

**MINUTES OF THE SPECIAL MEETING
OF THE LITCHFIELD PARK PLANNING AND ZONING COMMISSION
March 9, 2021**

I. Call to Order

The meeting was held online via Zoom.

Members Present: Chair Ross (arrived 7:10), and Commissioners Alvey, Darre, Lawrence, Ledyard; and O'Connor.

Members Absent: Vice Chair Faith.

Staff Present: Jason Sanks, Planning Consultant; Pamela Maslowski, Director of Planning Services; and Stephanie Irwin, Accounting Specialist.

Chairman Ross had not yet joined the meeting and Vice Chair Faith was unable to attend.

Commissioner Lawrence **moved** to appoint Boardmember O'Connor as Chair Pro Tem and Boardmember Darre **seconded**. There was **unanimous approval**.

Chair pro tem O'Connor called the meeting to order at 7:07 p.m., and chaired the remainder of the meeting.

II. Business

Chair Pro Tem O'Connor opened the Public Hearing.

A. Public Hearing: Proposed Zoning Code Text Amendment Related to Regulating Recreational Marijuana

1. Staff Report:

Mr. Sanks stated that on October 29, 2021, City Council gave direction to the City Attorney to process a proposed ordinance regarding recreational marijuana in response to Proposition 207 which had been approved by the voters. Proposition 207 allows recreational marijuana use under certain circumstances. Council's direction for the proposed ordinance was that the standards applicable to recreational marijuana would be the same as the standards the City has set for medical marijuana. Under the proposed ordinance, licenses or permits for recreational marijuana would not be limited to dual licensees (holders of medical marijuana certificates and recreational marijuana licenses/permits). However, the regulations related to site location, hours of operation, and other items currently regulated by the City for medical marijuana would be the same for recreational marijuana. The proposed ordinance was brought to the Commission at their January meeting for a Citizen Review Study Session. The text of the proposed ordinance has been unchanged since it was reviewed. However, there were a number of comments and questions brought up at the Citizen Review Study Session to which he had responded. Staff brought those comments, questions, and answers to the City Attorney for review and clarification.

Mr. Sanks reviewed the questions/comments from the previous meeting, including his responses at that meeting, and also further clarification from Staff and the City Attorney:

- Question: Where in the City could a facility could be located?
 - Mr. Sanks' Response: A recreational marijuana facility would be allowed to locate in the same locations that medical marijuana facilities are allowed, which is an Industrial zoned district. At this time, the only Industrial zoned property in the City is at the southwest corner of Camelback and El Mirage Roads, where the Monument Point Center is located.
 - Further Clarification: Mr. Sanks displayed a copy of the zoning map and indicated the area that has Industrial Zoning at the southwest corner of Camelback and El Mirage Roads.

- Question: Why is the term primary residence used, such as in Section b, Paragraph 5, "Regulations for Primary Residence for Personal Use", as there could be a secondary or vacation residence?
 - Mr. Sanks' Response: It means a private home.
 - City Attorney Clarification: The term "primary residence" is used in the State statute, which is why the same term is used in the proposed text amendment. Specifically, A.R.S. § 36-2852(A)(2) states: "Possessing, transporting, cultivating or processing not more than six marijuana plants for personal use at the individual's primary residence, and possessing, processing and manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis, the marijuana produced by the plants on the premises where the marijuana plants were grown if all of the following apply." It is likely this term was used to avoid a situation where an individual has multiple residences and attempts to grow more than the allowed six plants. It is suggested that this term remain unchanged and remain consistent with the language used in the Statute.

- Question: Can recreational marijuana be sold in another type of establishment such as a retail establishment, or will it be limited to the type of facility noted in the ordinance?
 - Mr. Sanks' Response: A business license would be required which would have to go through a zoning clearance process making sure it would only be allowed in areas with Industrial zoning. It would have to be a licensed facility used specifically for the sale of marijuana.
 - Clarification from City Attorney: Under the Statute, recreational marijuana can only be sold at an authorized "marijuana establishment," which must be licensed through the State – thus, the sale of recreational marijuana is not allowed at other retail establishments.

- Question: Who decides on the penalties?
 - Mr. Sanks' Response: It would have to be determined if it was a City Zoning Code violation or a violation of State Law. If it is a violation of the Zoning Code, those penalties are already in place.
 - City Attorney Clarification: Mr. Estes agreed with this answer. The direction from the City Council is that the regulations for recreational marijuana not be stricter than those for medical marijuana.

- Question: Will the facility be allowed to be open seven days a week?
 - Mr. Sanks' Response: The facilities would be allowed to be open 8 a.m. to 7 p.m., and there are no restrictions regarding the number of days it may be open. Other jurisdictions have limited the days a medicinal marijuana establishment may operate (for example Monday through Friday 9:00 a.m. to 5:00 p.m.) and those similar type of restrictions can be adopted in the City, but would need to be consistent for both medicinal marijuana and recreational marijuana establishments.
 - Clarification from the City Attorney: Mr. Estes had no further comments on this.
 - Mr. Sanks added that, if the Commission wanted to change the hours or days of operation, there would need to be an amendment for the medical marijuana hours of operation.

