

**BEFORE THE CITY COUNCIL OF THE CITY OF INDEPENDENCE
STATE OF OREGON, COUNTY OF POLK**

An Ordinance Amending the Independence]	
Development Code, Subchapters 13, 20, 21,]	
22, 23, 33, 34, 40, 41, and 53; and Adding]	Council Bill #2017-02
Sections 20.021, 21.021, 22.021, 23.021,]	
23.022, 33.021, 34.031, 34.032, 40.021,]	
41.021, 42.021, and 53.021]	

ORDINANCE NO. 1559

WHEREAS, at the November 2014 General Election, the voters of the State of Oregon approved Ballot Measure 91, which legalized the use and sale of recreational marijuana in Oregon; and

WHEREAS, Chapter 475B of the Oregon Revised Statutes allows for the establishment and licensure or registration of several types of medical and recreational marijuana facilities; and

WHEREAS, pursuant to Article IX, Section 2 of the Oregon Constitution and Sections 5 and 6 of the Charter of the City of Independence, the City of Independence is a home rule municipality with all the powers that the constitutions, statutes, and common law of the United States and the State of Oregon expressly or impliedly grant or allow the City; and

WHEREAS, ORS 475B.340 explicitly allows cities to adopt reasonable regulations applicable to recreational marijuana facilities, including but not limited to: reasonable conditions on the manner in which a recreational marijuana producer may produce marijuana; reasonable conditions on the manner in which a recreational marijuana processor may process marijuana; reasonable conditions on the manner in which a recreational marijuana wholesaler may sell marijuana at wholesale; reasonable limitations on the hours during which a recreational marijuana retailer may operate; reasonable conditions on the manner in which a recreational marijuana retailer may sell marijuana items; reasonable requirements related to the public's access to a recreational marijuana facility; and reasonable limitations on where a recreational marijuana facility may be located; and

WHEREAS, ORS 475B.500 explicitly allows cities to adopt reasonable regulations applicable to medical marijuana facilities, including but not limited to: reasonable limitations on the hours during which a medical marijuana grow site, a medical marijuana processing site, or a medical marijuana dispensary may operate; reasonable conditions on the manner in which a medical marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds; reasonable requirements related to the public's access to medical marijuana grow sites, medical marijuana processing sites or medical marijuana dispensaries; and reasonable limitations on where medical marijuana grow sites, medical marijuana processing sites and medical marijuana dispensaries may be located; and

WHEREAS, the Independence City Council has adopted the reasonable regulations contained in this ordinance in order to do the following: 1) protect the general health, welfare,

safety, and property of the citizens of Independence; 2) balance the rights of individuals to access and possess marijuana under state law with the goal of minimizing adverse impacts on nearby residents, property owners, businesses, and land uses that may result from the production, storage, processing, distribution, sale and/or use of marijuana; 3) prevent or reduce criminal activity that may result in harm to persons or property; 4) limit the exposure of minors to commercial marijuana; 5) prevent or reduce access to marijuana by minors; and 6) minimize impacts on public safety services; and

WHEREAS, in the interest of the health, safety, and well-being of the citizens of Independence, the City Council has determined that recreational and medical marijuana facilities should be allowed only within certain zones in the City and those uses should be subject to reasonable regulations; and

WHEREAS, on February 22, 2017, the City of Independence notified the Department of Land Conservation and Development of the proposed amendments to the Independence Development Code; and

WHEREAS, on March 3, 2017, notice of a public hearing before the Planning Commission was mailed to all affected property owners in compliance with ORS 227.186; and

WHEREAS, notice of a public hearing before the Planning Commission was published in the *Polk County, Itemizer-Observer* on March 15, 2017, as required by Section 11.025.B of the Independence Development Code; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments to the Independence Development Code on April 3, 2017, and at the Planning Commission's subsequent meeting on May 1, 2017, the Planning Commission adopted recommended findings of fact, and recommended to the City Council that the Independence Development Code be amended as presented in this Ordinance; and

