

ORDINANCE NO. 2021-01

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF SEDONA, ARIZONA,
AMENDING THE SEDONA CITY CODE BY ADOPTING A NEW CHAPTER 8.60
RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA;
ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING
MARIJUANA ON PUBLIC PROPERTY; PROHIBITING MARIJUANA
ESTABLISHMENTS (EXCEPT FOR DUAL LICENSEES) AND MARIJUANA TESTING
FACILITIES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR
ENFORCEMENT AND PENALTIES.**

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.; and

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 Sedona according to a prescribed statutory and regulatory process; and

WHEREAS, the statewide ballot measure I-23-2020, known as “Smart and Safe Arizona Act”, which was certified as Proposition 207, placed on the November 3, 2020 general election ballot and approved by Arizona voters, 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; and

WHEREAS, the City finds that Proposition 207 authorizes marijuana establishments 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 of Sedona departments to respond to violations of state and local laws, including building, electrical and fire codes; and

WHEREAS, the City seeks to protect public health, safety, and welfare by prohibiting marijuana establishments (except for Dual Licensees) and marijuana testing facilities in the Sedona.

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

Section 1. In General.

The Sedona City Code of the City of Sedona, Arizona, Article 8 (Health and Safety) is hereby amended by adding a new Chapter 8.60, Recreational Marijuana to read as follows:

Chapter 8.60 RECREATIONAL MARIJUANA

Sections:

8.60.010 Purpose.

8.60.020 Definitions.

8.60.030 Marijuana Prohibited on Public Property.

8.60.040 Marijuana Establishment Prohibited; Dual Licensee Exception.

8.60.050 Marijuana Testing Facility Prohibited.

8.60.060 Reserved.

8.60.070 Violations; Enforcement; Penalties.

8.60.010 Purpose.

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

8.60.020 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. “*City*” means the City of Sedona.
- D. “*Consume,*” “*Consuming,*” and “*Consumption*” mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- E. “*Consumer*” means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
- F. “*Cultivate*” and “*Cultivation*” mean to propagate, breed, grow, prepare and package marijuana.
- G. “*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.
- H. “*Department*” means the State of Arizona Department of Health Services or its successor agency.
- I. “*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- J. “*Enclosed Area*” means a building, greenhouse, or other structure that has:
 - 1. A complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;
 - 2. Is secure against unauthorized entry;
 - 3. Has a foundation, slab or equivalent base to which the floor is securely attached; and

4. Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of not being visible from public view without using binoculars, aircraft or other optical aids and is equipped with a lock or other security device that prevents access by minors.
- K. *“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.
- L. *“Manufacture”* and *“Manufacturing”* mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- M. *“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.
- N. *“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.
- O. *“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.
- P. *“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.
- Q. *“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.
- R. *“Nonprofit Medical Marijuana Dispensary”* means a nonprofit entity as defined in A.R.S. § 36-2801(12).
- S. *“Open Space”* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

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

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

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

W. “*Smoke*” and “*Smoking*” means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic. To the fullest extent permitted by law, “smoke” and “smoking” shall also mean the use of an electronic cigarette or vaping device to heat, vaporize, or atomize marijuana or marijuana products.

8.60.030 Marijuana Prohibited on Public Property.

A. The use, sale, cultivation, manufacture, production or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by City.

B. It is unlawful for an individual to smoke marijuana or marijuana products 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 marijuana products or consume marijuana products in any open space in the City.

D. It is unlawful for an individual to smoke marijuana or marijuana products in a public place in the City.

8.60.040 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 registrations from the Department.

8.60.050 Marijuana Testing Facility Prohibited.

A. To the fullest extent allowable by law, the operation of a Marijuana Testing Facility is prohibited in the City.

8.60.060 Reserved.

8.60.070 Violations; Enforcement; Penalties.

A. It is unlawful and a violation of this chapter for a person to sell or cultivate, process, manufacture 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. Except as otherwise provided in A.R.S. § 36-2853, any violation of this chapter shall be civil code offenses which may be adjudicated and enforced as set forth in Sedona City Code Section 1.15.010.

C. Violations of this chapter are in addition to any other violation enumerated within the City ordinances or the City Code and cumulative to any other federal, state or local remedy and in no way limits the penalties, actions or abatement procedures which may be taken by the City for any violation of this chapter, 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 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. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.

Section 2. 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 3. Recitals.

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

Section 4. Emergency.

The City finds that the unregulated smoking, consumption cultivation, extraction, manufacturing, or processing of marijuana creates immediate public safety hazards. Because of the urgent need for the implementation of the City of Sedona's regulations concerning recreational marijuana, the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare. An emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law.

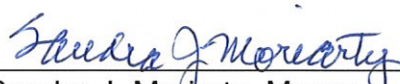
Section 5. Preservation of Rights and Duties.

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 6. 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 Sedona, Arizona, this 12th day of January 2021.



Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney