

## **Regulations Governing Cannabis Businesses**

---

### **I. Purpose:**

The purpose of these regulations is to establish administrative regulations consistent with Measure X: The City of Costa Mesa Medical Marijuana Measure, as amended, and Measure Q: The City of Costa Mesa Retail Cannabis Measure, as set forth in the Costa Mesa Municipal Code (CMMC). These regulations are issued pursuant to the authority of CMMC Sections 9-482.5 and 9-497.

The background information regarding these measures and related ordinances can be found in Section XII.

These Administrative Regulations implement the various ordinances regulating cannabis in Costa Mesa. The reader shall reference the applicable section of the CMMC to obtain direction and information on matters not discussed in these Regulations.

### **II. Policy**

No person may engage in any cannabis business or in a cannabis activity within the City, including manufacturing, processing, laboratory testing, transporting, dispensing, furnishing, distributing, delivering or selling cannabis or a cannabis product unless the person (1) has a valid cannabis business permit (CBP) from the City and a conditional use permit (CUP) that authorizes the specific business and activity and (2) is currently in compliance with all applicable state and local laws and regulations pertaining to the cannabis business and cannabis business activities, including, but not limited to, having a currently valid license issued by the state.

### **III. Permitted Activities**

1. Types of Authorized Cannabis Businesses Permitted: One or more of the following types of cannabis businesses may be conditionally permitted to operate within the City:
  - A. Cannabis distributor (license classification types 11 and 13);<sup>1</sup>
  - B. Cannabis manufacturer (license classification Type 6, 7, N and P);
  - C. Cannabis testing laboratory (license classification Type 8);<sup>2</sup>
  - D. Cannabis research and development laboratory;<sup>3</sup>

---

<sup>1</sup> With the passage of Senate Bill 94, on June 27, 2017, the State of California eliminated transporter as a separate license category for cannabis businesses. Distributors and non-storefront retailers licensed by Costa Mesa are now the only licensees that can transport cannabis within the City. Accordingly, the City will not issue a separate transporter license.

<sup>2</sup> A person or entity permitted to operate a testing laboratory may not hold a permit to distribute, manufacture or process cannabis under state law. See Business & Professions Code § 26053.

<sup>3</sup> A research and development laboratory permit will only be issued to a person holding a valid cannabis business permit for laboratory testing. Applicants should review CMMC § 9-485, *research and development laboratory*, for specific requirements regarding this use.

## **Regulations Governing Cannabis Businesses**

---

- E. Cannabis retail storefront business (license classification Type 10); and
- F. Cannabis retail non-storefront (delivery) business (license classification type 9).
- 2. Businesses permitted to operate shall not engage in the retail sales or distribution of cannabis, marijuana, cannabis products, marijuana products, or any other items unless the CBP and CUP specifically authorizes the retail sale of such items.
- 3. The City Council may by resolution limit and/or restrict the number of cannabis retail permits available for issuance and renewal.
- 4. No person may engage in any type of marijuana business that is not specifically authorized, including but not limited to, cultivating any form of cannabis or conducting any special event as a cannabis organizer as defined by the BCC.

### **IV. General Application and Permit Process**

- 1. Step 1: Pre-Application Review for Retail (Storefront) cannabis businesses and specified multi-tenant buildings in the Green Zone where hazardous materials will be used or stored.
    - A. The Planning Division leads the Pre-Application review.
    - B. If the Planning Division determines that the proposed site conforms to all applicable criteria, a written determination shall be made. The applicant may move to Step 2.
  - 2. Step 2: Cannabis Business Permit (CBP) Application
    - A. The Planning Division leads the CBP process.
    - B. The CBP cannot be issued until the CUP has been approved by the Planning Commission (or City Council on appeal), building improvements have been completed, all conditions of approval have been satisfied, and all other requirements of the CMMC have been met.
    - C. After successful completion of the background check, and review of required information, the applicant will be given Notice to Proceed to submit the CUP application.
  - 3. Step 3: Conditional Use Permit (CUP) Application
    - A. The Planning Division leads the CUP process.
    - B. The Planning Commission will hold a public hearing.
-

## **Regulations Governing Cannabis Businesses**

---

- C. The Planning Commission will adopt a resolution formally approving or denying the CUP (or City Council on appeal).
  - D. If the CUP is approved, the applicant may move to Step 4 to obtain building permits. If no building permits are required, the applicant may move to Step 5.
- 4. Step 4: Building Permits
    - A. The Building & Safety Division leads the building permit process.
    - B. When the City has completed the final inspection and/or issued a Certificate of Occupancy, the applicant may move to Step 5.
  - 5. Step 5: Issuance of Cannabis Business Permit
    - A. The Planning Division Division leads the issuance of the CBP.
    - B. A CBP shall be valid for two (2) years from the date of issue, unless otherwise suspended or revoked, and shall be renewed biannually thereafter, provided the permittee is in compliance with all provisions of the CMMC and applicable State laws.
    - C. When the CBP has been issued, the applicant may move to Step 6.
  - 6. Step 6: Issuance of City Business License
    - A. The Business License Division of the Finance Department leads this step.
    - B. The applicant shall apply for a City business license.
    - C. The applicant will need to demonstrate that the City has issued a CBP to obtain a business license.
    - D. No cannabis business shall open before all permits and licenses listed above have been issued by the City and required licenses have been obtained from the State of California.

## **V. PRIORITY FOR RETAIL PERMITS, APPLICATION ACCEPTANCE AND WAIT LIST**

- 1. Application Submittal Phases
  - A. Phase One

Only applications from the following types of applicants may be accepted for retail cannabis uses within the first 30 calendar days of the commencement of implementation of Ordinance Nos. 2021-08 and 2021-09 (August 12, 2021 through September 10, 2021):

## Regulations Governing Cannabis Businesses

---

- a. Business entities and owners with approved CUPs and CBPs pursuant to Measure X in the Green Zone who wish to apply for a modification to the existing permits to include a non-storefront retail component for any existing permit location (MCUP Review).
- b. Business entities and owners with approved CUPs and CBPs in the Green Zone who wish to establish a storefront use in a commercial zone (Pre-Application Review). Applications must comply with one of the following scenarios:
  1. The Measure X business entity or owner owns at least 51% of the entity requesting the retail cannabis application. The City will rely solely on ownership documents approved as part of the Measure X CBP and CUP application (or a subsequently approved amendment thereto that was submitted prior to the effective date of this regulation) to determine if an entity or owner qualifies to submit an application for the retail business in the first phase. The application shall be accompanied by an affidavit on a form specified by the City from each person who owns 10% or more of the Measure X business, consenting to the submittal of the retail storefront application. Eligible Measure X business owners may submit only one retail storefront application during this phase.
  2. One or more individuals who each own 20% or more of the existing Measure X business have formed a separate entity that will own at least 51% of the entity requesting the retail cannabis application. (Owners with an interest of 20% or more have already passed the City's background check process.) The City will rely solely on ownership documents approved as part of the Measure X CBP and CUP application (or a subsequently approved amendment thereto that was submitted prior to the effective date of this regulation) to determine if an entity or owner qualifies to submit an application for the retail business in the first phase. The application shall be accompanied by an affidavit on a form specified by the City from each person who owns 10% or more of the Measure X business, consenting to the submittal of the retail storefront application by this owner(s) and

## Regulations Governing Cannabis Businesses

---

acknowledging that the Measure X entity does not have an interest in the retail cannabis business. Eligible Measure X business owners may submit only one retail storefront application during this phase.

3. Owners of existing Measure X businesses are eligible to submit applications for one MCUP and one Pre-Application during the first phase. The City will only accept one pre-application from any Measure X business during the first phase, even if multiple owners wish to submit retail applications. The affidavit shall be used by the Measure X business to designate, if applicable, which owner's retail application shall be submitted during the first phase.
- c. Applicants who have filed CUPs and CBPs for cannabis businesses in the Green Zone that are currently under review by the City may amend their applications, if desired, to add a non-storefront cannabis use to their request. Said amendment to the CUP shall be requested in writing. These applications are already in the review process and adjusting the application to add a delivery use will not take a significant amount of time. This approach is more practical than asking the applicant to process the existing application and then amend it afterwards. Since these businesses are not yet established, building construction must still occur before the applicant may commence operations, so this policy does not give an unfair advantage to these applicants over existing Measure X businesses. Said amendment will require amendment to the CBP as well.
- d. Equity Applicants who are eligible to file an application pursuant to the Permit Equity program described below (Pre-Application Review).
- e. Nothing contained herein shall be construed to impose any liability upon the City granting or failing to grant priority, mandate that the City accept such applications, or that the City be responsible for adjudicating disputes between different persons and/or entities each claiming to be an "owner" of a business under subsection V.1. a. or b.

### B. Phase 2

## **Regulations Governing Cannabis Businesses**

---

The City will accept applications for retail cannabis facilities from all other applicants beginning on September 13, 2021. Measure X business owners may submit additional applications at this time.

### **2. Application Acceptance and Wait List for Retail Applications.**

The City will begin accepting applications subject to the following criteria:

- A. No more than one land use application (Pre-Application, MCUP or CUP) shall be filed for any proposed retail storefront location.
- B. Limit of 15 Active Retail Land Use and Cannabis Business Permit Applications at any time: The City has established two categories of retail cannabis applications: land use applications, which include Pre-Applications and CUPs; and business permit applications, which include CBPs. The City will accept for processing up to 15 land use applications at any one time. In addition, the City will accept up to 15 applications for CBPs at one time. The exception to this limitation is described in subsection G below, which addresses the sequential processing of applications. Modifications to existing CUPs to allow non-storefront retail uses and modifications to applications currently under review by the City shall not count towards this processing limit of 15 cases. Applications for non-retail (Measure X) cannabis businesses shall not count toward the processing limit of 15 cases in either category. Applications proposing manufacturing/distribution uses and a non-storefront retail component shall be classified as non-retail businesses if the floor area devoted to non-retail uses is 51% or more of the total area. This provisions limits the number of applications actively being processed at one time; it is not a limit on the number of applications that will ultimately be accepted by the City.
- C. Limit on Number of Applications Processed from any Applicant: When a Wait List exists, and an applicant has submitted more than one retail cannabis application, the City will only process one application submitted by that applicant at a time. The application for a second or subsequent retail cannabis facility will not be accepted for processing until the City has approved a CUP for the current application, and the CUP appeal period has expired. The applicant may identify the order in which multiple applications shall be processed. This restriction shall not prohibit multiple applicants from designating the same individual to represent them in the application process.
- D. Cannabis Permit Wait Lists: If the number of retail cannabis land use

## Regulations Governing Cannabis Businesses

---

applications reaches 15, or the number of applications for CBPs received reaches 15, the City shall not accept for processing new applications in that category. Instead, those applications shall be placed on the appropriate wait list. This limitation on cases being processed shall not apply to sequential applications as described in subsection G below. To ensure that new applications are reviewed in a timely manner, the City will move one application from the wait list each time an active application is cleared for the next application stage of the review process, even if the total number of applications being reviewed is greater than 15 due to the acceptance of sequential applications as described in subsection G below. The following procedures will guide the acceptance of additional applications in each category:

1. Applicants shall submit an application containing all of the information required by the City for the desired permit (Pre-Application review CUP or CBP). The applicant will be notified via email that the application cannot be processed due to capacity constraints. The City shall retain the application materials. The application will be placed on the applicable Cannabis Permit Wait List (Wait List). Presentation of an application containing all required elements to the City demonstrates the applicant's ability to move ahead with the application once the Department has capacity to process the application. Applicants will not be placed on a Wait List absent presentation of an application fully complying with the City's application forms and submittal instructions.
  2. Incomplete applications shall be rejected.
- E. Wait List Priority – Equity Applicants: Equity Applicants who apply for land use Pre-Applications within the first sixty (60) days of the opening of Phase 1 shall automatically move to the top of the Cannabis Business Wait List. Placement on the wait list shall be contingent on the applicant's submittal of all required information to determine eligibility as an Equity Applicant, as specified in Section VI, or documentation that the applicant has already been qualified by the City as an Equity Applicant. If the applicant does not qualify as an Equity Applicant, and was placed on the Wait List ahead of other applicants who are still on the Wait List, the first required application may be rejected by the Planning Division and the applicant shall fall to the bottom of the Cannabis Business Wait List. The City seeks to create a

## **Regulations Governing Cannabis Businesses**

---

disincentive to submit unqualified Equity Program applications in order to secure a higher position on a Wait List. If there is no Wait List, the City will continue to process the application.

- F. Calling up Applications from the Wait List: When a Pre-Application, CUP or CBP for retail cannabis uses is cleared to move to the next application stage of the review process, the Planning Division may notify the applicant(s) at the top of the applicable Cannabis Permit Wait List.
1. A Wait Listed applicant notified of an opportunity to submit must submit payment for the previously presented Pre-Application, CBP Application or CUP application within ten calendar days of notification.
  2. If the fee is not submitted within the designated time, the City may either:
    - a. Notify the next person on the Cannabis Permit Wait List that an application may be submitted; or, if there is no one else on the Wait List,
    - b. Accept an application, if so requested, from any other applicant.
- G. Sequential Processing of Applications: The satisfactory completion of one step in the review process allows the submittal of the sequential application in the process (i.e., issuance of a Notice to Proceed allows submittal of a CUP). The City will allow the applicant to proceed to the next application stage in the review process even if a wait list exists, provided the sequential application is submitted within ten calendar days of the date the City issues the approval or determination to proceed to the next step. This situation shall be referred to as a “sequential application.” As a result, the City may be processing more than 15 land use and/or business permit applications at one time. The sequential applications shall not take priority over other land use applications already accepted for processing.
- H. If the subsequent application is not submitted within ten calendar days, a subsequent application submittal may be placed on the Wait List if such a list is established at the time subsequent applications are submitted.
- I. Response Timeframes for Applicants: The Cannabis Wait List shall be employed as described above whenever 15 or more combined land use applications for retail storefront and non-storefront cannabis businesses



## **Regulations Governing Cannabis Businesses**

---

are under active review by the City, and/or whenever 15 applications for CBP for storefront and non-storefront cannabis businesses are under active review. When a Wait List is established, applicants with cases currently under review by the City shall respond to all comments, requests for additional information, corrections, etc. from the City within 30 calendar days. Failure to timely respond may result in the application being declared inactive and moved to the Wait List. The Director of Economic and Development Services shall have the ability to modify the 30 day response time based on individual circumstances. The intent of this provision is to ensure that applicants who are not prepared to move their cases through the review process do not prevent other applicants from entering the review process.

- J. Accepting Additional Applications: The Director of Economic and Development Services may accept additional applications for one or more specific application types if he or she determines that the City has the capacity to process more than 15 active retail cannabis business applications, based on the mix of cannabis applications on file and the volume of other development applications submitted to the Department.

### **VI. EQUITY PERMIT PROGRAM**

The City Council has expressed interest in creating a Social Equity program that addresses disparities in the cannabis industry by prioritizing the victims of the war on drugs, and minimizing barriers of entry into the industry. The first step in creating such a program is the establishment of this Equity Permit Program.

1. An “equity applicant” means a natural person who meets all of the following criteria:
  - A. Is currently a resident of the City of Costa Mesa and has been for at least the past consecutive five years;
  - B. Has an annual household income at or less than the Orange County Area Median as specified annually by the State Department of Housing and Community Development (HCD). The Orange County Area Median Income for a four person household in 2021 is \$106,700. The following table identifies the adjustments to the Area Median Income limits based on household size:

**Regulations Governing Cannabis Businesses**

---

Household Size	Income Limit
One person	\$ 74,700
Two people	\$ 85,350
Three people	\$ 96,050
Four people	\$106,700
Five people	\$115,250
Six people	\$123,750
Seven people	\$132,300
Eight or more	\$140,850

- C. Was convicted of a felony in Orange County, California 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.
- D. Can pass all other components of the City's specified background check process.

**2. Equity Applicant Verification Process**

- A. An applicant's eligibility shall be determined through the Pre-Application Review process. The City shall waive the fee typically required for a Pre-Application review to process the eligibility request. The eligibility request may be submitted concurrently with a Pre-Application Review request for a retail cannabis business. The City shall also waive fees to process Pre-Application Review for a proposed retail cannabis business owned by an Equity Applicant. (Ownership is defined as at least 51% ownership of a business entity. An Equity Applicant may only receive benefits as a participant in one Costa Mesa cannabis business.) If the applicant fails to qualify as an Equity Applicant, the applicant shall pay the required Pre-Application review fee for a proposed cannabis business, but shall not pay any fees to have the equity applicant application reviewed.
- B. Information required to complete a Live Scan background check (copies of legal identification, social security card, proof of address if needed). Because this application contains sensitive information, copies of the Live Scan information shall be maintained in a secure location. Information such as driver's license and social security numbers shall be

## Regulations Governing Cannabis Businesses

---

redacted before applications are made available pursuant to any requests for records under the Public Records Act.

- C. Proof of Income: A copy of owner's federal tax returns for the past two years and at least one of the following two documents:
  - 1. Two months of pay stubs, current Profit and Loss Statement or Balance Sheet.
  - 2. Proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKs or Supplemental Security Income or Social Security Disability (SSI/SSDI).
- D. Proof of Residency
  - 1. Provide at least two of the following documents, evidencing five consecutive years of residency:
    - a. California Driver's record or Identification Card record
    - b. Property tax billing and payment records
    - c. Verified copies of state or federal income tax returns where a Costa Mesa address is listed as the primary address
    - d. School records
    - e. Medical records
    - f. Banking records to a Costa Mesa address
    - g. Orange County Housing Authority records
    - i. Documents demonstrating residency in 2021 can be used for proof of current residency only; they will not be considered proof of a year of residency.
- E. Proof of Conviction shall be demonstrated through the following documents:
  - 1. Court records;
  - 2. Probation documents; and/or
  - 3. Department of Corrections or Federal Bureau of Prisons documentation that clearly indicates the arrest occurred in Orange County.
- F. Equity applicants shall submit required equity applicant verification documentation with the first application required to initiate review of the cannabis business (i.e., the Pre-Application Review for a storefront cannabis business). If an applicant wishes to pre-qualify as an Equity Applicant, the City may process a Pre-Application request solely for this purpose. However, qualification as an Equity Applicant will not guarantee a spot on any Cannabis Wait List, if such a list is established.

## **Regulations Governing Cannabis Businesses**

---

Only land use and CBP applications may be placed on the wait list.

- G. In order for a California entity (such as a corporation, LLC, LLP, partnership, etc.) to participate in the Equity Permit Program, one equity applicant must own and maintain a controlling interest of at least 51% in that company. In addition, the Social Equity Owner shall receive the Equity Share percent of the retained earnings and 100% of the unencumbered value of each share of stock, member interest or partnership interest owned in the event of the dissolution of the entity to their equity share, or 100% of the value of each of stock, member interest or partnership interest in the event that the stock, member interest or partnership interest is sold. Chief among the concepts of equity share, is unconditional ownership which means such individual(s) will receive equal profits, and distributions or other payments proportionate to their ownership interests.

This Provision is intended to ensure true ownership by Social Equity Owners and as such, prohibits the divestment or relinquishment of any part of their ownership under any circumstance. In addition, the Equity Share is also expanded to address voting rights on fundamental decisions relating to the business and control of at least the equity share percent of the voting rights on all decisions involving the operation of the business. This requirement is also subject to being audited to assess compliance and the Social Equity Owner can initiate legal action due to a breach of contract agreement, and the City may suspend and/or revoke a Cannabis Business Permit, Business License and/or Conditional Use Permit if any provision in an operating agreement violates any of the Equity Share for the Social Equity Owner requirements.

### **3. Benefits Afforded to Eligible Equity Permit Program Participants**

- A. The City shall waive fees associated with the Pre-Application Review to determine eligibility. The City shall waive fees associated with a required Pre-Application review for a proposed retail cannabis business. Should the applicant fail to qualify as a participant in the Permit Equity program, the City will not issue a final determination regarding the pre-application for the retail cannabis business until the applicant has paid the required filing fee. If the fee has not been paid within 10 calendar days

## Regulations Governing Cannabis Businesses

---

following a determination of ineligibility, the retail cannabis application shall be deemed withdrawn.

- B. The City shall waive fees associated with the CBP for qualified equity applicants. If a CBP is issued, the applicant shall be required to submit proof that the equity applicant continues to own at least 51% of the business entity the first two times the CBP is renewed. If the equity applicant ceases to own at least 51% of the business entity, the City will not renew the CBP.
- C. The city shall accept applications from an Equity Applicant for a retail cannabis business for Pre-Application review within the first thirty-day period following the beginning of the application process, prior to acceptance of applications from the general public.
- D. Equity applicants who apply within the first sixty day period following commencement of the application process shall be placed at the top of the Cannabis Permit Wait List described above when the Wait List to submit cannabis applications is used. Placement on the wait list shall be contingent on the applicant's submittal of all required information to determine eligibility for the Permit Equity program, or a determination from the City that the applicant qualifies as an Equity Applicant.
- E. City staff shall maintain a matrix documenting all fees waived for an Equity Applicant.

### VII. **Application Review Procedures**

#### 1. Step 1: Pre-Application Review

The City is implementing a Pre-Application Review process for several types of cannabis permits to ensure compliance with certain land use issues including zoning and separation requirements that would otherwise disqualify a permit application. The applicant shall submit a Pre-Application request to confirm that the proposed cannabis use is permitted at the proposed location. This screening is also intended to identify potential issues associated with the use of hazardous chemicals in multi-tenant buildings in the Green Zone.

- A. The following applications must undergo Pre-Application Review before successive permit applications will be accepted:

## **Regulations Governing Cannabis Businesses**

---

1. All cannabis retail storefront uses.
  - a. Review shall determine preliminary compliance with the following criteria:
    1. Land Use/zoning
    2. Separation standards
    3. Past illegal operations
    4. Parking
2. All cannabis businesses proposing to use or store hazardous materials located in multi-tenant buildings at the following addresses in the Green Zone:
  - a. Cadillac Avenue: 3505, 3590, 3595
  - b. Hyland Avenue: 3525
  - c. Review shall examine the proposed processes and chemicals to be used in relation to the hazardous materials currently used by other businesses in the building.
  - d. A proposal to modify an existing CUP/CBP to allow a non-storefront retail use in conjunction with an approved cannabis business in a multi-tenant building in the Green Zone shall NOT trigger the need for pre-application review.
  - e. A cannabis use that does not involve the use/storage of hazardous materials, such as a distribution use, shall NOT require pre-application review.

All other cannabis business applicants may skip Step 1 and go directly to Step 2.

### **B. Submittal Instructions**

1. A Pre-Application request must be submitted to the Planning Division via the portal on the City's website.
2. A Pre-Application request must also be submitted by an applicant seeking to establish eligibility as an Equity Applicant. In this case, the information that must be submitted can be found in Section VI. The City shall waive the Pre-Application fee to review any request to qualify an Equity Applicant.
3. Pre-Application review will not be completed over the counter to allow staff to conduct appropriate research and verify information submitted.
4. Payment of fees must be made by one of the acceptable payment methods: certified check, cashier's check, or money orders made payable to the City of Costa Mesa. The City will also accept wires, credit card, or

## Regulations Governing Cannabis Businesses

---

cash payments. Payments made by wire must include the project address, the payer's name, and the fee amount. Credit card payments are not to exceed the City's established credit card transaction threshold. Cash payments will be accepted at the discretion of the Finance Department, with prior approval and subject to appointment.

### C. Submittal Requirements

1. Retail Storefront Uses: the following information is required to be submitted with the pre-application request:

- a. Separation Map: Assessor's Parcel Map(s) depicting the subject location and all parcels within 1,200 feet from the perimeter of the site on which the proposed business shall operate. This map may be prepared by a person or firm specializing in planning, civil engineering or preparation of radius maps, but use of a consultant is not required. This map shall identify the location of all uses currently operating from which a separation requirement is specified in the CMMC for a cannabis use. The applicant shall also submit a list of the uses by address:

1. K-12 schools (public and private): 1,200 feet
2. Child daycare facilities: 1,200 feet
3. Homeless shelters: 1,200 feet
4. Playground: 1,200
5. Youth Center: 800 feet

All distances shall be measured in a straight line from the premises where the cannabis retail use is to be located to the closest property line of a K-12 school, playground, child daycare, homeless shelter or youth center. The property line of a playground shall be a thirty (30) foot radius from the exterior physical boundaries of the playground equipment area. All distances shall be measured without regard to the boundaries of the city and and/or intervening structures or other barriers.

A cannabis business may be allowed at a specific location even if portions of the building or site on which it is located are within specified separation areas, so long as the premises themselves are not within the required separation.

## Regulations Governing Cannabis Businesses

---

The preparer of the map shall certify that the map identifies all sensitive uses included in the map of sensitive uses maintained by the City, as well as all sensitive uses observed during the preparer's inspection of uses within 1,200 feet of the proposed cannabis business.

In cases where the distance between the proposed premises and a sensitive use is within 10% of the minimum required separation, the City may require the applicant to submit a precise measurement as calculated by an engineer licensed to practice in the State of California. For example, if a measurement on the Assessor's Parcel Map reveals the premises lie approximately 900 feet from a sensitive use, the City may require an engineer to certify the exact distance. Similarly, an applicant may submit an engineer's certification to confirm that the required separation does exist.

- b. Site Plan: A site plan depicting all available on-site parking and existing landscaping. The application shall also identify past uses of the subject premises. If the proposed business will occupy a space that has historically been used for retail purposes, the cannabis applicant will not be required to comply with current off-street parking standards. However, if the proposed premises have historically been occupied with uses that require less parking than a retail use, the cannabis applicant will be required to comply with current off-street parking standards.
- c. If the project site does not comply with the landscaping requirements per CMMC Chapter VII of Title 13, it may be required to be brought into conformance (when feasible as determined by the Director of Economic and Development Services).
- d. Statement regarding Illegal Activities: A statement signed by the applicant and property owner affirming that no unpermitted and/or illegal cannabis activity has existed **on the property** (not just the proposed premises) at any time in the 365 days preceding submittal of the Pre-Application request. If such an activity did exist, indicate the date the use was discontinued or vacated. The CMMC prohibits the establishment of a cannabis business on a site where a previously prohibited cannabis business was conducted unless:
  - i. At least 365 days have elapsed since the unpermitted cannabis activity vacated the property;
  - ii. The property owner has compensated the City for any and all expenditure of public funds and resources, including all costs, expenses (including but not limited



## Regulations Governing Cannabis Businesses

---

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. If the owner of the property is required to evict that use, the 365 days shall begin to run from the date of filing of an unlawful detainer complaint, in which case a cannabis business permit and CUP may be issued after the 365 days has elapsed and that use is no longer occupying the property.

- iii. The City shall be compensated even if more than 365 days have elapsed since the unpermitted activity has ceased.
  - iv. A decision and/or determination by the Zoning Administrator or Director of Economic and Development Services regarding a factual finding of illegal or unpermitted cannabis activities at a particular property may be appealed to the Planning Commission. However, the legal prohibition in the Zoning Code against establishing a retail cannabis business on a property where illegal or unpermitted cannabis activities has occurred is not itself subject to appeal.
  - v. For all applications for retail storefront uses, regardless of priority status, the Director may require reimbursement of the costs, expenses and/or attorneys' fees incurred by the City because of that unpermitted cannabis use, prior to processing or continuing to process an application or any portion thereof.
2. Businesses in Multi-tenant buildings in the Green Zone: the following information is required to be submitted with the pre-application request:
- a. All processes and chemicals to be used in the proposed non-retail cannabis business shall be identified through a business

## Regulations Governing Cannabis Businesses

---

- operations plan and/or safety plan.
  - b. Floor plan of the multi-tenant building with all existing uses labeled, including other cannabis businesses.
- D. Pre-Application Review Process
- 1. Retail Storefront Uses
    - a. The Planning Division shall review the application and will notify the applicant if there are questions or additional information is needed to make a determination.
    - b. The Planning Division shall conduct a field visit to confirm that the proposed maps correctly depict all potential separation conflicts. The planner shall include a Code Enforcement Officer in this inspection; the Supervisor shall assign the officer. This is a preliminary screening in that a final determination will be made regarding compliance with separation standards when the CBP application is accepted for processing.
    - c. The Planning Division will determine if parking and landscaping issues must be addressed during the CUP review process.
    - d. The planner shall review the applicable Smart Sheet maintained by the Community Improvement Division to determine if illegal or unpermitted cannabis activities have been observed on the property. If the **property** on which the proposed business is located is not on the list, and the applicant's letter certifies that no unpermitted or illegal cannabis activities have been conducted in the past, the planner shall deem the application to comply with this provision. If the site is on the list, the planner shall refer the application to the Community Improvement Manager to determine if the statement submitted about prior violations is accurate. The Community Improvement Manager shall confirm the date the illegal or unpermitted activity ceased. When applicable, the Community Improvement Manager shall also calculate the amount to be reimbursed for enforcement activities, based on the Community Improvement Division's records and information to be provided by the Building Division, Fire, Finance and Police Departments, and the City Attorney's Office.
  - 2. Businesses in Multi-Tenant Buildings in the Green Zone:
    - a. The Building & Safety Division and Fire Department shall review applications within the Green Zone to identify potential issues that

## **Regulations Governing Cannabis Businesses**

---

may arise from the use of hazardous chemicals by multiple users within the building. The Building & Safety Division and Fire Department shall advise the Planning Division of potential issues that may need to be addressed during the permit process. Information provided by the City will be preliminary and intended to help applicants understand if the proposed use of chemicals at the location may trigger the need for certain building improvements or other requirements. A final determination on these matters cannot be made until an application for a building permit is ultimately filed.

3. All applications – Written Determination: The Planning Division will issue a written determination as to whether the proposed site conforms to the applicable zoning criteria within approximately 30 days of the date the Pre-Application is accepted for processing. If the site is located in the Green Zone, the Building & Safety Division and/or Fire Department will provide guidance on potential issues and mitigation to address the proposed use of chemicals and processes. A decision regarding the Pre-Application review may be appealed to the Planning Commission in accordance with Section 13-29 of the CMMC.
4. Disclaimer: The Pre-Application determination shall be based on information available at the time the application is submitted. A final determination of compliance with all requirements of the CMMC will be made when the final applicable permit is reviewed and decided. Final determinations regarding separation of storefront cannabis businesses from sensitive uses will be based on the uses operating at the time the CBP application is accepted for processing. Final determinations regarding fire and building codes will be made when building permit application(s) are reviewed and/or permits issued.
5. Not a Permit: Issuance of a Pre-Application determination does not constitute written evidence of permission given by the City to operate a cannabis business, nor does it establish a “permit” within the meaning of the Permit Streamlining Act. It does not create an entitlement under the Zoning or Building Codes or any other law. The Pre-Application determination is based on current details known to the City at the time the determination is issued. The cannabis business must comply with all applicable provisions of the CMMC and state law at the time building permits are issued.

## Regulations Governing Cannabis Businesses

---

- E. Definitions: For convenience, the definitions of terms described above are included herein, as the terms are defined in the CMMC:
1. “Child day care facility” means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes. (Section 1596.750 of HSC). The city recognizes licensed child care facilities as meeting the criteria to require separation from retail cannabis uses.
  2. “Homeless Shelter” is the same as “Emergency shelter” which means a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless that is not in existence after the declared shelter crisis. (Section 8698.4(c)(1) of Government Code).
  3. “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, court, pool or skate facilities.
  4. “Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

## Regulations Governing Cannabis Businesses

---

5. "Property" shall have the same meaning as "lot" in CMMC Section 13-6:
  - (a) A parcel of real property when shown as a delineated parcel of land with a number or designation on a subdivision map or parcel map recorded in the office of the county recorder, and created in conformance with the Subdivision Map Act and applicable local ordinances.
  - (b) A parcel of real property when shown on a record of survey map or deed filed in the office of the county recorder, when such map or deed was filed as the result of and was made a condition of a lot division approved under the authority of prior ordinances
6. "School" means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. (Section 11362.768(h) of HSC).
7. "Youth center" shall mean 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. It shall not include dance studios, tutoring facilities, martial arts studios or similar types of uses.

### **2. Step 2: Cannabis Business Permit (CBP) Application**

It is the purpose and intent of the CMMC to regulate the distributing, manufacturing, processing, research and development, retail sale, delivery, 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 the CMMC is intended to authorize the possession, use, or provision of cannabis for purposes which violate state or federal law.

#### A. Submittal Instructions

1. Electronic Submittals: The application shall be submitted via the application portal as described on the City's website. The City shall acknowledge receipt of the application and provide a determination as to whether the application is complete for processing within 10 calendar days.
2. Organization of Application

## Regulations Governing Cannabis Businesses

---

The application materials must be organized in the following format. Each document must be submitted as a separate file.

- CBP Application form
- Floor plan(s)
- Operation History
- Labor Peace Agreement/Commitment
- Retail Cannabis Business Permit Defense and Indemnity Agreement

Live Scan background check information for each owner/officer:

- Copy of social security card
- Copy of Driver's License, DMV issued ID card, or passport
- Proof of address if different than what appears on government issued identification
- Individual digital passport photo in JPEG format or equivalent

Corporate Documents

Business Plan

Security Plan

Pre-Application Determination, if required

4. Signatures: The application shall be signed by the applicant and the property owner. The signatures shall be notarized.
3. Payment of Application Fees: The application will not be accepted for processing until the City has received the required fee. Payment of fees must be made by one of the acceptable payment methods: certified check, cashier's check, or money orders made payable to the City of Costa Mesa. The City will also accept wires, credit card, or cash payments. Payments made by wire must include the project address, the payer's name, and the fee amount. Credit card payments are not to exceed the City's established credit card transaction threshold. Cash payments will be accepted at the discretion of the Finance Department, with prior approval and subject to appointment.
5. Pre-Application Fee Credit: If the application includes a Pre-Application determination, the required fee shall be reduced by the fee paid by the application for the Pre-Application determination.
6. Fees Non-Refundable: Fees shall be non-refundable if the applicant fails to pass the background check or otherwise decides to withdraw the application.

## Regulations Governing Cannabis Businesses

---

7. Fee Waiver for Equity Applicant: The City shall waive the fee for a CBP application filed by an Equity Applicant. The application shall include the determination from the City qualifying the applicant for this program.

### B. Application Contents

1. Every CBP Application shall include, at a minimum, the following information:
  - a. The name, address, and contact information for the business owner(s). If the owner is a corporation, legal documents outlining the business structure shall be provided, along with the name, address and contact information for each officer. The following documents, if applicable to the business structure, shall be provided:
    1. Articles of Incorporation.
    2. Articles of Organization.
    3. Certificate of Limited Partnership.
    4. Statement of Partnership Authority.
    5. Fictitious Business Name Statements
  - b. Proof of identity for Live Scan background check for each owner/officer:
    1. Copy of social security card or a signed statement indicating the card is not available and attesting to the social security number.
    2. Copy of Department of Motor Vehicles (DMV) issued driver's license, DMV issued ID card or U.S. Passport.
    3. Proof of address (DMV issued driver's license, DMV issued ID card or U.S. Passport and/or recent utility bill in owner/officer's name).
    4. A recent passport-type photo in JPEG or equivalent format. Multiple photos cannot be combined into a single file.

Because this application contains sensitive information, copies of the Live Scan application shall be maintained in a secure location, separate from the Cannabis Business Permit application. Information such as driver's license and social security numbers shall be redacted before said applications are made available pursuant to any requests for records under the Public Records Act.

## Regulations Governing Cannabis Businesses

---

- c. Property Address of Proposed Business Location. The address, suite number (if applicable) and Assessor's Parcel Number of the property on which the proposed business shall be located. The application shall not be accepted if the proposed operation is not a conditionally permitted use on the subject property pursuant to the Citywide Land Use Matrix in Table 13-30 of the CMMC. For storefronts, the address must match the issued pre-application determination letter.
- d. A Business Plan. For ALL cannabis businesses, the business plan shall include at a minimum the following information. Additional requirements for specific types of businesses are set forth below.
  1. How the business will conform to local and state law.
  2. How cannabis will be tracked and monitored to prevent diversion.
  3. A schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion.
  4. A budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation costs. The budget must demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds.
  5. Proof of capitalization, in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets.
  6. A pro forma for at least three years of operation.
  7. A description of the day-to-day operations which meets the industry best practices for the specific type of permit sought from the City. At a minimum the description shall include the following information:
    - i. The total number of employees that will be employed at initial opening and when the facility is operating at full capacity.



## Regulations Governing Cannabis Businesses

---

- ii. Any third party vendors/consultants that will be utilized at the onsite operation.
      - iii. The supply chain the facility will utilize to acquire items for this operation.
      - iv. How cannabis will be tracked from the supplier to final product. Specifically outline the details on how it will be monitored to prevent diversion.
    8. A floor plan with a flow diagram and accompanying narrative describing how the cannabis product will travel starting from the time cannabis arrives onsite in the delivery vehicle until it leaves the location. Identify the designated parking locations for delivery vehicles and all delivery entrances.
  - e. Security Plan. For ALL cannabis businesses, provide a security plan prepared by a professional security consultant that includes, at a minimum, the following components. Additional requirements for specific types of businesses are set forth below.
    1. Details on operational security, including but not limited to:
      - i. Employee specific policies, training, sample written operational policies and procedures.
      - ii. Transactional security and cash handling security.
      - iii. Visitor security.
      - iv. Third party contractor security.
      - v. Security personnel, if utilized, must be licensed by the State of California Bureau of Security and Investigative Services.
      - vi. Delivery security.
      - vii. Designation of a security representative/liaison to the City, who shall be reasonably available to meet with the City Manager regarding any security-related measures or operational issues.
    2. A description and detailed schematic of the overall facility security, including but not limited to:

## Regulations Governing Cannabis Businesses

---

3. An alarm system on all perimeter entry points and perimeter windows shall be professionally installed, maintained, and monitored. The alarm system shall be approved by the City.
4. Video surveillance system including information on quality, color rendition, resolution and retention procedures. The exterior of the business shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be approved by the City and must be of adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than three months. The owner/operator shall make the recordings available to the Costa Mesa Police Department within 24 hours of receipt of such a request.
5. Capability to remain secure and operational during a power outage and ensure that all access doors are not solely controlled by an electronic access panel, thus ensuring that locks are not released during a power outage.
6. Security measures for doors and windows.
7. General security measures and any other procedures to prevent diversion, theft and loss.
8. Security Diagram(s) of the Licensed Premises accurate, dimensioned and to-scale (minimum scale of 1/4") that depicts the following:
  1. Locations where cannabis products shall be stored and secured. Depict the safe, vault, and secure rooms. If using a secured room, then provide an accompanying narrative describing what security measures are employed in that area including but not limited to type of lock(s) and wall construction. Include any other procedures to prevent diversion, theft, and loss.

## Regulations Governing Cannabis Businesses

---

2. Boundaries of limited access areas accessible only to authorized cannabis business persons.
      3. Location of sensors installed to detect entry and exit from secure areas.
      4. Camera locations (exterior and interior)
    - f. Floor Plan. A floor plan showing existing conditions. If changes are proposed as part of the project, then a proposed floor plan shall also be submitted. The floor plan(s) shall be accurate, dimensioned and to-scale (minimum scale of 1/4"). The floor plan shall clearly identify all demolition and improvements proposed.
  2. In addition to the above requirements for ALL cannabis uses, the following information shall also be submitted for each specific cannabis use allowed in the City:
    - a. Additional requirements for manufacturing and distribution uses:
      1. Business plans for manufacturing and distribution businesses shall also include the following information:
        - a. A narrative detailing production steps and describe the functions and processes to occur in each room.
        - b. Detailed description of the methods used to store and then distribute products after production. At minimum it shall include the following:
          1. Onsite warehousing capacity.
          2. Location of any offsite warehousing if applicable.
          3. The number of vehicles used for the transportation.
          4. The type of vehicles utilized for this transportation.
          5. Procedure for transportation of goods.
          6. Whether a third party transport company will be utilized. The application must identify the transport company.
          7. Specific details of manufacturing from the perspective of components and materials moving down the production line. This shall

## Regulations Governing Cannabis Businesses

---

identify each step of production process and give numerical detail, such as production capacity.

- b. Additional requirements for non-storefront (delivery only) uses:
1. Business Plans for non-storefront retail (delivery) businesses shall also include the following information:
    - a. The location where delivery vehicles shall be stored when not in use. If vehicles are to be stored onsite, provide a site plan depicting spaces to be used by delivery vehicles.
    - b. How the delivery vehicle(s) will be equipped with a GPS device and provide secure storage for cannabis goods and payment proceeds, if any.
  2. Security plans for retail non-storefront (delivery) businesses shall include the following additional information:
    - a. How proof of age of every person receiving a delivery shall be verified with an electronic age verification device, prior to delivery to that person. Describe how that device shall be able to retain a log of all scans for a minimum of 180 days that includes the date and time of each transaction and the customer's age.
    - b. The technology that will be used to implement point-of-sale tracking. The system shall record and store the following information for each transaction involving cannabis goods:
      - i. The date and time of the transaction
      - ii. The first name and employee number of the employee who processed the sale.
      - iii. A list of all cannabis goods purchased, including the quantity.
      - iv. The total amount paid for the sale, including the individual process paid for each cannabis product purchased, and any amounts paid for taxes.
      - v. A plan to secure all inventory during non-business hours.

## Regulations Governing Cannabis Businesses

---

3. Labor Peace Agreement: For a retail (storefront or non-storefront) 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 will abide by the terms of, a labor peace agreement as otherwise required by Business and Professions Code section 26105.5.
- c. Additional requirements for storefront retail uses:
1. Business Plans for retail storefront businesses shall also include the following information:
    - a. How customers will be notified, both verbally and via signage, of the following provisions:
      - i. Unlawful sale, barter or distribution of cannabis is a crime and subject to a fine or arrest.
      - ii. 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.
      - iii. A warning that patrons and/or employees may be subject to prosecution under federal cannabis laws, if applicable.
      - iv. 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.
    - b. How patrons will be screened at the entrance to the facility to ensure that no one under the age of 21 years enters the facility, unless the business holds a retail medical cannabis license issued by the State. The plan shall include verification of the age of every person, other than employees, entering the premises. The electronic age verification device may be

## Regulations Governing Cannabis Businesses

---

- mobile or fixed, and shall be able to retail a log of all scans that includes the following information: date, time, and age.
- c. The proposed product line to be sold and the estimated percentage of sales of flower and manufactured products.
  - d. Estimates of the number of customers to be served per hour and day.
  - e. How cannabis distributors will be screened and allowed into the storefront facility to deliver cannabis and cannabis products.
2. Security plans for retail storefront businesses shall include the following additional information:
- a. A plan to ensure at least one (1) licensed private security guard or guards shall be present at the premises twenty-four (24) hours per day.
  - b. A plan to demonstrate how the private security guard(s) and business personnel shall monitor 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.
  - c. Customer check-in procedures: Describe how proof of age of every person other than employees entering the business shall be verified with an electronic age verification device, prior to entry to the retail area or delivery to that person. Describe how that device shall be able to retain a log of all scans for a minimum of 180 days that includes the date and time of each transaction and the customer's age.
  - d. Cash handling procedures: opening, mid-day and closing procedures; whether cash will be stored on- or off-site; and security measures for storing cash on the premises and during transportation.

## Regulations Governing Cannabis Businesses

---

- e. An exterior lighting plan, indicating how exterior lighting will provide satisfactory illumination for safety purposes and for continuous video monitoring and recording of the exterior of the premises.
  - f. A plan depicting the location and type of all internal and external video cameras to ensure said cameras shall record video of all entryways and exits of the premises, system point-of-sale areas and areas where cannabis goods are displayed for sale.
  - g. Procedures to ensure deliveries of cannabis goods shall be accepted inside the facility, and that deliveries shall only occur during regular business hours. Also describe cash handling when distributors fulfill an order to the storefront business especially if it will occur onsite.
  - h. The technology that will be used to implement point-of-sale tracking. The system shall record and store the following information for each transaction involving cannabis goods:
    1. The date and time of the transaction.
    2. The first name and employee number of the employee who processed the sale.
    3. A list of all cannabis goods purchased, including the quantity.
    4. The total amount paid for the sale, including the individual process paid for each cannabis product purchased, and any amounts paid for taxes.
  - i. A plan to secure all inventory during non-business hours.
3. Labor Peace Agreement: For a retail (storefront or non-storefront) 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 will abide by the terms of, a labor peace agreement as otherwise required by Business and Professions Code section 26105.5.

## Regulations Governing Cannabis Businesses

---

4. Retail Cannabis Business Permit Defense and Indemnity Agreement: An executed copy of this Agreement shall be submitted with every CBP application for a retail (storefront or non-storefront) cannabis application.

### C. Accepting Applications

1. Planning Staff shall review the application materials to ensure all required documents and plans have been submitted.
2. If satisfied, Planning shall initialize a case in Permits Plus to generate the application number and receipt.
3. Planning shall create a case file with the property address if a file does not already exist in the Department shared drive: DevSvs/CannabisApps.
4. Planning shall ensure all application materials are placed and labeled in the electronic case file. Files containing sensitive information regarding background checks and tax information shall be placed in the secured file: Cannabis Documents/Cannabis Secure Files
5. Planning shall create a Log document in the file to track all activity regarding the permit application, including routing plans, communications with the applicant, receipt of background check clearances, etc.

### D. Routing Complete CBP Applications for Internal Review

1. Planning shall route the entire application to HdL for review.
2. Planning shall route the following components to Fire for review for non-retail applications:
  - a. Project description
  - b. Security Plan
  - c. Floor Plan
3. Upon receipt of comments on the application, Planning shall prepare a comment letter advising of corrections the applicant must make, if appropriate.
4. When the applicant has submitted a response to the comments/corrections, the applicable documents shall be routed to the appropriate reviewing agencies.
5. When the various reviewers including HdL are satisfied with the plans and documents, this initial phase of the CBP is complete.

### E. Background Check Process – Owners and Officers



## **Regulations Governing Cannabis Businesses**

---

1. Live Scan Application: Planning shall request that CID prepare the Live Scan forms if the Cannabis Business Permit application is complete and eligible for processing. A copy shall be placed in the secure location and the original shall be returned to the applicant(s).
2. Maintaining Sensitive Information: Because this application contains sensitive information, copies of the Live Scan application shall be maintained in a secure location, separate from the Cannabis Business Permit application (Cannabis Documents/Cannabis Secure Files. Information, such as driver's license and social security numbers, shall be redacted before said applications are made available pursuant to any requests for records under the Public Records Act.
3. Once the Live Scan forms have been created, the documents identifying each owner/officer (driver's license, social security card, and proof of address) shall be permanently deleted from the secure file.
4. Scope: All applicants shall be subject to the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) background checks.
5. Live Scan Operator: Live Scan background checks may be obtained from any Live Scan operator in the State of California offering DOJ and FBI background checks. The applicant is responsible for paying any fees imposed by the Live Scan Operator.
6. Tracking Form: After receiving a stamped copy of the Live Scan form from the Live Scan operator, the applicant(s) shall submit the stamped form to the planner within 24 hours. The form may be submitted in person or via email.
7. Results: CID is responsible for obtaining live scan background check results from the Costa Mesa Police Department. The Police Department shall simply indicate if the applicant(s) has/have passed or failed. Completion of the background check may take up to three months.
8. Notification: CID shall advise the case planner if a proposed business owner fails to pass the background check. Questions from an applicant regarding a failure to pass the background check shall be directed to the Police Department.
9. Third Party Check: The City Manager may require business owners and corporate officers to submit to a third party background check in addition to the Department of Justice and/or Federal Bureau of Investigation background checks.

## Regulations Governing Cannabis Businesses

---

10. Failure to Pass: If one or more of the business owners/officers have failed the background check, the City shall deny the Cannabis Business Permit and/or cease processing the application.
  11. Successful Pass: If all officers and owners pass the background check, this portion of the CBP process is complete.
- F. Background Check Process – Employees. After all owners and officers have passed the background check, and the Notice to Proceed has been issued, the applicant may commence background checks for employees.
1. Required Documents: The applicant shall provide to CID the following documents for background check for each employee as required by the CMMC:
    - a. Copy of social security card.
    - b. Copy of DMV issued driver's license, DMV issued ID card or U.S. Passport.
    - c. Proof of address in the form of DMV issued driver's license, DMV issued ID card or U.S. Passport and/or recent utility bill under the employee's name.
    - d. A recent passport photo in JPEG or equivalent format. Multiple photos may not be submitted in a single file.
    - e. Processing fee established by City Council resolution.
  2. Unique Identifier: CID shall assign each employee a unique identifier and complete the Live Scan application(s). A copy shall be placed in the secure file location and the original shall be returned to the applicant or employee(s). (Employees may be employed by more than one cannabis businesses; a new Live Scan is not required if an employee has already passed the City's background check process. However, the employee must have a separate badge for each employer and must therefore pay a separate badge fee for each badge requested.)
  3. Scope: All employees shall be subject to the Department of Justice and Federal Bureau Investigation background checks.
  4. Live Scan Operator: The applicant(s) shall submit the approved Live Scan application(s) to any Live Scan operator offering DOJ and FBI background checks. The applicant is responsible for paying any fees imposed by the Live Scan Operator.
  5. Tracking Form: After receiving a stamped copy of the Live Scan form from the Live Scan Operator, the applicant(s) shall submit the stamped form to the Community Improvement Division within 24 hours. The form may be submitted in person or via email.

## Regulations Governing Cannabis Businesses

---

6. Results: The Community Improvement Division is responsible for obtaining live scan background check results from the Costa Mesa Police Department. The Police Department shall simply indicate if the applicant(s) has/have passed or failed. Completion of the background check may take up to three months.
  7. Notification: CID shall advise the business operator of the results of the background check. Questions regarding a failure to pass the background check shall be directed to the Police Department.
  8. Failure to Pass: Should any employee fail the background check, the Community Improvement Division shall cease processing the application until the applicant certifies in writing that the person will not be employed by or work in any capacity at the business.
  9. Identification badge: The Community Improvement Division will issue an identification badge when the proposed employee has successfully passed the background check, the CUP has been approved, and the Cannabis Business Permit has been issued.
- G. Issuance of Notice to Proceed
- a. Required Components: When the owners and officers have passed background checks and the plans and documents have passed internal review, Planning may issue the Notice to Proceed (NTP). The NTP allows the applicant to submit an application for a CUP.
  - b. Retail Storefronts: Planning must confirm that the proposed facility complies with all separation standards when the CBP is accepted for processing. The NTP shall contain the following language:  
“The proposed facility has been found to be in compliance with all applicable separation standards set forth in the CMMC.”
  - c. Rights: The issuance of the NTP shall confer no rights on the applicant nor shall it be deemed approval of the CBP.

### **3. Step 3: Conditional Use Permit**

The CMMC requires approval of a CUP to operate a cannabis business of any type within the City. The CUP will be processed by the Planning Division.

#### A. Submittal Instructions

1. Application submittal: The application shall be submitted via the application portal on the City’s website. The Project Planner shall ensure that the application submittal contains all of the information and

## Regulations Governing Cannabis Businesses

---

plans identified in the Submittal Guide. Fire Safety Plans shall not be required for storefront and non-storefront uses.

2. Fees: When Planning determines that the application is complete for processing, payment of fees must be made by one of the acceptable payment methods: certified check, cashier's check, or money orders made payable to the City of Costa Mesa. The City will also accept wires, credit card, or cash payments. Payments made by wire must include the project address, the payer's name, and the fee amount. Credit card payments are not to exceed the City's established credit card transaction threshold. Cash payments will be accepted at the discretion of the Finance Department, with prior approval and subject to appointment.

### B. Application Contents

The applicant shall submit a Planning Application. The following plans and information must be included in the application:

#### 1. New Cannabis Uses

- a. A copy of the Pre-Application location determination as required by Step 1, if applicable
- b. A copy of the Notice to Proceed described in Step 2
- c. A Supplemental CUP Application Form
- d. All of the information specified on the Conditional Use Permit Application Checklist
- e. Any other information that may be specified by the Director of Economic and Development Services
- f. The Planner shall copy the approved Business and Security Plans from the CBP case into the CUP case file. The applicant shall not resubmit plans and documents that have been approved as part of the CBP process. If the applicant proposes to modify approved documents, the changes shall be depicted in strike-out/underline or equivalent format and a cover letter shall be provided, explaining the justification for the changes and summarizing all changes.
- g. Additional requirements for cannabis manufacturing and distribution, research and development, transport, processing and testing

## Regulations Governing Cannabis Businesses

---

uses:

1. A Safety Plan prepared by a professional fire prevention and suppression consultant shall be submitted. The Safety Plan shall include at a minimum the following components:
  - a. Details on the fire prevention suppression, HVAC, odor control and alarm systems that the facility will have in place.
  - b. Assessment of the facility's fire safety, considering all possible fire hazardous materials and inhalation issues/threats. Provide written and physical mechanisms in place to deal with each specific situation.
  - c. Volatile gas storage and safety procedures.
  - d. Hazardous material handling and storage.
  - e. Proposed employee training.
  - f. Equipment certifications and/or inspection reports.
  - g. The location of all fire extinguishers
  - h. Evacuation routes
2. Existing Measure X Businesses requesting to Add Non-Storefront (Delivery) Use
  - a. A minor CUP application is required to be submitted including all of the information as specified on the Minor CUP Application Checklist.
  - b. Floor Plans: existing and proposed
  - c. Site Plan: depict where delivery vehicles will be parked and/or stored (if on site).
  - d. Updated Business Plan and Security Plan to accommodate the proposed delivery operations. The changes from the documents approved as part of the prior CUP/CBP process shall be depicted in strike-out/underline or equivalent format and a cover letter shall be provided, summarizing all changes.
3. Payment of fees: The application will not be accepted

## **Regulations Governing Cannabis Businesses**

---

for processing until the City has received the required fee. Payment of fees must be made by one of the acceptable payment methods: certified check, cashier's check, or money orders made payable to the City of Costa Mesa. The City will also accept wires, credit card, or cash payments. Payments made by wire must include the project address, the payer's name, and the fee amount. Credit card payments are not to exceed the City's established credit card transaction threshold. Cash payments will be accepted at the discretion of the Finance Department, with prior approval and subject to appointment.

### **C. Review Process**

1. Once the CUP application has been assigned to a Project Planner, the Planner shall route a copy of the Safety Plan, if required, to Fire Prevention for review, and a copy of the Business and Security Plans, if applicable, to HdL for its review. HdL will provide the planner with feedback as to compliance with State law and any operations-related security vulnerabilities which may be relevant to the Planning Commission's review of the CUP.
2. The applicant shall be advised within 30 calendar days if additional information is needed to complete the processing of the CUP or if the application is deemed complete.
3. The Project Planner shall schedule an appointment with the applicant to visit the site and take pictures of the project site and inside and outside of the building(s) to be included as an attachment to the staff report. The planner shall include HdL and Fire Prevention staff in the site visit, to assist them in the preparation of their conditions and recommendations.
4. As part of its review, the Building & Safety Division will identify permits, if any, that the applicant must obtain to make any proposed changes to the building or site.
5. Once comments and/or conditions are received from all internal departments and all issues have been resolved, the Project Planner shall schedule the item for public hearing. All CUP resolutions for cannabis uses shall be subject to the standard conditions of approval that have been designated as such by the Director and kept on file

## Regulations Governing Cannabis Businesses

---

with the Economic and Development Services Department. The standard conditions may be updated and/or modified by the Director including his or her designee from time to time. Nothing contained herein shall restrict the Director from exercising his or her discretion to propose additional, modified or more stringent conditions of approval from any specific project, nor shall it be interpreted to restrict the discretion of the final review authority.

- a. For applicants who are current Measure X operators or retail storefront applicants with a Measure X partner (who must own at least 51% or more of the retail entity) - the Measure X business must be in good standing prior to staff scheduling a CUP for a public hearing. The Measure X business must have a valid CBP (or pending CBP renewal application), no outstanding code violations (Municipal Code including Zoning, Building Code, Fire Code), no outstanding code enforcement case, and remitting taxes monthly (unless Measure X business has not yet begun operating). If it is determined by the Director or their designee that the Measure X business is not in good standing with their CUP and CBP, the CUP application may not be scheduled for a public hearing date until any outstanding issues and violations have been deemed resolved by the Director or their designee.
6. The City may accept an “at risk” plan check submittal at the discretion of the Director or their designee on a case by case basis. Any at risk plan check submittal allowed must include a “Hold Harmless Agreement” in the form approved by the City Attorney that is signed by the applicant, property owner, and the Director or their designee. No at risk plan check will be accepted without a signed Hold Harmless Agreement.
7. Within five days of the conclusion of the appeal period, the planner responsible for processing the CUP shall ensure the project file is complete, including a copy of the signed resolution (a copy of the approved resolution may be substituted if the signed copy is not yet available); a copy of the approved plans; and any other documents that might be needed to facilitate the final issuance of the Cannabis Business Permit.
8. The Project Planner shall ensure the applicant complies with all applicable conditions of approval prior to issuance of the CBP and Business License from the Finance Department.

## **Regulations Governing Cannabis Businesses**

---

9. The Project Planner shall be responsible for tracking the number of hours spent processing each application.
10. Approval or denial of a CUP for a cannabis business by the Planning Commission shall be made at a public hearing. Approval or denial of an MCUP shall be made pursuant to applicable provisions of the CMMC. Appeal of the Planning Commission's decision shall be in accordance with Section 13-29(j) of the Zoning Code. The City will not issue a building permit, CBP, and/or a business license during an appeal process.

### **4. Step 4: Building Permits**

If the CUP is approved, the applicant shall obtain all required permits to make any interior and exterior improvements to the cannabis facility.

- A. The minimum size of plans shall be 24" x 36" and plans shall be drawn to a scale of 1/4" = 1 foot.
- B. The conditions of approval for the CUP shall be incorporated into the plans.
- C. The applicant shall submit an application and related plans to the Planning Division to confirm the project's eligibility for plan review.
- D. Upon confirmation of the project's eligibility, the Planning Division shall forward the plans to the Chief Plans Examiner. The Building & Safety Division shall collect the appropriate fees and commence review of the application.
- E. The Building & Safety Division shall route all plans to the appropriate departments for review, including Fire, Engineering and Planning.
- F. Corrections shall be returned to the applicant and the applicant must revise the drawings and documents to address all corrections.
- G. The applicant must demonstrate that all applicable conditions of approval attached to the CUP are satisfied.
- H. When the City departments have determined that the plans and documents are satisfactory and all applicable conditions of approval have been satisfied, the applicant shall pay all applicable fees and obtain the required permits.
- I. The applicant must call for inspections at the appropriate time during construction.
- J. The applicant must ensure that all applicable conditions of approval are satisfied during the construction process.



## Regulations Governing Cannabis Businesses

---

- K. The Building & Safety Division will determine when the final approval may be granted and then issue a Certificate of Occupancy. The City will NOT issue a Temporary Certificate of Occupancy for a cannabis business.
- L. On the same day the Certificate of Occupancy is issued, the staff member creating the Certificate shall place a signed copy in the project folder in the Citywide Shared Drive (S), found at this link: <S:\Common\Approved Cannabis Projects>. The file shall be labeled with the project address. A copy of the final, signed off building permit shall also be placed in this file.
- M. When the Certificate of Occupancy has been granted, the applicant may resume processing of the Cannabis Business Permit.
- N. The business may not commence operations until the Cannabis Business Permit and Business License have been issued by the City, and the required permits have been issued by the State of California.

### **5. Step 5: Cannabis Business Permit Issuance**

The Cannabis Business Permit may be issued after the CUP has been approved, all applicable conditions of approval have been satisfied, all required construction on the site and/or building has been completed, and a Certificate of Occupancy has been granted.

- A. Proof of Insurance: The applicant shall submit proof of insurance as specified in the CMMC. Retail businesses (storefront and non-storefront) must provide comprehensive general liability insurance and comprehensive automotive liability insurance in amount of not less than two million dollars per section 9-495(h)(17). Non-retail businesses must provide at least one million dollars per Section 9-495(f). The insurance certificate shall also name the City of Costa Mesa as an Additional Insured. Until such time as the state adopts regulations regarding insurance for cannabis businesses, an applicant may satisfy the requirements of CMMC section 9-495(f) by obtaining and maintaining insurance in the stated amounts issued by an insurance provider authorized to do business in California as a surplus line carrier pursuant to Chapter 6 of Part 2 of Division 1 of the California Insurance Code and that is:
  - 1. Listed on the California Department of Insurance's List of Approved Surplus Line Insurers ("LASLI"), and
  - 2. Rated at least A-: VIII in A.M. Best & Company's Insurance Guide.

Provided, however, that nothing stated herein shall prohibit the City from enforcing the requirements of Section 9-495(f).

## **Regulations Governing Cannabis Businesses**

---

- B. Background Checks: CID Staff will confirm that background checks have been successfully completed for all owners/officers and employees.
- C. Site Inspection: The Planning Division shall schedule a final City site inspection to confirm that all improvements, including signage, surveillance cameras, door locks, and other features, are provided as required by the approved plans, the Conditional Use Permit and the CMMC. Participants in the inspection shall include the Fire Marshall or his/her designee, the project planner, HdL, and a representative from the Community Improvement Division. The city shall make every effort to have all of its representatives participate in the site inspection together.

The Planning Division shall provide a report to the applicant regarding the inspection outcome based on input from all applicable City departments and divisions. Any outstanding issues shall be resolved before the CBP is issued. A follow up inspection may be required to ensure outstanding issues and conditions have been satisfied and/or corrected.

- D. CUP Conditions: The project planner shall confirm that all conditions of approval have been satisfied, or provide a list of outstanding conditions and/or corrections.
- E. For retail businesses, including existing manufacturing/distribution businesses adding non-retail storefront to their Permit, an executed, notarized Retail Cannabis Business Permit Defense and Indemnity Agreement shall be submitted by the applicant.
- F. The Planning Division shall send a reminder email to the applicant advising of the need to obtain a Business License, and to ensure records are kept in the manner prescribed by the City, after the CBP is issued. The Assistant Finance Director or designee shall be copied on this reminder email to the applicant.
- G. Cannabis Business Permit approval: Once all information has been verified, final approval has been granted for all improvements made to the facility, and all applicable conditions of approval imposed in conjunction with the CUP have been documented and satisfied, the Planning Division may issue the Cannabis Business Permit. The permit shall be signed by the applicant, acknowledging the operational requirements set forth in the CMMC, conditions of approval imposed as a part of the CUP, and enforcement procedures. The permit shall then be signed by the Assistant Director of Development Services. The planner shall place a copy of the CBP in the appropriate folder(s) on the shared drive.
- H. If the Cannabis Business Permit is issued for a phased project, the Permit shall list any exclusions. When the project is completed and those exclusions may be removed, the prior permit will be voided and a new Cannabis Business

## Regulations Governing Cannabis Businesses

---

- Permit form will be issued with the same permit number and expiration date two years from the date a Cannabis Business Permit under same number was first issued for the facility.
- I. Planning staff shall notify the Finance and Fire Departments that the CBP has been issued.
  - J. A copy of the Cannabis Business Permit must be submitted by the applicant with the application for a Business License.
  - K. A retail storefront cannabis business issued a CBP shall have one hundred eighty (180) days after CBP issuance to commence operations. After that date, the issued CBP shall be void.
  - L. A copy of the Cannabis Business Permit shall be displayed at the business at all times.
  - M. Identification Badges: The Community Improvement Division will issue an identification badge for each owner and employee/volunteer that has successfully passed the background check and is authorized to work at the cannabis business. Badges will be designed to minimize opportunities for fraud. Each badge will be labeled with an identification number linked to that specific employee's records. Employees must wear these badges whenever they are present at the facility. The City will not issue a badge to any individual whose disposition with regard to a disqualifying conviction is still pending. The applicant shall pay the fee set forth by resolution of the City Council to process and obtain employee badges.
  - N. Employee Registries: The Community Improvement Division will generate an Employee Registry for each business, based on approval of background checks and issuance of Identification Badges for employees and owners. This Registry must be maintained on the business premises at all times. The applicant will be required to update the Registry on a quarterly basis. In addition, the permit holder will be required to obtain background clearance and identification badges for any new employees or volunteers.
  - O. Termination of Employees: If an employee is terminated, the operator must return the employee's ID badge to the Community Improvement Division. CID staff shall then submit a "No Longer Interested Form" to the DOJ.

### **Step 6: Business License**

Chapter 1 of Title 9 of the CMMC addresses Licenses and Business Regulations. The CMMC requires all businesses operating within the City to pay the business tax and to have an approved Business License. Authorization to conduct a business is not granted until issuance of a Business License. Issuance of a business license does not permit

## **Regulations Governing Cannabis Businesses**

---

operation of a business in violation of the CMMC. After initial approval and payment of business tax, business license fees are renewed annually.

The Finance Department will forward the business license application to the Planning Division. The Planning Division must approve the application before the Finance Department will issue the business license. The Planning Division will confirm that the CBP has been issued.

A new business license application shall be filed when there is a change of Owner, change of Ownership Type and/or Change of Business Name.

### **VIII. Inspection and Enforcement**

Pursuant to CMMC Section 9-498, the City Manager is charged with enforcing the provisions of the CMMC, 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.

As defined in CMMC Section 9-485, City manager means the city manager of the city or designee. The City Manager's designees include but are not limited to the Chief of Police, Finance Director, Fire Chief, and the Economic and Development Services Director, and includes each official's respective designee.

### **IX. Modifications to an Approved Cannabis Business Permit and Conditional Use Permit**

#### **1. Modifications to Cannabis Business Permit**

##### **A. Changes in Ownership**

CBPs are not transferrable. If the ownership has changed by 51% or more, the new owner(s) must obtain a new CBP. The application for the new CBP must be submitted prior to assuming ownership of the business to ensure the prospective owners pass the required background check and can comply with all other provisions of the CMMC. If the new owner(s) is not able to obtain a CBP pursuant to the CMMC and these procedures, the City may take appropriate steps to revoke the CBP.

If the cannabis business is owned by a corporation or other entity and the ownership of the corporation or other entity changes or expands, each new owner must successfully pass the background check described above. The

## **Regulations Governing Cannabis Businesses**

---

cannabis business must disclose all changes in ownership to the City no less than 30 calendar days in advance by providing the name, address, copy of Driver's License, copy of social security card, and a passport photo for all the proposed new owners. When an entity is an owner in a commercial cannabis business, all entities and individuals with a financial interest in the entity shall be disclosed to the City and may be considered owners of the commercial cannabis business. For example, this includes all entities in a multilayer business structure, as well as the chief executive officer, members of the board of directors, partners, trustees and all persons who have control of a trust, and managing members or nonmember managers of the entity. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain. Prior to assuming ownership of the business, any individual proposing to acquire more than 20% financial interest (unless that interest is solely a security, lien, or encumbrance) must submit a Request for Live Scan Service to the Community Improvement Division. The owner may not be on the premises until such time as the background check has been passed and the City has issued an Identification Badge. If the new owner(s) is/are not able to pass the background check, the City shall take appropriate steps to revoke the Cannabis Business Permit.

Any ownership change that affects an interest of less than 51% must be reviewed and approved by the Community Improvement Division as a Minor Modification to the CBP. An application requesting an incremental change in ownership that will result in a change in ownership of 51% or more over a three year period shall be rejected by the City and the applicant shall file an application for a new CBP.

Notwithstanding any other provision of this subsection (A), for a four-year period after award of a CBP for Phase 1 Measure X business cannabis retail applicants, the existing Measure X business entity must hold at least 51% ownership interest in the retail business. The City will rely solely on ownership documents approved as part of the Measure X CBP and CUP application (or a subsequently approved amendment thereto that was submitted prior to August 11, 2021) to determine if an entity or owner qualifies to submit an application for the retail business in the first phase. In addition, for a four year period after award of a CBP for a retail business to a Phase One applicant, the existing Measure X business entity must continue to hold at least a 51% ownership interest in the retail business, and an aggregate ownership interest of 30% or more in the retail business may not be transferred to any person or combination of persons who were not owners of the

## **Regulations Governing Cannabis Businesses**

---

retail business at the time the CBP was awarded. In the event that an aggregate ownership interest of 30% or more in a retail business is transferred to any Person or combination of Persons who were not owners of the retail business at the time that the CBP was awarded, and/or the Measure X business entity ceases to hold at least 51% the retail business, the retail business shall promptly surrender the CBP to the City. If the retail business fails to surrender the CBP to the City, the City may revoke the CBP.

The City shall include this ownership restriction on any CBP and CUP issued to a Measure X business receiving permits following submittal of an application in Phase 1.

### **B. Modifications to Employee Rosters**

The applicant shall submit to the Community Improvement Division each quarter, a current roster of employees at the facility. The specific submittal date shall be specified in the CBP. The roster shall identify any employees whose employment was terminated for any reason during the prior quarter, as well as any new employees hired by the business. The Community Improvement Division shall confirm that each employee on the roster has obtained the required background clearance from the City. If the Community Improvement Division finds that any employee permitted to work at the Business has not passed the required background check, the City shall issue a Notice of Violation. The employee must cease working at the facility until such time as the employee has passed the background check described herein and received an Identification Badge from the Community Improvement Division. Should any employee, volunteer or other person who possesses an identification badge be terminated or cease their employment with the business, the applicant shall return such identification badge to the Community Improvement Division within 24 hours, not including weekends and holidays.

### **C. Background checks for new employees**

Every new employee proposed to be employed after the CBP has been issued must successfully pass the background check set forth in the CMMC before commencing to work at the business. New employees shall follow the procedure and submittal requirements for employees set forth above.

### **D. All other Changes**

Any changes to the CBP not described above shall require the submittal of revised plans and/or documents to address the desired change.

## **Regulations Governing Cannabis Businesses**

---

### **E. Application Process**

Submittal of a minor modification shall be made on an application form specified by the City. It shall include a letter describing the proposed changes, as well as updates, as applicable, to the security, business and safety plans. The request must be accompanied with the fee set forth by the City Council. Minor modifications that do not involve a modification to the approved CUP shall be processed by the CID.

If the minor modification to the CBP is related to a modification to an approved CUP, the applicant shall obtain approval of the MCUP before making an application for a minor modification to the CBP. Minor modifications that involve a modification to the approved CUP shall be processed by the Planning Division.

Submittal of a major modification shall require submittal of a new CBP application, as well as updates, as applicable, to the security, business and safety plans. The request must be accompanied with the fee set forth by the City Council.

#### **1. Modifications to Approved Conditional Use Permits**

The business shall operate in compliance with all terms of the approved CUP. Modifications shall be approved by the City prior to changes in the operation of the cannabis business. The approval process for the modification the CUP will depend on the nature of the proposed changes.

- a. Major Modification: A major modification is one that will result in a material change in the nature of a project. The following changes are deemed major modifications for purposes of this Administrative Regulation. The list is not inclusive, and the fact that a particular change is not included does not limit discretion or authority of the City to determine that a particular proposed change or set of changes to the permit constitutes a major modification.
  - i. Changes to a specific consideration/condition imposed by the Planning Commission or City Council.
  - ii. The introduction of manufacturing or retail storefront uses to an existing business, unless the Director of Development Services determines the change will not constitute a material change in the nature of the business.
  - iii. Modifications to conditions of approval, except for timing

## **Regulations Governing Cannabis Businesses**

---

- iv. Increasing the square footage area of the licensed premise.
- v. Any change that would not preserve the intent of the original findings and conditions of approval.

Major Modifications shall be processed as a CUP which require review and approval by the Planning Commission. The decision of the Planning Commission may be appealed to the City Council. The fee for a Major Modification is set by resolution of the City Council.

- b. Minor Modification: A minor modification is one that does not meet the definition of a major modification. The following changes are deemed minor modifications for purposes of this Administrative Regulation. The list is not inclusive, and the fact that a particular change is not included does not limit discretion or authority of the City to determine that a particular proposed change or set of changes to the permit constitutes a minor modification.
  - i. Minor changes to the site design, parking or landscaping which will not increase or change the intensity of the use or compliance with applicable provisions of the CMMC
  - ii. Changes to security, safety or operational plans that continue to comply with applicable provisions of the CMMC and the implementing Administrative Regulations
  - iii. The addition of a non-storefront retail (delivery) license to an existing approved CUP
  - iv. The addition of a new type of license not originally analyzed and approved with the original CUP, unless the Director of Development Services determines the amendment to be a major modification.
  - v. Changes to equipment used in the facility that affect the approved Business Plan
  - vi. Modifications to the timing of conditions of approval.

Minor Modifications shall be processed as a Minor Conditional Use Permit. Minor CUPs are reviewed and approved by the Zoning Administrator. However, the Zoning Administrator may forward any application for the Planning Commission for review. Decisions of the Zoning Administrator may be appealed to the Planning Commission. The fee for a Minor Modification is set by resolution of the City Council.

- c. Application Process

The process to modify an approved CUP is the same as the process to apply for a new CUP as set forth in Section VIII, Step 3. The application to modify the CUP shall not be accepted until the concurrent modification to



## **Regulations Governing Cannabis Businesses**

---

the CBP has been approved and a Notice to Proceed has been issued. The Director of Economic and Development Services, or his/her designee, shall have the ability to authorize concurrent processing of the modifications when appropriate.

When an MCUP is submitted to add non-storefront retail (delivery) to an existing Measure X use, the applicant shall submit an executed and notarized copy of the Retail Cannabis Business Permit Defense and Indemnity Agreement with the application.

### **X. Cannabis Business Permit Renewal**

1. Permit Expiration: Cannabis Business Permits shall be valid for two years from date of issuance.
2. Renewal Application: At least four months, but not more than six months prior to the expiration date of a Cannabis Business Permit, the applicant shall submit to the Community Improvement Division an application to renew the permit. The Renewal Application shall be made on a form specified by the City and shall include, at a minimum, the following information:
  - A. The name, address, and contact information for the business owner(s). If the owner is a corporation, legal documents outlining the business structure shall be provided, along with the name, address and contact information for each officer.
  - B. The following documents, if applicable to the business structure:
    - i. Articles of Incorporation.
    - ii. Articles of Organization.
    - iii. Certificate of Limited Partnership.
    - iv. Statement of Partnership Authority.
    - v. Fictitious Business Name Statement
  - C. Written certification that the business is operated in compliance with all provisions of the CMMC, the CUP, the Cannabis Business Permit, and all other provisions of the CMMC.

## **Regulations Governing Cannabis Businesses**

---

- D. A list of all licenses/registrations/permits or other documents required by the State of California for the business, and a copy of each.
  - E. A register of all persons employed by the business.
  - F. A matrix of the conditions of approval attached to the CUP, demonstrating how the applicant remains in compliance, or action required to remain in compliance. The information shall be combined into a single document to facilitate review of the status of each condition of approval.
  - G. An insurance certificate meeting the requirements of Section 9-495 of the CMMC.
  - H. The Cannabis Business Permit Renewal fee set forth by Resolution of the City Council.
3. Review Process
- A. The CID shall assign a new application number to the renewal. The approved CBP number shall be referenced in the new application.
  - B. Upon receipt of a complete renewal application, the Community Improvement Division shall route the request to HdL and the Fire, Finance, Planning and Police Departments for review and comment.
  - C. HdL shall review all CBP renewal documents to ensure that the ownership structure has not changed in a manner that would trigger the requirement to amend the existing CBP or obtain a new Cannabis Business Permit. HdL shall also ensure that applications are consistent with ownership provisions applicable to Phase 1 Retail Cannabis permits and Social Equity applicants.
  - D. The CID, shall ensure that the applicant has properly updated employee rosters and returned badges of employees/volunteers no longer associated with the business.
  - E. The licenses issued by the state shall be compared to the approvals granted by the City for consistency.
  - F. The CID shall also determine if the applicant originally qualified as an Equity Applicant. If the Equity Applicant no longer owns at least 51% of the business entity by the fourth anniversary of the date the CBP was issued, the applicant shall be responsible for reimbursing the City for all fees waived to process the original CBP. The CBP shall not be renewed until all waived fees have been reimbursed. Reimbursement shall not be required if the Equity Applicant maintains ownership for at least four years.

## Regulations Governing Cannabis Businesses

---

- G. The Planning Division shall ensure that all conditions of approval have been satisfied and that the business continues to operate in compliance with the CUP.
- H. A site inspection shall be conducted by the Fire Marshall, the project planner, HdL, and the CID. The purpose of the inspection is to ensure the operation of the business continues to be consistent with the approved plans and terms and all applicable requirements of the CMMC.
- I. The Community Improvement Division shall identify any outstanding or current fees owed by the business in order to satisfy outstanding conditions of approval of the CUP, provisions of the CBP or Business License fees and taxes. All fees must be paid before the Renewal Permit is issued.
- J. If the City determines that not all information is accurate, and/or there are outstanding violations associated with the business, the Community Improvement Manager may work with the business owner to bring the business into compliance with the applicable regulations. If the applicant fails to cooperate, and/or the City discovers that three or more discrete violations have occurred during the term of the CBP, the Community Improvement Manager may recommend to the Director that a hearing to consider revocation of the CBP be set. If the CBP is revoked, the City shall initiate proceedings to revoke the conditional use permit.
- K. If all information is accurate and the business owner has demonstrated that the business continues to operate in compliance with the terms of the CBP, CUP and Business License, the Community Improvement Division shall issue a new CBP for a period of two years. The new license shall reference the former CBP number as well as the new number issued upon renewal.
- L. The Community Improvement Division shall update all electronic records maintained by the City to confirm the renewal of the permit.
  
- M. The CBP must be displayed in a conspicuous location at the business. This document must also be submitted as part of the Business License application.

### XI. State Permit Status Requests

The State of California regulates cannabis licenses for medical and adult use. The Department of Cannabis Control (BCC) is the lead agency and is responsible for licensing all cannabis businesses in California. This state agency will contact the City during processing of state license applications to confirm that the proposed business has obtained the required permits from the City. These requests are sent via email to the Director of Economic and Development Services or designee and are forwarded to the Planning Division for response.

## **Regulations Governing Cannabis Businesses**

---

1. The State issues a range of licenses, as described below:
  - A. Distributor (Type 11): Transports cannabis goods between licensees, arranging for testing of cannabis goods, and conducting quality assurance review of cannabis goods to ensure compliance with all packaging and labeling requirements.
  - B. Distributor transport only (Type 13): Transports cannabis goods between licensees, but may not transport any cannabis goods, except for immature cannabis plants or seeds, to a licensed retailer or to the retailer portion of a licensed microbusiness.
  - C. Non-Storefront Retailer (Type 9): Sells cannabis goods to customers exclusively through delivery. Must have a licensed premises to store the cannabis goods for delivery, which shall not be open to the public.
  - D. Storefront Retailer (Type 10): Sells cannabis goods to customers at its premises or by delivery. Must have a licensed physical location where cannabis activities are conducted.
  - E. Manufacturing: BCC offers four main license types for cannabis manufacturers as listed below. Each license type is inclusive of the types in the list below it.
    - Type 7 – for extraction using a volatile solvent (ex: butane, propane and hexane)
    - Type 6 – for extraction using a mechanical method or non-volatile solvent (ex: CO<sub>2</sub>, ethanol, water, or food-grade dry ice, cooking oils or butter)
    - Type N – for infusions
    - Type P – for packaging and labeling only
  - F. Testing Laboratory (Type 8): Performs testing of cannabis goods. Must obtain and maintain ISO/IEC 17025 accreditation. State will issue a provisions license to a facility meeting all other license requirements while accreditation is sought.
2. Consistency Between Approvals: Applicants may request a license from the State for a less intense activity than is permitted or proposed in the permit requests submitted to the City. So long as the activity is less intense and consistent with the category(ies) contemplated in the CUP and CBP, the City may approve the state license request.
3. Microbusiness Prohibited: The state identifies a cannabis “microbusiness” as one that engages in at least three of the following four activities: Cultivation on an area less than 10,000 sq. ft.; licensed distribution; Level 1 manufacturer (Type 6), and retailer. The City of Costa Mesa does not currently allow cannabis microbusinesses.
4. Response to State Requests: There are three acceptable responses to the state regarding compliance with local regulations: Not in Compliance, Local Compliance Underway, and In Compliance. Once the City indicates a business

## Regulations Governing Cannabis Businesses

---

- is In Compliance, the state may issues its license. A license from the state does not allow operation of a business that has yet to obtain the required permits from the City. The following guidance is provided to ensure consistent responses from the City to state permit requests.
- a. Not in Compliance: The applicant has not submitted any applications to the City; the applicant has submitted the required application(s) but the City has not yet issued a Notice to Proceed; the applicant's request for a CBP has been rejected for any reason; an extended period of time has elapsed since one phase of the permit process has been completed with no activity towards completion of the next phase; the permits issued by the City have expired.
  - b. Local Compliance Underway: The applicant has obtained a Notice to Proceed and has submitted a CUP application. This response may be considered when the applicant's status does not meet the criteria to be called "in compliance" and the applicant is actively making progress towards obtaining local approvals by exhibiting prompt responsiveness to City staff's requests for more information and next steps.
  - c. In Compliance: The CBP has been issued.
  - d. If there are concerns about the status of the application and which response is most appropriate, the staff member processing the request may discuss the matter with the Assistant Director of Economic and Development Services. The Director has the discretion to determine which category is most appropriate given the specific circumstances of each application.
5. When State issues a License before City Issues CBP: If the State issues a license before the applicant obtains all required City approvals, the project planner or Community Improvement staff member shall notify the applicant, in writing, that the business may not commence operations until all required city permits and licenses have been granted. The Community Improvement Manager shall receive a copy of the written notification and shall monitor the site for unauthorized business activity.

### XII. **Background:**

Measure X was approved by the Costa Mesa electorate on November 8, 2016. The Measure amended the CMMC to allow *medical* marijuana distributing (including transport), manufacturing, and processing businesses, research and development, and testing laboratories, to be located in one specific area of the City the Green Zone, provided such businesses obtain a Medical Marijuana Business Permit, a conditional use permit and a business license. Measure X also imposed a six percent annual gross receipts tax on any medical marijuana business, including, but not limited to, businesses specifically authorized by Measure X. At its meeting of March 17, 2020, the City Council established a tax of one percent for businesses allowed under Measure X.

## **Regulations Governing Cannabis Businesses**

---

The amendments to the CMMC related to Measure X, included the following:

- Added a new Section to Title I, Chapter I, Article 4 regarding Marijuana Tax.
- Added a new Chapter VI “Marijuana Business Permits” to Title 9.
- Added a new Article 21 “Medical Marijuana Distributing, Manufacturing, Research and Development and Testing” to Chapter IX of Title 13.
- Amended Table 13-30 of Chapter IV, Citywide Land Use Matrix, of Title 13.

Concurrent with the local approval of Measure X in November 2016, the people of the state of California approved Proposition 64 (Prop 64) which allowed adults to use, possess and cultivate limited amounts of marijuana. Commercial aspects of Prop 64 did not become effective until January 1, 2018, to allow time for state regulations to be developed. In June 2017, the California State Legislature approved and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to create one regulatory system to address both medicinal and adult-use cannabis and to develop implementing regulations to be effective in January 2018.

Measure X regulations in the CMMC only addressed “medical” marijuana business uses since “adult-use” marijuana was not legal at the time Measure X was approved. With the legalization of adult-use marijuana on January 1, 2018, the City pursued an update to the Municipal Code to: (1) be consistent with Prop 64 and MAUCRSA, and (2) to modify the Measure X restrictions on “medical” marijuana businesses to now address “adult-use” marijuana.

On March 20, 2018, the City Council adopted Ordinance 18-04 to amend the CMMC to be consistent with Prop 64 and MAUCRSA and to delete the term “medical marijuana” in favor of the term “marijuana” in the Measure X implementing regulations. Adoption of Ordinance 18-04 resulted in the following changes to the CMMC:

- Amended Chapter I of Title 9.
- Amended Chapter VI of Title 9.
- Amended Article 21 of Chapter IX of Title 13.
- Amended Table 13-30 of Chapter IV, Citywide Land Use Matrix, of Title 13.

Measure Q was approved by city voters on November 3, 2020. Measure Q authorizes the City Council to adopt an ordinance that permits and regulates retail cannabis uses including storefront uses (dispensaries) and non-storefront uses (deliveries). Measure Q imposes a four-percent (4%) to seven-percent (7%) gross receipts tax on retail cannabis businesses. These businesses are also subject to the Cannabis Business

## **Regulations Governing Cannabis Businesses**

---

Permit process established by Measure X. In addition, Measure Q requires retail cannabis businesses to meet the following specific operating requirements:

- retail storefront uses may only be permitted in the commercial zone;
- retail non-storefront uses may be permitted in both the commercial zone and in the Green Zone;
- retail storefront uses must be located a minimum of 1,000 feet from childcare centers, K-12 schools, public and private playgrounds, and homeless shelters; and 600 feet from youth centers;
- security measures must include exterior lighting, video monitoring and security guards;
- a labor peace agreement is required for retail cannabis businesses with two or more employees;
- the proceeds of the tax are subject to an annual audit by certified public accountants that is reported to the City Council and available on the City's website for public inspection.

Measure Q only allows retail cannabis storefront and non-storefront uses; all other retail related cannabis businesses, including but not limited to lounges and cafes, are prohibited.

On June 15, 2021, the City Council adopted Ordinance Nos. 2021-08 and 2021-09, implementing Measure Q. Collectively, the ordinances amended various provisions of Chapters I, II, and VI of Title 9 (Licenses and Business Regulations) and Chapters IV and IX of Title 13 (Zoning) of the CMMC. These ordinances became effective on July 15, 2021.

### **XIII. Effective Date**

The effective date of this Administrative Regulation is April 6, 2023.

  
\_\_\_\_\_  
JENNIFER LE  
Director of Economic and Development Services

  
\_\_\_\_\_  
LORI ANN FARRELL HARRISON  
City Manager