

**ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER IX (SPECIAL LAND USE REGULATIONS), ARTICLE 21 (LOCATION OF MARIJUANA DISTRIBUTING, MANUFACTURING, RESEARCH AND DEVELOPMENT AND TESTING LABORATORIES), AND CHAPTER IV (CITYWIDE LAND USE MATRIX), TABLE 13-30 (LAND USE MATRIX) OF TITLE 13 (CODE AMENDMENT CO-2021-01) TO ESTABLISH THE DEVELOPMENT STANDARDS FOR CANNABIS USES, INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES TO IMPLEMENT THE CITY OF COSTA MESA RETAIL CANNABIS TAX AND REGULATION MEASURE (MEASURE Q)**

**THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

WHEREAS, on July 21, 2020, the City Council voted to place a ballot measure for the 2020 General Election asking city voters whether or not to allow retail cannabis storefront (dispensaries) and non-storefront (deliveries) businesses in the City;

WHEREAS, on November 3, 2020, city voters approved the “City of Costa Mesa Retail Cannabis Tax and Regulation Measure”, also known as, Measure Q;

WHEREAS, Measure Q authorizes the City Council to adopt an ordinance which permits and regulates retail cannabis storefront (dispensaries) and non-storefront (deliveries) businesses;

WHEREAS, Measure Q authorizes the City Council to impose a four-percent (4%) to seven-percent (7%) gross receipts tax on retail cannabis businesses. In addition, Measure Q requires retail cannabis businesses to meet certain operating requirements including permitted zones, minimum of 1,000 feet separation distance from sensitive uses such as schools, childcare centers, playgrounds and homeless shelters, security measures, and a requirement for a labor peace agreement for businesses with two or more employees;

WHEREAS, a Zoning Code Amendment is necessary to implement Measure Q and establish the minimum operating requirements and development standards in the Costa Mesa Municipal Code to tax, review, and regulate retail cannabis storefront and non-storefront businesses operating in the City;

WHEREAS, Chapter IX (Special Land Use Regulations), Article 21 (Location of Marijuana Distributing, Manufacturing, Research and Development and Testing Laboratories), Section 13-200.92 of Title 13 (Planning, Zoning and Development) contains permitted zones and planning application requirements for cannabis distribution, manufacturing, research and development, and testing laboratory uses. Chapter IV (Citywide Land Use Matrix), Table 13-30 (Land Use Matrix) of Title 13 prohibits retail cannabis sales;

WHEREAS, the proposed amendments to Chapter IX, Article 21 would add *inter alia* a new section, Section 13-200.93, to establish the permitted zones, planning application requirements, separation requirements from sensitive uses, and specific development standards for retail cannabis uses. The proposed amendment to Table 13-30 (Land Use Matrix) would revise cannabis retail sales from prohibited to conditionally permitted with an MCUP as well as add a land use category for cannabis retail sales non-storefront;

WHEREAS, the Title 13, "Planning, Zoning and Development", (the Zoning Code) of the Costa Mesa Municipal Code sets forth the zoning and land use regulations for the City in general; and,

WHEREAS, the City Council held a public hearing on April 20, 2021 with all persons having the opportunity to speak for and against the proposal; and,

WHEREAS, the Zoning Code Amendment and Ordinance No. 2021-08 have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures. The Code Amendment has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) and Section 15308 (Class 8, Actions by Regulatory Agencies for the Protection of the Environment) because the recommended ordinance will not have a significant effect on the environment. The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15301 (Class 1, Existing Facilities), Section 15303 (Class 3, New Construction or Conversion of Small Structures), and Section 15332 (Class 32, In-fill Development Projects) because future construction for retail cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction that will also not have a significant effect on the environment; and

WHEREAS, the CEQA findings reflect the City's independent judgment and analysis; and

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

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

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

**SECTION 1. Zoning Code Amendment.** Chapter IX (Special Land Use Regulations), Article 21 (Location of Marijuana Distributing, Manufacturing, Research and Development and Testing Laboratories), and Chapter IV (Citywide Land Use Matrix), Table 13-30 (Land Use Matrix) of Title 13 as specified in Exhibit 1, attached hereto and incorporated herein by this reference, are hereby amended in their entirety as set forth therein.

**SECTION 2. Compliance with CEQA.** Pursuant to the California Environmental Quality Act (CEQA), the Code Amendment has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) and Section 15308 (Class 8, Actions by Regulatory Agencies for the Protection of the Environment) the ordinance will not have a significant effect on the environment. The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15301 (Class 1, Existing Facilities), Section 15303 (Class 3, New Construction or Conversion of Small Structures), and Section 15332 (Class 32, In-fill Development Projects) because future construction for retail cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction that will also not have significant effect on the environment.

**SECTION 3. Inconsistencies.** Any provision of this ordinance which is inconsistent with state law shall be interpreted in a manner to be consistent with state law. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase 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 City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 5. Effective Date.** This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

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

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the following XX vote:

\_\_\_\_\_  
John Stephens, Mayor

ATTEST:

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Brenda Green, City Clerk

APPROVED AS TO FORM:

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Kimberly Hall Barlow, City Attorney

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

I, Brenda Green, City Clerk of the City of Costa Mesa, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2021-08 \_\_\_\_ introduced at a regular meeting of the City Council of the City of Costa Mesa held on the \_\_\_\_ day of \_\_\_\_\_, 2021, and was thereafter adopted at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:           COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSTAIN:       COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brenda Green, City Clerk

(SEAL)

## **EXHIBIT 1**

### **ARTICLE 21. LOCATION OF CANNABIS DISTRIBUTING, MANUFACTURING, RESEARCH AND DEVELOPMENT, TESTING LABORATORIES, RETAIL STOREFRONT AND RETAIL NON-STOREFRONT USES**

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

The purpose of this article is to regulate the location of and standards for cannabis distributing facilities, manufacturing sites, research and development laboratories, testing laboratories, retail storefront and retail non-storefront uses in order to promote the health, safety, morals and general welfare of the residents and the businesses within the city by maintaining local control over the ability to authorize and regulate the location of cannabis businesses.

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

- (a) Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act of 1996.
- (b) All the provisions of this article shall apply to all property, public and private, within the city.
- (c) All the provisions of this article shall apply indoors and outdoors.
- (d) Unless otherwise provided herein or in this title, the terms used in this article shall have the meaning ascribed to them in Title 9, Chapter VI of this Code.

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

- (a) Cannabis distribution, manufacturing, research and development and testing is prohibited in all zone districts within the city, except for those portions of the manufacturing park (MP) and planned development industrial (PDI) zones that are located both north of South Coast Drive and west of Harbor Boulevard, excluding any portion of the South Coast Collection (the “Green Zone”).
- (b) A conditional use permit shall be required and may be issued to allow the location of any business engaged in the distribution, manufacturing, researching and developing, or testing of cannabis in the MP or PDI zones pursuant to subsection (a) of this section, subject to the following conditions:
  - (1) The requirements of Chapter III of this title have been met;
  - (2) The findings for granting a conditional use permit in accordance with section 13-29(g) are met;
  - (3) The applicant obtains a cannabis business license pursuant to Chapter VI of Title 9 of this Code; and
  - (4) The use is conducted in compliance with all applicable state and local laws.
- (c) No person shall engage in any use set forth in this article unless that use is specifically authorized by Chapter VI of Title 9 of this Code.

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

- (a) Cannabis retail storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts.
- (b) Cannabis retail non-storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts and within the Green Zone.
- (c) The following planning application shall be required for cannabis retail uses:
  - (1) A conditional use permit shall be required for retail storefronts and non-storefronts; and
  - (2) An amendment to the approved conditional use permit shall be required for existing licensed cannabis distribution or manufacturing businesses to operate a retail non-storefront under the existing business and within the same licensed premise. The amendment shall be processed as a minor conditional use permit.
- (d) A conditional use permit may be issued to allow the location of a retail cannabis use pursuant to subsections (a) and (b) of this section, subject to the following conditions:
  - (1) The requirements of Chapter III of this title have been met;
  - (2) The findings for granting conditional use permit pursuant to section 13-29(g) are met;
  - (3) The applicant obtains a cannabis business license for the location pursuant to Chapter VI of Title 9 of this Code; and
  - (4) The use is conducted in compliance with all applicable state and local laws.
- (e) No cannabis retail storefront use shall be located:
  - (1) Within one-thousand (1,000) feet from a K-12 school, playground, child daycare, or homeless shelter, or within six-hundred (600) feet from a youth center, that is in operation at the time of submission of a completed Cannabis Business Permit application;
  - (2) All distances shall be measured in a straight line from the premises where the cannabis retail use is to be located to the closest property line of a K-12 school, playground, child daycare, homeless shelter or youth center;
    - i. For purposes of this sub-sub-section, the property line of a playground shall be a thirty (30) foot radius from the exterior physical boundaries of the playground equipment area.
  - (3) All distances shall be measured without regard to the boundaries of the city and and/or intervening structures or other barriers;
  - (4) At a property as for which the zoning administrator, director or planning commission determines, based on a preponderance of the evidence, that unpermitted and/or illegal cannabis activity involving sales, delivery and/or dispensing has taken place at any time in the 365 days preceding an application under this Article. If an unpermitted and/or illegal cannabis activity has existed on a property no cannabis business may be permitted on that property unless 365 days has elapsed since that unpermitted and/or illegal cannabis activity has vacated the property, and the owner of that property has compensated the City for any and all expenditure of public funds and resources, including all costs, expenses (including but not limited to the salaries of peace and/or code enforcement officers) and/or attorney's fees, incurred in investigating, abating or attempting to abate the unpermitted use or uses, whether or not any type of civil, criminal or administrative proceedings have been commenced against the property, provided however if the owner of the property is required to evict that use, the 365 days



shall begin to run from the date of the filing of an unlawful detainer complaint, in which case the a permit may be issued after the 365 days had elapsed and that use is no longer occupying the property.

- (5) A determination and/or finding under sub-section (e)(4) is subject to the appeal provisions of Chapter IX of Title 2 of this Code.
- (f) Retail storefront uses shall be subject to the following development standards in addition to those contained in Chapter VI of Title 9:
  - (1) Opaque window coverings unless required by the City for security purposes are prohibited;
  - (2) Permanent security or safety bars shall not be placed on any interior or exterior windows or door, unless required by the City for security purposes;
  - (3) Directional signage to the use including but not limited to A-frame signs, sandwich board signs, banners, or flags are prohibited;
  - (4) No use shall advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises of the commercial cannabis business or elsewhere including, but not limited to, the public right-of-way;
  - (5) Uses shall comply with the landscaping requirements set forth in Chapter VII of this title including bringing the site landscaping into conformance when feasible as determined by the director;
  - (6) Parking requirements shall be subject to Section 13-89;
  - (7) The hours of operation may be established as part of the planning application subject to the final review authority and may be more restrictive than those set forth in Chapter VI of Title 9. Modification of operation hours when established as part of the planning application shall be subject to an amendment of the planning application;
  - (8) Drive-through services or walk-up window services are prohibited;
  - (9) Outdoor seating or patio areas are prohibited;
  - (10) Special events that include live entertainment, dancing, and/or amplified music, or that are otherwise visible and/or audible from the public right-of-way, are prohibited;
  - (11) All cannabis products shall be secured after business hours in a locked container under 24-hour video surveillance; and
  - (12) For uses within two hundred (200) feet of a residential zone, all exterior lighting shall be shielded and/or directed away from residential areas. In addition, trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.
- (g) Non-storefront uses shall be subject to the following development standards in addition to those contained in Chapter VI of Title 9:
  - (1) Uses may operate independently from a retail storefront or as a part of, and in conjunction with, a permitted storefront, distribution, or manufacturing facility;
  - (2) Parking requirements shall be subject to Section 13-89 and shall also include sufficient parking spaces for delivery vehicles;
  - (3) All deliveries to customers shall be completed by 10:00 p.m.; and
  - (4) The general public shall not be permitted to enter the premises of a non-storefront retail use.



