

ORDINANCE NO. 5601

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING TITLE 6 POLICE REGULATIONS OF THE MESA CITY CODE BY ADDING CHAPTER 25, ENTITLED "MARIJUANA PROHIBITION" REGULATING MARIJUANA; PROHIBITING POSSESSION AND CONSUMPTION OF MARIJUANA ON CITY PROPERTY; PROHIBITING RECREATIONAL MARIJUANA RETAIL SALES EXCEPT FOR RETAIL SALES BY A STATE DUAL LICENSEE AT A SHARED LOCATION; PROHIBITING MARIJUANA TESTING FACILITIES; PROHIBITING THE DELIVERY OF MARIJUANA EXCEPT FOR DELIVERY BY A NONPROFIT MEDICAL MARIJUANA DISPENSARY; PROHIBITING CONSUMPTION OF MARIJUANA ON PROHIBITED PROPERTY; PROHIBITING CONSUMPTION OF MARIJUANA IN TRANSPORTATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES AND ENFORCEMENT.

WHEREAS, the statewide ballot initiative I-23-2020, known as the "Smart and Safe Arizona Act," certified as Proposition 207, was passed by Arizona voters at the November 3, 2020 General Election.

WHEREAS, Proposition 207 authorizes in part (1) the sale of non-medicinal recreational marijuana to adults who are at least twenty-one years of age; (2) adults over age twenty-one to possess marijuana for non-medicinal recreational use; and (3) cities to enact regulations relating to marijuana including limitations on recreational marijuana retail establishments, marijuana testing facilities, and delivery of recreational marijuana.

WHEREAS, the City of Mesa, Arizona (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, marijuana contains tetrahydrocannabinol, which remains on Schedule I of the Controlled Substances Act pursuant to 21 United States Code sections 811-814, and any possession or use is a violation of federal law pursuant to 21 United State Code sections 841-865.

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes title 36, chapter 28.1, and the Department of Health Services Medical Marijuana Program codified rules in title 9, chapter 17 of the Arizona Administrative Code allow the establishment and operation of medical marijuana dispensaries in the City according to a prescribed statutory and regulatory process.

WHEREAS, in accordance with and as permitted by state law and codified rule, the City seeks to protect public health, safety, and welfare by (1) prohibiting the possession and consumption of marijuana and marijuana products on City property, (2) prohibiting recreational marijuana retail sales and marijuana testing facilities in the City to the extent permitted by law, (3) prohibiting delivery of recreational marijuana and marijuana products within the City, and (4) prohibiting the consumption of marijuana and marijuana products on prohibited property.

WHEREAS, the prohibition on retail recreational marijuana sales in the City shall not apply to establishments permitted by the State of Arizona as a dual licensee to operate as both a nonprofit medical marijuana dispensary and a recreational marijuana retail establishment at a shared location.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA,  
ARIZONA, AS FOLLOWS:

SECTION 1: That Mesa City Code Title 6, Chapter 25 entitled "MARIJUANA PROHIBITION" is created as a new chapter as follows:

## CHAPTER 25

### MARIJUANA PROHIBITION

#### SECTION:

- 6-25-1: PURPOSE
- 6-25-2: DEFINITIONS
- 6-25-3: MARIJUANA PROHIBITED ON PUBLIC PROPERTY
- 6-25-4: MARIJUANA ESTABLISHMENT PROHIBITED; EXCEPTION
- 6-25-5: MARIJUANA TESTING FACILITIES PROHIBITED
- 6-25-6: MARIJUANA DELIVERY PROHIBITED; EXCEPTION
- 6-25-7: CONSUMPTION OF MARIJUANA ON PROHIBITED PROPERTY
- 6-25-8: CONSUMPTION OF MARIJUANA IN TRANSPORTATION
- 6-25-9: PENALTIES
- 6-25-10: ENFORCEMENT

#### 6-25-1: PURPOSE

It is the purpose of this Chapter to protect the health, safety, and welfare of the general public. 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 law. It is the intent of the City that this Chapter be read and interpreted in conjunction and compliance with state law pertaining to marijuana.

#### 6-25-2: 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. Definitions set forth in this Section apply only to this Chapter and do not affect any other City Codes.

- (1) "ARIZONA MEDICAL MARIJUANA ACT" means Arizona Revised Statutes, title 36, chapter 28.1.
- (2) "CITY" means the City of Mesa, Arizona.
- (3) "CONSUME," "CONSUMING," and "CONSUMPTION" mean the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.

- (4) "CONSUMER" means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.
- (5) "CULTIVATE" and "CULTIVATION" mean to propagate, breed, grow, prepare, and package marijuana.
- (6) "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.
- (7) "DUAL LICENSEE" means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license issued by the Arizona Department of Health Services.
- (8) "MANUFACTURE" and "MANUFACTURING" mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- (9) "MARIJUANA" 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.
  - (a) Includes cannabis as defined in Arizona Revised Statutes section 13-3401.
  - (b) 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.
- (10) "MARIJUANA CONCENTRATE" 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. Marijuana Concentrate 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.
- (11) "MARIJUANA ESTABLISHMENT" means an entity licensed by the Arizona Department of Health Services to operate all of the following:
  - (a) A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
  - (b) 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.
  - (c) 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.

- (12) "MARIJUANA PRODUCTS" means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for consumption, including edible products, ointments, and tinctures.
- (13) "MARIJUANA TESTING FACILITY" means the Arizona Department of Health Services or other entity that is licensed by the department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- (14) "NONPROFIT MEDICAL MARIJUANA DISPENSARY" means as defined in Arizona Revised Statutes section 36-2801(12).
- (15) "PROCESS" and "PROCESSING" mean to harvest, dry, cure, trim or separate parts of the marijuana plant.

**6-25-3: MARIJUANA PROHIBITED ON PUBLIC PROPERTY**

It is unlawful to acquire, possess, consume, purchase, sell, cultivate, manufacture, produce, store, transfer, or distribute marijuana or marijuana products on property that is owned and controlled by the City.

**6-25-4: MARIJUANA ESTABLISHMENT PROHIBITED; EXCEPTION**

The operation of a marijuana establishment is prohibited in the City. The prohibition in this Section 6-25-4 does not apply to a dual licensee who:

- (1) Is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location, and
- (2) Has not terminated its status as a dual licensee with the Arizona Department of Health Services by forfeiting either its marijuana establishment license or nonprofit medical marijuana dispensary registration.

**6-25-5: MARIJUANA TESTING FACILITIES PROHIBITED**

The operation of a marijuana testing facility is prohibited in the City.

**6-25-6: MARIJUANA DELIVERY PROHIBITED; EXCEPTION**

It is unlawful to facilitate or accept orders for delivery, or to deliver marijuana or marijuana products in the City. The prohibition in this Section 6-25-6 does not apply when delivery is done by a nonprofit medical marijuana dispensary in compliance with Arizona Department of Health Services codified rules and requirements governing the Arizona Medical Marijuana Program.

**6-25-7: CONSUMPTION OF MARIJUANA ON PROHIBITED PROPERTY**

It is unlawful, where reasonable notice prohibiting marijuana or marijuana product consumption has been provided, to knowingly consume marijuana or marijuana products in or on property where an individual, partnership, limited liability company, private corporation, private entity or private organization of any character that occupies, owns or controls the property has prohibited consumption of marijuana or marijuana products on the premises.



6-25-8 CONSUMPTION OF MARIJUANA IN TRANSPORTATION

It is unlawful to consume marijuana or marijuana products while driving, operating or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft or another vehicle used for transportation.

6-25-9: PENALTIES

A violation of this Chapter is a petty offense and shall be adjudicated in the Mesa Municipal Court. For the first petty offense, the fine shall not be less than \$150 and not more than \$1,500. For the second petty offense, the fine shall not be less than \$250 and not more than \$2,000. For the third and each subsequent petty offense, the fine shall not be less than \$500 and not more than \$2,500.

6-25-10: ENFORCEMENT

The Mesa Police Department is authorized to enforce the provisions of this Chapter.

SECTION 2: RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3: EFFECTIVE DATE. The effective date of this Ordinance shall be thirty days following adoption by the City Council.

SECTION 4: 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 5: APPLICABILITY OF TERM. The term "controlled" in Section 6-25-3 of the Mesa City Code shall be deemed not to include any property that is leased by the City to a tenant including but not limited to GPLET leases.

SECTION 6: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a 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 MESA, MARICOPA COUNTY, ARIZONA, this 8th day of December, 2020.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

  
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City Clerk

