



PLANNING COMMISSION

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

Date: November 9, 2022 for meeting scheduled November 16, 2022 Page 1 of 5

To: Planning Commission

From: Tim Thomure, Interim Director of Planning and Development
Services Department and Assistant City Manager
Executive Secretary

Subject: C8-22-05 Medical and Adult-Use Marijuana Special Exception
UDC Text Amendment – Public Hearing (Citywide)

Issue – This is a public hearing to discuss and deliberate on the proposed Unified Development Code (UDC) text amendments related to the medical and adult-use marijuana social equity applicants. Currently the UDC allows for dual-use (adult-use and medical) marijuana facilities but prohibits stand-alone adult-use marijuana dispensaries (called marijuana establishments in AZ State Statutes). On April 8, 2022, 26 social equity applicants were awarded, via a lottery, new marijuana establishment licenses (qualifications for the adult-use marijuana social equity applicants may be located [here](#)). Without the proposed amendments, those new social equity applicants are unable to locate a dispensary in the City of Tucson. Additionally, regulations approved by voters in the Arizona Smart and Safe Act require those new license holders to have an approved location prior to October 2023. To address these issues, the following amendments to the UDC are proposed (See Attachment A for detailed list of amendments related to medical and adult-use marijuana):

- Revise the use tables in UDC Section 4.8 to change marijuana dispensaries from a permitted use in C-2 and C-3 zones to a Mayor & Council Special Exception land use in those zones. This would require that any dispensary follow the Mayor & Council Special Exception land use procedure, which requires a neighborhood meeting, Zoning Examiner Public Hearing, and Mayor & Council review.
- Remove the restriction on Marijuana Establishment Licenses (Adult-use only licenses) in UDC Section 4.9.9.E.1, Use Specific Standards.
- Change the definition of Marijuana Dispensary so that it includes Medical Marijuana Licenses, Dual Use Licenses, and Marijuana Establishment Licenses (i.e. to encompass both dual-license and single-license dispensaries, right now only medical license or dual license are permitted) in UDC Section 11.3.9.F.
- Revise Sections 5.6.8.A.2.g and 5.6.8.B.2.g to codify a previous Zoning Administrator Determination Letter clarifying that the Marijuana Off-Site Cultivation Use is a wholesaling use and not a retail use.

Recommendation – Staff recommends the Planning Commission recommend adoption of the Medical and Adult-use Marijuana Special Exception UDC Text Amendment to the City of Tucson Mayor and Council.

Background – The following is a chronology of dates affecting marijuana regulations in Arizona and Tucson, since the passage of the Arizona Smart and Safe Act:

- November 3, 2020 Arizona voters approve Arizona Smart and Safe Act by a 60% to 40% margin (See Attachment B for the adopted Arizona Smart and Safe Act).
- On November 17, 2020, Mayor and Council held a study session for an update on the COVID-related issues discussed on September 9, 2020. At this meeting Mayor & Council directed staff to allow for the following two additional relief items through the temporary suspension of enforcement:
 1. Temporary utilization of unused space for expanded lobby
 2. Temporary utilization of an existing drive through

Additionally, the Mayor and Council provided direction for staff to begin the process to amend the UDC to address more permanent changes needed as a result of the approval of the AZ Smart and Safe Act.

- On April 6, 2021, the City of Tucson Mayor and Council held a study session and a public hearing to review and adopt proposed UDC text amendments related to adult-use and medical marijuana. At the study session, the Mayor and Council directed staff to temporarily prohibit social equity licenses until its rule-making was complete, while still moving forward with regulations for dual-use dispensaries. This temporary prohibition of social equity licenses would allow staff to participate and provide comment during the rule-making process to advocate for rules that will ensure that Social Equity licenses are ultimately issued to applicants who represent the minority communities that were disproportionately impacted by the enforcement of earlier marijuana laws. At the public hearing, the City of Tucson Mayor and Council voted 7-0 to adopt changes to the UDC in relation to dual-use licenses and to temporarily prohibit social equity licenses until their rule-making was complete. Please see Attachment C for the Legal Action Reports from the Mayor and Council study session and regular session held on April 6, 2021.
- On March 22, 2022, the city of Tucson Mayor and Council held a study session to initiate the process to amend the UDC to remove the restriction on adult-use only licenses operating dispensaries and to add a new Mayor and Council Special Exception process for all marijuana dispensaries. Please see Attachment D for the Legal Action Report from the Mayor and Council study session held on March 22, 2022
- On May 25, 2022, Planning and Development Services held a stakeholder meeting to discuss the removal of the restriction on marijuana establishment licenses from operating dispensaries in the City of Tucson and the addition of a new Mayor and Council Special Exception process for all marijuana dispensaries. There was general consensus from the group that the restriction on marijuana establishment licenses should be removed, however, the group was divided on if the Mayor and Council

Special Exception process should be added. About half requested there be no Special Exception process added, while the other half supported its addition. Please see Attachment E for the stakeholder meeting materials and summary.

- On October 12, 2022, the City of Tucson Planning Commission held a study session on the Medical and Adult Use Marijuana Special Exception UDC Amendment. The commission asked questions about the background of proposition 207 and the social equity applicant process and provided comments on the intended goals of the social equity program and if the proposed amendments further those goals. At the meeting, the Commission voted 8-0 to set the item for public hearing on November 2, 2022.
- On November 2, 2022 the City of Tucson Planning Commission had scheduled the public hearing on the Medical and Adult Use Marijuana Special Exception UDC Amendment. Due to lack of quorum, that public hearing was continued to the next scheduled Planning Commission date on November 16, 2022. Comments submitted for the public hearing may be located in Attachment G.

Present Considerations – The Arizona Smart and Safe Act (proposition 207), which was adopted by voters on November 2, 2020 provided regulations for limited adult-use marijuana possession and sales in Arizona. Within this new voter initiative, it allowed for an additional 26 marijuana establishment licenses (adult-use only) to be distributed to social equity applicants (total allowed based on 10 percent of pharmacies in Arizona), with a preference to underserved areas and applicants from communities disproportionately impacted by the enforcement of previous marijuana laws. Over the past year and a half, AZDHS developed the rules for which the social equity applicants may apply. They began accepting applications early in December 2021, and ultimately awarded the 26 marijuana establishment licenses to the social equity applicants on April 8, 2022 via random selection. The recipients of these 26 marijuana establishments are required by state law to have an operational business by October 2023.

Social Equity Applicants - As stated above, per proposition 207, the AZDHS issued 26 marijuana establishment licenses (adult-use only) through its Social Equity Ownership Program. These licenses are intended to be issued to applicants from underserved areas communities disproportionately impacted by the enforcement of previous marijuana laws. The following is an overview of the Social Equity Ownership Program:

- The rule-making for the social equity applicants had specific criteria, such as:
 - Applicant or family member of applicant must either have a marijuana conviction expunged or is eligible to have a conviction expunged.
 - Applicant must have made less than 400% of the poverty level for three of the past five years
 - Applicant must be from a geographic area disproportionately impacted by marijuana laws
- AZDHS removed the requirement that applicants provide an approved site when applying for a social equity license, so applicants from Tucson were able to apply but

- unless UDC regulations are amended to allow marijuana establishments those license holders would not be able to operate here
- Social equity applicants were issued a marijuana establishment license (adult-use only not dual use). The UDC currently prohibits these licenses. To allow for social equity licenses to operate in Tucson a code amendment is proposed to allow this use as a special exception land use.

Proposed Amendments – The following is a brief description of the proposed amendment.

Current Regulation – All dispensaries operating under marijuana establishment licenses (adult-use only) are prohibited in the City of Tucson per UDC Sections 4.9.9.E.1 and 11.3.9.F.3. Only dispensaries that utilize a dual-use license that operate both a marijuana establishment license and a non-profit medical license are allowed to operate in the City of Tucson. Those dispensaries are currently allowed by-right in C-2 and C-3 commercial zones provided they meet the development standards of the UDC.

Proposed Revision – The following revisions to the marijuana regulations are proposed (See Attachment A for the proposed amendments):

- Revise the use tables in UDC Section 4.8 to change marijuana dispensaries from a permitted use in C-2 and C-3 zones to a Mayor & Council Special Exception land use in those zones. This would require that any dispensary follow the Mayor & Council Special Exception land use procedure, which requires a neighborhood meeting, Zoning Examiner Public Hearing, and Mayor & Council review.
- Remove the restriction on Marijuana Establishment Licenses (Adult-use only licenses) in UDC Section 4.9.9.E.1, Use Specific Standards.
- Change the definition of Marijuana Dispensary so that it includes Medical Marijuana Licenses, Dual Use Licenses, and Marijuana Establishment Licenses (i.e. to encompass both dual-license and single-license dispensaries, right now only medical license or dual license are permitted) in UDC Section 11.3.9.F.
- Revise Sections 5.6.8.A.2.g and 5.6.8.B.2.g to codify a previous Zoning Administrator Determination Letter (Attachment F) clarifying that the Marijuana Off-Site Cultivation Use is a wholesaling use and not a retail use.

In addition to the proposed revisions, there have been concerns from dispensary owners who are presently in the process of permitting and building new facilities or expanding exiting facilities. Their concern related to the timing of zoning approval prior to when the proposed special exception becomes effective. In order to address this concern, it is proposed to add the following language to the ordinance allowing for them to complete their review under the existing code if those projects have been submitted for review prior to the effective date:

- “An applicant with a complete application that has been submitted for approval, but upon which no final action has been taken prior to the effective date of this ordinance, may request review under the regulations prior to these amendments adopted on _____.

Plan Tucson Consideration(s) – This item relates to the Plan Tucson Elements of the Business Climate and Land Use, Transportation, and Urban Design Policies, specifically:

BC8 – Support a safe, distinctive, well-maintained and attractive community with neighborhoods made up of residences and businesses that contribute to Tucson’s quality of life and economic success.

LT- 28.1.11 Support retention and expansion of existing business.

Attachments:

- A – Proposed amendments to the UDC related to medical and adult-use marijuana
- B – Adopted Arizona Smart and Safe Act
- C – Legal Action Reports from the Mayor and Council study session and regular session held on April 6, 2021
- D – Legal Action Report from the Mayor and Council study session held on March 22, 2022
- E – Stakeholder meeting materials and summary
- F – Zoning Administrator Determination dated September 23, 2010