

**PLANNING AND DEVELOPMENT SERVICES REPORT**

**Zoning Code Text Amendment**

**PUBLIC HEARING**

**PZ-21-00056**

**DATE:** April 7, 2021

**MEETING DATE:** May 12, 2021

**REPORT BY:** Dan Symer, AICP

**REQUEST:**

City's request for a Zoning Code Text Amendment to modify the existing Medical Marijuana land use and application provisions to address Proposition 207 – Smart and Safe Arizona Act (recreational use of marijuana) that was approved by the Arizona voters in November 2020.

**STAFF RECOMMENDATION:**

Staff recommends the Planning and Zoning Commission, in accordance with this report, find that the required findings of the Zoning Code have been met, and that the Planning and Zoning Commission make a recommendation to the City Council for approval of the Zoning Code Text Amendment.

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**I. Proposed Amendment:**

The proposed amendment (Attachment 2) modifies the existing marijuana use provisions of the Zoning Code to address Proposition 207 – Smart and Safe Arizona Act (the “Act”) that the Arizona voters approved in November 2020 to allow recreational use of marijuana. Furthermore, the amendment is to implement the City Council’s January 12, 2021, and March 2, 2021, direction to allow medical and dual license (medical or recreational) dispensaries and the testing, cultivation, and manufacturing of marijuana products. To accommodate both the medical marijuana and the associated uses, which is also referred to as Marijuana Establishments, the proposed revisions to the Zoning Code incorporate the following modifications:

- The Medical Marijuana Dispensary land use has been revised to be called Marijuana Dispensary. In addition, the associated definition has been modified to accommodate both medical and dual license (medical or recreational) sales. Furthermore, the definition incorporates the associated accessory uses (cultivation, manufacturing, processing, packaging, or storage of marijuana products) to be consistent with the Arizona Revised Statutes (ARS) pertaining to a dispensary's allowed operation characteristics allowed under ARS.
- A new land use, Marijuana Testing Facility, and its associated definition has been added. This land use is a laboratory that tests marijuana and marijuana products for potency and impurities. The Marijuana Testing Facility is proposed to be allowed in the Suburban Commercial (SC), Community Commercial (CC), Highway Commercial (HC), Commercial Service (CS), Research and Development (RD), Light Industrial (LI), and Light Industrial – Open (LI-O) zones as an allowed use.
- Medical Marijuana Off-Site Cultivation Location is proposed to be revised to Marijuana Off-Site Cultivation Location. In addition, the existing definition is proposed to be deleted, and a new definition is proposed to be added that conforms with the Act and the existing ARS provisions for medical marijuana. The Marijuana Off-Site Cultivation Location land use allows for the cultivation, manufacturing, packaging, processing, and storage of marijuana and marijuana products, but it excludes the sale or transfer of marijuana and marijuana products to consumers. The Marijuana Off-Site Cultivation Location use is proposed to be maintained as an allowed use in the Light Industrial (LI), Light Industrial – Open (LI-O), Heavy Industrial (HI), and Heavy Industrial – Open (HI-O) zones.

- A new land use, Marijuana Off-site Manufacturing Location, and its associated definition has been added. The proposed definition of the land use allows for the manufacturing, packaging, processing, and storage of marijuana and marijuana products, excluding the sale or transfer of marijuana and marijuana products to consumers. The Marijuana Off-site Manufacturing Location land use is proposed to be allowed in the Light Industrial (LI), Light Industrial – Open (LI-O), Heavy Industrial (HI), and Heavy Industrial – Open (HI-O) zones.
- The term and definition of Marijuana Establishment has been added to maintain consistency with the Act. A Marijuana Establishment is any of the following: Marijuana Dispensary, Marijuana Off-Site Cultivation Location, Marijuana Off-site Manufacturing Location, or Marijuana Testing Facility.
- The existing provisions have been modified to include a Concept Plan Review prior to the submittal of a Building Permit or Business License application or prior to a structure's occupancy for a Marijuana Establishment.

In addition to the above modifications, several of the existing provisions are proposed to be deleted since they are regulated and verified by the Arizona Department of Health Services as part of the department's review and certification of Marijuana Establishments and marijuana facility agents. Also, the provisions have been updated, requiring a dimensioned plan drawn by a surveyor and an affidavit signed by the applicant attesting that the lot or parcel proposed to contain the Marijuana Establishment meets the separation requirements specified in subsection F. of Section 10-40.60.220 (Please refer to Attachment 2). Furthermore, several provisions have been modified for simplification purposes.

## II. Zoning Code Text Amendment

The Planning Director shall provide a recommendation to the Planning and Zoning Commission for its review. The Director's recommendation shall be transmitted to the Planning and Zoning Commission in the form of a staff report prior to a scheduled public hearing. The recommendation shall include the following: an evaluation of the consistency and conformance of the proposed amendment with the goals and policies of the General Plan and any applicable specific plans; the grounds for the recommendation based on the standards and purposes of the zones set forth in Section 10-40.20 (Establishment of Zones) of the Zoning Code; and a recommendation on whether the amendment should be granted or denied.

A Zoning Code Text Amendment shall be evaluated based on the following findings:

### A. Finding #1:

**The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;**

The amendment's primary purpose is to implement the City Council's direction to update the Zoning Code to conform with the Act and to maintain consistency and conformance with the Regional Plan's (General Plan) goals and policies. Therefore, the modifications would allow for Marijuana Establishments to cultivate, manufacture, sell, and store marijuana products. The proposed provisions address multiple goals and policies of the Regional Plan. These include:

- Providing submittal and locational requirements that are transparent and minimize duplication with the State of Arizona's requirements to be a certified Marijuana Establishment that is allowed to cultivate, manufacture, sell, and store marijuana products (Regional Plan Goal ED.1.);
- Allowing the Marijuana Establishment land uses (Marijuana Dispensary, Marijuana Off-Site Cultivation Location, Marijuana Off-site Manufacturing Location, and Marijuana Testing Facility) in several commercial and industrial zones that will permit new and existing marijuana-based businesses to be retained, expanded, and located in Flagstaff, as well as providing for scientific testing of marijuana products (Regional Plan Goal ED.3., and Policies CC.5.1., CC.5.5., ED.3.1., ED.3.5., and ED.4.2.); and
- Allowing Marijuana Establishments to group related operations (cultivation, manufacturing, sales, and storage of marijuana products) in commercial and industrial zones in a manner that will permit urban agriculture, the utilization of existing transportation facilities, and provide leasing and development opportunities of commercial and industrial

property (Policies ED.3.5., ED.4.2, LU.3.5., and LU.15.1.).

**B. Finding #2**

**The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;**

The provisions of the amendment are not anticipated to be detrimental to the public interest, health, safety, convenience, or welfare of the city. To assist in ensuring that the proposed Marijuana Establishment land uses are not detrimental, minimum separation requirements are established from facilities and locations that contain any of the following uses: daycares, educational, family recreation and entertainment, public libraries and parks, drug or alcohol rehabilitation, and other Marijuana Establishments. In addition, provisions have been incorporated pertaining to the security, disposal of marijuana remnants and by-products, and prohibition of onsite consumption of marijuana products and emissions of dust, fumes, vapors, smoke, or odors into the environment from a Marijuana Establishment.

**C. Finding #3**

**The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**

The amendment is internally consistent, utilizes the existing format, and does not conflict with other Zoning Code provisions. It maintains the Zoning Code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable, and easily understood.

**III. CITIZEN PARTICIPATION**

Persons of interest on file with the Planning and Development Services section of the Community Development Division were notified of the Planning and Zoning Commission and City Council work sessions and public hearing via first-class mail. Moreover, notification of the work sessions and public hearings were published on the City's Facebook and Flagstaff Community Forum web pages and in the Arizona Daily Sun. As of the date of this report, staff has not had any public comments on the proposed Zoning Code Text Amendment.

**IV. PLANNING AND ZONING COMMISSION WORK SESSION**

At the Planning and Zoning Commission Work Session of April 14, 2021, staff reviewed the text amendment application with the Commission. The Commission had a general question regard the odor regulations to clarify their understanding of the proposed Zoning Code Text Amendment. The existing regulations and proposed Zoning Code Text Amendment maintenance the prohibition of the emittance of odor from a Marijuana Establishment.

**V. CITY COUNCIL WORK SESSION**

At the City Council Work Sessions of January 12, 2021, and March 2, 2021, the City Council provided direction to staff to modify the existing medical marijuana Zoning Code provisions to accommodate the Act's associated uses. In addition, the City Council's direction included limiting the sales of marijuana to entities that are certified by the State of Arizona to operate as a medical dispensary or dual license (medical or recreational) dispensary. The direction also included utilizing the applicable medical marijuana Zoning Code criteria for all marijuana uses that the Act addresses.

**Attachments:**

1. Application Narrative and Regional Plan Analysis
2. Draft of Case No. PZ-21-00056 Zoning Code Text Amendment - 2021: Marijuana Uses