



PLANNING COMMISSION

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

Date: October 24, 2018

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To: Planning Commission

From: Scott Clark
Executive Secretary

Subject: C8-18-04 Medical Marijuana Sunset Date – Study Session
(Citywide)

Issue – This study session is to discuss the upcoming January 31, 2019 Medical Marijuana Ordinance sunset date and review the proposed UDC text amendments (see Attachment A for proposed UDC text amendments).

On February 23, 2016, Mayor and Council adopted the following amendments to the Unified Development Code (UDC) related to Medical Marijuana (MMJ): (1) placing a cap on the number of dispensaries, (2) increasing the permitted size of off-site cultivation locations in the C-2 and C-3 zones from 3,000 to 4,000 square feet, and (3) adjusting the setback for expansion of existing dispensaries to be in conformance with the Arizona Department of Health Services (ADHS) standards. At that time, the ordinance (see Attachment B) was given a sunset date of January 31, 2019 to review whether the amendments cause a significant change in the uses impact on surrounding areas. After this date, the amendments will not continue in effect unless the Mayor and Council removes the sunset provision from the ordinance or creates a new sunset date.

Since the adoption of the most recent amendments to the MMJ ordinance, staff has also received inquiries from stakeholders to explore additional amendments related to the following: (1) addition of odor mitigation requirements for medical marijuana facilities, and (2) changing where applicants can view a list of public parks from the Technical Standards Manual to a more comprehensive and current list, (3) the requirement of 25% of gross floor area for dispensary waiting areas, and (4) clarification regarding churches.

Recommendation – Staff recommends that the Planning Commission set the medical marijuana sunset date for a public hearing on December 5, 2018.

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).

- September 9, 2014, Mayor and Council adopted revisions to the medical marijuana zoning regulations (Ordinance 11199). These revisions included the removal of the size limit on medical marijuana off-site cultivation locations in the I-1 and I-2 zones, permitting infusion kitchens as an associated use to dispensaries, and the establishment of a sunset date of two years for the amendments.
- February 23, 2016, Mayor and Council adopted revisions to the medical marijuana zoning regulations (Ordinance 11346) related to (1) placing a cap on the number of dispensaries, (2) increasing the permitted size of off-site cultivation locations in the C-2 and C-3 zones from 3,000 to 4,000 square feet, and (3) adjusting the setback for expansion of existing dispensaries to be in conformance with the Arizona Department of Health Services (ADHS) standards. These amendments have a sunset date of January 31, 2019.
- August 8, 2018, Mayor and Council held a study session to initiate the process to address the upcoming sunset date of January 31, 2019. Please see Attachment C for Legal Action Report from that meeting.
- August through October, 2018, PSDS staff conducted stakeholder interviews with a group that included business owners from the medical marijuana business, neighborhood groups, ward offices, and developers. At these meetings several topics were covered regarding how to make improvements to the existing ordinance. Initial recommendations to come out of those meetings were:
 - Adjust the 25% lobby size so it is tied to sales floor area not dispensary size
 - Codify odor mitigation requirement currently being added as a zoning condition
 - Revise language in the Technical Standards Manual to allow for interpretation by Zoning Administrator regarding setback requirement for new parks or parks that have been removed from the system
 - Clarify language related to religious institutions

For a summary of those meetings, please see Attachment D.

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

1. Adjust the 25% lobby size so it is tied to sales floor area not dispensary size.

Summary – This amendment has been requested by stakeholders. During the stakeholder meetings held by staff, it became apparent that our requirement for an interior customer waiting area to be 25% of the gross floor area was not a method that is truly representative of the intent and need of the regulation. In many cases, a

dispensary may only use 1000 sf or less of space for sales, while upwards of 2000 sf may be used for storage or production facilities. This has led to a situation where there is a significant amount of underutilized space in these businesses. It was determined that a more accurate measure of the need for an interior customer waiting area would be 25% of sales floor area, and not gross floor area.

Current Regulation – Medical marijuana dispensaries are required to have an interior customer waiting area equal to a minimum of 25% of the gross floor area.

Proposed Revision – Revise Section 4.9.9.E.1.e so that the required interior customer waiting area is equal to a minimum of 25% of the sales floor area and not gross floor area.

2. Codify odor mitigation requirement currently being added as a zoning condition.

Summary – There is no mention of odor mitigation in the current ordinance. Odor mitigation is a standard practice of the industry and is currently included as a condition of approval for all medical marijuana facilities in Tucson. The addition of an odor mitigation clause to the UDC would codify what is already enforced through conditions.

Current Regulation – There are currently no requirements in the UDC related to odor mitigation.

Proposed Revision – Revise UDC Sections 4.9.9.E.1.n, 4.9.9.E.1.o, 4.9.9.E.2.n, and 4.9.9.E.2.o to include provisions related to odor mitigation for medical marijuana dispensaries and cultivation facilities.

3. Revise language in the Technical Standards Manual to allow for interpretation by Zoning Administrator regarding which parks may trigger the setback requirement in the Medical Marijuana use specific standards.

Summary – The current regulation in UDC Section 4.9.9.E.1.k requires medical marijuana dispensaries to be setback a minimum of 1,000 feet from public parks listed in Section 6-01.0.0 of the Technical Standards Manual. This list is static and does not include some newly added City parks. PDSO became aware of this issue when a dispensary applied for a permit inside of the required setback distance of a newly developed park not listed in the Technical Standards Manual.

Current Regulation – 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.

Proposed Revision – Revise language of the Technical Standards Manual to include newly added parks since the 2010 ordinance was enacted, and language to allow for an interpretation of changes to park list based on specific criteria.

4. Clarify language related to religious institutions.

Summary – This amendment provides clarification to the use of the word “church” in regards to setback requirements. Through our stakeholder meetings, it was determined that that could be interpreted to be too narrow and clarification should be added.

Current Regulation – The UDC Section Sections 4.9.9.E.1.k and 4.9.9.E.2.h both reference a setback requirement for a church.

Proposed Revision – Revise UDC Sections 4.9.9.E.1.k and 4.9.9.E.2.h to reference a church, synagogue, or temple.

Attachments:

A – Draft Proposed Medical Marijuana UDC Text Amendment

B – Ordinance 11346 adopted February 23, 2016

C – Legal Action Report from August 8, 2018 Mayor and Council Study Session

D – Summary of Stakeholder Meetings