



PUBLIC HEARING NOTICE
HUACHUCA CITY HEARING OFFICER
MONDAY MARCH 15, 2021, AT 6:00PM
VIA REMOTE ACCESS FROM
COUNCIL CHAMBERS
HUACHUCA CITY TOWN HALL
500 N. GONZALES BLVD. HUACHUCA CITY, AZ 85616

SPECIAL NOTICE: BY PROCLAMATION OF THE MAYOR DUE TO THE COVID-19 PANDEMIC, THIS PUBLIC HEARING WILL BE CONDUCTED IN A REMOTE ACCESS FORMAT. THE HEARING WILL BE LIVE-STREAMED. MEMBERS OF THE PUBLIC MAY ATTEND THE HEARING BY GOING TO: <https://www.facebook.com/HuachucaCityAz> IN ADDITION, THOSE WISH TO PARTICIPATE IN THE HEARING BY EXPRESSING THEIR COMMENTS OR OPINIONS ARE ENCOURAGED TO CALL 520-844-2096 AT THE APPROPRIATE TIME IN THE AGENDA. IN ADDITION, MEMBERS OF THE PUBLIC MAY SUBMIT WRITTEN COMMENTS TO THE HEARING OFFICER TWENTY-FOUR HOURS IN ADVANCE OF THE MEETING AT jjohnson@huachucacityaz.gov. ADVANCE NOTICE OF THIS HEARING CAN BE FOUND AT THE TOWN'S USUAL AGENDA POSTING LOCATIONS INCLUDING THE TOWN'S WEBSITE <https://huachucacityaz.gov>.

AGENDA

A. Call to Order

- Pledge of Allegiance

B. Public Hearing for proposed text amendments for Town Zoning Code.

a. Hearing Officer presentation of the following Zoning Code text amendments:

- Amend Section 18.35.035C(2) to delete all existing wording and replacing with “*A second vehicle may be parked in a location other than the back yard, garage or carport, as long as it meets the following provisions:*”
- Amend Section 18.150.010 by deleting line item “*Trailer/Accessory Vehicle Registration Per Year Fee of \$35*” from the Planning and Zoning Fees Table.

- Amend Section 18.75.020 to add “*Recreational Marijuana Establishments and Retail Sale of Industrial Hemp Products*” as permitted uses in the B/C General Business/Commercial District.
- Amend Section 18.75.100 to delete the entire section entitled “*Medical Marijuana Dispensary*” regarding Medical Marijuana Dispensary regulations.
- Amend Section 18.80.040(C) to add “*or recreational marijuana establishment*” as a permitted use in the C-2 Light Industry District.
- Amend Section 18.80.040(D) to delete all existing wording and replace with “*Medical marijuana dispensary offsite cultivation and/or infusion site.*” as permitted use in the C-2 Light Industry District.
- Amend Section 18.80.040 to add item “*E. Industrial hemp cultivation site.*” as a permitted use in the C-2 Light Industry District.
- Amend Section 18.80.060(C) to delete all existing wording regarding Medical Marijuana Dispensary regulations.
- Amend Section 18.85.010(B) to delete all existing wording and replace with “*Medical marijuana dispensary offsite cultivation/infusion site or industrial hemp cultivation site.*” as a permitted use in the C-3 Heavy Industrial and Mining District
- Amend Chapter 18.100 by adding new Section “18.100.270 Marijuana Uses” which outlines *the regulations for marijuana facilities to include recreational marijuana establishments, medical marijuana dispensaries and medical marijuana cultivation and infusion sites, as well as regulations for marijuana at an individual’s primary residence for personal use.*
- Amend Chapter 18.100 by adding new Section “18.100.280 Cultivation of Industrial Hemp” which outlines the regulations for the cultivation of industrial hemp.

Dr. Johnson read the following:

MARCH 15, 2021 PUBLIC HEARING OPENING SUMMARY

I am here today to present the following proposed amendments to the Town of Huachuca City Zoning Code and to hear the public regarding these proposed amendments. At the conclusion of this public hearing and based on any comments received I will make my recommendation to the Council on how to proceed with these proposed amendments.

The information regarding these text amendments have been readily available for public review. The notice of the public hearing was posted on the Town website and all appropriate posting locations since March 2, 2021. The information regarding these proposed test amendments have also been posted on the Town website and on the Town facebook page. Publication was in the newspaper on February 21, 2021. There has been a Citizen Review process since then, giving the public the opportunity to ask questions and submit comments to be read at this hearing. We have received one written comment that will be read later in this meeting. The proposed amendments are categorized as follows:

1. Deleting the requirements to register with the Town Clerk to park a trailer or accessory vehicle on a residential property and pay an annual fee.
2. Marijuana facilities to include recreational marijuana establishments, medical marijuana dispensaries and medical cultivation/infusion sites.
3. Recreational marijuana at an individual's primary residence for personal use.
4. Cultivation of industrial hemp.

Let's touch on each of these categories:

1. **ELIMINATING REQUIREMENT TO REGISTER PARKING OF TRAILERS AND ACCESSORY VEHICLES ON RESIDENTIAL PROPERTY.** In an effort to help beautify the Town the Council directed the Planning and Zoning Commission to prepare provisions for the parking and storage of trailers and accessory vehicles on residential property. Planning and Zoning Commission made their recommendations to the Council in 2016, which included an annual permit and fee. This permit has been cumbersome and is recommended to be eliminated. All other provisions are to remain the same. The following amendments are proposed:
 - A. Amend Section 18.35.035C(2) by deleting all wording and replacing with "A second vehicle may be parked in a location other than the back yard, garage or carport, as long as it meets the following provisions:"
 - B. Amend Section 18.150.010 Planning and Zoning Fees by deleting "Trailer/Accessory Vehicle Registration Per Year Fee of \$35"
2. **AMENDING PERMITTED USES FOR MARIJUANA AND INDUSTRIAL HEMP RELATED USES.** In late 2019 the Planning and Zoning Commission prepared provisions to include Cultivation of Industrial Hemp and retail sales of industrial hemp products as permitted uses; however, no public hearing was conducted. In early 2020 the Planning and Zoning was disbanded and Council initiated a Hearing Officer to conduct public hearings. Due to the pandemic and distancing requirements, the public hearing was not held until now. Also, in November 2020, the Arizona voters passes Proposition 207, "Arizona Smart and Safe Act". This proposition allows for recreational marijuana establishments that can sell, cultivate and manufacture marijuana and marijuana products, as well as allows for the cultivation of marijuana plants in private residences. The following amendments are proposed:
 - A. Amend Section 18.75.020 Permitted Uses (B/C – General Business/Commercial District) by adding Item "O. Recreational marijuana establishment" and "P. Retail sale of industrial hemp products."
 - B. Amend Section 18.75.100 Medical marijuana dispensary by deleting entire Section.
 - C. Amend Section 18.80.040(C) Permitted Use (C-2 – Light Industry District) by adding "or recreational marijuana establishment."

- D. **Amend Section 18.80.040(D) Permitted Use (C-2 – Light Industry District)** by deleting all wording and replacing with “Medical marijuana dispensary offsite cultivation and/or infusion site.”
 - E. **Amend Section 18.80.040 Permitted Use (C-2 – Light Industry District)** by adding Item “E. Industrial hemp cultivation site.”
 - F. **Amend Section 18.80.060C Additional regulations** by deleting entire Item “C. Medical marijuana dispensary.”
 - G. **Amend Section 18.85.010B Uses permitted (C-3 – Heavy Industrial and Mining Zone)** by deleting all wording and replacing with “Medical marijuana dispensary offsite cultivation/infusion site or industrial hemp cultivation site.”
3. **ADDING USE REGULATIONS FOR MARIJUANA.** Although marijuana establishments are licensed and regulated by the Arizona Department of Health Services (ADHS), the State legislation does allow local municipalities some discretion on the permitting of these establishments. Municipalities can prohibit all marijuana establishments, allow the establishments as dual use with medical marijuana dispensaries (dual license) or allow the establishments as individual facilities. They can also choose to allow marijuana testing facilities, or not. Municipalities can also enact reasonable zoning requirements to regulate these establishments; however, these regulations cannot be more restrictive than those imposed on medical marijuana dispensaries. To make sure they were not restrictive, the existing Medical Marijuana Dispensary regulations were eliminated and the Dispensaries are included with the Recreational Marijuana regulations proposed today.

The Council held a work session on January 28 to discuss the options. The consensus from Council was to allow marijuana establishments within the Town limits as both dual licensed and individual operations but limit them to a total of two within the Town. They also decided that marijuana testing facilities would not be a benefit to the Town, so they are to be prohibited. In a follow-up Council meeting on February 11, the proposed provisions were presented. The proposed text amendments presented today in this public hearing are reflective of the Town Council’s direction:

- A. **Amend Chapter 18.100 by adding new Section 18.100.270 Marijuana Uses.** Some of the highlights include:
 - 1. Marijuana prohibited on public property. The use, sale, cultivation, manufacture, production or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the Town. It shall be unlawful for an individual to smoke marijuana in a public place or open space in the Town.
 - 2. Required to submit an application outlining exterior features of a building, floor plan , security plan and a ventilation/filtration plan.
 - 3. Required to be located in a BC or C-2 zoning district. (Cultivation site required to be in a C-2 or C-3 zoning district)

4. Required to be at least 1000' feet from a preschool, school, childcare facility, places of worship, public community center or public park, or of another marijuana establishment. Cultivation/infusion sites can be located at least 1000' from a residential property (but not marijuana establishments)
5. Required to be in a permanent building with a foundation, and a maximum of 4900 gross square feet.
6. No marijuana to be consumed onsite and a "No Loitering" sign posted
7. Operating hours no earlier than 10am or later than 6pm. Premises illuminated during hours of darkness.
8. No drive-thru or delivery services
9. Provide for proper disposal of remnants or by-products
10. No display to be visible outside of premises.
11. At a primary residence, one individual over 21 may have 6 marijuana plants; two or more individuals over 21 may have no more than 12 plants.
12. Kitchens, bathrooms, and primary bedrooms shall be used for their intended uses. Cultivation limited to a closet, room, greenhouse or other enclosed locked area. Plants cannot be visible from public view

ADDING USE REGULATIONS FOR CULTIVATION OF INDUSTRIAL HEMP. The following proposed amendment provides provisions for the cultivation of industrial hemp:

B. Amend Chapter 18.100 by adding new Section 18.100:280 Cultivation of Industrial Hemp. Some of the highlights include:

1. Definition of Industrial hemp means any viable cannabis sativa L seed and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than .3000% on a dry-weight basis.
2. Requires a conditional use permit, renewed annually
3. Required to be in a C-2 or C-3 zoning district.
4. Required to be at least 1000' feet from a residential property, preschool, school, childcare facility, places of worship, public community center or public park, or of another marijuana establishment.
5. Required to be in an enclosed locked building
6. During hours of darkness, all areas of premises to be illuminated.
7. Provide for proper disposal of remnants or by-products
8. Must eliminate smell or odors, so such odors are not detected by a person with a normal sense of smell from a distance of 10 feet from a building's exterior.
9. No vehicle used to transport Industrial hemp shall park in any residential zone or be left unattended on any public street, sidewalk, alley or other public right-of-way in the Town.

b. Reading of written comments

Clerk Thorpe read the following letter submitted by JB:

To the Huachuca City Town Council in regards to the proposed regulations and amendments for the town code,

First off, I wanted to thank you all for taking the time to read my response to the propose regulations and amendments for our town. I am a fairly new resident here and I have so far enjoyed my on -going contact with the council. For the sake of organization, I am going to respond to each individual proposition in the order I received them.

Proposed Amendment to the parking of trailers and accessories

I just wanted to push for an elimination of "2.E: the subject is not located in a front yard, directly front of the residence." I have lived in Arizona for a long time and maybe I'm just very used to seeing vehicles parked in spaces of yards created for the purpose of parking excess vehicles, but there doesn't seem to be a reason for this. If anything allowing people to park their cars in areas designated for their front yard helps to make sure they're not taking up otherwise valuable street space. That and I wonder when a "front yard" stops being a front yard (does a U-shaped driveway take away from a front yard or is it still part of one or do we make an exception if they have a cement in front of their house?)

Proposed Regulations for Industrial Hemp Cultivation

"Shall not be located within 1000 feet from a residential zoned property". So I took a look at the [map](#) (page 20) and I couldn't figure out what commercial zoning area was far enough from a residential or public zoned property to even be accomplished (maybe the southern part of Upper Huachuca City?) If we want to help support any industrial cultivation (which would be quite the boon for our town),it may be worth considering reducing the distance. 500 feet is probably more than adequate and there are certainly spots that could be used.

Now, having said that, I'm sure we could just allow any cultivator to buy "undeveloped" areas to produce their goods, but I admit that I'm concerned about the groups who own homes out there and their own reactions to the creation of any facilities. If the city is going to hold strong to this 1000 foot requirement, then we need to consider how we incentivize producers to go out to that land, how to make it easier for them to transport goods from those areas, how we develop the land for them (that's hill country and I'm sure a lot of cultivators would rather just find easier land to work with),and how we deal with the (more than likely inevitable) negative response from the people who live in the undeveloped areas in the western part of the city. Just a consideration.

Proposed Regulations for personal use of marijuana

I see no reason to have limits on how many plants people want to grow in their own home and on their property. For a region of Arizona that supports individual freedoms, this seems like an odd choice to make. We cannot both be a region that supports the freedom of individuals while also saying that we want to regulate how much of something someone is making for their own personal consumption. A person can have a fridge dedicated to all the alcohol they can drink

(which is much more dangerous than weed), but only 6 marijuana plants? Aside from that, imagine attempting to enforce a regulation such as that. I cannot imagine a way of doing that that is reasonable.

As for the part that says "kitchen, bathroom, and primary bedroom(s) will be used for their intended use", Once again I come back to my concern about government entities getting involved in the private matters of its citizens. If a person wants to grow marijuana in their third bedroom, it kind of feels like the city shouldn't be trying to govern their private lives. I get wanting to regulate something if we fear it will negatively harm other people, but if it's an individual making their own private decisions, They should be given the opportunity to make it. Unless the private cultivation of marijuana is leading to dangerous situations either in the home for the individuals or for their neighbors/community, I see no particular reason for the government to be involved.

"Marijuana plants [should not] be visible." This particular regulation has 19th century temperancist written all over it. People should not be shielded from the knowledge of this plant. If anything, they should be educated about it. Hiding a product with the goal of attempting to protect citizens does not normally work all that well. If anything, you'll make people even more curious about it.

Proposed Regulations for Marijuana Facilities

"Shall not be more than two marijuana establishments and/or dispensaries operating within the Town." I think the town should reconsider this particular clause. If multiple establishments believe that Huachuca City is a viable place to sell- and that it proves to be true- I can only see the city benefitting from the increased traffic flow and the injection of more money into the town. If the free market suggests that our town is worth selling/producing in, then I think it may be worth listening to the market.

Lastly, I see no reason to oppose a drive-thru operation and a delivery system if it allowed by Arizona state law (if it isn't, then never mind). If people drive through and make the store more money, which in turn benefits Huachuca City, then I see no reason to oppose this. While laws preventing the consumption of cannabis products during or before driving are reasonable, this particular clause does not seem to actually address that concern. Again, if the free market suggests that drive-thru and delivery operations are economically viable, then I think we should support that.

With all that said, I believe I made enough comments on these subjects. I think Huachuca City was wise to at least consider a future where businesses and individuals may very well have cannabis, but I do think there needs to be more consideration in regards to how Huachuca City decides to regulate these things. Regulation in a free market is reasonable, but remember, prohibition did not work and any attempts at mimicking their policies of the time probably will not either. Instead, let's focus on reasonable regulations that are possible to enforce while also creating an environment that welcomes these new businesses.

Thank you for hearing my concerns,

JB

c. Open Public Hearing and Invitation for Public Input CALL 520-844-2096 when directed to do so

Mayor Wallace reads 3 Facebook comments:

Jeffrey Ferro, “A lot of the proposed town code verbiage comes from the state law as passed, and/or from other municipalities’ laws as passed.”

Jules Birch, “Agreed. I think it’s worth emphasizing when town decisions are based on state/municipal laws.”

Eddy Lee Sharp, “The city and elementary school would benefit greatly from the taxes!”

One person phoned in. Jeremy Maginty asks about the building needing to be 4000 square feet. Why would the building need to be that large.

Dr Johnson clarifies that the maximum a building can be is 4,900 square feet. This is not a minimum square footage.

Mr. Maginty also states that he disagrees with the 1000 square feet distance requirement from residences.

Dr. Johnson states that the 1000 square feet is only for the cultivation, not for recreational or medical.

d. Close Public Hearing

Public Hearing closed at 6:27pm.

e. Comments from Hearing Officer

Dr. Johnson responds to JB’s letter.

1. We can not respond to questions about parking on front lawns as this was not included on the agenda. We were only addressing the elimination of the parking permit and fee.
2. Cultivation shall not be located within 1000 feet of residence. The area off of west Patton could meet the zoning and distance requirements. We are only talking about cultivation.
3. The State of Arizona regulates the number of plants per person that can grow on their personal residence. That is not coming from the Town of Huachuca City, that is coming directly from A.R.S..
4. The use of kitchen, bathrooms and bedrooms being used for their primary use. This is intended to ensure that the home is being used as a home and not primarily as a growing facility. That does not mean that they cannot use those areas, but that the primary use of those rooms has to remain the same.
5. The State regulates the plants, that they cannot be visible. That is not from the Town of Huachuca City.
6. Number of facilities in Town. During a Council work session it was decided that two was a sufficient number since there are is limited number of commercial properties available within

the Town limits the Town wanted to ensure that a variety of businesses are attracted to the Town.

f. Announcement of Hearing Officer Decision or Statement when Decision will be made. Dr. Johnson advises that it is his recommendation that the approved text be forwarded on to the Council for the first reading which will be March 25, 2021.

C. Adjournment

Adjourned at 6:29pm

Approved by Dr. Jim Johnson on March 18, 2021.

Dr. Jim Johnson
Public Hearing Official

Attest: _____
Ms. Brandye Thorpe,
Town Clerk

Seal:

Certification

I hereby certify that the foregoing is a true and correct copy of the Minutes of the Public Hearing for the Town of Huachuca City held on March 15, 2021. I further certify that the meeting was duly called and a quorum was NOT present.

Ms. Brandye Thorpe,
Town Clerk

DRAFT