CITY OF SAN JOSÉ, CALIFORNIA

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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 29421",** the original copy of which is attached hereto, was passed for publication of title on the **10th day of June, 2014,** was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **17th day of June, 2014,** by the following vote:

AYES: CHU, CONSTANT, HERRERA, KHAMIS, LICCARDO NGUYEN, OLIVERIO; REED.

NOES: CAMPOS, KALRA, ROCHA.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **18th day of July, 2014.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **19th day of June, 2014.**

(SEAL)_____
TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

RD:TLC:LCP
6-16-14

ORDINANCE NO. 29421

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 6.88 TO ESTABLISH REGULATIONS PERTAINING TO MEDICAL MARIJUANA COLLECTIVES AND TO THE INDIVIDUAL CULTIVATION AND USE OF MEDICAL MARIJUANA

WHEREAS, pursuant to the provisions of Title 21 of the San José Municipal Code, a Negative Declaration (File No. PP11-039) and Addenda thereto (File Nos. PP11-076 and PP14-030) were prepared to identify and analyze the environmental impacts of this Ordinance; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, after a duly noticed and conducted public hearing on May 13, 2014, the City Council considered the Addendum for PP14-030 to the previously adopted Negative Declaration together with said Negative Declaration as addended, prior to making a decision on the approval of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 6 of the San José Municipal Code is hereby amended to add a new chapter to be numbered, entitled and to read as follows:

CHAPTER 6.88
MEDICAL MARIJUANA
Part 1
Purpose and Intent

6.88.010 Purpose and Intent

In 1996, the voters of the State of California approved Proposition 215, entitled "The Compassionate Use Act of 1996" ("CUA"). The intent of Proposition 215 was to enable persons who are in need of Marijuana for medical purposes to obtain and use it under limited, specific purposes. On January 1, 2004 Senate Bill 420, entitled "The Medical Marijuana Program Act" ("MMP") became effective. The intent of the MMP was to clarify the scope of the CUA. Nothing in the MMP prevents cities and counties from adopting and enforcing rules and regulations consistent with the CUA and the MMP. The federal government has issued guidelines for states and local governments that have enacted laws authorizing Marijuana-related conduct, requiring them to "implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests." Specifically, the Department of Justice stated that regulations must focus on:

- Preventing the distribution of Marijuana to minors;
- Preventing revenue from the sale of Marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of Marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized Marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of Marijuana;

- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with Marijuana use;
- Preventing the growth of Marijuana on public lands and the attendant public safety and environmental dangers posed by Marijuana production on public lands; and
- Preventing Marijuana possession or use on federal property.

It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and protect their health and safety, while protecting our neighborhoods, children, and businesses from negative impacts and complying with state law and federal guidelines.

The use of Marijuana by minors is harmful to their health, brain development, and academic achievement. Furthermore, nothing in state law or federal guidelines permits the distribution of Marijuana to minors. The federal guidelines express serious concerns about distribution to minors. This Chapter expressly prohibits the distribution of Medical Marijuana to minors.

The federal guidelines express concerns about funding criminal enterprises. This Ordinance ensures that patients, caregivers, and residents of San José know the origin of the Medical Marijuana being cultivated and distributed in San José Collectives. It is the intent of this Chapter to keep drug cartels, criminals, and gangs out of the business of cultivating or distributing Medical Marijuana in San José. It is the intent of this Chapter to regulate the cultivation of Medical Marijuana in a manner which is responsible and protects the health, safety, and welfare of the residents of San José. It is the intent of this Chapter to protect seriously ill patients from Medical Marijuana that has been grown or processed in an unhealthy or unsafe manner or by individuals whose motivation is profit, not patient's health and safety.

It is the intent of the City of San José to have a strong and effective regulatory and enforcement system that addresses threats to public safety, health and other law

enforcement interests through robust controls and procedures that are effective in practice.

The provisions in this Chapter do not interfere with a patient's right to use Medical Marijuana under state law, nor do they criminalize the possession or cultivation of Medical Marijuana by specifically defined classifications of persons. Under state law, only Qualified Patients and Primary Caregivers cultivate Medical Marijuana.

The cultivation of Medical Marijuana shall comply with all provisions of this Code, state laws related to Medical Marijuana and all other applicable state and local laws. Nothing in this Chapter purports to, nor shall permit activities that are otherwise illegal under state or local law.

By adoption of this Chapter and the provisions of Title 20 related to Medical Marijuana, it is the intent of the City to set forth the conditions and criteria which must be met to establish an affirmative defense to criminal and civil enforcement of the San José Municipal Code if such enforcement is based solely upon the conduct recognized herein. It is the intent of the City that the party invoking the affirmative defense must demonstrate strict compliance with this Chapter, the provisions of Title 20 relating to Medical Marijuana, and the rules and regulations promulgated thereunder.

Notwithstanding the foregoing, all persons who choose to be involved with Medical Marijuana do so entirely at their own risk that their involvement may constitute a violation of federal or state law.

Part 2
Definitions

6.88.200 Definitions and Construction

The definitions set forth in this Part shall govern the application and interpretation of this Chapter. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

6.88.205 Attending Physician

"Attending Physician" shall have the definition given in California Health and Safety Code Section 11362.7.

6.88.210 Concentrated Cannabis

"Concentrated Cannabis" shall have the definition given in California Health and Safety Code Section 11006.5.

6.88.212 Cultivation Site

"Cultivation Site" means the property, Location, or Premises where Medical Marijuana is cultivated or grown by the members of a Collective on behalf of that Collective.

6.88.215 Identification Card

"Identification Card" shall have the definition given in California Health and Safety Code Section 11362.7.

6.88.220 Location

"Location" means the lot or parcel or portion of a lot or parcel that is used by a Medical Marijuana Collective, including any Cultivation Site.

6.88.225 Manager

"Manager" means an individual who is a member of a Medical Marijuana Collective and who, directly or indirectly, is engaged in the management of the Medical Marijuana Collective as may be evidenced by the individual member being responsible for the establishment, organization, registration, supervision, or oversight of the operation of the Collective and/or its members, which oversight may include but not be limited to the following: performing the functions of president, vice president, board member, director, owner, operating officer, financial officer, secretary, treasurer, supervisor or manager.

6.88.227 Manufacturing

"Manufacturing" means converting, producing, deriving, concentrating, making, cooking baking, transforming, or preparing Medical Marijuana, including the production of Concentrated Cannabis, the production of edible Medical Marijuana products, and/or the production of Medical Marijuana infused products.

6.88.230 Marijuana

"Marijuana" shall have the definition given in California Health and Safety Code Section 11018.

6.88.235 Medical Marijuana

"Medical Marijuana" means Marijuana used for medical purposes in accordance with California Health and Safety Code Section 11362.5.

6.88.240 Medical Marijuana Collective

"Medical Marijuana Collective" or "Collective" means an incorporated or unincorporated association, composed of four (4) or more individuals who are Qualified Patients and designated Primary Caregivers of Qualified Patients (individually and collectively referred to as "member(s)") who associate at a particular location to collectively or cooperatively cultivate Medical Marijuana, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

6.88.242 Medical Marijuana Transfers

"Medical Marijuana Transfers" means

A. The transfer of Medical Marijuana from a Primary Caregiver to that Primary Caregiver's Qualified Patient for such consideration as is sufficient to reimburse that Primary Caregiver for the Primary Caregiver's out-of-pocket expenses and for the Primary Caregiver's services; or

B. Transfers of Medical Marijuana between Qualified Patients and Primary Caregivers facilitated through an association of those Qualified Patients and Primary Caregivers who are operating as a nonprofit Collective.

6.88.245 On-Site Designated Representative

"On-Site Designated Representative" means a Manager that is designated by the Collective to be present, and who is present, at all times during the Collective's hours of operation.

6.88.250 Overhead Expenses

"Overhead Expenses" means the actual costs of cultivating Medical Marijuana incurred by the Collective including mortgage payments, rent, utilities, business and property taxes, property insurance, cultivation materials and equipment, and fees paid to comply with the requirements of this Chapter.

6.88.255 Owner

"Owner" means any individual member of a Collective having more than a ten percent (10%) interest, legal or equitable, or otherwise, in the Collective.

6.88.260 Person

"Person" shall have the definition given in Section 1.04.020 of this Code.

6.88.262 Personal Use Cultivation

"Personal Use Cultivation" includes cultivation by either of the following:

A. An individual Qualified Patient or Primary Caregiver of Qualified Patients who cultivates Medical Marijuana at the residence of the Qualified Patient or Primary Caregiver, in strict accordance with California Health and Safety Code Sections 11362.5, *et. seq.*; or

B. An association of less than four (4) individuals who are Qualified Patients and Primary Caregivers of Qualified Patients and who associate at the residence of one of the Qualified Patients or Primary Caregivers to collectively or cooperatively cultivate Medical Marijuana, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

6.88.265 Physician's Recommendation

"Physician's Recommendation" means the verbal or written communication by an Attending Physician stating that a Qualified Patient has been diagnosed with a serious medical condition and that the medical use of Marijuana is appropriate.

6.88.270 Premises

"Premises" means each building or the portion of any building, on the Location, where the Collective is located, including any Cultivation Site.

6.88.275 Primary Caregiver

"Primary Caregiver" shall have the definition given in California Health and Safety Code Section 11362.7.

6.88.280 Private Medical Record

"Private Medical Record" means documentation of the medical history of a Qualified Patient. "Private Medical Record" shall not include the recommendation of an Attending Physician or doctor for the medical use of Marijuana, an Identification Card, or the designation of a Primary Caregiver by a Qualified Patient.

6.88.282 Processing

"Processing" means the harvesting, trimming, drying, and/or curing of Medical Marijuana.

6.88.285 Qualified Patient

"Qualified Patient" means an individual who is entitled to the protections of California Health and Safety Code Section 11362.5.

6.88.290 Security Personnel

"Security Personnel" means any person(s) who perform(s) security related tasks on behalf of the Collective.

Part 3
General Provisions

6.88.300 Registration Required

A. No Collective shall operate in the City of San José unless and until it has first filed a registration form in accordance with the provisions of this Chapter, has paid all fees required by this Chapter, and has received a Notice of Completed Registration from the City Manager.

B. It shall be unlawful for a Person or Collective to maintain, manage, operate, conduct, control or own a Collective unless the Collective is maintained and operated in strict compliance with a Notice of Completed Registration issued by the City Manager.

C. To be eligible to register a Collective must be able to provide a Marijuana Business Tax Return evidencing payment of any applicable taxes due to the City pursuant to Chapter 4.66 of this Code and have no outstanding compliance orders under Chapter 1.14.

D. Collectives shall have ninety (90) days from the effective date of this Chapter to apply for registration under this Chapter and to apply for a Zoning Code Verification Certificate under Part 13 of Chapter 20.100. Collectives shall obtain a Notice of Completed Registration from the City Manager and a Zoning Code Verification Certificate within one (1) year from the effective date of this Chapter.

6.88.310 Locations

A. No Collective shall dispense Medical Marijuana from more than one location in the City.

B. A Collective may have one (1) Cultivation Site, upon which Medical Marijuana is cultivated, produced, harvested, stored, manufactured or packaged. The Cultivation Site may be separate from the location at which Medical Marijuana is dispensed, or the Cultivation Site may be at the same location as the Collective's sole dispensing site. The Cultivation Site must comply with the provisions of this Chapter and of Title 20 of this Code.

6.88.315 Authority of the City Manager

A. The City Manager is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Code relating to Medical Marijuana, including, but not limited to the following subjects:

1. Registration, review, investigation, priority order and disqualification process for the Collectives and forms necessary thereto.

2. Internal or external security requirements for the operation of the Collectives.

3. Storage or display of Medical Marijuana.

4. Criteria necessary to promote the safe cultivation of Medical Marijuana.

B. Regulations shall be published on the City's website and once in a daily newspaper of general circulation.

C. Regulations promulgated by the City Manager shall have the same force and effect of law and become effective upon date of publication.

6.88.320 <u>Registration Submittal</u>

A. Registration forms must contain all information as required by the City Manager pursuant to the rules and regulations and will be accepted by the City Manager on the published date on a first-come, first-served basis.

B. Each Collective shall submit with its registration forms a Medical Marijuana Collective Application Receipt Fee and a Medical Marijuana Collective Application Processing Fee, as set forth in Section 6.88.380 and as required by the City Manager pursuant to the rules and regulations.

C. As each Collective submits forms for registration and the required fees as required by the rules and regulations, the City Manager shall time-stamp the registration forms. The City Manager shall establish a list which shall identify the order in which registration forms were received. The order in which registration forms were received shall be the order in which they shall be reviewed and

processed by the City Manager. A Collective may only be assigned one place on the list, and multiple submissions will result in immediate disqualification from the registration process.

D. No Collective's rank on the list shall be assigned, transferred or sold. Any attempt to so assign, transfer or sell a ranking shall render the application null and void. Any Person or Collective attempting to assign, transfer or sell a ranking and any Person or Collective attempting to acquire a ranking outside the provisions set forth herein shall be immediately disqualified from the registration process.

6.88.330 <u>Registration Process</u>

A. **Registration Review**

1. Pursuant to Section 6.88.300, no Collective shall operate in the City of San José without a Notice of Completed Registration from the City Manager. A person desiring to obtain a Notice of Completed Registration shall file a registration form with the City Manager that shall contain the following accurate, complete and truthful information:

   a. The legal name, and any other names, under which the Collective will be operating;

   b. The physical address and physical description (e.g., one story commercial building, etc.) of the Premises;

   c. The onsite landline telephone number for the Collective;

d. Proof that the Location and the Premises are in compliance with the requirements of Title 20 of the Code, including but not limited to Part 9.75 of Chapter 20.80 and Part 13 of Chapter 20.100;

e. The name, telephone number, and address of the person authorized to accept service of process for the Collective;

f. The following information concerning each Owner, Manager, or individual member who will be participating in the actual cultivation, Processing, manufacturing, transporting or dispensing of the Medical Marijuana:

(1) Complete legal name, and any alias(es);

(2) Date of birth;

(3) A copy of a valid government issued photo Identification Card or license;

(4) A copy of the member's Identification Card or a copy of the Physician's Recommendation for the member;

(5) The name, address and telephone number of the Attending Physician who provided the member with a Physician's Recommendation (post office boxes are not deemed to satisfy this requirement);

(6) If the member is a Primary Caregiver, a copy of the written documentation provided by each Qualified Patient member designating the member as their Primary Caregiver.

(7) Telephone number(s) where the individual Owner or Manager can be reached twenty-four (24) hours a day;

(8) A list of all criminal convictions, other than infraction traffic violations, the jurisdiction of the conviction(s) and, the circumstances thereof;

(9) One set of fingerprints in a form acceptable to the Chief of Police; and

(10) A detailed explanation of the member's involvement with any other Collective including, but not limited to: the name and address of the Collective; the capacity in which the member was involved with the Collective; whether the Collective is or was the subject of any criminal investigation or prosecution, civil investigation, administrative action or civil lawsuit; whether the member or the Collective with which the member is or was associated has ever been denied, or is in the process of being denied registration, a permit, a license or any other authorization required to operate a Collective in any other city, county or state; and whether the member or the Collective with which the member is or was associated has ever had a registration, license, permit or any other authorization required to operate a Collective in any other city, county or state suspended or revoked, and the reasons therefore;

g. A complete list of all the duties and functions of each managing member of the Collective;

h. A copy of the lease or other such proof of the Collective's right to possess the Premises and/or Location;

i. The Collective's operations plan, which shall be in conformance with the requirements of this Chapter and shall include:

(1) A management plan naming the Managers for the Collective and detailing each Manager's responsibilities;

(2) A list of all Managers responsible for receiving, logging, and responding to complaints regarding the Collective, as required by Subsection 6.88.440K;

(3) A security plan which identifies the Collective's Security Personnel and provides documentation of the proper certification of that personnel by the State, as required by Subsection 6.88.420J, and which details the security measures for the Location and Premises including those requirements set forth in this Chapter;

(4) The rules and regulations of the Collective which shall comply with those requirements set forth in this Chapter;

(5) The hours and days of operation for the Collective, including the hours and days of operation for any separate Cultivation Site;

(6) The Medical Marijuana cultivation procedures to be utilized at the Location and the Premises including a detailed

explanation of how chemicals and fertilizers will be stored and what measures will be taken to minimize or offset energy use from the cultivation or Processing of Medical Marijuana and what measures will be taken to comply with the requirements of this Chapter;

(7) A site floor plan which details the layout of the Location and the Premises and any adjacent areas, including parking lots, which are owned or controlled by the Collective;

(8) An odor management plan detailing steps the Collective will take to install air purification systems and air scrubbers to ensure that the odor of Medical Marijuana will not emanate beyond the walls of the Collective's Premises; and

(9) Designation of the sole dispensing Location and designation of the sole Cultivation Site of the Collective.

j. Identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the Collective;

k. Authorization for the City Manager to:

(1) Seek other information that the City Manager deems necessary for a complete review of the registration form; and

(2) Conduct an investigation into the truthfulness of the statements set forth in the registration form, including, but not limited to, a criminal history investigation by the Chief of

Police with the California Department of Justice and any other law enforcement agencies;

l. Written consent by each Owner and Manager member of the Collective to provide the City Manager with the information and authorization described in this Section and written consent by each member of the Collective for the inspection and copying of records as specified in Subsection 6.88.330B;

m. A dated statement signed by an individual member authorized to represent and legally bind the Collective, certifying under penalty of perjury that the information provided in the registration form and any attachment thereto is true, complete and correct;

n. Proof of payment of any applicable taxes due to the City pursuant to Chapters 4.66 and 4.76 of the Code; and

o. Any other information reasonably required by the City Manager to show that the Collective is in compliance with the provisions of this Chapter.

B. **Consent for Inspection of Records and Location**

1. Required Consent for Inspection and Copying of Records

a. As part of the registration process the Collective shall provide written consent for the inspection and copying by the Chief of Police, and any other City official charged with enforcing the provisions of this Code, of any recordings and records required to

be maintained under this Chapter without requirement for a search warrant, subpoena or court order.

b. The Collective shall be subject to the inspection and copying set forth in Subsection 6.88.330 B(1)(a) at any time and without notice during the Collective's hours of operation and at any other time upon reasonable notice.

c. Nothing in this Chapter requires the disclosure of any Qualified Patient member's Private Medical Record.

2. Required Consent for Inspection of Location and Premises

a. As part of the registration process, the Collective shall provide written consent for the inspection of the Location and the Premises by the Chief of Police, and any other City official charged with enforcing the provisions of this Code, without requirement for a search warrant or court order.

b. The Collective Location and Premises shall each be subject to the inspection set forth in Subsection 6.88.330 B(2)(a) at any time and without notice during hours of operation and at any other time upon reasonable notice.

C. **Signatories to Registration**

Each and every Owner and Manager of the Collective shall print his or her name and sign the registration form under penalty of perjury certifying that all the information contained therein, and any attachments thereto, is true, complete and correct.

D. **Investigation and Determination**

1. Upon receiving a Collective's registration form, the City Manager shall proceed by the order established by Section 6.88.320 to investigate the information required in Subsection 6.88.330A through C and evaluate the compliance of the Collective with the requirements of this Chapter.

2. The City Manager shall also investigate the Location and the Premises for the purpose of assuring that each Collective complies with the requirements of this Chapter, including, but not limited to Part 4, and all public health, safety, welfare and zoning laws set forth in this Code and in State and local laws.

3. The Chief of Police shall also conduct a criminal background investigation on any Owner or Manager of the Collective and on any individual members who participate in the cultivation, processing, manufacturing, transporting or dispensing of Medical Marijuana.

