



OFFICE OF THE
MAYOR
CITY OF SOMERTON

Ordinance

No. 2021-003

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SOMERTON, AMENDING THE SOMERTON CITY CODE, ARTICLE 2-7-1, CITY OF SOMERTON ZONING AND SUBDIVISION ORDINANCE, BY AMENDING SECTION 3.1.5.M MEDICAL MARIJUANA DISPENSARY, CULTIVATION SITE, AND REPLACING IT WITH A NEW SECTION ENTITLED “SECTION 3.1.5 M; MEDICAL MARIJUANA, MARIJUANA ESTABLISHMENT, CULTIVATION AND TESTING FACILITIES;” AMENDING TABLES OF ALLOWED USES; AMENDING THE SOMERTON INFILL INCENTIVE OVERLAY PLAN “ENTERTAINMENT DISTRICT TABLE OF USES;” AMENDING ARTICLE 10-1-19, “RESERVED”; ESTABLISHING ARTICLE 8-2-4 “RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS;” PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City of Somerton City Council adopted Ordinance No. 2015-002, CITY OF SOMERTON ZONING AND SUBDIVISION ORDINANCE, and Article 2-7-1 on March 3, 2015; and,

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes § 36-2801 and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of nonprofit medical marijuana dispensaries and cultivation sites in the City of Somerton (“City”) according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as the “Smart and Safe Arizona Act” was certified by Proposition 207 and placed on the November 3, 2020 general election ballot, where it was approved by a majority of the votes cast at the November 3, 2020 general election;

WHEREAS, the recreational use and retail sale of marijuana has been authorized by the majority of votes cast at the November 3, 2020 general election both by statewide voters and City of Somerton voters;

WHEREAS, the City finds that Proposition 207 authorizes marijuana establishments and testing facilities 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, plumbing, and fire codes;

WHEREAS, these changes are in accordance with Article II, Sections 1 and 2 of the Constitution of Arizona.

WHEREAS, the City seeks to protect the public health, safety, and welfare of the City of Somerton and has considered the individual property rights and personal liberties of the City residents before adopting this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Somerton, Arizona as follows:

Section 1: That the Somerton City Code, Article 2-7-1, SOMERTON ZONING AND SUBDIVISION ORDINANCE, “**SECTION 3.1.5 M; MEDICAL MARIJUANA DISPENSARY, CULTIVATION SITE**” will be amended as follows:

M. MEDICAL MARIJUANA, MARIJUANA ESTABLISHMENT, CULTIVATION AND TESTING FACILITIES

1. **Purpose:** The City has a duty to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use. The City enacts reasonable regulations and requires compliance with zoning laws for the retail sale, cultivation and manufacturing of marijuana or marijuana products in a marijuana establishment, the cultivation, processing and manufacturing of marijuana in a primary residence and in the regulation of marijuana testing facilities. Nothing in this ordinance 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 applicable law.

2. **Definitions:**
Medical Marijuana and Marijuana Establishments shall include the following terms as identified in the ARS §36-2801 and ARS § 36-2850.

Non-Profit Medical Marijuana Dispensary - a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders.

Marijuana Establishment:

(I) A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.

(ii) 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.

(iii) 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.

City – means the City of Somerton, Arizona.

Consume, Consuming and Consumption – means 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 or Cultivations – means to propagate, breed, grow, prepare, and package marijuana.

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.

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 or Manufacturing – means 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. Includes cannabis as defined in ARS § 13-3401. 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 resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt, derivative, mixture, or preparation of the resin or tetrahydrocannabinol. 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 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.

Open Space – means a public park, public sidewalk, public walkway, public trail, preserve, public pedestrian thoroughfare, or public rights-of-way.

Public Place – has the same meaning prescribed in the Smoke-Free-Arizona Act, ARS §36-601-01.

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

3. Siting of Medical Marijuana and Marijuana Establishments having On-Site Cultivation and Manufacturing.

Medical Marijuana and Marijuana Establishments having on-site Cultivation and/or Manufacturing of Marijuana as defined in ARS 36-2801 and ARS 36-2850, as well as in the definitions of each respective use listed in Section 3.1.5 M of this ordinance shall only be permitted in the L-I (Light Industrial) and C-2 (General Commercial) Zoning Districts.

4. Siting of Medical Marijuana and Marijuana Establishments having no On-Site Cultivation

Medical Marijuana and Marijuana Establishments having no on-site Cultivation and/or Manufacturing of Marijuana as defined in ARS 36-2801 and ARS 36-2850, as well as in the definitions of each respective use listed in Section 3.1.5 M. of this ordinance shall be permitted in the L-I (Light Industrial) and C-2 (General Commercial) Zoning Districts and on properties fronting Main Street located in the MSC (Main Street Corridor) Zoning District and/or Infill Incentive Overlay – Entertainment District.

5. Supplemental Siting Requirements

No Medical Marijuana, Marijuana, or Dual-Licensee shall be located within 300 feet of the property line of a parcel having a protected use that exists in legal zoning conformance relative to its zoning district. Protected uses shall be: Residence, Educational Facility, Library, Public Park, Day Care Facility, Worship Assembly Use, or another Non-Profit Medical Marijuana Dispensary, Marijuana Establishment, or Dual-Licensee. Properties located inside the Infill Incentive Overlay – Entertainment District shall be exempt from this requirement.

6. Medical Marijuana and Marijuana Testing Facility Use Definitions

Medical Marijuana and Marijuana Testing Facilities shall include the following terms as identified in ARS 36-2801 and ARS 36-2850;

- a) Independent third-party laboratory - An entity that has a national or international accreditation and that is certified by the Arizona Department of Health Services to analyze marijuana cultivated for medical use.

- b) Marijuana testing facility – The Arizona Department of Health Services or another entity that is licensed by the Arizona Department of Health Services to analyze the potency of marijuana and test marijuana for harmful contaminants.
- 7. **Siting of Medical Marijuana and Marijuana Testing Facilities**
Medical Marijuana and Marijuana Testing Facilities shall only be permitted in the L-I (Light Industrial) Zoning District.
- 8. **Supplemental Siting Requirements**
No Medical Marijuana Testing Facility or Marijuana Testing Facility shall be located within 300' of the property line of a parcel having one of the following uses on the premises: Residence, Educational Facility, Library, Public Park, Day Care Facility, Worship Assembly Use, Non-Profit Medical Marijuana Dispensary, Marijuana Establishment, Dual Licensee, or another Medical Marijuana Testing Facility or Marijuana Testing Facility.

Section 2: That the Somerton City Code, Article 2-7-1, SOMERTON ZONING AND SUBDIVISION ORDINANCE, “SECTION 2.4 MIXED-USE DISTRICTS; Table 2.4-1, and SECTION 2.5 COMMERCIAL DISTRICTS; Table 2.5-1” will be amended by inserting Medical Marijuana and Marijuana Establishments as a new Permitted Use in both tables with reference to section 3.1.5 M.

Section 3: That the Somerton City Code, Article 2-7-1, SOMERTON ZONING AND SUBDIVISION ORDINANCE, “SECTION 2.6 INDUSTRIAL DISTRICTS; Table 2.6-1,” will be amended by inserting Medical Marijuana and Marijuana Establishments and Medical Marijuana and Marijuana Testing Facilities as a new Permitted Uses with reference to section 3.1.5M.

Section 4: That the Somerton Infill Incentive Overlay Plan “Entertainment District Table of Uses” will be amended by inserting Medical Marijuana and Marijuana Establishments as a new Permitted Use.

Section 5: That the Somerton City Code, Article 10-1-19, RESERVED will be amended as follows:

Article 10-1-19 MARIJUANA

A. Marijuana Prohibited on Public Property.

To the fullest extent allowable by law, it is unlawful to possess, smoke, consume, sell, or distribute, store, cultivate, manufacture, or produce marijuana or marijuana products on or in property that is occupied, owned, controlled, or operated by the City, or an open space in the City.

B. Marijuana Prohibited

- 1. Marijuana products are prohibited on school grounds, inside school buildings, in school parking lots or playing fields and in school buses. For purpose of this subsection, “school” means any public, charter, or private school where children attend classes in programs or grades equivalent to Kindergarten through 12.

2. Smoking is prohibited in all private residences when used as a licensed childcare, adult day care, group home or health care facility, or any other facility receiving a license or certification from Arizona Department of Economic Security or the Arizona Department of Health Services, except when authorized by the Department

C. Marijuana Permitted in Residential Districts

1. Except as provided by ARS §§ 36-2801 et seq. and this ordinance, it shall be unlawful for an individual to otherwise cultivate marijuana in a residential zoning district within the city limits.
2. Cultivation shall be limited to a closet room, 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.

D. Definitions:

City – means the City of Somerton, Arizona.

Consume, Consuming and Consumption – means 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 or Cultivations – means to propagate, breed, grow, prepare, and package marijuana.

Department – means the State of Arizona Department of Health Services or its successor agency.

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 or Manufacturing – means 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. Includes cannabis as defined in ARS § 13-3401. 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.

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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.

Open Space – means a public park, public sidewalk, public walkway, public trail, preserve, public pedestrian thoroughfare, or public rights-of-way.

Public Place – has the same meaning prescribed in the Smoke-Free-Arizona Act, ARS §36-601-01.

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

Section 6: That the Somerton City Code, Article 8-2-4, is hereby established and shall read as follows:

Article 8-2-4 **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 and is tangible personal property as defined in ARS § 42-5001 and subject to the transaction privilege tax in the retail classification and use tax

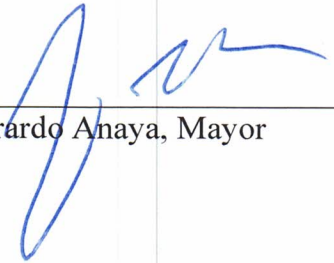
Section 7: Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances, codes, resolutions, or policy of the City of Somerton in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed, suspended, and replaced.

Section 8: Providing for 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.

PASSED AND ADOPTED by the City Council of Somerton this 15 day of June 2021.



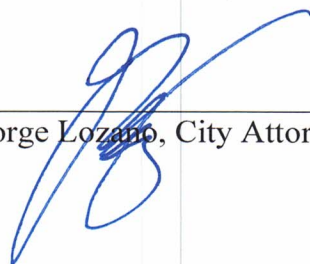
Gerardo Anaya, Mayor

ATTEST:



Andrea Moreno, Deputy City Clerk

APPROVED AS TO FORM:



Jorge Lozano, City Attorney