

ORDINANCE NO. ____

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, ADOPTING LAND USE REGULATIONS GOVERNING THE SALE AND CULTIVATION OF MEDICAL CANNABIS

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996”), decriminalizing the use of cannabis for medical purposes; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 et. seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate medical cannabis without being subject to criminal prosecution; and

WHEREAS, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

WHEREAS, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 (“Medical Marijuana Regulation and Safety Act” or “MMRSA”) to clarify legal requirements pertaining to medical cannabis; and

WHEREAS, the MMRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to medical cannabis cultivation, dispensing, manufacturing, or distribution pursuant to zoning powers that the city or counties governing body allows which including either expanding and allowing such activity within its city zoning area or can restrict, ban or prohibit within its zoning area; and

WHEREAS, the MMRSA states that, commencing March 1, 2016, the State will become the sole licensing authority for medical cannabis cultivation in any local jurisdiction that has not enacted land use regulations or ordinances regulating or prohibiting medical cannabis cultivation; and

WHEREAS, if Cathedral City does not adopt land use regulations on medical cannabis cultivation by the March 1, 2016 deadline, it may not be able to adopt such regulations in the future; and

WHEREAS, Cathedral City supports the right of patients with debilitating medical conditions to have safe access to medical cannabis; and

WHEREAS, it is necessary for Cathedral City to adopt land use regulations for the purpose of facilitating safe access of medical cannabis to patients; and

WHEREAS, Cathedral City wishes to regulate medical cannabis cultivation within its borders by regulating such cultivation that is in existence, open and operating within Cathedral City at the time this Urgency Ordinance is adopted, and which comply with the requirements set forth herein, until such time as the City Council adopts a new ordinance; and

WHEREAS, Cathedral City has a legitimate interest in maintaining an appropriate balance of land uses within its borders, and Cathedral City desires to ensure

that there is an appropriate balance of medical cannabis cultivation sites and other uses; and

WHEREAS, there has recently been interest in establishing licensed cultivation sites within the City as allowed under State law; and

WHEREAS, Cathedral City desires to permit the regulated cultivation of medical cannabis pursuant to State law and is studying a zoning proposal to do so; and

WHEREAS, in the event Cathedral City does not meet the March 1, 2016 deadline, the approval of future medical cannabis cultivation licenses by the State without Cathedral City's review or approval would leave cultivation unregulated by Cathedral City and conflict with the zoning proposal on regulated medical cannabis that Cathedral City is considering, resulting in a threat to public health, safety, and welfare; and

WHEREAS, Section 65858 of the Government Code authorizes Cathedral City to adopt an Urgency Ordinance for the immediate preservation of the public health, safety or welfare prohibiting any land uses that may be in conflict with the zoning proposal on regulated medical cannabis cultivation that Cathedral City is considering; and

WHEREAS, in Conway v. City of Imperial Beach, 52 Cal. App.4th 78(1997), the Court of Appeals interpreted Section 65858 of the Government Code as allowing cities to adopt complete moratoriums on certain uses as well as limitations on the establishment of already permitted uses; and

WHEREAS, this Urgency Ordinance will regulate medical cannabis in a manner that is consistent with State law and which promotes the health, safety, and general welfare of citizens of Cathedral City and limits impacts associated with medical cannabis cultivation; and

WHEREAS, this Urgency Ordinance will necessarily ensure that the issuance of medical cannabis cultivation licenses in Cathedral City will occur only as part of a process that includes Cathedral City review of possible detrimental impacts and approval; and

WHEREAS, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS

The City Council hereby makes the following findings:

- A. The above and foregoing recitals are true and correct and incorporated herein.
- B. The City has recently experienced significant interest by property owners and developers establishment of cultivation facilities as permitted by the MMRSA. If the City fails to adopt land use regulations governing such facilities on or before March 1, 2016, the MMRSA states that the establishment of such facilities in the

City would be permitted under State law without the regulatory authority of Cathedral City. This would prohibit the City from ensuring that medical cannabis cultivation facilities are only located in zones appropriate for medical cannabis cultivation uses.

