

## RESOLUTION NO. 2023-001

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, ESTABLISHING FEES FOR CANNABIS RELATED BUSINESS AND ACTIVITIES, PERMIT AND REGULATORY FEES AND FINDING THAT THE ACTIVITY 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 MAUCRSA. 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;

**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 City, under various statutory provisions under the California Government Code, may set and collect fees for the costs of providing various public services to the community;

**WHEREAS**, notice of a public hearing regarding all matters related to this resolution was mailed, published, posted and distributed in accordance with the provisions of the California Government Code;

**WHEREAS**, pursuant to FMC Section 33-27(a), the City Council, by resolution, may establish various fees and charges associated with the operation of a commercial cannabis business as referenced or determined;

**WHEREAS**, the City Council finds that fees for cannabis-related services subject to the Mitigation Fee Act and proposed for adoption by this Resolution, will not exceed the actual cost of providing the services for which the fees are collected;

**WHEREAS**, the City Council further finds that City revenues from the effective date of this Resolution, from fees for cannabis-related services subject to the FMC Chapter 33, and reflected in the fee schedule adopted pursuant to this

Resolution, will not exceed the estimated amount of funds required to provide the services for which they will be charged;

**WHEREAS**, on January 24, 2023, at a duly noticed public meeting, the City Council considered establishment of various fees arising from and relating to commercial cannabis businesses and activities;

**WHEREAS**, the City Council has considered any verbal and/or written testimony, and has reviewed and considered the information in the fee study and supporting data presented in support of this Resolution, together with information provided at the public hearing by staff and the public;

**WHEREAS**, the City Council finds that the fees established by this Resolution are based upon the reasonable cost of providing the administrative and regulatory services that necessarily arise from and relate to cannabis businesses and activities in the City; and

**WHEREAS**, the City Council now approves the adoption of the fees reflected in the schedule attached hereto as Exhibit "A;"

**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 the fees and charges reflected in the schedule attached hereto, and incorporated by this reference herein as Exhibit "A," do not qualify as a "project" subject to the California Environmental Quality Act (CEQA) because the adoption of the fees and charges will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15060(c)(2).) Moreover, under State CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms like the fees and charges at issue here are excluded from the definition of a "project" subject to CEQA. Alternatively, the imposition of fees is subject to the "common sense" exemption set forth in State CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**SECTION 3.** Commencing on the effective date of this Resolution, and established under FMC Chapter 33 Cannabis Business and Activities, the fees and charges reflected in the schedule attached hereto, and incorporated by this reference herein as Exhibit "A," are adopted.

**SECTION 4.** The fees and charges reflected in Exhibit "A," all of which are new, and established under FMC Chapter 33 Cannabis Business and Activities, shall be effective not earlier than sixty (60) days after the adoption of this Resolution.

**SECTION 5.** Pursuant to the terms under which they applied for their respective permits, all applicants for permits to engage in cannabis business and activities in the City prior to the effective date of this Resolution will have the duty to pay the City's cannabis businesses and activities permit application fee as now adopted. Future applicants will pay the entire application fee at the time when they file their applications with the City.

**SECTION 6.** The Director of Finance is hereby authorized and directed to incorporate the fees and charges documented in Exhibit "A" into the City's Comprehensive Fee Schedule.

**SECTION 7.** 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 24<sup>th</sup> 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**

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Ruben Duran, City Attorney

## EXHIBIT "A"

The following fees are established for and applicable to City services arising from and related to cannabis businesses and activities, as described in Chapter 33 of the Fontana Municipal Code:

- **Cannabis Application Fee (Sec. 33-8(a)(12).)** **\$17,500.00**
- **Cannabis Zoning Request Letter** **\$ 300.00**
- **Background Check Fee (Sec. 33-7(b)(1))** **\$ 300.00**
- **Cannabis Permit Fee (Sec. 33-9(l).)** **\$ 9,100.00**
- **Cannabis Permit Renewal Fee (Sec. 33-12.)** **\$ 2,300.00**
- **Change in Ownership Fee (Sec. 33-18.)** **\$ 3,600.00**
- **Change in Name Only Fee (Sec. 33-19.)** **\$ 2,300.00**
- **Cannabis Appeal Deposit (Sec. 33-14(2)(f).):** **\$ 5,000.00**