

TEXT AMENDMENT
Narrative Statement of Justification

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This application requests an amendment (“Text Amendment”) to the text of the Peoria City Code and Peoria Zoning Ordinance. The purpose of the Text Amendment is two-fold: 1) to allow for a marijuana dispensary to operate in Peoria (the “City”) under an establishment license, and 2) to allow marijuana dispensaries to perform delivery services. The precise language of the proposed Text Amendment is provided in **Exhibit A**.

Background

To provide context and understanding of this Text Amendment, it will be helpful to understand the regulatory landscape under which Peoria dispensaries currently operate. This section provides an overview of the types of licenses that are granted by the Arizona Department of Health Services (“AZDHS”) under the medical and recreational marijuana programs, and the licenses currently allowed in the City of Peoria.

AZDHS Licensing for Dispensaries

1. Medical Marijuana Licenses

The Arizona Department of Health Services (“AZDHS”) administers the medical and recreational marijuana programs in the State of Arizona. Since the adoption of the Arizona Medical Marijuana Act in 2010, AZDHS has issued 130 medical marijuana licenses. The entity holding a medical marijuana license is permitted to operate one (1) medical marijuana dispensary. AZDHS is no longer issuing medical marijuana licenses, and the number of medical marijuana licenses issued by AZDHS has been capped at 130 licenses.

2. Dual Licenses

On November 3, 2020, Arizona voters approved the “Smart and Safe Arizona Act” which legalized fair recreational marijuana for adults. Following the adoption of the Smart and Safe Arizona Act, AZDHS converted all 130 medical marijuana licenses to dual licenses. The holder of a dual license is permitted to operate one (1) dispensary, which may sell medical marijuana to cardholders and recreational marijuana to persons 21 and older. As of the time of this memo, statewide average sales of marijuana products by dual license holders are approximately eighty percent (80%) recreational and twenty percent (20%) medical. All dispensary licenses currently operating in Peoria are dual licenses, meaning they all currently sell both recreational and medical marijuana as required by State law.

3. Establishment Licenses

Shortly after the adoption of the Smart and Safe Arizona Act, AZDHS first issued 13 establishment licenses in counties that had less than two existing dispensaries within their jurisdictional boundaries. These 13 establishment licenses are required to remain in the county in which they

were awarded. As such, they are commonly referred to as “county licenses.” No county licenses were awarded in Maricopa County, and they may not be moved to Maricopa County.

In April of 2022, AZDHS awarded 26 additional establishment licenses through its Social Equity Ownership Program. The license holder of any establishment license—whether a county license or an establishment license awarded through the Social Equity Ownership Program—is permitted to operate one (1) dispensary that may sell recreational marijuana to persons 21 and older. Establishment licensees are not permitted to sell medical marijuana to eligible cardholders.

Existing Peoria City Code

1. Prohibition on Dispensaries Operating under an Establishment License

Section 21-202.D of Peoria’s Zoning Ordinance defines a “Qualifying Marijuana Dispensary” as follows:

“Qualifying Marijuana Dispensary means:

- 1) A non-profit Marijuana Dispensary defined in A.R.S §36-2801(12) that sells, distributes, transmits, gives, dispenses, or otherwise provides Marijuana for medical use and related supplies to Qualifying Patients. Included is the manufacture and creation of products for individual sale where Marijuana is incorporated into the product for consumption by an individual who is a valid Medical Marijuana Cardholder and the sale of not more than twelve living Marijuana plants to an individual Medical Marijuana Cardholder authorized pursuant to A.R.S. §36-2801, et. seq; or*
- 2) A dispensary operated pursuant to A.R.S. §36-2858 by a Dual Licensee as defined by A.R.S. §36-2850 and Section 11-75 of the City Code which sells, distributes, transmits, gives, dispenses, or otherwise provides Marijuana and Marijuana Products and related supplies for (1) medical use to Qualifying Patients; and (2) for general non-medicinal use to individuals who are at least twenty-one years of age as permitted by A.R.S. §36-2852.*

Under the existing definition, a Qualifying Marijuana Dispensary may only be operated under a medical marijuana license or a dual license. The definition does not include an establishment license. Moreover, Section 11-75 of Peoria’s Zoning Ordinance expressly prohibits the operation of a dispensary that sells marijuana to adults for recreational purposes, except under a dual license. As a result, holders of an establishment license are prohibited from operating a dispensary in the City of Peoria.

2. Prohibition on Delivery Services

In addition to prohibiting dispensaries that operate under an establishment license, Section 21-505.M.2.j of the Peoria Zoning Ordinance prohibits delivery services for all Qualifying Marijuana Dispensaries.

Proposed Text Amendment

As shown in **Exhibit A**, this proposed Text Amendment will modify the language of the Peoria Zoning Ordinance to:

- A. Remove the prohibition on a Marijuana Establishment in Section 11-75 of the Peoria City Code,
- B. Add a dispensary that operates under an establishment license to the definition of a Qualifying Marijuana Dispensary in Section 21-202 of the Peoria Zoning Ordinance, and
- C. Remove the prohibition of delivery services for Qualifying Marijuana Dispensaries in Section 21-505.M.2.j of the Peoria Zoning Ordinance and require Qualifying Marijuana Dispensaries to submit a copy of delivery procedures to the Peoria Police Department for approval.

The proposed Text Amendment does not change the zoning requirements or limitations on uses that currently apply to Qualifying Marijuana Dispensaries. If the Text Amendment is approved, *with the exception of allowing delivery services*, all other limitations on Qualifying Marijuana Dispensaries outlined in Section 21-505.M.2 of the Peoria Zoning Ordinance will continue to apply.

Justification

As described in more detail below, this proposed Text Amendment will: 1) increase local tax revenue, and 2) allow for dispensaries in Peoria to better compete with dispensaries in nearby jurisdictions. These changes will take effect without discernible differences to the consumer.

1. Increase in Sales Tax

Allowing for dispensaries to operate in the City under an establishment license will generate additional tax revenue for the City. The City of Peoria has a local sales tax of approximately 1.8%. The revenue from this local tax is not shared with the State of Arizona. Additionally, sales of recreational marijuana products are subject to an additional Marijuana Excise Tax, or MET, collected by the State and shared with the city in which the recreational sale takes place. As this Text Amendment will allow for establishment licenses to operate in the City, Peoria dispensaries would have the flexibility to use an establishment license at their approved location, subjecting all

of their sales not only to Peoria local sales tax, but also the MET (as opposed to dual license dispensaries, where medical marijuana sales are not subject to MET). this will result in additional sales of recreational marijuana products and, consequently, additional tax revenue for the City.

Additionally, residents of Peoria are currently allowed to accept the delivery of marijuana products from dispensaries outside the jurisdiction. The city where the delivering dispensary is located receives the tax revenue for each delivery. If the proposed Text Amendment pertaining to delivery is approved, the tax revenue generated by delivering marijuana products to customers, both within and outside of Peoria, can be generated in Peoria and remain in Peoria.

2. Increase in Competitive Advantage

There are several jurisdictions in the Valley that allow for dispensaries to perform delivery services, including Maricopa County, Phoenix, Glendale, Surprise, El Mirage, Scottsdale and Chandler. Some of these jurisdictions (Phoenix, Glendale and El Mirage) are adjacent to the City of Peoria. Consequently, the dispensaries in these jurisdictions have a competitive advantage over nearby dispensaries in the City. Approving the Text Amendment to allow for delivery both within and outside of Peoria is therefore necessary for dispensaries in Peoria to remain competitive with dispensaries in nearby jurisdictions.

3. No Change in Operations; Lower Dosage Products & Transactions

An establishment license is required to operate under essentially the exact same rules and regulations as a dual license. From the consumer or passerby perspective, there will be no changes to dispensaries in Peoria from how they operate today (same zoning guidelines, same protected use setbacks, same signage, same security measures and applicable regulations, etc.), to how they will operate with the approval of the Text Amendment. However, there will be one key exception: establishment licenses may only sell “recreational” products, which have a lower maximum dosage per package and a lower total quantity per sale than medical products. Consequently, dispensaries that choose to operate under an establishment license will actually be selling less potent products and lower quantities per transaction than dispensaries operating under dual licenses (where medical sales are permitted).

Rules that Remain Unaffected by the Proposed Text Amendment

As previously noted, this Text Amendment will not change the zoning requirements or limitations on uses that currently apply to Qualifying Marijuana Dispensaries in Peoria, *with the exception of delivery services*. If the Text Amendment is approved, all other regulations, requirements and limitations of uses that currently apply to dispensaries will continue to apply, including:

- Qualifying Marijuana Dispensaries are only permitted in C-2, C-4 and C-5 zoning districts, subject to approval of a Conditional Use Permit;

- Qualifying Marijuana Dispensaries must be separated from other sensitive uses as shown below:

Separation Requirements for Qualifying Marijuana Dispensaries	
From another marijuana dispensary, manufacturing, cultivation or testing facility	Not less than 2,640 feet
From a Day-Care Facility, Pre-School, Public/Charter or Private School	Not less than 1,000 feet
From a Retail Liquor Store, Tavern, Bar or Lounge, Adult Use, Substance Abuse Treatment Center or State Local Alcohol Reception Center	Not less than 1,000 feet
From Residentially zoned property	Not less than 500 feet

- Qualifying Marijuana Dispensaries shall have operating hours not earlier than 7:00 a.m. and not later than 10:00 p.m.;
- The manufacture, cultivation and testing of marijuana is prohibited;
- Drive-through services and sales are prohibited;
- Alcoholic beverages shall not be sold, stored, distributed or consumed on the premises;
- Qualifying Marijuana Dispensaries shall not have outdoor seating areas and shall have adequate indoor seating to prevent outside loitering;
- Lighting requirements that specify illumination during evening hours, fixture type, wattage, shielding... must be met;
- Windows and/or entrances must not be obstructed and must maintain a clear view into the premises during business hours;
- No consumption of marijuana or any product containing marijuana may occur on the dispensary premises; and
- The Tenant Improvement Plan shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes.

These requirements will ensure that dispensaries will continue to be compatible with, and will operate without adverse impact on, surrounding properties.

Conclusion

According to AZDHS, when the Arizona Medical Marijuana Program in began in 2011, slightly over 16,000 medical marijuana registration cards were issued to qualifying patients throughout the State. Since that time, there has been a significant increase in the issuance of medical marijuana registration cards, patients, and demand for medical marijuana. Additionally, on November 3, 2020, Arizona voters approved the “Smart and Safe Arizona Act” legalizing recreational marijuana use for adults, which further increased demand for marijuana products. The proposed Text

Amendment is needed to help dispensaries within the City of Peoria meet the sustained increase in demand for marijuana products.

The proposed Text Amendment will make reasonable changes to Peoria's City Code and Zoning Ordinance that will help to meet the increase in demand for marijuana products, will increase tax revenue for the City (through additional MET and tax from deliveries), and will allow for dispensaries in the City to remain competitive with nearby dispensaries in abutting jurisdictions. Thank you for your time and consideration of this application.