

ORDINANCE NO. 2020-3

AN ORDINANCE OF THE BOARD OF SUPERVISORS, YAVAPAI COUNTY ARIZONA, RELATING TO THE REGULATION OF MEDICAL AND RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA USE ON PUBLIC PROPERTY; REGULATING MARIJUANA TESTING FACILITIES AND MARIJUANA ESTABLISHMENTS; ESTABLISHING REGULATIONS FOR MARIJUANA AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES OF MARIJUANA AND MARIJUANA PRODUCTS; 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 Yavapai County according to a prescribed statutory and regulatory process, and

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act" was certified as Proposition 207 and placed on the November 3, 2020 general election ballot and was approved by the voters of this state 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 age 21 years and 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, Yavapai County 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 County departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, Yavapai County seeks to protect public health, safety, and welfare by prohibiting marijuana testing facilities in the unincorporated areas of Yavapai County, and

WHEREAS, Yavapai County seeks to protect public health, safety, and welfare by enacting reasonable regulations on marijuana establishments in unincorporated areas of Yavapai County.

NOW THEREFORE, pursuant to A.R.S. §§ 11-251, 11-802, 11-815, 36-2806.01, and 36-2857, the Yavapai County Board of Supervisors adopts the following ordinance for the regulation of marijuana possession, consumption, sale, purchase, cultivation, processing, manufacturing and transporting marijuana within the unincorporated areas of Yavapai County, Arizona:

Section I. In General.

A. Purpose

This article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, Yavapai County enacts reasonable regulations and requires compliance with laws for the retail sale, cultivation and manufacturing of marijuana or marijuana products in a marijuana establishment or marijuana testing facility and the cultivation, processing and manufacturing of marijuana in a primary residence. Nothing in this Ordinance 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.

B. Definitions.

The below words and phrases, wherever used in this article, 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.

“*Chemical Extraction*” means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.

“*Chemical Synthesis*” means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.

“*County*” means Yavapai County, Arizona.

“*Consume*,” “*Consuming*,” and “*Consumption*” mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.

“*Consumer*” means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.

“*Cultivate*” and “*Cultivation*” mean to propagate, breed, grow, prepare, and package marijuana.

“*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.

“*Department*” means the State of Arizona Department of Health Services or its successor agency.

“*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.

“*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, and
2. Is secure against unauthorized entry, and
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.

“*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.

“*Manufacture*” and “*Manufacturing*” mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

“*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; and includes *cannabis* as defined in A.R.S. § 13-3401; but 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.

“Marijuana Concentrate” means:

1. 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.

“Marijuana Establishment” means an entity licensed by the Department to operate any 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 and marijuana products which may not be transferred or sold to consumers.
3. A single off-site location at which the licensee may manufacture marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.

“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.

“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.

“Nonprofit Medical Marijuana Dispensary” means a nonprofit entity as defined in A.R.S. § 36-2801(12).

“Open Space” means a public park, public sidewalk, public walkway, or public pedestrian thoroughfare.

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

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

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

“Public Property” means property that is occupied, owned, controlled, or operated by the County.

“Smoke” means to inhale, exhale, burn, carry, or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

C. Marijuana Prohibited on Public Property.

1. The use, sale, cultivation, manufacture, production or distribution of marijuana or marijuana products is prohibited on public property.
2. It is unlawful for an individual to smoke or consume marijuana or marijuana products on public property, in a public place, or open space in the unincorporated areas of the County.

D. Marijuana Establishment Prohibited; Dual Licensee Exception.

1. To the fullest extent allowable by law, the operation of a marijuana establishment within the unincorporated areas of Yavapai County is prohibited, except where authorized for a dual licensee that:
 - a. Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
 - b. The addition of the marijuana establishment operation has increased the total operation of the dual licensee by no more than 125% of the square footage of the solely nonprofit operation.
 - c. Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.
2. Marijuana establishments must comply with the following:
 - a. Marijuana establishments that sell marijuana to the public are restricted to Yavapai County zoning districts C1, C2, C3, PM, M1, or M2.
 - b. Marijuana establishments that cultivate, manufacture, or extract marijuana are restricted to Yavapai County zoning districts PM, M1, or M2.
 - c. Marijuana establishments shall not be located within 500 feet of a residentially zoned property. This distance shall be measured from the lot line of the property in which the business is conducted or proposed to be conducted to the lot line of the residentially zoned property. Marijuana establishment locations that are licensed as dual licensees and that were licensed and operating as a nonprofit medical marijuana dispensary pursuant to A.R.S. § 36-2801 et. seq. as of the effective date of this ordinance, shall be exempt from the limitation in this paragraph.

d. Marijuana establishments shall not be located within 1000 feet of a preschool, kindergarten, elementary, secondary school, high school, place of worship, public park, or community center. This distance shall be measured from the lot line of the property in which the business is conducted or proposed to be conducted to the lot line of the protected use. Marijuana establishment locations that are licensed as dual licensees and that were licensed and operating as a nonprofit medical marijuana dispensary pursuant to A.R.S. § 36-2801 et. seq. as of the effective date of this ordinance shall be exempt from the limitation in this paragraph.

e. Marijuana establishments shall be in a permanent building, be permanently secured to an established foundation, shall adhere to County building and safety codes, and shall not include any temporary, portable, or self-powered mobile facilities, or any trailer, cargo container or motor vehicle.

