

RESOLUTION NO. 2023-002

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA ESTABLISHING HOURS OF OPERATION IN ACCORDANCE WITH SECTION 33-29(b) OF THE COMMERCIAL CANNABIS BUSINESSES CHAPTER OF THE FONTANA CITY CODE, AND FINDING THAT 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 (“RMIC”) 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 RMIC 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 February 26, 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 hours of operation applicable to commercial cannabis businesses in accordance with Section 33-29(b) of the Fontana Municipal Code;

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

SECTION 1. The true and correct recitals above are incorporated by this reference herein as the basis and foundation for the City's adoption of this Resolution.

SECTION 2. The adoption of hours of operation for commercial cannabis businesses 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,

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§§ 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.

SECTION 3. The Fontana City Council hereby adopts the following hours of operation for commercial cannabis businesses in accordance with Section 33-29(b) of the Fontana Municipal Code. Commercial cannabis businesses shall only operate from: 9:00 am to 9:00 pm.

SECTION 4. 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

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APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Ruben Duran, City Attorney