

WHEN RECORDED, RETURN TO:

City of Tolleson  
ATTN: Crystal Zamora, City Clerk  
9555 West Van Buren Street  
Tolleson, Arizona 85353

Ord594AdptAr5Ch7RMJ-8-1-1--  
wadel

**ORDINANCE NO. 594**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TOLLESON, ARIZONA, AMENDING THE CODE OF TOLLESON, ARIZONA BY ADOPTING A NEW ARTICLE 7-5 (RECREATIONAL MARIJUANA), IN CHAPTER 7 (OFFENSES) OF THE TOLLESON CITY CODE; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ENACTING REASONABLE REGULATIONS ON MARIJUANA CULTIVATION ON RESIDENTIAL PROPERTY; SETTING FORTH VIOLATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; 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 City 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 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;

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

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TOLLESON, ARIZONA**, as follows:

Section I.      In General.

The Code of Tolleson, Arizona, Chapter 7 Offenses, is hereby amended by adding a new Article 7-5 Recreational Marijuana to read as follows:

Article 7-5      Recreational Marijuana

Sec. 7-5-1	Purpose.
Sec. 7-5-2	Definitions.
Sec. 7-5-3	Marijuana Prohibited on Public Property.
Sec. 7-5-4	Marijuana Establishment Prohibited; Dual Licensee Exception.
Sec. 7-5-5	Marijuana Testing Facility Prohibited.
Sec. 7-5-6	Marijuana at a Primary Residence for Personal Use.
Sec. 7-5-7	Violations; Enforcement; Penalties.

**Sec. 7-5-1      Purpose**

This Article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal or private use, or as permitted under the Arizona Medical Marijuana Act, the City prohibits the consumption, cultivation, extraction, manufacturing, processing, sale, or distribution, of marijuana or marijuana products in the City. Nothing in this Article is intended to promote or condone the consumption, cultivation, extraction, manufacturing, processing, sale or distribution of marijuana or marijuana products in violation of any applicable law.

**Sec. 7-5-2      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.

- 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. “*Extract*” and “*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”* means a public park, public sidewalk, public walkway, public trail, preserve, or public pedestrian thoroughfare.
- 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.

**Sec. 7-5-3 Marijuana Prohibited on Public Property.**

- A. The consumption, cultivation, extraction, manufacture, processing, sale or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled, or operated by the City.
- 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 City.
- C. It is unlawful for an individual to smoke marijuana or consume marijuana products in an open space in the City.
- D. It is unlawful for an individual to smoke marijuana or consume marijuana products in a public place in the City.

**Sec. 7-5-4 Marijuana Establishment Prohibited; Dual Licensee Exception.**

- A. 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. 7-5-5 Marijuana Testing Facility Prohibited.**

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

**Sec. 7-5-6 Marijuana at a Primary Residence for Personal Use.**

- A. To the fullest extent allowable by law, marijuana consumption, cultivation, extraction, manufacture, and processing is permitted in

an individual's primary residence for personal use subject to the following conditions and limitations:

1. It shall be unlawful for any individual who is at least twenty-one (21) years of age to possess, transport, cultivate, or process more than six (6) marijuana plants.
2. It shall be unlawful for two or more individuals who are at least twenty-one (21) year of age to possess, transport, cultivate, or process more than twelve (12) marijuana plants.
3. Except as provided by A.R.S. § 36-2801 *et al.* and this section, it shall be unlawful for an individual to otherwise consume, cultivate, extract, manufacture, possess, or process marijuana in a residence or accessory structure within the City limits.
4. Marijuana or marijuana products shall not be cultivated, extracted, manufactured, or processed outdoors.
5. The cultivation, extraction, manufacture, and processing of marijuana shall be limited to a closet, room, greenhouse, or other enclosed area within the primary residence or an accessory structure on the property with a permanent foundation that is equipped with a lock or other security device that prevents access by minors.
6. Individuals shall not extract, manufacture, or process marijuana by chemical extraction or chemical synthesis, excluding manual or mechanical means.
7. The indoor area used for cultivation, extraction, manufacturing, or processing shall include a ventilation and filtration system designed to ensure that odors from the cultivation extraction, manufacturing, or processing are not detectable beyond the property line of a parcel containing a single dwelling unit, or beyond the boundaries of a single dwelling unit in multifamily dwellings, apartments, condominiums, or similar closely built unit arrangements, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence or unit. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the International Residential Code.
8. Marijuana may only be cultivated, extracted, manufactured, or processed as an accessory use at the primary residence of the person conducting such activity or in an accessory structure on the property with a permanent foundation, and only for such person's own use, or by a primary caregiver on behalf of a patient.



9. It is unlawful to use any grow lighting system for the indoor cultivation of marijuana other than light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited, to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, are prohibited.
10. Cultivation, extraction, manufacturing, and processing shall take place in an area where the marijuana plants or products are not visible from public view without using binoculars, aircraft, or other optical aids.

**Sec. 7-5-7      Violations; Enforcement; Penalties.**

- A. It is a violation of this Article for a person to consume, cultivate, extract, manufacture, or process 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 is punishable by Section 1-1-8(A) 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 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 Safety 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 City Council has considered the individual property rights and personal liberties of the residents of the City 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 Mayor and Council of the City of Tolleson, Arizona, on this 27th day of October, 2020.

Anna Tovar  
Anna Tovar, Mayor

ATTEST: Crystal Zamora  
Crystal Zamora, City Clerk

APPROVED AS TO FORM: Justin Pierce  
Justin Pierce, City Attorney