

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT HUENEME AMENDING ARTICLE X OF THE MUNICIPAL CODE TO CONDITIONALLY PERMIT CANNABIS FACILITIES IN CERTAIN ZONES AND AUTHORIZE DELIVERY, CULTIVATION, MANUFACTURING, AND SALE OF MEDICAL CANNABIS PRODUCTS FROM MEDICAL MARIJUANA DISPENSARIES.

The City Council of the City of Port Hueneme does ordain as follows:

SECTION 1: The City Council finds and determines as follows:

- A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5, *et seq.*, entitled the Compassionate Use Act of 1996 (“CUA”). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.
- B. The intent of the CUA is to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.
- C. Health and Safety Code Section 11362.7, *et seq.*, (“Medical Marijuana Program Act,” or “MMPA”) clarifies the scope of CUA and allows cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws.
- D. The Federal Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.
- E. In 2015, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective. MMRSA establishes a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to

operate in addition to a State license. MMRSA allows a city to completely prohibit commercial medical marijuana activities.

- F. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.
- G. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Marai v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Marai* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- H. A statewide initiative entitled the “Control, Regulate and Tax Adult Use of Marijuana Act” (“AUMA”) was approved by voters on the November 2016 ballot. AUMA decriminalized (under California law), controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years of age or older. AUMA also taxes the commercial growth and retail sale of marijuana. It does not, and cannot, affect federal regulations as to marijuana or its derivatives.
- I. AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses (Business & Professions Code § 26200, et seq.)

SECTION 2: Authority. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including, without limitation, Article XI, Section 7 of the California Constitution; the Compassionate Use Act; the Medical Marijuana Program Act; the Medical Marijuana Regulation and Safety Act; and the Control, Regulate and Tax Adult Use of Marijuana Act. The city manager is authorized to administer this Ordinance and to promulgate such administrative policies and procedures that may be required to implement this Ordinance.

SECTION 3: Zoning Findings. The City Council finds as follows:

- A. In light of recently adopted legislation, there are changed conditions since the existing zoning regulations became effective to warrant other or additional zoning regulations.
- B. This Ordinance will not adversely affect adjoining property as to value or precedent, and will not be detrimental to the area. Since 1996, twenty

states and the District of Columbia have legalized the use, home cultivation, and, in some cases, the retail dispensing of medical marijuana. In a study published March 26, 2014 in the journal PLOS One, researchers analyzed FBI crime statistics from eleven of these states between 1990 and 2006. (Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014) The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006. PLoS ONE 9(3): e92816. doi: 10.1371/journal.pone.0092816.) The states included Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Rhode Island, Vermont and Washington. The research revealed that laws authorizing the use and dispensing of medical marijuana are not predictive of higher crimes rates and, in fact, may be related to reductions in rates of homicide and assault. Robbery and burglary rates were found to be unaffected by medical marijuana legislation, despite widely-held belief to the contrary. The results of the study were consistent with other prior research suggesting that medical marijuana dispensaries may actually reduce crime in the immediate vicinity. Indeed, a U.S. National Institutes of Health study found that the psychopharmacologic effect of marijuana has “been attributed to ‘mellowing out’ or causing individuals to ‘nod out,’ conditions that are likely to ameliorate violent tendencies.” (U.S. Department of Health and Human Services, Public Health Service & National Institute on Drug Abuse, “Drugs and Violence: Causes, Correlates and Consequences,” NIDA Research Monograph 103, at 187 (1990)). The same study noted that marijuana use had no correlation to violent crime. (Id. at 8, 25, Table 6 and 232). Although there may be secondary impacts associated with marijuana dispensaries in the City, such as the possibility of increased crime at the facility, an increase in people loitering about the facility, and odors, the Council finds this ordinance adequately attempts to ameliorate such secondary impacts. Accordingly, there is substantial evidence to support the conclusion that this ordinance will not be detrimental to any area of the city or have an adverse effect on property values. To the contrary, it is anticipated that the limited authorization of marijuana-related businesses and uses contemplated by the ordinance, together with the strict regulatory controls set forth therein, will have the effect of reducing crime in the city and promoting public health, safety and the general welfare.

- C. This Ordinance promotes public health, safety and general welfare. Since 1996, twenty states and the District of Columbia have legalized the use, home cultivation, and, in some cases, the retail dispensing of medical marijuana. In a study published March 26, 2014 in the journal PLOS One, researchers analyzed FBI crime statistics from eleven of these states between 1990 and 2006. (Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014) The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006. PLoS ONE 9(3): e92816. doi: 10.1371/journal.pone.0092816.) The states included Alaska, California,

Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Rhode Island, Vermont and Washington. The research revealed that laws authorizing the use and dispensing of medical marijuana are not predictive of higher crimes rates and, in fact, may be related to reductions in rates of homicide and assault. Robbery and burglary rates were found to be unaffected by medical marijuana legislation, despite widely-held belief to the contrary. The results of the study were consistent with other prior research suggesting that medical marijuana dispensaries may actually reduce crime in the immediate vicinity. Indeed, a U.S. National Institutes of Health study found that the psychopharmacologic effect of marijuana has “been attributed to ‘mellowing out’ or causing individuals to ‘nod out,’ conditions that are likely to ameliorate violent tendencies.” (U.S. Department of Health and Human Services, Public Health Service & National Institute on Drug Abuse, “Drugs and Violence: Causes, Correlates and Consequences,” NIDA Research Monograph 103, at 187 (1990)). The same study noted that marijuana use had no correlation to violent crime. (Id. at 8, 25, Table 6 and 232). Although there may be secondary impacts associated with marijuana dispensaries in the City, such as the possibility of increased crime at the facility, an increase in people loitering about the facility, or odors, the Council finds this ordinance adequately attempts to ameliorate such secondary impacts. Accordingly, there is substantial evidence to support the conclusion that the limited authorization of marijuana-related businesses and uses contemplated by the ordinance, together with the strict regulatory controls set forth therein, will have the effect of reducing crime in the city and would, therefore, promote public health, safety and the general welfare.

- D. This Ordinance will not adversely affect the City’s General Plan or zoning regulations set forth in the Port Hueneme Municipal Code (“PHMC”) because this Ordinance does not inhibit the attainment of the overall goals of either the General Plan or the zoning regulations.

SECTION 4: Coastal Plan Consistency.

- A. PHMC § 10006 provides that any amendment to adopted development and use standards or boundary change to land situated within the California Coastal Zone constitutes an amendment of the City’s Local Coastal Plan (LCP) and cannot become final until approval or certification is granted by the California Coastal Commission. On XX, 2017, the City Council conducted a public hearing to consider this Ordinance to amend the Implementing Component of the LCP (commonly referred to as “Zoning Ordinance”). The City Council considered all public testimony, both written and oral, received in conjunction with the public hearing. The City’s Planning Agency constitutes the City Council. Accordingly, the

proposed LCP amendment is initiated by the City Council of the City of Port Hueneme acting for itself and as the planning agency.

- B. Written notice of the availability of LCP public review draft documents pertaining to the proposed Ordinance amendment together with public hearing dates before the City Council was mailed to all governmental agencies and persons known to be interested in LCP matters. In addition, copies of the review draft documents were made available for public perusal at the Port Hueneme Civic Center, Ray D. Prueter Library, and South Central Coast Area Office of the Coastal Commission. Both notice and draft documents were mailed or delivered on XXX, a minimum of 21 days before the City Council's action on the proposal (see Public Resources Code § 30514(d)(1)(A)). In addition, written notice of the proposal's public hearing before the City Council of the City of Port Hueneme was mailed to all governmental agencies and persons who were known to be interested in LCP matters and to all persons who have filed written request for such notice, which Notice was mailed not later than ten (10) calendar days before the date of said hearing and a 1/8 page display advertisement was published in a legal section of a newspaper of general circulation on XX, 2017 a minimum of ten calendar days before the date of said hearing with proposed response to comments supplied to commenting agencies a minimum of ten calendar days before the Public Hearing .
- C. The California Coastal Act is intended to protect natural and scenic resources; promote the public safety, health, and welfare; and protect public and private property, wildlife, marine fisheries, other ocean resources, and the natural environment and that California Coastal Commission Regulations establish the standards by which proposed land developments or other activities are evaluated to ensure consistency with the Act.
- D. Based upon substantial evidence in the record, the City Council finds that this LCP Amendment should be deemed "de minimis" in accordance with Public Resources Code § 30514(d) as the uses authorized by this Ordinance would have no impact, either individually or cumulatively, on coastal resources. Specifically, this Ordinance is consistent with the policies and objectives of the California Coastal Act as follows (see, Public Resources Code § 30200, *et seq.*):
1. The uses authorized by this Ordinance are not "new" since they are substantially similar to existing retail (e.g., alcohol and tobacco) establishments; light manufacturing (e.g., bakeries and cafes); agricultural cultivation (e.g., nurseries); and delivery services (e.g., United Parcel Service and FedEx).

2. Accordingly, such uses would not create new effects upon coastal access or marine life.
 3. The uses authorized by this Ordinance do not interfere with coastal access. In terms of potential land use impacts, these uses are substantially similar to existing light manufacturing and commercial land uses found throughout the Coastal Zone within the City's jurisdiction;
 4. This Ordinance establishes general policies and procedures for processing applications related to the land uses authorized herein. Any individual project proposed for a particular area within the Coastal Zone would require subjective evaluation by the City Council and discretionary approvals. Consequently, all policies and objectives of the California Coastal Act and the City's LCP would be implemented when processing individual project applications to ensure full coastal access.
 5. As set forth in attached Exhibit "A," which is incorporated by reference, there are no properties that would be suitable for water-oriented activities or visitor-serving commercial recreational facilities. Exhibit A is a graphical depiction of properties affected by this Ordinance and is for illustrative purposes only.
 6. All properties upon which the approved land uses could be situated are already developed or, if currently undeveloped, within a fully urbanized area. Consequently, such properties are not feasible for environmentally sensitive habitat or agricultural development.
 7. Further, such properties are sufficiently proximate to appropriate public services and resources for commercial development purposes.
- E. This Ordinance is consistent with and furthers the objectives and policies of the City's General Plan, zoning regulations, and Local Coastal Program and provides for the orderly growth, development, and use of properties and activities in the City of Port Hueneme.
- F. Pursuant to Public Resources Code § 30510, the City Council of the City of Port Hueneme reiterates its intent to implement the Local Coastal Program and amendments thereto in a manner fully consistent with the California Coastal Act and to issue coastal development permits for the total area included in the City's certified LCP.

SECTION 5: Article III, Chapter 12 of the Port Hueneme Municipal Code is amended to read as follows:

“Chapter 12

CANNABIS

3980 – Cannabis regulations.

For regulations regarding sale, delivery, cultivation, and manufacturing of cannabis, see Article X, Chapter 2, Part F.”

SECTION 5: Article X, Chapter 2, Part F of the Port Hueneme Municipal Code is amended to read as follows:

“Part F

COMMERCIAL CANNABIS ACTIVITY

10290 - **Purpose.**

This Part is adopted pursuant to the city’s police powers and municipal affairs provision of the City Charter for the purpose of permitting commercial cannabis activity for medical purposes in compliance with state and local laws. Nothing in this Part is intended to, nor does it, duplicate or conflict with applicable local, state, or, to the extent constitutionally permissible, federal laws.

10291 - **General Prohibitions.**

- A. It is unlawful for any person to engage in commercial cannabis activity without a valid Development Permit issued pursuant to this Part for each location at which the activity is proposed to occur.
- B. Unless otherwise provided by this code, it is unlawful for any person to engage in commercial cannabis activities from other than a fixed location within the city’s jurisdiction.
- C. It is unlawful for any person to cause, permit, aid, abet, or conceal a violation of any provision of this Part.
- D. Except as expressly authorized pursuant to this code, commercial cannabis activities are prohibited in the City of Port Hueneme.

10292 - **Permitted Commercial Cannabis Activity.** Subject to applicable State law and this Part, commercial cannabis activity is permitted when approved by the City in accordance with this code and only if related to medical purposes. Commercial

medical cannabis activities related to recreational uses are unlawful. Specifically, the following commercial cannabis activities are allowed as they relate to medical purposes:

- A. Sale;
- A. Except as otherwise provided for personal use, indoor cultivation;
- B. Delivery; and
- C. Manufacturing.

10293 - **Definitions.**

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Part. Words and phrases undefined in this Part have the same meaning as set forth in the Adult Use of Marijuana Act; the Compassionate Use Act; the Medical Marijuana Program Act; or the Medical Marijuana Regulation and Safety Act.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Health and Safety Code Section 11018. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Part, “cannabis” does not mean “industrial hemp” as defined by Food and Agricultural Code Section 81000 of the or Health and Safety Code Section 11018.5. For purposes of this Code, “marijuana” has the same meaning as cannabis and the two terms are used interchangeably.

“Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Business and Professions Code Section 19319, related to qualifying patients and primary caregivers.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a facility, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Health and Safety Code

Section 11362.7, or a testing laboratory. “Delivery” also includes the use by a facility of any technology platform owned and controlled by the facility, or independently licensed under California law, which enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed facility of medical cannabis or medical cannabis products.

“Director” means the city manager, or designee.

“Facility” and “medical marijuana dispensary” mean a facility at which commercial cannabis activity occurs as authorized by this Part including, without limitation, a medical marijuana collective.

“Identification card” means a document issued either by a governmental agency, e.g., the California Department of Health Services, or other valid documentation that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

“Medical marijuana collective” means a collective, cooperative, association, dispensary or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away cannabis in the city for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code § 11362.5 or any State regulations promulgated to implement the Compassionate Use Act of 1996. Medical Marijuana Collective does not include the following uses, so long as such uses comply with this Code and other applicable law:

- A. A clinic licensed pursuant to Health and Safety Code § 1200, *et seq.*
- B. A health care facility licensed pursuant to Health and Safety Code § 1250, *et seq.*
- C. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Health and Safety Code § 1568.01, *et seq.*
- D. A residential care facility for the elderly licensed pursuant to Health and Safety Code § 1569, *et seq.*
- E. A hospice or a home health agency licensed pursuant to Health and Safety Code § 1725, *et seq.*

“Operations Plan” means an operating plan approved by the police chief, that implements the standard requirements of this Part along with such additional, reasonable, criteria needed to protect public health and safety as determined by the police chief, based upon the size and location of the proposed facility.

“Medical cannabis,” medical cannabis product,” or “cannabis product” has the same meaning as set forth in Business & Professions Code § 19300.5(ag), as the same may be amended from time to time.

“Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card.

“Police Chief” means the police chief, or designee.

“Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

- A. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Health and Safety Code Section 1200, *et seq.*, a health care facility licensed pursuant to Health and Safety Code Section 1250, *et seq.*, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Health and Safety Code Section 1568.01, *et seq.*, a residential care facility for the elderly licensed pursuant to Health and Safety Code Section 1569, *et seq.*, a hospice, or a home health agency licensed pursuant to Health and Safety Code Section 1725, *et seq.*, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
- B. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
- C. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
- D. A primary caregiver must be at least 21 years old, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Family Code Sections 6922, 7002, 7050, or 7120.

“Qualified patient” means a person who is entitled to the protections of Health and Safety Code Section 11362.5.

“School” means any public or private school providing instruction in kindergarten; any grades 1 through 12; a day care center; or a youth center. A school does not include any private school in which education is primarily conducted in private homes.

“Testing Service” has the same meaning as set forth in Health and Safety Code § 26001.

“Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors including, without limitation, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

10294 - **State License Required; Timing.** To engage in commercial cannabis activity allowed by this Part, a person must obtain the following:

- A. First, a Development Permit as required by this Part.
- B. After obtaining a Development Permit issued by this Part, a person must thereafter obtain and maintain, a Type 6 (Manufacturer 1) license issued by the California Department of Consumer Affairs. Additionally, and depending on the type of Development Permit issued pursuant to this Part, e.g., whether delivery or manufacturing is authorized, a person must also obtain a Type 10 or 10A license issued by the California Department of Consumer Affairs.
- C. Notwithstanding any other provision of applicable law, a Development Permit issued by this Part will be rendered void should a person fail to obtain or maintain a license required by this Section.

10295 - **Development Permit; Qualifications and Timing Set by Resolution.** To protect public health and safety, and to further ensure that commercial cannabis activities permitted by this Part are in the public interest, the City Council may establish the procedures for determining the qualifications of persons allowed to apply for a Development Permit by resolution. Any such city council resolution may also establish the method, including timing, for objectively selecting persons that may apply for a Development Permit pursuant to this code.

10296 - **Limitations on City’s Liability.**

- A. To the fullest extent permitted by law, the city does not assume any liability whatsoever, with respect to approving any permit pursuant to this code or the operation of any facility approved pursuant to this code.
- B. As a condition of approval for any permit as provided in this code, the applicant or its legal representative must:
 - 1. Execute an agreement indemnifying the city from any claims, damages, injuries, or liabilities of any kind associated with the registration or operation of the facility or the prosecution of the facility or its owners, managers, directors, officers, employees, or its qualified patients or primary caregivers for violation of federal or state laws;
 - 1. Maintain insurance in the amounts and of the types that are acceptable to the city manager or designee;
 - 2. Name the city as an additionally insured on all city required insurance policies;
 - 3. Agree to defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a regulatory permit; and
 - 4. Agree to reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of any legal challenge related to the city's approval of a permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation does not relieve the operator of its obligation hereunder.

FACILITIES

10297 - Location Criteria.

- A. Facilities are conditionally permitted only in the C-1 (General Commercial) and M-1 (Light Industrial) Zone. Each physical location of a facility requires a separate Development Permit. This section does not require the City to issue any particular number of Development Permits or to issue any Development Permits at all.
- B. It is unlawful for any portion of the parcel on which a facility is located to be within 600 minimum feet of any parcel that contains a school.

- C. If a facility is located above the ground floor, it must be accessible to persons with disabilities in conformance with applicable law including, without limitation, the California Building Code as adopted by this code.
- D. A Development Permit may be renewed for a facility located on a parcel that is within 600 feet of a school if: (1) the school located to the area after the Development Permit was first issued; (2) the Development Permit has not lapsed for any period of time; and (3) the facility was in continuous operation. For purposes of this section, a temporary interruption of business activity due to fire, natural disaster or other force majeure is excused provided reasonable steps are taken by the permittee to resume business operations expeditiously. The prior, temporary suspension of a Development Permit does not render a permit ineligible for renewal under this section provided the applicant otherwise qualifies for renewal.

10298 - **Operations Plan and Standards.**

- A. A Development Permit issued for a facility must include, as conditions of approval, the operations standards set forth below. In addition, the Development Permit must incorporate by reference an Operations Plan approved by the police chief, that implements not only the operations standards set forth in this Section, but such additional conditions that the police chief, finds reasonably necessary to implement the purpose of this Part when considering the location and size of the proposed facility.
- B. Except as otherwise provided, a facility can only be open for access to the public only between the hours of 9:00 a.m. and 9:00 p.m.
- C. It is unlawful for alcohol or tobacco to be sold within the facility. Further, it is unlawful for smoking, vaporization, ingestion or consumption of alcohol, tobacco or medical marijuana in any form, to occur on the premises of a facility or in the areas adjacent to the facility on the same parcel (e.g., parking lots, walkways).
- D. It is unlawful for cannabis or cannabis products or graphics depicting cannabis or cannabis products to be publicly visible from the exterior of the property. It is unlawful to store cannabis or cannabis products outside of the facility at any time.
- E. All cannabis and cannabis products allowed to be sold or otherwise made available at a facility must be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with State and local regulations including, without limitation, certification by a testing service as required by applicable law.

