

ORDINANCE NO. 2021-06

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, AMENDING CHAPTER 21 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 21-202 PERTAINING TO DEFINITIONS; AND AMENDING SECTION 21-503 PERTAINING TO LAND USE MATRIX; AND AMENDING SECTION 21-505 PERTAINING TO LIMITATIONS ON USES; AND AMENDING SECTION 21-809 PERTAINING TO HOME OCCUPATIONS; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, marijuana contains tetrahydrocannabinol, which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al.; and

WHEREAS, the Arizona Medical Marijuana Act, Proposition 203, approved in the statewide election on November 2, 2010, provides for defined possession, use, distribution and transportation of marijuana for Medical Use within the State of Arizona; and

WHEREAS, the Mayor and City Council adopted Ordinance 2011-05A to enact reasonable zoning regulations to protect and promote public health, safety and general welfare and regulate the use of buildings, structures and land associated with Medical Marijuana; and

WHEREAS, the statewide ballot measure I-23-2020, known as the "Smart and Safe Arizona Act," was approved by the voters in the November 3, 2020 general election ballot and became effective on December 1, 2020.

WHEREAS, the newly enacted legislation set forth in A.R.S. 36-2857 allows localities to prohibit marijuana establishments.

WHEREAS, under the Smart and Safe Arizona Act, the City of Peoria is expressly permitted to enact reasonable zoning regulations that generally govern the time, place and manner that marijuana establishments and marijuana testing facilities can operate within. Arizona law also allows the City of Peoria to enact zoning regulations to protect and promote the public health, safety and general welfare and regulate the use of buildings, structures and land; and

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Maricopa County, Arizona, held a public hearing on February 4, 2021 to consider a proposed amendment to the Peoria City Code, after notice in the manner provided by law; and

WHEREAS, due and proper notice of such Public Hearing was given in the time, form, substance, and manner provided by law including publication of such in the Peoria Times on January 28, 2021; and

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Arizona at its regularly convened meeting of February 4, 2021, voted to recommend to the Mayor and Council of the City of Peoria, Arizona, that amendments be made to the Peoria City Code (1992 edition); and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, have considered the recommendation of the Planning and Zoning Commission of the City of Peoria, Arizona, and deem it to be in the best interest of the public health, safety and welfare of the residents of the City of Peoria, Arizona to amend Section 21-202 "Definitions"; Section 21-503 "Land Use Matrix"; and Section 21-505 "Limitations On Uses"; and Section 21-809 "Home Occupations":

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. Chapter 21 of the Peoria City Code (2017 edition) shall be amended to read as indicated on Exhibit A.

SECTION 2. This Ordinance shall become effective on the date provided by law.


SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 2<sup>nd</sup> day of March, 2021.

  
\_\_\_\_\_  
Cathy Carlat, Mayor


3-8-2021  
\_\_\_\_\_  
Date Signed

ATTEST:

  
Rhonda Geriminsky, City Clerk



APPROVED AS TO FORM

  
Vanessa P. Hickman, City Attorney

Published in: Peoria Times  
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Effective Date: April 7, 2021

21-202 Definitions <sup>\*32</sup>

- A. The word **occupied** and the word **used** shall be considered as meaning the same as the words **intended, arranged, or designed to be used or occupied**.
- B. The word **dwelling** includes the word **residence**; the word **lot** includes the words **plot or parcel**.
- C. Terms not herein defined shall have the meanings customarily assigned thereto.
- D. For the purpose of this Zoning Ordinance, certain words are hereby defined as follows:

*List of Defined Terms*

Cultivate and Cultivation of Marijuana means to propagate, breed, grow, prepare and package marijuana.

Dual Licensee means an entity that holds both a non-profit medical marijuana dispensary registration and a marijuana establishment license.

Marijuana Manufacturing means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

**Medical Marijuana Manufacturing or Cultivation Facility** is a Marijuana Establishment, as defined in A.R.S. §36-2850, licensed by the State of Arizona that is located in a building, structure, or premises where Marijuana is cultivated or stored and which is physically separate from a Medical Qualifying Marijuana Dispensary. Such **Medical Marijuana Manufacturing or Cultivation Facility** may only provide Marijuana or Marijuana plants Products to Medical Qualifying Marijuana Dispensaries for retail sales to qualified Medical Marijuana Cardholders. Requirements for mixed-use occupancy will be based upon the adopted building codes. <sup>\*35</sup>

Marijuana Testing Facility is an entity licensed by the State of Arizona to analyze the potency of marijuana and test marijuana for harmful contaminants.

**Medical Marijuana Cardholder** is a natural person who is a Qualifying Patient, Designated Caregiver, or Nonprofit Medical Marijuana Dispensary Agent or an independent third-party laboratory agent who has been issued and possesses a valid Registry Identification Card pursuant to A.R.S. §36-2801, et.seq. <sup>\*35</sup>

~~**Medical Marijuana Dispensary** is a non-profit entity defined in A.R.S. §36-2801(11), that sells distributes, transmits, gives, dispenses, or otherwise provides Marijuana for Medical Use and related supplies to Qualifying Patients. Included is the manufacture and creation of products for individual sale where Marijuana is incorporated into the product for consumption by an individual who is a valid Medical Marijuana Cardholder. Additionally included is the sale of not more than twelve living Marijuana plants to an individual Medical Marijuana Cardholder authorized pursuant to A.R.S. §36-2801, et.seq. to cultivate not more than twelve Marijuana plants for their personal use in addressing a Debilitating Medical Condition as set forth in A.R.S. §36-2801, et.seq.~~

**Medical Marijuana Statute** is the Arizona Medical Marijuana Act codified at A.R.S. §36-28.1. All definitions set forth in the Medical Marijuana Statute are hereby incorporated by reference into the City of Peoria Zoning Ordinance and City Code (1992), unless specified otherwise. \*35

**Personal Cultivation or Processing** means cultivating or processing of not more than six marijuana plants for personal use at an individual’s primary residence, or not more than twelve plants where two or more individuals reside at one time. In this instance, individual shall mean a person of at least twenty-one years of age.

**Qualifying Marijuana Dispensary** means:

- 1) A non-profit Marijuana Dispensary defined in A.R.S. §36-2801(12) that sells, distributes, transmits, gives, dispenses, or otherwise provides Marijuana for medical use and related supplies to Qualifying Patients. Included is the manufacture and creation of products for individual sale where Marijuana is incorporated into the product for consumption by an individual who is a valid Medical Marijuana Cardholder and the sale of not more than twelve living Marijuana plants to an individual Medical Marijuana Cardholder authorized pursuant to A.R.S. §36-2801, et.seq.; or
- 2) A dispensary operated pursuant to A.R.S. §36-2858 by a Dual Licensee as defined by A.R.S. 36-§2850 and Section 11-75 of the City Code which sells, distributes, transmits, gives, dispenses, or otherwise provides Marijuana and Marijuana Products and related supplies for (1) medical use to Qualifying Patients; and (2) for general non-medicinal use to individuals who are at least twenty-one years of age as permitted by A.R.S. §36-2852.

### 21-503 Land Use Matrix

The following Land Use Matrix (Table 21-503) indicates uses which are permitted outright, conditionally permitted, or prohibited in specific non-residential zoning districts in the City of Peoria. The Land Use Matrix is intended to serve as a guide for the convenience of the user of this Zoning Ordinance. Where the text of this Zoning Ordinance differs from the Land Use Matrix, the text shall prevail. In the event of a specific use not being identified on the matrix, the Community Development Director or designee(s) shall determine the closest associated use based on the provisions of this ordinance. The City will permit any accessory use customarily incidental to a permitted principal use in the same zoning district.

Table 21-503 Land Use Matrix

LAND USE	O-1	C-1	PC-1	PC-2	C-2	C-3	C-4	C-5	BPI	PI-1	I-1	I-2
<b>GENERAL INDUSTRIAL &amp; MANUFACTURING</b>												
Medical Marijuana Manufacturing or Cultivation Facility # **24	-	-	-	-	-	-	-	-	C	C	C	C
Marijuana Testing Facility #	=	=	=	=	=	=	=	=	C	C	C	C
<b>INTENSE RETAIL</b>												
Medical Qualifying Marijuana Dispensary # **24	-	-	-	-	C	-	C	C	-	-	-	-

## 21-505 Limitations on Uses

### M. ~~Medical~~ Qualifying Marijuana Dispensaries and Marijuana Manufacturing, Cultivation and Testing Facilities \*24

#### 1. General Requirements

- a. For the purposes of measuring separation distances, the measurements will be taken in a straight line from the exterior wall of the building, ~~or suite~~ or premises housing the use without regard to intervening buildings or political boundaries.
- b. Marijuana remnants or by-products shall be disposed of according to an approved plan and not placed within the facility's exterior refuse containers.
- c. There shall be no inordinate emission of dust, fumes, vapors or odors ~~into the environment~~ from the premises.
- d. Signage for Qualifying Marijuana Dispensaries ~~Dispensary~~ and/or ~~Medical~~ Marijuana Manufacturing, Cultivation and Testing facilities shall be limited to the name of the business only, and no advertising of the goods and/or services shall be permitted.
- e. ~~Medical~~ Qualifying Marijuana Dispensaries and/or Manufacturing, Cultivation and Testing Facilities shall be located in a permanent building on an established foundation adhering to Peoria building codes and shall not include any temporary, portable, or self-powered mobile facilities.
- f. An active Security Management Plan shall be approved by the Police Department. The Plan shall include, but is not limited to, the following:
  - 1) Security cameras shall be installed and maintained in good condition, and used in an on-going manner. Recordings shall be retained for a minimum of 60 days and comply with any additional standards defined by the Security Management Plan.
  - 2) The business space shall be alarmed with an alarm system that is operated and maintained by a recognized security company.
  - 3) A security guard shall be provided at the main entrance during all hours of operation. For the purposes of this Section, "security guard" shall mean licensed and duly bonded security personnel registered pursuant to A.R.S. §32-601.
- g. For the purposes of this section, qualifying zoning districts for Qualifying Marijuana Dispensaries, Manufacturing, Cultivation and Testing Facilities does not include a Planned Area Development (PAD) or Planned Community District (PCD) that points to or references such standard zoning districts identified herein.
- h. The operation of a licensed Marijuana Establishment for retail sales is prohibited in the City except as a Dual Licensee, pursuant to Section 11-75 of the City Code (1992).

2. ~~Medical~~ Qualifying Marijuana Dispensaries

- a. Operations for the dispensing of Medical Marijuana, and related supplies, to qualified patients and the sale of non-medicinal Marijuana and Marijuana Products shall be conducted cooperatively in a shared location.
- b. Vehicular access into the center or site containing the dispensary shall be from an arterial roadway, as identified on the Peoria General Plan.
- c. The use shall not be located within 2,640-feet of another ~~Medical~~ Qualifying Marijuana Dispensary or ~~Medical Marijuana Manufacturing, or Cultivation and Testing~~ Facility.
- d. The use shall not be located within 1,000-feet of the property line of Day-Care Facilities, Pre-Schools, Public/Charter or Private Schools.
- e. The use shall not be located within 1,000-feet of a Retail Liquor Store; Tavern, Bar or Lounge; Adult Use; Substance Abuse Treatment Centers; or State Local Alcohol Reception Center.
- f. The use shall not be located within 500-feet of the property line of a residentially-zoned property.
- g. The product offered for sales ~~to Medical Marijuana cardholders~~ shall be inaccessible to the public entering the ~~Medical~~ Qualifying Marijuana Dispensary. All product provided for retail sales shall be located behind a counter staffed by a ~~Nonprofit Medical Marijuana Dispensary or Facility Agent~~ registered by the State of Arizona as defined by A.R.S. §36-2801 et seq.
- h. The Dispensary shall have operating hours not earlier than ~~8:00~~ 7:00 a.m. and not later than ~~9:00~~ 10:00 p.m.
- i. The manufacturing, cultivation and testing of Marijuana is prohibited.
- j. Delivery services are prohibited.
- k. Drive-through services and sales are prohibited.
- l. Alcoholic beverages shall not be sold, stored, distributed or consumed on the premises.
- m. The Dispensary shall not have outdoor seating areas, but shall have adequate indoor seating to prevent outside loitering.
- n. The business entrance and all window areas shall be illuminated during evening hours and shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding etc.
- o. The windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.
- p. ~~The use shall provide a plan to ensure that~~ No consumption of Marijuana or any product containing Marijuana shall occur ~~occurs~~ on the premises of a ~~Medical~~ Qualifying Marijuana Dispensary.
- q. The Tenant Improvement Plan shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes.

3. ~~Medical Marijuana Manufacturing, or~~ Cultivation or Testing Facility.
  - a. Other than for delivery to an authorized ~~Medical~~ Qualifying Marijuana Dispensary, distributing, transmitting, dispensing, giving, selling, or providing ~~medical~~ Marijuana is prohibited.
  - b. All cultivation, manufacturing, testing and storage of Marijuana and Marijuana plants shall occur within secured, enclosed buildings and structures.
  - c. The use shall not be located within 2,640-feet of another ~~Medical Marijuana Manufacturing, or~~ Cultivation Facility or Testing Facility.
  - d. The use shall not be located within 1,000-feet of the property line of Day-Care Facilities, Pre-Schools, Public/Charter or Private Schools.
  - e. The use shall not be located within 500-feet of the property line of a residentially-zoned property.
  - f. There shall be no signage advertising the location of ~~Medical~~ Qualifying Marijuana Dispensaries or retail sales of ~~Medical~~ Marijuana on the premises.
  - g. The ~~Community Development Director~~ Zoning Administrator may require additional ventilation and air filtration necessary to ensure compatibility with adjacent uses.

## 21-809 Home Occupations

### B. Standards

#### 3. Prohibited Home Occupations.

Home occupations expressly prohibited shall include, but not be limited to the following:

- g. ~~Medical~~ Marijuana Dispensing, Cultivation or Manufacturing, except as provided in A.R.S. § ~~36-2801~~ 36-2852.