

ORDINANCE NO. 11-01

AN ORDINANCE OF THE GILA COUNTY BOARD OF SUPERVISORS TO AMEND THE TEXT OF THE GILA COUNTY ZONING ORDINANCE BY ADDING DEFINITIONS TO SECTION 102 FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION, MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION AND MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION AND SECTION 104 ENTITLED ZONING DISTRICTS AND SECTION 103.11 ENTITLED CONDITIONAL USES AND CONDITIONAL USE PERMITS.

THE BOARD OF SUPERVISORS FOR GILA COUNTY, ARIZONA FINDS THAT:

1. Proposition 203 has been passed and ratified by the Arizona Secretary of State on November 29, 2010. The Arizona Medical Marijuana Act A.R.S. 36-2806.01 allow counties to enact zoning regulations for medical marijuana dispensaries, and
2. Medical Marijuana Dispensaries are not currently listed as a permitted use of land in Gila County, and
3. Medical Marijuana Cultivation is not currently listed as a permitted use of land in Gila County, and
4. The Gila County Board of Supervisors finds it necessary to preserve the health, safety and welfare of all Gila County residents by amending our current zoning regulations, and
5. The amendments to this ordinance will allow for the use of property as a medical marijuana dispensary and related cultivation activities, and

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF GILA COUNTY, ARIZONA:

DEFINITIONS:

Amend Section 102 of the Gila County Zoning Ordinance by adding the following definitions in their proper alphabetical order:

Medical Marijuana Designated Caregiver Cultivation Location:

- Is at least twenty-one years of age and,

- Has agreed to assist with a patient’s medical use of marijuana and,
- Has not been convicted of an excluded felony offense.
- Assists no more than five qualifying patients with the medical use of marijuana.

May receive reimbursement for actual costs incurred in assisting a registered qualifying patient’s medical use of marijuana if the registered designated caregiver is connected to the registered qualifying patient through the Department’s registration process. The designated caregiver may not be paid any fee or compensation for his service as a caregiver. Payment for costs under this subdivision shall not constitute an offense under Title 13, Chapter 34 or under Title 36, Chapter 27, Article 4.

Nonprofit Medical Marijuana Dispensary:

Means a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders. A nonprofit medical marijuana dispensary may receive payment for all expenses incurred in its operation.

Medical Marijuana Dispensary Offsite Cultivation Location:

The additional location where marijuana is cultivated by a Medical Marijuana Dispensary as referenced in A.R.S. §36-2804(B)(1)(b)(ii). Must be in compliance with all Department of Health Services regulations for Medical Marijuana cultivation.

Medical Marijuana Qualifying Patient Cultivation Location:

An enclosed, locked facility such as a closet, room, greenhouse or other building with a Conditional Use Permit issued by Gila County where a patient who is qualified to cultivate marijuana pursuant to A.R.S. §36-2801 cultivates marijuana. The establishment of a cultivation location by a qualified patient must be in compliance with all regulations adopted by the Arizona Department of Health Services and State Statutes applicable to the use of medical marijuana.

Medical Marijuana Infusion (or Manufacturing) Facility:

A facility located at a dispensary or cultivation area that incorporates medical marijuana (cannabis) by the means of cooking, blending, or incorporation into consumable/edible goods.

ZONING DISTRICTS:

Industrial zoning districts:

Amend Permitted Use Regulations for M1 Industrial Zoning Districts – Section 104.2(j)(3) to allow:

Medical Marijuana Dispensaries, and/or Medical Marijuana Dispensary Offsite or Onsite Cultivation Location subject to securing a Conditional Use Permit and the related provisions of Section 103.11.

Medical Marijuana Infusion (or Manufacturing) Facility Subject to the following:

Applicant shall provide

- i. name(s) and location(s) of the offsite dispensary.
 - ii. a copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
 - iii. A map showing current dispensaries, cultivation sites and infusion sites within Gila County.
 - iv. The facility shall not be located within 35 miles of the same type of use. This distance shall be measured from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted.
- a. The facility shall not be located within 1,500 feet of a residentially zoned property. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted to the zoning boundary line of the residentially zoned property.
 - b. The facility shall not be located within 1,500 feet of a preschool, kindergarten, elementary, secondary or high school, place of worship, public park, or public community center.
 - c. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.
 - d. Medical Marijuana Infusion shall only be a part of a dispensary or cultivation location for a dispensary
 - e. There shall be no emission of dust, fumes, vapors, or odors into the environment from the facility.

CONDITIONAL USE PERMITS:

Amend Section 103.11 Entitled Conditional Uses and Conditional Use Permits to provide for Medical Marijuana Dispensaries and Medical Marijuana Dispensaries Offsite Cultivation Location by adding Item #6:

4. Medical Marijuana Dispensary/Cultivation and Medical Marijuana Dispensary Offsite Cultivation Location facilities as defined in Section 102 of this ordinance, subject to all rules adopted by the Arizona Department of Health Services and to the following conditions:
 - a. Medical Marijuana Dispensaries or medical marijuana offsite cultivation locations shall not be located within 35 miles of any other Medical Marijuana Dispensary or medical marijuana offsite cultivation location.
 - b. Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations shall not be located within 1,500 feet of:
 - i. A church; or,
 - ii. A public or private elementary or secondary school; or,
 - iii. A public or private day care center, preschool, nursery, kindergarten, or similar use; or,
 - iv. A public park, playground, or public recreational facility; or,
 - v. School bus stop, Library, Substance Abuse Treatment Facilities,
 - vi. An adult oriented business.
 - c. Medical Marijuana Dispensaries shall be located only within the M1 Zoning Districts.
 - d. Drive-thru facilities shall not be permitted with any dispensary
 - e. Dispensaries shall not permit the consumption of marijuana in any form on the premises or parcel of land.
 - f. Medical Marijuana Dispensaries with cultivation and off-site cultivation shall only be permitted in M1 Zoning Districts.
 - g. For purposes of this Conditional Use Permit the notification area for the application shall be 1,500 feet.
 - h. For purposes of measuring separation distances required in this section, the measurements shall be taken in a straight line from the closest exterior walls of any affected structures without regard to intervening structures or objects or political boundaries.

- i. Medical Marijuana Dispensaries shall be open to the public only from 8:00 AM to 5:00 PM daily, Monday through Friday.
 - j. Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location lawfully operating is not rendered in violation of these provisions by the subsequent location of a church, public or private elementary or secondary school, a kindergarten or preschool or similar use, a park or playground, or an adult oriented business within 1,500 feet of the Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location.
 - k. Applicant shall provide a copy of registration approved by Department of Health Services prior to opening for business.
 - l. A Dispensary must be located in a site built structure and not a manufactured home or RV.
 - m. A Conditional Use Permit is valid for one year and then must be renewed along with the regular fee as established in item (b) in this section of the ordinance. Any C.U.P. may be revoked for failure to comply with all conditions.
 - n. No one under 18 years of age is permitted within these facilities without an adult guardian with a registration card from Department of Health Services.
 - o. This provision shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.
5. Cultivation for Medical Marijuana Qualified Patient and Designated Caregiver as defined in Section 102 of the Zoning Ordinance subject to all rules adopted by the Arizona Department of Health Services and to the following conditions:
- a. For purposes of this Conditional Use Permit the notification area for the application shall be 1,500 feet.
 - b. A Conditional Use Permit is valid for one year and then must be renewed along with the regular fee as established in items (a) and (b) of this section. Any C.U.P. may be revoked for failure to comply with all conditions.
 - c. The qualifying patient and designated caregiver cultivation location must be accessory to the primary use of residential, must not be detectable from the exterior of the property in which the cultivation takes place.
 - d. Medical Marijuana cultivation as an accessory use to the qualifying patient's or caregiver primary residence shall only be permitted if the residence is located at least 25 miles distant from a Medical Marijuana Dispensary and in full compliance

with regulations as established by the Department of Health Services for Medical Marijuana.

Passed and Adopted this 3rd day of May, 2011.

Gila County Board of Supervisors

By: _____

Michael A. Pastor, Chairman

Approved as to form:

ATTEST:

By: _____

Bryan Chambers, Deputy County Attorney

By: _____

Marian Sheppard, Chief Deputy Clerk