

ORDINANCE O-21-08

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING THE ZONING CODE OF THE CITY OF BISBEE, ADDING ARTICLE 10B, RECREATIONAL MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR 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.*;

WHEREAS, the Arizona Medical Marijuana Act, 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 of Bisbee (City) according to a prescribed statutory and regulatory process;

WHEREAS, the State of Arizona has recently adopted legislation, known as the “Smart and Safe Arizona Act,” which authorizes the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least 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 recreational 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 recreational marijuana testing facility to test the potency of marijuana and detect any harmful contaminants; and

WHEREAS, pursuant to this law, the City of Bisbee is authorized to enact reasonable zoning regulations that specifically limit the use of land within this jurisdiction to specific areas for these establishments and facilities; and

WHEREAS, the Planning and Zoning Commission held a public meeting and solicited public comment to determine the appropriate scope of any such regulations; and

WHEREAS, the Planning and Zoning Commission has recommended the approval of these amendments to the Zoning Code, by a vote of 7 in favor and 0 opposed, following the Public Hearing held on February 25, 2021; and

WHEREAS, the Mayor and Council have the authority to adopt amendments to the Zoning Code, as necessary to protect the health, safety and general welfare of the citizens of this community; and

WHEREAS, the proposed amendments will provide a reasonable means to regulate the location of any recreational marijuana establishments and testing facilities, while also providing a means to protect the public from any inappropriate development of any such facility; and

NOW, THEREFORE, BE IT ORDAINED, BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AS FOLLOWS:

SECTION 1: THAT THE ZONING CODE OF THE CITY OF BISBEE IS HEREBY AMENDED BY THE ADDITION OF THE FOLLOWING ARTICLE 10B, RECREATIONAL MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES:

ARTICLE 10A RECREATIONAL MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES

10B.1 Purpose

Marijuana in any form, including medical and recreational marijuana, is illegal under federal law pursuant to the Controlled Substances Act (21 U.S.C §811). However, under Arizona State law, Proposition 207, passed by the voters in 2020 allows for the use of recreational marijuana in the State of Arizona. This change in state law means that it is possible that recreational marijuana dispensaries could be operating in the City of Bisbee. The City has a duty to ensure that the dispensaries are located and operated in a manner that least harms the health, safety and general welfare of its citizens. This section is adopted to protect the health, safety, and welfare of the residents of the general public. Nothing in this Section is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, or use of recreational marijuana or recreational marijuana products in violation of any applicable law.

10B.2 Definitions

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. **CONSUME and CONSUMPTION.** Mean the act of ingesting, inhaling, or otherwise introducing recreational marijuana into the human body.
- B. **CONSUMER.** Means a person who purchases recreational marijuana for personal use, who is at least twenty-one years of age, and who purchases recreational marijuana in accordance with the Smart and Safe Arizona Act.
- C. **CULTIVATE and CULTIVATION.** Mean to propagate, breed, grow, prepare, and package recreational marijuana.

D. **DEPARTMENT.** Means the State of Arizona Department of Health Services or its successor agency.

E. **DUAL LICENSEE.** Means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.

F. **OPEN SPACE.** For purposes of Articles 10A and 10B, means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

G. **PROCESS and PROCESSING.** For purposes of Articles 10A and 10B, means to harvest, dry, cure, trim or separate parts of the marijuana plant.

H. **PUBLIC PLACE.** Has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36.601.01.

I. **RECREATIONAL 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.

J. **RECREATIONAL 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.

K. **RECREATIONAL 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 recreational marijuana and recreational marijuana products to consumers.

cultivate recreational marijuana and manufacture recreational marijuana products.

2. A single off-site cultivation location at which the licensee may cultivate recreational marijuana, process recreational marijuana and manufacture recreational marijuana products, but from which recreational marijuana and recreational marijuana products may not be transferred or sold to consumers.

3. A single off-site location at which the licensee may manufacture recreational marijuana products and package and store recreational marijuana and recreational marijuana products, but from which recreational marijuana and recreational marijuana products may not be transferred or sold to consumers.

L. RECREATIONAL MARIJUANA PRODUCTS. Means recreational marijuana concentrate and products that are composed of recreational marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.

M. RECREATIONAL 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.

N. SMOKE. For purposes of this Article 10B means to inhale, exhale, burn, carry or possess any lighted recreational marijuana or lighted recreational marijuana products, whether natural or synthetic.

10B.3 Location Restrictions and Operating Provisions for Recreational Marijuana Establishments, Recreational Marijuana Testing Facilities.

Recreational Marijuana Establishments, Recreational Marijuana Testing Facilities, Cultivation and dispensing are subject to the following location restrictions and provisions:

A. Recreational Marijuana Establishments. Recreational Marijuana Establishments shall only be located within C1, C2, C3, C4 and M1 zoning districts within this City and are subject to the Special Use Permit process as established in this Zoning Code. Any such Recreational Marijuana Establishment, or any component of such Establishment, may only be authorized upon the approval of a Special Use Permit for such use, within one of the designated districts, subject to the terms and conditions as the Mayor and Council may impose on such use. In the event that transactions and operations authorized by the State of Arizona for Recreational Marijuana Establishments are to be conducted at more than one contiguous location, the applicant shall obtain a separate Special Use Permit for each such location.

B. *Recreational Marijuana Testing Facility.* Recreational Marijuana Testing Facilities shall only be located within M3 zoning districts within this City and are subject to the Special Use Permit process as established in this Zoning Code. Any such Testing Facility, or any component of such Facility, may only be authorized upon the approval of a Special Use Permit for such use, within one of the designated districts, subject to the terms and conditions as the Mayor and Council may impose on such use. In the event that operations authorized by the State of Arizona for Recreational Marijuana Testing Facilities are to be conducted at more than one contiguous location, the applicant shall obtain a separate Special Use Permit for each such location.

C. *Application for and Approval of the Special Use Permit.* Application and approval of Special Use Permits shall be regulated in the same manner as Registered Nonprofit Medical Marijuana Dispensaries as set forth in Article 10A.3.

D. *Operations; Sale of Marijuana and Marijuana Products.*

1. Recreational Marijuana Establishments permitted above shall be regulated in the same manner as Medical Marijuana Dispensaries as set forth in Article 10A.

2. The fee for a permit for a Recreational Marijuana Establishment or a Recreational Marijuana Testing Facilities shall be established by resolution of the City Council.

3. The sale of Recreational Marijuana and Recreational Marijuana Products 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.

E. *Public Places.*

1. The use, sale, cultivation, manufacture, production or distribution of Recreational Marijuana or Recreational Marijuana Products is prohibited on property that is occupied, owned, controlled, or operated by the City.

2. The use, sale, cultivation, manufacture, production, or distribution of Recreational Marijuana or Recreational Marijuana Products is prohibited on property that is occupied, owned, controlled, or operated by the State or a political subdivision of this State that has adopted rules, regulations, or policies prohibiting the use, sale, cultivation, manufacture, production, or distribution of Recreational

Marijuana or Recreational Marijuana Products on its property.

3. It is unlawful for an individual to smoke Recreational Marijuana in a Public Place or Open Space in the City.

10B.4 Location Restrictions and Operating Provisions for Primary Residence for Personal Use.

- A. To the extent allowable by law, Recreational Marijuana Possession, Consumption, Processing, Manufacturing, Transportation, and Cultivation is permitted in a residential zoning district in the City for personal use only and is subject to the following conditions and limitations:
 1. It shall be unlawful for any individual who is at least 21 years of age to possess, transport, cultivate, or process more than six (6) Recreational Marijuana plants.
 2. It shall be unlawful for two or more individuals who are at least 21 years of age to possess, transport, cultivate or process more than 12 Recreational Marijuana plants at the individuals' primary residence.
 3. Except as provided by this Section and the Smart and Safe Arizona Act, it shall be unlawful for an individual to cultivate Recreational Marijuana in a residential zoning district within the city limits.
 4. Individuals shall not process or manufacture Recreational Marijuana by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.
 5. Kitchen, bathrooms, and primary bedroom(s) shall be used for their intended use and shall not be used primarily for Residential Recreational Marijuana Processing, Manufacturing, or Cultivation.
 6. A residence shall not emit dust, fumes, vapors, or odors into the environment and individuals shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes of the town.
 7. Cultivation shall be limited to a closet, room, greenhouse, or other enclosed area on the grounds of the residence equipped with a lock or other security device that prevents access by minors.

8. Cultivation shall take place in an area where the Recreational Marijuana plants are not visible from public view without using binoculars, aircraft, or other optical aids.

10B.5 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article 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.

10B.6 Enforcement; Penalties.

- A. Except as otherwise provided in A.R.S. § 36-2853, violation of any provision of this Article is a class 1 misdemeanor and shall be punished as provided pursuant to Article 1.4 of this Code.
- B. Violations of this Article are in addition to any other violation enumerated within the City Charter, City Code and Zoning Code and in no way limit the penalties, actions, or abatement procedures which may be taken by the City for any violation of this Article, which is also a violation of any other ordinance or code provision of the City or federal or state law. Conviction and punishment or judgment 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.
- C. Recreational Marijuana Establishment and Recreational Marijuana Testing Facility Special Use Permits may be revoked by the City for violation of any provision of this Article, for any violation of the requirements of the permit, or if the Department revokes the license for a Recreational Marijuana Establishment or a Recreational Marijuana Testing Facility.

SECTION 2: All ordinances and parts of ordinances in conflict with this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

SECTION 3: 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 a court of competent jurisdiction, such decision shall not affect the validity of remaining portions.

SECTION 4: Violations of this Ordinance are subject to the following penalties:

- A. Except as otherwise provided in A.R.S. § 36-2853, violation of any provision of this Article is a class 1 misdemeanor and shall be punished as provided pursuant to Article 1.4 of this Code.

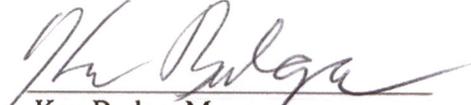
B. Violations of this Article are in addition to any other violation enumerated within the City Charter, City Code and Zoning Code and in no way limit the penalties, actions, or abatement procedures which may be taken by the City for any violation of this Article, which is also a violation of any other ordinance or code provision of the City or federal or state law. Conviction and punishment or judgment 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.

C. Recreational Marijuana Establishment and Recreational Marijuana Testing Facility Special Use Permits may be revoked by the City for violation of any provision of this Article, for any violation of the requirements of the permit, or if the Department revokes the license for a Recreational Marijuana Establishment or a Recreational Marijuana Testing Facility.

SECTION 5: In accordance with Article 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.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee, this 6th day of April, 2021.

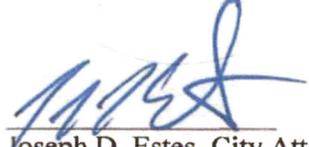
APPROVED:


Ken Budge, Mayor

ATTEST:


Ashlee Coronado, City Clerk

APPROVED AS TO FORM:


Joseph D. Estes, City Attorney
Gust Rosenfeld, P.L.C.