

ADOPTED BY THE
MAYOR AND COUNCIL ON

April 6, 2021

ORDINANCE NO. 11828

RELATING TO PLANNING AND ZONING; AMENDING THE TUCSON CODE, CHAPTER 23B, UNIFIED DEVELOPMENT CODE, SECTIONS 4.8.6, 4.8.7, 4.9.9, AND 11.3.9; AND SETTING AN EFFECTIVE DATE.

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

SECTION 1. The Tucson Code, Chapter 23, Unified Development Code, Article 4, Zones, Section 8, Use Tables, Sections 4.8.6 is hereby amended to read as follows:

**UNIFIED DEVELOPMENT CODE
ARTICLE 4: ZONES
SECTION 8, USE TABLES**

4.8.6. PERMITTED USES: COMMERCIAL AND MIXED USE ZONES

TABLE 4.8-4: PERMITTED USES - COMMERCIAL AND MIXED USE ZONES

P = Permitted Use S = Permitted as Special Exception Use

[1] Mayor and Council Special Exception Procedure, Section 3.4.4

[2] Zoning Examiner Special Exception Procedure, Section 3.4.3

[3] PDSD Special Exception Procedure, Section 3.4.2

LAND USE	C-1	C-2	C-3	OCR-1	OCR-2	USE SPECIFIC STANDARDS

Retail Trade Use Group With Land Use Class/Type:						

Marijuana Facility:						
Designated Caregiver Cultivation Location		P	P			C-2, C-3: 4.9.9.E.2 & 3

Dispensary		P	P			C-2, C-3: 4.9.9.E.1.
Dispensary Off-site Cultivation Location		P	P			C-2, C-3: 4.9.9.E.2
Qualifying Patient Cultivation Location		P	P			C-2, C-3: 4.9.9.E.4

4.8.7. PERMITTED USES: INDUSTRIAL ZONES

TABLE 4.8-5: PERMITTED USES - INDUSTRIAL ZONES *				
P = Permitted Use S = Permitted as Special Exception Use				
[1] Mayor and Council Special Exception Procedure, Section 3.4.4				
[2] Zoning Examiner Special Exception Procedure, Section 3.4.3				
[3] PDSD Special Exception Procedure, Section 3.4.2				
*Any Land Use Class not permitted or a Special Exception Use in any other zone , or permitted in the I-2 zone , may be permitted in the I-2 zone and shall comply with the dimensional standards determined to be most similar to the proposed use.				
LAND USE	P-I	I-1	I-2	USE SPECIFIC STANDARDS

Retail Trade Land Use Group With Land Use Class/Type:				

Marijuana Cultivation Location:				
Designated Caregiver Cultivation Location		P	P	I-1, I-2: 4.9.9.E.2 & .3 and 4.9.13.Q
Dispensary Off-Site Cultivation Location		P	P	I-1, I-2: 4.9.9.E.2 and 4.9.13.Q
Qualifying Patient Cultivation Location		P	P	I-1, I-2: 4.9.9.E.4 and 4.9.13.Q
Marijuana Dispensary Off-site Manufacturing Location	P	P	P	P-I, I-1, I-2: 4.9.9.E.2 and 4.9.13.Q

SECTION 2. The Tucson Code, Chapter 23, Unified Development Code, Article 4, Zones, Section 9, Use-Specific Standards, Section 4.9.9 is hereby amended to read as follows:

ARTICLE 4. ZONES
SECTION 9. USE-SPECIFIC STANDARDS

4.9.9. RETAIL TRADE USE GROUP

E. Marijuana Facility

1. **Marijuana Dispensary.** As provided in Section 11.3.9.F.2, a marijuana dispensary does not include a Marijuana Establishment. To the fullest extent allowable by law, the operation of a Marijuana Establishment is prohibited in the City of Tucson except where authorized for a dual licensee who:

i) Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and

ii) Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

a. The total maximum floor area of a marijuana dispensary shall not exceed 10,000 square feet.

b. A 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*.

c. The permitted hours of operation of a marijuana dispensary are from 7:00 a.m. to 10:00 p.m.

d. A marijuana dispensary shall have an interior customer waiting area equal to a minimum of 25% of the sales floor area. For purposes of this section, sales floor area is defined as any area open to customers for the sale of products. This does not include waiting areas, areas for production and storing of products, or offices.

e. A marijuana dispensary shall not have outdoor seating areas.

f. A marijuana dispensary may deliver marijuana, once rules permitting and regulating delivery are approved by the AZDHS and become effective, and shall comply with state law and all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

g. A marijuana dispensary shall be setback a minimum of 2,000 feet from any other marijuana dispensaries, measured in a straight and direct horizontal line between the two closest exterior or applicable interior suite walls of marijuana dispensaries.

h. A marijuana dispensary shall be setback a minimum of 500 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 or applicable interior suite wall of the 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, are 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.

i. A marijuana dispensary shall be setback a minimum of 500 feet from a public park listed in Section 6: *Marijuana Dispensary and Dispensary Off-Site Cultivation Uses - Required Setback from Certain Parks*, of the Technical Standards Manual, or library and a minimum of 500 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 or applicable interior suite wall of the marijuana dispensary to the closest property line of a library, public park, licensed residential substance abuse diagnostic and treatment facility, or other licensed drug or alcohol rehabilitation facility.

j. The expansion of an existing marijuana dispensary 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 or applicable interior suite wall of the marijuana dispensary to the closest property line of a school.

k. A 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.

l. Odor Mitigation

(1) Odor mitigation devices and techniques shall be incorporated in all marijuana facilities to ensure that odors are mitigated. As such, this may be done through an exhaust air filtration system with odor control that prevents internal odors from being emitted externally or through any other best practices deemed adequate for odor mitigation as determined by the Zoning Administrator.

(2) An odor mitigation plan shall be submitted demonstrating compliance with odor control requirements. When a modification is made to a marijuana facility, or the facility

operation, that has the potential to impact the nature or degree of odor, or affects the control of odor, and UDC requirements for bringing the entire site up to code per Sections 7.4.3.E, 7.5.3.E, 7.6.2.B & 9.2.2, the marijuana facility owner must update its odor mitigation plan within 30 days of facility modification. Failure to submit an updated odor mitigation plan within 30 days of facility modification is a violation of this section and shall be a civil infraction.

(3) Upon receipt of a formal complaint through code enforcement related to a marijuana facility's odor, an inspection for compliance with the odor mitigation plan shall be conducted. If an inspection reveals that the existing odor mitigation plan does not comply with the odor mitigation plan for the marijuana facility or marijuana facility's cultivation site, code enforcement shall provide the owner or person in charge with a notice of deficiencies and the owner or person in charge will be required to bring facility into compliance with the approved odor mitigation plan.

2. Marijuana Dispensary Off-Site Cultivation Location / Manufacturing Location

- a. In the C-2 and C-3 zones, the total maximum floor area of a marijuana dispensary off-site cultivation location shall not exceed 10,000 square feet.
- b. In the P-I, I-1 and I-2 zones, there is no size limit.
- c. In the C-2 and C-3 zones, a 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. In the I-1 and I-2 zones, a marijuana dispensary off-site cultivation location, or a marijuana dispensary off-site manufacturing location in the P-1, I-1, and I-2 zones, shall be located in a permanent, enclosed, locked facility in accordance with state statutes and Arizona Department of Health Services rules and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle.
- e. In the C-2 and C-3 zones, a marijuana dispensary off-site cultivation location shall be setback a minimum of 2,000 feet from any other marijuana dispensaries or marijuana dispensary off-site cultivation locations measured in a straight and direct horizontal line between the two closest exterior or applicable interior suite walls of marijuana dispensaries' cultivation locations.
- f. In the C-2 and C-3 zones, a 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 or applicable interior suite wall of the 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 .

g. In the C-2 and C-3 zones, a marijuana dispensary off-site cultivation location shall be setback a minimum of 1,000 feet from a public park listed in Section 6: *Marijuana Dispensary and Dispensary Off-Site Cultivation Uses - Required Setback from Certain Parks*, of the Technical Standards Manual or library and a minimum of 1,000 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 or applicable interior suite wall of the marijuana dispensary off-site cultivation location to the closest property line of a library, public park, licensed residential substance abuse diagnostic and treatment facility, or other licensed drug or alcohol rehabilitation facility.

h. In the I-1 and I-2 zones, a marijuana dispensary off-site cultivation location, or a marijuana dispensary off-site manufacturing location in the P-1, I-1, and I-2 zones, 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 or applicable interior suite wall of the marijuana off-site cultivation location to the closest property line of a school.

i. A marijuana off-site cultivation location or a marijuana dispensary off-site manufacturing 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.

j. A marijuana dispensary off-site cultivation location or marijuana dispensary off-site manufacturing location shall provide only wholesale products to other marijuana dispensaries, marijuana dispensary off-site manufacturing locations, or marijuana dispensary off-site cultivation locations.

k. Odor Mitigation

(1) Odor mitigation devices and techniques shall be incorporated in all marijuana facilities to ensure that odors are mitigated. As such, this may be done through an exhaust air filtration system with odor control that prevents internal odors from being emitted externally or through any other best practices deemed adequate for odor mitigation as determined by the Zoning Administrator.

(2) An odor mitigation plan shall be submitted demonstrating compliance with odor control requirements. When a modification is made to a marijuana facility, or the facility operation, that has the potential to impact the nature or degree of odor, or affects the control of odor, and UDC requirements for bringing the entire site up to code per Sections 7.4.3.E, 7.5.3.E, 7.6.2.B & 9.2.2, the marijuana facility owner must update its odor mitigation plan within 30 days of facility modification. Failure to submit an updated odor mitigation plan within 30 days of facility modification is a violation of this section and shall be a civil infraction.

(3) Upon receipt of a formal complaint through code enforcement related to a marijuana facility's odor, an inspection for compliance with the odor mitigation plan shall be conducted. If an inspection reveals that the existing odor mitigation plan does not comply with the odor mitigation plan for the marijuana facility or marijuana facility's cultivation site, code enforcement shall provide the owner or person in charge with a notice of deficiencies and the owner or person in charge will be required to bring facility into compliance with the approved odor mitigation plan.

SECTION 3. The Tucson Code, Chapter 23, Unified Development Code, Article 11, Definitions and Rules of Construction, Section 3, Definitions of Land Use Groups, Classes, and Types, Section 11.3.9, is hereby amended to read as follows:

**ARTICLE 11, DEFINITIONS AND RULES OF CONSTRUCTION
SECTION 3, DEFINITIONS OF LAND USE GROUPS, CLASSES, AND TYPES**

11.3.9. RETAIL TRADE USE GROUP

The Retail Trade Use Group includes Land Use Classes that involve the selling, leasing, or renting of merchandise to the general public. The following Land Use Classes and examples comprise the Retail Trade Use Group.

F. Marijuana Dispensary

A Marijuana Dispensary refers to the following:

1. "Nonprofit Medical Marijuana Dispensary" as set forth in The Arizona Medical Marijuana Act, A.R.S. § 36-2801.11.

2. "Dual Licensee" as set forth in The Arizona Smart and Safe Act, A.R.S. § 36-2850.9.

A Marijuana Dispensary does not include a Marijuana Establishment, as set forth in the Arizona Smart and Safe Act, A.R.S. § 36-2850.18. To the fullest extent allowable by law, the operation of a Marijuana Establishment is prohibited in the City of Tucson except where authorized for a dual licensee who:

- i) Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
- ii) Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

G. Marijuana Dispensary Off-site Cultivation Location

A Marijuana Dispensary Off Site Cultivation Location means the additional location, if any, where marijuana may be cultivated for the use of a Marijuana Dispensary as disclosed pursuant to The Arizona Medical Marijuana Act, A.R.S. § 36-2804.B.1.b.ii and/or The Arizona Smart and Safe Act, A.R.S. § 36-2850.18.

H. Marijuana Dispensary Off-site Manufacturing Location

A Marijuana Dispensary Off-site Manufacturing Location is the additional location, if any, where marijuana may be manufactured for the use of a Marijuana Dispensary as disclosed pursuant to The Arizona Smart and Safe Act, A.R.S. §36-2850.15.

I. 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 A.R.S. § 36-2804.02.A.3.f.

J. Swap Meets and Auctions

Occasional or periodic commercial activities held in an open area or enclosed structure where: 1) groups of sellers rent space on a short-term basis to display, barter, or sell goods to the public and at least 50% of swap meet space does not occupy the same allotted area on an uninterrupted, continuous, daily basis for the purpose of display and sale, exchange, or barter of merchandise, exclusive of occasional craft fairs and benefit sales held on public property; or 2) one or more sellers bring goods for auctioning to the public. Typical uses include swap meets, flea markets, and auctions.

K. Vehicle Rental and Sales

The sale, lease, and/or rental of automobiles, motorcycles, noncommercial trucks, boats, vans, motor homes, trailers, or other recreational vehicles. Typical uses include automobile and truck dealers and rental agencies.

SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 5 If any provisions of this Ordinance, or of its application to any person or circumstance is declared invalid or unenforceable, as determined by a court of competent jurisdiction, the invalidity or unenforceability shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or circumstance, and to this end, the provisions of this Ordinance are severable.


SECTION 6. This Ordinance becomes effective thirty (30) days after it is adopted by the Mayor and Council and is available from the City Clerk.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, April 6, 2021.



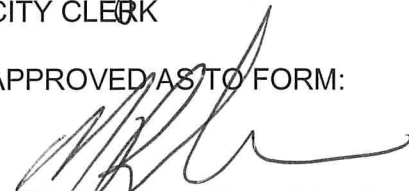
MAYOR

ATTEST:

for 


CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

PG/tl
3/31/21