

CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION

Meeting Date: 01/12/2021
Agenda Item: 5

ACTION: Request a Code Text Amendment for the Tempe Zoning and Development Code consisting of changes within Section 3-426, Medical Marijuana and other related sections for the regulation of recreational marijuana in compliance with the Smart and Safe Arizona Act for MARIJUANA INITIATIVE (PROP. 207). The applicant is the City of Tempe.

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

RECOMMENDATION: Approve

BACKGROUND INFORMATION: MARIJUANA INITIATIVE (PROP. 207) (PL200301) This code text amendment consists of changes to Tempe's existing regulations for medical marijuana and incorporates the voter-approved Smart and Safe Arizona Act, now under A.R.S. Chapter 28.2, entitled "Responsible Adult Use of Marijuana". The proposed changes will provide reasonable land use regulations for new marijuana establishments, dual licenses for existing dispensaries, marijuana testing facilities and cultivation of marijuana. The ordinance will also outline regulations consistent with the initiative for residential home growing of marijuana and identify the existing Arizona Industrial Hemp Program (established on June 1, 2019). At the December 3, 2020, City Council Work Study Session, City staff presented an overview of the recreational marijuana initiative and received initial consensus and direction to bring a draft ordinance before City Council. The request includes the following:

ZOA210001 Code Text Amendment for changes within the Zoning and Development Code, Sections 3-102, 3-202, 3-302, 3-426, 6-313, 7-110 and 7-114.

ATTACHMENTS: Ordinance, Attachment File

STAFF CONTACT(S): Ryan Levesque, Deputy Community Development Director (480) 858-2393

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Ryan Levesque, Deputy Community Development Director

COMMENTS:

This request includes a code text amendment for incorporating the voter-approved Proposition 207, Smart and Safe Arizona Act (recreational marijuana initiative). The draft ordinance for your review and consideration was derived using Tempe's existing medical marijuana regulation within the Code (ZDC Section 3-426) and the Arizona League of Cities and Towns model ordinance relating to recreational marijuana, distributed in September 2020.

PUBLIC INPUT

A Community survey was conducted by City staff on the Tempe Forum site. We received a total of 829 responses from the survey from the 1,059 attendees that have viewed the information. The responses to the survey, and follow-up public comments, are provided in the attachments of this report. Staff has reached out to the business representatives who have processed medical marijuana applications with the City in the past, and as well to the Tempe Coalition to Reduce Underage Drinking and Drug Abuse and the Tempe Chamber of Commerce. Those communications and follow-up are still on-going. We are also scheduled to provide an overview presentation with the Chamber of Commerce's Government Relations and Transportation Committee and the Neighborhood Advisory Commission.

HISTORY & FACTS:

November 3, 2020	Proposition 207, Smart and Safe Arizona Act, passes with 60% voter approval
December 3, 2020	City Council Work Study Session held, providing overview on the Smart and Safe Arizona Act (recreational marijuana initiative) with direction.
December 8, 2020	Development Review Commission study session presentation provided on the Smart and Safe Arizona Act
December 10-22 nd	Community Survey completed regarding proposed regulations for Marijuana Establishments and public feedback.
January 6, 2021	Tempe Chamber of Commerce, Government Relations and Transportation Committee, City staff provided an overview presentation and summary of proposed changes for Marijuana Establishments & Prop 207.
January 12, 2021	Development Review Commission public hearing recommendation for this request.
January 28, 2021	City Council Introduction and first public hearing for this request.
February 11, 2021	City Council second and final public hearing for this request.

ORDINANCE NO. O2021.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, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; ESTABLISHING RESIDENTIAL REGULATIONS FOR RECREATIONAL MARIJUANA; AUTHORIZING RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS; AMENDING SECTIONS 3-102, 3-202, 3-302; AMENDING PART 6 – APPLICATION AND REVIEW PROCEDURES, SECTION 6-313; AMENDING PART 7 – DEFINITIONS, SECTIONS 7-110 AND 7-114.

WHEREAS, marijuana contains tetrahydrocannabinol (“THC”), which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use is a violation of federal law pursuant to 21 U.S.C. § 841 et. al.;

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes Sections § 36-2801 et al., and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of medical marijuana dispensaries in the City of Tempe according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as “Smart and Safe Arizona Act” has been certified as Proposition 207, approved by the voters from the November 3, 2020 general election and contains provisions to authorize the possession, consumption, purchase, processing, manufacturing and transporting of marijuana by an individual who is at least twenty-one (21) years of age; authorize possession, transport, cultivation or processing of marijuana plants in a primary residence by adults 21 years or older; allow a medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation and manufacturing of marijuana; and allow the Department, or another entity designated by the Department, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants;

WHEREAS, the City of Tempe finds that Proposition 207 authorizes marijuana establishments to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and other City of Tempe departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, the City of Tempe seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations to limit the number of marijuana establishments, cultivation facilities and marijuana testing facilities in Tempe;

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

SECTION 1. That Section 3-102 of the Zoning and Development Code, pertaining to Table 3-102 – Permitted Land Uses, is hereby amended to read as follows:

Table 3-102 - Permitted Land Uses (AG, SFR, MF, MH, RMH, TP)				
Uses	Status of Use in District			
	AG	SFR	MF	MH/RMH/TP
Hospitals, Sanitariums, Nursing Homes: e.g. Orphanages, Institutions (AG, R-3R, R-3, R-4 only) [Section 3-413]	U(S)	N	U(S)	N
<u>INDUSTRIAL HEMP PROGRAM [SECTION 3-426]</u>	<u>P</u>	<u>N</u>	<u>N</u>	<u>N</u>
Live-Work [Section 3-414]	N	N	U(S)	N

SECTION 2. That Section 3-202 of the Zoning and Development Code, pertaining to Table 3-202A – Permitted Land Uses, is hereby amended to read as follows:

Table 3-202A - Permitted Land Uses (R/O, CSS, CC, PCC, RCC)						
Uses	Status of Use District					
	R/O	CSS	CC	PCC-1	PCC-2	RCC
Live-Work [Section 3-414]	S	N	S	U(S)	U(S)	N
<u>Medical Marijuana cultivation FOR MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT [Section 3-426]</u>	N	N	N	N	N	N
<u>MARIJUANA ESTABLISHMENT (WITHOUT CULTIVATION) [SECTION 3-426]</u>	<u>N</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>
<u>MARIJUANA TESTING FACILITY [SECTION 3-426]</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>MARIJUANA TESTING FACILITY (ACCESSORY TO MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT) [SECTION 3-426]</u>	<u>N</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>
Medical Marijuana dispensary (without cultivation) [Section 3-426]	N	S	S	S	S	S

SECTION 3. That Section 3-202 of the Zoning and Development Code, pertaining to Table 3-202B – Permitted Land Uses, is hereby amended to read as follows:

Table 3-202B - Permitted Land Uses (MU-1, MU-2, MU-3, MU-4 and MU-Ed)

Uses	Districts				
	MU-1	MU-2	MU-3	MU-4	MU-Ed
Live-Work [Section 3-414]	S	S	S	S	S
Medical Marijuana cultivation <u>FOR MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT</u> [Section 3-426]	N	N	N	N	N
<u>MARIJUANA ESTABLISHMENT (WITHOUT CULTIVATION) [SECTION 3-426]</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>MARIJUANA TESTING FACILITY [SECTION 3-426]</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>MARIJUANA TESTING FACILITY (ACCESSORY TO MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT) [SECTION 3-426]</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
Medical Marijuana dispensary [Section 3-426]	N	N	N	N	N

SECTION 4. That Section 3-302 of the Zoning and Development Code, pertaining to Table 3-302A – Permitted Land Uses, is hereby amended to read as follows:

Table 3-302A Permitted Land Uses (LID, GID, HID)			
Uses	Districts		
	LID	GID	HID
Machine shops	N	P	P
Medical Marijuana cultivation <u>FOR MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT</u> [Section 3-426]	N	S	S
<u>MARIJUANA ESTABLISHMENT (WITHOUT CULTIVATION) [SECTION 3-426]</u>	<u>S</u>	<u>S</u>	<u>S</u>
<u>MARIJUANA TESTING FACILITY [SECTION 3-426]</u>	<u>N</u>	<u>S</u>	<u>S</u>
<u>MARIJUANA TESTING FACILITY (ACCESSORY TO MEDICAL DISPENSARY OR MARIJUANA ESTABLISHMENT) [SECTION 3-426]</u>	<u>S</u>	<u>S</u>	<u>S</u>
Medical Marijuana dispensary [Section 3-426]	S	S	S

SECTION 5. That Section 3-426 of the Zoning and Development Code, pertaining to Marijuana related uses, is hereby amended to read as follows:

Section 3-426 - ~~Medical~~ Marijuana

- A. **Purpose.** The purpose of this section is to implement Arizona Revised Statutes, Title 36, Chapter 28.1; entitled "Arizona Medical Marijuana Act" AND CHAPTER 28.2; ENTITLED "RESPONSIBLE ADULT USE OF MARIJUANA".

Cross reference— See also the following definitions in Part 7 of this Code: *medical marijuana, medical marijuana cultivation facility, and medical marijuana dispensary.*

- B. **Location Requirements.** A *medical marijuana dispensary* OR MARIJUANA ESTABLISHMENT, without *cultivation*, is allowed in the CSS, CC, PCC-1, PCC-2, RCC, and LID districts. A *medical marijuana dispensary*, MARIJUANA ESTABLISHMENT, or *cultivation facility* is allowed in the GID and HID zoning districts. THE locations are limited to the following:

~~1. A *medical marijuana dispensary* shall not be operated or maintained on a parcel within five thousand two hundred eighty (5,280) feet (1 mile) from another *medical marijuana dispensary*, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing such use.~~

21. A *medical marijuana dispensary* OR MARIJUANA ESTABLISHMENT shall not be operated or maintained on a parcel, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing the following:

- a. Within one thousand five hundred (1,500) feet from a child care facility;
- b. Within one thousand five hundred (1,500) feet from a *charter school, private school, or public school*, which provides elementary or secondary education;
- c. Within one thousand three hundred twenty (1,320) feet from a church, synagogue, temple or similar religious worship building;
- d. Within one thousand three hundred twenty (1,320) feet from a public park, library, or public community building; ~~or~~
- e. Within one thousand three hundred twenty (1,320) feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district; OR

F. WITHIN FIVE THOUSAND TWO HUNDRED EIGHTY (5,280) FEET (1 MILE) FROM ANOTHER MEDICAL MARIJUANA DISPENSARY OR MARIJUANA ESTABLISHMENT.

32. A ~~*medical marijuana cultivation facility*~~ FOR MEDICAL MARIJUANA OR A MARIJUANA ESTABLISHMENT shall not be operated or maintained on a parcel ~~within one thousand three hundred twenty (1,320) feet~~, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing the following:

- a. WITHIN ONE THOUSAND THREE HUNDRED TWENTY (1,320) FEET FROM A child care facility;
- b. WITHIN ONE THOUSAND THREE HUNDRED TWENTY (1,320) FEET FROM A *charter school, private school, or public school*, which provides elementary or secondary education;
- c. WITHIN ONE THOUSAND THREE HUNDRED TWENTY (1,320) FEET FROM A *church, synagogue, temple or similar religious worship building* OR PLACE OF WORSHIP; ~~or~~
- d. WITHIN ONE THOUSAND THREE HUNDRED TWENTY (1,320) FEET FROM A public park, library, or public community ~~building~~; OR

E. WITHIN FIVE HUNDRED (500) FEET FROM A RESIDENTIAL ZONING DISTRICT OR THE PROPERTY LINE OF A PARCEL SOLELY DEVOTED TO A RESIDENTIAL USE IN ANY ZONING DISTRICT.

~~4. A medical marijuana cultivation facility shall not be operated or maintained on a parcel within five hundred (500) feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing such use.~~

53. *Medical marijuana cultivation* for a caregiver or patient's residence in a residential district is not permitted, unless sufficient evidence exists that the location is greater than twenty-five (25) miles from a *medical marijuana dispensary* within the State of Arizona.

C. **Operation Requirements.** Any *medical marijuana dispensary*, *MARIJUANA ESTABLISHMENT*, 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 AND 28.2:

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* or *marijuana establishment* shall be no more than five thousand (5,000) square feet. A DUAL LICENSEE FOR BOTH A MEDICAL MARIJUANA DISPENSARY AND A MARIJUANA ESTABLISHMENT WITHIN A SHARED LOCATION SHALL HAVE A COMBINED MAXIMUM SIZE OF NO MORE THAN TEN THOUSAND (10,000) 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* OR MARIJUANA ESTABLISHMENT is limited to the hours of operation not earlier than 8:00 a.m. and not later than 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.

D. DUAL LICENSEE. A LAWFULLY EXISTING MEDICAL MARIJUANA DISPENSARY SHALL BE AUTHORIZED TO OBTAIN A DUAL LICENSE TO OPERATE BOTH A NONPROFIT MEDICAL MARIJUANA DISPENSARY AND MARIJUANA ESTABLISHMENT COOPERATIVELY IN A SHARED LOCATION THAT HAS NOT FORFEITED OR TERMINATED THE NONPROFIT

MEDICAL MARIJUANA DISPENSARY REGISTRATION FROM THE ARIZONA DEPARTMENT OF HEALTH SERVICES.

1. A LEGAL NON-CONFORMING DISPENSARY SITE THAT DOES NOT COMPLY WITH THE CURRENT LOCATION REQUIREMENTS OF SUBSECTION B ABOVE, AS DETERMINED BY THE CITY OF TEMPE, SHALL BE ALLOWED TO COMPLY WITH THE REMAINING REGULATIONS SET FORTH FOR IN SECTION 3-426 WITHOUT COMPLIANCE OF THE PROVISIONS SET FORTH IN SECTION 3-504, LEGAL NON-CONFORMING USE.

E. MARIJUANA TESTING FACILITY; PERMITTED. IT SHALL BE UNLAWFUL FOR A PERSON TO OPERATE A MARIJUANA TESTING FACILITY AT ANY LOCATION WITHIN THE CITY OF TEMPE WITHOUT OBTAINING A USE ACCEPTANCE LETTER FROM THE COMMUNITY DEVELOPMENT DEPARTMENT IN ACCORDANCE WITH THE PROVISIONS SET FORTH HEREIN, INCLUDING ANY APPLICATION AND REVIEW PROCEDURES REQUIRED BY THE CITY'S BUILDING SAFETY DIVISION AND TEMPE FIRE MEDICAL RESCUE.

1. A MARIJUANA TESTING FACILITY IS PERMITTED IN THE CITY OF TEMPE SUBJECT TO THE FOLLOWING:
 - A. A MARIJUANA TESTING FACILITY IS ALLOWED IN THE GID AND HID ZONING DISTRICTS AS A LABORATORY.
 - B. INDEPENDENTLY OPERATED MARIJUANA TESTING FACILITIES DO NOT REQUIRE LOCATION SEPARATION REQUIREMENTS. A MARIJUANA TESTING FACILITY THAT IS ACCESSORY TO A MEDICAL MARIJUANA DISPENSARY, CULTIVATION FACILITY, OR MARIJUANA ESTABLISHMENT, IS ALLOWED IN ANY COMMERCIAL OR INDUSTRIAL ZONING DISTRICT IN COMPLIANCE WITH THE PRIMARY USE REGULATIONS SET FORTH.
 - C. SHALL ENSURE THAT ACCESS TO THE AREA OF THE FACILITY WHERE MARIJUANA OR MARIJUANA PRODUCTS ARE BEING TESTED OR STORED FOR TESTING IS LIMITED TO A FACILITY'S OWNERS OR AUTHORIZED AGENTS.
 - D. SHALL ENSURE THAT TRANSPORTATION OF MARIJUANA OR MARIJUANA PRODUCTS IS IN COMPLIANCE WITH APPLICABLE LAW.

