RESOLUTION NO. 10091

A RESOLUTION TO ESTABLISH NEW FEES FOR ADULT-USE AND MEDICINAL COMMERCIAL CANNABIS ACTIVITIES PURSUANT TO THE ADULT USE OF MARIJUANA ACT (PROPOSITION 64) AND CITY COUNCIL ORDINANCE NO. 2960 AND TO ESTABLISH NEW OR REVISE EXISTING PLANNING DIVISION FEES

WHEREAS, in 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the "CUA"), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician. The CUA provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."; and

WHEREAS, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the "MMP"), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

WHEREAS, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries. In 2013, the California Third District Appellate Court further held that state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within the city." and

WHEREAS, the Federal Controlled Substances Act (21 U.S. C., § 801 et seq.) makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense marijuana. Despite such federal prohibition, on August 29, 2013, the United States Department of Justice issued a memorandum (the "Cole Memo") stating that, notwithstanding the federal classification of marijuana as a schedule 1 controlled substance, jurisdictions that have legalized marijuana in some form are less likely to be subject to federal enforcement under the Controlled Substances Act if they have implemented strong and effective regulatory and enforcement systems to follow eight guiding principles: (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property; and

WHEREAS, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the "MMRSA"). The MMRSA created a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the "MCRSA"), under Senate Bill 837 in June 2016, which also made included substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees; and

WHEREAS, On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") was approved California voters as Proposition 64 and became effective on November 9, 2016, pursuant to the California Constitution (Cal. Const., art. II, § 10(a).). Proposition 64 would legalized the nonmedical use of cannabis by persons 21 years of age and over, and the personal cultivation of up to six (6) cannabis plants. On November 15, 2016, the City Council adopted Urgency Ordinance No. 2902 to prohibit outdoor personal marijuana cultivation and establish regulations and a permitting process for indoor personal marijuana cultivation; and

WHEREAS, AUMA also created a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products. On December 6, 2016, Interim Urgency Ordinance No. 2905 was adopted by the City Council to establish a temporary moratorium on nonmedical "commercial cannabis activities" for a period of 45 days and extended such moratorium for an additional period of 22 months and 15 days under Interim Urgency Ordinance No. 2907, on January 10, 2017; and

WHEREAS, on June 27, 2017, Governor Brown signed the Legislature-approved Senate Bill 94. SB 94 combined elements of the MCRSA and AUMA to establish a streamlined singular regulatory and licensing structure for both medical and nonmedical cannabis activities given that there were discrepancies between the MCRSA and AUMA. The new consolidated provisions under SB 94 is now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") to be governed by the California Bureau of Cannabis Control. MAUCRSA refers to medical cannabis as "medicinal cannabis" and nonmedical/recreational cannabis as "adult-use cannabis"; and

WHEREAS, on September 16, 2017, Governor Brown signed Assembly Bill 133 into law, which provided cleanup and substantive to MAUCRSA, including the removal of the requirement that licensed premises remain "separate and distinct" for each license type; and

WHEREAS, on November 8, 2017, the City Council adopted Ordinance No. 2924, which (i) prohibits all adult-use commercial cannabis activities and medicinal commercial cannabis retailers (dispensaries and deliveries) and microbusinesses; and (ii) creates regulations and a permitting process for medicinal commercial cannabis cultivation, manufacturing, distribution, and laboratory testing; and

WHEREAS, on October 22, 2019, proponents of a petition titled the Commercial Cannabis Regulation and Public Safety Measure (the "Initiative") presented and filed the Initiative to the El Monte City Clerk. The Initiative would permit adult-use and medicinal commercial cannabis activities in designated zones in the City. The City Clerk subsequently submitted the Initiative to the Los Angeles County Registrar-Recorder/County Clerk (the "County"), who found the Initiative to be valid; and

WHEREAS, on November 25, 2019, the City Council adopted Resolution No. 10064 to verify the findings of sufficiency for the Initiative and directed City staff to prepare the Initiative for first reading as an ordinance; and

WHEREAS, on December 3, 2019, the City Council adopted Ordinance No. 2960, to permit adult-use and medicinal commercial cannabis activities in designated zones the City; and

WHEREAS, Ordinance No. 2960 supercedes Ordinance No. 2924; and

WHEREAS, the City Council accordingly desires to establish application fees adult-use and medicinal commercial cannabis activities; and

WHEREAS, the City Council also desires to establish new or revise existing Planning Division fees; and

WHEREAS, pursuant to the California Constitution, a fee may not exceed the estimated reasonable cost of providing the service or regulatory act for which the fee is charged, and a fee that does exceed such cost may be considered a special tax (Cal. Const., art. XIIIC, § 1(e)); and

WHEREAS, on February 18, 2020 the City Council conducted a duly noticed public hearing to consider application fees for adult-use and medicinal commercial cannabis activities and to consider establishing new or revising existing Planning Division fees; and

WHEREAS, notice of such public hearing was effectuated pursuant to state law.

BASED UPON THE ABOVE RECITALS, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA, DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. The facts set forth in the recitals above are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council hereby adopts, establishes, and approves the following:

- An application fee for adult-use and medicinal commercial cannabis activities for retail, cultivation, manufacturing, distribution and testing in the amount of twenty-seven thousand two hundred fifty-seven dollars and sixty-two cents ($27,257.62) for an operator's first application and thirteen thousand six hundred twenty-eight dollars and eighty cents ($13,628.80) for each subsequent application, as set forth and calculated in accordance in the attached Exhibit "A-1 and A-2";

- A business license, cannabis business permit and annual inspection fee for adult-use and medicinal commercial cannabis activities for retail, cultivation, manufacturing, distribution and testing in the amount of twelve thousand six hundred ninety-six dollars and twenty-seven cents ($12,696.27) for each operator for the first year of operation and six thousand three hundred forty-eight dollars and thirteen cents ($6,348.13) for each subsequent year of operation, as set forth and calculated in accordance in the attached Exhibit "A-1 and A-2; and

- The following new or revised Planning Division fees: two hundred eleven dollars and forty-seven cents ($211.47) for the re-noticing of public hearings; seven hundred sixty-nine dollars and forty-five cents ($769.45) for single-family modification permits; nine hundred forty-six dollars and ninety-four cents ($946.94) for multifamily and non-residential modification permits; two hundred sixty-two dollars and thirty-five cents ($262.35) for modification permit time extensions; eight hundred thirty-eight dollars and twenty-one cents ($838.21) for reviewing Covenants, Conditions, and Restrictions (CC&Rs); four hundred ninety-four dollars and three cents ($294.03) for reviewing maintenance agreements; two thousand five hundred eleven dollars and seventy-seven cents ($2,511.77) as the base fee for tentative tract maps and an additional thirty-three dollars and sixty-six cents ($33.66) for each resulting parcel, as set forth and calculated in accordance in the attached Exhibit "A-3".

SECTION 3. The fees outlined in Section 2 shall be subject to the provisions outlined in City Council Resolution No. 8663, dated February 21, 2006 and Resolution No. 9293, dated July 3, 2012, which allow the City to adjust fees annually by a factor based on changes to the Employee Cost Index for State and Local Government Employees, Total Compensation, as published by the United States Bureau of Labor Statistics.

SECTION 4. This Resolution shall supersede and take the place of all provisions of all existing Resolutions or orders of the City Council pertaining to the subject matter hereof, all of which, to the extent that they conflict with the Resolution, are hereby repealed.

SECTION 5. This Resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting of this 18th day of February 2020.

André Quintero, Mayor
City of El Monte

ATTEST:

Catherine A. Eredia, City Clerk
City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, Catherine A. Eredia, City Clerk of the City of El Monte, hereby certify that the foregoing Resolution No. 10091 was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 18th day of February 2020 and that said Resolution was adopted by the following vote, to-wit:

AYES: Mayor Quintero, Mayor Pro Tem Morales, Councilmembers Martinez Muela and Velasco

NOES: Councilmember Ancona

ABSTAIN: None

ABSENT: None

Catherine A. Eredia, City Clerk
City of El Monte