

ORDINANCE NO. 2783

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, BY ADOPTING A NEW DIVISION 7 IN ARTICLE VII, CHAPTER 42 OF THE GILBERT TOWN 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; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; SETTING FORTH VIOLATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; AND SETTING A CONDITIONAL EFFECTIVE DATE.

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 Town according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as “Smart and Safe Arizona Act” has been certified as Proposition 207 and placed on the November 3, 2020 general election ballot and 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 21 years of older; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services 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 Town finds that Proposition 207 authorizes marijuana establishments and testing facilities to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and other Town departments to respond to violations of state and local laws, including building, electrical, plumbing, and fire codes;

WHEREAS, the Town seeks to protect public health, safety, and welfare

by prohibiting marijuana establishments and/or marijuana testing facilities in the Town.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VII Offenses Involving Public Health and Sanitation, is hereby amended by adding a new Division 7 Recreational Marijuana to read as follows:

Division 7 Recreational Marijuana

Sec. 42-294 Purpose

This division is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal use, the Town prohibits the retail sale, cultivation, storage, processing, testing, and manufacturing of marijuana and marijuana products in the Town. Nothing in this division 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. 42-295 Definitions.

The below words and phrases, wherever used in this division, 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 years of age and who purchases marijuana or marijuana products.

- E. “*Cultivate*” and “*Cultivation*” mean to propagate, breed, grow, prepare, and package marijuana.
- F. “*Department*” means the State of Arizona Department of Health Services or its successor agency.
- G. “*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- H. “*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.
- I. “*Manufacture*” and “*Manufacturing*” means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- J. “*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.
- K. “*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.
- L. “*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.
- M. *“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.
- N. *“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.
- O. *“Nonprofit Medical Marijuana Dispensary”* means a non-profit entity as defined in A.R.S. § 36-2801(12).
- P. *“Open Space,”* to the fullest extent allowable by law, means a public park, public sidewalk, public walkway, public trail, preserve, public pedestrian thoroughfare, public property, or other area that is open to the public.
- Q. *“Person”* means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- R. *“Process”* and *“Processing”* means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- S. *“Public Place”* has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- T. *“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 as defined in Section 42-266 of the Gilbert Town Code.

Sec. 42-296 Marijuana Prohibited on Public Property.

- A. 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 Town.
- B. It is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the Town. 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 Town.
- D. It is unlawful for an individual to smoke in a public place in the Town.

Sec. 42-297 Marijuana Establishment Prohibited; Dual Licensee Exception.

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in the Town, 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. 42-298 Marijuana Testing Facility Prohibited.

To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in the Town.

Sec. 42-299 Reserved.

Sec. 42-300 Violations; Enforcement; Penalties.

- A. It is unlawful and a violation of this division 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 division or state law, including the Department's rules.
- B. Each day any violation of any provision of this division shall continue shall constitute a separate offense.
- C. Except as otherwise provided in A.R.S. § 36-2853, any violation of this division shall be a violation of Section 1-5 of this code.
- D. Violations of this division are in addition to any other violation enumerated within the Town ordinances or the Town Code and in no way limits the penalties, actions or abatement procedures which may be taken by the Town for any violation of this division, which is also a violation of any other ordinance or Code provision of the Town or federal or state law. Conviction and punishment of judgment and civil sanction against any person under this division 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 division shall be cumulative and in addition to any other federal, state or local remedy, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Recitals.

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

Section IV. Effective Date.

This Ordinance does not become effective unless and until the Smart and Safe Act (Proposition 207) becomes law when approved by a majority of the votes cast at the November 3, 2020 general election and on proclamation of the Governor. Upon the Governor's proclamation, this Ordinance shall become effective.

Section V. Zoning Considerations.

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

Section VI. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section VII. Providing for Severability.

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.

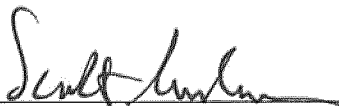
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 13th day of October, 2020, by the following vote:

AYES: Anderson, Koprowski, September, Spence, Taylor, Tilque, Yentes

NAYES: _____ ABSENT: _____

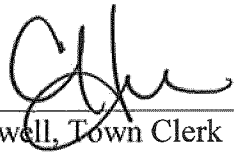
EXCUSED: _____ ABSTAINED: _____

APPROVED this 13th day of October, 2020.

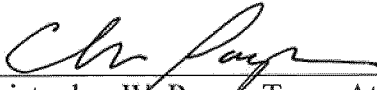


Scott Anderson, Mayor


ATTEST:


for Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:


Christopher W. Payne, Town Attorney

I, LISA MAXWELL, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2783 WAS ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 13TH DAY OF OCTOBER, 2020, AND WAS POSTED IN FOUR PLACES ON THE 14 DAY OF OCTOBER, 2020.


for Lisa Maxwell, Town Clerk