

ORDINANCE NO. 734

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT HUENEME AMENDING ARTICLE III OF THE MUNICIPAL CODE TO IMPLEMENT VARIOUS LAWS OF THE STATE OF CALIFORNIA BY ALLOWING MEDICINAL AND NONMEDICINAL CANNABIS FACILITIES WITHIN THE CITY SUBJECT TO REGULATORY PARAMETERS THAT PROTECT PUBLIC HEALTH, SAFETY AND WELFARE.

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 of California 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 CUA and MMPA 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 *Maral 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 *Maral* 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 decriminalizes (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 CUA, MMPA, MMRSA and AUMA. 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: Findings. The City Council finds as follows:

- A. 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.

- B. This Ordinance promotes public health, safety and general welfare. Based on the studies and sources cited in the preceding paragraph, 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.
- C. 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 (i) regulates commercial cannabis activity without regard to zone district or development standards that are properly relegated to Article X of the PHMC; and (ii) preserves the City’s land use

authority to determine the appropriate zone district and permit process by which such uses may be allowed.

SECTION 4: Article III, Chapter 12 of the PHMC is amended to read as follows:

“Chapter 12

CANNABIS ACTIVITY

3980 Purpose.

This Chapter 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 and nonmedical purposes in compliance with state and local laws. Nothing in this Chapter is intended to, nor does, duplicate or conflict with applicable local, state, or, beyond the extent constitutionally permissible, federal laws.

3981 General Prohibitions.

- A. It is unlawful for any person to engage in commercial cannabis activity without a valid Certificate of Approval issued pursuant to this Chapter for each location at which the activity is proposed to occur.
- B. Unless otherwise provided by this Chapter, it is unlawful for any person to engage in commercial cannabis activity from other than a fixed location within the city’s jurisdiction for which a Certificate of Approval has been obtained and remains in effect.
- C. It is unlawful for any person to cause, permit, aid, abet, or conceal a violation of any provision of this Chapter.

3982 Permitted Cannabis Activity. Subject to applicable State law and this Chapter, commercial cannabis activity is permitted when approved by the City in accordance with this Chapter. Specifically, the following commercial cannabis activity may be allowed pursuant to a Certificate of Approval:

- A. Sale;
- B. Indoor cultivation;
- C. Delivery;
- D. Manufacturing;

- E. Testing Services; and
- F. Distribution.

3983 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 Chapter. Words and phrases undefined in this Chapter have the same meaning as set forth in the Adult Use of Marijuana Act; the Compassionate Use Act; the Medical Marijuana Program Act; the Medical Marijuana Regulation and Safety Act; or the “Control, Regulate and Tax Adult Use of Marijuana 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 Chapter, “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.

“Certificate of Approval” or “Certificate” means final approval granted for commencement of a commercial cannabis activity under this Chapter.

“Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, or of nonmedical cannabis or nonmedical cannabis products, 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.

“Distribution” shall have the meaning as provided in Section 26001(r) of the California Business and Professions Code, as amended from time to time.

“Distributor” shall mean a licensee engaged in Distribution.

“Distributor” is one holding a valid certificate of Approval and license as for Distribution activities.

“Employee” at a facility means any person who performs work at the facility, including but not limited to any owner, supervisor, worker or volunteer, whether paid or unpaid, full time or part-time. “Employ” means to hire or otherwise retain or allow a person to act as an employee. Incidental contractors and enforcement officials (as defined in this Chapter) shall not be considered employees.

“Enforcement official” means an employee of or contractor for the City, County, or State who is enters onto the premises of a facility for the purpose of implementing this Chapter or enforcing applicable laws.

“Facility” means a facility at which commercial cannabis activity occurs as authorized by this Chapter including, without limitation, a medical marijuana collective, a medical or nonmedical marijuana dispensary, a commercial cannabis cultivation facility, a Testing Service, or a manufacturing site for cannabis products.

“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 as someone authorized to engage in the medical use of marijuana, and that identifies the person’s designated primary caregiver, if any.

“Implementing Resolution” means a resolution or resolutions adopted by the City Council which prescribes the application process, eligibility requirements and/or operational parameters governing commercial cannabis activity and/or cultivation of cannabis, as such resolutions may be revised, replaced or amended from time to time.

“Incidental contractors” means independent contractors who are brought in to a facility only occasionally and solely to perform specialized services generally applicable to non-cannabis businesses (e.g. pest control specialist, plumber, electrician, copier repair tech).

“Medical marijuana collective” means a collective, cooperative, association, dispensary or other entity, whether for profit or nonprofit in nature, 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.*

“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.

“Operations Plan” means an operating plan approved by the police chief, that implements the standard requirements of this Chapter 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.

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

“Personal cultivation”, “cultivation for personal use” and similar terms mean cultivation of cannabis for personal use, whether medical or nonmedical, by (i) the cultivator, and/or (ii) if for medical use, by the cultivator’s qualified patient, if the cultivator is the primary caregiver of the qualified patient.

“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.

“Proof of identity” is defined as a means of proving the person seeking medical marijuana is the person’s name in the doctor’s recommendation or as the primary caregiver, and may include, by way of example, photograph identity materials, such as a valid California driver’s license, California DMV identity card, or a US passport.

“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 school does not include any private school in which education is primarily conducted in private homes.

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

3984 State License Required; Timing. To engage in commercial cannabis activity allowed by this Chapter, a person must obtain all of the following:

- A. First, a Certificate of Approval as required by this Chapter.
- B. After obtaining a Certificate of Approval issued by this Chapter, a person must thereafter obtain and maintain all required State of California commercial cannabis activity licenses required for the facility, e.g. a Type 6 (Manufacturer 1) license issued by the California Department of Consumer Affairs and/or a Type 10 or 10A (Dispensary) license issued by the California Department of Consumer Affairs, etc. as enumerated in Cal. Bus. & Prof. Code section 19300.7 or other applicable state law, once such licenses become available. Operation of the facility without a state license or licenses is permissible during the time such licenses are not available.
- C. Background check approval from the City for each employee at the facility, pursuant to Section 3985 of this Chapter.
- D. After obtaining a Certificate of Approval, a person must thereafter, before commencing a commercial cannabis activity, obtain a Development Permit and any other permits and approvals required for the facility under Article X or other provision of this Code.

Notwithstanding any other provision of applicable law, unless extended or renewed, a Certificate of Approval will be rendered void should a person fail to obtain, within six (6) months following issuance of the Certificate of Approval, or thereafter maintain, the state license and other permits and approvals required by this Section. The six (6) month period shall be extended by a reasonable amount of time to reflect delays due to state backlog if the applicant has filed for such a license or licenses, provided all information and fees required by the state have been provided to the state within the initial six (6) month period following issuance of the Certificate of Approval.

3985 Certificate of Approval Qualifications; Background Check for Applicants and Employees.

- A. To protect public health and safety, and to further ensure that commercial cannabis activity permitted by this Chapter is in the public interest, the City may establish by Implementing Resolution and/or by administrative policies and procedures promulgated by the City Manager the procedures for determining the qualifications of persons allowed to apply for a

Certificate of Approval or allowed to be employed at a facility. Any such resolution, policy or procedures may also (i) establish the application fees and method, including timing, for objectively evaluating and reaching a decision on applications for a Certificate of Approval pursuant to this Chapter, and (ii) establish operating standards and restrictions as the City may require from time to time.

- B. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorize city authorities to access state and local summary criminal history information for employment, licensing, or certification purposes, and authorize access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every applicant for a Certificate of Approval (including owners and other representatives of the applicant) and every person to be employed at the facility must submit fingerprints and other information deemed necessary by the Chief of Police or his/her designee(s) for a background check by the Port Hueneme Police Department. A fee for the cost of the background investigation, which shall be the actual cost to the City of Port Hueneme to conduct the background investigation as it deems necessary and appropriate, including City staff time and costs, shall be paid at the time the person submits for the background check.
- C. In addition to any other qualifications, methods and procedures established for applicants pursuant to Paragraph A above in this Section, and except as permitted by the police chief on good cause shown, an applicant for a Certificate of Approval or for employment at a commercial cannabis activity shall be denied a Certificate of Approval and disqualified from employment at a facility if the background check or other information shows that the applicant:
 - 1. Is dishonest or untrustworthy;
 - 2. Has committed a felony or misdemeanor involving fraud, deceit or embezzlement;
 - 3. Was convicted of a violent felony or crime of moral turpitude; or
 - 4. Was convicted of unlawful activity under the Federal Controlled Substances Act, except for California medical cannabis-related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996, and where the conviction related solely to lack of legal authority to engage in the business.

3985.5 Term of Certificate. Unless otherwise provided in the Certificate, a Certificate of Approval shall expire one year following its issuance. All commercial cannabis

activity at the facility shall cease upon expiration of the Certificate unless and until the Certificate is renewed or a new Certificate of Approval is issued pursuant to the Implementing Resolution. The renewal of the Certificate of Approval shall not be unreasonably withheld based upon the City's review of the applicant's compliance with conditions of approval, any regulations adopted by resolution or City requirement, changes in circumstances, operations or ownership or staffing, observing all relevant laws, ordinances and regulations, and such other factors as are reasonable.

3986 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 Certificate of Approval pursuant to this code or the operation of any facility approved pursuant to this code.

- B. As a prerequisite to issuance of a Certificate of Approval, the applicant must:
 - 1. Execute an agreement indemnifying the city from any claims, judgments, awards, damages, injuries, or liabilities of any kind arising out of or related to issuance of a Certificate of Approval and/or approval of a Development Permit or Ministerial Permit, 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;
 - 2. Maintain insurance in the amounts and of the types that are reasonably acceptable to the city manager or designee;
 - 3. Name the city as an additionally insured on all city required insurance policies;
 - 4. Agree to pay the reasonable fees and costs of legal counsel selected by the city to defend the city, its agents, officers, and/or employees against any claim described in subsection 3986(B)1 above; and
 - 5. Agree to reimburse the city for any court costs and reasonable attorney fees the city may be required to pay as a result of any claim described in subsection 3986(B)1 above.
 - 6. The agreements required by this subsection 3986(B) 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. The surety requirement may be waived in the discretion of the director if the

applicant demonstrates sufficient net worth to adequately cover the liability exposure.

FACILITIES

3987 Location Criteria.

- A. Facilities may only be allowed within the zone districts designated by Implementing Resolution. Each physical location of a facility requires a separate Certificate of Approval.
- B. It is unlawful for any portion of the parcel on which a facility is located to be within 600 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 Certificate of Approval 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 Certificate of Approval was first issued; (2) the Certificate of Approval 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 Certificate holder to resume business operations expeditiously. The prior, temporary suspension of a Certificate of Approval does not render a Certificate of Approval ineligible for renewal under this section provided the applicant otherwise qualifies for renewal.
- E. Unless otherwise prohibited by state law, other provisions of this Chapter, or regulations or requirements adopted by the City, holders of more than one Certificate of Approval and related state license to operate different types of cannabis facilities may operate the facilities from the same location.

3989 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.

- B. During the first year of operation of a facility authorized under this Chapter, 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 Certificate of Approval authorized by this Chapter. 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, with reasonable notice.

3988 Operations Plan and Standards. A Certificate of Approval issued for a facility must include, as conditions of approval, the operating standards set forth below. In addition, the Certificate of Approval must incorporate by reference an Operations Plan approved by the police chief, that implements not only the operating standards set forth in this Section, but such additional conditions that the police chief finds reasonably necessary to implement the purpose of this Chapter when considering the location, size and other characteristics of the proposed facility.

DISPENSARIES

3988.5 Operational Standards for Dispensaries. In addition to all other requirements of an Operations Plan required by this Chapter, dispensary facilities must include the following in an Operations Plan approved by the police chief:

- A. Except as otherwise provided, a facility can only be open for access to the public between the hours of 9:00 a.m. and 9:00 p.m.
- B. 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 marijuana in any form, to occur on the premises of a facility, elsewhere on the same parcel, or in outdoor areas adjacent to the parcel (e.g., parking lots, walkways, sidewalks, streets, parks, etc.).
- C. 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.
- D. All cannabis and cannabis products allowed to be sold or otherwise made available at a facility must be cultivated, manufactured, distributed 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; provided, however, that this requirement may be waived for some designated period

of time at the director's sole discretion if, due to timing issues and coordination with state requirements, it would be difficult or impossible to meet this requirement.

- E. It is unlawful for a physician to be 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 recommendation. A physician is neither required nor prohibited from being located in or on the same parcel as a facility operating solely as a nonmedical facility.
- F. Before dispensing cannabis or cannabis products to any person, the facility must verify that the person possesses proof of identity, proving their identity as the patient specified in the recommendation or as the primary caregiver.
- G. 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.
- H. Except for employees of the facility, enforcement officials and incidental contractors, 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 a qualified patient or has a valid identification card (as defined in Section 3983), or is named as a designated primary caregiver on a valid identification card, together with proof of identity. It is unlawful for any person under the age of 21 to be present in any area of a facility where nonmedicinal cannabis products are displayed and/or being offered for sale. A sign must be posted at each entrance to a sales/display area of the facility informing patrons of these restrictions. Proof of identity as a qualified patient is not required at a facility that is operated solely as a nonmedical commercial cannabis facility.
- I. It is unlawful for any person under age 21 to be present in any lobby or reception area of a facility unless the facility is being operated solely as a medical cannabis facility and that person is a qualified patient or primary caregiver and is accompanied by a parent or legal guardian.
- J. It is unlawful for any person to employ any other person at a facility unless: (i) the person is at least 21 years of age; and (ii) the person has passed any background check and employee registration process specified by Implementing Resolution.

- K. 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.
- L. Medical cannabis dispensaries can only dispense medical cannabis or cannabis products to a “person with a physician’s recommendation,” as defined in Section 3983, or a qualified patient, either of whom possesses proof of identity.
- M. Cannabis and cannabis products for personal nonmedical use may not be displayed, dispensed or sold separately or in combination with a medicinal commercial cannabis activity at the same facility unless a separate Certificate of Approval is acquired for each such use.
- N. Entrances into any area of a facility where 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 as needed 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 except as may be otherwise provided in the operations plan incorporated as a condition of approval in the Certificate of Approval.
- 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 Certificate of Approval holder 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 by state law, state or city regulation or condition of approval, baked cannabis products (e.g., brownies, bars, cookies, cakes), tinctures, and other non-refrigerated items may be sold at a facility.
- Z. A Certificate of Approval 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 Certificate of Approval itself.

CULTIVATION

3990 Outdoor Cultivation Prohibited; Exception. Except for personal medicinal use as provided in Section 3993 below, outdoor cultivation of commercial cannabis is prohibited in all areas of the city.

3991 Operational Standards for Cultivation. In addition to all other requirements of an Operations Plan required by this Chapter, facilities engaged in indoor cultivation of medical or nonmedical marijuana must include the following in an Operations Plan approved by the police chief:

- A. The facility can have only one contiguous cultivation area, except that segregated areas within the facility are permitted with the police chief's approval and the approval of the fire chief regarding fire code issues.
- 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 applicant 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. 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.

- J. 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.
- K. A cannabis cultivation facility must have a professionally installed, maintained, and monitored alarm system as approved through the Operations Plan.
- L. Cannabis cultivation facilities cannot be open to the public, though the facility may dispense cannabis in accordance with a Certificate of Approval.
- M. A cannabis cultivation facility must be equipped with an automated fire suppression system to the satisfaction of the Building Official.
- N. Except as expressly approved as part of the Operations Plan and incorporated in a Certificate of Approval, 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.
- O. It is unlawful to cultivate cannabis within 600 feet of any other parcel containing a school.
- P. 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.
- Q. 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.
- R. A facility must maintain a valid business license as required by this code.
- S. A Certificate of Approval 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 Certificate of Approval itself.

3992 Personal Indoor Cultivation; Standards and Regulations. Outdoor cultivation of cannabis for personal use in accordance with State law may only be permitted as regulated under the provisions of Section 3993 of this Chapter.

3993 Personal Cultivation for Medicinal Use; 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. Cultivation cannot exceed 75 square feet in cumulative area.
- C. All outdoor cannabis cultivation must be fully enclosed by an opaque 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. Alternatively, outdoor cannabis cultivation may be conducted in a secure opaque greenhouse structure, subject to the approval of the police chief. The police chief will determine the level of security necessary. Indoor cultivation for personal medical marijuana is permissible, subject to the pertinent provisions hereof.
- D. It is unlawful to cultivate cannabis within 600 feet of any other parcel containing a school.
- E. 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 cannabis.
- F. It is unlawful to cultivate cannabis in the front yard area of any parcel.
- G. It is unlawful to cultivate cannabis within the required rear or side yard setbacks of any parcel.
- H. 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.
- I. The cultivation of medicinal 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.

- J. The address of any dwelling on a parcel where cannabis is cultivated must be posted and plainly visible from the public right-of-way.
- K. Cultivation of 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.
- L. 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.
- M. 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.
- N. All cultivation activities must be conducted in compliance with all applicable state and local water conservation laws, ordinances, and regulations.
- O. Nothing in this section is intended to authorize the cultivation, possession, or use of cannabis in violation of state or federal law.
- P. Notwithstanding any other provision of this code, or applicable law, no variances are permitted from any of the regulations in this section.
- Q. Prior to commencing cultivation under this Section, the cultivator shall obtain a Ministerial Permit from the City as provided by Implementing Resolution. A valid Ministerial Permit must be maintained in effect by the cultivator throughout the period of cultivation. The cultivator shall remove all cannabis plants and plant materials from the property within 24 hours following termination or expiration of the Ministerial Permit.

DELIVERY

3994 Delivery.

- A. A Certificate of Approval for a facility may authorize the delivery of medical cannabis as part of and in conjunction with the operation of the facility. Deliveries by dispensaries other than those which are located in the City of Port Hueneme and hold a valid Certificate of Approval under this Chapter are unlawful.
- B. Delivery of cannabis from a facility that has obtained a Certificate of Approval pursuant to this Chapter 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 deliveries of any medical cannabis product.
- D. A facility which has obtained a Certificate of Approval pursuant to this Chapter may have its delivery privileges suspended or terminated by the city manager if the facility is found to have violated this Chapter.

MANUFACTURING AND TESTING FACILITIES

3995 Operations Plan; Additional Requirements. In addition to any other requirements of an Operations Plan, a Testing Service or a facility engaged in manufacturing cannabis products must include, as conditions precedent to issuance of a Certificate of Approval, an Operations Plan encompassing the elements set forth in Section 3996.

3996 Operational Standards.

- A. The manufacture of cannabis products and the operations of a Testing Service 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, and must be in full compliance with state law.
- B. All law enforcement and code enforcement personnel seeking admission to the manufacturing or testing 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 applicant 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 or testing of cannabis products is occurring.

A sign must be posted at each entrance to a manufacturing or testing facility informing visitors of these restrictions.

- D. All manufacturing and testing 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 or testing facility.
- F. Entrances into any area of a cannabis manufacturing or testing facility where cannabis products are made, tested 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 or testing facility as needed 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 or testing facility must have a professionally installed, maintained, and monitored alarm system as approved through the Operations Plan.
- I. It is unlawful for cannabis manufacturing or testing facilities to be open to the public.
- J. Any compressed gases used in the manufacturing or testing process shall not be stored in containers that exceed 150 pound tanks in size. Each facility shall be limited to a total of eight tanks on the property at any time.
- K. Cannabis manufacturing and testing facilities are limited to the following methods, equipment, solvents, gases and mediums when creating cannabis extracts:
 - 1. Cannabis manufacturing and testing facilities may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human-related toxicity approved by the director. These solvents must be of at least ninety-nine percent purity and any extraction process must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.
 - 2. Any extraction processes must use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a

minimum of six hundred pounds per square inch. The CO₂ must be of at least ninety-nine percent purity.

3. Closed loop systems for hydrocarbon or CO₂ extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.
 4. Certification from a licensed engineer must be provided to the Community Development Department for professional grade closed loop systems used by any cannabis manufacturing or mechanized testing system to certify that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as: (i) the American Society of Mechanical Engineers (ASME); (ii) the American National Standards Institute (ANSI); (iii) Underwriters Laboratories (UL); or (iv) the American Society for Testing and Materials (ASTM).
 5. The certification document must contain the signature and stamp of a professional engineer and serial number of the extraction unit being certified.
 6. Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the Fire Department and meet any required fire, safety, and building code requirements specified in the California Building Reference Codes.
- L. Cannabis manufacturing facilities may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.
- M. Cannabis manufacturing facilities may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.
- N. Cannabis manufacturing facilities creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts or otherwise in a testing or manufacturing facility must be fully trained on how to use the system, have direct access to applicable

material safety data sheets and handle and store the solvents and gases safely.

- O. Parts per million for one gram of finished extract produced in a manufacturing facility cannot exceed 500 parts per million of residual solvent or gas when quality assurance tested.
- P. 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.
- Q. 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.
- R. 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.
- S. A facility must maintain a valid business license as required by this code.
- T. A Certificate of Approval 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 Certificate of Approval itself.
- U. The following requirements shall apply to all testing facilities:
 - 1. Testing laboratories shall be required to conduct all testing in a manner pursuant to Business and Professions Code Section 26100 and shall be subject to state and local law. Each testing laboratory shall be subject to additional regulations as they are developed or modified by the State of California.
 - 2. Testing laboratories shall conduct all testing in a manner consistent with general requirements for the competence of the testing and calibration activities, including a sampling using verified methods, pursuant to Section 26100(f).

3. All cannabis testing laboratories performing testing shall obtain and maintain ISO/IEC 17025 accreditation as required by the state, pursuant to Section 26100(g).
4. Testing laboratories shall destroy the remains of the sample cannabis or cannabis products upon the completion of the analysis as determined by the state through regulations, pursuant to Section 26100(i).
5. Testing laboratories shall dispose of any waste byproduct resulting from their operations in the manner required by state and local laws and regulations.

3996.1 **Distribution**

- A. Distribution is the procurement, sales and transport of cannabis and cannabis products between dispensaries.
- B. The transportation of cannabis or cannabis products shall only be conducted by persons holding a Distribution certificate or employee of those persons.
- C. Transportation safety standard, in addition to those imposed by the State of California, shall approved by the Chief of Police including without limitations, the type of vehicles in which cannabis or cannabis product may be distributed, and minimal qualification for persons eligible to operate such vehicles.
- D. A person holding a Distribution Certificate shall observe all security manifest, and notice requirements of Section 26070 (sections e through n, inclusive).

ENFORCEMENT

3997 Enforcement of Certificates of Approval; Generally. In addition to other remedies set forth in this code, violations of this Chapter may be prosecuted as infractions or misdemeanors at the City Attorney's discretion and may be abated as public nuisances. The remedies provided by Sections 3997 through 3999.5 are cumulative and in addition to any other criminal or civil remedies. For purposes of Sections 3997 through 3999.5, violations of this Chapter include (i) violation of the provisions of this Chapter; (ii) violation of any Implementing Resolution; (iii) violation of any administrative policy or procedure promulgated by the City Manager; (iv) violation of the terms and conditions of a Certificate of Approval, development agreement, indemnification agreement, operations plan, development permit, or other permit or

agreement associated with a facility; and (v) violation of terms and conditions of a Ministerial Permit issued for cannabis cultivation for personal use.

3998 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 Chapter 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 Chapter.

3999 Administrative Suspension and Revocation.

- A. Suspension or Revocation. In addition to any other penalty authorized by law, the director may suspend or revoke a Certificate of Approval for the following reasons:
 - 1. Upon learning that an applicant provided false, misleading or materially incomplete information in connection with its application for a Certificate of Approval or discovering facts that require denial of an application for a Certificate of Approval under this Chapter that were not previously disclosed by the applicant; or
 - 2. Upon occurrence of a violation under this Chapter.
- B. Notice of Suspension or Revocation. If the director elects to suspend or revoke a Certificate of Approval, the director shall provide written notice of suspension or revocation to the holder of the Certificate at the address of the facility. The notice shall state the basis for the suspension or revocation and provide information regarding the right to appeal. Unless the director determines there is an imminent threat to public health, safety and welfare and makes the suspension or revocation effective immediately, suspension or revocation of the Certificate of Approval 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.

3999.1 Appeal of Notice of Suspension or Revocation.

- A. A notice of suspension or revocation of a Certificate of Approval may be appealed to the City Council, 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 mailed to

the holder of the Certificate. If a request for review is untimely, the City Council 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 timely request for review, the City Council, will schedule and conduct a de novo appeal review of the decision of the director, which shall be heard as soon as the schedule of the City Council permits, but in any event not later than twenty one (21) business days of receiving the request. At the conclusion of the hearing, the City Council may conclude any of the following:
 - 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 Council's decision may include such terms and conditions as the City Council may determine to be in the interest of public health and safety, including revocation, suspension, or continuation of a Certificate of Approval (with or without modification to conditions of approval).
- E. The City Council's decision is final.
- F. Notwithstanding any provision of this ordinance to the contrary, any decision or act which is subject to appeal under the sections pertaining to cannabis businesses and/or facilities shall be appealable to the City Council after all other intervening appeals have been exhausted.

3999.2 **Right to Judicial Review.** A final decision of the City Council may be judicially reviewed pursuant to Code of Civil Procedure Section 1094.6.

3999.3 **No New Certificate After Revocation.** Should a cannabis Certificate of Approval be revoked, the former holder of the Certificate is presumptively disqualified to apply for a new Certificate of Approval in accordance with this Chapter. This presumption may be overcome upon a showing of good cause as to why a Certificate of Approval should be issued following a revocation. Any such showing must be made to the director's satisfaction.

3999.4 **Attorney's Fees in Nuisance Abatement Action.** 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, the city is entitled to recover its actual costs of abatement, including, without limitation, reasonable attorneys' fees incurred by the city in such judicial proceeding.

3999.5 **Remedies Cumulative.** The remedies provided by this Chapter are cumulative and in addition to any other criminal or civil remedies including, without limitation, those set forth elsewhere in this code."

ENVIRONMENTAL REVIEW

SECTION 5: *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.*)

a. On the basis of evidence provided, and for the reasons set forth in Section 3, Paragraphs A and B, the Ordinance will not adversely affect adjoining property as to value or precedent, and will not be detrimental to the area.

b. The Ordinance does not authorize any new construction or use; rather, it merely prescribes a process that requires the vetting of environmental, land use and operational issues in connection with each application for a Certificate of Approval. As such, the Ordinance is not a "project" under CEQA because: (1) it establishes "general policy and procedure making" (CEQA Guidelines § 15378(b)(2); and (2) it constitutes "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment" (CEQA Guidelines 15378(b)(5)).

c. The Implementing Resolution is self-mitigating insofar as it provides the means for avoiding environmental impacts, if any are identified, as part of each discretionary application for a Certificate of Approval. As stipulated in PHMC Section 10352C(7), each conditional use application is subject to separate environmental review under CEQA. Furthermore, as stipulated in PHMC Sections 10482 and 10542,

conditional **uses** within the C-1, M-1 and R-4 zones may only be allowed so long as they will not be injurious or detrimental to the public health, safety or welfare or to property in the vicinity or zone in which the use or uses will be situated.

d. Issuance of ministerial permits for personal, non-commercial cultivation is categorically exempt as a Class 1 or Class 5 project in so far, at best, the activities that are authorized would constitute a minor alteration of existing public structures involving no expansion of use, or a minor alteration in land use limitations (see 14 CCR §§15301, 15305).

GENERAL PROVISIONS

SECTION 6: *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 7: *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 8: *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 9: The City Clerk and Director of Community Development are directed as follows:

a. The City Clerk shall 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.

b. The Director of Community Development shall file a Notice of Exemption upon adoption of this Ordinance under the provisions of CEQA Guidelines Sections 15061 (d) and 15062, thereby commencing a 35-day challenge period should any interested party take exception to the City's determination set forth in Section 6 hereof.

SPECIAL PROVISIONS

SECTION 10: Notwithstanding any other provision of this ordinance to the contrary, the following special provisions shall apply:

- a. No license for a non-medical cannabis facility shall be issued after the effective date of this ordinance prior to the date which is six (6) months from said effective date, unless and until the City Council, by majority vote, adopts a resolution shortening or terminating said six month period. The purpose of this delay is to allow the City's various departments, and most particularly the Police Department, to understand problems of enforcement and/or general criminal conduct which might arise in connection with adult recreational use marijuana facilities, and to allow the design and/or implementation of additional policing procedures or personnel as is believed to be necessary to effectively counter problems which arise from such non-medical marijuana. No facility which has received a Certificate of Approval prior to the effective date of this ordinance shall be limited in its operations solely by virtue of this Section 10.a.
- b. City staff is directed to accept applications for any new adult recreational marijuana Certificate of Approval permitted under this Municipal Code, with the acceptance of such applications to commence on December 5, 2017, the day after the introduction of this ordinance. This will allow City staff the opportunity to process applications prior to the date when Certificates can be issued under Section 10.a.

SECTION 11: This Ordinance will take effect on the 31st day following its final passage and adoption

PASSED AND ADOPTED this 18th day of December 2017.

Mayor

ATTEST:

Michele Kostenuik, City Clerk

APPROVED AS TO FORM

Charles R. Green, City Attorney

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