

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITIES IN THE CITY, PROHIBIT OUTDOOR PERSONAL CULTIVATION OF MARIJUANA, AND ESTABLISH REASONABLE REGULATIONS FOR THE INDOOR PERSONAL CULTIVATION OF MARIJUANA, BY ADDING CHAPTER 18.115 (MARIJUANA USES AND ACTIVITIES PROHIBITED) TO TITLE 18 (ZONING) AND CHAPTER 9.53 (PERSONAL CULTIVATION OF MARIJUANA) TO DIVISION V OF TITLE 9, OF THE RIALTO MUNICIPAL CODE; BY REPEALING VARIOUS SECTIONS OF TITLE 18 (ZONING) AND CHAPTER 9.45 (MOBILE MARIJUANA DISPENSARIES) OF DIVISION V OF TITLE 9, OF THE RIALTO MUNICIPAL CODE; BY REPEALING ORDINANCE NO. 1570; AND, FINDING AN EXEMPTION FROM CEQA

WHEREAS, in 1996 California voters approved Proposition 215, the Compassionate Use Act (“CUA”), codified as Health and Safety Code §11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), codified as Health & Safety Code §§ 11362.7, *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of marijuana for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical marijuana operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial recreational (adult use) marijuana operations, and which also legalized limited personal recreational marijuana use, possession, and cultivation; and

1 **WHEREAS**, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult
2 Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of
3 MCRSA and AUMA; and

4 **WHEREAS**, the MAUCRSA provides that the State of California will begin issuing licenses
5 in 2018 for both medical and recreational marijuana businesses in 20 different categories, which are
6 found in Business & Professions Code § 26050, and which categories include marijuana cultivation,
7 manufacturer, testing, retailer, distributor, and microbusiness; and

8 **WHEREAS**, the MAUCRSA, Business & Professions Code § 26200(a)(1), provides that local
9 jurisdictions may completely prohibit the establishment or operation of any or all of the 20 different
10 medical and recreational business operations to be licensed by the state under Business & Professions
11 Code § 26050; and

12 **WHEREAS**, the MAUCRSA, Business & Professions Code § 26055(d), provides that a state
13 commercial marijuana license may not be issued to an applicant whose operations would violate the
14 provisions of any local ordinance or regulation; and

15 **WHEREAS**, the City Council of Rialto now desires to expressly prohibit, to the fullest extent
16 allowed under state law, any and all commercial medical and/or recreational marijuana activity,
17 including all of the 20 different MAUCRSA state license categories for both medical and recreational
18 commercial marijuana businesses described above (and as may be amended); and

19 **WHEREAS**, the AUMA, Health & Safety Code § 11362.1(a)(3), makes it lawful for any
20 person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six
21 living marijuana plants and possess the marijuana produced by the plants”; and

22 **WHEREAS**, the AUMA, Health & Safety Code § 11362.2(b)(3), explicitly allows a city to
23 “completely prohibit persons from engaging in [the personal cultivation of marijuana] outdoors upon
24 the grounds of a private residence”; and

25 **WHEREAS**, the AUMA, Health & Safety Code § 11362.2(b), explicitly allows a city to “enact
26 and enforce reasonable regulations to reasonably regulate” the cultivation of marijuana permitted under
27 Health & Safety Code § 11362.1(a)(3), so long as the city does not completely prohibit the cultivation
28

1 of up to six plants “inside a private residence, or inside an accessory structure to a private residence
2 located upon the grounds of a private residence that is fully enclosed and secure”; and

3 **WHEREAS**, the AUMA, Health & Safety Code § 11362.2(a)(2), further restricts such personal
4 marijuana cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of
5 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence,
6 are in a locked space, and are not visible by normal unaided vision from a public place”; and

7 **WHEREAS**, several California cities have reported negative impacts of marijuana cultivation
8 and related activities, including but not limited to offensive odors, criminal activity, (such as
9 trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of
10 marijuana), and public health and safety concerns (such as fire hazards and problems associated with
11 mold, fungus, and pests); and

12 **WHEREAS**, marijuana plants, as they begin to flower and for a period of two months or more,
13 produce a strong odor, offensive to many people, and detectable far beyond property boundaries if
14 grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

15 **WHEREAS**, due to the value of marijuana plants and their strong smell (which alerts others to
16 their location), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and
17 attendant violence and injury, creating an increased risk to public safety; and

18 **WHEREAS**, the indoor cultivation of marijuana has potential adverse effects on the structural
19 integrity of the buildings in which marijuana is cultivated, and the use of high wattage grow lights and
20 excessive use of electricity increases the risk of fire, which presents a clear and present danger to the
21 buildings, its occupants, and neighboring buildings and residents; and

22 **WHEREAS**, unregulated indoor cultivation of marijuana can be harmful to the public health,
23 safety and welfare, because electrical modifications risk fires, poor irrigation can cause mold,
24 overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness and
25 can contaminate soil and water, improper carbon dioxide mixed with insufficient ventilation can cause
26 injury or death, and structural changes put first responders in danger if they rush into the unknown; and

27 **WHEREAS**, the Attorney General’s August 2008 Guidelines for the Security and Non-
28 Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration

1 of marijuana in any location or premises without adequate security increases the risk that nearby homes
2 or businesses may be negatively impacted by nuisance activity such as loitering and/or crime; and

3 **WHEREAS**, marijuana cultivation is likely to generate these negative effects on the public
4 health, safety, and welfare in the city, based on the experiences of other cities; and

5 **WHEREAS**, absent clear regulation, marijuana cultivation in the city poses a potential threat
6 to the public peace, health, and safety, and, unless the city takes action to regulate it, the secondary
7 impacts described above are likely to occur; and

8 **WHEREAS**, the city has a compelling interest in protecting the public health, safety, and
9 welfare of its citizens, residents, visitors, and businesses, and in preserving the peace and quiet of the
10 neighborhoods within the city, by prohibiting outdoor marijuana cultivation and by regulating the
11 personal indoor cultivation of marijuana; and

12 **WHEREAS**, pursuant to the above-described express statutory authority and its police power,
13 the city has the authority to prohibit outdoor marijuana cultivation, and to enact reasonable regulations
14 for the indoor personal cultivation of up to six marijuana plants, to protect the public health, safety and
15 welfare, by adding a new Chapter 9.53 “Personal Cultivation of Marijuana” to the Rialto Municipal
16 Code; and

17 **WHEREAS**, this ordinance is enacted, consistent with the Compassionate Use Act of 1996,
18 the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015,
19 the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult Use of Cannabis Regulation and
20 Safety Act of 2017, to protect the public health, safety, and welfare of the public in relation to
21 marijuana-related uses and activities; and

22 **WHEREAS**, pursuant to the above-described express statutory authority and the city’s police
23 power, the city has the authority to prohibit all commercial marijuana activities (whether not-for-profit
24 or for-profit) that may otherwise be permitted by the State of California under the MCRSA, the AUMA,
25 and the MAUCRSA, by adding a new Chapter 18.115 (“Marijuana Uses and Activities Prohibited”) to
26 Title 18 of the Rialto Municipal Code; and

27 **WHEREAS**, the Rialto City Council affirms that Title 18 (“Zoning”) of the Rialto Municipal
28 Code is structured as a permissive zoning code, whereas “[a]ny use that is not permitted expressly by

any provisions of this title shall be prohibited” (Section 18.02.030), and that the prohibitions on commercial marijuana activities being added to Title 18 are to fully comply with requirements of state law when a city desires to prohibit commercial marijuana activities; and

WHEREAS, because new Chapter 18.115 (“Marijuana Uses and Activities Prohibited”) prohibits in all zones of the city the activities and use of “mobile marijuana dispensaries” as understood by and prohibited by existing Chapter 9.45 (“Mobile Marijuana Dispensaries”), the city desires to repeal Chapter 9.45 (“Mobile Marijuana Dispensaries”), for the sole purpose of centralizing the city’s express prohibition on all commercial marijuana activities, including mobile marijuana dispensaries; and

WHEREAS, because new Chapter 18.115 (“Marijuana Uses and Activities Prohibited”) prohibits in all zones of the city “medical marijuana dispensaries” as understood by existing Section 18.04.585 (“Medical marijuana dispensary”), the city desires to repeal the existing definition of “medical marijuana dispensary” and existing references thereto in Title 18, for the sole purpose of centralizing the city’s express prohibition on all commercial marijuana activities, including medical marijuana dispensaries; and

WHEREAS, nothing in this ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law; and

WHEREAS, at a properly noticed public hearing held on _____, 2017, the Planning Commission of the City of Rialto considered this issue and adopted Resolution No. _____ recommending the City Council adopt the amendments to Title 18 (Zoning) provided by this Ordinance; and

WHEREAS, the Rialto City Council, after notice duly given as required by law, held a public hearing on _____, 2017 during a regular meeting and considered this Ordinance, and all interested parties were given an opportunity to be heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

1 **SECTION 1. THE CITY COUNCIL OF THE CITY OF RIALTO HEREBY MAKES**
2 **THE FOLLOWING FINDINGS:**

- 3 A. The recitals set forth above are all true and correct and are incorporated herein.
- 4 B. The prohibitions on marijuana activities established by this Ordinance are necessary to
5 protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the
6 City by state law.
- 7 C. The regulation of indoor personal cultivation of marijuana established by this Ordinance
8 are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant
9 to the authority granted to the City by state law.

10 **SECTION 2. CHAPTER 9.53 (PERSONAL CULTIVATION OF MARIJUANA) IS**
11 **HEREBY ADDED TO DIVISION V OF TITLE 9 OF THE RIALTO MUNICIPAL CODE:**

12 **“CHAPTER 9.53. PERSONAL MARIJUANA CULTIVATION**

13 Sec. 9.53.010 - Purpose and intent.

14 Sec. 9.53.020 - Definitions.

15 Sec. 9.53.030 - Personal marijuana cultivation.

16 Sec. 9.53.040 - Indoor personal marijuana cultivation permit.

17 Sec. 9.53.050 - Violations and penalties; public nuisance.

18 **Sec. 9.53.010 - Purpose and Intent.**

19 The purpose and intent of this chapter is to prohibit throughout the entire city the outdoor cultivation
20 of marijuana, and to establish, consistent with the meaning of Section 11362.2 of the Health & Safety
21 Code, and as may be amended, reasonable regulations governing the indoor cultivation of up to six (6)
22 marijuana plants at a private residence.

23 **9.53.020 - Definitions.**

24 The following words and phrases shall, for the purposes of this chapter, have the meanings respectively
25 ascribed to them by this section, as follows:

- 26 A. “Accessory structure” means a detached subordinate building the use of which is incidental to
27 that of the main building or main use of the land on the same lot. A garage attached to the main
28 building is considered a part of the main building.

- 1 B. "Applicant" means an applicant for a permit.
- 2 C. "Application" means an application for a permit.
- 3 D. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing,
4 grading, or trimming of one or more marijuana plants or any part thereof.
- 5 E. "Cultivation site" means the real property on which marijuana cultivation occurs.
- 6 F. "Director" means the Director of Development Services for the City of Rialto, or his or her
7 designee.
- 8 G. "Marijuana" has the same definition as provided in Section 26001 of the Business & Professions
9 Code for the term "cannabis," and as may be amended, defined as "all parts of the plant
10 Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the
11 seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and
12 every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds,
13 or resin. 'Cannabis' also means the separated resin, whether crude or purified, obtained from
14 cannabis. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the
15 stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt,
16 derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom),
17 fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."
- 18 H. "Permit" means an indoor personal marijuana cultivation permit issued pursuant to this chapter.
- 19 I. "Person" means any individual, firm, co-partnership, joint venture, association, corporation,
20 limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or
21 combination acting as a unit.
- 22 J. "Private residence" has the same meaning as the term is defined in Section 11362.2(b)(5) of the
23 Health & Safety Code, and as may be amended, which provides that private residence "means
24 a house, an apartment unit, a mobile home, or other similar dwelling."

