

**ORDINANCE N<sup>o</sup> 11-83**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN CODE § 153.091 USE PERMITS AND BY ADDING MEDICAL MARIJUANA §§ 153.199 – 153.202 PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF ANY ORDINANCE OR PART OF ORDINANCES OR CODE PROVISIONS IN CONFLICT THEREWITH.**

**Whereas**, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Dewey-Humboldt and its residents;

**Whereas**, the Mayor and Council desire to enact the means for compliance with the Arizona Medical Marijuana Act; and

**Whereas**, Arizona Revised Statutes permits cities and town to enact zoning regulations in order to regulate the use of buildings, structures and land; and

**Whereas**, the Mayor and Council find that the regulations, limitations and prohibitions established in this Ordinance are necessary to protect and preserve the public's health, safety and welfare.

**Now, Therefore**, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

1. Amendment of Town Code. No portion of the Town Code is amended hereby, except as follows.

1.1. Town Code § 153.091 USE PERMITS and §§ 153.199 – 153.202 MEDICAL MARIJUANA are hereby added, as follows:

**§ 153.091 USE PERMITS**

**(A) Purpose and Definition**

The Use Permit process is established to ensure the orderly use of land for uses that may require special limitations and conditions. A Use Permit is a conditional use which is not permitted outright in a zoning district and may be granted at the discretion of the Town Council, when it is found that it:

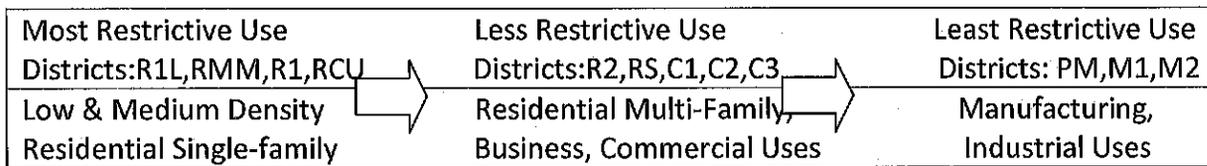
- (1) is compatible with permitted uses in the underlying zoning district;
- (2) is in compliance with the Town's General Plan and applicable Town regulations; and,
- (3) meets or exceeds the conditions and criteria described in this section.

**(B) Applicability**

- (1) All uses allowed in the Use District where a Use Permit is specified shall be processed in accordance with the regulations of this section;
- (2) A Use Permit may also be requested for a use that is first permitted in a less restrictive zoning district, except for those specifically excluded as noted in subsection (B)(5) below.

Zoning Districts as described in Sec 153.035 (B) through Sec 153.047 allow uses of varying intensities that range from:

- (a) most restrictive, such as low density residential single family to medium density residential single-family,
- (b) to less restrictive uses, such as higher density residential multi-family and commercial-business uses,
- (c) and to the least restrictive uses, such as manufacturing-industrial uses.



- (3) Use Permits are granted at the sole discretion of the Town Council and refusal is not the denial of a right.
- (4) The granting of a Use Permit by the Town Council does not constitute a permanent use nor does it grant a vested right beyond the term of the permit.
- (5) Uses which are excluded from the granting of a Use Permit (i.e., cannot be granted) are those specifically prohibited in the Town Code including but not limited to landfill disposals, solid waste landfills and any similar storage or processing of solid waste; and those specified within each Use District including but not limited to the exclusion of the following:

TABLE OF USES EXCLUDED FROM USE PERMIT APPLICATIONS BY DISTRICT							
USES EXCLUDED FROM USE PERMIT APPLICATION BY DISTRICT	USE DISTRICTS						
	R1L, R1, RMM, RCU, R2	C-1	C-2	C-3	P M	M-1	M-2
Public utility business offices, repair or storage facilities	X						
Commercial driving ranges or miniature putting courses	X						
The keeping of swine	X						
Facilities for the preparation of food in quarters attached to the principal dwelling for servants and/or non-paying guests	X						
Intoxicating beverage sale on-site	X	X					
Retail sales off-site, vending from openings in buildings (no drive through windows)	X	X					
Public recitals, concerts or dances	X						
Vending for on- or off-site consumption of foods, confections, non-intoxicating drinks and other refreshments through openings in buildings within three hundred feet (300') of a public or parochial grade or high school	X	X	X				
On-site incineration in veterinary clinics and hospitals	X	X	X				

and in pet shops							
Medical Marijuana Facilities	X	X	X				
Milling and planning operations in lumber yards	X	X	X	X			
Livestock sales in public auctions	X	X	X	X			
Vehicle and portable machinery repair	X	X	X	X			
Dwelling units and mobile home courts				X	X	X	X
Rooming and boarding houses and similar	X: R1L, RMM			X	X	X	X
Motels, hotels and similar	X				X	X	X
General retail sales & service or other uses that cater to the general public	X				X		
Open land facilities	X	X	Lm t	Lmt	X		
Emission of such nuisances as fumes, odors, noise, glare and vibration	X	X	X	X	X		
Wrecking yards	X	X	X	X	X	X	
Slaughtering of other than rabbits and poultry	X	X	X	X	X	X	
Landfill disposals, solid waste landfills, and any similar storage or processing facilities of solid waste	PROHIBITED IN ALL DISTRICTS						

\* (X) denotes excluded use in individual Use District; generally any use that is prohibited in a less restrictive Use District is also prohibited in a more restrictive Use District, except as noted in the table above.

\*\* (Lmt) indicates some limitations on specific usage; see Use District

### (C) Conditions and Criteria for Use Permits

(1) Use Permits may contain specific limitations on the scope, nature and duration of the use as deemed proper to secure the objectives of the Town's General Plan and to be in accordance with the following conditions and criteria.

(a) Use Permits may be granted for duration of no more than five (5) years. A request for renewal/extension (to extend the duration of the permitted use as originally approved) must be processed in the same manner as the original Use Permit request, except that the Town Council may review and extend a Use Permit upon its expiration without posting or publication, provided no material condition of the Use Permit is altered.

The applicant must demonstrate to the satisfaction of the Town Council that any structure or use requested will not be detrimental to persons or property in the vicinity and that the use is in the best interests of the public health, safety and welfare; criteria to be considered include the following:

- (a) any significant increase in vehicular or pedestrian traffic;
- (b) nuisances arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
- (c) contributions to the deterioration of the neighborhood or to the downgrading of property values;
- (d) incompatibility with existing adjacent structures and uses;
- (e) nuisances from inadequate control of disruptive behavior both inside and outside the premises

(3) The applicant must demonstrate the ability to comply with any specific conditions imposed by the Town Council.

(D) Use Permit Procedures

(1) Use Permits shall be applied for in the same manner as zoning district changes as specified in Sec 153.022 Amendments, reviewed at Public Hearings of both the Planning & Zoning Advisory Commission and the Town Council.

(2) Where an application involves a definite scheme, the applicant must submit a layout and landscape plan, building elevations and other pertinent data as may be requested.

(3) Permittees must obtain building permits within one year from the permit date and diligently pursue completion. Failure of such shall void the UP unless a longer time has been granted or an extension of time has been applied for with the Zoning Administrator prior to the expiration of the one-year period.

(a)The Zoning Administrator may administratively grant up to a one-year extension of time for obtaining building permits and completion of improvements as conditioned. Any further requests for such extensions of time must be applied for and approved by both the Planning and Zoning Commission and Town Council prior to the expiration of the administrative extension of time.

(4) Use Permits for temporary special events such as festivals, seasonal agricultural events, farmers markets, parades, carnivals and other community activities may be administratively granted subject to meeting all conditions and criteria of this section, and subject to compliance with regulatory codes for safety and health, and are of a temporary, limited duration appropriate to the activity.

(5) Violation of the terms of the UP or this section voids the Use Permit.

(6) If the use or uses for which a UP has been granted are discontinued for a continuous period of twelve months, the UP shall be voided.

(7) Decisions by the Zoning Administrator which result in the voiding of a Use Permit may be appealed to the Town Council subject to an application for appeal being on file with the Zoning Administrator within 30 days of notification of the Use Permit being voided.

(8) Within 30 days permittees shall notify the Zoning Administrator of any change of address of the permittee, any change of use of the permitted property, and/or any change of ownership or operator of the permitted use.

(a) The new owner/operator of the use shall apply for a transfer of the Use Permit within 30 days of the effective date of the change. Such transfer of the Use Permit shall be reviewed for compliance with all conditions imposed in the original Use Permit Application approval.

(b) Any modifications, alterations or increased intensities that conflict with the Use Permit and/or conditions of approval shall result in the requirement of a new Use Permit Application in compliance with the procedures listed in this section.

## **MEDICAL MARIJUANA**

### **§ 153.199 PURPOSE**

It is the purpose and intent of this subchapter (as enabled by ARS Title 36, Chapter 28, Arizona Medical Marijuana Act) to regulate the sale and cultivation of Medical Marijuana to promote the health, safety, morals and general welfare of the citizens of the Town and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of Medical Marijuana related businesses within the Town, thereby reducing or eliminating adverse and secondary effects from such businesses. It is neither the intent

nor effect of this subchapter to restrict or deny access to distributors and cultivators or Medical Marijuana to their intended market. Neither is it the intent nor the effect of this subchapter to condone or legitimize the production or distribution of Medical Marijuana.

#### § 153.200 DEFINITIONS

*EDIBLE FOOD PRODUCT:* A substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

*INFUSION OR INFUSE:* The act or process of mixing, blending, combining, or otherwise admixing medical marijuana or the active ingredients of Medical Marijuana into an edible food product.

*INFUSION FOOD ESTABLISHMENT:* A food processing or other food establishment of any type or size, not operated by a medical marijuana dispensary and not located at a medical marijuana facility or a medical marijuana cultivation site, but which is permitted under Arizona state law to contract with and does provide to a Medical Marijuana dispensary edible food products infused with Medical Marijuana.

*MEDICAL MARIJUANA:* All parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant, used to treat or alleviate a debilitating medical condition or the symptoms associated with the debilitating medical condition of a person who is registered with and identified by the Arizona State Department of Health Services as a registered qualifying patient.

