

ORDINANCE NO. 21-02

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, ADOPTING “CHAPTER 8.40, RECREATIONAL MARIJUANA” BY REFERENCE TO AMEND THE MARICOPA CITY CODE BY ADDING CHAPTER 8.40 RELATING TO THE REGULATION OF 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 DECLARING AN EMERGENCY.

WHEREAS, that certain document known as “Chapter 8.40, Recreational Marijuana” was adopted as a public record by Resolution No. 21-05 on February 16, 2021; 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 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 Mayor and City Council of the City of Maricopa believe, after consultation with its staff, that adding Chapter 8.40 to establish rules and regulations related to recreational marijuana within the City of Maricopa would be in the best interest of the City of Maricopa; and

WHEREAS, A.R.S. §9-802 allows a City to adopt a public record by Ordinance as a means to reduce publication costs while ensuring that the public gets fair notice and opportunity to review its operative provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, AS FOLLOWS:

SECTION 1. Pursuant to A.R.S. §9-802, that certain document known as “Chapter 8.40, Recreational Marijuana”, electronic copies of which are on file in the office of the City Clerk of the City of Maricopa, Arizona, which document was made a public record by Resolution 21-XX of the City of Maricopa, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 2. Chapter 8.40 is hereby added to the Maricopa City Code as set forth in “Chapter 8.40, Recreational Marijuana” which was made a public record by Resolution No. 21-05 of the City of Maricopa, Arizona.

SECTION 3. The following penalty provision is included in that certain document known as “Chapter 8.40, Recreational Marijuana”:

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.

SECTION 4. To the extent of any conflict between other City Ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing City Ordinance, Resolution or regulation except as expressly set forth herein.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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 6. The immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this ordinance shall become immediately effective upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 16th day of February, 2021.

APPROVED:

Christian Price
Mayor

ATTEST:

Vanessa Bueras, CMC
City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons
City Attorney