

ORDINANCE NO. 1444

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AMENDING THE APACHE JUNCTION CITY CODE, VOLUME II, LAND DEVELOPMENT CODE, CHAPTER 1: ZONING ORDINANCE, ARTICLE 1-6: SUPPLEMENTAL REGULATIONS, SECTION 1-6-12 MEDICAL MARIJUANA, IN CASE AM-2-16; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, in the general election of November 2010, Arizona voters approved Proposition 203, which 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 ("A.R.S.") § 43-1201(B). 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 also specifically allowed cities, towns and counties to enact reasonable zoning regulations for medical marijuana uses; and the city has the authority to enact such zoning regulations pursuant to A.R.S. Title 9, Article 6.1; and

WHEREAS, the Arizona Department of Health Services ("ADHS") 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; and

WHEREAS, on December 7, 2010, the city council gave direction to staff to process the necessary amendments to the zoning ordinance, through the planning and zoning commission, to accommodate medical marijuana uses in the city, pursuant to the approval of Proposition 203 and ADHS rules; and

WHEREAS, on February 15, 2011, the city adopted Ordinance No. 1372, which established the city's original medical marijuana regulations; and

WHEREAS, on May 6, 2014, the city council adopted Ordinance No. 1402, which approved new zoning maps and a new zoning ordinance for the city, but did not make any substantive changes to the city's medical marijuana regulations relative to the original version; and

WHEREAS, in 2016, ADHS awarded a second round of dispensary certificates to qualified applicants and determined that the Apache Junction Community Health Analysis Area ("CHAA") could accommodate a second dispensary within the CHAA boundaries; and

WHEREAS, SVACCHA, LLC, was the successful applicant for the Apache Junction CHAA; and

WHEREAS, discussions between SVACCHA representatives and planning staff suggested that a text amendment to the city's ordinance might be needed to be in compliance with state law relating to the number of dispensaries permitted in a CHAA; and

WHEREAS, on or about December 12, 2016, SVACCHA submitted a complete application requesting amendments to the city's medical marijuana regulations including that: two dispensaries be allowed in the city and possibly another when there are 25 pharmacies in the city; dispensaries be allowed in planned development-zoned areas; library, public park and freestanding church be added to the list of protected uses; dispensaries be allowed to offer delivery service; city language on security be better clarified; dispensaries be allowed to sell medical marijuana smoking products and paraphernalia but only to card-carrying patients; hours of operation be established; and home cultivators also notify the city's police department when they change residences; and

WHEREAS, on February 28, 2017, after two public hearings, and after considering suggested language changes from the applicants, planning and other city staff, other interested individuals and comments from the public, the planning and zoning commission voted 5 to 1 (with another member absent), to recommend changes to the city's medical marijuana regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA:

SECTION I: IN GENERAL

That the Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-6: Supplemental Regulations, Section 1-6-12 Medical Marijuana, be amended as follows:

- 1) Section 1-6-12(A) be amended to read as follows:  
Permit Required. A CUP shall be required for the establishment of nonprofit medical marijuana facilities, including dispensaries, cultivation facilities, and infusion facilities. The requirements of this section, for the establishment of a nonprofit medical marijuana use, may also be accomplished through a planned development ("PD") rezoning process or PD major amendment process.
- 2) Section 1-6-12(B) be amended to read as follows:  
Number of Facilities Allowed in City. The total number of nonprofit medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be as allowed by state statute for the Apache Junction Community Health Analysis Area ("CHAA"). (See A.R.S. Title 36, Chapter 28.1 Arizona Medical Marijuana Act, for definitions and statutes pertaining to medical marijuana.)
- 3) Section 1-6-12(C) be amended to read as follows:  
Allowed Zoning Districts.
  - 1) Location of nonprofit medical marijuana dispensaries shall be allowed in the city's B-1, B-2, B-4 and B-5 zoning districts.
  - 2) Location of a cultivation facility 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 zoning district.
- 4) New Section 1-6-12(C)(3) be added to read as follows:  
An existing medical marijuana facility that has received a conditional use permit approval from the city prior to the effective date of this ordinance, shall be allowed to continue operating at the approved location, regardless of any newly defined spacing requirements; and as long as said operation remains in strict accordance with the conditions of approval of said facility, or as may otherwise be approved by a CUP amendment or renewal.
- 5) Section 1-6-12(E) be amended to read as follows:  
Applications. A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include all the information required on the CUP

application form and the following supplemental information:

- 6) Section 1-6-12(F) (1) (a) and (b) be amended to read as follows:
  - a. A minimum of 1,320 feet between another dispensary, cultivation facility or infusion facility, as measured from nearest building wall to nearest building wall.
  - b. A minimum of 750 feet between a dispensary, cultivation facility or infusion facility and any public or private education institution, library, public park, commercial-zoned day care 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.
- 7) Section 1-6-12(F) (1) (c) be deleted.
- 8) Section 1-6-12(F) (2) (a) be amended to read as follows:

Drive-through pickup windows shall not be allowed.  
Delivery service shall be allowed as per state statute.
- 9) Section 1-6-12(F) (2) (c) be amended to read as follows:

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 state law, including an on-site alarm system, video surveillance devices 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.
- 10) Section 1-6-12(F) (2) (e) be amended to read as follows:

Dispensaries selling marijuana related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices, 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 a physician's certification or recommendation. Cookbooks and educational materials are excepted from this provision.

- 11) Section 1-6-12(F) (2) (g) be amended to read as follows:  
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.
- 12) New Section 1-6-12(F) (3) (c) be added to read as follows:  
Hours of operation will be addressed through the CUP process.
- 13) The following sentence be added at the end of Section 1-6-12(F) (4) and at the end of Section 1-6-12(F) (5):  
Any change in residence location shall be reported to the chief of police within 30 days.

#### SECTION II: REPEALING ANY CONFLICTING PROVISIONS


All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the codes adopted herein by reference are hereby repealed.

#### SECTION III: PROVIDING FOR SEVERABILITY

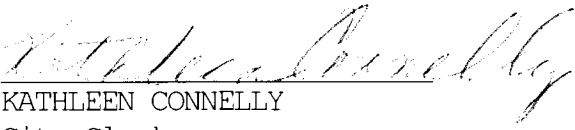
If any section, subsection, sentence, phrase, clause or portion of this ordinance or any part of the codes or regulations adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity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

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS 7<sup>TH</sup> DAY OF MARCH, 2017.

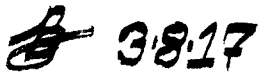
SIGNED AND ATTESTED TO THIS 7<sup>TH</sup> DAY OF MARCH, 2017.

  
JEFF SERDY  
Mayor

ATTEST:

  
KATHLEEN CONNELLY  
City Clerk

APPROVED AS TO FORM:

  
RICHARD JOEL STERN  
City Attorney