



# PLANNING COMMISSION

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

**Date:** May 21, 2014

Page 1 of 4

**To:** Planning Commission

**From:** Ernie Duarte, Director PDSD

**Subject:** Medical Marijuana Zoning Text Amendment – Study Session  
(Citywide)

**Issue** – On April 8, 2014, the Mayor and Council initiated the following text amendments to the medical marijuana regulations:

1. Lift the size limitation of off-site cultivation locations for I-1 and I-2 zone parcels only;
2. Allow infusion kitchens to be permitted within the dispensaries and off-site cultivation locations; and,
3. Include a sunset clause of two years from final adoption.

Further, they wanted to know the impact of the proposal in the industrial zones.

This is a study session to allow the Planning Commission to deliberate on the proposed amendments (see Attachment A for details).

**Recommendation** – It is recommended that the Planning Commission set this item for a public hearing on July 16, 2014.

## **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; and,
- April 8, 2014, the Mayor and Council initiated a text amendment to revise the medical marijuana regulations.

## **Summary of the Proposed Amendments**

Pursuant to the Mayor and Council's direction, staff prepared the following draft amendments (see Attachment A for more details on proposed amendments):

**1. Lift the size limitation of off-site cultivation location for I-1 and I-2 zone parcels only.**

Current Regulation – Off-site cultivation locations are limited to a maximum floor area of 3,000 square feet in C-2, C-3, I-1 and I-2 zones.

Proposed Revision – No limit on floor area for off-site cultivation locations in the I-1 and I-2 zones. Limit remains for C-2 and C-3 zones.

Stakeholder Comments – According to dispensary and off-site cultivation location owners, the maximum floor area requirement is too restrictive. The existing off-site cultivation location in Tucson is 3,000 square feet and can only use 1,500 square feet for cultivation. Currently, two other 3,000 square foot sites are in some state of construction. The existing site is competing against several 30,000 square foot and greater cultivation sites located in the Phoenix area. Some dispensary owners are registered with or planning to register with cultivation locations in Phoenix. Note dispensaries can only buy from one cultivation site or buy from other dispensaries, usually at a retail rate.

**2. Allow infusion kitchens to be permitted within the dispensaries and off-site cultivation sites.**

Background – An infusion kitchen is a use associated with dispensaries and off-site cultivation locations. They prepare consumable medical marijuana products. The Arizona Department of Health Services is the agency that regulates their products and activities. This amendment intends to recognize them as a use permitted by zoning that is part of the legal distribution of medical marijuana.

Current Regulation – The Unified Development Code currently does not acknowledge infusion facilities.

Proposed Revision – Revise UDC Sec. 4.9.9.E (Medical Marijuana Use Specific Standards) to allow infusion kitchens in medical marijuana dispensaries and off-site cultivation locations.

**3. Include a sunset clause of two years from final adoption**

Proposal – The proposed amendment goes away on January 31, 2017, unless extended by the Mayor and Council by a separate ordinance. If not extended, the sections will revert to the original language prior to this amendment. The purpose of this sunset clause allows the City to evaluate the impact of large cultivation sites on the community and preserve the City's ability to prepare a more restrictive standard in the UDC in the future if it sees that as the more appropriate direction.

**4. Study the impact of the proposal on potential sites in the industrial zones.**

Background – In response to council members’ concern that the proposed amendment may lead to a large increase in the number of off-site cultivation locations, staff has attempted to analyze the impact of the amendment in industrial zones.

Currently, off-site cultivation locations are required to be at least 2,000 feet from other dispensaries or off-site cultivation locations.

Evaluation – Staff reviewed the number of potential sites where an off-site cultivation location may locate by: 1) identifying all I-1 and I-2 zoned properties; 2) placing the UDC required 1,000-foot buffer around schools, childcares, churches, libraries, and public parks; and, 3) placing the required 2,000-foot buffer around existing dispensaries and off-site cultivation location, substance abuse diagnostic and treatment facilities, and other licensed drug or alcohol rehabilitation facilities.

First, in evaluating vacant, industrial land, staff found there is about 500 acres. It is unclear if the land is on the market. Further, local medical marijuana businessmen are reluctant to spend the time and money constructing new buildings for medical marijuana cultivation. The preference is to find available warehouses. From meetings with medical marijuana stakeholders, staff has found the spacing requirements are a key limiting factor on obtaining a site. The May 14, 2014 stakeholder meeting confirmed the difficulty in finding available industrial lands.

Evaluation Outcome – Based on the criteria above, there are about twelve hypothetical I-1 or I-2 zoned sites available to an off-site cultivation location. However it is not clear whether these sites are on the market. Some will require new construction regardless. The 2,000-foot setback requirement appears to be the most limiting standard preventing off-site cultivation locations in the industrial zones. The increasing of the cultivation location’s size does not appear to affect the number of sites in the City. See Attachment B mapping information.

Setback Reduction – The Planning Commission may consider a refinement to the amendment to adjust the 2000-foot setback requirement between off-site cultivation locations. The medical marijuana stakeholders believe no setback should be required between off-site cultivation locations. Their argument is that these sites from the outside look like regular industrial warehouses and have no negative impact on their surroundings. If increasing the number of sites remains a concern, an alternative way to handle this issue is placing a City-wide cap on the total number of large off-site cultivation locations.

**Stakeholder Involvement** – On May 14, 2014, staff met with stakeholders to discuss the proposed amendments. Attendees included medical marijuana dispensary and off-site cultivation business owners, a developer, and a neighborhood advocate.

The stakeholders raised numerous issues (many outside the parameters of what was initiated by the Mayor and Council), including (see Attachment D for details):

- The difficulty in finding a location that meets all of the off-site cultivation location requirements. One stakeholder said she has looked at about 25 available industrial properties; however, none of the sites meet all of the required setbacks from affected uses.
- The maximum floor area requirement of 3,000 for dispensaries and off-site cultivation locations is too small to accommodate infusion kitchens;
- The floor area restriction and separation requirements is limiting the ability of dispensaries here in the City from purchasing their product locally;
- Requiring setbacks between off-site cultivation locations does not make sense. Off-site cultivation locations are highly secured and purposely nondescript. Allowing off-site cultivation to locate within 2,000 feet of one another in the industrial zones will not result in potential nuisances.
- The hours of operation requirement for dispensaries is too restrictive.

The attendees agreed on the following:

1. To remove the size limitation in industrial zones.
2. To allow infusion kitchens in dispensaries and cultivation sites.
3. To set a sunset date of 4 years (note: the Mayor and Council initiated a two year sunset).
4. Based on staff's findings from their study and other considerations, to remove the 2,000' separation requirement between cultivation sites.

**Attachments:**

- A. Medical Marijuana Zoning Text Amendment
- B. Preliminary Study of the impact of the proposal on potential sites in the industrial zones
- C. Statewide Comparison Table
- D. Summary of the May 14 stakeholder meeting
- E. Update Memorandum for Mayor & Council

**PROPOSED AMENDMENTS TO THE MEDICAL MARIJUANA REGULATIONS**

Background: On April 8, 2014, the Mayor and Council initiated the following amendments to the medical marijuana regulations:

- 1) Lift the size limitation of cultivation site for I-1 and I-2 zone parcels only;
- 2) Allow review and infusion facilities to be permitted within the dispensaries and offsite cultivation sites; and,
- 3) Include a sunset clause of two years from final adoption.

Accordingly, the following are the draft revisions to Section 4.9.9.E of the Unified Development Code.

**4.9.9. RETAIL TRADE USE GROUP**

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**E. Medical Marijuana**

**1. Medical Marijuana Dispensary**

- a. The total maximum floor area of a medical marijuana dispensary shall not exceed 2,500 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 2,500 square foot 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 9:00 a.m. to 7:00 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 shall not offer a service that provides off-site delivery of the medical marijuana.
- 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 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. A medical marijuana dispensary and associated uses, such as infusion kitchens and off-site cultivation locations, 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

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exceed 3,000 square feet. In the I-1 and I-2 zones, there is no size limit.

- b. 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. In the I-1 and I-2 zones, the size of the secure storage area is not restricted.
- c. 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.
- d. 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.
- e. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 1,000 feet from a 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.
- f. 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 wall of the medical marijuana dispensary off-site cultivation location to the closes 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

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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.

- g. A medical marijuana off-site cultivation location shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

h. Infusion kitchens are permitted in Medical Marijuana Dispensary Off-Site Cultivation Location.

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**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 ***

\* \* \*

**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*		

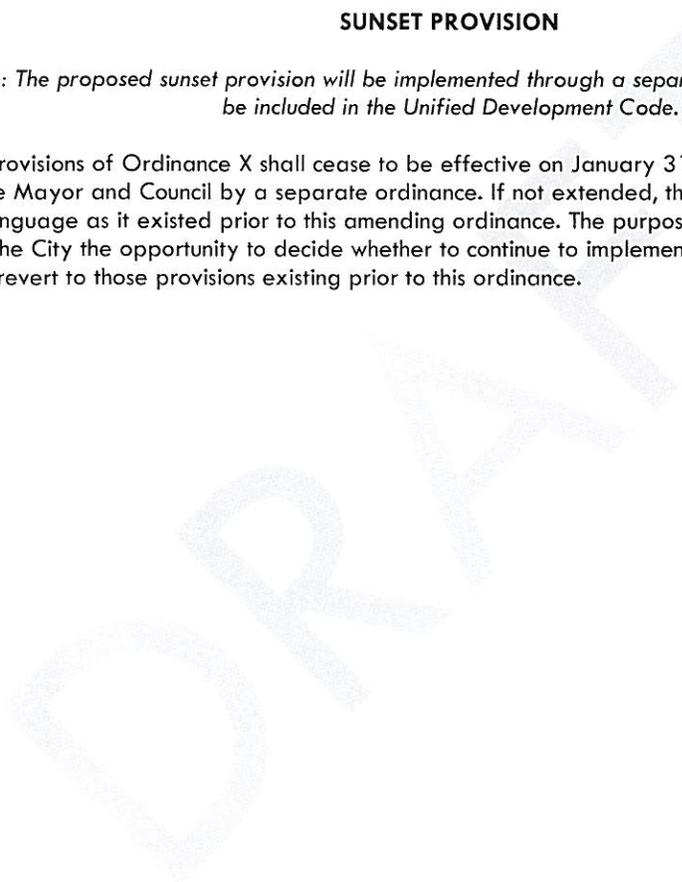
* * *		
<u>Medical Marijuana Dispensary Off-Site Cultivation Location</u>	<u>2 spaces</u>	<u>1 space per 40,000 sq. ft. GFA. Minimum requirement is 2 spaces. Maximum requirement is 10 spaces.</u>
* * *		

\* \* \*

### SUNSET PROVISION

*Note: The proposed sunset provision will be implemented through a separate ordinance and will not be included in the Unified Development Code.*

The provisions of Ordinance X shall cease to be effective on January 31, 2017, unless extended by the Mayor and Council by a separate ordinance. If not extended, the sections shall revert to the language as it existed prior to this amending ordinance. The purpose of this sunset clause is to give the City the opportunity to decide whether to continue to implement Ordinance X, as added or to revert to those provisions existing prior to this ordinance.



## Attachment B

### Preliminary Evaluation

#### Potential Cultivation Sites in the Industrial Zones



#### **Application of Medical Marijuana Buffers and Setbacks on Industrial Zoned Land –**

Below are a set of criteria applied to industrial lands for finding complying off-site cultivation locations.

1. Identify all the light (I-1) and heavy (I-2) industrial zones;
2. Identify industrial vacant and developed parcels;
3. Set 2,000 foot buffer around existing medical marijuana dispensaries and cultivation sites;
4. Set 1,000 foot buffer around sensitive uses like schools, libraries and parks;
5. Identify unavailable industrial land not covered by buffers;

Regulatory buffers were applied to industrial lands illustrated on the attached map.

#### **Potential Cultivation Sites and Buffers –**

When you apply a 2,000-foot setback on vacant, industrial areas of the City, the impact is that it reduces the number of locations for potential cultivation sites to about 12 sites. We cannot confirm these sites are currently on the market and if they are they require new construction.

Most current medical marijuana stakeholders prefer existing developed warehouse sites. In the case of developed sites, most of the land is not on the market thus decreasing the number of potential sites. For sites on the market, staff has learned it is still very difficult to find available land that complies with all the spacing requirements. The May 14, 2014 stakeholder meeting confirmed the difficulty in finding available industrial lands.

#### **Stakeholders Account –**

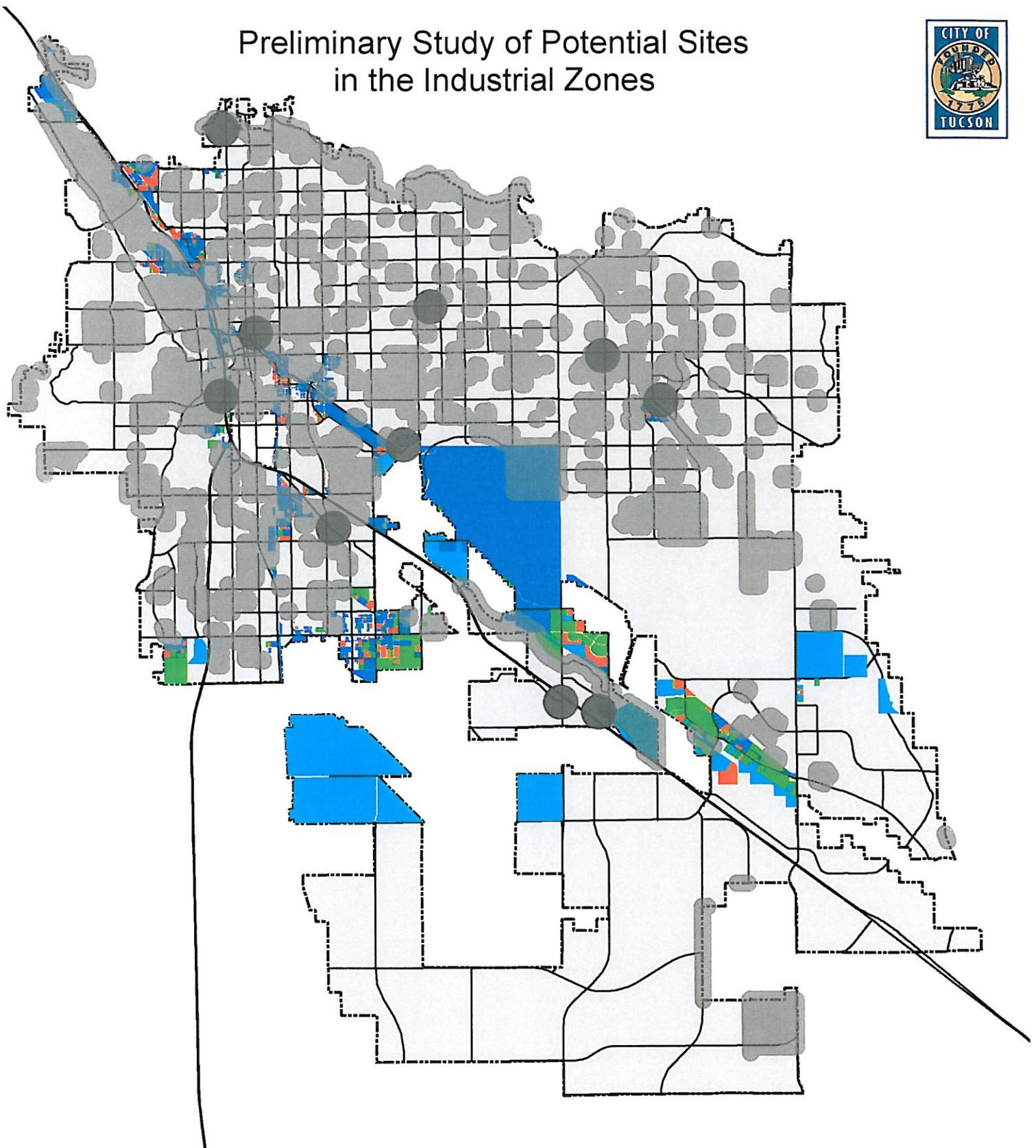
Demitri Downing, a stakeholder, said the buffers from sensitive uses such as schools, childcare, churches, libraries, and parks are not a big problem but the 2,000 foot distance between setback for cultivation sites severely limits the availability of industrial land.

Vicky Puchi-Saavedra, a stakeholder, talked about the difficulty she has had in finding a place for an off-site cultivation site of 3,000 square feet. She said she has looked at about 25 available industrial properties and all fall on the 2,000 foot distance between rule.

#### **Summary –**

The 2,000-foot setback is the most limiting standard preventing off-site cultivation sites in the industrial zones. The increasing of the cultivation sites' size does not appear to affect the proliferation of sites City-wide.

# Preliminary Study of Potential Sites in the Industrial Zones



-  Light Industrial (I-1)
-  Heavy Industrial (I-2)
-  Vacant Industrial Parcel
-  Industrial Warehouse
-  2,000' Setback Buffer around Medical Marijuana Sites
-  1,000' Setback Buffer around Sensitive Uses



Created By: Planning & Development Services  
Date: 05/20/2014  
Source: Pima County, City of Tucson

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.



## Statewide Comparison of Dispensary

	Permitted Zones	Max Floor Area Permitted (Square Feet)	Number of Dispensary Site	Number of CHAA in City
<b>Flagstaff</b>	<ul style="list-style-type: none"> <li>•Highway and Urban Commercial</li> <li>•Light and Heavy Industrial</li> </ul>	No space size limit (previously 3,000)	2	2
<b>Marana</b>	<ul style="list-style-type: none"> <li>•Residential, Commercial, Industrial, and Quasi-public Lot</li> <li>•Designated Flood Plain</li> <li>•Transportation Corridor</li> </ul>	No space size limit	2 (2 dispensary limit as per population)	5
<b>Peoria</b>	<ul style="list-style-type: none"> <li>•Intermediate, General, and Regional Commercial</li> </ul>	No space size limit	2	5
<b>Scottsdale</b>	<ul style="list-style-type: none"> <li>•Special Campus</li> <li>•Commercial Office</li> <li>•Industrial Park</li> </ul>	No space size limit	1	2 (1 developable)
<b>Tucson</b>	<ul style="list-style-type: none"> <li>•General and Intensive Commercial</li> </ul>	2,500	8	8
<b>Mesa</b>	<ul style="list-style-type: none"> <li>•Limited and General Industrial</li> </ul>	2,500	4	5
<b>Phoenix</b>	<ul style="list-style-type: none"> <li>•Intermediate Commercial</li> <li>•Light Industrial</li> </ul>	2,000	14	19
<b>Glendale</b>	<ul style="list-style-type: none"> <li>•General Office</li> <li>•General and Heavy Commercial</li> </ul>	2,000	2	6
<b>Oro Valley</b>	<ul style="list-style-type: none"> <li>•Medium- and High-Intensity Commercial</li> </ul>	2,000	1	3 (2 developable)
<b>Sahuarita</b>	<ul style="list-style-type: none"> <li>•Transitional Zone</li> <li>•General Business Zone</li> </ul>	2,000	1	2
<b>Pima County</b>	<ul style="list-style-type: none"> <li>•CB-2</li> </ul>	2,000	1	18
<b>Tempe</b>	<ul style="list-style-type: none"> <li>•Planned, Regional, and Shopping/Service Commercial</li> <li>•Light, General and Heavy Industrial</li> </ul>	Limited SF with one exit	2 (1,226 SF & 943 SF)	2
<b>Arizona</b>	<ul style="list-style-type: none"> <li>•NA</li> </ul>	NA	99	126 (110 eligible)

Attachment C



## Statewide Comparison of Offsite Cultivation

	Permitted Zones	Approval Process	Max Floor Area Permitted (Square Feet)	Number of Offsite Cultivation Site
<b>Phoenix</b>	<ul style="list-style-type: none"> <li>•Suburban Ranch</li> <li>•Light Industrial</li> </ul>	Administrative	No space size limit	7
<b>Flagstaff</b>	<ul style="list-style-type: none"> <li>•Highway and Urban Commercial</li> <li>•Light and Heavy Industrial</li> </ul>	Administrative	No space size limit (previously 5,000)	1
<b>Peoria</b>	<ul style="list-style-type: none"> <li>•Business Park Industrial</li> <li>•Planned Light Industrial</li> <li>•Light and Heavy Industrial</li> </ul>	Conditional Use	No space size limit	1
<b>Scottsdale</b>	<ul style="list-style-type: none"> <li>•Special Campus</li> <li>•Industrial Park</li> </ul>	Conditional Use	No space size limit	0 (1 underway)
<b>Mesa</b>	<ul style="list-style-type: none"> <li>•Limited and General Industrial</li> </ul>	Administrative	25,000	3
<b>Glendale</b>	<ul style="list-style-type: none"> <li>•Light and Heavy Industrial</li> </ul>	Administrative	25,000	2
<b>Tucson</b>	<ul style="list-style-type: none"> <li>•General and Intensive Commercial</li> <li>•Light and Heavy Industrial</li> </ul>	Administrative	3,000	2
<b>Oro Valley</b>	<ul style="list-style-type: none"> <li>•Medium- and High-Intensity Commercial</li> </ul>	Administrative	2,000	0
<b>Pima County</b>	<ul style="list-style-type: none"> <li>•CB-2</li> </ul>	Conditional Use	2,000	0
<b>Sahuarita</b>	<ul style="list-style-type: none"> <li>•Transitional Zone</li> <li>•General Business Zone</li> </ul>	Administrative	2,000	0
<b>Tempe</b>	<ul style="list-style-type: none"> <li>•General and Heavy Industrial</li> </ul>	Administrative	Limited SF with one exit	1 (4,864 SF)
<b>Marana</b>	<ul style="list-style-type: none"> <li>•Residential, Commercial, Industrial, and Quasi-public Lot</li> <li>•Designated Flood Plain</li> <li>•Transportation Corridor</li> </ul>	Conditional Use	Offsite Cultivation Prohibited	0
<b>Arizona</b>	<ul style="list-style-type: none"> <li>•NA</li> </ul>	Approval to Operate	NA	25



## Statewide Comparison of Offsite Cultivation Setback

	School	Childcare	Church	Library	Park	Substance Abuse	Other Medical Marijuana Site	Residential Zones
Phoenix*	1,320	1,320	500	NA	1,320	NA	5,280	1,000
Glendale	1,320	NA	NA	NA	NA	NA	5,280	1,320
Peoria	1,000	1,000	NA	NA	NA	NA	2,640	500
Mesa	1,200	NA	1,200	1,200	1,200	NA	2,400	NA
<b>Tucson</b>	<b>1,000</b>	<b>1,000</b>	<b>1,000</b>	<b>1,000</b>	<b>1,000</b>	<b>2,000</b>	<b>2,000</b>	<b>NA</b>
Marana	1,000	1,000	1,000	1,000	1,000	2,000	2,000	NA
Oro Valley	1,000	1,000	NA	NA	NA	NA	2,000	NA
Sahuarita	1,000	1,000	1,000	1,000	1,000	1,000	2,000	NA
Pima County	1,000	1,000	1,000	1,000	1,000	1,000	2,000	NA
Flagstaff	750	750	750	750	750	750	2,000	NA
Tempe	1,320	1,320	1,320	1,320	1,320	NA	1,320	NA
Scottsdale	500	NA	NA	NA	NA	NA	1,320	500
Arizona	500	NA	NA	NA	NA	NA	NA	NA

\*shall be setback 1,000 feet from all property lines

## Attachment D



### Proposed Revisions to the Medical Marijuana Regulations Stakeholder Meeting

Wednesday, May 14, 2014  
4<sup>th</sup> Floor Conference Room, Joel D. Valdez Main Library,  
101 N. Stone, Tucson, Arizona 85701.

Meeting started at 3:10 pm and ended at 4:20 pm.

#### **Meeting Attendants –**

Jim Campbell  
Ruth Becker  
Demitri Downing  
Molly Thrasher – Ward 6 aide  
Diana Rhoades – Ward 1 aide  
Linda Morales  
Vicky Puchi-Saavedra  
Jean Paul Genet  
Michael Crawford  
David Basila  
Mohit Asnani

#### **Staff –**

Alexandra Hines, Adam Smith, Glenn Moyer, Jim Mazzocco

#### **Presentations –**

Staff distributed a draft of the proposed medical marijuana amendment. Adam Smith gave a presentation on the proposed amendment.

On April 8, 2014, the Mayor and Council initiated the following amendment to the medical marijuana regulations:

1. Lift the size limitation of cultivation sites for I-1 and I-2 zone parcels only.
2. Allow review and infusion kitchens to be permitted within the dispensaries and off-site cultivation sites.
3. Include a sunset clause of two years from final adoption.

In addition, Mayor and Council asked for a study on how the proposal might impact the City's industrial zones. Alexandra Hines gave an overview of the impact of cultivation sites on industrial zones. The presentation included:

1. Identifying all the I-1 and I-2 zones;
2. Identifying industrial vacant and developed parcels;
3. Setting buffers around sensitive uses like schools, day cares, churches, libraries, parks, and other medical marijuana dispensaries and cultivation sites;
4. Identifying unavailable industrial land covered by buffers;
5. Setting up 2,000 foot distance between buffers in a hypothetical available, vacant, industrial areas that produced the finding that the setbacks significantly reduce locations for off-site cultivation.

#### **Meeting Summary -**

Ruth Beeker asked who proposed the cultivation-site amendment?

Staff explained that medical marijuana (MM) stakeholders approached council members from Wards 2 and 5 and explained that the 3,000 square foot limitation on off-site cultivation sites was too small and placed Tucson businessmen at a disadvantage to Phoenix growers who had no limit on cultivation sites and thus had an advantage and left Tucson dispensary owners with only the option to buy products in Phoenix.

The Mayor and Council on April 8, 2014 directed staff to return with an amendment to lift the restriction of the size limitation of a cultivation site for I-1 and I-2 zoned parcels only, allow review and infusion kitchens to be permitted within the dispensaries and offsite cultivation sites, and include a sunset clause of two years from final adoption.

Demitri Downing explained his concerns about Tucson's MM regulations. He said the buffers from sensitive uses such as schools, childcare, churches, libraries, and parks is not a big problem but the 2,000 foot distance between cultivation sites standard severely limits the availability of industrial land. He added that the cultivation sites are discreet and, at most, may have some smell issues associated with them.

Mr. Downing further noted that some council members mentioned concerns about future setbacks for dispensaries once dispensaries can locate more than one dispensary in a particular CHAA (Community Health Analysis Area). He believed their concerns were correct and the City should consider at some point a standard that placed greater limits on local dispensary locations. Note Arizona Department of Health Services (ADHS) states "*if the state still has fewer dispensaries than state law allows [126], ADHS will consider dispensary applications for a location in a CHAA that already has a dispensary.*" Thus such a future dispensary would only be limited by zoning district and zoning spacing requirements. However, cultivation sites were a different story, he said, in that they tended to be located in warehouses out of the public eye.

Jim Campbell agreed that dispensaries are visible and that one would not know that a cultivation sites was there.

Diana Rhoades mentioned that Councilmember Romero understood that there is value in allowing flexibility for cultivation sites so Tucson businesses do not have to turn to Phoenix.

Linda Morales replied that the distance between cultivation-site rule responds to controlling the proliferation of facilities.

It was mentioned that many MM business owners, like Vicky Puchi-Saavedra, favor empty warehouses rather than constructing a new building. However, Ms. Puchi-Saavedra cannot find an available building with a 2,000 foot distance from another MM facility. To supply her dispensary she said she may have to register with a cultivation facility in Phoenix.

In an ongoing search for the past 8 months, she has only been able to find one potential site meeting all the sensitive use buffers but it is 535 feet from another cultivation facility. She is considering asking for a Board of Adjustment variance. Ms. Puchi-Saavedra said that in contrast to popular belief most dispensary owners are just barely making it as commercial enterprises.

Mr. Campbell asked what the sunset clause entails. Staff replied that the Mayor and Council would decide prior to the sunset date whether to revert to the previous standard of a 3,000 square foot size limit or

continue the no limit to size for sites. If Mayor and Council decided to revert to the smaller size, the built structures would be grandfathered and become nonconforming uses.

Mr. Downing said that having more local control over the number of dispensaries will prevent the “Venice Beach” scenario of a large cluster of dispensaries in one place.

Jean-Paul Genet added, California does not regulate MM to the degree that Arizona does so there is no comparison. Regarding cultivation sites, he said, they go unnoticed, and thus, are a different entity than dispensaries. Initially, when drafting the 2010 ordinance, no one knew how the facilities would function and it was difficult to distinguish between dispensaries and cultivation sites.

Mr. Downing said the City needs to have the foresight to change the problematic first generation MM regulations including the 2,000-foot distance between cultivation sites standards.

Staff responded that the motion directing the text amendment was specific. The research on industrial-zoned lands showed that the 2,000-foot distance between standard had a strong impact on limiting cultivation sites. Whether the Planning Commission has the flexibility to add a text amendment addressing this issue was debatable and staff preferred getting legal advice on that matter before advising the Commission on the parameters of the amendment that they could consider.

Michael Crawford and several attendees asked if this matter could go back to the Mayor and Council to consider the distance-between cultivation-site standard. Staff said they would look into the matter with their legal advisors.

Ms. Rhoades said Councilmen Romero encourages increased business and no limit on the facility to make cultivation easier. Councilmen Romero is concerned about the CHAAs not being a control feature at some future date and its impact on the potential proliferation of dispensaries.

Mr. Campbell mentioned that the cultivation sites are already limited by actual land availability and there is no reason to be more restrictive.

Mr. Asnani stated that he is going to register with a cultivation location in Phoenix, because Tucson is taking too long to amend the MM regulations. Unfortunately, he said that he expected half of the Tucson dispensaries are going to choose to register with cultivation sites in other jurisdictions to accommodate their demand.

Mr. Genet said it is important that the City take steps for changes to MM regulations in the next few months because it is a burgeoning industry and business decisions need to be made quickly. He added the MM business owners are barely hanging in there. Ms. Puchi-Saavedra explained that the businesses are sinking and barely covering costs of goods.

Ms. Beeker said the stakeholders should take their case to the Planning Commission and not let this item be run by City staff. Citizens should initiate actions and that the Planning Commission should not be a “rubber stamp” of staff’s recommendations. She said citizens should be represented and not rely on staff. She said this matter should not be done piecemeal but the whole list of concerns should be looked at together. Several attendees said they agreed with her on an enhanced citizens’ role especially on looking at all the issues at once.

Mr. Genet added that there is justification for the increase in cultivation building size because the 3,000 square-foot limit cannot provide all MM strains or bring down the price.

Mr. Crawford said that the building size limit should also be lifted from C-2 and C-3 zones. Infusion kitchens, he said, do not fit in MM dispensaries which are limited to 2,500 square feet.

Ms. Rhoades said she can see that while the proposed no size limit for cultivation sites is helpful she can also understand why the stakeholders do not like the 2,000-foot setback between sites that the industrial zones study shows is an issue also.

Ms. Puchi-Saavedra asked about the text amendment's time frame. Staff answered that the proposed amendment would go to Planning Commission first for a study session, then return as a public hearing, and eventually go to Mayor and Council for approval in about September 2014. Upon its approval, the new regulations would take effect 30 days later.

Mr. Crawford brought up caregiver cultivation of MM and concerns with the continued necessity of such a standard and how it is a potential source of illegal activity.

Mr. Campbell asked how the sunset clause is handled. Staff said it is prepared as a separate ordinance and having a sunset clause is influenced by Proposition 207 provisions regarding making permanent provisions that the City may want to reconsider once it has some experience with them. Mr. Campbell said the sunset should be four years versus two years. He added it normally takes a new business about a year from permitting to get established and the two years does not give businesses enough time to go through the business and government processes.

There was some discussion about whether the Mayor and Council would renew a sunset provision. Ms. Beeker said in her experience they tend to be renewed.

Mr. Crawford said the 2,000-foot setback distance from existing MM facilities should be zero feet. Ms. Beeker agreed that industrial zones are appropriate for MM cultivation sites.

Mr. Downing said there are more issues that the MM stakeholders believe need to be addressed regarding the 2010 ordinance. They include hours of operation and handling of caregivers doing cultivation. In addition, Mr. Crawford mentioned home delivery especially in relation to hospice circumstances. Mr. Genet said there is no way under the current rules to convey the use of raw plants for consumption to patients. Another stakeholder said the 2,500 square foot dispensaries were too small to do infusion kitchens, which is a growing associated business.

Staff said that the directions from the Mayor and Council were specific on what could be amended but would discuss with its legal advisors the next steps prior to the June 4 Planning Commission study session.



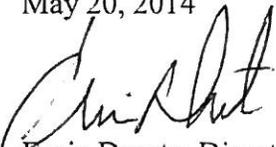
## Attachment E

# MEMORANDUM

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**DATE:** May 20, 2014

**TO:** Honorable Mayor and Council Members

**FROM:**   
Ernie Duarte, Director  
Planning & Development  
Services

**SUBJECT:** Update on the Medical Marijuana Zoning Text Amendment Process

Planning and Development Services Department (PDSD) staff invited a group of medical marijuana stakeholders and members from our email list of citizens following zoning text amendments to a May 14, 2014 presentation on the proposed medical marijuana text amendment recently initiated by Mayor and Council on April 8, 2014.

The Mayor and Council voted approval of the following – *“Direct staff to return with an amendment to lift the restriction of the size limitation of a cultivation site for I-1 and I-2 zone parcels only, allow review and infusion facilities to be permitted within the dispensaries and offsite cultivation sites, and include a sunset clause of two years from final adoption.”*

At the study session, there was some discussion among the Mayor and Council on whether there would be a proliferation of these facilities and that there was a need to understand the impact the proposed text changes would have on the City’s industrial zones.

As part of the May 14 presentation, staff presented its preliminary findings on estimating the likelihood of new cultivation sites this text amendment might create in industrial zones. Our basic finding was that the size of the site was not as important as the current 2,000-foot distance between setbacks for cultivation sites. This setback significantly limits the industrial land available after determining the City-wide setbacks for various sensitive uses like schools, childcare, churches, libraries, and parks.

Attached is a summary of the May 14 stakeholder meeting.

One stakeholder talked about the difficulty she has had in finding a place for an off-site cultivation site of 3,000 square feet. She said she has looked at about 25 available industrial properties and all fail because of spacing requirements including the 2,000-foot distance between rule.

The medical marijuana stakeholders asked staff if: 1) can the distance between setback as well as the sunset date two-year limit be reviewed by the Planning Commission given the Mayor and Council's April 8 motion, or 2) can the issue be returned to Mayor and Council for their consideration prior to the June 4 Planning Commission study session on the item.

Between now and the June 4 Commission study session, there is one Mayor and Council public meeting on June 3.

Staff has asked the City Attorney's office for advice on whether the April 8 motion and general discussion about doing an industrial land study regarding the potential proliferation of cultivation sites would still allow the Commission to deliberate on the distance between setbacks.

Staff agrees with the advice that the distance between setback still is addressing the proliferation of sites which was a subject of the April 8 Mayor and Council study session discussion.

This memo is intended to inform the Mayor and Council that staff's industrial land study, that we will be presenting to the Planning Commission on June 4, will mention the setback appears to be a key standard preventing off-site cultivation sites in the industrial zones and that the increasing of the cultivation facility's size does not appear to substantially affect the proliferation of sites City-wide. The Commission may decide to recommend a change in the distance between setback. If proliferation of sites is a concern, an alternative way to handle this issue is placing a City-wide cap on the total number of large cultivation sites allowed.

If the Mayor and Council would prefer to review the industrial land study and deliberate on further direction to the Commission on this item, then PDSO can give a presentation at your request at the June 3, 2014 Mayor and Council study session.

In the May 14 meeting summary, there is a list of potential amendment issues raised by the participants that we believe go beyond the scope of Mayor and Council's original direction. For example, it was mentioned that the City needs to consider spacing of dispensaries in anticipation of the (Community Health Analysis Area) CHAA system of spacing going away in the next few years. Arizona Department of Health Services (ADHS) rules states, "*if the State still has fewer dispensaries than State law allows [126], ADHS will consider dispensary applications for a location in a CHAA that already has a dispensary.*" Thus, at least hypothetically, there could come a time where additional dispensaries could apply to locate in the City and only be controlled by zoning districts and spacing requirements.

Currently, there are eight dispensaries in the City that are limited by eight CHAAs located in the City. If there are still less than 126 dispensaries statewide in the next several years, then zoning rules will be the only rules limiting the spacing of the additional dispensaries that are not already in a CHAA. The stakeholders said it is important to prevent the garish cluster of dispensaries that has occurred in places like Venice Beach, CA.

Unlike dispensaries, off-site cultivation sites, can be closer together because they look like generic industrial buildings. In other words, they do not want to draw attention to themselves.

If this item is set for the June 3 Mayor and Council study session, PDSB staff will be prepared to give an update on the issues related to industrial lands and the discussions held at the stakeholder meeting.

If you have any further questions on this matter, please feel free to call me at 837-4899.

cc:

Richard Miranda, City Manager

Mike Rankin, City Attorney

Jim Mazzocco, AICP, PDSB Deputy Director