



City Council Report

Date: November 25, 2020
To: City Council
Through: John Pombier, Assistant City Manager
From: Ken Cost, Police Chief
Harold Rankin, Assistant Chief
Subject: Amending Title 6 of the Mesa City Code (Police Regulations) by adding a new Chapter 25 entitled “Marijuana Prohibitions” prohibiting certain activities and facilities related to marijuana. (Citywide)

Purpose

Adopt an Ordinance amending Title 6 of the Mesa City Code (Police Regulations) by adding a new Chapter 25 entitled “Marijuana Prohibitions” prohibiting certain activities and facilities related to marijuana including (1) recreational marijuana retail establishments, except for retail sales by a state dual licensee at a shared location; (2) marijuana testing facilities; (3) delivery of marijuana unless delivered by a nonprofit medical marijuana dispensary in accordance with state regulations; and (4) the consumption of marijuana on City property, certain prohibited property, and in vehicles/transportation.

Background

The “Smart and Safe Arizona Act,” certified as Proposition 207, was passed by Arizona voters at the November 3, 2020 General Election. Proposition 207 declared that “the responsible adult use of marijuana should be legal for persons twenty one years of age or older, subject to state regulation, taxation, and local ordinance.” The Ordinance is consistent with and substantially similar to Gilbert’s adopted ordinance and draft versions of Chandler, Scottsdale, and Avondale ordinances that will soon be considered.

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.

Proposition 207 also decriminalizes recreational marijuana possession of up to two and one half ounces, and up to 12 marijuana plants depending on the age and the number of people in a residence.

Proposition 207 reiterates that it is still illegal to drive while impaired by marijuana. While Proposition 207 makes clear that a person cannot smoke marijuana in a public place, it provides the ability to prohibit marijuana possession, sale, and other uses (vaping, ingesting, etc.) on city property to each individual city.

Cities are also authorized to prohibit recreational marijuana retail establishments, marijuana testing facilities or both, with the exception of entities that hold both a dual license to operate a nonprofit medical marijuana dispensary and a recreational marijuana retail establishment cooperatively at a shared location, and prohibit delivery of recreational marijuana within its jurisdiction.

Proposition 207 will likely be signed by Arizona Governor Douglas A. Ducey and take effect on or about December 1, 2020.

Discussion

Based on lessons learned from other cities who respond to crimes related to recreational marijuana, there is a need to protect the health, safety, and welfare of the public by prohibiting marijuana establishments and marijuana testing facilities and prohibiting certain conduct related to recreational marijuana. Further, this Ordinance will make the City consistent with other adjacent and nearby cities. If the City does not prohibit recreational marijuana establishments and testing facilities, and other cities do, there is an increased likelihood that the City will have a disproportionate amount of recreational marijuana establishments or facilities in comparison to other cities, and in turn, increase public safety issues within the City that will require an increase in public safety responses.

This Ordinance prohibits certain activities and facilities related to marijuana including (1) recreational marijuana retail establishments, except for retail sales by a state dual licensee at a shared location; (2) marijuana testing facilities; (3) delivery of marijuana unless delivered by a nonprofit medical marijuana dispensary in accordance with state regulations; and (4) the consumption of marijuana on City property, certain prohibited property, and in vehicles/transportation.

A violation of Chapter 25 is a petty offense to be adjudicated in the Mesa Municipal Court.

Coordinated With

This Ordinance was drafted in coordination with the City Attorney's Office.