

**COPY**

1 GEOFFREY H. YOST (S.B. #159687)  
gyost@omm.com  
2 ANTHONY G. BEASLEY (S.B. #307511)  
tbeasley@omm.com  
3 MARK E. BERGHAUSEN (S.B. #278968)  
mberghausen@omm.com  
4 O'MELVENY & MYERS LLP  
Two Embarcadero Center, 28th Floor  
5 San Francisco, California 94111-3823  
Telephone: (415) 984-8700  
6 Facsimile: (415) 984-8701

7 JOY F. HAVILAND (S.B. #284147)  
jhaviland@drugpolicy.org  
8 THESHIA NAIDOO (S.B. #209108)  
tnaidoo@drugpolicy.org  
9 JOLENE M. FORMAN (S.B. #286725)  
jforman@drugpolicy.org  
10 DRUG POLICY ALLIANCE  
1330 Broadway Ste. 1426  
11 Oakland, CA 94612-2513  
Telephone: (510) 679-2317

12 MICHAEL RISHER (S.B. #191627)  
13 mrisher@aclunc.org  
WILLIAM S. FREEMAN (S.B. #82002)  
14 wfreeman@aclunc.org  
15 ACLU FOUNDATION OF NORTHERN  
CALIFORNIA  
39 Drumm St.  
16 San Francisco, CA 94111-4805  
Telephone: (415) 621-2493  
17 Facsimile: (415) 255-8437

18 Attorneys for Plaintiff  
Mike Harris  
19

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **COUNTY OF SAN BERNARDINO**  
22

23 Mike Harris,  
24 Plaintiff,  
25 v.  
26 City of Fontana,  
27 Defendant.  
28

Case No. **CIVDS1710589**  
**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF**  
UNLIMITED JURISDICTION

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN JUAN BAPTIST DISTRICT

JUN 5 2017

BY   
JASMIN CASILLAS, DEPUTY

1           1.       On November 8, 2016, the people of California enacted Proposition 64 (also  
2 known as the “Adult Use of Marijuana Act” or “AUMA”) to allow all adults 21 years and older  
3 in this state to possess and cultivate limited amounts of marijuana for personal use. One  
4 provision of the new law is a code section expressly stating that “it shall be lawful under state  
5 and local law, and shall not be a violation of state or local law, for persons 21 years of age or  
6 older to ... Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana  
7 plants and possess the marijuana produced by the plants.” Cal. Health & Safety Code  
8 § 11362.1(a). Although California cities are allowed to enact reasonable regulations, “no city  
9 ... may completely prohibit persons” from cultivating marijuana “inside a private residence ...  
10 that is fully enclosed and secure.” Cal. Health & Safety Code § 11362.3(b)(2).

11           2.       The Fontana City Council, however, promptly adopted an ordinance designed to make  
12 it virtually impossible for Fontana residents to enjoy the rights conferred on them by the  
13 AUMA. On February 14, 2017, the Council formally adopted Ordinance 1758, which contains  
14 a number of restrictions and fees transparently designed to deny residents the benefits and rights  
15 conferred by the AUMA.

16           3.       Among other things, Ordinance 1758 requires anyone in the City of Fontana to apply  
17 for a permit, at a cost of more than \$400, before they can grow the marijuana they are entitled to  
18 grow under state law.

19           4.       Even worse, Ordinance 1758 requires applicants to make self-incriminating  
20 statements in their permit applications, statements that admit to a violation of federal law and  
21 that federal authorities could easily obtain. It also requires citizens to submit to (and pay for) a  
22 warrantless search of their homes by government agents.

23           5.       Finally, the Ordinance completely prohibits some citizens with criminal records  
24 from growing under any circumstances and requires all citizens to submit to (and pay for) an  
25 illegal, costly, and wholly unnecessary criminal database search.

26           6.       The Fontana City Council has made no secret of the fact that the real purpose of  
27 Ordinance 1758 is to make it harder for the Citizens of Fontana to exercise their legal rights  
28 under the AUMA. During the debate over adoption of Ordinance 1758 on January 24, 2017,

1 the Mayor of Fontana, Acquanetta Warren, emphasized that Ordinance 1758 was meant to be  
2 “very restrictive in terms of ... cultivation.” During the period of public comment, one member  
3 of the public paraphrased City Manager Ken Hunt said, “[T]he intent is to be as restrictive as  
4 possible.” Neither Mr. Hunt nor any member of the City Council disagreed with that  
5 characterization.

6 7. Mayor Warren made clear at the same meeting that that Ordinance 1758 was a  
7 reaction to Prop. 64 and an attempt to limit the applicability of Prop. 64 in Fontana when she  
8 said: “We can’t ignore this; we can’t avoid it. It’s here, and we’re trying to put together an  
9 ordinance that controls it.” About the ordinance she said, “[I]t’s not saying that we agree with  
10 this,” and she reminded the Council before its vote that Ordinance 1758 “is a restrictive  
11 ordinance.”

12 8. Plaintiff Mike Harris (“Plaintiff”) seeks to vindicate the right of the people of  
13 Fontana to grow their own marijuana plants for private use without having to overcome the  
14 unconstitutional attempts of the City of Fontana to make their exercise of that right impossible.  
15 He therefore seeks a writ of mandate, pursuant to Code of Civil Procedure § 1085, prohibiting  
16 Defendant the City of Fontana (“Defendant,” the “City,” or “Fontana”) from enforcing  
17 Ordinance Number 1758 (“Ordinance 1758”) and Resolution Number 2017-015 (“Resolution  
18 2017-015”), as well as a judicial declaration under Code of Civil Procedure § 1060 that  
19 Ordinance 1758 and Resolution 2017-05 are void and unenforceable.

### 20 **THE PARTIES**

21 9. Plaintiff Mike Harris is a 61-year old retiree who moved to Fontana in 1987. He  
22 fell in love with much about the area, and he has lived here with his wife ever since. Together,  
23 they raised two daughters who attended Fontana public schools. A proud homeowner since  
24 1987, Harris has paid property taxes to Fontana and San Bernardino County every year since  
25 1987, up to and including 2017.

26 10. Before he retired in 2009, Harris had worked as a union iron worker for over 33  
27 years and as a registered nurse for over 13 years. He is currently retired but volunteers his time  
28

1 for a number of community organizations in Southern California. His wife also volunteers in  
2 the community, including with the Fontana Parent Teacher Association.

3 11. Thanks to his advancing age and his decades-long, physically demanding career,  
4 Harris has endured multiple physical injuries that required significant and painful medical  
5 procedures, including a prosthetic hip and shoulder reconstruction. In 2010, one of Harris's  
6 physicians recommended that he try medical marijuana for his pain and arthritis, and so Harris  
7 duly obtained a medical-marijuana identification card. Marijuana proved to have significantly  
8 less harmful side effects than any other treatment he tried. When he heard that the AUMA had  
9 legalized personal cultivation of marijuana, Harris thought it would be both convenient and  
10 economical for him to grow his own cannabis plants at home for his personal use. He has not  
11 yet done so, however, due to the restrictive regulations improperly adopted by the City of  
12 Fontana.

13 12. Fontana's zoning ordinances make no distinction or special allowances for  
14 residents who need to grow marijuana for personal medicinal use pursuant to a recommendation  
15 of their physician. Fontana Municipal Code §§ 30-7(A)(d)(1), 30-7(B).030.

16 13. Defendant Fontana is a general-law city, governed by a city council made up of an  
17 elected mayor and four council members, one of whom is designated Mayor Pro Tem  
18 (collectively, the "City Council"). Currently, the Mayor is Acquanetta Warren, the Mayor Pro  
19 Tem is Jesus "Jesse" Sandoval, and the other Council Members are John Roberts, Michael  
20 Tahan, and Jesse Armendarez.

21 14. The City has enacted Ordinance 1758 and adopted Resolution 2017-015, which  
22 deprive Mike Harris of his legal rights under the AUMA and the California and United States  
23 Constitutions. He is adversely affected by the City's actions.

24 15. As a resident of Fontana who intends to cultivate cannabis at home for his own  
25 personal use, Mike Harris has a clear, present, and beneficial interest in Fontana's compliance  
26 with the AUMA.

1 16. Upon information and belief, Fontana is unlawfully expending city funds on the  
2 administration and implementation of unlawful provisions of Ordinance 1758 and Resolution  
3 2017-015 concerning the personal use and cultivation of marijuana.

4 17. Mike Harris also has standing, as a Fontana citizen and taxpayer, to challenge the  
5 propriety of Ordinance 1758 and Resolution 2017-015, and seeks to restrain and prevent the  
6 illegal expenditure of city funds.

7 **JURISDICTION AND VENUE**

8 18. This Court has jurisdiction under Code of Civil Procedure §§ 410.10, 525-526,  
9 526a, 1060, 1085. This action is an unlimited civil case pursuant to Code of Civil Procedure  
10 § 580 because Mike Harris seeks non-monetary relief that is not available under limited  
11 jurisdiction, including but not limited to mandamus, declaratory relief, and injunctive relief.  
12 Because he does not seek damages or other non-incidental monetary relief, there is no amount  
13 in controversy and no requirement to present a claim to the City before pursuing judicial relief.

14 19. Venue is proper in the Superior Court of San Bernardino County under Code of  
15 Civil Procedure §§ 393-395, because the City of Fontana is a public entity situated in San  
16 Bernardino County and also because all of the acts and omissions complained of in this Petition  
17 and Complaint took place in San Bernardino County.

18 **THE HISTORY OF MARIJUANA CULTIVATION REGULATION**

19 20. California has a long history of regulating access to marijuana, dating back at least  
20 to 1913. Until the early 1970s, possession and cultivation of marijuana were both felonies.  
21 Beginning in 1972, the state steadily moved away from these harsh penalties.

22 21. In 1972, the Legislature adopted the laws currently codified as California Health &  
23 Safety Code §§ 11357 and 11358, which prohibited marijuana possession and cultivation,  
24 respectively. Cultivation remained a felony, but possession of 28.5 grams or less of marijuana  
25 was reduced to a misdemeanor punishable only by a fine, and was later reduced to an infraction.  
26 Possession of more than that amount was a misdemeanor under § 11357(b)-(c).

27 22. In 1996, the voters continued this trend by enacting Proposition 215, known as the  
28 Compassionate Use Act ("CUA"), to "ensure that seriously ill Californians have the right to

1 obtain and use marijuana for medical purposes,” as codified in Health & Safety Code  
2 § 11362.5. The CUA provided medical marijuana patients an affirmative defense to  
3 prosecution and removed the threat of criminal penalties for the possession and cultivation of  
4 marijuana for medical purposes. Sections 11357 and 11358 of the Health and Safety Code no  
5 longer applied to a patient or primary caregiver who “possesses or cultivates marijuana for the  
6 personal medical purposes.”

7 23. In 2003, the Legislature expanded the protections for medical-marijuana use by  
8 enacting the Medical Marijuana Program Act (“MMPA”). The MMPA added 18 new code  
9 sections that address the general subject matter covered by the CUA, including cultivation of  
10 medical marijuana, codified as Health & Safety Code §§ 11362.7 *et seq.* One of those sections  
11 is Health and Safety Code § 11362.77, which provides that “a qualified patient or primary  
12 caregiver may also maintain no more than six mature or 12 immature marijuana plants per  
13 qualified patient” without facing criminal sanction.

14 24. For most of the last two decades, regulation was left to local governments.  
15 However, three laws passed by a bipartisan Legislature in 2015—known collectively as the  
16 Medical Cannabis Safety and Regulation Act (“MCRSA”)—provided the state with a  
17 regulatory framework for medical marijuana.

18 25. Despite the general direction of state law—driven by both California voters and  
19 the Legislature—toward liberalizing access to marijuana, many cities and counties reacted in  
20 the reverse by using their local zoning power to severely limit or outright prohibit access to  
21 medical marijuana. Some local governments passed ordinances banning medical marijuana  
22 businesses and medical marijuana cultivation in a private residence, with the effect that patients  
23 in many parts of the state had little or no access to the medicine their doctors recommended.

#### 24 **THE PEOPLE ADOPT PROPOSITION 64**

25 26. On June 28, 2016, Secretary of State Padilla announced that an initiative to  
26 legalize recreational marijuana, the AUMA, had obtained enough valid petitioner signatures to  
27 be included as Proposition 64 on the ballot for the November 8, 2016 General Election. The  
28 purpose of the AUMA was “to establish a comprehensive system to legalize, control and

1 regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical  
2 marijuana, including marijuana products, for use by adults 21 years and older, and to tax the  
3 commercial growth and retail sale of marijuana.” To that end, one stated intent of the AUMA  
4 was to “[p]ermit adults 21 years and older to use, possess, purchase and grow nonmedical  
5 marijuana within defined limits for use by adults 21 years and older as set forth in this Act.”  
6 (emphasis added)

7 27. On November 8, 2016, Proposition 64 passed with 57% voter approval statewide.  
8 A majority of voters in both San Bernardino County (52.5%) and Fontana (53.5%) also voted to  
9 pass Proposition 64. The AUMA therefore became state law on November 9, amending various  
10 provisions of the Health and Safety Code, Business and Professions Code, and Revenue and  
11 Taxation Code.

12 28. In passing the AUMA, the People of California also decreed that the AUMA “shall  
13 be broadly construed to accomplish its purposes and intent” and the provisions of the AUMA  
14 “shall be liberally construed to effectuate [its] purposes and intent.”

15 29. Among other amendments, the AUMA amended the Health and Safety Code to  
16 declare in Section 11362.1 that “it shall be lawful under state and local law, and shall not be a  
17 violation of state or local law, for persons 21 years of age or older to ... (3) Possess, plant,  
18 cultivate, harvest, dry, or process not more than six living marijuana plants and possess the  
19 marijuana produced by the plants.” Other than limiting the lawful activity to adults aged 21 and  
20 over, the AUMA places no further restrictions on who may engage in activities such as  
21 possession and cultivation of nonmedical marijuana, and makes such behavior affirmatively  
22 *lawful* under state and local law.

23 30. The AUMA also allows for limited local control. It provides that a local  
24 government such as the City “may enact and enforce reasonable regulations to reasonably  
25 regulate” the cultivation of marijuana, though it also provides that “no city ... may completely  
26 prohibit” the cultivation of marijuana “inside a private residence ... that is fully enclosed and  
27 secure.” § 11362.2(b)(1)-(2). This is consistent with one of the AUMA’s stated intents, which  
28 is to “[a]llow local governments to *reasonably regulate* the cultivation of nonmedical marijuana

1 for personal use by adults 21 years and older through zoning and other local laws, *and only to*  
2 *ban outdoor cultivation* as set forth in this Act.”

3 **THE CITY OF FONTANA PASSES ILLEGAL REGULATIONS**

4 31. On September 13, 2016, while Proposition 64 was on the ballot and still two  
5 months away from its statewide vote, the City Council expressed its disapproval. The Council  
6 voted to adopt Ordinance 1747, which went into effect in October 2016. Ordinance 1747  
7 expressly banned indoor cultivation of marijuana for personal use. Anticipating that the voters  
8 of California might adopt Proposition 64, however, Ordinance 1747 also contained a “carve-  
9 out” provision, which would allow cultivation only “[t]o the extent a complete prohibition on  
10 indoor cultivation is not permitted under California law.”

11 32. Under Proposition 64, California residents 21 years and older have a right to  
12 cultivate up to six plants inside of their private residences for personal use. The people of  
13 Fontana, however, cannot exercise this right. Ordinance 1747’s carve-out provision required  
14 that, before residents could exercise their right to cultivate even a single marijuana seedling,  
15 they first had to apply for and be issued an indoor cultivation permit from the City’s  
16 Community Development Department (“CDD”). The CDD is the principal office in the City of  
17 Fontana responsible for processing applications for a variety of land uses. Ordinance 1747 did  
18 not provide any permitting guidelines or requirements itself, but rather tasked the CDD with  
19 drafting them at some future, unspecified date. This allegedly was pursuant to the AUMA’s  
20 limited grant of authority to local governments to enact reasonable regulations for—but in no  
21 way ban—the indoor cultivation of marijuana. The City Council did not explain why it  
22 believed the City could ban cultivation without a permit when it lacks the authority to ban  
23 cultivation in the first instance.

24 33. Upon information and belief, the CDD understood its task to be to design a  
25 permitting and application scheme for indoor cultivation permits that would be so burdensome  
26 and expensive that no one in Fontana would apply for a permit.

27 34. On January 24, 2017, when Proposition 64 had been in effect for only two months,  
28 the CDD issued its recommendation to the City Council. It proposed an ordinance that the City



1 Council would later adopt as Ordinance 1758. Ordinance 1758 amended Section 30-7 of the  
2 Zoning and Development Code to codify certain procedures and restrictions on what the  
3 Ordinance referred to as residential indoor marijuana cultivation (“RIMC”) permits. The CDD  
4 justified these restrictions as ostensibly necessary to remedy the “health and safety” risks that it  
5 attributed to indoor marijuana cultivation: “structural damage to the building due to increased  
6 moisture and excessive mold growth which can occur and can pose a risk of fire and  
7 electrocution; additionally, the use of pesticides and fertilizers can lead to chemical  
8 contamination within the structure.” While the CDD does not purport to regulate the indoor  
9 cultivation of any plants other than marijuana, the CDD did not explain how these risks are any  
10 different from the risks from indoor cultivation of any other plant.

11 35. Ordinance 1758 requires that, in order to receive a RIMC permit, the applicant  
12 must:

- 13 (1) be 21 years old or older;
- 14 (2) complete a Live Scan fingerprinting at his or her own expense;
- 15 (3) have no felony convictions for the illegal possession for sale, manufacture,  
16 transportation, or cultivation of a controlled substance within the last five  
17 years;
- 18 (4) have no pending code enforcement actions with the City of Fontana;
- 19 (5) have no outstanding payments due to the City; and
- 20 (6) provide a signed, notarized affidavit of any landlord or property owner  
21 other than the applicant that acknowledges and grants permission for  
22 cultivation to occur on the property.

23 36. Ordinance 1758 further requires that, in order to receive a RIMC permit,  
24 the residence where cultivation is to occur must:

- 25 (1) be a primary dwelling of the applicant;
- 26 (2) not include more than one cultivation area;
- 27 (3) not include more than six plants regardless of how many permit holders  
28 live in the residence; and

- 1 (4) not be used for day care, youth center, group homes, or be any facility that  
2 does not allow cultivation of marijuana by law or policy.

3 37. Ordinance 1758 further requires that, in order to receive a RIMC permit,  
4 the cultivation area must:

- 5 (1) be used exclusively for residential indoor marijuana cultivation, and not be  
6 shared with any space used for sleeping, cooking, eating, bathing, or other  
7 residential activities;
- 8 (2) be accessible through only one lockable door and have all other ventilation  
9 openings be lockable;
- 10 (3) be accessible only to the applicant or other permit holders authorized for  
11 that particular cultivation area;
- 12 (4) not be visible from anywhere outside the residence;
- 13 (5) not produce odors, sounds, or other emissions that can be sensed from  
14 adjacent properties and may indicate marijuana cultivation;
- 15 (6) be subject to an inspection by City officials; and
- 16 (7) not be used to store or have used within it any “[e]xplosive gases,”  
17 including butane, propane, xylene, styrene, gasoline, kerosene, oxygen,  
18 carbon dioxide, and hydrogen, or any “[d]angerous poisons,” including  
19 methanol, “iso-propul [*sic*]” alcohol (better known in concentrations of  
20 70% to 90% as rubbing alcohol), methylene chloride, acetone, benzene,  
21 toluene, and tri-chloro-ethylene.
- 22 (8) Furthermore, if any of those “explosive gases” or “dangerous poisons” are  
23 stored elsewhere in the home, they must be stored in leak-proof and  
24 fireproof containers.

25 38. A violation of these requirements is a misdemeanor, punishable by up to 6 months  
26 in jail, or an infraction, at the prosecutor’s discretion. *See* Gov’t Code § 36900; Fontana  
27 Municipal Code § 1-7.  
28

1           39.       These restrictions are plainly intended to make it unreasonably difficult and  
2 expensive for persons desiring to cultivate marijuana to do so. Many residents of Fontana will  
3 be unable to afford to dedicate a separate room in their home entirely to the cultivation of six or  
4 fewer marijuana plants, or to undertake the construction necessary to create a separate, locked  
5 room accessible by a single door. Occupants of single rooms, in-law units, studios, one-  
6 bedroom apartments, and other smaller homes may be denied a license based solely on the  
7 design of their homes. Residents who have unpaid municipal fines or fees are also denied  
8 permission to cultivate, even though this has no reasonable relation to public health or safety,  
9 let alone to the cultivation of marijuana.

10           40.       The City's requirement that an applicant submit to fingerprinting for a search in  
11 the California Department of Justice's LiveScan criminal records database is an illegal invasion  
12 of its citizen's privacy. California law treats its citizens' criminal records as private and only  
13 allows disclosure in very limited circumstances. Under Penal Code §§ 11076 and 11105,  
14 record requests by cities can only be used for occupational purposes. Under Penal Code  
15 § 11121, personal record requests are only intended to be used so that a citizen can review and  
16 correct their criminal records on file with the State. Indeed, California Penal Code § 11125  
17 makes it a misdemeanor for an agency such as the CDD to request a person to furnish a  
18 criminal history that he or she independently obtained. And nothing in the statutory scheme  
19 allows a City to obtain criminal-history information as part of a non-commercial permitting  
20 requirement.

21           41.       Many of the other restrictions are nonsensical. For example, the ordinance  
22 restricts the use of carbon dioxide and oxygen for growing marijuana. But carbon dioxide is  
23 present in the atmosphere, produced through human exhalation, necessary for plant respiration,  
24 and so famously nonflammable that it is often used as the main ingredient in fire extinguishers  
25 and commercial fire suppression systems. It is also used to carbonate beverages; many  
26 households have small canisters of the gas in their kitchens so that they can make their own  
27 soda water. Oxygen is necessary for human life, and like carbon dioxide, it also naturally  
28

1 occurs in the atmosphere. Accordingly, the City's ordinance purports to ban the storage or use  
2 of air in indoor marijuana cultivation.

3 42. In addition to these restrictive requirements, the CDD's January 24, 2017  
4 recommendation also included Resolution 2017-015, establishing a permitting fee for the RIMC  
5 permits. Resolution 2017-015 set the application fee for new applications at \$411.12 and the  
6 fee for renewal applications at \$253.00. According to the CDD's January 24 recommendation,  
7 these fee amounts are allegedly calculated based on the estimated cost for five city staff  
8 members—the Senior Planner, Associate Planner, Assistant Planner, Community Policing  
9 Technician, Police Lieutenant with an advanced certificate, and the Planning Compliance  
10 Technician—to all process each application. For new applications, the CDD purportedly  
11 estimated that the average hourly processing cost was \$83 per hour and would require 5.6 hours  
12 of staff time to complete the process. The specific actions the CDD included in its 5.6 hour  
13 estimate are completing the initial application intake, review, permit issuance (3.5 hours);  
14 conducting fingerprinting and/or photography and background check (1.1 hours); and  
15 conducting the site visit (1 hour). For renewal applications, the CDD estimated that the average  
16 hourly rate was \$70.28 to process the application and would require 3.6 hours of staff time to  
17 complete.

18 43. The burdensome and expensive requirements set forth in Ordinance 1758 and  
19 Resolution 2017-015 make it abundantly clear that the underlying goal of the Fontana City  
20 Council was to create a permitting process so prohibitively difficult and expensive that  
21 practically no one would apply for a permit, and even fewer would qualify. In short, the City's  
22 goal is to create a system so burdensome that it would effectively ban marijuana cultivation.

23 44. During the meeting of the City Council on January 24, 2017, the City Council  
24 spent a total of fifty-one minutes discussing Ordinance 1758 and Resolution 2017-015. With  
25 one exception, these were the same City Council members who had enacted Ordinance 1747  
26 months before. Rather than debating the merits of Ordinance 1758 and its potential effects on  
27 the City, the City Council members instead reiterated their desire to enact regulation strict  
28 enough to effectively ban the personal cultivation of marijuana. The City Council did not,

1 however, discuss whether the ordinance was so overly restrictive as to be legally impermissible,  
2 or whether the ordinance was in line with the desires of the majority of Fontana voters who had  
3 voted in favor of Proposition 64.

4 45. Council Member Armendarez remarked favorably on the proposal’s stringent  
5 restrictions: “[W]hen I read this . . . , ‘reasonable regulation,’ and *I think we’ve done the most*  
6 *stringent policy we could* knowing that you can’t smell it, you can’t see it, it can’t be available  
7 to the naked eye. . . . [T]hese are all things that . . . I believe you guys put in that for one  
8 reason [which] is to *deter people from actually doing this*. But we can’t stop them. . . . [I]f  
9 people are smelling it next door, that’s a violation of the ordinance. And that’s how we have  
10 our recourse.”

11 46. Mayor Warren also recognized the restrictiveness of this proposal: “[I]t’s not an  
12 easy permit process, by no means. You really have to be in a situation where you really want to  
13 do this.”

14 47. After hearing from the City Council members, City Manager Hunt could sense the  
15 City Council’s true goal with enacting this ordinance: “I would argue if your goal is to be more  
16 restrictive on this, *we would likely be considered one of the most restrictive cities* for the growth  
17 and use of marijuana. . . . [*O]ur intent was that this is a restrictive ordinance*, not a permissive  
18 ordinance . . . .” (emphasis added)

19 48. The City Council held a second reading of the Ordinance at the February 14, 2017  
20 City Council meeting, when it voted on Ordinance 1758 and Resolution 2017-015. There was  
21 no further debate. The only change from the CDD recommendation was that the CDD is now  
22 required to report to the City Council within one year with “any opportunity to add additional  
23 restrictions” to this already prohibitively restrictive regulation. Ordinance 1758 and Resolution  
24 2017-015 passed, with three of five City Council members voting in favor. City Councilman  
25 Tahan stated that he was voting against Ordinance 1758 because—despite City Manager Hunt’s  
26 assurances that Ordinance 1758 would be considered one of the most restrictive in the state—  
27 the regulations in the Ordinance were not restrictive enough: “I think we need to impose more  
28 restrictions.”

1                            **MANDATE AND DECLARATORY RELIEF ARE JUSTIFIED**

2            49.            Plaintiff seeks a writ of mandate pursuant to Code of Civil Procedure § 1085, as  
3            well as declaratory relief, to compel Defendant City of Fontana to comply with its duties under  
4            the California Constitution and Health and Safety Code § 11362.2.

5            50.            A writ of mandate is justified because the City of Fontana must be compelled to  
6            stop enforcing its illegal policies and practices in the RIMC permitting process. These practices  
7            are certain to result in widespread and wholesale violations of its clear constitutional and  
8            statutory duties.

9            51.            There is no plain, speedy, or adequate remedy in the ordinary course of the law for  
10           the Plaintiff.

11           52.            A speedy decision in this matter is needed to prevent Fontana from enforcing its  
12           unreasonable, unconstitutional, and preempted regulations and to prevent other local  
13           governments from adopting similarly oppressive ordinances. Other local governments in  
14           California are already in the process of considering and adopting their own regulations under  
15           the AUMA, and governments that might be similarly inclined to effectively ban personal  
16           marijuana cultivation within their borders are likely looking to early-adopter cities, such as  
17           Fontana, for guidance. Plaintiff now seeks to protect his fellow citizens in Fontana, and  
18           elsewhere, obtaining a judicial declaration that such oppressive restrictions are legally  
19           impermissible. With the passage of Proposition 64, California law now gives all adult  
20           Californians 21 and older the right to cultivate marijuana if they so choose, and action by this  
21           Court is required to vindicate that right.

22           53.            A declaration of Plaintiff’s rights is justified because there is an actual controversy  
23           relating to the legal rights of Plaintiff to cultivate marijuana for personal use in his private  
24           residence without first submitting to the City of Fontana’s unreasonable, unconstitutional, and  
25           preempted regulations.

1 **CAUSES OF ACTION**

2 **First Cause of Action**

3 **(Violation of California Constitution (Preemption Clause))**

4 54. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
5 preceding paragraphs as though each were fully alleged herein.

6 55. Defendant City of Fontana has a ministerial duty under the California Constitution  
7 not to promulgate or enforce ordinances that conflict with the general laws of the State, as  
8 provided by Article XI Section 7 of the California Constitution.

9 56. As a taxpayer, resident, and citizen of the City of Fontana, and as a citizen who  
10 intends to cultivate marijuana pursuant to California Health & Safety Code § 11362.1(a)(3),  
11 Plaintiff has a beneficial interest in the city's performance of its duty.

12 57. Ordinance 1758 requires residents to undergo an oppressive and plainly  
13 unreasonable process in order to acquire a permit to engage in an activity that, according to  
14 general law, the City has no authority to prohibit. It is therefore a violation of the City's duty  
15 under Article XI, Section 7 of the California Constitution not to promulgate ordinances in  
16 conflict with general laws.

17 **Second Cause of Action**

18 **(Violation of the California Constitution (Self-Incrimination Clause and Due Process))**

19 58. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
20 preceding paragraphs as though each were fully alleged herein.

21 59. Defendant City of Fontana has a ministerial duty under the Due Process Clause of  
22 the California Constitution not to condition the receipt of government benefits on the  
23 relinquishment or waiver of the constitutional right not to incriminate oneself, as guaranteed by  
24 Article I, Section 15 of the California Constitution.

25 60. As a taxpayer, resident, and citizen of the City of Fontana, and as a citizen who  
26 intends to cultivate marijuana pursuant to California Health & Safety Code § 11362.1(a)(3),  
27 Plaintiff has a beneficial interest in the City's performance of its duty.  
28





1 **Fourth Cause of Action**

2 **(Violation of the California Constitution (Privacy Clause))**

3 67. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
4 preceding paragraphs as though each were fully alleged herein.

5 68. Defendant City of Fontana has a ministerial duty under Article I, Section 1 of the  
6 California Constitution not to condition the receipt of government benefits on the  
7 relinquishment or waiver of the constitutional right to privacy, as guaranteed by Article I,  
8 Section 1 of the California Constitution.

9 69. As a taxpayer, resident, and citizen of the City of Fontana, and as a citizen who  
10 intends to cultivate marijuana pursuant to California Health & Safety Code § 11362.1(a)(3),  
11 Plaintiff has a beneficial interest in the city's performance of its duty.

12 70. In violation of the City's duty not to condition government benefits on a waiver or  
13 relinquishment of constitutional rights under Article I, Section 1 of the California Constitution,  
14 on information and belief, Ordinance 1758 requires residents to submit their criminal histories  
15 resulting from Live Scan fingerprinting before they can exercise their statutory rights under  
16 California Health & Safety Code § 11362.1(a)(3).

17 **Fifth Cause of Action**

18 **(Unreasonable Regulation in Violation of Cal. Health and Safety Code § 11362.2)**

19 71. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
20 preceding paragraphs as though each were fully alleged herein.

21 72. Defendant City of Fontana has a ministerial duty under Health and Safety Code §  
22 11362.2 to adopt only reasonable regulations that reasonably regulate personal residential  
23 cultivation of marijuana.

24 73. Defendant City of Fontana has violated this duty by passing Ordinance 1758 and  
25 Resolution 2015-017, which contain arbitrary and capricious requirements for obtaining a  
26 license to cultivate marijuana that are designed to prevent residents from exercising their  
27 statutory rights under § 11362.1(a)(3), and are not designed to reasonably pursue any legitimate  
28

1 government purpose. The unreasonable requirements enacted by the City of Fontana include,  
2 without limitation, those set forth in Paragraphs 35-37 and 42 above.

3 74. On information and belief, the City does not require similarly onerous licensing  
4 requirements for similar activities. The City's violations of the AUMA are, instead, motivated  
5 by an animus against marijuana and consumers of marijuana.

6 75. As a taxpayer, resident, and citizen of the City of Fontana, and as a citizen who  
7 intends to cultivate marijuana under the protection of Health & Safety Code § 11362.1(a)(3),  
8 Plaintiff has a beneficial interest in the city's performance of its duty.

9 76. In violation of the City's duty not to adopt unreasonable regulations under Health  
10 & Safety Code § 11362.2, Ordinance 1758 places arbitrary and capricious restrictions on the  
11 City's residents' exercise of their rights under California Health & Safety Code § 11362.1(a)(3).

12 **Sixth Cause of Action**

13 **(Violation of Cal. Penal Code §§ 11076, 11125)**

14 77. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
15 preceding paragraphs as though each were fully alleged herein.

16 78. California Penal Code § 11076 prohibits the dissemination of criminal-history  
17 information except to authorized agencies.

18 79. California Penal Code § 11125 prohibits a government agency from requiring or  
19 requesting a person to furnish a copy of his or her criminal history that he or she obtained from  
20 the Department of Justice.

21 80. Ordinance 1758 requires an applicant to complete Live Scan fingerprinting.

22 81. On information and belief, the application process either requires the applicant to  
23 furnish the resulting criminal history to the CDD or authorizes the City to obtain that  
24 information directly from the Department of Justice so that, in either event, the City may use  
25 the criminal history to determine if the applicant has a disqualifying drug felony conviction.

26 82. Defendant City of Fontana's Ordinance 1758 violates California Penal Code  
27 § 11125 because it impermissibly requests that an applicant complete a Live Scan fingerprinting  
28

1 and provide his or her criminal history to a government agency, or it violates § 11076 because it  
2 purports to allow the City to obtain this information directly.

3 **Seventh Cause of Action**

4 **(Declaratory Relief)**

5 83. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
6 preceding paragraphs as though each were fully alleged herein.

7 84. An actual controversy has arisen and now exists between the City of Fontana and  
8 Plaintiff with respect to their respective rights, duties, and obligations under Ordinance 1758  
9 and Resolution 2017 05, including but not limited to the following:

10 85. Plaintiff Mike Harris desires a judicial determination of his rights and duties, and a  
11 declaration of the following:

- 12 (1) that the City may not require a license before a resident can exercise his or  
13 her statutory rights under § 11362.1(a)(3);
- 14 (2) that the City may not require residents to incriminate themselves by  
15 applying for a residential marijuana permit before being allowed to  
16 exercise their statutory rights under § 11362.1(a)(3);
- 17 (3) that the City may not forbid residents from exercising their statutory rights  
18 under § 11362.1(a)(3) solely on the basis of an earlier felony conviction;
- 19 (4) that the City therefore may not require applicants to pay a fee set based on  
20 the costs of a criminal background check before being allowed to exercise  
21 their statutory rights under § 11362.1(a)(3);
- 22 (5) that the City therefore may not require applicants to undergo or relinquish  
23 the results of a criminal background check before being allowed to exercise  
24 their statutory rights under § 11362.1(a)(3);
- 25 (6) that the City may not require applicants to consent to a warrantless “home  
26 inspection” search as a condition of receiving a license to exercise their  
27 rights under § 11362.1(a)(3);
- 28 (7) that the City therefore may not require applicants to pay a fee set based on

1 the costs of a home inspection before being allowed to exercise their  
2 statutory rights under § 11362.1(a)(3); and

3 (8) that, in light of these violations, considered separately or together, \$411.12  
4 constitutes an illegally high license application fee in violation of  
5 California Government Code § 66016.

6 **Eighth Cause of Action**

7 **(Taxpayer Action Under Code Civ. Pro. § 526A to Prevent Illegal Expenditure of Funds)**

8 86. Plaintiff Mike Harris incorporates by reference each and every allegation in the  
9 preceding paragraphs as though each were fully alleged herein.

10 87. Defendant is illegally expending public funds by performing its purported duties  
11 under Ordinance 1758 in violation of the constitutional and statutory provisions described  
12 above.

13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Plaintiff prays the Court grant the following relief:

16 a. That this Court issue a writ of mandate directing Defendant City of Fontana to  
17 perform its duties and obligations under the United States and California  
18 Constitutions and the California Health and Safety Code and prohibiting it from  
19 enforcing Ordinance 1758.

20 b. That this Court issue a declaratory judgment as follows:

21 (1) that the City may not require a license before a resident can exercise his or  
22 her statutory rights under § 11362.1(a)(3);

23 (2) that the City may not require residents to incriminate themselves by  
24 applying for a residential marijuana permit before being allowed to  
25 exercise their statutory rights under § 11362.1(a)(3);

26 (3) that the City may not require residents' landlords to incriminate themselves  
27 by stating that they have given permission for their tenants to grow  
28 marijuana on their property under § 11362.1(a)(3);

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


- (4) that the City may not forbid residents from exercising their statutory rights under § 11362.1(a)(3) solely on the basis of an earlier felony conviction;
- (5) that the City therefore may not require applicants to pay a fee that is set based on the costs of a criminal background check before being allowed to exercise their statutory rights under § 11362.1(a)(3);
- (6) that the City therefore may not require applicants to undergo or relinquish the results of a criminal background check before being allowed to exercise their statutory rights under § 11362.1(a)(3);
- (7) that the City may not require applicants to consent to a warrantless “home inspection” search as a condition of receiving a license to exercise their rights under § 11362.1(a)(3);
- (8) that the City therefore may not require applicants to pay a fee that is set based on the costs of a home inspection before being allowed to exercise their statutory rights under § 11362.1(a)(3); and
- (9) that, in light of these violations, considered separately or together, \$411.12 constitutes an illegally high license application fee in violation of California Government Code § 66016.

- c. That this Court issue an order prohibiting Defendant City of Fontana, its agents, servants, officers, and employees from enforcing or attempting to enforce Ordinance 1758, or expending any government resources in doing so.
- d. That this Court award Plaintiff his costs of suit;
- e. That this court award Plaintiff his reasonable attorneys’ fees under Code of Civil Procedure § 1021.5 or other applicable statutes or rules; and
- f. That this Court award to Plaintiff such further relief as it may deem proper.

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

Dated: June 5, 2017

GEOFFREY H. YOST  
ANTHONY G. BEASLEY  
MARK E. BERGHAUSEN  
O'MELVENY & MYERS LLP

By:   
\_\_\_\_\_  
Geoffrey H. Yost  
Attorneys for Plaintiff

JOY HAVILAND  
THESHIA NAIDOO  
JOLENE M. FORMAN  
DRUG POLICY ALLIANCE

MICHAEL RISHER  
WILLIAM S. FREEMAN  
ACLU FOUNDATION OF NORTHERN  
CALIFORNIA