



**Community Development Department
Planning and Development Services**

Date: May 18, 2022
TO: Planning and Zoning Commission
FROM: Tiffany Antol, AICP, Zoning Code Manager
Through: Alexandra Pucciarelli, Current Planning Manager
RE: Planning and Zoning Commission Work Session

I. **Requests:**

Case No. PZ-22-00074: Request for a work session with the Planning and Zoning Commission to discuss the Noble Herb's proposed amendment to the Zoning Code to revise the existing hours of operation for Marijuana Dispensaries (Section 10-40.60.220.C).

Case No. PZ-22-00089: Request for a work session with the Planning and Zoning Commission to discuss the City's proposed amendment to the Zoning Code to address Marijuana Operations in the City of Flagstaff by updating terms and definitions to include single recreational sales establishments (Section 10-80.20.130) and potentially revise the separation requirements for all Marijuana Operations (Section 10-40.60.220.F)

II. **Purpose of the Work Session:**

The work session with the Planning and Zoning Commission is required as a "Citizen Review Session" in compliance with Section 10-20.50.040 (Procedures) of the Zoning Code and applicable state law. The purpose of the work session is for staff to present an overview of the proposed amendment, to allow interested residents to provide their ideas, suggestions, and concerns, and for the Commission to ask questions, seek clarification, and discuss the amendment, as well as offer alternate suggestions and ideas. The Commission will take no action at this work session. After the work session, staff will revise the proposed amendment. The amendment will then be presented to the Commission at a public hearing for consideration and action. Once a recommendation is received, a public hearing will be scheduled with the City Council. The anticipated timeline for the amendments is as follows:

- May 25, 2022 – Planning and Zoning Commission Work Session
- May 31, 2022 – City Council Work Session
- Public Hearings to be determined

III. **Planning and Zoning Commission Questions:**

For your reference, below is the question on which staff is seeking the Planning and Zoning Commission's comments and direction.

- Should the City of Flagstaff expand the hours of operation for Marijuana Dispensaries?

- Should the City of Flagstaff provide for Recreational-Only Marijuana Dispensaries to accommodate for social equity licenses?
- Should the City of Flagstaff increase the separation distance for Marijuana Dispensaries to ensure public health, safety, and welfare is maintained?

IV. **Overview of Proposed Amendments:**

There are two separate requests presented together in this work session regarding Marijuana Dispensaries. Each of these requests will be approved separately when presented at a public hearing and will require separate Ordinance.

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The first request is from Noble Herb who currently runs a permitted Marijuana Dispensary in Flagstaff. Their request is to modify Section 10-40.60.220.C which sets the operation hours for Marijuana Dispensaries as follows:

Current Text

A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than **7:00** p.m.

Proposed Text

A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than **10:00** p.m.

The applicant's narrative describing this request is attached for the Commission's review.

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The second request is in response to a work session with the City Council on April 12, 2022 to discuss allowing social equity licensees to operate in Flagstaff.

The "Smart and Safe Arizona Act" (the "Act"), certified as Proposition 207, was passed by Arizona voter at the November 3, 2020, general election and became effective on December 1, 2020. The Act declared that "the responsible adult use of marijuana should be legal for persons twenty-one years of age or older subject to state regulation, taxation, and local ordinance."

The Act allows for Marijuana Establishments, which are entities licensed by the Arizona Department of Health Services to operate a retail location for the sale of recreational marijuana, an off-site marijuana cultivation facility, and an off-site manufacturing facility. Pursuant to the licensing rules in the Act, the vast majority of the marijuana establishment licenses were given to entities that were already operating medical marijuana dispensaries. However, the Act also directed the Arizona Department of Health Services to issue twenty-six additional marijuana establishment licenses across the State of Arizona for the purpose of encouraging social equity in marijuana establishment ownership. Social equity licenses were issued to applicants who qualified under the Social Equity Ownership Program at random drawing on April 8, 2022.

On March 16, 2021, the Flagstaff City Council adopted Ordinance 2021-03, which enacted certain regulations regarding the use and sale of recreational marijuana in Flagstaff. One of the regulations adopted by Council prohibits the operation of recreational marijuana establishments in Flagstaff, except where authorized by a dual licensee that is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location. Under the current rules, social equity licenses are not dual licenses—they are recreation only. In order to

allow recreational only retail establishments, the Marijuana Dispensary definition would need to be amended as follows:

A. Definitions

Current Text

Marijuana Dispensary: A medical or dual licensee (as defined in A.R.S. 36-2850, as amended) Marijuana Dispensary certified by the State of Arizona to sell Marijuana and Marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of Marijuana products as an accessory use to the dispensary

Proposed Text

Marijuana Retail Establishment: A Non-Profit Medical Marijuana Dispensary, a Dual-Licensed establishment (as defined in A.R.S. 36-2850, as amended), or a single recreational retail establishment certified by the State of Arizona to sell Marijuana and Marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of Marijuana products as an accessory use to the dispensary.

Staff is recommending the revision to a few other definitions in the code to better align the Zoning Code with Arizona Revised Statutes. The recommendations are attached for the Commission's review.

B. Separation

Marijuana Establishments (to be renamed Marijuana Operation) which include retail establishments, cultivation establishments, manufacturing establishments and testing facilities are regulated by Section 10-40.60.220 of the Zoning Code to protect the public health, life, and safety. Marijuana Dispensaries (as currently defined – proposed to be called Marijuana Retail Establishment) are only permitted in the Highway Commercial (HC) zone. This Section includes minimum separations from a Marijuana Establishment, measured in a straight line from the boundary of the lot or parcel containing any of the existing uses listed below:

1. Two thousand feet from another Marijuana Establishment;
2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;
3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or education facility that caters to children;
4. Five hundred feet from a daycare home or daycare center;
5. Five hundred feet from a public library or public park; and
6. Five hundred feet from a facility devoted to family recreation or entertainment.

Staff does not have any specific recommendations for modifying the minimum separation requirements at this time.

V. Findings:

The Planning and Zoning Commission will be requested in a future public hearing to make a formal recommendation to the City Council on the proposed amendments. For your reference and discussion purposes, the required findings for a Zoning Text Amendment are listed below:

1. The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
3. The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.

VI. **Community Involvement**

In accordance with Arizona Revised Statutes and the Zoning Code, the work session before the Planning and Zoning Commission was advertised in the Arizona Daily Sun on Saturday, March 7, 2022, which is 18 days before the scheduled meeting date. Mailings were sent directly to those who have signed up for the “Interested Parties” list. The request is also published on the city website.

As of the date of this memorandum, staff has not received any public comments on the proposed amendment.

Conclusion:

As indicated above, the purpose of the work session is for staff to present an overview of the Zoning Code’s proposed amendment and allow interested individuals, residents, and business owners to provide comments. The work session also allows the Commission to ask questions, seek clarification, have discussions, and offer comments on the proposed amendment. No formal recommendation or action by the Commission to the City Council is to occur at the work session. Additional opportunities for discussion, public comment, and action by the Commission will occur at a future public hearing.