ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADOPTING THE PROVISIONS OF AN INITIATIVE MEASURE AMENDING TITLE 6 AND TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO INCLUDE MEDICAL MARIJUANA COLLECTIVES AS AN ALLOWED LAND USE IN AGRICULTURAL, COMMERCIAL PEDESTRIAN, COMMERCIAL NEIGHBORHOOD, INDUSTRIAL PARK, LIGHT INDUSTRIAL AND HEAVY INDUSTRIAL ZONING DISTRICTS, AND TO ESTABLISH A REGISTRATION PROCESS AND ZONING CODE VERIFICATION CERTIFICATE PROCESS

WHEREAS, on August 19, 2014 the proponents of the initiative submitted petition signatures to the Office of the City Clerk and on the same day the City Clerk transferred petition signatures to the County of Santa Clara Registrar of Voters for signature verification pursuant to Elections Code Section 9115; and

WHEREAS, on September 19, 2014 the Registrar of Voters certified that the initiative petition has qualified with the sufficient number of signatures with a total of 25,360 which is 6.2% of the Registered Voters in the City of San José in the last report filed by the Registrar of Voters with the Secretary of State in effect at the time the notice of intent to circulate the petition was published; and

WHEREAS, on September 30, 2014, the City Council accepted the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters and ordered a report on the effects of the proposed ordinance consistent with Elections Code Section 9212; and

WHEREAS, on October 28, 2014, the City Council accepted the report pursuant to Elections Code Section 9212 and directed staff to return on November 4, 2014 with the following options: (1) adopt the proposed initiative ordinance as submitted; (2) adopt a resolution calling an election to submit the initiative to the voters at a Special Municipal Election pursuant to San Jose Charter Section 1601(e) by the affirmative vote of ten (10) members of the Council; or (3) adopt a resolution calling an election to submit the initiative to the voters at the next General Election on Tuesday, June 7, 2016; and

WHEREAS, Elections Code Section 9215(a) and the San José City Charter Section 1603(a)(2), authorizes the City Council to adopt the proposed initiative ordinance to amend Title 6 and Title 20 of the San José Municipal Code, without alteration;

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

SECTION 1. The text of the proposed initiative ordinance amending Title 6 and Title 20 of the San José Municipal Code to include medical marijuana collectives as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial and heavy industrial zoning districts, and to establish a registration process and zoning code verification certificate process is set forth in full in Exhibit A attached hereto and incorporated herein by this reference.

SECTION 2. Title 6 and Title 20 of the San José Municipal Code are hereby amended to read as set forth in full in Exhibit A attached hereto and incorporated by this reference.

PASSED FOR PUBLICATION of title this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
CHUCK REED
Mayor

ATTEST:

_____
TONI J. TABER, CMC
City Clerk

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EXHIBIT A

To The Honorable Mayor and City Council of the City of San José:

We, the signers of this petition, registered and qualified voters and residents of the City of San José, hereby propose an ordinance as set forth herein below and request that the proposed ordinance be immediately passed by the City Council or otherwise be submitted to the vote of the people at the earliest regular or special election for which this petition qualifies pursuant to the California Elections Code and other applicable laws. The text of the ordinance is set forth below and on the subsequent pages.

NOW THEREFORE, the People of the City of San José do ordain as follows:

INITIATIVE SECTION 1 – Title

This initiative shall be known and may be cited as The City of San José Control and Regulate Medical Cannabis Act.

INITIATIVE SECTION 2 – Findings, Declarations, and Intent

A. 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 cannabis 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 expand the scope of the CUA and to facilitate the collective cultivation and distribution of medical cannabis. Nothing in the MMP prevents cities and counties from adopting and enforcing rules and regulations consistent with the CUA and the MMP.

B. It is the purpose and intent of this Chapter to regulate the cultivation and distribution of medical cannabis to ensure that medical cannabis is cultivated and distributed in a manner which is responsible and as intended by the voters of California in enacting Proposition 215, while at the same time protecting the health, safety and welfare of the residents of the City of San José. The provisions in this Chapter do not interfere with a patient's right to use medical cannabis under State law, nor do they criminalize the possession or cultivation of medical cannabis by specifically defined classifications of persons. Under State law, only qualified patients and primary caregivers, and collectives and cooperatives composed thereof, cultivate and distribute medical cannabis. The cultivation and distribution of medical cannabis shall comply with all provisions of this Code, State laws related to medical cannabis 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.

C. By adoption of this Chapter and the provisions of Title 20 related to medical cannabis, 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 raise a reasonable doubt as to compliance with this Chapter and with the provisions of Title 20 relating to medical cannabis. Notwithstanding the foregoing, all persons who choose to be involved with medical cannabis do so entirely at their own risk that their involvement may constitute a violation of Federal or State law.

D. No department, agency, commission, officer, or employee of the City of San José shall use any City funds or resources to assist in the enforcement of Federal controlled substance laws to the

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extent that they are inconsistent with California medical cannabis laws, including but not limited to the CUA and MMP, unless such assistance is required by Federal or State statute, regulation, or court decision.

E. The City of San José shall not accept any Federal funding that would be used to investigate, cite, arrest, prosecute, or seize property based on offenses otherwise legal under California medical cannabis laws, nor participate in any task force that accepts any Federal funding or revenue sharing and that investigates, cites, arrests, prosecutes, or seizes property based on offenses otherwise legal under California medical cannabis laws. Specifically, these prohibitions on accepting funding and task force participation shall not apply to the following activities where not legal under California medical cannabis laws:

(1) Distribution or sale of cannabis to minors;

(2) Cultivation or sale of cannabis on public property;

(3) Driving under the influence; and

(4) Interstate or international gang activity.

