CITY OF PHOENIX

PHOENIX, OREGON

ORDINANCE NO. 966

AN ORDINANCE AMENDING CHAPTER 2 OF THE PHOENIX LAND DEVELOPMENT CODE, ALSO KNOWN AS LDC15-01, ESTABLISHING SPECIAL STANDARDS REGULATING TIME, MANNER, AND PLACE OF CANNABIS CULTIVATION IN ALL LAND USE DISTRICTS IN THE CITY OF PHOENIX.

WHEREAS, the cultivation of cannabis is, under certain conditions and circumstances, recognized as a lawful activity by the laws and administrative regulations of the State of Oregon; and

WHEREAS, the cultivation of cannabis may be undertaken as a commercial enterprise according to these laws and administrative regulations; and

WHEREAS, the cultivation of cannabis has been found to have secondary impacts that can negatively affect quality of life and the integrity of residential neighborhoods; and

WHEREAS, the cultivation of cannabis for commercial purposes can influence local real estate markets in a way that does not support the goal of a diverse local economy; and

WHEREAS, the City has an obligation established by the Economic Element of its Comprehensive Plan to provide for diverse economic opportunities for individuals and commercial enterprises within the City; and

WHEREAS, the City of Phoenix intends to reduce conflicts between incompatible land uses and the activities conducted within Land Use Districts throughout the City ; and

WHEREAS, the City of Phoenix wishes to respect the rights of individuals afforded to them by state law to cultivate cannabis for personal use; and

WHEREAS, the City of Phoenix wishes to maintain the predominately residential character of neighborhoods and properties within Residential Land Use Districts; and

WHEREAS, the City wishes to protect public safety by eliminating attractive nuisances and potential targets for criminal activities including theft and vandalism.

NOW THEREFORE, the City of Phoenix ORDAINS as follows:

Section 1. The Land Development Code of the City of Phoenix is hereby amended as proposed in Exhibit A, and the Findings and Conclusions of Law as described in Exhibit B are hereby affirmed.

Section 2. Effective Date: This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 20th day of July, 2015.

ATTEST:

Mayor

Recorder

Chapter 1.3 – Definitions

Cultivation area: the area within which plants are grown. All parts of a plant grown within a cultivation area shall be contained within the perimeter of the cultivation area. No part of a plant, except for rhizomal matter, roots, etc., grown within a cultivation area shall grow past the perimeter of the cultivation area.

Resident grower: an individual engaged in the cultivation of cannabis for personal consumption, whether for medical or non-medical purposes, and whose primary residence is the site at which cultivation occurs.

Urban agriculture, urban agricultural land use: the cultivation of plants and raising of animals at a scale sufficient to enable the distribution of goods produced by these activities, whether in their raw form or as processed finished goods, to the general public, food processing operations, and other commercial and industrial enterprises. Confined animal feedlots, or CAFOs, and animal breeding operations are not considered to be urban agricultural land uses.

2.2.9--Special Standards for Certain Uses

N. Cannabis Cultivation. The purpose of this section is to regulate the cultivation of cannabis within Residential Land Use Map districts in a manner that protects the health, safety and welfare of the community, while avoiding undue interference with an individual's right to cultivate cannabis as allowed by the laws of the State of Oregon.

1. Applicability. All cultivation of cannabis, whether it is intended for immediate use by the grower or for distribution to and consumption by individuals other than the grower, shall meet the special use requirements established by this section.
2. Standards for the cultivation of cannabis by a resident grower who is a registered OMMP patient or care provider for consumption by a resident OMMP registered patient shall be as follows:
   a. The total area permitted to be used for cannabis cultivation, including indoor and outdoor cultivation areas, shall not exceed one hundred (100) square feet upon the site;
   b. An outdoor cultivation area shall not exceed thirty-five (35) square feet and not exceed ten (10) feet in height from the top of average surrounding grade and shall be surrounded by a fence that is six (6) feet in height. Any access points to the cultivation area must be secured at all times to prevent unauthorized access;
   c. Any and all points along the perimeter of an outdoor cultivation area shall not be located closer than ten (10) feet to any property line and shall not be located closer than thirty (30) feet to the closest edge of any other dwelling on any contiguous property;

d. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten (10) feet in height per residence and shall meet the following performance standards:
   i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
   ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited;
e. The OMMP registered patient for whom cannabis is cultivated shall reside at the site where cultivation occurs.

3. Standards for the cultivation of cannabis for the consumption by individuals other than resident OMMP registered individuals are as follows:
   a. The total area permitted to be used for cannabis cultivation shall not exceed one hundred (100) square feet upon the property;
   b. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a part of a dwelling, a garage, out building, or greenhouse;
   c. An indoor cultivation area shall not exceed one hundred (100) square feet per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.
4. Cannabis cultivation and distribution are prohibited as a Home Occupation in all Residential Land Use Districts. Cannabis cultivated in a Residential Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for onsite consumption by an individual who is legally entitled to do so. This cannabis shall not be sold for offsite distribution or consumption by an individual or body corporate.
5. Cannabis cultivation and distribution is not considered an accessory use in Residential Land Use Map Districts.
6. There shall be no visual evidence of the presence of cannabis cultivation at the property line of the site upon which cultivation is conducted;
7. The residence shall maintain a functional kitchen, bathroom, and at least one legally occupiable bedroom.
8. The cannabis cultivation area shall be in compliance with the current, adopted edition of the Oregon Specialty Structural Code and other applicable building and fire safety codes.
9. The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
10. Any proposed cannabis cultivation by an individual qualified patient or primary caregiver that cannot meet the cultivation area standards of Section 2.2.9.N.2.a or

2.2.9.N.2.c may request a Code Interpretation of the need for additional cultivation area or reduction in the minimum spatial separation requirements defined by 2.2.9.N.2.c. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The Request for Interpretation shall include written permission from the property owner. The Planning Director or planning department staff assigned by the Planning Director shall review the submitted information and make an interpretation in accordance with PLDC Chapter 4.8. The City Building Official may require additional specific standards to meet applicable building and fire safety codes, including but not limited to installation of fire suppression sprinklers. Approved cultivation for personal use that exceeds one hundred (100) square feet shall conform to the following standards:

a. Shall be in compliance with all other applicable standards in sections 2.2.9.N.1-9 above;
b. The cannabis cultivation area shall not exceed an additional fifty (50) square feet for a total of 150 square feet, not exceeding ten (10) feet in height;
c. At a minimum, the cannabis cultivation area shall be constructed with a 1-hour firewall;
d. Any additional cannabis cultivation area approved through this process shall be conducted exclusively indoors, limited to a garage or other accessory building that is secured, locked, and fully enclosed.

11. An individual cultivating cannabis or wishing to cultivate cannabis within a Residential Land Use District shall obtain a Type I Zoning Clearance from the Planning Department prior to commencement of cultivation (typically prior to planting of immature plants or seeds). The applicant shall submit information as is necessary for department staff to determine that the cultivation area will meet the requirements established herein.

