

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

**PUBLIC HEARING
July 23, 2015**

Co8-15-01

**MEDICAL MARIJUANA ZONING CODE TEXT
AMENDMENT**

STATUS / AGENDA ITEMS

**Planning and Zoning Commission Public Hearing
Zoning Code Amendment**

DESCRIPTION

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS RELATING TO ZONING; AMENDING THE PIMA COUNTY ZONING CODE TITLE 18 BY AMENDING CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.040 (CONDITIONAL USES) TO REVISE THE PROHIBITED LOCATIONS SECTIONS TO ALLOW MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATIONS IN THE GATEWAY AND BUFFER OVERLAY ZONES. (ALL DISTRICTS)

INITIATION

Planning and Zoning Commission

PUBLIC COMMENT

None received

STAFF RECOMMENDATION

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

STAFF REPORT

This text amendment is unique in that it was requested by a member of the public; The Epstein Feingold Consulting Group ("Applicant"), who has expressed interest in locating a dispensary on a parcel that is in both overlay zones. The county's current restrictions prohibit a dispensary and a dispensary off site cultivation location in the gateway and buffer overlay zones.

On October 5, 2010 the Board of Supervisors approved the Medical Marijuana text code amendment to have regulations in place in the event Proposition 203 legalizing medical marijuana passed in the November general election. Voters approved the proposition and our ordinance became effective November 6, 2010.

The Pima County Zoning Code allows a medical marijuana dispensary and dispensary offsite cultivation location as a Type III Conditional Use in the CB-2 zone. In addition to the gateway and buffer overlay restriction, there are a number of regulations that the dispensaries and

offsite cultivation locations must adhere to such as size, setbacks from other dispensaries, setbacks from schools, libraries churches or substance abuse facilities. The applicant states that "the way Pima County's Zoning Code is currently written makes it unduly burdensome (if not impossible) to identify any viable property within the Tucson West Community Health Analysis Area ("CHAA's"). The only viable piece of property that they were able to identify in the Tucson West CHAA is located in a gateway and buffer overlay zone thus the amendment request.

Staff acknowledged when the text amendment was written that there was a possibility that changes to the ordinance would be needed once the regulations were implemented. Staff supports the text amendment since anyone proposing a medical marijuana dispensary or medical marijuana dispensary offsite cultivation location on a parcel not only has to meet all the zoning requirements, but also has to obtain a Type III Conditional Use permit; an intensive process that allows public input on each proposed site.

Respectfully submitted,

Elva Pedregó,
Senior Planner

cc: Co8-15-01 file

E & F EPSTEIN FEINGOLD CONSULTING GROUP, LLC

*A Consulting Company
4641 E Don Jose Dr.
Tucson, AZ 85718*

*Pamela N. Epstein
Jessica M. Feingold*

*Pamela@epsteinfeingoldconsulting.com
Jessica@epsteinfeingoldconsulting.com*

June 4, 2015

Pima County
Board of Supervisors
Planning and Zoning Commissioners
Planning Department
201 N. Stone Ave
Tucson, AZ 85701

VIA HAND DELIVERY

RE: **Medical Marijuana Text Change Amendment Hearing Request and Background**

Dear Honorable Supervisors, Commissioners and Planning Staff:

A. Introduction

The Epstein Feingold Consulting Group, LLC (“E & F Consulting” or the “Firm”) represents Sean Nicks and Lori Nicks, property owners (“Owners”) of a 5.7 acre parcel of real property located at 4775 West Ajo Way in Pima County, Arizona, Parcel ID: 212-50-0100 (hereinafter referred to as the “Property”). The Firm is submitting this proposal letter (“Letter”) on behalf of the Owners in making an official request for your approval of an application for a Text Change Amendment. The requested Text Change Amendment and the proposed language is a minimal change to the current Zoning Code and approval of this request will directly result in providing substantial benefits to the residents of Pima County. If approval is obtained, the Owners intend to develop a phased commercial retail development project (the “Project”) within a retail enhancement zone, which will include a Medical Marijuana Dispensary constructed in accordance with the laws and regulations set forth by the Arizona Medical Marijuana Act. Further, as a direct result of approving this Text Change Amendment, Pima County will be able to continue to establish and maintain an economic competitive position within the State of Arizona’s burgeoning and profitable medical marijuana industry.

B. Factual Background

On November 14, 2010, Arizona became the fourteenth state to legalize the use of medical marijuana with the passage of Arizona's Proposition 203, referred to as the Arizona Medical Marijuana Act (the "AMMA" or the "Act"). The Act allows for qualified patients with a delineated "debilitating medical condition" to possess up to 2.5 ounces of marijuana every two weeks, upon obtaining a recommendation from a qualified physician. The Arizona Department of Health Services ("ADHS") is the governing agency that has been designated with the power and authority of implementation of the Act.

AHDS divided the state of Arizona geographically into 126 Community Health Analysis Areas ("CHAA's"), based on the number of registered pharmacies on a 10:1 ratio. A dispensary may only be opened and operated within one of these CHAA's.

In 2012, ADHS issued 100 Dispensary Registration Certificates during the initial open application period. Of those original 100 Certificates, only 88 received approvals to operate; however, to date, only 83 dispensaries are operational. AHDS released its annual report on November 14, 2014 (the "2014 Report"), which applies to the fiscal year from July 2013 – June 2014. The 2014 Report revealed that there are currently 63,417 total registered medical marijuana patients and caregivers - comprising over a 50% increase in patients from the first year of the program.¹

In 2014, the estimated population of Pima County totaled 1,004,516 inhabitants.² According to AHDS's 2014 Report, 8,098 residents in Pima County possess medical marijuana cards. This statistic confirms that one out of every 100-registered qualified patients or 13.2% of the total number of registered cardholders in the entire State of Arizona are living in Pima County.³ To date, ADHS has only provided two CHAA's under Pima County's jurisdictional control including the Tucson West CHAA. Moreover, the closest dispensary to the proposed Project site to service Pima County residents is 6.85 miles away.

Since the passage and implementation of the AMMA, there is no supporting evidence linking the availability of medical marijuana that correlates with an increase in crime rates and activity. Conversely, there is ample evidence supporting increased significant economic revenue generated and benefits attributable to the medical marijuana industry, at both the state and municipal level. For example, in the first year of Arizona's Medical Marijuana Program, dispensaries sold roughly \$40 million worth of cannabis and infused

¹ <http://mjbizdaily.com/arizona-mmj-sales-triple-to-hit-112m/>

² See, U.S. Census available at [Quickfacts.census.gov](http://quickfacts.census.gov)

³ Arizona Department of Health Services, The Arizona Medical Marijuana Act (AMMA) End of Year Report 2014, pg. 4 Chart. (hereinafter, "2014 Report"). Available at <http://azdhs.gov/documents/preparedness/medical-marijuana/reports/2014/arizona-medical-marijuana-end-of-year-report-2014.pdf>

products to qualified patients (amounting to \$520,000 in sales per dispensary in the initial year of operation⁴). In a 2013 study by the Regulated Dispensaries of Arizona Association, Professor Timothy Hogan of Arizona State University concluded that Arizona's medical marijuana industry could employ more than 1,500 Arizona workers and provides an aggregate of \$74 million in income to those households.⁵

The positive impacts associated with the medical marijuana industry have resulted in the rapid and considerate expansion of medical marijuana programs by various neighboring cities and counties. In September of 2014, Tucson City Council unanimously voted to lift zoning restrictions for those who are licensed to cultivate medical marijuana within the city limits on I-1 and I-2 (industrial) zoning. The Tucson City Council also voted to allow a licensed dispensary to deliver medical marijuana to qualifying patients and extended dispensary hours of operation from 9:00am to 7:00pm to 7:00am to 10:00pm.⁶ This zoning change allowed for dispensaries operating within the City of Tucson to effectively compete with their largest competitors across the state - specifically those dispensaries that are not subject to zoning restrictions regard cultivation sizing and extended hours of operation. This change in zoning ultimately benefitted the City of Tucson's cardholders in a number of ways. This change not only provided City of Tucson's cardholders with better access to medication but also reduced the cost of the medication by eliminating the expenses associated with importing high quantities of medical marijuana.

In sum, the Board's approval of the proposed Text Change Amendment will provide for a well-developed, comprehensive phased retail development plan, including a medical marijuana dispensary in a prime location servicing Pima County residents and owned and operated by Arizona residents and professionals.

C. Existing Land Use Code Section 18.45.40(D)(3) is Overly Restrictive

In 2010, ADHS did not receive any eligible applications for the Tucson West CHAA within the jurisdiction of Pima County. This was due to the burdensome zoning restrictions currently in place, which we are seeking to change. Pima County zoning code, Chapter 18.45 – titled CB2 General Business Zone, specifically Section 18.45.040(D)(3), provides that a Medical Marijuana Dispensary *is permitted* as a Type III conditional use subject to several exceptions, including a prohibited location provision that precludes a Medical Marijuana Dispensary in a *gateway overlay zone and a buffer overlay zone* (emphasis added).

⁴ 2014 Report, p. 2

⁵ Timothy D. Hogan, Ph.D., The Economic Contribution of Arizona's Regulated Medical Marijuana Dispensary Industry, March 19, 2013. Available at: http://mjbizdaily.com/Dr_Hogan_Report_March_19_2013.pdf

⁶ City of Tucson Fact Sheet Medical Marijuana Dispensaries and Cultivation Locations (ORD. No. 10850 and 11199). Available at: http://www.tucsonaz.gov/files/pdsd/forms/Medical_Marijuana_Fact_Sheet.pdf

The Act authorizes local jurisdictions to enact *reasonable zoning restriction* (emphasis added). However, the way Pima County's Zoning Code is currently written makes it unduly burdensome (if not impossible) to identify any viable property within the Tucson West CHAA for medical marijuana use. The Firm, in conjunction with real estate specialists, have analyzed and surveyed all available medical marijuana CB2 zoned properties within the jurisdiction of the Tucson West CHAA and discovered that the only viable piece of property is the Owner's Property located in a gateway and buffer overlay zone.

However, Pima County inadvertently and effectively drafted itself out of allowing a potential or interested applicant, like the Owners in this case, to be awarded with a Dispensary Registration Certification in the Tucson West CHAA due to the restrictions set forth in Section 18.45.040(D)(3), as referenced above, despite the fact that the Property is zoned for medical marijuana. In order to overcome this significant barrier to entry, the Firm has worked closely with industry pioneers, advisors, and legislators in the hopes of finding a practical solution. Here, this proposed and requested Text Change Amendment is the appropriate solution.⁷

D. REQUEST AND PROPOSED LANGUAGE

As discussed above, the medical marijuana industry has been operating successfully and without any major setbacks in Arizona for over four years. A majority of Pima County's Zoning Code as it relates to medical marijuana was drafted prior to the state implementation of the AMMA resulting in the restrictive nature of the Zoning Code.

The new proposed language is indicated in **BOLD** and the old language has been ~~stricken out~~.

18.45.40(D)(3) Prohibited locations: A medical marijuana dispensary is not permitted in ~~the gateway overlay zone, buffer overlay zone or~~ a historic zone. A medical marijuana dispensary may be permitted to operate in a gateway overlay zone or buffer overlay zone but only if the medical marijuana dispensary obtains the express consent and approval from the County. The County reserves the right to have the medical marijuana dispensary comply with any reasonable related additional conditions.

The proposed modifications to the Pima County Zoning Code are consistent with the intent of the County's ordinance. If approved, the change in the Code will permit the Owners to design a medical marijuana dispensary and a larger commercial development project that will provide services to local residents and most importantly, the Project will

⁷ The Firm first sought a variance however; it was the opinion of the County Attorney's office that a variance was inappropriate in this case.

not detrimentally affect the protected view-shed corridor. In addition, resulting from this Text Change Amendment and allowing for another medical marijuana dispensary will be the increased generation of additional business and taxes in Pima County.

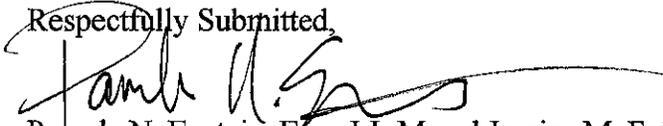
As a final note, the Owners have engaged and are working with Dr. Marc I. Epstein, D.O., in effort to ensure the medical marijuana dispensary would offer Pima County qualified patient residents with a safe product and superior medical care. Dr. Epstein is a Pima County resident, an active member of the community, and esteemed Osteopathic Physician with over 30 years of experience in private medical practice. Dr. Epstein will be responsible for the dosing of the medication and for the drafting of the patient education materials. The participation and collaboration of a highly qualified medical practitioner is paramount to the success of this Project and the medical marijuana industry as a whole. The 2014 Report cites 23% of all non-compliance violations were issued for non-compliant Medical Directors. Dr. Epstein, who plans as serving as a Medical Director for the Owners' potential medical marijuana dispensary has prepared a brief memorandum regarding the palliative benefits of medical marijuana in supplement to this Text Change Amendment request. Please see attached hereto as Exhibit "A" for Dr. Epstein's memorandum.

E. CONCLUSION

On behalf of Sean Nicks and Lori Nicks, we respectfully request that the Text Change Amendment applied for in this Letter be granted. This Project proposal dutifully fulfills all of the requirements for this Board to approve the Text Change Amendment. The Project is well conceived, practical, profitable, and will prove highly beneficial to Pima County and its citizens.

Thank you for your time and thoughtful consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Pamela N. Epstein" followed by a flourish that extends across the line.

Pamela N. Epstein, Esq., LL.M and Jessica M. Feingold, Esq., LL.M

EXHIBIT A

Memorandum

To: Pima County Planning & Zoning Honorable Commissioners and Staff

From: Dr. Marc I. Epstein, D.O.

Date: June 4, 2015

Re: Overview of Medical Marijuana and Palliative Benefits

In my professional opinion and as further discussed below, I believe that medical marijuana is associated with positive palliative benefits and should be available to those suffering and seeking an alternative or a supplement to their current medical treatment plan.

I. Introduction

Marijuana has been used as a medicinal herb for thousands of years, dating back to ancient civilizations in Egypt and Africa. In all that time, up to and including the present day, there *has never been a fatality as a direct result of consuming marijuana*. Conversely, over one thousand American's deaths occur annually from an overdose of aspirin - a non-prescription, over the counter drug. Furthermore, thousands of additional deaths are attributed to prescription drugs, alcohol and other schedule 1 controlled substances (such as: heroin, LSD, ecstasy, methaqualone and peyote).

II. Cannabis: Brief Overview & Medicinal Benefits

Marijuana has been linked to numerous medical benefits, and has been shown to relieve both acute and chronic pain, improve mood and increases appetite, and reduce seizures among a host of other benefits to be further described herein.

There are two known strains of marijuana, Sativa and Indica, as well as hundreds of hybrids of the two. Regardless of the strain, the cannabis plant is composed of 483 known compounds. The principal psychoactive constituent of cannabis is tetrahydrocannabinol (commonly referred to as "THC"). There are at least 84 other cannabinoids, such as cannabidiol (commonly referred to as "CBD"), cannabinol, and tetrahydrocannabivarin, and cannabigerol. The cannabinoids interact with a person's naturally existing cannabinoid receptors embedded in their cell membranes. There are cannabinoid receptors in the brain, lungs, liver, kidneys, immune system, and other organs. There are both therapeutic and psychoactive properties of each cannabinoid. Their receptors play an integral role in many body processes, including metabolic regulation, cravings, pain, anxiety, bone growth, and immune function.

Medical research has established a neurochemical mechanism for the action of cannabis, based on a 'cannabis receptor' and an endogenous ligand known as 'anadamide'. The mode of action appears to be the modulation of the responses to incoming stimuli mediated by a second messenger system. The body's natural cannabinoids may be used to "turn up or down the body's pain thresholds." There is also increasing evidence of anti-inflammatory activity from strains high CBD use. At least two types of cannabinoid receptors have been found, not only in the

brain and nervous system, but also peripheral tissues such as the skin and gut. The endocannabinoids are clearly of critical importance in mediating a number of bodily functions and physiological processes.

There is an ever-growing body of historical, anecdotal and laboratory evidence demonstrating increased tolerance of pain from administration of cannabis or individual cannabinoids, including THC and/or CBD. Other medical evidence has shown that cannabis normalizes intraocular pressure in glaucoma patients, reduces brain-cell death in stroke patients, relieves muscle spasms in Multiple Sclerosis patients, significantly reduces seizure frequency and intensity in epilepsy patients, stimulates appetite in patients with AIDS and in cancer patients with anorexia, promotes bronchodilation in asthma patients, provides relief from the symptoms of irritable bowel syndrome as well as those of alcohol and opiate withdrawal to name some of the many potential medical uses.

A 2009 review of clinical studies conducted over a 38-year period found that ‘nearly all of the 33 published controlled clinical trials conducted in the United States have shown significant and measurable benefits in subjects receiving the treatment. Historically, cannabis is most often recommended as complementary or adjunctive medicine. However, there is a substantial consensus among experts in the relevant disciplines, including the American College of Physicians, that cannabis and cannabis-based medicines have therapeutic properties that could potentially treat a wide variety of serious and chronic illnesses.

The New England Journal of Medicine conducted a poll amongst physicians regarding Medicinal Use of Marijuana in 2013.¹ The report included responses from 1,446 doctors from 72 different countries and 56 different states and provinces in North America. The report found there was overwhelming support for the use of drug at seventy-six percent (76%). Consequently, new marijuana research is now being conducted at an accelerated rate. For example, more than 15,000 modern peer-reviewed scientific articles on the chemistry and pharmacology of cannabis and cannabinoids have been published, as well as more than 2,000 scholarly articles on the body’s natural endocannabinoids.²

III. Arizona’s Qualified Patient Program & Requirements

The current qualifying conditions are (1) Cancer; (2) Glaucoma; (3) Human immunodeficiency virus; (4) Acquired immune deficiency syndrome; (5) Hepatitis C; (6) Amyotrophic lateral sclerosis; (7) Crohn’s disease; (8) Agitation of Alzheimer’s disease; (9) A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes cachexia or wasting syndrome; (10) A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes severe and chronic pain; (11) A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes severe nausea; (12) A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes seizures, including those

¹ Available at: <http://www.nejm.org/doi/full/10.1056/NEJMcld1305159>

² See, http://www.safeaccessnow.org/medical_cannabis_research_what_does_the_evidence_say

characteristic of epilepsy; (13) A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes severe or persistent muscle spasms, including those characteristic of multiple sclerosis; (14) Post-Traumatic Stress Disorder; or (15) A debilitating medical condition or treatment approved by the Department under A.R.S. §36-2801.01 and R9-17-106.

As the Medical Director, I will coordinate with the Dispensary Owners to ensure there is a bona fide relationship with our patients. It is our primary goal and objective to provide our patients with a superior experience in all aspects of their medical treatment plans. As part of our business model, we plan on developing a comprehensive tracking system to identify the strains that work best for each specific ailment and providing our patients with effective treatment protocols. Staying abreast of the new trends and conveyances of medical cannabis will ensure that our tracking system, staff, and patient materials will be always up-to-date and current. As the Medical Director, I plan to regularly hold seminars for the staff and open houses for the patients, their families and/or caregivers.

IV. Conclusion

In addition to being a resident of Pima County, I am an active member of the community, retired U.S. Air Force Colonel stationed at Davis-Monthan AFB and a dedicated Osteopathic Physician with over 30 years of experience in medical practice. I have a vested interest in serving and protecting my community and upholding the standards of my profession. It is my sincerest belief that properly controlled and administered medical marijuana use can provide my patients with significant treatment benefits. While there can be some dependency issues, cannabis when compared to other kinds of treatments is far less addictive – and far less deadly – than for example prescription opioids. I believe with my experience and expertise, the Dispensary can provide Pima County qualified patients with the most top-notch quality care that medical marijuana treatment can offer.

ORDINANCE 2015- _____

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS RELATING TO ZONING; AMENDING THE PIMA COUNTY ZONING CODE TITLE 18 BY AMENDING CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.040 (CONDITIONAL USES) TO REVISE THE PROHIBITED LOCATIONS SECTIONS TO ALLOW MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATIONS IN THE GATEWAY AND BUFFER OVERLAY ZONES. (ALL DISTRICTS)

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

1. The Planning and Zoning Commission, at its July 29, 2015 meeting initiated amendments to the Pima County Code.
2. The amendments in this ordinance allow medical marijuana dispensaries and medical marijuana dispensary offsite cultivation locations located in the CB-2 zone to locate in either a Gateway Overlay zone or a Buffer Overlay zone.
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.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY AS FOLLOWS:

SECTION 1. Pima County Zoning Code Chapter 18.45, CB-2 General Business zone is amended by amending Section 18.45.040 Conditional Uses as follows:

Chapter 18.45
CB-2 GENERAL BUSINESS ZONE

...

Section 18.45.040 Conditional Uses

...

D. Medical marijuana dispensary...

...

3. Prohibited locations: A medical marijuana dispensary is not permitted in the ~~gateway overlay zone, buffer overlay zone~~ or a historic zone.

...

E. Medical marijuana dispensary offsite cultivation location...

...

3. Prohibited locations: A medical marijuana dispensary offsite cultivation location is not permitted in the ~~gateway overlay zone, buffer overlay zone~~ or a historic zone.

...

SECTION 2. This ordinance is effective 30 days after its adoption.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona, this _____ day of _____, 2015.

Chair, Pima County Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

APPROVED AS TO FORM



Civil Deputy County Attorney



Executive Secretary, Pima County
Planning and Zoning Commission

ORDINANCE 2015- _____

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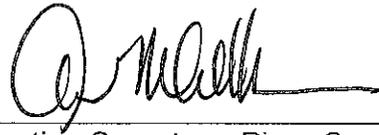
ATTEST:

Clerk, Board of Supervisors

APPROVED AS TO FORM



Civil Deputy County Attorney



Executive Secretary, Pima County
Planning and Zoning Commission