

**ORDINANCE NO. 2021-03**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 6, POLICE REGULATIONS, BY ADOPTING A NEW CHAPTER 6-10, REGULATION OF RECREATIONAL MARIJUANA; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the “Smart and Safe Arizona Act,” certified as Proposition 207 (the “Act”), was passed by Arizona voters at the November 3, 2020 general election; and

WHEREAS, the Act 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 recreational use, (3) adults over age twenty-one to possess, transport, cultivate, or process marijuana plants in a primary residence, and (4) cities to enact regulations relating to marijuana including limitations on recreational marijuana retail establishments, marijuana testing facilities, and delivery of recreational marijuana; and

WHEREAS, the Flagstaff City Council 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 Flagstaff divisions to respond to violations of state and local laws, including building, electrical, and fire codes; and

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 medical marijuana dispensaries in Flagstaff according to a prescribed statutory and regulatory process; and

WHEREAS, in accordance with and as permitted by state law and codified rule, the City Council seeks to protect public health, safety, and welfare by adopting Chapter 6-10, Regulation of Recreational Marijuana.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. Flagstaff City Code Title 6, *Police Regulations*, Chapter 6-10, *Regulation of Recreational Marijuana*, is hereby created as a new chapter as follows:

**Chapter 6-10**

## SECTIONS:

6-10-001-0001:	PURPOSE
6-10-001-0002:	DEFINITIONS
6-10-001-0003:	MARIJUANA PROHIBITED ON PUBLIC PROPERTY
6-10-001-0004:	MARIJUANA ESTABLISHMENT PROHIBITED; EXCEPTION
6-10-001-0005:	CONSUMPTION OF MARIJUANA ON PRIVATE PROPERTY PROHIBITED WHEN NOTICE OF PROHIBITION PROVIDED
6-10-001-0006:	CONSUMPTION OF MARIJUANA IN TRANSPORTATION
6-10-001-0007:	HOME CULTIVATION
6-10-001-0008:	REFUSING TO PROVIDE TRUTHFUL NAME, DATE OF BIRTH, AND CURRENT ADDRESS WHEN LAWFULLY DETAINED
6-10-001-0009:	PENALTIES
6-10-001-0010:	ENFORCEMENT

**6-10-001-0001 PURPOSE**

This Chapter is adopted to protect the health, safety, and welfare of the general public. Except as allowed by law for personal use, the City of Flagstaff hereby enacts reasonable regulations and requires compliance with zoning laws for the retail sale, cultivation, and manufacturing of marijuana. 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.

**6-10-001-0002 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 of the City Code.

- (1) "City" means the City of Flagstaff, Arizona, a political subdivision of the State of Arizona.
- (2) "Consume," "Consuming," and "Consumption" mean the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (3) "Consumer" means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.
- (4) "Cultivate" and "Cultivation" mean to propagate, breed, grow, prepare, and package marijuana.
- (5) "Deliver" and "Delivery" mean the transportation, transfer, or provision of marijuana or marijuana products to a consumer at a location where the marijuana was cultivated, manufactured, processed, or sold.

- (6) “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.
- (7) “Manufactures” and “Manufacturing” mean to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
- (8) “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.
- (9) “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.
- (10) “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.
- (11) “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.
- (12) “Marijuana Testing Facility” means the Arizona Department of Health Services (ADHS) or other entity that is licensed by ADHS to analyze the potency of marijuana and test marijuana for harmful contaminants.

- (13) "Open Space" means a public park, public sidewalk, public walkway, or public pedestrian thoroughfare.
- (14) "Process" and "Processing" mean to harvest, dry, cure, trim, or separate parts of the marijuana plant.
- (15) "Public Place" has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.

#### **6-10-001-0003 MARIJUANA PROHIBITED ON PUBLIC PROPERTY**

It is unlawful for an individual to smoke, consume, use, sell, cultivate, manufacture, produce, transfer, or distribute marijuana or marijuana products on property that is occupied, owned, controlled, or operated by the City.

#### **6-10-001-0004 MARIJUANA ESTABLISHMENT PROHIBITED; EXCEPTION**

The operation of a marijuana establishment is prohibited in Flagstaff, except where authorized for a dual licensee that:

- (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.

#### **6-10-001-0005 CONSUMPTION OF MARIJUANA ON PRIVATE PROPERTY PROHIBITED WHEN NOTICE OF PROHIBITION PROVIDED**

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.

#### **6-10-001-0006 CONSUMPTION OF MARIJUANA IN TRANSPORTATION**

- (1) 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.
- (2) A person who violates this section is subject to the following penalties:
  - a. Individuals over the age of 21 are guilty of a petty offense.
  - b. Individuals under the age of 21 will be subject to progressive enforcement as follows:
    - i. First violation: civil penalty of not more than \$100.
    - ii. Second violation: guilty of a petty offense, and in the court's discretion may be ordered to attend up to eight hours of drug education or counseling.
    - iii. Third or subsequent violation: guilty of a class one misdemeanor.

**6-10-001-0007 HOME CULTIVATION**

- (1) It is unlawful for an individual to possess, transport, cultivate, or process more than six marijuana plants for personal use at the individual's residence. For residences where two or more individuals who are at least twenty-one years of age reside at one time, it is unlawful for the residents to possess, transport, cultivate, or process more than twelve marijuana plants at the residence.
- (2) A person who violates this section is subject to the following penalties:
  - a. Individuals over the age of 21 are guilty of a petty offense.
  - b. Individuals under the age of 21 will be subject to progressive enforcement as follows:
    - i. First violation: civil penalty of not more than \$100.
    - ii. Second violation: guilty of a petty offense, and in the court's discretion may be ordered to attend up to eight hours of drug education or counseling.
    - iii. Third or subsequent violation: guilty of a class one misdemeanor.

**6-10-001-0008 REFUSING TO PROVIDE TRUTHFUL NAME, DATE OF BIRTH, AND CURRENT ADDRESS WHEN LAWFULLY DETAINED**

- (1) It is unlawful for a person, after being advised that the person's refusal to answer is unlawful, to fail or refuse to state the person's true full name, date of birth, and current address on request of a peace officer who has lawfully detained the person based on reasonable suspicion that the person has committed a criminal or civil violation of this chapter or of A.R.S. § 36-2853. A person detained under this section shall state the person's true full name, date of birth, and current address, but shall not be compelled to answer any other inquiry of a peace officer.
- (2) A person who violates this section is guilty of a class 2 misdemeanor.

**6-10-001-0009 PENALTIES**

A violation of this Chapter is a petty offense and shall be adjudicated in the Flagstaff Municipal Court, unless a different penalty is specified in this Chapter.

**6-10-001-0010 ENFORCEMENT**

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

**SECTION 2. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 3. 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.

SECTION 4. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 5. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 16th day of March 2021.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY