

ORDINANCE NO. 2011-05A

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 14 OF THE PEORIA CITY CODE (1977 EDITION), BY AMENDING ARTICLES 14-2 DEFINITIONS, 14-3 GENERAL PROVISIONS, AND 14-9 NON-RESIDENTIAL DISTRICTS OF THE PEORIA ZONING ORDINANCE; PROVIDING FOR SEPARABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Arizona Medical Marijuana Act, Proposition 203, approved in the statewide election on November 2, 2010, provides for defined possession, use, distribution and transportation of marijuana for Medical Use within the State of Arizona; and

WHEREAS, under the Arizona Act, the State issues Registry Identification Cards and renewals and adopts rules governing Nonprofit Medical Marijuana Dispensaries.

WHEREAS, under the Arizona Act, the City of Peoria is expressly permitted to enact reasonable zoning regulations that limit the use of land for registered Nonprofit Medical Marijuana Dispensaries. Arizona law also allows the City of Peoria to enact zoning regulations to protect and promote the public health, safety and general welfare and regulate the use of buildings, structures and land; and

WHEREAS, the current Zoning Ordinance for the City of Peoria does not address or regulate the establishment, location or operation of these Dispensaries and related cultivation activities. The regulations, limits and prohibitions established in this Ordinance, including, among other things, minimum separation requirements, environmental issues and security management plans, will reduce or eliminate threats to the public health, safety and general welfare. The regulations, limits and prohibitions established in this Ordinance are necessary to protect and preserve the public health, safety and general welfare.

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Maricopa County, Arizona, held a public hearing on December 22, 2010 to consider a proposed amendment to the Peoria City Code, after notice in the manner provided by law; and

WHEREAS, due and proper notice of such Public Hearing was given in the time, form, substance, and manner provided by law including publication of such in the Peoria Times on November 26, 2010; and

ARTICLE 14-2 DEFINITIONS

CONTENTS

- 14-2-1 INTENT
- 14-2-2 DEFINITIONS

14-2-1 INTENT (Ord. No 02-68)

This Article is intended to clarify the meaning of any term used within the regulations and development standards for which the common definition may not serve the purpose of the regulations, or which is not a commonly used term outside of the context of this Zoning Ordinance.

14-2-2 DEFINITIONS

D. For the purpose of this Zoning Ordinance, certain words are hereby defined as follows (Ord. No. 02-68):

Medical Marijuana Cardholder is a natural person who is a Qualifying Patient, Designated Caregiver or Nonprofit Medical Marijuana Dispensary Agent who has been issued and possesses a valid Registry Identification Card pursuant to A.R.S. § 36-2801, et.seq.

Medical Marijuana Dispensary is a non-profit entity defined in A.R.S. § 36-2801(11), that sells, distributes, transmits, gives, dispenses, or otherwise provides Marijuana for Medical Use and related supplies to Qualifying Patients. Included is the manufacture and creation of products for individual sale where Marijuana is incorporated into the product for consumption by an individual who is a valid Medical Marijuana Cardholder. Additionally included is the sale of not more than twelve living Marijuana plants to an individual Medical Marijuana Cardholder authorized pursuant to A.R.S. § 36-2801, et.seq. to cultivate not more than twelve Marijuana plants for their personal use in addressing a Debilitating Medical Condition as set forth in A.R.S. § 36-2801, et.seq.

Medical Marijuana Manufacturing or Cultivation Facility is a building, structure, or premises where Marijuana is cultivated or stored and which is physically separate from a Medical Marijuana Dispensary. Such Medical Marijuana Manufacturing or Cultivation Facility may only provide Marijuana or Marijuana plants to Medical Marijuana Dispensaries for retail sales to qualified Medical Marijuana Cardholders. Requirements for Mixed Use Occupancy will be based upon the adopted building codes.

Medical Marijuana Statute is the Arizona Medical Marijuana Act codified at A.R.S., Title 36, Chapter 28.1. All definitions set forth in the Medical Marijuana Statute are hereby incorporated by reference into the City of Peoria Zoning Ordinance and City Code (1992), unless specified otherwise.

ARTICLE 14-3 GENERAL PROVISIONS

(Ord. No. 02-85)

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- 14-3-1 INTENT
- 14-3-2 GENERAL USE PROVISIONS
- 14-3-3 ACCESSORY BUILDINGS AND USES
- 14-3-4 SCREENING
- 14-3-5 WALLS AND FENCES
- 14-3-6 PERFORMANCE STANDARDS
- 14-3-7 SATELLITE DISH ANTENNAE
- 14-3-8 MISCELLANEOUS PROVISIONS
- 14-3-9 HOME OCCUPATIONS
- 14-3-10 MANUFACTURED HOUSING
- 14-3-11 MOBILE HOMES, TRAVEL TRAILERS, HOUSE TRAILERS, AND RECREATIONAL VEHICLES
- 14-3-12 GROUP HOMES, DAY CARE GROUP HOMES, GROUP CARE FACILITIES AND COMMUNITY RESIDENTIAL SETTING FACILITIES
- 14-3-13 WIRELESS COMMUNICATION FACILITIES

14-3-9 HOME OCCUPATIONS

A. General

A Home Occupation is an accessory use of the primary dwelling unit permitted either by-right or by conditional use permit. Home occupations are generally conducted and located such that the average neighbor, under normal circumstances, would not be aware of their existence. The home occupation is generally carried on by a member of a family, residing on the premises, and is clearly incidental to the use of the structure for dwelling purposes and does not change the exterior character of the premises in any way.

B. Standards

The standards set forth in this Section are intended to ensure compatibility of the Home Occupation use with the residential character of the neighborhood. The proposed use shall be clearly accessory or incidental to the residential use of the main building to qualify as a home occupation use under this Section.

1. *Home Occupation as Permitted Accessory Use.* A home occupation where permitted, except for Day Care Group Homes, shall be considered a permitted accessory use when it complies with the following regulations:

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- a. Changes or alterations to the exterior of the building(s) that are inconsistent with the residential character of the building(s) or with the character of the surrounding area shall not be allowed. Such changes or alterations include, but are not limited to, construction of parking areas or garages at a scale exceeding the scale of such structures in the surrounding area.
 - b. Signs advertising a home occupation shall be strictly prohibited.
 - c. Exterior display or storage of materials or equipment, or any other exterior indication of the home occupation, shall be prohibited.
 - d. Emissions of noise, light, dust, gas, vibration, odor, smoke, or any other noxious matter emanating from the home occupation at a scale greater than that normally associated with the residential use shall be prohibited.
 - e. The home occupation shall not involve more than one (1) business caller or visitor at a time and not more than two (2) visitors per hour, nor commercial deliveries or outside services beyond those normal and incidental to the residential uses in the district.
 - f. The home occupation shall be conducted by a resident or residents of the dwelling unit only. No outside employees shall be employed at the site and not more than one (1) employee may report to the site for off-site employment.
 - g. No unusual load shall be placed on power, sewer, water, or other utilities as a result of the home occupation use.
 - h. External activity resulting from the home occupation shall be limited to the hours between 7:00 A.M. and 10:00 P.M.
 - i. Storage of commercial vehicles used in conjunction with the home occupation is not permitted on the home occupation site. Up to two (2) commercial vehicles may be parked on the home occupation site if these commercial vehicles are used for both business and personal needs. Commercial vehicles must be parked in accordance with Article 14-23, "Parking," of this Ordinance.
 - j. All home occupations shall be subject to the standards contained herein and shall be approved by the City prior to the initiation of any business activity.
 - k. A valid City sales tax and/or business license shall be obtained for the home occupation use.
2. *Home Occupation as Conditional Use.* A Conditional Use Permit for a home occupation shall be required in cases where any of the following conditions may result

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- a. The home occupation use requires or uses storage or space accessory to the principal residence, will utilize or require outdoor or open storage of materials or will require or result in the construction or installation of additional parking on-site.
 - b. The home occupation use will produce or make noticeable the appearance of a non-residential use or will cause the emission of noise, light, dust, gas, vibration, odor, smoke, or other noxious matter from the premise.
 - c. The home occupation will have more than one (1) business caller or visitor at any one time, more than two (2) visitors per hour, or more than one (1) commercial delivery per business day.
 - d. Pedestrian or vehicular traffic will increase beyond what is considered normal and incidental to the zoning district in which the use is located.
 - e. An increased load will be placed on any of the power, water, sewer or other utilities.
 - f. The home occupation use will require the services of a single employee or assistant who is not a resident of the household.
3. *Prohibited Home Occupations* Home occupations expressly prohibited shall include, but not be limited to, the following:
- a. Personal service offices such as physicians, dentists, massage therapists, and barber and beauty shops
 - b. Animal services such as commercial stables, dog grooming, veterinary offices, hospitals, and kennels
 - c. Permanent real estate offices
 - d. Restaurants
 - e. Vehicle services such as repairing, painting, storage, washing, or sales, where vehicle is defined as any motorized or non-motorized means of transportation
 - f. Sales of Permissible Consumer Fireworks
 - g. Medical Marijuana Dispensing, Cultivation, or Manufacturing, except as provided in A.R.S. § 36-2801.

ARTICLE 14-9 NON-RESIDENTIAL DISTRICTS (Ord. No. 02-68)

CONTENTS

14-9-3 LAND USE MATRIX

The following land use matrix (Table 14-9-3) indicates uses which are permitted outright, conditionally permitted, or prohibited in specific non-residential zoning districts in the City of Peoria. The land use matrix is intended to serve as a guide for the convenience of the user of this zoning ordinance. Where the text of this zoning ordinance differs from the land use matrix, the text shall prevail. In the event of a specific use not being identified on the matrix, the Community Development Director or designee(s) shall determine the closest associated use based on the provisions of this ordinance. The City will permit any accessory use customarily incidental to a permitted principal use in the same zoning district.

Table 14-9-3 Land Use Matrix

LAND USE	O-1	C-1	PC-1	PC-2	C-2	C-3	C-4	C-5	BPI	PI-1	E-1	E-2
Intense Retail												
Medical Marijuana Dispensary*	-	-	-	-	C	-	C	C	-	-	-	-
General Industrial & Manufacturing												
Medical Marijuana Manufacturing or Cultivation*	=	=	=	=	=	=	=	=	C	C	C	C

- P = Permitted Use
- C = Permitted Conditional Use. Conditional Use Permit required. See Article 14-39-10.
- A = Accessory use
- * = Any uses located within 200 feet of a residential district shall be subject to a Conditional Use Permit (Ord. No. 05-58A)
- † = Subject to special limitations (see the following section 14-9-5)
- = Not Permitted

14-9-5 LIMITATIONS ON USES

M. Medical Marijuana Dispensaries and Manufacturing or Cultivation Facilities (Ord. No. 11-##)

1. General Requirements

- a. For the purposes of measuring separation distances, the measurements will be taken in a straight line from the exterior wall of the building or suite housing the use without regard to intervening buildings or political boundaries.

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- b. Medical Marijuana remnants or by-products shall be disposed of according to an approved plan and not placed within the facility's exterior refuse containers.
- c. There shall be no emission of dust, fumes, vapors or odors into the environment from the premise.
- d. Signage for Dispensary and/or Medical Marijuana Cultivation facilities shall be limited to the name of the business only, and no advertising of the goods and/or services shall be permitted.
- e. Medical Marijuana Dispensaries and Cultivation Facilities shall be located in a permanent building on an established foundation adhering to Peoria building codes and shall not include any temporary, portable, or self-powered mobile facilities.
- f. An active Security Management Plan shall be approved by the Police Department. The Plan shall include, but is not limited to, the following:
 1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner. Recordings shall be retained for a minimum of 60 days and comply with any additional standards defined by the Security Management Plan.
 2. The business space shall be alarmed with an alarm system that is operated and maintained by a recognized security company.
 3. A security guard shall be provided at the main entrance during all hours of operation. For the purposes of this Section, "security guard" shall mean licensed and duly bonded security personnel registered pursuant to A.R.S. § 32-601.

2. Medical Marijuana Dispensaries

- a. Vehicular access into the center or site containing the dispensary shall be from an arterial roadway.
- b. The use shall not be located within 2,640-feet of another Medical Marijuana Dispensary or Medical Marijuana Manufacturing or Cultivation Facility.
- c. The use shall not be located within 1,000-feet of the property line of Day-Care Facilities, Pre-Schools, Public/Charter or Private Schools.
- d. The use shall not be located within 1,000-feet of a Retail Liquor Store; Tavern, Bar or Lounge; Adult Use; Substance Abuse Treatment Centers; or State Local Alcohol Reception Center.
- e. The use shall not be located within 500-feet of the property line of a residentially-zoned property.
- f. The product offered for retail sales to Medical Marijuana Cardholders shall be

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inaccessible to the public entering the Medical Marijuana Dispensary. All product provided for retail sales shall be located behind a counter staffed by a Nonprofit Medical Marijuana Dispensary Agent as defined by A.R.S. § 36-2801 et seq.

- g. The Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than 9:00 p.m.
- h. The Cultivation of Marijuana is prohibited.
- i. Delivery services are prohibited.
- j. Drive-through services and sales are prohibited.
- k. Alcoholic beverages shall not be sold, stored, distributed or consumed on the premises.
- l. The Dispensary shall not have outdoor seating areas, but shall have adequate indoor seating to prevent outside loitering.
- m. The business entrance and all window areas shall be illuminated during evening hours and shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding etc.
- n. The windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.
- o. The use shall provide a plan to ensure that no consumption of Marijuana or any product containing Marijuana occurs on the premises of a Medical Marijuana Dispensary.
- p. Tenant improvement plan shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted buildings codes.

3. Medical Marijuana Manufacturing or Cultivation Facility.

- a. Other than for delivery to an authorized Medical Marijuana Dispensary, distributing, transmitting, dispensing, giving, selling, or providing medical Marijuana is prohibited.
- b. All cultivation, manufacturing, and storage of Marijuana and Marijuana plants shall occur within secured, enclosed buildings and structures.
- c. The use shall not be located within 2,640-feet of another Medical Marijuana Manufacturing or Cultivation Facility.
- d. The use shall not be located within 1,000-feet of the property line of Day-Care Facilities, Pre-Schools, Public/Charter or Private Schools.

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- e. The use shall not be located within 500-feet of the property line of a residentially-zoned property.
- f. There shall be no signage advertising the location of Medical Marijuana Dispensaries or retail sales of Medical Marijuana on the premises.
- g. The Community Development Director may require additional ventilation and air filtration necessary to ensure compatibility with adjacent uses.

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WHEREAS, the Planning and Zoning Commission of the City of Peoria, Arizona at its regularly convened meeting of December 22, 2010, voted to recommend to the Mayor and Council of the City of Peoria, Arizona, that amendments be made to the Peoria City Code (1977 edition); and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, have considered the recommendation of the Planning and Zoning Commission of the City of Peoria, Arizona, and deem it to be in the best interest of the public health, safety and welfare of the residents of the City of Peoria, Arizona to amend Articles 14-2 Definitions, 14-3 General Provisions, and 14-9 Non-Residential Districts of Chapter 14 of the Peoria City Code (1977 edition):

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. Articles 14-2 Definitions, 14-3 General Provisions, and 14-9 Non-Residential Districts of Chapter 14 of the Peoria City Code (1977 edition) shall be amended to read as shown in Exhibit A.

SECTION 2. Effective Date. This Ordinance shall become effective on the date provided by law.

SECTION 3. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 15th day of February, 2011.



Bob Barrett, Mayor

2/22/2011

Date Signed

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ATTEST:

Wanda Nelson

Wanda Nelson, City Clerk



APPROVED AS TO FORM:

Stephen M. Kemp

Stephen M. Kemp, City Attorney

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