DE. Use Acceptance. A zoning administrative application shall be processed, certifying that all City of Tempe regulations for the *medical marijuana dispensary*, MARIJUANA ESTABLISHMENT, ~~or cultivation facility~~, OR MARIJUANA TESTING FACILITIES, are in compliance with the provisions set forth in Section 3-426 of this Code. The BUSINESS use shall not commence without the zoning administrator, or designee, acceptance letter. A USE ACCEPTANCE LETTER IS NOT TRANSFERABLE.

The application shall include, but is not limited to, the following items:

1. A project submittal form with applicable fee;
2. The property owner's letter of authorization for the use;
3. The name and location of the dispensary's off-site *medical marijuana cultivation facility*, if applicable;
4. A map showing the location in compliance with the separation requirements listed in Section 3-426(B), AS APPLICABLE;
5. A copy of operating procedures adopted in compliance with A.R.S. 36-2804(B)(1)(c) AND A.R.S. TITLE 36, CHAPTER 28.2;

6. A site plan;
7. A floor plan of the building or tenant space;
8. If applicable, Building permits (Separate submittal) in compliance with Tempe's Building Code and Fire Code; and
9. A Security Plan, in compliance with Section 3-426(C) AND TEMPE CITY CODE, SECTION 26-70, SECURITY PLANS.

G. MARIJUANA PERMITTED; RESIDENTIAL. TO THE FULLEST EXTENT ALLOWABLE BY LAW, MARIJUANA POSSESSION, CONSUMPTION, PROCESSING, MANUFACTURING, TRANSPORTATION AND CULTIVATION IS PERMITTED IN ANY RESIDENTIAL ZONING DISTRICT OR A DISTRICT THAT ALLOWS RESIDENTIAL IN THE CITY OF TEMPE, SUBJECT TO THE FOLLOWING:

1. ANY INDIVIDUAL WHO IS AT LEAST TWENTY-ONE (21) YEARS OF AGE MAY POSSESS, TRANSPORT, CULTIVATE OR PROCESS NO MORE THAN SIX (6) MARIJUANA PLANTS AT THE INDIVIDUAL'S PRIMARY RESIDENCE.
2. TWO OR MORE INDIVIDUALS WHO ARE AT LEAST TWENTY-ONE (21) YEARS OF AGE MAY POSSESS, TRANSPORT, CULTIVATE OR PROCESS NO MORE THAN TWELVE (12) MARIJUANA PLANTS AT THE INDIVIDUALS' PRIMARY RESIDENCE.
3. EXCEPT AS PROVIDED BY A.R.S. § 36-2801 ET AL. AND THIS SECTION, IT SHALL BE UNLAWFUL FOR AN INDIVIDUAL TO OTHERWISE CULTIVATE MARIJUANA IN ANY RESIDENTIAL ZONING DISTRICT, OR IN A DISTRICT WITHIN ANY RESIDENTIAL DWELLING, THAT IS FOR A COMMERCIAL PURPOSE OR REMUNERATION WITHIN THE CITY OF TEMPE LIMITS.
4. SHALL TAKE PLACE IN AN AREA WHERE THE MARIJUANA PLANTS ARE NOT VISIBLE FROM PUBLIC VIEW WITHOUT USING BINOCULARS, AIRCRAFT OR OTHER OPTICAL AIDS.
5. SHALL BE LIMITED TO A CLOSET, ROOM, GREENHOUSE OR OTHER ENCLOSED AREA ON THE GROUNDS OF THE RESIDENCE EQUIPPED WITH A LOCK OR OTHER SECURITY DEVICE THAT PREVENTS ACCESS BY MINORS. "ENCLOSED AREA" SHALL BE FURTHER DEFINED AS A COMPLETE ROOF ENCLOSURE SUPPORTED BY CONNECTING WALLS THAT ARE CONSTRUCTED OF SOLID MATERIAL EXTENDING FROM THE GROUND TO THE ROOF AND HAS EITHER A FOUNDATION, SLAB OR EQUIVALENT BASE TO WHICH THE FLOOR IS SECURELY ATTACHED;
6. SHALL MAINTAIN KITCHEN, BATHROOMS, AND PRIMARY BEDROOM(S) FOR THEIR INTENDED USE AND SHALL NOT BE USED PRIMARILY FOR RESIDENTIAL MARIJUANA CULTIVATION.
7. RESIDENTIAL CULTIVATION SHALL PROHIBIT USE OF CHEMICAL EXTRACTION OR CHEMICAL SYNTHESIS. "CHEMICAL EXTRACTION" MEANS THE PROCESS OF REMOVING A PARTICULAR COMPONENT OF A MIXTURE FROM OTHERS PRESENT, INCLUDING REMOVING RESINOUS TETRAHYDROCANNABINOL FROM MARIJUANA. "CHEMICAL SYNTHESIS" MEANS PRODUCTION OF A NEW PARTICULAR MOLECULE BY ADDING TO, SUBTRACTING FROM, OR CHANGING THE STRUCTURE OF A PRECURSOR MOLECULE.

H. INDUSTRIAL HEMP PROGRAM. INDUSTRIAL HEMP IS AN AGRICULTURAL PRODUCT LICENSED BY THE STATE OF ARIZONA AS PART OF AN AGRICULTURAL PILOT PROGRAM FOR THE PURPOSE OF RESEARCH INTO THE GROWTH, CULTIVATION AND MARKETING OF

INDUSTRIAL HEMP AS AUTHORIZED BY THE AGRICULTURAL ACT OF 2014 (P.L. 113-79; 128 STAT. 649; 7 UNITED STATES CODE SECTION 5940). INDUSTRIAL HEMP IS ALLOWED FOR THE COMMERCIAL GROWTH, CULTIVATION AND MARKETING OF INDUSTRIAL HEMP IF THE COMMERCIAL GROWTH, CULTIVATION AND MARKETING OF INDUSTRIAL HEMP IS AUTHORIZED BY FEDERAL LAW, WHILE MAINTAINING STRICT CONTROL OF MARIJUANA.

1. INDUSTRIAL HEMP IS ALLOWED IN THE AG, AGRICULTURAL DISTRICT AND THE GID AND HID ZONING DISTRICTS.
2. INDUSTRIAL HEMP SHALL BE COMPLIANT WITH THE STATE'S LICENSING INCLUDING ANY APPLICATION AND REVIEW PROCEDURES REQUIRED BY THE CITY'S BUILDING SAFETY DIVISION AND TEMPE FIRE MEDICAL RESCUE.

STATE LAW REFERENCE: A.R.S. § TITLE 3, CHAPTER 2, ARTICLE 4.1, INDUSTRIAL HEMP

(Ord. No. 2011.01, 1-27-2011; Ord. No. 2015.48, 11-12-2015; Ord. No. 2015.49, 12-3-2015; Ord. No. [O2017.25](#), 5-25-2017; Ord. No. [O2020.02](#), 2-13-2020; [Ord. No. O2020.10](#), 6-11-2020)

SECTION 6. That Section 6-313 of the Zoning and Development Code, pertaining to security plans, is hereby amended to read as follows:

Section 6-313 - Security Plan.

- A. **Purpose.** The purpose of approving a security plan is to protect the public health, safety, and welfare through crime prevention measures that are tailored to proposed land uses.
- B. **Applicability and Procedure.** Security plans are required for the following uses subject to the standards contained in Chapter 26, Article V, Security Plans, of the Tempe City Code:
 1. *Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;*
 2. *Adult-oriented businesses;*
 3. *Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and video arcades;*
 4. *Entertainment as accessory to restaurant facilities, bars or similar establishments;*
 5. *Hotels and motels;*
 6. *Convenience stores;*
 7. *Medical marijuana dispensary, MARIJUANA ESTABLISHMENT, MARIJUANA TESTING FACILITY, or cultivation facility;* and
 8. Any other use determined by the Community Development Director or the Chief of Police, or their designees, to be similar to a use listed immediately above.

Security plans for uses within the MU-Ed District shall be formulated in coordination with the *Public University*.

(Ord. No. 2011.01, 1-27-2011)

SECTION 7. That Section 7-110 of the Zoning and Development Code, pertaining to "I" definitions, is hereby amended to read as follows:

INDUSTRIAL HEMP MEANS THE PLANT CANNABIS SATIVA L. AND ANY PART OF SUCH A PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION OF NOT MORE THAN THREE-TENTHS PERCENT ON A DRY-WEIGHT BASIS.

SECTION 8. That Section 7-114 of the Zoning and Development Code, pertaining to “M” definitions, is hereby amended to read as follows:

MARIJUANA MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS, WHETHER GROWING OR NOT, AS WELL AS THE SEEDS FROM THE PLANT, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF THE PLANT OR ITS SEEDS OR RESIN. INCLUDES CANNABIS AS DEFINED IN A.R.S. § 13-3401. DOES NOT INCLUDE INDUSTRIAL HEMP, AS DEFINED HEREIN.

MARIJUANA CULTIVATION FACILITY MEANS A LOCATION FOR A MARIJUANA ESTABLISHMENT AT WHICH THE LICENSEE MAY CULTIVATE MARIJUANA, PROCESS MARIJUANA AND MANUFACTURE MARIJUANA PRODUCTS, PACKAGE AND STORE MARIJUANA AND MARIJUANA PRODUCTS, BUT FROM WHICH MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.

MARIJUANA ESTABLISHMENT MEANS AN ENTITY LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES TO OPERATE A SINGLE RETAIL LOCATION AT WHICH THE LICENSEE MAY SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

MARIJUANA TESTING FACILITY MEANS A MARIJUANA ESTABLISHMENT, CULTIVATION FACILITY OR ANOTHER ENTITY THAT IS LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES TO ANALYZE THE POTENCY OF MARIJUANA AND TEST MARIJUANA FOR HARMFUL CONTAMINANTS.

SECTION 9. 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 ____ day of _____, 2021.

Corey D. Woods, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

The Smart and Safe Arizona Act

(Recreational Marijuana Initiative)

Prop 207



Tempe

Making waves in the desert

Recreational Marijuana Initiative

- On November 3, 2020, Proposition 207, “The Smart and Safe Arizona Act” passed with 60% of the statewide votes
- City Council Strategic Priorities alignment:

Priority #1



Safe & Secure
Communities

Priority #4



Sustainable Growth
& Development



Tempe



Prop. 207 and Marijuana Establishment Licenses

- Prop. 207 allows for one Marijuana Establishment license for every 10 pharmacies (Same as Dispensaries)
- Allows a “Dual Licensee” for lawfully registered dispensaries to also sell as a Marijuana Establishment
- Not more than 2 licenses per County that contains no Medical Dispensary; or 1 Marijuana Establishment that contains 1 Medical Dispensary (1:1 ratio)
- Social Equity Ownership Program will issue 26 additional licenses throughout the State



Prop 207 and Zoning Regulations:

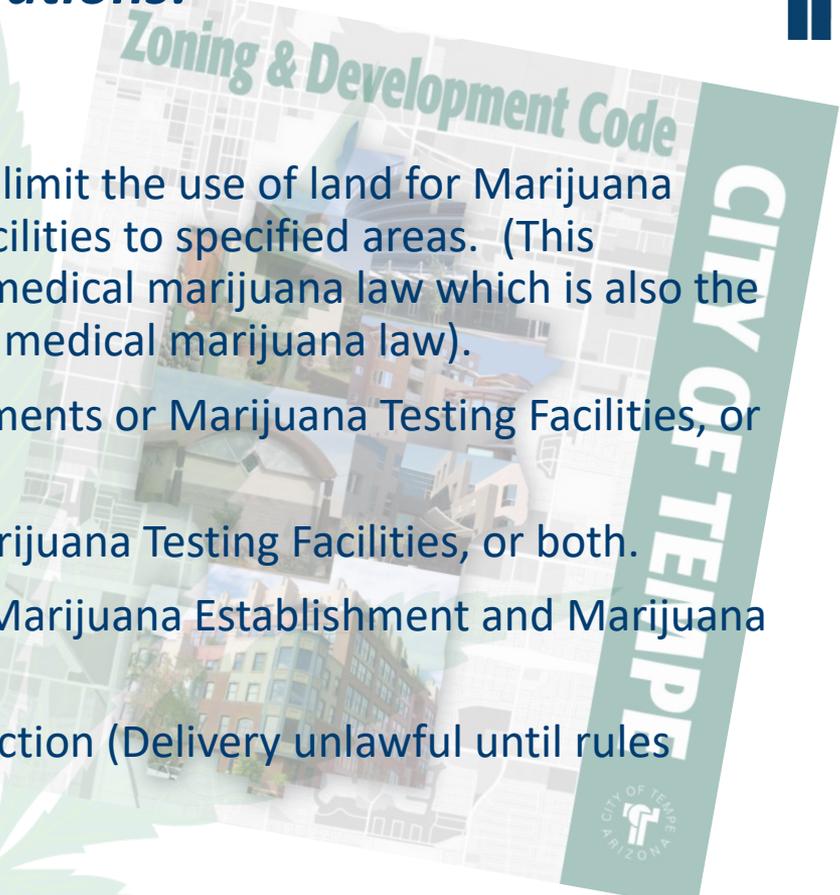
- Under Prop 207, Tempe may not enact regulations more restrictive than comparable regulations pertaining to medical marijuana; may not enact regulations that make the operations of a Marijuana Establishment or Marijuana Testing Facility unduly burdensome; or may not enact regulations that conflict with regulations contained in the Proposition.



Prop. 207 affecting Zoning Regulations:

A local jurisdiction may:

- Enact reasonable zoning regulations that limit the use of land for Marijuana Establishments and Marijuana Testing Facilities to specified areas. (This provision is identical to that in Arizona's medical marijuana law which is also the only zoning related provision in Arizona's medical marijuana law).
- Limit the number of Marijuana Establishments or Marijuana Testing Facilities, or both.
- Prohibit Marijuana Establishments or Marijuana Testing Facilities, or both.
- Regulate the time, place and manner of Marijuana Establishment and Marijuana Testing Facility operations.
- Prohibit/restrict delivery within its jurisdiction (Delivery unlawful until rules adopted by 2023-2025)





Council Direction...

1. Maintain current separation standards for new Marijuana Establishments and existing Dispensaries
2. Restrict use on city property, parks, sidewalks
3. Marijuana Testing Facilities (allow in Industrial Districts, and when accessory to a Marijuana Establishment)



Council Direction...

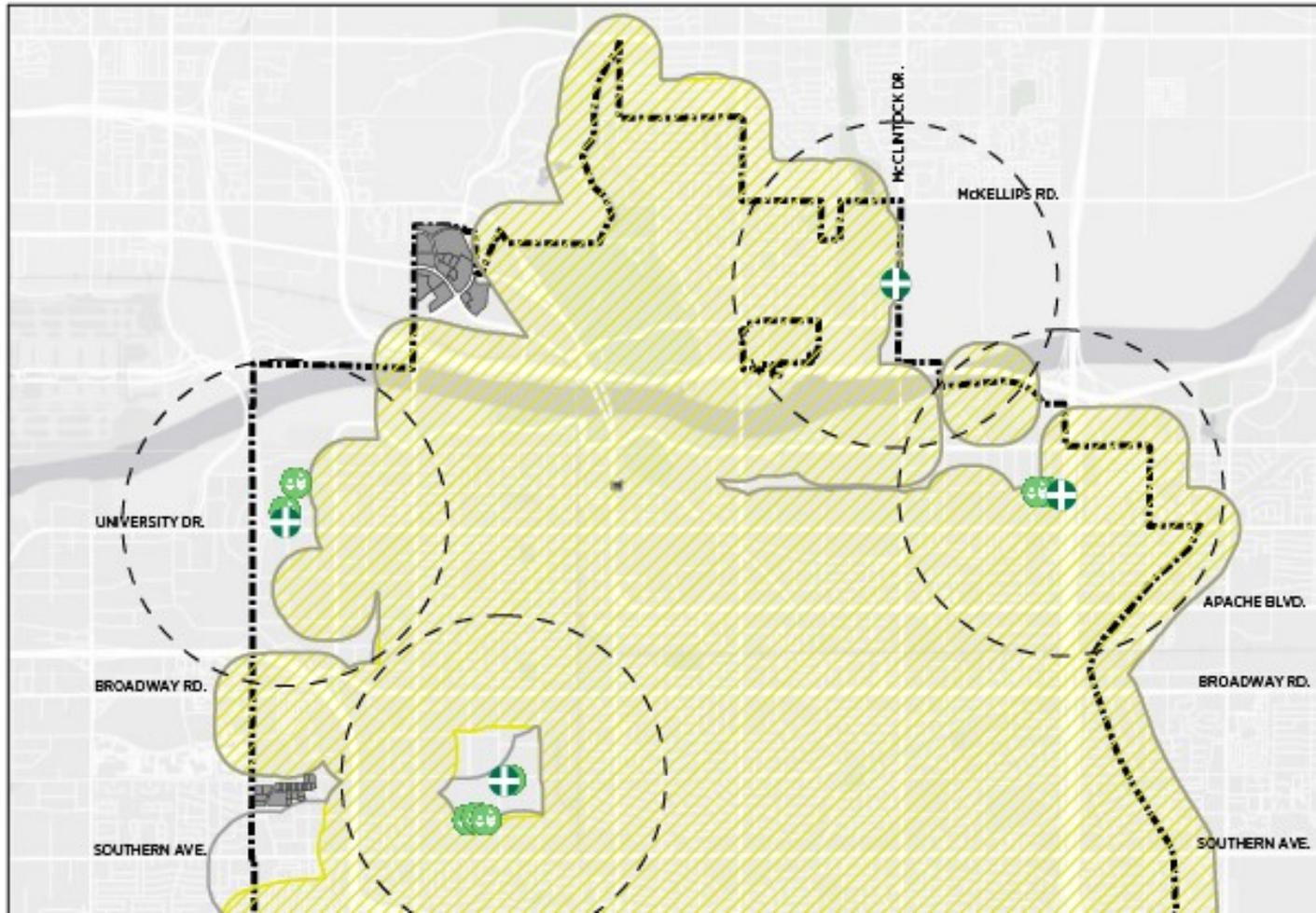
4. Incorporate current Industrial Hemp Program (evaluate operations with Fire and Building Safety)
5. Solicit feedback from Medical Marijuana business representatives in Tempe
6. Solicit input and dialogue from “Tempe Coalition to reduce underage drinking and drug use” and Tempe Chamber of Commerce, including a public survey and comments



Current Medical Marijuana Dispensary & Proposed Marijuana Establishment separation requirements:

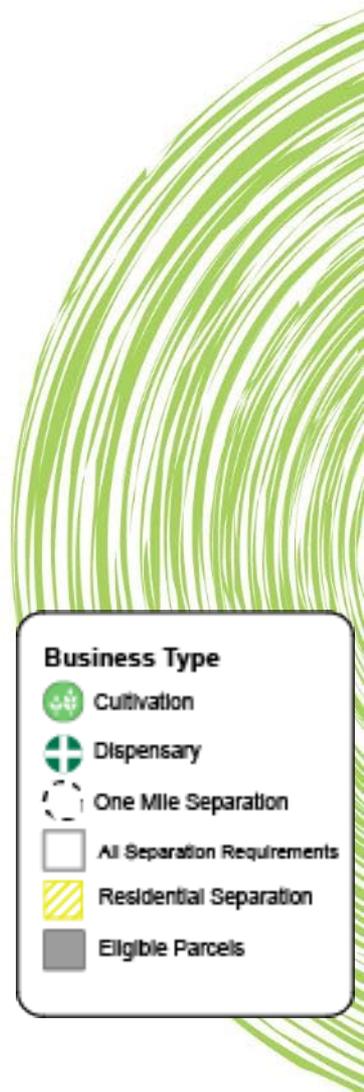
- 5,280 feet (1 mile) Dispensary to Dispensary
- 1,500 feet from a child care facility
- 1,500 feet from a charter, private or public school, providing elementary or secondary education
- 1,320 feet from a church, synagogue, temple or similar
- 1,320 feet from a public park, library, or public community
- 1,320 feet from a residential zoning district or a parcel devoted to a residential use in any district

Existing Separation Requirements (North Tempe)

