

ORDINANCE 2021-002

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; ADOPTING AMENDMENTS TO THE DEVELOPMENT CODE AND CITY CODE, AS SHOWN IN EXHIBIT A, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; SETTING FORTH DEFINITIONS; PROHIBITING THE USE OF MARIJUANA ON PUBLIC PROPERTY; REGULATING MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY. NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

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.; and

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 Sierra Vista according to a prescribed statutory and regulatory process; and

WHEREAS, the statewide ballot measure I-23-2020, known as “Smart and Safe Arizona Act” has been certified as Proposition 207 and approved by the voters of Arizona on November 3, 2020 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; and

WHEREAS, the City of Sierra Vista seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations to limit the number and location of marijuana establishments and/or marijuana testing facilities within the City; and

WHEREAS, the City of Sierra Vista is proposing text amendments to the following: Development Code Section 151.02.004-Definitions, Section 151.06.005-Medical Marijuana Dispensary, Section 151.22.006-Matrix of Use Permissions By Zoning Districts and;

WHEREAS, the City of Sierra Vista is proposing text amendments to City Code Chapter § 130.05 Marijuana Prohibited on Public Property; and

WHEREAS, the Planning & Zoning Commission held a public hearing on the Development Code text amendments on January 25, 2021 and recommended approval with revisions as attached; and

WHEREAS, the City Manager and Director of Community Development recommend that the amendments to the Development Code and City Code, as shown on Exhibit A, be adopted; and

WHEREAS, as required by Article 151.31 of the Development Code, the Mayor and City Council held a public hearing on the amendments after proper notice had been given; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista approving and adopting text amendments is hereby reaffirmed and the code amendments, as shown in Exhibit A, are hereby adopted.

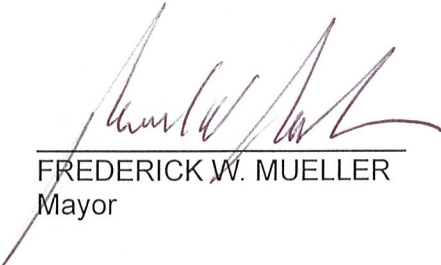
SECTION 2

All other ordinances and parts of ordinances in conflict with the provisions of this provision are hereby repealed.

SECTION 3

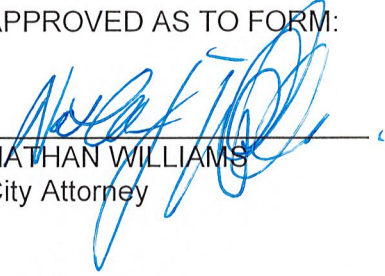
Should any section, clause or provision of this Ordinance be declared by the courts to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 11 DAY OF FEBRUARY 2021.



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FREDERICK W. MUELLER  
Mayor

APPROVED AS TO FORM:



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NATHAN WILLIAMS  
City Attorney

ATTEST:



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JILL ADAMS  
City Clerk

PREPARED BY:

Jeff Pregler, AICP  
Senior Planner

## CHAPTER 130, GENERAL OFFENSES

Chapter 130, General Offenses, is hereby amended to add the following section:

### § 130.05 MARIJUANA PROHIBITED ON PUBLIC PROPERTY

#### (A) Definitions

*Consume, Consuming, and Consumption-*

Means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.

*Cultivate and Cultivation-*

Means to propagate, breed, grow, prepare and package marijuana.

*Manufacture and Manufacturing-*

Means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

*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 Section 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.

*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.

*Open Space-*

Open space means public park, public sidewalk, public walkway or public pedestrian thoroughfare.

*Public Place-*

Public place means any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing

establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

*Smoke-*

Means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

(B) It shall be unlawful to smoke, display, consume, sell or distribute, store, cultivate, manufacture, or produce marijuana or marijuana products on property that is occupied, owned, controlled, or operated by the City.

## **CHAPTER 151, DEVELOPMENT CODE**

**Section 151.02.004 of Article 151.02, Definitions, is hereby amended to include the following definitions:**

**Chemical Extraction-**

Means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.

**Chemical Synthesis-**

Means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.

**Community Center, Public-**

A building owned by the City that is open to the public and is used for meetings, recreation, or social activities and may have outdoor recreational facilities.

**Marijuana-Consume, Consuming, and Consumption-**

Consume means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.

**Marijuana-Cultivate and Cultivation-**

Means to propagate, breed, grow, prepare and package marijuana.

**Marijuana-Deliver and Delivery-**

Means 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.

**Dual Licensee-**

Means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license with the Arizona Department of Health Services.

**Marijuana 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.

**Marijuana Manufacture and Manufacturing-**

Means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

**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 Section 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.

**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.

**Marijuana Establishment**-means an entity licensed by the Arizona Department of Health and Human Services 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 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.

**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.

**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.

**Marijuana-Process and Processing-**

Means to harvest, dry, cure, trim or separate parts of the marijuana plant.

**Marijuana-Smoke-**

Means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

**Section 151.06.005, of Article 151.06, Special Regulations for Particular Uses, is amended to read as follows:**

Section 151.06.005 Marijuana-Facilities

A. Applicability. The operational and development standards provided by this Section shall apply to Marijuana Establishments, Marijuana Testing Facilities, Medical Marijuana Dispensaries, and Medical Marijuana Infusion or Cultivation Facilities as defined by Section 151.02 of this Code.

B. Pre-Submittal Meeting Required. Prior to making application for a building permit or business license for a use regulated by this Section, the applicant shall meet with the City to review all applicable code requirements.

C. Submittal Requirements.

Prior to establishing a use regulated by this section, the applicant shall provide the City with the following information:

1. The name(s) and location(s) of any associated offsite medical marijuana cultivation or infusion facility associated with the cultivation operation.

2. For medical marijuana dispensaries and medical marijuana cultivation and infusion facilities, a copy of the Arizona Department of Health Services (ADHS) operating procedures adopted in compliance with A.R.S. § 36-2804.B.1(c).

3. A plan showing the exterior features of the building including the parking lot, landscaping, driveways, sidewalks, and accessible parking spaces.

4. A floor plan indicating all entrances, sales areas, waiting rooms, dispensary areas, storage areas, cultivation and manufacturing areas, as well as the separate enclosed, locked, and secured area for dispensing medical marijuana to qualified patients or designated caregivers, as required by the Arizona Medical Marijuana Act. The primary entrance should be kept clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets, sidewalks, or driveways.

5. Building permits for occupancy change, if necessary.

6. A security plan that complies with {ADHS} security requirements and provides for adequate lighting, alarms, security cameras, and locks in order to ensure the safety of persons and to prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

D. Development and Locational Requirements.

All marijuana facilities shall comply with the following:

1. Shall be located in a permanent building and may not be located in a kiosk, trailer, cargo container, or motor vehicle.
2. Marijuana establishments and medical marijuana dispensaries shall be a maximum of 2,000 gross square feet.
3. Shall only be located in a visible storefront-type location that provides easy views of the entrance and its window from a public street or parking lot. The windows shall not be impeded to prevent law enforcement personnel from seeing into the facility.
4. Shall not be located within 300 feet of a building with the same type of use; the distance shall be measured from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted.
5. Shall not be located within 500 feet of a residentially zoned property; the distance shall be measured from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the zoning boundary line of the residentially zoned property.
6. Shall not be located within 300 feet of a school or school of general education, or a child care center licensed by the Arizona Department of Health Services, or place of worship outside of the General Commercial zoning district, public park, or public community center. The distance shall be measured from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.

E. Operational Requirements:

1. Marijuana establishments and medical marijuana dispensaries shall comply with the following:
  - a. Operating hours shall not be earlier than 9:00 a.m. and be not later than 7:00 p.m. All areas of the premises, including adjacent public sidewalks, shall be illuminated during hours of darkness so that all areas are readily visible by law enforcement personnel.
  - b. Marijuana shall not be consumed on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking lot, or parking areas that are part of the approved location.
  - c. Drive-through services are prohibited.
  - d. A "No Loitering" sign shall be posted on the front exterior of the premises.
  - e. Shall provide for proper disposal of marijuana remnants or by- products and such shall not be placed in the facility's exterior refuse containers.



f. 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 adopted building codes.

g. Shall not sell marijuana or marijuana projects, except as permitted by state law to consumers.

h. Shall not display or keep marijuana or marijuana projects that are visible from outside the premises.

i. Shall comply with applicable laws to safely and securely engage in extraction process.

2. Marijuana testing facilities shall comply with the following:

a. 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 owner or authorized agent.

b. Shall ensure that transportation of marijuana or marijuana products is in compliance with applicable law.

c. Shall comply with all testing processes, protocols, standards and criteria adopted by the ADHS for testing marijuana or marijuana products.

d. Shall maintain records, equipment and instrumentation as required by ADHS.

3. Medical marijuana infusion or cultivation facilities shall comply with the following:

a. The cultivation or infusion facility shall only be accessible to registered nonprofit medical marijuana dispensary agents associated in the registry with a nonprofit medical marijuana dispensary. All areas of the premises, including adjacent public sidewalks, shall be illuminated during hours of darkness so that all areas are readily visible by law enforcement personnel.

b. The cultivation or infusion facility shall only be located in an enclosed locked building.

c. Marijuana shall not be consumed on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas which are part of the approved location.

d. "No Loitering" sign shall be posted on the front exterior of the premises.

e. The cultivation or infusion facility shall provide for proper disposal of marijuana remnants or by-products, and not to be placed within the facility's exterior refuse containers.

**Section 151.22.006, of Article 151.22, District Regulations is amended to establish the following use classifications and zoning district allowances:**

USE CLASSIFICATIONS	UR	SFR	MFR	MHR	RVP	NC	LC	OP	GC	LI	IP	HI	OS
Marijuana Establishment	NC	NC	NC	NC	NC	NC	NC	NC	P	NC	NC	NC	NC
Marijuana Testing Facility	NC	NC	NC	NC	NC	NC	NC	NC	P	NC	NC	NC	NC