

CITY COUNCIL ORDINANCE NO. 23-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
IRVINE, CALIFORNIA, APPROVING ZONE CHANGE
00917178-PZC TO AMEND CHAPTER 3-39, CANNABIS
RELATED USES, COMMERCIAL CANNABIS ACTIVITIES,
DELIVERIES, AND CULTIVATION PROHIBITED, OF THE
IRVINE ZONING ORDINANCE RELATING TO MEDICINAL
CANNABIS BUSINESSES

WHEREAS, the City of Irvine Public Safety Department has initiated Zone Change 00917178-PZC to amend Chapter 3-39 the Irvine Zoning Ordinance relating to Medicinal Cannabis Businesses; and

WHEREAS, in 2004, Senate Bill 420, known as the “Medical Marijuana Program Act,” codified as California Health and Safety Code section 11362.7 et seq., was adopted and established a statewide identification card program for qualified medical marijuana (also known as “cannabis”) patients and their primary caregivers, and recognized a qualified right to collective and cooperative cultivation of medical cannabis; and

WHEREAS, on September 8, 2022, the State of California adopted Senate Bill 1186, known as “The Medicinal Cannabis Patients’ Right of Access Act,” codified at California Business and Professional Code section 26320 et seq., promoting access to medicinal cannabis for the seriously ill by identifying and prohibiting specific regulations that would limit the sale of medicinal cannabis in local jurisdictions; and

WHEREAS, Senate Bill 1186 amends Business and Professions Code section 26200(a)(1), and effectively provides that local jurisdictions cannot prohibit medicinal cannabis deliveries to medicinal cannabis patients or their primary caregivers located within their jurisdictions; and

WHEREAS, in order to comply with Business and Professions Code section 26200(a)(1), Chapter 3-39 of the Irvine Zoning Ordinance, relating to Medicinal Cannabis Businesses, must be amended; and

WHEREAS, Zone Change 00917178-PZC is considered a “project” as defined by the California Environmental Quality Act (CEQA); and

WHEREAS, Pursuant to Section 4 of the City of Irvine CEQA procedures and Article 5 of the CEQA Guidelines, the proposed project is covered by the General Rule Exemption [Section 15601(b)(3) of the CEQA Guidelines], for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment; and

WHEREAS, on October 26, 2023, notice of the November 16, 2023, Planning Commission public meeting was published in Irvine World News and was posted at designated City public notice boards; and

WHEREAS, on November 16, 2023, the Planning Commission of the City of Irvine considered information presented by the Community Development Department, and other interested parties at a duly-noticed public meeting and recommended that the City Council approve Zone Change 00917178-PZC by a vote of 4-1 (Commissioners Lin, Pierson, Huang, and Limb in favor; Commissioner Bhatia opposed); and

WHEREAS, on November 23, 2023, notice of the December 12, 2023 City Council public hearing was published in Irvine World News and was posted at designated City public notice boards; and

WHEREAS, the City Council of the City of Irvine considered information presented by the Community Development Department and other interested parties at a duly-noticed public hearing held December 12, 2023.

NOW, THEREFORE, the City Council of the City of Irvine, California, DOES HEREBY RESOLVE as follows:

SECTION 1. That the above recitals are true and correct and are incorporated herein.

SECTION 2. Pursuant to Section 4 of the City of Irvine CEQA procedures and Article 5 of the CEQA Guidelines, the proposed project is covered by the General Rule Exemption [Section 15061(b)(3)], for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment.

SECTION 3. The City Council hereby makes the findings required by Section 2-38-7 of the Irvine Zoning Ordinance for adoption of Zone Change 00917178-PZC as follows:

A. The proposed zone change is consistent with the City of Irvine General Plan.

The purpose of the Zone Change includes an update to the text of Chapter 3-39, Cannabis related Uses, Commercial Cannabis Activities, Deliveries, and Cultivation Prohibited, of the Irvine Zoning Ordinance to comply with California law and allow for the delivery of medicinal cannabis to medicinal cannabis patients and primary caregivers located within their jurisdictions. This change is in response to the adoption of Senate Bill 1186, known as "The Medicinal Cannabis Patients' Right of Access Act," codified at California Business and Professional Code section 26320 et seq., which promotes access to medicinal cannabis for the seriously ill by identifying and prohibiting specific regulations that would limit the sale of medicinal cannabis in local jurisdictions. The proposed Zone Change will ensure that the City complies with state law. This Zone Change will remain consistent with the goals and objectives of the City of Irvine General Plan.

- B. The proposed zone change is consistent with any applicable Concept Plan.

There is no Concept Plan associated with this project. As such, this finding does not apply.

- C. The proposed zone change meets all the requirements set forth within Division 8 for the dedication of permanent open space through a specified phased implementation program for affected planning areas and zoning districts.

This project is not required to dedicate open space because there is no development associated with the Zone Change application. As such, this finding does not apply.

- D. The proposed zone change is in the best interest of the public health, safety, and welfare of the community.

The Zone Change is consistent with all applicable provisions of the Zoning Ordinance and is in the best interest of the community's health, safety, and welfare to conform with state law. The proposed project modifies an existing section of the Zoning Ordinance – Chapter 3-39 – related to cannabis-related uses so that the Zoning Ordinance will be in compliance with recently adopted state law (Senate Bill 1186, known as "The Medicinal Cannabis Patients' Right of Access Act). The text amendment implements state law to create a carve out in Chapter 3-39, which discusses the prohibition of cannabis related uses, to allow the delivery of medicinal cannabis to patients to the extent such activity complies with California Business and Professional Code section 26320 et seq.

- E. Based upon information available at the time of approval, adequate sewer and water lines, utilities, sewage treatment capacity, drainage facilities, police protection, fire protection/emergency medical care, vehicular circulation and school facilities will be available to serve the area affected by the proposed Zone Change when development occurs.

The project is an amendment to the Irvine Zoning Ordinance; it does not include any development. Therefore, it will not affect any infrastructure or utilities.

- F. If the proposed zone change affects land located within the coastal zone, the proposed zone change will comply with the provisions of the land use plan of the certified local coastal program.

The project is an amendment to the Irvine Zoning Ordinance; it does not include any development. Therefore, it would not affect any land within the coastal zone.

SECTION 4. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

NOW, THEREFORE, based on the above findings, the City Council of the City of Irvine DOES HEREBY APPROVE Zone Change 00917178-PZC, as shown in Exhibit A, attached hereto.

PASSED AND ADOPTED by the City Council of the City of Irvine, California, at the regular meeting held the 9th of January 2024.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing ordinance was introduced for first reading on the 12th day of December 2023, and duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 9th day of January 2024.

AYES:	4	COUNCILMEMBERS:	Agran, Kim, Treseder, and Khan
NOES:	1	COUNCILMEMBERS:	Carroll
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None


CITY CLERK OF THE CITY OF IRVINE

CHAPTER 3-39. CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED

Sec. 3-39-1. Definitions.

"Cannabis" shall mean all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means "marijuana" as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term "Cannabis" shall also have the same meaning as set forth in Business & Professions Code § 26001(f), as may be amended from time to time. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health & Safety Code § 11362.7, as may be amended from time to time.

"Commercial cannabis activity" shall have the same meaning as set forth in Business & Professions Code § 26001 (i), as may be amended from time to time. Commercial Cannabis Activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, delivery or sale of cannabis and cannabis products.

"Cooperative" shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available marijuana, with or without cultivation.

"Cultivation" or "Cultivate" shall have the same meaning as set forth in Business & Professions Code § 26001(l), as may be amended from time to time.

"Delivery" shall have the same meaning as set forth in Business & Professions Code § 26001(p), as may be amended from time to time.

"Dispensary" shall mean and refer to any premises where Cannabis or Medicinal Cannabis or Cannabis Products are offered, either individually or in any combination, for retail sale or Delivery to consumers, customers, patients, or primary caregivers. For purposes of this Chapter, Dispensary shall also include a Cooperative. Dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter

Exhibit A

2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Medicinal cannabis" shall have the same meaning as set forth in Business & Professions Code § 26001(ai), as may be amended from time to time.

"Medicinal cannabis business" shall have the same meaning as set forth in Business & Professions Code § 26321(a)(2), as may be amended from time to time.

"Medicinal cannabis patient" shall have the same meaning as set forth in Business & Professions Code § 26321(a)(3), as may be amended from time to time.

"Medicinal and Adult Use Cannabis Regulation and Safety Act" or "MAUCRSA" shall mean and refer to Senate Bill 94, signed into law on June 27, 2017, as the same may be amended from time to time.

"Medicinal Cannabis Patients' Right of Access" or "MCPRA" shall mean and refer to Senate Bill 1186, signed into law on September 18, 2022, as the same may be amended from time to time.

"Testing Laboratory" shall have the same meaning as set forth in Business & Professions Code section 26001(as), as may be amended from time to time.

"Qualifying Patient" or "Qualified Patient" shall have the same meaning as set forth in Health and Safety Code section 11362.7 as may be amended from time to time. (Ord. No. 16-01, § 3, 1-26-16; Ord. No. 18-01, § 8(Exh. A), 2-27-18)

Sec. 3-39-2. Prohibition.

Except as set forth in Subsection (D) and (F) of this chapter, all cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of cannabis, and all other commercial cannabis activities for which a State license is required under the MAUCRSA are prohibited in all zones throughout the City, regardless of whether the commercial cannabis activity relates to medicinal or adult use marijuana. Accordingly, the City shall not issue any permit, or process any license or other entitlement for any cannabis related use or any other activity for which a State license is required under the MAUCRSA.

A. Adult use cannabis related uses. Except as set forth in subsection (F) of this chapter, all adult use cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of cannabis, are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether the cannabis related use related to medicinal or adult use marijuana. No person shall establish, operate, conduct, permit or allow any cannabis related use anywhere within the City.

B. Medicinal cannabis uses. Except as set forth in subsection (D) and (F) of this chapter, all medicinal cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of cannabis, are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether such uses qualify as commercial cannabis activities under the MAUCRSA. No person shall establish, operate, conduct, permit or allow any medicinal cannabis related land use anywhere within the City.

C. Commercial cannabis activities. Except as set forth in subsection (D) and (F) of this chapter, all commercial cannabis activities, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of cannabis, are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether such uses relate to medicinal or adult use marijuana. No person shall establish, operate, conduct, permit or allow a commercial cannabis activity anywhere within the City.

D. Cannabis deliveries.

(1) Except as set forth in subdivision (2) below, all deliveries of cannabis and medicinal cannabis are expressly prohibited in the City. No person shall conduct any deliveries of cannabis or medicinal cannabis that either originate or terminate at any location within the City.

(2) Notwithstanding the foregoing, the delivery of medicinal cannabis and medicinal cannabis products to medicinal cannabis patients or their primary caregivers from a medicinal cannabis business is permitted within the city to the extent such activity complies with California Business and Professional Code section 26320 et seq., as those provisions may be amended from time to time.

E. Cannabis cultivation. The commercial cultivation of cannabis is expressly prohibited in all zones and all specific plan areas in the City, regardless of whether the cultivation is related to medicinal or adult use marijuana.

F. Cannabis testing laboratories. Cannabis testing laboratories shall only be permitted in the following zoning districts in the City: 5.1 IBC Multi-Use, 5.5 Medicinal and Science, and 5.4 General Industrial and upon the issuance of both (1) a valid permit issued by the City pursuant Title 4 - Public Safety of the City's Municipal Code and (2) a valid state license. Cannabis Testing Laboratories shall not be permitted in any other zoning district in the City. (Ord. No. 16-01 , § 3, 1-26-16; Ord. No. 18-01 , § 8(Exh. A), 2-27-18)

Sec. 3-39-3. Public nuisance.

Any use or condition cause, or permitted to exist, in violation of any provision of this Chapter 3-39 shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure Section 731 or any other remedy available at law. (Ord. No. 16-01 , § 3, 1-26-16; Ord. No. 18-01 , § 8 (Exh. A), 2-27-18)

Sec. 3-39-4. Civil penalties.

In addition to any other enforcement permitted by the City's Zoning and/or Municipal Codes, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this Chapter. In any civil action that is brought pursuant to this Chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party. (Ord. No. 16-01 , § 3, 1-26-16; Ord. No. 18-01, § 8(Exh. A), 2-27-18)