2011-03008
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Requested By: BOARD OF SUPERVISORS
Navajo County Recorder - Laurette Justman
02-24-2011 08:24 AM Recording Fee $0.00

# ORDINANCE NO. 01-11

## AN ORDINANCE OF THE NAVAJO COUNTY BOARD OF SUPERVISORS, ADOPTING ARTICLE 16A OF THE NAVAJO COUNTY ZONING ORDINANCE, CONCERNING MEDICAL MARIJUANA

**WHEREAS,** the Arizona Medical Marijuana Act, A.R.S. § 36-2801 et seq., authorizes counties to enact zoning regulations for Medical Marijuana dispensaries and related land uses; and

**WHEREAS,** the Public Works staff and the Planning and Zoning Commission have recommended that Article 16A as set forth herein be adopted to regulate Medical Marijuana uses within the Zoning Ordinance; and

**WHEREAS,** following a duly noticed public hearing held this date, the Board of Supervisors finds that the recommended Article 16A is in the public interest and should be approved,

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors that Article 16A of the Zoning Ordinance is hereby adopted to follow Article 16 and to read as follows:

### Article 16A – MEDICAL MARIJUANA

**Section 16A-01 – Definitions:**

1. Medical Marijuana Designated Caregiver Cultivation Location:

   An enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed 50 square feet of cultivation space where a caregiver designated pursuant to A.R.S. § 36-2801 cultivates marijuana for one or more patients under the caregiver's care. The Medical Marijuana Designated Caregiver Cultivation Location must be accessory to the designated caregiver's primary residence. Medical Marijuana cultivation as an accessory use to the designated caregiver's primary residence must not be detectable from the exterior of the building in which the cultivation takes place. Medical Marijuana cultivation as an accessory use to the designated caregiver's primary residence shall only be permitted if the residence is located at least 25 miles distant (by straight-line measurement) from a Medical Marijuana Dispensary.

2. Medical Marijuana Dispensary:

   An 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.

3. Medical Marijuana Dispensary Offsite Cultivation Location:

   An offsite location where marijuana is cultivated by a Medical Marijuana Dispensary as referenced in A.R.S. § 36-2804(B)(1)(b)(ii).

4. Medical Marijuana Qualifying Patient Cultivation Location:

An enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed 50 square feet of cultivation space where one or more patients qualified to cultivate marijuana pursuant to A.R.S. § 36-2801 cultivates marijuana.

The Qualifying Patient Cultivation Location must be accessory to the qualifying patient's primary residence. 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. Medical Marijuana cultivation as an accessory use to the qualifying patient's primary residence shall only be permitted if the residence is located at least 25 miles distant (by straight-line measurement) from a Medical Marijuana Dispensary.

**Section 16A-02 – Zoning Locations:**

1. Medical Marijuana Qualifying Patient Cultivation Locations and Medical Marijuana Designated Caregiver Cultivation Locations shall be permitted in any zoning district, subject to all rules adopted by the Arizona Department of Health Services.

2. Medical Marijuana Dispensaries shall be allowed in the Commercial-Residential and Industrial (IND-1 and IND-2) zoning districts only, subject to securing a Special Use Permit and the related provisions of Article 20.

3. Medical Marijuana Dispensary Offsite Cultivation Location facilities shall be allowed in the A-General, Commercial-Residential and Industrial (IND-1 and IND-2) zoning districts only, subject to securing a Special Use Permit and the related provisions of Article 20.

**Section 16A-03 – Development Standards for Medical Marijuana Dispensaries and Medical Marijuana Dispensary Offsite Cultivation Locations:**

1. Compliance with all rules adopted by the Arizona Department of Health Services.

2. Medical Marijuana Dispensaries or Medical Marijuana Dispensary Offsite Cultivation Locations shall not be located within 1,500 feet of any other Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location. A Medical Marijuana Offsite Cultivation Location shall be associated exclusively with a Medical Marijuana Dispensary (or Dispensaries) located in Navajo County and approved pursuant to this Article 16A.

3. Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations shall not be located within 1,500 feet of:

   a. A church; or
   b. A public or private elementary or secondary school; or
   c. A public or private day care center, preschool, nursery, kindergarten, or similar use; or
   d. A public park, playground, or public recreational facility; or
   e. An Adult Oriented Business regulated by Article 16.

4. Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations shall require the approval of a Special Use Permit by the Navajo County Board of Supervisors, pursuant to the requirements of this Article and the related provisions of Article 20.

5. For purposes of measuring separation distances required in this Article, the measurements shall be taken in a straight line from the closest exterior walls of any affected structures without regard to intervening structures or objects or political boundaries.

6. A Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location lawfully operating is not rendered in violation of these provisions by the subsequent location of a church, public or private elementary or secondary school, a kindergarten or preschool or similar use, a park or playground, or an Adult Oriented Business within 1,500 feet of the Medical Marijuana Dispensary or Medical Marijuana Offsite Cultivation Location.

7. This Article shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.

**SO ORDAINED** by the Navajo County Board of Supervisors at Holbrook, Arizona, on February 22, 2011, by a vote of 3 ayes, 1 nay and 1 absent for the vote.

**NAVAJO COUNTY BOARD OF SUPERVISORS**

By David Tenney
David Tenney
Chairman of the Board

Attest:

Melissa W. Buckley
Melissa Buckley, Clerk of the Board