

**RECREATIONAL MARIJUANA UPDATES
(January 19, 2021)**

The Town Code of the Town of Wellton, Arizona, Chapter 8, (Building, Planning & Zoning Code), Article 8-5 (Planning and Zoning Code), Section 8-5.5 (Commercial Area District), Subsection D (Conditional Use), is hereby amended by adding a new Paragraph 5 (Recreational Marijuana Testing Facilities and Establishments), to read as follows:

5. Recreational Marijuana Testing Facilities and Establishments.

- a. Purpose. This Paragraph 5 is adopted to protect the health, safety, and welfare of the community. Nothing in this Paragraph 5 is intended to promote or condone the sale, Cultivation, Manufacture, transport, production, distribution, possession, or use of Marijuana or Marijuana Products in violation of any applicable law.

- b. Definitions. The below words and phrases, wherever used in this Paragraph 5, shall be construed as defined in this Paragraph 5 unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.
 - (1) “Consume,” “Consuming,” and “Consumption” mean the act of ingesting, inhaling or otherwise introducing Marijuana into the human body.
 - (2) “Consumer” means an individual who is at least twenty-one years of age and who purchases Marijuana or Marijuana Products.
 - (3) “Cultivate” and “Cultivation” mean to propagate, breed, grow, prepare, and package Marijuana.
 - (4) “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.
 - (5) “Department” means the state of Arizona Department of Health Services or its successor agency.

- (6) “Dual Licensee” means an entity that holds both a nonprofit medical Marijuana dispensary registration and a Marijuana establishment license.
- (7) “Enclosed Area” means a building, greenhouse, or other structure that:
 - (A) Has a complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;
 - (B) Is secure against unauthorized entry;
 - (C) Has a foundation, slab or equivalent base to which the floor is securely attached; and
 - (D) Meets performance standards ensuring that Cultivation and Processing activities cannot be and are not perceptible from the structure in terms of not being visible from public view without using binoculars, aircraft or other optical aids and is equipped with a lock or other security device that prevents access by minors.
- (8) “Extract” and “Extraction” means the Process of separating resin from Marijuana to produce or Process any form of Marijuana Concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.
- (9) “Manufacture” and “Manufacturing” mean to compound, blend, Extract, infuse or otherwise make or prepare a Marijuana Product.
- (10) “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 A.R.S. § 13-3401.I
 - (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.

(11) “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.

(12) “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. This single off-site location may also operate as a Marijuana Testing Facility if permitted by the Department.

(13) “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.

- (14) “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.
- (15) “Open Space” means a public park, public sidewalk, public walkway, or public pedestrian thoroughfare.
- (16) “Person” means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- (17) “Process” and “Processing” means to harvest, dry, cure, trim, or separate parts of the Marijuana plant.
- (18) “Public Place” has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- (19) “Smoke” means to inhale, exhale, burn, carry, or possess any lighted Marijuana or lighted Marijuana Products, whether natural or synthetic.

c. Regulations.

- (1) Marijuana Testing Facilities. A Marijuana Testing Facility permitted pursuant to this Paragraph 5 shall:
 - (A) Ensure that access to the area of the facility where Marijuana or Marijuana Products are being tested or stored for testing is limited to a facility’s owners or authorized agents.
 - (B) Ensure that transportation of Marijuana or Marijuana Products is in compliance with applicable law.
 - (C) Comply with all testing processes, protocols, standards, and criteria adopted by the Department for testing Marijuana and Marijuana Products.
 - (D) Maintain records, equipment, and instrumentation as required by the Department.
 - (E) Comply with all security protocols required by the Department and submit a written security plan to the Town that specifies the measures that will be taken to deter and prevent unauthorized entrance into limited access areas

including the use of security equipment to detect unauthorized intrusion, exterior lighting to facilitate surveillance, and electronic monitoring such as video cameras that provide coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building and has sufficient recording resolution.

(2) Marijuana Establishments. The operation of a Marijuana Establishment is prohibited in the Town of Wellton except as a conditional use for a Dual Licensee who:

- (A) Operates both a nonprofit medical Marijuana dispensary and a Marijuana Establishment cooperatively in a shared location; and
- (B) Has not forfeited or terminated the nonprofit medical Marijuana dispensary registration from the Department.

(3) Operations and Sales.

- (A) Marijuana Establishments permitted as Dual Licensees pursuant to this Paragraph 5 shall be regulated in the same manner as nonprofit medical Marijuana facilities as provided in paragraph 8-5.5(D)(4). [Editor's note – For clarity of intent, the Town intends the reference in this Subparagraph to refer to the nonprofit medical Marijuana provisions adopted pursuant to Ordinance 136, which contained a scrivener's error referencing Paragraph 8-5.6(D)(4) instead of the correct Paragraph 8-5.5(D)(4).]
- (B) The fee for permit of a Marijuana Testing Facility and Marijuana Establishment shall be established by resolution of Council.
- (C) The sale of Marijuana and 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.
- (D) Off-site Deliveries of Marijuana and Marijuana Products are permitted during operating hours of the Marijuana Establishment.

(4) Public Places.

- (A) The use, sale, Cultivation, Manufacture, production or distribution of Marijuana or 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 Marijuana or 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 Marijuana or Marijuana Products on its property.
 - (C) It is unlawful for an individual to Smoke Marijuana in a Public Place, sports facility, or Open Space in the Town.
 - (D) It is unlawful to operate a business in the Town that permits Consumption of Marijuana or Marijuana Products on premises by invitees, patrons, or employees of the business.
- (5) Regulations for Primary Residence for Personal Use. To the extent allowable by law, Marijuana possession, Consumption, Processing, Manufacturing, transportation, and Cultivation is permitted in a residential zoning district in the Town, and commercial or industrial areas with residential units, subject to the following conditions and limitations for personal use:
- (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) 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 Marijuana plants at the individual's primary residence.
 - (C) Except as provided by A.R.S. § 36-2801 *et seq.* and this Paragraph 5, it shall be unlawful for an individual to otherwise Cultivate Marijuana in a residential zoning district within the Town limits.

- (D) Individuals shall not Process or Manufacture 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 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 Marijuana plants are not visible from public view without using binoculars, aircraft, or other optical aids.

(6) Enforcement; Penalties.

- (A) Except as otherwise provided in A.R.S. § 36-2853, violation of any provision of this Paragraph 5 is a class one misdemeanor.
- (B) Violations of this Paragraph 5 are in addition to any other violation enumerated within the Town Ordinances or 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 Paragraph 5, 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 Paragraph 5 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 and Testing Facility permits may be revoked by the Town for violation of any provision of this Paragraph 5, for any violation of the requirements of the permit, or if the Department revokes the license for the facility.