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ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 3 (BUSINESSES AND LICENSES), TITLE 5 (POLICE AND PUBLIC SAFETY) AND TITLE 10 (ZONING REGULATIONS) OF THE BURBANK MUNICIPAL CODE (BMC) TO EXPRESSLY DEFINE AND PROHIBIT CERTAIN CANNABIS ACTIVITIES IN THE CITY.

City Attorney's Synopsis

This Ordinance amends Title 3, Title 5, and Title 10 of the Burbank Municipal Code to define and prohibit certain cannabis activities, including medical cannabis deliveries, medical cannabis dispensaries, and commercial and non-commercial medical cannabis cultivation, throughout the City.

THE COUNCIL OF THE CITY OF BURBANK FINDS AS FOLLOWS:

A. In 1970 Congress passed the Federal Controlled Substances Act ("CSA"), 21 U.S.C. sections 801 et seq., which prohibits the manufacture, cultivation, distribution and possession of marijuana and classifies it as a Schedule 1 drug, meaning it has no accepted medical value in treatment; and

B. California law generally makes it a crime to possess and cultivate marijuana under California Health and Safety Code ("H&S") sections 11357 and 11358, respectively; and

C. In 1996, California voters approved Proposition 215 (H&S § 11362.5), entitled the Compassionate Use Act ("CUA"), with the intent to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The CUA exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S sections 11357 and 11358; and

D. In 2003, the California Legislature passed Senate Bill 420 (H&S §§ 11362.7 et seq.) to create the Medical Marijuana Program ("MMP"), which clarified the scope of the CUA by establishing a voluntary program for the issuance of medical marijuana identification cards for qualified patients, set limits on the amount of marijuana any individual could possess, and provided an exemption from State criminal liability for persons "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes;" and

E. Neither the CUA nor the MMP require or impose an affirmative duty on cities to allow, authorize, or sanction the establishment of facilities that cultivate, dispense or process medical marijuana within their jurisdiction; and

F. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that nothing in the CUA or the MMP limits the authority of cities to regulate or prohibit medical marijuana land uses; and

G. The United States Supreme Court has continuously held that the manufacture (including cultivation), distribution, and possession of marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483 held there is no "medical necessity" exception to the CSA and therefore, a medical marijuana dispensary could be enjoined from distribution and manufacturing medical marijuana in California. In 2005, the Court in *Gonzalez v. Raich* (2005) 545 U.S. 1 held that the Commerce Clause of the United States Constitution allows Congress to prohibit the local cultivation or use of medical marijuana otherwise permitted by California law. However, the United States Department of Justice has indicated that it may not enforce the CSA where an individual's actions are in clear and unambiguous compliance with existing state laws allowing medical use of marijuana.¹ Additionally, there are conflicting lower court opinions that raise a question as to whether the Federal Government may enforce the CSA where medical marijuana is allowed; and

H. On October 9, 2015, Governor Jerry Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), which is comprised of the following California legislative bills: Assembly Bill 243, Assembly Bill 266, and Senate Bill 643; and

I. The MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivation, processing, transportation, testing, and distribution of medical cannabis to qualified patients. The MMRSA establishes a state licensing scheme for individuals and entities engaged in "commercial cannabis activity," as defined, while protecting local control by requiring all such individuals and entities to have a local license or permit to operate in addition to a state license. The MMRSA also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit marijuana cultivation and their intent not to administer a conditional permit program pursuant to H&S section 11362.777 for the cultivation of marijuana (H&S § 11362.777(c)(4));
- Allow local governments to enact ordinances banning marijuana cultivation, storage, manufacture, transport, provision, or other activity by

¹ Memorandum for Selected United States Attorneys (Oct. 19, 2009) available at <http://www.justice.gov/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states>.

any person, including qualified patients and primary caregivers (H&S § 11362.777(g));

- Expressly provide that MMRSA does not supersede or limit local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements (California Business & Professions Code (“B&P”) § 19315(a));
- Expressly provide that MMRSA does not limit the authority or remedies of a local government under any provision of law, including but not limited to a local government’s constitutional right to make and enforce within its limits all police regulations not in conflict with general laws (B&P § 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery from operating within the local government’s boundaries, to enact an ordinance affirmatively banning such delivery activity (B&P § 19340); and

J. Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. In the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a primary caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City. The strong smell of marijuana may create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

K. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;² and

L. Los Angeles County has reported that most medical marijuana dispensaries are “cash only” businesses, and that the presence of large amounts of cash and marijuana make dispensaries, their employees and qualified patients the target of a disproportionate amount of violent crime, including robberies and burglaries (See *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 871); and

M. The California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that medical marijuana collectives and cooperatives should provide adequate security to ensure that patients are safe and that surrounding homes and businesses are not negatively impacted by nuisance activity such as loitering or crime; and

² See, e.g., Christopher Jelinek, “Risk Reduction Strategies Directed Towards Indoor Marijuana Cultivation Fires,” December 2009, available at <https://www.usfa.fema.gov/pdf/efop/efo44164.pdf>.

N. Based on the findings above and the experiences of other jurisdictions, the City Council finds that cannabis activities can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of increased criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities; and

O. Title 10 (Zoning Regulations) of the Burbank Municipal Code (BMC) expressly provides that uses in all zones are only allowed as authorized under the provisions of the BMC. While the City Council believes that all cannabis activity uses, including cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, sale, or delivery of medical cannabis are prohibited within the City because they are not authorized anywhere throughout the BMC, the Council desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City; and

P. Based on the findings above, the potential establishment of cannabis activities in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities described above; and

Q. The issuance or approval of business licenses, use permits, variances, building permits, or any other applicable entitlement for cannabis activities will result in the aforementioned threat to public health, safety, and welfare; and

R. Section 200 of the City's Charter vests the Council with the authority to exercise all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants, which are not prohibited by the California Constitution or the Charter; and

S. The Planning Board held a duly noticed public hearing on December 14, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance; and

T. The City Council held a duly noticed public hearing on this Ordinance on January 12, 2016, at which time it considered all evidence presented, both written and oral.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Findings. The City Council of the City of Burbank hereby finds that the above findings are true and correct and are hereby incorporated by reference.

Section 2. Authority. This Ordinance is adopted pursuant to the authority granted by the California Constitution, Charter of the City of Burbank, and State law,

including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and the Medical Marijuana Regulation and Safety Act.

Section 3. Environmental Review. This Ordinance was determined to be exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines (14 CCR §§ 15000 et seq.) in that it can be seen with certainty that there is no possibility that the proposed activity would have a significant effect on the environment. The City's permissive zoning provisions already prohibit all uses that are being expressly prohibited by this Ordinance. Therefore, this Ordinance will have no impact on the physical environment as it will not result in any changes.

Section 4. Addition of B.M.C. § 3-4-2510. Article 26 (Commercial Cannabis Activity), Section 3-4-2510 (Prohibition) is added to Chapter 4 (Businesses and Occupations) of Title 3 (Businesses and Licenses) of the Burbank Municipal Code to read as follows:

“ARTICLE 26. COMMERCIAL CANNABIS ACTIVITY

3-4-2510: PROHIBITION:

- A. Definitions. The words and phrases used in this Section 3-4-2510 shall have the same meanings as set forth in Section 10-1-512.
- B. Commercial cannabis activities of all types, including deliveries of medical cannabis and dispensaries of medical cannabis, are prohibited in the City. Accordingly, the City shall not issue any entitlement, license, or permit, whether administrative or discretionary, for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.”

Section 5. Addition of B.M.C. § 5-3-210. Section 5-3-210 (Cannabis Activities) is added to Article 2 (Crimes Against Public Health and Safety) of Chapter 3 (Morals and Conduct) of Title 5 (Police and Public Safety) of the Burbank Municipal Code to read as follows:

“5-3-210: CANNABIS ACTIVITIES:

- A. Definitions. The words and phrases used in this Section 5-3-210 shall have the same meanings as set forth in Section 10-1-512.
- B. Commercial cannabis activities of all types are prohibited in the City. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City, except where the City is preempted by Federal or State law from enacting a prohibition on any such activity.
- C. To the extent not already covered by subsection B above, all deliveries of medical cannabis are expressly prohibited within the City. No person or entity shall

conduct any deliveries of medical cannabis that either originate or terminate within the City.

D. To the extent not already covered by subsection B above, all medical cannabis dispensaries are expressly prohibited within the City. No person or entity shall establish or operate any medical cannabis dispensary within the City.

E. Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is prohibited in the City. No person, including a qualified patient or primary caregiver, may cultivate any amount of cannabis in the City, even for medical purposes.

F. Any activity conducted, or permitted to be conducted, in violation of any provision of this Section 5-3-210 or any other provision of this Code shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure section 731 or any other remedy available to the City.”

Section 6. Amendment to B.M.C. § 10-1-502. Section 10-1-502 (Uses in All Zones (Except Residential Zones)) of Article 5 (Use Table and General Use Regulations) of Chapter 1 (Zoning) of Title 10 (Zoning Regulations) of the Burbank Municipal Code is amended as stated on Exhibit 1, attached and incorporated by reference.

Section 7. Addition of B.M.C. § 10-1-512 (Cannabis Activity). Section 10-1-512 (Prohibited Cannabis Activity) is added to Article 5 (Use Table and General Use Regulations) of Chapter 1 (Zoning) of Title 10 (Zoning Regulations) of the Burbank Municipal Code to read as follows:

“10-1-512: PROHIBITED CANNABIS ACTIVITY:

A. DEFINITIONS.

The following definitions shall have the following meanings, and shall apply to Section 3-4-2510, Section 5-3-210, Section 10-1-502, Section 10-1-512, Section 10-1-602, Section 10-1-627, and any other provisions of this Code where reference is made to this section.

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

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in California Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in California Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical cannabis, with or without compensation.

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

“Cultivation site” shall have the same meaning as set forth in California Business & Professions Code § 19300.5 (x) as the same may be amended from time to time.

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

“Dispensary” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(n) as the same may be amended from time to time. “Dispensary” shall also include a cooperative. “Dispensary” shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, (2) a health facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as such use complies strictly with applicable state and local laws including, but not limited to, California Health and Safety Code §§ 11362.5 et seq., and provided that cultivation for any purpose shall not be permitted.

“Dispensing” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(y) as the same may be amended from time to time.

“Manufacturing site” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(af) as the same may be amended from time to time.

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

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following California legislative bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 266, and SB 643.

“Nursery” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

“Qualified patient” shall have the same meaning as set forth in California Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in California Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

B. PROHIBITION.

1. Commercial cannabis activities of all types are expressly prohibited in all zones in the City. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City, except where the City is preempted by Federal or State law from enacting a prohibition on any such activity.

2. To the extent not already covered by subsection B.1 above, all deliveries of medical cannabis are expressly prohibited within the City. No person or entity shall conduct any deliveries of medical cannabis that either originate or terminate within the City.

3. To the extent not already covered by subsection B.1 above, all medical cannabis dispensaries are expressly prohibited within the City. No person or entity shall establish or operate any medical cannabis dispensary within the City.

4. This section is meant to prohibit all activities for which a State license is required under the MMRSA. Accordingly, the City shall not issue any use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, for any activity for which a State license is required under the MMRSA.

5. Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones in the City. No person, including a qualified patient or primary caregiver, may cultivate any amount of cannabis in the City, even for medical purposes.

C. PUBLIC NUISANCE.

Any use or condition caused, or permitted to exist, in violation of any provision of this Section 10-1-512 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure Section 731 or any other remedy available to the City.”

Section 8. Amendment to B.M.C. § 10-1-602. Table 10-1-602 (Permitted Uses in the R-1 and R-1-H Zones) of Section 10-1-602 (Uses in R-1 and R-1-H Zones) of Division 1 (Single Family Residential Zones) of Article 6 (Residential Uses and

Standards) of Chapter 1 (Zoning) of Title 10 (Zoning Regulations) of the Burbank Municipal Code is amended by adding the following:

<i>Land Use</i>	<i>R-1</i>	<i>R-1-H</i>	<i>Specific Use Standards</i>
Cannabis Uses			
Cannabis delivery	---	---	10-1-512
Commercial cannabis activities	---	---	10-1-512
Cultivation	---	---	10-1-512
Dispensary	---	---	10-1-512

Section 9. Amendment to B.M.C. § 10-1-627. Table 10-1-627 (Permitted Uses in the Multiple Family Residential Zones) of Section 10-1-627 (Uses in the Multiple Family Residential Zones) of Division 4 (Multiple Family Residential Zones) of Article 6 (Residential Uses and Standards) of Chapter 1 (Zoning) of Title 10 (Zoning Regulations) of the Burbank Municipal Code is amended by adding the following:

<i>Land Use</i>	<i>R-2</i>	<i>R-3</i>	<i>R-4</i>	<i>Specific Use Standards</i>
Cannabis Uses				
Cannabis delivery	--	--	--	10-1-512
Commercial cannabis activities	--	--	--	10-1-512
Cultivation	--	--	--	10-1-512
Dispensary	--	--	--	10-1-512

Section 10. Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 11. Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

PASSED AND ADOPTED this ___ day of _____, 2016.

 Bob Frutos
 City of Burbank Mayor

Attest:

Zizette Mullins, CMC, City Clerk

Approved as to Form
Office of the City Attorney

By: _____
Lisa Kurihara, Deputy City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, CMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the ____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California on the _____ day of _____, 2016.

Zizette Mullins, CMC, City Clerk

EXHIBIT 1

Amendment to B.M.C. § 10-1-502.

Section 10-1-502 (Uses in All Zones (Except Residential Zones)) is amended by adding the following:

LAND USE	C-2	C-3	C-4	M-1	M-2	MDM-1	MDC-2	MDC-3	MDC-4	NB	GO	RC	C-R	RB-P	BCC-1	BCC-2	BCC-3	BCC-M	MPC-1	MPC-2	MPC-3	OS	A-P	RR	AD	
CANNABIS USES																										
Cannabis Delivery																										
Commercial Cannabis Activities																										
Cultivation																										
Dispensary																										