E. **Disqualification from Registration**

1. Any Collective may be disqualified from the registration process for any of the following reasons:

   a. The Collective or any person applying on behalf of a Collective knowingly made a false statement of fact or omitted a fact required to be revealed in the registration process, or any amendment or report or other information required to be made thereunder;

   b. The Collective Location or Premises is in violation of any building, zoning, health, safety or other provision of this Code; or of any

State or local law which substantially affects the public health, welfare or safety;

c. The Collective violates or has violated the terms and conditions of any requirement of this Code related to the operation of a Collective, other than solely because of its existence after the effective date of this Chapter;

d. The Collective, or any one of its Owners or Managers have owned or leased a Location or Premises that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the Location or Premises to be a nuisance within the past five (5) years;

e. The Collective was disqualified from the registration process under this Chapter on one (1) or more of the grounds provided in this Section within five (5) years prior to the date of the current attempt to register;

f. The Collective's registration under this Chapter has become null and void within the past five (5) years for any of the reasons set forth in Section 6.88.350;

g. The Collective's registration, permit, license or any other authorization issued by the City or by any State or local agency and required to operate a Medical Marijuana Collective, cooperative, dispensary, or other such establishment, has been deemed null and void or has been suspended or revoked or otherwise nullified within the past five (5) years;

h. The Collective has conducted itself in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the Location;

i. If the Collective is a corporation, the corporation is not in good standing or authorized to do business in the State;

j. The Collective conducted, conducts or anticipates conducting a Collective on a Location or Premises and such operation is prohibited under the terms of the lease for the Location or Premises or under the terms of another such document which memorializes the Collective's right to possess the Location or Premises;

k. The Collective has as an Owner or Manager or as individual members participating in the cultivation, Processing, manufacturing, transporting or dispensing of Medical Marijuana, persons who:

(1) Are on parole or probation for the possession, sale, manufacture, use, distribution or transportation of a controlled substance:

(2) Have been convicted of a crime of moral turpitude, or

(3) Have been convicted of any misdemeanor or felony within the last ten (10) years involving the following

(a) The use of violence, force, fear, fraud or deception;

(b) The unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance;

(c) The use of money to engage in criminal activity;

I. The Collective's operation from the Location or Premises results or will result in an imminent threat to the public's health, safety or welfare.

F. **Completed Registration.** After verification that the required Application Submission Fee and the Application Processing Fee, as set forth in Section 6.88.380, have been timely and fully paid and that all necessary information has been provided and that the Collective is in compliance with all requirements of this Chapter, the City Manager shall notify the Collective that the Annual Operating Fee and any applicable Hourly Investigative Fee, as set forth in Section 6.88.380, are now due and payable to the City. Within ten (10) business days of receiving the Collective's payment in full of the Annual Operating Fee and any applicable Hourly Investigative Fee, the City Manager shall mail a Notice of a Completed Registration, and any subsequent updated registration, to the person authorized to accept service of process on behalf of the Collective.

G. **Notice of Disqualification.** If the Collective has not paid the fees or taxes required by this Code, has not provided all necessary information, is not in compliance with all the requirements of this Code, or has otherwise been disqualified from the registration process, the City Manager shall mail notice to the person authorized to accept service of process on behalf of the Collective advising the Collective that it has been disqualified from the registration process.

6.88.340 Term of Registration

Each registration shall expire one (1) year from the date the City Manager mails the Notice of Completed Registration to the person authorized to accept service of process on behalf of the Collective.

6.88.350 Registration Null and Void

A registration deemed completed by the City Manager shall become null and void upon any of the following:

A. Any of the reasons set forth in Subsection 6.88.330E regarding disqualification;

B. Cessation of Medical Marijuana cultivation at the Location or on the Premises that is the designated Cultivation Site for the Collective for ninety (90) days or longer;

C. Relocation of the Collective to a different Location or Premises;

D. One (1) year after the issuance of the registration, as set forth in Section 6.88.340 above;

E. Any attempt to assign, transfer or sell a registration, ranking or the submission of multiple applications; or

F. Violation of the terms or requirements of this Chapter.

6.88.360 Change In Location And Updated Registration Forms

A. Any time a Collective changes its dispensing or cultivation Location or Premises, it shall re-register with the City Manager. The process and the fees for re-registration shall be the same as the process and fees set forth for registration in Section 6.88.330.

B. Within fifteen (15) calendar days of any other change in the information provided in the registration form or any change in status of compliance with the provisions of this Chapter, including any change in the Collective's ownership or management members, the Collective shall file an updated registration form with the City Manager for review along with a Registration Amendment Fee, as set forth in Section 6.88.380.

C. Each and every individual Owner and Manager of the Collective shall print his or her name and sign any form required to be updated, under penalty of perjury, certifying that all information contained in the updated forms is true, complete and correct.

6.88.370 Renewal of Registration

A. No registration issued under this Chapter may be renewed unless:

1. A new registration form has been filed with the City Manager pursuant to the process set forth in Section 6.88.330 sixty (60) days prior to the expiration date of the current registration;

2. An Annual Renewal Registration Fee, as set forth in Section 6.88.380, has been paid by the Collective; and

3. The Collective and its Owners and Managers all meet the requirements of this Chapter for registration.

B. If a new registration form is not filed, or the required fees are not paid prior to the expiration date of the current registration, the registration shall be deemed to have expired on the date of expiration noted on the registration.

6.88.380 <u>Fees and Charges</u>

A. The City Manager is hereby authorized to charge and collect from each Collective all fees associated with the registration of that Collective. Prior to operating in the City of San José, each Collective shall timely and fully pay all fees associated with the registration of that Collective.

B. All fees associated with the registration of a Collective shall be as set forth in the Schedule of Fees and Charges established by resolution of the City Council, including, but not limited to the following:

1. A Medical Marijuana Collective Application Receipt Fee for the cost to the City of accepting an application for registration;

2. A Medical Marijuana Collective Application Processing Fee for the cost to the City of processing an application for registration;

3. An Hourly Investigation Fee for any costs incurred by the City above those costs included in the Application Processing Fee which are associated with further investigation and review of an application for registration;

4. A Medical Marijuana Collective Annual Operating Fee for the cost to the City of operating a Medical Marijuana regulatory program;

5. A Medical Marijuana Collective Amendment Fee for the cost to the City of reviewing amendments to the registration form filed by the Collective; and

6. A Medical Marijuana Collective Renewal Registration Fee for the cost to the City of processing an application to renew a Collective's registration.

7. Any fees for inspection that are not included within the other fees associated with registration.

6.88.390 <u>Effect of Completed Registration – No Vested Right</u>

A registration deemed completed by the City Manager is merely an acknowledgement of the Collective's compliance with the registration requirements of this Chapter, and its ability to assert an affirmative defense to civil and criminal enforcement of the San José Municipal Code based solely upon conduct which is in strict compliance with the provisions of this Chapter and the provisions of Title 20 relating to Medical Marijuana. A completed registration does not grant the Collective any right to operate in the City of San José. Any Collective submitting a registration form should have no expectation that a registration will ultimately be deemed complete, nor that once so deemed, that its registration will continue.

Part 4
Operating Regulations and Conditions

6.88.400 <u>Operating Regulations And Conditions</u>

A. The provisions of this Part shall constitute terms and conditions applicable to each registration.

B. The provisions of this Part shall also constitute operating regulations that are applicable to each Collective registered with the City of San José and, if the Collective engages in off-site cultivation, the separate Cultivation Site for that Collective.

C. It shall be unlawful for any Person or Collective registered under this Chapter, or required to be registered under this Chapter, whether or not such Person or Collective is actually so registered, to violate any of the provisions of this Part.

6.88.410 Compliance With The Code

The Collective, Premises and Location shall at all times comply with all the provisions of this Code, including but not limited to Title 17, Title 20, Title 23, and Title 24. All occupancies, construction and equipment used therein, shall meet all conditions of the current state, local, building, fire and any other applicable provision of state or local law prior to the Processing or cultivating of Medical Marijuana at the Premises or Location.

6.88.420 Security

A. The Premises or Location shall be equipped with, and at all times be monitored by, a web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the Premises or Location. The system shall be fully functional prior to Processing or cultivating of Medical Marijuana at the Premises or Location. The recordings of the monitoring shall be maintained for a period of not less than ninety (90) days and shall be made available and accessible to the Chief of Police and any other City official charged with enforcing the provisions of this Code immediately upon request for review and copying, without the need for a search warrant, subpoena or court order. The Collective shall also provide the

Chief of Police with the URL address of any on-site web-based video surveillance to monitor remotely at any time without a warrant, subpoena or court order.

B. The Premises or Location shall have a centrally-monitored fire and burglar alarm system. This system shall be fully functional at all times and prior to Processing or cultivating Medical Marijuana at the Premises or Location. At a minimum, this alarm shall cover the perimeter of the Premises or Location and shall focus on those areas where Medical Marijuana is grown, produced, harvested, stored, packaged or dispensed. This alarm shall be monitored by a professional alarm company at all times.

C. The Premises shall contain a fire-proof safe and all records required by this Chapter shall be stored in that safe.

D. Exterior lighting on the Premises and parking area lighting for the Location shall be balanced and shall not result in glare on adjoining properties, shall complement the security systems required in Subsections A and B above to ensure that all areas of the Location are visible, and shall provide increased lighting at all entrances to the Premises. The lighting required in this subsection shall be turned on from dusk to dawn.

E. Medical Marijuana shall be stored in buildings that are completely enclosed, and in a locked vault or safe, or other secured storage structure which is bolted to the floor or structure of the Premises.

F. Windows and roof hatches of the Premises shall be secured from the inside with bars so as to prevent unauthorized entry, and shall be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency in compliance with all applicable building provisions in the Code.

G. Exterior doors to the Premises shall remain locked from the outside to prevent unauthorized ingress to the Premises. Ingress shall be allowed by means of a remote release operated from within the Premises of the Collective. In all cases, doors shall remain openable from the inside to allow egress without the use of a key or special knowledge. Access-controlled egress doors shall comply with Section 1008.1.3.4 of the California Building Code.

H. No person shall be in possession of any firearm while on the Premises or Location without having first obtained a license from the appropriate state or local agency authorizing the person to be in possession of such firearm.

I. Persons in possession of a firearm while on the Premises or Location must provide the City Manager and the Chief of Police, ten (10) days before bringing the firearm onto the Premises, with the following:

1. A copy of the license issued to the person by the appropriate state or local agency authorizing him or her to possess such firearm;

2. A copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency); and

3. A copy of his or her California Driver's license or California Identification Card.

J. There shall be a minimum of one (1) Security Personnel on duty on the Collective's Premises during its hours of operation. If the Collective has a separate Cultivation Site, there shall also be a minimum of one Security Personnel at that Cultivation Site on duty twenty-four (24) hours a day, seven (7) days a week. The Security Personnel shall provide security inside the Premises, along the outside perimeter of the Premises, at

parking sites immediately adjacent to the Premises and used by members of the Collective, and at sidewalks adjacent to the Collective's Location. The Collective shall employee Security Personnel subject to the following requirements:

1. All Security Personnel shall register and maintain valid registration status with the state of California's Department of Consumer Affairs. At no time shall any Security Personnel register with the State at any level that is less than that of a proprietary private security officer. Proof of application and registration for all Security Personnel shall be maintained by the Collective and shall consist of copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.

2. While on duty, all Security Personnel shall have a nameplate containing the Security Personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate shall be exhibited prominently on the clothing, at chest level, and shall be visible and easily read at all times. The nameplate shall be a minimum of two inches high and four inches wide, with the required information printed in capital letters, at least three-fourths inches high and in a contrasting color. As an alternative to a nameplate, the Security Personnel's name and the word "SECURITY" may be embroidered on the Security Personnel's outermost garment with the required information meeting the above specifications and located at chest level.

6.88.430 Cultivation of Medical Marijuana

A. No cultivation of Medical Marijuana at the Location shall be visible with the naked eye from any public or other private property, nor shall Medical Marijuana or any product containing Medical Marijuana be visible from the exterior of any Premises used by the Collective.

B. All areas devoted to the cultivation of Medical Marijuana shall be secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

C. No manufacture of Medical Marijuana in violation of California Health and Safety Code Section 11379.6 is allowed. The chemical Processing of Concentrated Cannabis shall continue to be prohibited under this Chapter even if California Health and Safety Code Section 11379.6 is subsequently amended or repealed, except that a separate Cultivation Site may be specifically registered with the City to engage in this activity subject to the filing of an appropriate chemical safety plan and the obtaining of any appropriate hazardous materials permits.

D. No Collective shall allow more Medical Marijuana or plants per member, other than the amounts permitted pursuant to State law, to be stored or provided at the Collective's Premises and/or Location.

E. Only Medical Marijuana that was cultivated, processed, and manufactured by the Collective at the Collective's Premises and/or Location, including any separate Cultivation Site, in strict accordance with State law and this Chapter, may be stored and dispensed from said Premises and/or Location. Medical Marijuana products (including edibles and concentrates) sold in the City of San Jose must

be manufactured and/or processed at the Collective's Premises within the City of San Jose.

F. The cultivation of Medical Marijuana outdoors is prohibited within the City of San Jose, except as provided in Section 6.88.900.

6.88.435 <u>Off-Site Cultivation</u>

A. No Medical Marijuana shall be dispensed from a Cultivation Site, unless that site also serves as the Collective's sole dispensing location.

B. The Cultivation Site shall be located within one of the following counties: Santa Clara, Alameda, Merced, Monterey, San Benito, San Mateo, San Joaquin, Santa Cruz, or Stanislaus. The Cultivation Site must be in compliance with State law and local law.

C. A Cultivation Site that does not serve as the Collective's sole dispensing location shall not be open to the public.

D. The Collective shall maintain complete records regarding the amount of Medical Marijuana cultivated, produced, harvested, stored or packaged at its Cultivation Site.

E. The Collective shall maintain complete records regarding Medical Marijuana Transfers from the Collective's Cultivation Site to the Collective's dispensing location, including the date and time of the transfer as well as the amount, form and type of Marijuana transferred.

F, The City Manager shall promulgate regulations pursuant to Section 6.88.315 to ensure that Collectives control, record, and track their Medical Marijuana throughout the growing and dispensing process in accordance with State law and any guidelines adopted by the California Attorney General.

6.88.440 <u>Collective Operations</u>

A. No dispensing location for the Collective shall be open between the hours of 9:00 p.m. and 9:00 a.m. on any given day.

B. No Collective shall operate for profit.

C. Only Medical Marijuana Transfers, as defined in Section 6.88.242, may be transacted between members of a Collective, and Medical Marijuana Transfers shall only occur inside the Premises of the Collective.

D. In-kind contributions, monetary contributions and property contributions provided by members towards the Collective's Overhead Expenses shall be in strict compliance with State law. All contributions (whether in-kind, monetary or property) shall be fully documented, in writing, at the time of their receipt by the Collective and in accordance with Part 5 of this Chapter.

E. On the fifteenth day of each month, the Collective shall provide a detailed accounting of Overhead Expenses to its membership. Contributions for Overhead Expenses shall be made through direct billing or through in-kind contribution. Monetary contributions shall be made by cash, personal check, cashier's check or credit card. All accountings, billings, and contributions (whether in-kind, monetary or property) shall be fully documented, in writing and in accordance with Part 5 of this Chapter, and shall be submitted to the Director of Finance on a quarterly basis.

F. No persons under the age of twenty-one (21) shall be allowed at the location, and no Medical Marijuana Transfers shall be made by the Collective to a Person under the age of twenty-one (21). .

G. No Medical Marijuana shall be provided to any persons other than the individual Collective members who participate, either directly or through a Primary Caregiver, in the Collective cultivation of Medical Marijuana at or upon the Premises and/or Location of that Collective.

H. No Medical Marijuana provided to a Primary Caregiver may be provided by the Primary Caregiver to any person other than the Primary Caregiver's Qualified Patient for whose care the Primary Caregiver is responsible.

I. No Collective shall cause or permit the sale, dispensing, or consumption of alcoholic beverages at the Premises and/or Location or in the parking area for the Premises and/or Location.

J. Medical Marijuana may not be inhaled, smoked, eaten, ingested, vaped, or otherwise used or consumed at the Premises and/or Location, in the parking areas of the Premises and/or Location, within 300 feet of the Premises and/or Location on the public right of way, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79.

K. Each Collective shall operate and maintain an onsite twenty four (24)-hour landline telephone number at the Premises for receiving complaints and other inquiries regarding the Collective. An individual member engaged in the management of the Collective shall be responsible for receiving, logging, and responding to these complaints and other inquiries on a daily basis. The log

shall be maintained in the records of the Collective and in accordance with Part 5 of this Chapter.

L. At no time shall any Collective or any of its members have any of the following items on the Premises or at the Location:

1. Any controlled substances, other than Medical Marijuana as defined herein;

2. Any paraphernalia used for the ingestion of any type of controlled substance, including Medical Marijuana;

3. Alcoholic beverages; or

4. Firearms, except in strict compliance with federal, state and local laws and with Section 6.88.420J.

M. A sign shall be posted in a conspicuous location inside the Premises advising, in English, Spanish and Vietnamese, the following: "Both the sale of marijuana and the diversion of marijuana for nonmedical purposes are violations of State law. The use of marijuana may impair a person's ability to operate a motor vehicle or heavy machinery. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code Section 647(h). This Collective is registered in accordance with the laws of the City of San José."

6.88.450 <u>Owner, Manager and Membership Requirements</u>

A. No Owner, Manager or any member who will be participating in the actual cultivation, Processing, manufacturing, transporting or dispensing of the Medical Marijuana shall:

1. Be on parole or probation for the possession, sale, distribution or transportation of a controlled substance, or

2. Have been convicted of a crime of moral turpitude, or convicted with the last ten (10) years of any misdemeanor or felony involving any one of the following:

   a. The use of violence, force, fear, fraud or deception;

   b. The unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance;

   c. The use of money to engage in criminal activity; or

3. Be under the age of twenty-one (21).

B. Members shall sign an agreement with the Collective that states that members shall not distribute Medical Marijuana to nonmembers and that members shall not use Medical Marijuana for other than medicinal purposes.

C. The Collective shall terminate the membership of any member violating any provisions of this Chapter.

D. Each Collective shall designate an on-site representative who shall be present during all hours of the Collective's operation. The On-Site Designated Representative shall meet the following minimum requirements:

1. Be a Manager for the Collective;

2. Comply with all laws and ordinances;

3. Carry on his or her person, at all times when he or she is functioning as the on-site representative, a valid government issued photo Identification Card or license;

4. Upon request by the Chief of Police or any other City official charged with enforcing the provisions of this Code, produce such photo Identification Card or license for inspection;

5. Be available at the telephone number identified in the registration as the on-site landline telephone number for the Premises;

6. Cooperate fully with the Chief of Police and any other City official charged with enforcing the provisions of this Code with any inquiry, inspection, request, or investigation necessary or appropriate to implement the requirements of this Code or to enforce any other State or local law;

7. Immediately report to the Chief of Police any violations of State or local law or conditions which the On-Site Designated Representative knows, or reasonably should know, exist on the Premises and at the Location and could result or have resulted in harm or an imminent threat of harm to the health, safety or general welfare of any person or member of the public; and

8. Immediately report to the Chief of Police, the County Health Department, and members of the Collective any information indicating that a member

experienced an adverse reaction to, or other difficulty related to, any Medical Marijuana procured from the Collective.

6.88.460 <u>Dispensing And Packaging of Medical Marijuana</u>

A. No Medical Marijuana shall be provided to any Collective member more than once per day.

B. All Medical Marijuana shall be packaged in an opaque childproof container which shall contain a label or be accompanied by a leaflet or insert that clearly states, in English, Spanish and Vietnamese, the following:

1. The complete legal name of the Qualified Patient who will be using the Medical Marijuana;

2. If the person obtaining the Medical Marijuana is a Primary Caregiver obtaining Medical Marijuana on behalf of a Qualified Patient, the complete legal name of the Primary Caregiver and the name of the Qualified Patient for whom he or she serves as a Primary Caregiver;

3. The name, address and on-site landline telephone number of the Collective;

4. The amount of Medical Marijuana in the container;

5. The name of the Attending Physician recommending the use of Medical Marijuana for the Qualified Patient;

6. The date the Medical Marijuana was provided;

7. A list of the chemicals and or substances that were used during the Processing of the Medical Marijuana;

8. All necessary health and safety warnings, including, but not limited to direction that the Medical Marijuana be stored in a clean and dry place and out of the reach of children; and

9. A statement that the City of San José neither warrants nor guarantees the quality or safety of the Medical Marijuana contained therein.

C. All edible Medical Marijuana products shall be manufactured and/or processed on the Collective's Premises within the City of San Jose and placed in opaque packaging, without photos or images of food on the label. Packaging that makes the edible product attractive to children or imitates candy is not allowed. Edible Medical Marijuana products shall not imitate commercially produced goods marketed to children. The edible product must have a label or be accompanied by a leaflet or insert that clearly states, in English, Spanish and Vietnamese, the source of the food production in addition to all of the information required by Subsection 6.88.460B.

6.88.470 <u>Public Safety and Safety of Location</u>

A. Each Collective shall operate in a manner such that the cultivation of Medical Marijuana does not adversely affect the health or safety of nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts.

B. Each Collective shall utilize appropriate air purification systems and air scrubbers wherever Medical Marijuana is cultivated, processed, manufactured or dispensed

so as to prevent the odor of Medical Marijuana from emanating beyond the walls of the Collective's Premises.

C. The cultivation of Medical Marijuana shall not create hazards due to the use or storage of materials, processes, products or wastes.

D. All electrical equipment used in the cultivation of Medical Marijuana shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the cultivation of Medical Marijuana is prohibited.

E. Each and every Collective shall ensure that it has safe growing facilities, chemicals and fertilizers are properly stored, carbon dioxide levels are tested, areas are properly vented, and mold is tested and controlled.

6.88.480 <u>Property Maintenance</u>

The Owner and/or Manager of a Collective shall keep the Premises and Location in a clean and safe condition by, at a minimum, performing all of the following tasks:

A. Properly remove and store all trash, litter, rubbish and debris on the Premises and Location at the end of each business day; and

B. Properly dispose of all trash, litter, rubbish and debris from the Premises and Location; and

C. Remove graffiti placed upon the Premises and Location within forty-eight hours of its occurrence; and

D. Keep driveways, sidewalks, parkstrips, fire access roads and streets on or adjacent to the Premises and Location clear and clean; and

E. Provide lighting on the Premises and Location to ensure the safety of the public and the employees of the Collective; and

F. Otherwise operate in a manner that does not create or result in any significant adverse impacts upon its Premises and Location or within three hundred (300) feet of the Premises and Location.

6.88.490 <u>Performance Standards</u>

The Owner, Manager and/or operator of a Collective shall not conduct the Collective in a manner that creates or results in a public nuisance on the Premises and Location or within three hundred feet of the Premises and Location, including but not limited to:

A. Disturbance of the peace;

B. Illegal drug activity;

C. Public drunkenness;

D. Drinking in public;

E. Gambling;

F. Prostitution;

G. Sale of stolen goods;

H. Public urination;

I. Theft;

J. Assaults;

K. Batteries; or

L. Acts of vandalism.

Part 5
Records

6.88.500 Maintenance of Records

A. Each Collective shall maintain, at the Premises and in a fireproof safe, all records and documents required by Parts 3 and 4 of this Chapter and all the information and records listed below:

1. The name, address, and telephone number(s) of the Owner, landlord and/or lessee of the location;

2. The following information concerning each member of the Collective:

   a. Name and a confidential member number unique to that individual which is used solely for the log identified in Section 7 below;

   b. A copy of a valid government issued photo Identification Card or license;

   c. A copy of the member's Identification Card or the Physician's Recommendation for the member;

d. The date the member joined the Collective; and

e. The nature of the member's participation in the collective cultivation of Medical Marijuana;

3. The name and telephone number of each Primary Caregiver member, along with a copy of every written designation for every Qualified Patient that designated the member as his or her Primary Caregiver;

4. The name, business address and telephone number of each Attending Physician who provided a Physician's Recommendation for any member of the Collective;

5. The records of all Qualified Patients with a valid Identification Card and Primary Caregivers with a valid Identification Card may be maintained by the Collective using only the Identification Card number issued by the State pursuant to California Health and Safety Code Section 11362.7 *et seq.*, in lieu of the information required by Subsections 6.88.500 A(2)(a) through (c), 6.88.500A(3), and 6.88.500A(4);

6. Up-to-date information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the Collective;

7. All receipts of the Collective, including but not limited to all contributions and all expenditures incurred by the Collective for the cultivation of Medical Marijuana;

8. An up-to-date log documenting each transfer of Medical Marijuana reflecting the amount provided, the form or product category in which the

Medical Marijuana was provided, the date provided, the time provided and the member number to whom it was provided;

9. An up-to-date log documenting the date, time, nature, and response by the Collective to all complaints received by the Collective pursuant to Subsection 6.88.440K of this Chapter;

10. A copy of the annual audit reports required pursuant to Section 6.88.600 of this Chapter; and

11. Proof of completed registration with the City Manager in conformance with this Chapter.

B. All records required by this Section shall be maintained by the Collective for a period of five (5) years and shall be made available by the Collective to the City Manager and any City official charged with enforcing the provisions of this Code, in accordance with Sections 6.88.330B and 6.88.700 of this Chapter.

C. At the request of the City Manager, all records required by this Section shall be made available in standard electronic format which shall be compatible with Microsoft Office programs and which can easily be imported into either Excel, Access, or any other contemporary software program designated by the City Manager.

D. In addition to all other formats that the Collective may maintain, all records required by this Section shall be stored by the Collective at the Location in a printed format in a fire-proof safe.

Part 6
Audits

6.88.600 Audits

No later than February 15th of every year, each Collective shall file with the City Manager an audit of its financial operations for the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. The audit shall include but not be limited to a discussion, analysis, and verification of each of the records required to be maintained pursuant to Parts 3, 4 and 5 of this Chapter. The information contained in the audit shall be made available in standard electronic format which shall be compatible with Microsoft Office programs and which can easily be imported into either Excel, Access, or any other contemporary software program designated by the City Manager.

Part 7
Inspection and Enforcement

6.88.700 Inspection And Enforcement

A. The Chief of Police and any other City official charged with enforcing the provisions of this Code may enter the location at any time during the hours of operation without notice and inspect the location of any Collective as well as the recordings and records maintained pursuant to this Chapter in accordance with Subsection 6.88.330B.

B. It is unlawful for any Owner, landlord, lessee, member (including but not limited to a member engaged in the management of the Collective), or any other person having any responsibility over the operation of the Collective to refuse to allow, impede, obstruct or interfere with an inspection, or the review or copying of records and closed-circuit monitoring authorized and required under this Chapter, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

C. The Chief of Police and any other City official charged with enforcing the provisions of this Chapter may enter the location at any time during the hours of operation and without notice to obtain samples of the Medical Marijuana to test for law enforcement and/or public safety purposes. Any samples obtained by the City shall be logged, recorded, and maintained in accordance with departmental standards. At all other times, the Chief of Police and any other City official charged with enforcing the provisions of this Chapter may enter the Location to obtain samples of Medical Marijuana upon reasonable notice.

Part 8

Application of Chapter; Other Legal Duties

6.88.800 Existing Medical Marijuana Operations

A. Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider at the time of the effective date of this Chapter is not in compliance with the San José Municipal Code, and shall immediately cease operations. This Chapter does not create any defense to civil or criminal enforcement of the provisions of the San José Municipal Code until such time, if any, that all requirements of this Chapter are met.

B. No Medical Marijuana Collective, dispensary, operator, establishment, or provider is a legally established use under the provisions of this Code whether in existence before or after the effective date of this Chapter.

6.88.810 Compliance With This Chapter And State Law

A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of Marijuana. To establish an affirmative defense to civil and criminal enforcement of the provisions of the San José Municipal Code, the person seeking to invoke the defense must establish compliance with all other applicable State and local laws.

B. It is unlawful for any person to cause, permit or engage in any activity related to Medical Marijuana, and a person may not establish an affirmative defense to civil and criminal enforcement of the provisions of the San José Municipal Code unless in strict compliance with Health and Safety Code Sections 11362.5 *et seq.* and pursuant to any and all other State and local laws.

C. It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this Chapter, or to any other Federal, State or local government agency having jurisdiction over any of the activities of Collectives.

D. It shall be the responsibility of the Owners and the members of the Collective to ensure that the Collective is, at all times, operating in a manner compliant with all applicable State and local laws. Nothing in this Chapter shall be construed as authorizing any actions which violate State law with regard to the cultivation, transportation, manufacture, provision, and sale of Marijuana.

6.88.820 <u>Violation And Enforcement</u>

A. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by this Code. Additionally, as a nuisance *per se*, any violation of this Chapter shall be subject to injunctive relief, the Collective's registration being deemed null and void, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under State and local laws for any violations committed by the Collective and persons related to, or associated with, the Collective. Additionally, when the City Manager determines that there is an imminent threat to public health, safety, or welfare, the Collective's registration shall immediately become null and void.

B. Notwithstanding an initial verification of compliance by the Collective with the provisions of this Chapter, any Collective later found to be in violation of any of the requirements of this Chapter at any time is subject to the enforcement provisions provided in this Section.

6.88.830 Release of Liability and Hold Harmless

The Collective and its members shall release the City of San José, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the Collective or its members for violation of Federal or State laws and from any and all legal liability related to or arising from the registration of the Collective or the enforcement of the provisions of this Chapter, in a form satisfactory to the City's Risk Manager. In addition the Collective and its members shall indemnify and hold harmless the City of San José and its agents, officers, elected officials, and employees for any claims, damages, or liabilities arising from claims filed by third parties due to the operations at the Location or Premises or arising from claims filed by the Collective's members arising out of the possession, cultivation or dispensing and/or on- or off-site use of Medical Marijuana provided at the Location or Premises, in a form satisfactory to the City's Risk Manager.

6.88.840 Registration Nontransferable

No person shall assign or transfer any notice of completed registration issued under this Chapter and any attempt to assign or transfer any notice of completed registration issued pursuant to this Chapter shall render the notice of completed registration null and void.

Part 9
Personal Use Cultivation Requirements and Regulations

6.88.900 Requirements and Regulations

A. Nothing in this Chapter shall be deemed to make unlawful Personal Use Cultivation of Medical Marijuana at the private residence of either a Qualified

Patient or the Qualified Patient's Primary Caregiver for use by the Qualified Patient if such cultivation is conducted pursuant to Health and Safety Code Sections 11362.765 through 11362.775.

B. Any Personal Use Cultivation must be conducted in strict compliance with the following provisions:

1. A Qualified Patient and Primary Caregiver shall be allowed to cultivate Medical Marijuana for the Qualified Patient's personal use within the private residence of either the Qualified Patient or the Qualified Patient's Primary Caregiver;

2. The residence being used for the cultivation shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities;

3. Medical Marijuana cultivation shall remain at all times incidental to the residential use of the property;

4. The Qualified Patient or the Primary Caregiver shall reside in the residence where the Medical Marijuana cultivation occurs;

5. The Medical Marijuana cultivation area shall be in compliance with all current Building and Fire Codes, including without limitation, the current adopted edition of the California Building Code Section 1203.4 – Natural Ventilation; or Section 402.3 – Mechanical Ventilation;

6. The cultivation shall not adversely affect the health or safety of any person living in or visiting a residence in which it is cultivated or living in or visiting nearby properties through the creation of mold, mildew, dust, glare, heat,

noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or be hazardous because of the use or storage of materials, processes, products or wastes, or for any other reason;

7. All electrical equipment used in the cultivation of Medical Marijuana shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the cultivation of Medical Marijuana is prohibited;

8. From a public right-of-way, there shall be no exterior evidence of Medical Marijuana cultivation occurring at the property;

9. Medical Marijuana cultivated for personal use as provided herein shall not be distributed to any person beyond those identified in Section 6.88.262(B) or to any Collective; and

10. Only Medical Marijuana Transfers, as defined in Section 6.88.242, may be transacted between Qualified Patients and their Primary Caregivers engaging in Personal Use Cultivation.

PASSED FOR PUBLICATION of title this 10th day of June, 2014, by the following vote:

AYES:	CONSTANT, HERRERA, KHAMIS, LICCARDO, NGUYEN, OLIVERIO; REED.
NOES:	CAMPOS, KALRA, ROCHA.
ABSENT:	CHU.
DISQUALIFIED:	NONE.

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk