

ORDINANCE NO. 2514

**AN ORDINANCE REPEALING SECTION 40.26.275, AMENDING SECTIONS
40.26B.030 AND 40.01.010, AND ADDING SECTION 40.26B.080 TO
THE DAVIS MUNICIPAL CODE RELATED TO ZONING OF
COMMERCIAL CANNABIS RETAILERS**

WHEREAS, the City Council of the City of Davis adopted Urgency Ordinance No. 2488 to establish an interim moratorium in all zoning districts on the establishment, creation or expansion of any and all marijuana uses and all marijuana cultivation; and

WHEREAS, the City Council, by Ordinance No. 2492 extended the moratorium until July 4, 2017 so as to allow City staff to conduct public outreach and develop recommendations regarding commercial marijuana businesses and appropriate regulations; and

WHEREAS, the City Council, by Ordinance No. 2497, amended the City's Zoning Code regarding indoor personal cultivation of marijuana in light of the Adult Use of Marijuana Act ("AUMA"), approved and enacted by the voters at the November 8, 2016 General Election, and to authorize certain limited outdoor personal cultivation of marijuana, and to begin using the word "cannabis" in place of "marijuana" in the Municipal Code; and

WHEREAS, the City Council, by Ordinance No. 2503, amended the City's Zoning Code to authorize certain commercial cannabis manufacturing, testing, research and distribution businesses in the City, subject to reasonable zoning regulations that are consistent with existing zoning practices in the City, so that cannabis manufacturing, testing, research and distribution activities occur in zones which already allow for such uses consistent with existing performance standards and levels of planning review; and

WHEREAS, Senate Bill 94 ("SB 94"), a bill tied to the State budget and signed by the Governor on June 27, 2017 to take effect immediately, repealed the Medical Cannabis Regulation and Safety Act, which provided state licensing for medical cannabis commercial businesses, and amended AUMA to consolidate and streamline the state licensing scheme applicable to both medical and non-medical commercial cannabis activity, including authorized retailers; and

WHEREAS, the City Council desires to authorize and regulate certain cannabis retail stores, subject to reasonable land use and zoning regulations that mitigate potential adverse impacts associated with commercial retail sales of cannabis; and

WHEREAS, the City Council finds that that this Ordinance imposes reasonable zoning regulations on cannabis retail stores by ensuring that such uses are conditionally permitted in existing zones that currently permit similar retail and mixed uses in the City, subject to zoning standards and locational restrictions that minimize access by minors and potential neighborhood impacts; and

WHEREAS, this Ordinance further imposes the same or greater performance standards and levels of planning review on cannabis retail stores as similar retail uses in the same or similar

zoning districts, and therefore ensures that such uses remain consistent with existing performance standards and levels of planning review in existing zoning districts; and

WHEREAS, this Ordinance further appropriately and adequately mitigates and minimizes potential adverse impacts related to traffic, safety and offensive odors associated with cannabis retail sales by limiting the total numbers and available locations of such uses, imposing reasonable zoning regulations and standards on such uses, and requiring separate business permitting and licensing to further ensure compliance with operational standards; and

WHEREAS, Business and Professions Code section 26055, subdivision (h), as amended by SB 94, provides that the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity, so long as the discretionary review includes any applicable environmental review pursuant to CEQA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are hereby incorporated as though set forth in this section.

SECTION 2. Findings.

Pursuant to Article 40.36 of the Davis Municipal Code, the City Council hereby makes the following findings in support of this Ordinance:

- a. A proposed ordinance amending the zoning code regarding commercial cannabis retail stores was brought before a duly noticed public meeting of the Planning Commission on July 23, 2017. The Planning Commission recommended unanimous (5-0) approval.
- b. The City Council hereby finds, pursuant to Davis Municipal Code section 40.36.070 and based on Planning Commission recommendation, that this Ordinance is in general conformance with the City General Plan. The City Council further finds that the public necessity, convenience and general welfare require the adoption of this Ordinance in order to balance the interests of the City in maintaining and developing certain cannabis-related activities in the City with the public health and safety concerns associated with certain commercial cannabis businesses.
- c. The City Council finds that adoption of this Ordinance preserves and clarifies the City’s intended zoning regulations regarding cannabis uses, and is therefore also intended to retain and maintain local land use authority over those uses in light of State law and State licensing of commercial cannabis uses.

SECTION 3. Repeal.

Section 40.26.275 of the Davis Municipal Code is hereby repealed in its entirety.

SECTION 4. Amendment.

Section 40.01.010 of the Davis Municipal Code is hereby amended to remove the defined terms “Marijuana,” “Marijuana cultivation,” and “Medical marijuana dispensary” in their entirety.

SECTION 5. Amendment.

Section 40.26B.030 of the Davis Municipal Code is hereby amended to add the following definitions, to be added in appropriate alphabetical order to existing defined terms, as follows:

“Cannabis retailer” means a premises permanently located in the City licensed by the state of California pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000 et seq., as may be amended, where cannabis is provided for retail sale, including an establishment that delivers cannabis as part of a retail sale. Unless otherwise specified, “Cannabis retailer” means both a retailer selling medical cannabis and medical cannabis products to patients with valid physician’s recommendations, and a retailer providing adult-use cannabis and cannabis products for adults 21 years of age and over.

“Medical cannabis” means cannabis used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code section 11362.5 et seq.) and the Medical Cannabis Program Act (California Health and Safety Code sections 11362.7 et seq.), as they may be amended from time to time.

SECTION 6. Amendment.

Section 40.26B.080 is hereby added to Article 40.26B of Chapter 40 of the Davis Municipal Code to read in full as follows:

40.26B.080 Cannabis Retailers.

(a) Cannabis retailers are prohibited in the following zoning districts:

- 1) Residential One-Family (R-1)
- 2) Residential One- and Two-Family (R-2)
- 3) Residential One- and Two-Family Conservation (R2-CD)
- 4) Residential Restricted (R-R)
- 5) Residential One- and Two-Family and Mobile Home (R-2-MH)
- 6) Residential Garden Apartment (R-3)
- 7) Residential High Density Apartment (R-HD)
- 8) All Planned Development districts with residential uses of a similar nature.

(b) In addition to those zoning districts identified in subsection (a), cannabis retailers that will not be open to the public and that perform sales exclusively by delivery are prohibited in the following zoning districts:

- 1) Central Commercial (C-C) District
- 2) Community Retail (C-R) District
- 3) All Planned Development districts of a similar nature.

(c) Cannabis retailers may be permitted in the City, subject to the granting of a Conditional Use Permit and the following zoning standards and locational restrictions:

- 1) Cannabis retailers shall not locate or establish within 600 feet, measured from the nearest property lines of each affected parcel, of any public park or any school providing K-12 education, unless the City Council finds that the proposed site will not pose a threat to the public health, safety and welfare of the surrounding properties and any minors that may be present at a public park or school located within 600 feet of the proposed site. For purposes of this section, "public park" shall not include the following: Toad Hollow Dog Park located at 1919 Second Street, bicycle paths and greenbelts.
 - 2) Cannabis retailers shall be limited to a total of no more than 4 in the City for the first 18 months following the effective date of this section. Thereafter, the City Council may, in its sole discretion, determine that additional use permit applications may be accepted for cannabis retailers to establish in the City. Cannabis retailers that will not be open to the public and that perform sales exclusively by delivery shall not be counted for purposes of this section.
- (d) The Community Development and Sustainability Director or his or her designee is authorized to administer reasonable guidelines and policies, including appropriate application periods for accepting requests for zoning approvals and use permits for cannabis retailers, consistent with this section.
- (e) The Planning Commission shall review all cannabis retailer conditional use permits and provide a recommendation regarding approval to City Council. The City Council shall serve as the final review authority for all cannabis retailer conditional use permits, and is authorized to approve or deny cannabis retailer conditional use permits. In exercising its discretion, the City Council shall consider the following factors:
- 1) The type of proposed use by the applicant; and
 - 2) Whether the proposed use will be detrimental to the health, safety and welfare of the community; and
 - 3) Whether the use would enhance the economic viability of the area in which it is proposed to be located; and
 - 4) Whether the applicant has adequately addressed potential community benefits of the use to offset potential adverse impacts; and
 - 5) The extent of support or opposition to the proposed use and location from members of the community; and
 - 6) The number of cannabis retailers located within 1,000 feet of the proposed location; and
 - 7) The extent to which the proposed use would cause a further overconcentration of that particular type of premises in the area; and
 - 8) The background and the history of the applicant, including the nature and extent of problems on any premises where he or she has operated a cannabis business in the past; and
 - 9) Whether there is a history of police or crime-related problems in the area of the proposed location; and
 - 10) Whether the proposed license would enhance recreational or entertainment opportunities in the area.

11) Without limiting any of the other requirements or considerations for the issuance of a conditional use permit, any cannabis retailer use proposed to be located within a Mixed-Use (M-U) Zoning District shall demonstrate, and the Planning Commission and City Council shall consider in determining whether to grant a conditional use permit, whether the proposed site and use is compatible with surrounding properties and uses, with a particular emphasis on compatibility with residential uses that are proximate to the proposed cannabis retailer use.

(f) The Community Development and Sustainability Director or City Council may address additional development and operational standards through conditions on the conditional use permit as it determines necessary or appropriate for the cannabis retailer conditional use permit under consideration, provided that any such conditions shall not conflict with operating requirements that may be applicable pursuant to other provisions of this Code.

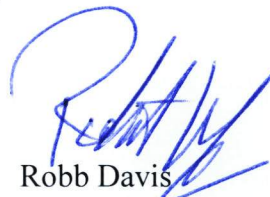
SECTION 7. CEQA. This Ordinance merely imposes reasonable zoning regulations on cannabis retailers to ensure that such uses are conditionally permitted in existing zones, subject to zoning standards and locational restrictions that minimize potential neighborhood impacts and access by minors. Accordingly, this Ordinance will not result in any significant changes to the environment within the meaning of Section 15061(b)(3) of Title 14 of the California Code of Regulations. Additionally, cannabis retailers authorized by this Ordinance are subject to the granting of a conditional use permit, which requires discretionary review subject to future CEQA review. As such, this Ordinance is additionally exempt from CEQA review pursuant to Business and Professions Code Section 26055(h).

SECTION 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.


INTRODUCED on the 29th day of August, 2017, and PASSED AND ADOPTED by the City Council of the City of Davis on this 12th day of September, 2017, by the following vote: \

AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None


Robb Davis
Mayor

ATTEST:


Zoe S. Mirabile, CMC
City Clerk