

## **ORDINANCE NO. 542**

### **AN INTERIM URGENCY ORDINANCE OF THE CITY OF BRISBANE IMPOSING A MORATORIUM UPON THE ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA COLLECTIVES**

**The City Council of the City of Brisbane does hereby ordain as follows:**

#### **SECTION 1: Findings and Declaration of Intent.**

The City Council finds and determines that:

(a) In 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act (codified as Health and Safety Code Section 11362.5 et seq.), which legalized, for purposes of California law, the cultivation and possession of medical marijuana by ill persons and their primary caregivers, upon recommendation or approval of a physician.

(b) In 2003, the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.) was adopted, which established certain guidelines for qualified individuals and caregivers to collectively grow, possess and dispense medical marijuana, and also authorized local agencies to regulate such activities.

(c) The City recently received an inquiry as to whether a medical marijuana collective could be established within the Crocker Park zoning district.

(d) At the present time, the Brisbane Municipal Code does not contain any provisions regulating the establishment and operation of medical marijuana collectives and, per BMC Section 17.01.080.A, it would be the position of the City that a medical marijuana collective is prohibited under the City's current zoning regulations. However, it is possible that a person seeking to operate a medical marijuana collective would argue that it should be allowed as either a permitted or a conditional use in the Crocker Park zoning district and other commercial districts in the City.

(e) Other cities which have allowed medical marijuana collectives to be established without any form of special regulation have experienced serious adverse impacts and secondary effects caused by these operations, including increased crime, loitering, intimidation of pedestrians, odors, increased vehicular traffic, parking congestion, sales of marijuana for profit rather than for medical purposes, and sales of illegal drugs at or in the immediate vicinity of the collective.

(f) The extent to which local agencies can regulate medical marijuana collectives may be impacted by litigation currently pending in the California Court of Appeals. In addition, the legal status of marijuana sales in general may be greatly affected by an initiative measure which has now qualified for the November, 2010 election, known as the "Tax, Regulate and Control Cannabis Act of 2010," which, if passed, would legalize (for

purposes of California law) the recreational use of marijuana and eliminate the need for a medical purpose as now required by the Compassionate Use Act.

(g) It is the intention of the City Council to study and review the health, public safety, and planning issues concerning medical marijuana collectives to determine whether such use should be allowed or prohibited in the City, and if allowed at all, to establish the conditions and requirements that should be imposed in order to mitigate any potential adverse impacts that may be created by this activity.

(h) Unless a moratorium is adopted, there is a serious risk that a medical marijuana collective could be established without any form of regulation by the City. Once established, the City may be unable to regulate or eliminate the activity and irreparable damage may be caused to the surrounding neighborhood and suffered by the community in general. A current and immediate threat to the public health, safety, and welfare therefore exists which requires the imposition of a moratorium in order to preserve the status quo until further studies are conducted and until further legislative action is accomplished.

## **SECTION 2: Purpose of Ordinance.**

This Ordinance is enacted pursuant to Section 65858 of the California Government Code. The purpose of this Ordinance is to prohibit, for a period of forty-five (45) days, the establishment or operation of any medical marijuana collective within any zoning district of the City.

## **SECTION 3: Definitions.**

As used in this Ordinance, the following terms shall have the meaning as set forth in this Section:

(a) "Marijuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(b) "Medical marijuana collective" means any facility, cooperative, dispensary, association, group, or establishment which distributes, sells, exchanges, delivers, or gives away marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, and physicians pursuant to California Health and Safety Code Sections 11362.5 and 11362.7.

## **SECTION 4: Prohibition.**

During the effective period of this Ordinance, no business license, building permit, design permit, use permit, or other form of permit, approval or entitlement shall be issued or granted for the establishment or operation of, and no person shall otherwise establish or operate, a medical marijuana collective within the City.

**SECTION 5:           Effective Period of Ordinance.**

This Ordinance shall be effective for a period of forty-five (45) days from the date of its adoption. However, this Ordinance may be extended for additional periods of time in the manner provided in Section 65858 of the California Government Code.

**SECTION 6:           Severability.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**SECTION 7:           Effective Date.**

This Ordinance is an urgency ordinance for the immediate preservation of the public health, safety, and welfare and shall become effective immediately upon its passage and adoption.

  
W. Clarke Conway, Mayor


The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Brisbane held on the 3<sup>rd</sup> day of May, 2010, by the following vote, which vote constitutes no less than a four-fifths (4/5ths) vote of the entire City Council, as required by Section 65858 of the California Government Code.

AYES: Councilmembers Bologoff, Lentz, Richardson, Waldo, and Mayor Conway

NOES: None

ABSENT: None

ATTEST:

  
Sheri Marie Spediacci, City Clerk

**CITY OF BRISBANE**

**CERTIFICATE OF POSTING**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SAN MATEO        )**

NOTICE IS HEREBY GIVEN that during the course of a regular meeting on Monday, May 3, 2010 the City Council of the City of Brisbane adopted Ordinance No. 542 entitled:

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THE CITY OF BRISBANE IMPOSING A  
MORATORIUM UPON THE ESTABLISHMENT OR  
OPERATION OF MEDICAL MARIJUANA  
COLLECTIVES**

The undersigned, for and on behalf of the Brisbane City Clerk, caused a copy of this Ordinance to be posted in the following places in the City of Brisbane:

Brisbane City Hall Offices, 50 Park Place  
Brisbane Community Center/Library, 250 Visitacion Avenue  
Mission Blue Park Tennis Courts, 475 Mission Blue Drive

Dated 5/3/2010. Said posting was completed on 5/10/2010.

I declare under penalty of perjury the foregoing is true and correct.

  
Sheri Marie Spediacci  
City Clerk