



PLANNING COMMISSION

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

DATE: October 6, 2010

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary

SUBJECT: Public Hearing - Land Use Code (LUC) Amendment – Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations

Issue – This item is scheduled for a Public Hearing before the Planning Commission. On September 8, 2010, Mayor and Council directed staff to prepare a Land Use Code amendment to address Medical Marijuana Dispensaries and Cultivation Locations. The amendment amends certain portions of the Tucson Land Use Code, Article II *Zones*, Divisions 5 *Commercial Zones*, Section 2.5.4 and Section 2.5.5; Article II *Zones*, Division 7 *Industrial Zones*, Section 2.7.2 and Section 2.7.3; Article III *Development Regulations*, Division 5 *Performance Criteria*, Section 3.5.9; and Article VI *Definitions*, Division 3 *Land Use Groups*, Section 6.3.10; providing new regulations, definitions and performance criteria for Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations. A dispensary and a cultivation location will be considered a new land use class in the Retail Trade Use Group.

A draft amendment was presented to the Planning Commission for review at a Study Session on September 22, 2010. The changes and modifications requested by the Planning Commission at that meeting have been included in the final draft language. In preparing final draft language, staff have included an amendment to the Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Applications, Section 5.3.12, Zoning Compliance For Site Improvements In Existence on May 1, 2005. Staff recognized the advisability of this amendment in preparation of final draft language and included it for consideration of the Planning Commission.

Background – Proposition 203, the Arizona Medical Marijuana Act, A.R.S. § 36-2806.01, will appear on the November 2, 2010 statewide ballot providing for certain medical use, sale and cultivation of marijuana, to include the establishment of medical marijuana dispensaries and cultivation in the State of Arizona, and allows Cities and Counties to enact reasonable zoning regulations for Medical Marijuana Dispensaries and Medical Marijuana Cultivation locations. Medical Marijuana Dispensaries and Medical Marijuana Cultivation locations are not currently a permitted use of land in the City of Tucson and are not addressed by any regulations of the Tucson Land Use Code.

The proposed amendment will allow for the use of property in the City of Tucson as a Medical Marijuana Dispensary, Medical Marijuana Offsite Cultivation Location, Qualifying

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Patient Cultivation and Medical Marijuana Designated Caregiver Cultivation Location if the provisions of Proposition 203 are approved and become law.

Recommendation – Staff recommends that the Planning Commission forward this text amendment to the Mayor and Council for review and approval of the final ordinance on October 26, 2010.

Attachments: Medical Marijuana Dispensaries and Cultivation Locations Final Draft

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING; LIMITING THE USE OF LAND FOR REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES AND THE GROWTH AND CULTIVATION OF MEDICAL MARIJUANA, AMENDING THE TUCSON CODE, CHAPTER 23, LAND USE CODE, SECTIONS 2.5.4, 2.5.5, 2.7.2, 2.7.3, 3.5.9, 6.3.10, AND 5.3.12; AND DECLARING AN EMERGENCY

SECTION 1. The Mayor and Council make the following legislative findings:

1. Proposition 203, the Arizona Medical Marijuana Act, will appear on the November 2, 2010, statewide ballot and, if approved by voters, will provide for certain medical marijuana use, sale and cultivation to include the establishment of medical marijuana dispensaries in the State of Arizona, to include the City of Tucson.

2. The Federal Controlled Substances Act, and applicable regulations classify marijuana as a 'Schedule I' drug and consequently prohibit its use in any manner with exceptions only for research purposes.

3. The possession, delivery, manufacture, cultivation and sale of marijuana as contemplated by Proposition 203 are currently prohibited by Arizona State Law.

4. The Federal Food and Drug Administration (FDA) continues to support the placement of marijuana as a 'Schedule I' controlled substance with no currently accepted medical use in the United States.

5. Past evaluation by federal agencies including the FDA, Substance Abuse and Mental Health Service Administration (SAMHSA), and National Institute for Drug Abuse (NIDA) have concluded that no sound scientific studies support medical use of marijuana for treatment in the United States.

6. FDA as the federal agency responsible for reviewing the safety and efficacy of drugs, DEA as the federal agency charged with enforcing the Controlled Substances Act, and the Office of National Drug Control Policy, as the federal coordinator of drug control policy, do not support the use of smoked marijuana for medical purposes.

7. Evaluation of several California cities' experience with medical marijuana dispensaries and the opinion of the California Police Chiefs' Association have indicated negative secondary neighborhood affects associated with the operation of medical marijuana dispensaries including: illegal drug sales, at a price less than dispensary prices, to dispensary patrons; marijuana use in and around dispensaries; non-residents being attracted to the community to secure marijuana; DUI arrests related to marijuana purchased at dispensaries; burglaries of dispensaries; drug dealers posing as medical marijuana users to purchase and resell marijuana illegally; robbery of medical marijuana patrons; thefts in and around dispensaries to support legal and illegal drug commerce; negative affects on surrounding businesses resulting from a concentration of criminals associated with the dispensary; and illegal sale of drugs other than marijuana in dispensaries.

8. Robberies, assaults and burglaries of dispensaries may be under reported by dispensaries and crime statistics may consequently inaccurately underestimate the

incidence of such crimes, and dispensaries may account for a disproportionate number of such incidents in comparison to other business uses.

9. Dispensaries, by virtue of their operation: may be the repositories of large amounts of cash and marijuana and consequently operators have been attacked at their dispensaries and at home; dispensaries have been regularly burglarized; dispensaries account for other negative affects on the community such as sales of drugs to minors, loitering, heavy vehicle traffic, increased noise and robbery of dispensary customers.

10. The Director of the Office of National Drug Control Policy reports that in states such as Colorado youths who receive information that marijuana is a medicine assume that marijuana use is safe, but science is clear that marijuana use is harmful and associated with dependence, respiratory and mental illness, poor motor performance, and cognitive impairment.

11. Unregulated dispensaries can expand enormously within a municipality; and the current City of Tucson Land Use Code does not specifically address or regulate establishment, location or operation of marijuana dispensaries.

12. Proposition 203 expressly authorizes cities to enact reasonable zoning regulations that limit the use of land for registered nonprofit medical marijuana dispensaries.

13. Arizona law permits cities to enact zoning regulations in order to conserve and promote the public health, safety and general welfare and regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.

14. It is necessary to restrict, or prohibit the use or division of real property within the City of Tucson in order to protect the public's health by establishing appropriate regulation of medical marijuana dispensaries, cultivation facilities and home cultivation.

15. Regulations defining permitted location of dispensaries, cultivation facilities and home cultivation uses (collectively referred to here as 'facilities') and providing for the minimum separation of such facilities from uses such as churches, libraries, schools, parks, day care centers, licensed treatment centers, and other marijuana facilities will reduce or eliminate the threat to public health, safety and welfare potentially caused by medical marijuana uses.

16. The regulations, limitations and prohibitions established in this Ordinance are necessary to protect and preserve the public's health and safety.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 2. The Tucson Code, Chapter 23, Land Use Code, Article II, Zones, Division 5, Commercial Zones, Sections 2.5.4 and 2.5.5 are hereby amended to read as follows:

**ARTICLE II, ZONES
DIVISION 5, COMMERCIAL ZONES**

2.5.4 "C-2" COMMERCIAL ZONE.

2.5.4.2 Permitted Land Uses.

B. Retail Trade Use Group, Sec. 6.3.10

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4. Heavy Equipment Sales "30", subject to: Sec. 3.5.9.3

5. Medical Marijuana Designated Caregiver Cultivation Location "30", subject to: Sec. 3.5.9.8.B. and .C.
6. Medical Marijuana Dispensary "30", subject to: Sec. 3.5.9.8.A
7. Medical Marijuana Dispensary Offsite Cultivation Location "30", subject to: Sec. 3.5.9.8.B.
8. Medical Marijuana Qualifying Patient Cultivation Location "30", subject to: Sec. 3.5.9.8.D.
9. Swap Meets and Auctions "30", subject to: Sec. 3.5.9.4
10. Vehicle Rental and Sales "31", subject to: Sec. 3.5.9.5.A and .B

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2.5.5 "C-3" COMMERCIAL ZONE.

2.5.5.2 Permitted Land Uses.

B. Retail Trade Use Group, Sec. 6.3.10

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4. Heavy Equipment Sales "30", subject to: Sec. 3.5.9.3
5. Medical Marijuana Designated Caregiver Cultivation Location "30", subject to: Sec. 3.5.9.8.B. and .C.
6. Medical Marijuana Dispensary "30", subject to: Sec. 3.5.9.8.A.
7. Medical Marijuana Dispensary Offsite Cultivation Location "30", subject to: Sec. 3.5.9.8.B.
8. Medical Marijuana Qualifying Patient Cultivation Location "30", subject to: Sec. 3.5.9.8.D.

9. Swap Meets and Auctions “30”, subject to: Sec. 3.5.9.4
10. Vehicle Rental and Sales “31”, subject to: Sec. 3.5.9.5.A and .B

SECTION 3. The Tucson Code, Chapter 23, Land Use Code, Article II, Zones, Division 7, Industrial Zones, Sections 2.7.2 and 2.7.3 are hereby amended to read as follows:

**ARTICLE II, ZONES
DIVISION 7, INDUSTRIAL ZONES**

2.7.2 “I-1” LIGHT INDUSTRIAL ZONE.

2.7.2.2 Permitted Land Uses.

G. Retail Trade Use Group, Sec. 6.3.10

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4. Heavy Equipment Sales “34”, subject to: Sec. 3.5.9.3
5. Medical Marijuana Designated Caregiver Cultivation Location “34”, subject to: Sec. 3.5.9.8.B. and .C.
6. Medical Marijuana Dispensary Offsite Cultivation Location “34”, subject to: Sec. 3.5.9.8.B.
7. Medical Marijuana Qualifying Patient Cultivation Location “34”, subject to: Sec. 3.5.9.8.D.
8. Swap Meets and Auctions “34”, subject to: Sec. 3.5.9.4 (limited to Auctions only)
9. Vehicle Rental and Sales “34”, subject to: Sec. 3.5.9.5.A

2.7.3 “I-2” HEAVY INDUSTRIAL ZONE.

2.7.3.2 Permitted Land Uses.

C. Retail Trade Use Group, Sec. 6.3.10

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- 4. Heavy Equipment Sales “35”, subject to: Sec. 3.5.9.3
- 5. Medical Marijuana Designated Caregiver Cultivation Location “35”, subject to: Sec. 3.5.9.8.B. and .C.
- 6. Medical Marijuana Dispensary Offsite Cultivation Location “35”, subject to: Sec. 3.5.9.8.B.
- 7. Medical Marijuana Qualifying Patient Cultivation Location “35”, subject to: Sec. 3.5.9.8.D.
- 5. Swap Meets and Auctions “35”, subject to: Sec. 3.5.9.4 (limited to Auctions only)
- 6. Vehicle Rental and Sales “35”, subject to: Sec. 3.5.9.5.A

SECTION 4. The Tucson Code, Chapter 23, Land Use Code, Article III, Development Regulations, Division 5, Performance Criteria, Section 3.5.9, is hereby amended to add a new Section 3.5.9.8 Medical Marijuana to read as follows:

**ARTICLE III, DEVELOPMENT REGULATIONS
DIVISION 5, PERFORMANCE CRITERIA**

3.5.9 RETAIL TRADE USE GROUP.

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3.5.9.8 Medical Marijuana.

A. Medical Marijuana Dispensary.

1. The total maximum floor area of a medical marijuana dispensary shall not exceed 2,500 square feet.
2. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 500 square feet of the total 2500 square foot maximum floor area of a medical marijuana dispensary.
3. 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 Article 6, Division 2, Section 6.2.2.
4. The permitted hours of operation of a medical marijuana dispensary shall be from 9:00 am to 5:00 pm.
5. A medical marijuana dispensary shall have an interior customer waiting area equal to a minimum of twenty-five (25) percent of the gross floor area.
6. A medical marijuana dispensary shall not have a drive-through service.
7. A medical marijuana dispensary shall not have outdoor seating areas.
8. A medical marijuana dispensary shall not offer a service that provides offsite delivery of the medical marijuana.
9. 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.
10. 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.

11. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a church, library, public park or licensed residential substance abuse diagnostic and treatment facility or other licensed 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 which is erected or converted for use as a church, where services are regularly convened which is used primarily for religious worship and schooling and which a reasonable person would conclude is a church by reason of design, signs or other architectural features.

B. Medical Marijuana Dispensary Offsite Cultivation Location.

1. The total maximum floor area of a medical marijuana dispensary offsite cultivation location shall not exceed 3,000 square feet.
2. The secure storage area for the medical marijuana stored at the medical marijuana dispensary offsite cultivation location shall not exceed 1,000 square feet of the 3,000 square foot total maximum floor area of a medical marijuana dispensary offsite cultivation location.

3. A medical marijuana dispensary offsite cultivation location must 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 Article 6, Division 2, Section 6.2.2.
4. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries or medical marijuana dispensary offsite cultivation locations measured in a straight and direct horizontal line between the two closest exterior walls of medical marijuana dispensaries' cultivation locations.
5. A medical marijuana dispensary offsite 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 closet exterior wall of the medical marijuana offsite cultivation location to the nearest property line of a school or childcare center.
6. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a church, library, public park or licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility measured in a straight and direct horizontal line from the closest wall of the medical marijuana dispensary offsite 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 which is erected or converted for use as a church, where services are regularly convened which is used primarily for religious worship and schooling and which a reasonable person would conclude is a church

by reason of design, signs or other architectural features.

C. Medical Marijuana Designated Caregiver Cultivation Location.

1. All conditions and restrictions for medical marijuana dispensary offsite 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.
2. A designated caregiver may cultivate at their residence for a single qualifying patient subject to compliance with §A.R.S. 36-2806.01.
3. 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. Medical Marijuana Qualifying Patient Cultivation Location.

1. A qualifying patient may cultivate at their place of residence subject to compliance with §A.R.S. 36-2806.01.

SECTION 5. The Tucson Code, Chapter 23, Land Use Code, Article VI, Definitions, Division 3, Land Use Groups, Section 6.3.10, is hereby amended to read as follows:

6.3.10 RETAIL TRADE USE GROUP.

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6.3.10.5 Heavy Equipment Sales.

6.3.10.6 Medical Marijuana Designated Caregiver Cultivation Location. A Medical Marijuana Designated Caregiver Cultivation Location or Cultivation by a Designated Caregiver refers to cultivation of Medical Marijuana by a Designated Caregiver and Cardholder whose registration card indicates that the cardholder has been authorized to cultivate marijuana plants for a qualifying patient(s)' medical use pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2804.A.7

6.3.10.7 Medical Marijuana Dispensary. A Medical Marijuana Dispensary shall have the same meaning as 'Nonprofit Medical Marijuana Dispensary' set forth in The Arizona Medical Marijuana Act A.R.S. § 36-2801.11.

6.3.10.8 Medical Marijuana Dispensary Offsite Cultivation Location. A Medical Marijuana Dispensary Off Site Cultivation Location means the additional location, if any, where marijuana may be cultivated for the use of a Medical Marijuana Dispensary as disclosed pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2804 .B.1.b.ii.

6.3.10.9 Medical Marijuana Qualifying Patient Cultivation Location. A Medical Marijuana Qualifying Patient Cultivation Location shall mean cultivation of medical marijuana by a qualifying patient pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2801.1.a.ii but shall only include a Qualifying Patient who is also a Cardholder, authorized to cultivate marijuana plants pursuant to the provisions of § 36-2804.02.A.3.f.

6.3.10.10 Swap Meets and Auctions.

6.2.10.11 Vehicle Rental and Sales.

SECTION 6. The Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Application, Section 5.2.12 is hereby amended to read as follows:

ARTICLE V ADMINISTRATION, DIVISION 3, SPECIAL DEVELOPMENT APPLICATIONS.

5.3.12. Zoning Compliance For Site Improvements in Existence on May 1, 2005

5.3.12.4 Properties granted zoning compliance under the provision of Section 5.3.12 may be used for all principal Permitted Land Uses based on the zoning of the site subject to the applicable General Restrictions in each zone, except for the following prohibited uses:

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J. Sections 2.5.4.2 and 2.5.5.2 Medical Marijuana Designated Caregiver Cultivation Location, Medical Marijuana Dispensary, Medical Marijuana Dispensary Offsite Cultivation Location.

K. Sections 2.7.2.2 and 2.7.3.2 Medical Marijuana Designated Caregiver Cultivation Location, Medical Marijuana Dispensary, Medical Marijuana Dispensary Offsite Cultivation Location.

SECTION 7. The provisions of this ordinance shall cease to be effective on December 3, 2010, and all articles amended by this ordinance shall revert to the language as it existed prior to this amending ordinance, unless Proposition 203, The Medical Marijuana Act has become law, after being approved by a majority of votes cast on November 2, 2010, and proclamation of the Governor of the State of Arizona.

SECTION 8. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

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WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and the is ordinance shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

TM/tl
9/13/10