

ORDINANCE NO. 1037

AN URGENCY ORDINANCE OF THE CITY OF BEAUMONT,
CALIFORNIA, AMENDING THE BEAUMONT MUNICIPAL CODE
ADDING CHAPTER 5.70 TO PROHIBIT MOBILE MARIJUANA
DISPENSARIES NECESSARY FOR PRESERVING PUBLIC
PEACE, HEALTH, AND SAFETY

The City Council of the City of Beaumont does ordain as follows:

Section 1. Findings. In enacting this Ordinance, the City Council finds and takes legislative notice as follows:

1. In 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use; and
2. The Compassionate Use Act ("CUA"), codified at California Health and Safety ("H&S") Code Section 11362.5, was approved by California voters in 1996 and legalized the use of marijuana for specific medical purposes; and
3. California courts have held that the CUA creates a limited exception for criminal liability for seriously ill persons who are in need of medical marijuana for specified medicinal purposes and who obtain and use medical marijuana under limited, specified circumstances; and
4. In 2003 the State of California adopted SB 420, the Medical Marijuana Program ("MMP"), codified at California Health and Safety ("H&S") Code Section 11362.7, which clarifies the scope of the Compassionate Use Act and allows local jurisdictions to adopt and enforce rules consistent with SB 420; and
5. The CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in this article shall prevent a city ... from adopting and enforcing ... local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective ... civil and criminal enforcement of local ordinances; [and] ... other laws consistent with this article (H&S Code 11362.83.); and
6. The California Supreme Court has established that neither the CUA or MMP preempt local regulation in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013); and

7. The exact number of delivery services operating in California is unclear, since the state does not keep a registry of mobile medical marijuana distributors. In June of 2013, at least 8 services within 7 miles of Beaumont advertised direct delivery of marijuana on "Weedmaps.com", an internet commercial listing service; and
8. An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Beaumont, particularly in light of the City's ban on dispensaries being recently upheld by the California Supreme Court and the City's willingness to cooperate with federal law enforcement operations; and
9. An Inland Empire lawyer who describes himself as one who represents "California dispensary clients battling local government roadblocks" has been advising his marijuana dispensary clients to change their business model as a result of the California Supreme Court decision so that marijuana is distributed from a mobile source. This lawyer has consistently represented dispensaries operating in the County of Riverside; and
10. Mobile dispensaries have been associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following:
 - a. In March of 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
 - b. In February of 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.
 - c. In January of 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.
 - d. In January of 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. restaurant in Riverside, and he told police that the suspect may have had a gun.
 - e. In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.

- f. In August of 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut during the crime.
- g. In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.
- h. In April of 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.
- i. In May of 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana; and

11. Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, 210 Cal.App.4th 829 (2012):

"Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case - that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card - then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."; and

12. Despite the Compassionate Use Act and the Medical Marijuana Program, the United States Attorneys in California have all taken action to enforce the federal Controlled Substances Act against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violate federal law; and

13. The California Constitution grants cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and
14. The City of Beaumont, by and through its City Council, has and may exercise all powers necessary to ensure the general welfare of its inhabitants; and
15. There exists a current and immediate threat to public health, safety and welfare in the absence of the City adopting an ordinance prohibiting establishment, operation or use of mobile marijuana dispensaries; and
16. It is the purpose and intent of this Ordinance prohibiting all mobile marijuana dispensaries to promote health, safety, morals, and general welfare of the residents and businesses within the City; and
17. The failure to prohibit mobile marijuana dispensaries or medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime.

Section 2. The City Council has determined that there is a high likelihood that mobile marijuana dispensaries will immediately flourish in the City without the adoption of this Ordinance. The City Council finds that this Ordinance is necessary as an emergency measure for preserving the public peace, health, or safety.

Section 3. Chapter 5.70 is hereby added to the Beaumont Municipal Code as more fully set forth on Exhibit A, which Exhibit is attached hereto and incorporated herein by this reference.

Section 4. This Ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. In the event that this Ordinance is found to be project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

Section 5. This Ordinance is adopted as an urgency measure pursuant to Section 36937 of the Government Code. This Ordinance is necessary as an emergency measure for preserving the public peace, health, and safety of the City and its residents.

Section 6. Pursuant to Section 36937 of the Government Code, this Urgency Ordinance shall become effective immediately upon adoption.

Section 7. The City Clerk shall certify to the adoption of this Ordinance and cause publication once in a newspaper of general circulation.

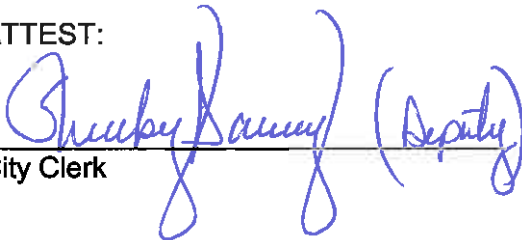
MOVED AND PASSED upon this 2nd day of July, 2013, by the following roll call vote:

AYES: Mayor Berg, Council Members Castaldo, De Forge, and Knight
NOES: None
ABSTAIN: None
ABSENT: None

CITY OF BEAUMONT

By 
ROGER BERG, Mayor

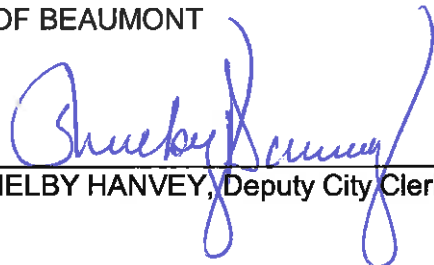
ATTEST:

 (Deputy)
City Clerk

CERTIFICATION

The foregoing is certified to be a true copy of Ordinance No. 1037 duly introduced at a regular meeting of the City Council of the City of Beaumont held on July 2, 2013, and was duly adopted by the roll call votes indicated therein.

CITY OF BEAUMONT

By 
SHELBY HANVEY, Deputy City Clerk

(SEAL)

CHAPTER 5.70

MOBILE MARIJUANA DISPENSARIES

Sections:

- 5.70.010 Definitions.**
- 5.70.020 Mobile Marijuana Dispensaries Prohibited.**
- 5.70.030 Marijuana Delivery Prohibited.**
- 5.70.040 Excluded Operations.**
- 5.70.050 Public Nuisance Declared.**
- 5.70.060 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:

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

"Person" means any person, firm, corporation, association, club, society, or other organization. The term Person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

"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. Mobile Marijuana Dispensaries are prohibited 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.

(a) No Person shall deliver marijuana to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

(b) No Person shall deliver any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

5.70.040 Public Nuisance Declared. Operation of any Mobile Marijuana Dispensary within the City in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

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.