

**ORDINANCE NO. 404**

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AMENDING THE CITY CODE OF SAN LUIS, ARIZONA BY AMENDING SECTION 152.013 DEFINITIONS AND SECTION 152.225 MEDICAL MARIJUANA TO PROVIDE FOR THE REGULATION OF MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES; REPEALING CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY .

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 municipalities 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 Council 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 departments to respond to violations of state and local laws, including building, electrical and fire codes;

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

WHEREAS, the City of San Luis Zoning Ordinance presently provides for regulation of medical marijuana dispensaries and medical marijuana off-site cultivation locations;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of San Luis, Arizona, as follows:

Section I. The Code of Ordinances of San Luis, Arizona, is hereby amended by adding in adding to §152.013 Definitions the following definitions:

- 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.
  5. Meets the standards of adopted building regulations.
- 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*” or “*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.

Section II. §152.225 Medical Marijuana Uses is hereby amended by changing the title and adding subsections §152.225 (G) and §152.225 (H) to read as follows:

§152.225 Medical Marijuana and Marijuana Establishment Uses

(G) To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in City, except 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. Any cultivation by a marijuana establishment shall be only in conjunction with a medical marijuana dispensary offsite cultivation location and in compliance with those requirements.

(H) To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in City.

Section III. 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 IV. Recitals.

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

Section V. 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 VI. 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 City Council of the City of San Luis, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 202\_.

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

ATTEST:

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Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

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Kay Macuil, City Attorney