

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF FONTANA, CALIFORNIA, AMENDING CHAPTER 33,
“CANNABIS BUSINESSES AND ACTIVITIES” AND
FINDING THAT THE ORDINANCE IS EXEMPT FROM
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, the City of Fontana, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on September 13, 2016, the City Council adopted Ordinance No. 1747 prohibiting all marijuana uses in the City to the extent allowed under California state law, and included a provision requiring a Residential Indoor Marijuana Cultivation (“RIMC”) permit for any individual who desires to grow up to six (6) marijuana plants in their private residence; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”) and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (“adult-use” or “recreational”) cannabis, including cannabis products, for use by adults twenty-one (21) years of age and older; and

WHEREAS, on January 24, 2017, the City Council adopted Ordinance No. 1758 amending the Zoning and Development Code by adding a new Section 30-7(b) entitled “Residential Indoor Marijuana Cultivation” to regulate indoor cultivation of marijuana and adopted Resolution No. 2017-05 establishing fees for a RIMC permit; and

WHEREAS, on March 12, 2019, the City council adopted Ordinance No. 1794 amending the RIMC fees; and

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“SB 94” or the “MAUCRSA”). SB 94 creates one state regulatory structure for medical and adult-use commercial cannabis activities, reconciling AUMA, with the Compassionate Use Act of 1996 (Proposition 215) and MCRSA (collectively referred to as “the Act”). SB 94 provided that a state license will not be approved for a business to engage in Commercial Cannabis Activity if the business activity violates any local ordinance or regulation; and

WHEREAS, three State licensing authorities charged with licensing and regulating commercial cannabis activities in California, the Bureau of Cannabis Control (“BCC”), the California Department of Food and Agriculture (“CDFA”), and the California Department of Public Health (“CDPH”), commenced releasing emergency regulations, outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis, and began issuing licenses for such activities on January 1, 2018; and

WHEREAS, having banned commercial cannabis citywide so as to monitor continuous developments with state law and how neighboring cities would regulate cannabis, the City Council has developed an approach to regulating cannabis businesses within the City which will increase

the likelihood of high quality and successful businesses and minimize potential adverse secondary impacts; and

WHEREAS, City Council adopted Ordinance 1899 on July 26, 2022 establishing a regulatory permit scheme for commercial cannabis activities; and

WHEREAS, City Council now wishes to amend Chapter 33 to add additional language regarding the requirements to enter into a development agreement with the City and expand requirements, in addition to those currently existing, that commercial cannabis activities are not allowed to be located within a 600-foot radius of any pre-school or boundaries of adjacent cities; and

WHEREAS, the City Council finds and declares that this Ordinance constitutes a valid exercise of police power in accordance with Article XI, Section 7 of the California Constitution, is consistent with the language and intent of the AUMA, MAUCRSA, and related laws regulations, and policies issued by the state, consistent with the General Plan, and furthers the health, safety, and general welfare of the residents of the City of Fontana.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fontana as follows:

SECTION 1: Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as findings in support of this Ordinance.

SECTION 2: Municipal Code Amendment. Section 33-6(a) of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“No person may engage in any commercial cannabis business or in any commercial cannabis activity within the city unless the person (a) has a valid commercial cannabis permit from the city, (b) has a valid State of California seller's permit, (c) has entered into a fully executed operating agreement, approved by city council, (d) has entered into a fully executed development agreement, approved by city council and (e) is in compliance with all applicable state and local laws and regulations pertaining to the commercial cannabis business and commercial cannabis activities, including the duty to obtain any required state licenses, business license obtained and all taxes paid and all other applicable laws including without limitation zoning and fire codes.”

SECTION 3: Municipal Code Amendment. Section 33-6(c) of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“In addition to all other applicable zoning regulations and the requirements of all required state and local permits, no Commercial Cannabis Permit will be valid if the proposed Commercial Cannabis Business is located within a 600-foot radius of a school providing instruction in pre-school, kindergarten or any grades one through twelve, a day care center, park, a Youth and Recreation Center with primary Youth and Recreation Center activities, which is in lawful existence at the time a successful application was submitted to the City, or the City boundaries. No Commercial Cannabis Permit will be valid if the proposed Commercial Cannabis

Business is located within a 600-foot radius of the ~~City~~ boundaries with adjacent cities.”

SECTION 4: Municipal Code Amendment. Section 33-8(a)(14)(a)(2) of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“Map identifying any instruction in pre-school, kindergarten or any grades one through 12, day care, park, youth and recreation center facilities, ~~City~~ boundaries with adjacent cities, and any commercial cannabis business located within 600 feet of the property lines of the proposed location. If the proposed location is not within 600 feet of any such uses, identify on the map the closest such use, and the distance in feet between that use and the property line of the proposed location;”

SECTION 5: Municipal Code Amendment. Section 33-21 of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“Operating agreement required; Development agreement required.

Prior to issuing the permit and commencing operations, a permittee of a commercial cannabis business must enter into a fully executed operating agreement with appropriate fiscal mitigation measures, in a form satisfactory to city manager and city attorney. Additionally, the permittee of a commercial cannabis business must enter into a fully executed development agreement in a form satisfactory to city manager. City manager shall be authorized to execute the operating agreement and development agreement.”

SECTION 6. Municipal Code Amendment. Section 33-28(3)(b) of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“~~Downtown~~ Retail;”

SECTION 7: Municipal Code Amendment. Section 33-29 of Chapter 33 of the Fontana Municipal Code is hereby amended to read as follows:

“No commercial cannabis business may be located within a 600-foot radius of a school providing instruction in pre-school, kindergarten or any grades one through 12, a day care center, a park, a youth and recreation center, which is in lawful existence at the time a successful application for a commercial cannabis permit was submitted to the city, or the ~~City~~ boundaries with adjacent cities. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school or other protected use to the closest property line of the lot on which the commercial cannabis business is located, without regard to intervening structures.”

SECTION 8: CEQA. The City Council, on the basis of the whole record and exercising independent judgment, finds that this Ordinance is not a project subject to the California Environmental Quality Act (“CEQA”) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15060(c)(2)-

(3.) In the alternative, even if the Ordinance were a project subject to CEQA, the Ordinance would be exempt from CEQA under the “common sense” exemption set forth under State CEQA Guidelines section 15061(b)(3) on the basis that it can be seen with certainty that there is no possibility that the Ordinance may have a significant impact on the environment. Notably, the Ordinance does not authorize or permit the construction or operation of any cannabis business or cannabis-related use, nor does it authorize or permit any other activity that could potentially have a significant impact on the environment.

SECTION 9: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the 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 may be declared invalid or unconstitutional.

SECTION 10: Nothing in this Ordinance shall be construed to allow persons to engage in conduct that violates state law, endangers others, causes a public nuisance, allows the use or diversion of cannabis in an unlawful manner or inconsistent with state law

SECTION 11: The City Clerk shall attest to the passage and adoption of this ordinance, causing it to be posted as required by law, and it shall become effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2023.

Acquanetta Warren, Mayor
City of Fontana

Germaine McClellan Key
City Clerk

Read and Approved as to form:

Best, Best & Krieger, LLP.

Ruben Duran, City Attorney