- F. It is unlawful for a physician located in, or on the same parcel as, a facility at any time for the purpose of evaluating patients to issue a medical marijuana prescription or card.
- G. Before dispensing cannabis or cannabis products to any person, the facility must verify that the person possesses a valid identification card.
- H. Each facility must provide the police chief, with the name and telephone number of an on-site employee or owner to whom emergency notice can be provided. The telephone number provided must be capable of accepting recorded voice messages in the event the contact person does not answer.
- I. Except for employees of the facility, it is unlawful for any person to be allowed into any area of a facility where medical cannabis products are displayed and/or being offered for sale unless that person is authorized to engage in the medical use of marijuana and has a valid identification card (as defined in Section 10292), or is named as a designated primary caregiver on a valid identification card. It is unlawful for any person under the age of 21 to be present in any area of a facility where medical cannabis products are displayed and/or being offered for sale unless that person satisfies one of the foregoing criteria and is accompanied by a parent or legal guardian. A sign must be posted at each entrance to a sales/display area of the facility informing patrons of these restrictions.
- J. It is unlawful for any person under age 21 to be present in any lobby or reception area of a facility unless that person is a qualified patient or primary caregiver and is accompanied by a parent or legal guardian.
- K. It is unlawful for any person to employ any other person at a facility who is not at least 21 years of age.
- L. Each entrance to a facility must be posted with a conspicuous notice stating that smoking, vaping, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the facility is prohibited.
- M. Dispensaries can only dispense medical cannabis or cannabis products to a “person with an identification card,” as defined in Section 10292.
- N. Entrances into any area of a facility where medical cannabis products are displayed and/or being offered for sale must be locked at all times with entry strictly controlled. A “buzz-in” electronic/mechanical entry system must be utilized to limit access to such areas and to separate them from the outside and/or any adjacent reception/lobby area. The specifics of such entry system must be set forth in the operations plan.

- O. Uniformed security personnel must be employed to monitor all entrances and exits of the facility and to serve as a visual deterrent to unlawful activities during all hours of operation. Every security guard employed by or provided by the facility must be currently licensed by the California Bureau of Security & Investigative Services and in possession of a valid "guard card." The number of such security personnel must be set forth in the operations plan.
- P. All restroom facilities serving a facility must remain locked and under the control of management.
- Q. Odor control devices and techniques must be incorporated in a facility to ensure that odors from marijuana are not detectable outside of the facility or in any tenant space or area adjacent to the facility.
- R. It is unlawful for any person within a facility to provide cannabis or cannabis products to any individual in a quantity not consistent with personal use.
- S. A facility cannot store more than \$200.00 in cash reserves overnight on the premises.
- T. All law enforcement and code enforcement personnel seeking admission to the facility for the purpose of ascertaining compliance with the standards and regulations of this code must be given unrestricted access to all areas of the premises at all times during hours of operation. Consent to such unrestricted access must be acknowledged by the permittee and included within the operations plan.
- U. All interior spaces of the facility which are open and accessible to the public (except restrooms), and all entrances and exits to and from the premises, must be monitored by 24-hour video security surveillance of at least HD quality with night vision capability. The video security system must be compatible with software and hardware utilized by the city as determined by the Police Chief and set forth in the operations plan. Surveillance video must be recorded to a device that is securely located on the premises and all footage must be maintained for a minimum of 45 days. The video surveillance system specifications must be set forth in the operations plan before the city issues a certificate of occupancy for the facility.
- V. A facility must have a professionally installed, maintained, and monitored alarm system as approved through the operations plan.
- W. A facility must maintain a valid business license as required by this code.

- X. All food products, food storage facilities, food-related utensils, equipment and materials must be approved, used, managed and handled in accordance with the provisions of the California Retail Food Code (Health & Safety Code § 113700 *et seq.*). All food products must be protected from contamination at all times, and all food handlers must be clean, in good health, and free from communicable diseases. The Ventura County Department of Environmental Health may inspect the facility at any time during business hours to ensure compliance with this Section.
- Y. Except as otherwise provided, baked cannabis products (e.g., brownies, bars, cookies, cakes), tinctures, and other non-refrigerated items may be sold at a facility.
- Z. As part of the operations plan, permittees must execute an agreement in a form approved by the City Attorney that defends and indemnifies the City of Port Hueneme, along with its officials, officers, and employees, from any claim or liability arising from the city approving a Development Permit or allowing the operation of a facility. Such agreement must be secured with sufficient insurance, as determined by the City Attorney, and a surety, as approved by the City Attorney, to adequately protect the city from any and all liability.
- AA. A Development Permit for a facility is subject to all of the regulations and operational standards set forth in this section in addition to the conditions stated in the permit itself.

10299 - **Community Relations.**

- A. Each facility must provide the city manager or designee with the name, telephone number, and email address of an on-site community relations or staff person or other representative to whom the city can provide notice if there are operating problems associated with the facility or refer members of the public who may have any concerns or complaints regarding the operation of the facility. Each facility must also provide the above information to all businesses and residences located within 100 feet of the facility.
- A. During the first year of operation of a facility authorized under this Part, the owner, manager, and community relations representative from each such facility must attend a monthly meeting with the city manager and/or designee to discuss costs, benefits and other community issues arising as a result of implementation of the permits authorized by this code. After the first year of operation, the owner, manager, and community relations representative from each such facility must meet with the city manager and/or designee when and as requested by the city manager or designee.

CULTIVATION

102100 - **Outdoor Cultivation Prohibited; Exception.** Except for personal use, as provided below, outdoor cultivation of cannabis is prohibited in all areas of the city.

102101 - **Operational Standards for Cultivation.** In addition to all other requirements of an Operations Plan required by this Part, facilities engaged in indoor cultivation must include the following in an Operations Plan approved by the police chief:

- A. The facility can have only one contiguous cultivation area.
- B. It is unlawful to use flammable or explosive substances in the cultivation of cannabis.
- C. Facilities engaged in cultivation must follow all pesticide use requirements of local, state and federal law.
- D. The Operations Plan must include a detailed electrical and plumbing plan, along with projections for water usage.
- E. All law enforcement personnel seeking admission to the cultivation site for the purpose of ascertaining compliance with the standards and regulations of this code must be given unrestricted access to all areas of the premises at all times during hours of operation. Consent to such unrestricted access must be acknowledged by the permittee and included within the Operations Plan.
- F. It is unlawful for any person under the age of 21 to be present within the area where the cultivation of cannabis is occurring. A sign must be posted at each entrance to a cultivation facility informing visitors of these restrictions.
- G. All cultivation activity must be conducted in compliance with all applicable state and local water conservation laws, ordinances, and regulations.
- H. Each cannabis cultivation facility must provide the police chief with the name and telephone number of an on-site employee or owner to whom emergency notice can be provided. The telephone number provided must be capable of accepting recorded voice messages in the event the contact person does not answer.
- I. It is unlawful for any person to employ another person under the age of 21 at a cannabis cultivation facility.

- J. Entrances into any area of a cannabis cultivation facility where cannabis is grown or kept must be locked at all times with entry strictly controlled. The specifics of such entry system must be set forth in the Operations Plan.
- K. Odor control devices and techniques must be incorporated in a cannabis cultivation facility to ensure that odors from cannabis are not detectable outside of the facility or in any tenant space or area adjacent to the facility.
- L. A cannabis cultivation facility must have a professionally installed, maintained, and monitored alarm system as approved through the Operations Plan.
- M. Cannabis cultivation facilities cannot be open to the public, though the facility may dispense cannabis in accordance with a Development Permit.
- N. A cannabis cultivation facility must be equipped with an automated fire suppression system to the satisfaction of the Building Official.
- O. It is unlawful for any cannabis cultivation facility to use, employ, or maintain any equipment, system, material or apparatus for the purpose of increasing the ambient carbon dioxide levels within any grow area.

102102 - **Personal Cultivation; Standards and Regulations.** Outdoor cultivation of cannabis for personal use in accordance with State law may only be permitted on a single-family residential parcel in the R-1 Zone, and only when that parcel contains, wholly within its boundaries, a legally permitted single-family residential dwelling. Outdoor cultivation of medical cannabis is prohibited in all other zones.

102103 - **Personal Cultivation; Development and Operational Standards.**

- A. Not more than six cannabis plants of any size may be cultivated on any parcel regardless of the number of qualified patients or caregivers residing on the property.
- B. At least one qualified patient or one primary caregiver must reside on the property.
- C. Cultivation cannot exceed 75 square feet in cumulative area.
- D. All cannabis cultivation must be fully enclosed by an opaque, wooden fence six feet in height. The fence must be at least ten feet from any structure on the property and be adequately secure to prevent unauthorized entry and theft. The police chief, will determine the level of security necessary.

- E. It is unlawful to cultivate cannabis within 600 feet of any other parcel containing a school.
- F. No lighting, heaters, fans, generators or other mechanical equipment that may cause a nuisance to neighbors may be used in connection with the cultivation of medical cannabis.
- G. It is unlawful to cultivate cannabis in the front yard area of any parcel.
- H. It is unlawful to cultivate cannabis within the required rear or side yard setbacks of any parcel.
- I. It is unlawful for there to be any audible or olfactory evidence of cannabis cultivation from any street, sidewalk, public right-of-way, or adjacent property, or any visual evidence of cannabis cultivation when viewed from five feet above ground level from any street, sidewalk, public right-of-way, or adjacent property.
- J. Qualified patients for whom the cannabis plants are being cultivated must have valid identification issued by a recognized government agency. Any primary caregiver cultivating cannabis plants for a qualified patient must keep a copy of the qualified patient's valid identification on the premises where the cannabis is cultivated.
- K. The cultivation of medical cannabis is permitted for non-commercial purposes only. It is unlawful to sell, trade, barter, or engage in any other commercial exchange of cannabis or cannabis products cultivated pursuant to this section.
- L. The address of any dwelling on a parcel where medical cannabis is cultivated must be posted and plainly visible from the public right-of-way.
- M. Cultivation of medical cannabis cannot occur on any property where a parolee or probationer resides unless the parolee or probationer has received confirmation from a court of competent jurisdiction that he or she is allowed to use medical cannabis while on parole or probation pursuant to Health and Safety Code section 11362.795. Such confirmation must be provided to city staff or law enforcement upon request.
- N. Any law enforcement personnel may, after providing 24 hours' notice, enter onto the property where cultivation of medical cannabis is occurring pursuant to this section for the purpose of inspecting the cultivation site and perimeter fencing. This section does not purport to authorize any law enforcement personnel to enter any dwelling located on the property. For purposes of this section, notice is sufficient if posted at the entrance to the

dwelling on the property or if hand delivered to any person over the age of 18 residing on the property.

- O. Any person issued a permit pursuant to this section must follow all pesticide use requirements of local, state and federal law.
- P. It is unlawful for any person under the age of 21 to be present within the fenced area where the cultivation of medical cannabis is occurring unless such person is a qualified patient or a primary caregiver and he or she is in the presence of his or her parent or guardian.
- Q. All cultivation activities must be conducted in compliance with all applicable state and local water conservation laws, ordinances, and regulations.
- R. Nothing in this section is intended to authorize the cultivation, possession, or use of cannabis for nonmedical purposes in violation of state or federal law.
- S. Medical cannabis cultivation permits issued pursuant to this section are personal and nontransferable. No vested right to continue the cultivation of medical cannabis on any property can accrue by virtue of the activity having occurred continuously for any period of time.
- T. Notwithstanding any other provision of this code, or applicable law, no variances are permitted from any of the regulations in this section.

DELIVERY

102104 - **Delivery.**

- A. A Development Permit for a facility may authorize the mobile delivery of medical cannabis as part of and in conjunction with the operation of the facility. Deliveries by dispensaries other than those authorized by this Part are unlawful. Mobile delivery privileges may be suspended or terminated by the city manager, as set forth in this code.
- B. Delivery of cannabis from a facility permitted pursuant to this Part can only be made in a city or county that does not expressly prohibit such deliveries by ordinance.
- C. It is unlawful for any person under the age of 21 to be allowed to serve as a delivery driver and no person can employ a person under the age of 21 for the purpose of making mobile deliveries of any medical cannabis product.

- D. A facility permitted pursuant to this Part may have its delivery privileges suspended or terminated by the city manager if the facility is found to have violated this Part.

MANUFACTURING

102105 - **Operations Plan; Additional Requirements.** In addition to any other requirements, a facility engaged in manufacturing cannabis products must include, as conditions of approval for a Development Permit an Operations Plan required by this Part.

102106 - **Operational Standards.**

- A. The manufacture of cannabis products must be undertaken in a manner that ensures the health, safety, and welfare of the public, the employees of the cannabis business, visitors, and neighboring properties.
- B. All law enforcement and code enforcement personnel seeking admission to the manufacturing site for the purpose of ascertaining compliance with the standards and regulations of this code must be given unrestricted access to all areas of the premises at all times during hours of operation. Consent to such unrestricted access must be acknowledged by the permittee and included within the Operations Plan.
- C. It is unlawful for any person under the age of 21 to be present within the area where the manufacture of cannabis products is occurring. A sign must be posted at each entrance to a manufacturing facility informing visitors of these restrictions.
- D. All manufacturing activity must be conducted in compliance with all applicable state and local water conservation laws, ordinances, and regulations.
- E. It is unlawful for any person to employ another person under the age of 21 at a cannabis manufacturing facility.
- F. Entrances into any area of a cannabis manufacturing facility where cannabis products are made or kept must be locked at all times with entry strictly controlled. The specifics of such entry system must be set forth in the Operations Plan.
- G. Odor control devices and techniques must be incorporated in a cannabis manufacturing facility to ensure that odors from cannabis are not detectable outside of the facility or in any tenant space or area adjacent to the facility.

- H. A cannabis manufacturing facility must have a professionally installed, maintained, and monitored alarm system as approved through the Operations Plan.
- I. It is unlawful for cannabis manufacturing facilities to be open to the public.

ENFORCEMENT

102107 - **Enforcement of Cannabis Development Permits; Generally.** In addition to other remedies set forth in this code, violations of this section may be prosecuted as infractions or misdemeanors at the City Attorney's discretion and may be abated as public nuisances. The remedies provided by this section are cumulative and in addition to any other criminal or civil remedies.

102108 - **City Attorney Enforcement Authority.** In addition to any other general functions, powers, and duties given to the City Attorney by this code or California law, the City Attorney is authorized to:

- A. Prosecute on behalf of the people all criminal and civil cases for violations of this section including, without limitation, administrative or judicial nuisance abatement and suits for injunctive relief;
- B. Prosecute all actions for the recovery of fines, penalties, forfeitures, and other money accruing to the city under this section.

102109 - **Administrative Suspension and Revocation.**

- A. Suspension or Revocation. In addition to any other penalty authorized by law, the director may suspend or revoke a Development for the following reasons:
 - 1. Upon learning or discovering facts that require permit denial under this section that were not previously disclosed or reasonably discoverable; or
 - 2. If the permittee violates any condition imposed by this section.
- B. Notice of Suspension or Revocation. If, after having determined that a person is violating this section, the director elects to suspend or revoke a medical cannabis cultivation permit, the director must serve a notice of suspension or revocation on the permittee. The notice must state the basis of such violations and provide information regarding the right to appeal. Suspension or revocation of the permit shall not become effective until the time for filing an appeal has passed or, if an appeal is timely filed, until the city manager has rendered a final decision on the appeal.

102110 - **Appeal of Notice of Suspension or Revocation.**

- A. A notice of suspension or revocation of a medical cannabis cultivation permit may be appealed to the city manager, provided that a request for review (appeal) is filed with the office of the city manager within ten calendar days from the date on which the written notice of suspension or revocation was served on the permittee. If a request for review is untimely, the city manager may, but is not required to, extend the time for commencing such review for good cause shown.
- B. A request for review must be on a form provided by the community development department and contain the following information:
 - 1. The name, address and telephone number of the person making the request;
 - 2. A description of the decision, determination or order which is the subject of the review and the date such decision, determination or order was made or issued;
 - 3. A complete description of all grounds for making the request, together with any evidence in support of the request; and
 - 4. Such other information as may be required by the director.
- C. Upon receiving a request for review, the city manager will review the request and, within ten business days of receiving the request, provide the appellant with a written notification that:
 - 1. The director's decision is affirmed;
 - 2. The director's decision is modified; or
 - 3. The director's decision is reversed.
- D. The city manager may, but is not required to, conduct a hearing at a time, place and manner determined in the city manager's sole discretion. Should a hearing occur, the city manager may issue a decision orally at the conclusion of the hearing, but also notify the appellant and director in writing of the city manager's decision.
- E. The city manager's decision is final. There is no right of appeal to the City Council.

102111 - **Right to Judicial Review.** A final decision of the city manager may be judicially reviewed pursuant to Code of Civil Procedure Section 1094.6.

102112 - **No New Permit After Revocation.** Should a medical cannabis cultivation permit be revoked, the former permittee is presumptively disqualified to apply for a new permit in accordance with this section. This presumption may be overcome upon a showing of good cause as to why a permit should be issued following a revocation. Any such showing must be made to the director's satisfaction.

102113 - **Attorney's Fees.** Where a civil action is filed, the prevailing party is entitled to reasonable attorneys' fees, but is limited by the amount of attorneys' fees claimed by the city. If the court issues an order or a judgment which finds a public nuisance to exist, and orders or approves the abatement of the public nuisance, or where the court validates an accounting, the court will also award the city its actual costs of abatement, including, without limitation, reasonable attorneys' fees incurred by the city in such judicial proceeding.

102114 - **Remedies Cumulative.** The remedies provided by this section are cumulative and in addition to any other criminal or civil remedies including, without limitation, those set forth elsewhere in this code."

SECTION 6: Subparagraph (K) is added to Section 10482 of the Port Hueneme Municipal Code to read as follows:

"K. Facility, as defined in Section 10292, subject to all conditions and regulations in Sections 10293 and 10294."

SECTION 7: Environmental Review. This Ordinance is exempt from additional review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment and establishes rules and procedures to implement an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this Ordinance does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(2, 5)). Even if the Ordinance were to qualify as a project, it would be categorically exempt as a Class 1 or Class 5 project since, at best, it would constitute a minor alteration of existing structures involving no expansion of use, or a minor alteration in land use limitations (see 14 CCR §§ 15301, 15305). The City will conduct environmental review of each individual project affected by this Ordinance.

SECTION 8: Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the city and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 9: Enforceability. Repeal of any provision of the Port Hueneme Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 10: *Severability.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 11: The City Manager, or designee, is authorized to file documents with the California Coastal Commission and to provide such additional documents and information with appropriate governmental agencies as may be required to implement this ordinance and that the LCP amendment will take effect after approval by the California Coastal Commission and acceptance by resolution of the City Council consistent with applicable law including, without limitation, 14 California Code of Regulations § 13551.

SECTION 12: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Port Hueneme's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 13: This Ordinance will take effect on the 31st day following its final passage and adoption.

PASSED AND ADOPTED this _____ day of _____, 2017

, Mayor

ATTEST:

, City Clerk

APPROVED AS TO FORM

, City Attorney

DRAFT