

ORDINANCE NO. (O) 10-13

AN ORDINANCE OF THE TOWN OF ORO VALLEY ARIZONA, AMENDING THE ORO VALLEY ZONING CODE REVISED (OVZCR) CHAPTER 31, DEFINITIONS, SECTION 23.1, PERMITTED USES AND SECTION 25.1(V), USE REGULATIONS REGARDING MEDICAL MARIJUANA DISPENSARIES, ON SITE AND OFF SITE CULTIVATION LOCATIONS AND MEDICAL MARIJUANA CAREGIVER AND QUALIFYING PATIENT CULTIVATION LOCATIONS; REPEALING ALL RESOLUTIONS, ORDINANCES AND RULES OF THE TOWN OF ORO VALLEY IN CONFLICT THEREWITH; PRESERVING THE RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER

WHEREAS, the Town of Oro Valley is a political subdivision of the State of Arizona vested with all associated rights, privileges and benefits and is entitled to the immunities and exemptions granted municipalities and political subdivisions under the Constitution and laws of the State of Arizona and the United States; and

WHEREAS, on March 13, 1981, the Mayor and Council approved Ordinance (O) 81-58, which adopted that certain document entitled "Oro Valley Zoning Code Revised" (OVZCR); and

WHEREAS, the Arizona Medical Marijuana Initiative, also known as Proposition 203, will appear on the November 2, 2010 ballot in the State of Arizona; and

WHEREAS, if approved by the voters of Arizona, Proposition 203 will allow qualifying patients and caregivers to purchase marijuana from regulated marijuana dispensaries and protect those patients from arrest and prosecution for using the drug for medicinal purposes; and

WHEREAS, the proposed amendments to the OVZCR, Chapter 31, Definitions, Section 23.1, Permitted Uses and Section 25.1(V), Use Regulations, are intended to regulate the use and location of marijuana dispensaries and cultivation locations within the Town; and

WHEREAS, the Planning and Zoning Commission reviewed the proposed amendments to the OVZCR, Chapter 31, Definitions, Section 23.1, Permitted Uses and Section 25.1(V), Use Regulations regarding the use and location of marijuana dispensaries and cultivation locations within the Town at a duly noticed public hearing on October 5, 2010 in accordance with State Statutes and recommended approval to the Town Council; and

WHEREAS, at a duly noticed Town Council Meeting on October 27, 2010, the Oro Valley Town Council has considered the proposed amendments to the OVZCR, Chapter 31, Definitions, Section 23.1, Permitted Uses and Section 25.1(V), Use Regulations regarding the use and location of marijuana dispensaries and cultivation locations within the Town and the Planning and Zoning Commission's recommendation and finds it consistent with the Town's General Plan and other Town ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Oro Valley, Arizona that:


SECTION 1. That certain document entitled Oro Valley Zoning Code Revised, is hereby amended to add the amendments to Chapter 31, Definitions, Section 23.1, Permitted Uses and Section 25.1(V), Use Regulations regarding the use and location of marijuana dispensaries and cultivation locations within the Town, attached hereto as Exhibit "A".

SECTION 2. All Oro Valley ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 3. 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.

PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona this 27th day of October, 2010.


TOWN OF ORO VALLEY


Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:


Kathryn E. Cuvelier, Town Clerk


Tobin Rosen, Town Attorney

Date: 10-29-10

Date: 10/29/10

EXHIBIT "A"

Zoning Code Chapter 31 – Definitions

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Medical Marijuana Dispensary:

Means a not-for-profit 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 to cardholders.

Medical Marijuana Dispensary Offsite Cultivation Location:

Means the additional location where marijuana is cultivated by a medical marijuana dispensary as referenced in A.R.S. § 36-2804(B)(1)(b)(ii).

Medical Marijuana Qualifying Patient Cultivation Location:

Means an enclosed facility, that does not exceed 50 square feet of cultivation space for each location, where a qualifying patient, as defined by A.R.S. § 36-2801(13), cultivates marijuana if the qualifying patient's registry identification card states that the qualifying patient is authorized to cultivate marijuana.

Medical Marijuana Designated Caregiver Cultivation Location

Means an enclosed facility, that does not exceed 250 square feet of cultivation space, where a designated caregiver, as defined by A.R.S. § 36-2801(5), cultivates marijuana if the designated caregiver's registry identification card provides that the designated caregiver is authorized to cultivate marijuana.

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TABLE 23-1: PERMITTED USES																					
USE CATEGORY	SPECIFIC USE TYPE	Single-Family									Multi-Family				Commercial			Other		ADDL REGS	
		R1-300	R1-144	R1-72	R1-43	R1-36	R1-20	R1-10	R1-7	S D H 6	R-4	R-4R	R-S	R-6	C-N	C-1	C-2	PS	T-P		P O S
Retail Sales	Medical Marijuana Dispensary															P	P				25.1V
Agriculture	Medical Marijuana Dispensary Offsite Cultivation Location															P	P				25.1V
	Medical Marijuana Designated Caregiver Cultivation Location															P	P				25.1V
	Medical Marijuana Designated Qualifying Patient Cultivation Location															P	P				25.1V

Zoning Code Section 23.1 – Permitted Uses

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Zoning Code Section 25.1.V – Use Regulations

1. **Medical Marijuana Dispensary:** a permitted use subject to the standards below.
 - A. Supplemental Application. In addition to the standard required permit application, an applicant applying for a medical marijuana dispensary must complete a supplemental application that includes all of the following information:
 - i. If the application is by an agent for the owner the authorization must include an explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary.
 - ii. The legal name of the medical marijuana dispensary.
 - iii. The name and address of each principal officer and board member of the nonprofit medical marijuana dispensary.
 - iv. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
 - v. A floor plan showing the location, dimensions and type of security measures demonstrating that the medical marijuana dispensary will meet the definition of enclosed locked facility contained in A.R.S. §36-2801(6).
 - B. Development Standards
 - i. A medical marijuana dispensary must be located in a permanent building and may not be located in a trailer, modular building, cargo container or motor vehicle.
 - ii. A medical marijuana dispensary shall be setback a minimum of 2,000 feet from all other medical marijuana dispensaries measured from the parcel boundaries;
 - iii. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity facility where children may be enrolled, measured from the parcel boundaries.
 - iv. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a childcare center, measured from the parcel boundaries.
 - v. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a library or public park.
 - vi. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a church.
 - vii. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.

- viii. A medical marijuana dispensary may not have a drive-through service.
- ix. The maximum floor area of a medical marijuana dispensary is 2,000 square feet.
- x. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 400 square feet.
- xi. The permitted hours of operation of a medical marijuana dispensary are between the hours of 9:00a.m. and 5:00p.m.

C. Permit Conditions. The Town may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The Town must include the following permit conditions for issuance of the medical marijuana dispensary permit:

- i. An expiration date that requires re-application or renewal of the permit after a specified period of time.
- ii. A requirement that the medical marijuana dispensary meets security requirements adopted by the Arizona Department of Health Services.
- iii. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors or odors into the environment.
- iv. A requirement that the medical marijuana dispensary is prohibited from permitting anyone to consume marijuana on the premises.
- v. A requirement that the medical marijuana dispensary comply with applicable sections of Title 10 (Offenses) of the Oro Valley Town Code.

2. Medical Marijuana Dispensary Offsite Cultivation Location: a permitted use subject to the standards below.

A. Supplemental Application. In addition to the standard required application, an applicant applying for a medical marijuana dispensary offsite cultivation location shall complete a supplemental application that includes all of the following information.

- i. If the application is by an agent for the owner the authorization must include an explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary offsite cultivation location.
- ii. The legal name and address of the affiliated medical marijuana dispensary.
- iii. The name and address of each principal officer and board member of the medical marijuana dispensary affiliated with the offsite cultivation location and the name and address of each medical marijuana dispensary agent.
- iv. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
- v. A floor plan showing the location, dimensions of and type of security measures demonstrating that the medical marijuana dispensary offsite

cultivation location will meet the definition of enclosed locked facility contained in A.R.S. §36-2801(6).

B. Development Standards.

- i. Medical marijuana dispensary offsite cultivation location must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
- ii. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 2,000 feet from all other medical marijuana dispensary offsite cultivation locations measured from the parcel boundaries;
- iii. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity facility where children may be enrolled;
- iv. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a childcare center.
- v. The maximum floor area of a medical marijuana dispensary offsite cultivation location is 2,000 square feet.
- vi. The secure storage area for the medical marijuana stored at the medical marijuana dispensary offsite cultivation location shall not exceed 1,000 square feet.
- vii. A medical marijuana dispensary offsite cultivation location must be contained indoors.

C. Permit Conditions. The Town may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The Town must include the following conditions for issuance of the permit for a medical marijuana dispensary offsite cultivation location:

- i. An expiration date for the permit that requires re-application or renewal of the permit after a specified period of time.
- ii. A requirement that the medical marijuana dispensary offsite cultivation location meets security requirements adopted by the Arizona Department of Health Services.
- iii. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors or odors into the environment.
- iv. A requirement that the medical marijuana dispensary offsite cultivation location is prohibited from permitting anyone to consume marijuana on the premises.
- v. A requirement that the medical marijuana dispensary offsite cultivation location comply with applicable sections of Title 10 (Offenses) of the Oro Valley Code.

3. Medical Marijuana Designated Caregiver Cultivation Location: a permitted use subject to the standards below:

A. Development Standards

- i. All conditions and restrictions for Medical Marijuana Dispensary Offsite Cultivation locations except that the Designated Caregiver Cultivation Location cultivation area is limited to 250 square feet.
- ii. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed 250 square feet.
- iii. The designated caregiver location must comply with the security requirements of A.R.S. Title 36, Chapter 28.1.

4. Medical Marijuana Qualifying Patient Cultivation Location: a permitted use subject to the standards below.

A. Development Standards

- i. The qualifying patient cultivation location must be located in the C-1 or C-2 Commercial District as a permitted use or as an ancillary use to the qualifying patient's primary residence.
- ii. 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.
- iii. The qualifying patient cultivation location must comply with the security requirements of A.R.S. Title 36, Chapter 28.1.

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