

ORDINANCE NO. 2903

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AMENDING SECTION 1.22.010 OF CHAPTER 1.22 OF TITLE 1, AND ADDING CHAPTER 8.02 OF TITLE 8, OF THE GARDEN GROVE MUNICIPAL CODE, TO ENHANCE THE CITY'S CODE ENFORCEMENT PROGRAM BY INCREASING ADMINISTRATIVE FINES FOR VIOLATIONS OF BUILDING AND SAFETY CODES AND PROHIBITING COMMERCIAL ADVERTISEMENTS FOR UNLAWFUL ACTIVITIES AND USES

City Attorney Summary

This Ordinance revises the administrative penalties for violations of the Building and Safety Codes as authorized by recent amendments to State law and establishes a prohibition against commercial advertisements for unlawful activities and uses to enhance the City's Code Enforcement Program.

WHEREAS, AB 2598, Chapter 970 of 2018 Statutes amended Government Code section 36900 to increase the penalties for violations of local building and safety codes;

WHEREAS, AB 2164, Chapter 316 of 2018 Statutes amended Government Code section 53069.4 to permit the immediate issuance of an administrative fine or penalty for the violation of building and safety codes resulting from the illegal cultivation of cannabis;

WHEREAS, it is well-established under the law that commercial speech that proposes an unlawful transaction, or is misleading or related to unlawful activity is excluded from First Amendment protection and may be freely regulated by the government;

WHEREAS, the United States Supreme Court has held that the government may prohibit advertising for commercial activity that is itself illegal without offending the First Amendment to the United States Constitution, as such speech is not entitled to protection. (See, Pittsburg Press Co. v. Pittsburgh Commission on Human Relations, (1973) 413 U.S. 376, 388; Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, (1980) 447 U.S. 557, 566);

WHEREAS, any person or entity wishing to avoid the impact of this ordinance's prohibition against advertising illegal activities under the code need only delete or remove and avoid publishing any advertisements for unlawful activities in the City of Garden Grove's jurisdictional limits; and

WHEREAS, under the principle of permissive zoning, any land use not expressly allowed by Title 9 of the Garden Grove Municipal Code is prohibited. Section 9.32.020.E.1 provides that no building, structure, or land shall be used, occupied, or

maintained, for any purpose or use except as specifically provided in the code, and in any permit approved under the code;

WHEREAS, the Garden Grove Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all residential zones as this land use is not provided for nor permitted in Chapters 9.08 and 9.12 thereof;

WHEREAS, many owners, operators, and facilitators of unlawful short-term rentals in the City's residential zones that engage in the short-term rental business, use advertisements to make unlawful short-term rentals available to the general public and rely on those advertisements to secure customers, such that prohibiting advertisements for unlawful short-term rentals would reduce the supply of unlawful rentals and reduce the occurrence of this unlawful activity by making it significantly more difficult for prospective renters and owners and operators to connect with each other and to enter into rental agreements;

WHEREAS, section 3 of is ordinance is intended to reduce the amount of illegal activity presently occurring and to prevent new illegal activity from occurring, by prohibiting advertisements by which owners, operators, and facilitators engaging in illegal activities seek customers;

WHEREAS, a purpose of this ordinance is to reduce the proliferation of the illegal land use of unlawful short-term, transient, and vacation rentals and the associated negative effects caused by this illegal land use on the City's residents, businesses, and visitors, including excessive traffic, reductions in available parking, unlawful conversions of residential property, unlawful conversions of existing affordable housing units into illegal short term vacation rentals, and inundation of the City's low-density, quiet residential neighborhoods with commercial visitors and activity that adds traffic, noise, and destroys their quiet, low-density residential character; and

WHEREAS, the City intends that the prohibition on advertisements for unlawful short-term, transient, and vacation rentals will apply to the extent of, but not beyond, the limit of the City's power, consistent with the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution, and any preemptive state or federal laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The foregoing recitals are true and are hereby incorporated by reference as the City Council's findings and purpose for this ordinance.

SECTION 2: Section 1.22.010 of Title 1 of the Garden Grove Municipal Code is hereby amended to read as follows:

1.22.010 Authority and Fines

A. Any person violating any provision of the Garden Grove Municipal Code may be issued an administrative citation by an enforcement officer and shall thereby be subject to an administrative fine as provided for in this chapter. For purposes of this chapter, a violation of the Garden Grove Municipal Code shall include any violation of the Municipal Code, any code adopted by reference by the City Council, including, but not limited to, all codes adopted by reference in Title 18 of the Municipal Code, and the failure to comply with any condition of approval imposed pursuant to any land use entitlement, any permit, license, or other authorization issued or approved pursuant to the City Council adopted ordinances, including, but not limited to, those violations specified in Section 1.22.110 herein. The violations referred to in this subsection are collectively referred to in this chapter as Municipal Code violations. For purposes of this chapter, an administrative citation for an administrative fine may be issued to any responsible person for any violation referred to in this chapter.

B. Each and every day a violation of the Municipal Code exists constitutes a separate and distinct offense.

C. An administrative fine shall be assessed by means of an administrative citation issued by an enforcement officer and shall be payable directly to the City of Garden Grove through the Finance Department. Except as set forth in subsection D, a citation may be issued by an enforcement officer upon the determination by such officer that a violation of the Municipal Code exists.

D. Continuing Violations.

1. When a continuing violation exists pertaining to a building, plumbing, electrical, or other similar structural or zoning issue that does not create an immediate danger to health or safety, a citation for such a violation shall not be issued pursuant to this chapter unless the responsible person has first been provided with a reasonable period as determined by the enforcement officer, but in no event less than five calendar days, in which to correct or otherwise remedy the violation. When such a violation creates an immediate danger to health or safety, a citation may be issued immediately.

2. Notwithstanding Subdivision (1) above, in the case of an administrative citation issued for violation of Section 9.52.030 pertaining to the illegal cultivation of cannabis, the citation may be issued immediately, except that the City will provide a reasonable period as determined by the enforcement officer, but in no event less than five calendar days, in which to correct or otherwise remedy the violation if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

E. Except as otherwise specified for those Municipal Code violations referred to in subsections F **through H** ~~and G~~, in the case of administrative citations issued for violation of the Municipal Code, administrative fines shall be assessed in the amount of \$1,000.00 for each violation.

F. For each violation of the Municipal Code that would otherwise be determined to be an infraction, administrative fines shall be in the following amounts:

1. A fine of \$100.00 for a first violation;
2. A fine of \$200.00 for a second violation of the same Municipal Code provision within one year from the date of the first violation; and
3. A fine of \$500.00 for each additional violation of the same Municipal Code provision within one year from the date of the first violation.

G. In the case of an administrative citation issued for violation of Sections 8.64.030, 8.64.040 or 8.64.050(A) or any provision of Chapter 8.84 of this Code, administrative fines shall be assessed in the following amounts:

1. A fine of \$300.00 for a first violation;
2. A fine of \$600.00 for a second violation of the same provision within one year from the date of the first violation; and
3. A fine of \$1,000.00 for each additional violation of the same provision within one year from the date of the first violation.

H. In the case of an administrative citation issued for violation of Title 18 (Building Codes), administrative fines shall be assessed in the following amounts:

- 1. A fine of \$130.00 for a first violation;**
- 2. A fine of \$700.00 for a second violation of the same provision within one year from the date of the first violation; and**
- 3. A fine of \$1,300.00 for each additional violation of the same provision within one year from the date of the first violation; and**

4. A fine of \$2,500.00 for each additional violation of the same provision within two years from the date of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

I H. In addition to the administrative fine schedule as set forth above, and pursuant to Government Code Section 38773.5(b), the City may recover, at its discretion, attorneys' fees and costs in any action, administrative proceeding, or special proceeding to abate any nuisance arising out of a Municipal Code violation. The recovery of attorneys' fees and costs shall be by the prevailing party, and limited to those individual actions or proceedings in which the City elects, by direction of the City Manager at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to the prevailing party exceed the amount of reasonable fees incurred by the City in such matters.

J I. Nothing in this chapter shall require the City to proceed with an administrative citation and fine in lieu of the penalty provisions set forth in Chapter 1.04 or any other legal options available to the City. An administrative citation may be utilized in place of, or in addition to, any other remedy allowed by the Municipal Code or state law.

SECTION 3: Chapter 8.02 is hereby added to Title 8 of the Garden Grove Municipal Code to read as follows:

Chapter 8.02

PROHIBITION OF COMMERCIAL ADVERTISEMENTS

FOR UNLAWFUL ACTIVITIES AND USES

Sections:

8.02.010 Prohibition of Commercial Advertisements for Unlawful Activities and Uses.

No person wishing to engage in any activity or use that is in violation of this code shall print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any commercial notice or advertisement for any such activity or use that is in violation of this code.

SECTION 4: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 5: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, TERESA POMEROY, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on January 22, 2019, with a vote as follows:

AYES: COUNCIL MEMBERS: (7) BRIETIGAM, O'NEILL, NGUYEN T., BUI,
KLOPFENSTEIN, NGUYEN K., JONES
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE