



Requesting Department:
Development Services

TO: Planning and Zoning Commission
THRU: Brett Burningham, Development Services Director
FROM: Erik Swanson, Planning Administrator
RE: Public Hearing and Possible Action on P20-0153 ZONING ORDINANCE TEXT AMENDMENT, ARTICLE 6.12 RECREATIONAL MARIJUANA, a request for Zoning Ordinance Text Amendment to Article 6.12 Recreational Marijuana.
DATE: October 14, 2020

STAFF RECOMMENDATION

Staff recommends approval of P20-0153 Zoning Ordinance Text Amendment, Article 6.12 Recreational Marijuana.

PROPOSED MOTION

Move to recommend approval of P20-0153 Zoning Ordinance Text Amendments, Article 6.12 Recreational Marijuana.

RELEVANT COUNCIL GOAL



Effective Government

SUMMARY

Arizona Proposition 207, Marijuana Legalization Initiative (the “initiative”), is on the 2020 ballot and will be voted on November 3, 2020. The initiative seeks to allow the legalization of marijuana for recreational purposes for adults age 21 or older. Similar to Proposition 203, Arizona Medical Marijuana Initiative that was approved in 2010, oversight on the implementation of the initiative will be overseen by the Arizona Department of Health Services where rules and regulations will be adopted. Within the initiative under section 36-2857 *Localities; marijuana establishments and marijuana testing facilities*, language is provided on how municipalities may implement zoning regulations on recreational marijuana. Planning Staff, in working with the Town Attorney, is proposing a Zoning Ordinance Text Amendment to add Article 6.12 Recreational Marijuana pertaining to the regulation of land use impacts on recreational marijuana.

DISCUSSION

As discussed above, the proposed addition of Article 6.12 Recreational Marijuana is in direct response to the proposed Proposition 207, Marijuana Legalization Initiative. As provided in section 36-2857 *Localities; marijuana establishments and marijuana testing facilities*, of the initiative, municipalities may establish land use regulations in the following manner:

- A. A locality may:
 1. *Enact reasonable zoning regulation that limit the use of land for marijuana establishments and marijuana testing facilities to specified areas.*
 2. *Limit the number of marijuana establishments or marijuana testing facilities, or both.*
 3. *Prohibit marijuana establishments or marijuana testing facilities, or both.*
 4. *Regulate the time, place and manner of marijuana establishment and marijuana testing facility operations.*
 5. *Establish reasonable restrictions on public signage regarding marijuana, marijuana establishments and marijuana testing facilities.*
 6. *Prohibit or restrict delivery within its jurisdiction.*
- B. *A county may exercise its authority pursuant to subsection A of this section only in unincorporated areas of the county.*
- C. *A locality may not enact any ordinance, regulation or rule that:*
 1. *Is more restrictive than a comparable ordinance, regulation or rule that applies to nonprofit medical marijuana dispensaries.*
 2. *Makes the operation of a marijuana establishment or marijuana testing facility unduly burdensome if the locality has not prohibited marijuana establishments or marijuana testing facilities.*
 3. *Conflicts with this chapter or rules adopted pursuant to this chapter.*
 4. *Prohibits the transportation of marijuana by a marijuana establishment or marijuana testing facility on public roads.*
 5. *Restricts or interferes with the ability of a dual licensee or an entity eligible to become a dual licensee to operate a nonprofit medical marijuana dispensary and a marijuana establishment cooperatively at shared locations.*
 6. *Except as expressly authorized by this section or section 36-2851, prohibits or restricts any conductor transaction allowed by this chapter, or imposes any liability or penalty in addition to that prescribed by this chapter for any conduct or transaction constituting a violation of this chapter.*

Based on subsections A.3 and C.1, the initiative provides conflicting information. Planning Staff and the Town Attorney recommend that Article 6.12 Recreational Marijuana, be approved prohibiting recreational marijuana facilities, however in the event the initiative is modified to strike subsection A.3 and therefore restrict localities from outright prohibiting marijuana establishments and marijuana testing facilities that language be included requiring recreational marijuana establishments and marijuana

testing facilities follow the same regulations as provided in Article 6.11 of the Zoning Ordinance pertaining to medical marijuana.

For reference, on December 1, 2010, Town Council adopted Ordinance 492-10, a text amendment to the Zoning Ordinance regulating medical marijuana dispensaries, infusion facilities, and offsite cultivation locations. During the development of the text amendment, provisions were adopted to ensure sensitive land-uses were protected, requiring a distance separation of 1,500 feet from said uses. Sensitive uses include other dispensaries, infusion facilities, or offsite cultivation locations, public/private/charter schools, public/private day care centers, public/private recreation centers, parks, religious institutions, massage establishments, group care homes, teen club, sexually oriented businesses, registered pharmacies, and properties zoned residential or for future residential development.

ATTACHMENTS

1. Zoning Code Text Amendment Article 6.12 Recreational Marijuana - *proposed*

ORDINANCE NO. 739-20

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING THE QUEEN CREEK ZONING ORDINANCE BY ADOPTING A NEW SECTION 6.12 PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES; AND DECLARING AN EMERGENCY.

WHEREAS, Town of Queen Creek currently regulates the Medical Marijuana pursuant to Section 6.11 of the Town of Queen Creek Zoning Ordinance;

WHEREAS, as provided in Section 6.11(A) of the Town of Queen Creek Zoning Ordinance, the sale and use of marijuana presents a number of public challenges and negative secondary effects; and

WHEREAS, in order to protect the health, safety, and welfare of the community, the Common Council of the Town of Queen Creek desires to regulate the use of recreational marijuana.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Queen Creek, Arizona, as follows:

Section I. In General.

The Zoning Code of Queen Creek, Arizona, is hereby amended by adding a new Section 6.12, Recreational Marijuana to read as follows:

Article 6-12

Sec. 6-12-1 Purpose

Sec. 6-12-2 Definitions

Sec. 6-12-3 Marijuana Prohibited on Public Property

Sec. 6-12-4 Marijuana Establishment Prohibited

Sec. 6-12-5 Marijuana Testing Facility Prohibited

Sec. 6-12-6 Violations

Sec. 6-12-7 Enforcement; Penalties

Sec. 6-12-8 Conflicts with State Law

Sec. 6-12-9 Preservation of Rights and Duties

Sec. 6-12-10 Providing for Severability

Sec. 6-12-1 Purpose.

This article is adopted to protect the health, safety, and welfare of the community by prohibiting recreational Marijuana in Town. Nothing in this article is intended to promote or condone the sale, Cultivation, Manufacture, transport, production, distribution, Possession, or use of Marijuana in violation of any applicable law.

Sec. 6-12-2 Definitions.

The below words and phrases, wherever used in this article, 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”* mean the act of ingesting, inhaling or otherwise introducing Marijuana into the human body.
- B. *“Consumer”* means an individual who is at least twenty-one years of age and who purchases Marijuana or Marijuana Products.
- C. *“Cultivate”* and *“Cultivation”* mean to propagate, breed, grow, prepare and package Marijuana.
- D. *“Deliver”* and *“Delivery”* mean the transportation, transfer or provision of Marijuana or Marijuana Products to a consumer at a location other than the location where the Marijuana was Cultivated, Manufactured, or Processed.
- E. *“Department”* means the State of Arizona Department of Health Services or its successor agency.
- F. *“Dual Licensee”* means an entity that holds both a Nonprofit Medical Marijuana Dispensary registration and a Marijuana Establishment license.
- G. *“Manufacture”* and *“Manufacturing”* mean to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.
- H. *“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 Marijuana to prepare topical or oral administrations, food, drink or other products.

I. *“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.

J. *“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 and 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.

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. *“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.

M. *“Nonprofit Medical Marijuana Dispensary”* means a non-profit entity as defined in A.R.S. § 36-2801(12).

N. *“Open Space”* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

- O. “*Person*” means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- P. “*Process*” and “*Processing*” means to harvest, dry, cure, trim or separate parts of the Marijuana plant.
- Q. “*Public Place*” has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- R. “*Smoke*” means to inhale, exhale, burn, carry or possess any lighted Marijuana or lighted Marijuana products, whether natural or synthetic.

Sec. 6-12-3 Marijuana Prohibited on Public Property.

- A. The possession, use, sale, Cultivation, Manufacture, transport, production or distribution of Marijuana or Marijuana Products is prohibited on property that is occupied, owned, controlled or operated by Town.
- B. It is unlawful for an individual to Smoke Marijuana in a Public Place or Open Space in Town.

Sec. 6-12-4 Marijuana Establishment Prohibited.

- A. To the fullest extent allowable by law, the operation of a Marijuana Establishment is not permitted in Town.
- B. To the fullest extent allowable by law, the operation of a Marijuana Establishment by a Dual Licensee is not permitted in Town.

Sec. 6-12-5 Marijuana Testing Facility Prohibited.

To the fullest extent allowable by law, the operation of a Marijuana Testing Facility is not permitted in Town.

Sec. 6-12-6 Violations.

- A. It is unlawful and a violation of this article for a Person to possess, Consume, sell, Cultivate, Process, Manufacture or transport Marijuana or Marijuana Products if the Person fails to meet all the requirements in this article or state law, including the Department’s rules.

- B. It is a violation of this article for any Person to provide false information on any permit application.
- C. Each day any violation of any provision of this article shall continue shall constitute a separate offense.

Sec. 6-12-7 Enforcement; Penalties.

In addition to all penalties provided under state law that may apply, any Person who violates any provision of this article, whether or not the act is specifically stated as being unlawful, may be subject to the revocation of any and all applicable licenses or permits issued by Town affiliated with such Person or such Person's place of business.

Sec. 6-12-8 Conflicts with State Law.

To the extent that all or any part of this ordinance prohibiting Marijuana Establishments and Marijuana Testing Facilities is found to violate applicable laws, then the provisions of Article 6.11 of this Zoning Ordinance regulating Medical Marijuana shall be applicable to govern Marijuana Establishments and Marijuana Testing Facilities.

Sec. 6-12-9 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.

Sec. 6-12-10 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 II. Emergency.

Because of the urgent need for the implementation of the Town's regulations concerning recreational marijuana, the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, Arizona, this _____ day of _____, 2020, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this _____ day of _____, 2020.

_____, Mayor

ATTEST:

Maria Gonzalez, Town Clerk

APPROVED AS TO FORM:

Town Attorney

I, MARIA GONZALEZ, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. _____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK ON THE _____ DAY OF _____, 2020, WAS POSTED IN THREE PLACES ON THE _____ DAY OF _____, 2020.

Maria Gonzalez, Town Clerk