2.3.2 – Permitted Use

Table 2.3.2.A - Land Uses and Building

1. Residential*:	3. Public and Institutional*:	6. Commercial:
a. Single-family attached townhouses b. Three-Family housing (triplex) c. Multi-family housing d. Residential care homes and facilities e. Family daycare (12 or fewer children) g. Mixed-use development (housing & other permitted use)* **2. Bed & Breakfast Inn's**	a. Churches and places of worship b. Clubs, lodges, similar uses c. Government offices and facilities (administration, public safety, transportation, utilities, and similar uses) d. Libraries, museums, community centers, concert halls and similar uses e. Public parking lots and garages f. Private utilities g. Public parks and recreational facilities h. Schools (public and private) i. Special district facilities j. Uses similar to those listed above [subject to CUP requirements, as applicable] 4. Accessory Uses and Structures* 5. Cottage Industrial*: "Light manufacture" (e.g., small-scale crafts, electronic equipment, bakery, furniture, similar goods when in conjunction with retail)	a. Retail trade and services, except auto-oriented uses b. Entertainment (e.g., theaters, clubs, amusement uses) c. Hotels/motels d. Medical and dental offices, clinics and laboratories e. Mixed-use development (housing & other permitted use)* f. Office uses g. Personal and professional services (e.g., child care center, catering/food services, restaurants, Laundromats and drycleaners, barber shops and salons, banks and financial institutions, and similar uses) h. Repair services must be enclosed within a building [subject to CUP requirements, as applicable] j. Uses similar to those listed above [may be subject to CUP requirements, as applicable]
Uses marked with an asterisk (*) are subject to the standards in Chapter 2.3.10 – Special Standards for Certain Uses. Uses with a double asterisk (**) require a Conditional Use Permit.		

2.3.10--Special Standards for Certain Uses

G. Cannabis Cultivation. The purpose of this section is to regulate the cultivation of cannabis within the City Center Land Use Map district in a manner that protects the health, safety and welfare of the community, while avoiding undue interference with an individual's right to cultivate cannabis as allowed by the laws of the State of Oregon.

1. Applicability. All cultivation of cannabis, whether it is intended for immediate use by the grower or for distribution to and consumption by individuals other than the grower, shall meet the special use requirements established by this section.

2. Standards for the cultivation of cannabis by a resident grower who is a registered OMMP patient or care provider for consumption by a resident OMMP registered patient shall be as follows:

   a. The total area permitted to be used for cannabis cultivation, including indoor and outdoor cultivation areas, shall not exceed one hundred (100) square feet upon the site;
   b. An outdoor cultivation area shall not exceed thirty-five (35) square feet and not exceed ten (10) feet in height from the top average surrounding grade and shall be surrounded by a fence that is six (6) feet in height. Any access points to the cultivation area must be secured at all times to prevent unauthorized access;
   c. Any and all points along the perimeter of an outdoor cultivation area shall not be located closer than ten (10) feet to any property line and shall not be located closer than thirty (30) feet to the closest edge of any other dwelling on any contiguous property;
   d. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten (10) feet in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited;
   e. The OMMP registered patient for whom cannabis is cultivated shall reside in a legal dwelling at the site where cultivation occurs. This dwelling shall be either conforming or legally nonconforming with the standards of the current Phoenix Land Development Code, Comprehensive Plan, and applicable building codes.

3. Standards for the cultivation of cannabis for the consumption by a resident grower other than a resident OMMP registered individuals are as follows:
   a. The total area permitted to be used for cannabis cultivation shall not exceed one hundred (100) square feet;
   b. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a part of a dwelling, a garage, out building, or greenhouse;
   c. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten feet (10') in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.

iii. A resident grower shall reside at the site where cultivation occurs.

4. Cannabis cultivation and distribution are prohibited as a Home Occupation in the City Center Land Use District. Cannabis cultivated in the C-C Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for personal consumption. This cannabis shall not be sold for offsite distribution or consumption by an individual or body corporate other than the resident grower.
5. Cannabis cultivation and distribution is not considered an accessory use in the City Center Land Use Map District.
6. There shall be no visual evidence of the presence of cannabis cultivation at the property line of the site upon which cultivation is conducted.
7. The residence shall maintain a functional kitchen, bathroom, and at least one legally occupiable bedroom.
8. The cannabis cultivation area shall be in compliance with the current, adopted edition of the Oregon Specialty Structural Code and other applicable building and fire safety codes.
9. The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
10. Any proposed cannabis cultivation by an individual qualified patient or primary caregiver that cannot meet the cultivation area standards of Section 2.3.10.G.2.a may request a Code Interpretation of the need for additional cultivation area or reduction in the minimum spatial separation requirements defined by 2.3.10.G.2.c. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Planning Director or planning department staff assigned by the Planning Director shall review the submitted information and make an interpretation in accordance with PLDC Chapter 4.8. The City Building Official may require additional specific standards to meet applicable building and fire safety codes, including but not limited to installation of fire suppression sprinklers. Approved cultivation for personal use that exceeds one hundred (100) square feet shall conform to the following standards:
    a. Shall be in compliance with all other applicable standards in sections 2.3.10.G.1-9 above;
    b. The cannabis cultivation area shall not exceed an additional fifty (50) square feet for a total of 150 square feet, not exceeding ten (10) feet in height;
    c. At a minimum, the cannabis cultivation area shall be constructed with a 1-hour firewall;
    d. Any additional cannabis cultivation area approved through this process shall be conducted exclusively indoors, limited to a garage or other accessory building that is secured, locked, and fully enclosed.

11. An individual cultivating cannabis or wishing to cultivate cannabis within the City Center Land Use District under the provisions of Chapter 2.3.10.2 or 3 shall obtain a Type I Zoning Clearance from the Planning Department prior to commencement of cultivation (typically prior to planting of immature plants or seeds). The applicant shall submit information as is necessary for department staff to determine that the cultivation area will meet the requirements established herein.
12. The commercial cultivation of cannabis, that being the cultivation of cannabis for the purpose of distribution to wholesale or retail customers, whether for medical or non-medical purposes, is expressly prohibited within the City Center Land Use District. Cannabis cultivated in a City Center Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for personal use as allowed by state law. Cannabis cultivated in the City Center Land Use District shall not be sold for offsite distribution or consumption by an individual or body corporate.

Exhibit A
PLDC as Amended by LDC15-01
Additions to existing text are underlined,
deletions are ~~stricken~~;
all other text appears as it will in the final,
amended document.

Commercial	
Retail Sales and Service, indoor only: ▪ less than 30,000 square feet GLA* ▪ 30,000 to 50,000 square feet GLA ▪ greater than 50,000 square feet GLA	 P C C, I-5
Nurseries and Landscape Supplies	C
Urban Agriculture < 2,000 GLA (indoor and outdoor) Urban Agriculture > 2,000 GLA (indoor and outdoor)	P C
Restaurants ▪ with drive-through ▪ without drive-through	 C P
Drive-up, drive-in, and drive-through facilities	C
Office, Banks, Research Facilities, and Clinics	P
Vet Hospitals (entirely enclosed in building)	C
Truck Stops, Truck Sales, and Heavy Equipment Sales	C, I-5
Auto Repair	P
Service Stations	C
Distribution Facilities	C
Lodging and RV Parks	P
Vehicle Sales and Service, RV and Boat Sales, Manufactured Home Sales, and Fuel Sales	C
Commercial and Public Parking	P
Commercial Storage ▪ enclosed in building and on an upper story ▪ not enclosed in building	 P C
Entertainment and Gyms ▪ enclosed in building (e.g., theater, museums, bowling alleys) ▪ not enclosed (e.g., amusement parks)	 P C
Wholesale ▪ 20,000 square feet GLA and greater ▪ less than 20,000 square feet GLA	 C P
Assisted Living Facilities	C
Mixed-use (residential with commercial/civic/industrial)	N
Civic	
Government –offices, public library	P
Government –public works yards	C
Parks and Open Space	P
Schools ▪ pre-school, daycare, and primary ▪ secondary, colleges, and vocational	 P P
Clubs and Religious Institutions	C
Light Industrial	
Manufacturing and Production ▪ 5,000 sq. ft. and larger ▪ less than 5,000 sq. ft. with retail outlet	 C P
Warehouse	C
Transportation, Freight and Distribution, Taxi Cab Dispatch, Emergency Vehicle Dispatch	C, I-5

Industrial Service (e.g., cleaning, repair)	C, I-5
Processing of Raw Materials	N

2.4.5—Special Standards for Certain Uses

K. **Cannabis Cultivation**. The purpose of this section is to regulate the cultivation of cannabis within Commercial Highway Land Use Map districts in a manner that protects the health, safety and welfare of the community, allows for commercial cultivation of cannabis, and avoids undue interference with an individual's right to cultivate cannabis as allowed by the laws of the State of Oregon. Cultivation of cannabis shall also be considered an "Urban Agriculture" use, and shall be subject to any additional requirements that are applicable to such uses.

1. Applicability. All cultivation of cannabis, whether it is intended for immediate use by the grower or for distribution to and consumption by individuals other than the grower, shall meet the special use requirements established by this section.
2. Standards for the cultivation of cannabis by a resident grower who is a registered OMMP patient or care provider for consumption by a resident OMMP registered patient shall be as follows:
   a. The total area permitted to be used for cannabis cultivation, including indoor and outdoor cultivation areas, shall not exceed one hundred (100) square feet upon the site;
   b. An outdoor cultivation area shall not exceed thirty-five (35) square feet and not exceed ten (10) feet in height from the top average surrounding grade and shall be surrounded by a fence that is six (6) feet in height. Any access points to the cultivation area must be secured at all times to prevent unauthorized access;
   c. Any and all points along the perimeter of an outdoor cultivation area shall not be located closer than ten (10) feet to any property line and shall not be located closer than thirty (30) feet to the closest edge of any other dwelling on any contiguous property;
   d. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten (10) feet in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited;
   e. The OMMP registered patient for whom cannabis is cultivated shall reside in a legal dwelling at the site where cultivation occurs. This dwelling shall be either conforming or legally nonconforming with the standards of the current Phoenix Land Development Code, Comprehensive Plan, and applicable building codes.

3. Standards for the cultivation of cannabis by a resident grower for the consumption by individuals other than resident OMMP registered individuals are as follows:
   a. The total area permitted to be used for cannabis cultivation shall not exceed one hundred (100) square feet;
   b. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a part of a dwelling, a garage, out building, or greenhouse;
   c. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten feet (10') in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.
4. Cannabis cultivation and distribution are prohibited as a Home Occupation in the Commercial Highway Land Use District. Cannabis cultivated by a resident grower in the C-H Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for personal consumption. This cannabis shall not be sold for offsite distribution or consumption by an individual or body corporate other than the resident grower.
5. Cannabis cultivation and distribution is not considered an accessory use in the Commerical Highway Land Use Map District.
6. There shall be no visual evidence of the presence of cannabis cultivation at the property line of the site upon which cultivation is conducted.
7. The residence shall maintain a functional kitchen, bathroom, and at least one legally occupiable bedroom.
8. The cannabis cultivation area shall be in compliance with the current, adopted edition of the Oregon Specialty Structural Code and other applicable building and fire safety codes.
9. The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
10. Any proposed cannabis cultivation by an individual qualified patient or primary caregiver that cannot meet the cultivation area standards of sections 2.4.5.K.2.a or 2.4.5.K.2.c may request a Code Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Planning Director or planning department staff assigned by the Planning Director shall review the submitted information and make an interpretation in accordance with PLDC Chapter 4.8.The City Building Official may require additional specific standards to

meet applicable building and fire safety codes, including but not limited to installation of fire suppression sprinklers. Approved cultivation for personal use that exceeds one hundred (100) square feet shall conform to the following standards:

a. Shall be in compliance with all other applicable standards in sections 2.4.5.K.1-9 above;
b. The cannabis cultivation area shall not exceed an additional fifty (50) square feet for a total of 150 square feet, not exceeding ten (10) feet in height;
c. At a minimum, the cannabis cultivation area shall be constructed with a 1-hour firewall;
d. Any additional cannabis cultivation area approved through this process shall be conducted exclusively indoors, limited to a garage or other accessory building that is secured, locked, and fully enclosed.

11. Additional standards for the commercial cultivation of cannabis, that being the cultivation of cannabis for the purpose of distribution to wholesale or retail customers, whether for medical or non-medical purposes, within the C-H Commercial Highway Land Use District shall be met:
    a. The total area permitted to be used for cannabis cultivation upon any single site shall not exceed five thousand (5,000) square feet GLA;
    b. A maximum business frontage of no more than one hundred and fifty (150) feet;
    c. A commercial cultivation operation shall obtain all licenses, certifications, permits, and other regulatory approvals prior to operation, and shall remain in good standing as required by the terms of those approvals;
    d. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a garage, out building, greenhouse, or other commercial building;
    e. An indoor cultivation area shall meet the following performance standards:
        i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
        ii. At a minimum, the cannabis cultivation area shall be surrounded by a 1-hour firewall or shall utilize a sufficiently sized fire suppression system;
        iii. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers;
    f. At a minimum, the cannabis cultivation area shall be surrounded by a 1-hour firewall or shall utilize a sufficiently sized fire suppression system;
    g. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers.

Industrial
Heavy manufacturing, assembly, and processing of raw materials* [CUP]
Light manufacture (e.g., electronic equipment, printing, bindery, furniture, and similar goods)
Urban agriculture (indoor crop cultivation, aquaculture, plant nurseries) < 5,000 square feet GLA Urban agriculture (indoor crop cultivation, aquaculture, plant nurseries) > 5,000 square feet GLA* [CUP]
Warehousing and distribution (this does not include Mini-Warehouse Storage facilities)
Uses similar to those listed above
Commercial
Offices and other commercial uses are permitted when they are integral to a primary industrial use (e.g., administrative offices, wholesale of goods produced on location, and similar uses).
Public and institutional uses
Government facilities (e.g., public safety, utilities, school district bus facilities, public works yards, transit and transportation, and similar facilities where the public is generally not received.)
Private Utilities (e.g., natural gas, electricity, telephone, cable, and similar facilities)
Special district facilities (e.g., irrigation district, and similar facilities)
Vocational schools co-located with parent industry or sponsoring organization
Uses similar to those listed above.
Accessory uses and structures
Wireless communication equipment – CUP*
Residential uses for security purposes only
One caretaker unit shall be permitted for each development, subject to the standards in Chapter 2.5.8 – Special Standards for Certain Uses. Other residential uses are not permitted, except that residences existing prior to the effective date of this Code may continue.
* Land uses with an asterisk (*) shall require a Conditional Use Permit subject to the procedure and standards in Chapter 4.4 – Conditional Use Permits.

2.5.8 – Special Standards for Certain Uses

D. Cannabis Cultivation. The purpose of this section is to regulate the cultivation of cannabis within General Industrial (GI) District Land Use Map districts in a manner that protects the health, safety and welfare of the community, allows for commercial cultivation of cannabis, and avoids undue interference with an individual's right to cultivate cannabis as allowed by the laws of the State of Oregon. Commercial cultivation of cannabis shall also be considered an "Urban Agriculture" use, and shall be subject to any additional requirements that are applicable to such uses.

1. Applicability. All cultivation of cannabis, whether it is intended for immediate use by the grower or for distribution to and consumption by individuals other than the grower, shall meet the special use requirements established by this section.
2. Standards for the cultivation of cannabis by a resident grower who is a registered OMMP patient or care provider for consumption by a resident OMMP registered patient shall be as follows:
   a. The total area permitted to be used for cannabis cultivation, including indoor and outdoor cultivation areas, shall not exceed one hundred (100) square feet upon the site;
   b. An outdoor cultivation area shall not exceed thirty-five (35) square feet and not exceed ten (10) feet in height from the top average surrounding grade and shall be surrounded by a fence that is six (6) feet in height. Any access points to the cultivation area must be secured at all times to prevent unauthorized access;
   c. Any and all points along the perimeter of an outdoor cultivation area shall not be located closer than ten (10) feet to any property line and shall not be located closer than thirty (30) feet to the closest edge of any other dwelling on any contiguous property;
   d. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten (10) feet in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited;
   e. The OMMP registered patient for whom cannabis is cultivated shall reside in a legal dwelling at the site where cultivation occurs. This dwelling shall be either conforming or legally nonconforming with the standards of the current Phoenix Land Development Code, Comprehensive Plan, and applicable building codes.
3. Standards for the cultivation of cannabis by a resident grower for the consumption by individuals other than resident OMMP registered individuals are as follows:
   a. The total area permitted to be used for cannabis cultivation shall not exceed one hundred (100) square feet;
   b. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a part of a dwelling, a garage, out building, or greenhouse;
   c. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten feet (10') in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.

4. Cannabis cultivation and distribution are prohibited as a Home Occupation in the General Industrial Land Use District. Cannabis cultivated in a G-I Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for personal consumption. This cannabis shall not be sold for offsite distribution or consumption by an individual or body corporate other than the resident grower.
5. Cannabis cultivation and distribution is not considered an accessory use in the General Industrial Land Use Map District.
6. There shall be no visual evidence of the presence of cannabis cultivation at the property line of the site upon which cultivation is conducted.
7. The residence shall maintain a functional kitchen, bathroom, and at least one legally occupiable bedroom.
8. The cannabis cultivation area shall be in compliance with the current, adopted edition of the Oregon Specialty Structural Code and other applicable building and fire safety codes.
9. The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
10. Any proposed cannabis cultivation by an individual qualified patient or primary caregiver that cannot meet the cultivation area standards of sections 2.5.8.D.2.a or 2.5.8.D.2.c may request a Code Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Planning Director or planning department staff assigned by the Planning Director shall review the submitted information and make an interpretation in accordance with Chapter 4.8. The City Building Official may require additional specific standards to meet applicable building and fire safety codes, including but not limited to installation of fire suppression sprinklers. Approved cultivation for personal use that exceeds one hundred (100) square feet shall conform to the following standards:
    a. Shall be in compliance with all other applicable standards in sections 2.5.8.D.1-9 above; and
    b. The cannabis cultivation area shall not exceed an additional fifty (50) square feet for a total of 150 square feet, not exceeding ten (10) feet in height;
    c. At a minimum, the cannabis cultivation area shall be constructed with a 1-hour firewall;
    d. Any additional cannabis cultivation area approved through this process shall be conducted exclusively indoors, limited to a garage or other accessory building that is secured, locked, and fully enclosed.
11. Additional standards for the commercial cultivation of cannabis, that being the cultivation of cannabis for the purpose of distribution to wholesale or retail

customers, whether for medical or non-medical purposes, within the General Industrial G-I Land Use District shall be met:

a. The total area permitted to be used for cannabis cultivation upon or at any single site shall not exceed forty thousand (40,000) square feet GLA;
b. A maximum business frontage of no more than two hundred (200) feet;
c. A commercial cultivation operation shall obtain all licenses, certifications, permits, and other regulatory approvals prior to operation, and shall remain in good standing as required by the terms of those approvals;
d. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a garage, out building, greenhouse, or other commercial building;
e. An indoor cultivation area shall meet the following performance standards:
   i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
   ii. The facility shall utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
   iii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.
f. At a minimum, the cannabis cultivation area shall be surrounded by a 1-hour firewall or shall utilize a sufficiently sized fire suppression system.
g. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers.

2.6.8—Special Standards for Certain Uses

D. Cannabis Cultivation. The purpose of this section is to regulate the cultivation of cannabis within Light Industrial Land Use Map districts in a manner that protects the health, safety and welfare of the community, allows for commercial cultivation of cannabis, and avoids undue interference with an individual's right to cultivate cannabis as allowed by the laws of the State of Oregon. Cultivation of cannabis shall also be considered an "Urban Agriculture" use, and shall be subject to any additional requirements that are applicable to such uses.

1. Applicability. All cultivation of cannabis, whether it is intended for immediate use by the grower or for distribution to and consumption by individuals other than the grower, shall meet the special use requirements established by this section.
2. Standards for the cultivation of cannabis by a resident grower who is a registered OMMP patient or care provider for consumption by a resident OMMP registered patient shall be as follows:
   a. The total area permitted to be used for cannabis cultivation, including indoor and outdoor cultivation areas, shall not exceed one hundred (100) square feet upon the site;
   b. An outdoor cultivation area shall not exceed thirty-five (35) square feet and not exceed ten (10) feet in height from the top average surrounding grade and shall be surrounded by a fence that is six (6) feet in height. Any access points to the cultivation area must be secured at all times to prevent unauthorized access;
   c. Any and all points along the perimeter of an outdoor cultivation area shall not be located closer than ten (10) feet to any property line and shall not be located closer than thirty (30) feet to the closest edge of any other dwelling on any contiguous property;
   d. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten (10) feet in height per residence and shall meet the following performance standards:
      i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
      ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited;
   e. The OMMP registered patient for whom cannabis is cultivated shall reside in a legal dwelling at the site where cultivation occurs. This dwelling shall be either conforming or legally nonconforming with the standards of the current Phoenix Land Development Code, Comprehensive Plan, and applicable building codes.
3. Standards for the cultivation of cannabis by a resident grower for the consumption by individuals other than resident OMMP registered individuals are as follows:
   a. The total area permitted to be used for cannabis cultivation shall not exceed one hundred (100) square feet;

b. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a part of a dwelling, a garage, out building, or greenhouse;
c. An indoor cultivation area shall not exceed one hundred (100) square feet and not exceed ten feet (10') in height per residence and shall meet the following performance standards:
   i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
   ii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.

4. Cannabis cultivation and distribution are prohibited as a Home Occupation in the Light Industrial Land Use District. Cannabis cultivated in the L-I Land Use District is explicitly intended to allow a resident grower to cultivate cannabis for personal consumption. This cannabis shall not be sold for offsite distribution or consumption by an individual or body corporate other than the resident grower.
5. Cannabis cultivation and distribution is not considered an accessory use in the Light Industrial Land Use Map District.
6. There shall be no visual evidence of the presence of cannabis cultivation at the property line of the site upon which cultivation is conducted.
7. The residence shall maintain a functional kitchen, bathroom, and at least one legally occupiable bedroom.
8. The cannabis cultivation area shall be in compliance with the current, adopted edition of the Oregon Specialty Structural Code and other applicable building and fire safety codes.
9. The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
10. Any proposed cannabis cultivation by an individual qualified patient or primary caregiver that cannot meet the cultivation area standards of sections 2.6.8.D.2.a or 2.6.8.D.2.c may request a Code Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Planning Director or planning department staff assigned by the Planning Director shall review the submitted information and make an interpretation in accordance with Chapter 4.8. The City Building Official may require additional specific standards to meet applicable building and fire safety codes, including but not limited to installation of fire suppression sprinklers. Approved cultivation for personal use that exceeds one hundred (100) square feet shall conform to the following standards:
    a. Shall be in compliance with all other applicable standards in sections 2.6.8.N.1-9 above;

b. The cannabis cultivation area shall not exceed an additional fifty (50) square feet for a total of 150 square feet, not exceeding ten (10) feet in height;
c. At a minimum, the cannabis cultivation area shall be constructed with a 1-hour firewall;
d. Any additional cannabis cultivation area approved through this process shall be conducted exclusively indoors, limited to a garage or other accessory building that is secured, locked, and fully enclosed.

11. Additional standards for the commercial cultivation of cannabis, that being the cultivation of cannabis for the purpose of distribution to wholesale or retail customers, whether for medical or non-medical purposes, within the Light Industrial L-I Land Use District shall be met:
    a. The total area permitted to be used for cannabis cultivation upon or at any single site shall not exceed ten thousand (10,000) square feet GLA;
    b. A maximum business frontage of no more than one hundred and fifty (150) feet;
    c. A commercial cultivation operation shall obtain all licenses, certifications, permits, and other regulatory approvals prior to operation, and shall remain in good standing as required by the terms of those approvals;
    d. Outdoor cultivation areas are not permitted. All cultivation shall be conducted within an enclosed, secured building such as a garage, out building, greenhouse, or other commercial building;
    e. An indoor cultivation area shall meet the following performance standards:
        i. Lighting used for indoor cultivation shall not exceed 1200 watts for every fifty (50) square feet of cultivation area;
        ii. The facility shall utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
        iii. The use of explosive or flammable gas products for cannabis cultivation or processing is prohibited.
    f. At a minimum, the cannabis cultivation area shall be surrounded by a 1-hour firewall or shall utilize a sufficiently sized fire suppression system.
    g. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers.

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TITLE: **AMENDMENT TO THE PHOENIX LAND DEVELOPMENT CODE REGARDING THE CULTIVATION OF CANNABIS.**

FILE NUMBER: LDC 15-01

APPLICANT: City of Phoenix

STAFF REPORT: June 1, 2015 at the City of Phoenix, 112 West 2nd Street, Phoenix, Oregon 97535, M-F, 8:00am – 5:00pm, or on the Planning & Building Department website (http://www.phoenixoregon.gov).

DATE OF PLANNING COMMISSION HEARING: June 8, 2015

STAFF RECOMMENDATION: Staff recommends that the Planning Commission accept the findings of this report and forward the proposed amendment to the City Council for its review and approval of the amendment after taking public testimony and deliberating at a duly noticed and conducted public hearing.

Note: Text excerpted from the PLDC appears below in italics.

I. PROJECT INFORMATION: The Planning Commission of the City of Phoenix has discussed the issue of cannabis cultivation at several work sessions beginning on March 23, 2015. The issue was originally brought to the City's attention during public comment at several City Council meetings during 2014. Members of the community expressed concern and dissatisfaction with the presence of outdoor cannabis cultivation operations in residential neighborhoods. These operations appear, at least from eyewitness accounts, to be intensive cultivation operations that consume entire backyards on residential lots. Smaller cultivation operations where the intended final consumer of cannabis is someone who lives on the premises (a resident grower), likely exist throughout the City but have not been identified in complaints.

Intensive, outdoor cannabis cultivation within and adjacent to residential neighborhoods creates land use conflicts between established residential uses and the new nonresidential, agricultural uses of these more intensive cultivation operations. The primary complaint received by the City has been the odor generated by mature cannabis plants at or around harvest time, lasting from late August through the end of September. Such complaints have been documented in communities throughout the Rogue Valley including Ashland. In Phoenix, complainants indicated that for several months during the summer growing season they were unable to open windows due to the pervasiveness of the odor. They further stated that the inability to enjoy their own outdoor space and open windows in their own homes significantly impairs their quality of life.

Aside from the most noticeable offsite impact (odor), cannabis cultivation can have other negative impacts on residential neighborhoods. Officials in other communities, most notably Arcata, California, have documented the phenomenon of conversion of

dwellings in established residential neighborhoods into cultivation facilities that no longer function as residential properties in any way. The presence of a commercial agricultural operation in the midst of a residential neighborhood is inconsistent with many residents' expectations of neighborhood character and function. Converted homes are, for all practical purposes, vacant and convey an image of disuse and abandonment—a problem that may in fact by be exacerbated the property owner's own negligence or unwillingness to maintain a property as a resident would. Even under the best of circumstances, where a cultivation operation is concealed within a well maintained residential property, the property ceases to contribute to any sense of community or neighborliness.

Other documented impacts of conversion of residences to cultivation sites include a variety of environmental, community development, and public safety problems. An energy hungry industry, residential properties have been targeted in California for acquisition by commercial cultivation operations because of the lower electrical utility rate payer status accorded to residential customers. A home converted for indoor cultivation can consume as much electricity as a 10,000 square foot retail commercial property. According to community development officials in Arcata, California, during the height of this phenomenon in their community very few of the estimated 600-700 converted residential cultivation sites legally upgraded electrical systems to meet the demands of such high consumption. As a result, building code violations were common and cultivation sites were not adequately protected from the threat of fire. Unpermitted and improvised electrical work poses a risk to the lives of public safety personnel and area residents while imposing an additional burden on local fiscal resources. Pesticides and nonorganic fertilizers are often used to enhance growth, and because residential sewer systems are not designed for industrial pretreatment many of these substances are sent downstream where wastewater management facilities are often unable to remove them from waste water before it is released into surface waters.

In addition to unregistered cultivation sites in residential neighborhoods, registered medical marijuana grow sites that are regulated under the OMMP operate within the City. These operations are purposefully commercial in nature, providing cannabis to individual OMMP registrants or "cardholders" and dispensaries. They are located on properties within nonresidential land use districts, more specifically the C-C City Center.

Though they share some commonalities with cultivation sites in residential neighborhoods, cannabis cultivation operations in nonresidential land use districts present a unique set of problems. One of the registered grow sites located in Phoenix is outdoor and, according to neighboring property owners, has been subject to several thefts that have occurred at night after standard business hours. Whereas cultivation by resident growers in residential neighborhoods may be particularly vulnerable to theft during the day when many residents are away at work, cultivation sites in nonresidential land use districts may be particularly vulnerable to theft at night when activity at surrounding properties decreases. Unlike most other agricultural operations, cannabis

is a high value crop, very transportable, and requires very little processing prior to sale. All of these characteristics make it a target for theft relative to other agricultural crops.

It should also be noted that given Phoenix's relatively small size and compact development pattern, problems created by or associated with a particular type of land use may be experienced beyond the limits of that particular land use district. In the case of the commercial cultivation operations in Phoenix, all of them are located directly adjacent to established residential neighborhoods. Odors generated by cultivation operations and the increased likelihood of criminal activity are examples of land use conflicts that are, in instances like this, embedded within the interface between residential and nonresidential land uses.

The negative impacts of cannabis cultivation manifest directly through the trespass of odors onto adjacent properties, the increased risk of fire attributable to building code violations, and the increased incidence of criminal acts. These impacts can be managed through operational performance standards and facility design standards (for example the requirement that cultivation occur in secured, enclosed areas). But they can also impact communities indirectly through their influence on real estate markets.

Emerging from decades of prohibition, the cannabis industry is poised for very fast growth to meet pent up demand. That means demand for land for retail distribution, processing, and cultivation will likely match consumer demand and rapid business development. This puts cannabis industry land uses in a unique position within local real estate markets, because they both need land very quickly and they are positioned to pay a premium for suitable land as supplies become more and more limited. Compared to other nonresidential land uses, cannabis cultivation operations are able to pay much higher rents due to larger profit margins. The Denver Post reported that industrial vacancy throughout the Denver metropolitan region reached an historic low of 3% two years after cannabis was legalized for recreational use. These low vacancy rates were attributed to the burgeoning commercial cannabis cultivation industry. Local industrial real estate brokers identified cannabis cultivation operations as the reason for the declining availability of industrial space and rising rents. In the Rogue Valley, the impending legalization of cannabis for non-medical consumption has drawn the attention of property owners and developers. In one case, a local developer has built 1,500 square foot "grow condos" that sell for $100/square foot under land contract that costs the purchaser an additional 10.7%/year in interest. The 15,000 square foot building is 100% occupied. The per square foot cost of $100 (not including debt service) is $25 above average industrial asking prices for existing industrial space.

Reduced vacancy and higher rents alone are not necessarily a problem. But placed in the context of a constrained real estate market environment and Oregon's growth management system that restricts access to developable land, these factors have unintended consequences for community economic development. Many industries that use industrial and commercial land will compete with cannabis cultivation operations for

a limited supply of available space. These industries, a small woodworking shop for example or artisanal food producer, operate on much tighter margins than do cannabis cultivation operations. Their business models do not allow them to commit more operating income to real estate costs, putting them at a competitive disadvantage.

This may very well change over time as the cannabis industry achieves greater stability and profit margins decline as competition weighs on retail prices and gross revenues. But until that time, it is reasonable to assume that cannabis businesses will compete with—and especially in the case of industrial land out-compete-- existing businesses for limited real estate. This should be a consideration when designing land use regulations for cannabis industry land uses if a community wishes to provide opportunities for a variety of commercial and industrial land users and encourage an economically diverse local economy.

The challenge before the Planning Commission, therefore, is to balance individuals' rights that have been established through statute, the rights of neighbors to quiet enjoyment of their private property, and broader community development and economic development goals. It is the opinion of staff that conflict between these goals can be managed through an approach that allows for the cultivation of cannabis with specific time, place, and manner regulations.

State Regulation of Cultivation

Oregon Medical Marijuana Act or OMMA

The State does not require proof of compliance with local land use regulations when a cannabis cultivation operation is registered; nor does the OMMA release properties owners from local land use regulations (OAR 333-008-0025). In other words, the OMMA does not preempt local land use regulations.

Measure 91

Final rules for this ballot initiative have not been approved by the State Legislature as of this writing, and are not anticipated. Regarding cultivation of cannabis by a resident grower for consumption not related to a medical condition and therapeutic course of treatment, Ballot Measure 91 clearly conveys the right to produce, keep, and store eight (8) ounces of "homegrown marijuana" and no more than 4 plants per household (Section 6). As proposed by Ballot Measure 91, "commercial" cannabis production would be licensed by the Oregon Liquor Control Commission (Section 19). The language does not, however, specifically state or otherwise imply that this license pre-empts local land use controls that may directly or indirectly regulate the cannabis cultivation. Section 58, which describes the "authority of cities and counties over establishments that serve marijuana", explicitly states that BM-91 authorizes local jurisdictions to adopt "reasonable, time, place, and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers [...]". This section does not

discuss local regulation of cannabis cultivation or any other form of urban agriculture through land use controls.

Other Communities

Ashland

The City of Ashland began looking at the issue of cannabis cultivation in residential neighborhoods in early 2015, but has yet to take any decisive action. Many of the same concerns discussed above were raised during at least one City Council meeting.

Grants Pass

Grants Pass is considering a total ban on outdoor cultivation of cannabis in all land use districts. The matter is under deliberation by the City Council.

Central Point

Central Point's City Council adopted regulations prohibiting all outdoor cannabis cultivation, whether for medical or non-medical purposes, whether for personal or offsite (commercial) consumption on May 14, 2015 (Ordinance 2007). It also requires that cultivation "must not be perceptible from the exterior of the household"; limits indoor cultivation to permanent structures with solid walls and foundation; prohibits cultivation in "multifamily or attached residential development such as townhomes and condominiums" (Section 8.45.030); and prohibits "licensed commercial grows, as defined in M. 91" from all residential zones.

Medford

Medford is contemplating the use of fencing to mitigate impacts of grows within residential neighborhoods. The effectiveness of fencing to manage a problem that is not primarily visual in nature is doubtful.

Arcata, CA

Many communities in California, where medical cannabis has been legal since 1996, have enacted regulations that restrict outdoor growing and establish other performance standards. The City of Arcata limits the size of grows and prohibits outdoor growing altogether. Speaking with the Director of the Community Development Department, staff learned that prior to these regulations Arcata experienced widespread code violations related to the operation of medical marijuana cultivation operations. In addition to noxious odors, the City often discovered serious building code violations when investigating grow operations. In 2012, voters in Arcata overwhelmingly approved an initiative taxing commercial marijuana cultivation operations through special electricity rates. The tax reportedly amounts to a tripling of the cost of electricity for residential properties that consume.

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Indoor cannabis cultivation requires energy intensive artificial lighting (roughly 15 – 30 watts/square foot). These systems often exceed the design capacities of typical single and multifamily dwellings. Electrical and HVAC work is often completed without permits and inspections.

The City also encountered problems with the widespread conversion of homes into indoor grow operations in residential neighborhoods. The dwellings no longer provided housing for residents in a tight housing market and degraded the residential character of established neighborhoods by introducing commercial or industrial agricultural operation into their midst. Consequently, the City prohibits cultivation as home occupation and limits cultivation to dwellings where the resident actually lives.

Current Land Development Code & Proposed Amendment

With the passage of Measure 91 in November, 2014, land use conflicts arising from the cultivation of cannabis in urban and rural areas, in residential and nonresidential land use districts, are only likely to increase in number and intensity. The substantial profit involved in cannabis cultivation and the availability of vacant properties in a City like Phoenix make it very susceptible to an influx in the number of operations. The City of Phoenix is already home to at least two cultivation operations in one of its commercial land use districts; anecdotal evidence suggests that several more are operating in residential land use districts. The Land Development Code does not currently allow urban agricultural operations other than "nurseries", and only then with a Conditional Use Permit.

Key Features of Proposed Time, Place, and Manner Regulations

As of June 8, 2015, the proposed PLDC regulations are as follows:

- The proposed PLDC regulations make an allowance for <u>outdoor</u> cultivation of 35 square feet in every land use district for "resident growers" who are registered as OMMP patients. This area is counted against a total maximum cultivation area of 100 square feet. They must reside at the cultivation site. A resident grower who is NOT registered as an OMMP patient can cultivate up to 100 square feet <u>indoors</u> in any land use district. The resident grower must actually reside at the cultivation site. Cultivation sites in residential districts would be required to get Type I Zoning Clearance.
- Commercial cultivation is expressly prohibited in all residential land use districts and may not be a home occupation. Commercial cultivation is also expressly prohibited in the City Center land use district.
- Outdoor cultivation areas must be surrounded by a six foot fence that is "secured at all times to prevent unauthorized access"; must be at least 10 feet from any property line and at least 30 feet from any dwelling on any contiguous property.

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- Wattage for lighting is limited in to 1200 watts/50 square feet of cultivation area in every land use district.
- Commercial cultivation would be prohibited within the City Center district.
- Commercial cultivation would be allowed in the Commercial Highway land use district, but limited to a maximum of 5,000 square feet for each site; sites in General and Light Industrial land use districts could have a maximum of 40,000 and 10,000 square feet, respectively.
- Commercial cultivation in C-H, G-I, and L-I land use districts over certain sizes would need a Conditional Use Permit.

II. PROPOSED AMENDMENTS: see Exhibit A in the attached draft Planning Commission Recommendation.

III. COMPLIANCE WITH DEVELOPMENT CODE PROVISIONS: Amendments to the Phoenix Land Development Code must comply with Section 4.7.2 of the Phoenix Land Development Code, which states that legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV Procedure in Chapter 4.1.6 – Type IV Procedure (Legislative) and shall conform to Section 4.7.2.B and 4.7.6, as applicable.

Demonstration of compliance with section 4.7.2.

1. The proposed amendment is consistent with the purpose of the subject section and article.

FINDING: The proposed amendment addresses issues arising from a certain use of land, its consistencies and inconsistencies with the purpose of each land use district, and establishes measures to mitigate or eliminate the undesirable secondary effects of that land use.

CONCLUSIONS OF LAW: Placing the proposed additions to the PLDC within this Chapter should provide for ease of use. Someone interested in knowing about permitted uses of land and any applicable standards would expect to find that information within this Chapter. **Proposed amendment is consistent with the purpose of the subject section and article.**

2. The proposed amendment is consistent with other Provisions of this Code.

FINDING: The proposed amendment is supportive of other provisions within the PLDC, particularly Chapter 2. Chapter 2 primarily addresses the orderly and systematic development of land within the City. Each land use district is considered individually below.

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R-1, 2, 3 Residential

The stated purpose of Chapter 2.2.1 (residential districts) is the promotion of livable and stable neighborhoods within the City, and their improvement. As discussed above, commercial cultivation of cannabis is not consistent with the residential character and function of property located within residential land use districts. Therefore, the proposed amendment to the Code would establish the following special standards for cannabis cultivation in all residential land use districts that limit the extent to which a residential property could be used for cultivation:

- Commercial cultivation, that being cultivation for consumption by anyone other than a resident grower or care provider for offsite distribution would be prohibited.
- Outdoor cultivation is limited to 35 square feet, and only then for cannabis cultivated for use by an OMMP registered resident. This allowance was designed to provide access to an affordable supply of cannabis for therapeutic use. According to Robert Bergman, author of "The Marijuana Grow Bible", a 35 square foot outdoor cultivation area could accommodate 3-4 plants at 9 square feet/plant with a yield of 500 grams or 17.50 ounces of usable cannabis per plant for a total of 3.30 pounds per growing season.
- An outdoor "cultivation area" would need to be at least 10 feet from any property line, and 30 feet from any dwelling on an adjacent lot. This standard is consistent with current standards for the raising of livestock, beekeeping, and other small scale agricultural uses within residential land use districts.
- So called "recreational marijuana" would not be permitted to be grown outdoors; it would need to be grown within the residence or other type of secured outbuilding.

C-C City Center

The stated purpose of Chapter 2.3.10 is to "strengthen the City Center District as the 'heart' of the community and as the logical place for people to gather and create a business center." The City Center district is intended to accommodate mixed land uses that support a vibrant walkable, urban environment. Auto-oriented land uses, and those that do not promote or contribute to an active downtown environment are not permitted. Urban agriculture uses, except for small outdoor gardens, are not currently permitted within this district.

Due to their need for secured space, commercial cannabis cultivation facilities would not be consistent with the policy goals of the City Center district. Stringent design

guidelines which strongly encourage street level retail and service uses are highly incompatible with any operation that is closed to the general public. This should also be understood in the context of the physical characteristics of Phoenix's city center which is quite small and provides limited opportunities to develop the types of land uses that would be supportive of an active downtown. Commercial cultivation of cannabis operations would compete for space with land uses that directly support the goal of creating a downtown area where residents and visitors can shop, dine, and recreate. Commercial cannabis cultivation operations would not, therefore, be appropriate in this land use district.

Allowances are made for personal cultivation for resident growers and registered care providers, just as in residential land use districts.

C-H Commercial Highway

The stated purpose of the C-H Commercial Highway land use district is to "provide for the development of easily accessible commercial areas that are intended to accommodate a mixture of retail businesses, services, and professional offices to serve the commercial and retail needs of the community and surrounding areas".

Of the two commercial districts, Commercial Highway is the only district that currently allows for a land use that is similar to the commercial cultivation. "Nurseries", which in contrast to a commercial cultivation facility are retail operations serving the general public, are permitted in the C-H land use district with a Conditional Use Permit. Large-scale outdoor cultivation similar to farming is not permitted in this land use district. (Oregon land use regulations, in fact, make a clear distinction between urban and rural "resource" lands. Hence, active farms are not often found within the political boundaries of cities in Oregon.)

With locations on the periphery of C-C districts, along major arterials, and (usually) with some spatial separation from adjacent residential neighborhoods, the C-H district can accommodate more intensive commercial and light industrial land uses that are known to generate offsite impacts that are incompatible with residential land uses. Therefore, commercial cannabis cultivation operations may be reasonably located within this district provided that they conform to special standards designed to mitigate offsite impacts unique to them. These standards include a maximum total permitted size of 5,000 square feet and a maximum business frontage of 150 feet for each cannabis cultivation site. These standards are designed 1) to prevent development of massive buildings that would be more industrial than commercial in character and 2) reduce the likelihood that large amounts of the City's limited commercial properties could be converted to commercial cultivation operations.

Allowances are made for personal cultivation for resident growers and registered care providers in instances where such individuals may live in legally nonconforming dwellings.

G-I General and L-I Light Industrial

These industrial land use districts are at once the most suitable locations for commercial cultivation operations, the most easily converted to such operations, and some of the most important lands to the City for economic development. Industrially zoned land, and land designated as industrial by the comprehensive plan are currently quite limited. However, with current design standards and additional special standards for cannabis cultivation that are proposed herein, locating commercial cultivation operations within G-I and L-I land use districts offers the greatest opportunity to accommodate such operations while managing potential land use conflicts.

Allowances are made for personal cultivation for resident growers and registered care providers in instances where such individuals may live in legally nonconforming dwellings.

FINDING: According to Section 4.1.6.D – *Notice of Hearing*, amendments to the PLDC must undergo a public hearing before the Planning Commission and the City Council. The Planning Commission will conduct a public hearing on the proposed amendment on June 8, 2015. If the Planning Commission affirmatively recommends the amendment to the City Council, a subsequent public hearing will be conducted 2015 before the City Council.

FINDING: According to Section 4.1.6.D.2, all Type IV decisions must be noticed in the following manner: 1) DLCD shall be notice at least 35 days before the 1st evidentiary hearing; 2) notices mailed to certain recipients at least 20 days and no more than 40 days before the 1st evidentiary hearing; 3) notice shall be posted on the City's website, at City Hall, and in other locations as deemed appropriate.

All of these notice requirements have been met (or were not applicable given the nature of this action), and an affidavit of notice will be included in the official record once it has been closed.

Demonstration of compliance with Section 4.7.6 – *Transportation Planning Rule Compliance.*

FINDING: subsection 4.7.6.B states "Amendments [...] land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan." The proposed amendment is <u>not</u> anticipated to

"significantly affect a transportation facility". **Standard is not applicable to the land use action under consideration.**

CONCLUSIONS OF LAW: Proposed amendment is consistent with other Provisions of this Code.

3. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

FINDING: The proposed amendment is supportive of existing provisions of the PLDC which have previously been found to be consistent with the Comprehensive Plan.

FINDING: The Land Use element describes the C-C district as having "an emphasis on general and specialty retail, service, and professional office" (p. 9). It continues stating that design standards within this district shall include "Providing for the construction of a streetscape and thus providing a clear pedestrian orientation". For reasons discussed in greater detail above, indoor cultivation operations are incompatible with these objectives.

Other commercial and "interchange business" designated lands are intended to provide opportunities for convenience retail and service commercial that is more likely to be dependent on automobile traffic for business. Lands in this designation may be conducive to commercial cultivation operations, but these lands are of limited supply and commitment of some portion of them for non-commercial uses should be carefully managed. This is why light industrial is allowed by right in the C-H district when accompanied by a retail use; light industrial uses otherwise require a Conditional Use Permit.

Land designated industrial by the Comprehensive Plan has been so identified to facilitate the development of employment opportunities served by public transportation and in close proximity to residential centers. These areas are, furthermore, intended to accommodate businesses that cannot be located within the City Center district. But as the plan recognizes, there are only 54 acres of industrial land within the City's UGB and a majority it is practically unbuildable at this time due to access issues. Allowing managed development of commercial cultivation on industrial lands, pursuant to design and performance standards, attempts to balance competing goals to both encourage new businesses in the City while ensuring that a supply of industrial land that can support a diversified local economic base that is not dependent on a single, dominant industry.

FINDING: Goals #1 of the Energy Conservation element states that the City will "work toward optimum levels of energy efficiency and conservation in structures of all types

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throughout the Community" and that the City will "promote energy efficient design in all new development that maximizes the use of nat (p. 10).

CONCLUSIONS OF LAW: Proposed amendment is consistent with the Comprehensive Plan.

III. STAFF RECOMMENDATION: Staff recommends that the Planning Commission accept these findings and, upon closure of the public hearing and after all due deliberation, move to approve the attached Planning Commission Recommendation, and forward the matter to the Phoenix City Council for review and ratification.