

ORDINANCE NO. 1062

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD REPEALING CHAPTER 17.780 (MEDICAL MARIJUANA FACILITIES) AND REPLACING IT IN ITS ENTIRETY WITH A NEW CHAPTER 17.780 (CANNABIS FACILITIES AND CULTIVATION) OF THE BRENTWOOD MUNICIPAL CODE TO REGULATE CANNABIS DELIVERIES WITHIN THE CITY OF BRENTWOOD

WHEREAS, in 1970, the United States Congress enacted the Controlled Substances Act (“CSA”) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, in 1972, California added Chapter 6 to the State Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state’s prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of marijuana; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (the “Act;” Health and Safety Code Section 11362.5, *et seq.*); and

WHEREAS, California courts have held that the Act creates a limited exception from criminal liability under the state Uniform Controlled Substances Act for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Sections 11362.7 to 11362.83, was enacted by the State Legislature to clarify the scope of the Act, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana; and

WHEREAS, the California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the Act and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives; and

WHEREAS, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation; and

WHEREAS, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the Medical Marijuana Regulation and Safety Act or “MMRSA”) were enacted to create a State regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana. This legislation preserved local control over marijuana facilities and land uses, including the authority to completely prohibit marijuana dispensaries, cultivation and deliveries; and

WHEREAS, several California cities and counties have experienced serious adverse impacts associated with and resulting from medical marijuana dispensaries, cultivation sites, and delivery services. According to these communities and according to news stories widely reported, medical marijuana activities have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana activities. There have also been large numbers of complaints of odors related to the cultivation and storage of marijuana; and

WHEREAS, a California Police Chiefs' Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report; and

WHEREAS, it is reasonable to conclude that medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries could cause similar adverse impacts on the public health, safety, and welfare in Brentwood; and

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), which allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. Under this new State law, an adult individual may possess up to 28.5 grams of non-concentrated marijuana or 8 grams of marijuana in a concentrated form (e.g., marijuana edibles); and

WHEREAS, the AUMA does not limit local police power authority over commercial marijuana businesses and land uses. Business and Professions Code Section 26200 provides that cities may "completely prohibit the establishment or operation of one or more types of businesses licensed under" the AUMA. Therefore, as under MCRSA, cities have a wide range of regulatory options under the AUMA to deal with marijuana land uses. These options include an express ban on all or some of the businesses permitted under the AUMA or a regulatory scheme for commercial marijuana businesses; and

WHEREAS, on October 24, 2017, the City Council amended Brentwood Municipal Code Chapters 9.50 and 17.780 to prohibit, in express terms, medical and recreational marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries; and

WHEREAS, in 2022 the California Legislature passed and Governor Gavin Newsom signed into law SB 1186 (Weiner), the Medicinal Cannabis Patients' Right of Access Act (the "Act"). Beginning January 1, 2024, the Act bars a city from adopting or enforcing any regulation that directly or indirectly prohibits retail delivery of medicinal cannabis to eligible patients or caregivers in the city; and

WHEREAS, in order to protect the public health, safety, and welfare, the City Council desires to amend Brentwood Municipal Code Chapter 9.50 to regulate cannabis dispensaries, cultivation facilities, commercial cannabis activities, and cannabis deliveries; and

WHEREAS, on September 19, 2023, the Planning Commission held a duly-noticed public hearing to consider the staff report, recommendation by staff, and public testimony concerning this Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

WHEREAS, on September 29, 2023, the City gave public notice of a City Council public hearing to be held to consider this Ordinance by advertisement in the Brentwood Press; and

WHEREAS, on October 10, 2023, the City Council held a duly-noticed public hearing to consider the Ordinance, including the public testimony and agenda reports prepared in connection with the Ordinance, as well as the policy considerations discussed therein; and

WHEREAS, at its October 10, 2023 meeting, the City Council introduced and waived the first reading of the Ordinance; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Brentwood does hereby ordain as follows:

SECTION 1. Recitals. The recitals set forth above are incorporated into this Ordinance as though fully set forth herein.

SECTION 2. Zoning Text Amendment. The City Council hereby finds that, with respect to Brentwood Municipal Code Section 17.870.008:

No rezoning of property or text amendment shall occur which is inconsistent with the city's community development plan. In making a decision, the planning commission and council shall consider the consistency of a proposed action with the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.

This zoning text amendment is consistent with the City of Brentwood General Plan (as updated July 2014), inasmuch as it implements General Plan Land Use Policy LU 1-1 ("Maintain a supply of developable commercial, business park, mixed-use, and residential lands sufficient to meet desired growth and economic needs over the planning period"). The Ordinance does this by maintaining the City's prohibition on the establishment of cannabis cultivation facilities, medical cannabis facilities, and non-medical cannabis facilities, while allowing for the State-mandated delivery of medicinal cannabis, as required by Senate Bill 1186 (2022). The proposed action is thus neither inappropriate nor otherwise contrary to the public interest, as it carries out the directive of State law.

SECTION 3. Repealing and Replacing Former Chapter 17.780. Chapter 17.780 is hereby repealed and replaced in its entirety with a new Chapter 17.780, which is set forth in Exhibit "A", attached hereto and incorporated herein.

SECTION 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance to replace Chapter 17.780 of the Brentwood Municipal Code in its entirety is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(1), 15061(b)(2), and 15061(b)(3).

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance or its attachments is for any reason held to be invalid or unconstitutional by the decision

of a court of competent jurisdiction, the holding shall not affect the validity or enforceability of the remaining provisions, and the City Council declares that it would have adopted each provision of this ordinance irrespective of the validity of any other provision.

SECTION 6. Inclusion in the Brentwood Municipal Code. It is the intention of the Brentwood City Council that the text in Exhibit A of this Ordinance be made a part of the Brentwood Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such other appropriate word or phrase to accomplish this intention.

SECTION 7. Publication and Effective Date. This Ordinance shall be published in accordance with Government Code Section 36933 by either posting or publishing the Ordinance in accordance with that law. Further, the City Clerk is directed to cause Chapter 17.780, as provided in Exhibit A, to be entered in the City of Brentwood Municipal Code. This Ordinance shall take effect and be in force 30 days following its adoption.

The foregoing ordinance was adopted at a regular meeting of the Brentwood City Council on the 24th day of October, 2023 by the following vote:

AYES:

NOES:

ABSENT:

RECUSE:

EXHIBIT A

Chapter 17.780

CANNABIS FACILITIES AND CULTIVATION

17.780.010 Purpose.

17.780.020 Definitions.

17.780.030 Medicinal cannabis facilities prohibited.

17.780.040 cannabis cultivation prohibited.

17.780.050 Non-medicinal cannabis facilities prohibited.

17.780.060 Non-medicinal cannabis delivery and transport prohibited.

17.780.070 State and federal law prohibitions and restrictions.

17.780.080 Enforcement.

17.780.010 Purpose.

The purpose and intent of this chapter is to prohibit cannabis cultivation facilities, medicinal cannabis facilities, non-medicinal cannabis facilities, and non-medicinal cannabis deliveries, as defined below, within the city limits. It is recognized that it is a federal violation under the Controlled Substances Act to possess or distribute cannabis even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with cannabis facilities and in connection with cannabis deliveries, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare. (Ord. 993 § 2, 2017)

17.780.020 Definitions.

The following definitions shall apply to the provisions of this chapter:

“Cannabis (also known as “marijuana”) means any or all parts of the plant *Cannabis sativa* *Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufactured, 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. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by [Section 11018.5 of the Health and Safety Code](#).

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

“Commercial cannabis activity” means the cultivation, possession, manufacturing, distribution, processing, storing, labeling, or sale of cannabis and cannabis products for commercial purposes, whether for profit or nonprofit, and for which a state license is required under Business and Professions Code section 26000 et seq. .

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer.

“Distribution” means the procurement, wholesale sale, and transport of cannabis products between entities permitted or licensed under this chapter, another local California jurisdiction, or state law.

“Establish” or “operate” a cannabis cultivation facility, medicinal cannabis dispensary, or non-medicinal cannabis facility means and includes any of the following:

1. The opening or commencement of the operation of a cannabis cultivation facility, medicinal Cannabis facility, or non-medicinal Cannabis facility;
2. The conversion of an existing business, facility, use, establishment, or location to a cannabis cultivation facility, medicinal cannabis facility, or non-medicinal cannabis facility;
3. The addition of a cannabis cultivation facility, medicinal cannabis facility, or non-medicinal cannabis facility to any other existing business, facility, use, establishment or location.

“Medicinal cannabis” is cannabis or a cannabis product, respectively, intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation, or in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction.

“Medicinal cannabis facility” means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medicinal cannabis is sold, made available, delivered and/or distributed by or to three or more people. A “medicinal cannabis facility” includes any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity, as defined by [Business and Professions Code](#) Section 26001(k), takes place. A “medicinal cannabis facility” does not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law and as long as any use of cannabis complies strictly with applicable law including, but not limited to, [Health and Safety Code](#) Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the [Health and Safety Code](#);
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the [Health and Safety Code](#);
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the [Health and Safety Code](#);

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the [Health and Safety Code](#);

5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the [Health and Safety Code](#).

“Medicinal cannabis patient” means a qualified patient, as defined in [Section 11362.7 of the Health and Safety Code](#), who possesses a physician's recommendation that complies with Article 25 (commencing with [Section 2525](#)) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to [Section 11362.71 of the Health and Safety Code](#).

“Non-medicinal cannabis facility” means any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under [Business and Professions Code](#) Section 26000 et seq., including, but not limited to, cannabis cultivation, cannabis distribution, cannabis transportation, cannabis storage, manufacturing of cannabis products, cannabis processing, the sale of any cannabis or cannabis products, and the operation of a cannabis microbusiness. (Ord. 993 § 2, 2017)

17.780.030 Medicinal cannabis facilities prohibited.

Medicinal cannabis facilities are prohibited in all zoning districts in the city and shall not be established or operated anywhere in the city. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medicinal cannabis facility within the city. No person may be the lessor of property where a medicinal cannabis facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medicinal cannabis facility in the city. (Ord. 993 § 2, 2017)

17.780.040 Cannabis cultivation prohibited.

No person or entity may cultivate cannabis at any location in the city, except that a person may cultivate cannabis plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the cannabis cultivation to occur, the person conducting the cannabis cultivation complies with all applicable Building Code requirements set forth in Title 8 of the Municipal Code, there is no use of gas products (including, but not limited to, CO₂, butane, propane, and natural gas) on the property for purposes of cannabis cultivation, and the cannabis cultivation complies with [Health and Safety Code](#) Section 11362.2(a)(3). Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. (Ord. 993 § 2, 2017)

17.780.050 Non-medicinal cannabis facilities prohibited.

Non-medicinal cannabis facilities are prohibited in all zoning districts in the city and shall not be established or operated anywhere in the city. The city shall not issue, approve or grant any

permit, license or other entitlement for the establishment or operation of a non-medicinal cannabis facility. No person may be the lessor of property where a non-medicinal cannabis facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any non-medicinal cannabis facility in the city. (Ord. 993 § 2, 2017)

17.780.060 Non-medicinal cannabis delivery and transport prohibited.

A. Except as set forth in subsection (C) below, origination or acceptance of deliveries of cannabis for any purpose is prohibited in all zoning districts in the city.

B. Except as set forth in subsection (C) below, no person and/or entity may deliver or transport cannabis, including medicinal cannabis, from any fixed or mobile location, either inside or outside the city, to any person in the city.

C. As an exception to subsection A and above, and as required by the Medicinal Cannabis Patients' Right of Access Act (Business and Professions Code Sections 26321, *et seq.*) a person may deliver or transport medicinal cannabis to a medicinal cannabis patient, subject to the following requirements:

1. Deliveries of medicinal cannabis to a medicinal cannabis patient must be made to fixed addresses and may not occur at locations such as schools, day care centers, youth centers, public parks and open spaces, public buildings, and establishments serving food or beverages.
2. A retailer with a physical address outside of the city that wishes to deliver medicinal cannabis or medicinal cannabis products to a patient or customer within city limits is required to obtain a City business license prior to commencing any delivery service within city limits.
3. All medicinal cannabis or medicinal cannabis products must be securely packaged and labeled according to State regulations, ensuring that they are not accessible to minors during transit.
4. Delivery vehicles must adhere to safety and security standards, which include GPS tracking, alarms, and secure storage.
5. The delivery of cannabis accessories, branded merchandise of the licensee, or promotional materials is prohibited, except for any equipment, products or materials necessary to enable a qualified patient to ingest, inhale, or otherwise introduce cannabis or cannabis products into the human body.

D. This Section shall not be interpreted as prohibiting medicinal cannabis patients within the city from purchasing by delivery sufficient medicinal cannabis to meet their demands in a timely and readily accessible manner.

17.780.070 State and federal law prohibitions and restrictions.

A. The purpose of this chapter is to prohibit all cannabis activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any commercial cannabis activity for which a state license is required.

B. Nothing contained in this section shall be deemed to permit or authorize any use or activity that is otherwise prohibited by any state or federal law. (Ord. 993 § 2, 2017)

17.780.080 Enforcement.

The city may enforce this chapter in any manner permitted by law. The violation of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief. In addition, violators may be punished pursuant to Title 1 of this code. These remedies are deemed to be cumulative and in addition to all other remedies under this code and state and federal law. (Ord. 993 § 2, 2017)