

CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION

Meeting Date: 05/24/2022
Agenda Item: 9

ACTION: Request for a code text amendment for MARIJUANA INFUSION TEXT AMENDMENT, consisting of changes within Section 3-426 – Marijuana, and other sections within the Zoning and Development Code, to allow alternate separation requirements for marijuana infusion facilities, including updates to the land use tables and related definitions. The applicant is Gammage & Burnham.

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

RECOMMENDATION: Approve

BACKGROUND INFORMATION: MARIJUANA INFUSION TEXT AMENDMENT (PL220083) introduces a new land use category that will allow marijuana infusion facilities to operate independently from marijuana cultivation facilities in General Industrial District (GID) and Heavy Industrial District (HID) only with no point of sale allowed. When the Proposition 203 - Arizona Medical Marijuana Act was originally passed in 2010, marijuana cultivation and infusion (manufacturing) were only allowed together. With the passage of Proposition 207 – Smart and Safe Arizona in November 2020, it allows cultivation to be separated from manufacturing. With this text amendment, the applicant is also proposing to reduce some of the separation requirements that are currently in the Zoning and Development Code (ZDC). This will allow for more locations for marijuana infusion facilities than the code currently allows. The request includes the following:

ZOA220002 A Code Text Amendment within the Zoning and Development Code, Section 3-426, Marijuana

Applicant Michael Maerowitz, Gammage and Burnham PLC
Zoning District Citywide in GID and HID

ATTACHMENTS: Project File, Ordinance

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

Department Director: Shelly Seyler, Interim Community Development Director

Legal review by: N/A

Prepared by: Suparna Dasgupta, Principal Planner

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 separates the marijuana cultivation from infusion (manufacturing), creating a new definition and land use for Marijuana Infusion Facility and Medical Marijuana Infusion Facility and establishing a new separation requirement for all such infusion facilities

The current separation requirements are as follows:

- Childcare facility –1,320 feet
- Schools (Charter, Private and Public) –1,320 feet
- Place of Worship –1,320 feet
- Public Library –1,320 feet
- Public Community Building –1,320 feet
- Residential Zoning District –500 feet

The proposed separation requirements are as follows:

- Childcare facility – 500 feet
- Schools (Charter, Private and Public) –500 feet
- Place of Worship – 500 feet
- Public Library – 500 feet
- Public Community Building – 500 feet
- Residential Zoning District –500 feet

There is one other jurisdiction known to staff that has made similar code text amendment and that is City of Tucson, AZ. Per City of Tucson, marijuana cultivation and manufacturing are allowed in P-1, I-1 and I-2 zoning districts and the separation requirements are as follows:

- K-12, Charter, Private and Public Schools – 500 feet

PUBLIC INPUT

NEIGHBORHOOD ADVISORY COMMISSION

Michael Maerowitz from Gammage and Burnham PLC presented the request for the Marijuana Infusion Text Amendment to the Neighborhood Advisory Commission (NAC) on May 4, 2022. The commission members had several questions of the applicant such as, if we don't have separation requirements alcohol distribution and distillery facilities then why should we for marijuana manufacturing or any type of marijuana business. Some Commissioners thought marijuana should be treated the same as alcohol. The NAC unanimously voted to support the proposed text amendment to the ZDC. Minutes of the NAC is attached with this report.

POLICE DEPARTMENT INPUT: Tempe Police Department has no concerns.

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

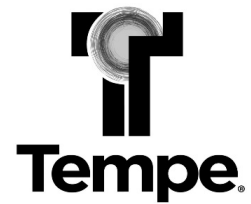
HISTORY & FACTS:

November 2, 2010	Election date, including the ballot initiative for Proposition 203, Arizona Medical Marijuana Act.
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 27, 2011	City Council held the second and final public hearing and adopted an ordinance for MEDICAL MARIJUANA (PL100378) (Ordinance 2011.01, Tempe's first regulations on medical marijuana)
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 for dispensaries and cultivation facilities the and total number of dispensaries in Tempe. The applicant is Steve White, White Berberian PLC. (Ordinance No. O2015.49) (7-0

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).
May 25, 2017	City Council approved PL170076 and adoption of Ordinance No O2017.25. removing the no more than two dispensary rule and modifying existing separation requirements.
February 13, 2020	City Council adopted an ordinance for MEDICAL MARIJUANA AMENDMENT (PL190280) to modify the permitted hours of operation for medical marijuana dispensaries from 8am to 8pm to no later than 10pm.
June 11, 2020	City Council adopted an ordinance for a Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, consisting of a change to the Zoning and Development Code to eliminate the current maximum 25,000 square-foot size restriction for medical marijuana cultivation facilities in Tempe. The applicant is CJK, Inc. (DBA Hana Meds). (Ordinance No. O2020.10)
November 3, 2020	Election date, including ballot initiative for Proposition 207 – Smart and Safe in November 2020
February 11, 2021	City Council adopted an ordinance for a Code Text Amendment consisting of changes within the Zoning and Development Code, 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). (Ordinance No. O2021.09)
May 4, 2022	Applicant presentation to Neighborhood Advisory Commission for this request.
May 24, 2022	Recommendation hearing at Development Review Commission for this request.
June 9, 2022	1 st and Introductory hearing at City Council for this request.
June 23, 2022	2 nd and Final hearing at City Council for this request.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 3-302A – Permitted Uses in Office/Industrial Districts
Section 6-426, Marijuana
Section 7-114 “M” Definitions



DEVELOPMENT PROJECT FILE
for
MARIJUANA INFUSION TEXT AMENDMENT
(PL2200)

ATTACHMENTS:

- 1-14 Applicant's Letter of Explanation and Proposed Text Amendment
- 15. Map illustration of all current cultivation facilities and dispensaries
- 16. Map illustration of possible cultivation facilities (that includes infusion) with current separation requirements
- 17. Map illustration of possible Infusion facilities with proposed new separation requirements marijuana infusion facilities
- 18-19. Minutes from Neighborhood Advisory Commission Meeting of May 4, 2022

Code Text Amendment

**Applicant's Letter of Explanation for:
Citywide Text Amendment Regarding Marijuana Infusion Facilities**

Prepared by:

**GAMMAGE
&
BURNHAM**

40 North Central Avenue, 40th Floor | Phoenix, AZ 85004

Contact:

**Gammage & Burnham, PLC
Attn: Lindsay C. Schube
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lschube@gblaw.com**

1st Formal Submittal: March 28, 2022

This application requests a code text amendment (“Text Amendment”) to the City of Tempe (“City”) Zoning and Development Code (“ZDC”). The purpose of the Text Amendment is to (i) create standalone land uses for medical marijuana and marijuana infusion facilities, and (ii) modify the location requirements for medical marijuana and marijuana infusion facilities. The precise language of the proposed Text Amendment is provided in **Exhibit A**.

Background

Tempe’s ZDC establishes the following five land uses for marijuana facilities:

- Medical Marijuana Dispensary
- Marijuana Establishment
- Medical Marijuana Cultivation Facility
- Marijuana Cultivation Facility
- Marijuana Testing Facility

These five land uses are defined in Section 7-114 of the ZDC as follows:

- **Medical Marijuana Dispensary** – “*Medical marijuana dispensary* means a not-for-profit entity that acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies to cardholders.”
- **Marijuana Establishment** – “*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.”
- **Medical Marijuana Cultivation Facility** – “*Medical marijuana cultivation facility* means an entity that cultivates or manufactures marijuana by the means of cooking, blending, or incorporating into consumable/edible goods or other means for a *medical marijuana dispensary*.”
- **Marijuana Cultivation Facility** – “*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 Testing Facility** – “*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.”

Under the above definitions, both the *cultivation* of marijuana and the *infusion* of marijuana fall under the same land use category. The ZDC defines a facility that either *cultivates* marijuana or *infuses* marijuana as a 'medical marijuana cultivation facility' or 'marijuana cultivation facility', even though cultivation facilities and infusion facilities have very different operational characteristics.

In practical terms, the *cultivation* of marijuana is the process of planting, growing, harvesting, drying and/or trimming marijuana plants. The *infusion* of marijuana is the process of removing oil from marijuana plants and then adding the extracted oil as an ingredient to a finished product, typically by blending or cooking. Said otherwise, a cultivation facility produces marijuana and an infusion facility incorporates marijuana into edible/consumable products, such as brownies, chocolates or pills. Because they have distinct operational characteristics, a marijuana cultivation facility and a marijuana infusion facility may operate entirely independent from each other within separate buildings or on separate properties. As such, cultivation facilities and infusion facilities should be distinct land uses under the ZDC.

As shown in **Exhibit A**, this Text Amendment modifies the language of the ZDC to:

- Remove the process of infusing/manufacturing marijuana from the definition of a 'marijuana cultivation facility' and 'medical marijuana cultivation facility';
- Create a new definition/land use for a 'marijuana infusion facility' and a 'medical marijuana infusion facility'; and
- Establish new location requirements for a 'marijuana infusion facility' and 'medical marijuana infusion facility.'

This Text Amendment does not change the zoning or operational requirements that currently apply to facilities that *infuse* marijuana. If the Text Amendment is approved, with the exception of the location requirements, all other regulations and requirements in the ZDC that currently apply to facilities that *infuse* marijuana will continue to apply to the new standalone 'marijuana infusion facility' and 'medical marijuana infusion facility' land uses created by this Text Amendment.

Justification

As described below, this Text Amendment will provide for more appropriate location/separation requirements for marijuana infusion facilities, which, in turn, will respond to the tremendous, sustained increase in demand for marijuana products.

According to Arizona Department of Health Services ("DHS") records, in 2011—the first year of the Arizona Medical Marijuana Program—just over 16,000 medical marijuana registration cards were issued to qualifying patients throughout the State. Since 2011, there has been a significant increase in the issuance of medical marijuana registration cards, patients, and demand for medical marijuana. In fact, today there are over 312,000 medical marijuana cardholders — **an increase of over 1,900%**. Furthermore, on November 3, 2020, Arizona voters approved the "Smart and Safe Arizona Act"

legalizing recreational marijuana use for adults, which has further increased demand for marijuana products.

Despite the tremendous increase in demand for marijuana, the restrictive zoning and separation requirements under the Tempe ZDC have remained the same. The ZDC requires that a 'medical marijuana cultivation facility' or 'marijuana cultivation facility' (which currently includes facilities that *cultivate* and *infuse* marijuana) be located on property zoned GID (General Industrial District) or HID (Heavy Industrial District) AND be separated from the following uses: 1,320 feet from a childcare facility; 1,320 feet from a charter school, private school, or public school, which provides elementary or secondary education; 1,320 feet from a place of worship; 1,320 feet from a public park; 1,320 feet from a public library; 1,320 feet from a public community building; and 500 feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district.

There are very few properties in the City that are correctly zoned GID or HID AND that are separated from all of the above "protected uses." Therefore, it is nearly impossible to find available property that is suitably zoned and spaced for an infusion facility.

Furthermore, from a practical standpoint, marijuana infusion facilities operate similar to a laboratory and a bakery. After marijuana plants are grown, harvested and dried at a cultivation facility, some of the dried marijuana plants are sent directly to marijuana dispensaries for sale to consumers and other marijuana plants are sent to infusion facilities for further processing. At the infusion facility, specialized equipment is used to pull out (or extract) oils from the marijuana plants. Once the oil is pulled from the marijuana plant, the oil is then further processed to remove impurities that would otherwise give the oil an unpleasant taste. The resulting purified oil is then infused into a variety of products. For example, the oil may be infused into cooking oil or butter and then baked/blended into edible goods, such as brownies, chocolates, or cookies; the oil may be placed into vape cartridges; or the oil may be infused into a pill.

The operations associated with infusion facilities do not meaningfully generate odor, dust, gas, noise, or other nuisances, and even less (if any at all) beyond property lines. In addition, the ZDC requires all operations to be conducted entirely indoors, which further mitigates impacts on surrounding properties and justifies less stringent separation requirements for infusion facilities.

The intent of the ZDC's location/separation requirements for marijuana uses is to require a certain amount of separation between marijuana uses and certain "sensitive" or "protected" land uses. That said, Tempe's ZDC acknowledges that the separation requirements should not apply equally to all marijuana uses. Under Tempe's ZDC, marijuana dispensaries, which have different impacts on surrounding properties than marijuana cultivation facilities, have stricter separation requirements than cultivation facilities. Likewise, a marijuana testing facility is not required to be separated from any protected land uses.

As demonstrated above, a marijuana infusion facility has minimal impacts on surrounding properties. In many ways, a marijuana infusion facility operates akin to a laboratory and bakery—neither of which are required to be separated from other land uses under Tempe's ZDC. The separation

requirements that apply to marijuana infusion facilities should therefore be less strict than those that apply to dispensaries or cultivation facilities.

If approved, this Text Amendment would establish appropriate separation requirements for marijuana infusion facilities that are more consistent with the actual impact marijuana infusion facilities have on surrounding properties. In turn, the Text Amendment will increase the available locations where finished marijuana products may be produced, therefore responding to the increase in demand for marijuana.

General Plan Elements Analysis

As detailed below, the Text Amendment supports the goals and objectives of the 'Land Use and Development' and 'Economic Development' elements of the General Plan.

Land Use and Development – Land Use Element

Land Use Objectives

- *“Encourage a balanced community with a diversity of uses and employment opportunities”*

Land Use Strategies

- *“Preserve employment-based land use for current and future jobs development”*
- *“Identify vacant or underdeveloped commercial and industrial land to target for employment-related development”*
- *“Encourage commercial or industrial uses that support the city’s employment and tax-base”*

Economic Development

Economic Development Goals

- *“Stimulate a sustainable, diversified and vibrant economy and job force”*

Economic Development Objectives

- *“Sustain a business climate that fosters private business investment”*
- *“Develop an increased tax base”*
- *“Attract businesses and employers that provide jobs paying wages at or above the regional average”*

Economic Development Strategies

- *“Continue diversification of the economy – analyze and pursue emerging industries consistent with regional clusters”*

Analysis

As noted above, marijuana infusion facilities are only permitted on properties zoned for General Industrial or Heavy Industrial land uses. Further, under the current ZDC, marijuana infusion facilities must also be separated from the following: 1,320 feet from a childcare facility; 1,320 feet from a charter school, private school, or public school, which provides elementary or secondary education; 1,320 feet from a place of worship; 1,320 feet from a public park; 1,320 feet from a public library; 1,320 feet from a public community building; and 500 feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district.

There are very few properties in the City of Tempe that are correctly zoned GID or HID AND that are separated from *all* of the above separation requirements. Therefore, it is nearly impossible to find available property that is suitably zoned and spaced for an infusion facility. Simply put, the ZDC's current regulations have practically "zoned out" medical marijuana uses—and, notably, have zoned out infusion facilities, which, like a laboratory and bakery, have minimal impacts on surrounding properties. Approval of this Text Amendment will allow for additional industrially zoned properties in the City to be used for marijuana infusion facilities. In turn, the Text Amendment will encourage private investment and redevelopment in industrial areas, increase employment opportunities and draw additional residents/taxpayers to Tempe.

We look forward to discussing this Text Amendment request with you in the near future and respectfully request your approval.

Exhibits

Exhibit A – Proposed Text Amendment

Exhibit A

Proposed Text Amendment

Changes are proposed to Tempe's Zoning and Development Code as follows (additions in **ALL CAPS, UNDERLINED AND BOLDED**; deletions in ~~strikeout~~):

Section 7-114 – "M" Definitions.

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 INFUSION FACILITY MEANS A LOCATION AT WHICH AN ENTITY LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES MAY PROCESS MARIJUANA, MANUFACTURE MARIJUANA PRODUCTS, AND PACKAGE AND STORE MARIJUANA PRODUCTS FOR A MARIJUANA ESTABLISHMENT, BUT FROM WHICH MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.

Medical marijuana cultivation facility means an entity that cultivates ~~or manufactures~~ marijuana ~~by the means of cooking, blending, or incorporating into consumable/edible goods or other means~~ for a *medical marijuana dispensary*.

MEDICAL MARIJUANA INFUSION FACILITY MEANS A LOCATION AT WHICH AN ENTITY LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES MAY PROCESS MARIJUANA, MANUFACTURE MARIJUANA PRODUCTS, AND PACKAGE AND STORE MARIJUANA PRODUCTS FOR A MEDICAL MARIJUANA DISPENSARY, BUT FROM WHICH MARIJUANA AND MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.

Section 3-426 – 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".
- 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~~ **OR INFUSION FACILITY** is allowed in the GID and HID zoning districts. The locations are limited to the following:

1. *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 childcare 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 *place of worship*;
 - d. Within one thousand three hundred twenty (1,320) feet from a public park, library, or public community building;
 - 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*.

2. *A marijuana cultivation facility for medical marijuana or a 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 on the property line of a parcel containing the following:
 - a. Within one thousand three hundred twenty (1,320) feet from a childcare 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 *place of worship*;
 - 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.

3. **A MARIJUANA INFUSION FACILITY OR MEDICAL MARIJUANA INFUSION FACILITY 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 ON THE PROPERTY LINE OF A PARCEL CONTAINING THE FOLLOWING:

- a. **WITHIN FIVE HUNDRED (500) FEET FROM A CHILDCARE FACILITY;**
 - b. **WITHIN FIVE HUNDRED (500) FEET FROM A CHARTER SCHOOL, PRIVATE SCHOOL, OR PUBLIC SCHOOL, WHICH PROVIDES ELEMENTARY OR SECONDARY EDUCATION;**
 - c. **WITHIN FIVE HUNDRED (500) FEET FROM A PLACE OF WORSHIP;**
 - d. **WITHIN FIVE HUNDRED (500) 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. *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* **OR INFUSION 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. *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.
- E. **Marijuana Testing Facility; Permitted.** {NO CHANGES}
- F. **Use Acceptance.** A zoning administrative application shall be processed, certifying that all City of Tempe regulations for the *medical marijuana dispensary*, *marijuana establishment*, *cultivation facility*, [INFUSION 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.

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* **AND INFUSION 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. {NO CHANGES}

H. Industrial Hemp Program. {NO CHANGES}

Section 3-302 – Permitted Uses in Office/Industrial Districts

Table 3-302A identifies land uses according to permit status. See key below the table:

Table 3-302A Permitted Land Uses (LID, GID, HID)			
Uses	Districts		
	LID	GID	HID
Accessory Use	P	P	P
Adult Businesses [Section 3-403]	N	S	S
Amateur Radio Antennas [Section 3-422]			
35 feet in height or less	S	S	S
Over 35 feet in height	U(S)	U(S)	U(S)
Animal Kennels, and Animal Hospitals	N	P	P
Ball Bearing, Boxes or Cabinets Manufacturing	N	U	P
Cement and Paving Material Mixing Plant	N	N	P
Cemetery, Crematorium, Mausoleum	N	U	U
Childcare, center: nursery school, daycare center, similar	N	U	U

Chocolate, Cocoa or Coffee Roasting or Manufacturing	N	U	P
Clinics: Medical, Dental and Veterinary	P	P	P
Computer Centers, including Computer Hotels and Similar Technology Facilities	P	P	P
Commercial Uses - and all other uses under Table 3-202A "Permitted land Uses", unless otherwise specified in this table (except outdoor display)	U	U	U
Construction Offices and Sheds, Appurtenant Signs and Storage; Temporary - incidental to a construction project only for the duration of such project, not to exceed 24 months	P	P	P
Dispatching, Weighing Station	N	P	P
Electronic Instruments and Devices, Computers, Assembling and Manufacturing	P	P	P
Entertainment	N	U	U
Amusement businesses (a)	N	U	U
Outdoor (permanent use)	N	U	U
Theater or similar use	P	P	P
Exterminator and Insect Poison Manufacturing	N	N	P
Storage, Wholesale and Distribution	N	P	P
Extraction of Sand, Gravel and Other Natural Resources	N	N	U
Farming, Landscaping and Agricultural Supplies and Equipment, Wholesaling and Storage	N	P	P
Foundry Casting Light-Weight, Nonferrous Metal, not Causing Noxious Odors or Fumes	N	U	P
Fuel Distributing Station, Gasoline (bulk plant)	N	U	P
Gasoline and Petroleum Bulk Storage Tanks	N	N	P
Hospitals, Sanitariums, Nursing Homes: e.g. Orphanages, Institutions [Section 3-413]	U(S)	U(S)	U(S)
House-Movers, Equipment Storage or Wrecking Yards	N	N	P
Ice Manufacturing and Cold Storage	N	U	P
Industrial Hemp Program [Section 3-426]	N	P	P
Industrial, Scientific, Bio-Technology or Business Research, Development and Testing Laboratories, and Offices	P	P	P
Junkyards	N	N	P
Machine shops	N	P	P
Manufacturing, not causing noxious odors, fumes, noise, dust or vibration	N	P	P
Marijuana cultivation for Medical Marijuana Dispensary or Marijuana Establishment [Section 3-426]	N	S	S
MARIJUANA INFUSION FOR MEDICAL MARIJUANA DISPENSARY OR MARIJUANA ESTABLISHMENT	<u>N</u>	<u>S</u>	<u>S</u>
Marijuana Establishment (Without Cultivation) [Section 3-426]	S	S	S
Marijuana Testing Facility [Section 3-426]	N	S	S

Marijuana Testing Facility (Accessory to Medical Marijuana Dispensary or Marijuana Establishment) [Section 3-426]	S	S	S
Medical Marijuana dispensary [Section 3-426]	S	S	S
Mini-Warehouse/Rental Storage Facilities [Section 3-415]	N	U(S)	S
Motion Picture/Recording Studios	P	P	P
Offices	P	P	P
Outdoor			
Retailing [Section 3-417]	N	U(S)	U(S)
Storage of equipment, goods, or materials [Section 4-706(F)]	N	S	S
Places of Worship (except tents and other temporary structures or buildings not permitted) including childcare, Sunday school uses which are ancillary to main use	P	P	P
Childcare center, private school or charter school not ancillary to main use	U	U	U
Public Uses			
Civic Facilities (e.g., post office, library, city office, customer serving)	P	P	P
Municipal Facilities (maintenance, repair and storage)	N	P	P
Open space, parks, similar uses (See also, Schools)	P	P	P
Recycling centers			
Large	N	U	P
Small	P	P	P
Residence - of a caretaker or operator employed on the premises; such residence may include the family of the caretaker	P	P	P
Mobile Home or Trailer	U	U	U
Single- or Multi-Family Dwelling	N	N	N
Retail uses - directly related to the primary industrial use, not to exceed 15% of the total building area's primary industrial use.	P	P	P
Retail and Restaurant Uses - and all other uses under Table 3-202A, "Permitted Land Uses", unless otherwise specified in this table (except outdoor display)	U	U	U
Rock Crushing, Sand Blasting Yard	N	N	P
Schools			
Charter	P	P	P
Instructional	N	U	U
Private	N	U	U
Public	P	P	P
Vocational	N	U	U
Similar Uses [Section 6-301]	S	S	S
Stadium, Arena	N	U	P
Vehicle			
Auto Body Repair	N	P	P
Auto Salvage, parts, supplies or wrecking	N	N	P

Car Wash	N	U	U
Repair	N	P	P
Sales/Rental (indoor or outdoor)	N	U	U
Service Station	N	U	U
Towed Vehicle Storage	N	P	P
Warehouse, including distribution centers	N	P	P
Wholesaling, Repairing, Storage, and Rental Activities - in conjunction with a permitted use	N	P	P
Wireless Telecommunication Facilities [Section 3-421]	U(S)	U(S)	U(S)
Wood Products, Manufacturing	N	U	P

Key:

P = Permitted

S = Permitted with special standards or limitations

U = Use permit required

N = Not permitted

LID = Light Industrial District (previously IBD district)

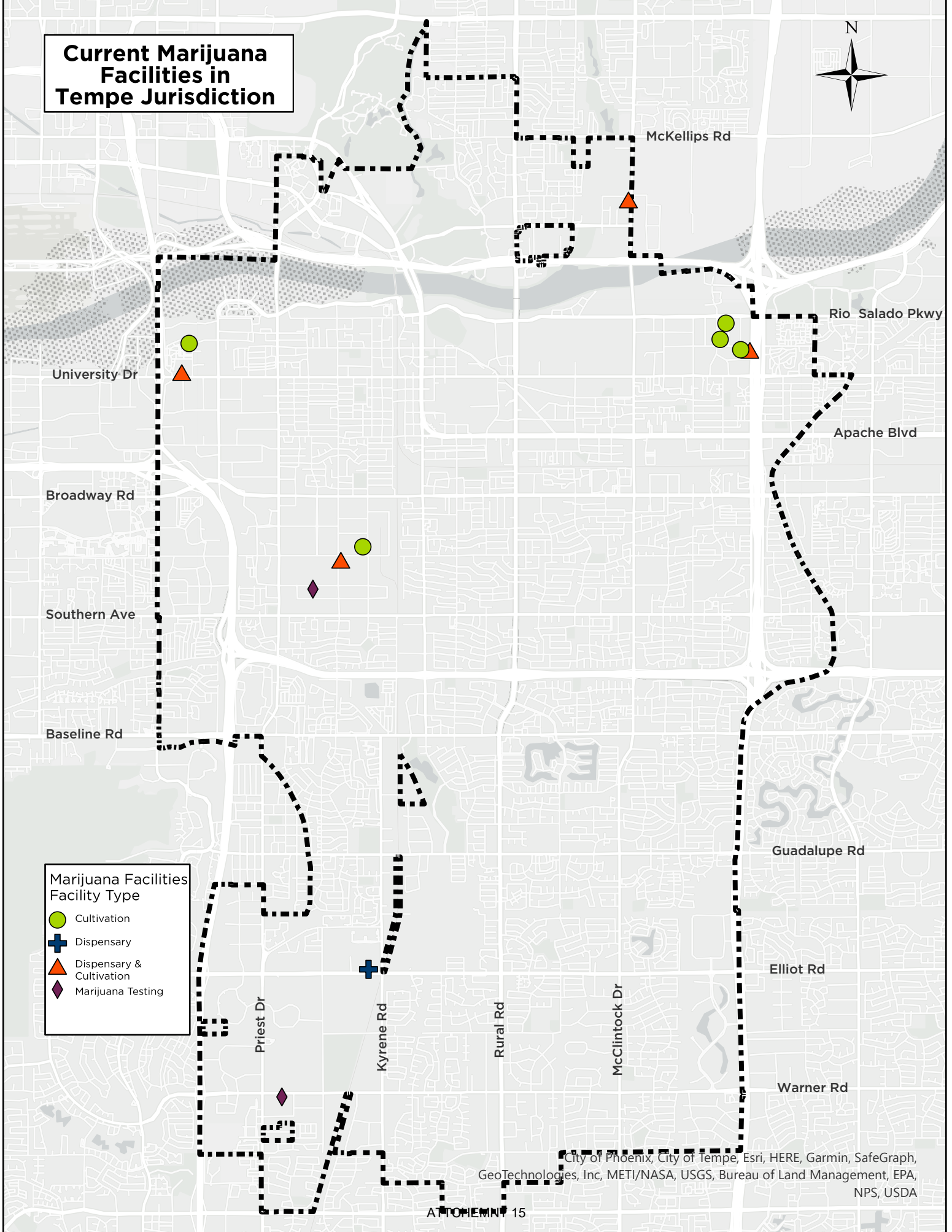
GID = General Industrial District (previously I-1 and I-2 districts)

HID = Heavy Industrial District (previously I-3 district)

Current Marijuana Facilities in Tempe Jurisdiction

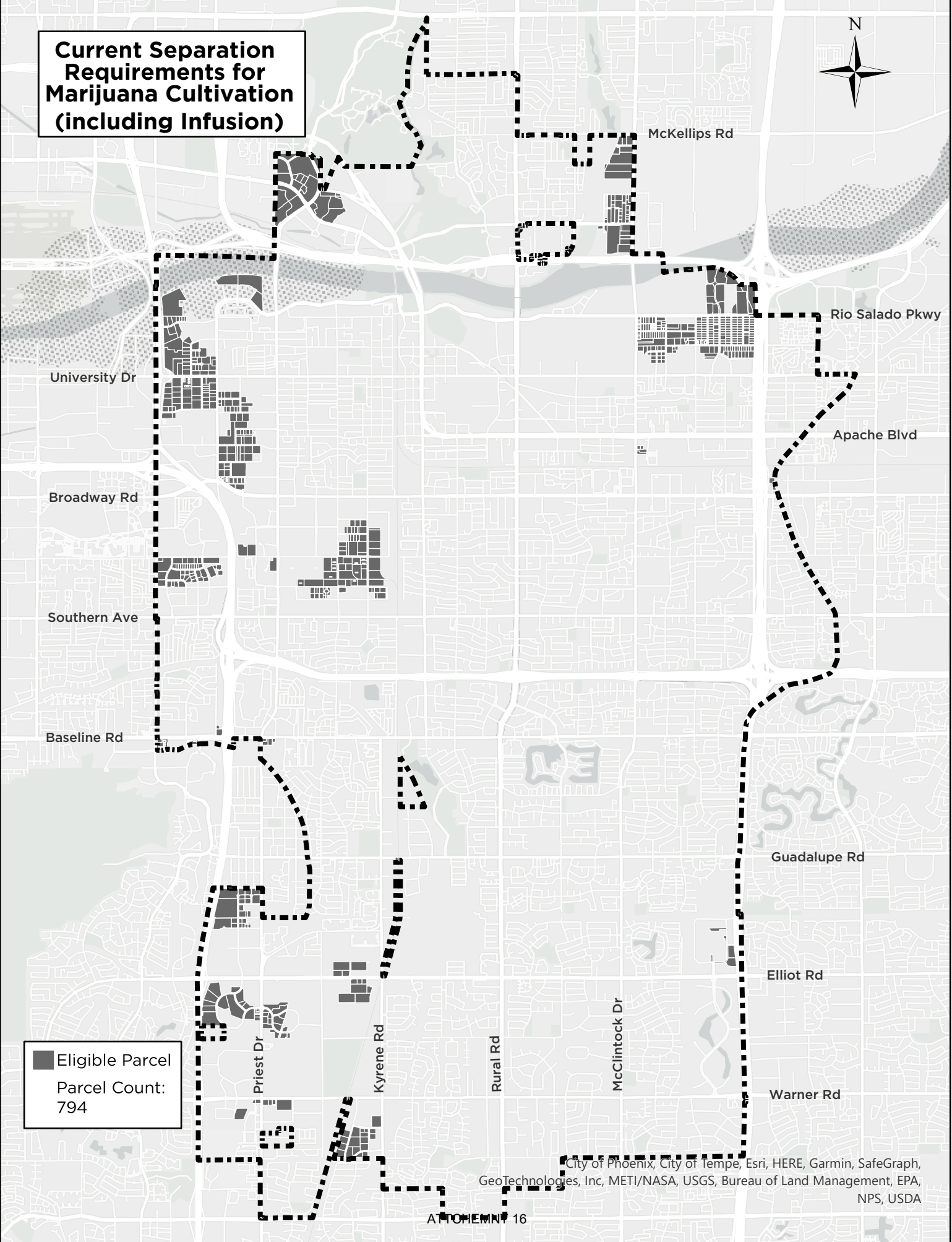


- Marijuana Facilities Facility Type**
- Cultivation
 - + Dispensary
 - ▲ Dispensary & Cultivation
 - ◆ Marijuana Testing



City of Phoenix, City of Tempe, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

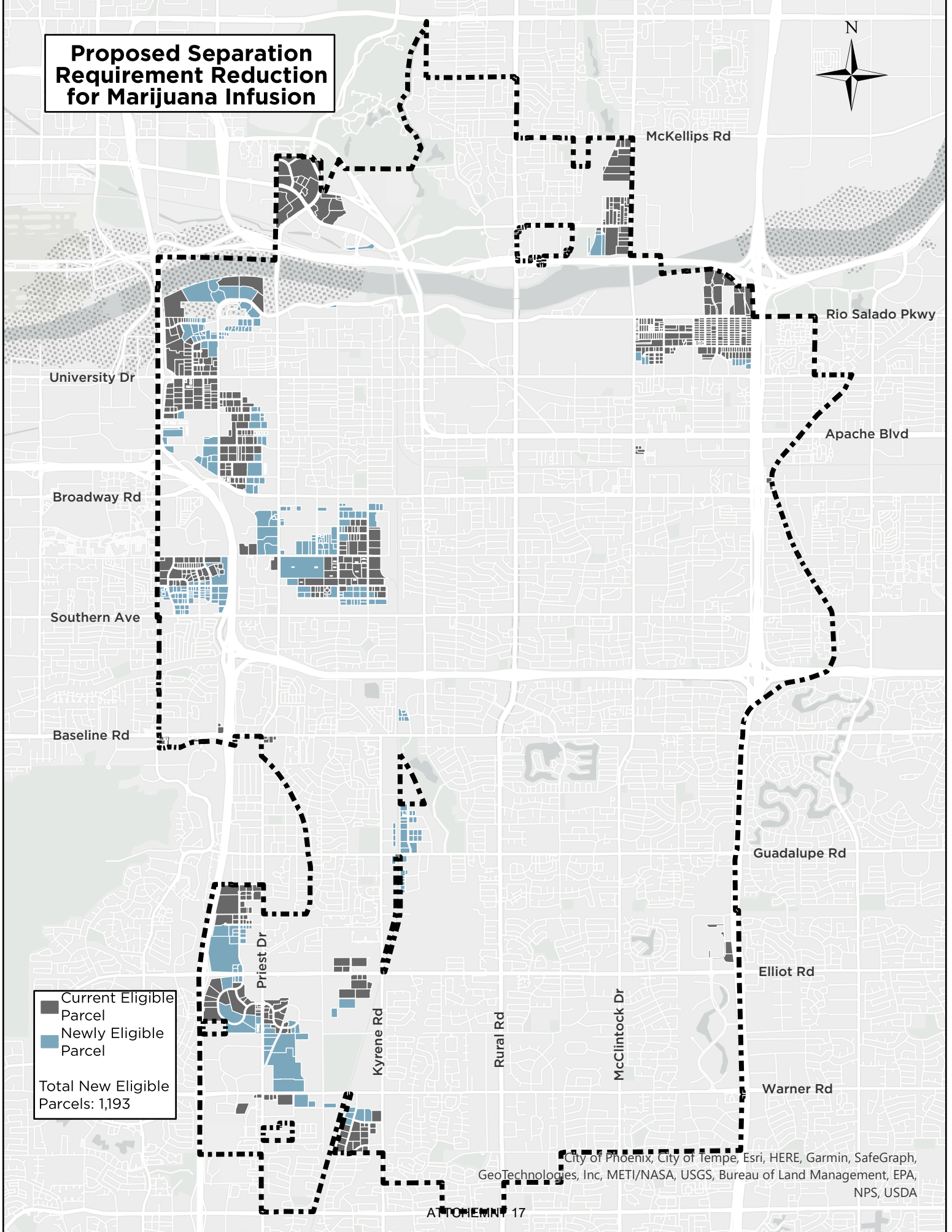
Current Separation Requirements for Marijuana Cultivation (including Infusion)



■ Eligible Parcel
Parcel Count:
794

City of Phoenix, City of Tempe, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

Proposed Separation Requirement Reduction for Marijuana Infusion



■ Current Eligible Parcel
■ Newly Eligible Parcel

Total New Eligible Parcels: 1,193

City of Phoenix, City of Tempe, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

Agenda Item 7 – Proposed Zoning and Development Code Marijuana Infusion Facility Text Amendment

Michael Maerowitz, a zoning attorney at Gammage and Burnham, introduced himself. Their firm is the applicant for the code text amendment on Mike Halsam's behalf. The NAC meeting is the first public meeting on the issue. The text amendment would be on the Development Review Commission's May 24 agenda for action and then early and late June hearings at Council.

Mr. Maerowitz provided background on the different types of marijuana facilities, which include dispensaries, cultivation facilities and infusion facilities. Infusion facility produce a consumable product where the extracted oil from marijuana plants is baked or blended into products. Tempe's current Zoning and Development Code groups cultivation and infusion facilities together and subjects them to the same zoning restrictions of what type of zoning they can be in as well as required separation requirements from defined places.

Current Separation Requirements:

- Childcare facility – 1,320 feet
- Schools – 1,320 feet
- Place of Worship – 1,320 feet
- Public Park, Library or Community Building – 1,320 feet
- Residential Zoning District – 500 feet

The proposed text amendment would separate infusion from the definition of Marijuana Cultivation Facility and Medical Marijuana Cultivation Facility. It would then create a new definition/land use for a Marijuana Infusion Facility and a Medical Marijuana Infusion Facility. This includes establishing new separation requirements for these types of facilities.

Proposed Separation Requirements:

- Childcare facility – 500 feet
- Schools – 500 feet
- Place of Worship – 500 feet
- Public Park, Library or Community Building – 500 feet
- Residential Zoning District – 500 feet

Mr. Maerowitz noted they are proposing the changes as Mr. Halsam would like to open an infusion facility in an industrial area that currently does not meet the separation requirement. He also explained the operational differences of an infusion facility, which works more like a lab with minimal odor, dust, gas, noise, or other nuisances. Odor comes with the cultivation/growing process. The change in zoning code would also help to serve a tremendous demand for medical and recreational use.

Commissioner questions and answers:

Q: Why are the ordinances for these facilities restricted differently than alcohol distribution or distillery facilities?

A: The marijuana act in 2010 included regulatory statutes that required separation requirements of 500 feet from schools. Local jurisdictions could put in other separation requirements. The numbers for other separations aren't dictated anywhere, it's just the 500 feet from schools that is required.

Q: Do other states with legalized recreational marijuana (CA, OR, CO) also have cultivation and infusion together? Have they separated?

A: Arizona grouped cultivation and infusion together with the legalization of medical marijuana in 2010 and didn't allow for them to take place separately. That requirement was updated with the legalization of recreational marijuana in November of 2020. They would have to survey other states to know how they categorize cultivation and infusion.

Q: Have any other cities approached amending their zoning requirements?

A: The first city to make a change is Tucson. They had similar regulations to Tempe, but in 2021 they separated the uses and created a new definition. Tucson only requires separation from schools for infusion and left the other requirements for cultivation.

Q: Have there been any challenges in Tucson?

A: Not that they are aware of. Infusion takes place in fully enclosed buildings in industrial areas that are not open to the public.

Q: What are the arguments used by those who would not support this change?

A: The argument depends on what you think are appropriate uses within industrial areas. Some cities limit the type of use when they don't want them to bunch up. Tempe doesn't. Most arguments relate to cultivation and are around odor mitigation. Infusion is different.

Motion: Commissioner Weller made a motion to support the proposed Zoning and Development Code text amendment related to marijuana infusion facilities.

Second: Vice Chair Stern

Commission Member Ayes: Brandon Abrahams, Hannah Moulton Belec, Maureen Eastty, Diane Harden, Barb Harris, Melanie Larimer, Nancy Puffer, Mark Rude, Joel Stern, Nicholas Weller

Commission Member Abstention: Jana Lynn Granillo,

Absent: Annette Fields, Linda Knutson and Daniel Schugurensky

Result: Approved by a vote of those present with 10 in favor, 1 abstention and 0 against.

Agenda Item 8 – Tempe Tomorrow: General Plan 2050 working group opportunity

Commissioners were requested to nominate representatives to the Tempe Tomorrow: General Plan 2050 Technical Advisory Group. Commissioner Abrahams volunteered to be the representative and Commissioner Weller volunteered to be the alternative representative.

Agenda Item 9 – Proposed Future Agenda Items

Zoning and Development Code Text Amendments

Short Term Rentals Update

Number of Registered Neighborhoods

Update on Maryanne Corder Neighborhood Grants

Water Conservation -- anticipated water usage policy changes and approach given drought

Entertainment District Noise Issues