

ORDINANCE NO. 2016-450

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE, CALIFORNIA APPROVING MUNICIPAL CODE 2016-104 TO AMEND TITLE 5, CHAPTER 5.99 OF THE MUNICIPAL CODE TO PROHIBIT THE ISSUANCE OF A BUSINESS LICENSE TO A MARIJUANA-RELATED AND CANNABIS-RELATED BUSINESS

WHEREAS, the City of Big Bear Lake, California (the “City”) is a municipal corporation and charter city, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et. seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the City’s General Plan; and

WHEREAS, the sale and distribution of marijuana is prohibited by Federal law, specifically Title 21 of the United States Code (U.S.C.) Sections 812 and 841, part of the Controlled Substances Act; and

WHEREAS, the City Council adopted Ordinance 2010-400, pertaining to Municipal Code Chapter 5.99, and Ordinance 2016-446, pertaining to Development Code Sections 17.25.230 and 17.35.230, to keep its regulations current with respect to marijuana land uses and to retain local control to the extent allowed under the law; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the control Regulate and Tax Adult Use of Marijuana Act (“AUMA”) for placement on the November 8, 2016, ballot; and

WHEREAS, if passed, AUMA would become law and would regulate personal, medical, commercial and nonmedical uses of marijuana. State regulations will control marijuana businesses and operations, unless the City adopts its own regulations; and

WHEREAS, the City desires to continue to ban the issuance of a business license to any marijuana-related business, including marijuana cultivators and manufacturers, marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, the United States Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), confirmed the validity of the Controlled Substances Act prohibition of the sale and distribution of marijuana and the application of the Act in California, notwithstanding the possible medicinal uses of marijuana and the limited authorization for sale and distribution of marijuana created by California State Law, noting that California’s system of limited decriminalization for medical marijuana is susceptible to abuse, and confirmed that California’s medical marijuana laws are superseded by the Controlled Substances Act to the extent that they conflict with the Act; and

WHEREAS, in May, 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the

authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the Big Bear Lake Development Code, Section 17.01.030 (E) states that “No land shall be developed nor shall any use be approved or initiated or permit approved which is not in conformance with the General Plan, applicable Specific Plan, this Development Code or other applicable provisions of the Big Bear Lake Municipal Code”; and

WHEREAS, the Big Bear Lake Development Code, Section 17.01.030 (F) states that “No land shall be developed nor shall any use be approved or initiated or permit approved which is not in conformance with all applicable Federal, State, or County adopted plans, regulations, or programs, including, but not limited to, National Pollution Discharge Elimination System (NPDES) and San Bernardino County Hazardous Waste Management Plan;” and

WHEREAS, cities where medical marijuana dispensaries have been permitted to operate have experienced significant problems, including an overabundance and overconcentration of such uses, along with burglaries and takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in crime (especially thefts and robberies) in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the selling of illegal drugs other than marijuana in the dispensaries, and the selling of marijuana to minors; and

WHEREAS, the City Council wishes to ensure that all uses, operations, and businesses within the City are permitted under both Federal and State law, in order to protect the public health, safety and welfare of the citizens of, and visitors to, the City of Big Bear Lake; and

WHEREAS, the City Council recognizes that certain uses of land, operations, and businesses may be prohibited under Federal or State law, but not both; and,

WHEREAS, on August 22 2016, the City Council conducted a first reading on the proposed Ordinance and passed the Ordinance to a second reading.

WHEREAS, on September 26, 2016, the City Council conducted a second reading and adopted the Ordinance on this date.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby specifically finds that all of the facts set forth in the Recitals of this Ordinance, are true and correct.

SECTION 2. The City Council hereby finds and determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(3) and Section 15061(b)(3) of the State CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment.

SECTION 3. Based on substantial evidence presented to the City Council during the August 22 and September 26, 2016, public meetings, including public testimony and written and oral staff reports, the City Council specifically finds as follows:

1. This Ordinance promotes the general health, safety, and welfare of the citizens of, and visitors to, the City of Big Bear Lake because it will avoid the adverse secondary impacts created by marijuana businesses, including marijuana cultivators and manufacturers, marijuana dispensaries, marijuana retailers and marijuana delivery services. Cities that have allowed medical marijuana business have experienced an overabundance and overconcentration of such uses, burglaries and takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in crime (especially thefts and robberies) in the vicinity of such dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the selling of illegal drugs other than marijuana in the dispensaries, and the selling of marijuana to minors. By adopting this Ordinance, the City is exercising its rights under the law to regulate these land uses to protect the public health, safety and welfare of the citizens of, and visitors to, the City of Big Bear Lake.

SECTION 4. The City of Big Bear Lake Municipal Code, Title 5 – Business Licenses, Taxes and Regulations, Chapter 5.99 Prohibition of Businesses, Operations or Uses that Violate Federal or State Law, is hereby amended to read as follows:

Chapter 5.99

Prohibition of Businesses, Operations or Uses that Violate Federal or State Law

5.99.010 Activities Prohibited by Federal or State Law.

The City of Big Bear Lake shall not issue any business license for any business, operation or use that is or would be in violation of, or contrary to, Federal or State law. **The City shall not issue a business license for any marijuana-related or cannabis-related business. For the purposes of this section, “cannabis” includes “marijuana” as defined in this Municipal Code.**

SECTION 5. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council and the people of the City of Big Bear Lake hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

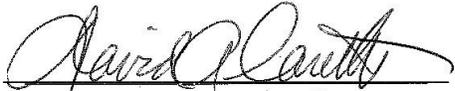
SECTION 6. Restatement of Existing Law. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor shall be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this Ordinance, insofar as they are substantially the same as the Ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City’s zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within fifteen (15) days after its passage, at least once, in a newspaper of general circulation, published and circulated in the City of Big Bear Lake, California. This Ordinance shall take effect thirty (30) days after its final passage.

SECTION 8. The City Clerk shall certify to the adoption of this Ordinance.

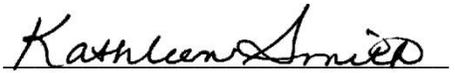
PASSED, APPROVED, AND ADOPTED this 26th day of September, 2016.

AYES: Jackowski, Jahn, Putz, Caretto
NOES: None
ABSENT: Herrick
ABSTAIN: None



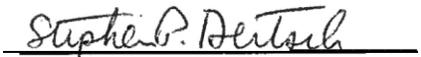
David A. Caretto, Mayor

ATTEST:



Kathleen Smith, Acting City Clerk

REVIEWED AND APPROVED:



Best Best & Krieger LLP
Stephen P. Deitsch, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF BIG BEAR LAKE)

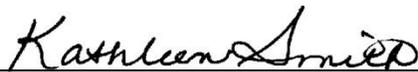
I, Kathleen Smith, Acting City Clerk of the City of Big Bear Lake, California, do hereby certify that the whole number of the City Council of the said City is five; that the foregoing Ordinance, being Ordinance No. 2016-450 is a full, true and correct original of Ordinance No. 2016-450 of the City of Big Bear Lake, entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, APPROVING MUNICIPAL CODE 2016-104 TO AMEND TITLE 5, CHAPTER 5.99 OF THE MUNICIPAL CODE TO PROHIBIT THE ISSUANCE OF A BUSINESS LICENSE TO A MARIJUANA-RELATED AND CANNABIS-RELATED BUSINESS

was duly passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 26th day of September, 2016, and that the same was so passed and adopted by the following vote:

AYES: Jackowski, Jahn, Putz, Caretto
NOES: None
ABSENT: Herrick
ABSTAIN: None

I do hereby further certify that pursuant to the provisions of Section 36933 of the Government Code of the State of California, that the foregoing Ordinance No. 2016-450 was duly and regularly published according to law and the order of the City Council and circulated within said City.



Kathleen Smith, Acting City Clerk