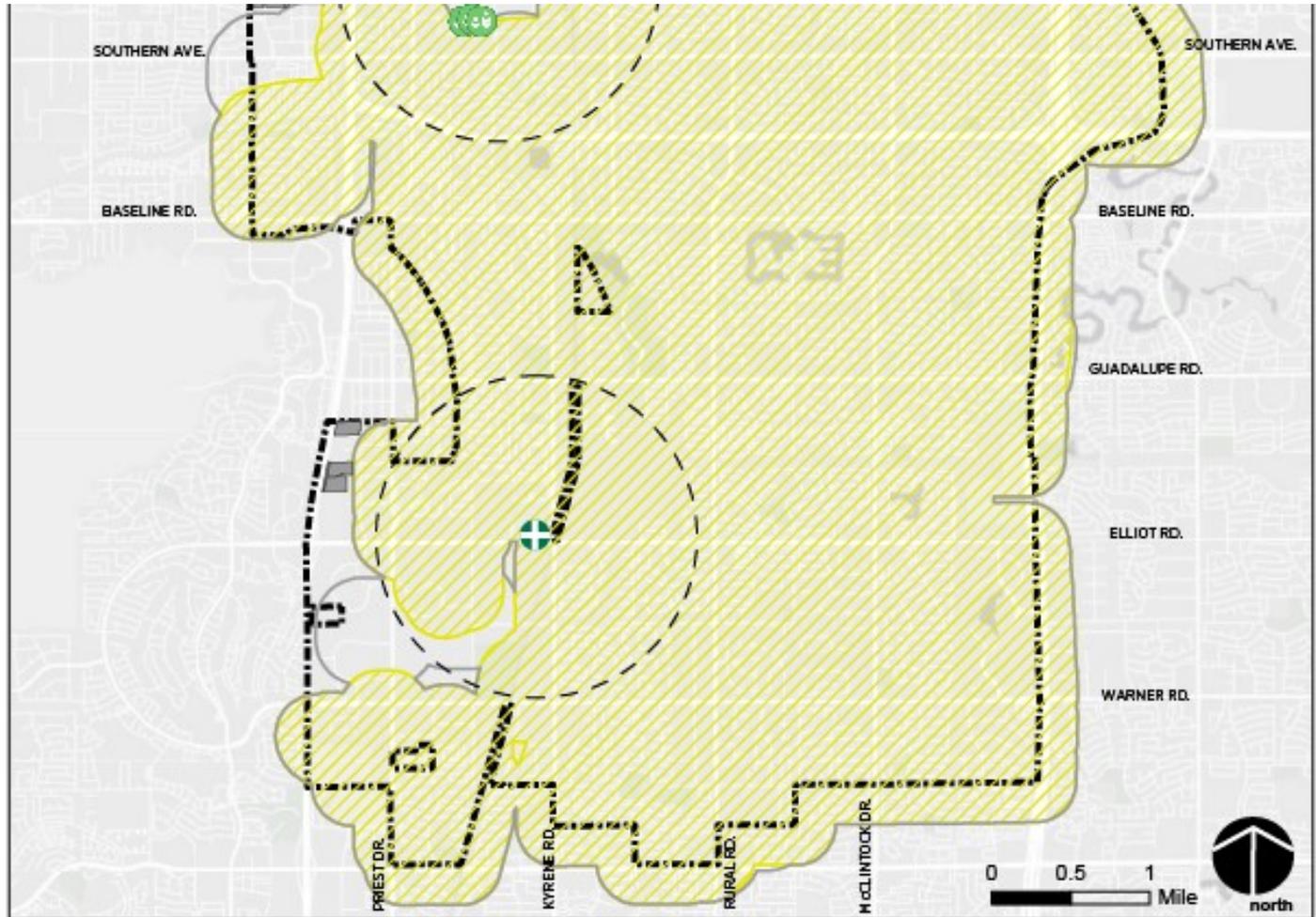


Business Type

- Cultivation
- Dispensary
- One Mile Separation
- All Separation Requirements
- Residential Separation
- Eligible Parcels



Existing Separation Requirements (South Tempe)



Business Type

- Cultivation
- Dispensary
- One Mile Separation
- All Separation Requirements
- Residential Separation
- Eligible Parcels





Schedule for Marijuana Initiative Ordinance:

- **Dec 3, 2020** **City Council – Issue Review / Work Study Session** (Direction on drafting Marijuana Ordinance)
- **Dec 8** **Development Review Commission - Study Session**, DRC informed of direction for the City to prepare a new ordinance for the Marijuana Legalization Initiative
- **Dec 10-22** **Opportunity for Public Outreach (City website for neighborhood survey, key stakeholders)**
- **Jan 6, 2021** **Neighborhood Advisory Commission**, presentation of draft ordinance and possible recommendation
- **Jan 12, 2021** **Development Review Commission public hearing** for draft Marijuana Initiative ordinance (recommendation action)
- **Jan 28, 2021** **City Council Intro & 1st Public Hearing** on a draft Marijuana Initiative ordinance
- **Feb 11, 2021** **City Council 2nd & Final Public Hearing** on a draft Marijuana Initiative ordinance
- **Mar 15, 2021** **30-day effective date** from ordinance adoption

- **April 5, 2021** Date existing dispensaries can automatically begin cultivation, process, production, manufacture, sales, transport, and testing of marijuana and related products if ADHS has failed to issue any Marijuana Establishment licenses



Recreational Marijuana Initiative (Prop. 207) Land-use Regulations Public Input Summary, December 2020

I. Background

On Nov. 3, voters in the State of Arizona passed a recreational marijuana initiative Prop 207, called “The Smart and Safe Arizona Act.” This requires that the State of Arizona establish rules and licensing processes by early 2021 and that cities and towns create reasonable land-use regulations. Tempe plans to move forward with a proposed draft ordinance starting in early January 2021 and was seeking input into the regulations.

There are parameters that define what a local jurisdiction can and cannot do within Prop. 207. Specifically, Tempe may not enact regulations more restrictive than comparable regulations pertaining to medical marijuana; may not enact regulations that make the operations of a Marijuana Establishment or Marijuana Testing Facility unduly burdensome; or may not enact regulations that conflict with regulations contained in the Proposition.

A Marijuana Establishment is an entity licensed to operate a retail site that may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products, whether such product is for recreational use (21 and over) or for medicinal purposes (with dual license at current dispensary)

A Marijuana Testing Facility is an entity licensed to analyze the potency of marijuana and test marijuana for harmful contaminants.

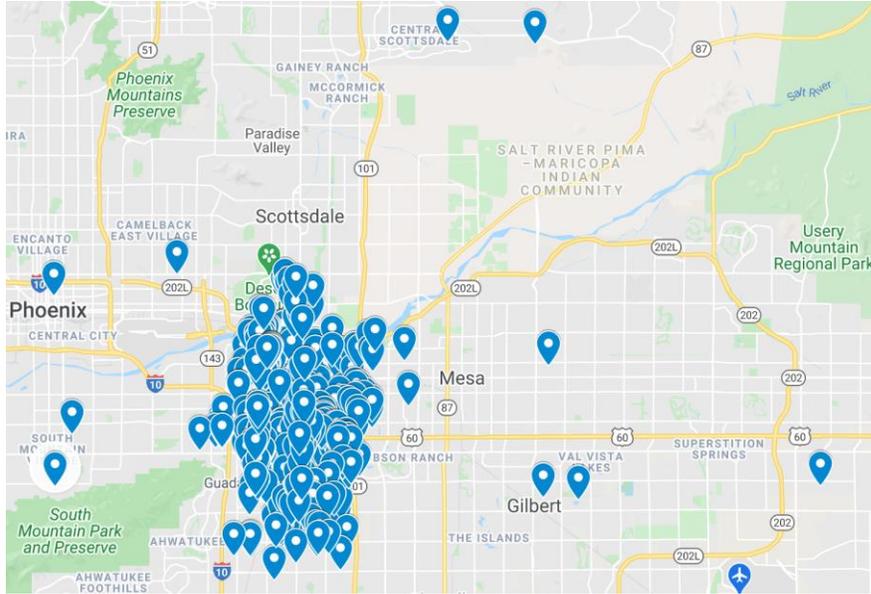
Timeline:

Dec. 10 – 21, 2020	Topic posted online at Tempe Forum
Jan. 12, 2021	Development Review Commission public hearing for the draft Marijuana Initiative ordinance (recommendation action)
Jan. 28, 2021	City Council Intro & 1 st Public Hearing on the draft Marijuana Initiative ordinance
Feb. 11, 2021	City Council 2 nd & Final Public Hearing on the draft Marijuana Initiative ordinance
March 15, 2021	30-day effective date from ordinance adoption, first business date.

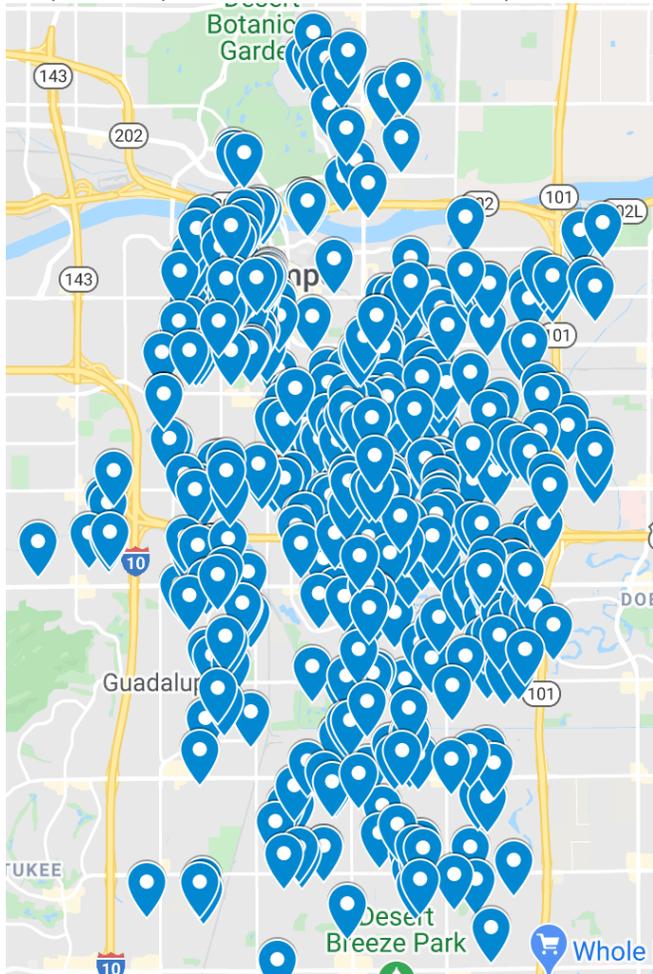
II. Survey Results

A total of 829 survey responses were received.

Map of responses received:



Map of responses received in Tempe:



Provide input on marijuana establishments

Marijuana Regulations

Summary Of Responses

As of December 22, 2020, 6:39 AM, this forum had:

Attendees: 1059
Responses: 829
Hours of Public Comment: 41.5

Topic Start

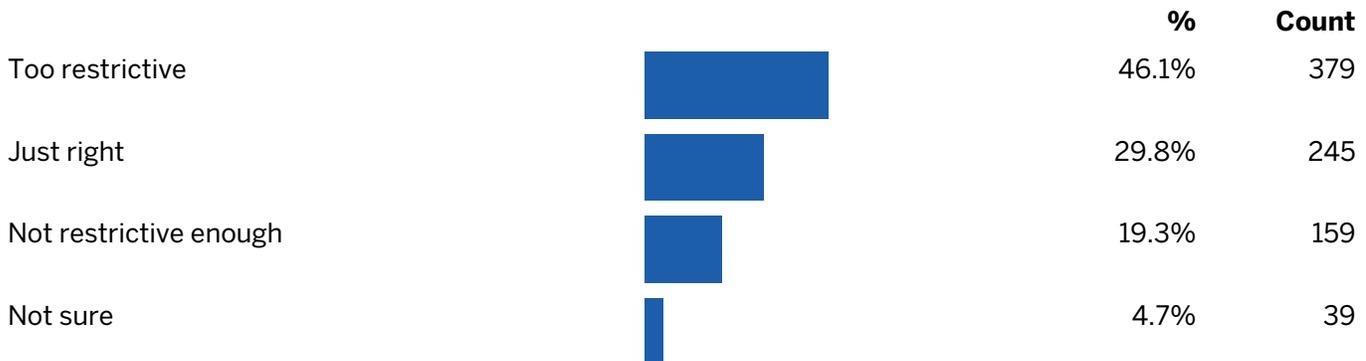
December 10, 2020, 4:37 PM

Topic End

December 22, 2020, 6:38 AM

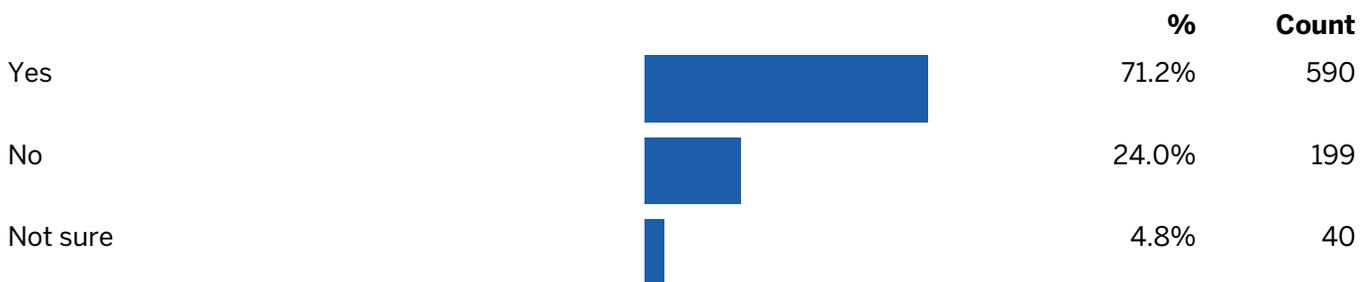
QUESTION 1

Are Tempe's Medical Marijuana Dispensary separation requirements appropriate for new Marijuana Establishments?



QUESTION 2

Tempe currently has 5 Medical Marijuana Dispensaries and 6 Cultivation Facilities. Should Tempe allow more Marijuana Establishments than what exists today?



Provide input on marijuana establishments

Marijuana Regulations

QUESTION 3

Do you agree with Marijuana Testing Facilities only being allowed in industrial areas if they are not associated with a Marijuana Establishment?

		%	Count
Yes		42.9%	355
No		34.9%	289
Not sure		22.1%	183

QUESTION 4

Name (will not appear even if you chose to share responses)

Answered	558
Skipped	271

QUESTION 5

Address (will not appear even if you chose to share responses)

Answered	515
Skipped	314

QUESTION 6

Contact information (will not appear even if you chose to share responses)

Answered	377
Skipped	452

From: [planning](#)
To:
Subject: FW: Announcements from the City of Tempe for 12/12/2020
Date: Monday, December 14, 2020 7:19:18 AM
Attachments: [~WRD0000.jpg](#)
[image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

From: Chloe E. Egan
Sent: Sunday, December 13, 2020 1:02 PM
To: [planning <planning@tempe.gov>](mailto:planning@tempe.gov)
Subject: Re: Announcements from the City of Tempe for 12/12/2020

Y'all. It is BEYOND time to start referring to this plant as CANNABIS. the term marijuana is not the science word guys! Every other country uses "cannabis" to refer to the plant in an official capacity - the US called it marijuana back in the day to promote anti-cannabis sentiments through racism. PLEASE look into changing the way this is referred to in city and state documents. Thanks.

On Dec 12, 2020, at 5:01 AM, Tempe <support@opengov.com> wrote:

Updates from the City of Tempe about Tempe Forum	Is this email not displaying correctly? View it in your browser.
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City seeks input on marijuana regulations

Dec 11, 2020 12:07 pm | The City of Tempe

The passage of marijuana initiative Prop 207 was the first step in creating new rules, licensing procedures and land use regulations regarding marijuana. Residents are invited to take a survey regarding the aspects of the ordinance that Tempe can regulate. The survey will run through Dec. 21. Visit tempe.gov/forum to get additional information and to respond.

[Read More](#)



From: [planning](#)
To:
Subject: FW: input on marijuana regulations
Date: Monday, December 14, 2020 7:17:43 AM

From: Jack Carlson
Sent: Saturday, December 12, 2020 12:43 PM
To: planning <planning@tempe.gov>
Subject: input on marijuana regulations

Hi,

From the survey, here is my input on marijuana regulations for Tempe.

It is best to treat marijuana like alcohol. Having a bar next to a bar is not a problem, so it should not be with a marijuana establishment.

Also, having the brewery at the bar or restaurant is not a problem, so it should be the same for marijuana. Marijuana operations don't need to be isolated in industrial locations.

Jack Carlson

Jack Carlson

Tempe, Arizona 85282
(480) 968-3362

From: [planning](#)
To:
Subject: FW: Marijuana dispensaries
Date: Monday, December 14, 2020 7:17:06 AM

From: Alan Hart
Sent: Saturday, December 12, 2020 9:10 AM
To: planning <planning@tempe.gov>
Subject: Marijuana dispensaries

Regarding pending marijuana legislation, I'd like to see a very competitive market so that adult consumers get the best value and quality possible. To that end:

1. There's no reason to limit the distance between dispensaries ... that's 100% downside, and kills competition.
2. There's no reason to hide the dispensaries from minors ... laws preventing them from purchasing should be enforced, and that's enough.
3. There's no reason to distance the businesses from residential districts any more than any other commercial or industrial business. If the particular lot isn't zoned for residential, it should be available to the marijuana industry.
4. There's no reason to restrict nearness to religious establishments, or to schools, or to parks, or to community facilities, if the zoning is non-residential. It is a legal substance that is age-restricted in order to bar minors, and adult consumers can buy or not as they see fit -- just as with any other product or service. Furthermore, because houses of worship and schools now commonly operate in strip malls (and churches have since the 1990s had the right to operate absolutely anywhere under Federal law), any other such local laws (e.g. alcohol license proximity restrictions) should be stricken from the code.
5. There's no reason to restrict proximity to child-care facilities, as toddlers don't commonly make any purchases whatsoever.

From: [planning](#)
To:
Subject: FW: Marijuana Forum
Date: Monday, December 14, 2020 7:17:33 AM

From: Casey/Judy Capps
Sent: Saturday, December 12, 2020 9:29 AM
To: planning <planning@tempe.gov>
Subject: Marijuana Forum

Dear Planning Committee,
I am an educator of thirty-four years experience. As such, I have seen the dulling effects of marijuana on the brains of our middle and high school age children. Allowing many vendors of recreational pot throughout our City may be conducive to gathering sales tax revenues, but also very destructive to the growing and evolving minds of our youth. Proponents will state that there is a minimum age for purchasing the drug, but just as in alcohol sales, the banned substance finds its way into our young population. I am asking the City of Tempe to limit the number of recreational marijuana stores to the minimum number allowed under law. We do not need to make **recreational** pot convenient and in fact, should be doing everything we can to keep it out of the hands of our youth. Thank you.
Sincerely,
Casey Capps

From: [planning](#)
To:
Subject: FW: Marijuana Regulations
Date: Monday, December 14, 2020 7:17:17 AM

-----Original Message-----

From: Dave Lowenstein
Sent: Saturday, December 12, 2020 9:19 AM
To: [planning <planning@tempe.gov>](mailto:planning@tempe.gov)
Subject: Marijuana Regulations

Gentlemen,

Tempe is already suffering the effects of marijuana and drug use. This is the cause of the majority of "homelessness." Drug users are roaming our streets, parks, neighborhoods, and shopping centers. They are stealing from residents and businesses to support their habits. They are panhandling everywhere, threatening residents, and endangering their own lives doing crazy things like running out into traffic, etc.

Drug and alcohol abuse laws are not being enforced unless someone complains. The lack of enforcement only magnifies the problem both for the purpretrators and victims. So, my question is, why would the City want to promote more marijuana establishments? The result would only be more drug abuse since marijuana is the gateway drug to the others. Our society is being destroyed by drug use and any entity that encourages the use of drugs is guilty of promoting this evil.

Please don't make the availability of marijuana any easier than it already is. Don't we already have enough problems with drinking and drugs destroying the lives of users and them destroying the lives of the innocent? What about the children we are so zealous about protecting from other evils?

Please, for all of our sakes, let us have some decency in Tempe and do everyting possible to discourage drug use, including marijuana.

Sincerely yours,

David J. Lowenstein

Resident

From: [planning](#)
To: [Levesque, Ryan](#)
Subject: FW: Marijuana
Date: Monday, December 14, 2020 7:18:14 AM

From: @cox.net
Sent: Saturday, December 12, 2020 5:26 AM
To: planning <planning@tempe.gov>
Subject: Marijuana

Good morning,
Get rid of all Marijuana facilities in Tempe & the state of Arizona. I don't agree nor does it make any common sense to have Marijuana available in this state or anywhere.

Dennis Cling

From: [planning](#)
To:
Subject: FW: Mariuana ordinances
Date: Monday, December 14, 2020 7:16:53 AM

From: Sandra Smith
Sent: Saturday, December 12, 2020 7:47 AM
To: planning <planning@tempe.gov>
Subject: Mariuana ordinances

It is my opinion that smoking marijuana should have same restrictions as smoking cigarettes. The smoke from both is harmful to others and we shouldn't have to be subjected to it.

This may already be in effect as I didn't see anything about its use on the survey, just its sale.

Sandra Smith

From: James Sena

Sent: Friday, December 18, 2020 7:22 PM

To: planning <planning@tempe.gov>

Subject: Recreational Marijuana

A marijuana dispensary should have the same rights to exist as any other business in this state. Children can't purchase marijuana and therefore the proximity of a marijuana dispensary near a school is of no concern. The idea that a church should have primacy over a legitimate business in this city is an affront to the first amendment and puts the city in a position of favoring religion at the expense of people looking to purchase a legitimate product. Frankly, religious institutions are not free from harm either.

Marijuana businesses will provide the city with a tremendous new source of revenue and opportunities for employment. We should not dream of limitations beyond those required by the voters in the last election. That law was already a compromise for many people and favors existing businesses at the expense of opportunities for start ups.

Further, the city should actually fund marijuana advancement programs promoting innovation so we can become an industry leader and drive tax dollars to our city being dismissed by our more conservative neighbors. This is a chance for our city to recover a lot of revenue recently lost due to Covid and we would irresponsible to throw it away.

From: [planning](#)
To:
Subject: FW: Prop 207 regulations
Date: Tuesday, December 15, 2020 7:44:10 AM

From: mihalis Gerakas
Sent: Tuesday, December 15, 2020 6:47 AM
To: planning <planning@tempe.gov>
Subject: Prop 207 regulations

I would respectfully point out that liquor establishments are located within 100 yards of many residential neighborhoods, churches, and schools in Tempe. Why make the regulations for Marijuana dispensaries more restrictive than liquor stores?

From: [planning](#)
To:
Subject: FW: Marijuana Comment
Date: Wednesday, December 16, 2020 7:47:34 AM

From: MICK DARCEY
Sent: Wednesday, December 16, 2020 7:41 AM
To: planning <planning@tempe.gov>
Subject: Marijuana Comment

Please consider offering delivery options to either bonified medical patients or non-medical recreation users and not have anyone required to drive to purchase.

From: [planning](#)
To:
Subject: FW: 2020 Prop 207
Date: Wednesday, December 16, 2020 7:47:51 AM

From: Jennifer Thompson
Sent: Tuesday, December 15, 2020 4:57 PM
To: planning <planning@tempe.gov>
Subject: 2020 Prop 207

Dear City of Tempe Planning,

As a long time resident of Tempe, homeowner, and voter I hope you will consider prohibiting and regulating marijuana establishments to the fullest extent possible.

Thank you,
Jennifer Thompson

From: [planning](#)
To:
Subject: FW: Marijuana In Tempe
Date: Thursday, December 17, 2020 7:27:58 AM

-----Original Message-----

From: jonnie mulford
Sent: Wednesday, December 16, 2020 5:08 PM
To: planning <planning@tempe.gov>
Subject: Marijuana In Tempe

The State of Arizona will start issuing licences in March 2021. Tempe will undoubtedly add more establishments. Also the new law allows people to grow marijuana. So in all likelihood a lot of people using state guidelines will be growing and smoking marijuana at home. Plants can easily be purchased in California for home growing. Look for nuisance claims to increase from neighbors smelling marijuana be smoked next door. Tempe Police should be trained in the law and handling of nuisance claims.