

**Minutes of the
Development Review Commission
September 22, 2015**

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Paul Kent – Chair
Trevor Barger- Vice Chair
Angie Thornton- Commissioner
Thomas Brown- Commissioner
Linda Spears- Commissioner
David Lyon- Commissioner
Andrew Johnson- Commissioner

City Staff Present:

Ryan Levesque, Dep. Comm. Dev. Director
Suparna Dasgupta, Principal Planner
Sarah Adame, Comm. Dev. Admin Assistant II+

Absent:

Daniel Killoren- Alt. Commissioner
Margaret Tinsley- Alt. Commissioner
Gerald Langston- Alt. Commissioner

Guest Present: NONE

Number of Interested Citizens Present: 1

Hearing convened at 6:05 p.m. and was called to order by Paul Kent.

Consideration of Meeting Minutes: Study Session 08/11/2015
Regular Meeting 08/11/2015

MOTION: Commissioner Spears
SECOND: Commissioner Thornton
DECISION: Approved 7-0

Consideration of Meeting Minutes: Study Session 08/25/2015
Regular Meeting 08/25/2015

MOTION: Commissioner Barger
SECOND: Commissioner Brown
DECISION: Approved 5-0 (Two Abstentions from the two alternate members who did not participate in the 8/25/15 meeting)

Consent Agenda: 0 Items

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

1. Request for a Code Text Amendment for **MEDICAL MARIJUANA CULTIVATION (PL150267)**, consisting of changes within the Code that regulate the location and operation requirements for cultivation facilities in Tempe. The applicant is Bryan McLaren, Zoned Properties, Inc.

Presentation by Staff, Ryan Levesque

Presentation of Medical Marijuana Cultivation facilities changes of the separation requirements and size limitation as it relates to the single doorway exit requirement.

The applicant is requesting a modification to the ordinance to eliminate one entrance requirement for both dispensaries and cultivation facilities.

Staff recommends an ordinance language that identifies maximum threshold for either dispensary or cultivation facility.

Staff is recommending maximum of 5,000 square feet for dispensaries and maximum of 25,000 square feet.

Request for the separation requirement:

Currently the separation is a quarter mile from one property to another property.

The result in limiting the separation would allow for multiple tenants to locate on the same facility or close to the proximity which would be less than a quarter mile.

This would identify eligible areas in the city for cultivation and dispensary sites to allow operation of these facilities in a setting of multiples on one site.

Questions from Commission to Staff

None

Presentation from Applicant, Bryan McLaren with Zoned Properties, Inc.:

Presentation of business, location, and propose.

The applicant's intention for this request is to look at his current property that is a three and half acre site and has two buildings with several tenants.

One tenants occupying space of 5,000 square feet and is a current cultivation facility in full operation. The intent is to develop multi-tenant in approximately 10,000 sq. ft. shared use cultivation space. There is a high focus on shared security and entrance and exit to property. As a cultivation facility, there is minimal interface with the public. Only one building would have cultivation operation. The intent is to develop a cannabis business park. This is just in cultivation, not dispensary

There are two main points for the code text amendments:

1. Removal of the single door requirement which is the primary factor that limits the area the facility to 5,000 square feet

2. Removal of the separation requirement between cultivation facilities

Only one building would have cultivation operation.

Questions from the Commission

Vice Chair Barger asked about the state's law of existing facilities and the maximum allowed. The applicant explained that under the state's law there are 126 districts in the state and of those 126 approximately 27 of those are on tribal lands. The state oversees 99 licensed districts for the dispensary sites. The dispensaries primarily are required to be within those districts. Three districts lie within the City of Tempe. There is a fourth one that may be on a boarder. Cultivation sites can be opened anywhere in the state as long as they abide to the local zoning ordinances and laws of those cities and jurisdictions. Of the 99 there are 91 locations that have opened. There are approximately 45 - 48 cultivation sites operating in the state.

Vice Chair Barger noted that the applicant is the only cultivation facility in that industrial park currently in that location. He also noted that there could be several neighbors potentially doing the same thing. The applicant agreed but also stated that he is the developer and landlord of the facility only.

Vice Chair Barger asked the applicant what his advantages are to cultivating where they are located. The applicant responded that this location allows for a controlled environment with more options for temperature, light, and

humidity. He is currently working with SRP on a solar installations project. He stated that Tempe provides a lot of opportunities such as the location of the airport, direct metropolitan resources, and vendors. From a foot print point of view there is low mile transportations to bring equipment in and out and being directly in a city where customers live and work without having to travel to rural areas.

Vice Chair Barger asked what the advantages are to being close to the airport. The applicant explained that, in general, it is convenient location to bring partners into town. The applicant explained that this business is nonprofit and the money goes to grants and funding to grow food for schools. The research of this industry has created the need to fly in experts, green house companies, and different horticulture and hydroponic technology innovators from across the country.

Vice Chair Barger inquired about the security plan proposed by the applicant for the facility once its location is known and is there high quantity available at the facility. The applicant responded that he works closely with the City and the City's Police Department to develop a cannabis park and that there is around-the-clock high security provided onsite.

Chair Kent asked for clarification that if rural areas have less security then how the security of such facilities ensured in an urban setting such as Tempe. The applicant explained that there is minimum security required by the state law and the rural locations have to only follow the minimum requirements, whereas in Tempe, the Police Department (PD) has to approve a security plan for the site for both the development side and the tenant operators as part of how tenant gets their licensing requirement completed.

Chair Kent also included that the staff summary report specifically contains the language "The zoning and development code related to medical marijuana dispensaries and cultivations that the police department will continue to provide service, etc...." and "it's believed that the existing zoning and development code has played an important role in ensuring those locations are safe." He noted that there is a specific intent in the language in the code and inquired why that language needed to be changed. The applicant responded that the intent of the code text amendment was to simplify and keep it consistent while allowing the expansion.

Vice Chair Barger asked if there is any reason that any cultivation facility would need to be larger than 25,000 square feet. The applicant responded that it is based on what the goal is and whether it is the dispensers' intent to cultivate their own product or for wholesaling purposes.

Vice Chair Barger asked if the current dispensaries in Tempe cultivate enough or have to go to other cultivators for supply. The applicant responded that he does not have direct knowledge of it.

Public Comments: NONE

Discussion from Commission Members:

Chair Kent voiced concern about changing the code to make it less restrictive and that he does not see the need to change the code.

Commissioner Spears commented that she supports the proposed changes and locating several facilities in one area and does not see any concerns with the locations as these would be located in industrial areas, where it is more appropriate. She also commented that she would like to rely on staff to ensure the requirements are being met and that since the code has been in place for three years, if this is a reasonable change and staff is not opposed to it, then she supports this change.

Vice Chair Barger commented that he supports having larger cultivation facilities and if the Police Department does not have any concerns based on the staff report then he will be in support of the change.

Mr. Levesque clarified the requirement for the one exit door was to address crime safety but the comments received from cultivation and dispensaries is the concern for life safety as it relates to operations of the business.

Commissioner Lyon commented that he strongly supports addressing the single door issue.

Chair Kent confirmed with Mr. Levesque that the single door for a 5,000 square foot facility still meets the building code and fire code requirements for safety, based on the floor plan configuration.

Commission Brown responded to Chair Kent's comment to clarify that the police department's review of safety concerns is different from that of building and fire code.

Commission Johnson commented that Tempe started off with a conservative approach and this re-evaluation is appropriate at this time. He thinks that Tempe is still on the conservative side regarding the square footage limitations compared to other cities and municipalities. He is in support of the changes.

MOTION: Vice Chair Barger motioned to approve Medical Marijuana cultivation (PL150267)
Commissioner Spears seconded the motion

VOTE: Approved 5-2 with Chair Kent and Commission Lyon in the opposition

DECISION: Request for a Code Text Amendment for **MEDICAL MARIJUANA CULTIVATION (PL150267)**, consisting of changes within the Code that regulate the location and operation requirements for cultivation facilities in Tempe was recommended for approval.

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2. Request for a Code Text Amendment for **MEDICAL MARIJUANA DISPENSARIES (PL150361)**, consisting of changes within the Code that regulate the location, operation requirements and total number of dispensaries in Tempe. The applicant is Steve White, White Berberian PLC.

Presentation from Staff, Ryan Levesque

Presentation of Medical Marijuana dispensaries second component of this coded text amendment.
Evaluation of the age limitation from 21 years old to 18 years.
Evaluation of the hours of operations from 8am – 7pm to 8am – 10pm.
Evaluation of the total number of dispensaries allowed in Tempe.
Staff recommends the time allowance to be 8pm not 10pm be consistent with other municipalities.
Language cleanup for the exterior doorway entrances.
Proposed condition regarding locations and limiting total number of dispensaries.
Staff recommends 4 locations.

Question from the Commission:

Chair Kent asked for clarification regarding the number of doors that a 5,000 square foot dispensary can have. Mr. Levesque explained that the number in the code text amended for the dispensaries is written to coincide with the code text amendment for the cultivation facilities and that a dispensary can now have, at a minimum, two doors, one entry and one exit.

Vice Chair Barger asked if there are other uses within the City of Tempe that the City limits the total quantity of. Mr. Levesque stated that the city does not. He explained when reviewing for separation requirements land uses they make sure they are not zoning them out of the City. Staff reviewed that approximately 17 percent of the city is available for this type of use.

Vice Chair Barger asked if City of Tempe has a licensing process for this type of use. Mr. Levesque explained that the City of Tempe does not have a licensing process but it does have a zoning review process.

Vice Chair Barger asked if the City is limited to only giving four zoning clearances at a time. Mr. Levesque stated that currently the City has two existing dispensaries and one cultivation facility and that previous sites that were awarded are now voided due to the time line lapse. The City can provide multiple zoning clearances but the sites would ultimately be limited based on the quarter mile separation requirements. Vice Chair Barger asked if there are any

zoning clearances besides the two existing dispensaries. Mr. Levesque stated that the City does not have any pending applications for dispensaries at this time.

Commissioner Lyon asked and staff clarified that if the Commission adopts this request it is possible to have a 4,900 square foot facility with two exits.

Commissioner Thornton asked if staff knows the impact this code text amendment would have if recreational marijuana initiative was to pass in the future. Mr. Levesque deferred it to the applicant to respond to the question asked.

Presentation from the Applicant: Steve White, Tempe

The applicant explained that the ballot initiative for recreational marijuana is written in a way that if it passes then for each medical dispensary, a city would automatically have to allow for a recreational dispensary. Under the current circumstances, Tempe has two medical dispensaries that would allow for two recreational stores in the City. The applicant explained that the concern is that under the current circumstances, eleven more medical dispensaries may open with the total allowance of thirteen dispensaries and if the ballot initiative for recreational marijuana passed, then that would automatically allow for 13 recreational stores with a total of twenty six. Therefore, the proposed text amendment is to consider limiting the number of facilities in anticipation of the future ballot initiative.

Commissioner Thornton asked to clarify where the number of dispensaries of thirteen came from. The applicant explained that it is based on the total number of applicants that were originally approved for dispensary by zoning. Chair Kent further explained that if the ballot initiative passes then the facilities in the rural area can potentially move to the urban areas such as Tempe where the population is.

Vice Chair Barger clarified that even though the current code limits the locations to thirteen and can potentially double the number with the recreational marijuana initiative, the locations are still limited based separation requirements of the zoning clearing process.

Vice Chair Barger asked what the required quantity in the City of Tempe is based on the state law. The applicant responded it is currently based on the two zones. Vice Chair Barger further clarified that this number can potentially change but only if the state changes its rules and regulations regarding the districting of locations of dispensaries.

The applicant continued with his presentation. He explained that the City of Tempe took a restrictive approach for the operations of these facilities initially because of the fear of increased crime and violence. Time has shown this is not the case, but the restrictive nature of the one exit and entrance poses safety and security concerns for the employees because of the common entry and exit for customers as well as for delivery of the product at the facility.

Chair Kent asked if there have been any issues with stolen product or money. The applicant responded there have not been any known issues.

The applicant proceeds to discuss the request regarding the age limit. The City of Tempe has an age limit that only a person 21 years or older can enter the dispensary. By state law, legally, an eighteen year old is allowed to have a certificate for medical marijuana but is not allowed to enter the dispensary, per the current Tempe code.

The applicant also presented the request for changing the hours of operations. The applicant explained that currently dispensaries are only allowed to stay open until 6:00pm which is the most restrictive hours in the state of Arizona.

Vice Chair Barger inquired if there are any statistics regarding how much business is conducted between the hours of 6:00pm and 8:00 pm. The applicant responded he did not have any statistics. Vice Chair Barger also inquired about how customers chose locations to purchase and what the hours of operations were for the other businesses surrounding the dispensaries. The applicant clarified that a number of factors, including location, hours of operation,

as well as the type of product dictates where the customers purchases the product. The applicant also raised concerns about other dispensaries across the border in City of Phoenix that are open longer hours than the ones within Tempe.

Vice Chair Barger asked how the applicant conducts business knowing it's a cash business. The applicant responded that they address it by various means with guidelines set by the Department of Justice and security plans based on guidance from Tempe Police Department that includes changing delivery routes and hours and being visible.

Vice Chair Barger asked how the applicant ensures that the customers are legitimate. The applicant responded that they rely on the physicians to certify the eligible patients and the dispensaries responsible for checking the certifications.

Vice Chair Barger asked what is more important to the applicant in terms of the requested changes to the current limitations that are being proposed: extending the age limit or extending the hours of operations. The applicant responded that he would probably chose the hours of operations but then would continue to have the concern of delivering the product to a person under the age of 21 years at an off-site location.

Commissioner Spears clarified that the issue is not about whether an 18 year old can get the product but that the current code limits an eighteen year old to walk into a dispensary to purchase the product. The proposed change provides for a safer environment.

Chair Kent asked if the applicant is a cultivator or if he buys his product from other sources. The applicant responded that they also cultivate but not in Tempe.

Chair Kent asked how the product gets from the cultivation to the dispensaries. The applicant replied that they drive it. He explains that they do acquire product from other resources.

Commissioner Thornton asked if he sold edible products. The applicant responded they have various types of products including edible ones.

Commissioner Thornton asked whether the hours of operation are for weekdays or if it includes weekends. The applicant responded that it does not specify days but they are open for shorter business hours on Sundays. Commissioner Thornton asked about how many deliveries they make a week. The applicant responded that on average about 10 deliveries per day.

Commissioner Brown asked if a family member can pick up product for an eighteen year old patient and if the patient's prescription specifies the amount and content. The applicant explained that the family member has to be the caregiver with a designated card in order to pick up product for a patient. He also explained that it is called a certification and a certified patient is allowed to purchase up to two and a half ounces every fourteen days.

Commissioner Johnson asked if the applicant knew the amount of sales based on delivery and what percentages of the patients are under the age of twenty one. The applicant responded that less than ten percent of the sales involve delivery and approximately half of the current patients are under the age of twenty one.

Public Comments:

Jeff Tice, Tempe – operates the North Tempe dispensary.

Mr. Tice explained his concerns about age limit and the hardship of the patients' access to the product as forty percent his patients are in the age range of 18 years old and 21 years old. Mr. Tice addressed his concerns regarding security issues related to the limitation of the one door entry and exit issue. Mr. Tice's also requested if the setbacks for these facilities from residential areas can be reduced from 500 feet to 250 feet.

Vice Chair Barger asked Mr. Tice the reasons for why did he chose this Tempe location out of thirteen certified sites. Mr. Tice explained that it was the only site that was available to him at the time as the concept of medical marijuana dispensary was new and unknown and landlords at the time were reluctant to lease.

Vice Chair Barger asked Mr. Tice if he is looking to relocate his facility or expand his facility. Mr. Tice replied it's to relocate his facility.

Vice Chair Barger asked Mr. Tice if he wanted to open more than one dispensary. Mr. Tice responded that per the state's licensing requirement, he is allowed to have only one facility.

Vice Chair Barger asked Mr. Tice what he looks for when choosing a location. Mr. Tice explained he looks at various things including the ability for patients to find the location, excellent security, excellent lighting, and easy access for patients, ability for his business to access Tempe Police, and the ability to provide a place that is discrete and non-disruptive.

Commissioner Brown asked for clarification that the request for reducing the setback is not proposed in the current code text amendment and is a request that is being made by Mr. Tice. Mr. Levesque responded that this public comment is a request to relaxing some of the residential district standards. This code text amendment has no specific language regarding the reduction of separation requirements.

Commissioner Thornton inquired about Mr. Tice's willingness to work with residents and changing the hours of operation if he was closer to the residential areas. Mr. Tice replied that he would work with the neighbors to discuss the business track records, traffic flow, non-disruptive behavior, and the hours of operation.

Discussion from Commission Members:

Commissioner Spears clarified the difference between the change in the hours of operations as proposed by the applicant and staff. Mr. Levesque clarified that the applicant is proposing the change of hours till 10:00pm and staff recommends the change of hours to 8:00pm.

Commissioner Spears clarified that the ordinance changes were being proposed by the applicant and not staff.

Commissioner Spears asked if staff was in agreement with the age and number of doors. Mr. Levesque responded that staff supports the proposed change.

Commissioner Spears commented that she agreed with changing the age from 21 years old to 18 years old and the change in hours to 8:00 pm but does not support changing the setback requirements.

Chair Kent asked Commissioner Spears regarding the number of dispensaries allowed. Commissioner Spears commented that she supports the number of dispensaries to four. She also stated that she was not concerned about the number for recreational users because she views that as similar to a bar and the City does not regulate the numbers of bars.

Vice Chair Barger commented that he supports the change with the age limit and the issue of the doorways but he struggles with how the to limit the number of facilities.

Commissioner Spears asked staff if the recreational use facilities would be regulated similar to how liquor licenses are. Mr. Levesque responded that the regulations are unclear on recreational uses right now. Commissioner Spears asked staff to look in to this matter further before the recreational use ballot is initiated.

Commissioner Johnson was concerned that limiting the age would have a similar effect as limiting the number where it would encourage businesses to open and customers to go to facilities along the edge of the City which will result in limiting the Tempe Police Department's involvement in the operations of these facilities.

Chair Kent stated that he prefers a more restrictive code that is currently in place in order to protect the City and does not support the change in the age limit. He also states that he supports the change in the number of doors to the facilities, the change in hours of operations and limiting to four dispensaries at this time.

Commissioner Spears stated that changing the age limit is appropriate and necessary for picking up the product given that an eighteen year old is considered an adult.

Chair Kent stated that an 18 year old could have their product delivered to them or go to another location.

Commissioner Spears disagreed with Chair Kent.

Commissioner Brown commented that he supports everything in the request but not the age restriction. He feels that if there is a medical need then a family member can be certified to get that product for that under-aged patient. Two and a half ounces is fairly a large amount and he is concerned about the sharing and abuse of the product by an under-aged person.

Mr. Levesque recommended that the Commission take separate motions for each of the proposed changes to the amendment.

Commissioner Lyon commented that he supports the request for the doorways but does not see any benefits to limiting the age limit if a person has been deemed capable of having the product. He does not have any opinion for or in opposition of the request for the change in hours. He raised concerns that he does not feel knowledgeable enough regarding limiting the number of stores and agrees with Chair Kent to be cautionary and supporting the change to limit the number to four.

Vice Chair Barger commented that he is concerned about the appropriateness of deciding number of facilities, given that the current code does not state a number of dispensaries and the applicant is requesting two and then the proposal from staff is four.

Commissioner Brown commented that he supports to have four dispensaries because would provide competition and better pricing.

Chair Kent suggests choosing the number four as a sunset condition and that the issue can be addressed with a code amendment if the recreational marijuana initiative passes.

Vice Chair Barger recommends that the number could be determined by a Use Permit in the future to address the appropriateness of use because it is unknown what the state law will be in the future. Commissioner Spears agreed with Vice Chair Barger. She stated she understands the challenges in deciding how to limit dispensaries.

Commissioner Lyon asked to clarify if the cities would be required to accept a certain number of licenses if the state law mandates it. Chair Kent clarified that if the state changes the current zones from two to a larger number, the City would have to allow for more number of facilities.

Vice Chair Barger stated that it is more consistent to limit the number of facilities by separation requirements between such facilities, similar to how other uses are controlled in the City currently, rather than limiting by the number of facilities allowed. Mr. Levesque replied that the Commission is responding to a proposal for a limitation on the total number. It was not the intent of the initial code separation requirements to propose a total number of dispensaries. This issue of limiting the number with a separation requirement or via Use Permit can be re-evaluated if the law changes in the future.

MOTION: Commissioner Spears motioned for the approval of condition number one for establishing a maximum building area for dispensary business at 5,000 square feet and adopting a 25,000 square feet area limitation for cultivation facilities.

Second by Commissioner Thornton.

VOTE: Approved 7-0

MOTION: Commissioner Spears motioned for approval of age limitation of 21 to 18 years old.
Seconded by Commissioner Thornton

VOTE: Approved 5-2 with Commissioner Brown and Chair Kent in opposition.

MOTION: Commissioner Spears motioned for approval of hours of operation from 8:00 am to 8:00 pm.
Seconded by Commissioner Thornton

VOTE: Approved 7-0

MOTION: Commissioner Spears motioned for approval of limitation of dispensaries allowed to four.
Seconded by Commissioner Brown

VOTE: Motion failed 4-3 with Commissioner Thornton, Vice Chair Barger, Commissioner Spears and Commissioner Johnson in opposition.

MOTION: Commissioner Spears motioned for no limitation on the number dispensaries at this current time so, no change to the current ordinance. Motion modified by Vice Chair Barger to not approve Condition of Approval number four, "E, Dispensary Limitations" as proposed by the applicant.

Seconded by Commissioner Thornton

VOTE: Approved 5-2 with Commissioner Lyon and Chair Kent in the opposition.

MOTION: Vice Chair Barger motioned for approval PL150361 condition approval number three as proposed by staff.
Seconded by Commissioner Spears

VOTE: Approved 7-0

DECISION: Request for a Code Text Amendment for **MEDICAL MARIJUANA DISPENSARIES (PL150361)**, consisting of changes within the Code that regulate the location, operation requirements and total number of dispensaries in Tempe was recommended approval with the modifications.

The Development Review Commission directed staff to look into the state law regarding this issue further to improve the process for the future.

There being no further business the meeting adjourned at 9:00 pm.

Prepared by: Sarah Adame
Reviewed by: Suparna Dasgupta



Suparna Dasgupta, Principal Planner, Community Development Planning