

ORDINANCE NO. 1506

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AMENDING APACHE JUNCTION CITY CODE, VOLUME II, LAND DEVELOPMENT CODE, CHAPTER 1: ZONING ORDINANCE, BY REPEALING, REPLACING AND RETITLING PORTIONS OF ARTICLE 1-5: ZONING BULK AND USE REGULATIONS, ARTICLE 1-6: SUPPLEMENTAL REGULATIONS, AND ARTICLE 1-17: DEFINITIONS; AND BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED "2021 AMENDMENTS TO THE APACHE JUNCTION CITY CODE, VOLUME II, LAND DEVELOPMENT CODE, CHAPTER 1: ZONING ORDINANCE, ARTICLE 1-5 ZONING BULK AND USE REGULATIONS, § 1-5-3 NON-RESIDENTIAL USE REGULATIONS, TABLE 5-3 NON-RESIDENTIAL USE REGULATIONS; ARTICLE 1-6: SUPPLEMENTAL REGULATIONS, § 1-6-12 MEDICAL MARIJUANA; AND ARTICLE 1-17: DEFINITIONS, § 1-17-1 DEFINITIONS"; REPEALING ANY CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes Sections § 36-2801 *et seq.*, and Arizona Administrative Code, Title 9, Health Services, Chapter 17, Department of Health Services ("DOHS") Code, allow the establishment and operation of nonprofit medical marijuana dispensaries in the City of Apache Junction according to a prescribed statutory and regulatory process; and

WHEREAS, on December 4, 2020, the city council gave direction to staff to process the necessary amendments to the Apache Junction zoning ordinance to accommodate recreational marijuana uses in the city after the November 3, 2020 voter approval of Proposition 207, also known as the Smart and Safe Arizona Act ("SSAA"); and

WHEREAS, marijuana contains tetrahydrocannabinol ("THC"), which possession or use still remains unlawful under the federal Controlled Substances Act pursuant to 21 U.S.C. § 811 *et seq.*; and

WHEREAS, the SSAA contains provisions: (i) authorizing the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; (ii) authorizing possession, transportation, cultivation or processing of marijuana plants in a primary residence by adults over 21 years of age; (iii) allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the DOHS to become a licensed marijuana establishment for retail sales, cultivation and manufacturing of marijuana; and (iv) allowing the DOHS, or another entity designated by the department, to become a

marijuana testing facility to test the potency of marijuana and detect any harmful contaminants; and

WHEREAS, the city finds that the SSAA 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 public and increases the responsibilities of law enforcement and other Apache Junction resources to respond to violations of state and local laws, including building, code compliance, electrical and fire codes; and

WHEREAS, the city of Apache Junction seeks to protect public health, safety, and welfare by prohibiting new medical marijuana facilities, cultivation and infusion kitchens, standalone recreational marijuana establishments, marijuana testing facilities, and marijuana cultivation sites; and

WHEREAS, A.R.S. § 9-802 permits municipalities to enact the provisions of a code of public record theretofore in existence without setting forth such provisions in full text as long as the adopting ordinance is published in full text and at least three paper copies, or one paper copy and one electronic copy of the code or public record, are filed and made available for public inspection in the office of the city clerk and the electronic copy is accessible on the city's website and made available for public inspection; and

WHEREAS, pursuant to A.R.S. §§ 9-801(1) and 9-802, codes which may be adopted by reference include those relating to medical and recreational marijuana zoning regulations; and

WHEREAS, city staff has determined that for administrative efficiency, it is more appropriate to update the city code by adopting by reference a revised version of the Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-5 Zoning Bulk and Use Regulations, § 1-5-3 Non-Residential Use Regulations, Table 5-3 Non-Residential Use Regulations; Article 1-6: Supplemental Regulations, § 1-6-12 Medical Marijuana; and Article 1-17: Definitions, § 1-17-1 Definitions.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

SECTION I IN GENERAL

1. That the existing Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-5 Zoning Bulk and Use Regulations, § 1-5-3 Non-Residential Use Regulations, Table 5-3 Non-Residential Use Regulations;

Article 1-6: Supplemental Regulations, § 1-6-12 Medical Marijuana; and Article 1-17: Definitions, § 1-17-1 Definitions be amended as referenced in the document noted in #2.

2. That certain document known as the "2021 Amendments to the Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-5 Zoning Bulk and Use Regulations, § 1-5-3 Non-Residential Use Regulations, Table 5-3 Non-Residential Use Regulations; Article 1-6: Supplemental Regulations, § 1-6-12 Medical Marijuana; and Article 1-17: Definitions, § 1-17-1 Definitions", at least three paper copies, or one paper copy and one electronic copy which are accessible on the city's website (www.apachejunctionaz.gov) and filed in the office of the city clerk of the City of Apache Junction, which document was made a public record by Resolution No. 21-27, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance, pursuant to A.R.S. § 9-802.

SECTION II REPEALING ANY CONFLICTING PROVISIONS

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the codes adopted herein by reference are hereby repealed.

SECTION III PROVIDING FOR SEVERABILITY

If any section, subsection, sentence, phrase, clause or portion of this ordinance or any part of the codes or regulations 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

Unless noted otherwise, any violation of any provisions adopted herein, shall be punishable as a class 1 misdemeanor consistent with Apache Junction City Code, Volume 1, Chapter 1: GENERAL, Article 1-8: PENALTY.

APPROVED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION THIS ____ DAY OF _____, 2021.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2021.

WALTER "CHIP" WILSON
Mayor

ATTEST:

JENNIFER PENA
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney