

ORDINANCE O20-10-08

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, AMENDING THE CODE OF EL MIRAGE, ARIZONA BY ADOPTING A NEW CHAPTER 97 (RECREATIONAL MARIJUANA), IN TITLE IX (GENERAL REGULATIONS) OF THE EL MIRAGE CITY CODE; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ENACTING REASONABLE REGULATIONS FOR 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 Common Council of the City of El Mirage, Arizona, as follows:

Section I. In General. The Code of El Mirage, Arizona, Title IX General Regulations, is hereby amended by adding a new Chapter 97 Recreational Marijuana.

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 Chapter 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 Common Council of the City of El Mirage, Arizona, this 20th day of October, 2020.

FOR THE CITY OF EL MIRAGE:

ATTESTED TO:

Alexis Hermosillo, Mayor

Sharon Antes, City Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Crystal Dyches, City Manager

Pierce Coleman, PLLC, City Attorney