



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Rowena Genilo-Concepcion, Interim Director of Planning

SUBJECT: Consideration and possible action to conduct a public hearing regarding Zoning Ordinance Text Amendment Case No. ZOTA 15-05, adopt Urgency Ordinance No. 13XX, and introduce Ordinance No. 13XX – An Ordinance approving Zoning Ordinance Text Amendment Case No. ZOTA 15-05 to add Chapter 8.48 to Title 8 and Section 17.04.110 to Chapter 17.04 of the Bellflower Municipal Code confirming that commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries, and medical marijuana collectives are prohibited in all zones and specific plan areas of the City.

DATE: January 14, 2016

EXECUTIVE SUMMARY

Currently, land uses and activities associated with medical marijuana are not permitted in the City of Bellflower, pursuant to Section 17.04.100 of the Bellflower Municipal Code (*i.e.*, “no new use is permitted unless it is permitted by both State and Federal law”). Because marijuana remains illegal to use, possess, or sell under federal law, marijuana-related uses are not permitted in the City. Similarly, because marijuana use and possession is illegal under federal law, no business license could be issued for any such activity in the City. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). This recently enacted State legislation reaffirms the ability of cities to regulate and/or prohibit medical marijuana-related uses and activities, but also requires cities to enact affirmative bans to prohibit certain medical marijuana uses and activities. The proposed ordinance is intended to confirm that commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries, and medical marijuana collectives are prohibited in all zones and specific plan areas of the City. The proposed ordinance does not state a new or different rule of law. Planning Commission recommended to City Council on December 21, 2015, the approval of the proposed amendments.

Currently, MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. Although it is possible that deadline may be extended in the near future (discussed below), staff is recommending the City Council adopt the attached Urgency Ordinance to avoid any possible ambiguity as to the current state of the law and ensure that no State license can be issued for medical marijuana cultivation in the City of Bellflower on or after March 1, 2016.

RECOMMENDATION TO CITY COUNCIL

- 1) Open the public hearing and take documentary and testimonial evidence;
- 2) Close the public hearing;
- 3) After considering the evidence, read by title only, waive further reading, and adopt Urgency Ordinance No. 13XX by at least a four-fifths vote; and read by title only, waive further reading, and introduce Ordinance No. 13XX; or
- 4) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

None.

PUBLIC NOTICE

On December 28, 2015, public hearing notices were posted at City Hall, Brakensiek Library, Bellflower Substation, Thompson Park, and Simms Park. A notice of public hearing was published in the *Press Telegram* newspaper on January 4, 2016.

CEQA STATUS

Pursuant to the authority and criteria of the California Environmental Quality Act (CEQA), it can be seen with certainty that this project does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from CEQA pursuant to 14 Cal. Code Regs. § 15061(b)(3).

BACKGROUND

Land uses and activities associated with medical marijuana are not permitted in the City of Bellflower. Recently enacted State legislation reaffirms the ability of cities to regulate and/or prohibit medical marijuana-related uses and activities, but also requires cities to enact affirmative bans to prohibit certain medical marijuana uses and activities. Proposed for the City Council's consideration is the addition of Chapter 8.48 ("Medical Marijuana") to Title 8 and Section 17.04.110 ("Medical Cannabis Cultivation and Distribution") to Chapter 17.04 of the Municipal Code to expressly prohibit all types of commercial cannabis activity and cannabis cultivation city-wide. These proposed changes are reflected in Exhibits A and B attached to Ordinance No. 13XX. Because the proposed Ordinance would amend, in part, the Zoning Ordinance of the City of Bellflower, the proposed changes were presented to the Planning Commission for its consideration.

• **Compassionate Use Act ("CUA") and Medical Marijuana Program Act ("MMPA")**

In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act ("CUA") (codified as Health and Safety Code section 11362.2 et seq.) The purpose of the Act was to ensure that seriously ill patients could obtain and use marijuana for medical purposes, even though the use and possession of marijuana remains illegal under the federal Controlled Substances Act. In 2003, the state Legislature enacted SB 420 (the "Medical Marijuana Program Act" or "MMPA"), which provided additional statutory guidance for those involved with medical marijuana use and also allowed local governing bodies to adopt and enforce rules and regulations regarding the operation or establishment of medical marijuana facilities. The CUA and MMPA do not "legalize" marijuana, but rather provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

Neither the CUA nor the MMPA preempt or limit local zoning regulations on medical marijuana cultivation and distribution. The California Supreme Court has ruled that a city has the power to ban facilities that distribute medical marijuana (*City of Riverside v. Inland Empire Patient's Health & Wellness Center* (2013) 56 Cal.4th 729) and an appellate court has ruled that a City may prohibit all marijuana cultivation. [*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975 (review denied March 26, 2014).]

