

Legislative Proposals for 2013
“Medical Marijuana” Law, ARS 36-2801 et seq.

Legislative proposal #1:

Cannabis is not a crop. The proposal excludes cannabis from the definition of “general agricultural purposes” in statute, thus subjecting the cultivation of medical marijuana to greater county zoning. (Proposed language attached.)

Rationale:

Under ARS 11-812, a county may not regulate tracts of land within its jurisdiction over 5 “commercial acres” that are used for “general agricultural purposes.” (“Commercial acre” is roughly equivalent to 4.2 standard acres.) Marijuana is arguably an agricultural product, and marijuana “coops” on tracts of land in excess of five commercial acres would arguably be exempt from county zoning ordinances, thus permitting cardholders to band together to grow marijuana. The proposed change would exclude marijuana and cannabis from the definition of “general agricultural purposes” under ARS 11-812.

- This proposal has been submitted to GSA for consideration at the 8th Annual GSA Legislative Summit to be held Oct. 1-3, 2012.

Legislative proposal #2:

Prohibit law enforcement agencies from returning any marijuana seized pursuant to a lawful seizure, regardless of whether criminal prosecution results.

Rationale:

There are many reasons why a lawful seizure of marijuana may not result in a successful prosecution of the possessor, including a decision by the prosecuting agency that there is not sufficient evidence to charge, or the production after-the-fact of a duly issued medical marijuana card. Law enforcement should not be in the position of preserving or otherwise cultivating marijuana in the event of the dropping of charges. The legislature should clarify that any marijuana lawfully seized shall not be returned to the individual.

Legislative proposal #3:

Clarify that any use by cardholders, caregivers, and dispensary agents in the production, transportation, sale, use or possession marijuana outside of the terms of

their authority granted by the medical marijuana law removes the protections of the law, and the person may be prosecuted pursuant to the Arizona Revised Statutes as a non-medical marijuana cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

Arizona has a strong public policy against marijuana. The medical marijuana law has carved out a narrow exception to that policy for medical use. To uphold Arizona's prohibition against marijuana, it is imperative that those individuals granted access to marijuana through the medical marijuana law be strongly discouraged from using their access to marijuana to add to the supply of illicit marijuana in the state, or to supply it to those without authorization to possess marijuana. One of the best ways this may be accomplished is for the legislature to specify and clarify that any activity beyond that permitted in the medical marijuana law results in the forfeiture of the protections of the law and the individual is subject to prosecution as if he/she is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Legislative proposal #4:

Impose criminal penalties for smoking marijuana in public. The law should clarify that smoking in public is prosecutable pursuant to Arizona Revised Statutes as if the violator is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

The medical marijuana law forbids smoking marijuana in public, but provides no penalty. Smoking of marijuana in public encourages its illicit use, and exposes marijuana to children. Since marijuana use in public is not authorized by the medical marijuana law and is a criminal activity in Arizona, smoking of marijuana in public by a cardholder should be made a serious criminal act.

Legislative proposal #5:

Impose criminal penalties for smoking marijuana in the presence of children under the age of 18. The law should clarify that smoking in the presence of children is prosecutable pursuant to Arizona Revised Statutes as if the violator is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

Children exposed to marijuana use are desensitized to the hazards of marijuana use, and are more likely to use marijuana illegally in the future. Children exposed to marijuana smoke will suffer the same health hazards as exposure to tobacco smoke. Smoking marijuana in the presence of children should be made a serious criminal act.

Legislative proposal #6:

Create a presumption that the exchange of marijuana at any location where fees are paid is an exchange for value.

Proposed language:

“There is a conclusive presumption that a transfer of marijuana to a person is a transfer of marijuana for value where the transferee must pay anything of value to be a member of an organization, or to participate in an activity, in order to be eligible to receive such transfer, or where a donation is accepted.”

Rationale:

Arizona Revised Statutes section 36-2811(B)(3) allows patients and caregivers to transfer marijuana to other patients or caregivers as long as nothing of value is transferred in return. In recent days, “marijuana clubs” have appeared. The clubs require the person to pay a fee to join an “educational club,” and a participation fee each time they visit the club. For each visit, the participant is given 3-5 grams of marijuana for “free” by another cardholder, who just happens to be the person that runs the club and collects the fees. Other businesses are now transferring marijuana in exchange for a “donation.”

The proposed legislation creates a conclusive presumption that (1) if you have to pay to gain status as a member or participant to a club that gives you the right to “free” marijuana, or (2) if you transfer marijuana in exchange for a donation, the payment or donation is the transfer for value. Dispensaries are allowed to sell, so the proposed legislation would not affect them.

Legislative proposal #7:

The legislature should set a presumptive level of marijuana impairment at a concentration of 2.0 ng/ml of blood THC for purposes of operating automobiles or other machinery, and for purposes of employment.

Rationale:

The medical marijuana law, A.R.S. section 36-2801 et seq., authorizes the use of marijuana for medical purposes, but does not allow a user to be impaired while employed or operating automobiles or other machinery. Use of marijuana impairs a person's ability to operate automobiles and other machinery, and to properly perform their job. Impairment is difficult to determine without presumptive standards. Marijuana impairment can be compared to use of alcohol, which is legal but impairment is not allowed when a person is operating automobiles or other machinery or by most employers. Levels of presumptive alcohol impairment are codified in law so employers and law enforcement may more easily determine if a person is impaired.

Scientific tests are available to determine the level of Tetrahydrocannabinol (THC) the active ingredient in marijuana, and standards exist that prove a person is impaired at blood levels of THC of 2.0 nanograms per milliliter (ng/ml) or greater. Presumptive levels of marijuana impairment for both employment and operation of automobiles and other machinery must be adopted by the legislature in order to allow employers and law enforcement to quickly and easily determine if probable cause exists that a person is impaired, and to take appropriate action to protect the person, the employer, and the public.

§ 11-812. Restriction on regulation; exceptions; aggregate mining regulation; definitions

Currentness

A. Nothing contained in any ordinance authorized by this chapter shall:

1. Affect existing uses of property or the right to its continued use or the reasonable repair or alteration of the property for the purpose for which used at the time the ordinance affecting the property takes effect.
2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. For the purposes of this paragraph, "mining" has the same meaning prescribed in § 27-301.
3. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for agricultural composting, if the tract is five or more contiguous commercial acres. An agricultural composting operation shall notify in writing the board of supervisors and the nearest fire department of the location of the composting operation. If the nearest fire department is located in a city, town or fire district where the agricultural composting is not located, the agricultural composting operation shall also notify in writing the fire district in which the operation is located. Agricultural composting is subject to §§ 3-112 and 49-141. For the purposes of this paragraph, "agricultural composting" has the same meaning prescribed in § 9-462.01, subsection G.

B. A nonconforming business use within a district may expand if the expansion does not exceed one hundred per cent of the area of the original business.

C. For the purposes of subsection A, paragraph 2 of this section, mining does not include aggregate mining operations in an aggregate mining operations zoning district established pursuant to this section. The board of supervisors of any county with a population of more than two million persons shall designate and establish the boundaries of an aggregate mining operations zoning district on the petition of at least one hundred persons who reside within one-half mile of an existing aggregate mining operation. In addition, the board of supervisors of any county may establish, in its discretion and on the board's initiative, one or more aggregate mining operations zoning districts. Aggregate mining operations zoning districts may only be located in areas that are inventoried and mapped as areas of known reserves or in areas with existing aggregate mining operations. Subject to subsections E and F of this section, a county and the state mine inspector may jointly adopt, as internal administrative regulations, reasonable aggregate mining operations zoning district standards limited to permitted uses, procedures for approval of property development plans and site development standards for dust control, height regulations, setbacks, days and hours of operation, off-street parking, screening, noise, vibration and air pollution control, signs, roadway access lanes, arterial highway protection and property reclamation for which aggregate mining operations are not otherwise subject to federal, state or local regulation or a governmental contractual obligation. Regulations jointly adopted pursuant to this subsection by the county and the state mine inspector shall not prohibit the activities included in the definition of mine pursuant to § 27-301, paragraph 8 or duplicate, conflict with or be more stringent than applicable federal, state or local laws.

D. The board of supervisors of any county that establishes an aggregate mining operations zoning district shall appoint an aggregate mining operations recommendation committee for the district. The committee consists of not more than seven operators, or representatives of operators, of active aggregate mining operations in any district within the county and an equal number of private citizens, who are not operators, who are not employed by operators and who do not represent operators, residing within three miles of the boundaries of aggregate mining operations or a proposed aggregate mining operation in the district for which the committee is established. The initial members appointed to the committee shall be deemed the primary members, and the board of supervisors shall appoint no more than five alternate members who represent operators and shall appoint no more than five alternate members who are private citizens. Alternate members may serve at meetings of the committee when a primary member is unable to attend. An aggregate mining operator may serve on more than one committee in the same county. The board of supervisors shall determine the length of terms of members of the committee and shall stagger the initial appointments so that not all members' terms expire at the same time. Members of the committee who no longer qualify for membership as provided by this subsection are subject to removal and replacement by the board of supervisors. The committee shall elect a member who is an aggregate mining operator to serve as chairperson for the first year in which the committee is created. For each year thereafter, the chairperson shall be elected by the members of the committee with a member who is a private citizen and a member who is an aggregate

mining operator serving as chairperson in alternate years. The committee is subject to the open meeting requirements of title 38, chapter 3, article 3.1.¹

E. Within ninety days after an aggregate mining operations recommendation committee is established, the committee shall notify all existing aggregate mining operators in the district of the application of this section and title 27, chapter 3, article 6² to the aggregate mining operation. In addition, the committee shall:

1. By a majority vote of all members make recommendations to the board of supervisors for aggregate mining zoning districts and administrative regulations as provided in this section. The board of supervisors may adopt or reject the recommendations but may not make any modifications to the recommendations unless the modification is approved by a majority of the members of the recommendation committee.
2. Serve as a forum for mediation of disputes between members of the public and aggregate mining owners or operators. If the committee is unable to resolve a dispute, the committee shall transmit the matter to the state mine inspector, with written findings and recommendations, for further action.
3. Hear written complaints filed with the state mine inspector regarding alleged material deviations from approved community notices for aggregate mining operations and make written recommendations to the state mine inspector pursuant to § 27-446.

F. Any administrative regulations adopted by a board of supervisors pursuant to this section are not effective until the regulations are approved by the state mine inspector. The inspector may disapprove the administrative regulations adopted by the board of supervisors only if they duplicate, conflict with or are more stringent than applicable federal, state or local laws, rules or regulations. If the inspector disapproves the administrative regulations, the inspector must provide written reasons for the disapproval. The inspector shall not make any modification to the administrative regulations as adopted by the board of supervisors unless the modification is approved by a majority of the members of the board of supervisors.

G. A person or entity is subject to this chapter if the use or occupation of land or improvements by the person or entity consists of or includes changing, remanufacturing or treating human sewage or sludge for distribution or resale. These activities are not exempt from this chapter under subsection A, paragraph 2 of this section.

H. A county shall not require as a condition for a permit or for any approval, or otherwise cause, an owner or possessor of property to waive the right to continue an existing nonconforming outdoor advertising use or structure without acquiring the use or structure by purchase or condemnation and paying just compensation unless the county, at its option, allows the use or structure to be relocated to a comparable site in the county with the same or a similar zoning classification, or to another site in the county acceptable to both the county and the owner of the use or structure, and the use or structure is relocated to the other site. The county shall pay for relocating the outdoor advertising use or structure including the cost of removing and constructing the new use or structure that is at least the same size and height. This subsection does not apply to county rezoning of property at the request of the property owner to a more intensive zoning district.

I. For the purposes of this section:

1. "Aggregate" has the same meaning prescribed in § 27-441.
2. "Aggregate mining" has the same meaning prescribed in § 27-441.
3. "Aggregate mining operation" means property that is owned, operated or managed by the same person for aggregate mining.
4. "Operators" means persons who are actively engaged in aggregate mining operations within the zoning district or proposed zoning district and who have given notice to the state mine inspector pursuant to § 27-303.

5. "General Agricultural Purposes" does not include the cultivation of cannabis or marijuana as defined by § 13-3401(4) or (19), or § 36- 2801(8).

Ariz. Rev. Stat. Ann. § 11-812

Cities, towns and counties may enact reasonable zoning regulations that limit the use of land for registered nonprofit medical marijuana dispensaries to specified areas in the manner provided in title 9, chapter 4, article 6.1,¹ and title 11, chapter 6, article 2.²

Ariz. Rev. Stat. Ann. § 36-2806.01