

RESOLUTION NO. 2023-003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, ESTABLISHING PROCESS INTEGRITY STANDARDS APPLICABLE TO COMMERCIAL CANNABIS PERMIT APPLICANTS AND THEIR REPRESENTATIVES LOBBYING OR WORKING ON THEIR BEHALF IN ACCORDANCE WITH SECTION 30-42 OF THE COMMERCIAL CANNABIS BUSINESSES CHAPTER OF THE FONTANA CITY CODE, AND FINDING THIS ACTION IS NOT A PROJECT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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, 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;

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;

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 cannabis use and commercial cannabis activities, reconciling AUMA, with Proposition 215 and MCRSA. SB 94 continues to provide 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;

WHEREAS, the 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;

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 adoption of Resolution No. 2017-05 establishing fees for a RIMC permit;

WHEREAS, a Petition for Writ of Mandate was filed against the City to prohibit the enforcement of Ordinance No. 1758 (“Petition”), and on November 2, 2018, a court issued a ruling granting the Petition;

WHEREAS, on March 12, 2019, the City Council adopted Ordinance No. 1794 amending Section 30-7(B)(c) and 30-7(b)9f to address the court’s ruling, and bring the City Municipal Code into conformance with the court’s ruling and amending the RIMC fee amount;

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;

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;

WHEREAS, on July 26, 2022, the City Council adopted Ordinance No. 1899 adding Chapter 33 to the Fontana Municipal Code (“FMC”) to regulate commercial cannabis businesses within the City; and

WHEREAS, on October 25, 2022, the City Council adopted Ordinance No. 1906 amending Chapter 30 and Chapter 33 to rename “commercial cannabis” to “cannabis retailer-storefront” and reference special regulations for same and to make minor modifications to Chapter 33 related to phasing, authorization letters, and locations for permit applications along with limiting the number of permits to be issued to any applicant to one;

WHEREAS, the new commercial cannabis provisions require the City Council to establish Process Integrity Standards applicable to commercial cannabis permit applicants and persons working on behalf of such applicants;

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

SECTION 1. The adoption of the Process Integrity Standards set forth in Exhibit A to this Resolution does not qualify as a project under the California Environmental Quality Act (“CEQA”). Notably, this action will not result in any direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15378(a); see also State CEQA Guidelines, §§ 15060(c)(2)-(3).) This action does not approve any cannabis business and will not result in any construction, development, or any other action that could impact the environment.

Resolution No. 2023-003

SECTION 2. The Fontana City Council hereby adopts the Process Integrity Standards set forth in Exhibit A to this Resolution and incorporated herein.

SECTION 3. The City Clerk shall attest and certify to the passage and adoption of this Resolution and it shall become effective immediately upon its approval.

ADOPTED by the City Council of the City of Fontana, California, at a regular meeting of the City Council held on the 24th day of January, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

City of Fontana

Acquanetta Warren, Mayor

ATTEST:

Germaine McClellan Key, City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Ruben Duran, City Attorney

EXHIBIT “A”

PROCESS INTEGRITY STANDARDS FOR COMMERCIAL CANNABIS PERMIT APPLICANTS

Definitions

“Applicant” shall include any individual or entity applying for a Commercial Cannabis Permit, and including any officer, director, partner, consultant, public relations, governmental affairs or other duly authorized “representative” applying on behalf of an individual or entity or making representations on behalf of an individual or entity.

“Commercial Cannabis Permit” means the regulatory permit issued by the City to a commercial cannabis business, which is required before any Commercial Cannabis Activity may be conducted in the City.

All other definitions shall be those set forth in Section 33-5 of the Fontana City Code.

Standards

1. No Ex-Parte Contacts: An applicant and its representatives shall not attempt to contact or initiate contact, in person, by phone or by electronic means, with the Mayor or any City Council Member during the application review period.
2. No Gifts: An applicant and its representatives shall not directly or through any agent or intermediary make, or arrange for the making of, any gift to the Mayor, City Council Member or staff person while the application is pending and for at least twelve (12) months after a Commercial Cannabis Permit is awarded. Gift shall have the meaning it is defined to have in the California Political Reform Act.
3. No Campaign Contributions: An applicant and its representatives shall not make a campaign contribution or loan to the Mayor or any City Council Member at anytime during the application review process and for at least twelve (12) months after a Commercial Cannabis Permit is issued to the Applicant.

Penalties

Failure to abide by these Process Integrity Standards may result in disqualification from an existing cannabis permit review process or revocation of a permit if it is later determined that the applicant or any person associated with the application or any third party lobbying on their behalf has violated these standards.