

ORDINANCE 18-01
TOWN OF SAN LUIS

AN ORDINANCE AMENDING CHAPTER 7-HEALTH, SANITATION, AND ANIMALS, ARTICLE 1-ADMINISTRATION AND ABATEMENT OF NUISANCES, OF THE SAN LUIS MUNICIPAL CODE-PERTAINING TO PROHIBITIONS REGARDING RESIDENTIAL MARIJUANA CULTIVATION FOR MEDICINAL OR RECREATIONAL USE IN THE TOWN OF SAN LUIS.

WHEREAS, in the November 2000 General Election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Amendment 20") which creates an affirmative defense for possession of marijuana for individuals using the drug in the treatment of debilitating medical conditions; and

WHEREAS, in the November 2012 General Election, the voters of the State of Colorado adopted Amendment 64 to the Colorado Constitution ("Amendment 64") which authorizes the use and possession of marijuana, subject to certain restrictions, by persons twenty-one years old or older; and

WHEREAS, the Town of San Luis is a statutory municipality organized and existing under the provisions of the Colorado Constitution Article 20 Section 6, and is thereby authorized to exercise all powers necessary for operation of a local government; and

WHEREAS, state law, including but not limited to, CRS Sections 31-15-401 and CRS 31-23-301 the Colorado Revised Statutes, further authorizes a municipality to exercise its police power in a manner that will protect the public health, safety, and welfare of its citizens; and

WHEREAS, Amendment 20 protects patients and primary caregivers from criminal liability for possession and cultivation of marijuana in amounts authorized by Amendment 20 for the patient's medical use; and

WHEREAS, the Town Board has carefully considered the provisions of Amendment 20 and Amendment 64 and various aspects of the impacts of marijuana possession, use and cultivation in residential structures will have on the health, safety, and welfare of the residents of San Luis and has determined that it is necessary and appropriate as an exercise of its local police power and land use authority to regulate marijuana cultivation in residential and non-residential structures located within the Town; and

WHEREAS, the Town Board finds these code amendments are necessary to promote the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED, by the Town Board of Trustees of the Town Of San Luis, Colorado, that:

Section 7-1-10 of the Town of San Luis Municipal Code is hereby amended by the addition of the following definitions:

Cultivation means all growing stages of the marijuana plant. Unless otherwise stated, it shall also include all stages of cultivating, processing, or preparing the plant material, including but not limited to, cutting, trimming and clipping, drying, curing, and storing the marijuana plant materials.

Enclosed means a permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space.

Locked Space means secured at all points of ingress or egress with a locking mechanism designed to limit access such as with a key or combination lock.

Primary Residence means that place in which a person's habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. Actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address evidence residence for domestic purposes, including but not limited to slumber, preparation of meals, package delivery, vehicle and voter registration, or credit and utility billings. For purposes of this Chapter, a person shall have only one primary residence.

CHAPTER 7 of the Town of San Luis Municipal Code is hereby amended by the addition of a new Section 7-2-280 to read in full as follows:

Section 7-2-280 Marijuana Cultivation for Medicinal or Recreational Use.

- A. *Cultivation restrictions.* It shall be unlawful for any person to cultivate, attempt to cultivate, or in any way cause, allow, or permit the cultivation of marijuana plants for either medical or recreational purposes or to engage in any activity in violation of the following restrictions:
1. *Restricted to Primary Residence.* Marijuana plants shall be cultivated, produced, processed, or maintained only on the property where the responsible person's Primary Residence is located.
 2. *Restrictions on cultivation locations.* Marijuana plants shall be cultivated, produced, processed, or maintained only within the Primary Residence or in a garage attached to the Primary Residence. No marijuana plants may be cultivated, produced, processed, or maintained outdoors or in any detached structure, except where the detached structure is an Accessory Dwelling Unit as defined in the Town's Zoning Ordinance and serves as the Primary Residence for one or more persons.

3. *Enclosed, Locked Space required.* The cultivation area for personal or medical marijuana shall be in an Enclosed, Locked Space that is inaccessible to anyone under the age of 21. If a person under 21 years of age lives at the residence, the cultivation area itself must be enclosed and locked. If no person under 21 years of age lives at the residence, the external locks of the residence constitute an Enclosed and Locked Space. If a person under 21 years of age enters the residence, the person must ensure that access to the cultivation site is reasonably restricted for the duration of that person's presence in the residence.
 4. *Maximum number of plants per household.* No more than six (6) marijuana plants may be cultivated, produced, processed, or maintained in the Primary Residence, regardless of the number of qualified patients or caregivers or persons otherwise allowed to possess or grow marijuana for medical or personal use who reside in the dwelling unit. At any given time, no more than half of the total number of marijuana plants in any residence may be mature, flowering plants.
 5. *Light pollution.* Marijuana cultivation shall not result in light pollution, glare, or brightness that disturbs the repose of another person of ordinary visual sensitivity.
 6. *Odor pollution.* Marijuana cultivation shall not result in odor pollution, or smells that disturbs the repose of another person of ordinary odor sensitivity.
 7. *Compliance with other codes required.* No person shall cultivate marijuana in any primary or accessory structure authorized to cultivate any type of marijuana without complying with applicable building, fire, plumbing, electrical, or mechanical codes as adopted and amended by the city and all applicable zoning codes, including but not limited to, lot coverage, setback, and height requirements.
- B. *Affirmative defense.* It shall be an affirmative defense to prosecution under subsection (A)(3) that the cultivation area for medical marijuana is accessible to a person under the age of 21 if such person is a primary caregiver or if such person is in possession of a valid registry identification card authorizing the medical use of marijuana as described by Section 14 of Article XVIII of the Colorado Constitution and Section 18-18-406.3, C.R.S.
- C. *Right of entry to Cultivation area for inspection purposes.*
1. In the interest of public safety, and subject to the requirements and limitations herein, an authorized code enforcement officer of the Town shall have the right during reasonable hours to enter upon and into any structure within the Town where residential marijuana plants are being cultivated, whether for medical or personal use, for the purpose of conducting an inspection of the premises to determine if the premises where marijuana is being cultivated is in compliance with nuisance and zoning regulations.
 2. Such entry shall be with the permission of the owner or occupant of the residential structure; provided, however, if such permission is refused, the public inspector may request, and the municipal court judge may issue, an

Inspection warrant pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

3. In the case of an emergency involving imminent danger to public health, safety, or welfare, the public inspector may enter any residential structure within the city to conduct an emergency inspection related to the cultivation of marijuana plants without a warrant and without complying with the requirements of this section.
4. The Town Board finds and declares that the ordinance by which Section 7-2-280 is adopted is an ordinance violation of which involves a serious threat to health, public safety, welfare or order within the meaning of Rule 241(a)(1) of the Colorado Municipal Court Rules of Procedure.
5. Nothing herein shall be construed to limit the availability of other types of warrants under Rule 241 of the Colorado Municipal Court Rules of Procedure, or the applicability of Rule 241 to other articles or provisions of this Chapter or Colorado Rules of Criminal Procedure, Colorado Revised statutes, or the Colorado State Constitution.

SECTION 3. Effective Date. This Ordinance shall be enforceable thirty (30) days after publication following signature.

SECTION 4. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read at a regular meeting of the Town Board on the 7th day of November, 2017; further review and discussion was held on the following regular meetings of the Town Board, March 3rd, 2017; March 14, 2017; May 9th, 2017; July 13th, 2017; October 10th, 2017, January 7, 2018 and published by title in the Costilla County Free Press and the La Sierra and in full on the Town of San Luis website on the 21st day of February, 2018; passed and adopted by the Town Board on the 13th February, 2018 and, signed and approved by the Mayor on the 13th day of February, 2018.



Theresa Medina, Mayor Town of San Luis

ATTEST:



Mary Jo Manzanares, Town Clerk,
San Luis, Colorado

Approved as to form:

Barbara A. Zollars

Barbara A. Zollars
San Luis, Town Attorney

