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May 22, 2023

City of Peoria  
Mayor Jason Beck  
8401 W Monroe St  
Peoria, AZ 85345

Re: Amendment to Zoning Code – Marijuana Establishments

Dear Mayor Beck:

At the April 24<sup>th</sup> City Council study session, the proposed amendment to the Zoning Code for Marijuana Establishments was presented and while there were several thoughtful questions from yourself and fellow Council members, some of the questions were beyond the normal “land use” line of questioning, therefore we didn’t have answers readily available. However, we are very appreciative of the questions and have spent some time preparing comprehensive responses for your use.

Prop 203 (the Arizona Medical Marijuana Act) established a clear distinction between the licensing function, which was retained by the State, and the zoning/land use function, which was delegated to each municipality. It barred municipalities from prohibiting marijuana business and required reasonable zoning regulations to be established. After much success with Prop 203, Prop 207 (Smart and Safe Act) was approved several years later, allowing for adult-use/recreational only licenses. The State allowed each municipality to determine if these licenses would be permitted in their jurisdiction but required municipalities to allow for adult-use/recreation sales in conjunction with the existing medical licenses, thereby establishing a “dual-license”. Not only were cities required to allow this "dual license" use, but dual license holders (i.e., all licenses in existence at the time) were required to begin selling to adult use customers pursuant to State statute and rules. Thus, adult-use/recreational sales are occurring through all the original 130 licenses, including those located in Peoria. Now, after two years of adult-use/recreational sales, 80% of total marijuana sales statewide are to adult-use/recreational customers.

Allowing adult-use/recreational only licenses in Peoria will result in no functional or operational difference to the existing marijuana businesses, other than the type of license hanging in the lobby. All existing and current zoning regulations and protected use setbacks would remain, thereby not resulting in a proliferation of new dispensaries or additional qualifying sites. Allowing adult-use/recreational only licenses in the City of Peoria simply allows existing Peoria dispensary owners to be competitive with neighboring jurisdictions while generating additional tax (MET) revenue for the City. As discussed by Peoria Deputy Police Chief Marcel Spaulding during the City Council study session, Peoria dispensaries have been compliant, low-crime and

non-problematic businesses, with no track record of having issues. We anticipate that this would remain true even with a change in license.

**1. What is the tax on medical marijuana versus recreational marijuana?**

Medical Marijuana is taxed at the sales tax rate of 8.3% (with 1.8% of that as Peoria's portion) whereas Recreational Marijuana is taxed with the 8.3% sales tax PLUS the 16% Marijuana Excise Tax ("MET") tax for a total of 24.3% tax.

The Marijuana Excise Tax ("MET") was the additional excise tax that was added by Smart and Safe Act (2020) which applies to all adult-use/recreational marijuana sales. The MET fund is distributed between community colleges, law enforcement, fire departments, transportation departments, public health & criminal justice programs, and the state Attorney General. We have included the specific breakdown on Exhibit A to this letter. However, we feel it is important to highlight what benefits Peoria most directly.

Almost one third (31.4%) of total MET collected in the State is allocated to municipal police and fire departments, fire districts, and county sheriff's departments. This amount is allocated and distributed to each jurisdiction based on the number of sworn public safety members in the Public Safety Personnel Retirement System ("PSPRS") in that jurisdiction. PSPRS applies to sworn police, fire, and other members of the public safety community. This is a relative calculation, meaning that cities will receive a percentage of the MET allocated to public safety equal to their portion of sworn PSPRS members relative to the total PSPRS members in the State. By way of example, if there were 1,000 PSPRS members in the State, and Peoria had 10 of those members, then Peoria would receive 10/1000 (or 1%) of the MET allocated to public safety. This is the portion of MET that most directly impacts individual cities. With the allowance of an establishment only license, 100% of the sales would contribute to the MET tax, thereby increasing the total MET collected and distributed.

To further this example, per the Arizona Department of Revenue and attached as Exhibit B, the Arizona MET tax has collected over \$287M from February 2021 through March 2023, which means just over \$90M has been distributed to municipalities for public safety funding over the last 2 years. If, in using the example above, Peoria was allotted 1%, that would total over \$900k received for public safety. In fact, per the State Treasury Department, Peoria did receive almost \$1M in 2022 alone, from the MET distribution; \$496,461.95 was distributed to the Police Department and \$496,305.39 was distributed to the Fire Department, as shown in Exhibit C. As City staff is not allowed to disclose actual amounts received, there may be a slight adjustment in the numbers.

**2. What is the total sales tax revenue from marijuana sales in Peoria (by year)? Can you divide this number between medical and recreational?**

Although we cannot provide a total sales tax revenue in Peoria, as your staff should have this information, we can provide you with estimates based on average sales performance. There are four (4) dispensaries that currently operate in Peoria. There is a range in sales from about \$600K/month to \$1.4M/month depending on the store. An average of \$800K/month would be a fair assessment given the information we have. \$800K/month times 4 stores would equate to \$3.2M in monthly sales. At the Peoria tax rate of 1.8% this would equate to approximately \$57K in tax revenue per month, or \$691k per year. This estimate does not include the MET tax allocation. Statewide, recreational sales make up approximately 80% of all sales, which, in this example, would generate another \$409K per month, or \$4.9M per year towards the MET fund.

**3. How does that revenue compare to Glendale, County, El Mirage?**

We do not have access to this information however, the 80/20 split between adult use and medical use holds consistent across all jurisdictions.

**4. How many dispensaries in immediate area in other jurisdictions?**

Within a 10 miles radius of Peoria, there are approximately 16 dispensaries which are listed below by municipality:

- Glendale – 6
- Surprise – 0
- El Mirage – 2
- Maricopa County (in vicinity of Peoria) – 3
- Youngtown – 1
- Phoenix (in vicinity of Peoria) – 4

**5. What municipalities already allow establishment only licenses?**

Many municipalities within the State currently allow establishment only licenses and are listed below, while several are in the process of amending their code to allow establishment only. These license types function similarly to a liquor license. They are simply a piece of paper on the wall. It does not change the business or security operations. When visiting a restaurant or bar consumers typically are not aware of the liquor license type that the establishment holds.

The municipalities that currently allow establishment only licenses are as follows:

- Tempe
- Tucson

- Litchfield Park
- El Mirage
- Maricopa County (notable areas include Sun City/West, Sun Lakes, Anthem, Tonopah, Wittman, Rio Verde, Morristown, Aguila, Youngtown, Laveen, Fort McDowell, Waddell, Tortilla Flat, Sunflower, Liberty, Belmont, Rainbow Valley, Chandler Heights, Circle City, Desert Hills)
- Avondale
- Sierra Vista
- Kingman
- Bullhead City
- Payson
- Coolidge
- Florence
- Superior
- Globe
- Safford
- Pima County
- Pinal County
- Mohave County
- Coconino County
- Santa Cruz County
- Apache County

The municipalities that are currently processing text amendments to allow establishment only are as follows:

- Phoenix
- Glendale
- Flagstaff

**6. How many deliveries have gone to Peoria residents per year?**

This information is not available publicly due to HIPAA. AZDHS has confirmed that this information cannot be disclosed and/or released. Although deliveries are not allowed *from* Peoria dispensaries, deliveries are allowed *to* Peoria residents. This is putting Peoria dispensary owners at a competitive disadvantage while also reducing the potential sales tax revenue for the City. Peoria customers are placing orders with neighboring jurisdiction’s dispensaries and since the sales tax is generated from the point of sale (not the delivery location), those jurisdictions are capturing the sales tax from Peoria residents.

Currently, per State regulations, delivery is only permitted to medical patients. With medical patients making up approximately 20% of sales, a dramatic increase in sales with deliveries is not anticipated but any increase will result in additional tax generated for the City of Peoria.

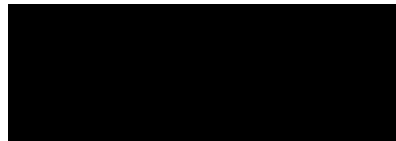
Additionally, by 2025, and possibly sooner, adult-use/recreational delivery rules will be established by the State. If Peoria were to allow dispensaries to deliver now, it would provide Peoria dispensary owners the time to invest in and build out delivery systems in anticipation for the allowance of delivery for the larger, adult-use/recreational market.

**7. How many liquor licenses are there in Peoria? How many liquor stores?**

This information can be provided by your staff, as we do not have access to permitting and records to determine. We can however state that there are approximately 14,807 liquor licenses in the State, which overshadows the 169 marijuana licenses in the State.

Again, we appreciate the thoughtful questions posed and the opportunity to respond to each. Please let us know if you have any questions or if you require additional information. We appreciate your careful consideration of this amendment.

Sincerely,  
GAMMAGE & BURNHAM, P.L.C.



By  
Lindsay C. Schube

# **EXHIBIT A**

36-2856. Smart and safe Arizona fund; disposition; exemption

(Caution: 1998 Prop. 105 applies)

A. The smart and safe Arizona fund is established consisting of all monies deposited pursuant to sections 36-2854, 42-5452 and 42-5503, private donations and interest earned on those monies. Monies in the fund are continuously appropriated. Monies in the fund and its accounts may not be transferred to any other fund except as provided in this section, do not revert to the state general fund and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. The state treasurer shall administer the fund.

B. All monies in the smart and safe Arizona fund must first be spent, and the state treasurer shall transfer monies from the fund, to pay:

1. The actual reasonable costs incurred by the department to implement, carry out and enforce this chapter and rules adopted pursuant to this chapter.

2. The actual reasonable costs incurred by the department of revenue to impose and enforce the tax authorized and levied by section 42-5452.

3. The actual reasonable costs incurred by the supreme court and the department of public safety to process petitions for expungement and expungement orders pursuant to section 36-2862 and to otherwise implement section 36-2862.

4. The actual reasonable costs incurred by the state treasurer to administer the fund.

5. Any other mandatory expenditure of state revenues required by this chapter to implement or enforce the provisions of this chapter.

C. The state treasurer may prescribe forms necessary to make transfers from the smart and safe Arizona fund pursuant to subsection B of this section.

D. On or before June 30 and December 31 of each year, the state treasurer shall transfer all monies in the smart and safe Arizona fund in excess of the amounts paid pursuant to subsection B of this section as follows:

1. 33 percent to community college districts and provisional community college districts, but not to community college tuition financing districts established pursuant to section 15-1409, for the purposes of investing in and providing workforce development programs, job training, career and technical education, and science, technology, engineering and math programs, as follows:

(a) 15 percent of the 33 percent divided equally between each community college district.

(b) 0.5 percent of the 33 percent divided equally between each provisional community college district, if one or more provisional community college districts exist.

(c) The remainder to community college districts and provisional community colleges districts in proportion to each district's full-time equivalent student enrollment percentage of the total statewide audited full-time equivalent student enrollment in the preceding fiscal year prescribed in section 15-1466.01.

2. 31.4 percent to municipal police departments, municipal fire departments, fire districts established pursuant to title 48, chapter 5 and county sheriffs' departments in proportion to the number of enrolled members for each such agency in the public safety personnel retirement system established by title 38, chapter 5, article 4 and the

public safety personnel defined contribution plan established by title 38, chapter 5, article 4.1, for personnel costs.

3. 25.4 percent to the Arizona highway user revenue fund established by section 28-6533.

4. 10 percent to the justice reinvestment fund established by section 36-2863.

5. 0.2 percent to the attorney general to use to enforce this chapter, or to grant to localities to enforce this chapter.

E. The monies transferred and received pursuant to this section:

1. Are in addition to any other appropriation, transfer or other allocation of monies and may not supplant, replace or cause a reduction in other funding sources.

2. Are not considered local revenues for the purposes of article IX, sections 20 and 21, Constitution of Arizona.

## **EXHIBIT B**

### Marijuana TPT and Excise Tax Collections, by Category

Month Revenue Received	TPT State General Fund- 203	TPT State General Fund- 420	EFT Payment Fees- 180	TPT Total State General Fund	Total TPT Collections- 203	Total TPT Collections- 420	Total Marijuana Excise Tax (MET) Collections- 920	EFT Payment Fees- 180	Total Collections
Feb-21	\$590,832	\$107,180		\$698,012	\$1,339,562	\$226,355	\$511,520		\$2,077,436
Mar-21	\$2,135,545	\$1,319,532		\$3,455,077	\$4,882,535	\$3,042,603	\$4,574,344		\$12,499,482
Apr-21	\$2,610,034	\$1,804,740		\$4,414,775	\$5,919,062	\$4,123,402	\$7,527,849		\$17,570,313
May-21	\$3,144,307	\$2,560,426		\$5,704,734	\$7,116,027	\$5,846,576	\$9,301,292		\$22,263,896
Jun-21	\$2,508,569	\$1,411,005		\$3,919,575	\$5,690,357	\$3,275,289	\$11,010,179		\$19,975,825
Jul-21	\$2,415,249	\$1,937,171		\$4,352,420	\$5,485,102	\$4,445,848	\$10,937,526		\$20,868,477
Aug-21	\$2,831,203	\$1,997,515		\$4,828,717	\$6,388,816	\$4,542,166	\$9,515,016		\$20,445,997
Sep-21	\$2,500,385	\$1,855,438		\$4,355,823	\$5,699,336	\$4,249,993	\$9,583,147		\$19,532,476
Oct-21	\$2,372,299	\$1,973,171		\$4,345,470	\$5,367,686	\$4,512,493	\$9,222,846		\$19,103,024
Nov-21	\$2,539,973	\$2,213,100		\$4,753,074	\$5,748,722	\$5,038,213	\$9,980,570		\$20,767,505
Dec-21	\$2,320,533	\$2,302,912		\$4,623,444	\$5,278,966	\$5,230,498	\$10,833,674		\$21,343,138
Jan-22	\$2,007,509	\$2,451,823		\$4,459,332	\$4,548,869	\$5,536,037	\$11,139,800		\$21,224,706
Feb-22	\$2,051,642	\$2,479,900		\$4,531,543	\$4,656,015	\$5,645,340	\$11,154,690		\$21,456,046
Mar-22	\$2,173,510	\$2,483,933		\$4,657,444	\$4,923,103	\$5,658,687	\$11,898,972		\$22,480,762
Apr-22	\$1,808,706	\$2,466,351		\$4,275,057	\$4,168,664	\$5,668,470	\$12,699,288		\$22,536,422
May-22	\$2,058,584	\$2,857,721		\$4,916,305	\$4,571,583	\$6,348,211	\$13,408,223		\$24,328,016
Jun-22	\$1,603,928	\$2,560,121	\$8,061	\$4,164,049	\$3,638,123	\$5,818,494	\$12,446,670	\$8,061	\$21,911,349
Jul-22	\$1,401,150	\$2,341,525	\$8,864	\$3,742,674	\$3,161,161	\$5,306,200	\$11,577,161	\$8,864	\$20,053,385
Aug-22	\$1,559,288	\$2,879,005	\$690	\$4,438,292	\$3,527,352	\$6,514,374	\$13,188,126	\$690	\$23,230,542
Sep-22	\$1,385,840	\$2,778,878	\$3,111	\$4,164,718	\$3,117,859	\$6,281,665	\$12,757,590	\$3,111	\$22,160,224
Oct-22	\$1,165,203	\$2,637,801	(\$818)	\$3,803,004	\$2,621,461	\$5,955,928	\$13,434,922	(\$818)	\$22,011,494
Nov-22	\$1,248,018	\$2,919,575	\$0	\$4,167,594	\$2,810,238	\$6,599,661	\$14,598,140	\$0	\$24,008,039
Dec-22	\$1,271,609	\$3,033,947	(\$953)	\$4,305,557	\$2,817,749	\$6,859,574	\$13,123,836	(\$953)	\$22,800,205
Jan-23	\$1,177,732	\$3,185,775	\$2,546	\$4,363,506	\$2,663,308	\$7,273,731	\$15,176,058	\$2,546	\$25,115,643
Feb-23	\$1,102,491	\$3,003,511	\$0	\$4,106,001	\$2,526,995	\$6,862,869	\$13,826,520	\$0	\$23,216,385
Mar-23	\$1,091,853	\$3,026,593	\$0	\$4,118,446	\$2,487,885	\$6,958,604	\$14,013,724	\$0	\$23,460,212
	<b>\$49,075,994</b>	<b>\$60,588,649</b>	<b>\$21,500</b>	<b>\$109,664,643</b>	<b>\$111,156,536</b>	<b>\$137,821,282</b>	<b>\$287,441,681</b>	<b>\$21,500</b>	<b>\$536,440,999</b>

\* TPT category 203 is taxes collected that were previously reported under the Retail category.

\* TPT category 420 is Retail Adult Use Marijuana, BC 203 is Retail Medical Marijuana, and MET is Marijuana Excise Tax.

\* Total Collections includes State, County, City and Education Tax TPT collections and Marijuana Excise Tax.

# **EXHIBIT C**



# Revenue Distribution Reports

Geographic Area:  ▼

Recipient:  ▼

Distribution Type:  ▼

## Common Date Ranges:

Start Date:

End Date:

### County/Recipient/Distribution

Maricopa County

Peoria Fire Dept.

SMART &  
SAFE AZ  
FUND

FY 22 June - Prop 207

2022-06-29

\$243,090.76

\$0.00

\$243,090.76

Net

SMART &  
SAFE AZ  
FUND

FY23 DECEMBER 2022

2022-12-20

\$253,214.63

\$0.00

\$253,214.63

**\$496,305.39**

**\$0.00**

**Grand Totals: \$496,305.39**

**\$496,305.39**



# Revenue Distribution Reports

Geographic Area:  ▼

Recipient:  ▼

Distribution Type:  ▼

## Common Date Ranges:

Start Date:

End Date:

### County/Recipient/Distribution

Maricopa County

Peoria Police Dept.

SMART &

SAFE AZ

FUND

SMART &

SAFE AZ

FUND

Comments	As Of Date	Amount	Exception	Net
FY 22 June - Prop 207	2022-06-29	\$239,331.63	\$0.00	\$239,331.63
FY23 DECEMBER 2022	2022-12-20	\$257,130.32	\$0.00	\$257,130.32
<b>Grand Totals:</b>		<b>\$496,461.95</b>	<b>\$0.00</b>	<b>\$496,461.95</b>