

AGENDA ITEM #: _____

DATE: October 26, 2020

CAR #: 2020-7093A



CITY COUNCIL ACTION REPORT

SUBJECT: Adopt the Zoning Ordinance Text Amendments for Establishment of Recreational Marijuana Establishments

STAFF PRESENTER(S): Katie Wilken, Planning Manager, Development Services

OTHER PRESENTER(S):

Summary: Request to amend the city of Goodyear Zoning Ordinance to adopt zoning regulations for establishment of recreational marijuana establishments in the event Smart and Safe Arizona Act becomes law.

Recommendation:

1. Conduct a public hearing to consider a request to amend various Articles of the city of Goodyear Zoning Ordinance and the adoption of the Goodyear CHAA map.
 - a. Open Public Hearing
 - b. Staff Presentation
 - c. Applicant Presentation (10 minutes)
 - d. Receive Public Comment (3 minutes per speaker)
 - e. Close Public Hearing
2. ADOPT RESOLUTION NO. 2020-2113 DECLARING A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND TITLED "GOODYEAR CHAA MAP"
3. ADOPT ORDINANCE 2020-1476 AMENDING ARTICLE 2 (DEFINITIONS), ARTICLE 3-4-1 (LIGHT INDUSTRIAL PARK), AND ARTICLE 3-4-2 (GENERAL INDUSTRIAL PARK) OF THE CITY OF GOODYEAR ZONING ORDINANCE AND AMENDING ARTICLE 4-2 (USES REQUIRING ADDITIONAL EVALUATION) OF THE CITY OF GOODYEAR ZONING ORDINANCE TO ADD ARTICLE 4-2-17 (MARIJUANA DUAL FACILITY); ADOPTING GOODYEAR CHAA MAP; PROVIDING FOR CORRECTIONS; PROVIDING FOR AN EFFECTIVE DATE FOR AMENDMENTS TO THE ZONING CODE; PROVIDING AN EFFECTIVE DATE OF THE ORDINANCE; AND PROVIDING FOR PENALTIES.

Fiscal Impact: There is no direct budget impact associated with the approval of this Zoning Ordinance Text amendment.

Background and Previous Actions

The City of Goodyear Zoning Ordinance was adopted on May 24, 1999, and has been amended periodically to reflect the evolving operational methods and criteria of the community. The goal of amending the City of Goodyear's Zoning Ordinance is to provide clear criteria in order to simplify the zoning process and increase the opportunities for developers and businesses seeking to establish locations in the city, as well as ensure positive impacts on city residents and on adjacent properties.

Pursuant to a statewide initiative passed by the electorate of the State of Arizona, The State of Arizona adopted regulations allowing for the sale, distribution, manufacture, and cultivation of marijuana and marijuana products (the Medical Marijuana Initiative). Under the regulations adopted by the State, the state identified areas within the state for the location of medical marijuana dispensaries and cultivation facilities intended to provide reasonable access to medical marijuana while insuring there was not an over concentration of facilities in any one geographic area. These areas where these facilities could be located were designated as CHAAs (Community Health Analysis Areas). According to the State, each CHAA in urbanized areas contains approximately 100,000 persons. Initially, one facility was permitted per each of the 126 state designated CHAAs. Since that time, unused licenses were offered in a lottery and some CHAAs could have more than one dispensary. Goodyear has two CHAAs. One in the north part of Goodyear and a second CHAA is located south of the El Paso gas line in far south Goodyear.

Following passage of the Medical Marijuana Initiative, the Goodyear City Council established zoning regulations for medical marijuana dispensaries and cultivation facilities with the adoption of Ordinance 11-1231 on January 24, 2011. These regulations permit medical marijuana facilities in the Light Industrial (I-1) and General Industrial (I-2) zoning districts subject to specific separation standards and development standards. There is one medical marijuana facility within the City of Goodyear that operates both a dispensary and cultivation facility.

Staff Analysis

Details of the Request:

The statewide ballot measure I-23-2020 known as "Smart and Safe Arizona Act" has been certified as Proposition 207 and placed on the November 3, 2020 general election. This ballot measure authorizes the possession, consumption, purchase, processing, manufacturing, or transportation of marijuana by an individual who is at least 21 years of age. If it passes, this ballot will take effect once the canvass has been conducted.

Under the Smart and Save Arizona Act, a recreational marijuana facility may be a dual license with a medical marijuana facility or it may be a stand-alone facility. All recreational marijuana facilities are lumped in the same category of "marijuana establishment" whether they be for cultivation, retail sale, or manufacturing. The one exception is a marijuana testing facility that is a facility licensed to analyze the potency of marijuana and to test it for harmful contaminants. The City has the ability to prohibit all marijuana establishments or to limit them to dual licensees.

The Smart and Save Arizona Act will not result in the creation of CHAAs and staff is not sure what changes the State will make to its regulations regarding the location and licensing of medical marijuana dispensaries and/or medical marijuana cultivation locations. To protect the public health, safety, and welfare of the residents of the City of Goodyear, staff is recommending zoning restrictions that will allow access to marijuana products without the need for a prescription while limiting the number of facilities within the City of Goodyear from which marijuana products can be sold, cultivated or distributed. Staff is proposing that marijuana establishments allowed under the Smart and Safe Arizona Act to be co-located with nonprofit medical marijuana dispensaries (“Dual Facilities”), that these facilities be located within specifically designated areas of the City referred to as Goodyear CHAAs, and that there be one Dual Facility allowed per Goodyear CHAA.

The CHAAs established by the state for the location of medical marijuana dispensaries, have resulted in approximately 100,000 people within each CHAA. These CHAAs have served to protect the public health, safety, and welfare of the residents of the City of Goodyear by not allowing an overconcentration of facilities but still providing access to these facilities to serve the needs of the Goodyear residents. Staff is proposing the establishment of Goodyear CHAAs that will result in one CHAA per 100,000 Goodyear residents.

To accomplish this, amendments to Article 2-2 to add new definitions, amendments to Article 3-4-1 I-1 Light Industrial Park and 3-4-2 I-2 General Industrial Park to allow these dual facilities in I-1 and I-2 zoning districts and amendment to Article 4-2 are required to add Article 4-2-17 adopting requirements for these Dual Facilities. In addition, a map identifying the Goodyear CHAAs has to be adopted. Article 4-2-17 includes a requirement that the CHAA Map be administratively revised by the Zoning Administrator to add one additional Goodyear CHAA for each 100,000 residents of the City of Goodyear according to the decennial census. (By way of example, the next Goodyear CHAA will not be added until the population of Goodyear reaches 200,000.) The new Goodyear CHAAs shall be drawn so that there is a roughly equal population within each Goodyear CHAA

Under the proposed amendments to the Goodyear Zoning Ordinance, marijuana dual facilities, like medical marijuana dispensaries and cultivation locations, will be permitted in the Light Industrial (I-1) and General Industrial (I-2) zoning districts subject to specific separation requirements and development standards. There can be one marijuana dual facility may be located within each CHAA. Separation requirements and development standards for marijuana dual facilities would be consistent with the separation requirements and development standards for medical marijuana and cultivation location facilities except as otherwise required by state law. These are set forth in the draft of Article 4-2-17 attached hereto, and include, but is not limited to the following:

- One Marijuana Dual Facility would be allowed per CHAA
- If the Marijuana Dual Facility included a medical marijuana dispensary the separation requirements and development standards applicable to marijuana dispensaries would also apply

- If the Marijuana Dual Facility included a medical marijuana cultivation location the separation requirements and development standards applicable to medical marijuana cultivation locations would also apply
- Separation requirement of 500-feet from residential districts,
- Separation requirement of 1,000-feet from schools,
- Separation requirement of 1,000-feet from public parks, library, or community centers,
- Separation requirement of 1,000-feet from places of worship
- Separation requirement of 2,000-feet from a licensed residential substance abuse diagnostic and treatment facility, and
- Separation requirement of 1,000-feet from an adult business

The proposed revisions to the zoning ordinance would be subject to the passage of statewide ballot measure I-23-2020 known as “Smart and Safe Arizona Act” certified as Proposition 207 and placed on the November 3, 2020 general election. If that act fails to pass or fails to become law, the amendments to the zoning ordinance will not take effect.

Public Participation

Notice of a public hearing before the Planning and Zoning Commission on October 14, 2020 and before the City Council on October 26, was published in the Arizona Republic on September 25, 2020. Information on the proposed text amendments was also posted to the current development applications section of the city’s website.

At the public hearing, no members of the public spoke regarding the request. Commissioners discussed the request. Commissioner Ellison stated that Colorado made a mistake by not limiting the number of marijuana establishments and now there is an overconcentration of facilities in some neighborhoods which has been a detriment to those neighborhoods. Commissioner Molony asked if marijuana will be able to be grown as an agricultural use. Planning Manager Katie Wilken stated it could not, cultivation falls under the definition of marijuana establishment and so is regulated by the zoning ordinance in the same manner as retail sales. Commissioner Clymer expressed support for the proposed regulations. Chair Bray suggested that marijuana establishments be banned completely from the city. Ms. Wilken responded that the proposal represented reasonable restrictions. Commissioners asked for clarification of the standards. Deputy City Attorney Sarah Chilton clarified that the recreational marijuana facilities would only be allowed with a medical marijuana facility. Ms. Chilton further stated that if the ballot passes, the State could step in and declare this an issue of statewide concern and provide further regulations as to what the city can and cannot regulate.

The Planning and Zoning Commission voted 5-1 to forward a recommendation of approval to the City Council. Chair Bray represented the dissenting vote and stated the reason being that the facilities should be banned outright.

Since the meeting before the Planning and Zoning Commission, staff determined that the Goodyear CHAA Map presented to the Commission was not consistent with the intent to have one Dual Facility per 100,000 Goodyear residents similar to the state CHAAs that were designed to include areas with approximately 100,000 people per CHAA. The CHAAs established by the

State include a CHAA located north of the El Paso gas line and a CHAA located south of the El Paso gas line, and the Goodyear CHAA Map presented to the Commission included two CHAAs. However, after the Commission meeting, staff realized that the CHAA located south of the El Paso gas line is part of a larger CHAA that incorporates other populated jurisdictions and the portion of the CHAA located within the Goodyear city limits is only sparsely populated and will likely not reach the 100,000 Goodyear resident threshold for many, many, many years, if ever. Given those circumstances and the fact that the current population of the City of Goodyear, at the time of the most recent census, is only 77,476, the Goodyear CHAA Map being presented to Council modified the boundaries of the Goodyear CHAA to include the entire city. When the population of Goodyear reaches 200,000 according to a decennial census, the map will be administratively amended to add an additional CHAA. The CHAAs will be roughly of equal population, about 100,000 persons each. Each time the city adds an additional 100,000 residents the CHAA map will be updated to add additional CHAAs.

Attachments

1. Resolution 2020-2113
 - A. Community Health Analysis Area Map
2. Ordinance 2020-1476