

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 12/10/2019
Agenda Item:14**

ACTION: Request a Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, consisting of changes within the Code that regulates the medical marijuana dispensary hours of operation in Tempe. The applicant is Harvest of Tempe.

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: Staff - Approve

BACKGROUND INFORMATION: MEDICAL MARIJUANA AMENDMENT (PL190280) consists of a request for changes within the existing code that regulates the medical marijuana dispensary hours of operation. The change proposed will amend the hours of operation of a medical marijuana dispensary from 8am to 8pm, to no later than 10pm. The request includes the following:

ZOA190006 A Code Text Amendment within the Zoning and Development Code, Section 3-426, Medical Marijuana

Applicant/Owner Steve White, Harvest of Tempe

ATTACHMENTS: Ordinance, Project File

STAFF CONTACT(S): Suparna Dasgupta, Principal Planner, (480) 350-8562

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Suparna Dasgupta

Reviewed by: Ryan Levesque, Deputy Community Development Director - Planning

COMMENTS:

This is a request for a code text amendment within the Zoning and Development Code that regulates the medical marijuana dispensary hours of operation in Tempe. Currently, the hours of operation allowed is 8am to 8 pm. The proposed amendment consists of changes within Section 4-246 C.5. changing the hours of operations to no later than 10pm.

Neighboring cities currently allow the dispensary hours as follows:

- City of Phoenix – 8am – 10pm
- City of Mesa – 8am – 9pm
- City of Scottsdale – 6am – 7pm
- City of Chandler – 9am – 10pm

The City of Tempe requires a dispensary/cultivation business to apply for a “zoning clearance”, an administrative review process that verifies compliance with the Code regulations and procedure requirements for a security plan. Applicants for medical marijuana then must apply to Arizona Department of Health Services (ADHS) for a permit and must certify that their dispensary/cultivation facility location is in compliance with local ordinances.

BACKGROUND:

City of Tempe adopted the Medical Marijuana Ordinance in 2010 that allowed the hours of operations for dispensaries to be 8am to 6pm. In 2015, an application for Code Text Amendment was made by the same applicant, Mr. Steve White, Harvest of Tempe (originally White Berberian, PLC), for a number of items, one of which included changing the business hours for dispensaries in Tempe and extending the hours of operation to 10pm. The comparison of dispensary hours of neighboring cities at that time were:

- City of Phoenix – 8am – 7 pm
- City of Mesa – 8am – 9 pm
- City of Scottsdale - 6am – 7 pm
- City of Chandler – 9am – 7 pm

At that time, the Development Review Commission (DRC) recommended to City Council to modify the hours but no later than 8pm and City Council concurred with the DRC recommendation.

PUBLIC INPUT:

Staff is presenting the request to Neighborhood Advisory Committee on December 4, 2019.

POLICE DEPARTMENT INPUT:

In reviewing this request to extend the hours, staff consulted with Tempe Police Department (PD) for any concerns they may have. Staff was informed by the representative of Tempe PD that PD has not experienced any significant calls for service from the dispensary locations and has not found any nexus between current locations of dispensaries and crimes committed within the immediate vicinity, i.e. ¼ mile radius of these locations. Additionally, Tempe PD does not anticipate any significant impact on police services as a result of this request. Therefore, PD does not have any concern with this request.

Based on the information provided by the applicant, staff recommends approval of the ordinance.

HISTORY & FACTS:

- October 29, 2010 Staff provided City Council a Friday memo update outlining the City of Tempe’s current involvement with the Arizona League of Cities and Towns with potential provisions for the proposed Proposition 203, cited as the Arizona Medical Marijuana Act.
- November 2, 2010 Election date, including the ballot initiative for Proposition 203, Arizona Medical Marijuana Act.
- November 23, 2010 Development Review Commission held a study session with staff presenting an outline of proposed draft amendments regarding the regulation of medical marijuana.

December 1, 2010	Neighborhood Advisory Commission received a presentation by staff of an outline of proposed draft amendments regarding the regulation of medical marijuana.
December 14, 2010	Development Review Commission recommended approval of a Code Text Amendment for AZ MEDICAL MARIJUANA ACT Ordinance No. 2011.01. (5-2 Vote, DiDomenico and Webb dissenting)
December 17, 2010	The Arizona Department of Health Services (ADHS) posts initial draft of rules governing the regulatory system for the medical marijuana program.
January 13, 2011	City Council introduced and held the first public hearing for MEDICAL MARIJUANA (PL100378).
January 27, 2011	City Council held the second and final public hearing and adopted an ordinance for MEDICAL MARIJUANA (PL100378).
September 22, 2015	Development Review Commission recommended approval 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. Development Review Commission recommended – <ol style="list-style-type: none"> 1. Exit/Size limitation: Approval (7-0 vote), subject to conditions 2. Age limitation from 21 to 18: Approval (5-2 vote) 3. Dispensary hours: Approval (7-0 vote), subject to hours limited until 8 pm 4. Limiting total # of dispensaries: Denial (5-2 vote), not to limit the number of dispensaries
October 22, 2015	Introduction and first public hearing to adopt an ordinance for a Code Text Amendment for MEDICAL MARIJUANA DISPENSARIES (PL150361), consisting of changes within the Zoning and Development Code, Section 3-426 that regulate operation requirements and total number of dispensaries in Tempe. The applicant is Steve White, White Berberian PLC. (Ordinance No. O2015.49)
November 12, 2015	City Council continued the second and final public hearing on an ordinance for a Code Text Amendment for MEDICAL MARIJUANA DISPENSARIES (PL150361).
December 3, 2015	City Council approved an ordinance for a Code Text Amendment for MEDICAL MARIJUANA DISPENSARIES (PL150361), consisting of changes within the Zoning and Development Code, Section 3-426 that regulate operation requirements and total number of dispensaries in Tempe. The applicant is Steve White, White Berberian PLC. (Ordinance No. O2015.49) (7-0 vote)
February 2, 2017	City Council Issue Review Session, regarding the one-year review and evaluation of Ordinance No. O2015.49. Received direction from Council to proceed with ordinance amendment, removing the dispensary limitation (2).
March 23, 2017	Development Review Commission recommended approval of PL170076, that regulated the location and operation requirements and number of dispensaries in Tempe.
April 5, 2017	Neighborhood Advisory Commission meeting of PL170076.
April 20, 2017	City Council introduction and first public hearing of PL170076.
May 4, 2017	City Council second and final public hearing of PL170076 and adoption of Ordinance No O2017.25.

December 4, 2019	Neighborhood Advisory Committee meeting of PL190280.
December 10, 2019	Development Review Commission recommendation to City Council.
January 16, 2020	City Council introduction and first public hearing for this request.
February 13, 2020	City Council second and final hearing for this request.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map Amendment and Code Text Amendments

ORDINANCE NO. O2019.XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, AMENDING THE CITY OF TEMPE ZONING AND DEVELOPMENT
CODE, PART 3 – LAND USE, SECTION 3-426, MEDICAL MARIJUANA.**

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

SECTION 1. That Section 3-426(C) of the Zoning and Development Code, pertaining to Medical Marijuana, is hereby amended to read as follows:

C. **Operation Requirements.** Any *medical marijuana dispensary* or *cultivation facility*, except within a residential home, shall comply with the following requirements, as well as those contained within Arizona Revised Statutes, Title 36, Chapter 28.1:

1. The business shall be located in a permanent building, with an engineered foundation that meets Tempe Building Code, and not located in a *mobile home, trailer, cargo container, motor vehicle, or similar personal property.*
2. The maximum size for a *medical marijuana dispensary* shall be no more than five thousand (5,000) square feet. The maximum size for a *cultivation facility* shall be no more than twenty-five thousand (25,000) square feet.
3. The business and tenant space must comply with Tempe's applicable Building Code and Fire Code requirements.
4. Drive-through facilities are prohibited.
5. The *medical marijuana dispensary* is limited to the hours of operation not earlier than 8:00 a.m. and not later than ~~8:00 p.m~~ 10:00 P.M.
6. *Medical marijuana* remnants or bi-products shall be disposed of according to an approved plan and not placed within the facilities exterior refuse containers.
7. There shall be no emission of dust, fumes, vapors, or odors into the environment from the premise.
8. A security plan is required, which shall include, but is not limited to, the following:
 - a. All exterior doorways for the facility shall provide a security vision panel pursuant to Section 4-406, Employee Service Entrances and Exits, or a one hundred eighty (180) degree rotatable viewer. If doorway is transparent, the door shall be designed with a material that is either impact resistant or restricts entry by means of a wrought iron gate;
 - b. Closed circuit television cameras, operating twenty-four (24) hours a day, shall be provided at the building's exterior entrances and inside the building at a designated service area;

- c. All lighting for the site shall be brought into conformance with the current lighting standards identified in Part 4, Chapter 8, Lighting. The building entrance of the business shall be illuminated from dusk till dawn activated by photocell relay to the lighting controller;
- d. No one under the age of eighteen (18) shall enter the medical marijuana dispensary; and
- e. Any person, prior to entering the establishment, shall remove all hats, sunglasses or other similar objects, to avoid obstruction of physical identification.

SECTION 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 13th day of February 13, 2020.

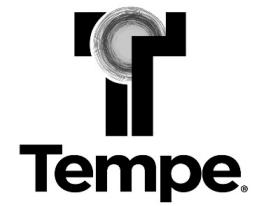
Mark W. Mitchell, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney



DEVELOPMENT PROJECT FILE

for

HARVEST OF TEMPE
(PL190280)

ATTACHMENTS:

1. Applicant's Letter of Explanation

HARVEST

Steve White
Chief Executive Officer
Harvest of Tempe
710 W. Elliot Rd. #102
Tempe, AZ 85284

October 11, 2019

Ryan Levesque
Deputy Community Development Director
City of Tempe Planning Division
31 East Fifth Street
Tempe, AZ 85281

Dear Director Levesque,

We are requesting an amendment to Tempe Zoning and Development Code Section 3-426 to extend the hours of operation for licensed medical marijuana dispensaries in Tempe from 8:00 pm to 10:00 pm. We believe this change, which would make Tempe code consistent with state law and other surrounding cities, will benefit patients while not adversely affecting public safety.

Currently, most cities adjacent to or nearby Tempe allow dispensaries to stay open later than 8:00 pm. Chandler, Glendale and Phoenix match state law at 10:00 pm, while Mesa allows dispensaries to stay open until 9:00 pm. Tempe residents who work later hours are forced to either rush to make the 8:00 pm deadline or travel to a neighboring jurisdiction, causing Tempe to lose out on tax revenue.

Additionally, there has been a significant increase in medical marijuana patients registered with the Arizona Department of Health Services over the last seven years. Extending Tempe's hours will allow more access to dispensaries without increasing the need for additional dispensaries or requiring residents to leave the city.

We do not believe this change will have an adverse effect on public safety. In fact, when recommending a similar change in May of this year, Phoenix city staff concluded that: "based on the numerous reviews of existing non-profit medical marijuana dispensaries, there are not significant public safety issues or detrimental effects from these establishments, including the ones with extended operating hours." The Phoenix City Council adopted the change.

In conclusion, extending Tempe's dispensary hours of operation is a simple change that will benefit Tempeans and will more closely align the City with its neighbors.

Thank you for your consideration,

Steve White

CEO, Harvest of Tempe