



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: November 20, 2018

Title: P18TA00005 MEDICALMARIJUANA-DESIGNATED CAREGIVER CULTIVATION LOCATION ZONING CODE TEXT AMENDMENT

Introduction/Background:

Pima County's requirements for caregiver cultivation are different from those in the City of Tucson and other jurisdictions. The county requirements are the same for caregivers as for the medical marijuana dispensary cultivation sites. These are onerous on caregivers who are licensed by the State of Arizona to cultivate medical marijuana.

Discussion:

This text amendment will allow designated caregivers to cultivate medical marijuana with an approved Type 1 Conditional Use Permit in the GR-1 and RH zones and allow it as an outright permitted use in the CB-2 zone. Currently it is only allowed with an approved Type 2 Conditional Use permit in the CB-2 zone.

Conclusion:

The current requirements in the zoning code are onerous and restrictive. The text amendment would further align and promote standardization with the City of Tucson's Land Use Code.

Recommendation:

Staff and Planning and Zoning Commission recommend approval of the Zoning Code text amendment.

Fiscal Impact:

n/a

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: Development Services, Planning Division Telephone: 724-8800

Contact: Elva Pedregó Telephone: 724-6718

Department Director Signature/Date:  10/24/18

Deputy County Administrator Signature/Date:  10/24/18

County Administrator Signature/Date:  10/24/18



PIMA COUNTY
DEVELOPMENT SERVICES

TO: Honorable Board of Supervisors

FROM: Chris Poirier, Planning Official
Public Works-Development Services Department-Planning Division



DATE: October 24, 2018

SUBJECT: P18TA00005 MEDICAL MARIJUANA – DESIGNATED CAREGIVER
CULTIVATION LOCATION ZONING CODE TEXT AMENDMENT

The above referenced Zoning Code Text Amendment is scheduled for the Board of Supervisors' **TUESDAY, NOVEMBER 20, 2018** hearing.

REQUEST: Proposal to amend by ordinance the Pima County Zoning Code Title 18, Chapter 18.13 (RH Rural Homestead Zone), Section 18.13.030 (Conditional uses); Chapter 18.14 (GR-1 Rural Residential Zone), Section 18.14.030 (Conditional Uses) to allow and provide regulations for Medical Marijuana Designated Caregiver Cultivation Locations as a conditional use in the RH and GR-1 zones; Chapter 18.45 (CB-2 General Business Zone), Section 18.45.030 Permitted Uses, to allow and provide regulations for Medical Marijuana Designated Caregiver Cultivation Locations as a permitted use; and Section 18.45.040 (Conditional Uses) to repeal the Conditional Use Permit requirement for Designated Caregiver Cultivation Locations in the CB-2 zone.

OWNER: N/A

APPLICANT: Pima County Development Services Department

DISTRICTS: ALL

STAFF CONTACT: Elva Pedrego

PUBLIC COMMENT TO DATE: Staff forwarded the draft text amendment to stakeholders and, as of October 24, 2018, did not receive any written comments. A stakeholder did contact Staff with questions but did not verbalize any position on the proposed changes.

PLANNING AND ZONING COMMISSION RECOMMENDATION: **APPROVAL** (6-0; Commissioners Bain, Gungle, Hook and Matter were absent).

STAFF RECOMMENDATION: **APPROVAL.**

TD/EP/ar
Attachments



BOARD OF SUPERVISORS MEMORANDUM

Subject: P18TA00005

Page 1 of 2

FOR NOVEMBER 20, 2018 MEETING OF THE BOARD OF SUPERVISORS

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Chris Poirier, Planning Official
Public Works-Development Services Department-Planning Division

DATE: October 24, 2018

ADVERTISED ITEM FOR PUBLIC HEARING

ZONING CODE TEXT AMENDMENT

P18TA00005 MEDICAL MARIJUANA – DESIGNATED CAREGIVER CULTIVATION LOCATION ZONING CODE TEXT AMENDMENT

PROPOSAL TO AMEND BY ORDINANCE THE PIMA COUNTY ZONING CODE TITLE 18, CHAPTER 18.13 (RH RURAL HOMESTEAD ZONE), SECTION 18.13.030 (CONDITIONAL USES); CHAPTER 18.14 (GR-1 RURAL RESIDENTIAL ZONE), SECTION 18.14.030 (CONDITIONAL USES) TO ALLOW AND PROVIDE REGULATIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS AS A CONDITIONAL USE IN THE RH AND GR-1 ZONES; CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.030 PERMITTED USES, TO ALLOW AND PROVIDE REGULATIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS AS A PERMITTED USE; AND SECTION 18.45.040 (CONDITIONAL USES) TO REPEAL THE CONDITIONAL USE PERMIT REQUIREMENT FOR DESIGNATED CAREGIVER CULTIVATION LOCATIONS IN THE CB-2 ZONE. On motion, the Planning and Zoning Commission voted 6-0 to recommend **APPROVAL** (Commissioners Bain, Gungle, Hook and Matter were absent). Staff recommends **APPROVAL**.
(ALL DISTRICTS)

Planning and Zoning Commission Public Hearing Summary (September 26, 2018)

Staff presented information from the text amendment to the commission stating that the proposed text amendment was the second before the commission since Proposition 203 legalizing Medical Marijuana, became effective in 2010. The first amendment recommended for approval by the commission and approved by the board in 2015, allowed medical marijuana dispensaries to be located in the Gateway and Buffer Overlay zones. This proposed text amendment will allow designated caregivers as defined by the state, to cultivate medical marijuana in the RH and GR-1

zones with an approved Type I conditional use permit and as an outright permitted use in the CB-2 zone. Currently the use is only allowed in the CB-2 zone with an approved Type III conditional use permit. Staff clarified that the requirements listed in Section 18.45.040E5 would apply. These are required setbacks, a 250 square foot growth area limitation and the requirement for the cultivation area to be located in an enclosed building.

Staff reiterated the setback requirements from schools, bus stops, etc.

Call to the public was made, no member from the public appeared on item.

Commissioner Maese made a motion to recommend **APPROVAL** of the Zoning Code text amendment P18TA00005; Commissioner Tronsdal seconded.

Upon a roll call vote, the motion to recommend **APPROVAL** passed (6-0; Commissioners Cook, Johns, Maese, Becker, Tronsdal and Membrila voted 'yes;' Commissioners Bain, Gungle, Hook and Matter were absent).

TD/EP/ar
Attachments

cc: Tom Drzazgowski, Chief Zoning Inspector
P18TA00005 File

**PIMA COUNTY DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION
STAFF REPORT TO THE PLANNING AND ZONING COMMISSION**

**PUBLIC HEARING
SEPTEMBER 26, 2018**

**P18TA00005 MEDICAL MARIJUANA – DESIGNATED CAREGIVER CULTIVATION
LOCATION TEXT AMENDMENT**

STATUS / AGENDA ITEMS	Planning and Zoning Commission Public Hearing Zoning Code Amendment
------------------------------	---

DESCRIPTION	Proposal to amend by ordinance the Pima County Zoning Code Title 18, Chapter 18.13 (RH Rural Homestead Zone), Section 18.13.030 (Conditional uses); Chapter 18.14 (GR-1 Rural Residential Zone), Section 18.14.030 (Conditional Uses) to allow and provide regulations for Medical Marijuana Designated Caregiver Cultivation Locations as a conditional use in the RH and GR-1 zones; Chapter 18.45 (CB-2 General Business Zone), Section 18.45.030 Permitted Uses, to allow and provide regulations for Medical Marijuana Designated Caregiver Cultivation Locations as a permitted use; and Section 18.45.040 (Conditional Uses) to repeal the Conditional Use Permit requirement for Designated Caregiver Cultivation Locations in the CB-2 zone. (All districts)
--------------------	---

INITIATION	Planning and Zoning Commission, August 8, 2018
-------------------	--

PUBLIC COMMENT

Staff has received some questions on the proposed Zoning Code text amendment.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the proposed Pima County Zoning Code text amendment.

STAFF REPORT

This is the second text code amendment that has been before the Planning and Zoning Commission since the voters approved Proposition 203 legalizing medical marijuana in 2010. The first text code amendment removed the restriction that prohibited medical marijuana dispensaries and medical marijuana dispensary off-site cultivation locations from being located within the buffer overlay and gateway overlay zones was approved in 2015.

Staff is proposing the current text code amendment which will allow a designated caregiver to cultivate medical marijuana in the RH and GR-1 zones with an approved Type I Conditional Use Permit, and allow it as an outright permitted use in the CB-2 zone. Currently it is only allowed with approval of a Type III Conditional Use Permit in the CB-2 zone. All existing conditions and requirements of a medical marijuana dispensary offsite cultivation location (see attached) would apply such as; the cultivation location must be located in a permanent building; meet all the setback requirements from other cultivation locations, schools, libraries, churches, bus stops, and childcare centers. The cultivation location area would be limited to 250 square feet.

Staff supports the proposed text amendment. The current requirements in the zoning code are onerous on caregivers that are licensed by the state to cultivate marijuana for approved medical marijuana patients. The amendment would further align and promote standardization with the City of Tucson's Land Use Code.

Respectfully submitted,



Elva Pedregó
Senior Planner

Section 18.45.040E of the Pima County Zoning Code

E. Medical marijuana dispensary offsite cultivation location: If the Arizona Revised Statutes are amended to allow medical marijuana dispensary offsite cultivation locations, as long as the law remains in full force and effect, a medical marijuana dispensary offsite cultivation location is permitted as a Type III conditional use subject to the following conditions:

1. Minimum notification area: The minimum notification area for a conditional use permit for a medical marijuana dispensary is two thousand six hundred forty feet.
2. Supplemental application: In addition to the application required by Chapter 18.97, an applicant for a conditional use permit for a medical marijuana dispensary offsite cultivation location shall complete an application that includes all of the following information:
 - a. If the application is by an agent for the owner the authorization must include an explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary offsite cultivation location.
 - b. The legal name and address of the affiliated medical marijuana dispensary.
 - c. The name address and date of birth of each principal officer and board member of the medical marijuana dispensary affiliated with the offsite cultivation location and the name, address, and date of birth of each medical marijuana dispensary agent.
 - d. A copy of the operating procedures adopted in compliance with A.R.S. Section 36-2804(B)(1)(c).
 - e. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the offsite cultivation location has been convicted of one of the following offenses:
 - i. A violent crime as defined in A.R.S. Section 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
 - ii. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. Section 36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.
 - f. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the offsite cultivation location has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
 - g. A floor plan showing the location, dimensions of and type of security measures demonstrating that the medical marijuana dispensary offsite cultivation location will meet the definition of enclosed locked facility contained in A.R.S. Section 36-2801(6).

3. Prohibited locations: A medical marijuana dispensary offsite cultivation location is not permitted in a historic zone.

4. Community impacts: The board may not approve a medical marijuana dispensary offsite cultivation location at a location if substantial evidence is presented that locating the cultivation location at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the cultivation location at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.

5. Development standards:

- a. A medical marijuana dispensary offsite cultivation location must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
- b. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of two thousand feet from all medical marijuana dispensaries measured from the parcel boundary to the parcel boundary;
- c. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of two thousand feet from all other medical marijuana dispensary offsite cultivation locations measured from the parcel boundaries;
- d. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity facility where children may be enrolled;
- e. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a public, private, parochial, charter school bus stops.
- f. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a childcare center.
- g. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a library or public park.
- h. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a church.
- i. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of one thousand feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
- j. A medical marijuana dispensary offsite cultivation location may not have outdoor seating areas.
- k. The maximum floor area of a medical marijuana dispensary offsite cultivation location is two thousand square feet.
- l. The secure storage area for the medical marijuana stored at the medical marijuana dispensary offsite cultivation location shall not exceed one thousand square feet.

6. Permit conditions: The board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The board must include the

following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary offsite cultivation location:

- a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after a specified period of time.
 - b. A requirement that the medical marijuana dispensary offsite cultivation location meets security requirements adopted by the Arizona Department of Health Services.
 - c. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors or odors into the environment.
 - d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary offsite cultivation location is to be located stating that the structure complies with all fire code requirements and supply a copy of that certification to the development services department.
 - e. A requirement that the medical marijuana dispensary offsite cultivation location is prohibited from permitting anyone to consume marijuana on the premises.
 - f. A requirement for a reasonable setback from a zoning district other than CB-2, CI-1, CI-2, and CI-3 or any existing, established, residential use in those zones.
 - g. A requirement for a reasonable setback from a zoning district in a city or town other than classifications that permit densities and uses greater than or equal to those permitted CB-2, CI-1, CI-2, and CI-3.
 - h. A requirement that the medical marijuana dispensary offsite cultivation location comply with applicable sections of Title 8 of the Pima County Code.
7. Enforcement: The provisions of this subsection may be enforced through the use of the civil penalty procedure provided for by Section 18.95.030 or by injunction or other civil proceeding as provided by A.R.S Section 11-808(H). Notwithstanding any other provision of this code; this subsection shall not be enforced under A.R.S Section 11-808(C) as a misdemeanor.
8. Fees: The fee for application and hearing is a combination of the existing fees for conditional use permit application filing fee, the site analysis submittal fee and the notice of public hearing fee included in the most current development services department fee schedule.

ORDINANCE 2018-_____

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS, RELATING TO ZONING (TITLE 18); AMENDING THE PIMA COUNTY ZONING CODE CHAPTER 18.13.(RH RURAL HOMESTEAD ZONE), SECTION 18.13.030 (CONDITIONAL USES) AND CHAPTER 18.14 (GR-1 RURAL RESIDENTIAL ZONE), SECTION 18.14.030 (CONDITIONAL USES) TO PERMIT AND PROVIDE REGULATIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS AS A CONDITIONAL USE IN THE RH AND GR-1 ZONES; AND AMENDING CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.030 PERMITTED USES, TO PERMIT AND PROVIDE REGULATIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS AS A PERMITTED USE AND AMENDING SECTION 18.45.040 (CONDITIONAL USES) TO REPEAL THE CONDITIONAL USE PERMIT REQUIREMENT FOR DESIGNATED CAREGIVER CULTIVATION LOCATIONS IN THE CB-2 ZONE. (ALL DISTRICTS)

THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA FINDS THAT:

1. The Planning and Zoning Commission, at its August 8, 2018 meeting, initiated and authorized staff to amend the Pima County Zoning Code for medical marijuana designated caregiver cultivation locations.
2. This ordinance updates the zoning code to repeal the Type 3 Conditional Use permit requirement for medical marijuana designated caregiver cultivation locations in CB-2 - General Business Zone and allow medical marijuana designated caregiver cultivation locations as a permitted use and allow medical marijuana designated caregiver cultivation locations in the GR-1 (Rural Residential) and RH (Rural Homestead) zones as a Type 1 Conditional Use.
3. This ordinance does not create new restrictions on the use of property, and this ordinance is not intended to, nor should it be construed to reduce any existing rights to use, divide, sell or possess private real property.

IT IS ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AS FOLLOWS:

SECTION 1. Pima County Zoning Code Chapter 18.13 - RH Rural Homestead zone is amended as follows:

Chapter 18.13 – RH RURAL HOMESTEAD ZONE

...

18.13.030 – Conditional Uses.

...

B. Uses conditionally permitted:

....

35. Medical marijuana designated caregiver cultivation location:

a. Type 1 procedure.

- 1) All conditions and restrictions for medical marijuana dispensary offsite cultivation location as provided for in Section 18.45.040E5 except that the Type 1 procedure as provided for in Section 18.97.030D2 is applied and the designated caregiver cultivation location area is limited to two hundred fifty square feet.
- 2) More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed two hundred fifty square feet.

356. Other conditional uses:....

SECTION 2. Pima County Zoning Code Chapter 18.14 - GR-1 Rural Residential Zone is amended as follows:

Chapter 18.14 - GR-1 RURAL RESIDENTIAL ZONE

...

18.14.030 – Conditional Uses.

...

B. Uses conditionally permitted:

...

22. Medical marijuana designated caregiver cultivation location:

a. Type 1 procedure.

- 1) All conditions and restrictions for medical marijuana dispensary offsite cultivation location as provided for in Section 18.45.040E5 except that the Type 1 procedure as provided for in Section 18.97.030D2 is applied and the designated caregiver cultivation location area is limited to two hundred fifty square feet.
- 2) More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed two hundred fifty square feet.

223. Other conditional uses:....

SECTION 3. Pima County Zoning Code Chapter 18.45 – CB-2 General Business Zone is amended as follows:

Chapter 18.45 – CB-2 GENERAL BUSINESS ZONE

...

18.45.030 – Permitted Uses.

...

B. Additional uses:

...

56. Medical marijuana designated caregiver cultivation location subject to the following conditions:

- a. All conditions and restrictions for medical marijuana dispensary offsite cultivation locations as provided for in Section 18.45.040E5 except that the designated caregiver cultivation location cultivation area is limited to two hundred fifty square feet.
- b. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed two hundred fifty square feet.

...

18.45.040 – Conditional Uses.

...

~~F. Medical marijuana designated caregiver cultivation location: If the Arizona Revised Statutes are amended to allow medical marijuana cultivation by designated caregivers, as long as the law remains in full force and effect, a designated caregiver cultivation location is permitted as a Type III conditional use subject to the following conditions:~~

- ~~1. All conditions and restrictions for medical marijuana dispensary offsite cultivation locations except that the designated caregiver cultivation location cultivation area is limited to two hundred fifty square feet.~~
- ~~2. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed two hundred fifty square feet.~~

~~G-F. Racetrack or sports stadium, provided: . . .~~

~~H. G. Non-Chartered Financial Institutions, provided: . . .~~

SECTION 4. This ordinance is effective 30 days after its adoption.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona,
this _____ day of _____, 2018.

Chairman, Pima County Board of Supervisors

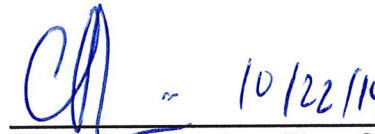
ATTEST:

Clerk, Board of Supervisors

APPROVED AS TO FORM

 10/22/18

Civil Deputy County Attorney
Lesley Lukach

 10/22/18

Executive Secretary, Pima County
Planning and Zoning Commission