*MEDICAL MARIJUANA CULTIVATION SITE:* The physical location in which Medical Marijuana is grown, cultivated, packaged or stored, or from which Medical Marijuana is delivered, transferred, transported, or supplied to another Medical Marijuana Facility.

*MEDICAL MARIJUANA DISPENSARY:* a not-for-profit entity registered with and approved to operate by the Arizona State Department of Health Services that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells, or dispenses Medical Marijuana or related supplies and educational materials to cardholders, as that term is defined in A.R.S. Section 36-2801

*MEDICAL MARIJUANA FACILITY:* the physical location from which Medical Marijuana is dispensed, cultivated, stored and/or infused.

*RELATED SUPPLIES:* any equipment, product, or material of any kind that is primarily intended or designed for the purpose of assisting a person who is registered with and identified by the Arizona State Department of Health Services as a registered, qualifying patient in smoking or otherwise consuming Medical Marijuana.

## § 153.201 ESTABLISHMENT AND LOCATION

The establishment of any Medical Marijuana Dispensary, Infusion Food Establishment or Cultivation business shall be permitted only in C-3 (Commercial and Minor Industrial), M1, (Industrial; General Limited), and M2 (Industrial; Heavy) Zoning Districts and shall be subject to the Arizona Administrative Code, Title 9, Health Services, Chapter 17 Department of Health Services, Medical Marijuana Program and the approval of a Use Permit as described in Town Code § 153.091 and the following performance standards.

- (A) The physical location of any Medical Marijuana Facility shall not be closer than 1000 feet of a public or private school, bona fide childcare facility or church existing before the date of application to establish a Medical Marijuana Facility. The distance shall be measured in a straight line building to property line without regard to intervening structures or objects.
- (B) The physical location of any Medical Marijuana Dispensary, Infusion Food Establishment or Cultivation facility shall not be closer than 250 feet of a residentially zoned property existing before the date of application to establish a Dispensary, Cultivation or Infusion Food facility. The distance shall be measured in a straight line building to property line without regard to intervening structures or objects.
- (C) The distance between any two Medical Marijuana facilities shall not be closer than 1,000 feet. The distance shall be measured in a straight line building to building without regard to intervening structures or objects.
- (D) The maximum aggregate floor area of a Medical Marijuana Dispensary shall be no larger than 2,500 square feet.
- (E) The maximum aggregate floor area of a Medical Marijuana Dispensary that includes a Cultivation Site or an Infusion Food Establishment shall be no larger than 4,000 square feet.
- (F) The maximum aggregate floor area of a Medical Marijuana Cultivation facility inclusive of or without an Infusion Food Establishment is 10,000 square feet.
- (G) The exterior of the building shall be lighted from dusk until dawn in compliance with "Dark Sky" regulations except that lighting at all exterior doors shall measure 5 foot-candles per square foot on the ground 10 feet away from the building.
- (H) Maintain an 8-foot tall chain-link fence around the facility and parking area to remain closed and secured during hours of non-operation.
- (I) No drive-through service shall be permitted.
- (J) Shall not provide off-site delivery of Medical Marijuana except that a Medical Marijuana Cultivation facility may transport Medical Marijuana to Medical Marijuana Dispensaries and between Dispensaries and/or Infusion Food Establishments per Arizona Health Services R9-17-317.
- (K) Any type of Medical Marijuana facility shall not emit dust, fumes, vapors or odors into the environment.
- (L) Any type of Medical Marijuana facility shall not have outdoor seating areas except for the use of employees only when located in a secure area.
- (M) No signs advertising, or any other advertising matter used in connection with any Medical Marijuana facility shall be of an offensive nature and shall in no way be contrary to Town Code.

§ 153.202 HOURS OF OPERATION

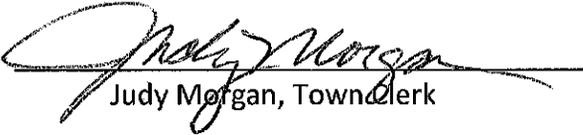
Unless specified otherwise through the Use Permit process Medical Marijuana Dispensaries shall only operate between the hours of 8:00 A.M. and 6:00 P.M. Monday through Friday. Dispensaries may only receive product during daylight hours. Medical Marijuana Cultivation facilities may operate round the clock as needed, however product may only be shipped during daylight hours.

2. Effective Date. That this Ordinance shall be effective at the soonest date after its passage and approval, according to law.
3. Savings Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.
4. Repeal. All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

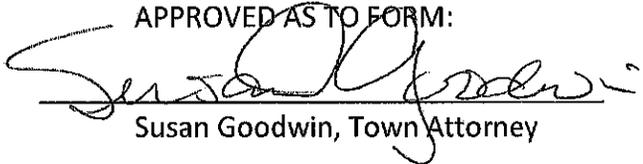
**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this 19th day of April, 2011.

  
\_\_\_\_\_  
Len Marinaccio, Mayor

ATTEST:

  
\_\_\_\_\_  
Judy Morgan, Town Clerk

APPROVED AS TO FORM:

  
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Susan Goodwin, Town Attorney