25 **Sec. 9.53.030 – Personal marijuana cultivation.**

- 26 A. Prohibition. Marijuana cultivation is prohibited in all zones of the city. No person shall engage
27 in the cultivation of marijuana in the city for any purpose.
- 28

1 B. Limited Exemption. The general prohibition on marijuana cultivation in above subsection (a)
2 does not apply to the indoor cultivation of marijuana at a private residence conducted both
3 pursuant to a valid and current permit as provided for in this chapter, as well as with complete
4 adherence to the following regulations:

- 5 1. Six plants. Cultivation is limited to no more than six (6) living marijuana plants at any one
6 time.
- 7 2. Indoor cultivation only. Cultivation shall occur entirely within a private residence or within
8 an accessory structure to a private residence located upon the grounds of a private residence
9 that is fully enclosed and secure.
- 10 3. Locked space. The six (6) living plants and any marijuana produced by the plants in excess
11 of 28.5 grams shall be kept within a locked space located either within the private residence
12 or upon the grounds of the private residence.
- 13 4. Visibility. The six (6) living plants and any marijuana produced by the plants in excess of
14 28.5 grams shall not be visible from any neighboring property or public right of way, or in
15 any manner be visible by normal unaided vision from a public place.
- 16 5. Odor.
 - 17 a. The odor resulting from all marijuana cultivation shall not be detectable by human
18 senses from any neighboring property or public right of way.
 - 19 b. As necessary (which final determination shall be made by the Director), to ensure
20 that no odor resulting from marijuana cultivation shall be detectable by human
21 senses from any neighboring property or public right of way, a marijuana cultivation
22 site shall install and continuously operate a functioning ventilation and filtration
23 system which complies with all applicable building code regulations, including
24 obtaining all required permits and approvals.
- 25 6. Nuisance Activity. Cultivation shall not result in a nuisance or adversely affect the health,
26 welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise,
27 noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use
28 or storage of materials, processes, products or waste.

1 7. Fire Extinguisher. A working portable fire extinguisher, which complies with the
2 regulations and standards adopted by the state fire marshal and applicable law, shall be kept
3 in the same room as the marijuana cultivation.

4 8. Electricity.

5 a. The collective draw from all electrical appliances at the marijuana cultivation site
6 shall not exceed the maximum rating of the approved electrical panel for the
7 residence where the marijuana is being cultivated.

8 b. The maximum rating shall be as established in the manufacturer specifications for
9 the approved electrical panel.

10 9. Lighting. Any lighting fixture or combination of lighting fixtures used for marijuana
11 cultivation shall:

12 a. not exceed the rated wattage and capacity of the circuit breaker; and

13 b. shall be shielded so as to completely confine light and glare to the interior of the
14 private residence or fully enclosed accessory structure.

15 10. Private Residence. Any private residence used for cultivation shall:

16 a. include a fully functional and usable kitchen, as well as bathroom and bedroom
17 areas, for use by the permit holder; and

18 b. not be used primarily or exclusively for marijuana cultivation.

19 11. Garage. Cultivation shall not displace required parking in a garage.

20 C. Additional Regulations. Further rules, regulations, procedures, and standards for the
21 administration and implementation of this chapter may be adopted from time to time either by
22 resolution or ordinance from the City Council, or by the Director (upon authorization by
23 resolution of the City Council).

24 **Sec 9.53.040 – Indoor personal marijuana cultivation permit.**

25 A. Permit Application. An applicant shall submit an application to the Director, in a form provided
26 by the city, and the application shall contain the following information:

27 1. The address of the property where marijuana cultivation is to occur.
28

2. The name of the applicant and a statement as to whether the applicant is an owner or tenant of the property where marijuana cultivation is to occur.
3. If the applicant is not the owner of the property, property owner acknowledgement, in a form provided by the city, that the property owner consents to the cultivation of marijuana at the marijuana cultivation site.
4. Proof, in a form acceptable to the city, that the cultivation site has been inspected and approved by the code enforcement division of the city. Such inspections shall be for the purpose of determining whether the proposed cultivation site meets the requirements of this chapter, as well as other applicable sections of the Rialto City Code.
5. A scaled property site plan and a scaled diagram of the floor plan of the residence, or the fully enclosed and secure accessory structure, to be used for cultivation at the marijuana cultivation site, and an itemized list of measures taken to comply with the provisions of this chapter, including identification and description of lighting and equipment to be used for the marijuana cultivation at the residence.
6. Any other information the Director deems necessary to efficiently administer applications and permits so as to further the purposes of this chapter.

B. Action on Applications.

1. Upon receipt of a completed application and payment of the application and permit fees, the Director shall review the information contained in the application to determine whether the applicant shall be issued the permit.
2. If the Director determines that the applicant has completed the application improperly, the Director shall notify the applicant within 30 days of receipt of the application. Applicant will then have 30 days to complete the application. If the application is not submitted within that time frame, or is resubmitted incomplete, the Director shall deem the application abandoned, and the applicant may then resubmit a new application for a new review pursuant to the requirements of this section.
3. Within 60 days of receipt of a completed application, the Director shall complete the review, approve or deny the application in accordance with the provisions of this chapter, and so

1 notify the applicant by United States mail, first class postage prepaid, addressed to the
2 applicant at the address stated in the application.

3 4. The Director shall grant the application upon affirmative findings for all of the following
4 requirements:

5 a. The applicant and the marijuana cultivation site are both in compliance with state law
6 governing marijuana cultivation; and

7 b. The applicant and the marijuana cultivation site are both in compliance with all of the
8 provisions of this chapter, including any regulations promulgated under this chapter;
9 and

10 c. The marijuana cultivation site complies with the building code, fire code, plumbing
11 code, and any other such applicable code adopted by the city.

12 C. Permits valid for one year. A permit issued under this section shall automatically expire one
13 year after issuance.

14 D. Permit renewals.

15 1. A permit holder shall request renewal of a permit at least 60 days, but not sooner than 90
16 days, prior to expiration of the permit. Permit holders shall pay a permit renewal fee and
17 submit to the Director, in a form provided by the city, a renewal application. The Director
18 shall determine what information is required to be presented with a renewal application.
19 The renewal application shall include, but not be limited to, determination whether any
20 information provided with any prior application (whether an initial application or a renewal
21 application) has changed since such prior submission.

22 2. The Director in his/her discretion may require proof, in a form acceptable to the city, that
23 the cultivation site has been inspected (since the last inspection) and approved by the code
24 enforcement division of the city. Such inspections shall be for the purpose of determining
25 whether the cultivation site, in regards to processing a renewal application, continues to
26 meet the requirements of this chapter, as well as other applicable chapters of the Rialto City
27 Code.
28

1 3. Procedures for processing an initial application shall be followed for processing a renewal
2 application except as provided herein. The Director shall make a determination on a permit
3 renewal application within 60 days of receipt of a complete renewal application. If the
4 renewal application is denied, and the applicant properly appeals the decision of the
5 Director, the existing permit shall remain valid until a final determination on the appeal is
6 reached pursuant to the appeals process described in this chapter.

7 E. Permit not transferable. A permit issued pursuant to this chapter is non-transferable and is
8 specific to both the permit holder and the private residence or fully enclosed accessory structure
9 for which it was issued.

10 F. Permit revocation. Permits issued under this section may be revoked by the Director upon
11 making any of the following findings:

- 12 1. The permit was issued in error or the application contained materially incorrect or false
13 information.
- 14 2. The marijuana cultivated at the cultivation site has been sold or used for any commercial
15 use, or any other use or activity prohibited by city or state law, including but not limited to
16 Sections 11362.1, 11362.2, and 11352.3 of the Health & Safety Code, and as they may be
17 amended.
- 18 3. The marijuana cultivation site has become a public nuisance or has been operated in a
19 manner constituting a public nuisance.
- 20 4. The marijuana cultivation is not in compliance with the provisions of this chapter.

21 G. Appeals. Any decision regarding an application for an indoor personal marijuana cultivation
22 permit may be appealed to the City Manager, or his or her designee, by an applicant, a permit
23 holder or interested party as follows:

- 24 1. Appellant must file a written appeal with the Rialto City Clerk within 10 calendar days of
25 the decision. The written appeal shall specify the person making the appeal, identify the
26 decision appealed from, state the reasons for the appeal, and include any evidence in support
27 of the appeal.

2. Notice of the time and place of an appeal hearing shall be provided to the appellant within 30 days of receipt by the Rialto City Clerk of the written appeal.
3. The appeal hearing shall be held within 60 days of the filing with the Rialto City Clerk of the written appeal, unless the 60-day time limit is waived by the appellant, or unless the City Administrator continues the appeal hearing date for good cause and upon written notification to the appellant.
4. The City Administrator shall review the facts of the matter, written documents submitted for review, the basis for making the decision which is under appeal, and then determine whether the Director's decision should be reversed or affirmed. The determination made shall be in writing, shall set forth the reasons for the determination, and shall be final.
5. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any final determination.

H. Fees. An application fee set by resolution of the City Council may be required for formal processing of every application and appeal made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon indoor marijuana cultivators and their operations.

Sec. 9.53.050 - Violations and penalties; public nuisance.

- A. Any violation of this chapter is punishable pursuant to Chapters 1.10 and 1.16 of this Code, except for as preempted by state law.
- B. Public nuisance abatement.
 1. Any cultivation of marijuana that is conducted in violation of any provisions of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 18.72 of this Code as reasonably applied to the enforcement of this chapter.
 2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.

3. Any appeal to a determination that cultivation of marijuana is operating as a public nuisance shall be pursuant to the appeal provisions in Chapter 18.72 of this Code.

C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.”

SECTION 3. CHAPTER 9.45 (“MOBILE MARIJUANA DISPENSARIES”) OF DIVISION 5 OF TITLE 9 IS HEREBY REPEALED IN ITS ENTIRETY FROM THE RIALTO MUNICIPAL CODE.

SECTION 4. NEW CHAPTER 18.115 (“MARIJUANA USES AND ACTIVITIES PROHIBITED”) IS HEREBY ADDED TO TITLE 18 OF THE RIALTO MUNICIPAL CODE AS FOLLOWS:

“CHAPTER 18.115. MARIJUANA USES AND ACTIVITIES PROHIBITED

Sec. 18.115.010 - Purpose and Intent.

Sec. 18.115.020 - Definitions.

Sec. 18.115.030 - Prohibition of commercial marijuana activities.

Sec. 18.115.040 - Public Nuisance and Abatement.

Sec. 18.115.010 - Purpose and intent.

A. In order to preserve the public health, safety, and welfare of the residents and businesses of the city, all marijuana-related businesses, activities and uses are prohibited in the city, unless local control is otherwise preempted by state law, and except as provided for by Chapter 9.53 (“Personal Marijuana Cultivation”).

B. This chapter is not intended to interfere with a patient’s right to medical marijuana as provided for in Section 11362.5 of the Health & Safety Code.

C. The city affirms that Title 18 (“Zoning”) of the Rialto Municipal Code is structured as a permissive zoning code, consistent with Rialto Municipal Code section 18.02.030 which provides that “[a]ny use that is not permitted expressly by any provisions of this title shall be prohibited,” and the prohibitions on commercial marijuana activities imposed by this Chapter

1 18.115 are enacted to fully comply with requirements of state law when a city desires to prohibit
2 commercial marijuana activities.

3 **Sec. 18.115.020 - Definitions.**

4 The following words and phrases shall, for the purposes of this chapter, have the meanings respectively
5 ascribed to them by this section, as follows:

- 6 A. "Cannabis" has the same definition as "marijuana" provided in this Chapter.
- 7 B. "Commercial marijuana activity" includes the cultivation, possession, manufacture,
8 distribution, processing, storing, laboratory testing, packaging, labeling, transportation,
9 delivery, or sale of marijuana and marijuana products; except, as applicable, as set forth in
10 Chapter 9.53 ("Personal Cultivation of Marijuana") of this Code.
- 11 C. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing,
12 grading, or trimming of marijuana.
- 13 D. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer,
14 and includes the use of any technology platform owned and controlled by the same person
15 making such use.
- 16 E. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products
17 between entities licensed for and/or engaged in commercial marijuana activities.
- 18 F. "Distributor" means a person engaged in distribution.
- 19 G. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a
20 marijuana product.
- 21 H. "Manufacturer" means a person that conducts the production, preparation, propagation, or
22 compounding of marijuana or marijuana products either directly or indirectly or by extraction
23 methods, or independently by means of chemical synthesis, or by a combination of extraction
24 and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana
25 products or labels or relabels its container.
- 26 I. "Marijuana" has the same definition as provided in Section 26001 of the Business & Professions
27 Code for the term "cannabis," and as may be amended, defined as "all parts of the plant
28 Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the

seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.”

J. “Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated marijuana, or an edible or topical product containing marijuana or concentrated marijuana and other ingredients.

K. “Medical marijuana” or “medical marijuana product” means marijuana or a marijuana product used for medical purposes in accordance with state law, including the Compassionate Use Act (Health and Safety Code § 11362.5) and the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*).

L. “Microbusiness” shall have the same definition as provided for in Section 26070 of the Business and Professions Code, and as may be amended from time to time.

M. “Nursery” means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.

N. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

O. “Retailer” shall mean a person engaged in the retail sale and delivery of marijuana or marijuana products to customers

P. “Testing laboratory” means a laboratory, facility, or entity that offers or performs tests on marijuana or marijuana products.

Sec. 18.115.030 - Prohibition of commercial marijuana activities.

- 1 A. All commercial marijuana activities, whether medical or recreational (adult use) and including
2 non-profit operations, are expressly prohibited in all zones (except for as preempted by state
3 law). No person shall establish, operate, conduct, or allow commercial marijuana activities
4 anywhere within the city except for as preempted by state law.
- 5 B. The city shall not issue any permit, license, or entitlement for any commercial marijuana
6 activity (except for as preempted by state law), including, but not limited to, any activity
7 covered by the state license classifications listed below as provided for in Section 26050 of the
8 Business & Professions Code:
- 9 1. Type 1 = Cultivation; Specialty outdoor; Small.
 - 10 2. Type 1A = Cultivation; Specialty indoor; Small.
 - 11 3. Type 1B = Cultivation; Specialty mixed-light; Small.
 - 12 4. Type 1C = Cultivation; Specialty cottage; Small.
 - 13 5. Type 2 = Cultivation; Outdoor; Small.
 - 14 6. Type 2A = Cultivation; Indoor; Small.
 - 15 7. Type 2B = Cultivation; Mixed-light; Small.
 - 16 8. Type 3 = Cultivation; Outdoor; Medium.
 - 17 9. Type 3A = Cultivation; Indoor; Medium.
 - 18 10. Type 3B = Cultivation; Mixed-light; Medium.
 - 19 11. Type 4 = Cultivation; Nursery.
 - 20 12. Type 5 = Cultivation; Outdoor; Large.
 - 21 13. Type 5A = Cultivation; Indoor; Large
 - 22 14. Type 5B = Cultivation; Mixed-light; Large.
 - 23 15. Type 6 = Manufacturer 1.
 - 24 16. Type 7 = Manufacturer 2.
 - 25 17. Type 8 = Testing laboratory.
 - 26 18. Type 10 = Retailer.
 - 27 19. Type 11 = Distributer.
 - 28 20. Type 12 = Microbusiness.

1 C. This prohibition includes any activities authorized under new or revised state licenses, or any
2 other state authorization, to allow any type, category or classification of medical or recreational
3 (adult use) marijuana commercial activities, or similar operations, including non-profit,
4 collective or cooperative operations.

5 D. The prohibition provided by this section includes medical marijuana collectives and
6 cooperatives that operate pursuant to Section 11362.775 of the Health & Safety Code, the
7 Compassionate Use Act, or otherwise.

8 **Sec. 18.115.040 – Violations and penalties; public nuisance.**

9 A. Any violation of this chapter is punishable pursuant to Chapters 1.10 and 1.16 of this Code,
10 except for as preempted by state law.

11 B. Public nuisance abatement.

12 1. Any commercial marijuana activity that is conducted in violation of any provisions of this
13 chapter is hereby declared to constitute a public nuisance and, as such, may be abated or
14 enjoined from further operation, in accordance with the procedures set forth in Chapter
15 18.72 of this Code as reasonably applied to the enforcement of this chapter.

16 2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be
17 paid by the person causing the nuisance, including the property owner where the nuisance
18 is occurring.

19 3. Any appeal to a determination that commercial marijuana activity constitutes a public
20 nuisance shall be pursuant to the appeal provisions in Chapter 18.72 of this Code.

21 C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy
22 shall not preclude city from availing itself of any or all available administrative, civil, or
23 criminal remedies, at law or equity.”

24 **SECTION 5. REPEAL OF CERTAIN SECTIONS OF TITLE 18 OF THE RIALTO**
25 **MUNICIPAL CODE, FOR THE SOLE PURPOSE OF CENTRALIZING THE PROHIBITION**
26 **OF ALL COMMERCIAL MARIJUANA ACTIVITIES IN ALL ZONES IN THE CITY, IN**
27 **NEW CHAPTER 18.115 (“MARIJUANA USES AND ACTIVITIES PROHIBITED”)**
28

- 1 **A. Section 18.04.585 (Medical marijuana dispensary) of the Rialto Municipal Code is hereby**
2 **repealed in its entirety.**
- 3 **B. Section 18.26.045 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
4 **entirety.**
- 5 **C. Section 18.27.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
6 **entirety.**
- 7 **D. Section 18.28.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
8 **entirety.**
- 9 **E. Section 18.30.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
10 **entirety.**
- 11 **F. Section 18.31.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
12 **entirety.**
- 13 **G. Section 18.32.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
14 **entirety.**
- 15
- 16 **H. Section 18.33.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
17 **entirety.**
- 18 **I. Section 18.34.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
19 **entirety.**
- 20 **J. Section 18.35.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
21 **entirety.**
- 22 **K. Section 18.36.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
23 **entirety.**
- 24 **L. Section 18.38.025 (Prohibited uses) of the Rialto Municipal Code is hereby repealed in its**
25 **entirety.**
- 26 **M. Paragraph (E) of Section 18.40.040 (Prohibited uses) of the Rialto Municipal Code is**
27 **hereby repealed in its entirety.**
- 28

1 **SECTION 6. ORDINANCE NO. 1570 REPEALED.** Ordinance No. 1570, adopted on August 9,
2 2016, is hereby repealed as of the effective date of this Ordinance.

3 **SECTION 7. CEQA EXEMPTION.** The City Council finds that this ordinance is not subject to the
4 California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3)
5 because it can be seen with certainty that it will not have a significant effect or physical change to the
6 environment.

7 **SECTION 8. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase,
8 word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the
9 decision of any court of competent jurisdiction, such decision shall not affect the validity of the
10 remaining portions of this Ordinance. The City Council of the City of Rialto hereby declare that they
11 would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase,
12 word, or portion thereof, irrespective of the fact that any one or more sections, subsections,
13 subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or
14 unconstitutional.

15 **SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days
16 after its second reading and adoption.

17 **SECTION 10. CERTIFICATION.** The City Clerk shall certify to the adoption of this Ordinance, and
18 shall cause the same to be posted and codified in the manner required by law.

19 **PASSED, APPROVED AND ADOPTED** this ____ day of _____, 2017.

20
21 _____
22 DEBORAH ROBERTSON, Mayor

23 ATTEST:

24
25 _____
26 BARBARA A. McGEE, City Clerk

27 APPROVED AS TO FORM

FRED GALANTE, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)

4 I, Barbara A. McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Ordinance No. _____ was duly passed and adopted at a regular meeting of the City Council of
6 the City of Rialto held on the _____ day of _____, 2017.

7 Upon motion of Councilmember _____, seconded by Councilmember
8 _____, the foregoing Ordinance No. _____ was duly passed and adopted.

9 Vote on the Motion:

10 AYES:

11 NOES:

12 ABSENT:

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
14 Rialto, this _____ day of _____, 2017.

15 _____
16 Barbara A. McGee, City Clerk
17
18
19
20
21
22
23
24
25
26
27
28