



## NOTICE OF WORK SESSION

In accordance with §38-431.01 of the Arizona Revised Statutes of the State of Arizona, notice is hereby given to the Members of City Council and to the general public that the Mayor and Council of the City of San Luis, Arizona, will hold a Work Session meeting at 6:30 p.m., Wednesday, November 4, 2020. The Work Session will take place at the City Council Chambers, located at 1090 E. Union Street, San Luis, Arizona, 85349.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities, or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recordings. Parents in order to exercise their rights may either file written consent with the City Clerk to such recordings or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

THIS NOTICE IS GIVEN BY:

/s/ Sonia Cornelio, City Clerk

## AVISO DE SESION DE TRABAJO

De acuerdo con los Estatutos del Estado de Arizona A.R.S. §38-431.01, se le informa a los miembros del Cabildo y al público en general que el Alcalde y el Cabildo, tendrán una Sesión de Trabajo a las 6:30 p.m., el día Miércoles, 4 de Noviembre del 2020. La junta se llevará a cabo en la Sala del Cabildo, ubicada en el 1090 E. Union Street, San Luis, Arizona, 85349.

De acuerdo con el Acta de Americanos con Discapacidades y la Sección 504 del Acta de Rehabilitación del 1973, la Ciudad de San Luis, Arizona no discrimina por causa de discapacidad la admisión y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para más información referente a derechos y provisiones del Acta de Americanos con Discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participación en programas, actividades o servicios de la Ciudad, contactar al: Coordinador del Acta de Americanos con Discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, Arizona, ubicado en el 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Por medio de este aviso y de acuerdo con los Estatutos del Estado de Arizona A.R.S §1-602.A.9, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar el consentimiento ante el Estado o cualquiera de sus subdivisiones políticas para hacer una grabación de audio o video de su hijo menor de edad. Las juntas del Cabildo se graban en audio y/o video y como resultado, el hecho de que haya menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden dar el consentimiento por escrito con la Secretaria de la Ciudad a tal grabación, o tomar acción personal para asegurarse que su hijo menor no esté presente cuando la grabación se lleve a cabo. Si un menor de edad está presente en el momento de la grabación, la Ciudad asumirá que los padres de familia están cediendo los derechos sobre una posible grabación de acuerdo con los Estatutos del Estado de Arizona A.R.S. §1-602.A.9.

ESTE AVISO ES DADO POR:

/f/ Sonia Cornelio, Actuaría de la Ciudad



## AMENDED AGENDA

11/3/2020

**AGENDA**  
**Work Session**  
**San Luis City Council**  
**San Luis Council Chambers**  
**1090 E. Union Street**  
**San Luis, AZ 85349**  
**November 4, 2020**  
**6:30 p.m.**

The November 4, 2020, Work Session, for the safety of the public during the COVID-19 pandemic, will not have in-person attendance for members of the public.

However, members of the public may listen to the meeting's live audio stream on the City of San Luis' website <https://sanluisaz.gov/listenlive>. Recordings of the meetings will be available on the City's website <https://sanluisaz.gov/listenlive> after the meeting.

Open meetings conducted remotely through technological means are permissible under the March 13, 2020, Arizona Attorney General opinion titled, "Re: Concerns Relating to Arizona's Open Meeting Law and COVID-19" and following the Mayor's March 18, 2020, Continued Declaration of Emergency and Amended Order-Coronavirus Disease-19 and City Council's Order 2020-7 which closed all city buildings and facilities (except the Municipal Court) to public access.

Por la seguridad del público durante la pandemia COVID-19, no habrá asistencia en persona para los miembros del público en la sesión de trabajo del 4 de Noviembre del 2020.

Sin embargo, los miembros del público pueden escuchar el audio en vivo de la reunión transmitido en el sitio web de la Ciudad de San Luis <https://sanluisaz.gov/listenlive>. Las grabaciones de las reuniones estarán disponibles en el sitio web de la Ciudad <https://sanluisaz.gov/listenlive> después de la reunión.

Las reuniones abiertas realizadas de forma remota a través de medios tecnológicos están permitidas bajo la opinión del Fiscal General de Arizona del 13 de marzo de 2020 titulada "Re: Preocupaciones relacionadas con Open Meeting Law de Arizona y COVID-19" y después de la Declaración de Emergencia Continua del 18 de marzo de 2020 del alcalde y Orden modificada-Enfermedad de Coronavirus-19 y Orden del Ayuntamiento 2020-7 la cual cerró todos los edificios e instalaciones de la ciudad (excepto en la Corte Municipal) al acceso público, para proteger la salud y la seguridad pública y reducir la transmisión de la Enfermedad de Coronavirus 2019 (COVID- 19).

**PLEASE TAKE NOTICE THAT MEMBERS OF THE CITY COUNCIL WILL ATTEND EITHER IN PERSON, TELEPHONE, OR VIDEO CONFERENCE COMMUNICATION; THE MAYOR OR ACTING MAYOR FOR THIS MEETING MAY CHANGE THE ORDER OF THE ITEMS.**

1. **CALL TO ORDER/ROLL CALL**

2. **ITEMS FOR DISCUSSION ONLY:**

2. A. Discussion and possible directions to staff on any and all matters regarding the consultant contract between the City of San Luis and James Davey and Associates for the new Community Park. **(Lizandro Galaviz, Director of Parks & Recreation)**

2. B. Discussion and possible action on any and all matters regarding the brick walls at various retention basins within the City of San Luis. **(Lizandro Galaviz, Director of Parks & Recreation)**
2. C. Discussion and possible directions to staff on any and all matters regarding Ordinance No. 401. An ordinance of the Mayor and City Council of the City of San Luis, Arizona, for the management of trees in the City of San Luis and practices for the care of the trees and removal when in the health, safety, and welfare interests of the residents; amending the San Luis City Code; repealing any conflicting provision; providing for severability, and providing for penalties. ITEM CONTINUED FROM THE REGULAR COUNCIL MEETING HELD SEPTEMBER 23, 2020. **(Lizandro Galaviz, Director of Parks and Recreation)**
2. D. Discussion and possible directions to staff regarding the Ballot Initiative, Proposition No. 207 titled "Smart and Safe Arizona Act" on regulating legal sales, cultivation, and manufacturing products from marijuana and options for city ordinances. **(Glenn J. Gimbut, Assistant City Attorney)**
2. E. Discussion and possible directions to staff on any and all matters regarding budget adjustment for unavoidable overtime in the City Prosecutor's Office. **(Jose de la Vara, City Prosecutor and Kay Marion Macuil, City Attorney)**
2. F. Discussion and possible directions to staff on any and all matters regarding Resolution No. 2145. A resolution of the Mayor and City Council of the City of San Luis, Arizona amending the assessment for fiscal year 2020/2021 for the Rio Sereno Enhanced Municipal Services District to reduce the tax imposed from \$60,944.00 to \$11,031.00. **(Monica Castro, Director of Finance)**
2. G. Discussion and possible directions to staff on any and all matters regarding possible tactical urbanism project. **(Jose A. Guzman, Director of Planning and Zoning)**
2. H. Discussion and possible directions to staff on any and all matters regarding hazard pay for essential workers from the Fire & Police Departments and Facilities Division. **(Vice-Mayor Maria Cecilia Cruz; Monica Castro, Director of Finance; and Sondra Matthews, Director of Human Resources)**
2. I. Update on any and all matters regarding the proposed hotel to be located on Main Street. **(Vice-Mayor Maria Cecilia Cruz and Jenny Torres, Economic Development Manager)**

3. **ADJOURNMENT**

**IN THE EVENT A MAJORITY OF THE COUNCIL IS NOT PRESENT, AN INFORMAL WORK SESSION MAY BE HELD.**



## AGENDA ITEM REVIEW FORM

### Work Session

2. A.

**Meeting Date:** 11/04/2020

**Department Head:** Lizandro Galaviz, Director of Parks & Recreation, Parks & Recreation Department

**Submitted By:** Crystal Fragozo, Administrative Assistant, Parks & Recreation Department

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding the consultant contract between the City of San Luis and James Davey and Associates for the new Community Park. **(Lizandro Galaviz, Director of Parks & Recreation)**

### SUMMARY:

Various departments have been working together to create a great community park for the City of San Luis residents. Currently, James Davey and Associates have been assisting staff with the guidance & assistance for the first steps and infrastructure of developing the Community Park. A consultant contract has been created between the City of San Luis and James Davey and Associates for the new Community Park. Along with the consultant contract, James Davey and Associates has provided staff with a proposal for engineering design services that are attached to this agenda. Staff would like to present the contract and proposal to Mayor and City Council for direction and for any suggestions or recommendations they may have.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

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### Fiscal Impact

<b>IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:</b>	YES
<b>CITY/STATE/FEDERAL FUNDS:</b>	CITY
<b>TOTAL:</b>	\$19,460.00
<b>BUDGETED AMOUNT:</b>	\$500,000.00
<b>AVAILABLE AMOUNT TO TRANSFER:</b>	N/A
<b>ACCT NAME &amp; GL#/REMAINING BALANCE BEFORE PURCHASE:</b>	CAPITAL PROJECTS - 806-860-90015.145 / \$500,000.00

### FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):

Project is budgeted under the Capital Projects Budget for Fiscal Year 2020-2021.

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### Attachments

Consultant Contract - James Davey & Associates



## **PROFESSIONAL SERVICES AGREEMENT**

Professional Services Agreement (this “Agreement”) made the \_\_\_ day of November, 2020, between the City of San Luis, Arizona, a municipal corporation organized under the laws of the State of Arizona, has its administrative offices at 1090 East Union Street, P.O. Box 1170, San Luis, Arizona 85349 (“CITY”), and James Davey and Associates, with an office located at 1025 W. 24<sup>th</sup> Street, Suite 2, Yuma, Arizona 85364 (“CONSULTANT”). CONSULTANT and CITY may be referred to singularly as the “Party” and collectively as the “Parties.”

### **RECITALS**

A. CITY has determined that it is in the public interest to proceed with the work described below in Section One (the “Project”).

B. CITY has determined that the Project involves the performance of professional and technical services of a temporary nature.

C. CITY desires to engage CONSULTANT and CONSULTANT agrees to render certain technical advice and professional services to CITY, as necessary.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

### **SECTION ONE. DESCRIPTION OF PROJECT**

The Project, described in the attached Exhibit A, dated October 5, 2020, by CONSULTANT James Davey and Associates, Inc., provides for engineering design services for a park design project for the City of San Luis East Side Community Park.

### **SECTION TWO. PROPOSAL SUBMITTAL**

The Parties mutually agree that the attached Exhibit A as described in Section One above is incorporated in this Agreement by this reference:

**SECTION THREE.  
SCOPE OF WORK**

CONSULTANT's scope of work is described in the proposal attached to and incorporated in this Agreement by this reference.

**SECTION FOUR.  
SCOPE OF WORK—ADDITIONAL SERVICES**

CITY and CONSULTANT understand that it may be necessary, in conjunction with the Project, for CONSULTANT to perform or secure the performance of consulting and related services other than those set forth in the proposal. If the CITY requests additional services, CONSULTANT shall advise CITY in writing of the need for additional services and the cost and estimated time to perform the services. CONSULTANT shall not proceed to perform any such additional service until CITY has determined that such service is beyond the scope of the basic services to be provided by CONSULTANT and has given its written authorization to proceed. Written approval for performance and compensation for additional services may be granted by the San Luis Director of Parks and Recreation or the San Luis City Manager. Except as stated in this paragraph, any additional service shall require a written amendment to this Agreement and shall be subject to all the provisions of this Agreement.

**SECTION FIVE.  
AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION**

CONSULTANT shall perform all necessary services provided under the contract and outlined in the proposal and shall do, perform, and carry out such work in a satisfactory and proper manner as determined by and to the satisfaction of the Director of Parks and Recreation. The Director of Parks and Recreation reserves the right to make changes, additions or deletions, to the scope of work as deemed to be necessary or advisable to implement and carry out the purposes of the contract. The Director of Parks and Recreation is authorized to execute the change orders on behalf of CITY.

**SECTION SIX.  
RESPONSIBILITY OF CONSULTANT**

By executing this Agreement, CONSULTANT represents and states to CITY that she possesses or will arrange to secure from others all necessary professional capabilities, experience, resources and facilities necessary to provide to CITY the services contemplated under this Agreement. CONSULTANT further warrants that she will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the Project for which services are rendered under this Agreement.

**SECTION SEVEN.  
INDEPENDENT CONTRACTOR**

The Parties to this Agreement agree that CONSULTANT, her employees, agents and subcontractors shall be independent contractors with regard to the providing of services under this Agreement and that CONSULTANT's employees, agents and subcontractors shall not be considered to be employees or agents of CITY for any purpose and will not be entitled to any of the benefits CITY provides for its employees. Rights of the CONSULTANT as independent contractor include but are not limited to control of the work, manner and methods of the work, and the right to contract with other employers.

Rights of the CITY include but are not limited to inspection and approval of the work and the right to contract with others to perform the work.

**SECTION EIGHT.  
MATERIALS AND EQUIPMENT**

CONSULTANT shall furnish at her own expense all materials and equipment necessary to carry out the terms of this Agreement.

**SECTION NINE.  
DIGITAL FILES**

CONSULTANT shall furnish copies of all deliverables in digital format. Files shall be compatible with the current versions used by CITY.

**SECTION TEN.  
EMPLOYMENT OF PERSONNEL**

CONSULTANT shall provide experienced and qualified personnel to carry out the work to be performed by CONSULTANT under this Agreement and shall be responsible for and in full control of the work of such personnel.

