

## **RESOLUTION NO. 21-05**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "CHAPTER 8.40, RECREATIONAL MARIJUANA," ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; SETTING FORTH VIOLATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND AMENDING THE MARICOPA CITY CODE BY ADDING CHAPTER 8.40 AND DECLARING AN EMERGENCY.**

**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 according to a prescribed statutory and regulatory process; and

**WHEREAS**, Prop 207, the statewide ballot measure known as "Smart and Safe Arizona Act," was approved at the November 3, 2020 general election 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 or 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 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 and marijuana testing facilities in the City; and

**WHEREAS**, the City Council believes that declaring Chapter 8.40, Recreational Marijuana as a public record and adopting its provisions by reference will be in the City's best interest.

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

**Section 1.** That certain document filed with the city clerk and entitled "Chapter 8.40, Recreational Marijuana," establishing a purpose; setting forth definitions; prohibiting marijuana on public property; prohibiting marijuana establishments and marijuana testing facilities; establishing regulations for personal use at an individual's primary residence; authorizing retail sales from marijuana and marijuana products; imposing fees; setting forth violations; providing for enforcement and penalties; and amending the City Code by adding Chapter 8.40, is hereby declared to be a public record, and an electronic copy shall remain on file in the office of the City Clerk of the City of Maricopa for examination by the public.

**Section 2.** The immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this resolution shall become immediately effective upon its passage and adoption.

**PASSED AND ADOPTED** by the City Council of the City of Maricopa, Arizona this 16<sup>th</sup> day of February, 2021.

APPROVED:


  
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Christian Price  
Mayor

ATTEST:

  
\_\_\_\_\_  
Vanessa Bueras  
City Clerk



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Denis Fitzgibbons  
City Attorney

## Recreational Marijuana

### **Title 8, Health and Safety Chapter 8.40, Recreational Marijuana**

#### **Section:**

<b>8.40.010</b>	<b>Purpose</b>
<b>8.40.020</b>	<b>Definitions</b>
<b>8.40.030</b>	<b>Marijuana Prohibited on Public Property</b>
<b>8.40.040</b>	<b>Marijuana Establishment Prohibited</b>
<b>8.40.050</b>	<b>Marijuana Testing Facility Prohibited</b>
<b>8.40.060</b>	<b>Individual's Primary Residence for Personal Use</b>
<b>8.40.070</b>	<b>Violations; Enforcement; Penalties.</b>

#### **8.40.010 Purpose.**

This Chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the City prohibits the retail sale, cultivation, 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.

#### **8.40.020 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. “*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. “*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.
- G. “*Department*” means the State of Arizona Department of Health Services or its successor agency.
- H. “*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- I. “*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.
- J. “*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.
- K. “*Manufacture*” and “*Manufacturing*” mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- L. “*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.
- M. *“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.
- N. *“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.
- O. *“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.
- P. *“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.
- Q. *“Nonprofit Medical Marijuana Dispensary”* means a nonprofit entity as defined in A.R.S. § 36-2801(12).
- R. *“Open Space”* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- S. *“Person”* means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.

- T. “*Process*” and “*Processing*” means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- U. “*Public Place*” has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- V. “*Smoke*” means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

**8.40.030 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 the City.
- B. It is unlawful for an individual to smoke marijuana in a public place or open space in the City.

**8.40.040 Marijuana Establishment Prohibited.**

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in City unless operated by a dual licensee at a shared location.

**8.40.050 Marijuana Testing Facility Prohibited.**

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

**8.40.060 Individual’s Primary Residence For Personal Use**

- A. To the fullest extent allowable by law, marijuana possession, consumption, processing, manufacturing, transportation, and cultivation is permitted in a residential zoning district in City and is subject to the following conditions and limitation:
  - 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 at the individuals’ primary residence.

3. Except as provided by A.R.S. § 36-2801 et al. and this Section, it shall be unlawful for an individual to otherwise cultivate marijuana in a residential zoning district within the City limits.
4. Individuals shall not process or manufacture marijuana by means of any liquid or gas other than alcohol, that has a flashpoint below one hundred (100) degrees Fahrenheit.
5. Kitchen, bathrooms, and primary bedroom(s) shall be used for their intended use and shall not be used primarily for residential marijuana processing, manufacturing, or cultivation.
6. A residence shall not emit dust, fumes, vapors, or odors into the environment and individuals shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes of the City.
7. Cultivation shall be limited to a closet, room, greenhouse, or other enclosed area on the grounds of the residence equipped with a lock or other security device that prevents access by minors.
8. Cultivation shall take place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft, or other optical aids.

**8.40.070          Violations; Enforcement; Penalties.**

- A. It is unlawful and a violation of this Chapter 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 Chapter, the City Code, state law, including the Department's rules.
- B. It is unlawful to solicit, facilitate, or accept orders for delivery, or to deliver marijuana or marijuana products in the City; provided that the prohibition in this Section shall not apply when delivery is done by a nonprofit medical marijuana dispensary in compliance with the Department rules and requirements governing the Arizona Medical Marijuana Program.
- C. Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense.
- D. Except as otherwise provided in A.R.S. § 36-2853, A.R.S. § 36-2854, or as otherwise specifically provided for in this Chapter, any violation



of this Chapter not specifically designated shall be a class 1 misdemeanor.

- E. For purposes of this Chapter, a violation of any provision of this Chapter or City Code shall mean any of the following:
1. Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor, by ordinance or by rule or regulation authorized by ordinance.
  2. Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
  3. Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.
  4. In this section, a violation of the Chapter or City Code includes causing, allowing, permitting, aiding, abetting, suffering, or concealing a violation of this Chapter or City Code.
  5. Officers of any corporation or partners of any firm or entity that are found to have committed a violation of this City Code shall be individually subject to fine and/or imprisonment for the violation by the entity.
- F. Violations of this Chapter 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 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.
- G. The remedies provided in this Chapter 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.