- **Section 17.04.100 of the Bellflower Municipal Code**

Section 17.04.100 of the Bellflower Municipal Code provides that "no new use is permitted unless it is permitted by both State and Federal law." Because marijuana remains illegal to use, possess, or sell under federal law, marijuana-related uses are not permitted in the City. Likewise, because marijuana use and possession is illegal under federal law, no business license could be issued for any such activity in the City.

- **Medical Marijuana Regulation and Safety Act ("MMRSA")**

On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to prohibit commercial medical marijuana activities. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other types of commercial medical marijuana activities.

MMRSA contains language that requires the City to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. Assemblyman Jim Wood (D-Healdsburg), the author of AB 243, recently issued a letter indicating that the March 1st deadline was an inadvertent drafting error that placed a deadline on local jurisdictions. Since then, Assemblyman Wood has amended one of his bills with language that will strike the deadline and maintain a local jurisdiction's ability to create their own regulations. In an abundance of caution, however, staff is recommending the City Council adopt the attached Urgency Ordinance to avoid any possible ambiguity as to the current state of the law and ensure that no State license can be issued for medical marijuana cultivation in the City of Bellflower on or after March 1, 2016 pursuant to Health & Safety Code section 11362.777(c)(4).

- **December 21, 2015, Planning Commission Meeting**

The proposed ZOTA was presented to the Planning Commission on December 21, 2015. No public comments were received either in support or opposition to the proposed ZOTA at the public hearing. However, prior to the Planning Commission meeting, a resident inquired about the proposed ZOTA and indicated her concerns regarding the MMRSA and meeting the March 1, 2016, deadline. The resident was advised of the Planning Commission meeting, but she did not attend. At the conclusion of the meeting, the Commission recommended approval of the resolution, as presented.

ANALYSIS

Although all medical marijuana-related uses and activities are already prohibited in the City pursuant to the prohibition on uses that violate either State or federal law (BFMC § 17.04.100), staff nevertheless recommends that the City adopt an ordinance expressly prohibiting all medical marijuana-related uses and activities in all zones throughout the City. The proposed ordinance is intended to clarify the City's longstanding prohibition on medical marijuana uses and does not state a new or different rule of law.

The proposed ordinance is consistent with the City's police powers under article XI, section 7 of

the California Constitution and promotes the public health and safety. The act of cultivating and furnishing marijuana to another person for medicinal purposes poses several serious risks to the health, safety, and welfare of both the individual and the people of the City at large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of collectives and marijuana cultivation operations. Other California cities that have permitted medical marijuana cultivation and distribution activities have experienced an increase in crime, such as burglary, robbery, and sale of illegal drugs in areas immediately surrounding these activities. (See, e.g., *White Paper on Marijuana Dispensaries*, California Police Chiefs Association’s Task Force on Marijuana Dispensaries, April 22, 2009, pp. v; 8-9 and Richard Winton, *Sheriff Says Pot Dispensaries Have Become Crime Targets*, Los Angeles Times, September 2, 2010.)

Known secondary impacts of medical marijuana dispensaries include the attraction of street dealers that attempt to sell to patrons at a lower price, marijuana smoking in public, loitering and nuisances, robbery of patrons going to or leaving the dispensary, burglaries of the dispensaries and increased burglaries of neighboring businesses, loss of trade at neighboring businesses, and increased traffic accidents and DUI arrests where marijuana is implicated. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association’s Task Force on Marijuana Dispensaries, April 22, 2009, p. 11.) Because of federal regulations on the banking industry, marijuana collectives tend to operate on a cash basis. Large amounts of cash and marijuana onsite make them a prime target for burglaries and robberies. (*Id.* at pp. v, 7-9.)

Marijuana cultivation can also attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association’s Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) Based on these studies and other evidence, there is a concern that the cultivation and distribution of medical marijuana in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California. By clarifying existing law to unambiguously prohibit medical marijuana dispensaries, collectives, distribution, and cultivation, the City can further safeguard against the detrimental secondary impacts associated with such activities.

CONCLUSION

The proposed amendments to the Zoning Ordinance are consistent with the General Plan. The General Plan’s goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City’s existing prohibitions on medical marijuana-related activities. The proposed clarifying amendment is also consistent with the purpose of the Zoning Ordinance, which is to serve the public health, safety, and general welfare. The amendment is necessary to make the prohibition of medical marijuana cultivation and delivery, and medical marijuana dispensaries and collectives, clear and unambiguous. The amendment will not adversely affect any property, will not be detrimental to any area of the City, and will not adversely affect the Comprehensive Zoning Plan.

ATTACHMENTS

A. Urgency Ordinance No. 13XX	5
B. Ordinance No. 13XX	13
C. Resolution No. PC 15-53 (for ZOTA 15-05).....	21
D. December 21, 2015, Planning Commission Staff Report (no attachments)	28

CITY OF BELLFLOWER

URGENCY ORDINANCE NO. 13XX

AN URGENCY ORDINANCE APPROVING ZONING ORDINANCE TEXT AMENDMENT CASE NO. ZOTA 15-05 TO ADD CHAPTER 8.48 TO TITLE 8 AND SECTION 17.04.110 TO CHAPTER 17.04 OF THE BELLFLOWER MUNICIPAL CODE CONFIRMING THAT COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS, DELIVERY OF MEDICAL CANNABIS, MEDICAL MARIJUANA DISPENSARIES, AND MEDICAL MARIJUANA COLLECTIVES ARE PROHIBITED IN ALL ZONES AND SPECIFIC PLAN AREAS OF THE CITY

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

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

- A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 ("CUA"). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.
- B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.
- C. The State enacted Senate Bill 420 in October 2003, codified as Health and Safety Section 11362.7, *et seq.*, ("Medical Marijuana Program Act," or "MMPA") to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMPA to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.
- D. The CUA and MMPA do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

City of Bellflower
Urgency Ordinance No. 13XX
Page 2 of 5

- E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMPA expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- F. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.
- G. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.
- H. The proposed Ordinance, upon approval by the City Council, would amend Titles 8 (Health and Safety) and 17 (Zoning) of the Bellflower Municipal Code. The proposed changes are reflected in the attached Exhibits A and B. Because the proposed Ordinance would amend, in part, the Zoning Ordinance of the City of Bellflower, the Planning Commission reviewed the proposed Ordinance and provided its report to the City Council.
- I. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- J. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

- K. MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.
- L. While cultivation of medical marijuana and all commercial medical marijuana uses are already prohibited under the City's permissive zoning regulations, the proposed ordinance would expressly make clear that all such uses are prohibited in all zones throughout the City. The ordinance is intended to clarify the City's longstanding position on medical marijuana cultivation and distribution and does not state a new or different rule of law.
- M. The Planning Commission held a duly-noticed public hearing on December 21, 2015, at which time it considered all evidence presented, both written and oral, and adopted a resolution recommending the City Council adopt this Ordinance.
- N. The proposed amendments to the Zoning Ordinance are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution and cultivation of medical marijuana.
- O. In accordance with Government Code sections 36934 and 36937(b), the City Council finds that this Ordinance should be adopted on an urgency basis to preserve the public health, safety and welfare. The immediate adoption of this Ordinance is necessary to avoid any possible ambiguity as to the current state of the law and ensure that no State license can be issued for medical marijuana cultivation in the City of Bellflower on or after March 1, 2016, pursuant to Health & Safety Code section 11362.777(c)(4). A complete prohibition on medical marijuana cultivation in the City of Bellflower is necessary to avoid the deleterious secondary effects of such activity as detailed herein. In addition to the negative effects recited above, marijuana cultivation and distribution can attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) Based on these studies and other evidence, there is a concern that the cultivation and distribution of medical marijuana in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California. By clarify existing law to unambiguously prohibit medical marijuana cultivation and distribution, the City can further safeguard against the detrimental secondary impacts associated with such activities.

SECTION 2. *Zoning Ordinance Findings.* Based on the facts and evidence set forth above, in the accompanying staff report, and in the record as a whole, the City Council finds that the proposed Ordinance (a) clarifies existing law and does not state a new or different rule of law; (b) will not adversely affect any property in the City as to value or precedent, and will not be detrimental to any area of the City; (c) promotes public health, safety and general welfare; and (d) will not adversely affect the Comprehensive Zoning Plan for the City.

SECTION 3. *General Plan Findings.* The proposed amendments to the zoning regulations of the Bellflower Municipal Code (Title 17) are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution and cultivation of medical marijuana. The proposed clarifying amendment is also consistent with the purpose of Title 17, which is to serve the public health, safety, and general welfare, and the amendment is necessary to make the prohibition of medical marijuana cultivation and delivery, and medical marijuana dispensaries and collectives, clear and unambiguous.

SECTION 4. *Authority.* This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act.

SECTION 5. *Environmental Review.* The City Council finds that this ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Bellflower Municipal Code to make clear that commercial cannabis activities, medical cannabis deliveries, and medical marijuana dispensaries and collectives are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. § 15307 (actions taken for protection of natural resources) and § 15308 (actions taken for protection of the environment).

SECTION 6. *Approval.* Title 8 of the Bellflower Municipal Code is amended to add Chapter 8.48 as described in the attached Exhibit A, and Title 17 of the Bellflower Municipal Code is amended to add Section 17.04.110 as described in the attached Exhibit B. Exhibits A and B are incorporated as though set forth in full by this reference.

SECTION 7. *Construction.* This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 8. *Enforceability.* Repeal of any provision of the Bellflower Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 9. *Severability.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 10. *Reliance on Record.* Each and every finding and determination in this Ordinance is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 11. The City Clerk, or her duly appointed Deputy, is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Bellflower's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 12. *Declaration of Urgency.* Based on the findings set forth in Section 1, this is an urgency ordinance adopted for the immediate preservation of the public peace, health, safety and welfare. This Ordinance is adopted by at least a four-fifths vote and will become effective immediately upon adoption pursuant to Government Code section 36937(b).

URGENCY ORDINANCE NO. 13XX WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF _____, 2016.

Scott A. Larsen, Mayor

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, Interim City Attorney

Attachments:

Exhibit A – Chapter 8.48
Exhibit B – Section 17.04.110

CITY OF BELLFLOWER

**URGENCY ORDINANCE NO. 13XX - EXHIBIT A
(CHAPTER 8.48)**

MEDICAL MARIJUANA

Section 8.48.010 Medical Marijuana Regulations.

For regulations regarding medical marijuana and medical cannabis cultivation and distribution, see Title 17, Section 17.04.110.

CITY OF BELLFLOWER

**URGENCY ORDINANCE NO. 13XX - EXHIBIT B
(SECTION 17.04.110)**

Section 17.04.110 Medical Cannabis Cultivation and Distribution.

A. Definitions

Cannabis

“Cannabis” has the same meaning as set forth in Business & Professions Code § 19300.5(f), as the same may be amended from time to time.

Commercial Cannabis Activity

“Commercial Cannabis Activity” has the same meaning as that set forth in Business & Professions Code § 19300.5(k), as the same may be amended from time to time.

Cultivation

“Cultivation” has the same meaning as that set forth in Business & Professions Code § 19300.5(l), as the same may be amended from time to time.

Delivery

“Delivery” has the same meaning as that set forth in Business & Professions Code § 19300.5(m), as the same may be amended from time to time.

Dispensary or Medical Marijuana Dispensary

“Dispensary” and “Medical Marijuana Dispensary” have the same meaning as that set forth in Business & Professions Code § 19300.5(n), as the same may be amended from time to time.

Medical Marijuana Collective

“Medical marijuana collective” means a collective, cooperative, association, dispensary or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away cannabis in the city for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the “Compassionate Use Act of 1996”) or any State regulations adopted in furtherance thereof, including Health and Safety Code Section 11362.7 et seq., (adopted as the “Medical Marijuana Program Act”). Medical Marijuana Collective does not include the following uses, so long as such uses comply with this Code, the Health and Safety Code Section 11362.5, et seq., and other applicable law:

CITY OF BELLFLOWER

**URGENCY ORDINANCE NO. 13XX - EXHIBIT B
(SECTION 17.04.110)**

1. A clinic licensed pursuant to Chapter 1 (Section 1200 et seq.) of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 (Section 1250 et seq.) 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 (Section 1568.01 et seq.) of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 (Section 1569 et seq.) of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 (Section 1725 et seq.) of Division 2 of the Health and Safety Code.

Medical Cannabis, Medical Cannabis Product, or Cannabis Product

“Medical cannabis,” medical cannabis product,” or “cannabis product” has the same meaning as set forth in Business & Professions Code § 19300.5(ag), as the same may be amended from time to time.

B. Prohibition.

Commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries (whether fixed or mobile in nature), and medical marijuana collectives are prohibited in all zones and all specific plan areas in the City of Bellflower. No use permit, variance, building permit, or any other entitlement, license, or permit, whether ministerial or discretionary, can be issued or approved for any commercial cannabis activity, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensary (whether fixed or mobile in nature), or medical marijuana collective in the City, and it is unlawful for any person to establish or conduct such activities in the City.”

CITY OF BELLFLOWER

ORDINANCE NO. 13XX

AN ORDINANCE APPROVING ZONING ORDINANCE TEXT AMENDMENT CASE NO. ZOTA 15-05 TO ADD CHAPTER 8.48 TO TITLE 8 AND SECTION 17.04.110 TO CHAPTER 17.04 OF THE BELLFLOWER MUNICIPAL CODE CONFIRMING THAT COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS, DELIVERY OF MEDICAL CANNABIS, MEDICAL MARIJUANA DISPENSARIES, AND MEDICAL MARIJUANA COLLECTIVES ARE PROHIBITED IN ALL ZONES AND SPECIFIC PLAN AREAS OF THE CITY

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- B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.
- C. The State enacted Senate Bill 420 in October 2003, codified as Health and Safety Section 11362.7, *et seq.*, ("Medical Marijuana Program Act," or "MMPA") to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMPA to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.
- D. The CUA and MMPA do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

- E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMPA expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- F. The Federal Controlled Substances Act, 21 U.S.C. Section 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.
- G. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.
- H. The proposed Ordinance, upon approval by the City Council, would amend Titles 8 (Health and Safety) and 17 (Zoning) of the Bellflower Municipal Code. The proposed changes are reflected in the attached Exhibits A and B. Because the proposed Ordinance would amend, in part, the Zoning Ordinance of the City of Bellflower, the Planning Commission reviewed the proposed Ordinance and provided its report to the City Council.
- I. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. City-wide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- J. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

- K. MMRSA contains language that requires the City to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.
- L. While cultivation of medical marijuana and all commercial medical marijuana uses are already prohibited under the City's permissive zoning regulations, the proposed ordinance would expressly make clear that all such uses are prohibited in all zones throughout the City. The ordinance is intended to clarify the City's longstanding position on medical marijuana cultivation and distribution and does not state a new or different rule of law.
- M. The Planning Commission held a duly-noticed public hearing on December 21, 2015, at which time it considered all evidence presented, both written and oral, and adopted a resolution recommending the City Council adopt this Ordinance.
- N. The proposed amendments to the Zoning Ordinance are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution and cultivation of medical marijuana.

SECTION 2. *Zoning Ordinance Findings.* Based on the facts and evidence set forth above, in the accompanying staff report, and in the record as a whole, the City Council finds that the proposed Ordinance (a) clarifies existing law and does not state a new or different rule of law; (b) will not adversely affect any property in the City as to value or precedent, and will not be detrimental to any area of the City; (c) promotes public health, safety and general welfare; and (d) will not adversely affect the Comprehensive Zoning Plan for the City.

SECTION 3. *General Plan Findings.* The proposed amendments to the zoning regulations of the Bellflower Municipal Code (Title 17) are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution and cultivation of medical marijuana. The proposed clarifying amendment is also consistent with the purpose of Title 17, which is to serve the public health, safety, and general welfare, and the amendment is necessary to make the prohibition of medical marijuana cultivation and delivery, and medical marijuana dispensaries and collectives, clear and unambiguous.

SECTION 4. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act.

SECTION 5. Environmental Review. The City Council finds that this ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. Section 15061(b)(3). The ordinance amends the Bellflower Municipal Code to make clear that commercial cannabis activities, medical cannabis deliveries, and medical marijuana dispensaries and collectives are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. Section 15307 (actions taken for protection of natural resources) and Section 15308 (actions taken for protection of the environment).

SECTION 6: Approval. Title 8 of the Bellflower Municipal Code is amended to add Chapter 8.48 as described in the attached Exhibit A, and Title 17 of the Bellflower Municipal Code is amended to add Section 17.04.110 as described in the attached Exhibit B. Exhibits A and B are incorporated as though set forth in full by this reference.

SECTION 7: Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 8. Enforceability. Repeal of any provision of the Bellflower Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 9. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 10. Reliance on Record. Each and every finding and determination in this Ordinance is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 11. The City Clerk, or her duly appointed Deputy, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 12. This Ordinance will take effect on the 31st day following its final passage and adoption.

ORDINANCE NO. 13XX HAD ITS FIRST READING ON _____, 2016, ITS SECOND READING ON _____, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF _____, 2016.

Scott A. Larsen, Mayor

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, Interim City Attorney

Attachments:

Exhibit A – Chapter 8.48
Exhibit B – Section 17.04.110

CITY OF BELLFLOWER

**ORDINANCE NO. 13XX - EXHIBIT A
(CHAPTER 8.48)**

MEDICAL MARIJUANA

Section 8.48.010 Medical Marijuana Regulations.

For regulations regarding medical marijuana and medical cannabis cultivation and distribution, see Title 17, Section 17.04.110.

Doc 332890

CITY OF BELLFLOWER

**ORDINANCE NO. 13XX - EXHIBIT B
(SECTION 17.04.110)**

Section 17.04.110 Medical Cannabis Cultivation and Distribution.

A. Definitions

Cannabis

“Cannabis” has the same meaning as set forth in Business & Professions Code § 19300.5(f), as the same may be amended from time to time.

Commercial Cannabis Activity

“Commercial Cannabis Activity” has the same meaning as that set forth in Business & Professions Code § 19300.5(k), as the same may be amended from time to time.

Cultivation

“Cultivation” has the same meaning as that set forth in Business & Professions Code § 19300.5(l), as the same may be amended from time to time.

Delivery

“Delivery” has the same meaning as that set forth in Business & Professions Code § 19300.5(m), as the same may be amended from time to time.

Dispensary or Medical Marijuana Dispensary

“Dispensary” and “Medical Marijuana Dispensary” have the same meaning as that set forth in Business & Professions Code § 19300.5(n), as the same may be amended from time to time.

Medical Marijuana Collective

“Medical marijuana collective” means a collective, cooperative, association, dispensary or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away cannabis in the city for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the “Compassionate Use Act of 1996”) or any State regulations adopted in furtherance thereof, including Health and Safety Code Section 11362.7 et seq., (adopted as the “Medical Marijuana Program Act”). Medical Marijuana Collective does not include the following uses, so long as such uses comply with this Code, the Health and Safety Code Section 11362.5, et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 (Section 1200 et seq.) of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 (Section 1250 et seq.) 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 (Section 1568.01 et seq.) of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 (Section 1569 et seq.) of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 (Section 1725 et seq.) of Division 2 of the Health and Safety Code.

Medical Cannabis, Medical Cannabis Product, or Cannabis Product

“Medical cannabis,” medical cannabis product,” or “cannabis product” has the same meaning as set forth in Business & Professions Code § 19300.5(ag), as the same may be amended from time to time.

B. Prohibition.

Commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries (whether fixed or mobile in nature), and medical marijuana collectives are prohibited in all zones and all specific plan areas in the City of Bellflower. No use permit, variance, building permit, or any other entitlement, license, or permit, whether ministerial or discretionary, can be issued or approved for any commercial cannabis activity, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensary (whether fixed or mobile in nature), or medical marijuana collective in the City, and it is unlawful for any person to establish or conduct such activities in the City.”

CITY OF BELLFLOWER

RESOLUTION NO. PC 15-53

A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THE CITY COUNCIL APPROVE ZONING ORDINANCE TEXT AMENDMENT CASE NO. ZOTA 15-05 TO ADD CHAPTER 8.48 TO TITLE 8 AND SECTION 17.04.110 TO CHAPTER 17.04 OF THE BELLFLOWER MUNICIPAL CODE CONFIRMING THAT COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS, DELIVERY OF MEDICAL CANNABIS, MEDICAL MARIJUANA DISPENSARIES, AND MEDICAL MARIJUANA COLLECTIVES ARE PROHIBITED IN ALL ZONES AND SPECIFIC PLAN AREAS OF THE CITY

The Planning Commission of the City of Bellflower does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 ("CUA"). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.
- B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.
- C. The State enacted Senate Bill 420 in October 2003, codified as Health and Safety Section 11362.7, et seq., ("Medical Marijuana Program Act," or "MMPA") to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMPA to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.
- D. The CUA and MMPA do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

- E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMPA expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- F. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.
- G. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.
- H. The proposed Ordinance, if approved by the City Council, would amend Titles 8 (Health and Safety) and 17 (Zoning) of the Bellflower Municipal Code. The proposed changes are reflected in the attached Exhibits A and B. Because the proposed Ordinance would amend, in part, the Zoning Ordinance of the City of Bellflower, the Planning Commission must review the proposed Ordinance and provide its report to the City Council.
- I. The Planning Commission finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMPA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

- J. The limited immunity from specified state marijuana laws provided by the CUA and MMPA does not confer a land use right or the right to create or maintain a public nuisance.
- K. MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.
- L. While cultivation of medical marijuana and all commercial medical marijuana uses are already prohibited under the City's permissive zoning regulations, the proposed ordinance would expressly make clear that all such uses are prohibited in all zones throughout the City. The ordinance is intended to clarify the City's longstanding position on medical marijuana cultivation and distribution and does not state a new or different rule of law.

SECTION 2: *Zoning Ordinance Findings.* Based on the facts and evidence set forth above, in the accompanying staff report, and in the record as a whole, the Planning Commission finds that the proposed Ordinance (a) clarifies existing law and does not state a new or different rule of law, (b) will not adversely affect any property in the City as to value or precedent, and will not be detrimental to any area of the City, (c) promotes public health, safety and general welfare, and (d) will not adversely affect the Comprehensive Zoning Plan for the City.

SECTION 3: *General Plan Findings.* The proposed amendments to the zoning regulations of the Bellflower Municipal Code (Title 17) are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution and cultivation of medical marijuana. The proposed clarifying amendment is also consistent with the purpose of Title 17, which is to serve the public health, safety, and general welfare, and the amendment is necessary to make the prohibition of medical marijuana cultivation and delivery, and medical marijuana dispensaries and collectives, clear and unambiguous.

SECTION 4: *Environmental Review.* The Planning Commission finds that the proposed ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Municipal Code to make clear that commercial cannabis activities, medical cannabis deliveries, and medical marijuana dispensaries and collectives are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5: *Recommendation.* The Planning Commission recommends that the City Council approve Zoning Ordinance Text Amendment Case No. ZOTA 15-05, as reflected in the attached Exhibits A and B.

SECTION 6: *Reliance on Record.* Each and every finding and determination in this Resolution is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: *Effective Date.* This Resolution will become effective immediately upon adoption.

PASSED, APPROVED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF BELLFLOWER THIS 21st DAY OF DECEMBER 2015.

ALAN GOMEZ, CHAIRMAN

Attest:

ROWENA GENILO-CONCEPCION, ACTING SECRETARY

Attachments:

Exhibit A – Chapter 8.48

Exhibit B – Section 17.04.110

Doc 332617

CITY OF BELLFLOWER

**RESOLUTION NO. PC 15-53 - EXHIBIT A
(CHAPTER 8.48)**

MEDICAL MARIJUANA

Section 8.48.010 Medical Marijuana Regulations.

For regulations regarding medical marijuana and medical cannabis cultivation and distribution, see Title 17, Section 17.04.110.

CITY OF BELLFLOWER

**RESOLUTION NO. PC 15-53 - EXHIBIT B
(SECTION 17.04.110)**

Section 17.04.110 Medical Cannabis Cultivation and Distribution

A. Definitions

Cannabis

"Cannabis" has the same meaning as set forth in Business & Professions Code § 19300.5(f), as the same may be amended from time to time.

Commercial Cannabis Activity

"Commercial Cannabis Activity" has the same meaning as that set forth in Business & Professions Code § 19300.5(k), as the same may be amended from time to time.

Cultivation

"Cultivation" has the same meaning as that set forth in Business & Professions Code § 19300.5(l), as the same may be amended from time to time.

Delivery

"Delivery" has the same meaning as that set forth in Business & Professions Code § 19300.5(m), as the same may be amended from time to time.

Dispensary or Medical Marijuana Dispensary

"Dispensary" and "Medical Marijuana Dispensary" have the same meaning as that set forth in Business & Professions Code § 19300.5(n), as the same may be amended from time to time.

Medical Marijuana Collective

"Medical marijuana collective" means a collective, cooperative, association, dispensary or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away cannabis in the city for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof, including Health and Safety Code Section 11362.7 et seq., (adopted as the "Medical Marijuana Program Act"). Medical Marijuana Collective does not include the following uses, so long as such uses comply with this Code, the Health and Safety Code Section 11362.5, et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 (Section 1200 et seq.) of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 (Section 1250 et seq.) 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 (Section 1568.01 et seq.) of Division 2 of the Health and Safety Code.

City of Bellflower

Resolution No. PC 15-53 – Exhibit B (Section 17.04.110)

Page 2 of 2

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 (Section 1569 et seq.) of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 (Section 1725 et seq.) of Division 2 of the Health and Safety Code.

Medical Cannabis, Medical Cannabis Product, or Cannabis Product

“Medical cannabis,” medical cannabis product,” or “cannabis product” has the same meaning as set forth in Business & Professions Code § 19300.5(ag), as the same may be amended from time to time.

B. Prohibition.

Commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries (whether fixed or mobile in nature), and medical marijuana collectives are prohibited in all zones and all specific plan areas in the City of Bellflower. No use permit, variance, building permit, or any other entitlement, license, or permit, whether ministerial or discretionary, can be issued or approved for any commercial cannabis activity, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensary (whether fixed or mobile in nature), or medical marijuana collective in the City, and it is unlawful for any person to establish or conduct such activities in the City.”



staff report

TO: Honorable Chairman and Members of the Planning Commission

FROM: Rowena Genilo-Concepcion, Interim Director of Planning

SUBJECT: Consideration of Zoning Ordinance Text Amendment Case No. ZOTA 15-05 and possible action to recommend that the City Council adopt an ordinance regarding an express City-wide prohibition on medical marijuana-related land uses and activities – A Resolution of the Planning Commission recommending the City Council approve Zoning Ordinance Text Amendment Case No. ZOTA 15-05 to add Chapter 8.48 to Title 8 and Section 17.04.110 to Chapter 17.04 of the Bellflower Municipal Code confirming that commercial cannabis activities, cultivation of medical cannabis, delivery of medical cannabis, medical marijuana dispensaries, and medical marijuana collectives are prohibited in all zones and specific plan areas of the City

DATE: December 21, 2015

RECOMMENDATION

1. Open the public hearing, receive testimony, close the public hearing, consider the evidence, and then adopt Resolution No. PC 15-53 recommending the City Council approve Zoning Ordinance Text Amendment Case No. ZOTA 15-05 regarding an express City-wide prohibition on medical marijuana-related land uses and activities.
2. Alternatively, discuss and take other action related to this item.

PUBLIC NOTICE

On December 10, 2015, public hearing notices were posted at City Hall, Brakensiek Library, Bellflower Substation, Thompson Park, and Simms Park. A notice of public hearing was published in the *Press Telegram* newspaper on December 11, 2015.

CEQA STATUS

Pursuant to the authority and criteria of the California Environmental Quality Act (CEQA), it can be seen with certainty that this project does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from CEQA pursuant to 14 Cal. Code Regs. § 15061(b)(3).

BACKGROUND

Land uses and activities associated with medical marijuana are not permitted in the City of Bellflower. Recently enacted State legislation reaffirms the ability of cities to regulate and/or prohibit medical marijuana-related uses and activities, but also requires cities to enact affirmative bans to prohibit certain medical marijuana uses and activities. Proposed for the Planning Commission's consideration is a resolution recommending to the City Council to approve the addition of Chapter 8.48 ("Medical Marijuana") to Title 8 and Section 17.04.110 ("Medical Cannabis Cultivation and Distribution") to Chapter 17.04 of the Municipal Code to expressly prohibit all types of commercial cannabis activity and cannabis cultivation city-wide. These proposed changes are reflected in Exhibits A and B attached to the resolution, and would constitute the proposed Ordinance presented to the City Council. Because the proposed Ordinance would amend, in part, the Zoning Ordinance of the City of Bellflower, the proposed change is presented to the Planning Commission for its consideration.

In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act ("CUA") (codified as Health and Safety Code section 11362.2 et seq.) The purpose of the Act was to ensure that seriously ill patients could obtain and use marijuana for medical purposes, even though the use and possession of marijuana remains illegal under the federal Controlled Substances Act. In 2003, the state Legislature enacted SB 420 (the "Medical Marijuana Program Act" or "MMPA"), which provided additional statutory guidance for those involved with medical marijuana use and also allowed local governing bodies to adopt and enforce rules and regulations regarding the operation or establishment of medical marijuana facilities. The CUA and MMPA do not "legalize" marijuana, but rather provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

Neither the CUA nor the MMPA preempt or limit local zoning regulations on medical marijuana cultivation and distribution. The California Supreme Court has ruled that a city has the power to ban facilities that distribute medical marijuana (*City of Riverside v. Inland Empire Patient's Health & Wellness Center* (2013) 56 Cal.4th 729) and an appellate court has ruled that a City may prohibit all marijuana cultivation. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975 (review denied March 26, 2014).)

Section 17.04.100 of the Bellflower Municipal Code provides that "no new use is permitted unless it is permitted by both State and Federal law." Because marijuana remains illegal to use, possess, or sell under federal law, marijuana-related uses are not permitted in the City. Likewise, because marijuana use and possession is illegal under federal law, no business license could be issued for any such activity in the City.

On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to prohibit commercial medical marijuana activities.

MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

ANALYSIS

Although all medical marijuana-related uses and activities are already prohibited in the City pursuant to the prohibition on uses that violate either State or federal law (BFMC § 17.04.100), staff nevertheless recommends that the City adopt an ordinance expressly prohibiting all medical marijuana-related uses and activities in all zones throughout the City. The proposed ordinance is intended to clarify the City's longstanding prohibition on medical marijuana uses and does not state a new or different rule of law.

The proposed ordinance is consistent with the City's police powers under article XI, section 7 of the California Constitution and promotes the public health and safety. The act of cultivating and furnishing marijuana to another person for medicinal purposes poses several serious risks to the health, safety and welfare of both the individual and the people of the City at large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of collectives and marijuana cultivation operations. Other California cities that have permitted medical marijuana cultivation and distribution activities have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in areas immediately surrounding these activities. (See, e.g., *White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, pp. v, 8-9 and Richard Winton, *Sheriff Says Pot Dispensaries Have Become Crime Targets*, Los Angeles Times, September 2, 2010.)

Known secondary impacts of medical marijuana dispensaries include the attraction of street dealers that attempt to sell to patrons at a lower price, marijuana smoking in public, loitering and nuisances, robbery of patrons going to or leaving the dispensary, burglaries of the dispensaries and increased burglaries of neighboring businesses, loss of trade at neighboring businesses, and increased traffic accidents and DUI arrests where marijuana is implicated. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 11.) Because of federal regulations on the banking industry, marijuana collectives tend to operate on a cash basis. Large amounts of cash and marijuana onsite make them a prime target for burglaries and robberies. (*Id.* at pp. v, 7-9.)

Marijuana cultivation can also attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) Based on these studies and other evidence, there is a concern that the cultivation and distribution of medical marijuana in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California. By clarify existing law to unambiguously prohibit medical marijuana dispensaries, collectives, distribution and cultivation, the City can further safeguard against the detrimental secondary impacts associated with such activities.

CONCLUSION

The proposed amendments to the Zoning Ordinance are consistent with the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on medical marijuana-related activities. The proposed clarifying amendment is also consistent with the purpose of the Zoning Ordinance, which is to serve the public health, safety, and general welfare. The amendment is necessary to make the prohibition of medical marijuana cultivation and delivery, and medical marijuana dispensaries and collectives, clear and unambiguous. The amendment will not adversely affect any property, will not be detrimental to any area of the City, and will not adversely affect the Comprehensive Zoning Plan.

ATTACHMENT

Resolution No. PC 15-53

Doc 332618