CITY OF LA MESA
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MARY J KENNEDY
CITY CLERK

MEDICAL MARIJUANA ACTIVITY ZONING ORDINANCE OF LA MESA

WHEREAS, in 1996 the voters of the State of California, including voters in the City of La Mesa passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, in 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, comprising the Medical Marijuana Regulation and Safety Act and establishing a comprehensive regulatory framework for the production, transportation, and sale of medical marijuana.

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of Dispensaries in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW, THEREFORE,

BE IT ORDAINED, by a vote of the people of the City of La Mesa as follows:

Section 1. Definitions

"Premise" is defined to mean the legal parcel(s) of land and the improvements on it, including building(s), store(s), shop(s), apartment(s), or other designated structure.

"Dispensary" as defined by Section 19300.5 of the California Business and Professions Code.

"Path Of Travel" is defined to mean a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

"*Cultivation*" as defined by Section 19300.5 of the California Business and Professions Code.

"*Cultivation Site*" as defined by Section 19300.5 of the California Business and Professions Code.

"*Cultivator*" is the organization or entity holding the Conditional Use Permit for *cultivation* activity at a location authorized by the City.

"*Manufactured Cannabis*" as defined by Section 19300.5 of the California Business and Professions Code.

"*Cannabis Concentrate*" means *manufactured cannabis* that has undergone a process to concentrate the cannabinoid active ingredient.

"*Edible Cannabis Product*" as defined by Section 19300.5 of the California Business and Professions Code.

"*Manufacturer*" as defined by Section 19300.5 of the California Business and Professions Code.

Manufacturing Site as defined by Section 19300.5 of the California Business and Professions Code.

Distributor as defined by Section 19300.5 of the California Business and Professions Code.

Distribution Site means a location where medical cannabis obtained from a license *cultivator* or medical cannabis products from a licensed *manufacturer* is temporarily stored, prior to delivery to a licensed *dispensary* and as part of performing a *Distributor*'s duties under state law.

"*Plant Canopy*" is the amount of cannabis that can be grown which is the aggregate area of vegetative growth of live marijuana plants.

"Minor-Oriented Facility" means any after school program, teen center, club for boys and/or girls, children's theater, or children's museum, where the primary use is devoted to people under the age of 18.

Playground means any outdoor *premises* or grounds, owned or operated by the City, that contains any play or athletic equipment primarily used, or primarily intended to be used by, any person less than eighteen (18) years old.

"*Vending Machine*" means any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a product.

"*Small Specialty Indoor Cultivation*" is defined to mean cultivation in compliance with the regulations for a Cultivation License Type 1A (Specialty Indoor License), defined in California Business and Professions Code section 19332, subdivision (g)(2), and subject to all applicable sections of Senate Bill 643, Assembly Bill 266, and Assembly Bill 243.

"*Nursery Cultivation*" is defined to mean cultivation in compliance with the regulations for a State Cultivation License Type 4 (Nursery License), defined in California Business and Professions Code section 19332, subdivision (g)(10), and subject to all applicable sections of Senate Bill 643, Assembly Bill 266, and Assembly Bill 243.

Section 2. Dispensaries

Dispensaries shall be permitted with a Conditional Use Permit in General Commercial (C), Light Industrial and Commercial Services (CM) and Industrial Services and Manufacturing (M) zones subject to the following restrictions and regulations.

a) *Dispensaries* shall maintain the following minimum separation between uses, as measured by *path of travel.*

   (1) 1,000 feet from City designated licensed childcare centers, *playgrounds, minor-oriented facilities,* other *Dispensaries,* or schools. For purposes of this section, *school* means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

b) Consultations by medical professionals shall not be a permitted at a *dispensary.*

c) Lighting shall be provided to illuminate the interior of the *dispensary,* facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

d) Security shall be provided at the *dispensary* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours.

e) *Signs* shall be posted on the outside of the *dispensary* and shall only contain the name of the business, limited to two colors.

f) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the *dispensary* in character size at least two inches in height.

g) The *dispensary* shall operate only between the hours of 7:00 a.m. and 9:00p.m., seven days a week.

h) The use of *Vending Machine* which allow access to medical marijuana except by a responsible person, is prohibited. For purposes of this Section, a vending

machine is any device which allows access to medical marijuana without a human intermediary.

i) Applicants for Conditional Use Permit for cannabis manufacturing must provide written proof that the building owner and management condone cannabis manufacturing activity on the *premise.*

j) A Conditional Use Permit for a *dispensary site* shall expire no later than five (5) years from the date of issuance.

k) The City has may charge a reasonable set application fee for a Conditional Use Permit for a *dispensary site* and, as well as reasonable set annual fee for maintaining the *dispensary Site* Conditional Use Permit. Such fees shall be established by the City planning department.

l) A Conditional Use Permit for a *dispensary site* may be revoked or suspended due to legitimate loitering complaints, noise complaints, upon City confirmation of the smell or loitering nuisance, or non-compliance with the Conditional Use Permit, or non-compliance with other applicable state or local regulation. The licensee shall have a reasonable opportunity and time to cure the complaint or possible non-compliance as defined in this section before being subject to revocation or suspension.

m) The applicant must meet any additional standard criteria and fulfill any additional standard requirements typically associated with obtaining a Conditional Use Permit in the City. The City shall review all qualifying applications at a reasonable pace and level of review equivalent to other land use projects requiring a conditional use permit.

n) Rules, regulations and local permitting requirements imposed on a Dispensary by the City shall conform to the State licensing requirements for a Dispensary, as set forth by the California Business and Professions Code, Division 8, Chapter 3.5.

Section 3. Commercial *Cultivation*

Commercial *Cultivation Sites* are prohibited in residential zones. *Cultivation Sites* shall be permitted in Industrial Service and Manufacturing (M) zones with a Conditional Use Permit subject to the following restrictions and regulations.

a) All *cultivation* must occur on the interior of a building using exclusively artificial lighting.

b) A Conditional Use Permit may be issued for *Small Specialty Indoor Cultivation* or *Nursery Cultivation.* All other commercial cultivation of medical marijuana is strictly prohibited. A Conditional Use Permit applicant must specify whether the applicant will be cultivating *Small Specialty Indoor Cultivation* or *Nursery Cultivation* on site. Only one cultivation type will be permitted per premise. Any cultivation must conform to the *plant canopy* and other limits set forth by the applicable California State License Category for the *cultivation site.*

c) Plants may only be cultivated in response to a pre-existing supply or purchase agreement with a licensed *dispensary* or *distributor.* For each plant, the *cultivator* must be able to show an active purchase order requiring this plant from a licensed *dispensary* or *distributor.* The *dispensary* or *distributor* with which a *cultivator* has a supply or purchase agreement must be licensed by a municipal or county jurisdiction within the state of California.

d) A unique identifier, such as, but not limited to, a zip tie or a bar code, shall be attached at the base of each plant or tray, batch, or other unit containing plants measuring less than12 inches in height. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant greater than 12 inches in height. This unique identifier shall identify the *dispensary* or *distributor* for which the plant is being grown. Records of plants, and their associated *dispensary* or *distributor* must be kept by the *cultivator,* and must be made available to City auditors upon request. .

e) Security shall be provided at the commercial *cultivation site* which shall

include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.

f) From a public right of way, there shall be no visual evidence of *cultivation* either within or outside the facility. Adverse impacts of *cultivation* shall be mitigated so that a "public nuisance" as defined by California Civil Code section 3480 does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes. If an adverse impact occurs, a licensee shall have a reasonable opportunity and time to cure the complaint, adverse impact, or possible non-compliance as defined in this section before being subject to revocation, suspension, or other discipline.

g) No external signage shall be allowed, other than the address of the premise.

h) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, contractors of the cultivator shall be present on the premises. Transporters and representatives of dispensaries, distributors, manufacturers, testing labs, and other licensees under the Medical Marijuana Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the cultivator to conduct business as required and appropriate.

i) All employees of the organization to which the Conditional Use Permit is issued shall be subject to a background check. Any person who has been convicted of a felony may not be employed by *commercial cultivator* or operate, manage, control, or own a *commercial cultivator* entity.

j) The City encourages *cultivators* to operate in an environmentally sustainable manner. Preference will be given to applicant for Conditional Use Permits who show their commitment to environmentally sustainable practices including building LEED certification and adoption of EPA WaterSense identified water saving technologies.

k) To discourage theft and vandalism, the City will not publicly publish the

exact addresses of *commercial cultivation sites*. Other aggregate information regarding conditional use permits for *cultivation* including, but not limited to, number of permits issued, districts where said permits were issued, and the organizations to whom such permits were issued shall be available upon request.

l) Applicants for Conditional Use Permit for *commercial cultivation* must provide written proof that the building owner and management condone *cultivation* activity on the *premise*.

m) A Conditional Use Permit for commercial *cultivation site* may be revoked or suspended due to failure to enact a correction ordered by the city in response to a legitimate smell complaints, noise complaints, upon City confirmation of the smell or noise nuisance. A Conditional Use Permit may also be revoked or suspended for non-compliance with the regulations set forth in this ordinance or failure to comply with state regulations. The holder of a Conditional Use Permit shall have a reasonable opportunity and time to cure the complaint, nuisance, or possible non-compliance as defined in this section before being subject to revocation or suspension.

n) The City has may establish a set a reasonable application fee for a Conditional Use Permit for a *cultivation site* and, as well as set a reasonable annual fee for maintaining the *cultivation site* Conditional Use Permit. Such fees shall be established by the City planning department.

o) The applicant must meet any additional standard criteria and fulfill any additional standard requirements typically associated with obtaining a Conditional Use Permit in the City. The City shall review all qualifying applications at a reasonable pace and level of review equivalent to other land use projects requiring a conditional use permit.

p) Rules, regulations and local permitting requirements imposed on a *Cultivation Site* by the City shall conform to the State licensing requirements for a *Cultivation Site*, as set forth by the California Business and Professions Code, Division 8, Chapter 3.5.

Section 4. *Manufacturing*

Manufacturing Sites are prohibited in residential zones. *Manufacturing Sites* shall be permitted in Industrial Service and Manufacturing (M) zones with a Conditional Use Permit subject to the following restrictions and regulations.

a) Extraction of *cannabis concentrates* with butane or other flammable gases is prohibited.

b) All manufacturing must conform to the medical marijuana processing rules and requirements, including those for testing, labeling and quality assurance, set forth by the California Department of Public Health.

c) Security shall be provided at the *manufacturing site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.

d) No external signage shall be allowed, other than the address of the premise.

e) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, contractors of the manufacturer shall be present on the premises. Transporters and representatives of dispensaries, distributors, cultivators, testing labs, and other licensees under the Medical Marijuana Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the manufacturer to conduct business as required and appropriate.

f) All employees of the organization to which the Conditional Use Permit is issued shall be subject to a background check. Any person who has been convicted of a felony may not be employed by *manufacturer*.

g) Any manufacturing site that produces *edible cannabis product* must have at least one owner, director, officer, manager, or employee that has passed a state-approved food safety certification exam.

h) Any manufacturing site that produces *edible cannabis products* that require baking or refrigeration must be also be a California-licensed commercial kitchen or in a cottage kitchen with a class B permit.

i) Applicants for Conditional Use Permit for cannabis manufacturing must

provide written proof that the building owner and management condone cannabis manufacturing activity on the *premise*.

j) The City has may establish a set reasonable application fee for a Conditional Use Permit for a *manufacturing site* and, as well as set reasonable annual fee for maintaining the *manufacturing site* Conditional Use Permit. Such fees shall be established by the City planning department.

k) A Conditional Use Permit for *manufacturing site* may be revoked or suspended due to failure to correct a correction ordered by the city in response to a legitimate smell complaints, noise complaints, upon City confirmation of the smell or noise nuisance. A Conditional Use Permit may also be revoked or suspended for non-compliance with the regulations set forth in this ordinance or failure to comply with state regulations. The holder of a Conditional Use Permit shall have a reasonable opportunity and time to cure the complaint, nuisance, or possible non-compliance as defined in this section before being subject to revocation or suspension.

l) The applicant must meet any additional standard criteria and fulfill any additional standard requirements typically associated with obtaining a Conditional Use Permit in the City. The City shall review all qualifying applications at a reasonable pace and level of review equivalent to other land use projects requiring a conditional use permit.

m) Rules, regulations and local permitting requirements imposed on a *Manufacturing Site* by the City shall conform to the State licensing requirements for a *Manufacturing Site*, as set forth by the California Business and Professions Code, Division 8, Chapter 3.5.

Section 6. Personal Use *Cultivation*

A qualified patient or a personal caregiver may cultivate up to eight marijuana plants for personal use. Personal use cultivation must conform to state law and local codes, including, but not limited to, nuisance codes, building codes, electrical codes and waste disposal codes. Personal use cultivation may also be further restricted, or disallowed, by a building's owner, management or governing housing association.

Section 7. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 9. If any section, sub-section, sentence, clause, phrase, part, or other portion of this measure, or application thereof, is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the remaining portions or provisions of this measure. It is hereby declared by the people voting for this measure that this measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts or portions, or the application thereof, are declared invalid or unconstitutional.

Section 10 This measure is inconsistent with and intended as an alternative to any other initiative or measure placed on the same ballot that addresses the same subject matter as this measure. In the event that this measure and another initiative or measure addressing the same subject matter as this measure, or any part thereof, is approved by a majority of voters as the same election, and this measure receives a greater number of affirmative votes than any other such initiative or measure, then this measure shall prevail and control in its entirety and said other initiative or measure shall be rendered void and without any legal effect.

Section 11. The undersigned voters of the City do hereby request that this ordinance be put to a vote of the people in a special election.