

CITY OF BENSON CITY COUNCIL JANUARY 25, 2021 – 6:00 P.M. WORKSESSION

A WORKSESSION OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
WILL BE HELD ON JANUARY 25, 2021 AT 6:00 P.M.,
AT THE BENSON CITY COUNCIL CHAMBERS,
599 SOUTH DRAGOON STREET, BENSON, ARIZONA

BECAUSE OF THE CURRENT COVID – 19 PUBLIC HEALTH EMERGENCY, THE BENSON COUNCIL CHAMBERS WILL HAVE LIMITED OCCUPANCY FOR COUNCIL MEETINGS. HOWEVER, THE LIVE MEETING MAY BE WATCHED VIA FACEBOOK ONLINE AT [HTTPS://WWW.FACEBOOK.COM/BENSONAZ/](https://www.facebook.com/bensonaz/) (NO FACEBOOK ACCOUNT IS NEEDED).

FOR HELP WITH TECHNICAL DIFFICULTIES, PLEASE CALL 520-720-6331.

Vicki L. Vivian, CMC, City Clerk

AGENDA

The Council may discuss, direct, consider and take possible action as indicated below pertaining to the following:

CALL TO ORDER: The Call to Order will consist of the Mayor calling the Council to order. The Mayor or his designee shall then lead those present in the Pledge of Allegiance before introducing the invocation speaker, who will offer the invocation.

ROLL CALL: The City Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes.

NEW BUSINESS:

1. Discussion and possible direction to Staff regarding Proposition 207 Background and Potential Code Amendments for Marijuana – **Michelle Johnson, Planning Technician/GIS** *

ADJOURNMENT

POSTED this 22nd day of January, 2021

Material related to the City Council meeting is available for public review the day before and the day of the meeting, during office hours, at the City Clerk's Office located at 120 W. 6th Street, Benson, Arizona, 520-586-2245 x 2011.

All facilities are handicapped accessible. If you have a special accessibility need, please contact Vicki L. Vivian, City Clerk, at (520) 586-2245 or TDD: (520) 586-3624, no later than eight (8) hours before the scheduled meeting time.

Any invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

Executive Sessions – Upon a vote of the majority of the City Council, the council may enter into Executive Sessions pursuant to Arizona Revised Statutes §38-431.03 (A)(3) to obtain legal advice on matters listed on the Agenda.

* Denotes an Exhibit in addition to the Council Communication

** Call to the Public

Arizona Revised Statutes §38-431.01(H) provides that "A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action." As such, a Call to the Public, if on the agenda, is provided as a courtesy.

In order to speak during the Call to the Public, please complete the Call to the Public form requesting to do so.

*** Consent Agenda

The Consent Agenda will be the first item under New Business and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring Council discussion. A single motion will approve all items on the Consent Agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Councilmember may remove any issue from the Consent Agenda, and that issue will be discussed and voted upon separately, immediately following the Consent Agenda under its proper regular category of New Business.

NOTICE TO PARENTS: Parents and legal guardians have the right (with certain exceptions) to consent before the City of Benson makes a video or voice recording of a minor child. A.R.S. §1-602(A)(9). Regular and Special Meetings of the Mayor and Council for the City of Benson are recorded, and that recording is usually posted on the City's website. If you permit your child to participate in a Regular or Special Meeting of the Mayor and Council for the City of Benson, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the City Clerk.

City of Benson City Council Communication



Worksession

January 25, 2021

To: Mayor and Council

Agenda Item # 1

From: Michelle Johnson, Planning Technician/GIS

Subject:

Discussion and possible direction to Staff regarding Proposition 207 Background and Potential Code Amendments for Marijuana

Discussion:

Proposition 207 was approved by voters in November 2020. The passage of this Act allows private usage of marijuana by adults and allows the Arizona Department of Health Services to issue licenses for marijuana establishments and testing facilities. The law also permits jurisdictions to decide whether or not they want these marijuana facilities within their jurisdiction limits and if so, to establish reasonable regulations for the facilities.

We will be discussing the Act, how it relates to medical marijuana and what policies or regulations Council would like to see implemented for medical and/or recreational marijuana usage.

Staff Recommendation:

Council pleasure



MARIJUANA AND AMENDMENTS TO CITY CODE

PROPOSITION 207 BACKGROUND

- **SMART & SAFE ARIZONA ACT** (A.R.S. § 36-2850 thru 36-2865)
- **APPROVED BY VOTERS ON NOVEMBER 3, 2020**
- **ALLOWED PRIVATE USAGE AND CREATED MARIJUANA ESTABLISHMENTS AND TESTING FACILITIES**
- **SMART & SAFE FUND AND JUSTICE REINVESTMENT FUND**
 - **LICENSE FEES**
 - **16% EXCISE TAX ON ALL PRODUCTS SOLD**
 - **PRIVATE DONATIONS**
- **SUBJECT TO CURRENT SALES TAX RATE (TPT) 3.5%; CANNOT LEVY ADDITIONAL TAX RATE.** (A.R.S. § 36-2864)

PROPOSITION 207 BACKGROUND

PRIVATE USAGE

- **ALLOWS INDIVIDUALS 21 YEARS OF AGE OR OLDER TO POSSESS, PURCHASE, CONSUME, PROCESS, MANUFACTURE, AND/OR TRANSPORT, ONE OUNCE OR LESS OF MARIJUANA. (A.R.S. § 36-2852)**
- **PROHIBITS SMOKING IN PUBLIC PLACES (BUILDINGS OPEN TO CUSTOMERS), OPEN SPACES (PARK, SIDEWALK) OR IN ANY MOVING VEHICLE. (A.R.S. § 36-2851)**
- **COUNCIL CAN PROHIBIT THE CONSUMPTION, POSSESSION, AND SALE ON CITY OWNED PROPERTIES. (A.R.S. § 36-2851)**

PROPOSITION 207 BACKGROUND

PRIVATE CULTIVATION (A.R.S. § 36-2852)

- **HARVEST NO MORE THAN 6 PLANTS IF ONE INDIVIDUAL OVER 21 IS IN HOUSEHOLD**
- **HARVEST NO MORE THAN 12 PLANTS IF TWO+ INDIVIDUALS OVER 21 ARE IN HOUSEHOLD**
- **PLANTS MUST BE LOCATED IN A COMPLETELY ENCLOSED BUILDING UNDER LOCK & KEY**

PROPOSITION 207 BACKGROUND

SMART & SAFE FUND DISTRIBUTION (A.R.S. § 36-2856)

- AZDHS TO ADMINISTER
- AZDOR TO COLLECT TAXES
- SUPREME COURT FOR EXPUNGEMENT
- STATE TREASURER TO ADMINISTER
- ANY OTHER MANDATORY EXPENDITURE
- ANY EXCESS TO:
 - 33% COMMUNITY COLLEGE DISTRICTS
 - 31.4% TO LOCAL FIRE AND POLICE
 - 25.4% HIGHWAY USER REVENUE FUND
 - 10% JUSTICE REINVESTMENT FUND
 - 0.2% TO ATTORNEY GENERAL-ENFORCEMENT

JUSTICE REINVESTMENT FUND DISTRIBUTION (A.R.S. § 36-2863)

- STATE TREASURER TO ADMINISTER
- AZDHS TO ADMINISTER
- ANY EXCESS TO:
 - 35% COUNTY PUBLIC HEALTH DEPARTMENTS
 - 35% TO AZDHS FOR GRANTS TO NONPROFITS
 - 30% TO AZDHS FOR PUBLIC HEALTH ISSUES

PROPOSITION 207

MARIJUANA ESTABLISHMENTS

- **MARIJUANA ESTABLISHMENTS-DEFINITION** (A.R.S. § 36-2850)
 - **A RETAIL LOCATION WHERE MARIJUANA CAN BE SOLD, CULTIVATED, AND MANUFACTURED**
 - **A CULTIVATION LOCATION WHERE MARIJUANA IS CULTIVATED, PROCESSED AND MANUFACTURED (NOT SOLD TO CONSUMERS)**
 - **A STORAGE LOCATION WHERE MARIJUANA IS MANUFACTURED, PACKAGED AND STORED (SILENT ON CULTIVATION; NOT SOLD TO CONSUMERS)**

PROPOSITION 207

MARIJUANA ESTABLISHMENTS

	ACTIVITIES
RETAIL	SELL, GROW, MANUFACTURE, DELIVERY RULES PENDING
CULTIVATION	GROW, MANUFACTURE
STORAGE	MANUFACTURE, PACKAGE, STORE

PROPOSITION 207 MARIJUANA ESTABLISHMENTS

- **LICENSED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES (ADHS)**
- **LICENSE VALID FOR TWO YEARS (RENEWABLE)**
- **TRACK, TEST, REVIEW LABELING AND PACKAGING, AND SECURITY OF FACILITY, INSPECTION OF FACILITY**

(A.R.S. § 36-2854)

PROPOSITION 207

MARIJUANA ESTABLISHMENTS

- **ACCEPTING EARLY APPLICATIONS JANUARY 19 TO MARCH 9, 2021.**
- **MAXIMUM OF 2 ESTABLISHMENTS PER COUNTY (COCHISE COUNTY ELIGIBLE FOR 1)**
 - **BASED ON NUMBER OF EXISTING MEDICAL MARIJUANA DISPENSARIES (COCHISE COUNTY CURRENTLY HAS 1)**
- **AN ADDITIONAL 26 LICENSES TO BE ALLOCATED AT A LATER TIME (SOCIAL EQUITY OWNERSHIP PROGRAM)**

(A.R.S. § 36-2854)

PROPOSITION 207 MARIJUANA TESTING FACILITY

MARIJUANA TESTING FACILITY-DEFINITION (A.R.S. § 36-2850)

- **AN ENTITY LICENSED BY AZDHS TO ANALYZE POTENCY AND TEST FOR CONTAMINANTS**

PROPOSITION 207

POTENTIAL AMENDMENT TO CITY CODE

QUESTION 1:

WHICH POLICY DOES THE COUNCIL WANT TO ADOPT?

- **PROHIBITION**
 - **3 ESTABLISHMENT TYPES AND TESTING**
 - **ONE OR THE OTHER**
- **PERMITTED ONLY AS DUAL LICENSE WITH A LICENSED MEDICAL MARIJUANA DISPENSARY**
- **ALLOW AS STAND ALONE SITE**
 - **3 ESTABLISHMENT TYPES AND TESTING**
 - **ONE OR THE OTHER**

PROPOSITION 207

POTENTIAL AMENDMENT TO CITY CODE

	MARIJUANA ESTABLISHMENT	TESTING FACILITY
OPTION A:	PROHIBIT	PROHIBIT
OPTION B:	PROHIBIT	ALLOW
OPTION C:	ALLOW	PROHIBIT
OPTION D:	PROHIBIT EXCEPT FOR DUAL LICENSE	PROHIBIT
OPTION E:	ALLOW	ALLOW

PROPOSITION 207 POTENTIAL AMENDMENT TO CITY CODE

OTHER LOCAL JURISDICTIONS IN ARIZONA

- **CITY OF SURPRISE, CITY OF NOGALES AND TOWN OF PIMA HAVE PROHIBITED**
- **SIERRA VISTA LEANING TOWARD ALLOWING DUAL LICENSES**
- **DOUGLAS AND COUNTY LIKELY TO ALLOW STAND ALONE FACILITIES VIA CONDITIONAL USE PROCESS**

PROPOSITION 207

POTENTIAL AMENDMENT TO CITY CODE

IF COUNCIL OPTS TO ALLOW:

- **NUMBER OF ESTABLISHMENTS AND TESTING FACILITIES**
- **OPERATIONAL STANDARDS**
 - **TIME**
 - **HOURS OF OPERATION**
 - **PLACE**
 - **ZONING DISTRICT OR OVERLAY DISTRICT**
 - **BUFFERS FROM SPECIFIED USES SUCH AS SCHOOLS OR RESIDENTIAL**
 - **MANNER**
 - **SCALE OF OPERATIONS**
 - **SECURITY**
 - **LOITERING**
 - **WASTE DISPOSAL**
 - **SPECIFIC CODE COMPLIANCE (ODOR, FIRE)**
 - **SIGNAGE**
 - **DELIVERY**
 - **ONSITE CONSUMPTION**
- **CANNOT BE STRICTER THAN MEDICAL MARIJUANA**

(A.R.S. § 36-2857)

PROPOSITION 207 CONSIDERATIONS IF ALLOWING

OPERATIONAL STANDARDS: TIME, PLACE AND MANNER

- **TIME**
 - **HOURS OF OPERATION**
 - **RETAIL**
 - **SET HOURS (7AM-8PM)**
 - **MAXIMUM OPEN HOURS (12 HOURS EVERY 24 HOUR)**
 - **CLOSED SPECIFIC HOURS (OVERNIGHT 9PM-6AM)**
 - **CULTIVATION**
 - **MANUFACTURE**
 - **TESTING**

PROPOSITION 207 CONSIDERATIONS IF ALLOWING

OPERATIONAL STANDARDS: TIME, PLACE AND MANNER

- **PLACE**

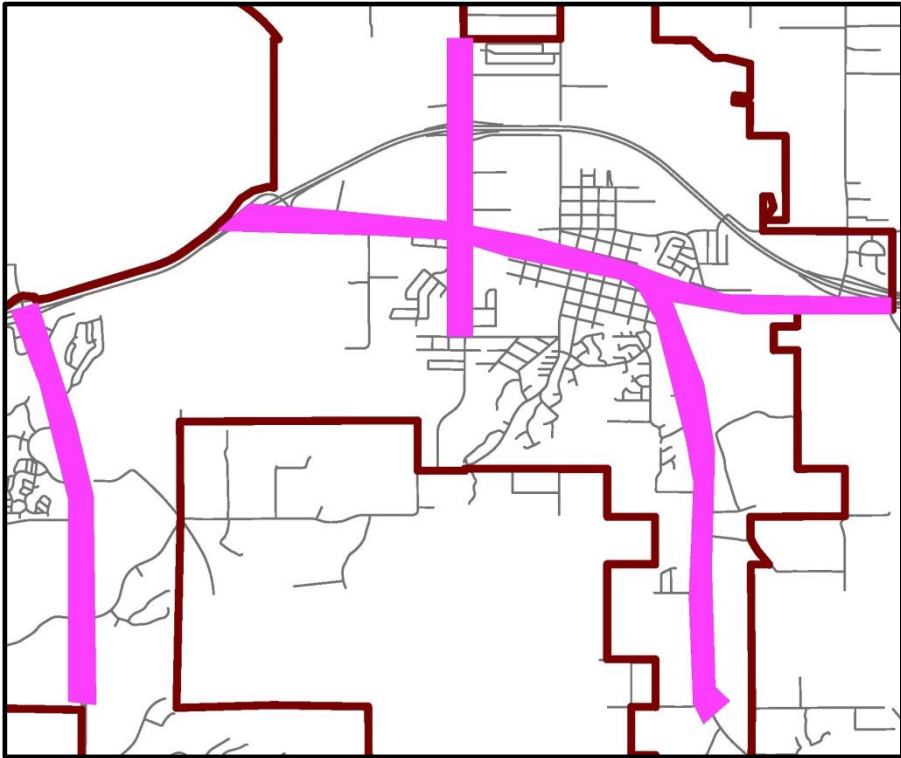
- **ZONING DISTRICT VS. OVERLAY**

- **BUSINESS, INDUSTRIAL, OR BOTH**
- **SPECIFIC BOUNDARY**

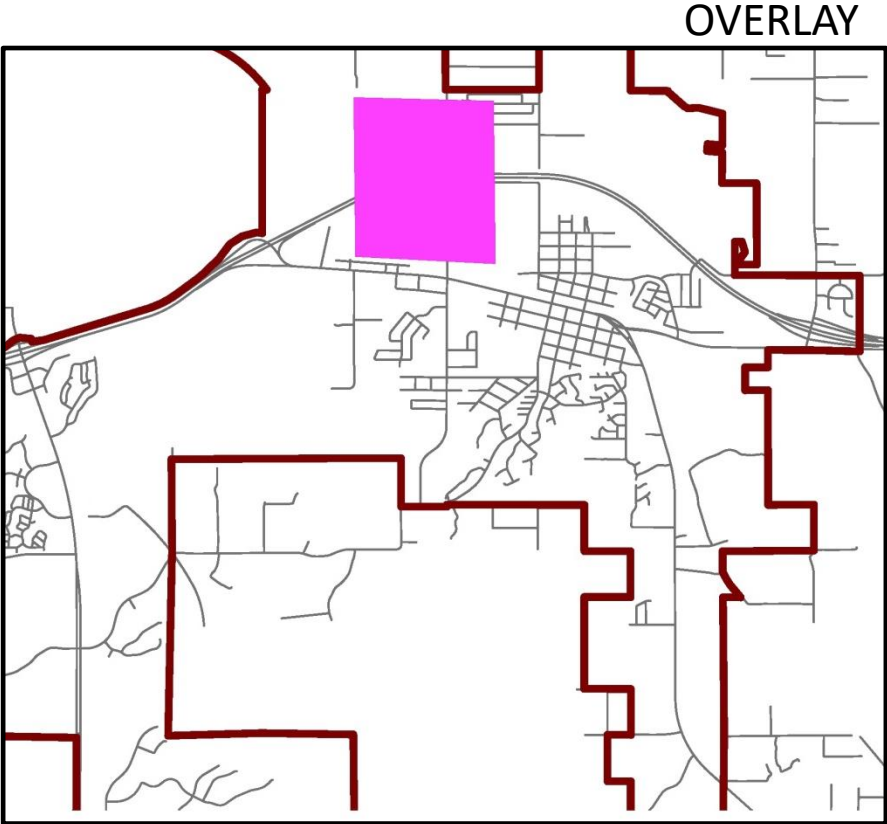
- **BUFFERS**

- **X FEET FROM SPECIFIC USES (RESIDENTIAL ZONE, SCHOOL, CHILD CARE CENTER, HOUSE OF WORSHIP, PUBLIC PARK, COMMUNITY CENTER, LIBRARY, ETC.)**

PROPOSITION 207 CONSIDERATIONS IF ALLOWING



ZONING DISTRICT



OVERLAY

PROPOSITION 207 CONSIDERATIONS IF ALLOWING

OPERATIONAL STANDARDS: TIME, PLACE AND MANNER

- **MANNER**

- **SCALE OF OPERATIONS**

- **SECURITY**

- **BEYOND ADHS REQUIREMENTS**

- **LOITERING**

- **WASTE DISPOSAL**

- **IF NO ADHS REQUIREMENTS OR BEYOND ADHS REQUIREMENTS**

- **SPECIFIC CODE COMPLIANCE**

- **ODOR AND FIRE SAFETY**

- **NFPA 1 CHAPTER 38 CANNABIS FACILITIES**

- **UPDATE CURRENT BUILDING CODES**

PROPOSITION 207 CONSIDERATIONS IF ALLOWING

OPERATIONAL STANDARDS TIME, PLACE AND MANNER

- **MANNER**
 - **SIGNAGE**
 - **SIZE**
 - **PLACEMENT**
 - **ILLUMINATION**
 - **DELIVERY**
 - **ONSITE CONSUMPTION**

PROPOSITION 207 POTENTIAL AMENDMENT TO CITY CODE

QUESTION 2:

- **DOES COUNCIL WANT TO PROHIBIT THE CONSUMPTION, POSSESSION, AND SALE OF MARIJUANA ON ALL CITY OWNED PROPERTIES?**
- **THIS WOULD LIKELY BE A CITY CODE AMENDMENT UNDER CHAPTER 10 OFFENSES**

36-2850. Definitions

(Caution: 1998 Prop. 105 applies)

In this chapter, unless the context requires otherwise:

1. "Advertise," "advertisement" and "advertising" mean any public communication in any medium that offers or solicits a commercial transaction involving the sale, purchase or delivery of marijuana or marijuana products.
2. "Child-resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.
3. "Consume," "consuming" and "consumption" mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
4. "Consumer" means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
5. "Cultivate" and "cultivation" mean to propagate, breed, grow, prepare and package marijuana.
6. "Deliver" and "delivery" mean the transportation, transfer or provision of marijuana or marijuana products to a consumer at a location other than the designated retail location of a marijuana establishment.
7. "Department" means the department of health services or its successor agency.
8. "Designated caregiver," "excluded felony offense," "independent third-party laboratory," "nonprofit medical marijuana dispensary," "nonprofit medical marijuana dispensary agent," and "qualifying patient" have the same meanings prescribed in section 36-2801.
9. "Dual licensee" means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
10. "Early applicant" means either of the following:
 - (a) An entity seeking to operate a marijuana establishment in a county with fewer than two registered nonprofit medical marijuana dispensaries.
 - (b) A nonprofit medical marijuana dispensary that is registered and in good standing with the department.
11. "Employee," "employer," "health care facility," and "places of employment" have the same meanings prescribed in the smoke-free Arizona act, section 36-601.01.
12. "Good standing" means that a nonprofit medical marijuana dispensary is not the subject of a pending notice of intent to revoke issued by the department.
13. "Industrial hemp" has the same meaning prescribed in section 3-311.
14. "Locality" means a city, town or county.
15. "Manufacture" and "manufacturing" mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
16. "Marijuana":
 - (a) 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.
 - (b) Includes cannabis as defined in 13-3401.
 - (c) 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.
17. "Marijuana concentrate":
 - (a) 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.
 - (b) 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.
18. "Marijuana establishment" means an entity licensed by the department to operate all of the following:
 - (a) A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
 - (b) 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.
 - (c) A single off-site location at which the licensee may manufacture 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.
19. "Marijuana facility agent" means a principal officer, board member or employee of a marijuana establishment or marijuana testing facility who is at least twenty-one years of age and has not been convicted of an excluded felony offense.
20. "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.
21. "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.
22. "Open space" means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

23. "Process" and "processing" mean to harvest, dry, cure, trim or separate parts of the marijuana plant.
24. "Public place" has the same meaning prescribed in the smoke-free Arizona act, section 36-601.01.
25. "Smoke" means to inhale, exhale, burn, carry, or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

36-2851. Employers; driving; minors; control of property; smoking in public places and open spaces

(Caution: 1998 Prop. 105 applies)

This chapter:

1. Does not restrict the rights of employers to maintain a drug-and-alcohol-free workplace or affect the ability of employers to have workplace policies restricting the use of marijuana by employees or prospective employees.
2. Does not require an employer to allow or accommodate the use, consumption, possession, transfer, display, transportation, sale or cultivation of marijuana in a place of employment.
3. Does not allow driving, flying or boating while impaired to even the slightest degree by marijuana or prevent this state from enacting and imposing penalties for driving, flying or boating while impaired to even the slightest degree by marijuana.
4. Does not allow an individual who is under twenty-one years of age to purchase, possess, transport or consume marijuana or marijuana products.
5. Does not allow the sale, transfer or provision of marijuana or marijuana products to an individual who is under twenty-one years of age.
6. Does not restrict the rights of employers, schools, day care centers, adult day care facilities, health care facilities or corrections facilities to prohibit or regulate conduct otherwise allowed by this chapter when such conduct occurs on or in their properties.
7. Does not restrict the ability of an individual, partnership, limited liability company, private corporation, private entity or private organization of any character that occupies, owns or controls property to prohibit or regulate conduct otherwise allowed by this chapter on in or such property.
8. Does not allow any person to:
 - (a) Smoke marijuana in a public place or open space.
 - (b) Consume marijuana or marijuana products while driving, operating or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft or another vehicle used for transportation.
9. Does not prohibit this state or a political subdivision of this state from prohibiting or regulating conduct otherwise allowed by this chapter when such conduct occurs on or in property that is occupied, owned, controlled or operated by this state or a political subdivision of this state.
10. Does not authorize a person to process or manufacture marijuana by means of any liquid or gas, other than alcohol, that has a flashpoint below one hundred degrees Fahrenheit, unless performed by a marijuana establishment.
11. Does not require a person to violate federal law or to implement or fail to implement a restriction on the possession, consumption, display, transfer, processing, manufacturing or cultivation of marijuana if by so doing the person will lose a monetary or licensing-related benefit under federal law.
12. Does not supersede or eliminate any existing rights or privileges of any person except as specifically set forth in this chapter.
13. Does not limit any privilege or right of a nonprofit medical marijuana dispensary under chapter 28.1 of this title except as expressly set forth in this chapter.
14. Does not limit any privilege or right of a qualifying patient or designated caregiver under chapter 28.1 of this title.

36-2852. Allowable possession and personal use of marijuana, marijuana products and marijuana paraphernalia

(Caution: 1998 Prop. 105 applies)

A. Except as specifically and expressly provided in sections 36-2851 and 36-2853 and notwithstanding any other law, the following acts by an individual who is at least twenty-one years of age are lawful, are not an offense under the laws of this state or any locality, may not constitute the basis for detention, search or arrest, and cannot serve as the sole basis for seizure or forfeiture of assets, for imposing penalties of any kind under the laws of this state or any locality or for abrogating or limiting any right or privilege conferred or protected by the laws of this state or any locality:

1. Possessing, consuming, purchasing, processing, manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis, or transporting one ounce or less of marijuana, except that not more than five grams of marijuana may be in the form of marijuana concentrate.
2. Possessing, transporting, cultivating or processing not more than six marijuana plants for personal use at the individual's primary residence, and possessing, processing and manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis, the marijuana produced by the plants on the premises where the marijuana plants were grown if all of the following apply:
 - (a) Not more than twelve plants are produced at a single residence where two or more individuals who are at least twenty-one years of age reside at one time.

- (b) Cultivation takes place within 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.
- (c) Cultivation takes place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft or other optical aids.
3. Transferring one ounce or less of marijuana, of which not more than five grams may be in the form of marijuana concentrate, to an individual who is at least twenty-one years of age if the transfer is without remuneration and is not advertised or promoted to the public.
4. Transferring up to six marijuana plants to an individual who is at least twenty-one years of age if the transfer is without remuneration and is not advertised or promoted to the public.
5. Acquiring, possessing, manufacturing, using, purchasing, selling or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana or marijuana products.
6. Assisting another individual who is at least twenty-one years of age in any of the acts described in this subsection.
- B. Notwithstanding any other law, a person with metabolites or components of marijuana in the person's body is guilty of violating section 28-1381, subsection A, paragraph 3 only if the person is also impaired to the slightest degree.
- C. Notwithstanding any other law, the odor of marijuana or burnt marijuana does not by itself constitute reasonable articulable suspicion of a crime. This subsection does not apply when a law enforcement officer is investigating whether a person has violated section 28-1381.

36-2853. Violations; classification; civil penalty; additional fine; enforcement

(Caution: 1998 Prop. 105 applies)

- A. Notwithstanding any other law and except as otherwise provided in this chapter, a person who possesses an amount of marijuana greater than the amount allowed pursuant to section 36-2852, but not more than two and one-half ounces of marijuana, of which not more than twelve and one-half grams is in the form of marijuana concentrate, is guilty of a petty offense.
- B. Notwithstanding any other law, a person who is under twenty-one years of age and who possesses, consumes, transports or transfers without remuneration one ounce or less of marijuana, of which not more than five grams is in the form of marijuana concentrate, or paraphernalia relating to the consumption of marijuana or marijuana products:
1. For a first violation, shall pay a civil penalty of not more than \$100 to the smart and safe Arizona fund established by section 36-2856 and in the court's discretion may be ordered to attend up to four hours of drug education or counseling.
 2. For a second violation, is guilty of a petty offense, and in the court's discretion may be ordered to attend up to eight hours of drug education or counseling.
 3. For a third or subsequent violation, is guilty of a class 1 misdemeanor.
- C. A person who smokes marijuana in a public place or open space is guilty of a petty offense.
- D. Except as otherwise provided in chapter 28.1 of this title and notwithstanding any other law, any unlicensed person who cultivates marijuana plants pursuant to section 36-2852 where they are visible from public view without using binoculars, aircraft or other optical aids or outside of an enclosed area that is equipped with a lock or other security device that prevents access by minors is guilty of:
1. For a first violation, a petty offense.
 2. For a second or subsequent violation, a class 3 misdemeanor.
- E. A person who is under twenty-one years of age and who misrepresents the person's age to any other person by means of a written instrument of identification or who uses a fraudulent or false written instrument of identification with the intent to induce a person to sell or otherwise transfer marijuana or a marijuana product to the person who is under twenty-one years of age is guilty of:
1. For a first violation, a petty offense.
 2. For a second or subsequent violation, a class 1 misdemeanor.
- F. A person who is under twenty-one years of age and who solicits another person to purchase marijuana or a marijuana product in violation of this chapter is guilty of:
1. For a first violation, a petty offense.
 2. For a second or subsequent violation, a class 3 misdemeanor.

36-2854. Rules; licensing; early applicants; fees; civil penalty; legal counsel

(Caution: 1998 Prop. 105 applies)

- A. The department shall adopt rules to implement and enforce this chapter and regulate marijuana, marijuana products, marijuana establishments and marijuana testing facilities. Those rules shall include requirements for:
1. Licensing marijuana establishments and marijuana testing facilities, including conducting investigations and background checks to determine eligibility for licensing for marijuana establishment and marijuana testing facility applicants, except that:
 - (a) An application for a marijuana establishment license or marijuana testing facility license may not require the disclosure of the identity of any person who is entitled to a share of less than ten percent of the profits of an applicant that is a publicly traded corporation.

- (b) The department may not issue more than one marijuana establishment license for every ten pharmacies that have registered under section 32-1929, that have obtained a pharmacy permit from the Arizona board of pharmacy and that operate within this state.
- (c) Notwithstanding subdivision (b) of this paragraph, the department may issue a marijuana establishment license to not more than two marijuana establishments per county that contains no registered nonprofit medical marijuana dispensaries, or one marijuana establishment license per county that contains one registered nonprofit medical marijuana dispensary. Any license issued pursuant to this subdivision shall be for a fixed county and may not be relocated outside of that county.
- (d) The department shall accept applications for marijuana establishment licenses from early applicants beginning January 19, 2021 through March 9, 2021. Not later than sixty days after receiving an application pursuant to this subdivision, the department shall issue a marijuana establishment license to each qualified early applicant. If the department has not adopted final rules pursuant to this section at the time marijuana establishment licenses are issued pursuant to this subdivision, licensees shall comply with the rules adopted by the department to implement chapter 28.1 of this title except those that are inconsistent with this chapter.
- (e) After issuing marijuana establishment licenses to qualified early applicants, the department shall issue marijuana establishment licenses available under subdivisions (b) and (c) of this paragraph by random selection and according to rules adopted pursuant to this section. At least sixty days prior to any random selection, the department shall prominently publicize the random selection on its website and through other means of general distribution intended to reach as many interested parties as possible and shall provide notice through an email notification system to which interested parties can subscribe.
- (f) Notwithstanding subdivisions (b) and (c) of this paragraph, and no later than six months after the department adopts final rules to implement a social equity ownership program pursuant to paragraph 9 of this subsection, the department shall issue twenty-six additional marijuana establishment licenses to entities that are qualified pursuant to the social equity ownership program.
- (g) Licenses issued by the department to marijuana establishments and marijuana testing facilities shall be valid for a period of two years.
2. Licensing fees and renewal fees for marijuana establishments and marijuana testing facilities in amounts that are reasonable and related to the actual cost of processing applications for licenses and renewals and that do not exceed five times the fees prescribed by the department to register or renew a nonprofit medical marijuana dispensary.
3. The security of marijuana establishments and marijuana testing facilities.
4. Marijuana establishments to safely cultivate, process and manufacture marijuana and marijuana products.
5. Tracking, testing, labeling and packaging marijuana and marijuana products, including requirements that marijuana and marijuana products be:
- (a) Sold to consumers in clearly and conspicuously labeled containers that contain accurate warnings regarding the use of marijuana or marijuana products.
- (b) Placed in child-resistant packaging on exit from a marijuana establishment.
6. Forms of government-issued identification that are acceptable by a marijuana establishment verifying a consumer's age and procedures related to verifying a consumer's age consistent with section 4-241. Until the department adopts final rules related to verifying a consumer's age, marijuana establishments shall comply with the proof of legal age requirements prescribed in section 4-241.
7. The potency of edible marijuana products that may be sold to consumers by marijuana establishments at reasonable levels upon consideration of industry standards, except that the rules:
- (a) Shall limit the strength of edible marijuana products to no more than ten milligrams of tetrahydrocannabinol per serving or one hundred milligrams of tetrahydrocannabinol per package.
- (b) Shall require that if a marijuana product contains more than one serving, it must be delineated or scored into standard serving sizes and homogenized to ensure uniform disbursement throughout the marijuana product.
8. Ensuring the health, safety and training of employees of marijuana establishments and marijuana testing facilities.
9. The creation and implementation of a social equity ownership program to promote the ownership and operation of marijuana establishments and marijuana testing facilities by individuals from communities disproportionately impacted by the enforcement of previous marijuana laws.
- B. The department may:
1. Subject to title 41, chapter 6, article 10, deny any application submitted or deny, suspend or revoke, in whole or part, any registration or license issued under this chapter if the registered or licensed party or an officer, agent or employee of the registered or licensed party does any of the following:
- (a) Violates this chapter or any rule adopted pursuant to this chapter.
- (b) Has been, is or may continue to be in substantial violation of the requirements for licensing or registration and, as a result, the health or safety of the general public is in immediate danger.
2. Subject to title 41, chapter 6, article 10, and unless another penalty is provided elsewhere in this chapter, assess a civil penalty against a person that violates this chapter or any rule adopted pursuant to this chapter in an amount not to exceed \$1,000 for each violation. Each day a violation occurs constitutes a separate violation. The maximum amount of any assessment is \$25,000 for any thirty-day period. In determining the amount of a civil penalty assessed against a person, the department shall consider all of the

factors set forth in section 36-2816, subsection H. All civil penalties collected by the department pursuant to this paragraph shall be deposited in the smart and safe Arizona fund established by section 36-2856.

3. At any time during regular hours of operation, visit and inspect a marijuana establishment, marijuana testing facility or dual licensee to determine if it complies with this chapter and rules adopted pursuant to this chapter. The department shall make at least one unannounced visit annually to each facility licensed pursuant to this chapter.

4. Adopt any other rules not expressly stated in this section that are necessary to ensure the safe and responsible cultivation, sale, processing, manufacture, testing and transport of marijuana and marijuana products.

C. Until the department adopts rules permitting and regulating delivery by marijuana establishments pursuant to subsection D of this section, delivery is unlawful under this chapter.

D. On or after January 1, 2023, the department may, and no later than January 1, 2025 the department shall, adopt rules to permit and regulate delivery by marijuana establishments. The rules shall:

1. Require that delivery and the marijuana and marijuana products to be delivered originate from a designated retail location of a marijuana establishment and only after an order is made with the marijuana establishment by a consumer.

2. Prohibit delivery to any property owned or leased by the United States, this state, a political subdivision of this state or the Arizona board of regents.

3. Limit the amount of marijuana and marijuana products based on retail price that may be in a delivery vehicle during a single trip from the designated retail location of a marijuana establishment.

4. Prohibit extra or unallocated marijuana or marijuana products in delivery vehicles.

5. Require that deliveries be made only by marijuana facility agents in unmarked vehicles that are equipped with a global positioning system or similar location tracking system and video surveillance and recording equipment, and that contain a locked compartment in which marijuana and marijuana products must be stored.

6. Require delivery logs necessary to ensure compliance with this subsection and rules adopted pursuant to this subsection.

7. Require inspections to ensure compliance with this subsection and rules adopted pursuant to this subsection.

8. Include any other provisions necessary to ensure safe and restricted delivery.

9. Require dual licensees to comply with the rules adopted pursuant to this subsection.

E. Except as provided in subsection D of this section, the department may not permit delivery of marijuana or marijuana products under this chapter by any individual or entity. In addition to any other penalty imposed by law, an individual or entity that delivers marijuana or marijuana products in a manner that is not authorized by this chapter shall pay a civil penalty of \$20,000 per violation to the smart and safe Arizona fund established by section 36-2856. This subsection may be enforced by the attorney general.

F. All rules adopted by the department pursuant to this section shall be consistent with the purpose of this chapter.

G. The department may not adopt any rule that:

1. Prohibits the operation of marijuana establishments, either expressly or through requirements that make the operation of a marijuana establishment unduly burdensome.

2. Prohibits or interferes with the ability of a dual licensee to operate a marijuana establishment and a nonprofit medical marijuana dispensary at shared locations.

H. Notwithstanding section 41-192, the department may employ legal counsel and make an expenditure or incur an indebtedness for legal services for the purposes of:

1. Defending this chapter or rules adopted pursuant to this chapter.

2. Defending chapter 28.1 of this title or rules adopted pursuant to chapter 28.1 of this title.

I. The department shall deposit all license fees, application fees and renewal fees paid to the department pursuant to this chapter in the smart and safe Arizona fund established by section 36-2856.

J. On request, the department shall share with the department of revenue information regarding a marijuana establishment, marijuana testing facility or dual licensee, including its name, physical address, cultivation site and transaction privilege tax license number.

K. Notwithstanding any other law, the department may:

1. License an independent third-party laboratory to also operate as a marijuana testing facility.

2. Operate a marijuana testing facility.

L. The department shall maintain and publish a current list of all marijuana establishments and marijuana testing facilities by name and license number.

M. Notwithstanding any other law, the issuance of an occupational, professional, or other regulatory license or certification to a person by a jurisdiction or regulatory authority outside this state does not entitle that person to be issued a marijuana establishment license, a marijuana testing facility license, or any other license, registration, or certification under this chapter.

[36-2855. Marijuana facility agents; registration; card; rules](#)

(Caution: 1998 Prop. 105 applies)

A. A marijuana facility agent shall be registered with the department before working at a marijuana establishment or marijuana testing facility.

B. A person who wishes to be registered as a marijuana facility agent or renew the person's registration as a marijuana facility agent shall:

1. Submit a completed application on a form prescribed by the department and pay a nonrefundable fee that is reasonable and related to the actual cost of processing applications submitted pursuant to this section.
2. Submit evidence that the applicant holds a current level I fingerprint clearance card issued pursuant to section 41-1758.07, or submit a full set of the applicant's fingerprints for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation without disclosing that the records check is related to this chapter and acts allowed by this chapter. The department of public safety shall destroy each set of fingerprints after the criminal records check is completed.

C. If the department determines that an applicant meets the criteria for registration under this chapter and rules pursuant to this chapter, the department shall issue the applicant a marijuana facility agent card that is valid for two years.

D. A registered marijuana facility agent may be employed by or associated with any marijuana establishment or marijuana testing facility. A marijuana establishment or marijuana testing facility shall promptly notify the department when it employs or becomes associated with a new marijuana facility agent. A marijuana facility agent shall promptly notify the department when the marijuana facility agent is employed by or becomes associated with a marijuana establishment or marijuana testing facility and when the marijuana facility agent is no longer employed by or associated with a marijuana establishment or marijuana testing facility.

E. A nonprofit medical marijuana dispensary agent of a dual licensee who has applied to be registered as a marijuana facility agent may serve as a marijuana facility agent of that dual licensee until the department has approved or rejected the agent's application.

F. The department shall adopt rules to implement this section.

36-2856. Smart and safe Arizona fund; disposition; exemption

(Caution: 1998 Prop. 105 applies)

A. The smart and safe Arizona fund is established consisting of all monies deposited pursuant to sections 36-2854, 42-5452 and 42-5503, private donations and interest earned on those monies. Monies in the fund are continuously appropriated. Monies in the fund and its accounts may not be transferred to any other fund except as provided in this section, do not revert to the state general fund and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. The state treasurer shall administer the fund.

B. All monies in the smart and safe Arizona fund must first be spent, and the state treasurer shall transfer monies from the fund, to pay:

1. The actual reasonable costs incurred by the department to implement, carry out and enforce this chapter and rules adopted pursuant to this chapter.
2. The actual reasonable costs incurred by the department of revenue to impose and enforce the tax authorized and levied by section 42-5452.
3. The actual reasonable costs incurred by the supreme court and the department of public safety to process petitions for expungement and expungement orders pursuant to section 36-2862 and to otherwise implement section 36-2862.
4. The actual reasonable costs incurred by the state treasurer to administer the fund.
5. Any other mandatory expenditure of state revenues required by this chapter to implement or enforce the provisions of this chapter.

C. The state treasurer may prescribe forms necessary to make transfers from the smart and safe Arizona fund pursuant to subsection B of this section.

D. On or before June 30 and December 31 of each year, the state treasurer shall transfer all monies in the smart and safe Arizona fund in excess of the amounts paid pursuant to subsection B of this section as follows:

1. 33 percent to community college districts and provisional community college districts, but not to community college tuition financing districts established pursuant to section 15-1409, for the purposes of investing in and providing workforce development programs, job training, career and technical education, and science, technology, engineering and math programs, as follows:
 - (a) 15 percent of the 33 percent divided equally between each community college district.
 - (b) 0.5 percent of the 33 percent divided equally between each provisional community college district, if one or more provisional community college districts exist.
 - (c) The remainder to community college districts and provisional community colleges districts in proportion to each district's full-time equivalent student enrollment percentage of the total statewide audited full-time equivalent student enrollment in the preceding fiscal year prescribed in section 15-1466.01.
2. 31.4 percent to municipal police departments, municipal fire departments, fire districts established pursuant to title 48, chapter 5 and county sheriffs' departments in proportion to the number of enrolled members for each such agency in the public safety personnel retirement system established by title 38, chapter 5, article 4 and the public safety personnel defined contribution plan established by title 38, chapter 5, article 4.1, for personnel costs.
3. 25.4 percent to the Arizona highway user revenue fund established by section 28-6533.
4. 10 percent to the justice reinvestment fund established by section 36-2863.
5. 0.2 percent to the attorney general to use to enforce this chapter, or to grant to localities to enforce this chapter.

E. The monies transferred and received pursuant to this section:

1. Are in addition to any other appropriation, transfer or other allocation of monies and may not supplant, replace or cause a reduction in other funding sources.
2. Are not considered local revenues for the purposes of article ix, sections 20 and 21, constitution of Arizona.

36-2857. Localities; marijuana establishments and marijuana testing facilities

(Caution: 1998 Prop. 105 applies)

A. A locality may:

1. Enact reasonable zoning regulations 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 establishment 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 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.

36-2858. Lawful operation of marijuana establishments and marijuana testing facilities

(Caution: 1998 Prop. 105 applies)

A. Except as specifically and expressly provided in section 36-2857 and notwithstanding any other law, it is lawful and is not an offense under the laws of this state or any locality, may not constitute the basis for detention, search or arrest, and may not constitute the sole basis for seizure or forfeiture of assets or the basis for imposing penalties under the laws of this state or any locality for:

1. A marijuana establishment, or an agent acting on behalf of a marijuana establishment, to:

- (a) Possess marijuana or marijuana products.
- (b) Purchase, sell or transport marijuana and marijuana products to or from a marijuana establishment.
- (c) Sell marijuana and marijuana products to consumers, except that a marijuana establishment may not sell more than one ounce of marijuana to a consumer in a single transaction, not more than five grams of which may be in the form of marijuana concentrate.
- (d) cultivate, produce, test or process marijuana or manufacture marijuana or marijuana products by any means including chemical extraction or chemical synthesis.

2. An agent acting on behalf of a marijuana establishment to sell or otherwise transfer marijuana to an individual under twenty-one years of age, if the agent reasonably verified that the individual appeared to be twenty-one years of age or older by means of a government-issued photographic identification in compliance with rules adopted pursuant to section 36-2854, subsection A, paragraph 6.

3. A marijuana testing facility, or an agent acting on behalf of a marijuana testing facility, to obtain, possess, process, repackage, transfer, transport or test marijuana and marijuana products.

4. A nonprofit medical marijuana dispensary or a marijuana establishment, or an agent acting on behalf of a nonprofit medical marijuana dispensary or a marijuana establishment, to sell or otherwise transfer marijuana or marijuana products to a nonprofit medical marijuana dispensary, a marijuana establishment or an agent acting on behalf of a nonprofit medical marijuana dispensary or a marijuana establishment.

5. Any individual, corporation or other entity to sell, lease or otherwise allow property or goods that are owned, managed or controlled by the individual, corporation or other entity to be used for any activity authorized by this chapter, or to provide services to a marijuana establishment, or marijuana testing facility or agent acting on behalf of a marijuana establishment or marijuana testing facility in connection with any activity authorized by this chapter.

B. This section does not preclude the department from imposing penalties against a marijuana establishment or marijuana testing facility for failing to comply with this chapter or rules adopted pursuant to this chapter.

C. A marijuana establishment may be owned or operated by a publicly traded company.

D. Notwithstanding any other law, a dual licensee:

1. May hold a marijuana establishment license and operate a marijuana establishment pursuant to this chapter.
2. May operate on a for-profit basis if the dual licensee promptly notifies the department and department of revenue and takes any actions necessary to enable its for-profit operation, including converting its corporate form and amending its organizational and operating documents.
3. Must continue to hold both its marijuana establishment license and nonprofit medical marijuana dispensary registration, regardless of any change in ownership of the dual licensee, unless it terminates its status as a dual licensee and forfeits either its marijuana establishment license or nonprofit medical marijuana dispensary registration by notifying the department of such a termination and forfeiture.
4. May not be required to:
 - (a) Employ or contract with a medical director.
 - (b) Obtain nonprofit medical marijuana dispensary agent or marijuana facility agent registrations for outside vendors that do not have regular, unsupervised access to the interior of the dual licensee.
 - (c) Have a single secure entrance as required by section 36-2806, subsection C, but may be required to implement appropriate security measures to deter and prevent the theft of marijuana and to reasonably regulate customer access to the premises.
 - (d) Comply with any other provision of chapter 28.1 of this title or any rule adopted pursuant to chapter 28.1 of this title that makes its operation as a dual licensee unduly burdensome.

E. Notwithstanding any other law, a dual licensee that elects to operate on a for-profit basis pursuant to subsection D, paragraph 2 of this section:

1. Is subject to the taxes imposed pursuant to title 43.
2. Is not required to submit its annual financial statements or an audit report to the department for purposes of renewing its nonprofit medical marijuana dispensary registration.

F. Notwithstanding any other law, a dual licensee must conduct both of the following operations at a shared location:

1. Sell marijuana and marijuana products to consumers pursuant to this chapter.
 2. Dispense marijuana to registered qualifying patients and registered designated caregivers pursuant to chapter 28.1 of this title.
- G. Notwithstanding chapter 28.1 of this title or any rule adopted pursuant to chapter 28.1 of this title, a dual licensee may engage in any act, practice, conduct or transaction allowed for a marijuana establishment by this chapter.

H. Notwithstanding any other law:

1. An individual may be an applicant, principal officer or board member of more than one marijuana establishment or more than one dual licensee regardless of the establishment's location.
 2. Two or more marijuana establishments or dual licensees may designate a single off-site location as prescribed in section 36-2850, paragraph 18, subdivision (c) to be jointly used by those dual licensees or marijuana establishments.
- I. Marijuana establishments, marijuana testing facilities and dual licensees that are subject to applicable federal or state antidiscrimination laws may not pay their employees differently based solely on a protected class status such as sex, race, color, religion, national origin, age or disability. This subsection does not expand or modify the jurisdictional reach, provisions or requirements of any applicable anti-discrimination law.

36-2859. Advertising restrictions; enforcement; civil penalty

(Caution: 1998 Prop. 105 applies)

A. A marijuana establishment or nonprofit medical marijuana dispensary may engage in advertising.

B. An advertising platform may host advertising only if all of the following apply:

1. The advertising is authorized by a marijuana establishment or nonprofit medical marijuana dispensary.
2. The advertising accurately and legibly identifies the marijuana establishment or nonprofit medical marijuana dispensary responsible for the content of the advertising by name and license number or registration number.

C. Any advertising under this chapter involving direct, individualized communication or dialogue shall use a method of age affirmation to verify that the recipient is twenty-one years of age or older before engaging in that communication or dialogue. For the purposes of this subsection, that method of age affirmation may include user confirmation, birth date disclosure or other similar registration methods.

D. It is unlawful for an individual or entity other than a marijuana establishment or dual licensee to do any of the following in a manner that is not authorized by this chapter or rules adopted by the department pursuant to this chapter:

1. Facilitate the delivery of marijuana or marijuana products.
2. Solicit or accept orders for marijuana or marijuana products or operate a platform that solicits or accepts orders for marijuana or marijuana products.
3. Operate a listing service related to the sale or delivery of marijuana or marijuana products.

E. A marijuana establishment that violates this section is subject to disciplinary action by the department pursuant to section 36-2854, subsection B. A nonprofit medical marijuana dispensary that violates this section is subject to disciplinary action by the department pursuant to section 36-2816.

F. In addition to any other penalty imposed by law, an individual or entity other than a marijuana establishment or nonprofit medical marijuana dispensary that advertises marijuana or marijuana products in violation of this section or otherwise violates this section shall pay a civil penalty of \$20,000 per violation to the smart and safe Arizona fund established by section 36-2856. This subsection may be enforced by the attorney general.

36-2860. Packaging restrictions on particular marijuana products

(Caution: 1998 Prop. 105 applies)

A. A marijuana establishment may not:

1. Package or label marijuana or marijuana products in a false or misleading manner.
2. Manufacture or sell marijuana products that resemble the form of a human, animal, insect, fruit, toy or cartoon.
3. Sell or advertise marijuana or marijuana products with names that resemble or imitate food or drink brands marketed to children, or otherwise advertise marijuana or marijuana products to children.

B. A marijuana establishment that violates this section is subject to disciplinary action by the department pursuant to section 36-2854, subsection B.

36-2861. Contracts; professional services

(Caution: 1998 Prop. 105 applies)

A. It is the public policy of this state that contracts related to marijuana establishments and marijuana testing facilities are enforceable.

B. A person that is licensed, certified or registered by any department, agency or regulatory board of this state is not subject to disciplinary action by that entity for providing professional assistance to a prospective or registered marijuana establishment, marijuana testing facility or other person for any lawful activity under this chapter.

36-2862. Expungement; petition; appeal; dismissal of complaints; rules

(Caution: 1998 Prop. 105 applies)

A. Beginning July 12, 2021, an individual who was arrested for, charged with, adjudicated or convicted by trial or plea of, or sentenced for, any of the following offenses based on or arising out of conduct occurring before the effective date of this section may petition the court to have the record of that arrest, charge, adjudication, conviction or sentence expunged:

1. Possessing, consuming or transporting two and one-half ounces or less of marijuana, of which not more than twelve and one-half grams was in the form of marijuana concentrate.
2. Possessing, transporting, cultivating or processing not more than six marijuana plants at the individual's primary residence for personal use.
3. Possessing, using or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana.

B. If the court receives a petition for expungement pursuant to this section:

1. The court shall notify the prosecuting agency of the filing of the petition, and allow the prosecuting agency to respond to the petition within thirty days.
2. The court may hold a hearing:
 - (a) On the request of either the petitioner or the prosecuting agency.
 - (b) If the court concludes there are genuine disputes of fact regarding whether the petition should be granted.
3. The court shall grant the petition unless the prosecuting agency establishes by clear and convincing evidence that the petitioner is not eligible for expungement.
4. The court shall issue a signed order or minute entry granting or denying the petition in which it makes findings of fact and conclusions of law.

C. If the court grants a petition for expungement:

1. The signed order or minute entry required pursuant to subsection B, paragraph 4 of this section shall do all of the following:
 - (a) If the petitioner was adjudicated or convicted of an offense set forth in subsection A of this section, vacate the judgment of adjudication or conviction.
 - (b) State that it expunges any record of the petitioner's arrest, charge, conviction, adjudication and sentence.
 - (c) If the petitioner was convicted or adjudicated of an offense set forth in subsection A of this section, state that the petitioner's civil rights, including the right to possess firearms, are restored, unless the petitioner is otherwise not eligible for the restoration of civil rights on grounds other than a conviction for an offense set forth in subsection A of this section.
 - (d) Require the clerk of the court to notify the department of public safety, the prosecuting agency and the arresting law enforcement agency, if applicable, of the expungement order.
 - (e) Require the clerk of the court to seal all records relating to the expunged arrest, charge, adjudication, conviction or sentence and allow the records to be accessed only by the individual whose record was expunged or the individual's attorney.
2. The department of public safety shall seal and separate the expunged record from its records and inform all appropriate state and federal law enforcement agencies of the expungement. Unless the petitioner is indigent, the department of public safety may charge

the successful petitioner a reasonable fee determined by the director of the department of public safety to research and correct the petitioner's criminal history record.

3. The arresting and prosecuting agencies shall clearly identify in each agency's files and electronic records that the petitioner's arrest, charge, conviction, adjudication and sentence are expunged and shall not make any records of the expunged arrest, charge, conviction, adjudication or sentence available as a public record to any person except to the individual whose record was expunged or that individual's attorney.

D. An arrest, charge, adjudication, conviction or sentence that is expunged pursuant to this section may not be used in a subsequent prosecution by a prosecuting agency or court for any purpose.

E. An individual whose record of arrest, charge, adjudication, conviction or sentence is expunged pursuant to this section may state that the individual has never been arrested for, charged with, adjudicated or convicted of, or sentenced for the crime that is the subject of the expungement.

F. If the court denies a petition for expungement, the petitioner may file a direct appeal pursuant to section 13-4033, subsection A, paragraph 3.

G. On motion, the court shall dismiss with prejudice any pending complaint, information or indictment based on any offense set forth in subsection A of this section, to include charges or allegations based on or arising out of conduct occurring before the effective date of this chapter. The individual charged may thereafter petition the court to expunge records of the arrest and charge or allegation as provided this section. A motion brought pursuant to this subsection may be filed with the court before July 12, 2021.

H. The supreme court may adopt rules necessary to implement this section and may also sponsor public service announcements or other notifications intended to provide notice to individuals who may be eligible to file petitions for expungement pursuant to this section.

I. A prosecuting agency may file a petition for expungement pursuant to this section on behalf of any individual who was prosecuted by that prosecuting agency, and the attorney general may file a petition for expungement pursuant to this section on behalf of any individual.

6-2863. Justice reinvestment fund; exemption; distribution; definition

(Caution: 1998 Prop. 105 applies)

A. The justice reinvestment fund is established consisting of all monies deposited pursuant to section 36-2856 and interest earned on those monies. Monies the fund are continuously appropriated. Monies in the fund and its accounts may not be transferred to any other fund except as provided in this section, do not revert to the state general fund, and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. The state treasurer shall administer the fund.

B. All monies in the justice reinvestment fund must first be spent, and the state treasurer shall transfer monies from the fund, to pay:

1. The reasonable costs incurred by the state treasurer to administer the fund.

2. The reasonable administrative costs incurred by the department to carry out its duties pursuant to this section.

C. On or before June 30 and December 31 of each year, the state treasurer shall transfer all monies in the justice reinvestment fund in excess of the amounts paid pursuant to subsection B of this section as follows:

1. Thirty-five percent to county public health departments, in proportion to the population of each county according to the most recent United States decennial census, for the purpose of providing justice reinvestment programs or distributing grants to qualified nonprofit organizations to provide justice reinvestment programs in that county.

2. Thirty-five percent to the department for the purpose of distributing grants to qualified nonprofit organizations that provide justice reinvestment programs in this state.

3. Thirty percent to the department for the purpose of addressing important public health issues that affect this state.

D. Grants made pursuant to this section are exempt from title 41, chapter 23, and each grantee shall provide the granting agency with an annual report detailing the use of granted monies.

E. Monies transferred and received pursuant to subsection C of this section are not considered local revenues for the purposes of article IX, section 20, Constitution of Arizona.

F. The state treasurer may prescribe forms necessary to make transfers pursuant to subsection B of this section.

G. For the purposes of this section, "justice reinvestment programs" means initiatives or programs that focus on any of the following:

1. Public and behavioral health, including evidence-based and evidence-informed substance use prevention and treatment and substance use early intervention services.

2. Restorative justice, jail diversion, workforce development, industry-specific technical assistance or mentoring services for economically disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration.

3. Addressing the underlying causes of crime, reducing drug-related arrests and reducing the prison population in this state.

4. Creating or developing technology and programs to assist with the restoration of civil rights and the expungement of criminal records.

36-2864. Transaction privilege tax; use tax; additional taxes prohibited; exception

(Caution: 1998 Prop. 105 applies)

A. For purposes of the transaction privilege tax and use tax levied and collected pursuant to title 42, chapters 5 and 6, marijuana and marijuana products are tangible personal property defined in section 42-5001 and are subject to the transaction privilege tax in the retail classification and use tax.

B. Except as provided in subsection A of this section and section 42-5452, this state and localities may not levy or collect additional taxes of any kind on the sale of marijuana or marijuana products and may not levy or collect any fees or assessments of any kind on the sale of marijuana or marijuana products or on the licensing, operations or activities of marijuana establishments or marijuana testing facilities, unless the fee or assessment is of general applicability to individuals or businesses that are not engaged in the sale of marijuana or marijuana products.

C. The prohibition imposed by subsection B of this section does not apply to uniform increases to the transaction privilege tax rate for the retail classification or use tax rate by this state or a locality or to uniform increases to fees or assessments allowed by subsection B of this section.