

**ORDINANCE NO. 2020-37**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING CHAPTER 34, *OFFENSES AND MISCELLANEOUS PROVISIONS*, OF THE SURPRISE MUNICIPAL CODE, BY ADOPTING A NEW ARTICLE VIII RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA AND SETTING FORTH VIOLATIONS, ENFORCEMENT, AND PENALTIES; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN 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 City according to a prescribed statutory and regulatory process

**WHEREAS**, the statewide ballot measure I-23-2020, known as the “Smart and Safe Arizona Act,” was certified as Proposition 207 and placed on the November 3, 2020 general election ballot, where it was approved by a majority of the votes cast at the November 3, 2020 general election;

**WHEREAS**, 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 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 City 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 City departments to respond to violations of state and local laws, including building, electrical, plumbing, and fire codes; and

**WHEREAS**, the City seeks to protect the public health, safety, and welfare of the City of Surprise by prohibiting marijuana establishments and/or marijuana testing facilities in the City.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Surprise, Arizona, as follows:

**Section 1.** Surprise Municipal Code, Chapter 34 *Offenses and Miscellaneous Offenses*, is hereby amended by adding a new Article VIII *Recreational Marijuana* to read as follows:

**Article VIII Recreational Marijuana**

Sec. 34-301.-Purpose.

Sec. 34-302.-Definitions.

Sec. 34-303.-Marijuana Prohibited on Public Property.

Sec. 34-304.-Marijuana Establishment Prohibited.

Sec. 34-305.-Marijuana Testing Facility Prohibited.

Secs. 34-306 – 34-320.-Reserved.

Sec. 34-321.-Violations; Enforcement; Penalties.

**Sec. 34-301 Purpose**

This Article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the City prohibits the retail sale, cultivation, storage, and manufacturing of marijuana or marijuana products in the City. Nothing in this Article 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. 34-302 Definitions.**

The below words and phrases, wherever used in this Article, 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.

“*Chemical Extraction*” means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.

“*Chemical Synthesis*” means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule

“*Consume*,” “*Consuming*,” and “*Consumption*” mean the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.

“*Consumer*” means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.

“*Cultivate*” and “*Cultivation*” mean to propagate, breed, grow, prepare, and package marijuana.

“*Department*” means the State of Arizona Department of Health Services or its successor agency.

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

“*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.

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

“*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.

“*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.

“*Marijuana Establishment*” means an entity licensed by the Department to operate any 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.

“*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.

“*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.

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

“*Open Space*” means a public park, public sidewalk, public walkway, public trail, preserve, public pedestrian thoroughfare, or public rights-of-way.

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

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

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

“*Smoke*” means to inhale, exhale, burn, carry, or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

#### **Sec. 34-303 Marijuana Prohibited on Public Property.**

A. To the fullest extent allowable by law, it is unlawful to:

1. smoke, consume, sell or distribute, store, cultivate, manufacture, or produce marijuana or marijuana products on or in property that is occupied, owned, controlled, or operated by the City;
2. smoke marijuana or consume marijuana products in an open space in the City;
3. smoke marijuana in a public place in the City.

B. Reserved.

#### **Sec. 34-304 Marijuana Establishment Prohibited.**

To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in the City, except where authorized for a dual licensee who:

1. operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
2. has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

**Sec. 34-305 Marijuana Testing Facility Prohibited.**

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

**Sec. 34-306 -- 34-320 Reserved.**

**Sec. 34-321 Violations; Enforcement; Penalties.**

- A. It is unlawful and a violation of this Article 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 Article or state law, including the Department's rules.
- B. Each day any violation of any provision of this Article shall continue shall constitute a separate offense.
- C. Except as otherwise provided in A.R.S. § 36-2853, any violation of this Article shall be a violation of Section 1-7 of this Code.
- D. Violations of this Article are in addition to any other violation enumerated within the City ordinances or the City Code and in no way limits the penalties, actions, or abatement procedures which may be taken by the City for any violation of this Article, which 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 Article 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 Article 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 2.** All ordinances, resolutions, or codes in conflict with the provisions of this Ordinance or any part of the Code adopted by this Ordinance are hereby repealed.

**Section 3.** The recitals above are fully incorporated in this Ordinance by reference.

**Section 4.** 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 5.** 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.

**Section 6.** This Ordinance shall not become effective until the Governor's proclamation declaring Proposition 207 to be law or as otherwise prescribed by applicable law.

ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Skip Hall, Mayor

ATTEST:

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Sherry Aguilar, City Clerk

APPROVED AS TO FORM:

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Robert Wingo, City Attorney