

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 and the management and

ownership of a medical marijuana business. 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.
- w)x) "Operator" means a manager and/or owner of a medical marijuana business.
- x)y) "Owner" means the owner of a medical marijuana dispensary and/or a medical marijuana cultivation site.
- y)z) "Permit" means the various regulatory licenses issued pursuant to this chapter, including but not limited to a license for a medical marijuana business.
- z)aa) "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)bb) "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)~~cc) “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.

~~ee)~~dd) “Police Department” means the Police Department of the City of Costa Mesa.

~~dd)~~ee) “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)~~ff) “Qualified Patient” has the same definition as set forth in Health and Safety Code section 11362.7(f).

~~ff)~~gg) “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)~~hh) “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

Comment [Issue1]:

Limit the number of permits?

Or, will simply limited zoning and location restrictions provide for enough limits on the maximum numbers of permits which can be issued?

Or, no cap on permits and allow the market to decide how many permits will be issued?

obtain a regulatory permit from the City CEO or his/her designee under the terms and conditions set forth in this chapter. A medical marijuana dispensary permit is valid for one year from the date of issuance. Conditions necessary for the continuing validity of any and all regulatory permits issued for the operation of a medical marijuana dispensary include:

Comment [Issue2]:

Need to determine selection process for issuance of permits. Should there be a lottery? A pre-screening? Some combination of the two?

- 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. A medical marijuana cultivation permit is valid for one year from the date of issuance. 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 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~~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.

Section 9-498. Medical Marijuana Business Operator Permit

A continuing condition for the operation of a medical marijuana business is that all operators of a medical marijuana business must maintain a current and valid medical marijuana business operator permit from the City CEO. An operator permit is valid for one year from the date of issuance. Conditions necessary for the continuing validity of any operator permit issued pursuant to this chapter include:

- a) Strict adherence to each and every requirement of this chapter.
- b) Maintaining with the city current and valid contact information of the operator.

Section 9-499. Application for Medical Marijuana Operator Permit

Any individual who intends to be an operator of a medical marijuana business shall file an application with the City CEO to obtain an operator permit upon a form provided by the city and shall pay a filing fee as established by resolution of the city council.

An application for a medical marijuana business operator permit shall include, but may not be limited to, the following information:

- a) Identification of the medical marijuana business which the applicant is seeking an operator permit.
- b) Provision of written live scan results for the applicant.

- c) Whether the applicant has been convicted within the last ten years of a felony substantially related to the qualifications, functions or duties of an operator of a medical marijuana business (such as a felony conviction for distribution of controlled substances, money laundering, racketeering, etc.) including whether such operator 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.
- d) Whether the applicant is a qualified patient, a primary caregiver and/or a legal representative of the medical marijuana business for which the application is being submitted.
- e) 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.
- f) Any such additional and further information as is deemed necessary by the City CEO to administer this chapter.

Comment [Issue3]:

Should all felons be disqualified for obtaining an operator permit?

Sec. 9-498500. 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, statute, ordinance, or regulation, including this code, at a particular location; or

- c) The applicant for either a medical marijuana dispensary permit or a medical marijuana cultivation permit 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, including the requirement of securing a conditional use permit for medical marijuana businesses, 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.

Comment [Issue4]:

If this is included then the zoning code will also need to be amended.

Sec. 9-499501. 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-~~500498~~.
- 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-~~501499~~(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. 9-502. Annual Permit Renewal

- a) Applications for the renewal of a permit shall be filed with the City CEO or his/her designee between ninety (90) and sixty (60) calendar days before the expiration of the current permit. Temporary permits will not be issued. Any permittee allowing his or her permit to lapse or which permit expired during a suspension shall be required to submit a new registration application and pay the corresponding original application fees.
- b) Any person desiring to obtain a renewal of his/her respective permit shall file a written application under penalty of perjury on a required form with the City CEO or his/her designee who shall conduct a reasonable investigation as warranted into whether the applicant has fully and completely complied with all provisions of this chapter during use of the permit.
- c) The application shall be accompanied by a nonrefundable filing fee established by separate resolution of the City Council to help defray the cost of the investigation required by this article.
- d) An applicant shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the City CEO in order to determine whether said permit should be renewed.

Sec. 9-~~500~~503. 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 and/or distribution of medical marijuana by members. Security guards shall be directed to report to the medical marijuana business all unlawful sales and/or distribution 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,

Comment [Issue5]:

Should all felons be prohibited from being employees?

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.

Comment [Issue6]:
Increase to those under 21?

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~~CEO.
- 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 marijuana 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~~CEO 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.

Comment [Issue7]:

Keep these hours?

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.**

Comment [Issue8]:

Increase age restriction to 21?

- 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.

iv-v. No delivery of medical marijuana, from the medical marijuana business to a member located outside of the medical marijuana business location, shall be performed by employees of the medical marijuana business for the two years subsequent to the effective date of this ordinance.

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, or the cultivation, storage, or use by a qualified patient or patients or that patient's or patients' primary caregiver or caregivers, incidental to a residential use by, and for the sole use of, the patient or patients who reside at such residential use location, 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.~~

~~e) 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~~504. 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. 9-503505. 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.

e) No medical marijuana business shall be established within two hundred (200') feet of either an existing sober living home as defined in Section 13-6, Article 2 of Title 13 of this Code, or a state licensed drug and alcohol treatment facility as defined in Health and Safety Code sections 11834.02 through 11834.30. This section expressly does not limit where sober living homes or state licensed drug and alcohol treatment facilities may be established and/or operate.

Comment [Issue9]:

What should minimum distance be if this section is added?

Sec. 9-504506. 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, or the operator, 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~~507. 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~~508. 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. 9-509. Cost Recovery for Excessive Use of Resources Due to Nuisance Activities at Medical Marijuana Businesses](#)

The purpose of this section is to provide administrative and civil remedies against responsible persons who permit, allow, or fail to prevent recurring nuisance activities to occur at medical marijuana businesses within the City of Costa Mesa that compromise the public health, safety or welfare.

a) Definitions. For the purposes of this section, the following words or phrases shall have the meanings given herein:

i. "Administrative costs" shall include, but not be limited to, any or all of the following:

a. All costs associated with any hearings before a hearing officer.

b. City's personnel costs, direct and indirect, incurred in enforcing this section and in preparing for, participating in or conducting any hearings subject to this section, including, but not limited to, attorney's fees.

c. The cost incurred by the city in documenting the nuisance activity, including, but not limited to, the actual expense and costs of the city responding to calls reporting nuisance activity; investigating and enforcing statutory offenses related to the nuisance activity, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, civil citations, and orders.

ii. "Call for service" shall mean any call made to the police department requesting police services at or near the premises, and shall include officer-initiated calls for service.

iii. "Officer-initiated calls for service" shall be calls for service that are generated by officers while on routine patrol wherein officers happen upon **nuisance activity as enumerated in subsection (x) below.**

- iv. "Chief of police" shall mean the Chief of the Police Department and shall include his/her designee.
- v. "Enforcement officer" shall mean any person authorized by the chief of police to enforce violations of this chapter.
- vi. "Excessive police call" shall mean any call for service for nuisance activity occurring at or in a medical marijuana business above the threshold amount of nuisance activity.
- vii. "Finance department" means the Finance Department of the City of Costa Mesa or any person or entity that the finance department designates to perform any of its functions and duties.
- viii. "Gang-related crime" means any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang.
- ix. "Hearing officer" shall mean any person appointed to preside over a hearing pursuant to this section. The hearing officer shall not be a city employee and his/her compensation shall not be dependent on any particular outcome of the hearing.
- x. "Nuisance activity" means the occurrence of any of the following activities, behaviors, or conduct occurring at a medical marijuana business:
- a. Disturbing the peace in violation of Penal Code Section 415.
 - b. Manufacturing, giving away, selling, offering for sale, soliciting the sale of, possessing, purchasing, using, igniting, exploding, firing or

otherwise discharging any fireworks within the city in violation of article 8 (fireworks sales) of chapter II (regulation of certain businesses) of title 9 (licenses and business regulations) of this Code, any applicable provisions of the California Fire Code, as adopted by reference by section 7-14, and section 7-19 of chapter 11 (fire prevention) of Title 7 (fire protection and prevention) of this Code.

- c. The occurrence or attempted occurrence of any gang-related crime.
- d. Unlawfully discharging a firearm, whether a handgun, long gun, and/or shotgun on lodging establishment property.
- e. Parties or gatherings at which alcohol or controlled substances are illegally consumed or used by minors.
- f. The occurrence or attempted occurrence of any other criminal activity that threatens the life, health, safety, or welfare of individuals at or near the medical marijuana business, the neighborhood, or the public, including but not limited to violations of federal, state or local law.
- g. The commission or attempted commission of any serious felony or violent felony as defined in Penal Code Sections 1192.7(c) and 667.5(c), respectively.
- h. The manufacture, cultivation, sale, use, or possession of a controlled substance in violation of the Uniform Controlled Substances Act (Health & Safety Code §§ 11000 et seq.).
- i. The commission or attempted commission of any act of prostitution as defined in Penal Code Section 647(b).

j. The manufacture, sale, possession, or use of a firearm in violation of the Dangerous Weapons Control Law (Penal Code § 12000 et seq.).

xi. "Property" shall mean the lot or parcel(s) of land where the medical marijuana business is located within the City of Costa Mesa.

xii. "Property owner" shall mean the owner of record of the property where the subject medical marijuana business is located, as shown on the latest equalized tax assessment role of Orange County.

xiii. "Responsible person" shall mean the property owner, the medical marijuana business owner, or both.

xiv. "Subsequent police response" means any police response to a specific property in response to nuisance activity, which is made within ninety (90) days after the chief of police has given a written warning to the responsible person notifying the responsible person that administrative costs will be imposed for any subsequent response to abate the nuisance.

xv. "Threshold amount of nuisance activity" means any calls for service for nuisance activity beyond a particular medical marijuana business' allotment per invoice period, which shall be based on an annual allotment of more than X calls for service per year for nuisance activities. The invoice period shall be set by city council resolution.

Comment [Issue10]:

If this section is used, this number needs to be set.

Perhaps base on square footage of business, annual revenues, or some other quantifiable number.

b) Authority. The chief of police shall be responsible for administering and enforcing the provisions of this section. The chief of police shall have the authority to designate city employees as enforcement officers in conformance with this section to assist with enforcement responsibilities, including, but not limited to, the issuance of civil citations.

c) Scope of Application.

- i. A criminal conviction is not required for establishing the occurrence of nuisance activity pursuant to this section. The occurrence of nuisance activity may be established by documented evidence that the nuisance activity was witnessed by a peace officer or other witness willing to testify.
- ii. The remedies set forth in this section are cumulative and in addition to any and all other legal and equitable remedies.

d) Chronic Nuisances at Medical Marijuana Establishments Prohibited. It shall be unlawful and a public nuisance for any responsible person to cause or allow a threshold amount of nuisance activity at or in any medical marijuana business owned or occupied by him or her.

e) Cost Recovery for Excessive Use of Police Resources for Nuisance Activities.

- i. When the chief of police determines that for any invoice period within which law enforcement has been dispatched to the same medical marijuana business in response to a threshold amount of nuisance activity at or in that medical marijuana business, the chief of police shall review the incident reports for that medical marijuana business and shall impose a cost recovery fee for all nuisance activity calls for service above the threshold amount of nuisance activity for that invoice period.

ii. The invoice for the cost recovery fee invoice shall:

a. Identify the medical marijuana business and the threshold amount of nuisance activity for that business;

b. Summarize the evidence of the nuisance activity occurring at or in

the medical marijuana business (including the documented observations of the peace officer or a witness willing to testify) for which the responsible person is being imposed a fee;

c. Provide the dates on which the nuisance activity was reported to the police department and the dates of any prior responses by the police department to nuisance activity at or in the medical marijuana business for the invoice period at issue; and

d. Notify the property owner and the medical marijuana business owner of the required corrective actions, including but not limited to conditions of operation, if any, and the date by which such corrective actions must be completed.

iii. Prior to the issuance of the cost recovery fee invoice, the chief of police shall provide the medical marijuana business owner and the property owner each with notice that the medical marijuana business is approaching its nuisance activity threshold.

f) Notice. Written notice to the responsible person shall be provided as follows:

i. Notice served upon a property owner by certified or registered mail, to the mailing address indicated on the last equalized assessment roll of the Orange County Assessor's Office.

ii. Notice served upon a medical marijuana business owner by certified or registered mail, to the mailing address provided on the business' most recent business license application.

iii. Notice shall be deemed served on the date the notice is received by the recipient, pursuant to the records of the U.S. Postal Service. In the event

the notice is refused by the recipient, notice shall be deemed served five business days following mailing of the notice by certified or registered mail.

g) Billing.

i. The responsible person may be notified in writing for every month that the medical marijuana business generates excessive police calls, including the date, time and type of nuisance activities that generated the calls, and the total amount that those calls will be invoiced.

ii. On a periodic basis, as determined by city council resolution, the responsible person shall be billed a cost recovery fee for each and every excessive police call. Such fee is to be paid by the responsible person.

A. On a periodic basis, the chief of police shall notify the finance department in writing of the name and address of the responsible person, the date and time of the nuisance activity, the services performed and the police services required, and such other information as may be necessary. The finance department shall thereafter cause appropriate billing of the administrative costs to be made to the responsible person, and shall serve such invoice to the responsible owner in accordance with section 9-508(f).

B. The invoice shall become final within ten (10) days of being served, unless appealed pursuant to section 9-508(h). Once a cost recovery invoice becomes final, payment shall be due to the city within thirty (30) days. The invoice shall make reference to the appeal procedures in section 9-508(h), and shall specify that an unsuccessful appellant shall also be invoiced for all administrative costs of the appeal.

C. Notice of the assessment of administrative costs shall be provided to the responsible person. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

iii. The cost recovery fee shall be set by city council resolution.

h) Appeal.

i. Appeals pursuant to this section shall be heard by an independent hearing officer.

ii. Any appeal shall be filed with the City CEO within ten (10) calendar days following the service of the invoice on the responsible person. The appeal shall be in writing and shall state the grounds for the appeal. The appeal

shall be accompanied by the amount owed under the invoice, as well as the fee required for the taking of the appeal, which fee shall be set by city council resolution. The City CEO shall have the discretion to waive or modify the amount to be deposited prior to the appeal if the responsible person demonstrates by clear and convincing evidence that depositing the full amount would result in a substantial hardship.

iii. The City CEO shall set the matter for a de novo hearing before the hearing officer at a date and time not less than ten (10), nor more than forty-five (45) calendar days following the filing of the appeal. The City CEO shall then notify the appellant by mail of the date and time of the hearing on appeal. The City CEO may, in his/her discretion, continue the hearing date for good cause.

iv. To allow appellants the opportunity to fully present their arguments, the formal rules of evidence shall not apply and all relevant evidence may be considered. However, the hearing officer shall have the discretion to exclude irrelevant evidence, i.e., evidence that does not pertain to the issue(s) on appeal. The hearing officer also has the discretion to exclude evidence the hearing officer deems needlessly repetitive.

v. The hearing officer's decision shall issue in writing within five (5) business days of the hearing, and shall be final. The decision shall include reference to Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

Sec. 9-507510. 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 Title 2 of the Costa Mesa Municipal Code, with the exception of the operation of Section 9-509 which provides for its own appeal procedures.

Comment [Issue11]:

Possibly limit ability of City Council Members to request appeals as provided for in CMMC Section 2-302.

Sec. 9-508511. 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. 9-509512. 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. 9-540513. Amendment

Provisions of this chapter may without any restrictions be amended or repealed ~~to further their purposes~~ by ordinance passed by a majority vote of the city council.

Sec. 9-~~514~~514. 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.

PROPOSED SPECIAL TAX SECTIONS FOR VOTER APPROVAL

Sec. 9-515. Medical Marijuana Tax

- a) Every person engaged in operating or otherwise conducting a medical marijuana business, and regardless of whether such business has valid permit(s) pursuant to this Code and/or this chapter, shall pay a maximum marijuana tax of 15 cents for each \$1.00 of proceeds or fractional part thereof, the rate to be set by resolution of the City Council.
- b) Every person engaged in the cultivation of medical marijuana, and regardless of whether such cultivation has valid permit(s) pursuant to this Code and/or this chapter, shall pay a maximum monthly fee of \$10.00 per square foot under active cultivation, the rate to be set by resolution of the City Council.
- c) An annual medical marijuana business license fee set by resolution of the City Council, but not to exceed \$10,000, shall be required for the issuance of a medical marijuana business permit. Separate permits may be required for the

cultivation of medical cannabis as distinct from the dispensing of medical cannabis.

- d) All revenues collected from the medical marijuana taxes provided for in this chapter are to be strictly allocated to only the following specific purposes in the order listed:
- i. Reimbursement to the City for all costs incurred for the holding of a special election on this tax measure;
 - ii. Enforcement of this Chapter by City officers and employees;
 - iii. Unfunded City pension liabilities;
 - iv. Drug abuse and prevention education programs;
 - v. Homeless prevention programs and the provision of affordable housing and/or temporary housing within the City.
- e) Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in this Code.
- f) The City Council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- g) The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter implies or authorizes that any activity connected with the distribution or possession of marijuana is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of this Code. Nothing in this chapter shall be applied or construed as

authorizing the sale of marijuana.

- h) Taxes provided for under the provisions of this chapter are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual member; rather, the taxes are imposed upon the medical marijuana business.
- i) The City CEO or his/her designee shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Sec. 9-516. Medical Marijuana Tax Regulations and Procedures

- a) Returns and Remittances. The medical marijuana taxes set forth in this chapter shall be due and payable as follows:
 - i. Each person owing Tax under this chapter, on or before the last business day of each calendar month as established by the City CEO, shall prepare a tax return to the City CEO of the total proceeds and/or total square feet under active cultivation, and the amount of Tax owed for the preceding calendar month. At the time the Tax return is filed, the full amount of the Tax owed for the preceding calendar month shall be remitted to the city.
 - ii. All tax returns shall be completed on forms provided by the City CEO or his/her designee.
 - iii. Tax returns and payments for all outstanding taxes owed the city are immediately due the City CEO upon cessation of business for any reason.

iv. Whenever any payment, statement, report, request or other communication received by the City CEO is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the City CEO is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the City CEO may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.

v. Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified in by this section.

vi. The City CEO is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

b) Failure to Pay Tax. Any person who fails or refuses to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

i. A penalty equal to twenty-five percent of the amount of the Tax in addition to the amount of the Tax, plus interest on the unpaid Tax calculated from

the due date of the Tax at a rate established by resolution of the City Council; and, an additional penalty equal to twenty-five percent of the amount of the Tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid Tax and interest on the unpaid penalties calculated at the rate established by resolution of the City Council.

ii. Whenever a check is submitted in payment of a Tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the Tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

iii. The Tax due shall be that amount due and payable from the operative date of this chapter.

iv. The City CEO may waive the first and second penalties of twenty-five percent each imposed upon any person if:

a. The person provides evidence satisfactory to the City CEO that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the City CEO for a waiver.

b. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period.

c) Refunds.

- i. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this Section.
- ii. No refund of any Tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a medical marijuana business.
- iii. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against medical marijuana business Taxes for the next calendar month.
- iv. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the Tax provided that a written claim for refund is filed with the City CEO.
- v. The City CEO shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the City CEO to do so.
- vi. In the event that the Tax was erroneously paid and the error is attributable to the city, the entire amount of the Tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this Chapter from the amount to be refunded to cover expenses.
- vii. The City CEO shall initiate a refund of any Tax which has been overpaid or erroneously collected whenever the overpayment or erroneous

collection is uncovered by a city audit of Tax receipts. In the event that the Tax was erroneously paid and the error is attributable to the city, the entire amount of the Tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

d) Enforcement.

- i. It shall be the duty of the City CEO to enforce each and all of the provisions of this chapter.
- ii. For purposes of administration and enforcement of this chapter generally, the City CEO, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.
- iii. The City CEO or his/her designee shall have the power to audit and examine all books and records of medical marijuana businesses as well as persons engaged in the operation of a medical marijuana business, including both state and federal income tax returns, California sales tax returns, cultivation records or logs, or other evidence documenting the gross receipts of the medical marijuana business or persons engaged in the operation of a medical marijuana business, or other evidence documenting the cultivation of medical marijuana, for the purpose of ascertaining the amount of Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such medical marijuana business or person, after written demand by the City CEO, refuses to make available for audit, examination or verification such books, records, or equipment as the City CEO requests, the City CEO may, after full consideration of all information within the City CEO's knowledge concerning the medical marijuana

business and activities of the person so refusing, make an assessment in the manner provided in subsection (F) of this Section.

iv. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

v. Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring permits from the City as provided for in this Chapter shall be deemed guilty of a misdemeanor.

e) Debts; Deficiencies; Assessments.

i. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person operating a medical marijuana business without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such medical marijuana business.

ii. If the City CEO is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the City CEO may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One

or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

iii. Under any of the following circumstances, the City CEO may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:

a. If the person has not filed any statement or return required under the provisions of this chapter.

b. If the person has not paid any tax due under the provisions of this chapter.

c. If the person has not, after demand by the City CEO, filed a corrected statement or return, or furnished to the City CEO adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.

d. If the City CEO determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

e. The notice of assessment shall separately set forth the amount of any tax known by the City CEO to be due or estimated by the City CEO, after consideration of all information within the City CEO's

knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

f. The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the City CEO for the purpose of receiving notices provided under this Chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the City CEO for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

g. Within ten days after the date of service the person may apply in writing to the City CEO for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the City CEO shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the City CEO shall cause the matter to be set for hearing before a hearing officer pursuant to the provisions of this Code not later than thirty days after the date of application, unless a later date is agreed to by the City CEO and the person requesting the hearing. Notice of such hearing shall be given by the City CEO to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the

City CEO should not be confirmed and fixed as the tax due. After such hearing the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this Chapter for giving notice of assessment.

f) The tax measures provided for in this section which apply to medical marijuana are intended to equally apply to all marijuana if statewide authorization of general marijuana use in California is promulgated in the future.

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:

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ATTACHMENT A

LAND USES	ZONES																				
	R 1	R 2 M D	R 2 H D	R 3	A P	C L	C 1	C 2	C 1 S	T C	M G	M P	P D R L D	P D R M D	P D R H D	P D R N C M	P D C	P D I	I & R	I & R S	P
3 a 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 General Municipal Election of November 4, 2014 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

_____.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney