

**ORDINANCE NO. 2024-03**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT), CHAPTER IX (SPECIAL LAND USE REGULATIONS), ARTICLE 21 (LOCATION OF CANNABIS DISTRIBUTING, MANUFACTURING, RESEARCH AND DEVELOPMENT, TESTING LABORATORIES, RETAIL STOREFRONT AND RETAIL NONSTOREFRONT USES) OF THE COSTA MESA MUNICIPAL CODE OF THE COSTA MESA MUNICIPAL CODE PERTAINING TO CANNABIS STOREFRONTS**

THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA DOES HEREBY FIND AND DECLARE AS FOLLOWS:

WHEREAS, in November 2020, the Costa Mesa voters approved Measure Q; which allows for storefront and non-storefront retail cannabis uses on commercially zoned properties meeting specific location requirements, and non-storefront retail cannabis uses on Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties;

WHEREAS, Measure Q authorizes the City Council to adopt ordinances to regulate cannabis retail uses;

WHEREAS, on June 15, 2021, the City Council adopted Ordinance No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC) to establish regulations for cannabis retail uses;

WHEREAS, at the July 18, 2023 City Council meeting, a Councilmember requested that an item be agendaized to discuss the potential for exploring amendments to the City's cannabis ordinances in response to public input;

WHEREAS, on September 5, 2023, the City Council directed the Planning Commission to explore potential amendments to the City's cannabis retail storefront provisions specific to eight topics;

WHEREAS, the Planning Commission discussed potential amendments to the City's cannabis retail storefront provisions at the November 27, 2023, December 11, 2023, and January 22, 2024, Planning Commission meetings;

WHEREAS, the City Council considered the Planning Commission's recommended amendments to the City's cannabis retail storefront provisions at the March 19, 2024, April 2, 2024, April 16, 2024, and May 7, 2024 City Council meetings;

Now, therefore, THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13, of the Costa Mesa Municipal Code is hereby amended to read as specified in Exhibit A, attached hereto and incorporated herein by this reference.

Section 2. Compliance with CEQA. Pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) ("General Rule"), as this action will not have any significant effect on the environment.

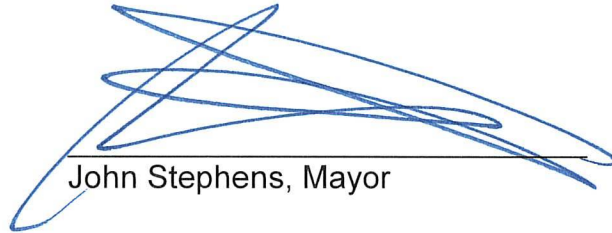
Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, 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 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 5. Effective Date. This Ordinance shall take effect thirty (30) days after its final passage.

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

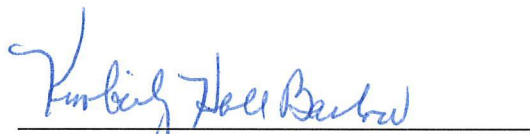
PASSED AND ADOPTED this 7<sup>th</sup> day of May, 2024.

  
John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

  
Brenda Green, City Clerk

  
Kimberly Hall Barlow, City Attorney

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

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Ordinance No. 2024-03 was duly introduced for first reading at a regular meeting of the City Council held on the 16<sup>th</sup> day of April, 2024, and that thereafter, said Ordinance was duly passed and adopted at a regular meeting of the City Council held on the 7<sup>th</sup> day of May, 2024, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: CHAVEZ, GAMEROS, MARR, REYNOLDS, HARLAN, AND STEPHENS.

NOES: COUNCIL MEMBERS: HARPER.

ABSENT: COUNCIL MEMBERS: NONE.

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 8<sup>th</sup> day of May, 2024.

  
Brenda Green, City Clerk

## EXHIBIT A

### **CHAPTER IX. SPECIAL LAND USE REGULATIONS. ARTICLE 21. LOCATION OF CANNABIS DISTRIBUTING, MANUFACTURING, RESEARCH AND DEVELOPMENT, TESTING LABORATORIES, RETAIL STOREFRONT AND RETAIL NON-STOREFRONT USES**

#### **13-200.90. Purpose.**

The purpose of this article is to regulate the location of and standards for cannabis distributing facilities, manufacturing sites, research and development laboratories, testing laboratories, retail storefront and retail non-storefront uses 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 the location of cannabis businesses.

#### **13-200.91. Applicability.**

- (a) 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.
- (b) All the provisions of this article shall apply to all property, public and private, within the city.
- (c) All the provisions of this article shall apply indoors and outdoors.
- (d) Unless otherwise provided herein or in this title, the terms used in this article shall have the meaning ascribed to them in Title 9, Chapter VI of this Code.

#### **13-200.92. Cannabis distributing facilities, manufacturing sites, research and development laboratories, and testing laboratories.**

- (a) Cannabis distribution, manufacturing, research and development and testing is prohibited in all zone districts within the city, except for those portions of the manufacturing park (MP) and planned development industrial (PDI) zones that are located both north of South Coast Drive and west of Harbor Boulevard, excluding any portion of the South Coast Collection (the "Green Zone").
- (b) A conditional use permit shall be required and may be issued to allow the location of any business engaged in the distribution, manufacturing, researching and developing, or testing of cannabis in the MP or PDI zones pursuant to subsection (a) of this section, subject to the following conditions:
  - (1) The requirements of Chapter III of this title have been met;
  - (2) The findings for granting a conditional use permit in accordance with section 13-29(g) are met;
  - (3) The applicant obtains a cannabis business license pursuant to Chapter VI of Title 9 of this Code; and
  - (4) The use is conducted in compliance with all applicable state and local laws.

(c) No person shall engage in any use set forth in this article unless that use is specifically authorized by Chapter VI of Title 9 of this Code.

**13-200.93. Cannabis retail storefront and non-storefront uses.**

- (a) Cannabis retail storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts.
- (b) Cannabis retail non-storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts and within the Green Zone.
- (c) The following planning application shall be required for cannabis retail uses:
  - (1) A conditional use permit shall be required for retail storefronts and non-storefronts; and
  - (2) An amendment to the approved conditional use permit shall be required for existing licensed cannabis distribution or manufacturing businesses to operate a retail non-storefront under the existing business and within the same licensed premise. The amendment shall be processed as a minor conditional use permit.
- (d) A conditional use permit may be issued to allow the location of a retail cannabis use pursuant to subsections (a) and (b) of this section, subject to the following conditions:
  - (1) The requirements of Chapter III of this title have been met;
  - (2) The findings for granting conditional use permit pursuant to section 13-29(g) are met;
  - (3) The applicant obtains a cannabis business licensed for the location pursuant to Chapter VI of Title 9 of this Code; and
  - (4) The use is conducted in compliance with all applicable state and local laws, regulations, and all applicable conditional use permit conditions of approval.
- (e) Cannabis retail storefront location.
  - (1) No cannabis retail storefront use shall be located within one-thousand (1,000) feet from a K-12 school, playground, child daycare, homeless shelter, or youth center, that is in operation at the time of submission of a completed Cannabis Business Permit application, or within two hundred fifty (250) feet from a property zoned for residential use;
    - i. For the purpose of identifying separations from cannabis storefronts and properties zoned for residential use, properties zoned for residential use are within the following zoning districts: R1 Single-Family Residential District, R2-MD Multiple-Family Residential District, Medium Density, R2-HD Multiple-Family Residential District, High Density, R3 Multiple-Family Residential District, TC Town Center District, PDR-LD Planned Density Residential—Low Density, PDR-MD Planned Development Residential—Medium Density, PDR-HD Planned Development Residential—High Density, and PDR-NCM Planned Development Residential—North Costa Mesa.
    - ii. Where a non-residential property was developed for residential or mixed residential use in accordance with an overlay, urban plan, or

specific plan, and the residential development and use remains, the property would be considered residential when establishing a separation from cannabis storefronts.

- iii. Where an overlay, urban plan, or specific plan allows residential development on a property zoned for residential use, but residential development has not been constructed, such property would not be considered a property zoned for residential use pursuant to this provision.
  - iv. Where a legal nonconforming residential unit or units have been developed on a property zoned for non-residential use, the property would not be considered residential when establishing a separation from cannabis storefronts.
- (2) All distances referenced in (e)(1) shall be measured in a straight line from the premises where the cannabis retail use is to be located to the closest property line of a K-12 school, playground, child daycare, homeless shelter, youth center or property zoned for residential use.
- i. For purposes of this sub-sub-section, the property line of a playground shall be a thirty (30) foot radius from the exterior physical boundaries of the playground equipment area;
- (3) All distances shall be measured without regard to the boundaries of the city and and/or intervening structures or other barriers;
- (4) At a property as for which the zoning administrator, director or planning commission determines, based on a preponderance of the evidence, that unpermitted and/or illegal cannabis activity involving sales, delivery and/or dispensing has taken place at any time in the 365 days preceding an application under this Article. If an unpermitted and/or illegal cannabis activity has existed on a property no cannabis business may be permitted on that property unless 365 days has elapsed since that unpermitted and/or illegal cannabis activity has vacated the property, and the owner of that property has compensated the City for any and all expenditure of public funds and resources, including all costs, expenses (including but not limited to the salaries of peace and/or code enforcement officers) and/or attorney's fees, incurred in investigating, abating or attempting to abate the unpermitted use or uses, whether or not any type of civil, criminal or administrative proceedings have been commenced against the property, provided however if the owner of the property is required to evict that use, the 365 days shall begin to run from the date of the filing of an unlawful detainer complaint, in which case a permit may be issued after the 365 days had elapsed and that use is no longer occupying the property.
- (5) A determination and/or finding under sub-section (e)(4) is subject to the appeal provisions of Chapter IX of Title 2 of this Code.
- (6) The nonconforming provisions contained in Chapter X of this Code pertain to cannabis uses except as follows:
- i. When an approved retail cannabis storefront conditional use permit location which lawfully met separation requirements at the time of the submission of a cannabis business permit application for the

subject property does not conform to the separation and the permitted cannabis retail operation is discontinued or abandoned for more than one hundred eighty (180) days, or when a permitted cannabis use is replaced in whole or part for any period of time by any other use, the conditional use permit shall be null and void after the permittee has had an opportunity for a hearing before the issuing officer as provided in Chapter II of Title 9.

- (f) Retail storefront uses shall be subject to the following development standards in addition to those contained in Chapter VI of Title 9:
- (1) Opaque window coverings unless required by the City for security purposes are prohibited;
  - (2) Permanent security or safety bars shall not be placed on any interior or exterior windows or door, unless required by the City for security purposes;
  - (3) Directional signage to the use including but not limited to A-frame signs, sandwich board signs, banners, or flags are prohibited;
  - (4) No use shall advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises of the commercial cannabis business or elsewhere including, but not limited to, the public right-of-way;
  - (5) Uses shall comply with the landscaping requirements set forth in Chapter VII of this title including bringing the site landscaping into conformance when feasible as determined by the director;
  - (6) Parking requirements shall be subject to Section 13-89;
  - (7) The hours of operation may be established as part of the planning application subject to the final review authority and may be more restrictive than those set forth in Chapter VI of Title 9. Modification of operation hours when established as part of the planning application shall be subject to an amendment of the planning application;
  - (8) Drive-through services or walk-up window services are prohibited;
  - (9) Outdoor seating or patio areas are prohibited;
  - (10) Special events that include live entertainment, dancing, and/or amplified music, or that are otherwise visible and/or audible from the public right-of-way, are prohibited;
  - (11) All cannabis products shall be secured after business hours in a locked container under 24-hour video surveillance; and
  - (12) For uses within two hundred (200) feet of a residential zone, all exterior lighting shall be shielded and/or directed away from residential areas. In addition, trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.
- (g) Non-storefront uses shall be subject to the following development standards in addition to those contained in Chapter VI of Title 9:
- (1) Uses may operate independently from a retail storefront or as a part of, and in conjunction with, a permitted storefront, distribution, or manufacturing facility;

- (2) Parking requirements shall be subject to Section 13-89 and shall also include sufficient parking spaces for delivery vehicles;
  - (3) All deliveries to customers shall be completed by 10:00 p.m.; and
  - (4) The general public shall not be permitted to enter the premises of a non-storefront retail use.
- (h) Except as specifically authorized in this article, all other cannabis retail uses such as but not limited to lounges and cafes are expressly prohibited in the city.
  - (i) No person shall engage in any use set forth in this article unless that use is specifically authorized by Chapter VI of Title 9 of this Code.
  - (j) Any cannabis use, including but not limited to those involving sale, delivery and/or dispensing, that is not permitted, licensed and otherwise in full compliance with all applicable provisions of this Code and state and local law, shall not be considered a legally non-conforming use pursuant to, and notwithstanding any contrary provisions of, Chapter IX of this title.

**13-200.94. 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.

**13-200.95. Violations.**

Violations of this article shall be punishable pursuant to the provisions of section 13-16 in addition to any other remedy available at law or in equity.