

ORDINANCE NO. 1090

**AN ORDINANCE OF THE CITY OF BEAUMONT
AMENDING TITLE 5, CHAPTER 5.62 OF THE CITY OF
BEAUMONT MUNICIPAL CODE TO REGULATE THE
PERSONAL, MEDICAL, AND COMMERCIAL USE OF
MARIJUANA; AND AMENDING TITLE 5, CHAPTER 5.70
PROHIBITING MOBILE MARIJUANA DISPENSARIES
AND DELIVERY**

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana (the “AUMA”); and

WHEREAS, some of the provisions of the AUMA took effect on November 9, 2016. The AUMA immediately legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older; and

WHEREAS, under the AUMA, adults can possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants and any marijuana produced by those plants; and

WHEREAS, the AUMA legalizes the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services; and

WHEREAS, to regulate commercial use of marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies the “exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for Marijuana businesses, including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

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

WHEREAS, the AUMA authorizes cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to an until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA authorizes cities to completely prohibit the establishment or operation of any State-licensed Marijuana business; and

WHEREAS, the City Council has determined that it is in the interests of the public health, safety and welfare of the City and its residents to have a strong and effective regulatory and enforcement system prohibiting Commercial Marijuana Activity to the extent authorized by State law ; and

WHEREAS, in light of the AUMA, the City Council now desires to amend sections of the City Code to regulate indoor Personal Cultivation of Marijuana consistent with applicable law; completely ban outdoor Cultivation of Marijuana to the extent authorized by law; and completely prohibit Commercial Marijuana Activity—whether medical or recreational—within the City.

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

SECTION 1. Findings. The City Council finds and determines as follows:

1. The dispensing, cultivation, manufacture, transportation, and distribution of marijuana can create problems related to public health, safety and welfare, increased crime, and energy consumption; and
2. Marijuana can create nuisance activity such as loitering and criminal activity in business and residential districts; and
3. Mobile delivery can create issues relating to responsibility and resources to monitor and enforce State law, questions of patient qualifications, and risks relating to the high use of large sums of cash for mobile transactions; and
4. Indoor cultivation of marijuana has potential adverse effects on the health and safety of occupants, including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution, and chemical contamination due to the use of pesticides and fertilizers within the structure; and
5. Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana dispensary, cultivation, processing, manufacturing, transportation and distribution uses.

SECTION 2. CEQA. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 3. Severability. The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any

preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences, or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. Violation of Prior Ordinances. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the City of Beaumont Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 5. The City Council hereby amends Title 5 (Business Taxes, Licenses, and Regulations), Division II, Chapter 5.62 to read in its entirety as follows:

Chapter 5.62

PROHIBITION AND REGULATION OF PERSONAL MARIJUANA USE AND CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY

Sections:

- 5.62.010 Purpose.
- 5.62.020 Definitions.
- 5.62.030 Personal Use and Cultivation.
- 5.62.040 Commercial Marijuana Activity.
- 5.62.050 Violation and Enforcement.

5.62.010 Purpose. It is the purpose and intent of this Chapter to: (1) regulate indoor personal Cultivation of Marijuana to the fullest extent permitted by State law; (2) completely prohibit outdoor Cultivation of Marijuana; and (3) completely prohibit Commercial Marijuana Activity—whether medical or recreational within the City of Beaumont, to the fullest extent permitted by law.

5.62.020 Definitions.

A. “**Marijuana**” shall mean all parts of the plant *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. “**Marijuana**” also means the separated resin, whether crude or purified, obtained from marijuana. “**Marijuana**” also means marijuana as defined by Section 11018 of the Health and Safety Code.

For the purposes of this Chapter, “**Marijuana**” does not mean “**industrial hemp**” as defined by Section 81000 of the Food and Agriculture Code or Section 11018.5 of the Health and Safety Code, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product

B. “Commercial Marijuana Activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, and/or sale of Marijuana and/or Marijuana products. Commercial Marijuana Activity expressly includes Mobile Marijuana Dispensaries and Delivery, as defined in City Code Chapter 5.70. Commercial Marijuana Activity does not include:

(1) The Activity of a Qualified Patient or Primary Caregiver as defined in Business and Professions Code Section 19319; or

(2) A person 21 years of age or older who, in strict accordance with State law and/or regulations, as may be amended from time to time:

(i) possesses, processes, transports, purchases, obtains, or gives away to persons 21 years of age or older without any compensation whatsoever, no more than 28.5 grams of Marijuana not in the form of concentrated cannabis; or

(ii) possesses, processes, transports, purchases, obtains, or gives away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of Marijuana in the form of concentrated cannabis, including as contained in Marijuana products; or

(iii) possesses, plants, cultivates, harvests, dries, or processes not more than six living Marijuana plants and possess the Marijuana produced by those plants; or

(iv) smokes or ingests Marijuana or Marijuana products; or

(v) possesses transports, purchases, obtains, uses, manufactures, or gives away Marijuana accessories to persons 21 years of age or older without any compensation whatsoever.

C. “Cultivation” means any activity involving the planting, growing, harvesting, drying curing, grading, or trimming of Marijuana, whether within a structure completely or partially enclosed, or outdoors.

D. “Person” means any individual, firm, corporation, association, collective, cooperative, dispensary, club, society, or other organization or group acting as a unit. The term Individual shall include any owner, manager, proprietor, employee, volunteer, salesperson, primary caregiver or qualified patient.

E. “Private residence” means a house, an apartment unit, a mobile home, or any other similar dwelling.

5.62.030 **Personal Use and Cultivation.**

A. For purposes of this subsection, personal use, possession, process, purchase, transport, and/or dissemination of Marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under State law.

B. Outdoor Cultivation. No person may plant, cultivate, harvest, dry, or process Marijuana plants outdoors in any zoning district of the City. No permit or any other license or entitlement for use, nor any business license, shall be approved or issued for the opening, establishment, maintenance or operation of any such use or activity. In the event of a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, outdoor Cultivation of Marijuana shall be prohibited and/or regulated to the fullest extent permitted by State law.

C. Indoor Cultivation. No Person, including a Qualified Patient or Primary Caregiver, may plant, cultivate, harvest, dry, or process Marijuana plants except inside a private residence or accessory structure to a private residence located upon the grounds of a private residence, and only in strict accordance with State law and/or regulations, and the City Code, as may be amended from time to time. This provision shall not be construed to authorize, regulate, permit, license, or otherwise allow indoor cultivation for commercial use. Such activity is expressly prohibited in all zones throughout the City.

5.62.040 Commercial Marijuana Activity

The opening, establishment, maintenance or operation of any business for the purpose of conducting Commercial Marijuana Activity, whether for medical or recreational use, is prohibited in all zones throughout the City. No permit or any other license or entitlement for use, nor any business license, shall be approved or issued for the establishment, maintenance, or operation of any business engaged in Commercial Marijuana Activity.

5.62.060 Violation and Enforcement.

1. Any condition caused or permitted to exist in violation of any provisions of this Chapter, the City Code, or State or City law is declared a public nuisance and may be abated by the City either pursuant to Chapter 8.32 of the Beaumont Municipal Code or any other available civil and/or criminal remedy, including but not limited to a restraining order, temporary and permanent injunctive relief, and other relief set forth in this Chapter, City Code and/or State Law.

2. Any person found to be in violation of or in non-compliance with any of the requirements of this Chapter or applicable provisions of the Beaumont Municipal Code shall be subject to any enforcement remedies available under the law and/or the Beaumont Municipal Code including, but not limited to, Chapter 1.17 and Chapter 8.32.

3. Any person violating any of the provisions of this Chapter or any provisions or part hereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of up to one thousand dollars (\$1,000.00) per day per violation or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. No civil action shall prevent criminal prosecution for any violation of the provisions of this Chapter, City Code and/or State law.

4. In lieu of issuing a misdemeanor citation, the City , may reduce the penalty to an infraction or issue an administrative citation, and/or assess an administrative fine up to the maximum amount(s) permitted by law and the Code.

5. Each violation of this Chapter shall constitute a separate violation and each violation may be charged as a separate count in the event of administrative or criminal enforcement action.

SECTION 6. The City Council hereby amends Title 5 (Business Taxes, Licenses, and Regulations), Division II, Chapter 5.70 “Mobile Marijuana Dispensaries” to read in its entirety as follows:

CHAPTER 5.70
MOBILE MARIJUANA DISPENSARIES AND DELIVERY

Sections:

- 5.70.010 Definitions.
- 5.70.020 Mobile Marijuana Dispensaries Prohibited.
- 5.70.030 Marijuana Delivery Prohibited.
- 5.70.040 Public Nuisance Declared.
- 5.70.050 Violations.

5.70.010 **Definitions.** The following words and phrases shall, for the purposes of this Chapter, have the meanings respectively ascribed to them by this section, as follows:

“Delivery” means the commercial transfer of Marijuana or Marijuana products to a customer of a business engaged in Commercial Marijuana Activity (as defined in City Code Section 5.62.020). “Delivery” also includes the use by a retailer of any technology platform owned and controlled by a retailer, or independently licensed under State law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of Marijuana or Marijuana product.

"Mobile Marijuana Dispensary" means any clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or Delivery, of marijuana to a Person for any medical or recreational use.

"Person" means any individual, firm, corporation, association, collective, cooperative, dispensary, club, society, or other organization or group acting as a unit. The term Individual shall include any owner, manager, proprietor, employee, volunteer, salesperson, primary caregiver or qualified patient.

"Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a Mobile Marijuana Dispensary.

5.70.020 **Mobile Marijuana Dispensaries Prohibited.** To the fullest extent permitted by State law, Mobile Marijuana Dispensaries are prohibited in all zones in the City of

Beaumont. No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of any Mobile Marijuana Dispensary within the City.

5.70.030 **Marijuana Delivery Prohibited.** To the fullest extent permitted by State law, Delivery of Marijuana is prohibited in all zones in the City of Beaumont

5.70.040 **Public Nuisance Declared.** Operation of any Mobile Marijuana Dispensary or Delivery service within the City is hereby declared a public nuisance and shall be abated pursuant to all available civil and/or criminal remedies, including but not limited to a restraining order, temporary and permanent injunctive relief, and other relief as set forth in this Chapter, the City Code and/or State law.

5.70.050 **Violations.** Violations of this Chapter may be enforced in accordance with the provisions of Chapter 1.17 of this Code. Notwithstanding any other provision of the Code, a violation of this Chapter is not subject to criminal penalties.

Any person violating any of the provisions of this Chapter or any provisions or part hereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of up to one thousand dollars (\$1,000.00) per day per violation or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. No civil action shall prevent criminal prosecution for any violation of the provisions of this Chapter, City Code and/or State law.

In lieu of issuing a misdemeanor citation, the City , may reduce the penalty to an infraction or issue an administrative citation, and/or assess an administrative fine up to the maximum amount(s) permitted by law and the Code.

Each violation of this Chapter shall constitute a separate violation and each violation may be charged as a separate count in the event of administrative or criminal enforcement action.

SECTION 7. Effective Date and Publication. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within 15 days after adoption in accordance with Government Code Section 36933. This Ordinance shall take effect 30 days after adoption in accordance with Government Code Section 36937.

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Beaumont, California, approves an amendment to the City Code.

INTRODUCED AND READ for the first time and ordered posted at a regular meeting of the City Council of the City of Beaumont, California, held on the 1st day of August, 2017, by the following roll call vote:

AYES: White, Carroll, Lara, Martinez

NOES:

ABSENT: Orozco

ABSTAIN:

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of
Beaumont, California, held on the 15th day of August, 2017.

AYES: Martinez, Lara, Carroll, White


NOES:

ABSENT: Orozco

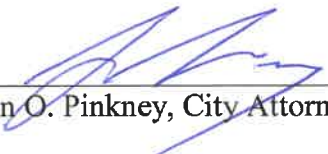
ABSTAIN:



Lloyd White, Mayor

Attest: 
Andreanna Pfeiffer, City Clerk

Approved as to form:



John O. Pinkney, City Attorney