- C. The lack of local regulation of medical cannabis cultivation and lack of Cathedral City's review or approval of regulated medical cannabis cultivation within its borders are a current and immediate threat to the public health, safety, and welfare.
- D. Allowing the State to have sole regulatory authority over medical cannabis cultivation may create negative impacts of cultivation in the City, including offensive odors, illegal sales, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests.
- E. The unregulated cultivation of medical cannabis can adversely affect the health, safety, and well-being of the City and its residents. Comprehensive regulation of medical cannabis cultivation by the City is proper and necessary ensure public safety.
- F. The City has a legitimate interest in maintaining an appropriate balance of medical cannabis cultivation business uses within the City to avoid potentially negative impacts and to ensure that patients have safe access to medicine. Allowing the establishment of medical cannabis cultivation businesses without City review and approval may materially impair the City's ability to maintain an appropriate balance of medical cannabis uses suitable to serve the needs of the City's population.
- G. Allowing the establishment of medical cannabis cultivation businesses without any City land use review and approval may negatively impact the properties surrounding such businesses by changing the character of the surrounding area.
- H. The City therefore desires to retain and maintain its control of the regulation of medical cannabis uses within its boundaries;

This Urgency Ordinance imposes interim regulations on medical cannabis cultivation consistent with the zoning proposal being studied for permanent adoption so that the regulations are in place prior to the March 1, 2016 deadline in the MMRSA.

SECTION 2. PURPOSE

- A. The purpose of this Urgency Ordinance is to regulate all Commercial Cannabis Activity in Cathedral City, as defined in Section 19300.5(k) of the Business and Professions Code, to the extent authorized by state law and in a manner consistent with the permanent zoning regulations under consideration by the City and designed to minimize negative impacts on the city and neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City.

- B. This Ordinance is further adopted and established pursuant to the specific authority granted to Cathedral City in Section 7 of Article XI of the California Constitution and Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code. These regulations shall govern all Commercial Cannabis Activity that occurs within the jurisdiction of Cathedral City.

SECTION 3. PCC PLANNED COMMUNITY COMMERCIAL DISTRICT

In addition to permitted uses under Section 9.30.030, the following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Cultivation Sites

Dispensaries;

SECTION 4. CBP-2 COMMERCIAL BUSINESS PARK DISTRICT

In addition to permitted uses under Section 9.30.040, the following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Cultivation Sites;

Dispensaries;

SECTION 5. I-1 LIGHT INDUSTRIAL DISTRICT

In addition to permitted uses under Section 9.40.040, the following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72.

Cultivation Sites;

Dispensaries;

SECTION 6. OS OPEN SPACE DISTRICT

In addition to permitted uses under Section 9.42.030, the following uses may be permitted subject to a conditional use permit:

Cultivation Sites;

SECTION 7. RELATIONSHIP TO OTHER LAWS

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code. In the event of any conflict between

the provisions of this Ordinance and the provisions of that Chapter or any other applicable state or local law, the more restrictive provision shall control.

SECTION 8. DEFINITIONS

For the purposes of this Urgency Ordinance, the following definitions shall apply:

- A. "Applicant" has the same meaning as that term is defined by Section 19300.5(b) of the Business and Professions Code.
- B. "City" means Cathedral City, California.
- C. "City Manager" shall mean the City Manager of the city of Cathedral City or duly authorized designee.
- D. "Commercial Cannabis Activity" has the same meaning as that term is defined by Section 19300.5(k) of Business and Professions Code, including the exclusion in Section 19319 of Business and Professions Code related to Qualified Patients and Primary Caregivers.
- E. "Community Development Director" or "Director" shall mean the community development director of the city of Cathedral City or duly authorized designee.
- F. "Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of Business and Professions Code.
- G. "Day-care center" has the same meaning as that term is defined by Section 1596.76 of the Health and Safety Code.
- H. "Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.
- I. "Edible Cannabis Product" means has the same meaning as that term is defined by Section 19300.5(s) of the Business and Professions Code.
- J. "Enclosed Locked Structure," means a structure that: 1) does not allow for the visibility of the interior from the outside; 2) is secured with a lock; 3) is completely surrounded on all sides by a wall; and 4) is roofed. Enclosed Locked Structures may include greenhouses and accessory buildings. All Enclosed Locked Structures shall comply with the City Building Code, Fire Code, and all other applicable laws.
- K. "Good Cause" for purposes of refusing or denying an initial conditional use permit issuance, for revoking a conditional use permit, or for refusing or denying a conditional use permit renewal or reinstatement, means:
 - 1. The Licensee or Applicant has violated any of the terms, conditions or provisions of this Ordinance, of State law, of any regulations and rules promulgated pursuant to State law, any applicable local rules and regulations, or any special terms or conditions placed upon its State License or Local License;
 - 2. The Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located.

3. The Licensee or applicant has knowingly made false statements, misrepresentations or material omissions on an application form, renewal form, or any other document submitted to the City.
 4. The Applicant or Licensee's criminal history does not indicate that the Applicant or Licensee is of Good Moral Character; or the Applicant or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made; except that if the Local Licensing Authority determines that the Applicant or Licensee is otherwise suitable to be issued a License and granting the License would not compromise public safety, the Local Licensing Authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or Licensee, and shall evaluate the suitability of the applicant or Licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the Local Licensing Authority shall consider the factors as set forth in Section 19323(b)(5) of the Business and Professions Code.
 5. The Applicant is employing or being financed in whole or in part by any Person whose criminal history indicates that Person is not of Good Moral Character;
 6. The Applicant or Licensee fails to allow inspection of the security recordings, activity logs, or business records of the Licensed Premise by the City officials.
 7. The Applicant or Licensee is owned by or has an officer or director who is, a licensed physician making recommendations for Medical Cannabis;
 8. The Applicant or Licensee has had a Local License revoked or has had more than one suspension on its Local License by the City; or
 9. The Applicant or Licensee operated a Medical Cannabis Business in violation of Title 5 of the Code.
- L. "Good Moral Character" means having a personal history that demonstrates the propensity to serve the public in the licensed area in a manner that reflects openness, honesty, fairness, and respect for the rights of others and for the law. In determining Good Moral Character, the following standards shall apply:
1. A, a judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of a person's lack of good moral character. Such judgment may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed.
 2. Except in the event of: (a) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled

substance to a minor or (b) A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the Business and Professions Code, and notwithstanding Chapter 2 of Division 1.5 of the Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to the approval of a conditional use permit shall be grounds for revocation of the conditional use permit.

- M. "Identification Card" or "ID Card" means a valid identification card issued pursuant to Section 113672.7 et. seq. of the California Health and Safety Code.
- N. "Licensed Premises" means the premises specified in an application for a Local License, which are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, test, or sell Medical Cannabis in accordance with Chapter 5.88 of the Code, the MMRSA, and any rules adopted pursuant thereto.
- O. "Licensee" means a person who has been issued a Local License pursuant to Title 5 and a conditional use permit issued pursuant to this Ordinance.
- P. "Limited Access Area" means and shall be a building, room or other area upon the Licensed Premises where medical cannabis is grown, cultivated, stored, weighed, displayed, packaged, or sold to other Medical Cannabis Businesses, under control of the Licensee, with limited access to only authorized personnel.
- Q. "Local License" means a business license granted by the Local Licensing Authority, pursuant to Chapter 5.88 of the Code.
- R. "Local Licensing Authority" means the City Manager or its designee.
- S. "Manufactured Cannabis" has the same meaning as that term is defined by Section 19300.5(ae) of the Business and Professions Code.
- T. "Medical Cannabis" has the same meaning as that term is defined by Section 19300.5(ag) of the Business and Professions Code.
- U. "Medical Cannabis Business" means any Person engaged in Commercial Cannabis Activity.
- V. "Medical Cannabis Collective or Cooperative" or "Cooperative or Collective" means any group that is collectively or cooperatively cultivating and distributing cannabis for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California and is on file in the office of the city clerk, and subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- W. "Medical Marijuana Regulation and Safety Act" or "MMRSA" means Chapter 3.5 of Division 8 of the Business and Professions Code

- X. “Outdoors” means any location within the City that is not within an Enclosed Locked Structure.
- Y. “Owner” means, pursuant to Section 19300.5(b) of the Business and Professions Code, owner of a Medical Cannabis Business, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.
 - 1. If the Owner is an entity, “Owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.
 - 2. If the Applicant is a publicly traded company, “Owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.
- Z. “Person” has the same meaning as that term is defined by the Business and Professions Code.
- AA. “Physician,” as used in this Ordinance, shall mean a medical doctor licensed by the state of California to practice as such.
- BB. “Primary Caregiver” shall have the meaning set forth in Section 11362.7(d) of the California Health and Safety Code.
- CC. “Protected Health Information” means documentation of a Qualified Patient or ID Card holder’s medical history or condition, pursuant to 45 CFR § 160.103, other than a Physician’s recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or ID Card holder. Protected Health Information shall not include information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding such Qualified Patient’s medical condition, information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient’s or ID Card holder’s medical condition, or information regarding the risks and benefits of Medical Cannabis provided to a Primary Caregiver, Qualified Patient or ID Card holder.
- DD. “Qualified Patient” shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.
- EE. “Restricted Access Area” means all areas where Medical Cannabis is sold, possessed for sale, displayed, or dispensed for sale to Qualified Patients, ID Card holders, or Primary Caregivers and where no one without a valid doctor’s recommendation is permitted.
- FF. “State Law(s)” shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008 (hereinafter “Guidelines”), as such guidelines may be revised from time to time by action of the Attorney General; MMRSA, and all other applicable laws of the state of California.
- GG. “State License” has the same meaning as that term is defined by Section

19300.5(ak) of the Business and Professions Code.

HH. “State Licensing Authority” shall mean the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, the State Department of Public Health, or any other state agency responsible for the issuance, renewal, or reinstatement of a license issued pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or any State agency authorized to take disciplinary action against such license.

SECTION 9. LOCAL LICENSE AND CONDITIONAL USE PERMIT REQUIRED TO OPERATE

- A. Medical Cannabis Businesses shall only be permitted to operate in the City following application, investigation, verification, notice and public hearing, approval and issuance of both a Local License issued by the Local Licensing Authority in accordance with the criteria and procedures set forth in Title 5 of the Code and a conditional use permit issued by the planning commission in accordance with the criteria and procedures set forth in this Ordinance and Chapter 9.72 of the Code. No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Cannabis Business shall be granted or permitted unless a conditional use permit is first obtained and issued in conformance with the provisions of this Ordinance and Chapter 9.72 of the Code. If there is a conflict between the requirements of Chapter 9.72 and this Ordinance, the requirements of this Ordinance shall prevail. Notwithstanding anything herein to the contrary, a facility or entity that is operating in compliance with Title 9 of the Cathedral City Municipal Code and other state and local requirements on or before the date this ordinance is adopted, may continue its operations pursuant to its conditional use permit provided such permitted use is considered a compliant or nonconforming use in that location under Title 9 of the Cathedral City Code.
- B. The issuance of the Local License under Title 5 and conditional use permit pursuant to this Ordinance shall satisfy the requirements of Chapter 5.01 of the Code.
- C. All persons who are engaged in or who are attempting to engage in Commercial Cannabis Activity in any form shall do so only in strict compliance with the terms, conditions, limitations and restrictions of the MMRSA, the provisions of Title 5, this Ordinance, and Chapter 9.72 of the Cathedral City Code, and all other applicable State and local laws and regulations.
- D. The Community Development Director is authorized to make policies and procedures consistent with the intent and spirit of this Ordinance concerning the applications, the application process, the information required of applicants, the application procedures and the administration and procedures to be used and

followed in the application and hearing process.

SECTION 10. CONDITIONAL USE PERMIT APPLICATION PROCESS

- A. Prior to initiating operations and as a continuing requisite to operating Medical Cannabis Business, the Applicant shall obtain a conditional use permit under the terms and conditions set forth in this Ordinance and Chapter 9.72 of the Code. If there is a conflict between the requirements of Chapter 9.72 and this Ordinance, the requirements of this Ordinance shall prevail. The Applicant shall file an application for a conditional use permit with the Director on the official form supplied by the City and shall pay the applicable application fee as established by resolution of the City Council, as may be amended from time to time. The City shall not accept an application for a conditional use permit pursuant to this Ordinance prior to April 1, 2016.
- B. An application for a conditional use permit shall include, but shall not be limited to, the following information:
 - 1. For a Cultivation Site, an environmental plan indicating how cultivation will be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, and agricultural discharges.
 - 2. Confirmation that that the premises proposed to be licensed is not currently permitted as a retail food establishment or wholesale food registrant.
 - 3. The address of the location of the Medical Cannabis Business.
 - 4. A site plan and floor plan of the Medical Cannabis Business denoting all the use of areas of the dispensary or Cultivation Site, including storage, employee areas, exterior lighting, restrooms, security cameras, areas of ingress and egress, and signage.
 - 5. Plans and specifications for the interior of the Licensed Premise if the building to be occupied is in existence at the time of the application. If the building is not in existence or alteration to the building is required at the time of the application, the Applicant shall file a plot plan and a detailed sketch for the interior and shall further submit an architect's drawing of the building to be constructed.
 - 6. The name and address of any person who is an Owner of the Applicant business entity, is managing or responsible for the Medical Cannabis Business's activities, the names and addresses of any employees, or volunteers, if any, and a statement as to whether such person or persons has or have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received for such conviction(s).
 - 7. The name and address of the owner and lessor of the real property upon which the Medical Cannabis Business is to be operated. In the event the Applicant is not the legal owner of the property, the application must be

- accompanied by a notarized acknowledgement from the owner of the property that a Medical Cannabis Business will be operated on his or her property.
8. An operating plan for the proposed Medical Cannabis Business including the following information:
 - a. A floor plan showing all interior dimensions of the Licensed Premises and the layout of the Medical Cannabis Business, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein.
 - b. A description of the design of the Licensed Premises evidencing that the design conforms to applicable City laws.
 - c. A description of the source of power for any Cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site.
 - d. Verification of all water sources used by the Licensed Premises and verification that the Licensed Premise does not utilize water that has been or is illegally diverted from any stream, creek, or river.
 - e. Any additional document(s) or information reasonably requested by the Local Licensing Authority.
 9. A security plan that, to the satisfaction of the City Manager and Chief of Police, addresses how the applicant intends to comply with and implement all requirements under Title 5 of the Code, this Ordinance, and the MMRSA, including, but not limited to, a description of how the security measures are sufficient to ensure the safety of members and employees, protect the Licensed Premises from diversion and theft, and ensure that all buildings where Medical Cannabis is cultivated or stored are secured sufficiently to prevent unauthorized entry, and the following requirements:
 - a. A diagram indicating all areas to be covered by the twenty-four (24) hour security cameras which shall include, but are not limited to, all Limited and Restricted Access Areas, all areas of ingress and egress, point of sale, the public areas, storage areas, all doors and windows, and any other areas as required by this Ordinance and the MMRSA.
 - b. A basic explanation of the methods the Medical Cannabis Business will undertake to ensure Medical Cannabis is under secure control of the Medical Cannabis Business staff at all times pursuant to Title 5 of the Code.
 10. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
 11. Authorization for the community development director to seek verification of the information contained within the application.
 12. Any such additional and further information as is deemed necessary by

the community development director to administer this section or this Ordinance.

- C. All Applicants for a conditional use permit under this Ordinance shall provide verification that the proposed premise to be licensed will be equipped with an odor filtration system that meets the following requirements:
 - 1. All Medical Cannabis Businesses shall install or provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Medical Cannabis Business that is distinctive to its operation is not detected outside the Medical Cannabis Business, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Medical Cannabis Business. As such, Medical Cannabis Businesses must install and maintain the following equipment or any other equipment which Local Licensing Authority determines has the same or better effectiveness:
 - a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
 - b. An air system that creates negative air pressure between the Medical Cannabis Businesses' interior and exterior so that the odors generated inside the Medical Cannabis Business are not detectable outside the Medical Cannabis Business.
 - 2. For enforcement purposes, the standard for determining what constitutes an unlawful odor under this subsection shall be whether such an odor would be deemed offensive to a reasonable number of persons on an ongoing or periodic basis and personally detectable by City staff or law enforcement personnel.
- D. The Director and appropriate City staff shall review, verify and investigate all information on the application and prepare a report for the planning commission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location, and the Applicant's compliance with the requirements of this Ordinance, Title 5 and Chapter 9.72.
- E. All renewals and time limitations on conditional use permits shall be governed by Chapter 9.72.

