

## Ordinance No. 543

### An Ordinance to Amend Chapter 230, Zoning, as it pertains to marijuana related businesses.

**WHEREAS**, the Council of The City of New Castle (“City Council”) possesses the authority to adopt, amend, modify, or repeal The City of New Castle Municipal Code (“Code”);

**WHEREAS**, the Delaware Marijuana Control Act specifically permits municipalities to prohibit or otherwise regulate the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores, through enactment of an ordinance or through an initiated or referred measure;

**WHEREAS**, the City Council finds that marijuana cultivation facilities and retail marijuana stores are not appropriate uses for any properties within the City;

**WHEREAS**, the City Council finds that marijuana product manufacturing facilities and marijuana testing facilities are appropriate as permitted uses only in Industrial-zoned properties within the City.

**NOW, THEREFORE**, making the express finding that the Proposed Changes outlined below enhance the health, safety, and welfare of the City of New Castle, the City Council of The City of New Castle hereby ordains and adopts the following Code changes and revisions:

**Section 1.** Section “230-23 Light Industrial – Office District LIO.” of the City Code is hereby amended and replaced as follows (with new language identified in bold text and changes appearing with strikethrough text):

This district is intended to provide for light industrial and office uses within the city, in a landscaped setting, with limitations as to lot coverage, setbacks, etc.

- A. The following uses are permitted as a matter of right:
- (1) Offices for professional services and administrative activities.
  - (2) Laboratory, medical or dental.
  - (3) Industrial research or testing laboratories; book or periodical publishing; manufacture of precision instruments, such as medical, dental and drafting instruments, optical goods, watches and clocks, industrial instruments. Similar uses may be permitted pursuant to

approval by the Board of Adjustment as special exceptions, according to the provisions of § 230-57B of this chapter.

**(4) Marijuana product manufacturing facilities and marijuana testing facilities. Marijuana cultivation facilities and retail marijuana stores are prohibited uses and will not be permitted.**

(45) Signs subject to § 230-37 of this chapter.

(56) Public utility rights-of-way and structures may be permitted as special exceptions in accordance with §§ 230-38 230-57B of this chapter.

[Amended 12-9-1997 by Ord. No. 379]

(67) Accessory uses and structures clearly incidental and customary to and associated with the operation of the permitted uses.

**Section 2.** Section “230-24 Industrial Office Park IOP.” of the City Code is hereby amended and replaced as follows (with new language identified in bold text and changes appearing with strikethrough text):

This district is intended to provide for industrial and office uses within the City, in a landscaped setting, together with convenient retail and personal service establishments. No area initially shall be zoned for IOP unless the proposed development has been subjected to restrictive covenants in form and content satisfactory to The Mayor and Council of the City of New Castle, which restrictive covenants shall provide for architectural review, landscaping standards, a maintenance corporation and such other covenants, conditions or restrictions as may be appropriate to insure the orderly development of the area to be zoned as IOP.

A. The following uses are permitted as a matter of right:

(1) Offices for professional services and administrative activities.

(2) Manufacturing, assembling, converting, altering, finishing, cleaning or any other processing, handling or storage of products or materials.

(3) Packaging, storage, warehousing and distribution.

(4) Research, experimental, testing, diagnostic and/or development laboratories.

(5) Manufacture and assembling of electronic equipment, appliances and mechanical instruments.

(6) Retail/personal services establishments designed primarily to provide daily service to occupants and users of the immediately surrounding area, such as drugstore, bookstore, florist shop, newspaper and periodical establishment, clothes-cleaning and pressing pickup agency, stationery store, travel agency, insurance agency, and with a gross floor area not in excess of 7,000 square feet, and provided that the same is located within a building that is intended for at least 50% of the gross floor area to be utilized for a use permitted in Subsections A(1), (3), (4) and/or (5) above.

(7) Retail food store, such as bakery, bakery-restaurant, candy store, delicatessen, but excluding the preparation of goods for resale off the premises, and with a gross floor area not in excess of 7,000 square feet, and provided that the same is located within a building that is intended for at least 50% of the gross floor area to be utilized for a use permitted in Subsection A(1), (3), (4) and/or (5) above.

(8) Restaurant, including service of alcoholic beverages, but excluding drive-in restaurant.

(9) Day-care center, kindergarten, preschool or day nursery school, which provides daytime care or instruction for children 11 years of age or under, subject to the following special requirements:

(a) At least 50 square feet of outdoor play space per child shall be provided.

(b) Outdoor play space for children shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet.

(10) Parking lot or parking garage.

(11) Blue printing, photostatting, photo processing and other business service retail establishments with a gross floor area not in excess of 7,000 square feet, and provided that the same is located within a building that is intended for at least 50% of the gross floor area to be utilized for a use permitted in Subsection A(1), (3), (4) and/or (5) above.

(12) Banks and other financial institutions.

(13) Health club, physical fitness and sports therapy center.

**(14) Marijuana product manufacturing facilities and marijuana testing facilities. Marijuana cultivation facilities and retail marijuana stores are prohibited uses and will not be permitted.**

~~(1415)~~ Accessory uses and structures clearly incidental and customary to and commonly associated with operation of any of the permitted uses.

~~(1516)~~ Ancillary (to any of the above) recreational uses, such as jogging paths, fitness trails, picnic areas and ball fields.

~~(1617)~~ Signs, subject to the provisions of § 230-37 of this chapter.

~~(1718)~~ Public utility rights-of-way and structures may be permitted as special exceptions in accordance with §§ 230-38 230-57B of this chapter.

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E. In addition to the requirements of Subsection C above, all development in the IOP District shall be subject to the following floor area ratio requirements:

Land Use Set Forth In Subsection	Maximum Net Floor Area Requirement
A(1)	0.35
A(2) through (5)	0.50
A(6) through <del>(1718)</del>	N/A
B(1)	
Office	0.35
Industrial	0.50
Retail/Commercial	N/A

F. In addition to the requirements of Subsection C above, all development in the IOP District shall be subject to the following open space requirement:

Land Use Set Forth In Subsection	Minimum Open Space Requirement
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A(1)	35%
A(2) through (5)	15%
A(6) through ( <del>4718</del> )	N/A
B(1)	
Office	35%
Industrial	15%
Retail/Commercial	N/A

**Section 3.** Section “230-25 Industrial District I.” of the City Code is hereby amended and replaced as follows (with new language identified in bold text and changes appearing with strikethrough text):

This district is intended to provide for industrial expansion within the city. Industrial uses which may be objectionable or have adverse effects upon surrounding existing or future development are not permitted.

A. The following uses are permitted as a matter of right:

- (1) Offices for professional services and administrative activities.
- (2) Manufacturing, assembling, converting, altering, finishing, cleaning or any other processing handling or storage of products or materials.
- (3) Printing, publishing, binding.
- (4) Packaging, storage, warehousing.
- (5) Truck terminals.
- (6) Research, testing and development laboratories.
- (7) Firms manufacturing textiles, clothing, hosiery.
- (8) Manufacture of electronic equipment, appliances and mechanical instruments.
- (9) Marijuana product manufacturing facilities and marijuana testing facilities. Marijuana cultivation facilities and retail marijuana stores are prohibited uses and will not be permitted.**
- ~~(10)~~ Signs subject to the provisions of § 230-37 of this chapter.
- ~~(1011)~~ Public utility rights-of-way and structures in accordance with § 230-38 of this chapter.

~~(1112)~~ Massage parlors which provide services on and/or off premises, adult bookstores and adult entertainment centers shall not be permitted within 1,000 feet of any property used solely for residential purposes. No massage parlors, adult bookstores and/or adult entertainment centers shall be permitted within 1,500 feet of each other.

~~(1213)~~ Accessory uses and structures:

(a) Retail sales of products manufactured on the premises.

(b) Accessory uses and structures clearly incidental and customary to and commonly associated with the operation of the permitted uses.

**Section 4.** Section “**230-39.1 Marijuana Related Businesses**” is hereby created as follows:

**No marijuana related businesses shall be permitted in any zoning district within the City, except as explicitly provided in this Chapter.**

**Section 5. Inconsistent Ordinances and Resolutions Repealed.** All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in direct conflict herewith are hereby repealed.

**Section 6. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council’s intent.

**Section 7. Effective Date.** This Ordinance shall become effective immediately upon its adoption by City Council.

First Reading

November 14, 2023

Second Reading

March 12, 2024

Signed this 12<sup>th</sup> day of March, 2024

Suzanne Souder

Suzanne Souder, President of City Council

Attest: Courtney Taylor  
Courtney Taylor, City Clerk

Approved: Valarie Leary  
Valarie Leary, Mayor