INITIATIVE SECTION 3 – Title 6—Business Licenses & Regulations

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 CANNABIS

Part 1
Purpose And Intent

6.88.010 Findings, Purpose, Intent, and Directives

A. 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 cannabis 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 expand the scope of the CUA and to facilitate the collective cultivation and distribution of medical cannabis. Nothing in the MMP prevents cities and counties from adopting and enforcing rules and regulations consistent with the CUA and the MMP.

B. It is the purpose and intent of this Chapter to regulate the cultivation and distribution of medical cannabis to ensure that medical cannabis is cultivated and distributed in a manner which is responsible and as intended by the voters of California in enacting Proposition 215, while at the same time protecting the health, safety and welfare of the residents of the City of San José. The provisions in this Chapter do not interfere with a patient's right to use medical cannabis under State law, nor do they criminalize the possession or cultivation of medical cannabis by specifically defined

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classifications of persons. Under State law, only qualified patients and primary caregivers, and collectives and cooperatives composed thereof, cultivate and distribute medical cannabis. The cultivation and distribution of medical cannabis shall comply with all provisions of this Code, State laws related to medical cannabis 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.

C. By adoption of this Chapter and the provisions of Title 20 related to medical cannabis, 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 raise a reasonable doubt as to compliance with this Chapter and with the provisions of Title 20 relating to medical cannabis. Notwithstanding the foregoing, all persons who choose to be involved with medical cannabis do so entirely at their own risk that their involvement may constitute a violation of Federal or State law.

D. No department, agency, commission, officer, or employee of the City of San José shall use any City funds or resources to assist in the enforcement of Federal controlled substance laws to the extent that they are inconsistent with California medical cannabis laws, including but not limited to the CUA and MMP, unless such assistance is required by Federal or State statute, regulation, or court decision.

E. The City of San José shall not accept any Federal funding that would be used to investigate, cite, arrest, prosecute, or seize property based on offenses otherwise legal under California medical cannabis laws, nor participate in any task force that accepts any Federal funding or revenue sharing and that investigates, cites, arrests, prosecutes, or seizes property based on offenses otherwise legal under California medical cannabis laws. Specifically, these prohibitions on accepting funding and task force participation shall not apply to the following activities where not legal under California medical cannabis laws:

(1) Distribution or sale of cannabis to minors;

(2) Cultivation or sale of cannabis on public property;

(3) Driving under the influence; and

(4) Interstate or international gang activity.

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, including but not limited to, terms not usually capitalized whose unusual capitalization indicates their definition in this Part, though such definitions shall govern regardless of capitalization.

6.88.205 Attending Physician

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

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6.88.210 Cannabis
"Cannabis" and "marijuana" shall be synonymous and shall have the definition given in California Health and Safety Code Section 11018.

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

6.88.217 For Profit
"For profit" means the distribution of the collective's net retained earnings to any individual(s) beyond reasonable overhead expenses as defined. Conversely, "Nonprofit" or "Not-for-profit" means that there is no such distribution.

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

6.88.225 Location
"Location" means the lot or parcel or portion of a lot or parcel specified by street address that is used for distribution by a medical cannabis collective.

6.88.235 Medical Cannabis
"Medical cannabis" and "medical marijuana" shall be synonymous and means cannabis used for medical purposes in accordance with California Health and Safety Code Sections 11362.5, *et seq.*

6.88.240 Medical Cannabis Collective or Cooperative
"Medical cannabis collective or cooperative" or "collective" means an incorporated or unincorporated association, composed of five (5) or more individuals who are qualified patients and designated primary caregivers of qualified patients (individually and collectively referred to as "member(s)") who associate to collectively or cooperatively cultivate and distribute medical cannabis, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

6.88.242 Medical Cannabis Transfer
"Medical cannabis transfer" means

A. The transfer of medical cannabis 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. The transfer of medical cannabis amongst and between qualified patients and primary caregivers for consideration facilitated through an association of those qualified patients and primary caregivers who are operating as a collective, or between such collectives, and specifically including the transfer of surplus personal use cultivation from members to the collective for distribution, as well as distribution from the collective to its members.

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.

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6.88.250 Overhead Expenses
"Overhead expenses" means all reasonable and necessary operating expenses incurred by the collective, including but not limited to, accounting, advertising, cultivation materials and equipment, depreciation, insurance, interest on loans and credit, legal fees, mortgage payments, rent, repairs, supplies, taxes, utilities, volunteer compensation and reimbursements, wages, salaries, payroll, fees paid to comply with the requirements of this Chapter, and any other expenses associated with the establishment and operation of the collective.

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

6.88.260 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 cannabis for their personal use in strict accordance with California Health and Safety Code Sections 11362.5, *et. seq.*; or

B. A personal use cultivation association of not more than four (4) individuals who are qualified patients or primary caregivers of qualified patients and who associate to collectively or cooperatively cultivate medical cannabis for their personal use in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

6.88.265 Physician's Recommendation or Approval
"Physician's recommendation or approval" 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 cannabis is appropriate.

6.88.270 Premises
"Premises" means each building or the portion of any building, on the Location, where the collective is Located.

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 include the recommendation of an attending physician or doctor for the medical use of cannabis, an identification card, or the designation of a primary caregiver by a qualified patient.

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 Senior Manager
"Senior Manager" means an individual who is a member of a medical cannabis collective and who, directly or indirectly, is engaged in the management of the medical cannabis collective at a senior level as may be evidenced by the individual member being responsible for the establishment,

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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, or senior general manager.

Part 3
General Provisions

6.88.300 Registration Required

A. One hundred eighty (180) calendar days after the adoption of this Chapter, 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. One hundred eighty (180) calendar days after the adoption of this Chapter, 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.

6.88.310 Pooling of Resources Recognized

The City of San José recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical activities necessary to cultivate cannabis for personal medical use. Accordingly, the City recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of acquiring, cultivating, manufacturing, and distributing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

6.88.315 Authority of the City Manager

The City Manager is authorized as a ministerial duty strictly to implement and fulfill only the specific policies, regulations, and requirements of this Chapter relating to medical cannabis, including the creation of the Chapter-required forms and procedures for registration and the Chapter-required process for ministerial verification of submitted registration materials as to completeness, accuracy, and qualification.

6.88.320 Registration – All Submissions Will Be Processed in Initial Registration Process

A. Within sixty (60) calendar days of the adoption of this Chapter, and at least thirty (30) calendar days prior to the date the City Manager will accept submission of registration forms from collectives, which shall be not more than ninety (90) calendar days after the adoption of this Chapter, the City Manager shall establish and publish, on the City's website and once

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in a daily newspaper of general circulation, the date, and manner in which, collectives must submit registration forms and required fees, which registration forms and instructions, including zoning code verification certificate applications from and for the Planning Department, shall simultaneously be made available on the City's website and in hard copy at the City Manager's Office.

B. Registration forms must contain all information as required by the City Manager pursuant to this Code and will be accepted by the City Manager on the published date during regular business hours.

C. Each collective shall submit with its registration forms a Medical Cannabis Collective Application Receipt Fee and a Medical Cannabis Collective Application Processing Fee, as set forth in Section 6.88.380 and as required by the City Manager pursuant to this Chapter.

D. A collective must specify its Location street address and must submit only one registration form application per Location.

E. The City Manager shall, as a ministerial duty, immediately begin processing collectives' registration forms by verifying them for completeness, accuracy, and qualification. The City Manager shall forward the zoning code verification certificate applications to the Planning Department for prompt processing. The City Manager shall continue processing registration forms until all have been processed and any qualifying collectives have been issued a Notice of Completed Registration.

F. If the City Manager fails to either issue a Notice of Completed Registration, or deny the submission of registration forms in writing stating the reasons for denial, within sixty (60) calendar days of submission (to be tolled if, and only if, requested by the collective), the registration shall be deemed complete and accurate, and the Notice of Completed Registration deemed issued.

G. A new date will be set for submission of additional registration forms following the process set forth herein at such time as 1) there exists at least one party who has expressed interest in writing to the City Manager in registering a collective at a specific Location, and 2) at least once every ninety (90) calendar days starting from the date of adoption of this Chapter, which such time shall trigger timelines analogous to those triggered by the adoption of this Chapter, except for the sixty (60) calendar days allotted for the City manger to establish the date, and manner in which, collectives must submit registration forms and required fees noted in subsection A above.

6.88.330 <u>Registration Process</u>

A. Registration Review

1. Pursuant to Section 6.88.300, one hundred eighty (180) calendar days after the adoption of this Chapter, 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

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

c. The onsite telephone number for the collective;

d. A separate application for a Zoning Code Verification Certificate pursuant to Part 13 of Chapter 20.100 of this Code as amended by this initiative ordinance, including evidence that the location and the premises are in compliance with the requirements of Part 9.75 of Chapter 20.80 as amended by this initiative ordinance; the City Manager shall forward this application to the Director of Planning, Building and Code Enforcement who shall evaluate it promptly as a ministerial duty per Part 13 of Chapter 20.100 as amended by this initiative ordinance;

e. The name, address, and phone number of the person or persons authorized by the collective to communicate with the City regarding the registration application, including the Zoning Code Verification Certificate application, and to receive the Notice of a Completed Registration on behalf of the collective;

f. The following information concerning each Senior Manager of the collective or cooperative:

(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 telephone number; and

(5) A list of any felony convictions within the previous seven (7) years for any crimes involving (a) the use of violence, force, fear, fraud or deception; (b) the unlawful possession, sale, distribution or transportation of a controlled substance; or (c) the use of money to engage in criminal activity; which shall be grounds for disqualification, as shall failure to disclose.

g. A list of the duties and functions of each Senior Manager 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;

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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 6.88.440 (G);

(3) A security plan 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; and

(6) 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.

j. A dated statement signed by a Senior Manager authorized to represent and legally bind the collective that the information provided in the registration form and any attachment thereto is true, complete and correct; and

k. Evidence of full payment of any applicable taxes due to the City pursuant to Chapter 4.66 of the Code, including all applicable penalties and interest.

B. Inspection of Records and Location to Be Reasonably Allowed

1. Collectives will allow the City to inspect records and the location on reasonable notice and request.
2. Nothing in this Chapter requires the disclosure of any qualified patient member's Private Medical Record.

C. Signatory To Registration

One authorized Senior Manager of the collective shall print his or her name and sign the registration form certifying that all the information contained therein, and any attachments thereto, are true, complete and correct.

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D. Investigation and Determination

1. Upon receiving a collective's registration form, the City Manager shall proceed to investigate and verify the information required in Subsection 6.88.330 (A) and verify the compliance of the collective with the requirements of this Chapter.

2. The City Manager may 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, the Operating Guidelines in Part 4.

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 material fact or omitted a material 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, other than those which deem medical cannabis collectives nuisances per se or prohibited because allegedly a violation of federal law, such as but not limited to Section 1.13.050(A)(3), and does not come into compliance on reasonable notice and opportunity to be heard; or of any State or local law which substantially affects the public health, welfare or safety and does not come into compliance on reasonable notice and opportunity to be heard;

   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, and other than those which deem medical cannabis collectives nuisances per se, or prohibited because allegedly a violation of federal law, such as but not limited to Section 1.13.050(A)(3), and does not come into compliance on reasonable notice and opportunity to be heard;

   d. 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;

   e. 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;

   f. The collective has conducted itself in a manner that creates or results in a public nuisance in fact, as defined in Section 1.13.050 (A) (1) or (2) of this

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Code or Section 3480 of the California Civil Code, established at an evidentiary hearing;

g. If the collective is a corporation, the corporation is not in good standing or authorized to do business in the State, and is not in the process of promptly addressing such issue;

h. The collective has a Senior Manager who:

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

(2) Has been convicted of any felony within the last seven (7) years involving the following:

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

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

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

k. The collective's operation from the location or premises results or will result in an imminent threat in fact to the public's health, safety or welfare, established at an evidentiary hearing;

l. The collective was not open and operating at the street address Location specified in its registration application, for the initial medical cannabis registration process, not later than, and making non-zero payments of the City's Marijuana Business Tax pursuant to Chapter 4.66 of this Code for the period ending, October 31, 2014, and continuously since that date without substantial interruption other than for good cause, including threats by government agencies of coercive intervention; or

m. The collective fails to specify its Location street address, or makes more than one registration form application submission for the same Location.

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 Biennial 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 five (5) business days of receiving the collective's scheduled payment of the Biennial Operating Fee and any applicable Hourly Investigative Fee as due, the City Manager shall mail a Notice of a Completed Registration, and any subsequent updated registration, to the person or persons authorized to receive such on behalf of the collective.

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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 such communications on behalf of the collective advising the collective that it has been disqualified from the registration process and the reasons therefore.

H. **Registration Deemed Complete if not Timely Processed.** If the City Manager does not notify the collective applicant that it is in compliance and issue it a Notice of Completed Registration, or notify it that it is disqualified, within sixty (60) calendar days of its submission of registration forms (which time period is to be tolled at, and only at, the request of the collective), the collective shall be deemed to have a Notice of Completed Registration and all legal rights flowing therefrom.

6.88.340 <u>Term of Registration</u>

Each registration shall expire two (2) years from the date the City Manager mails the Notice of Completed Registration to the person authorized to accept such communications on behalf of the collective.

6.88.350 <u>Registration Null and Void</u>

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 6.88.330 (E) regarding disqualification, and does not come into compliance on reasonable notice and opportunity to be heard;

B. Relocation of the collective to a different location or premises; notwithstanding this sub-section, a collective shall be entitled to re-locate, to update its registration forms, and to maintain its Notice of Completed Registration if it receives a Zoning Code Verification Certificate for the new location or premises pursuant to Part 13 of Chapter 20.100 of this Code as amended by this initiative ordinance;

C. Two (2) years after the issuance of the registration, as set forth in Section 6.88.340 above; or

D. Violation of the terms or requirements of this Chapter, after reasonable notice and opportunity to correct any such violations, and after notice and hearing pursuant to Section 6.02.200 *et seq.* of this Code.

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6.88.360 Change In Location And Updated Registration Forms

A. Any time a registered collective changes its Location or Premises, it shall be entitled to re-Locate and maintain its Notice of Completed Registration upon filing of an updated registration form with the City Manager for review along with a Registration Amendment Fee, as set forth in Section 6.88.380, if it has received a Zoning Code Verification Certificate for the new Location or Premises pursuant to Part 13 of Chapter 20.100 of this Code as amended by this initiative ordinance.

B. Within thirty (30) calendar days of any 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 senior managers, 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. One authorized Senior Manager of the collective shall print his or her name and sign any form required to be updated, 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) calendar days prior to the expiration date of the current registration and after notice by the city of such requirement between one hundred twenty (120) and ninety (90) calendar days prior to expiration;

2. The Renewal Registration Fee, as set forth in Section 6.88.380, has been paid by the collective; and

3. The collective and its senior 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, the collective shall be so notified and given sixty (60) calendar days to cure.

6.88.380 Fees, Charges, and Administrative Citation Schedule of Fines

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, after the initial one hundred eighty (180) calendar days following the adoption of this Chapter, each collective shall timely and fully pay all fees due associated with the registration of that collective.

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B. All fees associated with the registration of a collective shall be as set forth in the Schedule of Fees and Charges to be established by resolution of the City Council in compliance with this section in time for the City Manager to timely implement the registration process per this Chapter, and shall include only the following fees, subject to the specified maximum dollar amounts (which shall be the amounts if the Council fails to timely specify otherwise) and which shall be cost-recovering at most and shall not generate any excess revenue, recognizing that collectives pay an enormous gross receipts tax to the City generating revenue in the millions of dollars which greatly outweighs any shortfall of cost recovery:

1. A Medical Cannabis Collective Application Receipt Fee for the cost to the City of accepting an application for registration, not to exceed one hundred dollars ($100);

2. A Medical Cannabis Collective Application Processing Fee for the cost to the City of processing an application for registration, not to exceed one thousand dollars ($1,000);

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, not to exceed one hundred and twenty-six dollars per hour ($126/hour) to be capped at a maximum of 20 hours per application;

4. A Medical Cannabis Collective Biennial Operating Fee for the cost to the City of operating a medical cannabis regulatory program, not to exceed four thousand dollars ($4,000) every two years, payable in equal quarterly installments of not more than five hundred dollars ($500);

5. A Medical Cannabis Collective Amendment Fee for the cost to the City of reviewing amendments to the registration form filed by the collective, not to exceed five hundred dollars ($500); and

6. A Medical Cannabis Collective Renewal Registration Fee for the cost to the City of processing an application to renew a collective's registration, not to exceed one thousand dollars ($1,000).

C. The Administrative Citation Fine amount for any violation of any Section of this Chapter shall be no more than One-Hundred and no/100 Dollars ($100.00). The Administrative Citation Schedule of Fines is hereby amended accordingly.

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.

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B. The provisions of this Part shall also constitute operating regulations that are applicable to each collective registered with the City of San José.

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 comply with all the provisions of this Code, including but not limited to Title 17, Title 20, Title 23, and Title 24, other than those which deem medical cannabis collectives nuisances per se, or prohibited because allegedly a violation of federal law, such as but not limited to Section 1.13.050 (A) (3), or upon notice of any deficiency shall come into compliance as promptly as feasible or shall appeal the notice. All occupancies, construction and equipment used therein, shall substantially meet all conditions of the current state, local, building, fire and any other applicable provision of state or local law within one hundred eighty (180) calendar days of the adoption of this Chapter.

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 cannabis at the premises or location. The recordings of the monitoring shall be maintained for a period of not less than fifteen (15) days.

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 cannabis 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 cannabis is grown, produced, harvested, stored, packaged or distributed. This alarm shall be monitored at all times by a professional alarm company.

C. 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 Subparagraphs 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.

D. Dried medical cannabis shall be stored in buildings that are completely enclosed, and after hours in a locked vault, safe, or other secured storage structure that is bolted to the floor or structure of the Premises, or otherwise reasonably immovable.

E. No person shall be in possession of any firearm while on the premises or location without having obtained a license from the appropriate state or local agency authorizing the person to be in possession of a firearm.

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F. 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 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.

6.88.430 Cultivation of Medical Cannabis

A. No cultivation of medical cannabis at the location shall be visible with the naked eye from any public or other private property, nor shall cultivated or dried medical cannabis be visible from the exterior of any building used by the collective.

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

C. No collective shall allow more dried medical cannabis or plants per member than the amounts permitted pursuant to State law to be stored or provided at the collective's Premises or Location.

D. If medical cannabis is grown out of doors, the area where the growing occurs must have proper security measures in place to prevent nonmembers from accessing the medical cannabis growing outdoors.

6.88.440 Collective Operations

A. No collective shall be open between the hours of 8:00 p.m. and 9:00 a.m. on any given day.

B. Only medical cannabis transfers, as defined in Section 6.88.242, are allowed.

C. 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 documented, in writing, at the time of their receipt by the collective and in accordance with Part 5 of this Chapter and usual business practice.

D. No persons under the age of eighteen (18) shall be allowed at the location, unless that person is a qualified patient and that person is accompanied by his or her attending physician, his or her parent, or his or her documented legal guardian.

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E. Every collective's membership agreement shall require that no medical cannabis provided to a primary caregiver may be provided by the primary caregiver to any person other than the primary caregiver's qualified patient(s) for whose care the primary caregiver is responsible.

F. Every collective's membership agreement shall prohibit visiting members from consuming alcoholic beverages at the premises and/or location or in the parking area for the premises and/or location.

G. Each collective shall operate and maintain a 24-hour telephone number for receiving complaints and other inquiries regarding the collective. A member engaged in the management of the collective shall be responsible for receiving, logging, and responding to these complaints and other inquiries. The log shall be maintained in the records of the collective and in accordance with Part 5 of this Chapter.

H. At no time shall any collective or any of its members have on the Premises or at the Location any firearms, except in strict compliance with federal, state and local laws and with Sections 6.88.420 (E) and (F).

I. Collectives shall not provide medical cannabis to any member more than twice in one day, nor in any amount above the State law limit.

J. A sign shall be posted in a conspicuous location inside the premises advising the following: "The diversion of cannabis for nonmedical purposes is a violation of State law. The use of cannabis may impair a person's ability to operate a motor vehicle or heavy machinery. Loitering at the location of a medical cannabis 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."

K. Registered collectives shall be allowed to deliver medical cannabis to their members only in full compliance with all other applicable regulations and requirements of this Chapter.

L. Collectives shall not have any license to sell and shall not sell alcoholic beverages.

6.88.450 <u>Senior Manager and Membership Requirements</u>

A. No Senior Manager or any member who will be participating in the actual cultivation and distribution of medical cannabis shall:

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

2. Have been convicted within the last seven (7) years of any felony involving any one of the following:

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

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

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

3. Be under the age of eighteen (18).

B. Members shall sign an agreement with the collective that states that members shall not distribute medical cannabis to nonmembers and that members shall not use medical cannabis for other than medicinal purposes.

C. The collective shall, with any due process required, terminate the membership of any member violating any provisions of this Chapter.

D. Each collective shall designate one or more on-site representatives, at least one of whom shall be present during all hours of the collective's operation. The designated on-site representatives shall meet the following minimum requirements:

1. Be a manager for the collective;

2. Comply with all state and local 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; and

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.

6.88.460 <u>Public Safety And Safety of Location</u>

A. The cultivation and distribution of medical cannabis shall 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. The cultivation and distribution of medical cannabis shall not create hazards due to the use or storage of materials, processes, products or wastes.

C. Every collective shall ensure that its cultivation facilities are safe, that they are properly ventilated to reduce, control, or eliminate odor, that any chemicals and fertilizers are properly stored, and that mold will be controlled or eliminated.

D. Every collective shall comply with all the Security requirements of this Chapter, including, the Security Plan requirement of Subsection 330 (A) (1) (i) (3) and all the Security requirements of Section 420.

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Part 5
Records

6.88.500 Maintenance of Records

A. Each collective shall maintain 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 property owner, landlord and/or lessee of the location;

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

   a. Name;

   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

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. All receipts of the collective, including but not limited to all contributions and all expenditures incurred by the collective for the cultivation of medical cannabis; and

6. 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 2 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, on reasonable notice and request, in accordance with Section 6.88.330 (B) of this Chapter.

C. Except as otherwise provided in this Chapter and subject to redaction to maintain member confidentiality and privacy, at the reasonable request of the City Manager, all records required by this Section shall be provided, if 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.

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Part 6
Inspection And Enforcement

6.88.600 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 on reasonable notice and request, with consent that shall not be unreasonably withheld, and inspect the location of any collective as well as the recordings and records maintained pursuant to this Chapter in accordance with Subsection 6.88.330 (B).

B. The Chief of Police and any other City official charged with enforcing the provisions of this Chapter may enter the location on reasonable notice and request, with consent that shall not be unreasonably withheld, to obtain samples of the medical cannabis to test for law enforcement or public safety purposes.

C. The Administrative Citation Fine amount for any violation of any Section of this Chapter shall be no more than One-Hundred and no/100 Dollars ($100.00). The Administrative Citation Schedule of Fines is hereby amended accordingly.

Part 7
Application of Chapter; Other Legal Duties

6.88.710 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 cannabis. 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 raise a reasonable doubt that he or she or it is in compliance with all other applicable State and local laws, including Health and Safety Code Sections 11362.5 *et seq.* and this Chapter, of which possession of a valid Notice of Completed Registration from the City Manager shall be *prima facie* evidence creating a presumption of the affirmative defense.

B. 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 State or local government agency having jurisdiction over any of the activities of collectives.

C. It shall be the responsibility of the senior managers 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 that violate State law with regard to the cultivation, transportation, provision, and sale of cannabis.

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6.88.720 Violation And Enforcement

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. Any allegation of nuisance shall be proved as a nuisance in fact and not merely as nuisance *per se*. 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.

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.

6.88.730 Conflict with Other Codes

If this Chapter is found to be in conflict with any other Chapter, Part, Section, Subsection, or Title, or any regulation, rule, requirement, or practice promulgated thereunder, the provisions of this Chapter shall prevail.

INITIATIVE SECTION 4 – Zoning Code Interpretation

Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is hereby amended as follows. Subsection B is amended to read as follows:

B. No provision of this title is intended to nor shall be interpreted or applied to allow or authorize a use or structure that violates federal, state or local law, provided, however that a medical cannabis collective that raises a reasonable doubt that it complies with all applicable state and local laws and regulations may assert an affirmative defense to criminal or civil enforcement of this code where such enforcement action is based solely upon those operations by a collective that raise a reasonable doubt that it conforms to the provisions of this code. Possession of a valid Medical Cannabis Collective Notice of Completed Registration from the City Manager shall be *prima facie* evidence creating a presumption of the affirmative defense.

INITIATIVE SECTION 5 – Open Space & Agricultural Zoning Districts

A) Section 20.20.100 of Chapter 20.20 of Title 20 of the San José Municipal Code is hereby amended as follows:

A new subsection C. defining "Restricted" uses and how they are indicated on Table 20-30, to read as follows, is inserted after the existing subsection B. defining "Conditional" uses, and the following subsections are re-lettered accordingly and otherwise unchanged.

C. "Restricted" land uses are indicated by an "R" on Table 20-30. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full

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compliance with a valid and effective zoning code verification certificate as set forth in Chapter 20.100.

B) Table 20-30 OS Open Space and A Agricultural District Land Use Regulations is amended to add the following row and row heading in alphabetical order, and the following note numbered next in order to be cited in the row with the appropriate note number, here designated as variable "X":

Use	Zoning District		Notes & Sections
	OS	A	
Health and Veterinary Services			
Medical cannabis collective	-	R	Note X; Part 9.75, Chapter 20.80

Notes:

X. Notwithstanding any other part of the San José Municipal Code, including without limit this Title 20 Zoning Code and any version of the General Plan, the medical cannabis collective use shall not be construed to be prohibited or not permitted in any Planned Development District, such as but not limited to that designated A(PD), if designated a "Restricted" land use in the base district Land Use Regulation Table, regardless of the status of the PD district or any associated planned development permit, effectuated or not.

INITIATIVE SECTION 6 – Commercial Zoning Districts

Section 20.40.100 of Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended as follows. The "Medical marijuana collective" use row of Table 20-90 Commercial Districts Land Use Regulations is amended to read as follows:

Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Medical cannabis collective	-	R	R	-	Part 9.75, Chapter 20.80

INITIATIVE SECTION 7 – Industrial Zoning Districts

Section 20.50.100 of Chapter 20.50 of Title 20 of the San José Municipal Code is hereby amended as follows. The "Medical marijuana collective" use row of Table 20-110 Industrial Districts Land Use Regulations is amended to read as follows:

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Use		Zoning District				Applicable Sections & Notes
	CIC	TEC	IP	LI	HI	
Medical cannabis collective	-	-	R	R	R	Part 9.75, Chapter 20.80

INITIATIVE SECTION 8 – Planned Development Districts

Chapter 20.60 of Title 20 of the San José Municipal Code is hereby amended to add the following final section:

20.60.090 Medical Cannabis Collective Use

Notwithstanding any other part of the San José Municipal Code, including without limit this Title 20 Zoning Code, or any version of the General Plan, the medical cannabis collective use shall not be construed to be prohibited or not permitted in any Planned Development District, such as but not limited to that designated A(PD), if designated a "Restricted" land use in the base district Land Use Regulation Table, regardless of the status of the PD district or any associated planned development permit, effectuated or not.

INITIATIVE SECTION 9 – Medical Cannabis Collectives Zoning Restrictions & Regulations

Part 9.75 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

Part 9.75
Medical Cannabis Collectives

20.80.750 Purpose

The purpose of this Part is to further fulfill the purposes and intents set forth in Chapter 6.88 of Title 6 of the San José Municipal Code.

20.80.755 Definitions

Unless expressly defined in this Title otherwise, the terms used in this Part shall have the meanings ascribed to them in Chapter 6.88 of Title 6 of the San José Municipal Code, except for the terms defined immediately below which shall have only those definitions. Capitalized terms utilized in this Part that are not typically capitalized are intended to alert the reader of this Part that a term used in

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this Part may be a term that is defined in Chapter 6.88 of Title 6 or in this Title of the San José Municipal Code, though such definitions shall govern regardless of capitalization.

A. The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

B. The term "public or private college, junior college, or university" means only those accredited institutions of higher learning offering college credits and degrees of associate level or higher.

C. The term "public swimming pool" includes any parking lot appurtenant thereto.

D. The term "K-12 school," per Health and Safety Code Section 11362.768(h), means any public or private school providing full-time instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

E. The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

F. The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

20.80.760 **<u>Compliance Required</u>**

A. One hundred eighty (180) calendar days after the adoption of Chapter 6.88, no person shall operate, or suffer or allow the operation of, a Medical Cannabis Collective; provided, however, that a person may assert an affirmative defense to a criminal or civil enforcement action brought to enforce the provisions of this title where the person, Collective or activity raises a reasonable doubt of compliance with all of the applicable terms, provisions and conditions of this Code, including without limitation the provisions of this part.

B. In addition to the requirements set forth in Subsection 20.80.760.A above, One hundred eighty (180) calendar days after the adoption of Chapter 6.88, no person shall operate, or suffer or allow the operation of, a medical cannabis collective until such time as a zoning code verification certificate has been duly applied for and issued by the director pursuant to the provisions of Chapter 20.100 of this title, which zoning code verification certificate confirms full conformance of a proposed medical cannabis collective with all of the applicable locational siting requirements of this title. The application for such zoning code verification certificate shall be filed pursuant to the requirements and processes set forth in said Chapter 20.100.

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

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20.80.765 Personal Use Cultivation

The provisions of this part are not intended to and shall not regulate the cultivation or possession of medical cannabis for a medical use as personal use cultivation in full compliance with all applicable state and local laws by a qualified patient or primary caregiver or a personal use cultivation association thereof as defined in this code.

20.80.775 Restrictions and Conditions

The location and operation of medical cannabis collectives shall be subject to and shall comply with all of the following restrictions and conditions set forth in this section, in addition to those restrictions and conditions that may be imposed on a medical cannabis collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws. Anyone operating, or allowing or suffering the operation of, a medical cannabis collective shall comply with, or shall cause the compliance with, all of the following restrictions and conditions set forth in this section, in addition to those restrictions and conditions that may be imposed on a medical cannabis collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws at all times at the medical cannabis collective; provided, however, that if there is a conflict between the provisions of this section and the provisions of any other applicable state or local law, the most restrictive law allowed to apply shall govern and control:

A. For the first round of registration as of January 1, 2014, and for subsequent rounds as of the time of issuance of its initial zoning code verification certificate, based on federal enforcement guidelines, no medical cannabis collective shall be located closer than one thousand (1,000) feet from any public or private K-12 school; and

B. For the first round of registration as of January 1, 2014, and for subsequent rounds as of the time of issuance of its initial zoning code verification certificate, based on federal enforcement guidelines, no medical cannabis collective shall be located closer than one thousand (1,000) feet from any public or private college, junior college, or university; and

C. For the first round of registration as of January 1, 2014, and for subsequent rounds as of the time of issuance of its initial zoning code verification certificate, based on federal enforcement guidelines, no medical cannabis collective shall be located closer than one thousand (1,000) feet from any playground; and

D. For the first round of registration as of January 1, 2014, and for subsequent rounds as of the time of issuance of its initial zoning code verification certificate, based on federal enforcement guidelines, no medical cannabis collective shall be located closer than one thousand (1,000) feet from any housing facility owned by a public housing authority; and

E. For the first round of registration as of January 1, 2014, and for subsequent rounds as of the time of issuance of its initial zoning code verification certificate, based on federal enforcement guidelines, no medical cannabis collective shall be located closer than one hundred (100) feet from any public or private youth center, public swimming pool, or video arcade facility; and

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F. No medical cannabis collective shall be located on the ground floor of structures or buildings located on real property that, in whole or in part and at the time of issuance of its initial zoning code verification certificate, is within the DC-Downtown Primary Commercial Zoning District; and

G. No medical cannabis collective shall be located or shall operate on any floor of a retail commercial shopping center located on a parcel or parcels totaling over twenty (20) acres in size; and

H. All activities conducted at a medical cannabis collective shall at all times fully comport with the provisions of California Health & Safety Code Sections 11362.5, *et. seq.* through Section 11362.83, as the same may be amended from time to time; and

I. The hours within which a medical cannabis collective may choose to operate shall be within the hours of 9:00 a.m. and 8:00 p.m.

J. For the first round of registration proximate uses starting after January 1, 2014, or for subsequent rounds of registration proximate uses starting after the issuance of a Medical Cannabis Collective's initial zoning code verification certificate, shall have no effect on its eligibility for, or the validity of, such certificate which shall run with the land; notwithstanding any other part of the San José Municipal Code, including without limit this Title 20 Zoning Code, or any version of the General Plan, the medical cannabis collective use shall not be construed to be prohibited or not permitted in any Zoning District, if designated a "Restricted" land use in the base district Land Use Regulation Table.

INITIATIVE SECTION 10 – Zoning Code Verification Certificate

Part 13 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

Part 13

Zoning Code Verification Certificate

20.100.1500 **Applicability**

A. The provisions of this Part apply to and shall govern the issuance of zoning code verification certificates, which certificates are required whenever the provisions of this title so mandate.

B. The director is authorized to and has a ministerial duty to issue a zoning code verification certificate in accordance with the provisions of this part.

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20.100.1510 Purpose

The purpose of this part is to provide for a ministerial process by which the director can provide ministerial confirmation of the compliance of a site with the applicable provisions of this title.

20.100.1520 Application

The application for a zoning code verification certificate shall comport with the processes and requirements, including without limitation the payment in full of applicable fees, set forth in Parts 1 and 2 of this chapter, provided, however, that no public hearing on a zoning code verification certificate is required.

20.100.1525 Zoning Code Verification Certificate

A. The director shall issue, or cause the issuance of, a zoning code verification certificate when the director determines that the application evidences full compliance with all of the applicable provisions of this title.

B. The director shall not issue, nor allow the issuance of, a zoning code verification certificate when the director determines that the application evidences noncompliance with any applicable provision of this title.

C. The director's determination under this section shall be in writing, in the form of issuance of a zoning code verification certificate or a writing describing the noncompliance that prevents the issuance of a zoning code verification certificate.

D. The director's determination under this section shall be final.

E. For the initial medical cannabis collective registration process pursuant to Chapter 6.88 of this code, the director shall receive zoning code verification certificate applications from collectives through their registration submissions to the City Manager who shall promptly forward them to the Director who shall process all of them as a group in the following manner and in the exact order here prescribed.
   1) The Director shall first evaluate the applications for zoning district compliance using only the current Zoning District Land Use Regulation tables in this Title, as amended by this initiative ordinance, notwithstanding any other part of the San Jose Municipal Code, including without limit this Title, or any version of the General Plan. If prohibited or not permitted under those current zoning district tables, the Director shall deny the zoning code verification certificate application in writing, and the City Manager shall disqualify the collective from registration on that basis.
   2) If the zoning district is not prohibited or not not-permitted, but merely Restricted, under those current zoning district tables, the Director shall next evaluate the application for sensitive use proximity restriction and other compliance per section 20.80.775 of this Title. If any such proximity restriction or other requirement is violated, the Director shall deny the zoning code verification certificate application in writing, and the City Manager shall disqualify the collective from registration on that basis.

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3) If there is no such proximity restriction or other requirement violation, the Director shall immediately issue, or cause the issuance of, the zoning code verification certificate and shall promptly so notify the applicant and the City Manager.
4) Not withstanding any other part of this Code, if the Director does not make a determination on any zoning code verification certificate application within 30 calendar days of the submission of registration forms to the City Manager including the zoning code verification certificate which shall be promptly transmitted to the Planning Director (which time period is to be tolled at, and only at, the request of the applicant collective), the collective shall be deemed to have a zoning code verification certificate for the location and all legal rights flowing therefrom.

20.100.1530 Availability of Certificate – Medical Cannabis Collective

A. A medical cannabis collective shall keep, or cause to be kept, a true and correct copy of the zoning code verification certificate issued by the director for that medical cannabis collective, in legible condition, on the premises of that medical cannabis collective.

B. A medical cannabis collective shall present, or cause to be presented, the copy of its zoning code verification certificate to a city police officer or city code enforcement officer upon reasonable notice and request.

20.100.1535 Updated Certificate – Medical Cannabis Collective

A medical cannabis collective shall apply for a new zoning code verification certificate whenever it intends to re-Locate, or modify its operations in a manner that may impact compliance with the provisions and conditions set forth in this title.

INITIATIVE SECTION 11 – Conflicts

All ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflict and no further.

INITIATIVE SECTION 12 – Liberal Construction

This Act shall be liberally construed to effectuate those purposes the purposes and intents expressed herein.

INITIATIVE SECTION 13 – Statewide Regulation

This initiative, and the provisions herein, shall be read consistent with any statewide regulation of medical cannabis or legalization of cannabis for adult use that is promulgated by the legislature or by voter approval in the future.

INITIATIVE SECTION 14 – Initiative Not to be Amended Other Than by Voters

This initiative and every part thereof can only be amended by the voters of the San José and cannot be amended by the City of San José City Council except as specifically provided above, or until the Legislature or the Voters of the State of California pass statewide legislation controlling and regulating cannabis cultivation for medical or other use, at which time the City Council shall have

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only the power to conform this initiative to those new laws so as to provide registered collectives with the maximum recognition, protection, and approval available to city-licensed collectives under those new laws, or until three years from the effective date of this initiative ordinance at which time the City Council shall have all power to amend.

INITIATIVE SECTION 15 – Special or Regular Election

The voters of the City of San José hereby expressly request that this initiative be set for a special or regular election at the earliest time allowable by law.

INITIATIVE SECTION 16 – Severability

Should any provision of this initiative ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, voidable, or invalid, that determination shall have no effect on any other provision, or the application of this initiative to any other person or circumstance and, to that end, the provisions hereof are severable. By approving this ordinance the voters intend that each section and sub-section be explicitly severable, part-by-part, phrase-by-phrase, and word-by-word, thus that the minimum language held invalid be severed.

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