SECTION 11. GROUNDS FOR DENIAL OF CONDITIONAL USE PERMIT— ADDITIONAL CONDITIONS IMPOSED

- A. The planning commission shall reject any application for a conditional use permit to operate a Medical Cannabis Business where the Applicant does not hold a Local License in good standing.
- B. In addition to the findings set forth in Section 9.72.010 of the Cathedral City Code, a conditional use permit shall only be granted with the establishment of certain conditions to protect the health, safety and general welfare of the neighborhood or community, subject to the following findings:
 - 1. The Licensed Premises-Medical Cannabis Business is located as well as all operations as conducted therein, fully comply with all applicable building, zoning and fire Codes, accessibility requirements of the Americans with Disability Act, and all relevant City and State Law; and
 - 2. The Medical Cannabis Business fully complies with and meet all operating criteria required pursuant to State Laws, Title 5 of the Code, any other provisions of the Code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the conditional use permit; and
 - 3. For Dispensaries, the number, type, and availability of Dispensaries located in or near the Licensed Premises is such that the issuance of issuance of a conditional use permit to the Applicant will result in or add to an undue concentration of Dispensaries and/or result in a need for additional law enforcement resources.
- C. Following the public hearing required by Section 9.72.070 of the Cathedral City Code, the planning commission shall deny an application for a conditional use permit upon making any of the following findings, which shall be made part of the record of the meeting/public hearing:
 - 1. The findings required by Section 9.72.010, Section 14 or subsection 12 (A) of this Ordinance for the granting of a conditional use permit cannot be made; or
 - 2. Good Cause, as defined in this Ordinance.
- D. Based on the information set forth in the application and City staff's report, the planning commission may impose reasonable terms and conditions on the proposed operations in addition to those specified in and required to be included in every conditional use permit granted under this Ordinance. All such additional terms and conditions shall be supported by written findings that substantiate a need for the additional terms and conditions to mitigate or eliminate any potential secondary effects associated with the public health, safety and welfare.

SECTION 12. APPEALS

Any decision regarding the planning commission's approval, conditional approval, denial, or revocation of a conditional use permit for a Medical Cannabis Business may be appealed to the City Council in accordance with the provisions of Section 9.72.080 of the Code, and is subject to de novo review by the City Council pursuant to Section 9.72.090 of the Code.

SECTION 13. CONDITIONAL USE PERMIT REQUIREMENTS FOR DISPENSARIES AND CULTIVATION SITES: PERMITTED ZONES—DISTANCE AND OTHER CONDITIONS FOR APPROVAL

All conditional use permits for Medical Cannabis Businesses shall be processed pursuant to the terms and conditions set forth in this Ordinance and Chapter 9.72 of the Code. If there is a conflict between the requirements of Chapter 9.72 and this Ordinance, the requirements of this Ordinance shall prevail.

A. Dispensaries.

1. No Dispensary shall be or located:
 - a. Within six hundred feet of a school, child care or day care facility, or youth center; or
 - b. In any residential zone; or
 - c. Within two hundred fifty feet of East Palm Canyon Drive or a residential zone.
2. The restrictions in subsection 14(A)(1) shall not apply to any location where the City issued a conditional use permit for a Dispensary prior to the adoption of this Ordinance under Chapter 9.72 of the Code and a permitted Dispensary has existed in continuous operations at the subject location since the time of original permitting.
3. Subject to the distance and other requirements of this Ordinance a Dispensary may only be located or established on property within the I-1 Light Industrial District Zone, the CBP-2 Commercial Business Park District Zone or the PCC Planned Community Commercial District Zone, and following the application for and granting of a conditional use permit by the planning commission in accordance with this Ordinance and Chapter 9.72 of the Code. In addition to the findings required by Section 9.72.010 of the Code, the planning commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Ordinance for distance separations between Dispensaries and other specific land uses.

B. Cultivation Sites.

1. No Cultivation Site shall be located within six hundred feet of a school or within three hundred feet of a residential zone, except that the restrictions in this subsection 13(B)(1) shall not apply to any location where the City previously issued a conditional use permit authorizing cultivation prior to the adoption of this Ordinance under Chapter 9.72 of the Code and such

cultivation has existed in continuous operations at the subject location since the time of original permitting.

2. Subject to the distance and other requirements of this Ordinance, a Cultivation Site may only be located on a property within the I-1 Light Industrial District Zone, CBP-2 Commercial Business Park Zone, and S Open Space Zone, and following the application for and granting of a conditional use permit by the planning commission in accordance with this Ordinance and Chapter 9.72 of the Code. In addition to the findings required by Section 9.72.010 of the Code, the planning commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Ordinance for distance separations between other Cultivation Sites and other specific land uses.
 3. All Cultivation of Medical Cannabis shall occur in an Enclosed Locked Structure. All outdoor cultivation of Medical Cannabis within the City is prohibited.
 4. Cultivation Sites shall not exceed the square footage authorized pursuant to the conditional use permit.
 5. From a public right of way, there should be no exterior evidence of the Cultivation of Medical Cannabis except for any signage authorized by this Ordinance.
 6. All Cultivation Sites shall comply with the City's lighting standards including without limitation fixture type, wattage, illumination levels, shielding, and secure the necessary approvals and permits as needed.
 7. All windows on the Licensed Premise of the Cultivation Sites shall be appropriately secured and all Medical Cannabis securely stored.
- C. Any Dispensary or Cultivation Site established or operating in the City in violation of the ban established by Ordinance Nos. 675 and 677, shall not be considered a lawful or permitted nonconforming use, and no such Dispensary or Cultivation Site shall be eligible for issuance of a Medical Cannabis Business conditional use permit. Further, any such unlawfully established—Medical Cannabis Business shall constitute a public nuisance subject to abatement by the City, pursuant to Section 20 of this Ordinance.
- D. All distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Medical Cannabis Business is, or will be located, to the nearest property line of those uses described herein.

SECTION 14. NOTIFICATION AND APPROVAL OF TRANSFER OF OWNERSHIP, CHANGE OF FINANCIAL INTEREST, ALTERATION OR MODIFICATION OF PREMISES, OTHER MATERIAL CHANGES

In addition to any requirements in Title 5 and Chapter 3.28 of the Code, the following requirements for transfer of ownership, change of financial interest, or modification of

premise of a Local License apply. In the event of a conflict between this Ordinance, Title 5 or Chapter 3.28, the provisions of this Section shall control.

- A. Changes of ownership of conditional use permits shall be governed by Section 9.72.100 of the Cathedral City Code. A new Owner may not commence operations at the Licensed Premises until the change of ownership of both the conditional use permit and Local License have been approved by the City.
- B. All modifications to the Licensed Premise shall be subject to the provisions of Section 9.72.120 of the Cathedral City Code. A Licensee shall not make physical change, alteration, or modification of the Licensed Premise that materially or substantially alters the Licensed Premise from the plans approved by the Local Licensing Authority and planning commission without the prior written approval of the Local Licensing Authority and planning commission pursuant to Section 9.72.120 of the Cathedral City Code. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premise or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress.

SECTION 15. REVOCATION OF CONDITIONAL USE PERMIT

- A. Revocations of conditional use permits under this Ordinance shall be governed by Section 9.72.130 of the Code. In addition to the grounds for revocation set forth in Section 9.72.130(c), the planning commission and/or the City Council may revoke a conditional use permit if the planning commission and the City Council find:
 - 1. Good Cause; or
 - 2. The Medical Cannabis Business has failed to comply with this Ordinance or any condition of approval or a circumstance or situation has been created that would have permitted the planning commission to initially deny the Medical Cannabis Business License or conditional use permit under this Ordinance or Chapter 9.72 of the Code; or
 - 3. The Licensee fails to allow inspection of the security recordings, membership records, the employee register, the point of sale transaction data or inspection of the premises, as provided for herein above, by authorized City officials; or
- B. Prior to any initiating revocation proceedings, the subject Medical Cannabis Business Licensee shall be given a compliance period of at least fourteen days, which may be extended by the director upon a finding that the subject Licensee is attempting in good faith to resolve the non-compliance issue.

SECTION 16. CONFIDENTIALITY OF INFORMATION

- A. The City's review of information submitted or maintained pursuant to this

Ordinance shall preserve the confidentiality of all information about Licensees, Applicants, Owners, employees, principals, Qualified Patients, ID Card holders, members, or volunteers to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information, or disclosure of such information as may be required by law. Disclosure of any principal, member, Licensee or Applicant information to the City for purposes of this Ordinance shall not be deemed a waiver of confidentiality.

- B. Financial information provided to the City pursuant to this Ordinance shall be deemed to be 'Confidential Information.'
- C. Information identifying the names, addresses, or social security numbers of Qualified Patients, ID Card holders, their medical conditions, or the names of their Primary Caregivers, received and contained by a Medical Cannabis Business or any City official are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Civil Code § 56, *et seq.*) and shall not be disclosed by the Medical Cannabis Business or by any City official except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.
- D. Within 24 hours of receiving any request to disclose the name, address, or social security number of a Qualified Patient or ID Card holder, their medical condition, or the name of their Primary Caregiver, the Medical Cannabis Business or any City official shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.
- E. Notwithstanding Section 56.10 of the Civil Code, neither a Medical Cannabis Business nor any City official, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their Primary Caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.
- F. The information required by Section 18 and recordings from security cameras, as well as operating plans and security plans required by Sections 10(B)(8) and 10(B)(9) shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement, and except as may be required by the California Public Records Act or court order.
- D. In order to protect confidentiality, Dispensaries shall not collect or maintain Protected Health Information. Dispensaries shall maintain membership records and information about members in a manner that ensures that the information will not be disclosed except as required by this Ordinance or other laws. If a

Dispensary maintains information conveyed by a Qualified Patient or member to a Dispensary regarding such Member's medical condition, information conveyed by a Member to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Member's medical condition, or information regarding Medical Cannabis, Medical Cannabis Products and/or Edibles provided to a Qualified Patient or member, such information shall be kept in a manner that is in compliance with the Confidentiality of Medical Information Act. Membership lists shall be available to City employees charged with the administration of this Ordinance for inspection on site without a warrant during business hours or by appointment.

SECTION 17. LIMITATIONS ON CITY'S LIABILITY

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any conditional use permit pursuant to this Ordinance or the operation of any Medical Cannabis Business approved for such permit pursuant to this Ordinance. As a condition of approval a conditional use permit granted under this Ordinance, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business; and
- B. Maintain insurance in the amounts and of the types that are acceptable to the city pursuant to guidelines and policies set forth by the Local Licensing Authority; and
- C. Name the City as an additionally insured on all city required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a conditional use permit or the operation of the Medical Cannabis Business; and
- E. 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 (or federal enforcement action) related to the City's approval of a conditional use permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

SECTION 18. INSPECTIONS

- A. Recordings made by security cameras at any Medical Cannabis Business shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the Director, the city manager,

- the chief of police or their designee upon verbal request for law or regulatory enforcement and criminal investigation purposes.
- B. The Director, the city manager, or their designated Code enforcement officers shall have the right to enter all Medical Cannabis Businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Ordinance. Such inspections shall be limited to observing the Licensed Premises for purposes of determining whether the Medical Cannabis Business is being operated or maintained in compliance with the Code, state law, and other applicable laws and regulations.
 - C. The Director or the City Manager shall have the right to inspect membership records for the sole purpose of determining whether all members of the Dispensary's related collective or cooperative are qualified. Such inspections of membership records shall not be used for any other purposes, nor shall the records be removed off-site by the City without a court order.

SECTION 19. ENFORCEMENT

- A. Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of this Ordinance, Title 5 or Chapter 9.72 shall constitute a violation of the Cathedral City Municipal Code and shall be enforced pursuant to the provisions of this Ordinance and the Code.
- B. Applicants and Licensees must cooperate with employees and investigators of the City who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Ordinance. No Applicant or Licensee shall by any means interfere with, obstruct or impede the Director, City Manager, law enforcement, or other City official from exercising their duties under the provisions of this Ordinance and all rules promulgated pursuant to it.

SECTION 20. UNLAWFUL ACTS, VIOLATIONS

- A. Public Nuisance. It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of the Code, to establish, maintain, or operate a Medical Cannabis Business within the city without having received a Local License and conditional use permit pursuant to, in this Ordinance and Chapter 9.72 of the Code.
- B. Violations. The City Manager may establish a schedule of fines, suspension, or revocation as the standard punishment for specific violations of this Ordinance. Any violation without a scheduled punishment shall constitute an infraction violation which shall be subject to the provisions set forth in Chapter 13.65, including but not limited to the imposition of any and all criminal penalties set forth therein.
- C. Administrative Citations. In lieu of issuing a citation, the city may issue an

administrative citation, pursuant to Chapter 13.58, to any person responsible for committing, causing or maintaining a violation of this Ordinance. Nothing in this subsection shall preclude the city from also issuing a citation upon the occurrence of the same offense on a separate day against the same person or entity.

SECTION 21. ENVIRONMENTAL FINDINGS

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

SECTION 22. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

SECTION 23. EFFECTIVE DATE AND DURATION

This Ordinance shall take effect immediately and shall, pursuant to section 65858(a) of the Government Code, remain in effect for a period of forty-five (45) days.

SECTION 24. REPORTING

Pursuant to section 65858(d) of the Government Code, 10 days prior to the expiration of this Ordinance or any extension thereof, the City Council will issue a written report describing the measures taken to alleviate the conditions which led to the adoption of this Ordinance.

SECTION 25. POSTING

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

INTRODUCED AS AN URGENCY MEASURE PURSUANT TO SECTION 65858 OF THE GOVERNMENT CODE at the regular meeting of Cathedral City Council on January 27, 2016.