

ORDINANCE NO. 2011.01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTIONS 3-202, 3-302, 3-426; PART 6 – APPLICATION AND REVIEW PROCEDURES, SECTION 6-313; PART 7 – DEFINITIONS, SECTION 7-114, AND AMENDING THE TEMPE CITY CODE, SECTION 26-70.

Mayor and City Council make the following legislative findings:

The Arizona Medical Marijuana Act, Proposition 203, approved by voters in the statewide election on November 2, 2010, provides for defined possession, use, distribution and transportation of marijuana for Medical Use within the State of Arizona.

Federal law and related regulations classify marijuana as a Schedule I controlled substance and prohibit its cultivation, possession, dispensing and use, among other things, for medical reasons.

Federal agencies, including the United States Drug Enforcement Administration, Food and Drug Administration, Office of National Drug Control Policy, have concluded that no sound scientific studies support the safe and effective use of marijuana for treatment of any disease or condition or do not support the use of smoked marijuana for medical purposes.

Arizona law, likewise, prohibits the possession, delivery, manufacture, cultivation and sale of marijuana.

Law enforcement and residents of states that authorize the Medical Use of marijuana report, among other things, that dispensaries and the Medical Use of marijuana are correlated to myriad negative secondary effects such as an increase in violent armed robberies and murders, burglaries, traffic, noise and drug dealing, in gangs and gang activity, organized crime and other issues related to the presence of large amounts of cash, such as money laundering and firearms violations, and the underreporting of crimes committed at Medical Marijuana Dispensaries, the creation of opportunities for the diversion of marijuana for Medical Use into illegal use and a disregard of environmental standards.

States that authorize the Medical Use of marijuana also report an increase in social costs related to the Medical Use of marijuana such as increased gang activity, poisonings, structural fires and mold growth, decreased quality of life and loss of business tax revenue.

Under the Arizona Act, the State issues Registry Identification Cards and renewals and adopts rules governing Nonprofit Medical Marijuana Dispensaries.

Under the Arizona Act, the City of Tempe is expressly permitted to enact reasonable zoning regulations that limit the use of land for registered Nonprofit Medical Marijuana Dispensaries. Arizona law also allows the City of Tempe to enact zoning regulations to protect and promote the public health, safety and general welfare and regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.

The current Zoning and Development Code for the City of Tempe does not address or regulate the establishment, location or operation of these Dispensaries and related cultivation activities. The regulations, limits and prohibitions established in this Ordinance, including, among other things, minimum separation requirements, environmental issues and security plans, will reduce or eliminate threats to the public health, safety and general welfare. The regulations, limits, and prohibitions established in this Ordinance are necessary to protect and preserve the public health, safety and general welfare.

Nothing in this Ordinance is intended to establish any land use which violates federal or state law. Nothing in this Ordinance is intended to authorize or make legal any act that federal or state law does not permit or sanction or assist any violation of any federal or state law.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

SECTION 1. That a portion of Table 3-202A and Table 3-202B of Section 3-202 of the Zoning and Development Code, pertaining to medical marijuana, is hereby amended to read as follows:

Table 3-202A – Permitted Land Uses (R/O, CSS, CC, PCC, RCC)

Uses	Status of Use District					
	R/O	CSS	CC	PCC-1	PCC-2	RCC
MEDICAL MARIJUANA DISPENSARY (WITHOUT CULTIVATION) [SECTION 3-426]	N	S	S	S	S	S
MEDICAL MARIJUANA CULTIVATION [SECTION 3-426]	N	N	N	N	N	N

Table 3-202B – Permitted Land Uses (MU-1, MU-2, MU-3, MU-4 and MU-Ed)

Uses	Districts				
	MU-1	MU-2	MU-3	MU-4	MU-Ed
MEDICAL MARIJUANA DISPENSARY [SECTION 3-426]	N	N	N	N	N
MEDICAL MARIJUANA CULTIVATION [SECTION 3-426]	N	N	N	N	N

SECTION 2. That a portion of Table 3-302A of Section 3-302 of the Zoning and Development Code, pertaining to medical marijuana, is hereby amended to read as follows:

Table 3-302A Permitted Land Uses (LID, GID, HID)

Uses	Districts		
	LID	GID	HID
MEDICAL MARIJUANA DISPENSARY [SECTION 3-426]	<u>S</u>	<u>S</u>	<u>S</u>
MEDICAL MARIJUANA CULTIVATION [SECTION 3-426]	<u>N</u>	<u>S</u>	<u>S</u>

SECTION 3. That Part 4, Land Use, Chapter 4 – Special Use Standards, within the Zoning and Development Code, is hereby amended by adding the following:

SECTION 3-426 MEDICAL MARIJUANA.

