



City of Apache Junction

Development Services Department



DATE: January 18, 2017

MEMO TO: Planning and Zoning Commission

THROUGH: Larry Kirch, Development Services Director

FROM: ~~Rudy Esquivias~~ Rudy Esquivias, Senior Planner/Zoning Admin.

SUBJECT: January 24, 2017, P&Z New Business Discussion
Item: Proposed text amendments to city's Medical Marijuana Regulations.

BACKGROUND:

In the general election of November 2010, Arizona voters approved Proposition 203. This initiative enacted a group of statutes titled the "Arizona Medical Marijuana Act," to include a new Chapter 28.1 in Title 36 and amendment of Arizona Revised Statutes (ARS) §43-1201. The new law decriminalized possession, sale and cultivation of marijuana for certain purposes under state law and provided for the establishment of non-profit medical marijuana dispensaries, cultivation facilities and infusion facilities.

The law allowed, on a statewide basis, one dispensary and off-site cultivation facility for every 10 pharmacies; thus approximately 120 dispensaries could be established in Arizona, with at least one for every county in which an application was approved (see ARS Sec. 36-2804 attached). The law required dispensaries to be at least 500 feet from a public or private school, but had no other specific separation requirements. Local communities could then establish zoning requirements for the location of dispensaries and off-site cultivation facilities within their jurisdictions. Many Arizona communities adopted ordinance changes to accommodate these new uses.

The law specifically permits cities, towns and counties to enact zoning regulations for such medical marijuana dispensaries, and the City has the authority to enact such zoning regulations pursuant to ARS Title 9, Article 6.1.

The Arizona Medical Marijuana Act, allows a "qualifying patient" who has a "debilitating medical condition" to obtain an "allowable amount of marijuana" from a "non-profit medical

marijuana dispensary" and to possess and use the marijuana to treat or alleviate the debilitating medical condition or symptoms associated with the condition.

The Arizona Department of Health Services (DHS) was required to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing and revoking the registration of qualifying patients, designated caregivers, non-profit dispensaries and dispensary agents. The costs of the regulatory system would be paid from application and renewal fees collected, civil penalties imposed and private donations received pursuant to the proposition. A "qualifying patient" is defined as a person who has been diagnosed by a physician (a doctor of medicine, osteopathy, naturopathic medicine or homeopathy) as having one of the following debilitating medical conditions:

1. Cancer.
2. Glaucoma.
3. Positive status for human immunodeficiency virus.
4. Acquired immune deficiency syndrome.
5. Hepatitis C.
6. Amyotrophic lateral sclerosis.
7. Crohn's disease.
8. Agitation of Alzheimer's disease.
9. A chronic or debilitating disease or medical condition or its treatment that produces any of the following:
 - a. Cachexia or wasting syndrome.
 - b. Severe and chronic pain.
 - c. Severe nausea.
 - d. Seizures (including those characteristic of epilepsy).
 - e. Severe and persistent muscle spasms (including those characteristic of multiple sclerosis).
10. Any other medical condition or its treatment added by DHS through a public petition process.

In order to register with DHS, a qualifying patient must submit a signed written certification issued by the physician that states the physician's professional opinion that the patient is likely to receive therapeutic or symptom-relieving benefits from the medical use of marijuana to treat or alleviate a debilitating medical condition. The certification must specify the debilitating medical condition and must be made in the course of a physician-patient relationship after the physician has completed a full assessment of the patient's medical

history. If the qualifying patient is under 18 years of age, the patient's custodial parent or legal guardian must submit written certifications from two physicians and the custodial parent or legal guardian must consent in writing to control the patient's medical use of the marijuana. A qualifying patient who is registered with DHS (or a registered designated caregiver on behalf of the qualifying patient) may obtain up to 2.5 ounces of marijuana in a 14-day period from a registered non-profit medical marijuana dispensary. If the qualifying patient's home is located more than 25 miles from the nearest non-profit medical marijuana dispensary, the patient or designated caregiver may cultivate up to 12 marijuana plants in an enclosed, locked facility.

A registered non-profit medical marijuana dispensary must be operated on a not-for-profit basis, but may receive payment for all expenses incurred in its operation. DHS may not issue more than one non-profit medical marijuana dispensary registration certificate for every ten pharmacy permits issued by the Arizona State Board of Pharmacy under current law. The dispensary may cultivate marijuana only in an enclosed, locked facility and may acquire marijuana from a registered qualifying patient or designated caregiver if the patient or caregiver is not compensated for the marijuana. The proposition specifies various security, record-keeping and verification requirements relating to the operation of dispensaries.

Proposition 203 generally provides that any person who acts in conformity with the requirements of the proposition is not subject to any governmentally imposed sanction relating to the medical use of marijuana. This proposition would prohibit certain discriminatory practices, including the following:

1. A school or landlord may not refuse to enroll or lease to a person registered pursuant to this proposition unless failing to do so would cause the school or landlord to lose a monetary or licensing benefit under federal law.
2. An employer may not discriminate against a person registered pursuant to this proposition in hiring, terminating or imposing employment conditions unless failing to do so would cause the employer to lose a monetary or licensing benefit under federal law. Further, an employer may not penalize a qualifying patient registered pursuant to this proposition for a positive drug

test for marijuana, unless the patient used, possessed or was impaired by marijuana on the employment premises or during hours of employment.

Proposition 203 would not:

1. Authorize a person to undertake any task under the influence of marijuana that constitutes negligence or professional malpractice.
2. Authorize possessing or using medical marijuana on a school bus, on the grounds of a preschool, primary school or high school or in a correctional facility.
3. Authorize smoking marijuana on public transportation or in a public place.
4. Authorize operating, navigating or being in actual physical control of a motor vehicle, aircraft or motorboat while under the influence of marijuana. A registered qualifying patient would not be considered to be under the influence of marijuana solely because of the presence of marijuana in the person's system that appears in a concentration insufficient to cause impairment.
5. Require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana.
6. Require an owner of private property to allow the use of marijuana on that property.
7. Require an employer to allow the ingestion of marijuana in the workplace.
8. Prevent a nursing care or other residential or inpatient healthcare facility from adopting reasonable restrictions on the provision, storage and use of marijuana by residents or patients.

CITY COUNCIL ACTIONS AND IMPLEMENTATION:

On December 7, 2010, the City Council directed staff to initiate a zoning code text amendment to regulate non-profit medical marijuana uses in the city and the appropriate accompanying definitions, consistent with State law. On February 15, 2011, the city adopted Ordinance No. 1372, which established the city's original medical marijuana regulations. Then, on May 6, 2014, the City Council adopted Ordinance No. 1402, which approved new zoning maps and a new zoning ordinance for the city. The city's medical marijuana regulations in the new zoning ordinance changed very little from the original version (see Section 1-6-12 Medical Marijuana, the city's current code).

Under the city's medical marijuana regulations, an applicant for a dispensary, a cultivation facility or an infusion facility is required to go through a conditional use permit ("CUP") process, subject to a decision by the city's Planning and Zoning Commission. The city's regulations allowed only one of each type of facility until the city had at least 20 pharmacies, at which time another facility could be requested by an applicant, reflective of the state's rationale for how many dispensaries could be awarded statewide. At that time, the Apache Junction Community Health Analysis Area ("CHAA"), which includes Apache Junction, Gold Canyon and other outlying unincorporated areas of Pinal County east of Meridian (see AJ CHAA map), was designated to have one dispensary, one cultivation facility and one infusion facility. Our understanding is that not all +/-120 dispensary certificates were issued by the State.

Subsequent to the adoption of the city's medical marijuana regulations and the awarding of dispensary certificates by the Arizona Department of Health Services (ADHS), the City of Apache Junction has allowed one dispensary (Nature's Wonder) and one combination cultivation and infusion kitchen facility (Perpetual Healthcare Inc.). We thought we were done until such time as the city experienced substantial growth, but such is not necessarily the case.

PROPOSAL:

In 2016, ADHS offered the opportunity for another 31 dispensary certificates to be awarded in the CHAAs where they determined there was highest patient demand. Even though it was last on the priority list, the Apache Junction CHAA was one of those areas identified.

In 2016, the city received 20 requests for zoning verification letters from interested dispensary applicants, for possible dispensary locations within the city. Each and every one was advised that it would probably be very difficult to get another medical marijuana use approved in Apache Junction because of the way our ordinance is written. Nonetheless, ADHS awarded SVACCHA LLC (the applicants in this text amendment request) the opportunity of the Apache Junction CHAA. In early conversations with the applicants, Staff recommended to SVACCHA that they apply in unincorporated Pinal County, where our rules do not apply. The applicants expressed a preference to be in the city limits. As such, it was determined that our CUP process could not be used to accommodate them and that a text amendment was needed first.

Staff was already thinking about possible changes to the zoning ordinance in light of the recreational marijuana initiative which went before the voters of Arizona last November. The initiative was not approved by the voters. With regard to this text amendment request, staff is in general agreement with the applicants that our ordinance should be updated to be consistent with current state law and ADHS policies, now that the Arizona Medical Marijuana Act has been in effect for a few years.

P&Z NEW BUSINESS DISCUSSION ITEM:

The applicants have submitted a narrative and their proposed changes to our ordinance (see attached). While we agree with them on several items, staff has also prepared a draft with our own recommended changes for the Commission's consideration (see attached).

Please be advised that the Commission is NOT taking action on this item this evening. Tonight is discussion only. Staff seeks the Commissioners' input on the proposed changes—the applicant's and staff's. This item will be presented for public hearing on February 14, 2017.

Attachments:

- Narrative from Jenifer Corey (representative);
- ADHS Top 31 CHAAS priority list;
- Map of Apache Junction CHAA;
- ARS Section 36-2804;
- Section 1-6-12 Medical Marijuana (current A.J. regs.);
- Proposed text amendment changes from SVACCHA;
- Proposed text amendment changes from Planning Staff



ZONING STRATEGIES LLC

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December 7, 2016

Larry Kirch
City of Apache Junction
Development Services Department
300 E. Superstition Blvd.
Apache Junction, AZ 85119

RE: Text Amendment Request pertaining to a text amendment for medical marijuana.

Dear Mr. Kirch:

As you know, in October 2016, the Arizona Department of Health Services (AZDHS) recently issued thirty-one new medical marijuana dispensary licenses to CHAAs with the highest patient demand. The Apache Junction CHAA was one of those thirty-one CHAAs.

