



PLANNING AND ZONING COMMISSION STAFF REPORT

Date May 4, 2023
To Planning and Zoning Commission
From Dan Symer, AICP
Principal Planner
Subject Marijuana Delivery and Retail Establishment
Text Amendment (TA22-02)

REQUEST

Lindsay Schube of Gammage & Burnham, PLC on behalf of Pitchfork Partners, Inc has submitted an applicant-initiated amendment to the Zoning Ordinance pertaining to Qualifying Marijuana Dispensary regulations as follows:

1. Section 21-202 Definitions, "Qualifying Marijuana Dispensaries"

Expand the definition of a Qualifying Marijuana Dispensary to include those dispensaries holding an establishment license as a *Single Retail Location* ("Non-Medicinal Establishment") issued by the Arizona Department of Health Services, and sells marijuana and marijuana products for general non-medicinal use (adult-use).

2. Section 21-505.M Qualifying Marijuana Dispensaries and Marijuana Manufacturing, Cultivation and Testing Facilities

Remove the prohibition on the delivery of marijuana and marijuana products, and add requirements to the Security Management Plan criteria pertaining to the secure transport and delivery of marijuana and marijuana products, if a Qualifying Marijuana Dispensary provides delivery services.

PURPOSE OF THE REQUEST:

The applicant's narrative is included as **Exhibit 1**, and the proposed text amendment to the Zoning Ordinance is included as **Exhibit 2**. The proposed modifications would allow Non-Medicinal Establishments to exist within Peoria, subject to the same requirements as Medical and Dual License (Medical and Non-Medicinal Establishments) facilities. In addition, the amendment would allow any Qualifying Marijuana Dispensaries to deliver marijuana and marijuana products in a manner that is consistent with the security considerations and procedures established by the State of Arizona and the Peoria Police Department.

KEY ITEMS FOR CONSIDERATION:

- Currently, the City of Peoria only allows dispensaries that hold a medical marijuana license or a dual license (both medical and Non-Medicinal Establishments).
- These amendments in no way disrupt, alter or change, current zoning restrictions pertaining to the siting of Qualifying Marijuana Dispensaries. Moreover, with the exception of the

proposed removal of the prohibition of deliveries, the existing operating limitations in the Zoning Ordinance would remain unchanged.

- It should be noted that currently, the State of Arizona only allows the transportation and delivery of medicinal marijuana and marijuana products to and from:
 - cultivation sites,
 - other dispensaries,
 - registered laboratories, and
 - qualifying medical marijuana patients.
- Other cities and counties within Arizona currently allow medicinal marijuana delivery, including delivery services to Peoria caregivers and qualifying patients.
- The Statute enables the delivery of non-medicinal (“adult-use”) marijuana upon the promulgation of rules by the Arizona Department of Health Services (ADHS). The Statute requires the rules to be in place no sooner than January 1, 2023 and no later than January 1, 2025. (At the time of this report, ADHS has not enacted rules for the delivery of non-medicinal marijuana.)

REGULATORY BACKGROUND

In November 2010, Arizona voters approved Proposition 203 (known as the "Arizona Medical Marijuana Act" (AMMA)). The AMMA allowed for the use, sale, and cultivation of marijuana for medicinal use. In addition, it authorized cities and counties to enact "reasonable zoning regulations" to regulate land use for non-profit medical marijuana dispensaries and cultivation facilities.

In response to AMMA, the Peoria City Council adopted land use and applicable regulations in 2011 for the sale/distribution, growth/cultivation, and manufacturing of medical marijuana and medical marijuana products. These regulations established which zoning districts that medical marijuana establishments would be allowed, along with applicable requirements for the separation between establishments, a security plan and related security provisions. In addition, the provisions included restrictions on the hours of operation, signage, waste disposal, and the prohibition of outdoor seating, drive-throughs, and delivery services.

Subsequently, in November 2020, the Arizona voters approved Proposition 207 (known as the "Smart and Safe Arizona Act" (SSAA)). The broad scope of the SSAA included the allowance for licensed establishments to sell, and for adults over the age of 21 to possess and use non-medicinal marijuana. In addition, the SSAA prohibited the use of non-medicinal marijuana in public places or open spaces, and allowed cities to incorporate zoning regulations similar to the medical marijuana establishments. It should be noted that the SSAA precluded cities from prohibiting dual license dispensaries (Medical and Non-Medical Establishments) that operate in a shared location, creating regulations for non-medical marijuana dispensaries that are more restrictive than medical marijuana dispensaries, enacting regulations that unduly burden the operation of marijuana testing establishments, and enacting local traffic laws that prohibit the transportation of marijuana and marijuana products on public roads.

On March 8, 2021, the Peoria City Council adopted *Ordinance No. 2021-06*, which incorporated amendments to the Zoning Ordinance to implement the SSAA. This Ordinance retained the existing siting and operational zoning regulations, with modifications to the definitions and zoning districts to allow marijuana testing and dual-licensed (Medicinal and Non-Medicinal Establishment) facilities. The resulting Ordinance did not permit stand-alone, adult-use (Non-Medicinal Establishment) facilities with an Establishment License.

ANALYSIS OF REQUEST(S)

The applicant's narrative and justification for the proposed amendment are included in **Exhibit 1**. Related to the Zoning Ordinance, there are two primary parts to the proposed amendment. The first is to expand the definition of Qualifying Marijuana Dispensaries to include stand-alone Non-Medicinal Establishments, and the second is to remove the prohibition on the delivery of Marijuana Products. As part of the removal of the delivery prohibition, the proposed amendment incorporates a requirement to obtain a new or updated security plan from the Peoria Police Department to address delivery services.

In summary, the applicant's justification for the amendment is that it will:

- Increase City of Peoria tax revenue;
- Allow Peoria dispensaries to deliver to Peoria residences and to persons in other jurisdictions;
- Allow for Peoria dispensaries to better compete with dispensaries in nearby jurisdictions; and
- Utilize the same regulations that apply to Medical and Dual-Licensed facilities for Non-Medicinal Establishments.

Part #1 of Amendment – Expansion of the Qualifying Marijuana Dispensary Definition:

The existing Peoria Zoning Ordinance's definition of a Qualifying Marijuana Dispensary includes licensed Non-Profit Marijuana Dispensaries that sell Marijuana Products for medicinal purposes and Dual Licensed Dispensaries that sell Marijuana Products for medicinal and non-medicinal purposes. The proposed amendment incorporates stand-alone Non-Medicinal Establishments as a form of a Qualifying Marijuana Dispensary. The effect of incorporating Non-Medicinal Establishments into the definition is that all three-dispensary types allowed under the ARS (Medical, Dual Licensed, and Non-Medicinal Establishments) will be considered a Qualifying Marijuana Dispensary from a zoning land use perspective. Therefore, the expansion of the definition would allow licensed dispensaries that only sell non-medicinal marijuana products to exist in the same zoning districts and locations as medicinal and Dual Licensed dispensaries while being required to comply with the same applicable requirements of location, separation, security plan, and operational provisions. The existing definition and regulations of Qualifying Marijuana Establishments are included in **Exhibit 3**.

The proposed amendment is consistent with the General Plan's Smart Growth Goal 1 and Policy LUC-11 by promoting the regular evaluation of the development regulations and providing for a balanced mix of land uses that support business opportunities and improve access to services for Peoria residents.

Part #2 of Amendment – Removal of the Prohibition on Delivery:

Currently, the Peoria Zoning Ordinance prohibits Peoria-based marijuana dispensaries from delivering Marijuana Products to persons in and outside Peoria. This prohibition was established in February 2011 as part of the regulations adopted to implement the AMMA, and was maintained when the Zoning Ordinance was updated to implement the SSAA that legalized non-medicinal sales and use of marijuana.

When the Zoning Ordinance was updated to implement the 2010 AMMA, no city, county or state regulations addressing the operation, security, delivery, etc. had been developed for marijuana establishments, and a significant amount of information was unknown. Since the adoption of both acts, the AZDHS and local communities, including Peoria, have established rules and regulations that provide a high level of oversight for the state's marijuana industry. Among these regulations, AZDHS has established administrative regulations pertaining to the transportation and delivery of Marijuana Products to/from: cultivation sites, other dispensaries, registered laboratories, and qualifying medical marijuana patients. The AZDHS regulations for the delivery of non-medicinal Marijuana Products are required to be established between January 1, 2023 and January 1, 2025. When this report was written, the aforementioned regulations had not been created.

Upon review of other Phoenix metropolitan cities' regulations, staff confirmed that several cities currently allow deliveries of Marijuana Products. These cities include Phoenix, Mesa, Scottsdale, Chandler, Gilbert, Tempe, Glendale, El Mirage and Maricopa County. To that point, the applicant has asserted that Peoria-based marijuana dispensaries are at a competitive disadvantage compared to dispensaries in other cities that allow deliveries since cities are prohibited from regulating the transport and delivery of Marijuana Products on public streets. Therefore, dispensaries outside of Peoria are allowed to deliver to a qualified Peoria resident, whereas a Peoria-based dispensary cannot.

Consistent with the General Plan policies LUC-11 and CW-6 to regularly evaluate the development regulations and improve medical service and access to Peoria residents, the proposed amendment would equalize the above-referenced disparity for Peoria-based dispensaries, and allow a service qualifying Peoria residents could utilize to obtain marijuana products. It should be noted that the state currently only allows the delivery of marijuana products to qualifying patients for medicinal purposes. This will change when AZDHS develops regulations for the delivery of adult use marijuana, no later than January 1, 2025.

The proposed requirement for a dispensary that provides a delivery service is to have a new or updated security plan approved by the Peoria Police Department that is consistent with the security considerations and procedures established by the AZDHS. This provision will enable the City to proactively address potential public safety issues that will assist in minimizing security concerns. It should be noted that under the proposed amendment, Peoria dispensaries would be allowed to deliver non-medicinal Marijuana Products when AZDHS establishes the related regulation, provided the dispensaries comply with the above-referenced security plan provisions.

PUBLIC SAFETY

The Police Department staff has been consulted in the review of this request. Accordingly, in their response, the Police Department noted that although dispensaries are cash-based businesses, current marijuana dispensaries in the City have experienced few issues due to the requirement for approved Security Plans to help mitigate risk for employees and patrons. The Department has recommended that language be included requiring those dispensaries offering delivery services to update their approved Security Plan before initiating services. This recommendation has been incorporated into the proposed amendment.

PREVIOUS DISCUSSION AND ACTIONS

A limited version of this amendment (removal of the prohibition on delivery) was previously discussed at the October 6, 2020, Planning and Zoning Commission. Subsequently, on October 20, 2023, the Commission (4-1) supported the request with a recommendation to the City Council to allow Qualifying Marijuana Dispensaries to transport and deliver marijuana and marijuana products to customers. Ultimately, the City Council did not hear the previous version of the amendment since the applicant reconsidered and amended the application to include the proposed expansion of the definition for Qualifying Marijuana Dispensaries. Since the modification is a material change to the application, a new recommendation from Planning and Zoning Commission is necessary.

At the April 20, 2023, Planning and Zoning Commission meeting, the Commission reviewed and discussed the application as a study session item. Several Commissioners acknowledged that the same standards for Medical and Dual Licensed Establishment would apply to Non-Medicinal Establishments. In addition, there was discussion centered around the applicant's assertion that the delivery request was essentially a sales tax question. That is, current qualified patients and caregivers in Peoria are already receiving deliveries from dispensaries in neighboring cities that permit delivery. The point-of-sale and sales tax is essentially generated in those neighboring jurisdictions.

At the April 25, 2023, City Council Study Session meeting, the City Council had a series of questions answered by staff and the applicant. These questions included the state's regulatory methodology for the delivery of marijuana products, differences between and the necessity for a medical and non-medical establishment licenses, and the potency provisions for medical and non-medical marijuana products. In addition, the Council asked staff to return to the City Council with the answers to several questions related to: the tax revenue of all Peoria dispensaries, the number and type of dispensaries in adjacent jurisdictions and associated tax revenues, and the percentage of deliveries made to Peoria residents from adjacent jurisdictions (if available).

COMMUNITY INVOLVEMENT

Public Noticing

The application was properly noticed pursuant to Section 21-315 of the Peoria Zoning Ordinance, which includes placing an ad in the Peoria Times at least 15 days prior to the Public Hearing.

Outreach Process

- Opportunities for public comments on the original iteration of the amendment were provided at the October 6, 2022, and October 20, 2022 Planning and Zoning Commission meetings. No public comments have been received.
- An opportunity for the public to comment on the revised application was provided at the April 20, 2023, Planning and Zoning Commission meeting. No public comments were received.
- An additional opportunity for the public to comment on the revised application was provided at the April 25, 2023, City Council meeting. No public comments were received.

Support / Opposition

At the time of this writing, the staff has not received public comments supporting or opposing the proposed Zoning Ordinance Text Amendment.

KEY FINDINGS

1. The proposed amendment would allow Non-Medicinal Establishments (“Establishment Licenses”) to locate within Peoria, and they would be subject to the same siting and operational limitations that apply to Medical and Dual Licensed Establishments. In essence, all Marijuana Dispensaries are treated consistently.
2. There are no proposed changes to the siting and operational limitations in the Code; hence, the amendment would not change the number of qualifying locations.
3. The proposed amendment would enable Peoria dispensaries to offer delivery services of Marijuana Products to qualifying medical marijuana patients and caregivers. Dispensaries in surrounding communities such as Phoenix, Glendale, El Mirage and Maricopa County already offer delivery services to Peoria residents.
4. The Peoria marijuana dispensaries that provide delivery services would require a new, or revised Security Plan approved by the Peoria Police Department that specifically addresses the secure transport and delivery of Marijuana Products in compliance with the applicable state laws and regulations.
5. The proposed Security Plan provisions would supplement existing security and documentation requirements in place through AZDHS administrative rules.
6. The Delivery of *non-medicinal* Marijuana Products would be allowed once the AZDHS establishes delivery regulations. The law requires that AZDHS adopt rules to permit and regulate *non-medicinal* delivery no sooner than January 1, 2023 and no later than January 1, 2025.

POSSIBLE ACTIONS / OPTIONS

- A:** Approve as recommended by staff; or
- B:** Approve in part or with modifications; or
- C:** Deny; or
- D:** Continue action to a date certain or indefinitely.

RECOMMENDATION

Staff recommends that the Planning and Zoning Commission take the following action:

- 1) Recommend approval of Case TA22-02 to the City Council.**

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