

ORDINANCE NO. 2021-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING SECTION 9-29.5 OF ARTICLE 5 (ADMINISTRATION, APPLICATION AND PROCEDURES) OF CHAPTER I (BUSINESS TAX) AND SECTIONS 9-116, 9-119, 9-120 & 9-121 OF CHAPTER II (REGULATION OF CERTAIN BUSINESSES) AND CHAPTER VI (MARIJUANA BUSINESS PERMITS) OF TITLE 9 (LICENSES AND BUSINESS REGULATIONS) TO ESTABLISH THE TAX RATE, OPERATING REQUIREMENTS AND 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)

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

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 (delivery) 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 one thousand feet (1,000') from sensitive uses such as schools, childcare centers, playgrounds and homeless shelters, security measures, and labor peace agreement for businesses with two or more employees;

WHEREAS, this Ordinance 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 in the City;

WHEREAS, Ordinance No. 2021-09 has 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 a recommendation is not a final action and 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 that will also not have significant effect on the environment;

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.

THE COSTA MESA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Title 9, Chapter I, Article 5, Section 9-29.5 of the Costa Mesa Municipal Code, is hereby amended to read as follows:

9-29.5. Cannabis tax.

Notwithstanding any other provision of this Code, every person engaged in, managing, conducting, or carrying on any cannabis business defined in Chapter VI of this title, or any other marijuana and/or cannabis business, shall pay an annual business tax as follows:

- (a) Every person who is lawfully engaged in, managing, conducting, or carrying on a business as a cannabis distributor, manufacturer, and/or research and development laboratory, as set forth in Section 9-486(a), shall pay an annual business tax of one (1) percent based on the gross receipts of that business.
- (b) Every person who is lawfully engaged in, managing, conducting, or carrying on a business as a cannabis testing laboratory, as set forth in Section 9-486(a), shall pay no annual business tax.
- (c) Every person who is engaged in, managing, conducting, or carrying on a business as a cannabis store-front retailer, as set forth in Section 9-486(a), and/or who otherwise sells, dispenses and/or furnishes cannabis anywhere within the city, shall pay an annual business tax of seven (7) percent based on the gross receipts of that business.
- (d) Every person who is engaged in, managing, conducting, or carrying on a business as a cannabis non-store front retailer, as set forth in Section 9-486(a), and/or who otherwise delivers cannabis anywhere within the city, shall pay an annual business tax of seven (7) percent based on the gross receipts of that business, subject to the applicable provisions of section 9-40.
- (e) Every cannabis business that is engaged as a distributor, manufacturer, or research and development laboratory, that is also engaged in retail sales or

delivery of the same cannabis products, shall pay the business tax as set forth in 9-29.5 subsections (c) and (d), as applicable, for the retail sale or delivery of the same cannabis and cannabis products and is not required to pay business taxes set forth in 9-29.5(a). The operator has the burden of proving that the cannabis or cannabis products involved in the distribution, manufacturing, and/or research and development are the same.

- (f) The proceeds of the tax set forth in sub-sections (a), (c), (d), and (e) shall be subject to an annual audit as scheduled by the City Manager or Director of Finance.
- (g) One half of one percent of the proceeds of the tax set forth in sub-sections (c) and (d) shall be directed toward the implementation of the Cultural and Arts Master Plan and one half of one percent shall be directed towards the implementation of a first time homebuyer program for current residents of the City, former residents who were raised in the City and/or who graduated from the Newport Mesa Unified School District.

Section 2: Title 9, Chapter II, Article 1, Sections 9-116, 9-119, 9-120 and 9-121 of the Costa Mesa Municipal Code, are each hereby amended to read as follows:

9-116. Issuing officer.

“Issuing officer” shall mean the city council of Costa Mesa, the city manager, the Director of Finance, the fire chief, the chief of police, or the director of Economic and Development Services, as applicable, including such person’s designee.

9-119. Revocation or suspension of permits.

A business tax registration certificate or any other permit issued under this title may be revoked or suspended on the following grounds:

- (a) Where said issuing officer has found and determined that the preservation of the public health, safety, peace and welfare necessitate revocation of said business tax registration certificate or permit.
- (b) Where the applicant or permittee has violated any applicable provisions of this title, other provisions of this Code as defined in section 1-35, order of the Health Officer or the Emergency Services Director and/or any other provision of law.
- (c) Where a business tax registration certificate or permit has been granted on false or fraudulent evidence, testimony, or application.
- (d) Where the applicant or permittee has violated the terms and provisions of said business tax registration certificate or permit.

Exception. Notwithstanding the foregoing or any other provision of this title to the contrary, licenses issued to chiropractors, laboratory technicians, dentists, medical doctors, opticians, physical therapists, nurses, psychologists, pharmacists, veterinarians, accountants, advertising architects, landscape architects, building designers, attorneys, barbers, engineers, collection agencies, contractors, cosmetologists, private detectives, funeral directors, shorthand reporters, structural pest control operations, land surveyors, ship brokers, cleaners and dyers, electronic repair dealers, real estate agents and brokers, marriage counselors, auto dealers, boxers and wrestlers, furniture and bedding dealers and manufacturers, manufacturers of paints, petroleum activities, dealers in secondhand goods, or any other business, profession or trade where the determination of issuance or revocation of the right of any person to engage in such business, profession, or trade is solely vested in a state board or agency and is not otherwise regulated by this code, shall be issued upon filing the requisite application and payment of the requisite fees and shall not be subject to revocation or suspension except any such business tax registration certificate may be revoked for nonpayment of fees or upon revocation of the state board or agency license.

9-120. Permittee entitled to hearing prior to revocation or suspension.

- (a) No business tax registration certificate or permit shall be revoked or suspended until said permittee has had an opportunity for a hearing before the issuing officer.
- (b) Written notice of the revocation or suspension, the reasons therefore and the requirement to request a hearing shall be given by certified mail to a certificate holder or permittee's last known mailing address or by such other method reasonably calculated to provide notice.
- (c) The revocation or suspension shall be final and effective after ten (10) calendar days following the date of mailing set forth in sub-section (b), unless the certificate holder or permittee files an application for a hearing with the city clerk prior to such effective date. There shall be no cost to the certificate holder or permittee for such a hearing under this section.
- (d) Except as otherwise provided in sub-section (e) the hearing shall be commenced within 30 calendar days of the filing of an application for hearing. Hearings conducted pursuant to this section shall be open to the public, shall not be conducted according to the technical or traditional rules relating to evidence, and shall provide, personally or by counsel or both, an opportunity for certificate holder or permittee to defend and present evidence on their behalf. At least ten calendar days prior to the hearing, certificate holder or permittee shall be provided with any documentation upon which the revocation or suspension is based. Following the close of the hearing the issuing officer shall within 30 days render a written decision whether or not to impose revocation or suspension.

- (e) Notwithstanding the foregoing, the city manager or director of finance may suspend, pending a hearing, any business tax registration certificate or permit where it has been determined by said official that an immediate suspension of the business tax registration certificate or permit is necessary for the protection of the public health, safety, peace and welfare. In the event of such a suspension, the director of finance shall, within twelve (12) hours after said suspension, cause to be served upon said business or permittee a written statement containing the grounds for said suspension, any written documentation upon which the revocation is based and a notice of hearing to show cause before the issuing officer why said permit should not be permanently revoked, which said hearing shall be commenced no later than five (5) calendar days following the service of said notice unless the parties thereto agree otherwise, and thereafter followed by a written decision pursuant to sub-section (d).

9-121. Appeal from the decision of the issuing officer.

Appeals from decision of the hearing officer provided for herein shall be made in accordance with the procedure of Chapter IX of Title 2 of this Code.

Section 3: Title 9, Chapter VI of the Costa Mesa Municipal Code, is hereby amended in its entirety to read as follows:

CHAPTER VI. CANNABIS BUSINESS PERMITS

9-481. Purpose and intent.

It is the purpose and intent of this chapter to regulate the distributing, manufacturing, processing, research and development, retail sale, testing and transporting of cannabis and cannabis-related products in a manner which is responsible, which protects the health, safety, and welfare of the residents of Costa Mesa, and to enforce rules and regulations consistent with state law. In part to meet these objectives, a permit shall be required in order to own and/or to operate a cannabis business within the city. Nothing in this chapter is intended to authorize the possession, use, or provision of cannabis for purposes which violate state or federal law. The provisions of this chapter are in addition to any other permits, licenses, and approvals which may be required to conduct business in the city, and are in addition to any permits, licenses and approvals required under state law.

9-482. Legal authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution and the provisions of Division 10 of the Business and Professions Code, the city is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis-related activity.

9-482.5 Authority of the City Manager

The City Manager is authorized to make reasonable rules, policies, and procedures consistent with the intent and spirit of this Chapter as may be necessary to administer and enforce the provisions of this Chapter and any other ordinances, regulations or laws relating to and affecting the permitting and operations of commercial cannabis businesses.

The City Manager is authorized to make reasonable rules, policies, and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of applicants, the application procedures, and the administration and procedures to be used and followed in the application process for permit applications and requests for permit changes or modifications pursuant to this Chapter, and the implementation and administration of social equity programs.

9-483. Cannabis business activities prohibited unless specifically authorized by this chapter.

Except as specifically authorized in this chapter, the manufacture, processing, storing, laboratory testing, labeling, transporting, dispensing, furnishing, distribution, delivery, or sale of cannabis or a cannabis product is expressly prohibited in the city.

9-484. Compliance with laws.

It is the responsibility of the owners and operators of the cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder.

9-485. Definitions.

Unless otherwise defined in this chapter or in chapter I of Title 13, the words used in this chapter shall have the same definitions ascribed to them in Division 10 of the Business and Professions Code or the definitions of the Health and Safety Code applicable to school and child daycare. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

Cannabis means all parts of the *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the

seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by section 81000 of the California Food and Agricultural Code or section 11018.5 of the California Health and Safety Code.

Cannabis business permit means a regulatory permit issued by the city pursuant to this chapter to a cannabis business, and is required before any cannabis activity may be conducted in the city.

Cannabis goods means cannabis and/or cannabis products.

Cannabis product or manufactured cannabis product or product means cannabis that has undergone a process whereby the plant material is transformed into a concentrate for internal consumption or topical application, including, but not limited to, concentrated cannabis, an edible cannabis product, or a topical cannabis product containing cannabis or concentrated cannabis in combination with other ingredients.

Caregiver or primary caregiver has the same meaning as that term is defined in section 11362.7 of the California Health and Safety Code.

City manager shall mean the city manager of the city or designee.

Director shall mean the city's Director of the Economic and Development Services department or designee, unless otherwise specified.

Dispensing means any activity involving the retail sale of cannabis or cannabis products.

Distributor means a person or entity that engages in distribution. The direct and/or retail sale, distribution, or furnishing of any cannabis or cannabis product to any consumer or end user by a distributor is expressly prohibited, unless otherwise authorized pursuant to this chapter.

Edible cannabis product means manufactured cannabis that is intended to be used, in whole or in part, for oral human consumption including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. An edible cannabis product is not considered food as defined by California Health and Safety Code Section 109935 or a drug as defined by California Health and Safety Code Section 109925.

Free sample means any amount of cannabis goods provided to a patron of a business or member of the public without cost or payment or exchange for any other thing of value.

Green Zone means 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.

Homeless shelter has the same meaning as *emergency shelter*.

Labor Peace Agreement has the same meaning set forth in Business and Professions Code section 26001.

Manufacturing site means a location where cannabis products are manufactured.

Marijuana means “cannabis,” as that term is defined in this chapter.

Marijuana activity and/or *cannabis activity* includes manufacture, processing, laboratory testing, research and development, transporting, delivery, dispensing, distribution, furnishing, giving away or sale or any other activity involving cannabis or a cannabis product.

Marijuana business and/or *cannabis business* means any business or operation which engages in any marijuana or cannabis activity.

Marijuana business permit has the same meaning as *cannabis business permit*.

Patient or *qualified patient* shall have the same definition as California Health and Safety Code section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health and Safety Code section 11362.5. For purposes of this chapter, a qualified patient shall include a person with an identification card as that term is defined by California Health and Safety Code section 11362.7 et seq.

Person with an identification card shall have the meaning given that term by California Health and Safety Code section 11362.7.

Playground shall mean and include both a public playground located in a city park and a private playground. A private playground shall mean a privately-owned outdoor recreation area, including a tot lot, containing playground equipment or amenities such as swings, slides, sandboxes, or similar installations designed for use by minors and serving either the general public or residents of a development where the playground equipment is located, including residential subdivisions and/or developments such as apartments, townhomes and/or condominium complexes, mobile home parks or other similar residential uses, as well as playground equipment serving registered guests at hotels and motels. A private playground does not include a playground or playground equipment installed at a single-family residence, or play equipment that is part of a privately-owned commercial business or place of worship, or a playground that is access-controlled during operating hours or does not have direct access from the public right-of-way. A private playground does not include areas designated for use as a playing field or court, pool, or skate facility.

Premises shall have the same meaning as set forth in Business and Professions Code section 26001 sub-section (ap) for purposes of measuring the required distance from retail storefront uses to those uses set forth in section 13-200.93(e)(1).

Processing and processor shall have the same meaning as manufacturing and manufacturer, respectively.

Property shall mean any single development lot that has been subdivided bearing its own assessor's parcel number or with an approved subdivision map or condominium map unless the context clearly indicates a different meaning.

Research and development laboratory means a facility, entity, or site in the city that performs research into and/or the development of cannabis or cannabis products, where cannabis in any amount is located on-site, and that is both of the following:

1. Accredited by an accrediting body that is independent of all other persons involved in the cannabis industry in the state.
2. Registered with the State Department of Public Health, and is owned and operated by a person issued a valid cannabis business permit for laboratory testing from the city and is currently in compliance with all applicable state and local laws and regulations pertaining to the cannabis business and cannabis activities.

South Coast Collection or *SoCo* means all properties located at 3303 through 3323, inclusive, Hyland Avenue, in the City of Costa Mesa, commonly known as "SoCo" or "SOCO."

State means the State of California, including any of its departments, divisions, and/or bureaus.

State license means a permit or license issued by the state to engage in cannabis activity.

Youth center means any public or private facility that is primarily used to host recreation or social activities for minors, specifically private youth membership organizations or clubs, social services teenage club facilities, video arcades where ten (10) or more games or game machines or devices are operated or similar amusement park facilities, but does not include dance studios, tutoring, martial arts studios or similar type of uses.

9-486. Type of authorized cannabis businesses permitted.

- (a) One (1) or more of the following types of adult (A-license) and/or medical (M-license) cannabis business may be permitted to operate within the city:
1. Cannabis distributor (includes license classification type 11);
 2. Cannabis manufacturer (includes license classification type 6 and 7);
 3. Cannabis testing laboratory (includes license classification type 8);
 4. Cannabis retail - storefront (includes license classification type 10);

5. Cannabis retail - non-storefront (includes license classification type 9); and
 6. Cannabis research and development laboratory.
- (b) Businesses permitted pursuant to this chapter shall not engage in the retail sale, delivery or dispensing of cannabis, cannabis product, hemp or hemp products unless expressly permitted to do so pursuant to the terms of their cannabis business permit.
 - (c) No person may engage in any type of cannabis business that is not specifically authorized pursuant to this section and this code, including, but not limited to, cultivating cannabis.
 - (d) The City Council may by resolution limit and/or restrict the number of cannabis retail permits available for issuance and/or renewal.

9-487. Cannabis business permit required to engage in a cannabis business.

No person may engage in any cannabis business or in any cannabis activity within the city including manufacturing, processing, laboratory testing, transporting, dispensing, distribution, or sale of cannabis or a cannabis product unless the person: 1) has a valid cannabis business permit from the city that authorizes the specific business and activity at specific location; 2) has a valid business license issued to the entity that is listed on the cannabis business permit; and 3) is currently in compliance with all other applicable state and local laws and regulations pertaining to the cannabis business and cannabis activity.

9-487.5. Change in business name.

No operator shall operate, conduct, manage, engage in, or carry on a cannabis business under any name other than the business name specified in the permit and/or any “doing business as” or “DBA”, or “fictitious business name” or “FBN”, provided in the permit application and/or business license. Proof of the “DBA” or “FBN” filing with the County Clerk Recorder shall be required. Any approved changes and/or updates to the permit may require payment of fees as set by resolution of the City Council.

9-488. Term of permit-Fees.

- (a) A cannabis business permit shall be valid for two (2) years from the date of issue, unless otherwise suspended or revoked, and may be renewed bi-annually thereafter, provided the permittee is in compliance with the provisions of this chapter.
- (b) Cannabis business permit application fees and renewal fees shall be established by resolution of the city council as may be amended from time to time.

9-489. Effect of state license suspension, revocation, or termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the city, until the State of California, or its respective departments or divisions, reinstates or reissues the State license within 90 days. Should the state license remain suspended for 90 days or longer, any permit issued pursuant to this chapter shall expire and be of no further force and effect. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall also revoke or terminate the ability of a business permitted pursuant to this chapter including the persons and entities set forth in section 9-490(c) to operate any cannabis business within the city for a period of five years from the date of such revocation or termination.

9-490. Denial and revocation.

- (a) Revocation. A cannabis business permit may be revoked or suspended pursuant to the procedures of section 9-120 for failing to comply with the terms of the permit, the applicable provisions of this chapter, this Code, city regulations, state law or regulations and/or any conditions of any other permit issued pursuant to this Code.
- (b) Denial. An application for a cannabis business permit may be denied where it fails to provide all required information, documentation and/or fees and/or where it does not or would not be able to comply with the applicable provisions of this chapter, this Code, city regulations and/or state law or regulations and/or where the applicant is otherwise ineligible for such permit.
- (c) Effect of revocation and denial. Whenever an application for a permit is denied, no other similar application by such applicant or permittee will be considered for a period of one (1) year from the date of the denial of an application. Whenever a permit has been revoked, no other similar application by such permittee shall be considered for a period of five (5) years from either the date the notice of the permit revocation was mailed or the date of the final decision of the city to revoke the permit, whichever is later. The prohibitions of this subsection shall also apply to the following:
 - 1. Any individual whose permit was revoked or whose application was denied who later becomes a director or officer of a corporation, profit or nonprofit, or a member of a partnership or a person owning or possessing any portion of the shares of a corporation seeking to obtain a new permit.
 - 2. A corporation, profit or nonprofit, whose permit was revoked, or application was denied, to any of its directors or officers or to any person who owned any portion of its shares, who attempts by way of a new corporation or using their individual names or becoming a member of a partnership or a

director or officer or a person owning or possessing any portion of the shares in another corporation seeking to obtain a new permit.

- (d) Ineligibility. In addition to any other law, no person or entity shall be eligible for and/or receive a cannabis permit if that person or entity, or any director or officer of that entity or a person who owned any portion of that entity's shares, engaged in unpermitted and/or illegal cannabis activity involving sales, delivery and/or dispensing in the city, or had an ownership interest in any property set forth in section 13-200.93(e)(5), in the five (5) years preceding an application under this chapter. A determination of ineligibility under this sub-section (d) may be made by the City Manager and shall be based on the preponderance of the evidence. This prohibition shall not apply to a natural person who would otherwise be ineligible based on a criminal conviction that has been dismissed, withdrawn, expunged or set aside or is otherwise exempted pursuant to sections 9-495(g)(10) and/or 9-496(b).

9-491. Appeals.

Notwithstanding any other provision of this code, only a decision by the city manager to suspend, revoke or deny a cannabis business permit under this chapter shall be subject to appeal, which shall be governed by the procedures set forth in Chapter IX of Title 2 of this code.

9-492. Prohibition on transfer of cannabis business permits.

In the event a permit holding cannabis business sells or transfers the business to a new owner and/or operates the business under a new entity and/or name not listed on the permit, the new owner must obtain a new cannabis business permit and business license prior to commencing or continuing operations. A cannabis business shall be deemed to have transferred to a new owner within the meaning of this section if person(s) or entities with controlling interest at the time the permit was first issued cease(s) at any time to possess controlling ownership interest and/or an ownership interest of less than fifty-one (51) percent.

9-493. City business license required.

Prior to commencing operations, a cannabis business shall obtain and thereafter maintain a valid city business license pursuant to Chapter I of this title. Failure to do so will render the cannabis permit invalid.

9-494. Conditional use permit required.

No cannabis business permit shall be issued, and no person shall conduct a cannabis business unless a conditional use permit has been issued therefore pursuant to the provisions of Title 13, Chapter IX, Article 21 of this Code.

9-495. Operating requirements for all cannabis businesses permitted under this chapter.

(a) *Records and recordkeeping.*

1. Each owner and operator of a cannabis business shall maintain accurate books and records, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a cannabis business permit issued pursuant to this title), or at any time upon reasonable request of the city, each cannabis business shall file a sworn statement detailing the number of sales by the cannabis business during the previous twelve (12) month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid.

Each owner and operator shall keep and preserve for a period of no less than seven (7) years, all records as may be necessary to determine the amount of such tax the operator may have been liable to collect and remit to the city.

2. Each owner and operator of a cannabis business shall maintain a current register of the names and the contact information (including the name, address, telephone number, a copy of that person's government issued identification, and email address) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the cannabis business. The register required by this paragraph shall be provided to the city manager upon a reasonable request.
3. All cannabis businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the production or manufacturing, laboratory testing and distribution processes.
4. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA), each cannabis business shall allow city officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the city's request, unless otherwise stipulated by the city.

(b) *Security measures.*

1. A permitted cannabis business shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the cannabis business. These security measures shall include:
 - a. Establishing limited access areas accessible only to authorized cannabis business personnel;
 - b. All cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault, and shall be kept in a manner as to prevent diversion, theft, and loss;
 - c. Sensors shall be installed to detect entry and exit from all secure areas;
 - d. Having a professionally installed, maintained, and monitored alarm system;
 - e. Any bars to be installed on the windows or the doors of the cannabis business for security purposes, if permitted by the city, shall be installed only on the interior of the building;
 - f. Security personnel if utilized must be licensed by the State of California Bureau of Security and Investigative Services Personnel, shall comply with the requirements of California Business and Professions Code Chapters 11.4 and 11.5 of Division 3, and have a valid business license from the city; and
 - g. Each cannabis business shall have the capability to remain secure and operational during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
2. Each cannabis business shall identify a designated security representative/liaison to the city, who shall be reasonably available to meet with the city manager regarding any security related measures or and operational issues.
3. A cannabis business shall notify the city manager within twenty-four (24) hours after discovering any of the following:
 - a. Significant discrepancies identified during inventory, as set forth in the city's administrative regulations;

- b. Diversion, theft, loss, or any criminal activity involving the cannabis business or any agent or employee of the cannabis business; or
 - c. The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the cannabis business and/or cannabis sales.
- (c) *Restriction on alcohol sales.* No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the cannabis business.
- (d) *Compliance with laws.* It is the responsibility of the owners and operators of the cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this chapter shall be construed as authorizing any actions which violate state law or local law with respect to the operation of a cannabis business or any site-specific, additional operating procedures or requirements which may be imposed as conditions of approval of the location of the cannabis business.
- (e) *Taxes.* All cannabis businesses authorized to operate under this chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state and local law. Each cannabis business shall cooperate with the city with respect to any reasonable request to audit the cannabis business's books and records for the purpose of verifying compliance with this section, including, but not limited to, a verification of the amount of taxes required to be paid during any period.
- (f) *Insurance.* Permittee shall obtain and maintain at all times during the term of the permit comprehensive general liability insurance and comprehensive automotive liability insurance protecting the permittee 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-completed operations and each accident, issued by an insurance provider rated at least A-:VIII in A.M. Best and Company's Insurance Guide and either admitted and authorized to do business in California or is listed on the California Department of Insurance's List of Approved Surplus Line Insurers.
- (g) *Miscellaneous operating requirements.*
 - 1. *Restriction on consumption.* Cannabis shall not be consumed on the premises of any cannabis businesses or elsewhere in the city other than within private residences.

2. No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a cannabis business permit, or on any of the vehicles owned or used as part of the cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
3. *Reporting and tracking of product and of gross sales.* Each cannabis business shall have in place a point-of-sale tracking system to track and report on all aspects of the cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, and gross sales (by weight and by sale). The cannabis business shall ensure that such information is compatible with the city's record-keeping systems. The system must have the capability to produce historical transactional data for review by the city manager.
4. All cannabis and cannabis products sold, distributed or manufactured shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with all state and local regulations.
5. There shall not be a physician located in or around any cannabis business at any time for the purpose of evaluating patients for the issuance of a cannabis prescription or card.
6. *Signage and notices.*
 - a. In addition to the requirements otherwise set forth in this section, business identification signage for a cannabis business shall conform to the requirements of this Code, including, but not limited to, seeking the issuance of a city sign permit.
 - b. Each entrance to a cannabis business shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited.
 - c. Business identification signage shall be limited to that needed for identification only.
 - d. The business shall at all times comply with the advertising and marketing restrictions of Business and Professions Code sections 26150-26156, in addition to the requirements of this code.
7. *Minors.*
 - a. Persons under the age of twenty-one (21) years shall not be allowed on the premises of a cannabis business, except as otherwise specifically

provided for by state law. It is unlawful and a violation of this chapter for any person to employ any person at or for a cannabis business who is not at least twenty-one (21) years of age.

- b. The entrance to the cannabis business shall be clearly and legibly posted with a notice that no person under the age of twenty-one (21) years of age is permitted to enter upon the premises of the cannabis business except as specifically provided for herein.
- 8. *Odor control.* Odor control devices and techniques shall be incorporated in all cannabis businesses to ensure that odors from cannabis are not detectable off-site.
- 9. *Display of permit and city business license.* The original copy of the cannabis business permit issued by the city pursuant to this chapter and the city-issued business license shall be posted inside the cannabis business in a conspicuous location.
- 10. *Background check.* Every owner, manager, supervisor or employee of the cannabis business must submit fingerprints and other information deemed necessary by the city manager for a background check by the Costa Mesa police department to verify that person's criminal history. No person shall be issued a permit to operate a cannabis business who has been convicted of a felony within the past seven (7) years, unless that felony has been dismissed, withdrawn, expunged or set aside pursuant to Penal Code section 1203.4, 1000 or 1385, or who is currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance. Exempted from this prohibition is a conviction for a felony involving cannabis and/or marijuana for which the underlying cannabis or marijuana offense has subsequently been designated a misdemeanor or infraction or decriminalized pursuant to the provisions of the Control, Regulate and Tax Adult Use of Marijuana Act or federal law.
- 11. *Loitering.* The owner and/or operator of a cannabis business shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises.
- 12. *Permits and other approvals.* Prior to the establishment of any cannabis business or the operation of any such business, the person intending to establish a cannabis business must first obtain all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such cannabis business intends to operate.
- 13. *Free samples.* No cannabis business shall provide or cause to be provided any free sample of cannabis goods to any person within the city.

14. A licensed retailer may only sell cannabis goods, cannabis accessories, and licensees' branded merchandise or promotional materials

(h) *Additional operating requirements for retail sale (storefront) businesses.* In addition to every other requirement of this section, other than those set forth in subsection (i) (*retail sale, non-storefront*) that are expressly inapplicable, every business that sells cannabis as a storefront retailer shall comply with the following requirements:

1. The security plan shall include at least one (1) licensed private security guard or guards who shall be present at the premises twenty-four (24) hours per day, exterior lighting, and continuous video monitoring and recording of the interior and exterior of the premises. Video surveillance recordings must also include video of all entryways and exits of the premises. All video recordings shall be maintained for a minimum of ninety (90) days.
2. Both the private security guard and the business personnel shall monitor the premises and the immediate vicinity of the premises to ensure that patrons immediately leave the premises and do not consume cannabis in the vicinity of the retail business or on the property or in the parking lot, and shall ensure that persons do not loiter, linger, or otherwise congregate within fifty (50) feet of the entrance to the premises.
3. There shall be no on-site sales of alcohol or tobacco products, (excluding rolling papers and lighters) and no on-site consumption of food, alcohol, cannabis or tobacco by patrons.
4. Hours of operation shall be limited to: 7:00 a.m. to 10:00 p.m. daily. No licensed retail business shall be open to the public between the hours of 10:01 p.m. and 6:59 a.m. of any day.
5. The cannabis retail business shall notify patrons of the following both verbally and through posting of a sign in a conspicuous location:
 - a. Unlawful sale, barter or distribution of cannabis is a crime and subject to a fine or arrest.
 - b. Loitering on and around the retail premises is prohibited by California Penal Code section 647 and that patrons must immediately leave the premises and not consume cannabis in the vicinity and/or on the property or in the parking lot.
 - c. A warning that patrons and/or employees may be subject to prosecution under federal cannabis laws, if applicable.

- d. That the use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery and that doing so is illegal.
- 6. No one under the age of twenty-one (21) shall be allowed to enter the premises of a cannabis business unless the business holds a retail medical cannabis license (M-license) issued by the State.
- 7. No person shall be permitted to enter the premises without government-issued identification, and cannabis goods may not be provided to any person, whether by purchase, trade, gift, or otherwise, who does not possess a valid government-issued identification and who does not meet the age requirements of this Chapter.
- 8. Electronic age verification device required. Proof of age of every person other than employees entering the business shall be verified with an electronic age verification device, prior to entry of the retail area or delivery to that person. The electronic age verification device may be mobile or fixed, and shall be able to retain a log of all scans that includes the following information: date, time, and age. Said log shall be kept for a minimum of one hundred eighty (180) business days and all records shall be made available to the City Manager upon request.
- 9. Point-of-sale tracking required. The business shall facilitate the sale, making available, furnishing and/or delivery of cannabis goods with a technology platform that uses point-of-sale technology to track, and database technology to record and store, the following information for each transaction involving the exchange of cannabis goods between the business and consumer:
 - a. The date and time of transaction.
 - b. The first name and employee number of the employee who processed the sale of cannabis goods on behalf of the business.
 - c. A list of all the cannabis goods purchased, including the quantity purchased.
 - d. The total amount paid for the sale, including the individual prices paid for cannabis or cannabis products purchased, and any amounts paid for taxes.
- 10. Cannabis retail businesses shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

11. Adequate signage shall clearly state who has inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.
12. Shipments of cannabis goods may only be accepted during regular business hours.
13. Inventory shall be secured using a lockable storage system during non-business hours.
14. No cannabis product shall be visible from the exterior of the business.
15. All required labelling shall be maintained on all product, as required by State law, at all times.
16. A permitted commercial cannabis retail business shall have one hundred eighty (180) days after permit issuance by the city to commence operations, after which the permit shall be void and of no further force and effect. A permitted commercial cannabis retail business that ceases to operate for more than ninety (90) calendar days after commencing operations shall be deemed “abandoned” and the permit shall be forfeited. A permitted commercial cannabis business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the director or city manager. For the purposes of this subsection, “operate” shall mean by the end of the one hundred eighty (180) day period.
17. Obtain and maintain at all times during the term of the permit the insurance required pursuant to subsection (f) of this section in the minimum amounts of two million dollars (\$2,000,000.00), and enter into an agreement approved by the city attorney to defend, with attorneys of city’s choosing, indemnify, release and hold harmless the city, its city council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys’ fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permittee or the permittee’s activities. This indemnification shall include, but not be limited to, damages awarded against the city, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, city, and/or the parties initiating or bringing such proceeding, and shall not be limited by the types and/or amounts of insurance required herein;
18. For an applicant with two or more employees, provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered

into, and abide by the terms of a labor peace agreement as otherwise required by Business and Professions Code section 26105.5.

(i) *Additional operating requirements for retail sale (non-storefront) delivery businesses.* In addition to every other requirement of this section, except only for subsection (h)(1) through (5) and (10) (*retail sale, store-front*), every business that sells and/or delivers cannabis as a non-store front retailer shall comply with the following requirements:

1. Commercial cannabis retail deliveries may be made only from a commercial cannabis retail business permitted by the City in compliance with this chapter, and in compliance with all State regulations.
2. All employees who deliver cannabis shall have valid identification and a copy of the retail business' cannabis business permit and State license at all times while making deliveries.
3. All commercial cannabis retail businesses shall maintain proof of vehicle insurance for any and all vehicles being used to transport cannabis goods as required by State law.
4. Deliveries may only take place during normal business hours of the commercial cannabis retail business.
5. During delivery, the delivery employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers. The delivery request documentation shall comply with State law.
6. A licensed delivery employee shall not leave the State of California while possessing cannabis products while performing his or her duties for the cannabis retailer.
7. A commercial cannabis retail business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State.
8. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.
9. Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).
10. Each delivery request shall have a receipt prepared by the commercial cannabis retail business with the following information:
 - a. Name and address of the commercial cannabis retail business.

