

ORDINANCE NO. 01-2021

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLIFTON, ARIZONA, DECLARING THE DOCUMENT ENTITLED "TOWN OF CLIFTON RECREATIONAL MARIJUANA UPDATES" AS A PUBLIC RECORD; ADOPTING THE "TOWN OF CLIFTON RECREATIONAL MARIJUANA UPDATES" BY REFERENCE, AMENDING THE TOWN CODE OF THE TOWN OF CLIFTON, ARIZONA, TITLE XV LAND USAGE, CHAPTER 156 ZONING CODE, CHAPTER 1.08 DEFINITIONS BY ADDING NEW SECTION 1.08.386 RECREATIONAL MARIJUANA TERMS; CHAPTER 1.12 SUPPLEMENTARY REQUIREMENTS AND PROCEDURES APPLICABLE WITHIN ZONES BY ADDING NEW SECTION 1.12.380 RECREATIONAL MARIJUANA FACILITIES; AND AMENDING CHAPTER 1.60 CC-1 CENTRAL COMMERCIAL ZONE, SECTION 1.60.040 CONDITIONAL USES; ALL RELATED TO THE REGULATION OF RECREATIONAL MARIJUANA INCLUDING ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; REGULATING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; IMPOSING FEES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; 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, 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 Clifton according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as the "Smart and Safe Arizona Act" was certified as Proposition 207, and approved at the November 3, 2020 general election;

WHEREAS, the Smart and Safe Arizona Act 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 or 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 Clifton finds that the Smart and Safe Arizona Act 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 Clifton 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 marijuana testing facilities in the Town of Clifton; and

WHEREAS, that certain document entitled “Recreational Marijuana Updates,” 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 Clifton, Arizona, as follows:

Section I. In General.

The Code of Clifton, Arizona, is hereby amended by amending the Town Code of the Town of Clifton, Arizona, Title XV Land Usage, Chapter 156 Zoning Code, to read as set forth in that certain document entitled “Town of Clifton Recreational Marijuana Updates,” 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 the provisions of 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 the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Violation of any provision of this Ordinance shall be subject to the following penalties as set forth in the Town of Clifton Recreational Marijuana Updates and provided herein:

- A. 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 the facility.
- B. Violation of this Ordinance is in addition to any other violation enumerated within the Town ordinances or the Town Code and in no way limits the penalties, actions or abatement procedures which may be taken by the Town for any violation of this Ordinance, 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 Ordinance 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. Except as otherwise provided in A.R.S. § 36-2853, violation of any provision of this Ordinance is a class one misdemeanor pursuant to Chapter 1.96.

Section V. Emergency.

Because of the urgent need for implementation of Town regulations in response to the Smart and Safe Arizona Act, the immediate operation of this Ordinance is necessary for the preservation of health, safety, and welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately upon 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 Common Council of the Town of Clifton, Arizona, this ____ day of _____, 20__, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 20__.

Luis M. Montoya, Mayor

ATTEST:

Esperanza Castaneda, Town Clerk

APPROVED AS TO FORM:

Gust Rosenfeld PLC, Town Attorney
By Trish Stuhan

I, ESPERANZA CASTANEDA, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. _____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF CLIFTON, ARIZONA, ON THE ____ DAY OF _____, 20__, WAS POSTED IN THREE PLACES AND ON THE TOWN WEBSITE ON THE ____ DAY OF _____, 20__.

Esperanza Castaneda, Town Clerk