ORDINANCE NO. XX-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA ADDING CHAPTER VI (MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION) TO TITLE 9 (LICENSES AND BUSINESS REGULATIONS) OF THE COSTA MESA MUNICIPAL CODE, REPEALING AND REPLACING SECTION 13-16 (ENFORCEMENT) OF ARTICLE 4 (ENFORCEMENT) OF CHAPTER I (GENERAL) OF TITLE 13 (PLANNING, ZONING AND DEVELOPMENT), AND REPEALING AND REPLACING LINE 31A OF TABLE 13-30 (CITY OF COSTA MESA LAND USE MATRIX) OF CHAPTER IV (CITYWIDE LANDUSE MATRIX) OF TITLE 13 (PLANNING, ZONING AND DEVELOPMENT), RELATING TO THE REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION.

WHEREAS, in 1996 the California voters approved Proposition 215 (known as the Compassionate Use Act (the "CUA") and codified as Health and Safety Code Section 11362.5, *et seq.*) to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420 (known as the Medical Marijuana Program Act (the "MMPA") and codified as Health and Safety Code Section 11362.7 et seq.), as later amended, to clarify the scope of the Compassionate Use Act relating to the possession and cultivation of marijuana for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in 2005 the California Board of Equalization began issuing seller's permits for sales consisting only of medical marijuana; and

WHEREAS, in 2008 the California Attorney General issued guidelines for the security and non-diversion of marijuana grown for medical use; and

WHEREAS, in 2014 the U.S. House of Representatives voted to stop federal law enforcement from interfering with medical marijuana operations in the various states which have decriminalized and/or authorized such operations; and

WHEREAS, Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical marijuana dispensaries and cultivation; and

WHEREAS, the City Council of the City of Costa Mesa intends that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and

WHEREAS, the City Council of the City of Costa Mesa intends that nothing in this Ordinance shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal; and

WHEREAS, the operation of medical marijuana dispensaries and the cultivation of medical marijuana within the City of Costa Mesa presently remain prohibited; and

WHEREAS, the City Council of the City of Costa Mesa finds that medical marijuana operations and cultivation require careful consideration as well as the regulation of the location and manner in which dispensaries operate and cultivation occurs so as to prevent negative impacts on nearby residents and businesses; and

WHEREAS, the City Council of the City of Costa Mesa finds that the City of Costa Mesa has a compelling interest in protecting the public health, safety and welfare of its residents and businesses by regulating the location and operation of medical marijuana dispensaries and medical marijuana cultivation, in preserving the peace and

quiet of the neighborhoods in which medical marijuana dispensaries operate and medical marijuana is cultivated, and in providing compassionate access to medical marijuana to its seriously ill residents; and

WHEREAS, the California Constitution grants local governments in Article XI, Section 7 the authority under their police powers to regulate land use; and

WHEREAS, the proposed ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would have the possibility of creating any environmental impacts, and City staff has determined that the establishment of regulations for medical marijuana businesses does not meet any of the thresholds contained in the Checklist that would trigger an environmental impact, and thus according to the "general rule exemption" (Section 15061(b)(3)) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required, and a notice of exemption will be filed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter VI (Medical Marijuana Dispensaries and Cultivation) of Title 9 (of the Costa Mesa Municipal Code is hereby added as follows:

CHAPTER VI. MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION

Sec. 9-491. Purpose

The purpose of this chapter is to establish a comprehensive set of regulations with attendant regulatory permits applicable to the operation of medical marijuana dispensaries, as well as the cultivation of medical marijuana. The regulations are

intended to ensure such operations and cultivation are consistent with the overall health, welfare and safety of the city and its populace, and that such operations are in compliance with California's Compassionate Use Act of 1996 as well as California's Medical Marijuana Program Act of 2003.

The chapter is not intended to permit activities that are otherwise illegal under federal, state or local law. This chapter is not intended to conflict with federal or state law.

Sec. 9-492. Operation Prohibited Without Permit

It shall be unlawful to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business, or to participate as an employee, contractor, agent, volunteer, or in any manner or capacity other than as provided in this chapter. The general prohibition contained in this section shall include renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.

Sec. 9-493. Definitions

The following definitions shall apply to this chapter unless the context clearly denotes otherwise.

a) "Applicant" means a person who is required to file an application for a permit or a license under this chapter.

b) "Attending physician" has the same definition as set forth in Health and Safety Code section 11362.7.

c) "Attorney General Guidelines" shall refer to the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August, 2008, as amended from

time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

d) "City CEO" has the same meaning as "city manager" in Section 2-97 of this code and shall include his or her designee.

e) "Cultivation" means the growing of medical marijuana for medical purposes as defined in strict accordance with Health and Safety Code sections 11362.5 and 11362.7 et seq.

f) "Cultivator" means a person who engages in the cultivation of medical marijuana.

g) "Delivery" means the act of taking something to a person or place.

h) "Dispense" means the selection, measuring, packaging, labeling, delivery, or distribution or sale of medical marijuana to a qualified patient or a primary caregiver.

i) "Edible" has the same definition as "food" as set forth in Health and Safety Code section 109935.

j) "Employee" means any person (whether paid or unpaid) who provides regular labor or regular services for a medical marijuana business, including but not limited to at the location of a medical marijuana business.

k) "Identification card" has the same definition as set forth in Health and Safety Code section 11362.7, and as may be amended, and which provides that "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

l) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any marijuana intended for medical use, or (b) accompanying such marijuana intended for medical use.

m) "Location" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

n) "Lighting" means the act of illuminating as well as the effect achieved by the arrangement of lights.

o) "Live scan" means a system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the city council.

p) "Manager" means an employee responsible for management and/or supervision of a medical marijuana business.

q) "Marijuana" has the same definition as set forth in Health and Safety Code section 11018, and as may be amended.

r) "Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.).

s) "Medical marijuana business" means a medical marijuana dispensary and/or a medical marijuana cultivation site.

t) "Medical marijuana cultivation site" means a location where the cultivation of medical marijuana occurs.

u) "Medical marijuana dispensary" has the same meaning as Section 13-6 of the Costa Mesa Municipal Code.

v) "Member" means either a qualified patient, a person with an identification card, or a primary caregiver.

w) "Non-profit" means to use surplus revenue to achieve the goals of an organization rather than distributing surplus revenue as profit or dividends.

x) "Owner" means the owner of a medical marijuana dispensary and/or a medical marijuana cultivation site.

y) "Permit" means the various regulatory licenses issued pursuant to this chapter, including but not limited to a license for a medical marijuana business.

z) "Person" means any natural person, firm, corporation, partnership, club, or any association or combination of natural persons, whether acting by themselves or through any servant, agent or employee.

aa) "Person with an identification card" has the same definition as set forth in Health and Safety Code section 11362.7, and as may be amended, and which provides that "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article [being Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code].

bb) "Physician's referral" means a written recommendation for a patient from a licensed medical doctor indicating that marijuana would be a beneficial treatment for a serious medical condition of the patient.

cc) "Police Department" means the Police Department of the City of Costa Mesa.

dd) "Primary caregiver" has the same definition as set forth in Health and Safety Code section 11362.7(d), (e), and as may be amended.

ee) "Qualified Patient" has the same definition as set forth in Health and Safety Code section 11362.7(f).

ff) "Reasonable Compensation" means compensation commensurate with wages and benefits paid to officers and employees of other not-for-profit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked.

gg) "Serious Medical Condition" has the same definition as set forth in Health and Safety Code section 11362.7(h), and as may be amended.

Sec. 9-494. Medical Marijuana Dispensary Permit

Prior to initiating operations as a medical marijuana dispensary and as a continuing requisite to conducting operations, the owner of a medical marijuana dispensary shall obtain a regulatory permit from the City CEO or his/her designee under the terms and conditions set forth in this chapter. Conditions necessary for the continuing validity of any and all regulatory permits issued for the operation of a medical marijuana dispensary include:

a) Strict adherence to each and every requirement of this chapter.

b) Allowing the City CEO or his/her designee and the Police Department to conduct reasonable inspections of the location of the medical marijuana business at the discretion of the city, including but not limited to inspection of security, inventory, and written records and files pertaining to the medical marijuana business, for the purposes of ensuring compliance with local and state law.

c) Maintaining with the city current and valid contact information of the owner(s) of the medical marijuana dispensary.

d) Maintaining with the city current and valid contact information of a legal representative of the medical marijuana dispensary.

e) Transferable only if transferee successfully completes all of the requirements that a new applicant would otherwise need to meet.

Sec. 9-495. Medical Marijuana Cultivation Permit

Prior to initiating operations as a medical marijuana cultivator and as a continuing requisite to conducting operations, the persons intending to cultivate medical marijuana shall obtain a regulatory permit from the City CEO or his/her designee under the terms and conditions set forth in this Section. Conditions necessary for the continuing validity of any and all regulatory permits issued for the operation of a medical marijuana cultivation site include:

a) Strict adherence to each and every requirement of this chapter.

b) Allowing the City CEO or his/her designee, as well as the Police Department, to conduct reasonable inspections of the location of the medical marijuana business at the discretion of the city, including but not limited to inspection of security, inventory, and written records and files pertaining to the medical marijuana

business, for the purposes of ensuring compliance with local and state law.

c) Maintaining with the city current and valid contact information of the owner(s) of the medical marijuana cultivation site.

d) Maintaining with the city current and valid contact information of a legal representative of the medical marijuana cultivation site.

e) Transferable only if transferee successfully completes all of the requirements that a new applicant would otherwise need to meet.

Sec. 9-496. Applications for Medical Marijuana Dispensary and Cultivation Permits

The owner of a proposed medical marijuana dispensary and/or a medical marijuana cultivation site shall file an application with the City CEO or his/her designee upon a form provided by the city and shall pay a filing fee as established by resolution adopted by the city council as amended from time to time.

An application for a regulatory permit for a medical marijuana dispensary permit and/or a medical marijuana cultivation permit shall include, but shall not be limited to, the following information:

a) Address of the location where the medical marijuana business will be located.

b) A site plan and floor plan of the premises denoting all the use of areas on the premises of the medical marijuana business, including storage, cultivation areas, exterior lighting, restrooms, and signage.

c) A security plan including the following measures:

i. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 30 days of digitally recorded documentation in a format approved by the Police Department. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the storage areas, cultivation areas, all doors and windows, and any other areas as determined by the Police Department.

ii. The lease/business space/cultivation site shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code section 7590 et seq. and whose agents are properly licensed and registered under applicable law.

iii. Entrance to the dispensing area, cultivation site and any storage areas shall be locked at all times, and under the control of employees with current and valid employee permits.

iv. Interior Lighting. The premises within which the medical marijuana business is operated shall be equipped with and, at all times during which is open to the public or any portion thereof, shall remain illuminated with overhead lighting fixtures of sufficient intensity to illuminate every place to which members of the public or portions thereof are permitted access with an illumination of not less than two foot-candles as measured at the floor level.

v. Exterior Lighting. The exterior of the premises upon which the medical marijuana business is operated shall be equipped with and, at all times between sunset and sunrise, shall remain illuminated with fixtures of

sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas.

vi. All windows on the building that houses the dispensary and/or cultivation site shall be appropriately secured and all marijuana securely stored, and a reliable, commercial alarm system shall be installed and maintained.

d) The name and address of any person who is managing or responsible for the medical marijuana business' activities.

e) The name and address of the owner and lessor of the real property upon which the medical marijuana business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana business will be operated on his/her property.

f) Authorization for the City CEO or his/her designee to seek verification of the information contained within the application.

g) Evidence that the medical marijuana business is organized as a bona fide non-profit cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients in strict accordance with California's Compassionate Use Act.

h) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

i) Any such additional and further information as is deemed necessary by the City CEO or his/her designee to administer this chapter.

Sec. 9-497. Obligation of Medical Marijuana Dispensary and/or Cultivation Operation

The obligations of the medical marijuana dispensary and/or cultivator, including all on-going and continuing obligations required pursuant to any provision of this chapter or as may be provided in any conditional approval of the City CEO or his/her designee or the city council, shall be set forth in a written agreement, approved as to form by the city attorney, and enforceable by the city. Such written agreement shall also provide that the medical marijuana dispensary and/or cultivator shall annually provide to the City CEO or his/her designee an updated application containing the information provided in the granted application for a medical marijuana dispensary permit and/or medical marijuana cultivation site permit

Upon receiving possession of a regulatory permit as provided in this chapter, the medical marijuana dispensary and/or cultivator shall:

a) Provide written authorization to the City CEO or his/her designee as well as the Police Department, to conduct reasonable inspections of the location of the medical marijuana business at the discretion of the city, including but not limited to inspection of security, inventory, and written records and files pertaining to the medical marijuana business, for the purposes of ensuring compliance with local and state law.

b) Execute an agreement indemnifying the city, its elected officials, employees, agents, officers, and representatives, and each and all of them individually, from all liability in connection with all claims, damages, attorney's fees, costs and allegations arising from or in any way related to the operation of the medical marijuana business.

c) Carry insurance in the amounts and of the types that are acceptable to the City

CEO or his/her designee, with minimal coverage provided of comprehensive commercial general liability insurance and comprehensive automotive liability insurance (if automobiles are used by the medical marijuana business for any purpose) protecting the medical marijuana business in an amount of not less than one million dollars ($1,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than one million dollars ($1,000,000.00) aggregate for each personal injury liability, products liability and each accident. Such insurance shall name the city, its council members, officers, employees, agents and contractors as additional insured as respects to any liability arising out of the operation of the medical marijuana business.

d) Agree to defend at its sole expense, any action against the city, its elected officials, employees, agents, officers, and representatives, and each and all of them individually, which arises from the application and/or use of this chapter by an applicant.

e) Agree to reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of such action. The city may, at its sole discretion, participate at its own expense in the defense of any such action.

Failure to perform the aforementioned actions shall render the operation of a medical marijuana business unlawful.

Sec. 9-498. Review of Permit Applications

The City CEO or his/her designee shall conduct a review of any applicant for any permit authorized under this chapter, and shall prepare a report on the acceptability of the application. Upon completing the review process, the permit shall be deemed a qualified application, unless the City CEO or his/her designee finds:

a) The applicant has made one or more false or misleading statements, or

omissions on the application or during the application process; or

b) A proposed location for a medical marijuana business is not allowed by state or local law, statue, ordinance, or regulation, including this code, at a particular location; or

c) The applicant is not a primary caregiver or qualified patient or the legal representative of the medical marijuana business; or

d) The applicant or any person who is managing or is otherwise responsible for the activities of the cooperative or collective has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices; or

e) The applicant has not satisfied each and every requirement of this chapter.

Based on the information set forth in the application and the City CEO or his/her designee's review, the City CEO or his/her designee may impose reasonable terms and conditions on the use of the permit in addition to those specified in this chapter to ensure the safe operation of the business, and to ensure the health, safety and welfare of the citizens and visitors of the City of Costa Mesa.

Sec. 9-499. Action on Applications for Permits

This section shall govern action on all applications for all permits provided for in this chapter.

a) Upon receipt of a completed application and payment of the application and license fees, the City CEO or his/her designee shall investigate the information contained in the application to determine whether the applicant shall be issued the requested permit.

b) If the City CEO or his/her designee determines that the applicant has completed the application improperly, the City CEO or his/her designee shall notify the applicant of such fact within thirty (30) days of receipt of the application. The incomplete application upon return as incomplete shall be deemed abandoned. The applicant may then resubmit a new application for a new review pursuant to the requirements of this section.

c) Within sixty (60) days of receipt of the completed application, the City CEO or his/her designee shall complete the investigation, grant or deny the application in accordance with the provisions of this chapter, and so notify the applicant as follows:

   i. If the application is denied, the City CEO or his/her designee shall attach to the application a statement of the reasons for denial.

   ii. If the application is granted, the City CEO or his/her designee shall attach to the application the requested permit.

   iii. The application as granted or denied and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.

d) The City CEO or his/her designee shall grant the application and issue the requested permit upon findings that the proposed permit meets all of the requirements of this chapter, unless the application is denied for one (1) or more of the reasons set forth in section 9-498.

e) If the City CEO or his/her designee neither grants nor denies a complete application within sixty (60) days after it is received (except as provided in section 9-499(b)), the application shall be forwarded to the city council at its next regularly scheduled meeting for consideration in strict conformance with the

requirements of this chapter.

Sec. 9-500. General Operating Standards and Restrictions

A medical marijuana business shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the permit for a medical marijuana business to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and the Costa Mesa Municipal Code, and to mitigate any potential adverse impacts of the medical marijuana business on the public health, safety or welfare.

a) Security.

i. One security guard who is licensed by the State of California shall be present at the location of the medical marijuana business during all business hours. The security guard shall only be engaged in activities related to providing security for the medical marijuana business, except on an incidental basis. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms. The duties of the security guard shall include but are not limited to:

a. Ensuring no person smokes any substance within twenty feet (20') of any building entrance, exit, window and air intake vent.

b. Monitoring of the outside of the premises for loitering and unlawful sale of medical marijuana by members. Security guards shall be directed to report to the medical marijuana business all unlawful sales of medical marijuana by members, and the medical marijuana business shall make a report within twenty-four (24) hours to the Costa Mesa Chief of Police.

ii. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 30 days of digitally recorded documentation in a format approved by the City CEO or his/her designee. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the storage areas, cultivation areas, all doors and windows, and any other areas as determined by the City CEO or his/her designee.

iii. The location of the medical marijuana business shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code section 7590 et seq. and whose agents are properly licensed and registered under applicable law.

iv. All entrances into the building housing a medical marijuana business shall be locked from the exterior at all times with entry controlled by employees.

b) Authorizations.

i. The City CEO or his/her designee shall have the right to enter the medical marijuana dispensary and/or cultivation site from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the city and State of California.

ii. Recordings made by security cameras required pursuant to this chapter shall be made available to the City CEO or his/her designee or the Police Department upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

c) Records.

i. Medical marijuana businesses shall maintain records reflecting:

a. The full name, address, and telephone number(s) of the owner and/or lessee of the property.

b. The full name, address, and telephone number(s) of all employees.

c. Results of annual live scans of all employees.

d. The full name, address, and telephone number(s) of all members who participate in cultivation of marijuana.

e. The state issued identification card number of all members to whom the medical marijuana business provides medical marijuana. If a member does not have a state issued identification card, then the medical marijuana business shall assign the member a unique identifying number for the use of the medical marijuana business, and maintain a written copy of the physician's referral for the member.

f. The full name, address, and telephone number(s) of all members to whom the medical marijuana business provides medical marijuana. *This specific identifying information of names, addresses and telephone numbers of members is considered to be conditionally privileged by the City and shall be deemed confidential and not subject to City inspection unless such inspection has been authorized by the City of Costa Mesa Police Chief or his/her designee in writing pursuant to a reasonable justification.*

g. The designation, by qualified patient(s) and person(s) with identification cards, of any and all primary caregivers who participate in the collective cultivation of marijuana.

h. The dates upon which all members are dispensed medical marijuana, the amount dispensed, and the name of the recipient.

i. The delivery of medical marijuana, from the medical marijuana business to a member located outside of the medical marijuana business location, including but not limited to the identity of the recipient, the amount delivered, the date of the delivery, the address of the delivery, the name of the employee making the delivery, and a written receipt from the member confirming the delivery.

j. A written accounting of all cash and in-kind contributions, reimbursements, and reasonable compensation provided by the management members and members to the medical marijuana business, and all expenditures and costs incurred by the medical marijuana business.

k. A copy of the medical marijuana business' commercial general liability insurance policy and all other insurance policies related to the operation of the medical marijuana business.

l. An inventory record documenting the dates and amounts of medical marijuana received at the medical marijuana business, the amounts of medical marijuana being cultivated at the location of the medical marijuana business, the daily amounts of medical marijuana stored at the location of the medical marijuana business, and the daily

amounts distributed to members.

m. Proof of a valid and current permit issued by the city in accordance with this chapter. Every medical marijuana business shall display at all times during business hours the permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the location of the medical marijuana business.

ii. Records shall be maintained on-site, either in paper or electronic form, and secured and verified by the City CEO or his/her designee as needed (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law), and at least every 12 months by the qualified patient's attending physician.

iii. All records required to be maintained by the medical marijuana business for no less than 3 years and are subject to immediate inspection upon written request by the City CEO or his/her designee.

d) Employees

i. A medical marijuana business shall maintain results of live scans conducted annually by the medical marijuana business on all employees, the written results of such live scans being maintained at the location of the medical marijuana business.

ii. No employee convicted within the last ten years of a felony substantially related to the qualifications, functions or duties of an employee of a medical marijuana business (such as a felony conviction for distribution of controlled substances, money laundering, racketeering, etc.) shall be employed by a medical marijuana business, unless such employee has

obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted. At the request of the medical marijuana business, the City CEO shall determine the applicability of this section to a potential employee within a reasonable period of time after a written request has been made to the City CEO for such determination.

iii. All employees must possess a valid government issued (or equivalent) form of identification containing an identifying photograph of the employee, the name of the employee, the date of birth of the employee, and the residential address of the employee. Color copies of such identification shall be maintained at the location of the medical marijuana business. A valid California Driver's license will satisfy this requirement.

iv. All owners and managers must have a current and valid identification card.

e) Volume.

A medical marijuana business shall only cultivate, dispense, store or transport medical marijuana in aggregate amounts tied to its members' needs. To that end a medical marijuana business shall ensure compliance with state law limits on amount of dried marijuana and amount of marijuana plants allowed per qualified patients and persons with identification cards and/or primary caregivers

f) Only Medical Marijuana.

Medical marijuana businesses shall dispense, offer for sale or provide only products which are closely associated with medical marijuana, such as pipes, rolling papers, etc.

g) No Recommendations On-site.

A medical marijuana business shall not have a physician or an attending physician at the location of the medical marijuana business to evaluate patients or provide a recommendation for medical marijuana.

h) Signage.

The following signs in measurements of not less than eight by ten inches shall be clearly and legibly posted in a conspicuous location inside the medical marijuana business where they will be visible to members in the normal course of a transaction, stating:

i. "Smoking, ingesting or consuming marijuana on this property or within 20 feet of the medical marijuana business is prohibited."

ii. "Minors are prohibited from entering this property unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian."

iii. "Neither the City of Costa Mesa, County of Orange, nor any other governmental agency has tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed at this location."

iv. "The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law."

i) No Alcohol.

Medical marijuana businesses shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate

a business that sells alcoholic beverages.

j) No Lounge or Cafe.