WHEREAS, notice of a public hearing before the City Council was published in the *Polk County, Itemizer-Observer* on March 15, 2017, as required by Section 11.025.B of the Independence Development Code; and

WHEREAS, the Independence City Council held a public hearing on the proposed amendments to the Independence Development Code on May 9, 2017; and

WHEREAS, the Council has considered materials relevant to the proposed amendments, including staff reports, the findings made by the Planning Commission, and testimony and comments submitted at both public hearings, both orally and writing; NOW THEREFORE,

THE CITY OF INDEPENDENCE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby adopts the Findings of Fact attached to this Ordinance as Exhibit A, and the recitals, above, as the basis for these Development Code amendments.

Section 2. Insert the following definitions into Independence Development Code (IDC) Subchapter 13 in the appropriate alphabetical order:

ELEMENTARY SCHOOL

“Elementary School” means a public elementary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary school teaching children as described in ORS 339.030(1)(a).

MARIJUANA

“Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp as defined in ORS 571.300.

MARIJUANA FACILITY

“Marijuana Facility” means any of the following: a medical marijuana processing site, a medical marijuana dispensary, a recreational marijuana producer, a recreational marijuana processor, a recreational marijuana wholesaler, a recreational marijuana retailer, a marijuana research facility or a marijuana testing laboratory.

MARIJUANA RESEARCH FACILITY

“Marijuana Research Facility” means cannabis researcher certified by the Oregon Liquor Control Commission pursuant to ORS 475B.235.

MARIJUANA TESTING LABORATORY

“Marijuana Testing Laboratory” means a laboratory that conducts testing of marijuana items and is licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.560 and accredited by the Oregon Health Authority pursuant to ORS 475B.565.

MEDICAL MARIJUANA DISPENSARY

“Medical marijuana dispensary” means a medical marijuana dispensary registered with the Oregon Health Authority pursuant to ORS 475B.450.

MEDICAL MARIJUANA GROW SITE

“Medical marijuana grow site” means a site registered with the Oregon Health Authority pursuant to ORS 475B.420 to produce marijuana for an individual who has been issued a medical marijuana registry identification card by the Oregon Health Authority.

MEDICAL MARIJUANA PROCESSING SITE

“Medical Marijuana Processing Site” means a medical marijuana processing site registered with the Oregon Health Authority pursuant to ORS 475B.435.

PUBLIC ATHLETIC FIELD

“Public Athletic Field” means an athletic field that is owned or operated by a government entity or nonprofit organization and that is open to the general public.

PUBLIC LIBRARY

“Public Library” means a library open to the general public and owned or operated by a government entity or nonprofit organization.

PUBLIC PARK

“Public Park” means a park that is owned or operated by a government entity or nonprofit organization and that is open to the general public.

PUBLIC PLAYGROUND

“Public Playground” means a playground that is owned or operated by a government entity or nonprofit organization and that is open to the general public.

PUBLIC RECREATIONAL FACILITY

“Public Recreational Facility” means a recreational facility that is owned or operated by a government entity or nonprofit organization and that is open to the general public.

RECREATIONAL MARIJUANA PROCESSOR

“Recreational Marijuana Processor” means a recreational marijuana processor licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.090.

RECREATIONAL MARIJUANA PRODUCER

“Recreational Marijuana Producer” means a recreational marijuana producer licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.070.

RECREATIONAL MARIJUANA RETAILER

“Recreational Marijuana Retailer” means a recreational marijuana retailer licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.110.

RECREATIONAL MARIJUANA WHOLESALER

“Recreational Marijuana Wholesaler” means a recreational marijuana wholesaler licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.100.

SECONDARY SCHOOL

“Secondary School” means a public secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial secondary school teaching children as described in ORS 339.030(1)(a).

