



City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

Staff Report Zoning Ordinance Text Amendment Z-TA-8-20 (Responsible Adult Use of Marijuana) January 4, 2021

Application No. Z-TA-8-20: Amend Chapter 2, Section 202 (Definitions) and Chapter 6, Sections 623.D.124 (Commercial C-2 District—Intermediate Commercial) and 627.D.92 (A-1 Light Industrial District) of the Phoenix Zoning Ordinance to address changes to the Arizona Revised Statutes regarding responsible adult use of marijuana (Smart and Safe Arizona Act).

Staff recommendation: Staff recommends approval of Z-TA-8-20 as shown in Exhibit A.

Purpose

The voters of the State of Arizona approved Proposition 207, also known as the “Smart and Safe Arizona Act” on November 3, 2020. The Smart and Safe Arizona Act amended Title 36, of the Arizona Revised Statutes by adding Chapter 28.2, and added regulations related to the retail sale of marijuana at licensed establishments (marijuana establishments). This text amendment proposes changes to the Phoenix Zoning Ordinance to be consistent with the new provisions of Title 36 of the Arizona Revised Statutes.

Background

Chapter 28.2 of Title 36 of the Arizona Revised Statutes (A.R.S) also contains provisions on how a locality (city) may regulate marijuana establishments. Should a city propose to permit and regulate marijuana establishments, the A.R.S provisions do not allow the city to enact more restrictive regulations or rules than those that apply to nonprofit medical marijuana dispensaries. Furthermore, the A.R.S prohibits cities from restricting or interfering with the ability of an entity to operate a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location.

The number of marijuana establishment licenses are capped at one marijuana establishment license for every 10 pharmacies that have obtained a pharmacy permit and operate in this state. Beginning January 19, 2021 through March 9, 2021, the Arizona Department of Health Services is required to accept early applications for marijuana establishments from both:

1. Currently registered nonprofit medical marijuana dispensaries.
2. Applicants seeking to operate a marijuana establishment in a county with fewer than two nonprofit medical marijuana dispensaries.

The proposed language adds definitions for “cannabis”, “industrial hemp”, “marijuana”, “marijuana establishment”, and “marijuana products” that mirrors the language in the A.R.S. The language also proposes to permit marijuana establishments as an accessory use to a non-profit medical marijuana dispensary. This approach is consistent with the provisions outlined in the A.R.S.

Non-profit medical marijuana dispensaries are permitted in the C-2, C-3, A-1 and A-2 zoning districts subject to several conditions and require a use permit. One of the conditions is that the dispensaries are limited to a maximum of 5,000 square feet of net floor area. This 5,000 square foot floor area limitation will apply to the combination of the areas for the non-profit medical marijuana dispensary and the marijuana establishment. Existing non-profit medical marijuana dispensaries that would like to add a marijuana establishment as an accessory use may be required to modify their existing use permit to address square footage limitations or any other use permit conditions that would preclude the addition of the accessory use.

Conclusion

The proposed text amendment creates a regulatory framework for marijuana establishments by making them an accessory use to a non-profit medical marijuana dispensary. A comprehensive assessment of marijuana regulations will be reviewed in the future, but the purpose of this text amendment is to update the Phoenix Zoning Ordinance to comply with the new A.R.S provisions prior to marijuana establishment licenses becoming effective.

Staff recommends approval of Z-TA-8-20 as proposed in Exhibit A.

Writer

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1/4/21

Exhibit

A. Proposed Language

Text Amendment Z-TA-8-20: Responsible Adult Use of Marijuana

Proposed Language:

Amend Section 202 (Definitions) by adding the following new definitions in correct alphabetical order:

CANNABIS: MEANS THE FOLLOWING SUBSTANCES UNDER WHATEVER NAMES THEY MAY BE DESIGNATED:

1. THE RESIN EXTRACTED FROM ANY PART OF A PLANT OF THE GENUS CANNABIS, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF SUCH PLANT, ITS SEEDS OR ITS RESIN. CANNABIS DOES NOT INCLUDE OIL OR CAKE MADE FROM THE SEEDS OF SUCH PLANT, ANY FIBER, COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF THE MATURE STALKS OF SUCH PLANT EXCEPT THE RESIN EXTRACTED FROM THE STALKS OR ANY FIBER, OIL OR CAKE OR THE STERILIZED SEED OF SUCH PLANT WHICH IS INCAPABLE OF GERMINATION.
2. EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF SUCH RESIN OR TETRAHYDROCANNABINOL.

INDUSTRIAL HEMP: MEANS THE PLANT CANNABIS SATIVA L. AND ANY PART OF SUCH A PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION OF NOT MORE THAN THREE-TENTHS PERCENT ON A DRY-WEIGHT BASIS.

MARIJUANA:

1. MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS, WHETHER GROWING OR NOT, AS WELL AS THE SEEDS FROM THE PLANT, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF THE PLANT OR ITS SEEDS OR RESIN.
2. DOES NOT INCLUDE INDUSTRIAL HEMP, THE FIBER PRODUCED FROM THE STALKS OF THE PLANT OF THE GENUS CANNABIS, OIL OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEEDS OF THE PLANT THAT ARE INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK OR OTHER PRODUCTS.

MARIJUANA ESTABLISHMENT: MEANS AN ENTITY LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES TO OPERATE ALL OF THE FOLLOWING:

1. A SINGLE RETAIL LOCATION AT WHICH THE LICENSEE MAY SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS, CULTIVATE MARIJUANA AND MANUFACTURE MARIJUANA PRODUCTS.
2. A SINGLE OFF-SITE CULTIVATION LOCATION AT WHICH THE LICENSEE MAY CULTIVATE MARIJUANA, PROCESS MARIJUANA AND MANUFACTURE MARIJUANA PRODUCTS, BUT FROM WHICH MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.
3. A SINGLE OFF-SITE LOCATION AT WHICH THE LICENSEE MAY MANUFACTURE MARIJUANA PRODUCTS AND PACKAGE AND STORE MARIJUANA AND MARIJUANA PRODUCTS, BUT FROM WHICH MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.

MARIJUANA PRODUCTS: MEANS MARIJUANA CONCENTRATE AND PRODUCTS THAT ARE COMPOSED OF MARIJUANA AND OTHER INGREDIENTS AND THAT ARE INTENDED FOR USE OR CONSUMPTION, INCLUDING EDIBLE PRODUCTS, OINTMENTS AND TINCTURES.

Amend Section 623.D.124 (Commercial C-2 District—Intermediate Commercial) to read as follows:

D. Permitted Uses.

124. Nonprofit medical marijuana dispensary facility, subject to the following conditions and limitations; failure to comply with the below regulations and requirements is subject to revocation per Section 307.

a. A use permit shall be obtained in accordance with standards and procedures of Section 307 and the following:

- (1) Shall be reviewed every 365 calendar days.
- (2) Provide name(s) and location(s) of the off-site cultivation location.
- (3) Include a copy of the operating procedures adopted in compliance with Section 36-2804(B)(1)(c), Arizona Revised Statutes.
- (4) A survey sealed by a registrant of the State of Arizona shall be submitted to show compliance with the distance requirements listed below.

b. Cultivation of medical marijuana is prohibited.

- c. Shall be located in a closed building and may not be located in a trailer, cargo container, motor vehicle or similar structure or motorized or non-motorized vehicle.
- d. Shall not exceed 5,000 square feet of COMBINED net floor area dedicated exclusively to the nonprofit medical marijuana dispensary AND MARIJUANA ESTABLISHMENT; this shall include all storage areas, retail space and offices for the nonprofit medical marijuana dispensary AND MARIJUANA ESTABLISHMENT.
- e. Shall not be located within 5,280 feet of the same type of use or a medical marijuana cultivation or infusion facility. This distance shall be measured from the exterior wall of the building or portion thereof in which the business is conducted or proposed to be conducted to the nearest exterior wall or portion thereof of another medical marijuana dispensary, cultivation, or infusion facility.
- f. Shall not be located within 500 feet of the following residentially zoned districts: S-1, S-2, RE-43, RE-35, R1-18, R1-14, R1-10, R1-8, R1-6, R-2, R-3, R3-A, R-4, R-4A, R-5, and PAD-1 through PAD-15. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the zoning boundary line of the residentially zoned district.
- g. Shall not be located within 1,320 feet of a preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, or youth community center. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the property line of the protected use.
- h. Shall not be located within 1,320 feet of a place of worship. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the property line of the place of worship.
- i. Shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m.
- j. Drive-through services are prohibited.
- k. There shall be no emission of dust, fumes, vapors or odors into the environment from the premises.

- L. THE RETAIL SALE OF MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS IN A MARIJUANA ESTABLISHMENT SHALL BE PERMITTED AS ACCESSORY USE ONLY.

Amend Section 627.D.92 (A-1 Light Industrial District) to read as follows:

D. Permitted Uses.

92. Medical marijuana dispensary facility, subject to the following conditions and limitations; failure to comply with the below regulations and requirements is subject to revocation per Section 307:
- a. A use permit shall be obtained in accordance with standards and procedures of Section 307 of the Zoning Ordinance and the following:
 - (1) Shall be reviewed every 365 calendar days.
 - (2) Provide name(s) and location(s) of the off-site cultivation location.
 - (3) Include a copy of the operating procedures adopted in compliance with Section 36-2804(B)(1)(c), Arizona Revised Statutes.
 - (4) A survey sealed by a registrant of the State of Arizona shall be submitted to show compliance with the distance requirements listed below.
 - b. Shall be located in a closed building and may not be located in a trailer, cargo container, motor vehicle or similar structure or motorized or non-motorized vehicle.
 - c. Shall not exceed 5,000 square feet of COMBINED net floor area DEDICATED EXCLUSIVELY TO THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND MARIJUANA ESTABLISHMENT; this shall include all storage areas, retail space and offices FOR THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND MARIJUANA ESTABLISHMENT.
 - d. Shall not be located within 5,280 feet of the same type of use or a medical marijuana cultivation or infusion facility. This distance shall be measured from the exterior wall of the building or portion thereof in which the business is conducted or proposed to be conducted to the nearest exterior wall or portion thereof of another medical marijuana dispensary, cultivation, or infusion facility.

- e. Shall not be located within 500 feet of the following residentially zoned districts: S-1, S-2, RE-43, RE-35, RE-24, R1-18, R1-14, R1-10, R1-8, R1-6, R-2, R-3, R-3A, R-4, R-4A, R-5, and PAD-1 through PAD-15. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the zoning boundary line of the residentially zoned district.
- f. Shall not be located within 1,320 feet of a preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, or youth community center. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the property line of the protected use.
- g. Shall not be located within 1,320 feet of a place of worship. This distance shall be measured from the exterior walls of the building or portion thereof in which the dispensary business is conducted or proposed to be conducted to the property line of the place of worship.
- h. Shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m.
- i. Drive-through services are prohibited.
- j. There shall be no emission of dust, fumes, vapors or odors into the environment from the premises.
- K. THE RETAIL SALE OF MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS IN A MARIJUANA ESTABLISHMENT SHALL BE PERMITTED AS ACCESSORY USE ONLY.
