

CITY OF BELLFLOWER

ORDINANCE NO. 1332

AN ORDINANCE ADDING CHAPTER 3.37 TO TITLE 3 OF THE BELLFLOWER MUNICIPAL CODE ENTITLED "CANNABIS TAX" AND IMPOSING A TAX ON VARIOUS CANNABIS-RELATED BUSINESSES

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 3.37, entitled "*Cannabis tax*" and consisting of §§ 3.37.100 to 3.37.260, is added to Title 3 of the Bellflower Municipal Code ("BMC") to read as follows:

"Chapter 3.37

CANNABIS TAX

ARTICLE I – CANNABIS TAX GENERALLY

§ 3.37.010 PURPOSE.

This chapter is adopted pursuant to Government Code §§ 53723 and 53724 for the purpose of raising revenue for the city's general governmental purposes.

§ 3.37.020 DEFINITIONS.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter will have the meanings stated elsewhere in this Code, or under the California Government Code.

- A. "Administrator" means the city manager, or designee.
- B. "Affiliated corporation" means a corporation where:
 - 1. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
 - 2. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - 3. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

- C. “Business” includes all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but does not include the services rendered by an employee to his or her employer.
- D. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Health and Safety Code Section 11018 and is not limited to medical cannabis.
- E. “Cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. “Cannabis product” also means marijuana products as defined by Health and Safety Code Section 11018.1 and is not limited to medical cannabis products.
- F. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.
- G. “Cannabis business” or “Commercial cannabis business” means any commercial business activity relating to cannabis including, without limitation, cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the City, whether or not carried on for gain or profit.
- H. “Commercial cannabis cultivation” means cultivation conducted by, for, as part of a commercial cannabis business.
- I. “City permit” means a permit issued pursuant to this Code authorizing a person to operate or engage in a commercial cannabis business.
- J. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- K. “Delivery” means the commercial transfer of cannabis or cannabis products from a dispensary.

- L. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.
- M. “Distributor” or “distribution” or “distribution facility” means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.
- N. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.
- O. “Engaged in business” means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person is deemed engaged in business within the City if, and without limitation:
 - 1. Such person or person’s employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
 - 2. Such person or person’s employee owns or leases real property within the City for business purposes;
 - 3. Such person or person’s employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
 - 4. Such person or person’s employee regularly conducts solicitation of business within the City;
 - 5. Such person or person’s employee performs work or renders services in the City; and
 - 6. Such person or person’s employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

- P. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a marijuana business in the City.
- Q. "Fiscal year" means July 1 through June 30 of the following calendar year.
- R. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" is all receipts, cash, credits and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following is excluded:
1. Cash discounts where allowed and taken on sales;
 2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price is included as gross receipts;
 3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
 4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
 5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
 6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

7. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they is included in the amount of gross receipts for the period when they are recovered;
 8. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business must not be excluded when in excess of one dollar;
 9. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion does not apply to any fees, percentages, or other payments retained by the agent or trustees.
- S. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid City permit.
- T. "Nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- U. "Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnerships of every kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal corporation (other than the City), municipal district, cooperative, or receiver, trustee, guardian or other representative appointed by court.
- V. "Personal medical cannabis cultivation" means cultivation by a qualified patient who cultivates 100 square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. "Personal medical cannabis cultivation" also includes cultivation by a primary caregiver who cultivates 100 square feet total canopy area or

less of cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Health and Safety Code Section 11362.765, as amended.

- W. "Sale" means and includes any sale, exchange, or barter.
- X. "Square foot" or "square footage" means the maximum amount of canopy for commercial cannabis cultivation authorized by a City permit issued to a person engaging in commercial cannabis business, or by a state license in the absence of a City permit or license, not deducting for unutilized square footage, and is the basis for the tax base for cultivation.
- Y. "State license," "license," or "registration" means a state license issued pursuant to Business & Professions Code Sections 19300, *et seq.* or other applicable state law.
- Z. "Tax," "cannabis tax," "business tax," or "commercial marijuana tax" means the tax due pursuant to this chapter for engaging in commercial cannabis business in the City.
- AA. "Testing laboratory" means a facility, entity, or site in the state that offers or performs testing of cannabis or cannabis products and that is both of the following:
 - 1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state; and
 - 2. Registered with the California State Department of Public Health.
- BB. "Transport" means the transfer of cannabis or cannabis products from the permitted business location of one permittee or licensee to the permitted business location of another permittee or licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to state law.
- CC. "Transporter" means a person issued all required state and City permits to transport cannabis or cannabis products between permitted facilities.

§ 3.37.030 PAYMENT OF TAX DOES NOT AUTHORIZE UNLAWFUL BUSINESS.

- A. Paying the tax required by this chapter, and its acceptance by the City, does not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

- B. Taxes paid pursuant to this chapter do not authorize the conduct of any business. Monies collected from the tax imposed by this chapter is solely for revenue and not for regulation.

ARTICLE II – VOTER APPROVED TAX*

§ 3.37.040 VOTER APPROVAL REQUIRED.

This Article II of Chapter 3.37 of the Bellflower Municipal Code must be approved by voters in accordance with applicable law.

§ 3.37.050 TAX IMPOSED.

There is established and imposed, beginning July 1, 2017, a cannabis tax in the manner and rates set forth in this chapter.

§ 3.37.060 CANNABIS TAX.

- A. Tax on commercial cannabis cultivation except nurseries.
1. Every person who is engaged in commercial cannabis cultivation in the City must pay an annual Cannabis tax. The initial tax rate effective July 1, 2017 for commercial cannabis cultivation, excluding nurseries, is set at \$15.00 per fiscal year, per square foot of canopy space authorized by each City permit, or by each state license in the absence of a City permit, not deducting for unutilized square footage. The square footage is the maximum square footage of canopy allowed by the City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage is the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case can canopy square footage which is authorized by the permit or license, but not utilized for cultivation, be deducted for the purpose of determining the tax for cultivation unless duly authorized in writing by the administrator.
 2. Beginning on July 1, 2020, the tax rate will automatically increase each fiscal year by \$2.50 per square foot of authorized canopy. Except as otherwise provided, the maximum tax rate is \$25.00 per square foot.
- B. Tax on cultivation of cannabis as a nursery.

* Pursuant to Article XIII C, § 2 of the California Constitution, this Article II of BMC Chapter 3.37 is effective only if approved by a majority of voters at a municipal election.

3. Every person who is engaged in cultivation of cannabis as a nursery as defined in this chapter in the City must pay an annual Cannabis tax. The initial tax rate effective July 1, 2017 is set at \$2.00 per square foot of canopy authorized by each City permit, or by each state license in the absence of a City permit, not deducting for unutilized square footage. The square footage is the maximum square footage of canopy allowed by the City permit for cultivation of cannabis as a nursery, or, in the absence of a City permit, the square footage is the maximum square footage of canopy for cultivation of cannabis as a nursery allowed by the state license type. In no case must canopy square footage which is authorized by the permit or license but not utilized for cultivation as a nursery be deducted for the purpose of determining the tax for cultivation as a nursery unless duly authorized in writing by the administrator.
4. Beginning on July 1, 2020, such tax rate will automatically increase each fiscal year by \$1.50 per square foot of canopy utilized for cannabis cultivation as a nursery. Except as otherwise provided, the maximum tax rate is \$5.00 per square foot per annum.

C. Tax on transportation businesses.

Every person who is engaged in a cannabis transportation business must pay an annual Cannabis tax of \$1,500.00 per year effective July 1, 2017.

D. Tax on all other commercial cannabis businesses.

1. Every person who is engaged in business as a dispensary, manufacturer, testing laboratory, or distribution facility, or engaging in delivery of cannabis in the City must pay an annual commercial Cannabis tax. The initial tax rate effective July 1, 2017 is set at 5% of the gross receipts per fiscal year.
2. Beginning on July 1, 2020, the tax rate will automatically increase each fiscal year by 2.5%. Except as otherwise provided, the maximum tax rate is 10% per fiscal year on gross receipts.

§ 3.37.070 AUTOMATIC TAX INCREASE.

- A. Beginning on July 1, 2024, non-gross receipts based taxes imposed by this chapter will be increased annually each July 1st on a percentage basis using the percentage increase in the consumer price index ("CPI") for all urban consumers as calculated by the United States Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Riverside-Orange County area, for the 12 months ending March 31st of each year.

