
ZCA-2023-04
Marijuana
Establishments &
Dispensaries
Code Text
Amendment

October 24, 2023
Planning & Zoning
Commission

Staff Report

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STAFF REPORT

To: City Planning & Zoning Commissioners
From: William D. Osborne, AICP, City Planner

Date: October 17, 2023

Subject: Marijuana Establishments & Dispensaries Code Text Amendment (ZCA-2023-04)

INTRODUCTION

The City of Douglas has procedural and substantive differences in the regulation of non-profit medical marijuana dispensaries and adult use marijuana establishments. This is a violation of State Law; Arizona Revised Statutes (A.R.S.). Further, maximum floor area and sensitive use separation requirements in Douglas Municipal Code (DMC) exceed A.R.S. and have impacted immediate economic development opportunities.

BACKGROUND

Arizona Revised Statute (A.R.S.) §36-2857(C)(1) states:

A locality may not enact any ordinance, regulation or rule that...is more restrictive than a comparable ordinance, regulation or rule that applies to nonprofit medical marijuana dispensaries.

Douglas Municipal Code (DMC) specifically violates the A.R.S. in the following sections:

- DMC §5.02.010 does not include definitions for Marijuana Establishments;
- DMC §5.02.040 does not include license fees for Marijuana Establishments;
- DMC §17.05.507.7(E)(1)(a) does not offer a Medical Marijuana Dispensary expansion of maximum square footage through a Conditional Use Permit (CUP), as is available for a *Marijuana Establishment* in DMC §17.05.507.13(B)(7) and (B)(8);
- DMC §17.05.507.12(A) & 507.13(A) require a business license for a *Marijuana Establishment* but not for a *Medical Marijuana Dispensary* – which are nonprofits; and
- DMC §17.05.507.7(E)(1)(d) and §17.05.507.13(B)(8)(a) have different requirements for *Medical Marijuana Dispensary* and *Marijuana Establishment* hours of operation.

State Law only requires a five hundred (500) foot separation distance from public and private schools. State Law does not require a maximum floor area for marijuana uses.

DMC includes exceptional requirements on maximum floor area and separation distances between marijuana businesses and sensitive uses:

- *DMC § 17.05.507.7(E)(1)(a)* specifies a maximum floor area of two thousand five hundred (2,500) square feet;
- *DMC § 17.05.507.7(E)(1)(b)* limits secure storage area to five hundred (500) square feet of the two thousand five hundred (2,500) square foot maximum gross floor area;
- *DMC § 17.05.507.7(E)(1)(e)* requires a minimum customer waiting area of twenty-five (25) percent of the gross floor area;
- *DMC § 17.05.507.7(E)(1)(i)* requires a building-to-building setback of two thousand (2,000) feet for medical marijuana dispensaries from one another;
- *DMC § 17.05.507.7(E)(1)(j)* requires a building-to-building setback of one thousand (1,000) feet for medical marijuana dispensaries from a public, private or charter school or a licensed childcare center;
- *DMC § 17.05.507.7(E)(1)(k)* requires a building-to-building setback of one thousand (1,000) feet for medical marijuana dispensaries from a church, library or public park and a minimum of two thousand (2,000) feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility; and
- *DMC § 17.05.507.7(E)(2)(a)* limits the total maximum floor area of a medical marijuana dispensary off-site cultivation location to three thousand (3,000) square feet.

PROPOSAL

Staff proposes amending Douglas Municipal Code sections to ensure compliance with State Law:

- *DMC § 5.02.010 Definitions and 5.02.040 Schedule* should be amended to include *Marijuana Establishments* – retail and off-site cultivation location – separately from but licensed the same as Medical Marijuana Dispensary uses (see *Attachment A, Proposed Revisions to DMC 5.02*);
- *DMC § 17.05.507.1(B)* to include *Marijuana Establishments* with A.R.S. citations in *Definitions* as currently provided for *Medical Marijuana Dispensaries* (*Attachments B-1, B-2, and B-3*);
- *DMC § 17.05.507.4(B) Permitted principal uses – Retail sales* – amended to include *Marijuana Establishment uses commensurate with Medical Marijuana Dispensary uses* (*Attachments B-1, B-2, and B-3*);
- *DMC § 17.05.507.7(E)(1)(a)(i) Medical marijuana dispensary* – amended to include *conditional use permit provision for increasing the maximum floor area as with Marijuana Establishments* (*Attachments B-1, B-2, and B-3*).

