

ORDINANCE NO. 11-04

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE RELATED TO ADOPTING REASONABLE REGULATIONS WITH RESPECT TO THE USE OF LAND FOR MEDICAL MARIJUANA DISPENSARIES AND RELATED USES.

WHEREAS, Proposition 203, the Arizona Medical Marijuana Act (the "Act"), appeared on the November 2, 2010, statewide ballot and, as approved by the voters, provides for certain medical marijuana use, sale and cultivation, to include the establishment of medical marijuana dispensaries in the State of Arizona; and

WHEREAS, the Federal Controlled Substances Act and applicable regulations classify marijuana as a "Schedule I" drug and consequently prohibit its use in any manner, with exceptions only for research purposes; and

WHEREAS, the Federal Food and Drug Administration (the "FDA") continues to support the placement of marijuana as a "Schedule I" controlled substance with no currently accepted medical use in the United States; and

WHEREAS, past evaluation by federal agencies including the FDA, the Substance Abuse and Mental Health Service Administration ("SAMHSA") and the National Institute for Drug Abuse ("NIDA") have concluded that no sound scientific studies support medical use of marijuana for treatment in the United States; and

WHEREAS, the FDA, as the federal agency responsible for reviewing the safety and efficacy of drugs, the DEA, as the federal agency charged with enforcing the Controlled Substances Act and the Office of National Drug Control Policy, as the federal coordinator of drug control policy, do not support the use of smoked marijuana for medical purposes; and

WHEREAS, evaluation of several California cities' experiences with medical marijuana dispensaries and the opinion of the California Police Chiefs' Association have indicated negative secondary neighborhood affects associated with the operation of medical marijuana dispensaries including: (i) illegal drug sales at a price less than dispensary prices, to dispensary patrons; (ii) marijuana use in and around dispensaries; (iii) non-residents being attracted to the community to secure marijuana; (iv) DUI arrests related to marijuana purchased at dispensaries; (v) burglaries of dispensaries; (vi) drug dealers posing as medical marijuana users to purchase and resell marijuana illegally; (vii) robbery of medical marijuana patrons; (viii) thefts in and around dispensaries to support legal and illegal drug commerce; (ix) negative affects on surrounding businesses resulting from a concentration of criminals associated with the dispensary; and (x) illegal sale of drugs other than marijuana in dispensaries; and

WHEREAS, robberies, assaults and burglaries of dispensaries may be under-reported by dispensaries and crime statistics may consequently inaccurately underestimate the incidence of such crimes, and dispensaries may account for a disproportionate number of such incidents in comparison to other business uses; and

WHEREAS, dispensaries, by virtue of their operation: (i) may be the repositories of large amounts of cash and marijuana and consequently operators have been attacked at their dispensaries and at home; (ii) have been regularly burglarized; and (iii) account for other negative affects on the community such as sales of drugs to minors, loitering, heavy vehicle traffic, increased noise and robbery of dispensary customers; and

WHEREAS, the Director of the Office of National Drug Control Policy reports that in states such as Colorado (where medical marijuana is legal), youths who receive information that marijuana is a medicine assume that marijuana use is safe, but science is clear that marijuana use is harmful and associated with dependence, respiratory and mental illness, poor motor performance and cognitive impairment; and

WHEREAS, unregulated dispensaries can expand enormously within a municipality and the current Town of Fountain Hills Zoning Ordinance (the “Zoning Ordinance”) does not specifically address or regulate establishment, location or operation of marijuana dispensaries, which, pursuant to Section 5.01 of the Zoning Ordinance, amounts to a total ban of the use; and

WHEREAS, the Act expressly authorizes cities to enact “reasonable” zoning regulations that limit the use of land for registered nonprofit medical marijuana dispensaries, but does not permit an outright ban, as currently exists; and

WHEREAS, Arizona law permits cities to enact zoning regulations in order to conserve and promote the public health, safety and general welfare and regulate the use of buildings, structures and land; and

WHEREAS, it is necessary to restrict, or prohibit, the use or division of real property within the Town of Fountain Hills in order to protect the public’s health by establishing appropriate regulation of medical marijuana dispensaries and cultivation facilities; and

WHEREAS, regulations defining permitted location of dispensaries and cultivation facilities (collectively referred to here as “Facilities”) and providing for the minimum separation of such Facilities from uses such as churches, libraries, schools, parks, day care centers, licensed treatment centers and other marijuana facilities will reduce the threat to public health, safety and welfare potentially caused by medical marijuana uses; and

WHEREAS, the regulations, limitations and prohibitions established in this Ordinance are necessary to protect and preserve the public’s health and safety; and

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the Town of Fountain Hills Planning and Zoning Commission (the “Commission”) and the Mayor and Council of the Town of Fountain Hills (the “Town Council”) were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, the Commission held a public hearing on this Ordinance on December 9, 2010, after which the Commission recommended to the Town Council that this Ordinance be approved; and

WHEREAS, the Town Council held an additional public hearing on this Ordinance on January 6, 2011.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. That certain document known as the "Town of Fountain Hills Medical Marijuana Regulations" (the "Regulations") three copies of which are on file in the office of the Town Clerk of the Town of Fountain Hills, Arizona, which document was made a public record by Resolution No. 2011-03 of the Town of Fountain Hills, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The Town of Fountain Hills Zoning Ordinance is hereby amended by creating a new Chapter 24, Medical Marijuana Uses, the text of which shall be the Regulations adopted herein by reference.

SECTION 4. Any person found guilty of violating any provision of the Regulations shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or the Regulations 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 of this Ordinance or the Regulations.

SECTION 6. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, January 6, 2011.

FOR THE TOWN OF FOUNTAIN HILLS:



Jay T. Schlum, Mayor

ATTESTED TO:



Bevelyn J. Bender, Town Clerk

REVIEWED BY:



Richard L. Davis, Town Manager

APPROVED AS TO FORM:



Andrew J. McGuire, Town Attorney