- B. Notwithstanding any other provisions of this code, the tax imposed in this chapter will be increased by a minimum of one cent (\$0.01) every year for square footage-based or other non-gross receipts based taxes.

§ 3.37.080 REPORTING AND REMITTANCE OF TAX.

- A. Each person required by this chapter to remit a tax must file a return to the administrator on forms approved by the administrator on or before the due date. The full amount of the tax owed must be included with the return and filed with the administrator. The administrator is authorized to require such additional information as deemed necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Pursuant to Revenue and Tax Code § 7284.6, the administrator, and its agents, must maintain such filing returns as confidential information, and not subject to the California Public Records Act.
- B. The Cannabis tax imposed by this chapter is imposed on a fiscal year basis and is due and payable in quarterly installments as follows:
 - 1. Each person or business owing a Cannabis tax must, on or before the last day of the month following the close of each fiscal year quarter remit to the administrator the tax due. The tax due is no less than the quarterly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year.
 - 2. If the Cannabis tax is owed on commercial cannabis cultivation, the square footage tax due is paid based on the square footage of cultivation authorized by the City permit. The tax will not be prorated or adjusted for any reduction in the square footage authorized but not utilized for cultivation unless duly authorized in writing by the administrator. If the cultivation begins in the middle of a fiscal year, the administrator must prorate, in daily increments, the amount due for the fiscal year.
- C. Tax statements and payments for all outstanding taxes owed the City are immediately due to the administrator upon cessation of business for any reason.
- D. The administrator may establish shorter reporting and payment periods for any taxpayer as the administrator deems necessary to ensure collection of the tax.
- E. The administrator may, as part of administering the tax, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

§ 3.37.090 CONSTITUTIONAL EXEMPTIONS.

- A. The tax imposed by this chapter does not apply to:
 - 1. Any person or service when imposition of the tax upon that person or service would violate a federal or state statute, the Constitution of the United States, or the Constitution of the state of California;
 - 2. The city.
- B. Except as otherwise provided, any person that is exempt from the tax imposed by this chapter must file an application with the administrator for an exemption. The application for a Tax exemption must be made upon a form approved by the administrator and state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and include the names of all utility service providers serving that person. If deemed exempt by the administrator, such person must give the administrator timely written notice of any change in utility service providers so that the administrator can properly notify the new utility service provider of the person's Tax exempt status.
- C. A person failing to comply with this section is not entitled to a refund of Tax remitted to the administrator from such person as a result of such non-compliance.

§ 3.37.100 SUSPENSION OR REDUCTION.

Nothing in this chapter requires the City Council to collect a tax; the city council may suspend or reduce tax rates imposed by this chapter by resolution after a public hearing.

§ 3.37.110 CITY COUNCIL AUTHORITY TO AMEND.

Unless voter is approval is required by the California Constitution or applicable law, the City Council may exercise all applicable powers set forth in the Government Code including, without limitation, amending this chapter by ordinance upon three affirmative votes by its members. It may, in additional, adopt by ordinance or resolution such additional regulations that may be necessary to implement the purposes of this chapter.

ARTICLE III – ADMINISTRATION OF CANNABIS TAX

§ 3.37.120 ADMINISTRATION BY ADMINISTRATOR.

- A. The administrator is authorized to administer this chapter. Such authority includes, without limitation, the ability to promulgate administrative rules and regulations consistent with the provisions of this code as needed to enforce and administer this chapter. Rules and regulations adopted by the administrator require City Council approval.
- B. The administrator has the power and duty to enforce each and all of the provisions of this chapter including, without limitation, the rules and regulations promulgated in accordance with the chapter.
- C. For good cause, the administrator may enter into agreements to vary the strict requirements of this chapter in order to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. Such agreements must be on file in the administrator's office and may be voided by the administrator or the City at any time.
- D. The administrator will determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter.

§ 3.37.130 SEGREGATION OF BOOKS AND RECORDS.

If a business subject to the tax is operating both within and outside the City, the person operating the business must maintain separate books and records and if permitted by law, bank accounts, for business operations within and outside of the City at all times.

§ 3.37.140 INTEREST AND PENALTY.

- A. Taxes collected from a person, or owed by a person which are not received by the administrator on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest. Should the due date occur on a weekend or legal holiday, the return must be received by the administrator on the first regular working day following a Saturday/Sunday or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a person in satisfaction of its obligations under this subsection is considered timely if the transfer is initiated on or before the due date, and the transfer settles into the city's account on or before the following business day.

- B. If the person required to remit the tax fails to remit the tax, the administrator will attach a penalty for such delinquencies or deficiencies at the rate of 5% of the total tax that is delinquent or deficient in the remittance, and if not remitted within two working days after the date of the delinquency, will pay a total penalty of 20% of the amount of tax owed.
- C. The administrator has the power to impose additional penalties upon persons required to remit Taxes under the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of 50% of the amount of the tax required to be remitted, or as recomputed by the administrator.
- D. In addition to any other penalties imposed by this chapter, any person required to remit any tax imposed by the provisions of this chapter who fails to remit the tax must pay interest at the rate of three-quarters of one percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.
- E. No penalty or interest will be applied if delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with remitting the tax, provided the person being delinquent notifies the administrator as soon as normal communications permit.

§ 3.37.150 ASSESSMENTS AND APPEAL.

The administrator may make an assessment for tax not paid or remitted by a person required to pay or remit. The administrator must mail a notice of such assessment, which refers briefly to the amount of the tax, penalties and interest imposed and the time and place where the assessment may be contested, to the person and/or the person at least ten days before the date of the hearing and post such notice for at least five continuous days before the date of the hearing. A penalty of 25% of the amount of the tax set forth in the notice must be imposed, along with interest at the rate of three-quarters of one percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid. Any interested party having any objections may appear and be heard at the hearing provided his or her objection is filed in writing with the administrator before the time of the hearing. At the time fixed for considering such assessment, the administrator will hear the same, together with any objections filed as provided in this subsection, and thereupon may confirm or modify such assessment.

§ 3.37.160 RECORDS.

- A. It is the duty of every person required to remit to the City any tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for remittance to the administrator, which records the administrator, or the administrator's designated representative, must have the right to inspect at a reasonable time.
- B. The administrator may issue a legislative subpoena, in a form approved by the city attorney, to compel a person to deliver to the administrator, copies of all records deemed necessary by the administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the city on or before the due date, provided that such person must reimburse the city for all reasonable travel expenses incurred by the city to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.
- C. The administrator is authorized to execute a non-disclosure agreement approved by the city attorney to protect the confidentiality of person information pursuant to Revenue and Tax Code §§ 7284.6 and 7284.7.
- D. If a person uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the person must:
 - 1. Provide to the administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the person to bill, collect, and/or remit the tax to the city; and
 - 2. Upon request of the administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such Tax to the city.

- E. If any person subject to record-keeping under this section unreasonably denies the administrator access to such records, or fails to produce the information requested in a legislative subpoena within the time specified, the administrator may impose a penalty of \$500 on such person for each day following:
 - 1. The initial date that the person refuses to provide such access; or
 - 2. The due date for production of records as set forth in the legislative subpoena. This penalty is in addition to any other penalty imposed under this chapter.

- F. If any person subject to the gross receipts based tax and the record-keeping requirements under this section is being audited by the Internal Revenue Service, Franchise Tax Board, Board of Equalization, or any other similar taxing and regulatory entities, the person must submit all audit notices, findings, adjustments, and determination letters to the administrator within five working days.

§ 3.37.170 REFUNDS.

- A. Whenever the amount of any tax is overpaid, paid more than once, or was erroneously collected or received by the administrator under this chapter it may be refunded as provided in this section.

- B. The administrator may refund any tax that was overpaid, paid more than once, or erroneously collected or received by the administrator under this chapter, provided that no refund will be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator submits a written claim to the administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein permits the filing of a claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of \$25,000, city council approval is required in addition to approval by the administrator.

- C. The administrator, or the city council where the claim is in excess of \$25,000 and the administrator has approved the claim, must act upon the refund claim within 45 days of the initial receipt of the refund claim. Said decision is the city's final decision. If the administrator/city council fails or refuses to act on a refund claim within the 45 day period, the claim is deemed rejected by the administrator/City Council on the 45th day. The administrator will give notice of the action in a form which substantially complies with that set forth in Government Code § 913.

- D. The filing of a written claim is a prerequisite to any lawsuit. Any action brought against the city pursuant to this chapter is subject to the provisions of Government Code §§ 945.6 and 946.
- E. Notwithstanding anything to the contrary, a person is entitled to take any overpayment as a credit against an underpayment whenever such overpayment was received by the city within the three years next preceding a notice of tax deficiency or assessment by the administrator, or during any year for which the person, at the request of the administrator, executed a waiver of the defense of the statute of limitations with regard to any claim the city may have for a tax. Under no circumstances may an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a person for a refund to which it would not otherwise be entitled under the written claim requirements of this chapter.

§ 3.37.180 APPEALS.

- A. The provisions of this section apply to any assessment, decision or administrative ruling of the administrator, other than a decision relating to a refund. Any person aggrieved by any assessment, decision or administrative ruling of the administrator, other than a decision relating to a refund, is required to comply with the appeals procedure of this section. Compliance with this section is a prerequisite to a lawsuit. Nothing permits the filing of a claim or action on behalf of a class or group of taxpayers.
- B. If any person is aggrieved by any assessment, decision or administrative ruling of the administrator, other than a decision relating to a refund; or with the failure of the administrator to grant an exemption as provided for under this chapter; he or she may appeal to the city council by filing a notice of appeal with the city clerk within fourteen days of the date of the assessment, decision or administrative ruling of the administrator which aggrieved the person or person.
- C. The matter will be set for hearing not more than 30 days from the receipt of the appeal. The appellant will be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days before the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

- D. Based upon the submission of such evidence and the review of the city's files, the city council will issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice must be given within fourteen days after the conclusion of the hearing and must state the reasons for the decision. The notice will specify that the decision is final and that any petition for judicial review must be filed within 90 days from the date of the decision in accordance with Code of Civil Procedure § 1094.6. If the City Council fails or refuses to act on a refund claim within the fourteen day period after the assessment, decision or administrative ruling, the claim is deemed to have been rejected by the City Council on the fourteenth day. The action of the City Council is final and conclusive.
- E. No injunction or writ of mandate or other legal or equitable process may issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be remitted.

§ 3.37.190 APPROPRIATIONS LIMIT.

The City's appropriations limit established under Article XIII B of the California Constitution will be increased by the amount collected by the levy of the tax in accordance with the applicable requirements of California law.

ARTICLE IV – ENFORCEMENT

§ 3.37.200 MISDEMEANOR; TAX STILL OWED.

- A. Violations of this chapter are unlawful and constitute a misdemeanor.
- B. Conviction for violating this chapter does not relieve persons from paying the tax or prevent the City from filing a civil action for the tax debt unpaid at the time of such conviction.

§ 3.37.210 TAX AS CIVIL DEBT.

Any tax required to be paid pursuant to this chapter:

- A. Which is collected by a person and has not been paid to the city in the time prescribed by this chapter, is a civil debt owed by the person to the City; and
- B. By a person, which tax is not collected for any reason by the person whether or not charges are collected by the person from the person, the amount of such tax is a civil debt owed by the person and person to the City.

§ 3.37.220 ACTIONS TO COLLECT.

Any person owing money to the city under the provisions of this chapter is liable in an action brought in the name of the city for the recovery of such amount, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, without limitation, reasonable attorney's fees.

§ 3.37.230 ENFORCEMENT COSTS.

Where a civil action is filed, the prevailing party is entitled to reasonable attorneys' fees, but is limited by the amount of attorneys' fees claimed by the city. If the court issues an order in favor of the city, the court will also award the city its actual costs of enforcement, including, without limitation, reasonable attorneys' fees incurred by the city in such judicial proceeding.

§ 3.37.240 REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this chapter or which are available under any other provision of this code, in law, or in equity, including, without limitation, the California False Claims Act (Government Code § 12650, et seq.), are cumulative. The use of one or more remedies by the City will not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

§ 3.37.250 RECORDING OF A CERTIFICATE OF LIEN.

If any tax is not paid when due, the administrator may record with the County Recorder(s) of such counties as the administrator may determine, a Certificate which specifies the amount of tax due and the name and address of the person owing the tax. The Certificate must include a statement that the administrator has complied with all legal requirements in the determination of the tax owed and a legal description of the real property of the owner. Upon recording of the Certificate, the tax constitutes a lien upon all real property owned or thereafter acquired by the person. The lien has the force, effect and priority of a judgment lien.

§ 3.37.260 STATEMENT OF TAX NOT CONCLUSIVE ON CITY.

A. No reports or statements of a person is conclusive as to any matter affected by this chapter nor is the city precluded from collecting any sum actually due and payable. Each report or statement and each of the items therein are subject to audit and verification by an auditor appointed by the city.

- B. The administrator may require any person, upon reasonable written notice, to provide the administrator with access to all of the person's books and records relating to the person's operation of the utility that are subject to a Tax pursuant to this chapter. If, as a result of any such audit, it is determined that a return required to be filed by such person is inaccurate and did not include and report the correct amount of Tax due pursuant to this chapter, the person must forthwith pay to the city all Taxes which are shown to be due as a result of such audit.
- C. Every person must keep and preserve for a period of not less than five years all records as may be necessary to determine the tax, which records must be made available upon demand of the city at all reasonable times. Such person must permit an examination of such books and records at a location within the city's jurisdiction.
- D. If an audit conducted pursuant to the provisions of this section reflects that in any tax reporting and remittance period there was under-reporting of Taxes due by five percent or more, which under-reporting was not corrected by the person before the commencement of the audit, all costs associated with the audit will be borne by the person and the cost is subject to collection as a civil debt by the City."

SECTION 2. *Environmental Analysis.* This Resolution is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 2100, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it establishes rules and procedures to implement government funding mechanisms; does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this Resolution does not constitute a "project" that requires environmental review (*see specifically* 14 CCR § 15378(b)(4-5)).

SECTION 3. *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, and reflect the independent judgment of the City Council. 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 4. *Continuity.* 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 5. Savings Clause. Repeal of any provision of the BMC or any other regulation by this Ordinance 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 6. 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 7. Validity of Previous Code Sections. If this the entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal of the BMC or other regulation by this Ordinance will be rendered void and cause such BMC provision or other regulation to remain in full force and effect for all purposes.

SECTION 8. Effective Date. This Ordinance will become effective on the 31st day following its passage and adoption.

SECTION 9. The City Clerk must certify as to the adoption of this ordinance and cause the summary thereof to be published within fifteen calendar (15) days of the adoption and post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code § 36993, for the City of Bellflower.

ORDINANCE NO. 1332 HAD ITS FIRST READING ON November 28, 2016, ITS SECOND READING ON DECEMBER 12, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF DECEMBER 12, 2016.



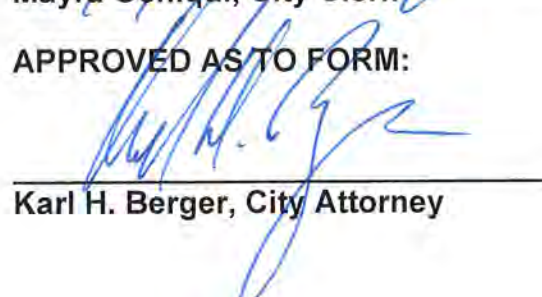
Dan Koops, Mayor

Attest:



Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:



Karl H. Berger, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF BELLFLOWER)

I, **Mayra Ochiqui**, City Clerk of the City of Bellflower, California, do hereby certify under penalty of perjury that the foregoing Ordinance No. 1332 had its first reading on November 28, 2016, its second reading on December 12, 2016, and was duly passed, approved, and adopted by the City Council of the City of Bellflower at its Regular Meeting of December 12, 2016, by the following vote to wit:

AYES: Council Members – Dunton, Garza, Santa Ines, Schnablegger,
and Mayor Koops

Ordinance No. 1332 was posted at City Hall, the Clifton M. Brakensiek Library, John S. Simms Park, the Bellflower Sheriff's Substation, and T. Mayne Thompson Park; and the title, effective date, and vote will be published on Thursday, December 22, 2016, in the Public Notices Section of the *Herald American*, pursuant to Government Code Section 36933.

Dated: December 13, 2016



Mayra Ochiqui, City Clerk
City of Bellflower, California

(SEAL)