

ORDINANCE NO. 2018-03R

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ARTICLE 57 OF THE ESCONDIDO ZONING CODE; AND AMENDING ARTICLE 11, CHAPTER 17 OF THE ESCONDIDO MUNICIPAL CODE TO ADDRESS CHANGES IN STATE LAW REGARDING CANNABIS

WHEREAS, the City Council of the City Escondido desires to amend Article 57 of the Escondido Zoning Code and Chapter 17 of the Escondido Municipal Code to provide protection for the public health, safety, and welfare by adopting regulations regarding the use of cannabis within the City; and

WHEREAS, the City Council finds proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue; and

WHEREAS, the City Council has duly reviewed and considered all evidence submitted at said hearings; and

WHEREAS, the City Council has reviewed and considered the Notice of Exemption prepared for this project, in conformance with the California Environmental Quality Act ("CEQA") Section 15061(b)(3) "General Rule," and has determined that all environmental issues have been addressed and finds that no significant environmental impact will result from approving the Zoning Code Amendment and Municipal Code Amendment; and

WHEREAS, upon consideration of the staff report; Planning Commission recommendation; Findings of Fact/Factors to be Considered, attached as Exhibit "A" to this Ordinance and incorporated herein by this reference as though fully set forth herein, and all public testimony presented at the hearing held on this project, this City Council

finds the proposed Zoning Code Amendment and Municipal Code Amendment are consistent with the General Plan and do not affect any specific plans of the City of Escondido.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. RECITALS. That the City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2. That Article 11, Chapter 17 of the Escondido Municipal Code is repealed and replaced as follows:

ARTICLE 11. POLICE SERVICES AT PARTIES INVOLVING THE CONSUMPTION OF ALCOHOLIC BEVERAGES, CANNABIS OR CONTROLLED SUBSTANCES BY MINORS

Sec. 17-216. Purpose.

(a) Law enforcement control of Parties is necessary when such activity is reasonably determined to be a threat to the peace, health, safety or general welfare of the public.

(b) Police officers have been required to make more than one return response to a location of a Party in order to disperse uncooperative and disorderly participants, reduce noise, and eliminate public nuisances to the community. The return of police officers to a location constitutes a drain of law enforcement resources, often leaving other areas of the City without minimal levels of police protection.

(c) The unlawful consumption of Alcoholic Beverages, Cannabis and Controlled Substances by Minors is harmful to the health, safety and welfare of Minors and the entire community. Further, Cannabis is a Schedule I controlled substance under

the Controlled Substances Act, 21 U.S.C § 801 *et. seq.*, and its possession, without a valid prescription, is illegal under federal law.

(d) Imposing both criminal and financial liability on Responsible Persons permitting a Party constituting a public nuisance, including those which allow for the unlawful consumption of Alcoholic Beverages, Cannabis or Controlled Substances by Minors, constitutes a reasonable and effective means to prevent these events and protect the health, safety and welfare of the public.

Sec. 17-217. Definitions.

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

Alcoholic Beverage means a liquid as defined in California Business and Professions Code § 23004, from whatever source or by whatever process produced, including when diluted, mixed, or combined with other substances.

Cannabis means a substance as defined in California Business and Professions Code § 26001(f), either alone or when mixed or combined with any other substance.

Controlled Substances means all narcotics or drugs, the possession or use of which is illegal under the laws of the State of California as defined under the Penal Code, Health and Safety Code, and all other related statutes.

Cost of Law Enforcement Services means the salaries and benefits of police officers, fire fighters or other City personnel for the amount of time actually spent in responding to, or in remaining at, an event subject to this Article; the City administrative costs directly attributable to the event subject to this Article; the actual cost of any medical treatment provided to City personnel injured during any event subject to this Article; and the actual cost of repairing any City equipment or property damaged or lost as a result of

an event subject to this Article.

Law Enforcement Services means the dispatch to or presence at a Party subject to this Article of any number of law enforcement officials and related City personnel.

Minor means any person under twenty-one (21) years of age.

Parent or Guardian means a person who is a biological parent, adoptive parent, step-parent, foster parent or a Guardian appointed by Court Order, of a Minor.

Party means a gathering of persons who have assembled for a social purpose or event where an Alcoholic Beverage, Cannabis or Controlled Substance is furnished, consumed, sold, or possessed.

Responsible Person means (1) the person or entity, other than a public agency, who owns, rents, leases, or otherwise has control of the premises where a Party takes place; (2) the person(s) who organized or otherwise makes the premises available for the Party; or (3) a person who is the Parent or Guardian of a Minor in attendance at the Party.

Sec. 17-218. Law Enforcement Services at Parties requiring a second or subsequent response.

When a Party occurs at any location, and a law enforcement official determines that there is a threat to the public peace, health, safety or general welfare as a result of such activity, after issuance of a written warning, the Responsible Person shall be liable for the Cost of Law Enforcement Services during any subsequent response to the same Party.

Sec. 17-219. Consumption of Alcoholic Beverages by Minor.

(a) Except as permitted by state or federal law, no Minor shall consume

in any place any Alcoholic Beverage.

(b) A violation of this section shall constitute a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or by imprisonment for a period of not to exceed six (6) months, or by both fine and imprisonment.

Sec. 17-220. Serving Alcoholic Beverages, Cannabis or Controlled Substances to Minors at Parties.

(a) It is the duty of any Responsible Person to take all reasonable steps to prevent the unlawful consumption of Alcoholic Beverages, Cannabis or Controlled Substances by a Minor at a Party. Reasonable steps include, but are not limited to, controlling access to a Party where such substances are furnished; controlling access to Alcoholic Beverages, Cannabis and Controlled Substances at the location of the Party; controlling the quantity of Alcoholic Beverages, Cannabis or Controlled Substances present at the location of the Party; verifying the age of all persons in attendance at the Party by inspecting drivers' licenses or other government-issued identification cards; and supervising the activities of Minors in attendance at the Party.

(b) A Responsible Person shall not permit, allow, or host a Party where a Minor unlawfully consumes an Alcoholic Beverage, Cannabis or Controlled Substance whenever that Responsible Person knows or reasonably should have known that a Minor consumed or had access to such substances had the person taken all reasonable steps to prevent that consumption as set forth in subsection (a) of this section.

(c) Whenever a Responsible Person is present at the premises at the time the Party takes place, where a Minor unlawfully obtains, possesses, or consumes any Alcoholic Beverage, Cannabis or Controlled Substance, it shall be prima facie evidence that such person had actual knowledge or should have had the knowledge, that

the Minor obtained, possessed, or consumed such substance in violation of this Article.

(d) A violation of this section shall constitute a misdemeanor punishable by fine of one thousand dollars (\$1,000.00) or by imprisonment for a period of not to exceed six (6) months, or by both fine and imprisonment.

Sec. 17-221. Recovery of Cost of Law Enforcement Services.

(a) The recovery of the Cost of Law Enforcement Services allowed for in this Article shall be in addition to all other applicable administrative, civil or criminal fines and penalties which may be assessed against the Responsible Person pursuant to state and local law and shall include reasonable attorney fees and costs.

(b) This Article shall not limit the right of the City to seek reimbursement for the Costs of Law Enforcement Services and any other related costs, expenses or damages suffered as the result of a Party, through other legal remedies or procedures.

(c) If the Responsible Person is under eighteen (18) years of age at the time of the Party, the Parent or Guardian of that person will be jointly and severally liable to the City for the Cost of Law Enforcement Services provided for in this Article.

Sec. 17-222. Reservation of legal options.

The procedure provided for in this Article is in addition to any other statute, ordinance or law, civil or criminal. This Article in no way limits the statutory authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated herein.

Sec. 17-223. Local authority.

This Article, or any provision herein, shall not apply where prohibited or preempted by state or federal law.

Sec. 17-224. Reserved.

Sec. 17-225. Reserved.

SECTION 3. That Section 33-1117, Article 57 of the Escondido Zoning Code is repealed and replaced as follows:

Sec. 33-1117. Commercial and Medical Cannabis Uses.

(a) Definitions.

(1) For the purposes of this Article, unless the context clearly requires otherwise, the definitions found in the Medicinal and Adult Use Cannabis Regulation and Safety Act codified at California Business and Professions Code Section 26000 et seq. shall control.

(b) Uses and Activities Prohibited.

(1) All cannabis activities and uses are expressly prohibited in all zones in the City other than as provided in Section 33-1117(c). No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of cannabis related activities or uses in the City of Escondido, and no person or entity shall otherwise establish or conduct such activities in the City.

(c) Exemptions.

(1) Personal Use. Nothing in this Article shall prohibit the personal use of cannabis as specifically provided in California Health and Safety Code §11362.1 at a personal residence, provided that the activity or use is wholly contained within the residence and not visible to the public.

(2) Transportation. Nothing in this Article shall prevent a duly licensed cannabis business that is in compliance with the Medicinal and Adult Use Cannabis Regulation and Safety Act from transporting cannabis or cannabis products on public

roads through the City to another destination outside the City limits. No commercial or medical cannabis business may deliver any product to any residence, office, commercial or any other place in the City limits.

SECTION 4. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by the adoption of this Ordinance, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded within all respects as if such prior ordinance or part thereof had not been repealed or altered.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 21st day of March, 2018 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2018-03R passed at a regular meeting of the City Council of the City of Escondido held on the 21st day of March, 2018, after having been read at the regular meeting of said City Council held on the 14th day of February, 2018.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2018-03R

EXHIBIT "A"

FACTORS TO BE CONSIDERED / FINDINGS OF FACT

Zoning Code and Municipal Code Amendment(s) Determinations:

1. It has been determined that amendments to the Zoning Code and Municipal Code are warranted in order to better serve the community.

2. The public health, safety, and welfare would not be adversely affected by the proposed Zoning Code Amendment because prohibition of commercial cannabis ("marijuana") activity is necessary to prevent adverse direct and secondary effects to individuals, while at the same time the proposed Zoning Code Amendment protects individual rights to use marijuana within private residents as authorized by Proposition 64.

The public health, safety, and welfare would not be adversely affected by the proposed Municipal Code Amendment because the proposed change helps strengthen the City of Escondido "Social Host Ordinance" to include marijuana-related activities, which assigns responsibility to those who knew a party was occurring on their property.

The proposed Zoning Code and Municipal Code Amendments would also help prevent larger community-related effects associated with marijuana-related activities, such as increases in property and violent crimes, increases in marijuana-related traffic incidences, increases in youth marijuana use, preventing the blighting and degradation of neighborhoods in the vicinity of commercial marijuana activities.

3. The proposed Zoning Code and Municipal Code Amendments would be consistent with the goals and policies of the General Plan because it advances a number of health, safety, and welfare related objectives. The City of Escondido currently prohibits all commercial marijuana activity under the City's Zoning Ordinance as a non-permitted use and a non-permitted business under its licensing ordinance. The City's Zoning Code is a permissive Zoning Code, whereby only those land uses expressly contained in a list of uses authorized in a zoning classification is permitted, and all other uses are thereby prohibited. The City's Zoning Code does not expressly list marijuana-related uses or marijuana-related businesses among the permitted uses, and therefore, such uses always have been and continue to be prohibited in the City. The City has uniformly interpreted the Zoning Code as a permissive Zoning Code and has relied upon this determination to consistently prohibit marijuana-related uses or marijuana-related businesses. The City's licensing ordinance prohibits any business, operation, or use that can't be conducted or carried out without being in violation of State or Federal law. The Federal Controlled Substances Act, 21 U.S.C. Section 801 et. seq., makes it unlawful to manufacture, distribute, or possess marijuana. The proposed Zoning Code Amendment helps preserve local control over this issue and prevent the State from issuing licenses for commercial marijuana activities and marijuana businesses to operate in the City of Escondido. By not expanding allowed uses and activities to any level beyond the state-mandated uses and activities, the City maintains a position of maximum compliance with Federal law, while also meeting the State law.

4. The proposed Zoning Code amendment does not conflict with any specific plan.