

ORDINANCE NO. 2503

AN ORDINANCE ADDING ARTICLE 40.26B TO CHAPTER 40 OF THE CITY OF DAVIS MUNICIPAL CODE RELATED TO ZONING OF COMMERCIAL CANNABIS MANUFACTURING, TESTING, RESEARCH, AND DISTRIBUTION BUSINESSES IN THE CITY, AND AMENDING SECTIONS 40.30A.030, 40.30A.070 AND 40.30A.080 TO MAKE CLARIFYING EDITS TO THE EXISTING ADMINISTRATIVE USE PERMIT FINDINGS

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, 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 has determined that reasonable regulations regarding the establishment of commercial cannabis manufacturing, testing, research and distribution businesses in the City, as defined in this Ordinance and consistent with State law, balances the City's interests in certain commercial and research-related activities with the public health and safety concerns of the City; and

WHEREAS, the City Council finds that this Ordinance imposes reasonable zoning regulations on cannabis manufacturing, testing, research and distribution uses 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, City staff therefore finds that this Ordinance will not result in any significant changes to the character or use of the properties in the City and therefore is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis, and further is categorically exempt to the extent it authorizes only minor alterations to the use of existing facilities and public and private structures already zoned for such uses pursuant to existing zoning regulations; and

WHEREAS, it is the City Council's intent that the moratorium on all other commercial cannabis uses, as set forth in Ordinances Nos. 2488 and 2492, not addressed by this Ordinance, shall stay in effect unless or until amended by future action of the City Council; and

WHEREAS, the City Council further finds that certain clarifying edits to the existing procedure for granting administrative use permits, currently only authorized for accessory dwelling units, is necessary to ensure that the findings for an administrative use permit approval are also applicable to certain commercial cannabis uses that will require an administrative use permit, and to further clarify that only uses specifically authorized to establish subject to an administrative use permit shall be granted such a permit.

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 manufacturing, testing, and research businesses was brought before a duly noticed public meeting of the Planning Commission on May 10, 2017. The Planning Commission unanimously (6-0) recommended the City Council adopt the proposed ordinance and zoning code amendments subject to comments that have been incorporated herein..
- 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 manufacturing and research-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. Amendment. Section 40.30A.030 of the Davis Municipal Code is hereby amended to read in full as follows:

Prior to taking action on an administrative approval, the community development and sustainability department shall provide notice through a mailing to all tenants and owners of real property as shown on current property tax rolls within a minimum of five hundred feet of the subject property. At the discretion of the department, based on public interest in the project, the scope of notice, including property owner radius, may be expanded.

SECTION 4. Amendment. Section 40.30A.070 of the Davis Municipal Code is hereby amended to read in full as follows:

An administrative use permit approval shall be approved, conditionally approved, or denied by the community development and sustainability director (or the planning commission or city council if subject to an appeal) pursuant to the requirements of Article 40.39, Administrative Approvals, of this chapter. An administrative use permit shall only be

granted for uses that the Zoning Code expressly provides may be authorized upon the approval of an administrative use permit, for example accessory dwelling units and certain cannabis-related uses. Such application may be approved only if the following findings are made:

- (a) Conforms to General Plan. The proposed structure or use conforms to the requirements and intent of this chapter and the General Plan.
- (b) Conditions and requirements will be met. Any additional conditions and requirements stipulated by the community development and sustainability director (or the planning commission or city council if subject to an appeal) have been or will be met.
- (c) Not detrimental to public welfare. That such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community.
- (d) Compatible relationship with adjacent properties. That the location and design of the structure or use maintains a compatible relationship with adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.
- (e) An application for an accessory dwelling unit may be approved only if the following additional findings are made:
 - 1) Measures to protect privacy. The accessory dwelling unit limits major access stairs, entry doors, decks and major windows facing adjacent single-family residences. Windows that impact the privacy of neighboring interior side or rear yards are minimized. Fencing or landscaping has been effectively provided to protect the privacy by screening.
 - 2) Open space and landscaping. Adequate open space and landscaping are provided to be useful for both the primary dwelling and the accessory dwelling unit.

