

ORDINANCE NO. 10-15

AN ORDINANCE OF THE CITY OF HOLBROOK, ARIZONA, AMENDING THE HOLBROOK CITY CODE BY THE ADDITION OF A NEW SECTION 6-5 ENTITLED "MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION LOCATIONS " THERETO; REPEALING ANY AND ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH AND PROVIDING FOR PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, on November 2, 2010, the voters of the state of Arizona approved Proposition 203 (1-04-2010), the "Arizona Medical Marijuana Act", which created a distinction between the medical and nonmedical uses of marijuana under Arizona law for persons suffering from debilitating medical conditions who are in need of marijuana for medical purposes and who obtain and use medical marijuana under the circumstances specified in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq.; and

WHEREAS, the possession, use, sale, distribution or transportation of marijuana is still a violation of federal law and, when possessed, used, sold, distributed or transported for any purpose other than medical use, a violation of state law as well; and

WHEREAS, accordingly, the possession, use, sale, distribution, and transportation of marijuana for medical use as contemplated by Proposition 203 should be closely monitored and regulated by the City of Holbrook (the "Town"); and

WHEREAS, if not closely monitored and regulated, the manner in which medical marijuana is possessed, used and distributed may adversely affect the health, safety, and welfare of the residents of the City of Holbrook as well as the health, safety and welfare of the qualifying patients and designated caregivers whose possession and use of marijuana for medical purposes is permitted by Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq.; and

WHEREAS, City of Holbrook staff has, pursuant to Planning Commission and City of Holbrook Council direction, reviewed the issues, concerns and secondary effects that may be associated with the operation of medical marijuana dispensaries and medical marijuana cultivation facilities in the City of Holbrook and has presented proposed regulations pertaining to the same for the Planning Commission and City of Holbrook Council's consideration; and

WHEREAS, by adoption of this Ordinance, the City of Holbrook Council does not intend to authorize or make legal any act that is not permitted under

federal or state law but rather to establish local regulations governing the possession and use of medical marijuana under Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq.; and

WHEREAS, it is not appropriate to allow establishments that grow, sell or distribute medical marijuana or paraphernalia to be located in every zoning district in the Town; and

WHEREAS, the City of Holbrook Council has determined that, for the reasons set forth above and for the purpose of protecting the public health, safety and welfare of the residents and visitors of the City of Holbrook, it is in the best interests of the City of Holbrook to amend the Zoning Code as provided herein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HOLBROOK, ARIZONA AS FOLLOWS:

Section 1 That the Holbrook City Code Chapter 6 Planning and Zoning is hereby amended by the addition of a new Section 6-2-1 NN thereto, entitled "Medical Marijuana Dispensaries and Cultivation Locations; Conditional Use Permit Required" to read as follows:

ARTICLE 6-5	<u>Medical Marijuana Dispensaries and Cultivation Locations; Conditional Use Permit Required</u>
6-5-1	Purpose and Intent
6-5-2	Definitions
6-5-3	Location
6-5-4	Standard Conditions of Approval
6-5-5	Additional Conditions of Approval Authorized

Section 6-5-1 Legislative Findings and Purpose.

A. In many communities in which so-called medical marijuana "dispensaries" have been established, law enforcement agencies have documented the serious and adverse impacts associated with such dispensaries. These communities and the media have reported increased crime, including burglaries, robberies, violence, illegal sales of marijuana to and use of marijuana by minors and others without medical need in the areas immediately surrounding such medical marijuana dispensaries. Other negative secondary effects include the smoking of marijuana in public areas and adverse impacts on neighboring businesses (including odor complaints). Such negative secondary effects related to medical marijuana use have been considered by other government agencies such as the County of San Diego. The City of Holbrook could reasonably anticipate experiencing similar adverse impacts and effects from any marijuana dispensaries and cultivation and other marijuana operations established in the Town.

B. Additionally, a number of sources, including the United States Department of Justice's California Medical Marijuana website [which contains various documents and reports related to issues surrounding marijuana use] and the "White Paper on Marijuana Dispensaries" published by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009), have concluded that the establishment of marijuana dispensaries can lead to an increase in crime. Among the crimes cited as typical examples are burglaries, robberies, sales of illegal drugs in areas immediately surrounding such dispensaries, as well as other public nuisances such as loitering, smoking marijuana in public places, sales to minors and driving while under the influence of marijuana. The Council of City of Holbrook finds that these data and conclusions, experiences in other cities, towns and counties justify the implementation of the regulatory zoning and safety measures included in this ordinance.

C. The provisions of this Article are intended to acknowledge and protect the rights of qualifying patients and their designated caregivers under the provisions of Title 36, A.R.S § 36-2801 et seq., while also protecting the health, safety, and welfare of the public; through implementation of the Zoning Code; and curtailing to the extent reasonably possible, the possession, use, distribution, or cultivation of marijuana for unlawful purposes by:

1. requiring that medical marijuana businesses, operations and facilities be operated in a manner that minimizes potential health and safety risks and mitigates the negative impacts that a medical marijuana dispensary or cultivation operation might have on surrounding properties and persons;
2. regulating the conduct of persons owning, operating and using medical marijuana dispensaries and cultivation facilities in order to protect the public health, safety and welfare; and
3. regulating the location and operation of medical marijuana dispensaries, cultivation facilities and medical marijuana operations.

D. By adoption of this Article, the City Council does not intend to authorize or make legal any act that is not permitted under federal or state law.

Section 6-5-2 Definitions

A. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

1. **Cultivation** shall mean the process by which a person grows a marijuana plant(s) as allowed by Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. and the Department rules and regulations.

2. **Department** shall mean the Arizona Department of Health Services or its successor agency.
3. **Department rules and regulations** shall mean the adopted regulations of the Department relating to the provisions of Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. currently in existence and as adopted in the future.
4. **Designated caregiver** shall mean a person, other than qualifying patient and the patient's physician, who, pursuant to Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. and the Department rules and regulations, assists no more than five (5) registered qualifying patients with the medical use of marijuana.
5. **Group care home** shall mean a residential facility for persons providing living facilities, sleeping rooms, and meals and which has a permit issued by the Arizona Department of Health Services or Maricopa County Health Department. This definition shall be construed to include assisted living homes for the elderly and the handicapped, adult foster care homes, group care homes for the developmentally disabled, boarding houses, lodging houses, nursing homes, residential substance abuse diagnostic and treatment facilities, residential drug or alcohol rehabilitation facilities, and halfway houses.
6. **Massage establishment** shall mean any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders.
7. **Medical marijuana** shall mean marijuana or cannabis, including all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant, approved under state law for treatment of persons suffering from debilitating medical conditions as designated in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq., the Department rules and regulations, and other laws and regulations of the State of Arizona.
8. **Medical marijuana designated caregiver cultivation location** shall mean an enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed 250 square feet of cultivation space where a designated caregiver, as designated by Arizona Revised Statutes, Title 36, § A.R.S. 36-2801 et seq., Department rules and regulations, cultivates medical marijuana.

9. **Medical marijuana dispensary offsite cultivation location** shall mean a building, dwelling, structure, or premises used for the cultivation or storage of medical marijuana that is the additional location where marijuana is cultivated by a medical marijuana dispensary as designated in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. or Department rules and regulations.
10. **Medical marijuana dispensary or dispensary** shall mean a building, dwelling, structure or premises used to acquire, possess, cultivate, manufacture, deliver, transfer, transport, sell, distribute, transmit, give, dispense or otherwise provide medical marijuana in any manner to patients or designated caregivers pursuant to the authority contained in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq., Department rules and regulations, or other implementing state statutes and administrative regulations.
11. **Medical marijuana infusion facility** shall mean a facility that incorporates medical marijuana (cannabis) by the means of cooking, blending, or incorporation into consumable/edible goods.
12. **Medical marijuana operation** shall mean any person acting alone or in concert with another person, whether for barter, reimbursement, profit or not for profit, who cultivates, grows, harvests, processes, packages, transports, displays, sells, dispenses or otherwise distributes the stalks, stems, roots, seeds, leaves, buds or flowers of any plant of the genus cannabis, or any mixture or preparation thereof, and medical marijuana for medical use as authorized by Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. This definition shall be construed to include, but is not limited to, the following: a) all services offered by a designated caregiver; b) cultivation by a designated caregiver; c) medical marijuana dispensaries; d) medical marijuana offsite cultivation locations; e) medical marijuana infusion facilities; and f) any other operation involving medical marijuana registered with the Department; all as designated in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq., the Department rules and regulations, or other implementing state statutes and administrative regulations.
13. **Medical marijuana paraphernalia or paraphernalia** shall mean all equipment, products and materials of any kind, which is used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise

introducing into the human body a controlled substance, including medical marijuana.

14. **Medical marijuana qualifying patient cultivation location** shall mean an enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed 50 square feet of cultivation space where a qualifying patient, as defined in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. or Department rules and regulations, cultivates medical marijuana. The qualifying patient cultivation location must be accessory to the qualifying patient's primary residence. Medical marijuana cultivation as an accessory use to the qualifying patient's primary residence must not be detectable from the exterior of the building in which the cultivation takes place. Medical marijuana cultivation as an accessory use to the qualifying patient's primary residence shall only be permitted if the residence is located at least 25 miles from a medical marijuana dispensary.
15. **Minor patient** shall mean a patient less than eighteen (18) years of age.
16. **Park** shall mean any public or private land available for recreational, educational, cultural, or aesthetic use.
17. **Patient** shall mean a person who has a debilitating medical condition as defined in Arizona Revised Statutes, Title 36, A.R.S. § 36-2801 et seq. and is a registered qualifying patient as defined by State law and the Department rules and regulations.
18. **Person** shall mean a natural person or business entity such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.
19. **Place of worship or religious assembly** shall mean buildings or facilities used for the purpose of conducting religious services, worship and related educational, cultural, and social activities.
20. **Premises** shall mean the entire parcel of property upon which a medical marijuana dispensary, medical marijuana cultivation facility or any other medical marijuana operation is located.
21. **Registered pharmacy** shall mean those pharmacies which have registered under A.R.S. § 32-1929 and obtained a pharmacy permit from the Arizona Board of Pharmacy and operate within the State of Arizona.
22. **School** means any building, portion of building, or group of buildings which is designed, constructed, or used for education

or instruction in any branch of knowledge, including tutoring centers, day care centers, and the following types of schools:

- a) "Charter school" means a school operating under sponsorship of a public school district governing board, the State Board of Education or the State Board for Charter Schools and has been created pursuant to A.R.S. 15-181.
- b) "Instructional school" means a public or private school providing domestic, recreational, and other types of instruction such as dance, gymnastics, cooking, music, martial arts (without fitness center equipment), and fine arts.
- c) "Private school" means any building, portion of building, or group of buildings used for elementary, secondary or higher education that does not secure the major part of its funding from a governmental agency.
- d) "Public school" means any building, portion of building, or group of buildings used for elementary, secondary or higher education that secures the major part of its funding from a governmental agency.
- e) "Vocational school" means an institution which teaches trades, business courses, hairdressing and similar skills on a post-secondary level.

23. ***Sensitive uses*** shall be construed to include the following uses: school; public or private recreation center; park; public library; place of worship; massage establishment; group care home; sexually oriented business; teen club; or registered pharmacy.

24. ***Teen club*** An enclosed or unenclosed structure which is open to persons from fifteen (15) through twenty (20) years of age unaccompanied by adults at which music is furnished for the purpose of social dancing, and at which a person fifteen (15) through twenty (20) years of age pays an admission, membership dues, or a minimum fee or cover charge, whether or not admission is limited to members only. This definition shall be construed to include the enclosed or unenclosed structure and the surrounding premises used for parking and any activity related to the dancing operation.

25. ***Zoning clearance*** shall mean the issuance of a permit certificate or authorization by the Zoning Administrator, or designee, indicating that a proposed building, structure, or use of land for a medical marijuana operation meets all of the standards, criteria, procedures, and requirements contained in this Article and the Zoning Ordinance.

6-5-3 Location

1. A Medical Marijuana Dispensary or Cultivation Location may not be located within any Residential District within the City.
2. A Medical Marijuana Dispensary or Cultivation Location may not be operated as a Home Occupation anywhere within the City.
3. A Medical Marijuana Dispensary or Cultivation Location may only be located in I-1 or I-2 Zoning Districts pursuant to a conditional use permit as may be approved pursuant to Section 6-2-1 I of this Code, except that the recommendation of the Planning Commission shall also be reviewed and approved by the City Council prior to the issuance of a conditional use permit for a Medical Marijuana Dispensary or Cultivation Location.
4. A Medical Marijuana Dispensary or Cultivation Location shall not be located within Five Hundred (500') feet of any public park, school or another Medical Marijuana Dispensary or Cultivation Location.

6-5-4 Standard Conditions of Approval

1. No person under the age of eighteen (18) may be present at a Medical Marijuana Dispensary except with the prior approval of the Chief of Police, or designee, for good cause shown.
2. Marijuana may not be used in any manner on the premises or in the vicinity of any Medical Marijuana Dispensary or Cultivation Location within the City.
3. Only persons with a Registry Identification Card, as defined by A.R.S. 36-2801 (14), authorized licensees, and authorized employees may be present at a Medical Marijuana Dispensary or Cultivation Location.
4. The Medical Marijuana Dispensary or Cultivation Location shall comply with all the restrictions and requirements of the Arizona Medical Marijuana Act, A.R.S. 36-2801 through 2818, together with compliance with any regulations adopted by the Arizona Department of Health Services pursuant to same, and said regulations are incorporated herein by this reference as if set forth in full.
5. No alcoholic beverages shall be sold, served, or consumed on the premises.
6. Each Dispensary shall display in a manner legible and visible to its clientele:

- a. Notice that persons without a registry identification card or under the age of 18 (eighteen) are not allowed on the premises.
 - b. Consumption of medical marijuana on the premises or in the vicinity of the Dispensary/Cultivation Location are prohibited.
7. Dispensaries are to be designed and constructed so that no area or portion where marijuana can be visible from the exterior while requiring the entrance to be visible from a public street.
 8. Medical Marijuana Dispensaries and Cultivation Locations must conform to regulations for other businesses with similar zoning and all applicable building, fire and safety codes.
 9. Applications for a Conditional Use under the provisions of this Section for a Nonprofit Medical Marijuana Dispensary or Cultivation Location may only be made, received or held by a registered Nonprofit Medical Marijuana Dispensary or Cultivation Location Agent for a registered and certified Medical Marijuana Dispensary or Cultivation Location as provided in A.R.S. 36-2804.
 10. Drive through and delivery services are prohibited.
 11. Hours of operation shall be only from 8 a.m. to 7 p.m.
 12. The Dispensary or Cultivation Location shall be operated in compliance with regulations for same the City may adopt regardless of the date of the grant of a business license or the approval of a conditional use permit. Such regulations may be amended from time to time as the City deems appropriate and shall be deemed to be incorporated in any conditional use permit authorized hereunder.

6-5-4. Additional Conditions of Approval Authorized

In addition to the standard conditions of approval as set forth in Subsection B above, the City may add any other conditions of approval appropriate to the application considering the location, building, surroundings, adjacent land uses, topography, security and safety considerations, as may be necessary to achieve a compatible land use with the surrounding community as authorized by the City Code or Arizona law.

Section 2 That any and all other prior ordinances or parts of ordinances in conflict herewith are hereby repealed to that extent.

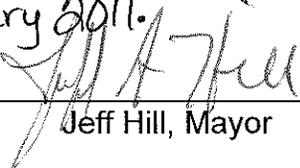
Section 3 That any person found guilty of violating any provisions of this ordinance may be punished by a fine of up to \$2,500.00, or by imprisonment for up to six (6) months in jail, or by both such fine and imprisonment. Each day a violation continues shall constitute a separate offense punishable as hereinabove provided.

Section 4 If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments of any court of competent jurisdiction, such decision adopted herein is for any reason held to be invalid or unconstitutional by the decision shall not affect the validity of the remaining portions thereof.

Section 5 That the City Clerk is hereby authorized and directed to publish and post this Ordinance in accordance with State law.

Section 6 The effective date of this Ordinance shall be thirty (30) days following adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Holbrook, Arizona, this 11th Day of January 2011.



Jeff Hill, Mayor

ATTEST:



Cher Reyes, CMC, CPM, City Clerk

APPROVED AS TO FORM:



Marlene Pontrelli, City Attorney