

ORDINANCE NO. O2021-002

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING CHAPTER 154 OF THE YUMA CITY CODE, AS AMENDED, PROVIDING FOR CHANGES TO THE ZONING CODE, ARTICLE 22, RELATED TO RECREATIONAL MARIJUANA ESTABLISHMENTS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, on November 3, 2020, the voters of the State of Arizona passed Proposition 207, the Smart and Safe Act; A.R.S. § 36-2850, and,

WHEREAS, cities and counties are charged with enacting reasonable zoning regulations that limit the use of land for registered recreational marijuana establishments to specified areas in the manner provided in Title 36, Chapter 28.2; and,

WHEREAS, the possession, delivery, manufacture, cultivation and sale of marijuana is illegal under the federal Controlled Substances Act; marijuana is a Schedule I drug under federal law. Although some illegal drugs may be prescribed under the Controlled Substances Act, federal law prohibits the retail sale of marijuana because it is a Schedule I drug; and,

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

WHEREAS, recreational marijuana establishments are not currently a permitted land use in the City of Yuma; and,

WHEREAS, the City of Yuma is exercising its authority to enact reasonable zoning regulations to limit the use of land for registered recreational marijuana establishments and to protect the public health, safety and general welfare of the citizens of the City; and,

WHEREAS, to that end, the City of Yuma Planning and Zoning Commission held a public hearing on December 14, 2020, in Zoning Case No: ZONE-32945-2020 in the manner prescribed by law for the purpose of amending the City of Yuma Zoning Code; and,

WHEREAS, due and proper notice of such public hearing was given in the time, form, substance and manner as provided by law, including publication of such notice in the Yuma Sun on November 27, 2020; and,

WHEREAS, the City Council has considered the recommendation of the Planning and Zoning Commission regarding Case No: ZONE-32945-2020 and finds that the zoning code text amendment fulfills the purpose of protecting the health, safety and general welfare of the citizens of the City of Yuma.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: Yuma City Code, Title 15, Chapter 154, Article 22 is amended to insert the following bolded text and delete the strikethrough text:

Non-Profit Medical Marijuana Dispensaries **and Recreational Marijuana Establishments**

§154-22.01 Purpose

Marijuana in any form, including medical **and recreational** marijuana, is illegal under federal law pursuant to the Controlled Substances Act (21 U.S.C §811.) However, under Arizona State law, the Arizona Medical Act (Proposition 203, passed by the voters in 2010) allows a qualifying patient who has an identified debilitating medical condition, to obtain and use marijuana to treat or alleviate the qualifying debilitating medical condition or its associated symptoms; **and the Arizona Smart and Safe Act (Proposition 207, passed by the voters in 2020) allows the responsible adult use of marijuana for persons twenty-one years of age or older. Both Proposition 203 and 207** ~~also~~ contain provisions for dispensaries to provide medical **or recreational** marijuana to qualifying ~~patients~~ **individuals**. ~~This~~ **These** changes in state law means that it is possible that medical marijuana dispensaries **and recreational marijuana establishments** could be operating in the City of Yuma. The City has a duty to ensure that the dispensaries are located and operated in a manner that least harms the health, safety and general welfare of its citizens. The purpose of this ordinance is to ensure the health, safety and welfare of the general public. Furthermore, the City of Yuma does not condone the use of marijuana or violation of Federal law.

§154-22.02 Definitions

Cultivation. To propagate, breed, grow, prepare and package marijuana.

Dual-Purpose Marijuana Facility. An entity that holds both a nonprofit medical marijuana dispensary registration and a recreational marijuana establishment license.

Enclosed, Locked Facility. A closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.

Medical Marijuana. All parts of any plant of the genus cannabis, whether growing or not, and the seeds of such plant.

Recreational Marijuana Establishment. An entity licensed by the State of Arizona to operate a single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.

Non-profit Medical Marijuana Dispensary. A not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders. A nonprofit medical marijuana dispensary may receive payment for all expenses incurred in its operation. For the purposes of this article, a medical marijuana dispensary and medical marijuana cultivation, together, are considered one use.

§154-22.03 Location Restrictions and Operating Provisions

Medical **and Recreational** Marijuana cultivation and dispensing are subject to the following location restrictions and provisions:

- A. **Each non-profit medical marijuana dispensary and recreational marijuana establishment shall locate within one location, within the same building as a dual-purpose marijuana facility.**
- B. Each ~~non-profit medical~~ **dual-purpose** marijuana ~~dispensary facility~~ shall contain both the cultivation of and the dispensary for the marijuana at one location. No separate cultivation location is permitted.
- C. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries facilities~~ shall be permitted uses in the B-2 and L-I zones, subject to conditions and limitations identified in this article. ~~Non-profit medical~~ **Dual-purpose** marijuana distribution facilities shall not be permitted in any Heavy Industrial District by way of a CUP (from a Light Industrial District.)
- D. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries facilities~~ shall not be permitted on any site that has any of the following Zoning Overlays: Historic District Overlay, Aesthetic Overlay (and all properties that have a development agreement requiring the Aesthetic Overlay standards), Auto Center Overlay, or Bed and Breakfast Overlay designation.
- E. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries facilities~~ must meet the following distance separation requirements:
 - 1. Must be located at least 1,000 feet from a residentially zoned property, regardless if the residential property is located in the city or the county. This distance shall be measured in a straight line from the exterior walls of the building (or portion thereof in which the medical marijuana dispensary and cultivation business is conducted or proposed to be conducted), to the zoning boundary line of the residentially zoned property.
 - 2. Must be located at least 1,000 feet from all public and private: preschools, kindergartens, elementary schools, secondary or high schools; any place of worship; any public park, adult-oriented businesses, large and small day care facilities, or public community center, regardless if these uses are located in the city or the county. This distance shall be measured in a straight line from the exterior walls of the building (or portion thereof in which the medical marijuana dispensary and cultivation business is conducted or proposed to be conducted), to the property line of the protected use.
 - 3. Must be located at least 5,280 feet from another **dual-purpose** marijuana **facility** ~~dispensary and cultivation business~~, regardless if the **dual-purpose** marijuana **facility** ~~dispensary and cultivation business~~ is located in the city or the county. This distance shall be measured from the exterior walls of the building or portion thereof in which each of the marijuana businesses are conducted or proposed to be conducted.
- F. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries facilities~~ are not allowed as an Accessory Use in any zone.

- G. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** are not allowed as a Home Occupation in any zone.
- H. The number of ~~non-profit medical~~ **dual-purpose** marijuana ~~dispensaries~~ facilities shall be limited to one for each 50,000 population within the City of Yuma, with the population determined by the most recent Decennial Census reported by the U.S. Census Bureau or according to the permissions identified through the Arizona Department of Health Services as it relates to the number of dispensaries permitted in a jurisdiction.
- I. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall only be located in permanent structures on properties that front on roadways classified as ~~Expressways~~ **Principal Arterials**, as identified in the adopted City of Yuma General Plan.
- J. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall be located in a permanent building/structure affixed to a permanent foundation. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ facilities shall not be located in any other type of non-permanent structure such as, but not limited to, a trailer, cargo container, or motor vehicle.
- K. The retail aspect of any ~~non-profit medical~~ **dual-purpose** marijuana ~~dispensaries~~ **facility** shall be limited in physical size based on the building code requirements for a structure that has only one exit door.
- L. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall have operating hours not earlier than 8:00 a.m. and not later than 5:00 p.m., Monday through Saturday, Noon to 5:00 p.m. on Sunday.
- M. Drive-through services are prohibited.
- N. No use or consumption in any manner of marijuana is permitted on the premises of any ~~non-profit medical~~ **dual-purpose** marijuana ~~dispensaries~~ **facility**.
- O. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** must comply with City of Yuma sign code regulations
- P. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall have interior lighting of sufficient intensity to illuminate every place that members of the public are permitted access, with overhead light fixtures that have an illumination of not less than two foot-candles as measured at the floor level, when the dispensary is open to the public.
- Q. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall have exterior lighting of sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas, at all times between sunset and sunrise.
- R. ~~Non-profit medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall be configured such that there is an unobstructed view of every public area of the

premises, unaided by closed circuit cameras or any other means, by a manager. No public area shall be obscured by any door, curtain, wall, two-way mirror, or other device. A manager shall be in the public portion of the dispensary at all times it is in operation or open to the public, in order to enforce all rules and regulations.

- S. If windows exist in the building that houses a ~~non-profit-medical~~ **dual-purpose** marijuana ~~dispensaries~~ **facility**, there shall be an unobstructed view through those windows, from the outside of the building in.
- T. ~~Non-profit-medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall provide for proper disposal of marijuana remnants or by-products, and shall not be placed within the facility's exterior refuse containers
- U. ~~Non-profit-medical~~ **Dual-purpose** marijuana ~~dispensaries~~ **facilities** shall comply with all other applicable city, state and federal regulations.
- V. Business licenses for ~~non-profit-medical~~ **dual-purpose** marijuana ~~dispensaries~~ **facilities** shall not automatically renew. Annual staff review and approval is required.

SECTION 2. It shall be unlawful for any person, firm or corporation to violate, or cause the violation of, any provision of this chapter. Any person, firm or corporation violating any of the provisions in this chapter shall be guilty of a class 1 misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$1,000 or by imprisonment for not more than ten days or both fine and imprisonment. Each separate day or part thereof during which any violation of said sections occurs or continues shall be deemed to constitute a separate offense, and upon conviction thereof shall be punishable as herein provided.

Adopted this _____ day of _____, 2021.

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney