

ORDINANCE NO. 21-1128

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, ARIZONA, COCHISE COUNTY, ARIZONA, AMENDING ARTICLE 5 OF THE PLANNING AND ZONING CODE, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS; IMPOSING LICENSE FEES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES IN THE CITY OF DOUGLAS; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

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, 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 City according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act" has been certified as Proposition 207 and placed on the November 3, 2020 general election ballot 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 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 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;

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/Town departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, the City seeks to protect public health, safety, and welfare by regulating marijuana establishments and marijuana testing facilities in the City.

NOW, THEREFORE, be it Ordained by the Mayor and Council of the City of Douglas, Arizona, as follows:

SECTION 1. A new Section numbered 507.11 shall be established within the City of Douglas Zoning Regulations, to be titled Marijuana Testing Facility Permitted, and shall further read as follows:

- A. It shall be unlawful for a person to operate a marijuana testing facility at any location within the City of Douglas without obtaining a business license from the City of Douglas pursuant to the Douglas Municipal Code, Section 5.02.040 (A) 8 and also meet City Zoning Code regulations, including any application and review procedures.

1 B. A marijuana testing facility is permitted in the City of Douglas subject to the following
2 conditions:

- 3 1. To the extent permitted by applicable law, the development standards shall follow
4 those outlined in Section numbered 5.07.7 (e). Maximum square footage may be
5 expanded subject to Conditional Use Permit application and hearing procedures set
6 forth under the City.
- 7 2. There are no more than 1 marijuana testing facilities operating in the City of
8 Douglas.
- 9 3. Shall ensure that access to the area of the facility where marijuana or marijuana
10 products are being tested or stored for testing is limited to a facility's owners,
11 authorized personnel or agents.
- 12 4. Shall ensure that transportation of marijuana or marijuana products are following
13 applicable law.
- 14 5. Shall comply with all testing processes, protocols, standards, and criteria adopted
15 by the Department for testing marijuana and marijuana products.
- 16 6. Shall maintain records, equipment and instrumentation as required by the
17 Department.
- 18 7. Shall submit a written security plan to the City of Douglas that specifies the
19 measures that will be taken to deter and prevent unauthorized entrance into limited
20 access areas including the use of security equipment to detect unauthorized
21 intrusion, exterior lighting to facilitate surveillance, and electronic monitoring such
22 as video cameras that provide coverage of all entrances to and exits from limited
23 access areas and all entrances to and exits from the building and has sufficient
24 recording resolution.
- 25 8. Shall comply with all security protocols required by the Department.
9. Shall only be authorized in GC, IP, LI, HI zoning districts by Conditional Use
Permit.

14 **SECTION 2. A new Section numbered 507.12 shall be established within the City of Douglas Zoning
15 Regulations, to be titled Marijuana Establishments Permitted.**

16 A. It shall be unlawful for a person to operate a marijuana establishment at any location
17 within the City of Douglas without obtaining a business license from the City of
18 Douglas pursuant to the Douglas Municipal Code, Section 5.02.040 (A) 8, and also meet
19 City Zoning Code regulations, including any application and review procedures.

20 B. If authorized by state law and a valid permit has been obtained from the City of
21 Douglas, a marijuana establishment is permitted in City of Douglas subject to the
22 following conditions and limitations:

- 23 1. To the fullest extent allowable by law, shall be authorized in the City of Douglas
24 for:
 - 25 a. A dual licensee who operates both a nonprofit medical marijuana dispensary
and marijuana establishment.
 - b. Any other entity licensed by the Department to provide marijuana or marijuana
products to consumers.
2. Shall only be authorized in GC, IP, LI, HI zoning districts by Conditional Use
Permit.
3. Shall not be located within 2000 feet of the same type of use or a nonprofit medical
marijuana dispensary. This distance shall be measured from the lot line of the
property in which the businesses are conducted or proposed to be conducted.

- 1 4. Shall not be located within 2000 feet of a substance abuse testing, treatment, or
2 rehabilitation center. This distance shall be measured from the lot line of the
3 property in which the business is conducted or proposed to be conducted to the
4 property boundary line of the protected use.
- 5 5. Shall not be located within 1000 feet of a residence, preschool, kindergarten,
6 elementary, secondary or high school, place of worship, public park, or licensed
7 childcare facility. This distance shall be measured from the lot line of the property
8 in which the business is conducted or proposed to be conducted to the property line
9 of the protected use.
- 10 6. Shall be located in a permanent building on an established foundation adhering to
11 the City building codes and shall not include any temporary, portable or self-
12 powered mobile facilities, or trailer, cargo container or motor vehicle.
- 13 7. To the extent permitted by applicable law, the development standards shall follow
14 those outlined in Section numbered 5.07.7 (e). Maximum square footage may be
15 expanded subject to Conditional Use Permit application and hearing procedures set
16 forth under the City.
- 17 8. Maximum square footage may be expanded subject to Conditional Use Permit
18 application and hearing procedures set forth under the City of Douglas Planning and
19 Zoning Code and:
 - 20 a. Shall have operating hours not earlier than 9 a.m. and not later than 10
21 p.m.
 - 22 b. Shall not provide drive-thru services or offsite deliveries of marijuana or
23 marijuana products.
 - 24 c. Shall not allow a person to consume marijuana or marijuana products on
25 the premises or provide outdoor seating areas.
 - d. Shall provide for proper disposal of marijuana remnants or by-products.
The remnants or by-products shall not to be placed within the facility's
exterior refuse containers, City trash can, bin or another City facility, or in
any park refuse container unless authorized by the City.
 - e. 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 City.
 - f. Shall not sell marijuana or marijuana products, except as permitted by state
law to consumers.
 - g. Shall not display or keep marijuana or marijuana products that are visible
from outside the premises.
 - h. Shall comply with applicable county health regulations for food
preparation and handling.
 - i. Shall comply with applicable laws to safely and securely engage in
extraction processes.

- 1 j. Shall submit a written security plan to the City that describes the actions
2 taken to deter and prevent unauthorized entrance into limited access areas
3 including use of security equipment, exterior lighting to facilitate
4 surveillance, and electronic monitoring such as video cameras.
- 5 k. For a marijuana establishment that engages in cultivation or
6 manufacturing, shall submit a written operations plan to the City that
7 describes the following:
- 8 i. Procedures showing that the marijuana cultivation will be
9 conducted in accordance with state and local laws and regulations
10 regarding use and disposal of pesticides and fertilizers.
 - 11 ii. The legal water source, irrigation plan, wastewater systems to be
12 used, and projected water use.
 - 13 iii. The plan for addressing odor and other public nuisances that may
14 derive from the establishment.

15 **SECTION 3. A new Section numbered 507.13 shall be established within the City of Douglas Zoning
16 Regulations, to be titled individual's primary residence for personal use of marijuana.**

- 17 A. To the fullest extent allowable by law, marijuana possession, consumption, processing,
18 manufacturing, transportation, and cultivation is permitted in a residential zoning district
19 in the City of Douglas and is subject to the following conditions and limitation:
- 20 1. It shall be unlawful for any individual who is at least twenty-one (21) years of age
21 to possess, transport, cultivate or process more than six (6) marijuana plants.
 - 22 2. It shall be unlawful for two or more individuals who are at least twenty-one (21)
23 year of age to possess, transport, cultivate or process more than twelve (12)
24 marijuana plants at the individuals' primary residence.
 - 25 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 from cultivation,
processing, or manufacturing 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/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 marijuana plants are not visible
from public view without using binoculars, aircraft, or other optical aids.

**SECTION 4. A new Section numbered 507.14 shall be established within the City of Douglas Zoning
Regulations, to be titled Fees and Retail Sales from Marijuana and Marijuana Products.**

1 Douglas Municipal Code, Section 5.02.040 (A) 8, shall be amended to provide for a
2 \$1,000 a year business license fee applicable to a Marijuana Testing Facility and to
3 conduct retail sales of Marijuana and Marijuana products by Marijuana Establishments.
4 These facilities shall also be subject to local sales tax assessments. To the fullest extent
allowable by law, the sale of marijuana and marijuana products is authorized within the
Douglas City Code from a marijuana establishment and 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.

5 **SECTION 5. A new Section numbered 507.15 shall be established within the City of Douglas Zoning**
6 **Regulations, to be titled Violations and Enforcement Penalties.**

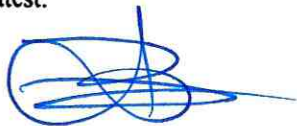
- 7 A. It is unlawful and a violation of this article for a person to sell, cultivate, process,
8 manufacture or transport marijuana or marijuana products if the person fails to meet all
9 the requirements in this article or state law, including the Department's rules.
- 10 B. It is a violation of this article for any person to provide false information on any permit
11 application.
- 12 C. Each day any violation of any provision of this article shall continue shall constitute a
13 separate offense.
- 14 D. The business license may be revoked by the City for violation of any provision of this
15 article, for any violation of the requirements of the permit, or if the Department revokes
16 the license for a marijuana establishment or marijuana testing facility. If a license is
17 revoked, the permittee shall have the right to appeal the decision of the City as outlined
18 in the Douglas Municipal Code.
- 19 E. Violations of this article are in addition to any other violation enumerated within the
20 Douglas Municipal Code and in no way limits the penalties, actions or abatement
21 procedures which may be taken by the City for any violation of this article, which is also
22 a violation of any other Code provision of the City or federal or state law. Conviction
23 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.
- 24 F. Violations of this article are in addition to any other violation enumerated within the
Douglas Municipal 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 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.
- 25 G. Civil Penalty: Violations of any provision of this article shall be civil code offenses
which may be adjudicated and enforced in the local justice Court.

SECTION 6. Effective date. This ordinance shall be effective thirty (30) days after final approval and adoption by
the Mayor and Council.

SECTION 7. Severability. If any chapter, section, subsection, sentence, clause or phrase 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 of this Ordinance.

1 **PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 10th day of March,
2 2021.

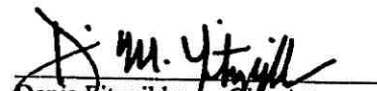
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4 Attest:

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6 Alma Andrade, City Clerk
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9 Donald C. Huish, Mayor

10 Approved as to Form:

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12 Denis Fitzgibbons, City Attorney
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