

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, AMENDING TITLE 8 OF THE INDIAN WELLS MUNICIPAL CODE BY ADDING CHAPTER 8.46 ENTITLED "RESIDENTIAL INDOOR MARIJUANA CULTIVATION"

WHEREAS, the City of Indian Wells, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 696 on October 12, 2016; and

WHEREAS, Ordinance No. 696 was adopted to bring the City into full compliance with Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") and to regulate the personal, medical, and commercial use of marijuana pursuant to local authority preserved in the AUMA; and

WHEREAS, the 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"; and

WHEREAS, the AUMA would authorize cities to "reasonably regulate" without completely prohibiting cultivation of marijuana 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"; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a "determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law"; and

WHEREAS, many AUMA provisions took effect on November 9, 2016, including the ability to cultivate marijuana inside a private residence or accessory structure; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, 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; and

WHEREAS, the City believes a Recreational Indoor Marijuana Cultivation permit is a reasonable requirement to ensure that all marijuana grown in the City is grown in code-compliant structures that reduce the risk of fire, mold, or other structural damage and contamination;

WHEREAS, the City has determined a Recreational Indoor Marijuana Cultivation permit is necessary to the public health, safety, and welfare in the City; and

WHEREAS, this Ordinance would add Chapter 8.46 to the Indian Wells Municipal Code to establish permitting regulations to allow for indoor cultivation of marijuana in a private residence or accessory structure thereto in a manner that will ensure any cultivation is safe, secure, and does not create a public nuisance to others living in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.46 entitled "Residential Indoor Marijuana Cultivation" is hereby added to Title 8 "Health and Sanitation" of the Indian Wells Municipal Code, and shall read in its entirety as follows:

**"Chapter 8.46
RESIDENTIAL INDOOR MARIJUANA CULTIVATION**

Sections:

- 8.46.010 Purpose**
- 8.46.020 Definitions**
- 8.46.030 Applicability**
- 8.46.040 Review and Appellate Authority**
- 8.46.050 Application and Notice**
- 8.46.060 Findings**
- 8.46.070 Expiration and Renewals**
- 8.46.080 Suspension and Termination**
- 8.46.090 Subsequent Applications**
- 8.46.100 No Sale or Transfer**

8.46.010 Purpose.

The purpose of this chapter is to prescribe the requirements for Residential Indoor Marijuana Cultivation ("RIMC") and detail the process and requirement for permitting such use. Hereafter referred to as an "RIMC Permit", this Chapter is intended to serve as an instrument of the City's reasonable regulation of residential indoor marijuana cultivation as provided by California Health and Safety Code, Section 11362.2(b)(1) and further detailed in this Municipal Code under Chapter 21.90.

8.46.020 Definitions.

"Cultivation" means the marijuana cultivation process including, but not limited to, planting, harvesting, drying, processing, or maintenance activities.

"Cultivation area" includes the area where marijuana plants are cultivated, cultivation-related materials and supplies are stored, and any marijuana processed from the cultivation in excess of 28.5 grams is kept in a locked space not visible from a public place.

"Day care" means a facility, center, or home requiring a license that is issued by the State of California which provides for the care, health, safety, supervision, or guidance of a child's social, emotional, and educational growth on a regular basis, in a place other than the child's own home, or any facility meeting the definition of California Health and Safety Code Section 1596.76

"Directly engage" in cultivation means to handle the marijuana plants in the cultivation process.

"Group Home" means any community care facility regulated and licensed by a Federal and/or State agency. Unlicensed community care facilities or those community care facilities the regulation of which is not otherwise preempted by State or Federal law shall not constitute group homes.

"Indirectly engage" in cultivation means to assist, even if not handling marijuana plants, in the cultivation process.

"Personal Use" means to possess, use, or give away to persons 21 years of age or older without any compensation whatsoever.

"Residence" means a private residence such as a house, apartment unit, mobile home, or similar dwelling.

“Youth Center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities

8.46.030 **Applicability.**

(a) A person may directly or indirectly engage in residential indoor marijuana cultivation only after obtaining and maintaining a valid RIMC permit from the City of Indian Wells.

(b) An RIMC Permit authorizes:

1. Only one person,
2. To directly or indirectly engage in residential indoor marijuana cultivation for personal use,
3. At only one residence, and
4. Within only the authorized cultivation area at the residence.

(c) A RIMC Permit does not authorize:

1. Construction or improvements of any structure,
2. A property-at-large for marijuana cultivation,
3. The permit holder or any others to engage in any activity licensed by the State of California under Division 10 of the Business and Professions Code, or
4. The following people to directly or in directly engage in residential indoor marijuana cultivation:
 - (a) The permit holder’s family members,
 - (b) Cohabitants,
 - (c) Guests,
 - (d) Future residents, or
 - (e) Any other person other than the permit holder.

(d) A person may not hold more than one RIMC Permit at a time. Multiple permit holders may be authorized to engage in residential indoor marijuana cultivation at the same residence, but a residence must include no more than one cultivation area, and no residence may cultivate more than six plants in total, regardless of how many permit holders are present.

8.40.040 **Review and Appellate Authority.**

(a) Applications for a RIMC Permit will be processed and reviewed by the Community Development Director or his or her designee. The Community Development Director may approve or deny an application based on the findings provided in section 8.46.060.

(b) A decision by the Community Development Director may be appealed to the City Manager or his or her designee by the following parties within 15 days after receipt of the Community Development Director’s final decision:

1. The applicant,
2. Owners or residents of the property.

8.46.050 Application and Notice.

(a) The Community Development Director may approve the forms and submittal materials required for a complete application.

(b) The City Council may by resolution require an application fee.

(c) The City will provide written notification of the complete application to the applicant, indicating whether the application has been approved or denied.

8.46.060 Findings.

The Community Development Director or his or her designee may approve an application for an RIMC Permit if the following findings are made:

(a). Applicant:

The applicant must:

1. Be 21 years of age or older.
2. Complete a Live Scan with the California Department of Justice, at the applicant's own cost.
3. Have no felony convictions for the illegal possession for sale, manufacture, transportation, or cultivation of a controlled substance within the last five years,
4. Have no pending code enforcement actions with the City, and
5. Have no outstanding payments due to the City.
6. Show proof of fee title ownership or other proof of ownership, or provide a signed, notarized affidavit of any landlord or property owner other than the applicant that acknowledges and grants permission for cultivation to occur on the property.

(b). Residence:

1. The residence must be the primary dwelling of the applicant.
2. The residence must not include more than one cultivation area.
3. The residence must not be used for any of the following activities:
 - (i) Day care,
 - (ii) Youth center,
 - (iii) Group Homes, and
 - (iv) Any facility that does not allow cultivation of marijuana by law or policy.

(c). Cultivation Area:

1. Location and Use

- (i) The cultivation area must be located within the residence or within an accessory structure. The residence, accessory structure, and all plumbing, electrical, and other utilities must be properly permitted by the City or appropriate regulatory agency.
- (ii) The cultivation area must be used exclusively for residential indoor marijuana. The cultivation area may not be shared with any space used for sleeping, cooking, eating, bathing, or other residential activities.
- (iii) The cultivation area must not be used or prepared in a manner to cultivate more than six marijuana plants.
- (iv) The following chemicals may not be used or stored in the cultivation area, and if stored elsewhere in the home must be stored in leak and fireproof containers sufficient to provide storage up to required safety standards:
 1. Explosive gases, including, but not limited to: Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, Oxygen (O₂), Carbon dioxide (CO₂) or Hydrogen (H₂).
 2. Dangerous poisons, toxins, or carcinogens, including, but not limited to: Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, or Tri-chloro-ethylene.

2. Access and Security

- (i) The cultivation area must be accessible by only one lockable door. Any windows, skylight, ventilation, or other opening must be lockable.
- (ii) Access to the cultivation area must be restricted to the applicant or other permit holders authorized for the cultivation area.
- (iii) The cultivation area must not be visible from anywhere outside the residence. Any windows, skylight, ventilation, or other opening must be sufficiently covered or opaque as to obscure visibility of the cultivation area from any adjacent property.
- (iv) The cultivation area must not produce odors, sounds, or other emissions that are sensible from adjacent properties and may indicate marijuana cultivation.

3. Required Inspection

- (i) Prior to the issuance or renewal of any RIMC Permit, an inspection of the cultivation area shall be conducted by City Staff including, but not limited to, Code Enforcement, Building, and Fire officials at the City's discretion.
- (ii) A RIMC Permit expires, if not renewed, one year from the date of approval.

8.46.070 Expiration and Renewal.

- (a) A RIMC Permit may be renewed, if prior to the expiration, the permit holder:
 - 1. Completes forms and submittal materials for renewal as required by the Community Development Director or his/her designee;
 - 2. The permit holder passes an inspection approved by the Community Development Director; and
 - 3. Pays a renewal fee as approved by resolution by the City Council.

8.46.080 Suspension and Termination.

- (a) The City may suspend or terminate a RIMC Permit at any time for failure to comply with applicable governing regulations.
- (b) If a RIMC Permit is suspended, the suspension will be effective and the permit holder's marijuana crop may be impounded until the permit holder:
 - 1. Demonstrates compliance with the applicable governing regulations, and
 - 2. Pays a fine as set forth in section 8.46.080(d).
- (c) If a RIMC Permit is terminated, the permit holder's marijuana crop may be impounded. The permit holder may not apply for another RIMC Permit until the permit holder pays a fine as set forth in section 8.46.080(d).
- (d) Violations of any terms of an RIMC Permit is hereby deemed a violation of the Municipal Code and may be subject to Administrative Citation, that may escalate with successive violations, as detailed further in Chapter 8.08 of this Municipal Code.
- (e) A suspension or termination of a RIMC Permit may be appealed to the City Manager or his or her designee by the permit holder.

8.46.090 Subsequent Applications.

- (a) Application for a Different Residence
 - 1. If a permit holder applies for a RIMC Permit for a residence other than specified on the existing permit, the existing RIMC Permit will be suspended upon application for the new permit.

- (i) Where practicable, the address for the existing RIMC Permit residence will be inspected to confirm removal of cultivation.
 2. If the application is approved, the existing RIMC Permit is rescinded.
 3. If the application is denied, the existing RIMC Permit is reinstated.
 4. If the applicant appeals a denial of the application, the existing RIMC Permit remains suspended until a final decision is reached.
- (b) Application for a Different Cultivation Area in the Same Residence
1. If a permit holder applies for a RIMC Permit for the residence on the existing permit, but for cultivation area other than specified on the existing permit, the existing permit will terminate upon approval of the application.
- (c) Application for Same Cultivation Area in Same Residence
1. If another individual applies for a RIMC Permit for the same cultivation area, no permit will be issued if the existing permit has been terminated or suspended. An additional RIMC Permit for the same cultivation area shall only be issued if all Permits related to that cultivation area remain in good standing with the City.

8.46.100 **No Sale or Transfer.** An RIMC Permit may not be sold or transferred.”

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect and be in force 30 days after passage.

SECTION 4. PUBLICATION. The City Clerk is directed to publish this Ordinance within the manner and in the time prescribed by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on this 17th day of November, 2016.

DANA W. REED
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. _____

I, Anna Grandys, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. _____, having been regularly introduced at the meeting of November 17, 2016, was again introduced, the reading in full thereafter unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on this 15th day of December, 2016, and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES:
NOES:

and was thereafter on said day signed by the Mayor of the City of Indian Wells.

ATTEST:

APPROVED AS TO FORM:

ANNA GRANDYS
CITY CLERK

STEPHEN P. DEITSCH
CITY ATTORNEY