

**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**

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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.