**SECTION ELEVEN.  
TIME OF PERFORMANCE**

Subject to the provisions of this Agreement, CONSULTANT agrees to perform the Project in accordance with the proposal. The services of CONSULTANT are to be undertaken and completed in such a sequence as to assure their expeditious completion in light of the purpose of this Agreement. CONSULTANT's performance of the Project starts November 15, 2020 and shall be completed on or before February 26, 2021.

**SECTION TWELVE.  
COMPENSATION**

Subject to the provisions of this Agreement, CONSULTANT agrees to perform the work and services specified and outlined in the proposal for an amount not to exceed \$19,460 with hourly rates for the CONSULTANT'S personnel to be as depicted in Exhibit A, unless specifically authorized by a written contract amendment prior to the commencement of any additional work. CONSULTANT shall prepare invoices in accordance with this Agreement and shall submit to CITY once a month covering the amount and value of the Project satisfactorily performed by CONSULTANT up to the date of such invoice. CITY shall reimburse CONSULTANT for work satisfactorily performed on a time and materials basis.

If the CITY wants the CONSULTANT to travel outside of Yuma County, then it shall be handled as an additional service which shall require a written amendment to this Agreement and shall be subject to all the provisions of this Agreement.

**SECTION THIRTEEN.  
ASSIGNMENT**

CONSULTANT shall not assign any duties, responsibilities or obligations under this Agreement without the prior written consent of CITY.

**SECTION FOURTEEN.  
INDEMNIFICATION**

To the fullest extent permitted by law, CONSULTANT agrees to indemnify, protect, defend and hold harmless CITY, its Mayor, Council Members, any and all of its officers, directors, officials, employees, agents, insurers, and indemnitors ("Indemnified Parties") for, from and against any and all suits, claims, losses, liabilities, damages, costs, expenses and debt, including reasonable attorneys' fees and costs incurred by the CITY which arise out of, attributable to or caused in whole or in part by acts or omissions of CONSULTANT (or its officers, directors, shareholders, agents or employees) including but not limited to injuries to CONSULTANT's employees who may or may not be covered by workers' compensation insurance; except, to the extent such suits, claims, losses, liabilities, damages, costs, expenses and debt result from acts or omission of the CITY and all Indemnified Parties. This indemnification provision shall apply to suits, claims, losses, liabilities, damages, costs, expenses and debt that are not otherwise covered by the CITY's Liability Insurance provided for by the Arizona Municipal Risk Pool.

**SECTION FIFTEEN.  
INSURANCE**

A. Insurance Requirements.

Prior to the beginning and throughout the duration of the work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth in this Section Fifteen, then such coverage shall be amended to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this Section Fifteen constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement, and which is applicable to a given loss, will be available to CITY.

Without in any way limiting CONSULTANT's liability pursuant to the indemnification described above, CONSULTANT shall maintain, during the term of this contract, the following types and amounts of insurance:

<u>Coverage Type</u>	<u>Coverage Amounts -Minimum Limits</u>
<u>Commercial General Liability, including:</u> Premises and Operations Contractual Liability Personal-Injury Liability Independent Contractors Liability	\$1,000,000 Combined Single Limit, per occurrence and \$2,000,000 general aggregate

Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits

<u>Comprehensive Automobile Liability</u> (including, owned, non-owned and hired autos)	\$1,000,000 Combined Single Limit, per Occurrence
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If CONSULTANT owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT's employees use personal motor vehicles in any way on this Project, then CONSULTANT shall obtain evidence of

personal motor vehicle liability coverage for each such person.

<u>Workers' Compensation and Employer's Liability</u>	\$1,000,000	Statutory,
<u>Professional Liability</u>	\$1,000,000 per claim and \$2,000,000 annual aggregate	

Except for Workers Compensation and Professional Liability Insurance coverage, such insurance shall include additional endorsements naming CITY and its directors, officers, employees and agents as additional insured with respect to liabilities arising out of the performance of services under this Agreement. CONSULTANT shall provide CITY with certificates of insurance documenting that CONSULTANT has obtained the above coverages. Such certificates shall include the required provisions and endorsements required by this Agreement. Such Certificates shall include a statement that insurance may not be canceled without 30 days' prior written notice to CITY by first class mail, postage prepaid, 10 days of notice in the event that cancellation is due to nonpayment of premium.

B. Certificates of Insurance and Endorsements.

CONSULTANT will file a certificate of insurance and endorsement naming CITY as an additional insured under General Liability and Auto Liability, if applicable. Such liability insurance maintained by CONSULTANT shall be primary and non-contributory and any coverage maintained by CITY shall not be expected to contribute to any claims arising from the work under this Agreement. The CONSULTANT shall file these certificates with CITY within 10 days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by the insurance company or the insured during the term of this Agreement shall occur without 30 days' written notice to CITY prior to the effective date of such cancellation or change in coverage.

**SECTION SIXTEEN.  
COMPLIANCE WITH LAWS AND REGULATIONS**

Services performed by CONSULTANT pursuant to this Agreement shall be performed in accordance with full compliance to all applicable federal, state, and CITY laws and any rules or regulations promulgated under such laws including but not limited to the following Arizona required provisions:

- A. Conflict of Interest

CONSULTANT declares that she presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement. CONSULTANT further declares that in the performance of this Agreement no subcontractor or person having such interest shall be employed. CONSULTANT certifies that, if she hires any employee, no one who has or will have any financial interest in this Agreement is an officer or employee of CITY. The Parties agree that in the performance of the services under this Agreement CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY. Under Arizona law, rules and regulations, no member, official or employee of the CITY shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. §38-511.

B. Employment Eligibility

CONSULTANT hereby warrants that it complies with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of this Agreement. CITY retains the legal right to inspect the papers of CONSULTANT to ensure that CONSULTANT complies with this warranty.

C. Boycott

CONSULTANT certifies that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel under A.R.S. § 35-393.01. The undersigned understands this certification will become public record under A.A.C. R2-7-C317.

D. San Luis Business License

CONSULTANT shall obtain a San Luis Business License.

**SECTION SEVENTEEN.  
INSPECTION OF WORK**

CITY's representative or his or her designee shall at all times have the right to inspect the work, services or performance of CONSULTANT. CONSULTANT shall furnish all reasonable aid and assistance required by CITY for proper examination of the work or services. Such inspection shall not relieve CONSULTANT of any obligation to perform such services in accordance with the law or this Agreement.

**SECTION EIGHTEEN.  
NO WAIVER**

CONSULTANT agrees that any waiver by CITY of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

**SECTION NINETEEN.  
ATTORNEYS' FEES; COURT VENUE**

Should either Party to this Agreement commence legal action against the other (including a formal judicial proceeding, mediation or arbitration), the case shall be handled in Yuma, County, Arizona or the United States District Court for the District of Arizona at the election of the plaintiff in such legal action. The Parties waive any right to object to such venue. Nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action. The Party prevailing in such action shall be entitled to reasonable attorneys' fees which shall be fixed by the judge, mediator or arbitrator hearing the case and such fees shall be included in the judgment, together with all costs.

**SECTION TWENTY.  
NOTICES**

All notices to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested, and postage prepaid,
- personal delivery by process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If for the CITY -

City Manager  
City of San Luis  
P.O. Box 1170(by United States Postal Service)  
1090 East Union Street (by personal process or courier)  
San Luis, Arizona 85349

Copy to

San Luis City Attorney  
City of San Luis  
P.O. Box 1170  
San Luis, Arizona 85349

If to the CONSULTANT- James Davey and Associates, Inc.  
1025 W. 24<sup>th</sup> Street, Suite 2  
Yuma, Arizona 85364

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

**SECTION TWENTY-ONE.  
TERMINATION**

Either Party may terminate this Agreement upon 30 days' written notice to the other Party. In the event of such termination, CITY shall pay CONSULTANT for all services performed to the satisfaction of CITY to the date of receipt of notice of termination. An itemized statement of the work performed to the date of termination shall be submitted to CITY. In ascertaining the services actually rendered under this Agreement up to the date of termination, consideration shall be given to both completed work and work in the process of completion and to complete and incomplete documents whether delivered to CITY or in the possession of CONSULTANT.

**SECTION TWENTY-TWO.  
OWNERSHIP OF DOCUMENTS**

Upon completion, termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of CITY and may be used, reused, or otherwise disposed of by CITY without the permission of CONSULTANT.

When CONSULTANT creates any copyrightable material or invents any patentable property under this Agreement, CITY shall retain a royalty-free, non-exclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize others to do the same.

**SECTION TWENTY-THREE.  
GOVERNING LAW AND SEVERABILITY**

This Agreement shall be administered and interpreted under the laws of Arizona. Jurisdiction of litigation arising from this Agreement shall be in Arizona. If any part of this Agreement is found to conflict with applicable laws, then such part shall be inoperative and void insofar as it conflicts with such laws, but the remainder of the Agreement shall continue to be in full force and effect.

**SECTION TWENTY-FOUR.  
MISCELLANEOUS PROVISIONS**

A. Headings

The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of this Agreement.

B. Authority

The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement.

C. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and no person or entity not a Party shall have any right or cause of action under this Agreement.

D. No Agency Created

It is not intended by this Agreement to, and nothing contained in this Agreement shall create any agency, partnership, joint venture or other similar arrangement between the Parties.

E. No Personal Liability

No member, official or employee of the CITY shall be personally liable to CONSULTANT, or any successor or assignee, (a) if any default occurs or breach by the CITY, (b) for any amount which may become due to the CONSULTANT or its successor or assign, or (c) under any obligation of the CITY under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of CONSULTANT under this Agreement shall be limited solely to the assets of CONSULTANT and shall not extend to or be enforceable against: (i) the individual assets of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of CONSULTANT; (ii) the shareholders, members or managers or constituent partners of CONSULTANT; or (iii) officers of CONSULTANT.

#### F. Survival

All representations and warranties of CONSULTANT, CONSULTANT's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of the Agreement.

#### G. Time is of the Essence

Time is of the essence in this Agreement and CONSULTANT agrees to use the utmost diligence and dispatch to speedily to have all the work specified in this Agreement entirely completed on or before February 26, 2021. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of the CONSULTANT of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction.

#### H. Further Acts

Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

#### I. Force Majeure

If CONSULTANT or CITY are prevented or materially restricted from performing any of their obligations under this Agreement by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by the exercise of reasonable diligence. Examples of "force majeure" include, but are not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.

#### J. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

**SECTION TWENTY-FIVE.  
ENTIRE AGREEMENT**

This Agreement, including its Exhibit, represents the entire understanding of CITY and CONSULTANT as to those matters contained in this Agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both Parties.

The Parties have executed this Agreement in Arizona the \_\_\_\_\_ day of November 2020 which is the day the last Party approved this Agreement.

**City of San Luis, Arizona**

\_\_\_\_\_  
Tadeo A. De La Hoya, City Manager

**ATTEST:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

**James Davey and Associates, Inc.**

\_\_\_\_\_  
James Davey, President



Proposal for Engineering Design Services  
 City of San Luis  
 Preparing Master Grading, Water, Sewer and Electrical Master Plans  
 for the City of San Luis East Side Community Park

Prepared by: James Davey and Associates, Inc.

October 5, 2020

Item	Description	Principal Engineer	Engineering Technician	Survey Crew	Direct Costs	Comments
<u>Master Plan</u>						
1	Project Management & Meetings	8				
2	Prepare Topographic and Boundary Survey of Park Area	2	12	8		Includes using information available from other Engineering firms and also field survey as needed to complete the survey
3	Prepare Master Grading Plan	12	24			
4	Prepare Master Water System Plan	6	16			
5	Prepare Master Sewer System Plan	6	16			
6	Prepare Master Electrical Plan	2			\$5,200	Electrical Plan subcontracted to JOL Electrical Engineers (see attached proposal.)
7	Prepare Cost Estimates	8				
Total Estimated Hours		44	68	8	\$5,200	
Hourly Rates		\$150	\$90	\$160	x 1.05	
Subtotals		\$6,600	\$6,120	\$1,280	\$5,460	
TOTAL FEE ESTIMATE					\$19,460	



## AGENDA ITEM REVIEW FORM

### Work Session

2. B.

**Meeting Date:** 11/04/2020

**Department Head:** Lizandro Galaviz, Director of Parks & Recreation, Parks & Recreation Department

**Submitted By:** Crystal Fragozo, Administrative Assistant, Parks & Recreation Department

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible action on any and all matters regarding the brick walls at various retention basins within the City of San Luis. **(Lizandro Galaviz, Director of Parks & Recreation)**

### SUMMARY:

Several retention basins around the City of San Luis have damaged brick walls that are in need of maintenance & repairs. Staff has gone out to the various retention basins to evaluate the damaged brick walls and to determine what can be done to repair them. Staff would like to present pictures of the damaged brick walls including a breakdown of repair costs.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, not action.

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### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** Yes  
**CITY/STATE/FEDERAL FUNDS:** Yes  
**TOTAL:** See Fiscal Impact Statement  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

### FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):

This project was not budgeted within the Fiscal Year 2020-2021. If City Council would like to move forward with this project this year, we need to identify funds to cover this expenditure.

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### Attachments

Retention Basins - Damaged Brick Walls

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Sub-Division Block Wall Repairs

Prioritized List:

1. 1604 E Kennedy Ln	Cost	\$ 9,000
2. 987 Sinoff Ave	Cost	\$ 9,000
3. 1988 E Kennedy Ln	Entire repair cost	\$ 17,730
	Partial Cost	\$ 360
4. 1266 E America and Guerrero	Cost	\$ 15,750
5. 144 E Liberty St	Repair Cost	\$ 4,050
	<b>Total Cost:</b>	<b>\$55,530</b>

1604 E Kennedy Ln 200 Ft. wall fence to be repair

90 Ft Damage in various areas total cost \$9,000





28 FT



72 FT

1988 E Kennedy Ln "Las Fuentes Sub"  
394 Ft. need to repair North side Wall Fence  
Entire Wall repair cost \$17,730  
Partial Area repair cost \$ 360



Damage Areas



987 N SINOFF Ave, East side

200 FT fence need to repair

Cost \$ 9,000



1266 E America and Guerrero 350 FT. need to repair

Entire Wall Damage Cost \$15,750



144 E Liberty St 90 Ft need to repair of Wall fence

Repair cost \$4,050





## AGENDA ITEM REVIEW FORM

### Work Session

2. C.

**Meeting Date:** 11/04/2020

**Department Head:** Kay Macuil, City Attorney, Attorney's Office

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Discussion Item - No Action to be  
Taken  
Ordinance

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding Ordinance No. 401. An ordinance of the Mayor and City Council of the City of San Luis, Arizona, for the management of trees in the City of San Luis and practices for the care of the trees and removal when in the health, safety, and welfare interests of the residents; amending the San Luis City Code; repealing any conflicting provision; providing for severability, and providing for penalties. ITEM CONTINUED FROM THE REGULAR COUNCIL MEETING HELD SEPTEMBER 23, 2020. **(Lizandro Galaviz, Director of Parks and Recreation)**

### SUMMARY:

Tree City U.S.A. Program and Ordinance No. 401

City staff is requesting consideration to become a Tree City U.S.A. community. The program creates an opportunity to celebrate the importance of an urban tree canopy and improve city trees' vitality. Tree City U.S.A.'s program has been greening up cities and towns across America since 1976. The program provides a framework for the city to manage and expand our public trees' inventory.

To become a recognized Tree City U.S.A. community, the city must meet certain core standards of sound urban forestry management by maintaining a city department that part of their job maintains a focus on, having a community tree ordinance, spending at least \$2 per capita on urban forestry and celebrating Arbor Day.

Although becoming a Tree City U.S.A. community is a collective city departmental effort, staff is recommending that the Director of Parks and Recreation and associated staff be assigned to lead this effort. The Parks and Recreation Department budget meets the required per capita to grow and maintain the city's urban canopy. The department routinely facilitates the city's large events, and celebrating Arbor Day annually would be easily incorporated into the department's events list.

To create a local tree program will include the development of a strategic plan of counting/recording, designating planting areas, and implementing a tree nursery program in partnership with local agencies. This information will create a foundation to work towards becoming a certified tree city and building environmental awareness in our community.

Approving the Ordinance meets the requirements of the Tree City U.S.A. program, and it will be the first step in implementing the program and seeking funds to help support the program.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

---

**Fiscal Impact**

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** No  
**CITY/STATE/FEDERAL FUNDS:** N/A  
**TOTAL:** N/A  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

The Department of Parks and Recreation is currently the department charged with the maintenance of city trees. This ordinance codifies those responsibilities and there is no additional cost to the department. However, having this ordinance that spells out the management of the trees may lead to grant revenue for the city.

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**Attachments**

Draft Tree Ordinance

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**No. 401**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, FOR THE MANAGEMENT OF TREES AND PRACTICES FOR THE CARE OF THE TREES AND REMOVAL WHEN IN THE HEALTH, SAFETY AND WELFARE INTERESTS OF THE RESIDENTS; AMENDING THE SAN LUIS CITY CODE; REPEALING ANY CONFLICTING PROVISION; PROVIDING FOR SEVERABILITY; AND IMPOSING A PENALTY.**

**BE IT ORDAINED** by the Mayor and City Council of the City of San Luis, Arizona, as follows:

**Section 1.** The San Luis City Code is amended by adding an article called “City Trees” article to Title IX: General Regulation, Chapter 94: Parks and Recreation. The “City Trees” article consists of the sections as follows:

**CITY TREES**

**§ 94.30.010** New businesses and subdivisions landscape is being provided in conjunction with the development of the projects in accordance with the landscape chapter of the Zoning Regulations. Any remodeling or development triggers landscape retrofit for commercial properties and must be in accordance with the zoning regulations. The City of San Luis should consider installing or rebuilding landscape as part of street improvement projects in accordance with this chapter.

**§ 94.30.020 DEFINITIONS.**

As used in this City Trees Article, the following words and phrases have the meanings indicated:

***CITY TREES ARTICLE*** – this article of the San Luis City Code.

***DAMAGE*** – any injury to or destruction of a tree, including but not limited to:

- uprooting;
- severance of all or part the root system or main trunk;

- storage of material on or compaction of surrounding soil;
- a substantial change in the natural grade above a root system or around a trunk;
- surrounding the tree with impervious paving materials; or
- any trauma to a tree caused by accident or collision.

**DIRECTOR** – references to a director (whether the Director of Parks and Recreation or the Director of Public Works, the Director of Planning and Zoning or the Fire Chief) include the director’s designee or designees.

**GREENWAY** – the area along a public street between the curb and the sidewalk, or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley. The Greenway may or may not have vegetation on it.

**NUISANCE** – any tree, or limb of a tree, that has an infectious disease or insect infestation; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety and welfare.

**PUBLIC PROPERTY** – all grounds and rights-of-way owned or maintained by the city.

**PUBLIC TREE** – any tree or woody vegetation on a city-owned or city-maintained property or rights-of-way.

**TOP** – to cut back limbs to stubs within a tree’s crown to such a degree as to remove the natural canopy and disfigure the tree.

**§ 94.30.030 PURPOSE.**

To enhance the quality of life and the present and future health, safety, and welfare of all residents and visitors, to enhance property values, and to ensure proper planting and care of Public Trees on Public Property, the San Luis City Council delegates the authority and responsibility for managing Public Trees, establishes practices governing the planting and care of Public Trees on Public Property, and makes provision for the emergency removal of trees on private property under certain conditions.

**§ 94.30.040 POWERS, AUTHORITY AND RESPONSIBILITIES**

(A) *City’s powers.* The city has the power under A.R.S. § 9-240 to plant, prune, maintain and remove trees and woody plants growing in or upon all municipal streets, rights-of-ways, city parks, and other Public Property, including the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

(B) *Authority and responsibility and delegation.* The Director of Parks and Recreation

and the Director of Public Works share the authority and responsibility for the powers described in the above-subsection (A).

- (1) The Director of Parks and Recreation or said director's designee or designees have primary authority and responsibility where parkland and facility landscaping are involved.
- (2) The Director of Public Works or said director's designee or designees have primary authority and responsibility where utility lines, rights-of-way and infrastructure are involved.
- (3) This City Trees Article does not repeal or change the authority and responsibilities of the Director of Planning and Zoning (also referred to as the Zoning Administrator) as described in the Land Usage Title of the San Luis City Code. The Director of Planning and Zoning or said director's designee or designees have responsibilities described under this City Trees Article.

(C) *Coordination among city departments.* All city departments shall coordinate as necessary with the Director of Parks and Recreation, the Director of Public Works and the Director of Planning and Zoning. All city departments shall provide services as required to ensure compliance with this City Trees Article as it relates to streets, alleys, rights-of-way, drainage, easements and other Public Properties.

(D) *Interference.* No person shall hinder, prevent, delay, or interfere with the Director of Parks and Recreation or the Director of Public Works or the Director of Planning and Zoning or their staff or agents while engaged in carrying out the execution or enforcement of this article.

#### **§ 94.30.050 TREE PLANTING AND CARE STANDARDS.**

The Director of Parks and Recreation approves all planting of Public Trees.

- (A) *Standards.* All planting and maintenance of Public Trees should conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (B.M.P.s) published by the International Society of Arboriculture.
- (B) *Requirements of franchise utility companies.* The maintenance of Public Trees for utility clearance shall conform to all applicable utility industry standards.
- (C) *Tree species list.* After consulting with the Director of Planning and Zoning for consistency with the city's land-use regulations, the Director of Parks and Recreation shall develop and maintain an official list of desirable tree species for planting on Public Property in two size classes: Ornamental (20 feet or less at maturity) and Shade (greater than 20 feet at maturity). Only trees from this approved list may be planted on Public Property. Requests to plant a tree species not on the list must be approved in writing

by both the Director of Planning and Zoning and the Director of Parks and Recreation.

- (D) *Planting distances.* After consultation with the Director of Public Works, the Director of Planning and Zoning, and the Fire Chief or their designees, the Director of Parks and Recreation shall develop and maintain an official set of spacing requirements for planting trees on Public Property. No tree may be planted within the visibility triangle of a street intersection or within ten feet (10') of a fire hydrant.
- (E) *Planting trees under electric utility lines.* Only trees listed as Ornamental trees on the official city tree species list may be planted under or within fifteen lateral feet (15') of any overhead utility wire.
- (F) *Protection of Public Trees during construction.* Any person, firm, corporation, or city department performing construction near any Public Tree shall employ appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent Damage.

**§ 94.30.060 PROHIBITION AGAINST HARMING PUBLIC TREES.**

- (A) It shall be unlawful for any person, firm or corporation to Damage, remove, or cause the Damage or the removal of a tree on Public Property without written permission from the Director of Parks and Recreation, the Director of Public Works, or the Director of Planning and Zoning. Before granting or denying permission, said directors shall consult with each other.
- (B) It shall be unlawful for any person, firm or corporation to attach any cable, wire or sign or any other object to any Public Tree.
- (C) It shall be unlawful for any person, firm or corporation to Top any Public Tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical, may be exempted from this section as determined by the Director of Parks and Recreation or the Director of Public Works if utility lines, rights-of-way and infrastructure are involved.

**§ 94.30.060. ADJACENT OWNER RESPONSIBILITY.**

- (A) The owner of land adjacent to any city street or highway, when acting within this article's provisions, may plant and maintain trees in the adjacent Greenway area. Property owners are responsible for the reasonable and routine maintenance of trees and other landscaping in the adjacent Greenway area.
- (B) Property owners shall not allow a tree or other plant growing on their property or within the adjacent Greenway to obstruct or interfere with pedestrians or the view of drivers, creating a hazard. If an obstruction persists, the Director of Parks and

Recreation or the Director of Public Works or the Director of Planning and Zoning shall notify the property owner to prune or remove the tree or plant. Each director shall provide the other two directors with copies of the notice under this section. If the owner fails to comply with the notice, the city may undertake the necessary work and charge the cost to the property owner.

#### **§ 94.30.080. CERTAIN TREES DECLARED A NUISANCE.**

- (A) Any tree, or limb on a tree, on private property determined by the Directors of Parks and Recreation, Public Works and Planning and Zoning
- to have contracted a communicable disease or insect infestation lethal to trees;
  - to be dead or dying;
  - to obstruct the view of traffic signs or the free passage of pedestrians or vehicles;  
or
  - to threaten public health, safety, and welfare

is declared a Nuisance. The city may require treatment or removal of any trees that fit this section's description of a declared Nuisance.

- (B) Private property owners have the duty, at their own expense, to remove or treat Nuisance trees on their property. The city may remove such trees at the owner's expense if the owner does not comply with treatment or removal or both, as specified by the Director of Planning and Zoning within the written notification period.

**Section 2.** The San Luis City Code is amended by adding an article called "Penalties" to Title IX: General Regulation, Chapter 94: Parks and Recreation. The "Penalty" article consists of one section, Section 94.99, titled "Penalty." Section 94.99 is amended by adding subsection "D" as follows:

### **PENALTIES**

#### **§ 94.99 PENALTY.**

- (D) *City Trees.* Any person, firm or corporation violating § 94.30.010 through § 94.30.070 shall be subject to the misdemeanor penalty provisions of § [10.99](#) for each offense.

**Section 3.** The San Luis City Code is amended by adding an article called "Hazardous Trees" to Title IX: General Regulation, Chapter 91: Nuisances. The "Hazardous Trees" article consists of one section, Section 91.71, as follows.

### **HAZARDOUS TREES**

**§91.71** Certain trees are declared nuisances as nuisance is defined under § 94.30.010. Such trees are regulated under § 94.30.070 and penalized under § 94.99(D).

**Section 4.** With the exception that it is intended that this ordinance shall harmonize with any ordinance or regulation under Title XV: Land Usage of the San Luis City Code regarding Public Trees as defined by this ordinance; in the event of a conflict between the provisions of this ordinance and any other ordinance, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are repealed, superseded, and replaced. The provisions of this article shall govern.

**Section 5.** If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 of this article.

**PASSED, ADOPTED and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this \_\_ day of November 2020.

\_\_\_\_\_  
Gerardo Sanchez, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney



## AGENDA ITEM REVIEW FORM

### Work Session

2. D.

**Meeting Date:** 11/04/2020

**Department Head:** Kay Macuil, City Attorney, Attorney's Office

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff regarding the Ballot Initiative, Proposition No. 207 titled "Smart and Safe Arizona Act" on regulating legal sales, cultivation, and manufacturing products from marijuana and options for city ordinances. (**Glenn J. Gimbut, Assistant City Attorney**)

### SUMMARY:

This agenda summary was written before the November 3rd election results when polling showed a nearly 50% chance of passing or failing. However, staff would like to advise the City Council of its options if the proposition has passed by the time of this meeting. The Proposition allows for non-medical marijuana establishments, cultivation testing of, and manufacture of marijuana products.

If one looks at the overall scheme:

- There will be one license for a marijuana establishment for every ten pharmacies. (San Luis only has three with a fourth coming. The City of Yuma has about 12)
- There is one license for a marijuana establishment per county where there is a licensed medical marijuana facility. (Yuma County has at least one (1). The City of Yuma has one (1))

So, it looks like there will be one(1) maybe two (2) recreational marijuana establishments for the entire county. It is doubtful a marijuana establishment will locate in San Luis.

### **Non-medical marijuana establishment Local Ordinance Option**

For non-medical marijuana establishments, a complete prohibition route is possible. Basically, this means San Luis keeps what it has on the books without change. Only a medical marijuana distributor under all the current rules might be able to get established if the State issues a license, which to date it has not.

### **Proposition 207 and Law Enforcement**

Proposition 207 restricts citations for marijuana.

### **Proposition 207 and Land Use Regulation**

While folks have the right to grow on their own, our current zoning restrictions will apply. This means growing marijuana indoors, out of sight, under lock and key. So, what we have now remains.

### **Proposition 207 and Workforce**

The city may continue to have a complete drug free workplace.

The presenter recommends that the city keep its current rules in place without change.

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The full text of Proposition 207 is attached. For reference, the operable part of the initiative for local governments is as follows:

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

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 establishments 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.*

**RECOMMENDATION / SUGGESTED MOTION:**

**Discussion and possible directions to staff only, no action.**

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** No  
**CITY/STATE/FEDERAL FUNDS:** N/A  
**TOTAL:** N/A  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A  
**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

There is no fiscal impact for this discussion item.

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### **Attachments**

Prop 207 Text  
Memorandum - Proposition 207  
League Model Ordinance

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**OFFICIAL TITLE**  
AN INITIATIVE MEASURE

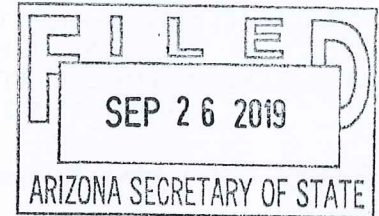
AMENDING SECTION 36-2817, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 28.2; AMENDING TITLE 42, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING TITLE 43, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-108; RELATING TO THE RESPONSIBLE ADULT USE, REGULATION AND TAXATION OF MARIJUANA.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

**Section 1.** Short title

This act may be cited as the "Smart and Safe Arizona Act".



**Section 2.** Findings and declaration of purpose

The People of the State of Arizona find and declare as follows:

1. In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the responsible adult use of marijuana should be legal for persons twenty-one years of age or older, subject to state regulation, taxation, and local ordinance.
2. In the interest of the health and public safety of our citizenry, the legal adult use of marijuana should be regulated so that:
  - (a) Legitimate, taxpaying business people, and not criminal actors, conduct sales of marijuana.
  - (b) Marijuana sold in this state is tested, labeled and subject to additional regulations to ensure that consumers are informed and protected.
  - (c) Employers retain their rights to maintain drug-and-alcohol-free places of employment.
  - (d) The health and safety of employees in the marijuana industry are protected.
  - (e) Individuals must show proof of age before purchasing marijuana.
  - (f) Selling, transferring, or providing marijuana to minors and other individuals under the age of twenty-one remains illegal.
  - (g) Driving, flying or boating while impaired to the slightest degree by marijuana remains illegal.

**Section 3.** Section 36-2817, Arizona Revised Statutes, is amended to read:

**36-2817. Medical marijuana fund; private donations**

- A. The medical marijuana fund is established consisting of fees collected, civil penalties imposed and private donations received under this chapter. The department shall administer the fund. Monies in the fund are continuously appropriated.
- B. The director of the department may accept and spend private grants, gifts, donations, contributions and devises to assist in carrying out the provisions of this chapter.
- C. Monies in the medical marijuana fund do not revert to the state general fund at the end of a fiscal year.
- D. ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE DIRECTOR OF THE DEPARTMENT SHALL TRANSFER THE FOLLOWING SUMS FROM THE MEDICAL MARIJUANA FUND FOR THE FOLLOWING PURPOSES:
  1. \$15,000,000 TO THE ARIZONA TEACHERS ACADEMY FUND ESTABLISHED BY SECTION 15-1655.
  2. \$10,000,000 TO THE DEPARTMENT TO FUND THE FORMATION AND OPERATION OF COUNCILS, COMMISSIONS AND PROGRAMS DEDICATED TO IMPROVING PUBLIC HEALTH, INCLUDING TEEN SUICIDE PREVENTION, THE MATERNAL MORTALITY REVIEW PROGRAM, IMPROVING YOUTH HEALTH, SUBSTANCE ABUSE PREVENTION, ADDRESSING ADVERSE CHILDHOOD EXPERIENCES, THE ARIZONA POISON CONTROL SYSTEM ESTABLISHED PURSUANT TO SECTION 36-1161, THE ARIZONA HEALTH IMPROVEMENT PLAN, THE CHILD FATALITY REVIEW TEAM ESTABLISHED PURSUANT TO SECTION 36-3501 AND THE CHRONIC PAIN SELF MANAGEMENT PROGRAM.
  3. \$10,000,000 TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY TO DISTRIBUTE GRANTS FOR THE FOLLOWING PURPOSES:
    - (a) REDUCING IMPAIRED DRIVING, INCLUDING CONDUCTING TRAINING PROGRAMS AND PURCHASING EQUIPMENT FOR DETECTING, TESTING AND ENFORCING LAWS AGAINST DRIVING, FLYING OR BOATING WHILE IMPAIRED.
    - (b) EQUIPMENT, TRAINING AND PERSONNEL COSTS FOR DEDICATED TRAFFIC ENFORCEMENT.
  4. \$2,000,000 TO THE DEPARTMENT TO IMPLEMENT, CARRY OUT AND ENFORCE CHAPTER 28.2 OF THIS TITLE.

5. \$4,000,000 TO THE DEPARTMENT TO DISTRIBUTE GRANTS TO QUALIFIED NONPROFIT ENTITIES THAT WILL PROVIDE OUTREACH TO INDIVIDUALS WHO MAY BE ELIGIBLE TO FILE PETITIONS FOR EXPUNGEMENT PURSUANT TO SECTION 36-2862 AND WILL ASSIST WITH THE EXPUNGEMENT PETITION PROCESS. THE DEPARTMENT SHALL DISTRIBUTE GRANTS PURSUANT TO THIS PARAGRAPH ON OR BEFORE JUNE 30, 2021.

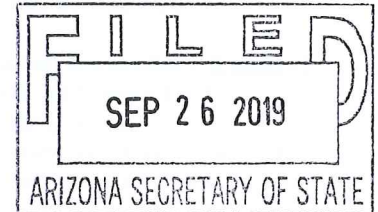
6. \$2,000,000 TO THE DEPARTMENT TO DEVELOP AND IMPLEMENT, IN CONJUNCTION WITH THE DEPARTMENT OF ECONOMIC SECURITY AND OTHER STATE AGENCIES, A SOCIAL EQUITY OWNERSHIP PROGRAM TO PROMOTE THE OWNERSHIP AND OPERATION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES BY INDIVIDUALS FROM COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE ENFORCEMENT OF PREVIOUS MARIJUANA LAWS. FOR THE PURPOSES OF THIS PARAGRAPH, "MARIJUANA ESTABLISHMENT" AND "MARIJUANA TESTING FACILITY" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2850.

7. \$1,000,000 TO THE DEPARTMENT TO FUND PROGRAMS AND GRANTS TO QUALIFIED NONPROFIT ORGANIZATIONS FOR EDUCATION AND COMMUNITY OUTREACH RELATED TO CHAPTER 28.2 OF THIS TITLE.

8. \$1,000,000 TO THE SMART AND SAFE ARIZONA FUND ESTABLISHED BY SECTION 36-2856.

**Section 4.** Title 36, Arizona Revised Statutes, is amended by adding chapter 28.2, to read:

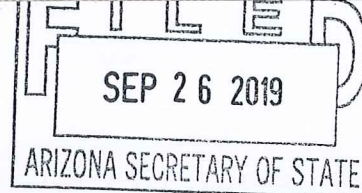
CHAPTER 28.2  
RESPONSIBLE ADULT USE OF MARIJUANA



**36-2850. Definitions**

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 SECTION 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**  
**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 OR IN 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**

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.

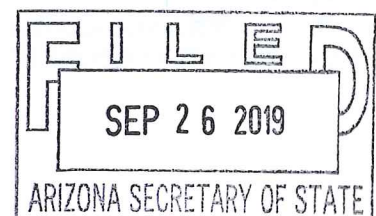
(b) CULTIVATION TAKES PLACE WITHIN A CLOSET, ROOM, GREENHOUSE OR OTHER ENCLOSED AREA ON THE GROUNDS OF THE RESIDENCE EQUIPPED WITH A LOCK OR OTHER SECURITY DEVICE THAT PREVENTS ACCESS BY MINORS.

(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**

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.

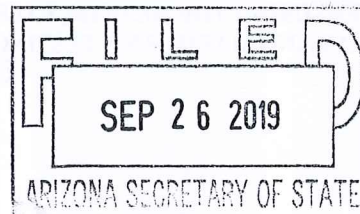
2. FOR A SECOND OR SUBSEQUENT VIOLATION, A CLASS 3 MISDEMEANOR.

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

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.

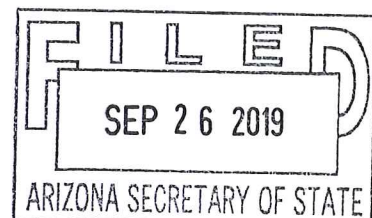
6. FORMS OF GOVERNMENT-ISSUED IDENTIFICATION THAT ARE ACCEPTABLE BY A MARIJUANA ESTABLISHMENT VERIFYING A CONSUMER'S AGE AND PROCEDURES RELATED TO VERIFYING A CONSUMER'S AGE CONSISTENT WITH SECTION 4-241. UNTIL THE DEPARTMENT ADOPTS FINAL RULES RELATED TO VERIFYING A CONSUMER'S AGE, MARIJUANA ESTABLISHMENTS 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 IN 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**

A. A MARIJUANA FACILITY AGENT SHALL BE REGISTERED WITH THE DEPARTMENT BEFORE WORKING AT A MARIJUANA ESTABLISHMENT OR MARIJUANA TESTING FACILITY.

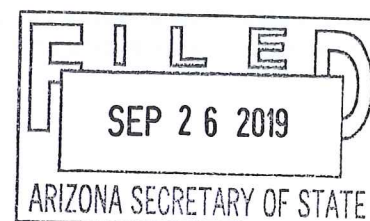
B. A PERSON WHO WISHES TO BE REGISTERED AS A MARIJUANA FACILITY AGENT OR RENEW THE PERSON'S REGISTRATION AS A MARIJUANA FACILITY AGENT SHALL:

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**

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.

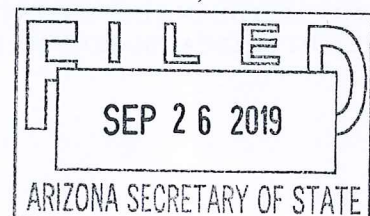
4. 10 PERCENT TO THE JUSTICE REINVESTMENT FUND ESTABLISHED BY SECTION 36-2863.

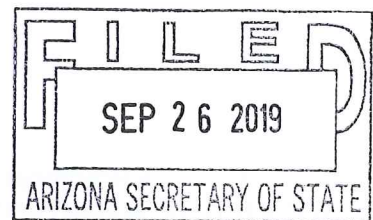
5. 0.2 PERCENT TO THE ATTORNEY GENERAL TO USE TO ENFORCE THIS CHAPTER, OR TO GRANT TO LOCALITIES TO ENFORCE THIS CHAPTER.

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**

- 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 ESTABLISHMENTS 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**

- 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**

- 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**

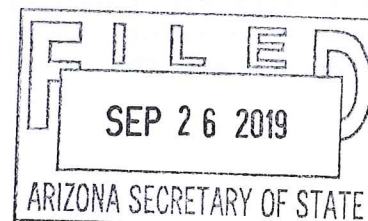
- A. A MARIJUANA ESTABLISHMENT MAY NOT:
1. PACKAGE OR LABEL MARIJUANA OR MARIJUANA PRODUCTS IN A FALSE OR MISLEADING MANNER.
  2. MANUFACTURE OR SELL MARIJUANA PRODUCTS THAT RESEMBLE THE FORM OF A HUMAN, ANIMAL, INSECT, FRUIT, TOY OR CARTOON.
  3. SELL OR ADVERTISE MARIJUANA OR MARIJUANA PRODUCTS WITH 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**

- 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**

- 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 IN 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.

**36-2863. Justice reinvestment fund; exemption; distribution; definition**

A. THE JUSTICE REINVESTMENT FUND IS ESTABLISHED CONSISTING OF ALL MONIES DEPOSITED PURSUANT TO SECTION 36-2856 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 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**

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.

**36-2865. Enforcement of this chapter; special action**

A. IF THE DEPARTMENT FAILS TO ADOPT RULES NECESSARY TO IMPLEMENT THIS CHAPTER ON OR BEFORE JUNE 1, 2021, OR FAILS TO BEGIN ACCEPTING APPLICATIONS AS PROVIDED IN SECTION 36-2854, SUBSECTION A, PARAGRAPH 1, SUBDIVISION (d), ANY CITIZEN MAY COMMENCE A SPECIAL ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.

B. IF THE DEPARTMENT FAILS TO ISSUE A LICENSE OR SEND A NOTICE OF DENIAL WITHIN SIXTY DAYS AFTER RECEIVING A COMPLETE MARIJUANA ESTABLISHMENT APPLICATION PURSUANT TO SECTION 36-2854, SUBSECTION A, PARAGRAPH 1, SUBDIVISION (d), THE APPLICANT MAY COMMENCE A SPECIAL ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.

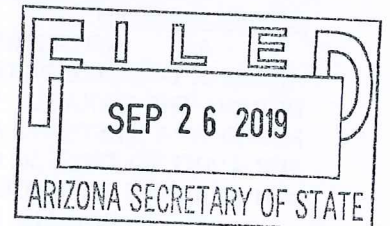
C. NOTWITHSTANDING CHAPTER 28.1 OF THIS TITLE, IF THE DEPARTMENT FAILS TO ISSUE ANY MARIJUANA ESTABLISHMENT LICENSES PURSUANT TO SECTION 36-2854, SUBSECTION A, PARAGRAPH 1, SUBDIVISION D ON OR BEFORE APRIL 5, 2021, EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY IN GOOD STANDING MAY BEGIN TO CULTIVATE, PRODUCE, PROCESS, MANUFACTURE, TRANSPORT AND TEST MARIJUANA AND MARIJUANA PRODUCTS AND MAY SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS UNTIL THE DEPARTMENT ISSUES LICENSES TO OPERATE MARIJUANA ESTABLISHMENTS. IF THIS OCCURS, NONPROFIT MEDICAL MARIJUANA DISPENSARIES IN GOOD STANDING SHALL:

1. BE TREATED AS MARIJUANA ESTABLISHMENTS FOR ALL PURPOSES UNDER THIS CHAPTER, AND THEIR NONPROFIT MEDICAL MARIJUANA ESTABLISHMENT AGENTS SHALL BE TREATED AS MARIJUANA FACILITY AGENTS FOR ALL PURPOSES UNDER THIS CHAPTER.

2. COMPLY WITH THE RULES ADOPTED BY THE DEPARTMENT TO IMPLEMENT CHAPTER 28.1 OF THIS TITLE, EXCEPT THOSE THAT ARE INCONSISTENT WITH THIS CHAPTER.

**Section 5.** Title 42, Chapter 5, Arizona Revised Statutes, is amended by adding article 10 to read:

ARTICLE 10.  
MARIJUANA AND MARIJUANA PRODUCTS



**42-5451. Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONSUMER," "DUAL LICENSEE," "MARIJUANA," "MARIJUANA ESTABLISHMENT" AND "MARIJUANA PRODUCTS" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2850.

2. "DESIGNATED CAREGIVER," "NONPROFIT MEDICAL MARIJUANA DISPENSARY" AND "QUALIFYING PATIENT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2801.

**42-5452. Levy and rate of tax; effect of federal excise tax**

A. THERE IS LEVIED AND THE DEPARTMENT SHALL COLLECT AN EXCISE TAX ON ALL MARIJUANA AND MARIJUANA PRODUCTS SOLD TO A CONSUMER BY A MARIJUANA ESTABLISHMENT AT A RATE OF SIXTEEN PERCENT OF THE PRICE OF THE MARIJUANA OR MARIJUANA PRODUCT SOLD. THIS SUBSECTION DOES NOT APPLY TO MARIJUANA DISPENSED TO A REGISTERED QUALIFYING PATIENT OR REGISTERED DESIGNATED CAREGIVER PURSUANT TO TITLE 36, CHAPTER 28.1 BY A DUAL LICENSEE OR NONPROFIT MEDICAL MARIJUANA DISPENSARY.

B. IF THE UNITED STATES LEVIES AND COLLECTS AN EXCISE TAX ON MARIJUANA AND MARIJUANA PRODUCTS, THE AGGREGATE OF FEDERAL AND STATE EXCISE TAXES MAY NOT EXCEED A RATE OF THIRTY PERCENT OF THE PRICE OF THE MARIJUANA OR MARIJUANA PRODUCT SOLD, AND THE TAX LEVIED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE LOWERED ACCORDINGLY AND AUTOMATICALLY ON THE EFFECTIVE DATE OF THE FEDERAL EXCISE TAX.

C. A PRODUCT SUBJECT TO THE TAX IMPOSED BY THIS SECTION MAY NOT BE BUNDLED WITH A PRODUCT OR SERVICE THAT IS NOT SUBJECT TO THE TAX IMPOSED BY THIS SECTION.

D. THE TAX LEVIED AND COLLECTED PURSUANT TO THIS SECTION SHALL NOT BE INCLUDED IN COMPUTING THE TAX BASE, GROSS PROCEEDS OF SALES OR GROSS INCOME OF A MARIJUANA ESTABLISHMENT

FOR PURPOSES OF TITLE 42, CHAPTERS 5 AND 6, AND IS NOT SUBJECT TO ANY TRANSACTION PRIVILEGE, SALES, USE OR OTHER SIMILAR TAX LEVIED BY A COUNTY, CITY, TOWN OR SPECIAL TAXING DISTRICT.

E. NOTWITHSTANDING SECTION 42-3102, THE DEPARTMENT SHALL DEPOSIT ALL MONIES LEVIED AND COLLECTED PURSUANT TO THIS SECTION IN THE SMART AND SAFE ARIZONA FUND ESTABLISHED BY SECTION 36-2856.

**42-5453. Return statement and payment by marijuana establishment; penalty; interest; rules; confidential information**

A. THE TAX IMPOSED BY THIS ARTICLE IS DUE AND PAYABLE, TOGETHER WITH A RETURN STATEMENT PRESCRIBED BY THE DEPARTMENT, FOR EACH MONTH ON OR BEFORE THE TWENTIETH DAY OF THE SUCCEEDING MONTH.

B. A MARIJUANA ESTABLISHMENT THAT FAILS TO PAY THE TAX IMPOSED BY THIS ARTICLE WITHIN TEN DAYS AFTER THE DATE THE PAYMENT IS DUE IS SUBJECT TO AND SHALL PAY A PENALTY DETERMINED UNDER SECTION 42-1125, PLUS INTEREST AT THE RATE DETERMINED PURSUANT TO SECTION 42-1123, FROM THE TIME THE TAX WAS DUE AND PAYABLE UNTIL PAID. THE DEPARTMENT MAY WAIVE ANY PENALTY OR INTEREST IF IT DETERMINES THAT THE MARIJUANA ESTABLISHMENT HAS MADE A GOOD FAITH ATTEMPT TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE.

C. THE MONTHLY RETURN STATEMENT PRESCRIBED BY THE DEPARTMENT SHALL INCLUDE AN ACCOUNTING OF THE QUANTITY OF MARIJUANA THAT IS SOLD BY A MARIJUANA ESTABLISHMENT THAT IS SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE DURING THE TAX MONTH.

D. ALL PENALTIES AND INTEREST COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE SMART AND SAFE ARIZONA FUND ESTABLISHED BY SECTION 36-2856.

E. THE DEPARTMENT MAY ADOPT RULES THAT ARE NECESSARY OR CONVENIENT TO ENFORCE THIS ARTICLE, EXCEPT THAT THOSE RULES THAT ARE NECESSARY OR CONVENIENT TO ENFORCE THIS ARTICLE, EXCEPT THAT THOSE RULES MAY NOT CONFLICT WITH TITLE 36, CHAPTER 28.2.

F. THE DEPARTMENT MAY SHARE CONFIDENTIAL INFORMATION AS DEFINED IN SECTION 42-2001 WITH THE DEPARTMENT OF HEALTH SERVICES FOR ITS USE IN DETERMINING WHETHER A MARIJUANA ESTABLISHMENT, MARIJUANA TESTING FACILITY OR DUAL LICENSEE IS IN COMPLIANCE WITH TAX OBLIGATIONS UNDER THIS TITLE OR TITLE 43.

**Section 6.** Title 43, Chapter 1, article 1, Arizona Revised Statutes, is amended by adding Section 43-108 to read:

**43-108. Subtraction from gross income; ordinary and necessary expenses; marijuana establishments and marijuana testing facilities; definitions**

A. NOTWITHSTANDING ANY OTHER LAW, IN COMPUTING ARIZONA ADJUSTED GROSS INCOME OR ARIZONA TAXABLE INCOME FOR A TAXPAYER, ALL ORDINARY AND NECESSARY EXPENSES PAID OR INCURRED DURING THE TAXABLE YEAR IN CARRYING ON A TRADE OR BUSINESS AS A MARIJUANA ESTABLISHMENT, MARIJUANA TESTING FACILITY, OR DUAL LICENSEE THAT ELECTS TO OPERATE ON A FOR-PROFIT BASIS PURSUANT TO TITLE 36, CHAPTER 28.2 SHALL BE SUBTRACTED FROM ARIZONA GROSS INCOME TO THE EXTENT NOT ALREADY EXCLUDED FROM ARIZONA GROSS INCOME.

B. FOR THE PURPOSES OF THIS SECTION, "DUAL LICENSEE," "MARIJUANA ESTABLISHMENT," AND "MARIJUANA TESTING FACILITY" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2850.

**Section 7. Voter Protection Act**

For the purposes of the Voter Protection Act, Ariz. Const. art. IV, pt. 1, § 1(6)(C), the People of the State of Arizona declare that the following acts of the Legislature would further the purpose of this act:

1. Enacting a per se law for the presumption of marijuana impairment based on the concentration of delta-9 tetrahydrocannabinol in a person's body when scientific research on the subject is conclusive and the National Highway Traffic Safety Administration recommends the adoption of such a law.

2. Reducing or eliminating any offense, offense level or penalty provided for in this act.

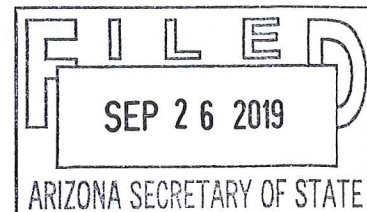
3. Increasing the amount of marijuana that a person may lawfully possess.

4. Amending the provisions of this act to align more closely with federal laws and regulations if marijuana is legalized or decriminalized by the federal government, but only if and to the extent that such federal laws and regulations are not more restrictive than the provisions of this act.

5. Amending the provisions of this act to align more closely with federal laws and regulations governing the possession, processing, cultivation, transport, or transfer of industrial hemp, but only if and to the extent that such federal laws and regulations are not more restrictive than the provisions of this act.

6. Increasing the number of marijuana establishment licenses by up to 10 percent in furtherance of the social equity ownership program established by this act.

7. Facilitating the expungement and sealing of records of arrests, charges, convictions, adjudications and sentences that were predicated on conduct made lawful by this act, including by automatic means, and otherwise preventing or mitigating prejudice to individuals whose arrests, charges, convictions, adjudications or sentences are expunged.



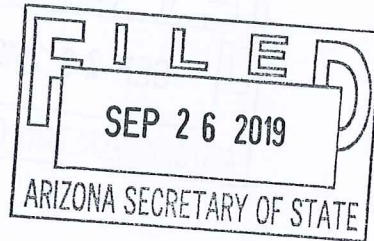
8. Amending the definition of "smoking" in this act to conform with the Smoke-Free Arizona Act if that act is amended to include the use of an electronic smoking device that creates an aerosol or vapor.

**Section 8.** Exemption from rulemaking

For the purposes of this act, and for sixty months after the effective date of this act, the department of revenue and the department of health services are exempt from (a) any executive order or other directive purporting to limit or restrict their ability to adopt new rules, and (b) the rulemaking requirements of title 41, chapters 6 and 6.1, Arizona Revised Statutes, except that each department shall provide the public with a reasonable opportunity to comment on proposed rules and shall publish otherwise exempted rules.

**Section 9.** Severability

If any provision of this act or its application to any person or circumstance is declared invalid by a court of competent jurisdiction, such invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application. The invalidated provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of this act and, to the fullest extent possible, the provisions of this act, including each portion of any section of this act containing any invalidated provision that is not itself invalid, shall be construed so as to give effect to the intent thereof.



**MEMORANDUM**

DATE: October 28, 2020

TO: Honorable Mayor and City Council  
Tadeo De La Hoya, City Manager  
Kay Marion Macuil, City Attorney  
Richard Jessup, Chief of Police  
Jose A. Guzman, Planning and Zoning Director

FROM: Glenn Gimbut, Assistant City Attorney

**RE: PROPOSITION 207 – LEGALIZATION OF MARIJUANA INITIATIVE**

=====  
On the November 3, 2020, ballot is Proposition 207, which seeks to legalize possession of small amounts of marijuana in Arizona. A copy of the initiative is attached to this memorandum. The highlights of the bill are:

1. Adults 21 and older would be able to possess 1 ounce of marijuana with no more than 5 grams of it being marijuana concentrates (extracts).
2. Limits home cultivation to 6 plants at an individual’s primary residence and 12 plants at a residence where two or more individuals who are at least 21 years old reside at one time.
3. The Arizona Department of Health Services (“ADHS”) would have to establish recreational marijuana regulations on or before April 5, 2021.
4. A 16% excise tax (the same as cigarettes and alcohol) would be placed on recreational marijuana products. Money from the excise tax would fund various state agencies and be dispersed between community college districts, police departments, fire departments and the Highway User fund.
5. Marijuana use would remain illegal in public places (restaurants, parks, sidewalks, etc.). Offenders are guilty of a petty offense.
6. No marijuana products could be sold that imitate brands marketed to children or look like humans, animals, insects, fruits, toys, or cartoons.
7. Marijuana edibles will be limited to a maximum of 10mg of THC per edible and limited to a maximum of 100mg of THC per package of edibles.
8. Employers have the right to maintain a drug- and alcohol-free workplace.

9. Driving, flying, or boating impaired to even the slightest degree by marijuana would remain illegal (i.e., zero-tolerance rule).

10. Marijuana testing facilities will test marijuana for harmful contaminants (i.e., pesticides, molds, etc.).

11. "Qualified early applicants" (qualifications are currently undetermined) can apply for a recreational dispensary license (approx. 145 licenses will be available) with the ADHS. Any remaining or additional licenses will be provided by random selection.

12. The ADHS may issue a marijuana establishment license (recreational marijuana dispensary license) to no more than two recreational dispensaries per county that contains no medical marijuana dispensaries, or one recreational dispensary license per county that contains one medical marijuana dispensary (the ADHS will accept applications from January 19, 2021 – March 9, 2021).

13. On or before April 5, 2021, medical marijuana dispensaries will be able to sell recreational marijuana to adults until the ADHS issues licenses for recreational dispensaries.

14. Medical marijuana dispensaries that obtain a recreational marijuana dispensary license(s) could operate both entities in the same and or shared location.

15. Possession Offenses:

(a) Possessing more than one ounce but less than 2.5 ounces would be a petty offense.

(b) Minors caught with less than one ounce would receive up to a \$100 fine and four hours of drug counseling for a first offense.

(c) Escalating penalties:

(i) A second offense would be up to a \$100 fine and eight hours of drug counseling.

(ii) A third offense would be a Class 1 misdemeanor.

16. Smoking in a public place would be a petty offense.

17. On or after January 1, 2023, the ADHS can adopt rules to permit recreational marijuana deliveries.

18. Beginning on July 12, 2021, people convicted previously of possessing less than an ounce of marijuana or six or fewer plants or paraphernalia can petition to have the record expunged.

## **Licensing Businesses**

With respect to the number of available licenses to sell recreational marijuana, the proposed §36-2854 puts an upper limit on the number of available licenses in the state to no more than one for every ten licensed pharmacies in Arizona, which puts the estimated number at about 145. In addition, there would be two licenses available for every county that does not have medical marijuana in the county and one license for counties with medical marijuana. Provisions are made for a program for 26 additional licenses for a “social equity ownership program.” Whether any of these licensed facilities would desire to establish a business in San Luis is unknown. The provisions in the law for medical marijuana remain unchanged. Proposition 207 adds new and additional provisions.

## **Provisions Key to San Luis**

For the City of San Luis, the key provisions are to be found at §36-2857. While other parts of the law will have impacts, this is the major section that impacts the city. (Other parts of the law, for example, impact the city’s ability to collect sales tax in the same manner as the sales tax would apply to any other retail sale and impact the police department’s ability to enforce current laws regarding sale, possession, and cultivation of marijuana)

The key Section 36-2857 provides:

### *Localities; marijuana establishments and marijuana testing facilities*

#### *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 establishments or marijuana testing facilities, or both.*
- 3. Regulate the time, place and manner of marijuana establishment and marijuana testing facility operations.*
- 4. Establish reasonable restrictions on public signage regarding marijuana, marijuana establishments and marijuana testing facilities.*
- 5. 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.*
- 6. 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.*
- 7. 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.*

Despite the above language, there is another section which, on the surface, appears to contradict what a local government can do. ARS §36-2857(A)(3) provides:

*“A locality may...prohibit marijuana establishments and marijuana testing facilities or both.”*

However, ARS §36-2857(C)(1) states:

*“A locality may not enact any ordinance, regulation or rule that is more restrictive than a comparable ordinance, regulation or rule that applies to nonprofit medical marijuana dispensaries.”*

We cannot outright ban medical marijuana dispensaries, so how can we totally ban marijuana establishments and marijuana testing facilities or both? Right now, it is unclear as to what the eventual outcome will be. The working group at the City

Attorneys Association is comfortable with the provisions in the Model Ordinance. An observation by one member, Andrew Miller of Paradise Valley, is that the safest course of action is to regulate in the zoning code and treat these establishments the same way as medical marijuana.

Basically, there are two types of uses in Proposition 207.

- (1) The first is a '**marijuana establishment**,' which sells and cultivates marijuana and produces marijuana products. A license for such an establishment would allow the license holder to do all three things.
- (2) The second is where the retail sales occur. The second is a '**marijuana testing facility**,' which is a place where marijuana is tested for potency and to determine if contaminants are present. Cultivation and production are uses that can be separated from the location where retail sales occur.

So, in the end, there are four distinct types of operations: 1) sales, 2) cultivation, 3) production; 4) testing.

As stated above, §36-2857 would, if one is not impacting existing medical marijuana provisions, appear to allow San Luis to ban the new establishments. San Luis would be allowed to permit them but limit the number in the city. San Luis would be allowed to pick which facilities it liked and ban the ones it did not. The new law allows the retail sales facilities to do home delivery – sort of like Domino's pizza delivery. Proposition 207 imposes a statewide ban on delivery until the state adopts regulatory rules. The law has sections that appear to allow San Luis to impose restrictions upon or outright ban home delivery. However, there are also sections which appear to contradict the ability to do a total ban forever. Once again, Proposition 207 is a bit unclear.

Proposition 207 specifically provides at §36-2851 that San Luis, as an employer, has the right to maintain a drug-free workplace. Hence, our current rules regarding marijuana in the workplace remain intact and unaffected.

Attached as an additional exhibit is a proposed model ordinance coming from the League of Arizona Cities and Towns. This ordinance gives the following general options:

- Option A. Prohibiting marijuana establishments and testing facilities.
- Option B. Prohibiting marijuana establishments and testing facilities except for dual license facilities (medical marijuana and recreational marijuana at the same place.)

- Option C. Prohibits marijuana establishments but allows testing facilities. (Sub-option permits dual operations only and allowing testing facilities.)
- Option D. Permits marijuana establishments but prohibits testing facilities.

If the City Council decides it wants to allow either marijuana establishments or testing facilities or both, it can still regulate them. The model ordinance gives examples of those regulations one might want to consider. If simply prohibiting these uses, then there is no need for further regulation.

An area to also consider is home delivery and whether to prohibit or restrict it. This is another area of contradictory provisions in Proposition 207. There is a statewide ban on delivery services until the state adopts regulations, so there is time to regulate. But this is an area one needs to be concerned about.

Remember, this law does not impact medical marijuana facilities or our existing regulations. So far, to date, while some have attempted to get a medical marijuana license from the state to operate in San Luis, no one has been able to get such a license, and, as a result, there is no dispensary here.

Under the medical marijuana law, folks who qualify for medical marijuana can grow up to 12 plants in their homes if no dispensary is located within a certain distance. As that distance is exceeded in San Luis, those who qualify for medical marijuana can grow their own. Current restrictions limit growing to the indoors. Under Proposition 207, any adult can grow up to 6 plants, and two adults at the same residence can grow up to a total of 12 plants. Again, this is limited to indoors or rural areas where one must use binoculars to see the plants.

Undoubtedly the Police Department and the Planning and Zoning Department will have recommendations to make to City Council. If there are any questions, please do not hesitate to ask.

**League of Arizona Cities and Towns**  
**Model Ordinance Relating to Recreational Marijuana**  
**(September 29, 2020)**

Options are highlighted in **yellow**.

Notes are in **red**.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE COMMON COUNCIL OF THE [CITY/TOWN] OF \_\_\_\_\_, ARIZONA, AMENDING THE CODE OF \_\_\_\_\_, ARIZONA BY ADOPTING A NEW ARTICLE \_\_\_ RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; **[PROHIBITING MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES OR REGULATING MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES]**; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS; IMPOSING FEES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

WHEREAS, marijuana contains tetrahydrocannabinol ("THC"), which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use is a violation of federal law pursuant to 21 U.S.C. § 841 et. al.;

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes Sections § 36-2801 et al., and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of nonprofit medical marijuana dispensaries in [City/Town] according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act" has been certified as Proposition 207 and placed on the November 3, 2020 general election ballot and contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of marijuana plants in a primary residence by adults over 21 years of older; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation and manufacturing of marijuana; and allowing the Department, or another entity designated by the Department, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants;

WHEREAS, the [City/Town] finds that Proposition 207 authorizes marijuana establishments to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and other [City/Town] departments to respond to violations of state and local laws, including building, electrical and fire codes;

***[OPTION: If Prohibiting establishments/facilities]***

WHEREAS, the [City/Town] seeks to protect public health, safety, and welfare by prohibiting marijuana establishments and/or marijuana testing facilities in the [City/Town];

***[OPTION: If Allowing/Regulating establishments/facilities]***

WHEREAS, the [City/Town] seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations to limit the number of marijuana establishments and/or marijuana testing facilities in [City/Town];

NOW THEREFORE, BE IT ORDAINED by the Common Council of the [City/Town] of \_\_\_\_\_, Arizona, as follows:

Section I. In General.

The Code of \_\_\_\_\_, Arizona, is hereby amended by adding a new Article \_\_, Recreational Marijuana to read as follows:

**Article X-X**

**Sec. X-X-1 Purpose**

**Sec. X-X-2 Definitions**

**Sec. X-X-3 Marijuana Prohibited on Public Property**

***Option A: Prohibits Marijuana Establishments and Marijuana Testing Facilities***

**Sec. X-X-4(A) Marijuana Establishment Prohibited**

**Sec. X-X-5(A) Marijuana Testing Facility Prohibited**

***Option B: Prohibits Marijuana Establishments Except for Dual Licensees; Prohibits Marijuana Testing Facilities***

**Sec. X-X-4(B) Marijuana Establishment Prohibited; Dual Licensee Exception.**

**Sec. X-X-5(B) Marijuana Testing Facility Prohibited**

***Option C: Prohibits Marijuana Establishments (with or without exception for dual licensees); Permits Marijuana Testing Facilities***

**Sec. X-X-4(C) INSERT Sec. X-X-4(A) or Sec. X-X-4(B)**

**Sec. X-X-4(C) Marijuana Testing Facility Permitted**

***Option D: Permits Marijuana Establishments; Prohibits or Permits Marijuana Testing Facilities***

**Sec. X-X-4(D) Marijuana Establishments Permitted; Nonresidential**

**Sec. X-X-5(D) INSERT Sec. X-X-5(A) or X-X-5(C)**

**Sec. X-X-6 Individual's Primary Residence for Personal Use**

**Sec. X-X-7 Retail Sales from Marijuana and Marijuana Products**

**Sec. X-X-8 Fees**

**Sec. X-X-9 Violations**

**Sec. X-X-10 Enforcement; Penalties**

**Sec. X-X-1 Purpose.**

**[OPTION: If prohibiting marijuana.]**

This article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the [City/Town] prohibits the retail sale, cultivation, and manufacturing of marijuana or marijuana products in [City/Town]. Nothing in this article 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.

**OR**

**[OPTION: If regulating marijuana.]**

This article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the [City/Town] enacts reasonable regulations and requires compliance with zoning laws for the retail sale, cultivation and manufacturing of marijuana or marijuana products in a marijuana establishment or marijuana testing facility and the cultivation, processing and manufacturing of marijuana in a primary residence. Nothing in this article 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.

**Sec. X-X-2 Definitions.**

The below words and phrases, wherever used in this article, shall be construed as defined in this section 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.

- A. “*Chemical Extraction*” means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.
- B. “*Chemical Synthesis*” means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.
- C. “*Consume*,” “*Consuming*,” and “*Consumption*” mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.

- D. “*Consumer*” means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
- E. “*Cultivate*” and “*Cultivation*” mean to propagate, breed, grow, prepare and package marijuana.
- F. “*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.
- G. “*Department*” means the State of Arizona Department of Health Services or its successor agency.
- H. “*Dual Licensee*” means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- I. “*Enclosed Area*” means a building, greenhouse, or other structure that has:
1. A complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;
  2. Is secure against unauthorized entry;
  3. Has a foundation, slab or equivalent base to which the floor is securely attached; and
  4. 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.
- J. “*Extraction*” means the process of extracting or separating resin from marijuana to produce or process any form of marijuana concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.
- K. “*Manufacture*” and “*Manufacturing*” mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- L. “*Marijuana*”
1. 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.
2. Includes cannabis as defined in A.R.S. § 13-3401.
  3. 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.
- M. *“Marijuana Concentrate:”*
1. 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.
  2. 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.
- N. *“Marijuana Establishment”* means an entity licensed by the Department to operate all of the following:
1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
  2. 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.
  3. 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.
- O. *“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.
- P. *“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.
- Q. *“Nonprofit Medical Marijuana Dispensary”* means a nonprofit entity as defined in A.R.S. § 36-2801(12).
- R. *“Open Space”* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

- S. “*Person*” means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- T. “*Process*” and “*Processing*” means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- U. “*Public Place*” has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- V. “*Smoke*” means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

**Sec. X-X-3 Marijuana Prohibited on Public Property.**

- 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 [City/Town].
- B. It is unlawful for an individual to smoke marijuana in a public place or open space in [City/Town].

***[OPTION A: Sec. X-X-4(A) and X-X-5(A) prohibits a marijuana establishment and marijuana testing facility – a municipality may prohibit either or both.]***

**Sec. X-X-4(A) Marijuana Establishment Prohibited.**

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in [City/Town].
- B. To the fullest extent allowable by law, the operation of a marijuana establishment by a dual licensee is prohibited in [City/Town].

**Sec. X-X-5(A) Marijuana Testing Facility Prohibited.**

- A. To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in [City/Town].

***[OPTION B: Sec. X-X-4(B) and X-X-5(B) prohibits a marijuana establishment with the exception of dual licensees who operate both medical dispensaries and marijuana establishments at a shared location; prohibits a marijuana testing facility].***

**Sec. X-X-4(B) Marijuana Establishment Prohibited; Dual Licensee Exception.**

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in [City/Town], except where authorized for a dual licensee who:
  - 1. Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
  - 2. Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

**Sec. X-X-5(B) Marijuana Testing Facility Prohibited.**

- B. To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in [City/Town].

***[OPTION C: Sec. X-X-4(C) and X-X-5(C) prohibits a marijuana establishment but allows a marijuana testing facility].***

**Sec. X-X-4(C)**

***[INSERT Sec. X-X-4(A) prohibition of all Marijuana Establishments or Sec. X-X-4(B) prohibition of Marijuana Establishment with dual licensee exception].***

**Sec. X-X-5(C) Marijuana Testing Facility Permitted.**

- A. It shall be unlawful for a person to operate a marijuana testing facility at any location within the [City/Town] without obtaining a \_\_\_\_\_ permit from the [City/Town] clerk in accordance with [City/Town] Zoning Code Section \_\_\_\_\_, including any application and review procedures pursuant to \_\_\_\_\_.
- B. A marijuana testing facility is permitted in [City/Town] subject to the following conditions:
  - 1. There are no more than \_\_\_\_ number of marijuana testing facilities operating in [City/Town].
  - 2. Shall 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.
  - 3. Shall ensure that transportation of marijuana or marijuana products is in compliance with applicable law.
  - 4. Shall comply with all testing processes, protocols, standards, and criteria adopted by the Department for testing marijuana and marijuana products.
  - 5. Shall maintain records, equipment and instrumentation as required by the Department.

6. Shall submit a written security plan to the [City/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.

**OR**

Shall comply with all security protocols required by the Department.

***[OPTION D: Sec. X-X-4(D) and X-X-5(D) permits a Marijuana Establishment and has an option for prohibiting or permitting a Marijuana Testing Facility].***

***[NOTE: The following provisions are provided as examples to include in your ordinance to regulate a Marijuana Establishment. However, if your city or town has existing medical marijuana regulations it may be simpler to reference back to those provisions since the Act prohibits a city or town from enacting an ordinance, regulation or rule that is unduly burdensome or more restrictive than a comparable ordinance, regulation, or rule that applies to nonprofit medical marijuana dispensaries.]***

#### **Sec. X-X-4(D) Marijuana Establishments Permitted; Nonresidential.**

Marijuana establishments shall be regulated as outlined in Section \_\_\_ of the [City/Town] Code (reference to nonprofit medical marijuana dispensary regulations instead of including the following provisions).

**OR**

- A. It shall be unlawful for a person to operate a marijuana establishment at any location within the [City/Town] without obtaining a \_\_\_\_\_ permit from the [City/Town] clerk in accordance with [City/Town] Zoning Code Section \_\_\_\_\_, including any application and review procedures pursuant to \_\_\_\_\_.
- B. If authorized by state law and a valid permit has been obtained from the [City/Town], a marijuana establishment is permitted in [City/Town] subject to the following conditions and limitations:

***[OPTION: Dual licensee only]***

1. To the fullest extent allowable by law, shall be authorized for a dual licensee who operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a

shared location and has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

**OR**

***[OPTION: Dual licensee (who is not limited to a shared location or maintaining dispensary registration) or any other licensed applicant; the Act allows the Department to issue social equity ownership program licenses that will be authorized to operate as marijuana establishments].***

1. To the fullest extent allowable by law, shall be authorized in [City/Town] for:
  - a. A dual licensee who operates both a nonprofit medical marijuana dispensary and marijuana establishment.
  - b. Any other entity licensed by the Department to provide marijuana or marijuana products to consumers.
2. Shall not be more than \_\_\_ marijuana establishments operating in [City/Town].
3. Shall be authorized in \_\_\_\_\_ zoning districts.
4. Shall not be located within \_\_\_\_\_ hundred feet of the same type of use or a nonprofit medical marijuana dispensary. This distance shall be measured from the lot line of the property in which the businesses are conducted or proposed to be conducted.
5. Shall not be located within \_\_\_\_\_ hundred feet of a residentially zoned property. This distance shall be measured from the lot line of the property in which the business is conducted or proposed to be conducted to the property boundary line of the residentially zoned property.
6. Shall not be located within \_\_\_\_\_ feet of a preschool, kindergarten, elementary, secondary or high school, place of worship, public park, public cemetery or community center. This distance shall be measured from the lot line of the property in which the business is conducted or proposed to be conducted to the property line of the protected use.
7. Shall be located in a permanent building on an established foundation adhering to [City/Town] building codes and shall not include any temporary, portable or self-powered mobile facilities, or trailer, cargo container or motor vehicle.

8. Shall be a total maximum \_\_\_\_\_ square feet. Maximum square footage may be expanded subject to Use Permit application and hearing procedures set forth under [City/Town Code].
9. The secure storage area for the marijuana stored at the location shall not exceed \_\_\_\_\_square feet of the total \_\_\_\_\_ square foot maximum floor area of the facility. Maximum square footage may be expanded subject to Use Permit application and hearing procedures set forth under [City/Town Code].
10. Shall have operating hours not earlier than \_\_\_\_ a.m. and not later than \_\_\_\_ p.m.
11. Shall not provide drive-thru services or offsite deliveries of marijuana or marijuana products.
12. Shall not allow a person to consume marijuana or marijuana products on the premises or provide outdoor seating areas.
13. Shall provide for proper disposal of marijuana remnants or by-products. The remnants or by-products shall not to be placed within the facility's exterior refuse containers, [City/Town] trash can, bin or other [City/Town] facility, or in any park refuse container unless authorized by the [City/Town].
14. Shall not emit dust, fumes, vapors or odors into the environment from the facility and shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes of [City/Town].
15. Shall not sell marijuana or marijuana products, except as permitted by state law to consumers.
16. Shall not display or keep marijuana or marijuana products that are visible from outside the premises.
17. Shall comply with applicable county health regulations for food preparation and handling.
18. Shall comply with applicable laws to safely and securely engage in extraction processes.
19. Shall submit a written security plan to the [City/Town] that describes the actions taken to deter and prevent unauthorized

entrance into limited access areas including use of security equipment, exterior lighting to facilitate surveillance, and electronic monitoring such as video cameras.

20. For a marijuana establishment that engages in cultivation or manufacturing, shall submit a written operations plan to the [City/Town] that describes the following:
- i. Procedures showing that the marijuana cultivation will be conducted in accordance with state and local laws and regulations regarding use and disposal of pesticides and fertilizers.
  - ii. The legal water source, irrigation plan, wastewater systems to be used, and projected water use.
  - iii. The plan for addressing odor and other public nuisances that may derive from the establishment.

**Sec. X-X-5(D)**

**[INSERT Sec. X-X-5(A) to prohibit a Marijuana Testing Facility or Sec. X-X-5(C) to permit a Marijuana Testing Facility]**

**Sec. X-X-6 INDIVIDUAL'S PRIMARY RESIDENCE FOR PERSONAL USE**

*[NOTE: Your city or town may want to reference or incorporate any existing regulations for medical marijuana use and cultivation in residential areas.]*

- A. To the fullest extent allowable by law, marijuana possession, consumption, processing, manufacturing, transportation, and cultivation is permitted in a residential zoning district in [City/Town] and is subject to the following conditions and limitation:
1. It shall be unlawful for any individual who is at least twenty-one (21) years of age to possess, transport, cultivate or process more than six (6) marijuana plants.
  2. It shall be unlawful for two or more individuals who are at least twenty-one (21) year of age to possess, transport, cultivate or process more than twelve (12) marijuana plants at the individuals' primary residence.
  3. Except as provided by A.R.S. § 36-2801 et al. and this Section, it shall be unlawful for an individual to otherwise cultivate marijuana in a residential zoning district within the [City/Town] limits.
  4. Individuals shall not process or manufacture marijuana by means of any liquid or gas other than alcohol, that has a flashpoint below one hundred (100) degrees Fahrenheit.

5. 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.
6. 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 [City/Town].
7. 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.
8. 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.

***[NOTE: Cities and towns are not allowed to impose any tax rate above or below their regular retail tax rate on sales or purchases of marijuana or marijuana products.]***

**Sec. X-X-7 Retail Sales from Marijuana and Marijuana Products.**

To the fullest extent allowable by law, the sale of marijuana and marijuana products is authorized within the [City/Town] from a marijuana establishment and 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.

***[OPTIONAL: If marijuana establishments and/or marijuana testing facilities are permitted in your city or town].***

**Sec. X-X-8 Fees.**

- A. [FOR PERMITS] The fee for the permit shall be established by [RESOLUTION OF THE CITY/TOWN COUNCIL/FEE SCHEDULE].

OR

The permit fee for a marijuana establishment pursuant to Sec. X-X-\_\_ is (\$\_\_\_\_\_) annually.

The permit fee for a marijuana testing facility pursuant to Sec. X-X-\_\_ is (\$\_\_\_\_\_) annually.

**Sec. X-X-9 Violations.**

- A. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture or transport marijuana or marijuana products if the person fails to meet all the requirements in this article or state law, including the Department's rules.
- B. It is a violation of this article for any person to provide false information on any permit application.
- C. Each day any violation of any provision of this article shall continue shall constitute a separate offense.

**Sec. X-X-10 Enforcement; Penalties.**

- A. The \_\_\_\_\_ permit may be revoked by the [City/Town] for violation of any provision of this article, for any violation of the requirements of the permit, or if the Department revokes the license for a marijuana establishment or marijuana testing facility. If a permit is revoked, the permittee shall have the right to appeal the decision of the [City/Town] to \_\_\_\_\_ as outlined in Section \_\_\_\_ of the [City/Town] Code.
- B. Violations of this article are in addition to any other violation enumerated within the [City/Town] ordinances or the [City/Town] Code and in no way limits the penalties, actions or abatement procedures which may be taken by the [City/Town] for any violation of this article, which is also a violation of any other ordinance or Code provision of the [City/Town] or federal or state law. Conviction and punishment of judgment and civil sanction against any person under this article 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. Civil Penalty: Violations of any provision of this article shall be civil code offenses which may be adjudicated and enforced by the [City/Town] civil hearing process set forth in subsection \_\_\_\_\_ or [City/Town] Court under Section \_\_\_\_ of the [City/Town Code].

Section II. Providing for Repeal of Conflicting Ordinances.

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

Section III. Recitals.

The recitals above are fully incorporated in this Ordinance by reference.

Section IV. Effective Date.

***[OPTION: Conditional Effective Date]***

This Ordinance does not become effective unless the Smart and Safety Act (Proposition 207) becomes law when approved by a majority of the votes cast at the November 3, 2020 general election and on proclamation of the governor. Upon the governor's proclamation, the effective date of this Ordinance shall be \_\_\_\_ days following adoption by the [City/Town] Council.

***OR***

***[OPTION: Emergency Act]***

Emergency.

Because of the urgent need for the implementation of the [City/Town]'s regulations concerning recreational marijuana, the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law.

Section V. Zoning Considerations.

In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the [City/Town] Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

Section VI. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section VII. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the [City/Town] of \_\_\_\_\_, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 202\_, by the following vote:

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, [City/Town] Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
[City/Town] Attorney

I, \_\_\_\_\_, [CITY/TOWN] CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE [CITY/TOWN] OF \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_, WAS POSTED IN THREE PLACES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_.

\_\_\_\_\_  
\_\_\_\_\_, [City/Town] Clerk



## AGENDA ITEM REVIEW FORM

### Work Session

2. E.

**Meeting Date:** 11/04/2020

**Department Head:** Kay Macuil, City Attorney, Attorney's Office

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding budget adjustment for unavoidable overtime in the City Prosecutor's Office. **(Jose de la Vara, City Prosecutor and Kay Marion Macuil, City Attorney)**

### SUMMARY:

The Prosecutor's Office consists of one (1) attorney (exempt from overtime) and one (1) paralegal (not exempt from overtime).

Due to the enormous caseload and deadlines, including constitutional requirements for speedy trial in criminal cases, compensatory time is not feasible. The court has been accommodating as much as it can within the speedy-trial time limits.

In September, the budget for overtime was spent. There is no indication that the caseload will decrease. Staff recommends the transfer of funds from the City Attorney's Legal Expenses Line to the Prosecutor's Overtime Line as follows:

\$530.00 for September and October

\$3,970.00 to budget for the remainder of the fiscal year through June 30, 2021

\$4,500.00 total transfer amount.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

---

### Fiscal Impact

<b>IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:</b>	Yes
<b>CITY/STATE/FEDERAL FUNDS:</b>	City
<b>TOTAL:</b>	\$5,500.00
<b>BUDGETED AMOUNT:</b>	\$1,000.00
<b>AVAILABLE AMOUNT TO TRANSFER:</b>	\$4,500.00
<b>ACCT NAME &amp; GL#/REMAINING BALANCE BEFORE PURCHASE:</b>	Legal Services 100.117.80003 \$31,308

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

We are requesting to approve a transfer of \$4,500.00 from City Attorney Legal services budget to the Prosecutor's Department overtime budget to cover for non-budgeted overtime in the Prosecutor's office.

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## AGENDA ITEM REVIEW FORM

### Work Session

2. F.

**Meeting Date:** 11/04/2020

**Department Head:** Carlos Cortes, Assistant Director of Finance, Finance Department

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding Resolution No. 2145. A resolution of the Mayor and City Council of the City of San Luis, Arizona amending the assessment for fiscal year 2020/2021 for the Rio Sereno Enhanced Municipal Services District to reduce the tax imposed from \$60,944.00 to \$11,031.00. **(Monica Castro, Director of Finance)**

### SUMMARY:

In performing its due diligence, the staff reviewed the figures for the Rio Sereno assessment and recommends that City Council approve Resolution No. 2145 for presentation at the Yuma County Supervisor's November 19, 2020. Meeting.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

---

### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** NO  
**CITY/STATE/FEDERAL FUNDS:** N/A  
**TOTAL:** N/A  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A  
**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**  
Discussion of policy, no fiscal impact

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### Attachments

Resolution No. 2145  
Resolution No. 2144  
Amendment of Assessment Rio Sereno FY 2021  
Map  
Assessment FY 2021

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# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**No. 2145**

A resolution of the Mayor and City Council of the City of San Luis, Arizona amending the assessment for fiscal year 2020/2021 for the Rio Sereno Enhanced Municipal Services District to reduce the tax imposed from \$60,944.00 to \$11,031.00.

**WHEREAS**, the City Council of the City of San Luis approved the assessment for Rio Sereno Enhanced Municipal Services District, tax authority 3100801 on June 10, 2020;

**WHEREAS**, due to a water meter manufacturer programming error, the assessment was improperly calculated and included amounts that should not have been assessed;

**WHEREAS**, the City Council desires to amend the assessment to reflect the correct amount;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1.** That as part of the adoption of the budget for the City of San Luis, Arizona the assessment for Rio Sereno Enhanced Municipal Services District, tax authority 3100801, for the fiscal year beginning July 1, 2020 and ending June 30, 2021 is hereby amended to order, fix, levy, and assess amounts to be reduced by ad valorem taxes the amount of \$49,913.00 for the purpose of levying the total sum of \$11,031.00.

**Section 2.** This resolution replaces and repeals Resolution No. 2144. In the event of a conflict between the provisions of this resolution and any other resolution or assessment or levy of the City of San Luis, the conflicting provisions are hereby amended, superseded, and replaced and the provisions of this resolution shall govern.

**Section 3.** Staff is hereby directed to deliver and file this resolution amending the assessment for Rio Sereno Enhanced Municipal Services District for fiscal year 2020-2021 with all appropriate offices and authorities in accordance with law and take such actions as may be necessary to ensure that the appropriate ad valorem taxes are collected.

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**PASSED, ADOPTED and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this \_\_\_\_day of November 2020

\_\_\_\_\_  
Gerardo Sanchez, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney



# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**No. 2144**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AMENDING THE ASSESSMENT FOR FISCAL YEAR 2020/2021 FOR THE RIO SERENO ENHANCED MUNICIPAL SERVICES DISTRICT TO REDUCE THE TAX IMPOSED FROM \$60,944.00 TO \$12,276.00.**

**WHEREAS**, the City Council of the City of San Luis approved the assessment for Rio Sereno Enhanced Municipal Services District, tax authority 3100801 on June 10, 2020;

**WHEREAS**, due to a water meter malfunction, the assessment was improperly calculated and included amounts that should not have been assessed;

**WHEREAS**, the City Council desires to amend the assessment to reflect the correct amount;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1.** That as part of the adoption of the budget for the City of San Luis, Arizona the assessment for Rio Sereno Enhanced Municipal Services District, tax authority 3100801, for the fiscal year beginning July 1, 2020 and ending June 30, 2021 is hereby amended to order, fix, levy, and assess amounts to be reduced by ad valorem taxes the amount of \$48,667.97 for the purpose of levying the total sum of \$12,276.00.

**Section 2.** In the event of a conflict between the provisions of this resolution and any other resolution or assessment or levy of the City of San Luis, the conflicting provisions are hereby amended, superseded, and replaced and the provisions of this resolution shall govern.

**Section 3.** Staff is hereby directed to deliver and file this resolution amending the assessment for Rio Sereno Enhanced Municipal Services District for fiscal year 2020-2021 with all appropriate offices and authorities in accordance with law and take such actions as may be necessary to ensure that the appropriate ad valorem taxes are collected.

[Intentionally left blank, signature page follows]


**PASSED, ADOPTED and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this 28<sup>th</sup> day of October 2020

  
Gerardo Sanchez, Mayor

**ATTEST:**

*for*  Deputy City Clerk  
Sonia Cornelio, City Clerk

**APPROVED AS TO FORM:**

  
Kay Marion Macuil, City Attorney

CITY OF SAN LUIS  
 Assesment Comparison  
 Estimate Vs Actual

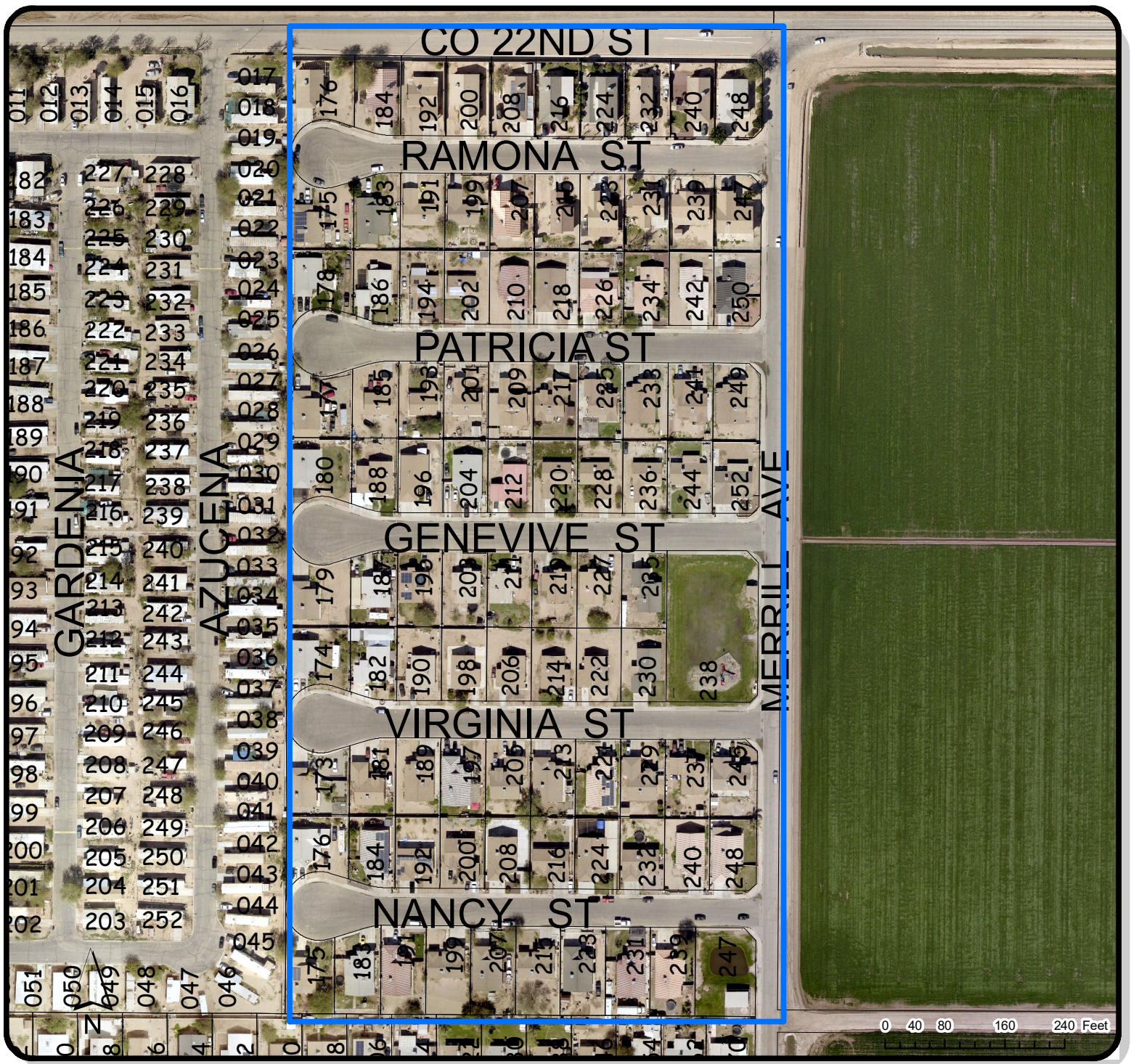
ASSESSMENT DISTRICT													
No Cta	NAME	ADDRESS	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	DEC	JAN	Feb	Mar	est 3mo	Total
15991-001	Rio Sereno FY 2021 (Assessed)	247 E NANCY ST	6,528	7,858	6,912	6,648	4,382	1,791	2,495	1,461	1,481	13,185.83	52,743
15991-001	Rio Sereno FY 2021 (Revised Assesment)	247 E NANCY ST	234	265	278	269	266	244	217	225	214	645.95	2,859
TOTAL Over Assesment			6,293.94	7,593.16	6,634.25	6,379.24	4,116.08	1,547.74	2,277.93	1,235.77	1,266.46	12,539.88	49,884.43

Total Credit 49,884.43

No Cta	NAME	ADDRESS	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Total
15991-001	Rio Sereno FY 2020 (Assessed)	247 E NANCY ST	0.00	237	208	208	208	208	208	208	208	1,690
15991-001	Rio Sereno FY 2020 (Revised Assesment)	247 E NANCY ST	0.00	208	208	208	208	208	208	208	208	1,661
TOTAL Over Assesment			-	29	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	29

Total Credit Oct 2018-Jun 2020

49,913



LOCATION OF SUBJECT PROPERTY

## LOCATION MAP

RIO SERENO IMPROVEMENT DISTRICT

**CASE #**

**DATE:**  
10/28/2020

**PLANNING & ZONING**



**GIS**

**CREATED BY:**  
ISAAC GUTIERREZ

**CHECKED BY:**  
ROMAN PACHECO

**APPROVED BY:**  
JOSE A. GUZMAN

**CITY OF SAN LUIS  
FY 2021 IMPROVEMENT DISTRICT BUDGET SCHEDULE  
ENHANCED MUNICIPAL SERVICES**

<b>DISTRICT NAME</b>	<b>ACRES</b>	<b>Maintenance</b>	<b>Street Lighting</b>	<b>Total Assessment</b>
Bienestar 7A	1.00	\$ 16,505	\$ 2,429	\$ 18,935
Bienestar 7B	1.50	11,311	3,605	\$ 14,916
Las Quintas I - Ph I	1.00	9,516	2,226	\$ 11,742
Las Quintas I - Ph II	1.50	19,332	1,418	\$ 20,750
Las Quintas II	1.90	24,774	1,786	\$ 26,560
Los Portales 4 - Ph 5	0.75	8,335	1,536	\$ 9,871
Rancho los Oros	1.50	18,489	5,966	\$ 24,455
Rio Sereno	0.75	60,944	2,226	\$ 63,170
Los Olivos	1.75	22,073	4,806	\$ 26,879
Bienestar 8A	1.65	21,019	3,442	\$ 24,461
Bienestar 8B	1.65	26,628	5,161	\$ 31,789
Las Brisas	1.00	8,737	2,482	\$ 11,218
Frontera Estates II	1.00	15,844	3,745	\$ 19,589
Bienestar 9A Ph I	3.25	35,880	7,109	\$ 42,989
Bienestar 9A Ph II	1.00	18,342	1,489	\$ 19,831
Bienestar 9B	5.20	56,733	16,496	\$ 73,230
Industrial Park - Magrino	-	-	3,155	\$ 3,155
Industrial Park - Sam Group	-	-	1,057	\$ 1,057
Santa Cecilia I	1.10	24,806	2,905	\$ 27,711
Santa Cecilia II	1.43	21,792	4,341	\$ 26,133
Santa Cecilia III	1.00	17,899	3,716	\$ 21,615
	<b>30</b>	<b>438,960</b>	<b>\$ 81,095</b>	<b>\$ 520,056</b>



## AGENDA ITEM REVIEW FORM

### Work Session

2. G.

**Meeting Date:** 11/04/2020

**Department Head:** Jose A. Guzman, Director of Planning & Zoning, Planning & Zoning Department

**Submitted By:** Jose A. Guzman, Director of Planning & Zoning, Planning & Zoning Department

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding possible tactical urbanism project. (Jose A. Guzman, Director of Planning and Zoning)

### SUMMARY:

Presentation and discussion regarding the idea of a tactical urbanism project implementing temporary bike lanes and open space promoting public health, open space, quality of life, and economic development in of the current pandemic.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

---

### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** N/A

**CITY/STATE/FEDERAL FUNDS:** N/A

**TOTAL:** N/A

**BUDGETED AMOUNT:** N/A

**AVAILABLE AMOUNT TO TRANSFER:** N/A

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

N/A

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## AGENDA ITEM REVIEW FORM

### Work Session

2. H.

**Meeting Date:** 11/04/2020

**Department Head:** Melissa Lopez, Deputy City Clerk, City Clerk's Office

**Submitted By:** Melissa Lopez, Deputy City Clerk, City Clerk's Office

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Discussion and possible directions to staff on any and all matters regarding hazard pay for essential workers from the Fire & Police Departments and Facilities Division. **(Vice-Mayor Maria Cecilia Cruz; Monica Castro, Director of Finance; and Sondra Matthews, Director of Human Resources)**

### SUMMARY:

Vice Mayor Maria Cecilia Cruz asked that this item be placed on the Work Session for November 4, 2020, for discussion.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

---

### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** N/A

**CITY/STATE/FEDERAL FUNDS:** NO

**TOTAL:** NO

**BUDGETED AMOUNT:** NO

**AVAILABLE AMOUNT TO TRANSFER:** NO

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** NO

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

There is no fiscal impact associated with this item., discussion only.

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## AGENDA ITEM REVIEW FORM

### Work Session

2. I.

**Meeting Date:** 11/04/2020

**Department Head:** Melissa Lopez, Deputy City Clerk, City Clerk's Office

**Submitted By:** Melissa Lopez, Deputy City Clerk, City Clerk's Office

**Action Requested:** Discussion Item - No Action to be Taken

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### ITEM:

Update on any and all matters regarding the proposed hotel to be located on Main Street. **(Vice-Mayor Maria Cecilia Cruz and Jenny Torres, Economic Development Manager)**

### SUMMARY:

Vice-Mayor Maria Cecilia Cruz requested that this item be placed on the Work Session for November 4, 2020, for discussion.

### RECOMMENDATION / SUGGESTED MOTION:

Discussion and possible directions to staff only, no action.

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### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** N/A

**CITY/STATE/FEDERAL FUNDS:** NO

**TOTAL:** NO

**BUDGETED AMOUNT:** NO

**AVAILABLE AMOUNT TO TRANSFER:** NO

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** NO

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

There is no fiscal impact associated with this item.

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