

ORDINANCE NO. 1519

AN ORDINANCE OF THE CITY OF BOULDER CITY, NEVADA, AMENDING BOULDER CITY CODE, TITLE 11, CHAPTER 1, SECTION 3B, DEFINING "MEDICAL MARIJUANA ESTABLISHMENTS," AND FURTHER ADDING BOULDER CITY CODE, TITLE 11, CHAPTER 2, SECTION 8, REGARDING THE PROHIBITION OF MEDICAL MARIJUANA ESTABLISHMENTS AS A MATTER OF PROHIBITED LAND USE THROUGHOUT THE INCORPORATED AREAS OF THE CITY OF BOULDER CITY PER ZONING AMENDMENT FILE NUMBER AM-14-309; AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, the Nevada Legislature adopted SB374 during the 2013 Session, and Section 10.5 of the legislation requires that medical marijuana establishments be located in accordance with local governmental ordinances on zoning and land use, and be professional in appearance; and

WHEREAS, existing Nevada law provides immunity from state and local prosecution for possessing, delivering and producing marijuana in certain limited amounts for patients with qualifying medical conditions; and

WHEREAS, the City Council recognizes the rights of qualifying individuals to grow, possess, and use marijuana for medical purposes as provided by the Medical Use of Marijuana Law adopted by the Nevada legislature in 2001; and

WHEREAS, the City of Boulder City has a long tradition of applying strict land use standards to protect the unique land use zones within the City of Boulder City, and, in some cases, Boulder City has banned certain types of retail and industrial uses; and

WHEREAS, the City of Boulder City may make and enforce within its boundaries all local, police, sanitary, zoning and other ordinances and regulations not in conflict with the general laws; and

WHEREAS, Preemption of the City's authority will not be implied when the legislative scheme either permits or recognizes local regulation. SB 374 explicitly provides in Section 10.5 that a city may enact zoning restrictions; and

WHEREAS, the mere fact that a local law imposes restraints that the state law does not impose does not establish a conflict; and

WHEREAS, zoning is a field covered by local regulation and there is significant local interest that may differ from one locality to another; and

WHEREAS, regulations related to the sale and distribution of substances controlled by state and federal law are necessitated by the large geographic size of the City, the limited resources of the City, and the close proximity to residential, school, park and religious uses to commercial and industrial uses in the City; and

WHEREAS there is a legal uncertainty between federal law and Nevada law regarding medical marijuana establishments. The United States Supreme Court has held that the federal Controlled Substances Act validly prohibits local cultivation and use of marijuana under all circumstances, *Gonzales v. Raich*, 125 S. Ct. 2195 (2005), and the federal Controlled Substances Act prohibits marijuana use, distribution and possession, and that no medical necessity exception exists to these prohibitions, *United States v. Oakland Cannabis Buyers' Cooperative*, 121 S. Ct. 1711 (2001); and

WHEREAS, regulations are further needed to protect the public health, safety and welfare of residents, children, and businesses from harmful secondary effects of certain types of land use and such regulations are necessary and proper and consistent with the guidelines set forth in NRS 278.250;

NOW, THEREFORE,

The City Council of Boulder City do ordain:

Section 1. CODE AMENDMENT. Boulder City Code, Title 11, Chapter 1, Section 11-1-3B is hereby amended to add the definition for "Medical Marijuana Establishments" and Boulder City Code, Title 11, Chapter 2, shall have added thereto a new Section 11-2-8 prohibiting marijuana establishments in any zone throughout the incorporated boundaries of the City of Boulder City, all of which is set forth in full on Exhibit "A" attached hereto.

Section 3. VALIDITY. Each section and each provision or requirement of any section of this ordinance shall be considered separable and the invalidity of any portion shall not affect the validity or enforceability of any other portion

Section 4. PUBLICATION. The City Clerk shall cause this Ordinance to be published in summary on Friday, February 28th, 2014 in the *Las Vegas Review Journal*, a daily newspaper published in Las Vegas, Nevada.

Section 5. EFFECTIVE. This ordinance shall become effective twenty (20) days after its approval and publication, on the 20th day of March, 2014.

Bill No. 1737
Introduced by: Woodbury



ROGER TOBLER, Mayor

ATTEST:



LORENE KRUMM, City Clerk

The foregoing Ordinance was first proposed and ready by title to the City Council on the 11th day of February, 2014, which was a regular meeting; thereafter, on the 25th day of February, 2014, a regular meeting was held and the proposed Ordinance was adopted by the following vote:

VOTING AYE: Tobler, Leavitt, McCoy, Walker, Woodbury

VOTING NAY: None

ABSENT: None

DATED and APPROVED this 25th day of February, 2014.



ROGER TOBLER, Mayor

ATTEST:



LORENE KRUMM, City Clerk

Boulder City Code, Title 11, Chapter 1, Section 11-1-3 is hereby amended to add the definition for "Medical Marijuana Establishments"

11-1-3-B Definitions

**MEDICAL MARIJUANA
ESTABLISHMENTS:**

An establishment as defined by Nevada Revised Statute Chapter 453A, shall include, but not be limited to:

- a. An independent marijuana testing laboratory;**
- b. A marijuana cultivation facility;**
- c. A facility for the production of edible marijuana products or marijuana-infused products;**
- d. A marijuana dispensary; or**
- e. A business registered with the Division of Public and Behavioral Health and paid the requisite fees to act as more than one of the types of businesses listed in subsections b, c, and d of this section.**

Boulder City Code, Title 11, Chapter 2, shall have added thereto a new section 11-2-8 as follows:

11-2-8 Medical Marijuana Establishments. Notwithstanding any other provision of this Code, medical marijuana establishments are not allowed, and shall be unlawful as a permitted use, conditional use, special use or accessory use in any zone throughout the incorporated boundaries of the City of Boulder City. This prohibition is not intended to interfere with the individual rights of persons to the medical use of marijuana as permitted by Chapter 453A of the Nevada Revised Statutes.