

CITY OF BELLFLOWER

ORDINANCE NO. 1305

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

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.

- 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. 1305 HAD ITS FIRST READING ON JANUARY 14, 2016, ITS SECOND READING ON JANUARY 25, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF JANUARY 25, 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. 1305 - 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

**ORDINANCE NO. 1305 - 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.”