

ORDINANCE NUMBER 1356

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, ADDING A NEW CHAPTER 7.48 (PERSONAL MARIJUANA CULTIVATION) TO THE PERRIS MUNICIPAL CODE TO PROHIBIT OUTDOOR CULTIVATION OF MARIJUANA FOR PERSONAL USE AND ESTABLISH REASONABLE REGULATIONS FOR INDOOR CULTIVATION OF MARIJUANA FOR PERSONAL USE

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which, among other things, legalized limited personal recreational marijuana use, possession, and cultivation;

WHEREAS, the AUMA, Health & Safety Code § 11362.1(a)(3), makes it lawful for any person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants”;

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of marijuana] outdoors upon the grounds of a private residence”;

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b), explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of marijuana permitted under Health & Safety Code § 11362.1(a)(3), so long as the city does not completely prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”;

WHEREAS, the AUMA, Health & Safety Code § 11362.2(a)(2), further restricts such personal marijuana cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place;

WHEREAS, several California cities have reported negative impacts of marijuana cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests);

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations;

WHEREAS, due to the value of marijuana plants and their strong smell (which alerts others to their location), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety;

WHEREAS, the indoor cultivation of marijuana has potential adverse effects on the structural integrity of the buildings in which marijuana is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the buildings, its occupants, and neighboring buildings and residents;

WHEREAS, unregulated indoor cultivation of marijuana can be harmful to the public health, safety and welfare, because electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness and can contaminate soil and water, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown;

WHEREAS, the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize 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 and/or crime;

WHEREAS, marijuana cultivation is likely to generate these negative effects on the public health, safety, and welfare in the city, based on the experiences of other cities;

WHEREAS, absent clear regulation, marijuana cultivation in the city poses a potential threat to the public peace, health, and safety, and, unless the city takes action to regulate it, the secondary impacts described above are likely to occur;

WHEREAS, the city has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors, and businesses, and in preserving the peace and quiet of the neighborhoods within the city, by prohibiting outdoor marijuana cultivation and by regulating the personal indoor cultivation of marijuana;

WHEREAS, pursuant to the above-described express statutory authority and its police power, the city has the authority to prohibit outdoor marijuana cultivation, and to enact reasonable regulations for the indoor personal cultivation of up to six marijuana plants, to protect the public health, safety and welfare, by adding a new Chapter 7.48 “Personal Cultivation of Marijuana” to Title 7 (“Health and Welfare”) of the Perris Municipal Code;

WHEREAS, this ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015, the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult Use of Cannabis Regulation and Safety Act of 2017, to protect the public health, safety, and welfare of the public in relation to personal marijuana cultivation;

WHEREAS, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity

relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law;

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY ORDAINS AS FOLLOWS:

SECTION 1. THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY MAKES THE FOLLOWING FINDINGS:

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. The regulations of personal cultivation of marijuana established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

SECTION 2. A NEW CHAPTER 7.48 (“PERSONAL MARIJUANA CULTIVATION”) IS HEREBY ADDED TO TITLE 7 (“HEALTH AND WELFARE”) OF THE PERRIS MUNICIPAL CODE TO READ IN ITS ENTIRETY AS FOLLOWS:

“CHAPTER 7.48 PERSONAL MARIJUANA CULTIVATION

- 7.48.010 Purpose and intent.
- 7.48.020 Definitions.
- 7.48.030 Personal marijuana cultivation.
- 7.48.040 Violations and penalties; public nuisance.

Section 7.48.010 Purpose and intent.

- A. The purpose and intent of this chapter is to prohibit throughout the entire city the outdoor cultivation of marijuana, and to establish reasonable regulations, consistent with the meaning of Section 11362.2 of the Health & Safety Code, and as may be amended, for the indoor cultivation of up to six (6) marijuana plants at a private residence.
- B. This chapter is not intended to interfere with a patient’s right to medical marijuana as provided for in Section 11362.5 of the Health & Safety Code.

Section 7.48.020 Definitions.

The following words and phrases shall, for the purposes of this chapter, have the meanings respectively ascribed to them by this section, as follows:

- A. *Accessory structure* means a building which is attached to or detached from the main building on a parcel or lot, the use of which is ancillary to that of the main building. An accessory building includes, but is not limited to, greenhouse, storage shed, pool house, cabana, barn, stable or workshop.
- B. *Cultivation* means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of one or more marijuana plants or any part thereof.

- C. *Cultivation site* means the real property on which marijuana cultivation occurs.
- D. *Director* means the City of Perris Director of Development Services, and includes his/her designee(s).
- E. *Marijuana* has the same definition as provided in Section 26001 of the Business & Professions Code for the term “cannabis,” and as may be amended, defined as “all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.”
- F. *Person* means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- G. *Private residence* has the same meaning as the term is defined in Section 11362.2(b)(5) of the Health & Safety Code, and as may be amended, which provides that private residence “means a house, an apartment unit, a mobile home, or other similar dwelling.”

Section 7.48.030 Personal Marijuana Cultivation.

- A. Prohibition. Personal marijuana cultivation is prohibited in all zones of the city. No person shall engage in the personal cultivation of marijuana in the city for any purpose.
- B. Limited Exemption. The prohibition on personal marijuana cultivation in the above subsection (A) does not apply to the indoor cultivation of marijuana at a private residence conducted in complete adherence to the following regulations:
 1. Six plants. Cultivation is limited to no more than six (6) living marijuana plants at any one time.
 2. Indoor cultivation only. Cultivation shall occur entirely within a private residence or within an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
 3. Accessory structures. Any accessory structure used for cultivation shall comply with all applicable building code and zoning requirements, including but not limited to, setback and accessory structure size/height requirements.
 4. Locked space. The six (6) living plants and any marijuana produced by the plants in excess of 28.5 grams shall be kept within a locked space located either within the private residence or upon the grounds of the private residence.

5. Visibility. The six (6) living plants and any marijuana produced by the plants in excess of 28.5 grams shall not be visible from any neighboring property or public right of way, or in any manner be visible by normal unaided vision from a public place.
6. Odor.
 - a. The odor resulting from all marijuana cultivation shall not be detectable by human senses from any neighboring property or public right of way.
 - b. As necessary (which final determination shall be made by the Director), to ensure that no odor resulting from marijuana cultivation shall be detectable by human senses from any neighboring property or public right of way, a marijuana cultivation site shall install and continuously operate a functioning ventilation and filtration system which complies with all applicable building code regulations, including obtaining all required permits and approvals.
7. Nuisance Activity. Cultivation 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 gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste.
8. Fire Extinguisher. A working portable fire extinguisher, which complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the same room as marijuana cultivation.
9. Electricity.
 - a. The collective draw from all electrical appliances at the marijuana cultivation site shall not exceed the maximum rating of the approved electrical panel for the private residence where the marijuana is being cultivated.
 - b. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel.
10. Lighting. Any lighting fixture or combination of lighting fixtures used for marijuana cultivation shall:
 - a. not exceed the rated wattage and capacity of the circuit breaker; and
 - b. shall be shielded so as to completely confine light and glare to the interior of the private residence or fully enclosed accessory structure.
11. Private Residence. Any private residence used for cultivation shall:
 - a. include a fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and
 - b. shall not be used primarily or exclusively for marijuana cultivation.
12. Garage. Cultivation shall not displace required parking in a garage.

- C. Additional Regulations. Further rules, regulations, procedures, and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution of the City Council).

Section 7.48.040 Violations and penalties: public nuisance.

- A. Any violation of this chapter, at the discretion of the city prosecutor, is punishable as a misdemeanor or as an infraction pursuant to Chapter 1.16 of this Code, except for as preempted by state law; and, any violation of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.18 of this Code.
- B. Public nuisance abatement.
 - 1. Any cultivation of marijuana that is conducted in violation of any provisions of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 7.06 of this Code as reasonably applied to the operation of this chapter.
 - 2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.”

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, 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, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

ADOPTED, SIGNED and APPROVED this 14th day of November, 2017.

Michael M Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I, Nancy Salazar, City Clerk of the City of Perris that the foregoing Ordinance Number 1356 introduced at a regular meeting of the City Council held on the 2nd day of November , 2017 and was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 14th day of November, 2017, and that it was so adopted by the following vote:

AYES: RABB, ROGERS, BURKE, VARGAS
NOES: CORONA
ABSENT: NONE
ABSTAIN: NONE

Nancy Salazar, City Clerk