- A. PURPOSE.** THE PURPOSE OF THIS SECTION IS TO IMPLEMENT ARIZONA REVISED STATUTES, TITLE 36, CHAPTER 28.1; ENTITLED "ARIZONA MEDICAL MARIJUANA ACT".

CROSS REFERENCE—SEE ALSO THE FOLLOWING DEFINITIONS IN PART 7 OF THIS CODE: *MEDICAL MARIJUANA, MEDICAL MARIJUANA CULTIVATION FACILITY, AND MEDICAL MARIJUANA DISPENSARY.*

- B. LOCATION REQUIREMENTS.** A *MEDICAL MARIJUANA DISPENSARY*, WITHOUT *CULTIVATION*, IS ALLOWED IN THE CSS, CC, PCC-1, PCC-2, RCC, AND LID DISTRICTS. A *MEDICAL MARIJUANA DISPENSARY OR CULTIVATION FACILITY* IS ALLOWED IN THE GID AND HID ZONING DISTRICTS. THE LOCATIONS ARE LIMITED TO THE FOLLOWING:

1. A *MEDICAL MARIJUANA DISPENSARY OR MEDICAL MARIJUANA CULTIVATION FACILITY* SHALL NOT BE OPERATED OR MAINTAINED ON A PARCEL WITHIN 1,320 FEET, MEASURED BY A STRAIGHT LINE IN ALL DIRECTIONS, WITHOUT REGARD TO INTERVENING STRUCTURES OR OBJECTS, FROM THE NEAREST POINT ON THE PROPERTY LINE OF A PARCEL CONTAINING THE FOLLOWING:
 - a. ANOTHER *MEDICAL MARIJUANA DISPENSARY OR CULTIVATION FACILITY*;
 - b. A CHILD CARE FACILITY;
 - c. A *CHARTER SCHOOL, PRIVATE SCHOOL, OR PUBLIC SCHOOL*, WHICH PROVIDES ELEMENTARY OR SECONDARY EDUCATION;
 - d. A *CHURCH, SYNAGOGUE, TEMPLE OR SIMILAR RELIGIOUS WORSHIP BUILDING*; OR
 - e. A PUBLIC PARK, LIBRARY, OR PUBLIC COMMUNITY *BUILDING*;
2. A *MEDICAL MARIJUANA DISPENSARY OR MEDICAL MARIJUANA CULTIVATION FACILITY* SHALL NOT BE OPERATED OR MAINTAINED ON A PARCEL WITHIN FIVE HUNDRED (500) FEET FROM A RESIDENTIAL ZONING DISTRICT OR THE PROPERTY LINE OF A PARCEL SOLELY DEVOTED TO A RESIDENTIAL USE IN ANY ZONING DISTRICT, MEASURED BY A STRAIGHT LINE IN ALL DIRECTIONS, WITHOUT REGARD TO INTERVENING STRUCTURES OR OBJECTS, FROM THE NEAREST POINT OF THE PROPERTY LINE OF A PARCEL CONTAINING SUCH USE.
3. *MEDICAL MARIJUANA CULTIVATION* FOR A CAREGIVER OR PATIENT'S RESIDENCE IN A RESIDENTIAL DISTRICT IS NOT PERMITTED, UNLESS SUFFICIENT EVIDENCE EXISTS THAT THE LOCATION IS GREATER THAN TWENTY-FIVE (25) MILES FROM A *MEDICAL MARIJUANA DISPENSARY* WITHIN THE STATE OF ARIZONA.

- C. OPERATION REQUIREMENTS.** ANY *MEDICAL MARIJUANA DISPENSARY* OR *CULTIVATION FACILITY*, EXCEPT WITHIN A RESIDENTIAL HOME, SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS, AS WELL AS THOSE CONTAINED WITHIN ARIZONA REVISED STATUTES, TITLE 36, CHAPTER 28.1:
1. THE BUSINESS SHALL BE LOCATED IN A PERMANENT BUILDING, WITH AN ENGINEERED FOUNDATION THAT MEETS TEMPE BUILDING CODE, AND NOT LOCATED IN A *MOBILE HOME*, *TRAILER*, CARGO CONTAINER, MOTOR VEHICLE, OR SIMILAR PERSONAL PROPERTY.
 2. ONLY ONE (1) SECURED EXTERIOR DOORWAY SHALL BE ALLOWED FOR THE PURPOSE OF INGRESS OR EGRESS. THE MAXIMUM SIZE TENANT SPACE SHALL BE LIMITED TO THE SQUARE FOOTAGE DEDICATED FOR SUCH USE WITH ONE EXIT. ANY EXISTING DOORWAYS BEYOND THIS ALLOWANCE SHALL BE PERMANENTLY CLOSED BY REMOVING THE DOOR AND FRAME AND FILLING IN THE OPENING WITH PERMANENT CONSTRUCTION TO MATCH THE EXTERIOR WALL.
 3. THE BUSINESS AND TENANT SPACE MUST COMPLY WITH TEMPE'S APPLICABLE BUILDING CODE AND FIRE CODE REQUIREMENTS.
 4. DRIVE-THROUGH FACILITIES ARE PROHIBITED.
 5. THE *MEDICAL MARIJUANA DISPENSARY* IS LIMITED TO THE HOURS OF OPERATION NOT EARLIER THAN 8:00 A.M. AND NOT LATER THAN 6:00 P.M.
 6. *MEDICAL MARIJUANA* REMNANTS OR BI-PRODUCTS SHALL BE DISPOSED OF ACCORDING TO AN APPROVED PLAN AND NOT PLACED WITHIN THE FACILITIES EXTERIOR REFUSE CONTAINERS.
 7. THERE SHALL BE NO EMISSION OF DUST, FUMES, VAPORS, OR ODORS INTO THE ENVIRONMENT FROM THE PREMISE.
 8. A SECURITY PLAN IS REQUIRED, WHICH SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:
 - A. THE SINGLE DOORWAY FOR THE FACILITY SHALL PROVIDE A SECURITY VISION PANEL PURSUANT TO SECTION 4-406, EMPLOYEE SERVICE ENTRANCES AND EXITS, OR A 180 DEGREE ROTATABLE VIEWER. IF DOORWAY IS TRANSPARENT, THE DOOR SHALL BE DESIGNED WITH A MATERIAL THAT IS EITHER IMPACT RESISTANT OR RESTRICTS ENTRY BY MEANS OF A WROUGHT IRON GATE;
 - B. CLOSED CIRCUIT TELEVISION CAMERAS, OPERATING 24 HOURS A DAY, SHALL BE PROVIDED AT THE BUILDING'S EXTERIOR ENTRANCE AND INSIDE THE BUILDING AT A DESIGNATED SERVICE AREA;

C. ALL LIGHTING FOR THE SITE SHALL BE BROUGHT INTO CONFORMANCE WITH THE CURRENT LIGHTING STANDARDS IDENTIFIED IN PART 4, CHAPTER 8, LIGHTING. THE BUILDING ENTRANCE OF THE BUSINESS SHALL BE ILLUMINATED FROM DUSK TILL DAWN ACTIVATED BY PHOTOCCELL RELAY TO THE LIGHTING CONTROLLER ;

D. NO ONE UNDER THE AGE OF TWENTY-ONE (21) SHALL ENTER THE ESTABLISHMENT.

E. ANY PERSON, PRIOR TO ENTERING THE ESTABLISHMENT, SHALL REMOVE ALL HATS, SUNGLASSES OR OTHER SIMILAR OBJECTS, TO AVOID OBSTRUCTION OF PHYSICAL IDENTIFICATION.

D. USE ACCEPTANCE. A ZONING ADMINISTRATIVE APPLICATION SHALL BE PROCESSED, CERTIFYING THAT ALL CITY OF TEMPE REGULATIONS FOR THE *MEDICAL MARIJUANA DISPENSARY OR CULTIVATION FACILITY* ARE IN COMPLIANCE WITH THE PROVISIONS SET FORTH IN SECTION 3-426 OF THIS CODE. THE USE SHALL NOT COMMENCE WITHOUT THE ZONING ADMINISTRATOR, OR DESIGNEE, ACCEPTANCE LETTER. THE APPLICATION SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING ITEMS:

1. A PROJECT SUBMITTAL FORM WITH APPLICABLE FEE;
2. THE PROPERTY OWNER'S LETTER OF AUTHORIZATION FOR THE USE;
3. THE NAME AND LOCATION OF THE DISPENSARY'S OFF-SITE *MEDICAL MARIJUANA CULTIVATION FACILITY*, IF APPLICABLE;
4. A MAP SHOWING THE LOCATION IN COMPLIANCE WITH THE SEPARATION REQUIREMENTS LISTED IN SECTION 3-426(B);
5. A COPY OF OPERATING PROCEDURES ADOPTED IN COMPLIANCE WITH A.R.S. 36-2804(B)(1)(C);
6. A SITE PLAN;
7. A FLOOR PLAN OF THE BUILDING OR TENANT SPACE;
8. IF APPLICABLE, BUILDING PERMITS (SEPARATE SUBMITTAL) IN COMPLIANCE WITH TEMPE'S BUILDING CODE AND FIRE CODE; AND
9. A SECURITY PLAN, IN COMPLIANCE WITH SECTION 3-426(C).

SECTION 4. That Section 6-313(B), within the Zoning and Development Code, relating to security plans, is hereby amended to read as follows:

B. Applicability and Procedure. Security plans are required for the following uses subject to the standards contained in Chapter 26, Article V, Security Plans, of the Tempe City Code:

1. *Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;*

2. *Adult-oriented businesses;*
3. Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and *video arcades;*
4. *Entertainment* as accessory to *restaurant* facilities, *bars* or similar establishments;
5. Hotels and motels;
6. Convenience stores;
7. **MEDICAL MARIJUANA DISPENSARY OR CULTIVATION FACILITY;** and
8. Any other use determined by the Community Development Director or the Chief of Police, or their designees, to be similar to a use listed immediately above.

SECTION 5. That Section 7-114, within the Zoning and Development Code, relating to definitions, is hereby amended to read as follows:

MEDICAL MARIJUANA MEANS ALL PARTS OF ANY PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, AND THE SEEDS OF SUCH PLANT TO TREAT OR ALLEVIATE A REGISTERED QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE PATIENT'S DEBILITATING MEDICAL CONDITION.

MEDICAL MARIJUANA CULTIVATION FACILITY MEANS AN ENTITY THAT CULTIVATES OR MANUFACTURES MARIJUANA BY THE MEANS OF COOKING, BLENDING, OR INCORPORATING INTO CONSUMABLE/EDIBLE GOODS OR OTHER MEANS FOR A **MEDICAL MARIJUANA DISPENSARY**.

MEDICAL MARIJUANA DISPENSARY MEANS A NOT-FOR-PROFIT ENTITY THAT ACQUIRES, POSSESSES, DELIVERS, TRANSFERS, TRANSPORTS, SUPPLIES, SELLS OR DISPENSES MARIJUANA OR RELATED SUPPLIES TO CARDHOLDERS.

SECTION 6. That Section 26-70(b), within Tempe City Code Chapter 26, Article V. Security Plans, is hereby amended to read as follows:

(b) *Uses requiring security plans.* A security plan shall be required upon the commencement or assumption of any of the following uses:

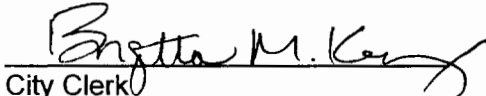
- (1) Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;
- (2) Adult-oriented businesses;
- (3) Recreational or amusement business, both indoor and outdoor activities, including pool halls and video arcades;
- (4) Entertainment as accessory to restaurant facilities, bars or similar establishments;
- (5) Hotels and motels;
- (6) Convenience stores; ~~and~~
- (7) MEDICAL MARIJUANA DISPENSARY OR CULTIVATION FACILITY;
AND
- (8) Any other use determined by the community development director or the chief of police, or their designees, to be similar to a use listed above.

SECTION 7. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

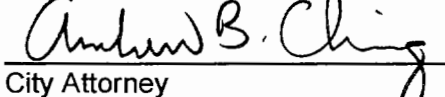
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 17th day of Jan., 2011.


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney