



PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85701

Date: January 13, 2016

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To: Planning Commission

From: Carolyn Laurie 
Planning and Development Services, Principal Planner

Subject: C8-15-03 Medical Marijuana Zoning Text Amendment – Public Hearing (Citywide)

Issue – On September 9, 2014, Mayor and Council adopted amendments to the Unified Development Code (UDC) related to Medical Marijuana (MMJ). During the public hearing staff was also directed to revisit the text amendment to ensure the amendments were functioning as proposed and to address the following: (1) place a cap on the number of dispensaries; and, (2) increase the permitted size of off-site cultivation locations in the C-2 and C-3 zones from 3,000 to 4,000 square feet.

Staff has received inquiries from stakeholders concerning additional amendments which would do the following: (3) adjust the setback for expansions of existing dispensaries to be in conformance with the Arizona Department of Health Services (ADHS) standards; and, (4) allow the outdoor cultivation of medical marijuana in the I-1 and I-2 zones.

The intent of this public hearing is to allow the Planning Commission to hear public input and deliberate on the three proposed amendments (Attachments A).

Recommendation – Staff recommends that the Planning Commission recommend approval of the proposed amendments (2, 3, and 4) regarding medical marijuana zoning to Mayor and Council.

Background – The following is a chronology of dates affecting medical marijuana in Arizona and Tucson:

- November 2, 2010, voters approved Proposition 203 legalizing the use of medical marijuana in Arizona;
- November 23, 2010, Mayor and Council adopted medical marijuana zoning regulations (Ordinance 10850); and,
- September 9, 2014, Mayor and Council adopted revisions to the medical marijuana zoning regulations (Ordinance 11199, highlighted text in Attachment A) which took into account the Planning Commission recommendations (Attachment B).

Present Considerations – The following is a brief description of the proposed amendments:

- (1) ******Place a cap on the number of dispensaries.*** – For the initial issuance of dispensary registration certificates, ADHS divided the State into 126 Community Health Analysis Areas (CHAAs) which cross jurisdictional boundaries. By requiring dispensaries to apply for a dispensary registration certificate based on a CHAA, the Department intended to spread dispensaries across the State based on population.***

As of today, ADHS has allocated approximately 96 dispensary registration certificates. In the next few years, if the State still has unassigned dispensaries, ADHS will consider dispensary applications for a location in a CHAA that already has an existing dispensary.

This amendment would allow Mayor and Council to set a dispensary cap for the City that could be the same as the current number of dispensaries or slightly higher.

Current Regulation – The State currently permits one (1) dispensary per CHAA. The City of Tucson has ten (10) CHAAs and ten (10) dispensaries (see Attachment D).

Proposed Revision – *** No change proposed. *** During the January 5, 2016, Mayor and Council removed this proposed text amendment during study session.

- (2) ***Increase the permitted size of off-site cultivation locations in the C-2 and C-3 zones to 4,000 square feet.*** – The 2014 amendment increased the size of dispensaries in the C-2 and C-3 zones. An anomaly occurred wherein a dispensary is allowed to be larger than a permitted off-site cultivation location in the same zones. Off-site cultivation locations tend to include more processing activity like infusion kitchens.

Current Regulation – Off-site cultivation locations in the C-2 and C-3 zones shall not exceed 3,000 square feet.

Proposed Revision – Revise UDC Section 4.9.9.E.2.a (Medical Marijuana Use-Specific Standards) to allow 4,000 square feet of total maximum floor area for off-site cultivation locations in the C-2 and C-3 zones: This size is the same as dispensaries.

- (3) ***Adjust the “sensitive use” setbacks for expansion of existing dispensaries to be in conformance with the Arizona Department of Health Services (ADHS) standards.*** – The 2014 text amendment allowed for the increase of dispensary square footage and the installation of infusions kitchens into dispensaries. This amendment would allow an existing dispensary, which was approved with 1,000 foot setbacks from sensitive uses, to expand to up to 4,000 square feet in floor area per the 2014 amendment with reduced setbacks.

Staff became aware of this issue when an existing dispensary wanted to expand. The Sixth Street dispensary was established prior to the 2014 amendment. Since the time of approval of the dispensary, sensitive uses have located within a distance that is less than the 1,000 foot sensitive use setback that exist in both Ordinance 10850 and Ordinance 11199 (the 2014

revision). The standards for sensitive use setbacks still apply to an expansion or alteration of an approved building footprint of a nonconforming use where the subject dispensary cannot meet the setback standards from the new sensitive uses in the area. An expansion would, thus, not qualify for an approval under Section 9.2.2, Expansion of a Nonconforming Use.

Current Regulation – For existing dispensaries an expansion must meet 1,000-foot sensitive setbacks.

Proposed Revision – Revise UDC Section 4.9.9.E.1.1 (Medical Marijuana Use Specific Standards) to (a) adjust the sensitive use setback for existing dispensaries and/or expansions to require a setback of 500 feet from schools that have moved into the area since the dispensary was established, and (b) remove any setback requirement for existing dispensaries and/or expansions for all ‘non-school’ sensitive uses that have moved into the area since the dispensary was established.

- (4) *Allow the outdoor cultivation of medical marijuana in I-1 and I-2 zones.* – This amendment has been requested by stakeholders. It would allow outdoor cultivation activity in industrial zones.

State statute requires that all cultivation of medical marijuana take place in an “enclosed, locked facility” (ARS § 36-2806(E)). ‘Enclosed, locked facility’ is defined as “a closet, room, greenhouse or other *enclosed area* equipped with locks or other security devices that permit access only by a cardholder” (ARS § 36-2801(6)).

ADHS rules further to define the “enclosed area” as an “outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate” (ADHS R9-17-101(16)).

Current Regulation – The UDC Section 4.9.9.E.2.d requires cultivation to be located in a permanent building, which is a structure having a roof: a greenhouse qualifies.

Proposed Revision – Revise UDC Section 4.9.9.E.2.d and .e (Medical Marijuana Use-Specific Standards) to allow off-site cultivation location to be located in an enclosed, locked facility (including outdoor enclosed areas), in I-1 and I-2 zones, in accordance with state statutes and ADHS rules.

Attachment:

- A – Medical Marijuana Zoning Text Amendment
- B – Planning Commission Recommendation Letter dated July 16, 2014
- C – Legal Advertising
- D – CHAA map

**UNIFIED DEVELOPMENT CODE
ARTICLE 4, ZONES
SECTION 4.9, USE-SPECIFIC STANDARDS**

4.9.9. RETAIL TRADE USE GROUP

E. Medical Marijuana

1. Medical Marijuana Dispensary

- a. The total maximum floor area of a medical marijuana dispensary shall not exceed **4,000** square feet.
- b. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 500 square feet of the **total maximum floor area** of a medical marijuana dispensary.
- c. A medical marijuana dispensary shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle. "Building" shall have the same meaning provided in Section 11.4.3, *Definitions-B*.
- d. The permitted hours of operation of a medical marijuana dispensary are from **7:00 a.m. to 10:00 p.m.**
- e. A medical marijuana dispensary shall have an interior customer waiting area equal to a minimum of 25% of the gross floor area.
- f. A medical marijuana dispensary shall not have a drive-through service.
- g. A medical marijuana dispensary shall not have outdoor seating areas.
- h. A medical marijuana dispensary **may deliver medical marijuana to qualifying patients and shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.**
- i. A medical marijuana dispensary shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries, measured in a straight and direct horizontal line between the two closest exterior walls of medical marijuana dispensaries.
- j. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a **K-12** public, private, or charter school or a licensed childcare center, measured in a straight and direct horizontal line from

the closest exterior wall of the medical marijuana dispensary to the closest property line of a school or childcare center. Exception: For the purposes of this section, the following uses are not considered schools, and therefore, exempt from the setback requirement: 1) school administrative offices not located on or contiguous with a school site; and, 2) athletic fields or playgrounds used for school functions that are not contiguous with a school site, except as provided in Section 4.9.9.E.1.k.

- k. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a public park listed in Section 6: *Medical Marijuana Dispensary and Dispensary Off-Site Cultivation Uses - Required Setback from Certain Parks*, of the Technical Standards Manual, a church, or library and a minimum of 2,000 feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed residential drug or alcohol rehabilitation facility, measured in a straight and direct horizontal line from the closest wall of the medical marijuana dispensary to the closest property line of a church, library, public park, licensed residential substance abuse diagnostic and treatment facility, or other licensed drug or alcohol rehabilitation facility. A “church” means a building that is erected or converted for use as a church, where services are regularly convened that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs, or other architectural features.

l. The expansion of an existing medical marijuana dispensary shall be setback a minimum of 500 feet from a K-12 public, private, or charter school, measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana dispensary to the closest property line of a school.

- lm. A medical marijuana dispensary and associated uses such as infusion kitchens, shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

2. Medical Marijuana Dispensary Off-Site Cultivation Location

- a. In the C-2 and C-3 zones, the total maximum floor area of a medical marijuana dispensary off-site cultivation location shall not exceed ~~3,000~~4,000 square feet.
- b. In the I-1 and I-2 zones, there is no size limit.
- c. In the C-2 and C-3 zones, the secure storage area for the medical marijuana stored at the medical marijuana dispensary off-site cultivation location shall not exceed 1,000 square feet of the 3,000

square foot total maximum floor area of a medical marijuana dispensary off-site cultivation location.

- d. In the C-2 and C-3 zones, A medical marijuana dispensary off-site cultivation location shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle. “Building” shall have the meaning provided in Section 11.4.
- e. In the I-1 and I-2 zones, A medical marijuana dispensary off-site cultivation location shall be located in a permanent, enclosed, locked facility in accordance with State Statute and Arizona Department of Health Services rules and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle.
- ef. In the C-2 and C-3 zones, a medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries or medical marijuana dispensary off-site cultivation locations measured in a straight and direct horizontal line between the two closest exterior walls of medical marijuana dispensaries’ cultivation locations.
- fg. In the C-2 and C-3 zones, a medical marijuana dispensary off-site cultivation location shall be setback a minimum of 1,000 feet from a **K-12** public, private or charter school or a licensed childcare center measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana off-site cultivation location to the nearest property line of a school or childcare center. Exception. For the purposes of this section, the following uses are not considered schools, and therefore, exempt from the setback requirement: 1) school administrative offices not located on or contiguous with a school site; and, 2) except as provided in Section 4.9.9.E.k, athletic fields or playgrounds used for school functions that are not contiguous with a school site.
- gh. In the C-2 and C-3 zones, a medical marijuana dispensary off-site cultivation location shall be setback a minimum of 1,000 feet from a public park listed in Section 6: *Medical Marijuana Dispensary and Dispensary Off-Site Cultivation Uses - Required Setback from Certain Parks*, of the Technical Standards Manual, a church or library and a minimum of 2,000 feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed residential drug or alcohol rehabilitation facility measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana dispensary off-site cultivation location to the closest property line of a church, library, public park, licensed residential substance abuse diagnostic and treatment facility, or other licensed drug or alcohol rehabilitation facility. A “church” means a building that is erected or

converted for use as a church, where services are regularly convened that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs, or other architectural features.

- hi. In the I-1 and I-2 zones, a medical marijuana dispensary off-site cultivation location shall be setback a minimum of 500 feet from a K-12 public, private, or charter school, measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana off-site cultivation location to the closest property line of a school.
- ij. A medical marijuana off-site cultivation location and associated uses such as infusion kitchens, shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.
- ik. A medical marijuana dispensary off-site cultivation location shall provide only wholesale products to other medical marijuana dispensaries or medical marijuana dispensary off-site cultivation locations.

3. Medical Marijuana Designated Caregiver Cultivation Location

- a. All conditions and restrictions for medical marijuana dispensary off-site cultivation locations apply except that the designated caregiver cultivation location cultivation area is limited to a total 250 square feet maximum, including any storage areas.
- b. A designated caregiver may cultivate at their residence for a single qualifying patient subject to compliance with A.R.S. § 36-2806.01.
- c. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed 250 square feet maximum, including storage areas.
- d. A designated caregiver shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

4. Medical Marijuana Qualifying Patient Cultivation Location

- a. A qualifying patient may cultivate at their place of residence subject to compliance with A.R.S. § 36-2806.01.
- b. A qualifying patient, cultivating marijuana, shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

**UNIFIED DEVELOPMENT CODE
ARTICLE 7, DEVELOPMENT STANDARDS
SECTION 7.4, MOTOR VEHICLE AND BICYCLE PARKING**

7.4.4. REQUIRED NUMBER OF MOTOR VEHICLE PARKING SPACES

B. Minimum Number of Motor Vehicle Parking Spaces Required

The minimum number of motor vehicle parking spaces required is provided in Table 7.4.4-1.

TABLE 7.4.4-1: MINIMUM NUMBER OF MOTOR VEHICLE SPACES REQUIRED	
Land Use Group/Class	Motor Vehicle Parking Required
* * *	
RETAIL TRADE USE GROUP*	1 space per 300 sq. ft. GFA, except as follows:
* * *	
Medical Marijuana Dispensary Off-Site Cultivation Location	1 space per 2,000 sq. ft. of storage area for the first 20,000 sq. ft. of storage area plus 1 space per 10,000 sq. ft. of storage area for over 20,000 sq. ft. of storage area, with a minimum of 2 spaces
* * *	

7.4.8. REQUIRED NUMBER OF BICYCLE PARKING SPACES

B. Minimum Number of Bicycle Parking Spaces Required

2. Minimum Required Bicycle Parking Spaces

Table 7.4.8-1: Minimum Required Bicycle Parking Spaces		
Land Use Group/Class	Short-Term Bicycle Parking Required	Long-Term Bicycle Parking Required
* * *		
RETAIL TRADE USE GROUP*		
* * *		
Medical Marijuana Dispensary Off-Site Cultivation Location	2 spaces	1 space per 40,000 sq. ft. GFA. Minimum requirement is 2 spaces. Maximum requirement is 10 spaces.



CITY OF
TUCSON

PLANNING AND
DEVELOPMENT
SERVICES
DEPARTMENT

PLANNING
COMMISSION

July 16, 2014

The Honorable Mayor and
Members of the Council
City of Tucson
P. O. Box 27210
Tucson, Arizona 85726-7210

Subject: Text Amendments to the Unified Development Code (UDC) – Medical Marijuana

Recommendation

This letter is to inform you that the Planning Commission recommends approval of the proposed amendments to the medical marijuana regulations with additional recommendations.

The Planning Commission held one study session (June 4, 2014) and one public hearing (July 16, 2014) on the proposed amendments. The various stakeholders that spoke at the public hearing confirmed their support for less restriction of medical marijuana dispensary and off-site cultivation.

1. Remove floor area restriction of off-site cultivation locations in I-1 and I-2 zones (Vote: 10-0);
2. Allow infusion kitchens within dispensaries and off-site cultivation locations (Vote: 10-0);
3. Establish a **four** year sunset clause (Vote: 10-0);
4. Reduce the setback of off-site cultivation locations to 500 feet from schools in I-1 and I-2 zones (Vote: 10-0);
5. Expand the dispensary hours of operation from 7 a.m. to midnight (Vote: 10-0); and,
6. Allow delivery to qualifying patients (Vote: 7-3).

Findings

The Planning Commission finds that the proposed amendments clarify vagueness, corrects inconsistency, and modify the restrictiveness of medical marijuana regulations.

Sincerely,



Thomas Saylor-Brown, Chair
Planning Commission

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Tucson will hold a public hearing on Wednesday, January 13, 2016, at 6:00 PM, in Mayor and Council Chambers (City Hall), 255 W Alameda, Tucson, Arizona. All interested persons will have an opportunity to appear and be heard in relation to the following:

UNIFIED DEVELOPMENT CODE AMENDMENTS

MEDICAL MARIJUANA ZONING

The C8-15-03 proposed amendments revise the City of Tucson Code, Chapter 23B, Unified Development Code (UDC) Section 4.9.9.E, *Medical Marijuana* of Article 4, *Zones*, Section 4.9, *Use-Specific Standards*, Section 4.9.9, *Retail Trade Use Group*.

A complete copy of the above proposed text amendments can be obtained from the City of Tucson Planning and Development Services Department located on the 3rd Floor of 201 N Stone, Tucson, Arizona, or online at tucsonaz.gov/pdsd/planning-commission. If you have questions or comments regarding the proposal, please contact staff at cotplanningcommission@tucsonaz.gov.

The Mayor and Council Chambers is wheelchair accessible. A request for reasonable accommodation for persons with disabilities must be made to the City Clerk's Office by parties at least five working days in advance of the scheduled meeting and can be made by calling (520)791-4213 or (520)791-2639 (TDD). If you require an accommodation or materials in accessible format or require a foreign language interpreter or materials in a language other than English for this event, call (520)791-5550 at least five business days in advance. Si usted desea esta notificación en español, por favor llame al número de teléfono: (520) 791-5550. Cuando llame por este documento, por favor indique el título y el tema.

Medical Marijuana Community Health Analysis Areas

City of Tucson
Planning and Development Services



Medical Marijuana Facilities

- Dispensary
- Offsite Cultivation

Commercial and Industrial Zones

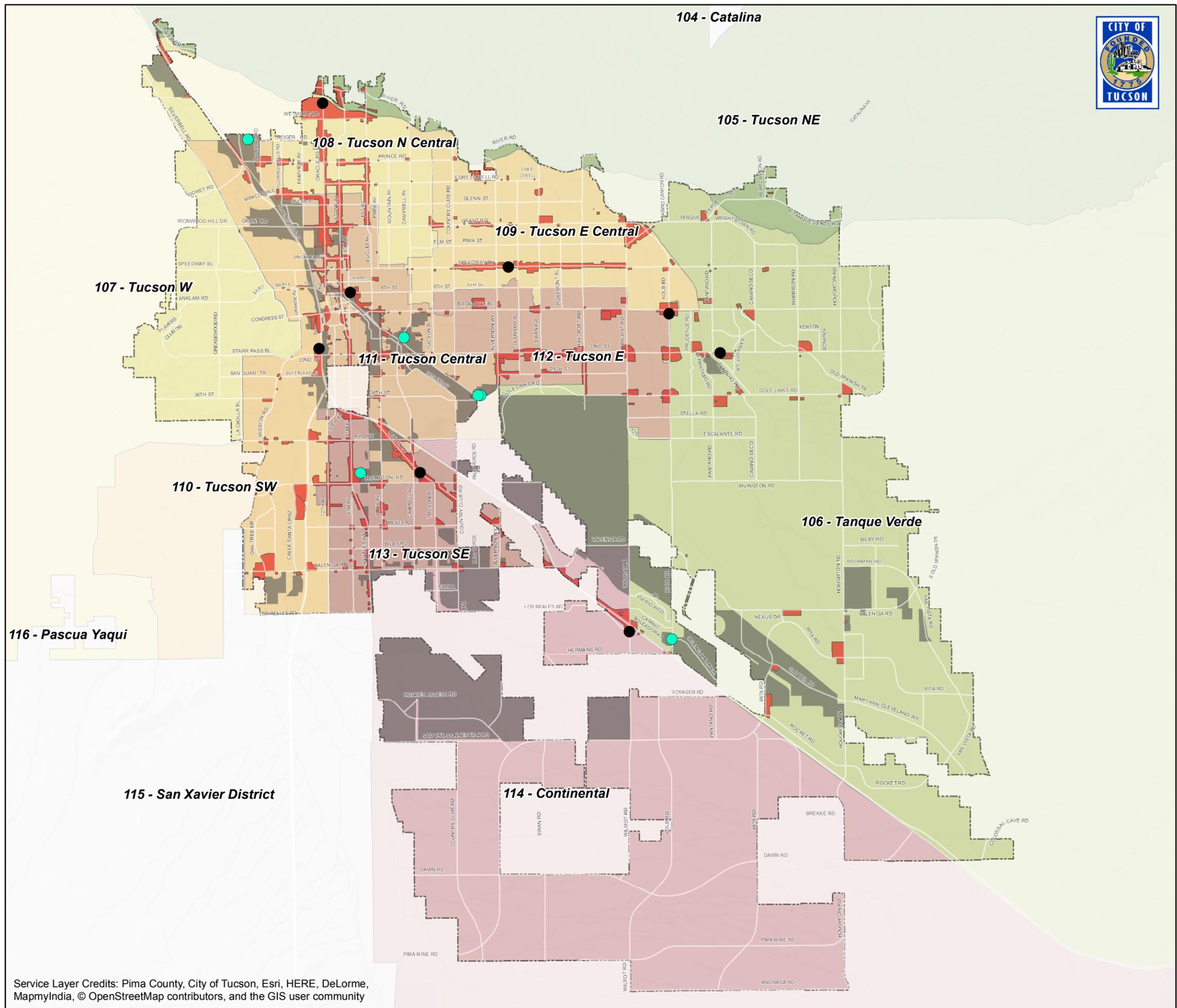
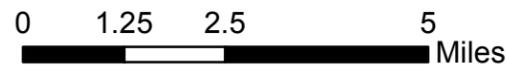
- Commercial Zone (C-2 & C-3)
- Industrial Zone (I-1 & I-2)
- City Limits

CHAA

- 105 - Tucson NE
- 106 - Tanque Verde
- 107 - Tucson W
- 108 - Tucson N Central
- 109 - Tucson E Central
- 110 - Tucson SW
- 111 - Tucson Central
- 112 - Tucson E
- 113 - Tucson SE
- 114 - Continental

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Date: 1/5/16

The City of Tucson makes no claims concerning the accuracy of this map nor assumes any liability resulting from the use of the information herein.



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