WITHIN 1,000 FEET

“Within 1,000 Feet” means a straight line measurement in a radius extending for 1,000 feet or less in every direction between any point on the boundary line of the real property on which the Marijuana Facility is located and the real property on which an Elementary or Secondary School is located.

WITHIN 250 FEET

“Within 250 Feet” means a straight line measurement in a radius extending for 250 feet or less in every direction between any point on the boundary line of the real property on which the Marijuana Facility is located and the real property which is residentially zoned, or on which a Public Library, Public Park, Public Playground, Public Recreational Facility or Public Athletic Field is located, as applicable.

Section 3. Amend the definition of the term “Home Occupation” in IDC Subchapter 13, as follows:

HOME OCCUPATION

“Home Occupation” means an occupation carried on solely by the resident or residents of a dwelling and which is incidental, secondary, and subordinate to the residential use, and which is conducted in accordance with the provisions and requirements of this ordinance. All home occupations shall comply with the requirements of Subchapter 72. A Marijuana Facility is not a home occupation.

Section 4. IDC Section 20.015 is amended to add a subsection “K,” as follows:

“K. Medical Marijuana Grow Site.”

Section 5. Add the following Section 20.021 to IDC Subchapter 20:

“20.021 Prohibited Uses

The following uses are prohibited in the RS Zone:

- A. Medical Marijuana Processing Site.
- B. Medical Marijuana Dispensary.
- C. Recreational Marijuana Producer.
- D. Recreational Marijuana Processor.
- E. Recreational Marijuana Wholesaler.
- F. Recreational Marijuana Retailer.
- G. Marijuana Research Facility.
- H. Marijuana Testing Laboratory.”

Section 6. IDC Section 21.015 is amended to add a subsection “O,” as follows:

“O. Medical Marijuana Grow Site.”

Section 7. Add the following Section 21.021 to IDC Subchapter 21:

“21.021 Prohibited Uses

The following uses are prohibited in the RM Zone:

- A. Medical Marijuana Processing Site.
- B. Medical Marijuana Dispensary.
- C. Recreational Marijuana Producer.
- D. Recreational Marijuana Processor.
- E. Recreational Marijuana Wholesaler.
- F. Recreational Marijuana Retailer.
- G. Marijuana Research Facility.
- H. Marijuana Testing Laboratory.”

Section 8. IDC Section 22.015 is amended to add subsection “V,” as follows:

“V. Medical Marijuana Grow Site.”

Section 9. Add the following Section 22.021 to IDC Subchapter 22, as follows:

"22.021 Prohibited Uses

The following uses are prohibited in the RH Zone:

- A. Medical Marijuana Processing Site.
- B. Medical Marijuana Dispensary.
- C. Recreational Marijuana Producer.
- D. Recreational Marijuana Processor.
- E. Recreational Marijuana Wholesaler.
- F. Recreational Marijuana Retailer.
- G. Marijuana Research Facility.
- H. Marijuana Testing Laboratory."

Section 10. IDC Section 23.015 is amended to add subsections "H" and "I," as follows:

- "H. Medical Marijuana Dispensary, subject to the special use limitations in Section 23.021.
- I. Recreational Marijuana Retailer, subject to the special use limitations in Section 23.021."

Section 11. Add the following IDC Section 23.021 to IDC Subchapter 23, as follows:

"23.021 Special Use Limitations for Marijuana Facilities

A. At the time a Medical Marijuana Dispensary or Recreational Marijuana Retailer locates in the MX Zone, the Medical Marijuana Dispensary or Recreational Marijuana Retailer may not be located:

- 1. Within 1,000 Feet of an Elementary or Secondary School; or
- 2. Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, or Public Athletic Field.

B. The maximum floor area for a Medical Marijuana Dispensary or Recreational Marijuana Retailer is 2,000 square feet or less.

C. A Medical Marijuana Dispensary or Recreational Marijuana Retailer must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.

D. A Medical Marijuana Dispensary or Recreational Marijuana Retailer may not include a Drive-Through Facility.

E. A Medical Marijuana Dispensary or Recreational Marijuana Retailer located in the MX Zone must be located in a Building, as that term is defined in the Uniform Building Code.

F. A Medical Marijuana Dispensary or Recreational Marijuana Retailer may not operate as a Home Occupation.”

Section 12. Add the following Section 23.022 to IDC Subchapter 23.

“23.022 Prohibited Uses

The following uses are prohibited in the MX Zone:

- A. Medical Marijuana Grow Site.
- B. Medical Marijuana Processing Site.
- C. Recreational Marijuana Producer.
- D. Recreational Marijuana Processor.
- E. Recreational Marijuana Wholesaler.
- F. Marijuana Research Facility.
- G. Marijuana Testing Laboratory.”

Section 13. IDC Section 33.015 is amended add subsections “K” through “N,” as follows:

- “K. Medical Marijuana Dispensary, subject to the special use limitations in Section 33.021.
- L. Recreational Marijuana Retailer, subject to the special use limitations in Section 33.021.
- M. Marijuana Research Facility, subject to the special use limitations in Section 33.021.
- N. Marijuana Testing Laboratory; subject to the special use limitations in Section 33.021.”

Section 14. The following Section 33.021 is added to IDC Subchapter 33:

“33.021 Special Use Limitations for Marijuana Facilities

- A. At the time a Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory locates in the MUPC

Zone, the Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory may not be located:

1. Within 1,000 Feet of an Elementary or Secondary School; or
2. Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, or Public Athletic Field.

B. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.

C. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory may not include a Drive-Through Facility.

D. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory located in the MUPC Zone must be located in a Building, as that term is defined in the Uniform Building Code.”

Section 15. IDC Section 33.025 is amended to read, as follows:

33.025 Prohibited Uses

Within the MUPC Zone and the Downtown Overlay Zone, the following uses shall not be permitted (see definitions found in Subchapter 13):

PROHIBITED USES	MUPC	Downtown Overlay
Drive-through Facility		X
Entertainment/Major Event		X
Self-Service Storage	X	X
Vehicle Servicing/Repair		X
Wholesale Retail	X	X
Heavy Industrial	X	X
Light Industrial		X
Manufacturing and Production	X	X
Warehouse and Freight	X	X
Waste-Related	X	X
Agriculture	X	X
Mining	X	X
Commercial Parking	X	X
Commercial Outdoor Recreation	X	X
Railroad Yards	X	X
Detention Facilities	X	X
Medical Marijuana Grow Site	X	X
Medical Marijuana Processing Site	X	X

Recreational Marijuana Producer	X	X
Recreational Marijuana Processor	X	X
Recreational Marijuana Wholesaler	X	X

Section 16. IDC Section 34.025 is amended to add subsections “M” through “P,” as follows:

- “M. Medical Marijuana Dispensary, subject to the special use limitations in Section 34.031.
- N. Recreational Marijuana Retailer, subject to the special use limitations in Section 34.031
- O. Marijuana Research Facility, subject to the special use limitations in Section 34.031.
- P. Marijuana Testing Laboratory; subject to the special use limitations in Section 34.031.”

Section 17. The following Section 34.031 is added to IDC Subchapter 34:

“34.031 Special Use Limitations for Marijuana Facilities

A. At the time a Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory locates in the DRZ Zone, the Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory may not be located:

1. Within 1,000 Feet of an Elementary or Secondary School; or
2. Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, or Public Athletic Field.

B. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.

C. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory may not include a Drive-Through Facility.

D. A Medical Marijuana Dispensary, Recreational Marijuana Retailer, Marijuana Research Facility, or Marijuana Testing Laboratory located in the DRZ Zone must be located in a Building, as that term is defined in the Uniform Building Code.”

Section 18. Add the following Section 34.032 to IDC Subchapter 34:

“34.032 Prohibited Uses

The following uses are prohibited in the Downtown Riverfront Zone:

- A. Medical Marijuana Grow Site.
- B. Medical Marijuana Processing Site.
- C. Recreational Marijuana Producer.
- D. Recreational Marijuana Processor.
- E. Recreational Marijuana Wholesaler.”

Section 19. Section 40.010 of IDC Subchapter 40 is amended to add subsections “II” through “QQ,” as follows:

- “II. Medical Marijuana Grow Site, subject to the special use limitations in Section 40.021.
- JJ. Medical Marijuana Processing Site, subject to the special use limitations in Section 40.021.
- KK. Medical Marijuana Dispensary, subject to the special use limitations in Section 40.021.
- LL. Recreational Marijuana Producer, subject to the special use limitations in Section 40.021.
- MM. Recreational Marijuana Processor, subject to the special use limitations in Section 40.021.
- NN. Recreational Marijuana Wholesaler, subject to the special use limitations in Section 40.021.
- OO. Recreational Marijuana Retailer, subject to the special use limitations in Section 40.021.
- PP. Marijuana Research Facility, subject to the special use limitations in Section 40.021.
- QQ. Marijuana Testing Laboratory, subject to the special use limitations in Section 40.021.”

Section 20. The following Section 40.021 is added to IDC Subchapter 40:

“40.021 Special Use Limitations for Marijuana Facilities

A. At the time a Marijuana Facility locates in the IL Zone, the Marijuana Facility may not be located:

- 1. Within 1,000 Feet of an Elementary or Secondary School; or
- 2. Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, Public Athletic Field, or residentially zoned real property.

B. A Marijuana Facility must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.

C. A Marijuana Facility may not include a Drive-Through Facility.

D. A Marijuana Facility located in the IL Zone must be located in a Building, as that term is defined in the Uniform Building Code.

E. A Medical Marijuana Dispensary must have a total floor area of less than 10,000 square feet.

F. A Recreational Marijuana Retailer must have a total floor area of less than 10,000 square feet and must be located on the same tax lot as a Recreational Marijuana Producer or a Recreational Marijuana Processor.”

Section 21. Section 40.035 of IDC Subchapter 40 is amended to read, as follows:

“40.035 Yards

- A. Front Yard: No front yard shall be required for any lot or parcel in the IL zone unless the front yard either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses. A front yard that either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses shall have a minimum front yard setback of twenty (20) feet and shall conform to the buffering and screening requirements of Section 54.010.
- B. Side and Rear Yard: No side or rear yard shall be required for any lot or parcel in an IL zone unless a side or rear yard is adjoining or across the street from property used or zoned for residential uses. A side or rear yard that either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses shall have minimum side or rear yard setbacks of five (5) feet and be bounded by a fence or sight-obscuring evergreen hedge at least six (6) feet high.”

Section 22. Section 40.045 of IDC Subchapter 40 is hereby amended to read, as follows:

“40.045 Parking and Access

- A. When a front setback is required under Section 40.035(A) the following standards shall apply:
 - 1. Parking shall be prohibited between front building line and street; and
 - 2. No parking area shall exceed 50% of the total frontage of the site.
- B. Access points to property from a street shall be located to minimize traffic congestion, and maximum effort shall be made to avoid directing traffic into residential areas. Existing access roads and access points shall be used to the

maximum extent possible to serve the greatest number of uses. All access roads and driveways shall be surfaced with asphaltic concrete or similar permanent surfacing.”

Section 23. Section 41.010 of IDC Subchapter 41 is hereby amended to correct the reference in subsection “U” from “Subsection 40.010N” to “Subsection 40.010T,” and to add subsections “MM” through “SS,” as follows:

- “MM. Medical Marijuana Grow Site, subject to the special use limitations in Section 41.021.
- NN. Medical Marijuana Processing Site, subject to the special use limitations in Section 41.021.
- OO. Recreational Marijuana Producer, subject to the special use limitations in Section 41.021.
- PP. Recreational Marijuana Processor, subject to the special use limitations in Section 41.021.
- QQ. Recreational Marijuana Wholesaler, subject to the special use limitations in Section 41.021.
- RR. Marijuana Research Facility, subject to the special use limitations in Section 41.021.
- SS. Marijuana Testing Laboratory, subject to the special use limitations in Section 41.021.”

Section 24. Section 41.015 of IDC Subchapter 41 is hereby amended to add subsections “C” and “D,” as follows:

- “C. Medical Marijuana Dispensary.
- D. Recreational Marijuana Retail.”

Section 25. Add the following Section 41.021 to IDC Subchapter 41, as follows:

“41.021 Special Use Limitations for Marijuana Facilities

- A. At the time a Medical Marijuana Grow Site, Medical Marijuana Processing Site, Recreational Marijuana Producer, Recreational Marijuana Processor, Recreational Marijuana Wholesaler, Marijuana Research Facility, or Marijuana Testing Laboratory locates in the IH Zone, the Medical Marijuana Grow Site, Medical Marijuana Processing Site, Recreational Marijuana Producer, Recreational Marijuana Processor, Recreational Marijuana Wholesaler, Marijuana Research Facility, or Marijuana Testing Laboratory may not be located:
 - 1. Within 1,000 Feet of an elementary or Secondary School; or

2. Within 250 feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, Public Athletic Field, or residentially zoned real property.
- B. A Medical Marijuana Grow Site, Medical Marijuana Processing Site, Recreational Marijuana Producer, Recreational Marijuana Processor, Recreational Marijuana Wholesaler, Marijuana Research Facility, or Marijuana Testing Laboratory must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.
 - C. A Medical Marijuana Grow Site, Medical Marijuana Processing Site, Recreational Marijuana Producer, Recreational Marijuana Processor, Recreational Marijuana Wholesaler, Marijuana Research Facility, or Marijuana Testing Laboratory may not include a Drive-Through Facility.
 - D. A Medical Marijuana Grow Site, Medical Marijuana Processing Site, Recreational Marijuana Producer, Recreational Marijuana Processor, Recreational Marijuana Wholesaler, Marijuana Research Facility, or Marijuana Testing Laboratory located in the IH Zone must be located in a Building, as that term is defined in the Uniform Building Code.”

Section 26. Section 41.035 of IDC Subchapter 41 is hereby amended, as follows:

“41.035 Yards

- A. Front Yard: No front yard shall be required for any lot or parcel in the IH zone unless the front yard either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses. A front yard that either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses shall have a minimum front yard setback of twenty (20) feet and shall conform to the buffering and screening requirements of Section 54.010.
- B. Side and Rear Yard: No side or rear yard shall be required for any lot or parcel in an IH zone unless a side or rear yard is adjoining or across the street from property used or zoned for residential uses. A side or rear yard that either abuts, or is located across an adjoining right-of-way and within 100 feet of, property used or zoned for residential uses shall have minimum side or rear yard setbacks of ten (10) feet and be bounded by a fence or sight-obscuring evergreen hedge at least six (6) feet high.”

Section 27. Section 41.040 of IDC Subchapter 41 is hereby amended, as follows:

“41.040 Parking and Access

- A. When a front setback is required under Section 41.035(A) the following standards shall apply:
 1. Parking shall be prohibited between front building line and street; and
 2. No parking area shall exceed 50% of the total frontage of the site.

- B. Access points to property from a street shall be located to minimize traffic congestion, and maximum effort shall be made to avoid directing traffic into residential areas. Existing access roads and access points shall be used to the maximum extent possible to serve the greatest number of uses. All access roads and driveways shall be surfaced with asphaltic concrete or similar permanent surfacing.”

Section 28. Amend Section 42.010 of IDC Subchapter 42 to add subsections “II” through “QQ,” as follows:

- “II. Medical Marijuana Grow Site, subject to the special use limitations in Section 42.021.
- JJ. Medical Marijuana Processing Site, subject to the special use limitations in Section 42.021.
- KK. Medical Marijuana Dispensary, subject to the special use limitations in Section 42.021.
- LL. Recreational Marijuana Producer, subject to the special use limitations in Section 42.021.
- MM. Recreational Marijuana Processor, subject to the special use limitations in Section 42.021.
- NN. Recreational Marijuana Wholesaler, subject to the special use limitations in Section 42.021.
- OO. Recreational Marijuana Retailer, subject to the special use limitations in Section 42.021.
- PP. Marijuana Research Facility, subject to the special use limitations in Section 42.021.
- QQ. Marijuana Testing Laboratory, subject to the special use limitations in Section 42.021.”

Section 29. Add the following Section 42.021 to IDC Subchapter 42:

“42.021 Special Use Limitations for Marijuana Facilities

- A. At the time a Marijuana Facility locates in the IP Zone, the Marijuana Facility may not be located:
- 1. Within 1,000 Feet of an Elementary or Secondary School; or
 - 2. Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, Public Athletic Field, or residentially zoned real property.

- B. A Marijuana Facility must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.
- C. A Marijuana Facility may not include a Drive-Through Facility.
- D. A Marijuana Facility located in the IP Zone must be located in a Building, as that term is defined in the Uniform Building Code.
- E. A Medical Marijuana Dispensary must have a total floor area of less than 10,000 square feet.
- F. A Recreational Marijuana Retailer must have a total floor area of less than 10,000 square feet and must be located on the same tax lot as a Recreational Marijuana Producer or a Recreational Marijuana Processor.”

Section 30. Section 53.015 of IDC Subchapter 53 is amended to add subsections “I” and “J,” as follows:

- “I. Medical Marijuana Grow Site, subject to the special use limitations described in Section 53.021.
- J. Recreational Marijuana Producer, subject to the special use limitations described in Section 53.021.”

Section 31. Add the following Section 53.021 to IDC Subchapter 53:

“53.021 Special Use Limitations for Marijuana Facilities

- A. At the time a Medical Marijuana Grow Site or a Recreational Marijuana Producer locates in the AG Zone, the Medical Marijuana Grow Site or Recreational Marijuana Producer may not be located:
 - 1. Within 1,000 Feet of an Elementary or Secondary School; or
 Within 250 Feet of a Public Library, Public Park, Public Playground, Public Recreational Facility, or Public Athletic Field.
- B. A Medical Marijuana Grow Site or a Recreational Marijuana Producer must possess a valid business registration in accordance with Chapter 8 of the Independence Municipal Code, Article XII, Marijuana Facilities.
- C. A Medical Marijuana Grow Site or a Recreational Marijuana Producer may not include a Drive-Through Facility.”

Section 32. Section 53.025 of IDC Subchapter 53 is hereby amended, as follows:

“53.025 Standards for Conditional Uses

An application for a conditional use in the Agricultural Zone shall be approved only if the conditional use is approved pursuant to Subchapter 71 of this Independence Zoning Ordinance and the following conditions are found to exist:

- A. The proposed use is consistent with the purpose of the Agriculture Zone as stated in this chapter.
- B. The proposed use shall not interfere with adjacent farm uses.
- C. The proposed use is consistent with the applicable overlay zones.”

Section 33. Any provision of this Ordinance which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect.

Section 34. This ordinance shall take effect on the 30th day after its adoption by the Council and signature by the Mayor.

First Reading to the Council this 23rd day of May, 2017
Second Reading to the Council this 23rd day of May, 2017
Adopted this 23rd day of May, 2017
Signed by the Mayor this 23rd day of May, 2017

JOHN McARDLE, MAYOR

ATTEST:

Karin Johnson, MMC, City Recorder