To encourage economic development by reducing barriers to locating the use, reductions to separation distances, reduced classes of sensitive uses, and larger

floor areas for uses consistent with Arizona Revised Statute and local opportunities are offered for consideration:

- *Options A & B: DMC § 17.05.507.7(E)(1)(a) and DMC § 17.05.507.7(E)(2)(a) amended to ten thousand (10,000) square feet for dispensaries and off-site cultivation locations (Attachments B-2 and B-3);*
- *Options A & B: DMC § 17.05.507.7(E)(2)(b) revise secure storage area to twenty-five (25%) of maximum floor area rather than one thousand (1,000) square feet of an off-site cultivation location (Attachments B-2 and B-3);*
- *DMC Title 17 Articles and Section 17.05.507.7(E) reference revisions for housekeeping/clarity in all applicable Zoning Districts (Attachments B-1, B-2, and B-3);*
- *Option A: DMC § 17.05.507(E) Reduced 500 ft. Separation Distances for Existing DMC Sensitive Uses (Attachments B-2 and C-2);*
- *Option B: DMC § 17.05.507(E) Reduced 500 ft. Separation Distances for Schools Only to Meet State Law Requirements (Attachments B-3 and C-3);*
- *Option C: DMC § 17.05.507(E) Existing 1,000 ft. Separation Distance for Schools Only to Meet State Law Requirements (Attachments B-4 and C-4).*

SUPPORTING POLICY

The City of Douglas General Plan contains several goals, objectives, and policies supporting mixed uses, adaptive reuse, infill residential, and small-scale commercial spaces in existing neighborhoods. Also considered is the Community Services Node Future Land Use Designation. The principal supporting goals and policies of this proposed Zoning Code Text Amendment are:

Land Use (LU) GOAL 1: *Provide a balance of land uses that will preserve and enhance neighborhoods, promote economic development, encourage redevelopment at appropriate locations and protect environmentally sensitive areas.*

...

LU-Policy 1-1c: *Encourage new development where resources and facilities are in place to promote a high quality, attractive and efficient urban development pattern, as provided in the Growth Areas and Population Element.*

LU-Policy 1-1d: *Encourage an appropriate mix of land use types.*

LU-Policy 1-1e: *Promote infill and reinvestment within established areas of the City.*

...

LU-Employment Related Development (ERD) GOAL 6: *Support appropriate locations for commercial and office land uses, including infill development and redevelopment.*

LU-ERD Objective 6-1: *Support appropriate locations for commercial and office uses, including infill development and redevelopment within the established growth areas that:*

- 1. Promote use and improvement of existing infrastructure;*
- 2. Meet residents' needs for goods and services in a cost-effective and equitable manner;*
- 3. Increase pedestrian activity; and*
- 4. Attract tourists and visitors.*

...

LU-Central Business District (CBD) GOAL 7: *Support a Central Business District that is an attractive gathering center serving civic, public, commercial, entertainment, cultural and community purposes.*

LU-CBD Objective 7-1: *Support enhancements within the Central Business District that serve Douglas residents, reduce automobile use and air pollution, improve delivery of public and private services, increase tourism and visitors, and create inviting places to live, work, and play.*

LU-CBD Policy 7-1a: *Enhance Douglas Downtown Business District retail core as the primary regional activity center for finance, culture, and government, complemented by a mixture of adjacent land uses that support a variety of housing types compatible with the character of established historic residential neighborhoods.*

LU-CBD Policy 7-1d: *Promote retail and other private sector development that will complement and support the existing Downtown Historic District.*

LU-CBD Policy 7-1h: *Support development and redevelopment of street level retail or other pedestrian-oriented land uses, such as galleries, restaurants, and cinema within the Central Business District.*

STAFF RECOMMENDATION

Supported by the General Plan, staff recommends **APPROVAL** of ZCA-2023-04 Option B to amend the City of Douglas Zoning Code to regulate equally adult use marijuana establishments and medical non-profit marijuana dispensaries as required by Arizona Revised Statute §36-2857(C)(1), and to reduce the barriers to economic development that currently exceed State Law.

- Attachment A: Proposed Business Taxes, Licenses and Regulations Revisions to DMC §5.02.010, -.040
- Attachment B-1: Proposed Minimum Zoning Code Revisions DMC §17.05.507, -.508, -.509, -.510
- Attachment B-2: Proposed Option A Zoning Code Revisions DMC §17.05.507, -.508, -.509, -.510
- Attachment B-3: Proposed Option B Zoning Code Revisions DMC §17.05.507, -.508, -.509, -.510
- Attachment B-4: Proposed Option C Zoning Code Revisions DMC §17.05.507, -.508, -.509, -.510
- Attachment C-1: Existing Regulations Buffers Map
- Attachment C-2: Option A: Existing Sensitive Uses at 500 ft. Buffers
- Attachment C-3: Option B: Schools Only at 500 ft. Buffer
- Attachment C-4: Option C: Schools Only at 1,000 ft. Buffer