ORDINANCE NO. P-32

MARICOPA COUNTY
ORDINANCE PROVIDING FOR ZONING
FOR MEDICAL MARIJUANA DISPENSARIES AND
OFFSITE CULTIVATION LOCATIONS

C-44-14-044-M-00

CHAPTER 1 – LEGISLATIVE FINDINGS

The Maricopa County Board of Supervisors (Board) finds the following:

a. In November 2010 voters passed the Arizona Medical Marijuana Act (AMMA) authorizing the dispensing of marijuana for medical purposes.

b. Prior to adoption of the AMMA, the Ordinance for the Unincorporated Areas of Maricopa County (Zoning Ordinance) did not make any provision for medical marijuana dispensaries. Thus, they could not be located anywhere in Maricopa County, because they were not listed as a permitted use in any zoning district.

c. In response to the adoption of the AMMA, a need arose to regulate the location of medical marijuana facilities under the new Act to protect and promote the public health, safety and general welfare of the citizens of Maricopa County, and the Board accordingly classified medical marijuana facilities as "industrial" uses.

d. By decision dated November 20, 2013, the Superior Court of Arizona, in *White Mountain Health Center, Inc. v. Maricopa County*, CV 2012-053585, determined that the Board's classification of medical marijuana dispensaries as industrial was unreasonable, voided it as a matter of law and found that there was no zoning ordinance that regulated medical marijuana dispensaries. This left Maricopa County with no zoning regulations for medical marijuana dispensaries.

e. Because of the ruling of the court, and as of the date of the adoption of this amendment to the ordinance, there are no use controls in place determining in which zoning districts a medical marijuana distribution facility may, or may not be, located.

f. As a result of the decision of the Court, arguably a medical marijuana distribution facility may be located within any zoning district in unincorporated Maricopa County.

g. The location of a medical marijuana distribution facility in a residential zoning district would be a detriment to the health, safety and general welfare of the citizens of Maricopa County. This detriment would be magnified were the proposed facility located proximate to residential districts or uses.

h. The Board has authorized the County Attorney to appeal the decision of the Superior Court in CV 2012-053585. One of the grounds of appeal is whether the AMMA is preempted by federal law. Another of the grounds of appeal is whether the trial court correctly ruled that the County's zoning was unreasonable, violated the AMMA, and therefore void.

i. If the AMMA is not preempted by federal law, it remains the preference of the Board that medical marijuana distribution facilities be classified as an industrial use, available to be located only in industrial zoning districts, as the location of such facilities in industrial zoning districts would be the least harmful to the best interests of the health, safety and welfare of the citizens of Maricopa County.

j. In the event the decision of the Court in CV 2012-053585 is reversed, this Ordinance No. P-32 shall be deemed repealed by the Board and the zoning for medical marijuana distribution facilities in Maricopa County shall be as it was before being held unreasonable by the Court.

k. The lack of any zoning for medical marijuana distribution centers creates an emergency situation, threating the health, safety and general welfare of all of the citizens of unincorporated Maricopa County and posing a threat to residential property values of all residential property located in unincorporated Maricopa County.

CHAPTER 2 – PURPOSE AND TITLE

201. PURPOSE

The purpose of this ordinance is to establish zoning for medical marijuana dispensaries and offsite cultivation location facilities within unincorporated Maricopa County in response to decisions by the Superior Court which have resulted in such a facility being permitted on any property without regard to the underlying zoning of the property.

202. AMENDING THE ZONING ORDINANCE

This ordinance is intended to be and shall be construed as an amendment to the Zoning Ordinance (No. P-18) for the Unincorporated Areas of Maricopa County.

203. SEPARABILITY

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

CHAPTER 3 – CHANGES TO THE ZONING ORDINANCE

301. PURPOSE

The purpose of this chapter is to amend the Zoning Ordinance (No. P-18) for the Unincorporated Areas of Maricopa County.

302. CHANGES TO THE ORDINANCE

The Zoning Ordinance (No. P-18) for the Unincorporated Areas of Maricopa County is amended so that the identified sections contain the following language:

Chapter 2 - Definitions

SECTION 201. DEFINTIONS

MEDICAL MARIJUANA DISPENSARY: An entity defined in A.R.S. §36-2801(11) that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials. ~~A Medical marijuana Dispensary shall be considered an industrial use.~~

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). ~~A Medical marijuana Dispensary Offsite Cultivation Location shall be considered an industrial use.~~

Chapter 8 – Commercial Zoning Districts

SECTION 804. C-2 (Intermediate Commercial Zoning District)

ARTICLE 804.2. USE REGULATIONS: A building or premises shall be used only for the following purposes:

44. **Medical Marijuana Dispensary facilities as defined in Chapter 2 of this Ordinance subject to all rules adopted by the Arizona Department of Health Services and to the following conditions:**

    a. **Medical Marijuana Dispensaries shall not be located within 1,500 feet of any other Medical Marijuana Dispensary.**

    b. **Medical Marijuana Dispensaries shall not be located within 1,500 feet of:**

        1. **A church; or**
        2. **A public or private elementary or secondary school; or**
        3. **A public or private day care center, preschool, nursery, kindergarten, or similar use; or**
        4. **A public park or playground; or**
        5. **An adult oriented facility.**

    c. **For purposes of measuring separation distances required in this section, the measurements shall be taken in a straight line from the closest exterior wall of the subject building to the closest boundary line of any affected parcel without regard to intervening structures or objects or political boundaries.**

    d. **A Medical Marijuana Dispensary 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, or a park or playground within 1,500 feet of the Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location.**

    e. **This provision shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.**

SECTION 805. C-3 (General Commercial Zoning District)

ARTICLE 805.2. USE REGULATIONS: A building or premises shall be used only for the following purposes:

1. Any use permitted in the C-2 Zoning District**, including a Medical Marijuana Dispensary,** subject to all the regulations specified in the use regulations for such C-2

Zoning District unless the use is otherwise regulated in this Section.

Chapter 9 – Industrial Zoning Districts

SECTION 901. IND-1 (Planned Industrial Zoning District)

ARTICLE 901.2. USE REGULATIONS: A building or premises shall be used for the following purposes:

23. Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location facilities as defined in Chapter 2 of this Ordinance subject to all rules adopted by the Arizona Department of Health Services and to the following conditions:

f. Medical Marijuana Dispensaries or Medical Marijuana Offsite Cultivation Location facilities shall not be located within 1,500 feet of any other Medical Marijuana Dispensary.

g. Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations shall not be located within 1,500 feet of:

6. A church; or
7. A public or private elementary or secondary school; or
8. A public or private day care center, preschool, nursery, kindergarten, or similar use; or
9. A public park or playground; or
10. An adult oriented facility.

h. For purposes of measuring separation distances required in this section, the measurements shall be taken in a straight line from the closest exterior wall of the subject building to the closest boundary line of any affected parcel without regard to intervening structures or objects or political boundaries.

i. A Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location facilities 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, or a park or playground within 1,500 feet of the Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location.

j. This provision shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.

SECTION 902. IND-2 (Light Industrial Zoning District)

ARTICLE 902.2. USE REGULATIONS: A building or premises shall be used only for the following purposes, and subject to procedural regulations as listed in Chapter 9, Section 902, Article 902.11.

1. Any use permitted in the IND-1 Zoning District**, including a Medical Marijuana Dispensary or a Medical Marijuana Offsite Cultivation Location** subject to all the regulations specified in the use regulations for such IND-1 Zoning District unless the use is otherwise regulated in this Section.. Any use permitted in the C-3 Zoning District provided such use has a primary purpose of providing services for existing industrial uses in the area with only incidental sales/service provided for the general public, subject to all the regulations in the use regulations for the IND-2 Zoning District unless the use is otherwise regulated in the article except that the following uses shall be prohibited: mobile home parks, travel trailer parks, mobile home subdivisions, resort hotels, dwellings and mobile homes, other than the residence, or one mobile home, of the family of the operator or caretaker employed on the premise of a commercial or industrial use.

SECTION 903. IND-3 (Heavy Industrial Zoning District)

ARTICLE 903.2. USE REGULATIONS: A building or premises shall be used only for uses permitted in the IND-2 Zoning District subject to all the regulations specified in the use regulations for such IND-2 Zoning District or any industrial use not listed that is not in conflict with any federal law, state law or any Ordinance of Maricopa County, and subject to procedural regulations as listed in Chapter 3, Section 306. Special Uses may be allowed on any lot in this district as authorized in Chapter 13, Section 1301. Renewable energy systems as set forth in Section 1206 of this Ordinance may be permitted as either a primary or an accessory use.

CHAPTER 4 – EFFECTIVE DATE

The Board having found an emergency situation exists, pursuant to A.R.S. § 11-813 G., no resident having filed a written objection with the Board of Supervisors, this Ordinance shall be effective immediately.

PASSED AND ADOPTED this 29th day of January 2014, by the Board of Supervisors of Maricopa County, Arizona.

Chairman

Attest:

Clerk 012914

Approved as to form:

Deputy County Attorney