

ORDINANCE NO. 2018-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ISLETON
ADDING CHAPTER 23, SECTIONS 2301, 2303, 2305, AND 2306 CANNABIS LAND USE
REGULATIONS TO THE ISLETON ZONING ORDINANCE**

The City Council of the City of Isleton hereby finds and declares as follows:

SECTION 1. FINDINGS

- A. In November 1996, the voters of the State of California approved Proposition 215, entitled "The Compassionate Use Act of 1996" ("CUA"), which decriminalized the use of medical cannabis. The Legislature of the State of California enacted Senate Bill 420 ("SB 420," entitled the "Medical Cannabis Program Act") in 2004 to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. In 2015, the State Legislature adopted the Medical Cannabis Regulation and Safety Act ("MCRSA"), which addressed state licensing with respect to medical cannabis cultivation, dispensing, and manufacturing.
- B. In November 2016, the voters of the State of California approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), legalizing the recreational use of cannabis for adults 21 years of age and older. The AUMA allows cities to retain their police powers and land use authority to regulate but not prohibit indoor cultivation of up to a total of six cannabis plants per residence, and to regulate or prohibit cultivation or any commercial activity related to cannabis.
- C. In June 2017, the State Legislature passed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). It established a single system of administration for cannabis laws in California and conforms the regulations contained in MCRSA and AUMA together for all commercial cannabis activity.
- D. In light of these developments in state law, and in the interest of applying consistent law enforcement guidelines, the City now desires to regulate cannabis activities within the City.
- E. Unregulated cannabis activities, including, but not limited to, cultivation, testing, and manufacturing, may have significant health, safety, and welfare impacts on the residents of the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.
- F. Cultivation of any amount of cannabis at locations or premises within 600 feet of schools, day care centers, or youth centers may create unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, visible cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the cannabis plants.

- G. It is the purpose and intent of this chapter to require that cannabis be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety, and welfare of the public, to prevent odor created by cannabis plants from impacting adjacent properties, and to ensure that cannabis grown remains secure and does not find its way to non-patients (if under 21) or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of cannabis pursuant to California state law. Nothing in this chapter is intended to authorize the cultivation, possession, or use of cannabis for purposes in violation of state law.
- H. The authority to enact this ordinance is derived from Article XI, section 7 of the California Constitution which provides that a city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws. Additionally, California Health and Safety Code section 11362.2(b)(1) authorizes cities to adopt zoning, land use, and permit regulations concerning the location and establishment of cannabis businesses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ISLETON HEREBY ORDAINS AS FOLLOWS:

SECTION 2. PURPOSE AND AUTHORITY

The purpose of this ordinance is to regulate commercial cannabis activities in a manner that protects the health, safety, and welfare of the community, consistent with Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), and with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). This chapter is not intended to interfere with a patient's right to medical cannabis, as provided in Health and Safety Code section 11362.5, nor does it criminalize cannabis possession or use, pursuant to state law. This chapter is not intended to give any person the unfettered right to grow cannabis; rather, it is intended to impose zoning restrictions on the personal and commercial indoor cultivation of cannabis, regulation of commercial cannabis activity as permitted pursuant to the AUMA and the MAUCRSA.

SECTION 3. REGULATIONS

Article 23, Sections 2301, 2303, 2305, and 2306 are hereby added to the Isleton Zoning Ordinance to read as follows:

SECTION 2301 DEFINITIONS

For the purposes of this article, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

- A. "Authorized grower" means a person twenty-one years and older who is authorized by, and in compliance with, federal or state law to cultivate cannabis indoors for personal or medical use. Authorized grower also means a person eighteen years and older who is a qualified patient, as that term is described in Health and Safety Code section 11362.77.
- B. "Cannabis" shall mean any or all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not, the seeds thereof, the resin or

separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including cannabis infused in foodstuff or other ingestible or consumable product containing cannabis. The term "cannabis" shall also include "medical cannabis" as defined in California Health and Safety Code section 11362.5, "medicinal cannabis" and "medicinal cannabis product" as defined in California Business and Professions Code section 26001(ai), and "cannabis product" as defined in Section 11018.1 of the Health and Safety Code.

- C. "Cannabis dispensary" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers, dispenses, distributes, exchanges, transmits, transports, sells or provides cannabis to any person for any reason, including members of any medical cannabis cooperative or collective consistent with the purposes set forth in California Health and Safety Code section 11362.5, or as may be amended.
- D. "Cannabis products" as used herein has the same meaning as in Section 11018.1 of the Health and Safety Code.
- E. "Child care center" means any licensed child care center, daycare center, or child care home, or any preschool.
- F. "Commercial cannabis activity" includes the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, wholesale of cannabis and cannabis products, retail sale of cannabis and cannabis products, or delivery of cannabis or cannabis products.
- G. "Commercial cannabis facility" means a building, or portion thereof, used for commercial cannabis activity in compliance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA," Business and Professions Code section 26000, et seq.).
- H. "Cultivation" means the planting, growing, harvesting, drying, or processing of cannabis plants or any part thereof as provided for in Business and Professions Code section 26001(l).
- I. "Delivery" means the commercial transfer of cannabis or cannabis products up to an amount determined by the Bureau of Cannabis Control, as defined in California Business and Professions Code section 26001(p). "Delivery" also means the commercial transfer of cannabis or cannabis products to a primary caregiver or qualified patient as defined in Section 11362.7 of the California Health and Safety Code. "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.
- J. "Greenhouse" means a structure designed and constructed primarily for raising and protecting vegetation.
- K. "Identification Card" has the same meaning as in Section 11362.7(g) of the Health and Safety Code.

- L. "Immature cannabis plant" means a cannabis plant that has no flowers and that is a seedling or start shorter than eighteen (18) inches.
- M. "Indoor Cultivation" means cultivation within an enclosed structure that can be secured from access by means of a lock.
- N. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Gov. Code § 66410, et seq.).
- O. "Mature cannabis plant" means a cannabis plant that has flowers or that is taller than eighteen (18) inches.
- P. "Manufacture" has the same meaning as in Section 26001(ag) of the Business and Professions Code.
- Q. "Medical cannabis" means cannabis used for medical purposes in accordance with the Compassionate Use Act (Health & Saf. Code § 11362.5) and the Medical Cannabis Program Act (Health & Saf. Code § 11362.7, et seq.).
- R. "Mobile cannabis dispensary" means any clinic, cooperative, club, business, group or person which transports or delivers, or arranges the transportation or delivery, of cannabis or cannabis products to a person or entity.
- S. "Outdoor Cultivation" means any cultivation not within an enclosed structure.
- T. "Person with an Identification Card" has the same meaning as in Section 11362.7(c) of the Health and Safety Code.
- U. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.
- V. "Primary caregiver" has the same meaning as in Section 11362.7(d) of the Health and Safety Code.
- W. "Public" shall include, but not be limited to, "qualified patients," "primary caregivers," and "persons with identification cards," as those terms are defined in Section 11362.7 of the Health and Safety Code.
- X. "Qualified Patient" has the same meaning as in Section 11362.7(f) of the Health and Safety Code.
- Y. "Residential structure" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation on a Premises or legal parcel located within a residential zoning district.
- Z. "Smoking" means inhaling, exhaling, burning or carrying any lighted combustible substance containing cannabis in any manner or in any form and use of electronic devices with electrical ignition or vaporization (e-cigarettes/cigars or similar devices) with cannabis or its byproducts in the device.

AA. "Testing laboratory" has the same meaning as in Section 26001(as) of the Business and Professions Code.

SECTION 2302 [RESERVED]

SECTION 2303 OUTDOOR CANNABIS CULTIVATION PROHIBITED

It is unlawful, a public nuisance, and a violation of this article for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city to cause or allow such Premises to be used for Outdoor Cultivation.

SECTION 2304 [RESERVED]

SECTION 2305 COMMERCIAL CANNABIS ACTIVITY NEAR SCHOOLS, CHILD CARE CENTERS, OR YOUTH CENTERS IS PROHIBITED

It is unlawful and a public nuisance to use any legal parcel or premises within six hundred (600) feet of any school, child care center, or youth center for commercial cannabis activity. Six hundred (600) feet shall be measured from the closest property line of the school, child care center, or youth center to the closest property line of the parcel upon which commercial cannabis activity will take place.

SECTION 2306 COMMERCIAL CANNABIS FACILITY

Subject to Section 2305 and Article 14, commercial cannabis facilities may be established in C-Commercial and PDI-Planned Industrial Districts as set forth in this section. In addition to the requirements set forth in Article 14, all commercial cannabis facilities shall be subject to the following additional conditions:

- A. Commercial cannabis facilities shall require a development agreement approved by the city council prior to operation.
- B. Prior to commencing operation of commercial cannabis activity, the public safety and security plan for every commercial cannabis facility reviewed and approved by the city.
- C. Commercial cannabis facilities shall not have any exterior signage other than building address.
- D. Commercial cannabis facilities shall have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and that shall comply with California Building Code section 402.3, Mechanical Ventilation, as now existing or hereafter amended.
- E. Commercial cannabis facilities shall not be accessible to persons under twenty-one (21) years of age, except that commercial cannabis facilities licensed to sell medicinal cannabis shall be accessible to persons eighteen (18) years of age or older who possess a valid government-issued identification card and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

SECTION 4. CIVIL INJUNCTION

The violation of this ordinance shall be and is hereby declared to be a public nuisance and contrary to the public interests and shall, at the discretion of the city, create a cause of action for injunctive relief.

SECTION 5. CEQA

This ordinance is consistent with the protection of the public interest, health, safety, and welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines section 15061(b)(3).

SECTION 6. SEVERABILITY

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7. EFFECTIVE DATE AND PUBLICATION

This ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish this ordinance within fifteen (15) days after its passage in a newspaper of general circulation published in the City of Isleton or to post it in at least three (3) public locations in the City of Isleton.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Isleton that it hereby:

Adopted and approved this ordinance at a meeting held on the 25th day of April, 2018 by the following vote:

AYES: Councilmember's Dean Dockery, Robert Jankovitz, Vice Mayor Elizabeth Samano, Mayor Eric Pene.

NOES: None.

ABSTAIN: Councilmember Glenn Giovannoni.

ABSENT: None.



Eric Pene, Mayor
City of Isleton

ATTEST:



Yvonne Zepeda, City Clerk