We represent Svaccha, LLC the recipient of the new Apache Junction dispensary license. In our November 8, 2016 meeting, there was discussion of text amendments to accommodate a newly licensed dispensary facility and also potential provisions in the event of Proposition 205(recreational marijuana). Prop 205 did not pass, however our client is requesting text amendment revisions that will allow the operation of one other dispensary as was intended by AZDHS in awarding this registration to a CHAA with rapid patient growth.

Background:

AZDHS maps the state into divisions called Community Health Analysis Areas or CHAAs. These divisions also provide the statistics that determine the allocation of new dispensary licenses.

In 2013, AZDHS rules issued one dispensary per CHAA. This summer, AZDHS awarded 31 licenses to those CHAAs identified as having the highest patient counts.

Under the current zoning ordinance provisions, there is a cap of only one dispensary allowed within the Apache Junction CHAA. Additional dispensaries are allowed, but only when the total number of pharmacies exceeds 20 within Apache Junction.

In 2014, Apache Junction took a very conservative approach to regulating medical marijuana. In fact, the Town's locational requirements are among the most conservative in the state. Since there have been no real issues associated with the one dispensary in Apache Junction, we believe it is appropriate to re-evaluate the ordinance requirements and allow an additional dispensary more consistent with adjacent communities.

A map showing the Apache Junction CHAA is attached. Unlike other communities, Apache Junction is entirely contained within one CHAA. Mesa for example is broken down into Five CHAAs, Tempe in Two CHAAs, and Queen Creek is within a single CHAA.

State Statutes limit the total number of dispensaries allowed in the State. 2013 AzDHS rules issued one dispensary per CHAA. This summer, AzDHS awarded 31 licenses to those CHAAs identified as having the highest patient counts.

Text Amendment Request:

Now that AzDHS has made a determination that an additional dispensary location is appropriate for the Apache Junction CHAA, the challenge is how to modify the existing ordinance to allow for the dispensary, while ensuring that the appropriate zoning restrictions remain in place.

In addition to needing to modify the total number of dispensaries within Apache Junction, we have identified a number of items within the Ordinance that merit amending.

1. Requiring spacing to additional sensitive uses, including libraries, public parks;
2. Providing additional measures to be included within the Security Plan;
3. Requiring hours of operation that limit the operating hours to only within 8am and 10pm;
4. Allowing the sale of certain items (water pipes, vapor systems, etc.) only to be used in conjunction with medicine from the dispensaries. Only able to be sold to Qualified Patients or Caregivers.
5. Eliminating the restriction on delivery to Qualified Patients or Caregivers.

While the original City code allowed one dispensary with the until a large number of pharmacies existed in the City was warranted, a new look at the situation may be in the City's best interest. Apache Junction is the only City we are aware of that has a "one dispensary" limit. This would seem to create a monopoly of sorts. Furthermore, each dispensaries are unique, each serving a different selection of strains, with different potency, efficacy and effects to treat a patient's particular condition.

The intent with the original text language was to balance AzDHS requirements with the City's desire to prevent a concentration of similar uses in close proximity. Amending the existing code allowing for an additional facility within the Apache Junction CHAA will not result in an over concentration. In fact, the proposed changes will ensure that any new dispensaries will be adequately spaced from additional identified sensitive uses such as libraries and public parks.

We are requesting no changes to any other provisions in the Zoning Ordinance, other than that shown on the attached redline. This modification would merely allow one additional dispensary. The separation to other sensitive land uses will continue to protect residents and the youth of the area as originally prescribed. The existing code spacing requirements, operational restrictions and extensive security measures in place as requested by the Police Department – will remain unchanged. This change only applies to dispensaries and not cultivation facilities.

Jurisdiction Comparison of number of dispensaries permitted.

Apache Junction
Medical Marijuana text amendment

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| | |
|-----------------|--|
| Mesa – | No limit on number, numerous spacing requirements. |
| Chandler – | No limit on number, numerous spacing requirements. |
| Gilbert – | Limit of 2 Dispensaries. |
| Queen Creek -- | No limit on number, numerous spacing requirements. |
| Pinal County -- | No limit on number, numerous spacing requirements. |

Approval of this text amendment will not have a detrimental impact to the community. In fact, expanded allowance of dispensary numbers will result in improved access for Apache Junction area patients by providing a safe and centrally located dispensary to fill their prescriptions. This ordinance modification would make the City more consistent with other nearby communities. This request does not intend to modify any other zoning ordinance requirement, security and operational measure in place. The City's sole dispensary serves to demonstrate that medical marijuana can operate in a safe and responsible manner.

Conclusion

The additional dispensary text amendment will bring the City into alignment with other communities in the area, and serve a need identified by the State Department of Health Services which identified for an additional dispensary for Apache Junction.

Please let us know if you require additional information or documents to address this text amendment. Otherwise, we look forward to addressing these requests with you at the forthcoming hearing.

Sincerely,

Zoning Strategies LLC

Jenifer Corey
Principal



ARIZONA DEPARTMENT OF HEALTH SERVICES

LICENSING

June 16, 2016

Top 31 CHAAs prioritized under [R9-17-303\(B\)\(2\)](#)

| Rank | CHAA | CHAA ID |
|------|---------------------------|---------|
| 1 | Paradise Valley Village | 46 |
| 2 | North Mountain | 52 |
| 3 | Deer Valley | 44 |
| 4 | Chandler SE | 80 |
| 5 | Scottsdale N | 40 |
| 6 | Camelback East | 56 |
| 7 | Peoria | 41 |
| 8 | Gilbert E | 77 |
| 9 | Mesa E | 65 |
| 10 | Scottsdale S | 58 |
| 11 | Surprise | 47 |
| 12 | Tanque Verde | 106 |
| 13 | Tucson NE | 105 |
| 14 | Tempe N | 68 |
| 15 | Mesa W | 69 |
| 16 | Tempe S | 74 |
| 17 | Maryvale | 60 |
| 18 | Alhambra | 59 |
| 19 | Yavapai Co. NE | 26 |
| 20 | Superior/Kearny | 93 |
| 21 | Chandler NW | 79 |
| 22 | Tucson E Central | 109 |
| 23 | South Mountain | 71 |
| 24 | Glendale N | 45 |
| 25 | Desert View/North Gateway | 42 |
| 26 | Mesa Central | 70 |
| 27 | Ahwatukee Foothills | 78 |
| 28 | Maricopa Co. W | 51 |
| 29 | Lake Havasu City | 8 |
| 30 | Mesa S | 73 |
| 31 | Apache Junction | 92 |

