


DATE SUBMITTED 02/10/17
SUBMITTED BY PLANNING DIRECTOR
DATE ACTION REQUIRED 02/15/17

COUNCIL ACTION
PUBLIC HEARING REQUIRED
RESOLUTION
ORDINANCE 1ST READING
ORDINANCE 2ND READING
CITY CLERK'S INITIALS 

**IMPERIAL CITY COUNCIL
AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: REGULATIONS REGARDING PERSONAL INDOOR CULTIVATION OF MARIJUANA, PROHIBITION OF OUTDOOR CULTIVATION, AND BAN OF MARIJUANA USE IN CITY FACILITIES

1. INTRODUCTION/FIRST READING, BY TITLE ONLY, OF ORDINANCE NO. _____ REGULATING PERSONAL INDOOR CULTIVATION OF MARIJUANA, BANNING OUTDOOR PERSONAL CULTIVATION AND BANNING MARIJUANA USE IN CITY FACILITIES
2. DIRECT STAFF TO PREPARE SUMMARY FOR PUBLICATION

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA) became law on November 8, 2016. The AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age. AUMA would also add Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products. AUMA would make it lawful for those individuals to "possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants. AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses.

The proposed Ordinance would limit the cultivation of marijuana to indoor locations that is secured against unauthorized entry and accessible only through lockable doors. The cultivation area cannot exceed fifty square feet (about the size of a large closet). Outdoor cultivation is prohibited. Other regulations are included to protect the health, safety, and welfare of the community consistent with the AUMA. A permit must first be obtained before any cultivation can occur.

The proposed Ordinance also includes a prohibition on the possession and smoking of marijuana in City buildings.

This is a Public Hearing continued from February 15, 2017.

FISCAL IMPACT:

F.O. INITIALS: _____

STAFF RECOMMENDATION:

Staff recommends further continuance of the Public Hearing at this time.

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS

MOTION:

SECONDED:

AYES:

NAYES:

ABSENT:

APPROVED ()

DISAPPROVED ()

REFERRED TO:

REJECTED ()

DEFERRED ()

ORDINANCE NO.793

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL
REGULATING PERSONAL INDOOR CULTIVATION OF MARIJUANA, BANNING
OUTDOOR PERSONAL CULTIVATION AND BANNING MARIJUANA USE IN
CITY FACILITIES**

The City Council of the City Imperial does ordain as follows:

SECTION 1: Article XIII of Chapter 15 of the Imperial Municipal Code is hereby repealed and reenacted as follows:

Article XIII

Regulation of Marijuana Under Proposition 64

Section 15-90 Purpose and Findings

Section 15-91 Indoor Marijuana Cultivation

Section 15-92 Outdoor Marijuana Cultivation

Section 15-93 Penalties not exclusive; Violation Constitutes a Crime

Section 15-94 Prohibition on Smoking or Possession in City Buildings

Section 15-95 Council Direction

Section 15-96 Severability

15-90. Purpose and Findings.

In light of approval of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) on the November 8, 2016, statewide general election, the purpose of this Ordinance is to adopt an Ordinance in order to, among other things, regulate personal indoor cultivation, ban outdoor personal cultivation, ban use of marijuana in City facilities and ban all types of businesses licensed under the AUMA.

This ordinance is not related to the regulation or prohibition of medical marijuana cultivation or sale.

The adoption of this ordinance is exempt from CEQA as it does not have any significant impact on the environment as it simply continues existing provisions of the City Code as to restrictions on marijuana cultivation.

15-91. Indoor Marijuana Cultivation

(a). Purpose. The purpose and intent of this Ordinance is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community consistent with AUMA. As such, this Ordinance is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Ordinance is not intended to give any person unfettered legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the personal indoor cultivation of marijuana permitted under AUMA when it is authorized by California state law for medical or other lawful purposes under the state law.

Non-conflicting enactment. No part of this Ordinance 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.

(b). Definitions.

As used herein the following definitions shall apply:

1. "Authorized Grower" means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal use. There may be only one authorized grower per private residence who can present written evidence that any other persons in that private residence have authorized him/her to obtain the permit referenced herein.

2. "City" means the City of Imperial.

3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof.

4. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBC"), as adopted in the City, or if exempt from the permit requirements of the CBC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with

the California building, electrical, and fire codes as adopted in the City of Imperial.

5. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

6. "Indoors" means within a fully enclosed and secure structure as that structure is defined above.

7. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

8. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure.

9. "Parcel" means property assigned a separate parcel number by the Imperial County assessor.

10. "Private residence" means a house, apartment unit, mobile home, or other similar dwelling unit. A second unit does not constitute a "private residence."

(c). Indoor Cultivation of Marijuana Only for Personal Use; Regulations for Residential Zones.

1. When authorized by state law, an authorized grower shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

2. The marijuana cultivation area shall be located indoors. The total area cultivated shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Ordinance.

3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

4. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any

marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs. It is the responsibility of the authorized grower to insure that marijuana cultivated hereunder is not accessed by persons under 21.

7. The authorized grower shall not participate in marijuana cultivation in any other location within the City. There may be only one authorized grower per private residence.

8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas actually utilized for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

9. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

10. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers and may require annual or other inspections.

11. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

12. No more than 6 living marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

13. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

(d). Indoor Cultivation of Marijuana Restricted to One Authorized Grower per Private Residence.

1. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Ordinance.

2. No person shall grow marijuana upon any parcel until and unless he or she first secures a permit from the community development department and pay such fee as may be required and set forth by resolution of the City Council for issuance of the permit and or inspections.

3. Only one such permit shall be granted per private residence.

(e). Public Nuisance Prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

2. Repeated responses to the parcel by law enforcement or fire personnel.

3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

5. Outdoor growing and cultivation outdoor growing and cultivation of marijuana in violation of this ordinance.

15-92. Outdoor Cultivation Banned.

It is hereby declared to be unlawful, a public nuisance and a violation of this Ordinance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

15-93. Penalties Not Exclusive; Violation Constitutes a Crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Imperial Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Imperial Municipal Code shall prevent the City from using any other penalty or remedy under state

statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

15-94. Prohibition on Possession and Smoking of Marijuana in City Buildings

The possession, smoking or other use of marijuana is prohibited in buildings owned, leased or occupied by the City. As an employer, the City maintains a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display and growth of marijuana in the workplace. As provided by state law, where a tobacco smoking ban or regulation is in place, such ban or regulation applies to the smoking of marijuana.

15-95. SCOPE

Except as set forth in this ordinance, all other provisions of the Imperial City Code shall remain in full force and effect.

15-96. SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 2

This ordinance shall take effect and be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial and circulated with the City, together with the names of the members of the City Council voting for and against the same.

PASSED, APPROVED, AND ADOPTED at a meeting of the City Council held on _____, 2017

James Tucker, Mayor

ATTEST:

Debra Jackson, City Clerk