ORDINANCE NO. 05-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF COSTA MESA.

The City Council of the City of Costa Mesa, California, does hereby declare:

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5, et seq.), ("the Act") to allow the medical use of marijuana for certain persons; and

WHEREAS, the Act does not require or provide for the opening of businesses or cooperatives commonly known as Medical Marijuana Dispensaries; and

WHEREAS, notwithstanding the passage of the Act, the sale and distribution of marijuana is prohibited by the Controlled Substances Act, 21 U.S.C. section 841; and

WHEREAS, the City Council of the City of Costa Mesa concludes that the federal law prohibiting sale and distribution of marijuana would preclude the opening of Medical Marijuana Dispensaries sanctioned by the City of Costa Mesa;

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

Section 1. The City Council of the City of Costa Mesa hereby finds and determines that it is the purpose and intent of this ordinance to prohibit medical marijuana dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City.

Section 2. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following:

> "**Medical marijuana dispensary.** A facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to one or more of the following: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with State Health and Safety Code Sections 11362.5 et seq and 11362.7 et seq."

b. Amend Table 13-30 to include an additional row as shown in Attachment A.

Section 3. Environmental Determination. The project 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.

Section 4. 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 the extent necessary to affect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, 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 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 6: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City

Council voting for and against the same.

PASSED AND ADOPTED this 19th day of July, 2005

ATTEST:

Deputy City Clerk of the City of Costa Mesa

Mayor of the City of Costa Mesa

APPROVED AS TO FORM

City Attorney

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

I, Julie Folcik, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 05-11 was introduced and considered section by section at a regular meeting of said City Council held on the 21st day of June, 2005, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the 19th day of July, 2005, by the following roll call vote:

AYES: Mansoor, Monahan, Bever

NOES: Dixon, Foley

ABSENT: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this 20th day of July, 2005.

Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa

ATTACHMENT A

TABLE 13-30
CITY OF COSTA MESA LAND USE MATRIX

LAND USES	ZONES																				
	R1	R2MD	R2HD	R3	AP	CL	C1	C2	C1S[1]	TC[1]	MG	MP	PDRLD[1]	PDRMD[1]	PDRHD[1]	PDRNCM[1]	PDC[1]	PDI[1]	I&R[1]	I&RS[1]	P
INSTITUTIONAL AND RECREATIONAL USES																					
"31a. Medical Marijuana dispensary	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•"

ORDINANCE NO. 10-13

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING ZONING CODE SECTIONS 13-6 (DEFINITIONS) AND 13-16 (ENFORCEMENT) OF TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE REGARDING MEDICAL MARIJUANA DISPENSARIES.

WHEREAS, the City of Costa Mesa Zoning Code currently defines medical marijuana dispensaries and this definition is in need of minor revisions to insure applicability of the City's zoning prohibition to all store-front and multi-user distribution of marijuana within the City of Costa Mesa; and

WHEREAS, the Fourth District Court of Appeal has indicated in dictum in its published opinion in *Qualified Patients' Association v. City of Anaheim*, Case No. G040077, filed on August 18, 2010, that criminal prosecution of possession, cultivation, transportation, distribution, sales, etc. of medical marijuana contrary to the Compassionate Use Act (Cal. Health & Saf. Code § 11356.2) or the Medical Marijuana Program Act (Cal. Health & Saf. Code §§ 11362.7-11362.83) may be preempted by State law; and

WHEREAS, the City of Costa Mesa has never criminally prosecuted medical marijuana dispensaries for any violation of the City's Zoning Code; does not intend to do so in the future; and desires to clarify the City's Zoning Code to make these facts explicit; and

WHEREAS, the City would also like to make explicit its desire to prohibit all businesses and uses, generally, that are in violation of any local, state or federal law or regulation, in order to permit and allow only those businesses and uses which are in compliance with all laws and regulations in furtherance of the health, safety and welfare of the citizens, residents and visitors to the City of Costa Mesa; and

WHEREAS, the City Council of the City of Costa Mesa hereby finds that businesses or uses in violation of the City's municipal code constitute a public nuisance, injurious to the public health, safety and welfare; and

WHEREAS, the City has not enforced its Zoning Code prohibition against medical marijuana dispensaries against individuals or very small groups of individuals for the possession, cultivation, transportation, distribution, sales, etc. of medical marijuana, even though such activities presently remain a violation of federal law; and

WHEREAS, the City intends to circumscribe its Zoning Code prohibitions to apply them to groups of three or more individuals possessing, cultivating, transporting, distributing, selling, etc. medical marijuana, which prohibition includes facilities engaging in the retail sale, dispensing or distribution of medical marijuana, when such facilities do not have an active role in the cultivation of their marijuana product or when the cultivation of their marijuana product occurs off-site; and

WHEREAS, the limitations as to the applicability of the City's prohibition on medical marijuana dispensaries are necessary due to the urban and highly suburban nature of the City of Costa Mesa, and in order to fully preserve the health, safety, welfare and general well-being of the residents, businesses and visitors to the City of Costa Mesa; and

WHEREAS, this ordinance is an urgency ordinance necessary for the immediate preservation of the public peace, health and safety, which is justified, in part, by the Court of Appeal's decision in the Qualified Patients' case, which may in the future detrimentally impact the City's ability to regulate medical marijuana businesses under its existing ordinance and thereby prohibiting the City from furthering its substantial governmental interest in systematically regulating businesses for zoning purposes.

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

Section 1. The definition of the term "Medical Marijuana Dispensary" in Section 13-6 (Definitions) of Title 13 (PLANNING, ZONING AND DEVELOPMENT) of the Costa Mesa Municipal Code is hereby repealed and replaced in its entirety with the following:

> "Medical marijuana dispensary. A facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to three (3) or more of the following: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with State Health and Safety Code Sections 11362.5 et seq. and 11362.7 et seq., which shall include, but not be limited to any facility or location engaging in the retail sale, dispensation, or distribution of marijuana for medical purposes that does not have an active role in the cultivation of the marijuana product that it sells, dispenses, or distributes, or when its cultivation of the marijuana product is off-site from the facility or location for retail sale, dispensation, or distribution."

Section 2. Section 13-16 (Enforcement) of Title 13 (PLANNING, ZONING AND DEVELOPMENT) of the Costa Mesa Municipal Code is hereby repealed and replaced in its entirety with the following:

> "Sec. 13-16. Enforcement.
> (a) Criminal prosecution. Any person, whether as principal, agent, or employee, violating the terms of this Zoning Code may be prosecuted as provided in section 1-33 of this Municipal Code.
> (b) Criminal citation. For the purposes of this Zoning Code, a violation of the terms of this Zoning Code may be cited as either an infraction or misdemeanor pursuant to State Government Code Sections 36900 and 36901 and as provided in section 1-33 of this Municipal Code.
> (c) Civil action. As an alternative to prosecution or citation, or as an additional action, the city attorney may, at the request of the development services director, institute an action in any court of competent jurisdiction to

restrain, enjoin, or abate the condition(s) or activity(ies) found to be in violation of the provisions of this Zoning Code.

(d) No criminal prosecution, citation or penalty. Notwithstanding the provisions of subsections (a) and (b) of this Section, no person shall be criminally prosecuted or cited, or suffer any criminal penalty, for any violation of the provisions of Section 13-30, Table 13-30, row 31a relating to the prohibition of medical marijuana dispensaries within the City.

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

Section 3. Environmental Determination. The project 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 Section 15061(b)(3) of the CEQA Guidelines.

Section 4. 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 the extent necessary to affect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, 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 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 6. This Ordinance shall take effect and be in full force immediately from and after its passage. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published prior to the expiration of fifteen (15) days from its passage once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED, APPROVED AND ADOPTED this 19th day of October, 2010.

Allan R. Mansoor, Mayor

ATTEST:

Julie Folcik, City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney

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

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 10-13 was duly introduced and adopted as a whole at a regular meeting of said City Council held on the 19th day of October, 2010, by the following roll call vote:

AYES: COUNCILMEMBER: MANSOOR, LEECE, BEVER, FOLEY, MONAHAN

NOES: COUNCILMEMBER: NONE

ABSENT: COUNCIL MEMBER: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this 20th day of October, 2010.

JULIE FOLCIK, CITY CLERK

(SEAL)

I hereby certify that the above and foregoing is the original of Ordinance No. 10-13 was duly passed and adopted by the Costa Mesa City Council at the regular meeting held October 19, 2010, and that the Ordinance was published in its entirety in the Newport Beach-Costa Mesa Daily Pilot on October 27, 2010.

JULIE FOLCIK, CITY CLERK

(SEAL)

CITY OF COSTA MESA

CALIFORNIA 92628-1200 P.O. BOX 1200

FROM THE OFFICE OF THE CITY CLERK

June 25, 2013

Law Offices of Omar Figueroa
7770 Healdsburg Avenue, Ste. A
Sebastopol, California 95472-3352

Dear Mr. Figueroa:

RE: Public Records Request

Thank you for your Public Records Request received in our office on June 20, 2013, requesting a copy of the City of Costa Mesa's guidelines pertaining to medial marijuana.

Enclosed you will find a copy of the City of Costa Mesa's adopted Ordinances which define and provide the City's guidelines relating to medical marijuana dispensaries.

If you have any questions about the enclosed Ordinances, please contact Code Enforcement at (714) 754-5623.

Sincerely,

Christiane Goldsworthy

Christiane Goldsworthy
Executive Secretary

Enclosure