- b. The name of the employee who delivered the order.
 - c. The date and time the delivery request was made.
 - d. The complete delivery addresses.
 - e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested.
 - f. The total amount paid for the delivery including any fees or taxes.
 - g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.
 - h. No cannabis delivery vehicle shall display signs, decals or any other form of advertisement.
 - i. Inspections by an authorized City representative may be conducted anytime during regular business hours.
- 11. Delivery must be made to a physical address that is not on publicly owned land, a school, a day care, or a youth center.
 - 12. The delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.
 - 13. Delivery must be made in person by a direct employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered directly employed by the licensed retailer.

9-496. Cannabis employees.

- (a) Any person who is an employee or who otherwise works within a cannabis business must be legally authorized to do so under applicable state law.
- (b) No cannabis business or owner thereof may employ any person who has been convicted of a felony within the past seven (7) years, unless that felony has been dismissed, withdrawn, expunged or set aside pursuant to Penal Code section 1203.4, 1000 or 1385, or who is currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance. Exempted from this prohibition is a conviction for a felony involving cannabis and/or marijuana for which the underlying cannabis or marijuana offense has subsequently been designated a misdemeanor or

infraction or decriminalized pursuant to the provisions of the Control, Regulate and Tax Adult Use of Marijuana Act or federal law.

- (c) All employees must wear an identification badge while on the premises of the business, in a format authorized by the city manager.

9-497. Promulgation of administrative regulations.

- (a) The city manager is also authorized to establish any additional administrative rules, regulations, policies, procedures and/or standards governing the issuance, denial or renewal of cannabis business permits, or concerning any other subject necessary to carry out the purposes of this chapter.
- (b) Regulations promulgated by the city manager shall become effective upon the date of publication. Cannabis businesses shall be required to comply with all state and local laws and regulations, including, but not limited to, any rules, regulations policies, procedures and/or standards adopted by the city manager.
- (c) Such administrative rules, regulations and/or standards may include establishing standards and timing for application processing, including but not limited to providing priority for existing licensees in good standing.

9-498. Inspection and enforcement.

- (a) The city manager is charged with enforcing the provisions of the Costa Mesa Municipal Code, or any provision thereof, and may enter the location of a cannabis business at any time during the hours of operation without notice, and inspect the location of any cannabis business as well as any recordings and records required to be maintained pursuant to this title or under applicable provisions of state law.
- (b) It is unlawful for any person having responsibility for the operation of a cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the city to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a cannabis business under this chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a cannabis business under this chapter or under state or local law.

9-499. Violations.

- (a) *Violations declared a public nuisance.* Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance.

- (b) *Each violation a separate offense.* Each and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Costa Mesa Municipal Code. Additionally, as a nuisance per se, any violation of this chapter shall be subject to injunctive relief, any permit issued pursuant to this chapter being deemed null and void, disgorgement and payment to the city of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The city may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the cannabis business or persons related to, or associated with, the cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the city manager, or the chief of police, may take immediate action to temporarily suspend a cannabis business permit issued by the city, pending a hearing before the city council.
- (c) *Criminal penalties.* Each and every violation of the provisions of this chapter may be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the County Jail for a period of not more than twelve (12) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.
- (d) *Remedies cumulative and not exclusive.* The remedies provided herein are not to be construed as exclusive remedies. The city is authorized to pursue any proceedings or remedies provided by law.

Section 4: Environmental Compliance. This Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) and Section 15308 (Class 8, Actions by Regulatory Agencies for the Protection of the Environment) because a recommendation is not a final action and 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 that will also not have significant effect on the environment.


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

Section 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to

any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 7: Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

PASSED AND ADOPTED this 15th day of June, 2021.



John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:



Brenda Green, City Clerk



Kimberly Hall Barlow, City Attorney

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

I, Brenda Green, City Clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 2021-09 was introduced and considered section by section at a regular meeting of said City Council held on the 1st day of June, 2021, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 15th day of June, 2021, by the following roll call vote:

AYES: COUNCILMEMBERS: CHAVEZ, GAMEROS, HARLAN, HARPER,
REYNOLDS, MARR, AND STEPHENS.

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this 16th day of June, 2021.



Brenda Green, City Clerk