

ORDINANCE NO. 2018-08

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ISLETON
ADDING SECTION 2307 TO CHAPTER 23 OF THE ISLETON ZONING ORDINANCE TO
REGULATE COMMERCIAL CANNABIS ACTIVITY**

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 of Isleton ("City") desires to hereby regulate commercial cannabis activities within the City.
- E. Unregulated commercial 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. To avoid these impacts, the City seeks to limit the number of retail and delivery cannabis businesses within City limits.
- G. The City enacted a moratorium on May 23, 2018, which prohibits the prohibits cannabis retail sale and delivery businesses in Isleton. The purpose of the moratorium was to give the City an opportunity to study and develop regulations to address the impacts of cannabis retail sale and cannabis delivery businesses and prepare regulations related to cannabis retail sale and cannabis delivery businesses in the City, and since such purpose will have been accomplished upon the enactment of Ordinance No. 2018-08 and the moratorium will no longer be necessary and should be ended.

- 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 AUMA, and with 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 commercial cannabis activity as permitted pursuant to the AUMA and the MAUCRSA.

SECTION 3. REGULATION

Article 23, Sections 2307 is hereby added to read as follows:

SECTION 2307 COMMERCIAL CANNABIS FACILITIES CONDITIONAL USE PERMITS

- A. Conditional Use Permit Required. All commercial cannabis facilities within the City shall require a Conditional Use Permit.
1. Conditional Use Permit Applications. The following information will be required with the initial conditional use permit application and subsequent permit extension applications.
 - i. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where commercial cannabis facilities will occur;
 - ii. The name of each person owning more than a ten percent (10%) interest in the commercial cannabis facilities; and
 - iii. The physical address of the premises where the commercial cannabis facility will operate.
 - iv. Special Findings. The issuance of a conditional use permit for any commercial cannabis facility shall require the following special findings by the City's Planning Commission:

- a. The proposed location, size, and other development standards of the premises are consistent with state law and this chapter; and
 - b. A development agreement between the applicant and the City has been fully executed.
 - c. That the conditions set forth in Section 2306(B)-(D) have been satisfied.
2. **Duration of Conditional Use Permit.** Any conditional use permit issued by the City pursuant to this section shall be valid for five (5) years from the date of issuance. Conditional use permits issued pursuant to this section may be extended in increments of one (1) year. Such extensions are discretionary and subject to the owner of a commercial cannabis facility complying with all substantive and procedural requirements imposed by the City. Furthermore, the City retains the right to deny any application for a conditional use permit for a commercial cannabis facility, or extension of a conditional use permit, where it finds that the issuance of such permit or extension does not demonstrate satisfaction of the minimum requirements of this chapter.
3. **Termination of Conditional Use Permit.** Notwithstanding any other provision in the City's Municipal Code, conditional use permits issued for commercial cannabis facilities shall automatically be considered revoked if:
 - i. The owner of the commercial cannabis facility attempts to transfer the commercial cannabis facility to another individual not named in the conditional use permit application as an owner or person in charge;
 - ii. The commercial cannabis facility ceases to operate at the premises described in the conditional use permit application; or
 - iii. The commercial cannabis facility ceases to operate for sixty (60) consecutive calendar days.
4. **Conditional Use Permit Application Fee.** Prior to the City reviewing any application for a conditional use permit for commercial cannabis facilities, the applicant shall pay a fee to the City in an amount to be set by resolution of the City Council.
5. **Enforcement.** In the event the City discovers the requirements of a development agreement or conditions of a conditional use permit have not been, or are not being, complied with, the City may commence revocation of the conditional use permit. The City shall give the owner of the commercial cannabis facility notice of the City's intention to revoke the conditional use permit at least ten (10) days prior to the Planning Commission considering the revocation of the conditional use permit. Conditional use permits for commercial cannabis facilities may only be revoked by the City's Planning Commission.

B. General Regulations. The following regulations shall apply to all commercial cannabis facilities:

1. **On-Premises Cannabis Use Prohibited.** Cannabis may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the premises or in the parking areas of a commercial cannabis facility.
2. **Visibility from Public Right-of-Way.** Cannabis or cannabis products on the premises shall not be visible from the public right of way, the unsecured areas surrounding the buildings on the premises, or the premises' main entrance and lobby.
3. **No Unaccompanied Minors on Premises.** Unless a minor is a qualified patient or primary caregiver, or is accompanied by its parent or legal guardian, no minor shall be allowed to enter the premises of a commercial cannabis facility.
4. **Accessibility to Public.** Except for retail facilities, access to a commercial cannabis facility shall be restricted to employees of that commercial cannabis facility.

C. Use-Specific Regulations.

1. The total number of commercial cannabis facilities engaging primarily in retail cannabis sales in the City shall not exceed three (3).
2. The City will process completed applications for conditional use permits for commercial cannabis facilities on a first-come, first-served basis. Approval of conditional use permit applications will be based on the submission date of complete applications, demonstrated compliance with state laws, the compliance with all other requirements set forth in the Municipal Code, and the full execution of a development agreement with the City;

D. Public Nuisance. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to engage in a commercial cannabis facility without a conditional use permit issued by the City, and a signed development agreement with the City.

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. END MORATORIUM.

A. Pursuant to Government Code section 65858, the City enacted a moratorium prohibiting the cannabis retail sale and delivery businesses on May 23, 2018.

B. The purpose of the moratorium was to give the City an opportunity to study and develop regulations to address the impacts of cannabis retail sale and delivery businesses and also to establish zoning regulations related to cannabis retail sale and delivery businesses. Such studies have been completed and regulations have been developed.

C. Therefore, the City Council hereby ends the moratorium prohibiting cannabis retail sale and delivery businesses that was enacted on May 23, 2018.

SECTION 6. 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 7. 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 8. EFFECTIVE DATE AND PUBLICATION

This ordinance shall take effect 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 26th day of June 2018 by the following vote:

AYES: Councilmember Dean Dockery, Robert Jankovitz, Mayor Eric Pene.
NOES: Vice Mayor Elizabeth Samano
ABSTAIN: Councilmember Glenn Giovannoni
ABSENT: None.


Eric Pene, Mayor
City of Isleton

ATTEST:


Yvonne Zepeda, City Clerk