Medical marijuana businesses shall not operate as a lounge, cafe or restaurant serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of members.

k) Quality control.

Medical marijuana businesses shall disclose the percentage level of specified compounds, as designated from time to time by the City CEO or his/her designee, which are present in medical marijuana to members before providing medical marijuana.

l) Labeling.

i. Any medical marijuana provided to members shall be properly labeled in strict compliance with state and local laws, regulations and policies, including but not limited to those established by the City Office of Cultivation Standards and Quality Control.

ii. A distinct and clearly legible label must be affixed onto all medical marijuana items provided by a medical marijuana business which states:

a. This item contains medical marijuana
b. Warning that the item is a medication and not a food
c. Warning that the item is to be kept away from children.
d. Warning if nuts or other known allergens are used.
e. Date of manufacture.
f. Total weight (in ounces or grams) of marijuana in the item.

iii. Packaging that makes the product attractive to children or imitates candy is not allowed.

iv. Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the medical marijuana business.

v. The City Office of Cultivation Standards and Quality Control shall establish additional minimum requirements as deemed necessary for labeling of medical marijuana products, which shall be strictly adhered to by all medical marijuana businesses.

m) Edibles

All medical marijuana edibles shall comply with the California Sherman Food, Drug, and Cosmetic Law, as codified in section 109875, *et seq.* of Part 5 of Division 104 of the Health and Safety Code, and as amended from time to time. Further minimum requirements for all medical marijuana edibles include:

i. No edible medical marijuana products requiring refrigeration or hot-holding shall be manufactured for sale or distribution at a medical marijuana business, due to the potential for food-borne illness. Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at a medical marijuana business.

ii. Edible medical marijuana products for sale or distribution at a medical marijuana business must have been prepared by a member of that medical marijuana business. No non-member medical marijuana products are allowed for sale or distribution at a medical marijuana business.

n) Signage.

i. Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Costa Mesa Municipal Code.

ii. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements with the applicable zoning district.

o) Employee Training.

i. All employees of a medical marijuana business shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding maintaining compliance by the operation with State and local law.

ii. The medical marijuana business shall take those steps necessary to assure that the persons assigned to provide security are properly trained or employed by a private security service in good standing with all supervisory or regulatory bodies exercising jurisdiction over such services.

p) Supply.

A medical marijuana dispensary shall only acquire its supply of medical marijuana from its members.

q) Operating Hours for Medical Marijuana Dispensary.

The maximum hours of operation for a medical marijuana dispensary shall be daily from 7:00 a.m. to 10:00 p.m.

r) Use Restrictions.

Smoking, ingesting or consuming marijuana at the location of the medical marijuana business or within 20 feet of the medical marijuana business is prohibited.

s) No Minors.

i. Minors are prohibited from entering the location of the medical marijuana business unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

ii. No minor shall operate a medical marijuana dispensary in any capacity, including but not limited to, as a management member, employee, contractor or volunteer.

t) Odors.

A medical marijuana business shall have an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the medical marijuana business shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location of the medical marijuana business is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the medical marijuana business, if the use only occupies a portion of a building.

u) Insurance.

A medical marijuana business shall carry insurance in the amounts and of the types that are acceptable to the City CEO or his/her designee, with minimal coverage provided of comprehensive commercial general liability insurance and comprehensive automotive liability insurance (if automobiles are used by the medical marijuana business for any purpose) protecting the medical marijuana business in an amount of not less than one million dollars ($1,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than one million dollars ($1,000,000.00) aggregate for each personal injury liability, products liability and each accident. Such insurance shall name the city, its council members, officers, employees, agents and contractors as additional insured as respects to any liability arising out of the operation of the medical marijuana business.

v) Site management.

i. The medical marijuana business permit holder shall take all reasonable steps to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the members of the subject medical marijuana business.

a. "Reasonable steps" shall include immediately calling the police upon observation of the activity, and requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.

b. "Nuisance" includes but is not limited to disturbances of peace, open public consumption of medical marijuana or alcohol, excessive pedestrian or vehicular traffic, including the formation of

any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

ii. The medical marijuana business permit holder shall make available to members who are dispensed medical marijuana a list of the rules and regulations governing medical marijuana use and consumption within the city and recommendations on sensible medical marijuana etiquette.

w) Non-profit.

i. A medical marijuana business shall operate on a non-profit basis. A medical marijuana business shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the medical marijuana business should only be an amount necessary to cover overhead costs and operating expenses. Retail sales of medical marijuana that violate California law or this chapter are expressly prohibited.

ii. Reasonable proof (as determined to the satisfaction of the City CEO or his/her designee) of compliance with these non-profit requirements shall be providing annually to the City CEO or his/her designee in writing along with supporting documentation.

x) Delivery of Medical Marijuana to Members

i. All employees who provide delivery of medical marijuana from a medical marijuana business to a member located outside the medical marijuana business location must have a valid identification card at all times with the employee while the delivery is being made.

ii. All deliveries must be recorded by the medical marijuana business and maintained in the regular records of the medical marijuana business. These records shall include but not be limited to the identity of the recipient, the amount delivered, the date of the delivery, the address of the delivery, and the name of the employee making the delivery.

iii. Upon receipt of a delivery outside of the location of the medical marijuana business, a member must sign for the delivery on a written identifiable receipt to be kept in the regular records of the medical marijuana business.

iv. All deliveries must leave the medical marijuana business in sealed containers whose seals will not be broken until receipt of the delivery by the member.

y) Exemptions

The regulations contained in this Chapter shall not apply to a medical marijuana business engaged in the following uses: a clinic permitted pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility permitted pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness permitted pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice or a home health agency permitted pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law regulating such use and the location of such use, including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et. seq.

Sec. 9-501. Medical Marijuana Cultivation Standards and Quality Control

A medical marijuana cultivation site shall operate in conformance with the following standards, and such standards shall be deemed to be part of the conditions of approval on the medical marijuana cultivation site's permit to ensure that its operation is in compliance with California law and this Code, and to mitigate any potential adverse impacts of the cultivation of medical marijuana on the public health, safety or welfare.

To this end the City CEO or his/her designee is authorized (but not required) to establish a City Office of Cultivation Standards and Quality Control whose purpose will be to conduct regular inspection of cultivation practices and procedures at medical marijuana cultivation sites, as well as to test medical marijuana cultivated at medical marijuana cultivation sites.

a) Cultivation Standards.

The City Office of Cultivation Standards and Quality Control may:

i. Establish model guidelines for recommended best practices and procedures for the cultivation of medical marijuana.

ii. Determine whether the model guidelines are being adhered to by a permit holder for a medical marijuana cultivation site, and make available to the public the results.

b) Quality Control.

The City Office of Cultivation Standards and Quality Control may:

i. Establish testing standards for the quality of medical marijuana dispensed at medical marijuana businesses.

iii. Apply the testing standards to medical marijuana dispensed at medical marijuana businesses, and make available to the public the results.

c) Labeling.

The City Office of Cultivation Standards and Quality Control may establish labeling standards for all medical marijuana products consistent with both the results of inspections and testing pursuant to this section as well as deemed appropriate and necessary by the City CEO or his/her designee.

d) Pesticides and Contaminants.

i. Representative samples of all strains of medical marijuana distributed by a medical marijuana business shall be analyzed by the medical marijuana business or an independent laboratory (if and when such is available) to ensure it is free of harmful pesticides and other contaminants regulated by local, state or federal regulatory statutory standards.

ii. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level that exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith.

iii. The City Office of Cultivation Standards and Quality Control shall have the authority to enforce this section.

Sec. 9-502. Fees

a) Fees.

i. An application fee set by resolution of the city council shall be required for formal processing of every application made under this chapter.

ii. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon medical marijuana businesses and their operations.

b) State Board of Equalization Seller's Permit Required.

The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit from the State Board of Equalization. Such permit shall be conspicuously displayed at the Medical Marijuana Business. Failure to maintain the Seller's Permit is grounds for revocation of a medical marijuana dispensary permit and/or medical marijuana cultivation site permit.

Sec. 9-503. Location Restrictions

a) Medical marijuana businesses shall not be located within one thousand feet of a public or private school, public library or youth center (serving youth ages eighteen (18) and under).

b) Medical marijuana businesses shall not be located within two hundred (200') feet of a residential zone except pursuant to the issuance of a minor conditional use permit as determined by the director of development services.

c) Medical marijuana businesses may only be located in commercial, manufacturing or industrial zones as designated in Row 31a, Table 13-30, of Section 13-30 of chapter 4 of Title 13 of the Costa Mesa Municipal Code.

d) No medical marijuana business can be located within one thousand (1000') feet of any other medical marijuana business, irrespective of ownership.

Sec. 9-504. Suspension and Revocation.

The City CEO or his/her designee is authorized to suspend and/or revoke any and all permits issued pursuant to this chapter upon the determination through written findings of a failure to comply with any provision of this chapter, any condition of approval, or any agreement or covenant as required pursuant to this chapter. The City CEO or his/her designee may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

a) The City CEO or his/her designee determines that the medical marijuana dispensary or cultivation site has failed to comply with any aspect of this chapter, any condition or approval, or any agreement or covenant as required pursuant to this chapter; or

b) Operations cease for more than 180 calendar days (including during any change of ownership, if applicable); or

c) Ownership is changed without securing a new regulatory permit; or

d) The medical marijuana dispensary and/or cultivation site fails to maintain required security camera recordings; or

e) The medical marijuana dispensary and/or cultivation site fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized city officials.

Sec. 9-505. Violations and Penalties.

Any person, whether as principal, employee, agent, partner, director, officer, stockholder, or trustee or otherwise, violating or causing the violation of any of the provisions of this chapter shall be guilty of a misdemeanor, and any conviction thereof shall be punishable by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

Sec. 9-506. Public Nuisance.

In addition to the penalties set forth in this chapter, any medical marijuana business which is operating in violation of any provisions of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the permit holder of the medical marijuana business pursuant to Chapter III (Public Nuisance Abatement) of Title 20 (Property Maintenance) of the Costa Mesa Municipal Code. Any appeals to a determination that a medical marijuana business is operating as a public nuisance shall be pursuant to the provisions in the same chapter.

Sec. 9-507. Appeals

Any decision regarding approval, conditional approval, denial, suspension or revocation may be appealed to the city council in accordance with the provisions of Chapter IX of the Costa Mesa Municipal Code.

Sec. 9-508. Prohibited Operations and Nonconforming Use

All medical marijuana businesses in violation of Health and Safety Code Section 11362.7 et seq. and 11362.5 et seq., this chapter, or any other applicable State law are expressly prohibited.

It is unlawful for any medical marijuana business in the city, or any agent, employee or representative of such medical marijuana business, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the medical marijuana business, or to violate any State law, or this chapter.

No use which purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Costa Mesa Zoning Code, the Costa Mesa Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

Sec. 9-509. Severability

If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Costa Mesa hereby declare that they would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Sec. 9-510. Amendment

Provisions of this chapter may be amended to further their purposes by ordinance passed by a majority vote of the city council.

Sec. 9-511. Consistency with Statewide Regulation of Marijuana

This chapter shall be read consistent with any statewide regulation of medical marijuana that is promulgated by the California legislature or by voter approval in the future. In the event statewide regulation is passed pursuant to the decriminalization or legalization of marijuana for recreational use, this chapter shall govern the conduct of those business allowed to distribute marijuana under such provisions to the fullest extent possible consistent with such statewide regulation.

SECTION 2. Section 13-16 (Enforcement) of Article 4 (Enforcement) of Chapter I (General) of Title 13 (Planning, Zoning and Development) is hereby repealed and replaced with the following:

Sec. 13-16. Enforcement.

(a) Criminal prosecution. Any person, whether as principal, agent, or employee, violating the terms of this zoning code may be prosecuted as provided in section 1-33 of this Municipal Code.

(b) Criminal citation. For the purposes of this zoning code, a violation of the terms of this zoning code may be cited as either an infraction or misdemeanor pursuant to State Government Code Sections 36900 and 36901 and as provided in section 1-33 of this Municipal Code.

(c) Civil action. As an alternative to prosecution or citation, or as an additional action, the city attorney may, at the request of the development services director, institute an action in any court of competent jurisdiction to restrain, enjoin, or abate the condition(s) or activity(ies) found to be in violation of the provisions of this zoning code.

(d) Nuisance. Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this title or any condition of approval, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

SECTION 3. Line 31a of Table 13-30 (City of Costa Mesa Land Use Matrix) of Chapter IV (Citywide Landuse Matrix) of Title 13 (Planning, Zoning and Development) is hereby repealed and replaced with the following:

	ZONES																				
LAND USES	R 1	R 2 MD	R 2 HD	R 3	A P	C L	C 1	C 2	C 1 S	T C	M G	M P	PD RLD	PD RMD	PD RHD	PD RNCM	PD C	PD I	I & R	I & RS	P
31a Medical marijuana dispensaries[5]	•	•	•	•	•	•	p[5]	p[5]	p[5]	p[5]	p[5]	p[5]	•	•	•	•	p[5]	p[5]	•	•	•

[5] Subject to the limitations and requirements of Chapter VI (Medical Marijuana Dispensaries and Cultivation) of Title 9 (Licenses and Business Regulations).

SECTION 4. Effective Date. This Chapter, if approved by the electorate of the City of Costa Mesa at the Special Election of _____, 2015 shall become effective immediately upon the declaration of the results of that election by the City Council of the City of Costa Mesa.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 6. Execution. The Mayor is hereby authorized to attest to the adoption of the Ordinance by the voters of the City of Costa Mesa by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Costa Mesa, California voting on the _____ day of _____, 2015.

_____

Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney