



# PLANNING COMMISSION

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

**Date:** December 5, 2018

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**To:** Planning Commission

**From:** *Scott Clark for*  
Scott Clark  
Executive Secretary

**Subject: C8-18-04 Medical Marijuana Sunset Date – Public Hearing  
(Citywide)**

**Issue** – This public hearing is to review and deliberate on the upcoming January 31, 2019 Medical Marijuana Ordinance sunset date and review the proposed UDC text amendments which would make changes to the ordinance to modify the size of required waiting areas, require additional odor mitigation, update how parks are identified with respect to required setbacks, and clarify language related to religious institutions (see Attachment A for proposed UDC text amendments).

On February 23, 2016, Mayor and Council adopted amendments to the Unified Development Code (UDC) related to Medical Marijuana (MMJ) (see Attachment B) and placed a sunset date of January 31, 2019 on the ordinance to review whether the amendments would cause a significant 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.

**Recommendation** – Staff recommends that the Planning Commission recommend the removal of the sunset date regarding medical marijuana and the approval of the related proposed amendments to the Unified Development Code (UDC).

**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, PDS 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.

- October 2018, PDS staff held two additional public meetings related to the medical marijuana ordinance sunset date. The following are a summary of the feedback received at those meetings (please see Attachment E for the comments submitted at those meetings):
  - Concern about a proposed medical marijuana cultivation facility near Rita Ranch led to suggestions that there should be residential setbacks and notification to nearby property owners for medical marijuana facilities.
  - Suggestion to allow for larger medical marijuana dispensary size if they were setback from residential by a certain distance.
  - Concern about the effectiveness of odor mitigation.

- On October 24, 2018, the Planning Commission held a study session related to the Medical Marijuana sunset date and set the public hearing date for December 5, 2018.

**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. PDSB 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

E – Comments submitted to PDSB