

**ORDINANCE NO. 2018-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ISLETON ADDING CHAPTER 23, SECTIONS 2302 AND 2304 TO THE ISLETON ZONING ORDINANCE TO ALLOW INDOOR CANNABIS CULTIVATION FOR PERSONAL USE**

The City Council of the City of Isleton hereby finds and declares as follows:

**SECTION 1. FINDINGS**

- A. In November 1996, the voters of the State of California approved Proposition 215, entitled "The Compassionate Use Act of 1996" ("CUA"), which decriminalized the use of medical cannabis. The Legislature of the State of California enacted Senate Bill 420 ("SB 420," entitled the "Medical Cannabis Program Act") in 2004 to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. In 2015, the State Legislature adopted the Medical Cannabis Regulation and Safety Act ("MCRSA"), which addressed state licensing with respect to medical cannabis cultivation, dispensing, and manufacturing.
- B. In November 2016, the voters of the State of California approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), legalizing the recreational use of cannabis for adults 21 years of age and older. The AUMA allows cities to retain their police powers and land use authority to regulate but not prohibit indoor cultivation of up to a total of six cannabis plants per residence, and to regulate or prohibit cultivation or any commercial activity related to cannabis.
- C. In June 2017, the State Legislature passed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). It established a single system of administration for cannabis laws in California and conforms the regulations contained in MCRSA and AUMA together for all commercial cannabis activity.
- D. In light of these developments in state law, and in the interest of applying consistent law enforcement guidelines, the City now desires to regulate cannabis activities within the City.
- E. Unregulated cannabis activities, including, but not limited to, cultivation, testing, and manufacturing, may have significant health, safety, and welfare impacts on the residents of the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.
- F. Cultivation of any amount of cannabis at locations or premises within 600 feet of schools, day care centers, or youth centers may create unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, visible cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the cannabis plants.

- G. It is the purpose and intent of this chapter to require that cannabis be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety, and welfare of the public, to prevent odor created by cannabis plants from impacting adjacent properties, and to ensure that cannabis grown remains secure and does not find its way to non-patients (if under 21) or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of cannabis pursuant to California state law. Nothing in this chapter is intended to authorize the cultivation, possession, or use of cannabis for purposes in violation of state law.
- H. The authority to enact this ordinance is derived from Article XI, section 7 of the California Constitution which provides that a city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws. Additionally, California Health and Safety Code section 11362.2(b)(1) authorizes cities to adopt zoning, land use, and permit regulations concerning the location and establishment of cannabis businesses.

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

**SECTION 2. PURPOSE AND AUTHORITY**

The purpose of this ordinance is to regulate personal cannabis cultivation in a manner that protects the health, safety, and welfare of the community, consistent with Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), and with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). This chapter is not intended to interfere with a patient's right to medical cannabis, as provided in Health and Safety Code section 11362.5, nor does it criminalize cannabis possession or use, pursuant to state law. This chapter is not intended to give any person the unfettered right to grow cannabis; rather, it is intended to impose zoning restrictions on the personal and commercial indoor cultivation of cannabis, regulation of commercial cannabis activity as permitted pursuant to the AUMA and the MAUCRSA.

**SECTION 3. REGULATIONS**

Article 23, Sections 2302 and 2304 are hereby added to the Isleton Zoning Ordinance to read as follows:

**SECTION 2302 INDOOR CULTIVATION FOR PERSONAL USE**

- A. Indoor Cultivation for personal use in accordance with this Ordinance shall only be permitted in R- One-Family Residential Districts, and RM- Multi-Family Residential Districts.
- B. Indoor Cultivation for personal use is permitted in Residential Structures and Greenhouses located in R- One-Family Residential Districts, and RM- Multi-Family Residential Districts.
- C. Indoor Cultivation of no more than six mature or twelve immature cannabis plants for personal use shall be permitted in residential areas subject to the following conditions:

1. There shall be no exterior visibility or evidence of the Indoor Cultivation 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.
2. Grow lights used for Indoor Cultivation shall not exceed one thousand two hundred (1,200) watts each and shall comply with the California Building, Electrical, and Fire Codes as adopted by the city. Gas products (including, without limitation, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of marijuana.
3. The Residential Structure or Greenhouse used for personal Indoor Cultivation shall have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and that shall comply with California Building Code section 402.3, Mechanical Ventilation, as now existing or hereafter amended.
4. The residential Premises used for personal Indoor Cultivation shall have a fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident grower, and the Premises shall not be used primarily or exclusively for marijuana cultivation.
5. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.

D. Commercial Cannabis Activity is prohibited in residential zones.

#### **SECTION 2304 CULTIVATION PERMITS**

1. *Number of Permits Per Residence:* Only one permit shall be allowed per residence.
2. *Permit Requirements.* The following information will be required with the initial permit application and subsequent permit extensions:
  - i. The physical site address of where the cannabis will be cultivated.
  - ii. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where cannabis will be cultivated.
  - iii. Property owner's written consent to the cultivation of cannabis at the premises, if different from the authorized grower.
3. *Permit Duration.* The initial permit shall be valid for three (3) years, and thereafter may be extended in increments of three (3) years upon the determination by the City Manager or his or her designee, to ensure the standards and conditions set forth in this article are being met.
4. *Adjudication of Permits.* The City Manager or his or her designee may deny an application for a cannabis cultivation permit, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this chapter and state law.

5. *Permit Fees.* The City may establish, by resolution, a fee or fees required to be paid upon filing an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

6. *Indoor Cultivation Without A Cultivation Permit.* It is unlawful, a public nuisance, and a violation of this article 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 Indoor Cultivation without a Cultivation Permit.

#### **SECTION 4. CIVIL INJUNCTION**

The violation of this ordinance shall be and is hereby declared to be a public nuisance and contrary to the public interests and shall, at the discretion of the city, create a cause of action for injunctive relief.

#### **SECTION 5. CEQA**

This ordinance is consistent with the protection of the public interest, health, safety, and welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines section 15061(b)(3).

#### **SECTION 6. SEVERABILITY**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

#### **SECTION 7. EFFECTIVE DATE AND PUBLICATION**

This ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish this ordinance within fifteen (15) days after its passage in a newspaper of general circulation published in the City of Isleton or to post it in at least three (3) public locations in the City of Isleton.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Isleton that it hereby:

Adopted and approved this ordinance at a meeting held on the 23 day of September 2018 by the following vote:

AYES: Councilmember's Dean Dockery, Glenn Giovannoni, Robert Jankovitz, Mayor Eric Pene.

NOES: Vice Mayor Elizabeth Samano.

ABSTAIN: None.

ABSENT: None.



Eric Pene, Mayor  
City of Isleton

ATTEST:

  
Yvonne Zepeda, City Clerk