

**DRAFT – URGENCY ORDINANCE – Item 3.10(b)**

**ORDINANCE NO.**

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 1 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTION 1.13.050 OF CHAPTER 1.13 TO EXEMPT A LAWFUL MEDICAL MARIJUANA COLLECTIVE FROM THE DEFINITION OF A PUBLIC NUISANCE AND AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTION 20.10.040 OF CHAPTER 20.10, SECTION 20.40.100 OF CHAPTER 20.40; ADDING A NEW PART 9.5 TO CHAPTER 20.80; AND ADDING A NEW PART 13 TO, AND AMENDING SECTION 20.100.200 OF, CHAPTER 20.100, ALL TO ESTABLISH LAND USE REGULATIONS PERTAINING TO MEDICAL MARIJUANA COLLECTIVES, AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

**WHEREAS**, on June 1, 2010, the Director of Planning, Building and Code Enforcement determined, pursuant to the provisions of Title 21 of the San José Municipal Code and the provisions of the California Environmental Quality Act of 1970 (together with regulatory guidelines promulgated thereunder), that the environmental impacts resulting from the approval and adoption of this Ordinance are analyzed and disclosed in the Environmental Impact Report for the General Plan 2020 (the “EIR”), together with that certain City Council Resolution No. 65459, under File No. PP10-116; and

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

**WHEREAS**, this Council has considered and hereby approves of the reuse of the EIR, together with Resolution No. 65459, as the environmental clearance for the approval and adoption of this Ordinance.

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

**SECTION 1.** Section 1.13.050 of Chapter 1.13 of Title 1 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**1.13.050 Public nuisance defined.**

- A. For purposes of this Chapter, a public nuisance is:
1. The maintenance or use of property in the city in a manner that jeopardizes or endangers the health, safety or welfare of persons on the premises or in the surrounding area; or
  2. Real property that has been the situs for nuisance activity including, but not limited to:
    - a. Disturbing the peace; or
    - b. Illegal drug activity; or
    - c. Public drunkenness; or
    - d. Drinking alcoholic beverages in public; or
    - e. Harassment of passersby; or
    - f. Illegal gambling; or
    - g. Prostitution; or
    - h. The sale of stolen goods; or
    - i. Acts of violence; or
    - j. Public urination; or
    - k. Acts of vandalism; or
    - l. Acts of lewd conduct; or
    - m. Unreasonably loud noise; or
    - n. Loitering; or
    - o. Excessive littering; or
  3. The maintenance or use of property in the city in a manner that violates, or real property that has been the situs of a violation of, any provision of this Code or any other city, state or federal law or regulation, subject to the provisions of Subsection A.4 below.

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4. Notwithstanding the provisions of Subsection A.3 above, a Medical Marijuana Collective as defined in Chapter 6.88 of this Code that is in full compliance with the provisions of this Code, including without limitation, the provisions of Chapter 6.88 and Title 20 of this Code, and also is in full compliance with all applicable provisions of state law, will not be deemed to be a nuisance under this Subsection A.3 because such use is in violation of a federal law or regulation.

B. Nothing contained in this Chapter shall prohibit persons from participating in activity which the City may not proscribe under the United States Constitution or the California Constitution.

**SECTION 2.** Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.10.040 Interpretation**

A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of buildings or premises or upon height or buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.

B. No provision of this Title is intended to nor shall be interpreted or applied to allow a use or structure that violates state or local law.

**SECTION 3.** Section 20.40.100 of Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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**20.40.100 Allowed Uses and Permit Requirements**

- A. “Permitted” land uses are indicated by a “P” on Table 20-90.
- B. “Conditional” uses are indicated by a “C” on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.
- C. “Special” uses are indicated by a “S” on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- D. “Administrative” uses are indicated by an “A” on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- E. “Restricted” land uses are indicated by an “R” on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Zoning Code Compliance Certificate as set forth in Chapter 20.100.
- F. Land uses not Permitted are indicated by a “-” on Table 20-90. Land uses not listed on Table 20-90 are not Permitted.
- G. When the right column of Table 20-90 includes a reference to a Section number or a footnote, the regulations cited in the Section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other Title of the San Jose Municipal Code.

<b>Table 20-90 Commercial Districts Land Use Regulations</b>					
<b>Use</b>	<b>Zoning District</b>				<b>Notes &amp; Sections</b>
	<b>CO</b>	<b>CP</b>	<b>CN</b>	<b>CG</b>	
<b>General Retail</b>					
Retail sales, goods and merchandise	-	P	P	P	
Alcohol, off-site sales – beer and/or wine only	-	C	C	C	Section 20.80.900
Alcohol, off-site sales, full range of alcoholic beverages	-	C	C	C	Section 20.80.900

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<b>Table 20-90 Commercial Districts Land Use Regulations</b>					
<b>Use</b>	<b>Zoning District</b>				<b>Notes &amp; Sections</b>
	<b>CO</b>	<b>CP</b>	<b>CN</b>	<b>CG</b>	
Bakery, retail	-	P	P	P	
Food, beverage, groceries	-	P	P	P	
Nursery, plant	-	P	P	P	Note 1
Outdoor vending	-	A	A	A	Part 10, Chapter 20.80
Pawn shop/broker	-	C	C	C	See Title 6
Seasonal sales					Part 14, Chapter 20.80
Retail Art Studio	-	P	P	P	Section 20.40.140
<b>Education and Training</b>					
Child daycare center located on an existing school site or as an incident to an on-site Church/Religious Assembly use involving no building additions or changes to the site	P	P	P	P	
Day care center	C	C	C	C	
Instructional art studios	-	P	P	P	
Instructional art studios, with live models	-	C	C	C	
Private Instruction, personal enrichment	-	P	P	P	
School- elementary and secondary (Public)	P	P	P	P	
School- elementary and secondary (Private)	-	C	C	C	
School, driving (class C & M license)	-	P	P	P	Note 2
School, post secondary	-	P	P	P	Note 3
School, trade and vocational	-	C	C	C	
<b>Entertainment and Recreation Related</b>					
Arcade, amusement	-	C	C	C	
Dancehall	-	C	C	C	
Entertainment	-	C	C	C	
Poolroom/Billiards Establishment	-	C	C	C	
Private club or lodge	C	C	C	C	
Recreation, Commercial (indoor)	-	P	P	P	
Recreation, Commercial (outdoor)	-	C	C	C	
Relocated Cardroom	-	-	-	C	Section 20.80. 1155
Theatre, indoor	-	C	C	C	
Theatre, outdoor	-	-	-	C	
<b>Food Services</b>					
Banquet facility	-	C	C	C	
Caterer	-	P	P	P	Note 4
Drinking establishments	-	C	C	C	
Public eating establishments	-	P	P	P	
Outdoor dining, incidental to a public eating establishment or a retail establishment	-	P	P	P	Section 20.40.520
Wineries, Breweries	-	C	C	C	
<b>Health and Veterinary Services</b>					
Animal boarding, indoor	-	P	P	P	Section 20.40.120

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<b>Table 20-90 Commercial Districts Land Use Regulations</b>					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Animal grooming	-	P	P	P	Section 20.40.120
Emergency ambulance service	C	C	C	C	
Hospital/ in-patient facility	C	C	C	C	
Medical clinic/ out-patient facility	P	P	P	P	
<b>Medical Marijuana Collective</b>	-	-	-	R	<b>Part 9.5, Chapter 20.80</b>
Office, medical	P	P	P	P	
Veterinary clinic	-	P	P	P	
<b>General Services</b>					
Bed and Breakfast	-	P	P	P	Part 2, Chapter 20.80
Dry cleaner	-	P	P	P	
Hotel/motel	-	P	P	P	
Laundromat	-	P	P	P	
Maintenance and repair, small household appliances	-	P	P	P	
Messenger services	P	P	P	P	Note 2
Mortuary and funeral services	P	P	P	P	
Personal services	-	P	P	P	Section 20.200.880
Photo processing and developing	-	P	P	P	
Printing and publishing	-	P	P	P	
<b>Offices and Financial Services</b>					
Automatic Teller Machine	P	P	P	P	Section 20.80.200
Business Support	-	P	P	P	
Financial Institution	P	P	P	P	
Office, general business	P	P	P	P	Section 20.40.110
<b>Public, Quasi-Public and Assembly Uses</b>					
Cemetery	C	C	C	C	
Church/Religious Assembly	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (Publicly operated)	P	P	P	P	
Museums, libraries, parks, playgrounds, or community centers (Privately operated)	C	C	C	C	
<b>Residential</b>					
Emergency residential shelter	C	C	C	C	Section 20.80.500
Live/Work	-	S	S	S	Section 20.40.130
Mixed Use/Ground floor commercial with residential above	-	C	C	C	Note 6
Residential Care Facility for seven or more persons	C	C	C	C	
Residential Service Facility for seven or more persons	C	C	C	C	
Single Room Occupancy Hotel	-	C	C	C	Part 15, Chapter 20.80
Single Room Occupancy Living Unit	-	C	C	C	Part 15, Chapter 20.80
<b>Drive-Through Uses</b>					

