

August 12, 2019

**ADMINISTRATIVE INTERPRETATION
DECISION AND FINDINGS
PLNZAD2019-00637**



REQUEST:

Moon Lake Farms has requested an administrative interpretation to make the following two (2) determinations regarding medical cannabis uses:

1. Can a Cannabis Cultivation Facility (both indoor and outdoor) as defined and regulated in Utah State Code §4-41a be considered an Agricultural Use as defined and regulated in the Salt Lake City Zoning Ordinance?
2. Can a Cannabis Processing Facility as defined and regulated in Utah State Code §4-41a be considered a Light Manufacturing use as defined and regulated in the Salt Lake City Zoning Ordinance?

The subject property is located at **2601 North 2200 West** and is zoned BP Business Park. Per Salt Lake City Zoning Ordinance, Agricultural and Light Manufacturing uses are Conditional Uses in this zone.

DECISION:

The Zoning Administrator finds that the proposed Cannabis Cultivation Facility and Cannabis Processing Facility are not allowed in the BP zoning district. The uses are specifically defined by State Code and State Code specifically states that a municipality must ensure that these uses are allowed in at least one industrial zone and at least one agricultural zone. The BP zone is not an industrial zone or agricultural zone. Making an administrative decision to allow these uses in a type of zoning district not allowed specifically by State Code violates the purpose and intent of the administrative decision process in that it changes the essential content of the Zoning Ordinance, which is a function of the legislative branch of the City.

PROPOSED OPERATIONS/USES:

Cannabis Cultivation Facilities and Cannabis Processing Facilities are subject to all applicable regulations contained in Utah State Code §4-41a, and the State defines them as follows:

"Cannabis cultivation facility" means a person that:

- (a) possesses cannabis;
- (b) grows or intends to grow cannabis; and
- (c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

"Cannabis processing facility" means a person that:

- (a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under Title 4, Chapter 41, Hemp and Cannabinoid Act;
- (b) possesses cannabis with the intent to manufacture a cannabis product;
- (c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

These two specific uses fall under the larger classification of a **Cannabis Production Establishment**, which the State defines as follows:

"Cannabis production establishment" means a cannabis cultivation facility, a cannabis processing facility, or an independent cannabis testing laboratory.

State Code §4-41a-406(1) Local Control includes the following language regarding where municipalities and counties shall ensure that **Cannabis Production Establishments** are allowed (bold added for emphasis):

- (a) If a municipality's or county's zoning ordinances provide for an industrial zone, the municipality or county shall ensure that the ordinances allow for cannabis production establishments in at least one type of **industrial zone**.*
- (b) If a municipality's or county's zoning ordinances provide for an agricultural zone, the municipality or county shall ensure that the ordinances allow for cannabis production establishments in at least one type of **agricultural zone**.*

Because the Salt Lake City Zoning Ordinance does not specifically define cannabis-related uses or address where they may be located, the applicant has requested this interpretation to determine if a Cannabis Cultivation Facility can be considered an Agricultural Use as defined in the Salt Lake City Zoning Ordinance, and also if a Cannabis Processing Facility can be considered a Light Manufacturing use as defined the Salt Lake City Zoning Ordinance. Positive findings would result in all zoning districts that permit the Agricultural Use or Light Manufacturing use to also permit Cannabis Cultivation Facilities and Cannabis Processing Facilities, respectively, subject to applicable regulations.

FINDINGS:

The Zoning Administrator finds that the State has specifically defined the cannabis-related uses, and requires cities to ensure that they are allowed in at least one agricultural zone and at least one industrial zone. Classifying the proposed uses under more generic land use categories would create a conflict with State Code, as it would result in the cannabis-related uses being permitted in zoning districts that are not characterized as industrial or agricultural.

Salt Lake City has specific zoning districts that are considered industrial: M1 Light Manufacturing and M-2 Heavy Manufacturing. The purpose statement for both districts states they provide an environment for industrial uses (SLC Zoning Ordinance, 21A.28.020 and 21A.28.030). Salt Lake City also has four specific agricultural zoning districts: AG, AG-2, AG-5 and AG-20. The subject property is located at 2601 North 2200 West, which is zoned BP Business Park. The BP zone is not considered an industrial or agricultural zone as described in the BP purpose statement, below:

The purpose of the BP business park district is to provide an attractive environment for modern offices, light assembly and warehouse development and to create employment and economic development opportunities within the city in a campuslike setting. This district is appropriate in areas of the city where the applicable master plans support this type of land use. The standards promote development that is intended to create an environment that is compatible with nearby, existing developed areas (21A.32.030).

State Code states that a City must ensure that the proposed uses are allowed in at least one industrial zone and at least one agricultural zone. The BP zone is not categorized or described as an industrial zone or agricultural zone; therefore, the Zoning Administrator cannot make an administrative decision that the proposed uses are allowed in this zone. That decision would have to be made by the legislative branch of the City through a zoning amendment process. Approving a specifically defined land use in a zoning district where that land use is not allowed under City ordinance would be in conflict with the purpose of Administrative Determinations as stated below:

This interpretation authority is administrative rather than legislative. It is intended only to allow authoritative application of the provisions of this title to specific cases. It is not intended to add to or change the essential content of this title. (21A.12.010, Emphasis added)

Allowing a land use that is specifically defined by law in a zoning district that is not a zoning district specifically listed as one where the use shall be located would change the essential content of the Zoning Ordinance. This is outside of the scope of an administrative decision.

ANALYSIS OF STANDARDS FOR USE INTERPRETATIONS:

The following standards shall govern the zoning administrator, and the appeals hearing officer on appeals from the zoning administrator, in issuing use interpretations:

A. Any use defined in chapter 21A.62 of this title, shall be interpreted as defined;

Finding: The proposed Cannabis Cultivation Facility and Cannabis Processing Facility are not currently defined in chapter 21A.62 of the Zoning Ordinance, but they are defined in §4-41a of Utah State Code.

B. Any use specifically listed without a "P" or "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district;

Finding: The proposed Cannabis Cultivation Facility and Cannabis Processing Facility are not currently identified as uses in the Zoning Ordinance. However, State Code specifically defines each of these uses and dictates that municipalities shall allow them in at least one industrial and one agricultural zone. The subject property at 2601 N 2200 West falls within the BP Business Park District, which is not an industrial or agricultural zone. The Zoning Administrator finds that permitting these uses within the BP zone would be in conflict with State Code and is outside of the scope of an administrative decision.

C. No use interpretation shall allow a proposed use in a district unless evidence is presented demonstrating that the proposed use will comply with the development standards established for that particular district;

Finding: The Zoning Administrator has found that uses that fall under the definition of Cannabis Production Establishments are not permitted in the BP zone; therefore, it is irrelevant whether the proposed uses could comply with the associated development standards.

D. No use interpretation shall allow any use in a particular district unless such use is substantially similar to the uses allowed in that district and is more similar to such uses than to uses allowed in a less restrictive district;

Finding: As stated in the Findings above, the proposed uses are not currently defined in the Zoning Ordinance, but they are defined in State Code. State Code directs municipalities to allow for these uses within at least one industrial and one agricultural zone. The applicant has proposed to locate them in the BP zoning district, which is not an industrial or agricultural zone. The Zoning Administrator finds that permitting these uses within the BP zone would be in conflict with State Code and is outside of the scope of an administrative decision.

E. If the proposed use is most similar to a conditional use authorized in the district in which it is proposed to be located, any use interpretation allowing such use shall require that it may be approved only as a conditional use pursuant to chapter 21A.54 of this title; and

Finding: The Zoning Administrator has found that uses that fall under the definition of Cannabis Production Establishments, which is specifically defined in State Code. Since these uses are specifically defined by the State and State Code specifically states where a City must ensure that they can be located, the Zoning Administrator cannot make a finding that these uses are similar to uses allowed in the BP zone.

F. No use interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of that zoning district.

Finding: As described above, the Zoning Administrator finds that the proposed uses cannot be established within the BP zoning district because State Code provides a directive to permit the uses within industrial and agricultural zones, and the statement of purpose for the BP zone does not state that the zone is meant to be industrial or agricultural in nature.

Further, approving a land use in a zoning district where that land use is not allowed per State Code would be in conflict with the purpose of Administrative Determinations as stated below:

“This interpretation authority is administrative rather than legislative. It is intended only to allow authoritative application of the provisions of this title to specific cases. It is not intended to add to or change the essential content of this title.” (21A.12.010, Emphasis added)

Allowing a land use that is specifically defined by law in a zoning district that is not a zoning district specifically listed as one where the use shall be located would change the essential content of the Zoning Ordinance. This is outside of the scope of an administrative decision.

If you have any questions regarding this interpretation please contact Ashley Scarff at (801) 535-7660 or by email at ashley.scarff@slcgov.com.

APPEAL PROCESS:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at

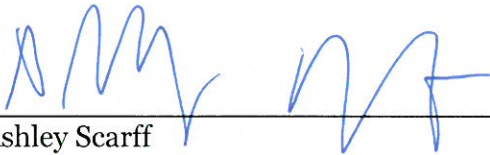
<https://www.slc.gov/planning/applications/> along with information about the applicable fee. Appeals may be filed in person or by mail at:

In Person: Salt Lake City Corp Planning Counter 451 S State Street, Room 215 Salt Lake City, UT	US Mail: Salt Lake City Corp Planning Counter PO Box 145471 Salt Lake City, UT 84114-5417
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NOTICE:

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.

Dated this 12th day of August, 2019 in Salt Lake City, Utah.



Ashley Scarff
Principal Planner

Attachment: Narrative submitted by applicant

cc: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Greg Mikolash, Development Review Supervisor
Posted to Web
Applicable Recognized Organizations