

RESOLUTION NO. PC-2024-02

**RESOLUTION RECOMMENDING THAT THE CITY COUNCIL
GIVE FIRST READING TO AN ORDINANCE TO AMEND THE
CANNABIS RETAIL STOREFRONT PROVISIONS IN TITLE 13
(PLANNING, ZONING, AND DEVELOPMENT), CHAPTER IX
(SPECIAL LAND USE REGULATIONS), ARTICLE 21
(LOCATION OF CANNABIS DISTRIBUTING,
MANUFACTURING, RESEARCH AND DEVELOPMENT,
TESTING LABORATOIES, RETAIL STOREFRONT AND RETAIL
NONSTOREFRONT USES) OF THE COSTA MESA
MUNICIPAL CODE**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDS
AND DECLARES AS FOLLOWS:

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

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

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

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

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

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

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

1. Adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that

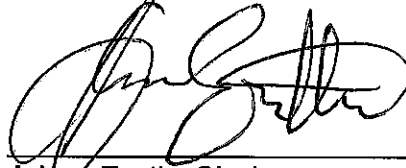
there is no possibility that the minor updates to the City's retail cannabis storefront provisions will have a significant impact on the environment.

2. The Planning Commission recommends the City Council approve the amendments to Title 13, Planning, Zoning, and Development of the Costa Mesa Municipal Code, as attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the CEQA exemption for this project reflects the independent judgement of the City.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 22nd day of January, 2024.

A handwritten signature in black ink, appearing to read 'Adam Ereth', is written over a horizontal line.

Adam Ereth, Chair
Costa Mesa Planning Commission

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

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2024-02 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on January 22, 2024 by the following votes:

AYES: Ereth, Andrade, Rojas Vivar, Zich

NOES: None

ABSENT: Toler, Klepack

ABSTAIN: None



Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2024-02

EXHIBIT A

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

13-200.90. Purpose.

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

13-200.91. Applicability.

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

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

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

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

- (a) Cannabis retail storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts.
- (b) Cannabis retail non-storefront uses are prohibited in all zone districts within the city, except for the commercial zone districts and within the Green Zone.
- (c) The following planning application shall be required for cannabis retail uses:
 - (1) A conditional use permit shall be required for retail storefronts and non-storefronts; and
 - (2) An amendment to the approved conditional use permit shall be required for existing licensed cannabis distribution or manufacturing businesses to operate a retail non-storefront under the existing business and within the same licensed premise. The amendment shall be processed as a minor conditional use permit.
- (d) A conditional use permit may be issued to allow the location of a retail cannabis use pursuant to subsections (a) and (b) of this section, subject to the following conditions:
 - (1) The requirements of Chapter III of this title have been met;
 - (2) The findings for granting conditional use permit pursuant to section 13-29(g) are met;
 - (3) The applicant pursuant to Chapter VI of Title 9 of this Code; and
 - (4) The use is conducted in compliance with all applicable state and local laws, regulations, and all applicable conditional use permit conditions of approval.
- (e) A total maximum of thirty (30) conditional use permits for cannabis storefronts may be approved by the city. Following the approval of the thirtieth (30th), no further conditional use permits for cannabis storefronts may be approved by the city until the total number of existing conditional use permits falls below fifteen (15), after which time the city may approve further conditional use permits not to exceed a total of fifteen (15) existing conditional use permits for cannabis storefronts located within the city.
- (f) Cannabis retail storefront location.
 - (1) No cannabis retail storefront use shall be located within one-thousand (1,000) feet from a K-12 school, playground, child daycare, homeless shelter, or youth center, that is in operation at the time of submission of a completed Cannabis Business Permit application, or within one hundred (100) feet from a property zoned for residential use;
 - i. For the purpose of identifying separations from cannabis storefronts and properties zoned for residential use, properties zoned for residential use are within the following zoning districts: R1 Single-Family Residential District, R2-MD Multiple-Family Residential District, Medium Density, R2-HD Multiple-Family Residential District, High Density, R3 Multiple-Family Residential District, TC Town Center District, PDR-LD Planned Density Residential—Low Density, PDR-MD Planned Development Residential—Medium Density, PDR-HD Planned Development Residential—High Density, and PDR-NCM Planned Development Residential—North Costa Mesa.
 - ii. Where a non-residential property was developed for residential or mixed residential use in accordance with an overlay, urban plan, or specific plan,

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

- iii. Where an overlay, urban plan, or specific plan allows residential development on a property zoned for residential use, but residential development has not been constructed, such property would not be considered a property zoned for residential use pursuant to this provision.
 - iv. Where a legal nonconforming residential unit or units have been developed on a property zoned for non-residential use, the property would not be considered residential when establishing a separation from cannabis storefronts.
- (2) No cannabis retail storefront use shall be located within five hundred (500) feet from the premises of a lawfully existing cannabis retail storefront business;
 - (3) All distances referenced in (f)(1) and (2) 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 or property zoned for residential use, or from the premises of a lawfully existing cannabis retail storefront use.
 - i. For purposes of this sub-sub-section, the property line of a playground shall be a thirty (30) foot radius from the exterior physical boundaries of the playground equipment area;
 - (4) All distances shall be measured without regard to the boundaries of the city and and/or intervening structures or other barriers;
 - (5) 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.
 - (6) 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.
 - (7) The nonconforming provisions contained in Chapter X of this Code pertain to cannabis uses except under the following:
 - i. When an approved retail cannabis storefront conditional use permit location which lawfully met separation requirements at the time of the submission of a cannabis business permit application for the subject

property does not conform to the separation and the permitted cannabis retail operation is discontinued or abandoned for more than one hundred eighty (180) days, or when a permitted cannabis use is replaced in whole or part for any period of time by any other use, the conditional use permit shall be null and void.

- (g) 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.
- (h) 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.

- (i) Except as specifically authorized in this article, all other cannabis retail uses such as but not limited to lounges and cafes are expressly prohibited in the city.
- (j) 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.
- (k) Any cannabis use, including but not limited to those involving sale, delivery and/or dispensing, that is not permitted, licensed and otherwise in full compliance with all applicable provisions of this Code and state and local law, shall not be considered a legally non-conforming use pursuant to, and notwithstanding any contrary provisions of, Chapter IX of this title.

13-200.94. Declaration of public nuisance.

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this article, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil and/or administrative proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

13-200.95. Violations.

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