f. Marijuana establishments shall have operating hours not earlier than 8 a.m. and not later than 8 p.m.

g. Marijuana establishments shall not provide drive-thru services or offsite deliveries of marijuana or marijuana products.

h. Marijuana establishments shall not allow a person to consume marijuana or marijuana products on the premises or provide outdoor seating areas for the public.

i. Marijuana establishments shall provide for proper and secure disposal of marijuana, marijuana remnants or by-products discarded by the establishment. All marijuana, marijuana remnants, and marijuana by-products shall be disposed of in a manner that renders them unusable.

j. Marijuana establishments shall not emit dust, fumes, vapors, or odors into the environment. Prior to conducting business, marijuana establishments shall submit an odor control plan to the Yavapai County Development Services Department.

k. Marijuana establishments shall ensure that ventilation, air filtration, building, safety, and design standards are compatible with adjacent uses and shall comply with the requirements of building and safety codes of the County. On written notice of at least 24 hours, the Yavapai County Development Services Department may conduct reasonable inspections of marijuana establishments to ensure compliance with county building, safety, and odor control plans.

l. Marijuana establishments shall not sell marijuana or marijuana products except as permitted by state law.

m. Marijuana establishments shall not display or keep marijuana or marijuana products that are visible from outside the premises.

n. Marijuana establishments shall comply with applicable county health regulations for food preparation and handling.

o. Marijuana establishments shall fully comply with laws and regulations applicable to safe and secure extraction.

p. Marijuana establishments shall submit a written security plan to the Yavapai County Sheriff that describes the plans and actions implemented 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. On written notice of at least 24 hours, the Yavapai County Sheriff may conduct reasonable inspections of marijuana establishments to ensure compliance with the written security plan.

E. Marijuana Testing Facilities.

The operation of a marijuana testing facility is restricted to Yavapai County zoning districts C1, C2, C3, PM, M1, and M2.

F. Marijuana Cultivation Facility Prohibited

Except as provided in Sec. D. or Sec. H. of this Ordinance, to the fullest extent allowable by law, the operation of a cultivation location at which the licensee cultivates marijuana, processes marijuana and manufactures marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers, is prohibited in the unincorporated areas of the County.

G. Marijuana Product Manufacturing Facility Prohibited

Except as provided in Sec. D. or Sec. H., to the fullest extent provided by law, the operation of a manufacturing location at which the licensee manufactures marijuana products and packages and stores marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers, is prohibited in the unincorporated areas of the County.

H. Individual's Primary Residence for Personal Use

To the fullest extent allowable by law, an individual is permitted to possess consume, process, manufacture, transport, and cultivate marijuana in a residential zoning district within the unincorporated areas of the County, 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 at the individuals' primary residence.
3. Except as provided by A.R.S. § 36-2801 et al. (the Arizona Medical Marijuana Act [2010] and the Smart and Safe Arizona Act [2020]) and this Section, it shall be unlawful for an individual to otherwise cultivate marijuana in a residential zoning district within the unincorporated areas of the County.
4. Processing or manufacturing marijuana by means of any liquid or gas other than alcohol that has a flashpoint below one hundred (100) degrees Fahrenheit is prohibited within the unincorporated areas of the County.
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 any marijuana processing, manufacturing, or cultivation activities comply with applicable electrical, plumbing and other building codes, have adequate ventilation and air filtration, and that the building and design standards are compatible with adjacent uses.
7. Cultivation shall be limited to a closet, room, greenhouse, or other enclosed area on the grounds of the residence that is: (1) properly modified to safely accommodate the size and manner of cultivation, and (2) 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.

I. Retail Sales of Marijuana and Marijuana Products.

To the fullest extent allowable by law, the sale of marijuana and marijuana products is authorized within the County 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.

J. Violations.

1. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture or transport marijuana or marijuana products if the

person fails to meet all the requirements in this article or state law, the Department's rules, or Yavapai County building, safety, signage, or design codes.

2. It is a violation of this article for any person to provide false information on any permit application.
3. Each day any violation of any provision of this article shall continue shall constitute a separate offense.
4. The remedies provided in this Ordinance 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.

K. Enforcement; Penalties.

1. Pursuant to A.R.S. § 11-251.05 violations of this Ordinance constitute Class 1 misdemeanors. Each day during which the illegal activity, erection, construction, reconstruction, alteration, maintenance, or use continues is a separate offense. Violations of this Ordinance are in addition to any other violation enumerated within County ordinances and in no way limits the penalties, actions or abatement procedures which may be taken by the County for any violation of this article which is also a violation of any other ordinance of the County or federal or state law. Conviction and punishment of judgment or civil sanction against any person under this article 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.

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 Ordinance adopted herein by reference, are hereby repealed.

Section III. Recitals.

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

Section IV. Zoning Considerations.

In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the Yavapai County Board of Supervisors has considered the individual property rights and personal liberties of the residents of the County before adopting this ordinance.

Section V. Emergency.

Because of the urgent need for the implementation of the County'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 Board of Supervisors as required by law.

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. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Ordinance 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 Board of Supervisors, Yavapai County, Arizona this 16th day of December 2020.

/s/ Craig L. Brown
Craig L. Brown, Chairman

ATTEST:

APPROVED AS TO FORM:

/s/ Kim Kapin
Kim Kapin, Clerk of the Board

/s/ Martin Brennan
Martin Brennan, Deputy County Attorney