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<b>Table 20-90 Commercial Districts Land Use Regulations</b>					
<b>Use</b>	<b>Zoning District</b>				<b>Notes &amp; Sections</b>
	<b>CO</b>	<b>CP</b>	<b>CN</b>	<b>CG</b>	
Drive-through in conjunction with any use	-	-	C	C	
<b>Recycling Uses</b>					
Reverse vending	A	A	A	A	
Small collection facility	A	A	A	A	
<b>Transportation and Utilities</b>					
Data Center	-	-	-	C	
Community television antenna systems	C	C	C	C	
Off-site, alternating use and alternative parking arrangements	S	S	S	S	Section 20.90.200
Parking establishment, off-street	C	C	C	C	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	
Television, radio studios without antenna/dishes	-	-	-	C	
Short term parking lot for uses or events other than on-site	-	-	-	C	Note 7
Wireless communication antenna	C	C	C	C	Section 20.100.1300
Wireless communication antenna, slimline monopole	S	S	S	S	Section 20.80.1900
Wireless communication antenna, building mounted	P	P	P	P	Section 20.80.1910
<b>Electrical Power Generation</b>					
Private Electrical Power Generation Facility	C	C	C	C	Note 2
Co-Generation Facility	S	S	S	S	
<b>Stand-by/Backup</b>					
Facilities that <b>do not</b> exceed noise or air standards	A	A	A	P	
Facilities that <b>do</b> exceed noise or air standards	C	C	C	C	
Temporary Stand-by/Backup	P	P	P	P	
Solar Photovoltaic System	P	P	P	P	Section 20.100.610(C)(7)
<b>Vehicle Related Uses</b>					
Accessory installation, passenger vehicles and pick-up trucks	-	-	C	P	
Auto broker, wholesale, no on-site storage	P	P	P	P	
Car wash, detailing	-	-	C	C	
Gas or charge station	-	C	C	P	Note 8
Gas or charge station with incidental service and repair	-	C	C	P	Note 9, Note 13
Glass sales, installation and tinting	-	-	C	P	Note 13
Sale or lease, commercial vehicles	-	-	C	C	Note 13

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Table 20-90 Commercial Districts Land Use Regulations					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Sale passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	S	P	Note 12, Note 13
Leasing passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	C	C	Note 2
Sale, vehicle parts	-	C	P	P	Note 11
Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks	-	-	C	P	Note 10, Note 13

**Notes Applicable to all Commercial Districts:**

- (1) In the CP District, landscaping materials, such as rock, mulch, and sand are limited to prepackaged sales.
- (2) No on site storage of vehicles permitted.
- (3) Includes public and private colleges and universities, as well as extension programs and business schools.
- (4) Not a catering facility.
- (5) No on site storage of vehicles permitted.
- (6) Make sure General Plan supports mixed use or residential.
- (7) Use must be less than twenty-four (24) hours.
- (8) No incidental repair or service permitted.
- (9) Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- (10) Non engine and exhaust related service and repair allowed as incidental.
- (11) No outdoor sales areas or dismantling allowed.
- (12) In the CG District, incidental repair of vehicles requires a Special Use Permit. Incidental repair of vehicles is prohibited in all other commercial districts.
- (13) All vehicle-related repair, service, and accessory or other installation shall be conducted within a fully enclosed building.

**SECTION 4.** Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read in its entirety as follows:

**Part 9.5  
MEDICAL MARIJUANA COLLECTIVES**

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**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. 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 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.

**20.80.760 Compliance Required**

- A. No person shall operate, or suffer or allow the operation of, a Medical Marijuana Collective except in full compliance with all of the terms and conditions of this Part.
- B. In addition to the requirements set forth in Subsection 20.80.760.A above, no person shall operate, or suffer or allow the operation of, a Medical Marijuana Collective until such time as a zoning code compliance 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 compliance certificate confirms full conformance of a proposed Medical Marijuana Collective with all of the applicable provisions of this Title. The application for such zoning code compliance certificate shall be filed pursuant to the requirements and processes set forth in said Chapter 20.100.

**20.80.765 Zoning Code Compliance Certificate Not Required**

The provisions of this Part are not intended to and shall not regulate the cultivation or possession of Medical Marijuana for a medical use in full compliance with all applicable

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state and local laws by a single Qualified Patient or Primary Caregiver at their primary residence located within a zoning district that allows for residential uses.

**20.80.770 Allowed Districts**

Medical Marijuana Collectives are allowed only on those real properties located in CG-Commercial General Zoning Districts as described in Chapter 20.40 of this Title or in those Planned Development Zoning Districts that allow CG-Commercial General Zoning District uses as described in Chapter 20.60 of this Title.

**20.80.775 Maximum Number**

No more than a maximum of ten (10) Medical Marijuana Collectives shall be allowed to operate in the City.

**20.80.780 Restrictions and Conditions**

The location and operation of Medical Marijuana 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 Marijuana Collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws, regulations or policies. Anyone operating, or allowing or suffering the operation of, a Medical Marijuana 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 Marijuana Collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws, regulations or policies, at all times at the Medical Marijuana Collective:

- A. At the time of issuance of a zoning code compliance certificate, no Medical Marijuana Collective shall be located on a parcel of real property that is closer than a minimum of five hundred (500) feet from any parcel on which any of the

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following uses exist: a residential use, school, child day care center, church that includes a school or child day care use, community or recreation center, park, trail, library, substance abuse rehabilitation center or another Medical Marijuana Collective, and distances under this subsection shall be measured from boundary lines of the parcels that are closest to one another; and

- B. All activities conducted at a Medical Marijuana 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 amended from time to time; and
- C. No retail sales of any products shall occur or be allowed at the Medical Marijuana Collective; and
- D. The hours within which a Medical Marijuana Collective may choose to operate shall be within the hours of 9:00 a.m. and 8:00 p.m.
- E. Cultivation of Medical Marijuana on the site of a Medical Marijuana Collective is allowed as a part of the Medical Marijuana Collective use.

**SECTION 5.** Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read in its entirety as follows:

**PART 13  
ZONING COMPLIANCE CERTIFICATE**

**20.100.1500 Applicability**

- A. The provisions of this Part apply to and shall govern the issuance of zoning code compliance certificates, which certificates are required whenever the provisions of this Title so mandate.
- B. The Director is authorized to issue a zoning code compliance 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 compliance 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 compliance certificate is required.

**20.100.1525 Compliance Certificate**

- A. The Director shall issue, or cause the issuance of, a zoning code compliance 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 compliance 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 compliance certificate or a writing describing the noncompliance that prevents the issuance of a zoning code compliance certificate.
- D. The Director's determination under this Section shall be final.

**20.100.1530 Availability of Certificate – Medical Marijuana Collective**

- A. A Medical Marijuana Collective shall keep, or cause to be kept, a true and correct copy of the zoning code compliance certificate issued by the Director for that

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Medical Marijuana Collective, in legible condition, on the premises of that Medical Marijuana Collective.

- B. A Medical Marijuana Collective shall present, or cause to be presented, the copy of its zoning code compliance certificate to a City police officer or City code enforcement officer who is at the site of the Medical Marijuana Collective immediately upon request.

**20.100.1535 Updated Certificate – Medical Marijuana Collective**

A Medical Marijuana Collective shall apply for a new zoning code compliance certificate whenever it intends to modify its operations in a manner that may impact compliance with the provisions and conditions set forth in this Title.

**20.100.1540 Nontransferability – Medical Marijuana Collective**

A zoning code compliance certificate may not be transferred or assigned; this includes without limitation a prohibition of a transfer or assignment to another Medical Marijuana Collective that plans to operate on the same site.

**SECTION 6.** Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.220 Appeal – Hearing Body**

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

<b>Table 20-260 Appeal Hearing Body</b>		
<b>Application</b>	<b>Initial Decision Making Body</b>	<b>Appeal Decision Making Body</b>
Administrative Permit	Director of Planning	No Appeal

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Site Development Permit	Director of Planning	Planning Commission
Site Development Permit – Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit Administrative Decision Director's Hearing	Director of Planning Director of Planning	No Appeal Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit I	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission
<b>Zoning Code Compliance Certificate</b>	<b>Director of Planning</b>	<b>No Appeal</b>

**SECTION 7.** This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are: (1) there is an urgent need to establish regulations pertaining the types and numbers of Medical Marijuana Collectives that may operate in the City in order to facilitate the ability of the City to address currently, illegally-operating facilities that are dispensing marijuana for allegedly medical purposes without any authority or approval from the City; (2) there exists an essential need to enact land use regulations pertaining to the appropriate siting of Medical Marijuana Collectives in order to address land use incompatibility issues that have arisen in connection with the currently, illegally-operating facilities, and (3) there is an immediate need to remove any confusion or ambiguity that exists about what sort of Medical Marijuana Collective may operate in the City, and where, in order to retard the proliferation of illegally-operating facilities in the City that are dispensing marijuana for allegedly medical purposes.

**SECTION 8.** This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain in effect until the effective date of a superseding ordinance.

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**ADOPTED** this        day of        , 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk