

ORDINANCE NO. 678-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PAGE, ARIZONA, AMENDING THE PAGE CITY CODE OF ORDINANCES BY ADOPTING A NEW CHAPTER 95 RELATING TO THE REGULATION OF MARIJUANA; PROHIBITING MARIJUANA ON PUBLIC PROPERTY AND IN VEHICLES; PROHIBITING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES TAX FROM MARIJUANA AND MARIJUANA PRODUCTS; 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 the City of Page according to a prescribed statutory and regulatory process; and

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act," certified as Proposition 207, was passed by Arizona voters on November 3, 2020; and

WHEREAS, the Proposition authorizes the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; authorizes possession, transport, cultivation or processing of marijuana plants in a primary residence by adults over 21 years of older; allows 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 allows 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 of Page 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/or marijuana testing facilities in the City of Page, except for

establishments permitted by the State of Arizona as a dual licensee to operate both a nonprofit medical dispensary and a recreational marijuana retail establishment at a shared location; and

WHEREAS, A.R.S. § 9-802 allows a City to adopt a public record by ordinance.

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

Section I. Public Record.

Chapter 95, Marijuana Regulations, as set forth in Exhibit A, attached hereto and incorporated herein by reference, is hereby declared a public record. A minimum of one paper copy and one electronic copy of Exhibit A shall be maintained in compliance with A.R.S. § 44-7041 in the office of the City Clerk and shall be available for public inspection during normal business hours.

Section II. Adoption.

The Page City Code of Ordinances for the City of Page, Arizona, is hereby amended by adding a new Chapter 95, Marijuana Regulations, as set forth in Exhibit A, and that the amendments set forth therein are hereby approved and adopted.

Section III. 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 Code adopted herein by reference, are hereby repealed.

Section IV. Recitals.

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

Section V. Effective Date.

The effective date of this Ordinance shall be 30 days following adoption by the City Council.

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. 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.

Section VIII. Typographical Errors.

The City Clerk is authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk is authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with the Page City Code of Ordinances.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, COCONINO COUNTY, ARIZONA this 13 day of January, 2021, by the following vote:

Ayes	<u>5</u>
Nays	<u>2</u>
Abstentions	<u>0</u>
Absent	<u>0</u>

CITY OF PAGE

By:

William R. Diak
WILLIAM R. DIAK, MAYOR

ATTEST:

Kim L. Larson
CITY CLERK

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY



EXHIBIT A

CHAPTER 95 MARIJUANA REGULATIONS

Sec. 95.01	Purpose
Sec. 95.02	Definitions
Sec. 95.03	Marijuana Prohibited on Public Property
Sec. 95.04	Marijuana Establishment Prohibited
Sec. 95.05	Marijuana Testing Facility Prohibited
Sec. 95.06	Individual's Primary Residence for Personal Use
Sec. 95.07	Consumption of Marijuana in Vehicles Prohibited
Sec. 95.08	Retail Sales Tax from Marijuana and Marijuana Products
Sec. 95.09	Violations
Sec. 95.10	Enforcement; Penalties

Sec. 95.01 Purpose.

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the City of Page prohibits the retail sale, cultivation, and manufacturing of marijuana or marijuana products in the City of Page. 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. 95.02 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 nonprofit 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”* means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

Sec. 95.03 Marijuana Prohibited on Public Property.

- A. The use, consumption, sale, cultivation, manufacture, storage, production, transfer or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the City of Page.
- B. It is unlawful for an individual to smoke marijuana in a public place or open space in the City of Page.
- C. It is unlawful for an individual to smoke marijuana or consume marijuana products in an open space in the Town.
- D. It is unlawful for an individual to smoke marijuana or consume marijuana products in a public place in the Town.

Sec. 95.04 Marijuana Establishment Prohibited.

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in the City of Page 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.

Sec. 95.05 Marijuana Testing Facility Prohibited.

To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in the City of Page.

Sec. 95.06 Individual's Primary Residence for Personal Use.

- A. To the extent required by law, marijuana possession, consumption, processing, manufacturing, transportation, and cultivation is permitted in a residential zoning district in the City of Page and is 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. Marijuana may only be cultivated, extracted, manufactured, or processed as an accessory use at the primary residence of the person conducting such activity or in an accessory structure on the property, and only for such person's own use, or by a primary caregiver on behalf of a patient.
 4. Except as provided by A.R.S. § 36-2801 *et al.* and this section, it shall be unlawful for an individual to otherwise consume, cultivate, extract, manufacture, possess, or process marijuana in a residence or accessory structure within the City of Page limits.
 5. 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.
 6. 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.

7. 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 City of Page. More specifically, the indoor area used for cultivation, extraction, manufacturing, or processing shall include a ventilation and filtration system designed to ensure that odors from the cultivation extraction, manufacturing, or processing are not detectable beyond the property line of a parcel containing a single dwelling unit, or beyond the boundaries of a single dwelling unit in multifamily dwellings, cluster houses, condominiums, or similar closely built unit arrangements, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence or unit. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the International Residential Code.
8. 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. Marijuana or marijuana products shall not be cultivated, extracted, manufactured, or processed outdoors.
9. It is unlawful to use any grow lighting system for the indoor cultivation of marijuana other than light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited, to mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, are prohibited.
10. 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. 95.07 Consumption of Marijuana in Vehicles Prohibited.

It is unlawful to consume marijuana or marijuana products while driving, operating or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft or other vehicle.

Sec. 95.08 Retail Sales Tax from Marijuana and Marijuana Products.

If the sale of marijuana and marijuana products is required or allowed by law, any such sales 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. 95.09 Violations.

- A. It is a violation of this chapter for a person to consume, cultivate, extract, manufacture, or process marijuana or marijuana products if the person fails to meet all the requirements in this chapter or state law, including the Department's rules.
- B. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.

Sec. 95.10 Enforcement; Penalties.

- A. Violations of this chapter are in addition to any other violation enumerated within the Page City Code of Ordinances and in no way limits the penalties, actions or abatement procedures which may be taken by the City of Page for any violation of this chapter, which is also a violation of any other ordinance or Code provision of the City of Page 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.
- B. 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.
- C. Penalty: Violations of any provision of this chapter shall be as set forth in Arizona Revised Statutes Sections § 36-2851 *et al.*, or if not specified therein, as civil code offenses with a civil penalty up to \$1000 per violation.