- Question: Could the secured storage space have an 8' fence with barbed wire on top?
 - Mr. Sanks Response: He believes that barbed wire is not allowed within the City.
 - Further clarification: Staff checked the City Code and barbed wire is classified as a public nuisance under City Code Section 9-5-4(D) and is not allowed.

- Question: The ordinance refers to 8" concrete block roofs and walls. Usually it is an 8" concrete block ceiling. Please clarify how the facility will be required to be constructed.
 - Mr. Sanks' Response: It is not specific as to how the roof would prevent unauthorized entry.
 - City Attorney Clarification: The requirement for walls and roofs to be constructed of materials (eight-inch concrete block or equivalent) sufficient to deter and prevent theft of marijuana being processed is the same as the current requirement for medicinal marijuana found in City Code Section 31.21(b)(2)(L).

- Question: Why is there a 1,325' distance required from uses such as churches, daycare centers, etc., while there is only a 500' distance requirement from a residential neighborhood?
 - Mr. Sanks Response: He was not certain of the origin of the 500' distancing requirement from residential neighborhoods. It could be from State Legislation. Another issue might be that the City cannot make it impossible for this use to locate in the City if larger distancing requirements were required.
 - City Attorney Clarification: The distance requirements are the same as those for medicinal marijuana establishments as found in City Code 31.21(b)(3).
 - Mr. Sanks stated that, in his experience working with marijuana regulations, there were concerns that cities would create such significant distancing requirements that could eliminate the use in a City. Therefore, reasonable distance requirements were calculated that would help to minimize the effect on neighboring properties and other uses, while preventing cities from eliminating the use completely within their city.

- Is there a map that indicates the Industrial Zoning District where these facilities could be located?
 - Mr. Sanks' Response: He could bring the City's zoning map to use as a reference to indicate where the Industrial district is located.

- Further Clarification: Mr. Sanks displayed the Zoning Map indicating the Industrial District where the use would be allowed.
- Question: Is there was any way to restrict people from using marijuana in their backyard? An example had been cited of someone who lived next door to someone who used marijuana in their rear yard a number of times a day.
 - Mr. Sanks' Response: He does not know if that could be done. The City currently does not have the authority to restrict someone from using medical or recreational marijuana in their backyard on their private property
 - City Attorney Clarification: The City cannot restrict the use in the individual's backyard. This issue would be governed under the State Statute on recreational marijuana, which prohibits smoking in public places and would also be governed by Arizona's "Smoke-free Arizona Act" that prohibits smoking in public places (with certain exceptions) and states: "A private residence is not a 'public place' unless it is used as a child care, adult day care, or health care facility." Thus, Arizona does not have a statewide law prohibiting smoking in private residential units, such as apartments, condos. or backyards. Although the City is limited on what it can and cannot regulate in the privacy of someone's backyard, landlords and HOA's can more fully regulate what can and cannot be done on private property. Additionally, individuals maintain their civil claims for nuisances and there may be the ability for an impacted neighbor to bring a civil claim that the secondhand smoke constitutes a nuisance or disrupts their right to quiet enjoyment, but the City cannot provide legal advice on such actions.

Mr. Sanks noted that the text of the proposed ordinance has been unchanged since it was previously reviewed. Staff recommends that the Commission forward a recommendation of approval to the City Council of the draft ordinance related to Recreational Marijuana.

2. Public Comment

There were no public comments.

Chair Pro Tem O'Connor closed the Public Hearing.

B. Proposed Zoning Code Text Amendment Related to Regulating Recreational Marijuana

Commissioner Lawrence thanked Staff and the City Attorney for the work done on this subject.

Commissioner Darre agreed and **moved** to recommend that the City Council approve the proposed ordinance regarding recreational marijuana; Commissioner Lawrence **seconded; unanimous approval.**

D. Topics for Referral to City Council

There were no referrals.

E. Minutes

Commissioner Darre **moved** to approve the minutes of the January 12, 2021 minutes; Commissioner Lawrence **seconded; unanimous approval.**

III. Staff Reports

Mr. Sanks reported on the progress of the Sun Health project to be located at the northwest corner of Litchfield and Camelback Roads, and on possible new businesses proposing to locate within the Camelback and Dysart Center. In response to a question, Mr. Sanks stated that he did not have information regarding the progress of the City Center. Ms. Maslowski noted that the City Engineer, is scheduled to provide an update on the City Center progress to the City Council at the March 17, 2021 meeting.

IV. Commission Reports

Chair Pro Tem O'Connor inquired about the Design Review Board report. Ms. Maslowski responded that it had been dropped from the agenda when the Commission started meeting online in order to keep the agendas and meetings short. However, she believes it can be put back on now.

V. Adjournment

Commissioner Lawrence **moved** to adjourn; Commissioner Darre **seconded; unanimous approval.**
The meeting was **adjourned** at 7:36 p.m.

APPROVED:

PLANNING & ZONING COMMISSION

Brian O'Connor, Chair Pro Tem

/pm