

RESOLUTION NO. R21-04-07

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, AMENDING CHAPTER 97 (RECREATIONAL MARIJUANA), IN TITLE IX (GENERAL REGULATIONS) OF THE EL MIRAGE CITY CODE BY ADOPTING REASONABLE REGULATIONS TO PERMIT THE OPERATION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES PURSUANT TO A.R.S. § 36-2857.

WHEREAS, the State of Arizona has legalized medical and recreational marijuana under certain conditions in two separate statewide initiatives;

WHEREAS, Arizona Medical Marijuana Act, Arizona Revised Statutes (A.R.S.) §§ 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 Smart and Safe Arizona Act, known as Prop 207, was passed by the voters on the November 3, 2020 general election ballot, effective November 30, 2020, and codified in A.R.S. §§ 36-2850 *et al.*, and authorizes an individual who is at least twenty-one (21) years of age to possess, consume, purchase, process, manufacture or transport recreational marijuana;

WHEREAS, the Arizona Department of Health Services adopted rules, effective January 15, 2021, to regulate the licensing of recreational marijuana establishments to engage in the retail, sale, cultivation, and manufacturing of marijuana, and marijuana testing facilities to test the potency of marijuana and detect any harmful contaminants, codified in Title 9, Chapter 18 of the Arizona Administrative Code;

WHEREAS, A.R.S. § 36-2857 allows the City to enact reasonable zoning regulations that limit the use of land for marijuana establishments and marijuana testing facilities to specified areas and regulate the time, place and manner of marijuana establishments and marijuana testing facility operations as long as the regulation is not more restrictive than a comparable ordinance, regulation or rule that applies to nonprofit medical marijuana dispensaries or makes the operation of a marijuana establishment or marijuana testing facility unduly burdensome;

WHEREAS, the City seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations for marijuana establishments and marijuana testing facilities in the City, including cultivation sites that utilize flammable gases to extract marijuana concentrate that may increase 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;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of El Mirage, Arizona, as follows:

Section I. That the Code of El Mirage, Arizona, Title IX General Regulations, is hereby amending Chapter 97 Recreational Marijuana which is newly adopted and made a part of this Resolution as set forth in the attached Exhibit A.

PASSED AND ADOPTED by the Mayor and Common Council of the City of El Mirage, Arizona, this 6th day of April, 2021.

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

EXHIBIT “A”
RESOLUTION R21-04-07

The Code of El Mirage, Arizona, Title IX General Regulations, is hereby amended by amending Chapter 97 Recreational Marijuana to read as follows:

Sec. 97.01 Purpose.

This Chapter 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 ENACTS REASONABLE REGULATIONS AND REQUIRES COMPLIANCE WITH ZONING LAWS FOR ~~prohibits~~ the consumption, cultivation, extraction, manufacturing, processing, sale or distribution, of marijuana or marijuana products in the City. Nothing in this Chapter 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. 97.02 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. “*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. 97.03 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. 97.04 Marijuana Establishment PERMITTED; Prohibited; NONRESIDENTIAL. 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.~~

A. IT SHALL BE UNLAWFUL FOR A PERSON TO OPERATE A MARIJUANA ESTABLISHMENT AT ANY LOCATION WITHIN THE CITY WITHOUT OBTAINING A BUSINESS LICENSE FROM THE FINANCE DEPARTMENT IN ACCORDANCE WITH CITY CODE SECTION 110.01 ET SEQ., INCLUDING ANY APPLICATION AND REVIEW PROCEDURES PURSUANT TO CITY ZONING CODE SECTION 154.091 ET SEQ.

B. IF AUTHORIZED BY STATE LAW AND A VALID PERMIT HAS BEEN OBTAINED FROM THE CITY, A MARIJUANA ESTABLISHMENT IS PERMITTED TO OPERATE IN THE CITY SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

1. MARIJUANA ESTABLISHMENT SHALL BE AUTHORIZED IN ZONING DISTRICTS.
2. SHALL NOT SELL MARIJUANA OR MARIJUANA PRODUCTS, EXCEPT AS PERMITTED BY STATE LAW TO CONSUMERS.
3. SHALL NOT ALLOW A PERSON TO CONSUME MARIJUANA OR MARIJUANA PRODUCTS ON THE PREMISES IF THE ESTABLISHMENT IS NOT LICENSED BY THE DEPARTMENT AS A RETAIL SITE.
4. SHALL PROVIDE FOR PROPER DISPOSAL OF MARIJUANA REMNANTS OR BY-PRODUCTS. THE REMNANTS OR BY-PRODUCTS SHALL NOT TO BE

PLACED WITHIN THE FACILITY'S EXTERIOR REFUSE CONTAINERS, CITY TRASH CAN, BIN OR OTHER CITY FACILITY, OR IN ANY PARK REFUSE CONTAINER UNLESS AUTHORIZED BY THE CITY.

5. SHALL NOT EMIT DUST, FUMES, VAPORS OR ODORS INTO THE ENVIRONMENT FROM THE FACILITY AND SHALL ENSURE THAT VENTILATION, AIR FILTRATION, BUILDING AND DESIGN STANDARDS ARE COMPATIBLE WITH ADJACENT USES AND THE REQUIREMENTS OF ADOPTED BUILDING CODES OF CITY.
6. SHALL NOT DISPLAY OR KEEP MARIJUANA OR MARIJUANA PRODUCTS VISIBLE FROM OUTSIDE THE PREMISES TO PREVENT LOITERING.
7. SHALL COMPLY WITH APPLICABLE COUNTY HEALTH REGULATIONS FOR FOOD PREPARATION AND HANDLING.
8. SHALL COMPLY WITH APPLICABLE LAWS TO SAFELY AND SECURELY ENGAGE IN EXTRACTION PROCESSES.
9. SHALL SUBMIT A WRITTEN SECURITY PLAN TO THE CITY THAT DESCRIBES THE ACTIONS TAKEN TO DETER AND PREVENT UNAUTHORIZED ENTRANCE INTO LIMITED ACCESS AREAS INCLUDING USE OF SECURITY EQUIPMENT, EXTERIOR LIGHTING TO FACILITATE SURVEILLANCE, AND ELECTRONIC MONITORING SUCH AS VIDEO CAMERAS.
10. FOR A MARIJUANA ESTABLISHMENT THAT ENGAGES IN CULTIVATION OR MANUFACTURING, SHALL SUBMIT A WRITTEN OPERATIONS PLAN TO THE CITY THAT DESCRIBES THE FOLLOWING:
 - i. PROCEDURES SHOWING THAT THE MARIJUANA CULTIVATION WILL BE CONDUCTED IN ACCORDANCE WITH STATE AND LOCAL LAWS AND REGULATIONS REGARDING USE AND DISPOSAL OF PESTICIDES AND FERTILIZERS.
 - ii. THE LEGAL WATER SOURCE, IRRIGATION PLAN, WASTEWATER SYSTEMS TO BE USED, AND PROJECTED WATER USE.

- iii. THE PLAN FOR ADDRESSING ODOR AND OTHER PUBLIC NUISANCES THAT MAY DERIVE FROM THE ESTABLISHMENT.

Sec. 97.05 Marijuana Testing FACILITIES ~~Facility Prohibited~~ PERMITTED.

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

- A. IT SHALL BE UNLAWFUL FOR A PERSON TO OPERATE A MARIJUANA TESTING FACILITY AT ANY LOCATION WITHIN THE CITY WITHOUT OBTAINING A BUSINESS LICENSE FROM THE FINANCE DEPARTMENT IN ACCORDANCE WITH CITY CODE SECTION 110.01 ET SEQ., INCLUDING ANY APPLICATION AND REVIEW PROCEDURES PURSUANT TO CITY ZONING CODE SECTION 154.091 ET SEQ.
- B. IF AUTHORIZED BY STATE LAW AND A VALID BUSINESS LICENSE AND ZONING APPROVAL HAS BEEN OBTAINED FROM THE CITY, A MARIJUANA TESTING FACILITY IS PERMITTED TO OPERATE IN THE CITY SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:
 - 1. THE MARIJUANA TESTING FACILITY SHALL ENSURE THAT ACCESS TO THE AREA OF THE FACILITY WHERE MARIJUANA OR MARIJUANA PRODUCTS ARE BEING TESTED OR STORED FOR TESTING IS LIMITED TO A FACILITY'S OWNERS OR AUTHORIZED AGENTS.
 - 2. THE MARIJUANA TESTING FACILITY SHALL ENSURE THAT TRANSPORTATION OF MARIJUANA OR MARIJUANA PRODUCTS IS IN COMPLIANCE WITH APPLICABLE LAW.
 - 3. THE MARIJUANA TESTING FACILITY SHALL COMPLY WITH ALL TESTING PROCESSES, PROTOCOLS, STANDARDS, AND CRITERIA ADOPTED BY THE DEPARTMENT FOR TESTING MARIJUANA AND MARIJUANA PRODUCTS.
 - 4. THE MARIJUANA TESTING FACILITY SHALL MAINTAIN RECORDS, EQUIPMENT AND INSTRUMENTATION AS REQUIRED BY THE DEPARTMENT.

5. TESTING FACILITY SHALL COMPLY WITH ALL SECURITY PROTOCOLS REQUIRED BY THE DEPARTMENT.

Sec. 97.06 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 building 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 building 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-family dwelling unit, or beyond the boundaries of a single dwelling unit in a double- or multiple-family dwellings, condominiums, apartment buildings, or similar closely built dwelling 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 building 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. 97.07 Violations; Enforcement; Penalties.

- A. It is a violation of this Chapter 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 Chapter or state law, including the Department's rules.
- B. Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense.
- C. Except as otherwise provided in A.R.S. § 36-2853, any violation of this Chapter is punishable by a misdemeanor pursuant to Section 10.99 (A) of this code.
- D. 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.

- E. 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.

SEC. 97.08 RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS.

- A. TO THE FULLEST EXTENT ALLOWABLE BY LAW, THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS IS AUTHORIZED WITHIN THE CITY FROM A MARIJUANA ESTABLISHMENT AND IS TANGIBLE PERSONAL PROPERTY AS DEFINED IN A.R.S. § 42-5001 AND SUBJECT TO THE TRANSACTION PRIVILEGE TAX IN THE RETAIL CLASSIFICATION AND USE TAX.