

**CITY OF SOUTH TUCSON ORDINANCE NO: 10-03**

**AN ORDINANCE OF THE CITY OF SOUTH TUCSON, ARIZONA RELATING TO ZONING; APPROVING AMENDMENTS TO CHAPTER 24 ("ZONING") OF THE SOUTH TUCSON CITY CODE, THE ZONING CODE, ADDING DEFINITIONS FOR MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION LOCATIONS UNDER ARTICLE IV ("ZONING DISTRICT REGULATIONS"), DIVISION 13 ("SB-2 BUSINESS DISTRICT") AND DIVISION 17 ("SI-1 LIGHT INDUSTRIAL DISTRICT")**

**WHEREAS**, the City of South Tucson regularly engages in comprehensive land use planning and regulation through the adoption of a general plan, specific plans, and a comprehensive zoning code; and

**WHEREAS**, the primary purposes of the amendment to Chapter 24, Article IV of the Zoning Code are to preserve and protect the public health, public welfare, and public safety by promoting the location of dispensaries in highly visible zones which leads to more accessible law enforcement, easier access to ill patients, and reduction of the number of patients and caregivers who need to cultivate their own marijuana plants; and

**WHEREAS**, proposed provisions of Proposition 203 (Arizona Medical Marijuana Act, A.R.S. § 36-2806.01) in the November 2, 2010 election allow cities to enact zoning regulations of medical marijuana dispensaries; and

**WHEREAS**, the possession, delivery, manufacture, cultivation and sale of marijuana is illegal under both the federal Controlled Substances Act and the Arizona Controlled Substances Act; and

**WHEREAS**: if adopted, Proposition 203, the Arizona Medical Marijuana Act, may be preempted or limited by the federal Controlled Substances Act or preempted or limited by the Arizona Controlled Substances Act; and

**WHEREAS**, nothing in this ordinance is intended to permit or assist in the violation of either the federal Controlled Substances Act and the Arizona Controlled Substances Act; and

**WHEREAS**, medical marijuana dispensaries and marijuana cultivation are not currently a permitted use of land in the City of South Tucson, Arizona; and

**WHEREAS**, other jurisdictions have experienced mobile distribution of marijuana and a proliferation of marijuana dispensaries after adoption of state laws permitting their operation; and

**WHEREAS**, many jurisdictions have reported significant nuisances and violent crime associated with marijuana cultivation locations and newly opened dispensaries; and

**WHEREAS**, the amendments in this ordinance will allow for the use of property as a medical dispensary or cultivation location; and

**WHEREAS**, the amendments in this ordinance do not create new restrictions on the use of the property, and this ordinance is not intended to, nor should it be construed to, reduce any existing rights to use, divide, sell, or possess private real property.

**NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA:**

**Section 1:** Chapter 24 of the South Tucson Code hereby is amended by adding said Chapter 24 amendments to Article I Sec. 24-1. Definitions to read as follows:

**Sec. 24-1: Definitions.**

*Medical Marijuana Designated Caregiver Cultivation Location* means cultivation of Medical Marijuana by a Designated Caregiver and Cardholder whose registration card indicates the cardholder has been authorized to cultivate marijuana plants for a qualifying patient's medical use pursuant the Arizona Medical Marijuana Act, A.R.S. § 36-2804 (A) (7).

*Medical Marijuana Dispensary* shall have the same meaning as 'Nonprofit Medical Marijuana Dispensary' set forth in The Arizona Medical Marijuana Act, A.R.S. § 36-2801(11).

*Medical Marijuana Dispensary Offsite Cultivation Location* means the additional location, if any, where marijuana may be cultivated for the use of a Medical Marijuana Dispensary as disclosed pursuant to The Arizona Medical Marijuana Act, A.R.S. § 36-2804 (B) (1)(b)(ii).

*Medical Marijuana Qualifying Patient Cultivation Location* means cultivation of medical marijuana by a qualifying patient pursuant to The Arizona Medical Marijuana Act, A.R.S. § 36-2801(1)(a)(ii). But shall only include a Qualifying Patient who is also a Cardholder, authorized to cultivate marijuana plants pursuant to the provisions of A.R.S. § 36-2804.02 (A) (3) (f).

**Section 2:** Chapter 24 of the South Tucson Code is amended by adding said Chapter 24 amendments to Article IV, Division 13 (SB-2 Business District) Sec. 24-387 (Permitted Uses) as follows:

**Sec. 24-387: Permitted uses.**

- (d) *Local business uses.* The following local business uses are allowed:
- (41) Liquor store.
  - (42) Locksmith, tool or cutlery sharpening, lawnmower repair, fix-it or handyman shop.
  - (43) Massage establishment, reducing salon.
  - (44) Medical Marijuana Dispensary provided:
    - a) The maximum floor area of the medical marijuana dispensary shall not exceed 2,500 square feet.
    - b) The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 500 square feet of the total 2,500 square foot maximum floor area of a medical marijuana dispensary.
    - c) A medical marijuana dispensary shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle
    - d) The permitted hours of operation of a medical marijuana dispensary shall be from 9:00 am to 5:00 pm.
    - e) The medical marijuana dispensary shall have an indoor customer waiting space area equal to twenty-five (25) percent of the gross floor area.
    - f) A medical marijuana dispensary shall not have drive-through service and shall not have outdoor seating areas.
    - g) A medical marijuana dispensary shall not provide for offsite delivery of the medical marijuana.
    - h) A medical marijuana dispensary shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries measured from parcel boundaries.
    - i) A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music or similar school, a childcare center, or any other educational or activity facility where children may be enrolled.

- j) A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a designated public, private parochial or charter school bus stop.
- k) A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a church, library, public park or residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.

(45) Multigraphing, mimeographing, duplicating Addressographing.

(46) Music, phonograph or radio store.

**Section 3:** Chapter 24 of the South Tucson Code hereby is amended by adding said Chapter 24 amendments to Article IV, Division 17 (SI-1 Light Industrial District) Sec. 24-387 (Permitted Uses) as follows:

**Sec. 24-473: Permitted uses.**

- (a) *Generally.* No building, structure or land shall be used and no building or structure shall be erected or altered which is intended or designed to be used in whole or in part for any other than one (1) or more of the purposes specified in this section.
- (b) *Permitted residential uses.* The following uses are allowed:  
One (1) dwelling unit for a watchman or caretaker employed on the premises and members of the watchman's or caretaker's family.
- (c) *Local business uses.* The following uses are also allowed:
  - (41) Liquor store.
  - (42) Locksmith, tool or cutlery sharpening, lawnmower repair, fix-it or handyman shop.
  - (43) Massage establishment, reducing salon.
  - (44) Medical Marijuana Dispensary Offsite Cultivation Location, provided:
    - a) The total maximum floor area of a medical marijuana dispensary offsite cultivation location shall not exceed 3,000 square feet.
    - b) The secure storage area for the medical marijuana stored at the medical marijuana dispensary offsite cultivation location shall not exceed 1,000 square feet of the 3,000 square foot total maximum floor area of a medical marijuana dispensary offsite cultivation location.
    - c) A medical marijuana dispensary offsite cultivation location must be located in a permanent building and shall not be located in a trailer, cargo container mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.

- d) A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries or medical marijuana dispensary offsite cultivation locations measured from the parcel boundary to the parcel boundaries.
  - e) 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 similar school, a childcare center, or any other educational or activity facility where children may be enrolled.
  - f) A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a designated public, private, parochial or charter school bus stop.
  - g) A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a church, library, public park or residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
- (45) Medical Marijuana Designated Caregiver Cultivation Location, provided:
- a) All conditions and restrictions for medical marijuana dispensary offsite cultivation locations apply except that the designated caregiver cultivation location cultivation area is limited to 250 square feet maximum, including storage areas.
  - b) A designated caregiver may cultivate at their residence for a single qualifying patient subject to compliance with A.R.S. § 36-2806.01.
  - c) More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed 250 square feet, including storage areas.
- (46) Multigraphing, mimeographing, duplicating, addressographing.
- (47) Music, phonograph or radio store.

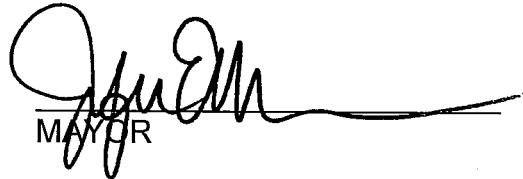
**Section 4.** The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

**Section 5.** If any provision of this ordinance is found to be invalid, or the application thereof to any person or circumstance is found to be invalid, the invalidity shall not effect other provisions or applications of this ordinance, which can be given the effect without the invalid provision, or application, and to this end the provisions of this ordinance are severable.

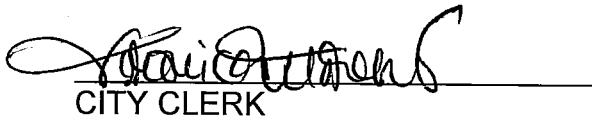
**Section 6.** This Ordinance is effective 31 days after its adoption by the Mayor and Council of the City of South Tucson, Arizona only if Proposition 203, in the November 2, 2010 election, the Arizona Medical Marijuana Act, is passed, adopted and effective.

PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson, Arizona this 18<sup>th</sup> day of October 2010

APPROVED/EXECUTED

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

REVIEWED BY:

  
CITY MANAGER