



PUEBLO OF ISLETA

P.O. BOX 1270
ISLETA, NM 87022

PUEBLO OF ISLETA

RESOLUTION No. 2023-045

ADOPTING LEGISLATION TO CLARIFY THAT MEDICAL CANNABIS IS LEGAL FOR USE AND POSSESSION WITHIN THE EXTERIOR BOUNDARIES OF THE PUEBLO OF ISLETA

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on June 22, 2023 the following Resolution was passed:

WHEREAS, the Pueblo of Isleta is a federally recognized Indian Tribe with a written Constitution adopted pursuant to the Indian Reorganization Act and with the inherent powers of self-government;

WHEREAS, Article V, Section 2(e) of the Pueblo of Isleta Constitution authorizes the Tribal Council to “enact ordinances to protect the peace, safety, property, health, and general welfare of the members of the Pueblo of Isleta;”

WHEREAS, the Pueblo of Isleta Law and Order Code is presently ambiguous as to whether or not cannabis may be lawfully possessed within the Pueblo pursuant to a lawful prescription by a healthcare provider licensed to practice in the State of New Mexico. *See* LAW AND ORDER CODE § 30-12-02(5) (explicitly naming marijuana as an unlawful controlled substance, but thereafter referencing conflicting federal and state laws); and § 30-18-02 (creating an affirmative defense to the crime of unlawful controlled substance possession where such substance was lawfully prescribed);

WHEREAS, creating further ambiguity for the public, law enforcement, and the judiciary, the Pueblo of Isleta Law and Order Code presently defines a “controlled substance” by referencing the relevant definitions under federal and state law “and any amendments thereto.” PUEBLO OF ISLETA LAW AND ORDER CODE, § 30-21-02(5). However, in recent years, the State has adopted a different definition of controlled substance than the federal government by removing cannabis from the State’s controlled substance schedule entirely. *See* NM 2021 HB 2 (removing cannabis from the State’s schedule of controlled substances); 21 U.S.C. § 812 and 21 CFR Part 1308 (retaining cannabis on Schedule I of the federal schedule of controlled substances). This has created an internal conflict-in-law within the Law and Order Code;

WHEREAS, the Tribal Council has determined that it is in the best interests of the Pueblo of Isleta to clarify the status of medical cannabis within the Pueblo of Isleta; and

WHEREAS, the Tribal Council has determined that it is in the best interests of the Pueblo of Isleta to legalize the use and possession of medical cannabis on Pueblo lands, but only when such use and possession is authorized by a valid and lawfully issued prescription by a licensed healthcare practitioner.

NOW, THEREFORE, BE IT RESOLVED, that the Pueblo of Isleta Tribal Council hereby authorizes as lawful the private use and possession of medical cannabis within the exterior boundaries of the Pueblo of Isleta, but only when:

- The cannabis was purchased from an authorized medical dispensary in the state of New Mexico (outside of the Pueblo of Isleta); and
- The individual has a valid medical cannabis card lawfully issued by any state.

BE IT FURTHER RESOLVED, that while public and private employers within the Pueblo, including Pueblo of Isleta government entities and the Casino, may continue to condition employment on the employee's total abstinence from recreational cannabis and may continue to prohibit intoxication by any cannabis, including medical cannabis, during work hours, employers shall not condition employment on an employee's abstinence from the lawful use of medical cannabis subject to a valid prescription and to a lawful cannabis card issued by a state, unless such use unreasonably prevents the employee from performing the essential functions of the job;

BE IT FURTHER RESOLVED, that the Council's action herein is narrowly limited in scope, as described above. The following activities relating to cannabis continue to be criminal within the Pueblo of Isleta:

- Recreational use and/or possession of cannabis and/or its paraphernalia;
- Public use of and/or public intoxication of any cannabis, including medical cannabis, including but not limited to use or intoxication while in or near schools, parks, public facilities, parking lots, roads/streets, and any designated drug free zones;
- Intoxication from any cannabis, including medical cannabis, while performing work for the Pueblo of Isleta or any of its entities;
- Possession of cannabis without a valid medical cannabis card lawfully issued by a state;
- Possession of any cannabis, whether medical or recreational, purchased from anyone or anywhere other than a valid New Mexico medical dispensary;
- Growing cannabis;
- Possession of cannabis plants;
- Selling, exchanging, gifting, trading, or trafficking cannabis, including medical cannabis, on Tribal lands;
- Use of cannabis by a minor, except for medical cannabis explicitly authorized by a parent or legal guardian and subject to a valid prescription issued to the minor and a valid medical cannabis card issued by a state;
- Use of any kind of cannabis, including medical cannabis, in any manner that may endanger children;
- Intoxication from any kind of cannabis, including medical cannabis, while operating a motor vehicle.

BE IT FURTHER RESOLVED, that the Tribal Council hereby adopts the following legislation. Tribal Council directs the Legal Department to codify the legislation into the Pueblo of Isleta Law and Order Code and any other ordinances/policies as needed for consistency with this Resolution. Specifically, as to

the Pueblo of Isleta Law and Order Code, the following provisions shall be amended, with such amendments recorded in the Code's Revisor's notes:

- Amending Title 30, Chapter 18, Section 2 titled "POSSESSION OF CONTROLLED SUBSTANCES" by clarifying that the affirmative defense applicable to validly prescribed controlled substances applies to medical cannabis;
- Amending Title 30, Chapter 18, Section 3 titled "TRAFFICKING CONTROLLED SUBSTANCES OR TOXIC SUBSTANCES" by clarifying that the affirmative defense applicable to possession of validly prescribed controlled substances, including medical cannabis, applies to transporting such substances;
- Amending Title 30, Chapter 18, Section 5 titled "POSSESSION OF DRUG PARAPHERNALIA" by clarifying that the affirmative defense applicable to validly prescribed controlled substances applies to medical cannabis and its paraphernalia;
- Amending Title 30, Chapter 21, Section 2 defining Controlled Substance to exclude medical cannabis, and by defining Cannabis.

BE IT FURTHER RESOLVED, that upon publication of the revised Law and Order Code, the Legal Department shall provide notice to the Tribal Council, Governor, Isleta Tribal Court, Isleta Health Center, Isleta Police Department, Isleta Prosecutor, Isleta Public Defender, and Social Services;


BE IT FURTHER RESOLVED, that regardless of the publication date of the revised Code, this law shall take effect May 25, 2023, the date that the Tribal Council affirmatively voted on a motion legalizing medical cannabis as described herein;

BE IT FURTHER RESOLVED, that this Resolution and the legislation adopted herein shall replace and supersede any conflicting provisions of any laws, resolutions, ordinances, codes, and policies previously adopted by the Tribal Council, including personnel policies; and

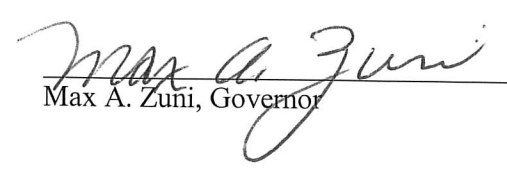
BE IT FURTHER RESOLVED, that Executive departments and Pueblo of Isleta entities are directed to do all that is necessary to effectuate the intent of this Resolution.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 22nd day of June 2023 at which a quorum was present, with 7 voting for, 0 opposing, and 0 abstaining.




Michael A. Lente, Tribal Council President



Max A. Zuni, Governor

ATTEST:



Elizabeth M. Kirk, Tribal Council Secretary