

TOWN OF MIAMI

ORDINANCE NO. 375

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI, ARIZONA, DECLARING THE DOCUMENT ENTITLED "RECREATIONAL MARIJUANA UPDATES, 2020" AS A PUBLIC RECORD; ADOPTING THE "RECREATIONAL MARIJUANA UPDATES, 2020" BY REFERENCE, AMENDING THE CODE OF THE TOWN OF MIAMI, ARIZONA, TITLE 17, ZONING, CHAPTER 17.04 INTRODUCTORY PROVISIONS AND DEFINITIONS, SECTION 17.04.030 DEFINITIONS; CHAPTER 17.32 C COMMERCIAL DISTRICT BY AMENDING SECTION 17.32.020 USE REGULATIONS AND ADOPTING A NEW SECTION 17.32.070 RECREATIONAL MARIJUANA; AMENDING CHAPTER 17.36 L-I LIGHT INDUSTRIAL DISTRICT BY ADOPTING A NEW SECTION 17.36.060 RECREATIONAL MARIJUANA FACILITIES REGULATIONS; ALL RELATED TO THE REGULATION OF RECREATIONAL MARIJUANA INCLUDING SETTING FORTH DEFINITIONS; REGULATING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; IMPOSING FEES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR 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.*;

WHEREAS, the Arizona Medical Marijuana Act, A.R.S. § 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 Town of Miami 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 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 Town of Miami 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 Town of Miami departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, the Town Council seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations to limit the number of marijuana establishments and/or marijuana testing facilities in the Town of Miami; and

WHEREAS, that certain document entitled “Recreational Marijuana Updates, 2020,” three copies of which are on file in the office of the Town Clerk, is hereby declared to be a public record and said copies are hereby ordered to remain on file with the Town Clerk.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Miami, Arizona, as follows:

Section I. In General.

The Code of Miami, Arizona, is hereby amended by amending Title 17, Zoning, to read as set forth in that certain document entitled “Town of Miami Recreational Marijuana Updates, 2020,” which document is hereby adopted and incorporated by reference.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. 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 a court of competent jurisdiction, such decision shall not affect the validity of remaining portions.

Section IV. Providing for Penalties.

Violation of any provision of this Ordinance shall be subject to the following civil penalties, petty offenses, and misdemeanor classifications as set forth in the Town of Miami Recreational Marijuana Updates, 2020 and stated herein:

- A. Except as otherwise provided in the Town of Miami “Recreational Marijuana Updates, 2020” or in A.R.S. § 36-2853, violation of any provision of this Ordinance

is punishable as a class 2 misdemeanor pursuant to Section 17.68.050 of the Town Code.

- B. Violations of this Ordinance are in addition to any other violation enumerated within the Town Code and in no way limit the penalties, actions, or abatement procedures which may be taken by the Town for any violation of this section, which is also a violation of any other ordinance or code provision of the Town or federal or state law. Conviction and punishment or judgment against any person under this section 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.
- C. Marijuana Establishment permits may be revoked by the Town for violation of any provision of this Ordinance, for any violation of the requirements of the permit, or if the Department revokes the license for a Marijuana Establishment.

Section V. Effective Date.

This Ordinance does not become effective unless the Smart and Safe Arizona Act (Proposition 207) becomes law when approved by a majority of the votes cast at the November 3, 2020 general election and on proclamation of the governor. Upon the governor's proclamation, the effective date of this Ordinance shall be thirty days following adoption by the Town Council.

Section VI. Zoning Considerations.

In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

PASSED AND ADOPTED by the Town Council of the Town of Miami, Arizona, this **8th** day of **February**, 2021, by the following vote:

AYES: <u>6</u>	ABSENT: <u>0</u>
NAYES: <u>0</u>	ABSTAINED: <u>0</u>
EXCUSED: <u>1</u>	

APPROVED this **8th** day of **February**, 2021.

S. Gonzales
Sammy Gonzales, Mayor

ATTEST:

Karen Norris
Karen Norris, Town Clerk

APPROVED AS TO FORM:


Joe Estes, Town Attorney

I, KAREN NORRIS, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 375 ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI ON THE 8th DAY OF February, 2021, WAS POSTED IN THREE PLACES ON THE 18 DAY OF February, 2021.


Karen Norris, Town Clerk

TOWN OF MIAMI RECREATIONAL MARIJUANA ORDINANCE
DATED 02/08/2021

TITLE 17 ZONING

**CHAPTER 17.04
INTRODUCTORY PROVISIONS AND DEFINITIONS**

17.04.030 DEFINITIONS

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“*CONSUME*” AND “*CONSUMPTION*” MEAN THE ACT OF INGESTING, INHALING, OR OTHERWISE INTRODUCING RECREATIONAL MARIJUANA INTO THE HUMAN BODY.

“*CONSUMER*” MEANS A PERSON WHO PURCHASES RECREATIONAL MARIJUANA FOR PERSONAL USE, WHO IS AT LEAST TWENTY-ONE YEARS OF AGE, AND WHO PURCHASES RECREATIONAL MARIJUANA IN ACCORDANCE WITH THE SMART AND SAFE ARIZONA ACT.

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“*CULTIVATE*” AND “*CULTIVATION*” MEAN TO PROPAGATE, BREED, GROW, PREPARE, AND PACKAGE RECREATIONAL MARIJUANA.

“*DEPARTMENT*” MEANS THE STATE OF ARIZONA DEPARTMENT OF HEALTH SERVICES OR ITS SUCCESSOR AGENCY.

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“*DUAL LICENSEE*” MEANS AN ENTITY THAT HOLDS BOTH A NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION AND A MARIJUANA ESTABLISHMENT LICENSE.

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“*OPEN SPACE*” FOR PURPOSES OF CHAPTER 17.32.070, MEANS A PUBLIC PARK, PUBLIC SIDEWALK, PUBLIC WALKWAY OR PUBLIC PEDESTRIAN THOROUGHFARE.

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“PROCESS” AND “PROCESSING” FOR PURPOSES OF CHAPTER 17.32 AND 17.36, MEANS TO HARVEST, DRY, CURE, TRIM OR SEPARATE PARTS OF THE MARIJUANA PLANT.

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“PUBLIC PLACE” HAS THE SAME MEANING PRESCRIBED IN THE SMOKE-FREE-ARIZONA ACT, A.R.S. § 36.601.01.

“RECREATIONAL 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.

“RECREATIONAL 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.

“RECREATIONAL 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 RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA PRODUCTS TO CONSUMERS, CULTIVATE RECREATIONAL MARIJUANA AND MANUFACTURE RECREATIONAL MARIJUANA PRODUCTS.
2. A SINGLE OFF-SITE CULTIVATION LOCATION AT WHICH THE LICENSEE MAY CULTIVATE RECREATIONAL MARIJUANA, PROCESS RECREATIONAL MARIJUANA AND MANUFACTURE RECREATIONAL MARIJUANA PRODUCTS, BUT FROM WHICH RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.
3. A SINGLE OFF-SITE LOCATION AT WHICH THE LICENSEE MAY MANUFACTURE RECREATIONAL MARIJUANA PRODUCTS AND PACKAGE AND STORE RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA PRODUCTS, BUT FROM WHICH RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA PRODUCTS MAY NOT BE TRANSFERRED OR SOLD TO CONSUMERS.

“RECREATIONAL MARIJUANA PRODUCTS” MEANS RECREATIONAL MARIJUANA CONCENTRATE AND PRODUCTS THAT ARE COMPOSED OF RECREATIONAL MARIJUANA AND OTHER INGREDIENTS AND THAT ARE INTENDED FOR USE OR CONSUMPTION, INCLUDING EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

“RECREATIONAL 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.

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“SMOKE” FOR PURPOSES OF CHAPTERS 17.32 AND 17.36 MEANS TO INHALE, EXHALE, BURN, CARRY OR POSSESS ANY LIGHTED RECREATIONAL MARIJUANA OR LIGHTED RECREATIONAL MARIJUANA PRODUCTS, WHETHER NATURAL OR SYNTHETIC.

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Chapter 17.32
C COMMERCIAL DISTRICT

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17.32.020 **USE REGULATIONS**

A. Uses Permitted. Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

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2. Retail Sales.

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U. RECREATIONAL MARIJUANA ESTABLISHMENTS, CONTINGENT ON ARIZONA STATE LICENSURE AND SUBJECT TO THE STANDARD CONDITIONS AND LIMITATIONS IN SECTION 17.32.070.

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17.32.070 **RECREATIONAL MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES**

A. PURPOSE. THIS SECTION IS ADOPTED TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE TOWN. NOTHING IN THIS SECTION IS INTENDED TO PROMOTE OR CONDONE THE SALE, CULTIVATION, MANUFACTURE, TRANSPORT, PRODUCTION, DISTRIBUTION, POSSESSION, OR USE OF RECREATIONAL MARIJUANA OR RECREATIONAL MARIJUANA PRODUCTS IN VIOLATION OF ANY APPLICABLE LAW.

B. REGULATIONS.

1. RECREATIONAL MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES. THE OPERATION OF A RECREATIONAL MARIJUANA ESTABLISHMENT AND MARIJUANA TESTING FACILITIES ARE PROHIBITED IN THE TOWN OF MIAMI, EXCEPT THAT A RECREATIONAL MARIJUANA ESTABLISHMENT MAY BE PERMITTED PURSUANT TO SECTION 17.32.020 OR 17.36.060 FOR A DUAL LICENSEE WHO:

A. OPERATES BOTH A NONPROFIT MEDICAL MARIJUANA DISPENSARY AND RECREATIONAL MARIJUANA ESTABLISHMENT COOPERATIVELY IN A SHARED LOCATION; AND

B. HAS NOT FORFEITED OR TERMINATED THE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION FROM THE DEPARTMENT.

2. OPERATIONS; SALE OF MARIJUANA AND MARIJUANA PRODUCTS.

A. RECREATIONAL MARIJUANA ESTABLISHMENTS PERMITTED ABOVE SHALL BE REGULATED IN THE SAME MANNER AS NONPROFIT MEDICAL MARIJUANA DISPENSARIES AS SET FORTH IN SECTION 17.32.060.

B. THE FEE FOR A PERMIT FOR A RECREATIONAL MARIJUANA ESTABLISHMENT SHALL BE ESTABLISHED BY RESOLUTION OF COUNCIL.

C. THE SALE OF RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA PRODUCTS 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.

3. PUBLIC PLACES.

A. THE USE, SALE, CULTIVATION, MANUFACTURE, PRODUCTION OR DISTRIBUTION OF RECREATIONAL MARIJUANA OR RECREATIONAL

MARIJUANA PRODUCTS IS PROHIBITED ON PROPERTY THAT IS OCCUPIED, OWNED, CONTROLLED, OR OPERATED BY THE TOWN.

B. THE USE, SALE, CULTIVATION, MANUFACTURE, PRODUCTION, OR DISTRIBUTION OF RECREATIONAL MARIJUANA OR RECREATIONAL MARIJUANA PRODUCTS IS PROHIBITED ON PROPERTY THAT IS OCCUPIED, OWNED, CONTROLLED, OR OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THIS STATE THAT HAS ADOPTED RULES, REGULATIONS, OR POLICIES PROHIBITING THE USE, SALE, CULTIVATION, MANUFACTURE, PRODUCTION, OR DISTRIBUTION OF RECREATIONAL MARIJUANA OR RECREATIONAL MARIJUANA PRODUCTS ON ITS PROPERTY.

C. IT IS UNLAWFUL FOR AN INDIVIDUAL TO SMOKE RECREATIONAL MARIJUANA IN A PUBLIC PLACE OR OPEN SPACE IN THE TOWN.

4. REGULATIONS FOR PRIMARY RESIDENCE FOR PERSONAL USE. TO THE EXTENT ALLOWABLE BY LAW, RECREATIONAL MARIJUANA POSSESSION, CONSUMPTION, PROCESSING, MANUFACTURING, TRANSPORTATION, AND CULTIVATION IS PERMITTED IN A RESIDENTIAL ZONING DISTRICT IN THE TOWN AND IS SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

A. IT SHALL BE UNLAWFUL FOR ANY INDIVIDUAL WHO IS AT LEAST 21 YEARS OF AGE TO POSSESS, TRANSPORT, CULTIVATE, OR PROCESS MORE THAN SIX (6) RECREATIONAL MARIJUANA PLANTS.

