

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IONE, CALIFORNIA,
IMPOSING AN EXPRESS BAN ON COMMERCIAL MARIJUANA CULTIVATION,
MARIJUANA PROCESSING, MARIJUANA DELIVERY, AND MARIJUANA
DISPENSARIES WITHIN THE CITY**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"), referred to herein as the "CUA";

WHEREAS, the stated intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical purposes under state law, once a physician has deemed the use beneficial to a patient's health;

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code;

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction;

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, holding that cities have the authority to ban medical marijuana land uses;

WHEREAS, under the Federal Controlled Substances Act, codified as 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution, without regard to a claimed medical need;

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("MMRSA" or "Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, On June 27, 2017, Governor Jerry Brown signed SB 94, reconciling MMRSA and Proposition 64, also known as the Control, Regulate and Tax the Adult Use of Marijuana Act (or "AUMA"); SB 94 also clarified licensing and local government control;

WHEREAS, the Act became effective January 1, 2016, and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that allow local governments to enact ordinances expressing their intentions, including the following:

1. Allows local governments to prohibit the cultivation of marijuana, and to not administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provides that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provides that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
4. Authorizes a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries, to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a));

WHEREAS, several California cities and counties have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors;

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City of Ione;

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the building and its occupants;

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime;

WHEREAS, based on the experiences of other counties and cities, these negative effects on the public health, safety, and welfare are likely to occur, and to continue to occur, in the City of Ione as the result of the establishment and operation of marijuana cultivation, processing and/or distribution activities;

WHEREAS, prior to the effective date of this ordinance, the cultivation, processing and distribution of medical marijuana is prohibited in the City of Ione to the extent such activities are prohibited by the Federal Controlled Substances Act or other law;

WHEREAS, based on the findings above, the potential establishment of the cultivation, processing and/or distribution of medical marijuana in the City of Ione, without an express ban on such activities, poses a current and immediate threat to the public health, safety, and welfare of the residents of the City of Ione, due to the negative impacts of such activities as described above;

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, it is in the interests of the City of Ione, its residents, and its lawfully permitted businesses, that this ordinance be adopted, to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, and/or dispensary activities, as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where preempted by federal or state law from enacting such a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity.

NOW, THEREFORE, BE IT ORDAINED that the Council of the City of Ione, State of California, does hereby approve said ORDINANCE OF THE CITY OF IONE, STATE OF CALIFORNIA: AN ORDINANCE IMPOSING AN EXPRESS BAN ON COMMERCIAL MARIJUANA CULTIVATION, MARIJUANA PROCESSING AND MARIJUANA DISPENSARIES WITHIN THE CITY.

Section 1. The City of Ione hereby finds that the above recitals are true and correct, and are incorporated into the substantive portion of this ordinance. Therefore Chapter 17.29 is repealed and replaced, to read as follows:

Chapter 17.29 – “Special Provisions applying to Miscellaneous Uses.”

Section 2: The Council Amends Section 17.29.010 entitled "Medical Marijuana" to the City of Ione Code to read as follows:

A. **Legislative Findings and Statement of Purpose.**

1. The City Council finds that the prohibitions on marijuana cultivation, marijuana processing and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City of Ione and its community. The prohibition of such activities is within the authority of the City of Ione under State law.

On October 9, 2015, the Governor signed the "Medical Marijuana Regulation and Safety Act" ("MMRSA" or "Act") into law. The Act became effective January 1, 2016.

3. On June 27, 2017, Governor Jerry Brown signed SB 94, clarifying and reconciling AUMA and MMRSA, including the local controls.
4. Local governments are allowed to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program, pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4)).
5. The Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a)).
6. The Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)).
7. Local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries, must enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).
8. The City Council finds and enacts this chapter for the following purpose:
 - a. To prohibit the cultivation of marijuana in the City of Ione, and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City;
 - b. To exercise its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter;

- c. To exercise its police power to enact and enforce regulations for the public benefit, safety, and welfare of the community;
- d. To expressly prohibit the cultivation, sale, delivery, and/or dispensing of commercial medical marijuana in the City; and
- e. To place restrictions on the personal cultivation of marijuana.

