

ORDINANCE NO. O2020-026

AN ORDINANCE OF THE COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING THE YUMA CITY CODE BY ADOPTING A NEW TITLE 13, CHAPTER 140 RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; REGULATING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ESTABLISHING RESIDENTIAL REGULATIONS FOR RECREATIONAL MARIJUANA; AUTHORIZING RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS; IMPOSING FEES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES

WHEREAS, marijuana contains tetrahydrocannabinol (“THC”), which remains classified as a Schedule I substance under 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 seq.*, and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of medical marijuana dispensaries in the City of Yuma according to a prescribed statutory and regulatory process; and

WHEREAS, the statewide ballot measure I-23-2020, known as “Smart and Safe Arizona Act” or Proposition 207 was approved by Arizona voters during the November 3, 2020 general election; and

WHEREAS Proposition 207 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 of older; allowing a 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 of Health Services, or another entity designated by the Department of Health Services, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants; and

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

WHEREAS, the City Council of the City of Yuma seeks to protect public health, safety, and welfare by enacting reasonable regulations to limit new marijuana establishments and/or marijuana testing facilities in the City of Yuma.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: In General. The Yuma City Code (YCC) is amended by adding a new Chapter 140. Recreational Marijuana to Title 13: Health and Safety consisting of Sections 140-01 through 140-12 and to read as follows:

Chapter 140 Recreational Marijuana

Sec. 140-01	Purpose
Sec. 140-02	Definitions
Sec. 140-03	Marijuana Prohibited on Public Property
Sec. 140-04	Marijuana Establishment Prohibited; Dual License Exception
Sec. 140-05	Marijuana Testing Facility Prohibited
Sec. 140-06	Marijuana Establishments Permitted; Non-Residential
Sec. 140-07	Marijuana Permitted Residential
Sec. 140-08	Marijuana Prohibited
Sec. 140-09	Retail Sales from Marijuana and Marijuana Products
Sec. 140-10	Fees
Sec. 140-11	Violations
Sec. 140-12	Enforcement Penalties

Sec. 140-01. Purpose.

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use and in accordance with all health and safety and zoning laws and ordinances, the City of Yuma prohibits the retail sale, cultivation, and manufacturing of marijuana or marijuana products in a marijuana establishment or marijuana testing facility in the City of Yuma. Nothing in this chapter 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.

Sec. 140-02. 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. “*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.
- G. “*Department*” means the State of Arizona Department of Health Services or its successor agency.
- H. “*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- I. “*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;
 2. Is secure against unauthorized entry;
 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.
- J. “*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.
- K. “*Manufacture*” and “*Manufacturing*” mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- L. “*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.

- M. “*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.
- N. “*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.
- O. “*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.
- P. “*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.
- Q. “*Nonprofit Medical Marijuana Dispensary*” means a non-profit entity as defined in A.R.S. § 36-2801(12).
- R. “*Open Space*” means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- S. “*Person*” means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- T. “*Process*” and “*Processing*” means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- U. “*Public Place*” has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- V. “*Smoke or Smoking*” means inhaling, exhaling, burning, or carrying or possessing any lighted marijuana product, including cigars, cigarettes, pipe marijuana or any other lighted marijuana product, whether natural or synthetic.
- W. “*Sports Facilities*” has the same meaning as prescribed in the Smoke-Free Arizona Act, A.S.S. §36-601.01

Sec. 140-03. Marijuana Prohibited on Public Property.

- A. The use, sale, cultivation, manufacture, production or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the City.
- B. The use, sale, cultivation, manufacture, production or distribution of marijuana or 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 marijuana or marijuana products on its property.
- C. It is unlawful for an individual to smoke, mechanically or electronically heat or vape, or otherwise use marijuana in a public place, sports facility or open space in the City.
- D. Violation of this section shall be a Petty Offense.

Sec. 140-04. Marijuana Establishment Prohibited; 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.
- B. To the fullest extent allowable by law, the operation of a Marijuana Establishment consisting of an offsite cultivation facility is prohibited in the City, except where authorized for:
 - 1. A single cultivation facility for a Nonprofit Medical Marijuana Dispensary owned or controlled by a licensee holding a license in good standing from the Department for a Medical Marijuana facility.
 - 2. A single cultivation facility for a retail Marijuana Establishment owned or controlled by a licensee holding a license in good standing from the Department for a Retail Marijuana Establishment.
- C. If a licensee has surrendered, terminated or forfeited their license for a Nonprofit Medical Marijuana Dispensary or a retail Marijuana Establishment, their permit for the cultivation facility shall automatically terminate upon action by the Department.

Sec. 140-05. Marijuana Testing Facility Prohibited.

To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in the City of Yuma. This prohibition does not apply to marijuana testing facilities operated by the federal government and its agencies, the State of Arizona and its agencies and political subdivisions, or by public or private universities or colleges engaged in research. This prohibition shall supersede any Yuma City Code provision in conflict with this Section to the extent of the conflict.

Sec. 140-06. Marijuana Establishments Permitted; Nonresidential.

- A. It shall be unlawful for a person to operate a marijuana establishment at any location within the City of Yuma without obtaining a Nonprofit Medical Marijuana Dispensary and a Marijuana Establishment permit from the City in accordance with Title 7 and Title 15 of the Yuma City Code, including any application and review procedures.
- B. If authorized by state law and a valid permit has been obtained from the City, a marijuana establishment is permitted in the City subject to the following conditions and limitations:
 - 1. To the fullest extent allowable by law, shall be authorized for a Dual Licensee who operates both a Nonprofit Medical Marijuana Dispensary and Marijuana Establishment cooperatively in a shared location and has not forfeited or terminated the Nonprofit Medical Marijuana Dispensary registration from the Department.
 - 2. Shall meet the business regulations and zoning requirements contained in Title 7 and Title 15 of the Yuma City Code.
 - 3. Shall be located in a permanent building on an established foundation adhering to City building codes and shall not include any temporary, portable or self-powered mobile facilities, or trailer, cargo container or motor vehicle.
 - 4. Shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m.
 - 5. Shall not provide drive-thru services.
 - 6. Shall not provide offsite deliveries of marijuana or marijuana products unless specifically authorized by the Department.
 - 7. Shall not allow a person to smoke or consume marijuana or marijuana products on the premises or provide outdoor seating areas.
 - 8. Shall provide for proper disposal of marijuana remnants or by-products. The remnants or by-products shall not be identified as marijuana remnants in any trash bag or refuse container.
 - 9. 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 the City.
 - 10. Shall not sell marijuana or marijuana products, except as permitted by state law to consumers.
 - 11. Shall not display or keep marijuana or marijuana products that are visible from outside the premises.
 - 12. Shall comply with applicable county health regulations for food preparation and handling.
 - 13. Shall comply with applicable laws to safely and securely engage in extraction processes.
 - 14. 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.
 - 15. 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. The facility may be required to enter into a separate water service

agreement with the City if the facility is determined by the City to be a significant water user.

- iii. The plan for addressing odor and other public nuisances that may derive from the establishment.

Sec. 140-07. Marijuana; Residential.

- A. To the fullest extent allowable by law, personal marijuana possession, consumption, transportation, and cultivation is permitted in a residential zoning district set forth in Title 15 of the Yuma City Code, including but not limited to any mixed use or planned development districts that permit residential development in the City. Marijuana possession, consumption, transportation and cultivation is permitted 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.* and this Section, it shall be unlawful for an individual to otherwise cultivate marijuana in a residential zoning district within the City limits.
 4. Individuals shall not process or manufacture marijuana by means of any liquid or gas other than alcohol, that has a flashpoint below one hundred (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 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 City. It shall be a violation of this article for a residence to unreasonably emit dust, fumes, vapor or odors from the possession, consumption, transportation and cultivation that prevent adjacent property owners from the reasonable enjoyment of their property or to violate the terms of any odor control plan approved by the City.
 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 marijuana plants are not visible from public view without using binoculars, aircraft, or other optical aids.

Sec. 140-08. Marijuana Prohibited.

- A. Marijuana products are prohibited on school grounds, inside school buildings, in school parking lots or playing fields, in school buses or vehicles. For purposes of this subsection, "school" means any public, charter or private school where children attend classes in kindergarten programs or grades one through twelve.
- B. Subsection A of this section does not apply to an adult who employs Marijuana products as a necessary component of a school sanctioned Drug Education Program.
- C. Smoking is prohibited in all Private residences when used as a licensed child care, adult day care, group home or facility, or health care facility or any other premises receiving a license or certification through Arizona Department of Economic Security or the Arizona Department of Health Services, except when authorized by the Department.

- D. It is prohibited for any retail establishment in the City holding a business license and having a license from Yuma County to serve food for retail sale and consumption on the premises to permit individuals to bring Marijuana products onto such premises for consumption by themselves or others.

Sec. 140-09. Retail Sales from Marijuana and Marijuana Products.

To the fullest extent allowable by law, the sale of marijuana and marijuana products is authorized within the City from a marijuana establishment 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.

Sec. 140-10. Fees.

The initial permit/license fee for a Marijuana Establishment is \$500.00 and the annual renewal fee for a Marijuana Establishment business license is \$250.00. A Dual Dispensary/Marijuana establishment shall pay a permit fee for the establishment and a separate permit fee for the dispensary. At such time as the City Council adjusts other fees of the City by resolution, these fees may be adjusted in such resolution.

Sec. 140-11. Violations.

- A. 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, including the Department's rules.
- B. It is a violation of this article for any person to provide false information on any permit application.
- C. Each day any violation of any provision of this article shall continue shall constitute a separate offense.

Sec. 140-12. Enforcement; Penalties.

- A. The Dispensary and/or Establishment permit may be revoked by the City for violation of any provision of this Ordinance, for any violation of the requirements of the permit, or if the Department revokes the license for a marijuana establishment facility.
- B. If a permit is revoked, the permittee shall have the right to appeal the decision of the City finding a violation of this Ordinance or the City Code:
 - 1. Within five (5) working days of receiving notice of revocation of the Dispensary and/or Establishment permit, the respondent licensee may provide to the Director of the Department of Community Development, in writing, a response that shall include a statement of reasons why the license or permit should not be revoked.
 - 2. Within ten (10) working days the Director of the Department of Community Development shall conduct a hearing at which respondent licensee shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Director of the Department of

Community Development in the time stated or, if after the hearing, the Director of the Department of Community Development finds that grounds as specified in this chapter exist for revocation, the revocation shall become final five (5) days after the City Administrator sends, by certified mail, written notice that the license has been revoked. Such notice shall include a statement advising the respondent licensee of the right to appeal such decision to a court of competent jurisdiction.

3. If the Director of the Department of Community Development finds that no grounds exist for revocation of a license, then within five (5) days after the hearing, the Director of the Department of Community Development shall withdraw the intent to revoke the license, and shall so notify the respondent licensee in writing by certified mail of such action and shall contemporaneously issue/reinstate the license.
4. When a decision to revoke a license becomes final, the respondent licensee whose license has been revoked, shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the revocation, the City shall immediately issue the respondent licensee a provisional license. The provisional license shall allow the respondent licensee to continue operation of the Dispensary and/or Establishment as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement.

C. Violations of this article 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 article, 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 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.

D. Violations of any provision of the provisions of proposed A.R.S. § 36-2850 *et seq.* shall be punished as set forth in the statute.

SECTION 2: 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 Yuma City Code adopted herein by reference, are hereby repealed.

SECTION 3: Recitals. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 4: Effective Date. This Ordinance does not become effective unless the Smart and Safety Act (Proposition 207) becomes law when approved by a majority of the votes cast at the November 3, 2020 general election and on proclamation of the Governor of the State of Arizona. Upon the Governor's proclamation, the effective date of this Ordinance shall be thirty (30) days following adoption by the City Council.

SECTION 5: Zoning Considerations. 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.

SECTION 6: 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 7: Providing for Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Yuma City 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.

ADOPTED this _____ day of _____, 2020

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney