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A regulation that requires prospective cannabis businesses to locate at least 300 feet away from homes and some businesses may be going away.

Would-be cannabis businesses are having trouble navigating the city's location requirements.

Most recently, property owner and builder Rick Murphy has fielded a proposal for a cannabis cultivation operation in the AG Cash & Carry building at 101 N. Third St., which he owns.

The building is in an industrial zone, which allows cannabis cultivation, but it's also in the Downtown Overlay District, which does not. Murphy has asked for three things: to change the Land Development Standards to eliminate most "protected" uses and hence, the 300-foot rule; to remove his building from the Downtown Overlay District; and to waive screening requirements for properties in industrial zones. Planners are recommending the first two, but would retain the screening requirement.

As it stands, the Land Development Standards state that cannabis businesses cannot set up shop within 300 feet from a residential zone or schools, daycare centers, libraries, parks and public open spaces, religious institutions, cemeteries, correctional facilities and community or recreation centers.

Last month the city changed the way it measures the 300-foot distance after two would-be cannabis retailers said the restrictions were preventing them from opening downtown. One chose to move to Grants rather than wait for the city to make the change; the other opened his doors shortly thereafter.

Looking to head off a shooting gallery approach that would see the protected uses challenged one by one, planners are recommending the city remove all of the protected businesses except schools and daycare centers serving seven or more children, which are state requirements.

“I’m going to be coming back to you until we actually get rid of them all – until they are all gone anyway,” Planning and Development Director C.B. Strain told the Planning Commission Feb. 8, noting that most of those seeking to open cannabis-related businesses have run up against the exclusions.

Murphy’s property, for example, is within 300 feet of Iglesia Hispana Pentecostal El Pueblo de Dios.

“It takes a lot of staff time to research what’s on the ground, to make sure we’re not violating our own ordinances. It takes a lot of getting yelled at by these guys saying we’re picking on them and we’re anti-development and we don’t like them,” Strain said. “ … We’re just following the rules and applying the rules. It’s going to happen eventually, so nip it in the bud, do it all at once.”

Commissioners noted that Albuquerque scrapped similar protections after the city was forced to pay out legal judgments over enforcement.

Nobody spoke against the change, one other potential grower spoke in favor, and the argument sold the Planning Commission, which voted 4-0 with one member absent to approve the recommended changes. The matter will go to the city council Feb. 28.

Whittling the protected use list would solve the 300-foot problem, but the council will have to decide whether a grow-op or warehouse is consistent with their future plans for the area.

City Manager Maryann Ustick has characterized changes to the overlay district as a political decision.

“It is possible for the council to change the boundaries,” Ustick said. “You need to make a policy decision: Do you want it to be industrial or do you want it to be part of downtown?”

The cultivation business that Murphy is exploring isn’t a sure thing, he said, and it’s not the only reason he asked for changes. An out-of-state cultivation concern contacted him as the building owner about possibly growing marijuana there. His role as a landlord would include making changes to the building, which he said lends itself to a cultivation business because it is in an industrial zone and already has access to 480-volt power connections.

“It does have adequate power and utilities to the building. There’s not many other properties that are ready to go,” Murphy said.

The current tenant, Cash Cow Home Store, would move if the grow op goes forward.

Murphy also touted the potential benefit to the city, which would sell power and water to the concern. Plans would call for 20 to 30 jobs at the facility, with expected pay in the $15-$20 per hour range for most employees and higher salaries for management, Murphy said.

But cultivation is not the only option for the site. The overlay district requires that whatever business opens be at least 50% retail, which would prevent using his property for warehousing, he said.

Another potential hitch is that the city owns the nearby Alpine Lumber property at 104 N. Second St., and the council has discussed eventually putting a new library and/or some more arts and entertainment-centered businesses there.

“If there is a library over there, this probably would not be a big detriment to it,” Murphy told the Planning Commission. “I would think the bigger hazard would be walking across the tracks to get to a library.”

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