B. Definitions.

For purposes of this chapter, the following definitions shall apply:

1. "Marijuana" means 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 marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
2. "Commercial Cannabis Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical or recreational use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Cannabis Regulation and Safety Act (MCRSA) (AUMA) Adult Use of Marijuana for use by medical cannabis patients or recreational users in California pursuant to (MMRSA) (AUMA) or (MAUCRSA) Medicinal and adult-use Cannabis Regulation and Safety Act, found at Section 11362.5 of the Health and Safety Code.
3. "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.
4. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative

or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

5. "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
6. "Private Residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

C. **Prohibited Activities.**

Commercial Marijuana cultivation, marijuana processing and marijuana dispensaries shall be prohibited activities, except where preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City of Ione and no person shall otherwise establish or conduct such activities in the City of Ione, except where the preempted by federal or state law.

D. **Cultivation for Personal Use.**

- a. Personal use marijuana cultivation shall comply with all state laws and is subject to the provisions contained within this chapter.
- b. Cultivation of marijuana is prohibited outdoors within the City of Ione.
- c. No person under the age of 21 shall possess, plant, cultivate, harvest, dry, or process cannabis plants.
- d. Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.
- e. Cultivation areas, including but not limited to residential and accessory structures, shall comply with the following requirements:

1. Marijuana Cultivation shall not adversely affect the health, safety, or general welfare of persons at the Cultivation site or at any nearby residence by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of hazardous materials, processes, products or wastes, or by any other way. The Cultivation of Marijuana shall not subject residents of neighboring parcels who are of normal, sensitivity to reasonably objectionable odors.
2. All new structures used or intended for use in Indoor Cultivation shall submit complete construction plans for review to the Building Department, obtain building permits, and obtain required building inspections and a final certificate of occupancy prior to the start of any Indoor Cultivation activities.
3. All electrical, mechanical, and plumbing used for Cultivation of Marijuana shall be installed with valid electrical, mechanical, and plumbing permits issued and inspected by the City of Ione Building Department, which building permits shall only be issued to the legal owner of the Parcel.
4. Living plants and any cannabis produced by the plants in excess of 28.5 grams kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), shall be stored in a locked space, and not visible by normal unaided vision from a public place.
5. All structures used for Cultivation of Marijuana shall contain adequate ventilation, air filtration and odor control filters to prevent odor, mold and mildew in any area used for Cultivation or which is used as, designed or intended for human occupancy, or on adjacent Parcel. Indoor grow lights shall not exceed one thousand two hundred watts (1200W) and shall comply with the California Building, Electrical and any applicable Fire Codes. Gas products (including, without limitation, CO₂, butane, propane and natural gas), or generators shall not be used within any structure used for Indoor Cultivation. Grow light systems associated with Cultivation shall be shielded to confine light and glare to the interior of the structure and shall conform to all applicable building and electrical codes. Lights used indoors shall not interfere with the use of any radio or other communication devices.
6. Any lights used for the Cultivation of Marijuana shall be shielded or otherwise positioned in a manner that will not shine light outside of the structure in which the Cultivation occurs and shall comply with the requirements of the Ione City Code and provisions of State law.
7. The Cultivation of Marijuana shall not exceed the noise level standards as set forth in City code.
8. If the person(s) Cultivating Marijuana on any Legal Parcel is/are not the legal owner(s) of the Parcel, the person(s) who is/are Cultivating Marijuana on such Parcel shall, (a) give written notice to the legal owner(s) of the Parcel prior to commencing Cultivation of Marijuana on such Parcel, and (b) shall obtain a signed and notarized letter from the legal owner(s) consenting to the Cultivation of Marijuana on the Parcel. The person(s) Cultivating Marijuana shall obtain this written letter of consent from the legal owner prior

to Cultivating Marijuana on the Parcel and at least annually thereafter. A copy of the most current letter of consent shall be displayed immediate area in such a manner as to allow law enforcement officers to easily see the letter of consent without having to enter any building of any type. The person(s) Cultivating Marijuana shall maintain the original letter of consent on the Parcel at which Marijuana is being cultivated and shall provide the original letter to the Enforcement Officer for review and copying upon request. The Chief of Police may prescribe forms for such letters.

9. The use of Hazardous Materials for and/or in association with the Cultivation of Marijuana, except for limited quantities of Hazardous Materials that are below State of California threshold, is prohibited. Any Hazardous Materials stored shall maintain a minimum setback distance of one hundred (100) feet from any private drinking water well, spring, water canal, creek or other surface water body, and two hundred (200) feet from any public water supply well or source. The production of any Hazardous Waste as part of the Cultivation process shall be prohibited.
10. All Parcel used for the Cultivation of Marijuana shall have a legal and permitted water source on the Parcel and shall not engage in unlawful or unpermitted diversion or drawing of surface water or permit illegal discharges of water from the Parcel.
11. New Structures used for the Cultivation of Marijuana shall meet all of the following criteria:
 - a. The structure, regardless of size, shall be legally constructed in accordance with all applicable development permits and entitlements including, but not limited to, grading, building, structural, electrical, mechanical and plumbing permits approved by applicable federal, state and local authorities prior to the commencement of any Cultivation activity. The conversion of any existing structure, or portion thereof, for Cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable federal, state and local authorities prior to commencement of any Cultivation activity.
 - b. The structure shall not be built or placed within any setback as required by the City Code or approved development permit or entitlement.
 - c. The structure shall be equipped with permanently installed and permitted electricity, and shall not be served by temporary extension cords. Electrical wiring conductors shall be sized based on the current California Electrical Code with anticipated loads identified.
 - d. The structure shall be equipped with a permanently installed and permitted odor control filtration and ventilation system adequate to prevent any odor, humidity, or mold problem within the structure, on the Parcel, or on adjacent Parcels.
 - e. If the structure is a greenhouse, the panels shall be of glass or polycarbonate and should be opaque for security and visual screening purposes. Where the greenhouse panels are not obscure, the greenhouse shall be screened from view by a solid Fence.

12. Nothing herein shall limit the ability of the Chief Building Official or designee, Fire Marshall or designee, or any other state or local employees or agents from entering the property to conduct the inspections authorized by or necessary to ensure compliance with this Chapter, or the ability of the Chief of Police to make initial inspections or independent compliance checks. The Chief of Police is authorized to determine the number and timing of inspections that may be required.
13. Marijuana Cultivated in violation of this section shall be subject to administrative penalties, fines and cost of enforcement set out in Chapter 1.10 of Ione City Code.
14. Enforcement of this code shall require an inspection warrant issued by the Amador Superior Court to enter upon private property if the cultivation site is not in plain view from a legal vantage point by enforcement officer. Fourth amendment protections shall not be abridged by enforcement officers and warrants will be obtained where required.

D. **Public Nuisance.**

Any violation of this chapter is hereby declared to be a public nuisance.

E. **Violations.**

Any violation of this chapter shall be punishable as provided in Chapter 1.10 of this Code or any successor section thereto.

F. **Constitutionality/Severability.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 4: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City

Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 5: This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirtieth (30th) day after its passage, and prior to the expiration of fifteen (15) days from its adoption.

The city clerk shall cause this Ordinance to be published as required by law in a newspaper of general circulation in the City of Ione.

INTRODUCED at a regular meeting of the City Council of the City of Ione on the _____ day of December, 2017; and

PASSED AND ADOPTED this _____ day of December, 2017 by the following roll call vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

 DOMINIC ATLAN, MAYOR
 CITY OF IONE

ATTEST:

 Janice Traverso, City Clerk

APPROVED AS TO FORM:

 David A. Prentice, City Attorney