

Adopted May 3, 2011 by Apache County Board of Supervisors

## **2300 Medical Marijuana Regulations**

### **Section 2301. Definitions**

*Medical Marijuana Designated Caregiver Cultivation Location* – 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. The location shall comply with the security requirements of A.R.S. Title 36, Chapter 28.1

*Medical Marijuana Dispensary* - 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* - 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* – 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. The qualifying patient cultivation location or designated caregiver cultivation location shall be located in the AG or any residential zone with an approved administrative use permit. 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. The qualifying patient cultivation location shall comply with the security requirements of A.R.S. Title 36, Chapter 28.1

### **Section 2302. Purpose and Application.**

#### **A. Purpose**

1. The Arizona Medical Marijuana Act, A.R.S. 36-2806.01 allows counties to enact zoning regulation of medical marijuana dispensaries.
2. Nothing in this ordinance is intended to permit or assist in the violation of either the Federal Controlled Substances Act or the Arizona Controlled Substances Act.
3. This ordinance will allow for the use of property as a medical marijuana dispensary or an affiliated medical marijuana dispensary off-site cultivation location.

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## B. Application

1. Medical Marijuana Dispensary and Medical Marijuana Dispensary Offsite Cultivation Location shall only be located in a C2 (General Commercial) Zone with an approved Conditional Use Permit following this section. The qualifying patient cultivation location or designated caregiver cultivation location shall be located in the AG or any residential zone with an approved administrative use permit.

## Section 2303. Conditional Uses.

A. Medical Marijuana Dispensary. As long as the Arizona Revised Statutes remain in full force and effect to allow medical marijuana dispensaries, a medical marijuana dispensary is permitted as a conditional use subject to the following conditions:

1. Minimum Notification Area. The minimum notification area for a conditional use permit for a medical marijuana dispensary is 1,000 feet.
2. An applicant for a conditional use permit for a medical marijuana dispensary must complete an application that includes all of the following information:
  - a. 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.
  - b. The legal name of the medical marijuana dispensary.
  - c. The name address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary and the name, address, and date of birth of each medical marijuana dispensary agent.
  - d. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
  - e. A notarized certification that none of the principal officers or board members has been convicted of one of the following offenses:
    - i. A violent crime as defined in A.R.S. § 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
    - ii. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted including an offense for which the sentence, any term of probation, incarceration or supervised release, was completed within the 10 years prior to applying for the application for the dispensary or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. §36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the State of Arizona.

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- f. A notarized certification that none of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
- g. 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) and will be conducted completely within an enclosed, locked building.
3. Permitted Location: A medical marijuana dispensary is only permitted in the C-2 (General Business) zone.
4. Community Impacts. The Board may or may not approve a medical marijuana dispensary at a site if substantial evidence is presented that locating the dispensary at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the dispensary at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.
5. Development Standards.
  - a. A medical marijuana dispensary must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
  - b. A medical marijuana dispensary shall be setback a minimum of 25 miles from all other medical marijuana dispensaries measured from the parcel boundaries;
  - c. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from schools, community service agency, activity facility, and or activity where children may be enrolled, measured from the parcel boundaries.
  - d. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from a childcare center, measured from the parcel boundaries.
  - e. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from a library or public park.
  - f. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from a church.
  - g. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
  - h. A medical marijuana dispensary may not have a drive-through service.
  - i. A medical marijuana dispensary may not have outdoor seating areas.

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- j. The maximum floor area of a medical marijuana dispensary is 2,000 square feet finished floor area.
  - k. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 400 square feet finished floor area.
  - l. The permitted hours of operation of a medical marijuana dispensary are between the hours of 9:00a.m. and 5:00p.m. daily.
  6. Permit Conditions. The Board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience, and general welfare. The board must include the following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary:
    - a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after three years or less.
    - b. A requirement that the medical marijuana dispensary meets security requirements adopted by the Arizona Department of Health Services.
    - c. A requirement that the storage facilities for the medical marijuana stored or grown at the off-site cultivation location prevent the emission of dust, fumes, vapors or odors into the environment.
    - d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary is to be located stating that the structure complies with all fire code requirements and supply that certification to the Development Services Department.
    - e. A prohibition on the medical marijuana dispensary offering a service that provides off-site delivery of the medical marijuana.
    - f. A requirement that the medical marijuana dispensary is prohibited from permitting anyone to consume marijuana on the premises.
  7. Enforcement. The provisions of this subsection may be enforced through the use of the civil penalty procedure provided for by Section 2.160.140 or by injunction or other civil proceeding as provided by A.R.S §11-808(H). Notwithstanding any other provision of this code, this subsection shall not be enforced under A.R.S §11-808(C) as a misdemeanor.
  8. Fees. The fees shall be set from time to time by the Board of Supervisors.
- B. Medical Marijuana Dispensary Off-Site Cultivation Location: As long as the laws within the Arizona Revised Statutes remain in full force and effect to allow medical marijuana dispensaries,

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a medical marijuana dispensary off-site cultivation location is permitted as a conditional use subject to the following conditions:

1. Minimum Notification Area. The minimum notification area for a conditional use permit for a medical marijuana dispensary is 1000 feet.
2. Supplemental Application. In addition to the application required by Article 11, an applicant for a conditional use permit for a medical marijuana dispensary off-site cultivation location shall complete an application that includes all of the following information.
  - a. 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 off-site cultivation location.
  - b. The legal name and address of the affiliated medical marijuana dispensary.
  - c. The name address and date of birth of each principal officer and board member of the medical marijuana dispensary affiliated with the off-site cultivation location and the name, address, and date of birth of each medical marijuana dispensary agent.
  - d. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
  - e. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the off-site cultivation location has been convicted of one of the following offenses:
    - 1) A violent crime as defined in A.R.S. § 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
    - 2) A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. §36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.
  - f. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the off-site cultivation location has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
  - g. A floor plan showing the location, dimensions of and type of security measures demonstrating that the medical marijuana dispensary off-site cultivation location will be conducted completely within an enclosed locked building and meet the definition of enclosed locked facility contained in A.R.S. §36-2801(6).

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3. Permitted Location: A medical marijuana dispensary off-site cultivation location is only permitted in the C-2 (General Business) zone.
4. Community Impacts. The Board may not approve a medical marijuana dispensary off-site cultivation location on a property if substantial evidence is presented that locating the cultivation location at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the cultivation location at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.
5. Development Standards.
  - a. A medical marijuana dispensary off-site cultivation location must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
  - b. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from all other medical marijuana dispensary off-site cultivation locations measured from the parcel boundaries;
  - c. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from schools, community service agency, activity facility, and or activity where children may be enrolled, measured from the parcel boundaries.
  - d. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a childcare center.
  - e. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a library or public park.
  - f. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a church.
  - g. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
  - h. A medical marijuana dispensary off-site cultivation location may not have outdoor seating areas.
  - i. The maximum floor area of a medical marijuana dispensary off-site cultivation location is 2,000 square feet finished floor area.
  - j. The secure storage area for the medical marijuana stored at the medical marijuana dispensary off-site cultivation location shall not exceed 1,000 square feet finished floor area.

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- k. Must have a legible copy of a valid Medical Marijuana Dispensary Agent Registry Identification Card, the original of which is issued by the State of Arizona, plainly displayed inside of the doorway at all times.
- l. Must have the address of the Medical Marijuana Dispensary that the Off-site Cultivation Location supplies plainly displayed inside of the doorway at all times.
6. Permit Conditions. The Board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The board must include the following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary off-site cultivation location:
  - a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after two years or less.
  - b. A requirement that the medical marijuana dispensary off-site cultivation location meets security requirements adopted by the Arizona Department of Health Services.
  - c. 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.
  - d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary off-site cultivation location is to be located stating that the structure complies with all fire code requirements and supply a copy of that certification to the Community Development Department.
  - e. A requirement that the medical marijuana dispensary off-site cultivation location is prohibited from permitting anyone to consume marijuana on the premises.
7. Enforcement. The provisions of this subsection may be enforced through the use of the civil penalty procedure provided for by Section or 2.160.140 or by injunction or other civil proceeding as provided by A.R.S §11-808(H). Notwithstanding any other provision of this code, this subsection shall not be enforced under A.R.S §11-808(C) as a misdemeanor.
8. Fees. The fees shall be set from time to time by the Board of Supervisors.

#### **Section 2304. Non Dispensary Cultivation**

##### A. Special Conditions for Non-Dispensary Cultivation.

1. Medical Marijuana Cultivation Location for a Registered Qualifying Patient:
  - a. Allowed as an accessory to a primary residence
  - b. Must be conducted in a completely enclosed, locked building

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- c. Must have a legible copy of a valid Medical Marijuana Registry Qualifying Patient Identification Card, the original of which is issued by the State of Arizona, plainly displayed inside of the doorway.
  - d. The qualified patient cultivation must be at least 25 miles from a medical marijuana dispensary.
  - e. A medical marijuana dispensary off-site cultivation location must be located in a permanent building and may not be located in a trailer, cargo container, or motor vehicle.
  - f. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from all other medical marijuana dispensary off-site cultivation locations measured from the parcel boundaries;
  - g. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from schools, community service agency, activity facility, and or activity where children may be enrolled, measured from the parcel boundaries.
  - h. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a childcare center.
  - i. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a library or public park.
  - j. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a church.
  - k. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
1. The fees shall be set from time to time by the Board of Supervisors.
2. Medical Marijuana Cultivation Location for a Registered Designated Caregiver:
    - a. Allowed as an accessory to a primary residence
    - b. Must be conducted in a completely enclosed, locked building
    - c. Must have a legible copy of a valid Medical Marijuana Registry Designated Caregiver Identification Card, the original of which is issued by the State of Arizona, plainly displayed inside of the doorway.
    - d. Must be for qualified patients who live at least 25 miles from a medical marijuana dispensary.
    - e. A medical marijuana dispensary off-site cultivation location must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.

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- f. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from all other medical marijuana dispensary off-site cultivation locations measured from the parcel boundaries;
- g. A medical marijuana dispensary shall be setback a minimum of 2,500 feet from schools, community service agency, activity facility, and or activity where children may be enrolled, measured from the parcel boundaries.
- h. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a childcare center.
- i. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a library or public park.
- j. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a church.
- k. A medical marijuana dispensary off-site cultivation location shall be setback a minimum of 2,500 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
- l. Fees. The fees shall be set from time to time by the Board of Supervisors.

The fees recommended by the P & Z Commission are as follows:

Dispensary Use Permit - \$2,500

Cultivation Location Use Permit - \$2,500

Home Cultivation Administrative Use Permit - \$500

Designated Caregiver Cultivation Administrative Use Permit - \$500

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Adopted by the Apache County Board of Supervisors at St. Johns, Arizona, on May 3<sup>rd</sup>, 2011, by unanimous vote.

APACHE COUNTY BOARD OF SUPERVISORS

By \_\_\_\_\_  
R. John Lee  
Chairman of the Board

Attest:

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Delwin Wengert, Clerk of the Board

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Michael B. Whiting, County Attorney