

ZONING INTERPRETATION RECORD

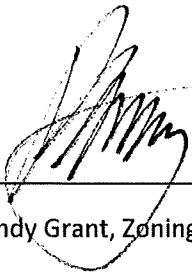
Subject: Administration of the Marijuana Legalization Initiative

BACKGROUND

On November 3, 2020 the voters of Arizona passed a marijuana legalization initiative known as the Smart and Safe Arizona Act (Proposition 207). The ballot initiative made the Arizona Department of Health Services responsible for adopting rules to regulate marijuana, including the licensing of a new type of marijuana dispensaries (for recreational use), cultivation facilities and production facilities. There is currently uncertainty about when the law will be signed, when the rules will be promulgated, and definition about how these new marijuana establishments will be regulated. However, the ballot initiative does allow the City of Scottsdale to prohibit or limit the number of the new marijuana establishments the ballot initiative may allow and the City Council has passed Ordinance No 4484 in order to preserve the public peace, health and safety of the city and its residents by prohibiting (or limiting the number of these new marijuana establishments) unless operated with as a dual licensee with a current and valid medical marijuana dispensary as more fully set forth in Ordinance No. 4484, which is incorporated herein by reference.

INTERPRETATION

Marijuana establishments for recreational use and purposes are prohibited, except where authorized by the Department of Health Services for a **dual licensee** who operates both a licensed nonprofit medical marijuana dispensary and a licensed marijuana establishment cooperatively in a **shared location** and has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department of Health Services, and will only be allowed when located in compliance with an existing conditional use permit for a medical marijuana dispensary approved by the city of Scottsdale. Marijuana testing facilities are allowed only when operated by an independent third-party laboratory that are internationally or nationally certified and authorized by the ADHS, and meet all City requirements.



Randy Grant, Zoning Administrator

12-1-2020

Date

ORDINANCE NO. 4484

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, ADDING CHAPTER 25 TO THE SCOTTSDALE REVISED CODE, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING RECREATIONAL MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; SETTING FORTH VIOLATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY

WHEREAS, marijuana contains tetrahydrocannabinol ("THC"), which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use is a violation of federal law pursuant to 21 U.S.C. § 841 et. al.;

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes Sections § 36-2801 et al., and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of nonprofit medical marijuana dispensaries in the City of Scottsdale according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act" was certified as Proposition 207, placed on the November 3, 2020 general election ballot and adopted by the voters of Arizona. Proposition 207 contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of marijuana plants in a primary residence by adults over twenty-one (21) years or older; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services ("Department") to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation and manufacturing of marijuana; and allowing the Department or another entity designated by the Department to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants;

WHEREAS, the City finds that Proposition 207 authorizes marijuana establishments and testing facilities, which may involve the use of chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate;

WHEREAS, such marijuana establishments pose a threat to the health, safety, security, peace and welfare of the community and increases the responsibilities of law enforcement and other City departments to respond to violations of state and local laws, including building, electrical, plumbing, and fire codes;

WHEREAS, the City seeks to protect the public's health, safety, and welfare by prohibiting marijuana establishments and/or marijuana testing facilities in the City to the fullest extent allowed by law and further seeks to protect the public's health, safety, and welfare by prohibiting by the use, possession, sale, production, cultivation and smoking of marijuana on public property.

BE IT ORDAINED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The recitals above are fully incorporated in this Ordinance by reference.

Section 2. Scottsdale Revised Code, Chapter 25 is hereby added to the Scottsdale Revised Code as follows:

CHAPTER 25 - RECREATIONAL MARIJUANA.

ARTICLE I. - GENERAL.

Sec. 25-1. - Purpose.

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal use and as otherwise provided in this chapter, the City prohibits the retail sale, cultivation, storage, processing, testing, and manufacturing of marijuana and marijuana products in the City. Nothing in this chapter is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, storage, or use of marijuana or marijuana products in violation of any applicable law.

Sec. 25-2. - Definitions.

The below words and phrases, wherever used in this chapter, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "*Chemical Extraction*" means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.
- B. "*Chemical Synthesis*" means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.
- C. "*Consume*," "*Consuming*," and "*Consumption*" mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- D. "*Consumer*" means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.
- E. "*Cultivate*" and "*Cultivation*" mean to propagate, breed, grow, prepare, and package marijuana.
- F. "*Deliver*" and "*Delivery*" mean the transportation, transfer or provision of

marijuana or marijuana products to a consumer at a location other than the designated retail location of a marijuana establishment.

G. *"Department"* means the State of Arizona Department of Health Services or its successor agency.

H. *"Dual Licensee"* means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.

I. *"Electronic cigarette"* means any product containing or delivering nicotine, marijuana or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

J. *"Extraction"* means the process of extracting or separating resin from marijuana to produce or process any form of marijuana concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.

K. *"Independent third-party laboratory"* means an entity that has a national or international accreditation and that is certified by the department to analyze marijuana cultivated for medical use.

L. *"Light"* means to burn, kindle or ignite including via electronic ignition or use of a mechanical heating element or battery.

M. *"Manufacture"* and *"Manufacturing"* means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

N. *"Marijuana"*

1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.

2. Includes cannabis as defined in A.R.S. § 13-3401.

3. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the plant that are incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

O. *"Marijuana Concentrate:"*

1. Means resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt, derivative, mixture or preparation of that resin or tetrahydrocannabinol.

2. Does not include industrial hemp or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other products.

P. *"Marijuana Establishment"* means an entity licensed by the Department to operate all of the following:

1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
3. A single off-site location at which the licensee may manufacture marijuana products and package and store marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.

Q. *"Marijuana Products"* means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.

R. *"Marijuana Testing Facility"* means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.

S. *"Nonprofit Medical Marijuana Dispensary"* means a non-profit entity as defined in A.R.S. § 36-2801(12).

T. *"Open Space,"* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

U. *"Person"* means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.

V. *"Process"* and *"Processing"* means to harvest, dry, cure, trim or separate parts of the marijuana plant.

W. *"Public Place"* has the same meaning prescribed in the Smoke-Free- Arizona Act, A.R.S. § 36-601.01.

X. *"Smoke"* means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic. To the extent permitted by law, "smoke" shall also mean the use of an electronic cigarette.

Sec. 25-3 -Marijuana and Smoking Marijuana Prohibited on Public Property.

A. Within the City of Scottsdale, the use, sale, cultivation, manufacture, production,

storage, or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the City, this state or any of its political subdivisions, including school districts.

- B. Within the City of Scottsdale, it is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the City, this state or any of its political subdivisions, including school districts. This subsection shall not apply to lawful activities of law enforcement agencies.
- C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the City.
- D. It is unlawful for an individual to smoke in a public place in the City.
- E. A violation of subsection A above is a class one misdemeanor, and any other violation of this section is a petty offense.

Sec. 25-4. - Marijuana Establishment Prohibited; Dual Licensee Exception.

- A. The operation of a marijuana establishment is prohibited in the City, except where authorized for a dual licensee who:
 - 1. Operates both a licensed nonprofit medical marijuana dispensary and a licensed marijuana establishment cooperatively in a shared location; and
 - 2. Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

Sec. 25-5. - Marijuana Testing Facility Prohibited.

The operation of a marijuana testing facility except for an independent third-party laboratory is prohibited in the City.

Sec. 25-6. - Delivery Prohibited.

- A. No person except a dual licensee or a nonprofit medical marijuana dispensary shall deliver marijuana or marijuana products to a consumer.
- B. A violation of this section is a class one misdemeanor.

Sec. 25-7. - Unlawful facilitation of delivery or use of marijuana or products; unlawful solicitation or acceptance of marijuana orders or products.

- A. It is unlawful for an individual or entity other than a dual licensee, nonprofit medical marijuana dispensary or marijuana establishment to do any of the following within the City of Scottsdale in a manner that is not authorized by A.R.S. Chapter 28.2 or rules adopted by the Arizona Department of Health Services:
 - 1. Facilitate the delivery or use of marijuana or marijuana products.
 - 2. Solicit or accept orders for marijuana or marijuana products or operate a platform

that solicits or accepts orders for marijuana or marijuana products.

- B. A violation of this section is a civil offense and any individual or entity who violates this section is subject to a one thousand-dollar (\$1,000) fine per violation.

Sec. 25-8. -- Unlawful consumption of marijuana within motor vehicles, boats, aircraft, other vehicles or other devices used for transportation.

- A. It shall be unlawful for any person to consume marijuana or marijuana products while driving or operating a motor vehicle, boat, aircraft, other vehicle or any form of conveyance, transportation or device defined in Chapter 17 of this code. A violation of this subsection is a class one misdemeanor.
- B. It shall be unlawful for any person to consume marijuana or marijuana products while riding in the passenger seat or compartment, including the bed of a pick-up truck, of any motor vehicle, boat, aircraft, other vehicle or any form of conveyance, transportation or device defined in Chapter 17 of this code. A violation of this subsection is a class two misdemeanor.

Sec. 25-9. - Violations; Enforcement; Penalties.

- A. It is unlawful and a violation of this chapter for a person to sell, cultivate, process, manufacture, store, or transport marijuana or marijuana products if the person fails to meet all the requirements in this chapter or state law, including the Department's rules.
- B. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.
- C. Except as otherwise provided in A.R.S. § 36-2853, A.R.S. § 36-2854 or as otherwise provided above, any violation of this chapter shall be a class one misdemeanor.
- D. Violations of this chapter are in addition to any other violation enumerated within the Scottsdale Revised Code and in no way limit the penalties, actions or abatement procedures which may be taken by the City for any violation of this chapter that is also a violation of any other ordinance or Code provision of the City or federal or state law. Conviction and punishment of judgment and civil sanction against any person under this chapter shall not relieve such person from the responsibility of correcting prohibited conditions, or removing prohibited structures or improvements, and shall not prevent the enforced correction or removal thereof.
- E. The remedies provided in this chapter shall be cumulative and in addition to any other federal, state or local remedy that may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

Section 3. In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this ordinance.

Section 4. The City finds that Proposition 207 may go into effect as early as

December 1, 2020 and further finds that Proposition 207 authorizes marijuana establishments and testing facilities which may include, but is not limited to, dangers such as the use of chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the public's health, safety, security and peace and increases the responsibilities of law enforcement and other City departments to respond to violations of state and local laws, including building, electrical, plumbing, and fire codes;

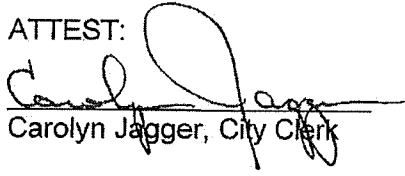
Section 5. The City hereby declares an emergency to exist making the immediate operation of the provisions of this ordinance necessary to preserve the public's peace, health, safety and security by prohibiting marijuana establishments and/or marijuana testing facilities in the City to the fullest extent permitted by Proposition 207 and further prohibiting the use, possession, sale, production, cultivation and smoking of marijuana on public property and further requiring this ordinance to be in full force and effect immediately upon its passage by the Council as set forth in the City Charter;

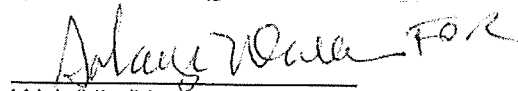
Section 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 30th day of November, 2020.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:


Carolyn Jagger, City Clerk

 FOR
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:


Sherry R. Scott
City Attorney

By: Luis E. Santaella
Deputy City Attorney