SECTION 5. Amendment. Section 40.30A.080 of the Davis Municipal Code is hereby amended to read in full as follows:

When an administrative use permit has not been used within eighteen months after the date of granting thereof, the permit shall be null and void. Such expiration date may be extended by the community development and sustainability director for one or more periods not exceeding a total of eighteen months upon a showing that circumstances and conditions upon which the administrative use permit was approved have not changed. Any such extension by the community development and sustainability director shall be processed in accordance with the requirements of Article 40.39 regarding administrative approvals.

Where a conditional use subject to an administrative use permit has abandoned the site or has ceased activity for a period of six months, the approved administrative use permit shall become null and void. Under these circumstances, a new application for an administrative use permit must be processed pursuant to the provisions of this Article for any uses designated by the Zoning Code as subject to an administrative use permit.

SECTION 6. Amendment. Article 40.26B is hereby added to Chapter 40 of the Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 7. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 8. CEQA. The City Council hereby finds that the zoning regulations contained in this Ordinance are consistent with existing zoning standards that apply to other similar manufacturing, research and development, and distribution uses in the City. Manufacturing, research and development, and distribution uses are currently already permitted or conditionally permitted in designated zoning districts in the City subject to, among other things, performance standards contained in Article 40.24 (Performance Standards) of the City of Davis Municipal Code. This Ordinance imposes the same or more stringent zoning requirements on similar cannabis-related uses. As a result, the amendments contained in this Ordinance do not allow or permit new uses or more intensive uses than those already established in existing zoning districts in the City. Accordingly, City staff has determined that this Ordinance will not result in any significant changes to the character or use of the properties in the City and will not result in a significant change in the environment. As such, the City Council finds that this Ordinance is not a project subject to California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, to the extent this Ordinance authorizes any minor alterations to existing public or private structures and facilities, such structures and facilities are already established for manufacturing, research and development and distribution uses and this Ordinance does not authorize expansion of those uses. Accordingly, this Ordinance is also categorically exempt from CEQA review pursuant to Section 15301 of Title 14 of the California Code of Regulations.

SECTION 9. 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 23rd day of May, 2017, and PASSED AND ADOPTED by the City Council of the City of Davis on this 6th day of June, 2017, by the following vote:

AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None

Robb Davis
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A
ARTICLE 40.26B – COMMERCIAL CANNABIS BUSINESSES

- 40.26B.010 – Purpose**
- 40.26B.020 – Applicability**
- 40.26B.030 – Definitions**
- 40.26B.040 – General Conditions**
- 40.26B.050 – Cannabis Manufacturing**
- 40.26B.060 – Cannabis Laboratories and Research**
- 40.26B.070 – Cannabis Distribution Facilities**

40.26B.010 Purpose.

The purpose of this Article is to impose zoning restrictions on various commercial cannabis businesses authorized and/or licensed by the State of California pursuant to State law. This section is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding cannabis businesses that may operate in the City pursuant to this Code and State law. This Article is in addition to any other business license and regulatory requirements imposed on cannabis businesses by this Code or other applicable State law.

40.26B.020 Applicability.

No part of this section shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. Nothing in this section shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. No provision of this section shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney’s office, the Attorney General of the State of California or the United States of America.

40.26B.030 Definitions.

The following words and phrases shall have the following meanings when used in this section:

“Cannabis” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including cannabis products derived therefrom. For purposes of this Article, “cannabis” shall mean and include both cannabis for medical purposes and non-medical cannabis, unless otherwise specified. Cannabis shall not include industrial hemp.

“Cannabis business” means a business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, distributing, researching, testing, providing, or selling wholesale and/or retail sales of cannabis. A cannabis business includes any facility, building, structure or location, expressly including dispensaries and deliveries, and shall expressly include those commercial cannabis activities authorized and/or licensed by State law.

“Cannabis manufacturing” means the compounding, blending, extracting, infusing, or otherwise making or preparing a cannabis product. For purposes of this Article, cannabis manufacturing expressly includes the production, preparation, propagation, processing or compounding of cannabis or cannabis products directly or indirectly, including through extraction and/or chemical synthesis methods. Cannabis manufacturing may include distribution of wholesale products from the premises, but shall not include any retail sales of cannabis or cannabis products or other sales to consumers.

“Cannabis laboratories and research” means a laboratory, facility, or entity that offers or performs tests or testing of cannabis or cannabis products. It includes start-up or incubator research activities, which typically include but are not limited to research, design, analysis, development and/or testing of a cannabis product, and laboratories or facilities engaged in scientific research studies, investigation, testing or experimentation, but not including cannabis manufacturing or sales of cannabis.

“Cannabis distribution facility” means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis or cannabis products between State-licensed cannabis businesses, including warehouses and similar structures.

40.26B.040 General Conditions.

- (a) Cannabis businesses are prohibited from operating in all zoning districts in the City except as expressly permitted by and in conformance with the provisions of this Article.
- (b) All cannabis businesses permitted by this Article must, prior to establishing and operating any such cannabis business, obtain and maintain at all times a valid license issued by the State, as may be applicable, and any other local or regulatory licenses required by this Code. A cannabis business subject to State licensing under the Medical Cannabis Regulation and Safety Act, California Business and Professions Code section 19300 et seq., that is operating in compliance with this Article and other state and local requirements on or before January 1, 2018, may continue its operations after January 1, 2018 provided that it timely applies for and its application for licensure is approved by the State, subject to the requirements of California Business and Professions Code section 19321(b), as may be amended. If a cannabis business operating in the city on or before January 1, 2018 fails to timely apply for a license by the deadline established by the applicable State licensing authority, or its application for licensure is denied, the cannabis business shall cease all operations of the cannabis business until a valid State license is obtained, in addition to any other State and local requirements that may apply.
- (c) Pursuant to California Business and Professions Code section 26054(b), as may be amended, the City finds that no additional setback or radius is necessary for the establishment of a cannabis business pursuant to this Article, beyond the zoning regulations contained herein.
- (d) No cannabis business may engage in retail sales of cannabis unless expressly permitted or conditionally permitted by this Article.

40.26B.050 Cannabis Manufacturing.

- (a) Cannabis manufacturing that does not involve hazardous materials as defined in section 40.01.010 may be permitted, subject to the requirements of this section and the granting of an Administrative Use Permit as provided in Article 40.30A, in the following zones:
 - 1) Commercial Service (C-S)
 - 2) Industrial Administration & Research (I-R)
 - 3) Industrial (I)

- 4) Planned Developments permitting or conditionally permitting similar manufacturing uses.

(b) Cannabis manufacturing involving hazardous materials as defined in section 40.01.010 may be permitted subject to a Conditional Use Permit and the Performance Standards set forth in Article 40.24, in the following zones:

- 1) Industrial Administration & Research (I-R)
- 2) Industrial (I)
- 3) Planned Developments permitting or conditionally permitting similar manufacturing uses.

(c) Cannabis manufacturing may include distribution of wholesale products from the premises for the purpose of resale, but shall not include any retail sales or other sales directly to consumers.

40.26B.060 Cannabis Laboratories and Research.

(a) Cannabis laboratories and research facilities that do not involve hazardous materials as defined in section 40.01.010, and which do not contain or conduct any cultivation of cannabis onsite, are principally permitted uses in the following districts:

- 1) Commercial Service (C-S)
- 2) Industrial Administration & Research (I-R)
- 3) Industrial (I)
- 4) Planned Developments permitting or conditionally permitting similar testing and research laboratory facilities.

(b) Cannabis laboratories and research facilities that include limited cultivation of cannabis onsite for research and testing purposes may be permitted in the same districts specified in subsection (a), subject to the following conditions:

- 1) An Administrative Use Permit granted pursuant to Article 40.30A is required for any onsite cultivation that will total a cumulative floor area of 600 square feet or less, provided that the cultivation shall be conducted wholly within a completely enclosed building.
- 2) A Conditional Use Permit is required for any onsite cultivation that will occur outdoors or that will exceed a cumulative floor area of 600 square feet.
- 3) The cultivation must be used strictly for purposes of cannabis research, and may not be used to conduct cannabis manufacturing or sales of cannabis.

(c) Cannabis laboratories and research facilities involving hazardous materials as defined in section 40.01.010 may be permitted in the same districts specified in subsection (a), subject to the granting of a Conditional Use Permit and the Performance Standards set forth in Article 40.24.

40.26B.070 Cannabis Distribution Facilities.

(a) Cannabis distribution facilities may be permitted, subject to the requirements of this section and the granting of a Conditional Use Permit, in the following zones:

- 1) Industrial Administration & Research (I-R)
- 2) Industrial (I)
- 3) Planned Developments permitting or conditionally permitted manufacturing uses.