ORDINANCE NO.

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

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 <u>Purpose And Intent</u>

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.

It is the purpose and intent of this Chapter to regulate the collective cultivation of medical marijuana to ensure that medical marijuana is cultivated in a manner which is

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

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 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 may cultivate medical marijuana collectively. Medical marijuana collectives 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 permit activities that are otherwise illegal under State or local 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.

6.88.215 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.

6.88.225 Manager

"Manager" means a member engaged in the management of the collective with responsibility 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.

6.88.230 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 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 marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq*.

6.88.242 Medical Marijuana Sales

"Medical marijuana sales" means

A. Transfer from a designated caregiver to that caregiver's qualified patient for such consideration as is sufficient to reimburse that caregiver for their expenses and services; or

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

B. Transfers between qualified members (who must be either patients or caregivers) facilitated through an association of patients and caregivers operating as a nonprofit cooperative or collective.

6.88.245 On-Site Designated Representative

"On-site designated representative" means a manager designated by the collective 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. ~~Overhead expenses does not include or mean salaries, wages or benefits paid to members by the collective.~~

6.88.255 Owner

"Owner" means any member 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.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

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.

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.

6.88.285 Qualified Patient

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

Part 3
General Provisions

6.88.300 Registration Required

A. No collective shall operate in the City of San José until after it has 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 registration accepted as complete by the City Manager.

6.88.310 Maximum Number of Collectives

The maximum number of collectives allowed to operate in the City shall be 10. ~~that number set forth in Part 9.5 of Chapter 20.80 of Title 20 of this Code~~.

6.88.320 Priority Order ~~--~~ Lottery

A. The City Manager shall hold a lottery for the purpose of determining the priority order in which he or she will consider registration forms submitted by collectives.

B. The City Manager shall establish and publish the date, time and place for the lottery.

C. Following the lottery, the City Manager shall publish the results of the lottery in a daily newspaper of general circulation in the City.

D. The results of the lottery will remain in effect until the list has been exhausted, at which time a new lottery shall be held following the procedures set forth in this Section.

E. Following publication of the lottery results, the City Manager shall begin processing registration forms, submitted by collectives pursuant to Section 6.88.330, in the order established by the lottery. The City Manager shall continue processing registration forms until the maximum number of collectives allowed under ~~Part 9.5 of Chapter 20.80 of Title 20 of this Code~~ Section 6.88.310 have been issued a notice of completed registration.

F. The City Manager shall have the authority to promulgate additional lottery rules and regulations in compliance with the following:

1. All such rules and regulations shall be published once in a daily newspaper of general circulation in the City; and

2. All such rules and regulations shall take effect upon publication.

G. Lottery numbers shall not be assigned, transferred or sold. Any attempt to so assign, transfer or sell a lottery number shall render the number null and void. Any person or collective attempting to assign, transfer or sell the lottery number and any person or collective attempting to acquire the lottery number shall be immediately disqualified from the registration process.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

6.88.330 Registration Process

A. **Registration Review**

1. Each collective shall file a registration form with the City Manager. The registration form shall require, and the collective shall provide to the City Manager, the following accurate and truthful information:

   a. The legal name 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 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 9.5 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 member who is an owner or manager of the collective:

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

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

(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 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 therefor;

g. A copy of the lease or other such proof of the collective's right to possess the premises and/or location;

h. 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) The name 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 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 of operation for the collective;

(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; and

(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;

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

j. 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;

k. 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;

l. A dated statement signed by a member authorized to represent and legally bind the collective, certifying under penalty of perjury that the information provided is true and correct;

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

n. Any other information reasonably required by the City Manager to show that the collective complies 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 6.88.330B1(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 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 6.88.330B2(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 and correct.

D. **Investigation and Determination**

1. Upon receiving a collective's registration form, the City Manager shall proceed by priority order, based on the results of the lottery, 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 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.

E. **Disqualification From Registration**

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

   a. The collective knowingly made a false statement of fact or omitted a fact required to be revealed in the priority lottery process or 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. Violation of the terms and conditions of any requirement of this Code related to the operation of a collective;

   d. The collective, 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. A prior attempt to register has resulted in the collective being disqualified from the registration process 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. A registration previously deemed completed by the City Manager has been made null and void within the past five (5) years for any of the reasons set forth in Section 6.88.350;

g. A 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 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. Conducting a collective on the location or premises 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 allowed or is allowing members to manage or retain an ownership interest in the collective, which members are on parole or probation for the possession, sale, distribution or transportation of a controlled substance, have been convicted of a

crime of moral turpitude, or have been convicted of any of the crimes set forth below:

(1) Conviction within the last ten (10) years, of any misdemeanor or felony 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;

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

l. Operating the collective from the location or premises will result in an imminent threat to the public's health, safety or welfare.

F. **Completed Registration.** After verification that all required fees have been 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 mail 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 required fees, has not provided all necessary information, is not in compliance with all the requirements of this Chapter, 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 for ninety (90) days or longer;

C. Relocation of the collective to a different location or premises;

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

E. Any attempt to assign, transfer or sell the registration; or

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

6.88.360 <u>Change In Location And Updated Registration Forms</u>

A. Any time the collective changes its location or premises, it shall re-register with the City Manager. The process shall be the same as the process for the registration review as set forth in this Chapter.

B. Within fifteen (15) days of any change in the collective's ownership or management members, the collective shall provide an updated list of its owner and manager members to the City Manager.

C. Any member that becomes an owner or a manager for the collective shall submit all the information required by Subsection 6.88.330A1(f) pertaining to owners and manager members and shall comply with Section 6.88.450.

D. The collective shall file an updated registration form within fifteen (15) calendar days of any other changes in the information provided in the registration form or any change in status of compliance with the provisions set forth in this Chapter.

E. Each and every 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 and correct.

6.88.370 <u>Renewal of Registration</u>

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. All fees for registration have 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 registration 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>

Fees for registration and enforcement of the provisions of this Chapter shall be as set forth in the schedule of fees and charges established by resolution of the City Council.

6.88.390 <u>Effect of Approved 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. 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, will continue.

Part 4
Operating Regulations And Conditions

6.88.400 Operating Regulations And Conditions

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.

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.

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 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 for the storage of all records required by this Chapter.

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 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.

E. No dried medical marijuana shall be stored in buildings that are not completely enclosed, or stored in an unlocked vault or safe, or other unsecured storage

structure; nor shall any dried medical marijuana be stored in a safe or vault that is not 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. The City Manager is hereby authorized to impose additional standards for internal and external security at any time if he or she deems the additional standards for internal and external security to be necessary to protect the public health, safety and welfare; and the collective shall comply with such requirements.

I. The collective shall not allow any person to be, and no person shall be, in possession of any firearm while on the premises or location without first having obtained a license from the appropriate state or local agency authorizing the person to be in possession of a firearm.

J. If any person will be in possession of a firearm while on the premises or location, the person shall, no less than (10) days prior to the date he or

she will be on the premises or location provide the City Manager and the Chief of Police 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.

6.88.430 <u>Cultivation of Medical Marijuana</u>

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 cultivated or dried medical marijuana be visible from the exterior of any building 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 concentrated cannabis in violation of California Health and Safety Code Section 11379.6 is allowed.

D. No collective shall allow more dried 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 by the collective at the collective's premises and/or location, and in strict accordance with State Law and this Chapter, may be stored and provided at said premises and/or location.

F. ~~F.~~ If medical marijuana is grown out of doors at the location, the area where the growing occurs must be immediately adjacent to the premises and proper security measures must be in place to prevent nonmembers from accessing the medical marijuana 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. No collective shall operate for profit.

C. ~~No sale of any products, including medical marijuana and products containing medical marijuana, shall be allowed; nor shall the manufacture of medical marijuana products for sale be permitted~~ Only medical marijuana sales as defined in Section 6.88.242 may be transacted by a 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 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 City Manager on a quarterly basis.

F. 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.

G. No medical marijuana shall be provided to any persons other than the 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.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

J. Medical marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed at the premises and/or location, in the parking areas of the premises and/or location, 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 24-hour telephone number at the premises 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.

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;

2. Any paraphernalia used for the ingestion of any type of controlled substance;

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 member who is on parole or probation for the possession, sale, distribution or transportation of a controlled substance, or who has been convicted of a crime of moral turpitude, or who has been convicted of those crimes set forth below shall have an ownership interest in the collective or be a manager for, or engage directly or indirectly in the management of the collective:

1. Conviction within the last ten (10) years of any misdemeanor or felony 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;

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

B. No member under the age of twenty-one (21) shall be a manager for, or engage directly or indirectly in the management of the collective.

C. 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.

D. The collective shall terminate the membership of any member violating any provisions of this Chapter.

E. Each collective shall designate an on-site representative who shall be present during all hours of operation. The designated on-site 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 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 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 designated on-site 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 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>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 a 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 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. What chemicals and or substances 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 safety of the medical marijuana contained therein.

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

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

C. 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.

D. Each and every collective shall ensure it has safe growing facilities, chemicals and fertilizers are properly stored, carbon dioxide levels will be tested, areas will be properly vented, and mold will be tested and controlled.

Part 5
Records

6.88.500 <u>Maintenance of Records</u>

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;

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

6. 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;

7. An up-to-date log documenting each transfer of medical marijuana reflecting the amount provided, the date provided, the time provided and the full legal name of the member to whom it was provided;

8. 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;

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

10. 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 15 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 and inspect the location of any collective and

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, 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. 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 that does not comply with the requirements of this Chapter must immediately cease operation until such time, if any, when it complies fully with the requirements of this Chapter.

B. No medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this Chapter shall be deemed to be a legally established use under the provisions of this Code, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status.

6.88.810 <u>Compliance With This Chapter And State Law</u>

A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana for medical purposes except as provided in this Chapter, and pursuant to any and all other applicable local and State laws.

B. It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana except as provided in Health and Safety Code Sections 11362.5 *et seq.* and pursuant to any and all other State laws 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 local, State or federal 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 laws and this Chapter. Nothing in this Chapter shall be construed as authorizing any actions which violate State law with regard to the cultivation, transportation, provision, and sale of marijuana.

6.88.820 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. 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.

B. Notwithstanding an initial verification of compliance by the collective with the lottery process set forth in this Chapter prior to the filing of the registration form, any collective later found to be in violation of any of the preregistration review requirements 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 State or federal 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 <u>Registration Nontransferable</u>

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 Requirements And Regulations

6.88.900 <u>Requirements And Regulations</u>

A. Nothing in this Chapter shall be deemed to make unlawful an individual's cultivation of medical marijuana at his or her own residence for his or her own use if such cultivation is lawful under Health and Safety Code Sections 11362.7 through 11362.77, and is in compliance with the following provisions:

1. A qualified patient shall be allowed to cultivate medical marijuana for his or her own personal use within his or her private residence in an area not to exceed fifty (50) square feet per residence (a legal dwelling unit).

2. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver.

3. Cultivation of medical marijuana for personal use shall be in conformance with the following standards:

   a. The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities;

   b. Medical marijuana cultivation shall remain at all times secondary to the residential use of the property;

   c. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;

   d. The medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code Section 1203.4 – Natural Ventilation; or Section 402.3 – Mechanical Ventilation;

   e. The cultivation shall not adversely affect the health or safety of the residence in which it is cultivated or nearby properties through 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;

   f. All electrical equipment used in the cultivation of medical cannabis 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;

g. From a public right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring at the property;

h. Medical marijuana cultivated for personal use as provided herein shall not be distributed to any other person or to any collective;

i. Medical marijuana cultivation lighting shall not exceed 1200 watts; and

~~j. Medical marijuana sale is prohibited.~~

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM

PASSED FOR PUBLICATION of title this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
CHUCK REED
Mayor

ATTEST:

_____
DENNIS D. HAWKINS, CMC
City Clerk

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

REVISED PER SUPPLEMENTAL MEMORANDUM