

PLANNING AND DEVELOPMENT SERVICES REPORT

Zoning Code Text Amendment

PUBLIC HEARING

PZ-22-00089

DATE: June 8, 2022

MEETING DATE: June 22, 2022

REPORT BY: Tiffany Antol, AICP

REQUEST:

City’s request for a Zoning Code Text Amendment to modify the existing Marijuana Dispensary land use and Specific to Use for Marijuana Establishments provisions to address Proposition 207 – Smart and Safe Arizona Act (recreational use of marijuana) that was approved by the Arizona voters in November 2020 and the recent issuance of social equity licenses.

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.

I. Proposed Amendment:

The “Smart and Safe Arizona Act” (the “Act”), certified as Proposition 207, was passed by Arizona voters 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 a 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. 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 terms in the code to align the Zoning Code with Arizona Revised Statutes. This includes changing the following:

Marijuana Off-Site Cultivation Location → Marijuana Off-Site Cultivation **Establishment**

Marijuana Off-Site Manufacturing Location → Marijuana Off-Site Manufacturing **Establishment**

Marijuana Establishment → Marijuana **Operation**

B. Separation Requirements

Marijuana Establishments (to be renamed Marijuana Operations), 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, safety, and welfare. Marijuana Dispensaries (as currently defined – proposed to be called Marijuana Retail Establishments) are only permitted in the Highway Commercial (HC) zone. Section 10-40.60.220.F includes minimum separation requirements for 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 is recommending that the two thousand feet separation required between establishments be increased to two thousand five hundred feet. Attached to this report are maps of the existing sales locations with the existing 2,000 feet separation delineated, 2,500 feet separation delineated, and one-mile separation delineated to provide reference for this decision.

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 issuance of social equity licenses and to maintain consistency and conformance with the Regional Plan's (General Plan) goals and policies. Therefore, the modifications would allow for single recreational retail establishments in addition

to Medical Marijuana Dispensaries and Dual-Licensed establishments (both medical and recreational). The proposed provisions address multiple goals and policies of the Regional Plan including:

- 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,

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 are already 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 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 May 25, 2022, staff reviewed the text amendment application with the Commission. The Commission had general questions and comments about the separation between Marijuana Establishments (to be renamed Marijuana Operations). Modifications to the separation requirements have been added to this amendment.

V. CITY COUNCIL WORK SESSION

At the City Council Work Session on May 31, 2022, the City Council provided direction to staff to modify the existing marijuana Zoning Code provisions to accommodate the Act’s associated uses.

Attachments:

1. Application
2. Draft of Case No. PZ-22-00089 Marijuana Operations

3. Maps showing varied separation distances