B. IT SHALL BE UNLAWFUL FOR TWO OR MORE INDIVIDUALS WHO ARE AT LEAST 21 YEARS OF AGE TO POSSESS, TRANSPORT, CULTIVATE OR

PROCESS MORE THAN 12 RECREATIONAL MARIJUANA PLANTS AT THE INDIVIDUALS' PRIMARY RESIDENCE.

- C. EXCEPT AS PROVIDED BY THIS SECTION AND THE SMART AND SAFE ARIZONA ACT, IT SHALL BE UNLAWFUL FOR AN INDIVIDUAL TO CULTIVATE RECREATIONAL MARIJUANA IN A RESIDENTIAL ZONING DISTRICT WITHIN THE TOWN LIMITS.
- D. INDIVIDUALS SHALL NOT PROCESS OR MANUFACTURE RECREATIONAL MARIJUANA BY MEANS OF ANY LIQUID OR GAS, OTHER THAN ALCOHOL, THAT HAS A FLASHPOINT BELOW 100 DEGREES FAHRENHEIT.
- E. KITCHEN, BATHROOMS, AND PRIMARY BEDROOM(S) SHALL BE USED FOR THEIR INTENDED USE AND SHALL NOT BE USED PRIMARILY FOR RESIDENTIAL RECREATIONAL MARIJUANA PROCESSING, MANUFACTURING, OR CULTIVATION.
- F. 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 TOWN.
- G. 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.
- H. CULTIVATION SHALL TAKE PLACE IN AN AREA WHERE THE RECREATIONAL MARIJUANA PLANTS ARE NOT VISIBLE FROM PUBLIC VIEW WITHOUT USING BINOCULARS, AIRCRAFT, OR OTHER OPTICAL AIDS.

5. ENFORCEMENT; PENALTIES.

- A. EXCEPT AS OTHERWISE PROVIDED IN A.R.S. § 36-2853, VIOLATION OF ANY PROVISION OF THIS SECTION IS PUNISHABLE AS A CLASS 2 MISDEMEANOR PURSUANT TO SECTION 17.68.050 OF THE TOWN CODE.
- B. VIOLATIONS OF THIS SECTION ARE IN ADDITION TO ANY OTHER VIOLATION ENUMERATED WITHIN THE TOWN CODE AND IN NO WAY LIMIT THE PENALTIES, ACTIONS, OR ABATEMENT PROCEDURES WHICH MAY BE TAKEN BY THE TOWN FOR ANY VIOLATION OF THIS SECTION, WHICH IS ALSO A VIOLATION OF ANY OTHER ORDINANCE OR CODE PROVISION OF THE TOWN OR FEDERAL OR STATE LAW. CONVICTION AND PUNISHMENT OR JUDGMENT AGAINST ANY PERSON UNDER THIS SECTION 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.
- C. RECREATIONAL MARIJUANA ESTABLISHMENT PERMITS MAY BE REVOKED BY THE TOWN FOR VIOLATION OF ANY PROVISION OF THIS SECTION, FOR ANY VIOLATION OF THE REQUIREMENTS OF THE PERMIT, OR IF THE DEPARTMENT REVOKES THE LICENSE FOR A RECREATIONAL MARIJUANA ESTABLISHMENT.

Chapter 17.36
L-I LIGHT INDUSTRIAL DISTRICT

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17.36.060 **RECREATIONAL MARIJUANA ESTABLISHMENT**
REGULATIONS

RECREATIONAL MARIJUANA ESTABLISHMENTS SHALL BE LOCATED, DEVELOPED AND OPERATED IN COMPLIANCE WITH THE STANDARDS SET FORTH IN SECTION 17.32.070 AND REQUIREMENTS FOR ARIZONA STATE LICENSURE.