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

Apache Junction Community Health Analysis Area

Apache Junction
CHAA Boundary

Major Roads

Minor Roads

Highways

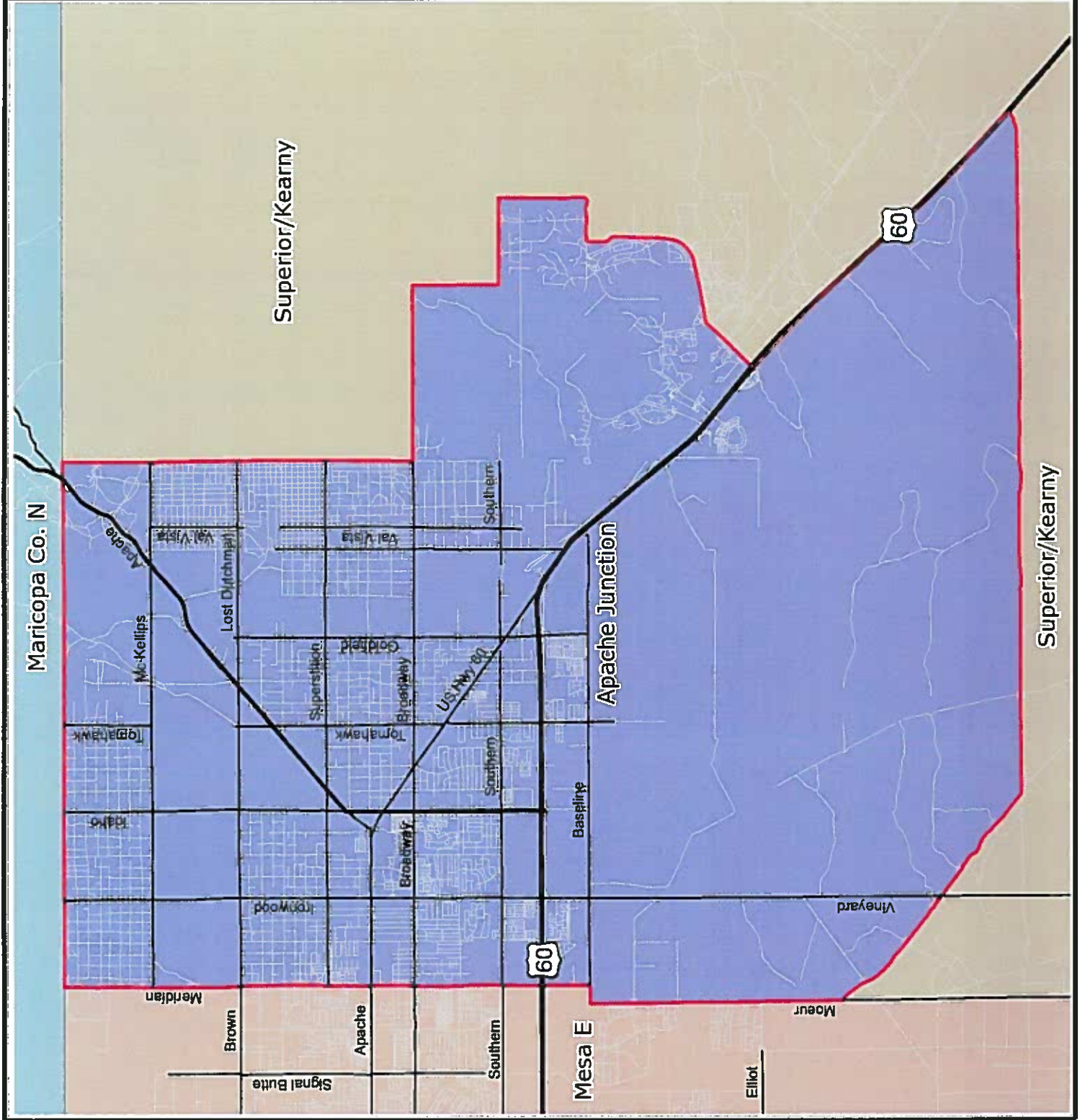
Unbuilt

Under Construction

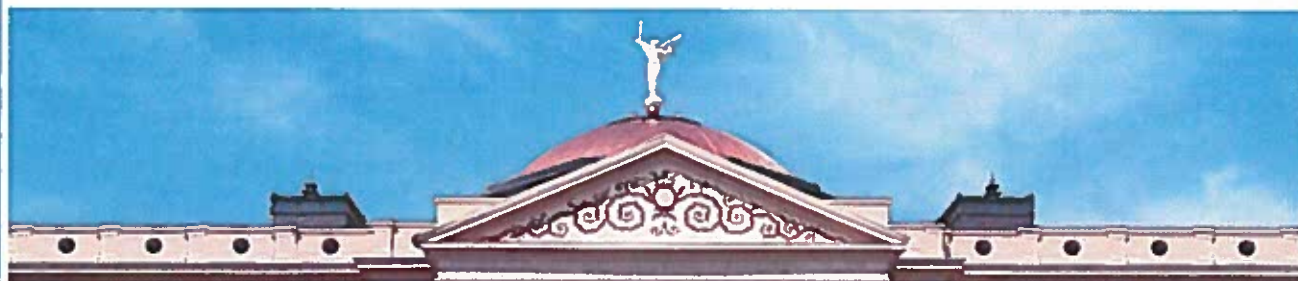
Existing



0 1 2 Miles



Arizona State Legislature

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Fifty-second Legislature - Second Regular Session

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(Caution: 1998 Prop. 105 applies)

A. Nonprofit medical marijuana dispensaries shall register with the department.

B. Not later than ninety days after receiving an application for a nonprofit medical marijuana dispensary, the department shall register the nonprofit medical marijuana dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:

1. The prospective nonprofit medical marijuana dispensary has submitted the following:

(a) The application fee.

(b) An application, including:

(i) The legal name of the nonprofit medical marijuana dispensary.

(ii) The physical address of the nonprofit medical marijuana dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within five hundred feet of a public or private school existing before the date of the nonprofit medical marijuana dispensary application.

(iii) The name, address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary.

(iv) The name, address and date of birth of each nonprofit medical marijuana dispensary agent.

(c) Operating procedures consistent with department rules for oversight of the nonprofit medical marijuana dispensary, including procedures to ensure accurate record-keeping and adequate security measures.

(d) If the city, town or county in which the nonprofit medical marijuana dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the registered nonprofit medical marijuana dispensary is in compliance with the restrictions.

2. None of the principal officers or board members has been convicted of an excluded felony offense.

3. 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.

4. None of the principal officers or board members is under twenty-one years of age.

C. The department may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacies that have registered under section 32-1929, have obtained a pharmacy permit from the Arizona board of pharmacy and operate within the state except that the department may issue nonprofit medical marijuana dispensary registration certificates in excess of this limit if necessary to ensure that the department issues at least one nonprofit medical marijuana dispensary registration certificate in each county in which an application has been approved.

D. The department may conduct a criminal records check in order to carry out this section.

CURRENT A.J. ORDINANCE

1-6-12 MEDICAL MARIJUANA

- A. Permit Required. A CUP shall be required for the establishment of nonprofit medical marijuana dispensaries with or without cultivation facilities, off-site cultivation facilities and for stand-alone nonprofit medical marijuana infusion facilities.
- B. Number of Facilities Allowed in City. One nonprofit medical marijuana dispensary with or without an on-site cultivation facility, one off-site cultivation facility and one stand-alone infusion facility shall be allowed in the City. An additional dispensary, off-site cultivation facility, and standalone infusion facility may be allowed when the City has at least twenty pharmacies within its municipal limits, and then one additional facility for every ten pharmacies thereafter. (See A.R.S. Title 36, Chapter 28.1 Arizona Medical Marijuana Act, for definitions and statutes pertaining to medical marijuana.)

- C. Allowed Zoning Districts. Location of nonprofit medical marijuana dispensaries with or without on-site cultivation facilities shall be limited to the City's B-1 through B-5 zoning districts.

Location of an off-site cultivation facility (i.e., a cultivation facility not co-located with a dispensary) and/or a stand-alone nonprofit medical marijuana infusion facility which serves one or more nonprofit medical marijuana dispensaries shall be limited to the City's B-5 (Industrial) zoning district. Nonprofit medical marijuana dispensaries, off-site cultivation facilities and/or infusion facilities shall not be allowed within any MPC zoned property.

- D. Facility Security. Medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be located in an enclosed locked facility, such as a permanent secure building and not in a cargo container, RV, trailer, or motor vehicle. If a green house is used as a cultivation facility, reasonable measures shall be taken to obscure the visibility of the marijuana plants from outside the building.
- E. Applications. A CUP application for medical marijuana dispensaries, cultivation facilities or Infusion facilities shall include, at a minimum, the following supplemental information:
1. Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating or infusion.

2. A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the Apache Junction Police Department upon final approval to operate from DHS, as well as a copy of said final approval document.
3. Application and all applicable fees paid as required by Apache Junction City Code, Volume I; Chapter 8, Business, and the Apache Junction City Tax Code as amended.
4. A detailed site plan and floor plan for the facility prepared in accordance with Section 1-16-9, and narrative explaining the operation of the facility and hours of operation.

F. Conditions of Approval. The conditions of approval which may be considered by the Planning and Zoning Commission in evaluating these requests include the following:

1. Required Spacing Requirements:

- a. A minimum of 1,320 feet between dispensaries, off-site cultivation facilities or stand-alone infusion facilities, as measured from nearest building wall to nearest building wall.
- b. A minimum of 750 feet between a dispensary, off-site cultivation facility or stand-alone infusion facility and any public or private school, business zoned day care center, church, or drug and/or alcohol rehabilitation center, as measured from nearest building wall of the business to the nearest building wall of the protected use.
- c. A minimum of 750 feet from other sensitive land uses as determined by the Zoning Administrator on a case by case basis, as measured from the nearest building wall of the business to the nearest building wall of the protected use.

2. Operating Requirements:

- a. Drive-through pickup windows and delivery service shall not be allowed.
- b. Outdoor seating areas at dispensaries, cultivation facilities or standalone infusion facilities shall not be allowed.
- c. Security plans shall include lighting, monitored alarm and/or camera surveillance systems, secure storage, and other necessary building safety measures.

- d. On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed.
 - e. Dispensaries selling marijuana or tobacco-smoking related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices and other than cookbooks and educational materials shall not be allowed.
 - f. The size of facility in terms of square footage, building height or other factors shall be consistent with the character of existing or planned surrounding development.
 - g. Signage that will be visible from the exterior of the facility may be approved by the City if all sign regulations have been met.
3. Other Conditions. The Planning and Zoning Commission may deem it necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:
- a. Compliance with all City-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements.
 - b. The Commission shall reserve the right to revoke a CUP for noncompliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community.
4. Patient Home Cultivation. In the event that a qualifying patient residing in the City lives 25 miles or farther from a dispensary, said individual or his or her designated caregiver may cultivate no more than 12 marijuana plants at the place of primary residence (including a manufactured home or a recreational vehicle) of the qualifying patient, with owner's permission, without need to apply for a CUP. However, said individual or his or her designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the Chief of Police of his or her intent to cultivate marijuana at home. At such time as a dispensary is located within 25 miles from the qualifying patient's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations.
5. Caregiver Home Cultivation. In the event that a designated caregiver whose residence is in the City limits is cultivating marijuana for the qualifying patient or patients in his or her care, and whose qualifying patient or patients in his or her care live 25 miles or farther from a dispensary, said designated caregiver may cultivate no more than 12 marijuana plants per patient at the place of primary residency of the

designated caregiver (including a manufactured home or a recreational vehicle), with homeowner's permission, without need to apply for a CUP. However, said designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the Chief of Police of his or her intent to cultivate marijuana at home for the benefit of his or her qualifying patient or patients. At such time as a dispensary is located within 25 miles from the designated caregiver's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations.

SVACCHA'S PROPOSED CHANGES

Apache Junction Medical Marijuana Text Amendment

Section 1-6-12 MEDICAL MARIJUANA.

(A) *Permit required.* A CUP shall be required for the establishment of nonprofit medical marijuana dispensaries with or without cultivation facilities, off-site cultivation facilities and for stand-alone nonprofit medical marijuana facilities.

(B) *Number of facilities allowed in the city.* ~~Two~~ One nonprofit medical marijuana dispensary with or without an on-site cultivation facility, up to two ~~+~~ off-site cultivation facility and up to two ~~+~~ stand-alone infusion facility shall be allowed in the city. An additional dispensary, off-site cultivation facility, and stand-alone infusion facility may be allowed when the city has at least ~~25~~ 20 pharmacies within its municipal limits, and then 1 additional facility for every 10 pharmacies thereafter. (See A.R.S. Title 36, Chapter 28.1 Arizona Medical Marijuana Act, for definitions and statutes pertaining to medical marijuana.)

(C) *Allowed zoning districts.*

(1) Location of nonprofit medical marijuana dispensaries with or without on-site cultivation facilities shall be limited to the city's B-1 through B-5 zoning districts, with or without a Planned Development Overlay.

(2) Location of an off-site cultivation facility (i.e. a cultivation facility not co-located with a dispensary) and/or a stand-alone nonprofit medical marijuana infusion facility which serves 1 or more nonprofit medical marijuana dispensaries shall be limited to the city's B-5 (Industrial) zoning district. Nonprofit medical marijuana dispensaries, off-site cultivation facilities and/or infusion facilities shall not be allowed within any MPC zoned property.

(D) *Facility security.* Medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be located in an enclosed locked facility, such as a permanent secure building and not in a cargo container, RV, trailer, or motor vehicle. If a green house is used as a cultivation facility, reasonable measures shall be taken to obscure the visibility of the marijuana plants from outside the building.

(E) *Applications.* A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include, at a minimum, the following supplemental information:

(1) Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating, or infusion.

(2) A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary, off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the Apache Junction Police Department upon final approval to operate from DHS as well as a copy of said final approval document.

(3) Application and all applicable fees paid as required by the Apache Junction City Code, Vol. 1; Chapter 8, Business, and the Apache Junction City Tax Code as amended.

(4) A detailed site plan and floor plan for the facility prepared in accordance with Vol. II, p1-16-9, and narrative explaining the operation of the facility and hours of operation.

(F) *Conditions of approval.* The conditions of approval which may be considered by the Planning and Zoning Commission in evaluating these requests include the following:

(1) Required spacing requirements:

(a) A minimum of 1,320 feet between dispensaries, off-site cultivation facilities or stand-alone infusion facilities, as measured from nearest building wall to nearest building wall.

(b) A minimum of 750 feet between a dispensary, off-site cultivation facility or stand-alone infusion facility and any public or private school, library, public park, business zoned day care center, freestanding church, or drug and/or alcohol rehabilitation centers, as measured from nearest building wall of the business to the nearest building wall of the protected use.

(c) A minimum of 750 feet from other sensitive land uses as determined by the Zoning Administrator on a case by case basis, as measured from the nearest building wall of the business to the nearest building wall of the protected use.

(2) Operating requirements:

(a) Drive-through pickup windows ~~and delivery service~~ shall not be allowed.

(b) Outdoor seating areas at dispensaries, cultivation facilities or stand-alone infusion facilities shall not be allowed.

(c) ~~Security plans shall include lighting, monitored alarm and/or camera surveillance systems, secure storage, and other necessary building safety measures.~~ A Medical Marijuana Facility shall submit a Security Plan containing the following information:

(1) Proof that any cultivation and storage of Medical Marijuana will take place in an "enclosed, locked facility" equipped with locks or other security devices that permit access only by persons authorized to enter pursuant to State and local law.

(2) A floor plan that details the security measures required by Arizona law including an on-site alarm system and a single secure entrance.

(3) Additional protections, if any, against medical marijuana diversion and theft.

(4) Provide and update as needed a current list of all persons who are authorized to access the dispensary, offsite cultivation site or infusion facility.

(d) On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed.

(e) Dispensaries selling marijuana ~~or tobacco smoking~~ related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices shall be restricted to selling only to patients displaying the required Arizona Department of Health Services medical marijuana card and to be used only in conjunction with prescription. ~~and other than cookbooks and educational materials~~ shall not be allowed. Cookbooks and educational materials are excepted from this provision.

(f) The size of facility in terms of square footage, building height or other factors shall be consistent with the character or other factors of existing or planned surrounding development.

(g) Signage that will be visible from the exterior of the facility may be approved by the city if all sign regulations have been met.

(3) *Other conditions.* The Planning and Zoning Commission may deem is necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:

(a) Compliance with all the city-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements.

(b) The Commission shall reserve the right to revoke a CUP for noncompliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community.

(c) Hours of Operation: A Medical Marijuana Facility shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m.

(4) *Patient home cultivation.* In the event that a qualifying patient residing in the city lives 25 miles or farther from a dispensary, said individual or his or her designated caregiver may cultivate no more than 12 marijuana plants at the place of primary residence (including a manufactured home or a recreational vehicle) of the qualifying patient, with owner's permission, without need to apply for a CUP. However, said individual or his or her designated caregiver shall apply the same types of precaution above for security use, documentation and much advise the Chief of Police of his or her intent to cultivate marijuana at home. At such time as a dispensary is located within 25 miles from the qualifying patients home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation among other possible local, state and federal law violations. Any change in residence location shall be reported to the Chief of Police within 30 days.

(5) *Caregiver home cultivation.* In the event that a designated caregiver whose residence is in the city limits is cultivating marijuana for the qualifying patient or patients in his or her care, and whose qualifying patient or patients live 25 miles or farther from a dispensary, said designated caregiver may cultivate no more than 12 marijuana plants per patient at the place of primary residency of that designated caregiver (including a manufactured home or a recreational vehicle), with homeowner's permission, without need to apply for a CUP. However, said designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the Chief of Police of his or her intent to cultivate marijuana at home for the benefit of his or her qualifying patient or patients. At such time as a dispensary is located within 25 miles from the designated caregiver's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible

local, state and federal law violation. Any change in residence location shall be reported to the Chief of Police within 30 days. (Ord. 1402, passed 5-6-2014-)

PLANNING STAFF'S PROPOSED CHANGES

(shaded = new language; strike-throughs = deletions)

1-6-12 MEDICAL MARIJUANA

- A. Permit Required. A CUP shall be required for the establishment of nonprofit medical marijuana facilities, including dispensaries, ~~with or without cultivation facilities, and infusion facilities~~ off-site cultivation facilities and for stand-alone nonprofit medical marijuana infusion facilities.

- B. Number of Facilities Allowed in City. ~~One~~ The total number of nonprofit medical marijuana dispensary dispensaries, with or without an on-site cultivation facility facilities, one off-site cultivation facility and one stand-alone infusion facility facilities shall be as allowed by State statute in the City. An additional dispensary, off-site cultivation facility, and standalone infusion facility may be allowed when the City has at least twenty pharmacies within its municipal limits, and then one additional facility for every ten pharmacies thereafter. (See A.R.S. Title 36, Chapter 28.1 Arizona Medical Marijuana Act, for definitions and statutes pertaining to medical marijuana.)

- C. Allowed Zoning Districts. Location of nonprofit medical marijuana dispensaries ~~with or without on-site cultivation facilities~~ shall be limited to allowed in the City's B-1, B-2, B-4 and ~~through~~ B-5 zoning districts.

