

ORDINANCE NO. 1758

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, AMENDING SECTION 30-7 OF THE FONTANA MUNICIPAL CODE BY RENUMBERING THE EXISTING SECTION 30-7 TO 30-7(A) AND ADDING SECTION 30-7(B) ENTITLED “RESIDENTIAL INDOOR MARIJUANA CULTIVATION”

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, the City passed Ordinance No. 1747 on September 13, 2016; and

WHEREAS, Ordinance No. 1747 was adopted to bring the City into full compliance with Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) and to regulate the personal, medical, and commercial use of marijuana pursuant to local authority preserved in the AUMA; and

WHEREAS, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, when AUMA passed, many of its provisions took effect on November 9, 2016, including the ability to cultivate marijuana inside a private residence or accessory structure; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the City believes a Recreational Indoor Marijuana Cultivation (“RIMC”) permit is a reasonable requirement to ensure that all marijuana grown in the City is grown in code-compliant structures that reduce the risk of fire, mold, or other structural damage and contamination; and

WHEREAS, the City has determined a RIMC permit is necessary to the public health, safety, and welfare in the City; and

WHEREAS, this Ordinance would renumber the existing Section 30-7 to Section 30-7(A) and add Section 37(B) to the Fontana Municipal Code to establish permitting regulations to allow for indoor cultivation of marijuana in a private residence or accessory structure thereto in a manner that will ensure any cultivation is safe, secure, and does not create a public nuisance to others living in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. Code Amendment No. 1. Section 30-7, entitled “Administration; marijuana uses”, and all its subsections shall be renumbered as Section 30-7(A).

SECTION 3. Code Amendment No. 2. Section 30-7(B) entitled “Residential Indoor Marijuana Cultivation” is hereby added to the Development Code of the Fontana Municipal Code, and shall read as follows:

“Section 30-7(B)

RESIDENTIAL INDOOR MARIJUANA CULTIVATION

Sections:

- 30-7(B).010 - Purpose**
- 30-7(B).020 - Definitions**
- 30-7(B).030 - Applicability**
- 30-7(B).040 - Review and Appellate Authority**
- 30-7(B).050 - Application and Notice**
- 30-7(B).060 - Findings**
- 30-7(B).070 - Expiration and Renewal**
- 30-7.(B).080 - Suspension and Termination**
- 30-7.(B).090 - Subsequent Applications**
- 30-7.(B).100 - No Sale or Transfer**

30-7(B).010. Purpose

The purpose of this section is to prescribe the requirements and process for the Residential Indoor Marijuana Cultivation (RIMC) Permit. The RIMC Permit is intended to serve as an instrument of the City’s reasonable regulation of residential indoor marijuana cultivation as provided by California Health and Safety Code, Section 11362.2(b)(1).

30-7(B).020. Definitions

- A. “Cultivation” means the marijuana cultivation process including, but not limited to, planting, harvesting, drying, processing, or maintenance activities.
- B. “Cultivation area” includes the area where marijuana plants are cultivated, cultivation-related materials and supplies are stored, and any marijuana processed from the cultivation in excess of 28.5 grams.
- C. “Day care” means a facility, center, or home requiring a license that is issued by the State of California which provides for the care, health, safety, supervision, or guidance of a child’s social, emotional, and educational growth on a regular basis, in a place other than the child’s own home, or any facility meeting the definition of California Health and Safety Code Section 1596.76
- D. “Directly engage” in cultivation means to handle the marijuana plants in the cultivation process.
- E. “Group Home” means any community care facility regulated and licensed by a Federal and/or State agency. Unlicensed community care facilities or those community care facilities the regulation of which is not otherwise preempted by State or Federal law shall not constitute group homes.
- F. “Indirectly engage” in cultivation means to assist, even if not handling marijuana plants, in the cultivation process.
- G. “Personal Use” means to possess, use, or give away to persons 21 years of age or older without any compensation whatsoever.
- H. “Residence” means a private residence such as a house, apartment unit, mobile home, or similar dwelling.
- I. “Youth Center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities

30-7(B).030. Applicability

- A. A person may directly or indirectly engage in residential indoor marijuana cultivation only after obtaining and maintaining a valid RIMC permit from the City of Fontana.
- B. A RIMC Permit authorizes:
 - 1. Only one person,

2. To directly or indirectly engage in residential indoor marijuana cultivation for personal use,
 3. At only one residence, and
 4. Within only the authorized cultivation area at the residence.
- C. A RIMC Permit does not authorize:
1. Construction or improvements of any structure,
 2. A property-at-large for marijuana cultivation,
 3. The permit holder or any others to engage in any activity licensed by the State of California under Division 10 of the Business and Professions Code, or
 4. The following people to directly or indirectly engage in residential indoor marijuana cultivation:
 - (a) The permit holder's family members,
 - (b) Cohabitants,
 - (c) Guests,
 - (d) Future residents, or
 - (e) Any other person other than the permit holder.
- D. A person may not hold more than one (1) RIMC Permit at a time. Multiple permit holders may be authorized to engage in residential indoor marijuana cultivation at the same residence, but a residence must include no more than one (1) cultivation area, and no residence may cultivate more than six (6) plants in total, regardless of how many permit holders are present.

30-7(B).040. Review and Appellate Authority

- A. Applications for a RIMC Permit will be processed and reviewed by the Community Development Director or his or her designee. The Community Development Director may approve or deny an application based on the findings provided in section 30-7(B).060.
- B. A decision by the Community Development Director may be appealed to the City Manager or his or her designee by the following parties within 15

days after receipt of the Community Development Director's final decision:

1. The applicant, or
2. Owner(s) or resident(s) of the property.

30-7(B).050. Application and Notice

- A. The Community Development Director may adopt the forms and submittal materials required for a complete application.
- B. The City Council may by resolution require an application fee.
- C. The City will provide written notification of the complete application to the applicant within 30 calendar days of complete submission, indicating whether the application has been approved or denied.

30-7(B).060. Findings

The Community Development Director or his or her designee may approve an application for an RIMC Permit if the following findings are made:

A. Applicant

The applicant must:

1. Be 21 years of age or older.
2. Complete a Live Scan with the California Department of Justice, at the applicant's own cost.
3. Have no felony convictions for the illegal possession for sale, manufacture, transportation, or cultivation of a controlled substance within the last five (5) years,
4. Have no pending code enforcement actions with the City, and
5. Have no outstanding payments due to the City.
6. Provide a signed, notarized affidavit of any landlord or property owner other than the applicant that acknowledges and grants permission for cultivation to occur on the property.

B. Residence

1. The residence must be the primary dwelling of the applicant.
2. The residence must not include more than one (1) cultivation area.
3. The residence must not be used for any of the following activities:
 - (a) Day care,
 - (b) Youth center,
 - (c) Group Homes, and
 - (d) Any facility that does not allow cultivation of marijuana by law or policy.

C. Cultivation Area

1. Location and Use
 - (a) The cultivation area must be located within the residence or within an accessory structure. The residence, accessory structure, and all plumbing, electrical, and other utilities must be properly permitted by the City or appropriate regulatory agency.
 - (b) The cultivation area must be used exclusively for residential indoor marijuana. The cultivation area may not be shared with any space used for sleeping, cooking, eating, bathing, or other residential activities.
 - (c) The cultivation area must not be used or prepared in a manner to cultivate more than six (6) marijuana plants.
 - (d) The following chemicals may not be used or stored in the cultivation area, and if stored elsewhere in the home must be stored in leak and fireproof containers sufficient to provide storage up to required safety standards:
 - (i) Explosive gases, including, but not limited to: Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, Oxygen (O₂), Carbon dioxide (CO₂) or Hydrogen (H₂).
 - (ii) Dangerous poisons, toxins, or carcinogens, including, but not limited to: Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, or Tri-chloro-ethylene.

2. Access and Security

- (a) The cultivation area must be accessible by only one lockable door. Any windows, skylight, ventilation, or other opening must be lockable.
- (b) Access to the cultivation area must be restricted to the applicant or other permit holders authorized for the cultivation area.
- (c) The cultivation area must not be visible from anywhere outside the residence. Any windows, skylight, ventilation, or other opening must be sufficiently covered or opaque as to obscure visibility of the cultivation area from any adjacent property.
- (d) The cultivation area must not produce odors, sounds, or other emissions that are sensible from adjacent properties and may indicate marijuana cultivation.

3. Required Inspection

- (a) Prior to the issuance or renewal of any RIMC, an inspection of the cultivation area shall be conducted by City Staff including, but not limited to, Code Enforcement, Building, and Fire officials at the City's discretion.

30-7(B).070. Expiration and Renewal

- A. A RIMC Permit expires, if not renewed, one (1) year from the date of approval.
- B. A RIMC Permit may be renewed, if prior to the expiration, the permit holder:
 - 1. Completes forms and submittal materials for renewal as required by the Community Development Director,
 - 2. The permit holder passes an inspection approved by the Community Development Director,
 - 3. Pays a renewal fee as approved by resolution by City Council.

30-7(B).080 Suspension and Termination

- A. The City may suspend or terminate a RIMC Permit at any time for failure to comply with applicable governing regulations.
- B. If a RIMC Permit is suspended, the suspension will be effective and the permit holder's marijuana crop may be impounded until the permit holder:
 - 1. Demonstrates compliance with the applicable governing regulations, and
 - 2. Pays a fine as set forth in section 30-7(B).080(D).
- C. If a RIMC Permit is terminated, the permit holder's marijuana crop may be impounded. The permit holder may not apply for another RIMC Permit until the permit holder pays a fine as set forth in section 30-7(B).080(D).
- D. The City Council may by ordinance adopt a fine schedule for violations that may escalate with successive violations.
- E. A suspension or termination of a RIMC Permit may be appealed to the City Manager or his or her designee by the permit holder.

30-7(B).090 Subsequent Applications

- A. Application for a Different Residence
 - 1. If a permit holder applies for a RIMC Permit for a residence other than specified on the existing permit, the existing RIMC Permit will be suspended upon application for the new permit.
 - 2. If the application is approved, the existing RIMC Permit is rescinded.
 - 3. If the application is denied, the existing RIMC Permit is reinstated.
 - 4. If the applicant appeals a denial of the application, the existing RIMC Permit remains suspended until a final decision is reached.
- B. Application for a Different Cultivation Area in the Same Residence

If a permit holder applies for a RIMC Permit for the residence on the existing permit, but for cultivation area other than specified on the existing permit, the existing permit will terminate upon approval of the application. Only one cultivation area may exist in a residence at one time, and if another application is approved, the existing RIMC Permit will terminate.

C. Application for Same Cultivation Area in Same Residence

If another individual applies for a RIMC Permit for the same cultivation area, no permit will be issued if the existing permit has been terminated or suspended. An additional RIMC Permit for the same cultivation area shall only be issued if all Permits related to that cultivation area remain in good standing with the City.

30-7(B).100. No Sale or Transfer

A RIMC Permit may not be sold or transferred.”

SECTION 4. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 8353 Sierra Avenue, Fontana, CA 92335. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and

against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana.

APPROVED AND ADOPTED this 14th day of February, 2017.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting of said City Council on the 24th day of January, 2017, and was passed and adopted not less than five (5) days thereafter on the 14th day of February, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk