

Direction to Staff
RE: Voter Approval of Smart
and Safe Arizona Act
(Recreational Marijuana)



City of Apache Junction
City Council Direction to Staff Item
Nov. 30, 2020 WS & Dec. 1, 2020 DtS



Background

On November 3, 2020, the voters of Arizona passed the “Smart and Safe Arizona Act”, a citizen initiative.....*“relating to the responsible adult use, regulation and taxation of marijuana”,* (also referred to as the “recreational marijuana act”).

The act declares that in the interest of public health and safety, the legal adult use of marijuana should be regulated so that:

- Legitimate, taxpaying business people, and not criminal actors, conduct sales of marijuana;
- Marijuana sold in this state is tested, labeled and subject to additional regulations to ensure that consumers are informed and protected;

Background (cont.)

- Employers retain their rights to maintain drug and alcohol free places of employment;
- The health and safety of employees in the marijuana industry are protected;
- Individuals must show proof of age before purchasing marijuana;
- Selling, transferring or providing marijuana to minors and other individuals under the age of 21 remains illegal;
- Driving, flying or boating while impaired to the slightest degree by marijuana remains illegal.

Newly Defined Uses:

A marijuana establishment includes:

- a retail establishment at which the sale of marijuana and marijuana products is conducted, along with the possible cultivation and manufacture of marijuana products;
- an off-site location where marijuana is cultivated, processed and products are made, but which does not conduct sales to consumers;
- an off-site location at which marijuana products are manufactured, packaged and stored, but which does not conduct sales to consumers.

Newly Defined Uses (cont.)

- A *marijuana testing facility* includes ADHS facilities or facilities operated by another licensed entity to analyze the potency of, and test the marijuana for, harmful contaminants.

The act does not:

- change the medical marijuana laws, except that a licensed medical marijuana dispensary may also apply to offer recreational marijuana products to consumers over 21 years of age (referred to as being a “dual licensee”);
- allow smoking in public or open spaces;
- allow persons to operate motor vehicles, boats or fly aircraft under the influence.

The act does:

- impose a sales tax of 16% on recreational marijuana products;
- allow people to consume marijuana products in private places, carry small quantities of marijuana and/or marijuana products and paraphernalia;
- allow a person over the age of 21 to securely cultivate up to 6 plants in their own private residence (no more than 12 plants if two or more persons over the age of 21 reside together);
- set penalties for violators.

City's Options for Regulation – A City May:

- Enact reasonable zoning regulations that limit the use of land for marijuana establishments and marijuana testing facilities to specified areas;
- Limit the number of marijuana establishments or marijuana testing facilities, or both;
- Prohibit marijuana establishments or marijuana testing facilities, or both;
- Regulate the time, place and manner of marijuana establishment and marijuana testing facility operations;
- Establish reasonable restrictions on public signage regarding marijuana, marijuana establishments and marijuana testing facilities;
- Prohibit or restrict delivery within its jurisdiction.

City's Options for Regulation – A City May Not:

Enact any ordinance, regulation or rule that:

- Is more restrictive than a comparable ordinance, regulation or rule that applies to non-profit medical marijuana dispensaries;
- 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;
- Conflicts with state law or rules adopted pursuant to state law;
- Prohibits the transportation of marijuana by a marijuana establishment or marijuana testing facility on public roads;

City's Options for Regulation – A City May Not:

.....enact a rule that:

- 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;
- Except as expressly authorized by state law (Section 36-2851), prohibits or restricts any conduct or 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.

Sampling of what other cities are doing:

	ME & MTF Prohibition	ME Prohibited ex- cept dual licensee	MTF Prohibited
• Gilbert:		X	X
• Fountain Hills:		X	X
• Payson		X	X
• Sahuarita:		X	X
• Tolleson:		X	X
• Wickenburg:	X		
• Queen Creek:	X		

(ME = Marijuana Establishment; MTF = Marijuana Testing Facility)

Possible Directions to Staff:

- ALLOW EXISTING DISPENSARIES TO BECOME DUAL LICENSEES:
 - Require CUP amendment process;
 - Operate under the same rules as existing dispensaries;
 - Allow rec-mar sales too, but no cultivation or processing;
 - Allow med-mar to convert to rec-mar through CUP amendment;
 - AJ code still allows for med-mar cultivation & infusion kitchens;
- TAKE NO ACTION:
 - ME would be treated like retail or liquor stores in B-1, B2, B-3 zones;
 - MTF would be treated like light industrial uses in B-4, B-5 zones;
 - ME & MTF would be subject to states' minimum requirements;

Possible Directions to Staff (cont.):

- PROHIBIT ANY NEW FREE-STANDING ME OR MTF USES IN CITY:
 - It is possible that in the future a new med-mar facility could apply for a CUP, which could lead to another dual licensee;
- ALLOW ME OR MTF USES IN SIMILAR MANNER AS MED-MAR:
 - Through the CUP process;
 - In specific zoning districts;
 - With regulations on signage, delivery, hours of operation, separations, limit on # of establishments, odor control, security, etc.;

Possible Directions to Staff (cont.):

- ALLOW ME & MTF OUTRIGHT IN SPECIFIC ZONING DISTRICTS:
 - With states' minimum regs., including odor control, security, etc.;
 - Subject to city's normal commercial development requirements;
- OTHER???

Final Comments:

- Staff report also contains a model ordinance drafted by the League of Cities and Towns for the possible regulation of marijuana establishments and marijuana testing facilities.
- AJ presently has two licensed dispensaries which could apply to be dual licensees.

Questions/direction to staff?: