



PLANNING COMMISSION

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

Date: December 2, 2015

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To: Planning Commission

From: Jim Mazzocco, AICP
Executive Secretary

Subject: C8-15-03 Medical Marijuana Zoning Text Amendment – Study Session (Citywide)

Issue – On September 9, 2014, the Mayor and Council adopted amendments to the Unified Development Code (UDC) related to Medical Marijuana (MMJ); and, directed staff to revisit the text amendment to ensure that the amendments were functioning as proposed and to address the following:

1. Place a cap on the number of dispensary locations; and,
2. Increase the permitted size of off-site cultivation locations in the C-2 and C-3 zones to 4,000 square feet and address parking associated with the retail use.

Staff has received inquiries from stakeholders concerning additional minor changes, which would do the following:

3. Adjust the setback for expansions of existing dispensary locations; and,
4. Allow the outdoor cultivation of medical marijuana in I-1 and I-2 zones.

The intent of this study session is to allow the Planning Commission to deliberate on the draft amendments (see Attachment A).

Recommendation – Staff recommends that the Planning Commission set the medical marijuana zoning text amendments to the UDC for a public hearing on January 13, 2016.

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

- November 2, 2010, the voters approved Proposition 203 legalizing the use of medical marijuana in Arizona;
- November 23, 2010, the Mayor and Council adopted medical marijuana zoning regulations (Ordinance 10850); and,
- September 9, 2014, the Mayor and Council adopted revisions to the medical marijuana zoning regulations (Ordinance 11199).

Present Considerations – The following is a brief description of the amendment items:

1. Place a cap on the number of dispensary locations.

Summary – For the initial issuance of dispensary registration certificates, the Arizona Department of Health Services (ADHS) allocated certificates on the basis of having 126 Community Health Analysis Areas (CHAAs). 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.

Up to now ADHS has used approximately 96 dispensary registration certificates. In the next two or three years if the State still has unassigned dispensaries, ADHS will consider dispensary applications for a location in a CHAA that already has a dispensary.

This draft 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 dispensary per Community Health Analysis Area (CHAA). The City of Tucson has nine CHAAs that overlap into adjacent jurisdictions.

Proposed Revision – Add to UDC Section 4.9.9.E.1.n (Medical Marijuana Use Specific Standards) that the number of dispensary locations is limited to nine.

2. Increase the permitted size of off-site cultivation locations in the C-2 and C-3 zones to 4,000 square feet and address parking associated with the retail use.

Summary – The 2014 amendment increased the size of dispensary locations 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 are limited to 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 floor area for off-site cultivation locations in the C-2 and C-3 zones. The size is the same as current C-2 and C-3 zone dispensaries.

3. Adjust the setback for existing dispensary locations.

Summary – Since the increase of the dispensary location size and installation of an infusion kitchen, the dispensary has requested to expand within the existing building

footprint. This amendment would allow an existing dispensary that was approved with 1,000 foot setbacks to expand to up to 4,000 square feet in 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, several sensitive uses have located within a distance that is less than the sensitive use setbacks that existed in Ordinance 10850 and remained in the 2014 revision, Ordinance 11199. The standards for sensitive use setbacks still apply to an expansion or alteration of an approved building footprint of a nonconforming use and the subject dispensary cannot meet the setback standards from the new sensitive uses in the area, thus an expansion would 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 adjust the sensitive use setback for existing dispensary expansions with a setback of 500 feet from 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.

Summary – This amendment has been requested by stakeholders. It would allow certain outdoor cultivation activity in industrial zones.

The State statute defines cultivation in an “enclosed, locked facility”, which is a closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.

ADHS, further evaluates in section R9-17-101 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.

Current Regulation – The UDC Section 4.9.9.E.2.d permits cultivation to be located in a permanent building, which is a structure with 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, in accordance with ADHS. This provision would allow an enclosed outdoor area to qualify.

Attachments:

A – Draft Medical Marijuana Zoning Text Amendment

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**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. An existing medical marijuana dispensary expansion shall be setback a minimum of 500 feet from sensitive uses in Section 4.9.9.E.1.i, .j, & .k.

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.

n. The number of city-wide medical marijuana dispensaries are limited to nine.

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 3,0004,000 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 Arizona Department of Health Services 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.

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