ORDINANCE NO. 16-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING CODE AMENDMENT CO-15-06, AMENDING TITLE 13, CHAPTER I (DEFINITIONS AND ENFORCEMENT) AND CHAPTER IV (CITYWIDE LAND USE MATRIX), AND ADDING ARTICLE 20 TO CHAPTER IX ADOPTING NEW REGULATIONS RELATED TO PROHIBITING MARIJUANA CULTIVATION

THE CITY COUNCIL OF THE CITY OF COSTA MESA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, the City Council of City of Costa Mesa, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or permit these activities within the cities and counties; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA, marijuana remains a schedule I substance pursuant to Cal. Health & Saf. Code § 11054 (d)(13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional permit program pursuit to the MMRSA, then commencing March 1, 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code section 11372.777(c)(4)); and

WHEREAS, the City intends by the adoption of this ordinance to prohibit marijuana cultivation within the City for the express and specific purpose of preserving the City's authority to ban and/or adopt future regulations pertaining to marijuana cultivation as is required by California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA; and

WHEREAS, per Title 13, Zoning Code of the City of Costa Mesa, marijuana cultivation is not a permitted use in any of the zoning districts in the City; and

WHEREAS, the City Council of the City of Costa Mesa finds that it is in the interest of the health, safety and welfare of the City to make explicit that marijuana cultivation is prohibited anywhere in the City and is a public nuisance per se; and

WHEREAS, the City Council finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the City's jurisdiction. These impacts include the following:

A. In Orange County, public safety agencies, city residents, and other public entities have reported adverse impacts from marijuana cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes;

B. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime;

C. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from marijuana cultivation;

D. The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation;

E. The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors; and

F. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limits to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana; and

Whereas the City Council finds that sanctioning the cultivation of marijuana would be inconsistent with federal law; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, the City Council finds that this Ordinance will not adversely affect property values and will not be detrimental to the City; and

WHEREAS, the City Council has considered evidence presented by the Planning Commission and City Staff at a duly noticed public hearing held on December 14, 2015; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

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

Section 1: Title 13, Chapter I, Article 2, Definitions, Section 13-6 of the Costa Mesa Municipal Code is hereby amended to include the following new definitions within an alphabetized series of definitions:

"*Marijuana.* Has the same definition as that set forth in California Health & Safety Code Section 11018."

"*Medical marijuana.* Marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5."

"*Marijuana cultivation* and/or *Medical Marijuana Cultivation.* The planting, growing, harvesting drying or processing of marijuana plants or any part thereof for any purpose, including medical marijuana, and shall include both indoor and outdoor cultivation."

Section 2: Title 13, Chapter I, Article 4, Enforcement, Section 13-16(d), of Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 13-16. Enforcement

" *(d) No criminal prosecution, citation or penalty.* Notwithstanding the provisions of subsections (a) and (b) of this section, no person shall be criminally prosecuted or cited, or suffer any criminal penalty, for any violation of the provisions of section 13-30, Table 13-30, rows 31a and/or 31b relating to the prohibition of medical marijuana dispensaries or medical marijuana cultivation within the city, or for a violation of the provisions of Chapter IX, Article 20 related to the prohibition against medical marijuana cultivation. "

Section 3: Title 13, Chapter IX, Article 20 of Costa Mesa Municipal Code is hereby added as follows:

"Article 20. Marijuana and/or Medical Marijuana Cultivation

Sec. 13-200.84 PURPOSE

The purpose of this article is to prohibit marijuana cultivation, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City by maintaining local control over the ability to authorize and regulate marijuana-related businesses, including cultivation.

Sec. 13-200.85 APPLICABILITY

1. Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act of 1996.

2. All the provisions of this article shall apply to all property, public and private, within the City.

3. All the provisions of this article shall apply indoors and outdoors.

Sec. 13-200.86 DEFINITIONS

The following definition applies to this article:

"Person" shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.

Sec. 13-200.87 CULTIVATION OF MARIJUANA PROHIBITED

Marijuana and/or medical marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Costa Mesa.

Sec. 13-200.88 DECLARATION OF PUBLIC NUISANCE

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this article, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil and/or administrative 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.

Sec. 13-200.89 VIOLATIONS

Violations of this article shall be punishable pursuant to the provisions of section 13-16. "

Section 4: Title 13, Table 13-30 of Chapter IV (Citywide Land Use Matrix) of Costa Mesa Municipal Code is hereby amended to add row 31b as follows:

"31b. Marijuana and/or medical marijuana cultivation." [prohibited in all zones]

[See Attachment A]

Section 5: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 7: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and

shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2016

_____
Stephen Mensinger, Mayor

ATTEST:

_____
Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2016, and thereafter at the regular meeting of said City Council duly held on the _____ day of _____, 2016, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Brenda Green
City Clerk of the City of Costa Mesa

TABLE 13-30

CITY OF COSTA MESA LAND USE MATRIX

LAND USES	ZONES																				
	R1	R2MD	R2HD	R3	AP	CL	C1	C2	C1S[1]	TC[1]	MG	MP	PDRLD[1]	PDRMD[1]	PDRHD[1]	PDRNCM[1]	PDC[1]	PDI[1]	I&R[1]	I&RS[1]	P
INSTITUTIONAL AND RECREATIONAL USES																					
23. Cemeteries	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	C	•	•
24. Churches and other places of religious assembly (Subject to the requirements of ARTICLE 4.5 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY)	C[2]	C[2]	C[2]	C[2]	C[2]	C[2]	P[2]	P[2]	C[2]	C[2]	P[2]	P[2]	C[2]	C[2]	C[2]	C[2]	C[2]	C[2]	P[2]	C[2]	•
25. Civic and community clubs	C	C	C	C	C	C	P	P	P	P	C	C	C	C	C	C	C	C	C	•	•
26. Convalescent hospitals; Nursing homes	•	C	C	C	C	C	C	C	•	•	•	•	•	•	•	•	•	•	P	•	•
27. Country clubs; golf courses	C	C	C	C	•	•	•	•	•	•	•	•	C	C	C	C	•	•	P	C	•
28. Crematories - See also Mortuaries services	•	•	•	•	•	•	•	C	•	•	C	C	•	•	•	•	•	•	C	•	•
29. Fairgrounds; Outdoor festival (permanent)	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	C	•	•
30. Hospitals, general	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	P	•	•
31. Libraries, privately-operated	C	C	C	C	•	•	C	C	C	C	C	C	C	C	C	C	C	C	P	C	•
31a. Medical marijuana dispensary	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
31b. Marijuana and/or medical marijuana cultivation	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•