

ORDINANCE NO. 21-1131

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, AMENDING TITLE 8 OF THE DOUGLAS MUNICIPAL CODE RELATING TO HEALTH AND SAFETY BY ADDING SECTION 8.44 PERTAINING TO MARIJUANA ON PUBLIC PROPERTY, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND DECLARING AN EMERGENCY.

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 limits according to a prescribed statutory and regulatory process;

WHEREAS, the Smart and Safe Arizona Act, Arizona Revised Statutes Sections § 36-2850 et al., authorizes 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 age;

WHEREAS, the City finds that the Smart and Safe Arizona Act does not prohibit this state or a political subdivision of this state from prohibiting or regulating conduct otherwise allowed by Title 36, Chapter 28.2 of the Arizona Revised Statutes when such conduct occurs on or in property that is occupied, owned, controlled or operated by this state or a political subdivision of this state;

WHEREAS, the City seeks to protect public health, safety, and welfare by prohibiting the use, possession, sale, production, cultivation, consumption and smoking of marijuana in public areas of the City.

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

SECTION 1. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 2. A new Section numbered 8.44 shall be established within the City of Douglas Health and Safety Code, to be titled Marijuana Prohibited on Public Property, and shall further read as follows:

CHAPTER 8.44 – MARIJUANA PROHIBITED ON PUBLIC PROPERTY

ARTICLE I. – GENERAL

Sec. 8.44.010. – Purpose

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal use and as otherwise provided in this chapter and chapter 5, the City prohibits the cultivation, storage, processing, testing, and manufacturing of marijuana and marijuana products in public areas within the City. Nothing in this chapter 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.

Sec. 8.44.020. – 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. "Consume," "Consuming," and "Consumption" means the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- B. "Consumer" means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.
- C. "Cultivate" and "Cultivation" means to propagate, breed, grow, prepare, and package marijuana.
- D. "Deliver" and "Delivery" means 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.
- E. "Department" means the State of Arizona Department of Health Services or its successor agency.
- F. "Electronic cigarette" means any product containing or delivering nicotine, marijuana or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- G. "Light" means to burn, kindle or ignite including via electronic ignition or use of a mechanical heating element or battery.
- H. "Manufacture" and "Manufacturing" means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- I. "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. "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. "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.

- 1 L. "Open Space," means a public park, public sidewalk, public walkway or public pedestrian
thoroughfare.
- 2 M. "Person" means an individual, partnership, corporation, association, or any other entity of
whatever kind or nature.
- 3 N. "Process" and "Processing" means to harvest, dry, cure, trim or separate parts of the marijuana
plant.
- 4 O. "Public Place" has the same meaning prescribed in the Smoke-Free- Arizona Act, A.R.S. § 36-
601.01.
- 5 P. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted
marijuana products, whether natural or synthetic. To the extent permitted by law, "smoke" shall
6 also mean the use of an electronic cigarette.

7 **Sec. 8.44.030 – Marijuana and Smoking Marijuana Prohibited on Public Property**

- 8 A. Within the City of Douglas, the use, sale, cultivation, manufacture, production, storage, or
distribution of marijuana or marijuana products is prohibited on property that is occupied, owned,
9 controlled or operated by the City, this state or any of its political subdivisions, including school
districts.
- 10 B. Within the City of Douglas, it is unlawful for an individual to smoke marijuana or consume
marijuana products on property that is occupied, owned, controlled or operated by the City, this
11 state or any of its political subdivisions, including school districts. This subsection shall not apply
to lawful activities of law enforcement agencies.
- 12 C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any *open*
space in the City.
- 13 D. It is unlawful for an individual to smoke marijuana or consume marijuana in a *public place* in the
City.
- 14 E. A violation of subsection A above is a class one misdemeanor, and any other violation of this
section is a petty offense.

15 **Sec. 8.44.040 – Enforcement; Penalties**

- 16 A. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or
suspected violation of A.R.S. § 36-2853 or this chapter and to serve a copy of the complaint for an
17 alleged civil violation of A.R.S. § 36-2853 or this chapter.
- 18 B. It is unlawful for any person to hinder, resist, delay, obstruct or prevent a peace officer in the
discharge of or their attempt to discharge their official duties, or refuse to obey any lawful order
19 issued by peace officers engaged in the discharge of their official duties.
- 20 C. It is unlawful for a person, after being advised that the person's refusal to answer is unlawful, to
fail or refuse to provide either identification or evidence of identity on request of a peace officer
21 who has lawfully detained the person based on reasonable suspicion to believe that the person has
committed a violation of the Douglas Municipal Code or any law of the State of Arizona or the
United States
- 22 a. Identification means any legally government issued document that contains a
photograph, date of birth and physical description, including but not limited to height, weight,
23 eye color, sex, and hair color of the person presenting the identification.
- 24 b. Evidence of identity means that the person has provided the peace officer with their true
full name and date of birth upon request.
- 25 D. Except as otherwise provided in A.R.S. § 36-2853, A.R.S. § 36-2854 or as otherwise provided in
this chapter, any violation of this chapter shall be a class one misdemeanor.
- E. Violations of this chapter 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 chapter that is also a violation of any other ordinance or

1 Code provision of the City or federal or state law. Conviction and punishment of judgment and
2 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.

3 F. The remedies provided in this chapter shall be cumulative and in addition to any other federal,
4 state or local remedy that may be available. Nothing contained herein shall be construed to
preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

5 **SECTION 3.** The City hereby declares an emergency to exist making the immediate operation of the
6 provisions of this ordinance necessary to preserve the public's peace, health, safety and security by
7 prohibiting the use, possession, sale, production, cultivation, consumption and smoking of marijuana on
public property and further requiring this Ordinance to be in full force and effect immediately upon its
passage by the Council as set forth in the City Charter.

8 **SECTION 4. Severability.** If any chapter, section, subsection, sentence, clause or phrase of this
9 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.

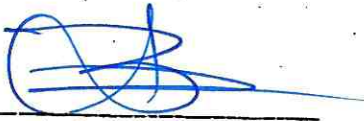
10 **SECTION 5. Emergency Clause:** Whereas the immediate operation of this Ordinance is necessary to
11 the preservation of the public health, peace and welfare, an emergency is declared to exist and this
12 Ordinance shall come into full force and effect by its terms from and after its passage by six-sevenths
(6/7) of the Council and approval of the Mayor.

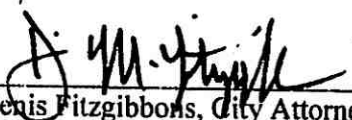
13 **PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 10th day of
14 March, 2021.


Donald C. Huish, Mayor

15
16 Attest:

Approved as to Form:

17 
18 Alma Andrade, City Clerk


Denis Fitzgibbons, City Attorney

Title 8

HEALTH AND SAFETY

Chapters:

- 8.04 Alarm Systems**
- 8.08 Fire Prevention Code**
- 8.10 Fire Lanes**
- 8.16 Solid Waste Collection and Disposal**
- 8.20 Open Burning**
- 8.24 Smoking Prohibited in City Facilities and Vehicles**
- 8.28 Noise**
- 8.32 Nuisances, Abandoned or Junk Vehicles**
- 8.36 Smoking in Public Places and Workplaces**
- 8.40 Prohibiting the Sale, Possession, and use of Tobacco Products, Alternative Nicotine Products, or Vapor Products to or by persons under the age of 21.**
- 8.44 Marijuana Prohibited on Public Property**

Chapter 8.44

MARIJUANA PROHIBITED ON PUBLIC PROPERTY

ARTICLE I. – GENERAL

Sec. 8.44.010. – Purpose

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal use and as otherwise provided in this chapter and chapter 5, the City prohibits the cultivation, storage, processing, testing, and manufacturing of marijuana and marijuana products in public areas within the City. Nothing in this chapter 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.

Sec. 8.44.020. – 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. "Consume," "Consuming," and "Consumption" means the act of ingesting, inhaling or otherwise introducing marijuana into the human body.

B. "Consumer" means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.

C. "Cultivate" and "Cultivation" means to propagate, breed, grow, prepare, and package marijuana.

D. "Deliver" and "Delivery" means 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.

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

F. "Electronic cigarette" means any product containing or delivering nicotine, marijuana or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, ehookah, or vape pen, or under any other product name or descriptor.

G. "Light" means to burn, kindle or ignite including via electronic ignition or use of a mechanical heating element or battery.

H. "Manufacture" and "Manufacturing" means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

I. "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. "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. "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.

L. "Open Space," means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

M. "Person" means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.

N. "Process" and "Processing" means to harvest, dry, cure, trim or separate parts of the marijuana plant.

O. "Public Place" has the same meaning prescribed in the Smoke-Free- Arizona Act, A.R.S. § 36- 601.01.

P. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic. To the extent permitted by law, "smoke" shall also mean the use of an electronic cigarette.

Sec. 8.44.030 – Marijuana and Smoking Marijuana Prohibited on Public Property

A. Within the City of Douglas, the use, sale, cultivation, manufacture, production, storage, or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the City, this state or any of its political subdivisions, including school districts.

B. Within the City of Douglas, it is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the City, this state or any of its political subdivisions, including school districts. This subsection shall not apply to lawful activities of law enforcement agencies.

C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the City.

D. It is unlawful for an individual to smoke marijuana or consume marijuana in a public place in the City.

E. A violation of subsection A above is a class one misdemeanor, and any other violation of this section is a petty offense.

Sec. 8.44.040 – Enforcement; Penalties

A. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of A.R.S. § 36-2853 or this chapter and to serve a copy of the complaint for an alleged civil violation of A.R.S. § 36-2853 or this chapter.

B. It is unlawful for any person to hinder, resist, delay, obstruct or prevent a peace officer in the discharge of or their attempt to discharge their official duties, or refuse to obey any lawful order issued by peace officers engaged in the discharge of their official duties.

C. It is unlawful for a person, after being advised that the person's refusal to answer is

unlawful, to fail or refuse to provide either identification or evidence of identity on request of a peace officer who has lawfully detained the person based on reasonable suspicion to believe that the person has committed a violation of the Douglas Municipal Code or any law of the State of Arizona or the United States

a. Identification means any legally government issued document that contains a photograph, date of birth and physical description, including but not limited to height, weight, eye color, sex, and hair color of the person presenting the identification.

b. Evidence of identity means that the person has provided the peace officer with their true full name and date of birth upon request.

D. Except as otherwise provided in A.R.S. § 36-2853, A.R.S. § 36-2854 or as otherwise provided in this chapter, any violation of this chapter shall be a class one misdemeanor.

E. Violations of this chapter 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 chapter that 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 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.

F. The remedies provided in this chapter shall be cumulative and in addition to any other federal, state or local remedy that may be available. Nothing contained herein shall be construed to preclude prosecution under any

other applicable statute, ordinance, rule, order or regulation. (Ord. 21-1131 §2, 2021)

Title 8

HEALTH AND SAFETY

Chapters:

- 8.04 Alarm Systems**
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Chapter 8.44

**MARIJUANA PROHIBITED ON
PUBLIC PROPERTY**

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2. Includes cannabis as defined in A.R.S. § 13-3401.

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N. "Process" and "Processing" means to harvest, dry, cure, trim or separate parts of the marijuana plant.

O. "Public Place" has the same meaning prescribed in the Smoke-Free- Arizona Act, A.R.S. § 36- 601.01.

P. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic. To the extent permitted by law, "smoke" shall also mean the use of an electronic cigarette.

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B. Within the City of Douglas, it is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the City, this state or any of its political subdivisions, including school districts. This subsection shall not apply to lawful activities of law enforcement agencies.

C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the City.

D. It is unlawful for an individual to smoke marijuana or consume marijuana in a public place in the City.

E. A violation of subsection A above is a class one misdemeanor, and any other violation of this section is a petty offense.

Sec. 8.44.040 – Enforcement; Penalties

A. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of A.R.S. § 36-2853 or this chapter and to serve a copy of the complaint for an alleged civil violation of A.R.S. § 36-2853 or this chapter.

B. It is unlawful for any person to hinder, resist, delay, obstruct or prevent a peace officer in the discharge of or their attempt to discharge their official duties, or refuse to obey any lawful order issued by peace officers engaged in the discharge of their official duties.

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a. Identification means any legally government issued document that contains a photograph, date of birth and physical description, including but not limited to height, weight, eye color, sex, and hair color of the person presenting the identification.

b. Evidence of identity means that the person has provided the peace officer with their true full name and date of birth upon request.

D. Except as otherwise provided in A.R.S. § 36-2853, A.R.S. § 36-2854 or as otherwise provided in this chapter, any violation of this chapter shall be a class one misdemeanor.

E. Violations of this chapter 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 chapter that 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 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.

F. The remedies provided in this chapter shall be cumulative and in addition to any other federal, state or local remedy that may be available. Nothing contained herein shall be construed to preclude prosecution under any

other applicable statute, ordinance, rule, order or regulation. (Ord. 21-1131 §2, 2021)

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