~~Location of an off-site a cultivation facility (i.e., a cultivation facility not co-located with a dispensary) and/or a stand-alone nonprofit medical marijuana infusion facility which serves one or more nonprofit medical marijuana dispensaries shall be limited to the City's B-5 (Industrial) zoning district. Nonprofit medical marijuana dispensaries, off-site cultivation facilities and/or infusion facilities shall not be allowed within any MPC zoned property.~~

- D. Facility Security. Medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be located in an enclosed locked facility, such as a permanent secure building and not in a cargo container, RV, trailer, or motor vehicle. If a green house is used as a cultivation facility, reasonable measures shall be taken to obscure the visibility of the marijuana plants from outside the building.
- E. Applications. A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include, ~~at a minimum,~~ all the information required on the CUP application form and the following supplemental information:

1. Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating or infusion.

2. A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the Apache Junction Police Department upon final approval to operate from DHS, as well as a copy of said final approval document.
3. Application and all applicable fees paid as required by Apache Junction City Code, Volume I; Chapter 8, Business, and the Apache Junction City Tax Code as amended.
4. A detailed site plan and floor plan for the facility prepared in accordance with Section 1-16-9, and narrative explaining the operation of the facility and hours of operation.

F. Conditions of Approval. The conditions of approval which may be considered by the Planning and Zoning Commission in evaluating these requests include the following:

1. Required Spacing Requirements:

- a. A minimum of 1,320 feet between ~~another dispensaries, dispensary, off-site cultivation facilities facility or stand-alone infusion facilities, facility,~~ as measured from nearest building wall to nearest building wall.
- b. A minimum of 750 feet between a dispensary, off-site cultivation facility or ~~stand-alone infusion facility~~ and any public or private school, library, public park, business commercial-zoned day care center, facility, free-standing church, or drug and/or alcohol rehabilitation center, as measured from nearest building wall of the business to the nearest building wall of the protected use.
- c. ~~A minimum of 750 feet from other sensitive land uses as determined by the Zoning Administrator on a case by case basis, as measured from the nearest building wall of the business to the nearest building wall of the protected use.~~

2. Operating Requirements:

- a. Drive-through pickup windows and delivery service (???) shall not be allowed.
- b. Outdoor seating areas at dispensaries, cultivation facilities or ~~stand-alone infusion facilities~~ shall not be allowed.
- b. ~~Security plans shall include lighting, monitored alarm and/or camera surveillance systems, secure storage, and other necessary building safety measures.~~ A

medical marijuana facility shall submit a security plan containing the following information:

- i) Proof that any cultivation and storage of medical marijuana will take place in an "enclosed, locked facility" equipped with locks or other security devices that permit access only by persons authorized to enter pursuant to State and local law.
- ii) A floor plan that details the security measures required by Arizona law, including and on-site alarm system and a single secure entrance.
- iii) Additional protections, if any, against medical marijuana diversion and theft.
- iv) Provide and update as needed a current list of all persons who are authorized to access the dispensary, off-site cultivation site or infusion facility.

d. On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed.

e. Dispensaries selling marijuana ~~or tobacco smoking~~ related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices ~~and other than cookbooks and educational materials shall not be allowed, etc.,~~ shall be restricted to selling only to patients displaying the required Arizona Department of Health Services medical marijuana card and to be used only in conjunction with prescription. Cookbooks and educational materials are excepted from this provision.

f. The size of facility in terms of square footage, building height or other factors shall be consistent with the character of existing or planned surrounding development.

g. Signage that will be visible from the exterior of the facility may be approved by the City if all sign code regulations have been met. ~~The use of the marijuana leaf symbol shall not be allowed on any exterior signage.~~

3. Other Conditions. The Planning and Zoning Commission may deem it necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:

a. Compliance with all City-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements.

b. The Commission shall reserve the right to revoke a CUP for noncompliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community.

- c. **Hours of operation:** a medical marijuana facility shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m. (or 8:00 p.m.???), Mountain Standard Time.
4. **Patient Home Cultivation.** In the event that a qualifying patient residing in the City lives 25 miles or farther from a dispensary, said individual or his or her designated caregiver may cultivate no more than 12 marijuana plants at the place of primary residence (including a manufactured home or a recreational vehicle) of the qualifying patient, with owner's permission, without need to apply for a CUP. However, said individual or his or her designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the Chief of Police of his or her intent to cultivate marijuana at home. At such time as a dispensary is located within 25 miles from the qualifying patient's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations. Any change in residence location shall be reported to the Chief of Police within 30 days.
5. **Caregiver Home Cultivation.** In the event that a designated caregiver whose residence is in the City limits is cultivating marijuana for the qualifying patient or patients in his or her care, and whose qualifying patient or patients in his or her care live 25 miles or farther from a dispensary, said designated caregiver may cultivate no more than 12 marijuana plants per patient at the place of primary residency of the designated caregiver (including a manufactured home or a recreational vehicle), with homeowner's permission, without need to apply for a CUP. However, said designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the Chief of Police of his or her intent to cultivate marijuana at home for the benefit of his or her qualifying patient or patients. At such time as a dispensary is located within 25 miles from the designated caregiver's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations. Any change in residence location shall be reported to the Chief of Police within 30 days.