

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 6.88 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS COLLECTIVES, MEDICAL CANNABIS BUSINESSES, NON-MEDICAL CANNABIS BUSINESSES AND TO THE PERSONAL CULTIVATION AND USE OF CANNABIS**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), a Negative Declaration for this project was adopted by the City Council under Resolution No. 75984 on September 13, 2011, under File No. PP11-039, and subsequent addenda thereto under File Nos. PP11-076, PP14-030, PP16-076 and PP17-070; and

**WHEREAS**, pursuant to Section 15164 of the CEQA Guidelines, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance; and

**WHEREAS**, pursuant to Section 26055(h) of the California Business and Professions Code, this Ordinance is statutorily exempt from the requirements of CEQA on the basis that the project will adopt ordinances, rules and/or regulations, that will require subsequent discretionary review under CEQA to engage in non-medical cannabis activity in the City of San José; and

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

**WHEREAS**, this City Council has reviewed and considered the 1) Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code; and 2) adopted Negative Declaration and related City Council Resolution No. 75984, as addended, prior to taking any approval actions on this Ordinance;

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

Chapter 6.88 of Title 6 of the San José Municipal Code is hereby amended to read as follows:

**MEDICAL MARIJUANA AND NON-MEDICAL CANNABIS**

**Part 1**

**Purpose and Intent**

**6.88.010 Purpose and Intent**

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

Specifically, the Department of Justice stated that regulations must focus on:

- Preventing the distribution of marijuanacannabis to minors;
- Preventing revenue from the sale of marijuanacannabis from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuanacannabis from states where it is legal under state law in some form to other states;



- Preventing state-authorized marijuanacannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuanacannabis;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuanacannabis use;
- Preventing the growth of marijuanacannabis on public lands and the attendant public safety and environmental dangers posed by marijuanacannabis production on public lands; and
- Preventing marijuanacannabis possession or use on federal property.

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

On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act which permits the non-medical use, adult use, or recreational use of cannabis by individuals age 21 and older. Under the proposition, individuals age 21 and older would be allowed to smoke or ingest cannabis products as well as possess, process, transport, purchase, obtain, or give away without compensation of any sort, cannabis, and cannabis products, subject to the following limitations:

- Not more than 28.5 grams of cannabis (not concentrated cannabis);
- Eight grams of concentrated cannabis including that contained in cannabis products;
- Six living plants per residence (including possession of the cannabis produced by those plants); and
- Public consumption of cannabis is not allowed (except in limited circumstances), and consumption in motor vehicles is prohibited.

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



The federal guidelines express concerns about funding criminal enterprises. This Chapter ensures that patients, caregivers, and residents of San José know the origin of the ~~medical-marijuanacannabis~~ being cultivated and distributed in San José collectives or cannabis businesses. It is the intent of this Chapter to keep drug cartels, criminals, and gangs out of the business of cultivating or distributing ~~medical-marijuanacannabis~~ in San José. It is the intent of this Chapter to regulate the cultivation of ~~medical-marijuanacannabis~~ in a manner which is responsible and protects the health, safety, and welfare of the residents of San José. It is the intent of this Chapter to protect seriously ill patients and persons age 21 and older from ~~medical-marijuanacannabis~~ that has been grown or processed in an unhealthy or unsafe manner or by individuals whose motivation is ~~profit~~, not patient's or person's health and safety.

It is the intent of the City of San José to have a strong and effective regulatory and enforcement system that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.

The provisions in this Chapter do not interfere with a patient's right to use medical ~~marijuanacannabis~~ under state law, nor do they criminalize the possession or cultivation of medical ~~marijuanacannabis~~ by specifically defined classifications of persons. ~~Under state law, only qualified patients and primary caregivers cultivate medical marijuanacannabis. Additionally, the provisions of this chapter do not interfere with the rights of a person age 21 and older to cultivate or possess non-medical cannabis under state law.~~

It is the purpose and intent of this Chapter to accommodate the needs of the seriously ill and persons age 21 and older who want safe access to cannabis from licensed providers, to protect their health and safety, and to protect our neighborhoods, children, and businesses from negative impacts while complying with state law and federal guidelines.

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

By adoption of this Chapter and the provisions of Title 20 related to ~~medical-marijuanacannabis~~, it is the intent of the City to set forth the conditions and criteria which must be met to establish an affirmative defense to criminal and civil enforcement



of the San José Municipal Code if such enforcement is based solely upon the conduct recognized herein. It is the intent of the City that the party invoking the affirmative defense must demonstrate strict compliance with this Chapter, the provisions of Title 20 relating to medical-marijuanacannabis, and the rules and regulations promulgated thereunder.

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

## **Part 2 Definitions**

### **6.88.200 Definitions and Construction**

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

### **6.88.205 Attending Physician**

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

### **6.88.208 Cannabis**

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

### **6.88.209 Cannabis Business**

Cannabis business means any business licensed by the state, including a medical marijuana collective, engaged in any of the following cannabis activities, whether for medical or non-medical use, or both:

A. Cultivating cannabis;

B. Processing cannabis, including packaging, trimming, and/or preparing cannabis for sale or distribution;

C. Manufacturing cannabis, including extraction of concentrated cannabis as well as infusion of cannabis into other products; or

D. Distributing, selling, or transferring cannabis

### **6.88.210 Concentrated Cannabis**

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

### **6.88.212 Cultivation Site**

"Cultivation site" means the property, location, or premises where medical marijuana is cultivated, stored, manufactured or processed by the members of a collective on behalf of that collective, or by owners, managers, employees, contractors or agents of a cannabis business on behalf of that cannabis business.

### **6.88.212.5 Delivery**

"Delivery" means the transporting and transfer of cannabis from the location of the collective or cannabis business to a medical cannabis patient or primary caregiver, or to another person age twenty-one (21) or older, located at another property, location, or premises.

### **6.88.213 Dispensary**

"Dispensary" means the property, location, or premises where transfers of cannabis occur. Dispensary includes the property, location, or premises where transfers of medical marijuana between qualified patients and primary caregivers are facilitated through an association of those qualified patients and primary caregivers who are operating as a nonprofit collective.

### **6.88.214 Dispensing**

"Dispensing" means the transfer of non-medical cannabis to persons age 21 and older, or the transfer of medical marijuana between qualified patients and primary caregivers facilitated through an association of those qualified patients and primary caregivers who are operating as a nonprofit collective.

### **6.88.215 Electronic Age Verification Device**



"Electronic age verification device" means a device capable of quickly and reliably confirming the age of the cardholder of a government issued identification card using computer processes.

#### **6.88.2175 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 marijuanacannabis collective, medical cannabis business, or non-medical cannabis business, including any cultivation site.

#### **6.88.225 Manager**

"Manager" means either or both of the following:

- A. aAn individual who is a member of a medical marijuanacannabis collective and who, directly or indirectly, is engaged in the management of the medical marijuanacannabis collective as may be evidenced by the individual member being responsible for the establishment, organization, registration, supervision, or oversight of the operation of the collective and/or its members, which oversight may include but not be limited to the following: performing the functions of president, vice president, board member, director, owner, operating officer, financial officer, secretary, treasurer, supervisor or manager.
- B. An individual who, directly or indirectly, is engaged in the management of a cannabis business as may be evidenced by the individual being responsible for the establishment, organization, registration, supervision, or oversight of the operation of the business and/or its employees, which oversight may include but not be limited to the following: performing the functions of president, vice president, board member, director, owner, operating officer, financial officer, secretary, treasurer, supervisor or manager.

#### **6.88.227 Manufacturing**

"Manufacturing" means converting, producing, deriving, concentrating, making, cooking, baking, transforming, packaging, or preparing medical marijuanacannabis, including, but not limited to, the production of concentrated cannabis, the production of edible

medical marijuana cannabis products, and/or the production of medical marijuana cannabis infused products.

#### **6.88.230 Marijuana**

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

#### **6.88.235 Medical MarijuanaCannabis**

"Medical marijuanacannabis" means marijuanacannabis used for medical purposes in accordance with California Health and Safety Code Section 11362.5, including any product containing medical marijuanacannabis, manufactured in accordance with all state and local laws.

#### **6.88.240 Medical MarijuanaCannabis Collective**

"Medical marijuanacannabis collective" or "collective" means an incorporated or unincorporated association, composed of four or more individuals who are qualified patients and designated primary caregivers of qualified patients (individually and collectively referred to as "member(s)") who associate at a particular location to collectively or cooperatively cultivate medical marijuanacannabis, in strict accordance with California Health and Safety Code Sections 11362.5 et seq.

#### **6.88.242 Medical MarijuanaCannabis Transfers**

"Medical marijuanacannabis transfers" means:

- A. The transfer of medical marijuanacannabis 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.
- B. Transfers of medical marijuanacannabis between qualified patients and primary caregivers facilitated through an association of those qualified patients and primary caregivers who are operating as a nonprofit collective; or
- C. Transfers of medical marijuanacannabis between two collectives located within the state of California, both of which are registered, licensed, or otherwise lawfully operating pursuant to state law and the law in the relevant local



jurisdiction, and conducted in accordance with the restrictions set forth in Section 6.88.465.

#### **6.88.243 Non-medical Cannabis**

"Non-medical cannabis" means cannabis intended for, transferred to, distributed to, possessed by, or used by any person who is not a qualified patient and who does not have a physician's recommendation for cannabis. Non-medical cannabis includes cannabis that is adult use or recreational use.

#### **6.88.244 Non-medical Cannabis Transfers**

"Non-medical cannabis transfers" means any sale, transfer or barter of non-medical cannabis in exchange for money or any other thing of value whatsoever, including donations.

#### **6.88.245 On-Site Designated Representative**

"On-site designated representative" means a manager that is designated by the collective or cannabis business to be present, and who is present, at all times during the collective's hours of operation.

#### **6.88.250 Overhead Expenses**

"Overhead expenses" means the actual costs of cultivating ~~medical marijuana~~cannabis incurred by the collective or cannabis business including mortgage payments, rent, utilities, business and property taxes, property insurance, cultivation materials and equipment, and fees paid to comply with the requirements of this Chapter.

#### **6.88.255 Owner**

"Owner" means any ~~person individual member of a collective~~ having more than a ten percent interest, legal or equitable, or otherwise, in ~~thea~~ collective or cannabis business.

#### **6.88.260 Person**

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

#### **6.88.262 Personal Use Cultivation**

"Personal use cultivation" includes cultivation by either any of the following:

- A. An individual qualified patient or primary caregiver of qualified patients who cultivates medical marijuanacannabis at the residence of the qualified patient or primary caregiver, in strict accordance with California Health and Safety Code Sections 11362.5 et seq.; ~~or~~
- B. An association of less than four individuals who are qualified patients and primary caregivers of qualified patients and who associate at the residence of one of the qualified patients or primary caregivers to collectively or cooperatively cultivate medical marijuanacannabis, in strict accordance with California Health and Safety Code Sections 11362.5 et seq.; or
- C. An individual age 21 or older who cultivates not more than six (6) non-medical cannabis plants at his or her private residence in strict accordance with all local and state laws and regulations.

#### **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 marijuanacannabis is appropriate.

#### **6.88.270 Premises**

"Premises" means each building or the portion of any building, on the location, where the collective or cannabis business is located, including any cultivation site.

#### **6.88.275 Primary Caregiver**

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

#### **6.88.280 Private Medical Record**

"Private medical record" means documentation of the medical history of a qualified patient. "Private medical record" shall not include the recommendation of an attending physician or doctor for the medical use of marijuanacannabis, an identification card, or the designation of a primary caregiver by a qualified patient.

#### **6.88.282 Processing**



"Processing" means the harvesting, trimming, drying, and/or curing of ~~medical marijuana~~cannabis.

#### **6.88.285 Qualified Patient**

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

#### **6.88.290 Security Personnel**

"Security personnel" means any person(s) who perform(s) security related tasks on behalf of the collective or cannabis business.

#### **6.88.295 Transport**

"Transport" means all activity involved in the movement of ~~medical marijuana~~cannabis from one location to another, including, but not limited to, loading, shipping and receiving. Transport does not include delivery to a qualified patient, caregiver or individual cannabis user age twenty-one (21) or older.

### **Part 3 General Provisions**

#### **6.88.300 Registration Required**

- A. No collective or cannabis business shall operate in the ~~c~~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. Effective January 1, 2018 or upon issuance of licenses by the State of California, no collective or cannabis business shall operate in the city of San José unless and until it has first obtained the appropriate state license or licenses for the cannabis activity in which it is engaged.
- C. ~~B.~~—It shall be unlawful for a person, ~~or~~ collective or cannabis business to maintain, manage, operate, conduct, control or own a collective or cannabis business unless the collective or cannabis business is maintained and operated in strict compliance with a notice of completed registration issued by the City Manager.



- D. It shall be unlawful for a person, collective or cannabis business to maintain, manage, operate, conduct, control or own a collective or cannabis business unless the collective or cannabis business is maintained and operated in strict compliance with state law, including possessing any applicable state licenses.
- E. Only a medical cannabis collective or medical cannabis business in possession of a Notice of Completed Registration from the City of San José as of December 18, 2015 and continually registered since that date is eligible to apply for and receive registration to cultivate, process, manufacture, distribute, transfer and/or sell non-medical cannabis.
- ~~E. C.~~ To be eligible to register a collective must be able to provide a marijuana business tax return evidencing payment of any applicable taxes due to the city pursuant to Chapter 4.66 of this Code and have no outstanding compliance orders under Chapter 1.14.
- ~~F.~~
- ~~G. D.~~ ~~Collectives shall have ninety days from the effective date of this chapter to apply for registration under this chapter and to apply for a zoning code verification certificate under Part 13 of Chapter 20.100. Collectives shall obtain a notice of completed registration from the city manager and a zoning code verification certificate within one year from the effective date of this chapter.~~
- ~~H.~~
- ~~I. E.~~ ~~Notwithstanding Subsection D. above, a collective shall be granted an extension to December 18, 2015 of the time within which it shall receive a notice of completed registration from the city manager provided it meets the following requirements:~~
- ~~J.~~
- ~~K. 1.~~ ~~Obtains a zoning code verification certificate under Part 13 of Chapter 20.100 of this Code and submits all applications for any site development permit and any building permit required for the collective's location and premises within the cCity of San José to comply with this Code by July 17, 2015;~~
- ~~L.~~
- ~~M. 2.~~ ~~Obtains all required site development permits and building permits necessary for the collective's location and premises within the cCity of San José to comply with this Code by September 18, 2015;~~
- ~~N.~~
- ~~O. 3.~~ ~~Completes a preliminary inspection with the city manager, chief of police, and any other city official charged with enforcing the provisions of this Code, of all of the collective's locations and premises both within the cCity of San José and outside the cCity of San José by November 20, 2015; and~~
- ~~P.~~



~~Q.F. 4. Complies with all other regulations promulgated by the city manager pursuant to Section 6.88.315 pertaining to the registration process.~~

#### **6.88.310 Number of Locations**

- A. No collective or cannabis business shall dispense ~~medical marijuana~~cannabis from more than one location in the city.
- B. A collective or cannabis business may have up to two cultivation sites that are separate from the location at which ~~medical marijuana~~cannabis is dispensed. Alternatively, one cultivation site may be at the same location as the collective's or cannabis business's sole dispensing site. Cultivation sites must comply with the provisions of this Chapter and of Title 20 of this Code.

#### **6.88.315 Authority of the City Manager**

- A. The City Manager is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Code relating to medical ~~marijuana~~and non-medical cannabis, including, but not limited to the following subjects:
  - 1. Registration, review, investigation, priority order and disqualification process for the collectives and cannabis businesses and forms necessary thereto.
  - 2. Internal or external security requirements for the operation of the collectives or cannabis businesses.
  - 3. Storage or display of ~~medical marijuana~~cannabis.
  - 4. Criteria necessary to promote the safe cultivation of ~~medical marijuana~~cannabis.
- B. Regulations shall be published on the City's website.
- C. Regulations promulgated by the City Manager shall have the same force and effect of law and become effective upon date of publication.

#### **6.88.320 Registration Submittal**

- A. Registration with the City of San José as a collective or cannabis business is open only to those possessing a valid Notice of Completed Registration from the City Manager as of December 18, 2015.
- B. Registration forms must contain all information as required by the City Manager pursuant to the rules and regulations, ~~and will be accepted by the city manager on the published date on a first come, first served basis.~~
- BC. Each collective or cannabis business shall ~~submit with its registration forms a medical marijuana/cannabis collective application receipt fee and a medical marijuana/cannabis collective application processing pay any applicable fee(s) related to its registration forms,~~ as set forth in Section 6.88.380 and as required by the City Manager pursuant to the rules and regulations, prior to being issued a Notice of Completed Registration.

### 6.88.330 Registration Process

- A. Registration review.
1. Pursuant to Section 6.88.300, no collective or cannabis business shall operate in the City of San José without a notice of completed registration from the City Manager. A ~~person~~ collective or cannabis business desiring to obtain a notice of completed registration shall file a registration application with the ~~city~~ manager that shall contain the following accurate, complete and truthful information:
    - a. The legal name, and any other names, under which the collective or cannabis business will be operating;
    - b. The physical address and physical description (e.g., one story commercial building, etc.) of the premises;
    - c. The onsite landline telephone number for the collective or cannabis business;
    - d. Proof that the location and the premises are in compliance with the requirements of Title 20 of the Code, including but not limited to Part 9.75 of Chapter 20.80 and Part 13 of Chapter 20.100;
    - e. The name, telephone number, and address of the person authorized to accept service of process for the collective or cannabis business;



- f. The following information concerning each owner, manager, or individual member or person who will be participating in the actual cultivation, processing, manufacturing, transporting or dispensing of the medical marijuana/cannabis for the collective or cannabis business:
- i. Complete legal name, and any alias(es);
  - ii. Date of birth;
  - iii. A copy of a valid government issued photo identification card or license;
  - iv. For a medical cannabis collective or medical cannabis business, A-a copy of the member or person's identification card or a copy of the physician's recommendation for the member;
  - v. For a medical cannabis collective or medical cannabis business, Tthe 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);
  - vi. For a medical cannabis collective or medical cannabis business, Iif the member or person is a primary caregiver, a copy of the written documentation provided by each qualified patient ~~member~~ designating the ~~member~~individual as their primary caregiver;
  - vii. Telephone number(s) where the individual, owner or manager can be reached twenty-four hours a day;
  - viii. A list of all criminal convictions, other than infraction traffic violations, the jurisdiction of the conviction(s) and, the circumstances thereof;
  - ix. One set of fingerprints in a form acceptable to the Chief of Police; and

- x. A detailed explanation of the ~~member's~~ person's involvement with any other collective or cannabis business including, but not limited to: the name and address of the collective or cannabis business; the capacity in which the ~~member~~ person was involved with the collective or cannabis business; whether the collective or cannabis business is or was the subject of any criminal investigation or prosecution, civil investigation, administrative action or civil lawsuit; whether the ~~member~~ person, ~~or~~ the collective or the cannabis business with which the ~~member~~ person 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 or cannabis business in any other city, county or state; and whether the ~~member~~ person, ~~or~~ the collective or the cannabis business with which the ~~member~~ person is or was associated has ever had a registration, license, permit or any other authorization required to operate a collective or cannabis business in any other city, county or state suspended or revoked, and the reasons therefore;
  
- ~~g.~~ ~~A complete list of all the duties and functions of each managing member of the collective;~~
- gh. A copy of the lease or other such proof of the collective's or cannabis business's right to possess the premises and/or location;
  
- hi. The collective's or cannabis business's operations plan, which shall be in conformance with the requirements of this Chapter and shall include:
  - i. A management plan naming the managers for the collective or cannabis business and detailing each manager's responsibilities, duties and function;
  - ii. A list of all managers responsible for receiving, logging, and responding to complaints regarding the collective or cannabis business, as required by Subsection 6.88.440 ~~KQ~~;
  - iii. A security plan which identifies the collective's or cannabis business's security personnel and provides documentation of the proper certification of that personnel by the state, as required by Subsection 6.88.420 J., and which details the



security measures for the location and premises including those requirements set forth in this Chapter;

- iv. The rules and regulations of the collective or cannabis business which shall comply with those requirements set forth in this Chapter;
- v. The hours and days of operation for the collective or cannabis business, including the hours and days of operation for any separate cultivation site;
- vi. The ~~medical marijuana~~cannabis cultivation, processing and manufacturing 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, processing and manufacturing of ~~medical marijuana~~cannabis and what measures will be taken to comply with the requirements of this Chapter;
- vii. A site plan and 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 or cannabis business;
- viii. An odor management plan detailing steps the collective or cannabis business will take to install air purification systems and air scrubbers to ensure that the odor of ~~medical marijuana~~cannabis will not emanate beyond the walls of the collective's or cannabis business's premises; and
- ix. Designation of the sole dispensing location and designation of the ~~sole~~ cultivation site or sites of the collective or cannabis business.
- jj. Identifying information for all savings accounts, checking accounts, credit and debit card processing accounts, investment accounts and trusts associated with the operation of the collective or cannabis business;
- jk. Authorization for the City Manager to:

- i. Seek other information that the City Manager deems necessary for a complete review of the registration application; and
- ii. Conduct an investigation into the truthfulness of the statements set forth in the registration application, including, but not limited to, a criminal history investigation by the Chief of Police with the California Department of Justice and any other law enforcement agencies.

- l. Written consent by ~~each owner and manager member of the person authorized to sign on behalf of and legally bind the collective~~ or cannabis business 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 6.88.330 B.;
- m. A dated statement signed by ~~an the individual member~~ person authorized to represent and legally bind the collective or cannabis business, certifying under penalty of perjury that the information provided in the registration application and any attachment thereto is true, complete and correct;
- n. Proof of payment of any applicable taxes due to the City pursuant to Chapters 4.66 and 4.76 of the Code; and
- o. Any other information reasonably required by the City Manager to show that the collective or cannabis business is in compliance with the provisions of this Chapter.

B. Consent for inspection of records and location.

1. Required consent for inspection and copying of records.
  - a. As part of the registration process the collective or cannabis business 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 or cannabis business shall be subject to the inspection and copying set forth in Subsection 6.88.330 B.1.a. at any time and without notice during the collective's or cannabis business's hours of operation and at any other time upon reasonable notice.
  - c. Nothing in this Chapter requires the disclosure of any qualified patient member's private medical record.
2. Required consent for inspection of location and premises.
- a. As part of the registration process, the collective or cannabis business 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 or cannabis business location and premises shall each be subject to the inspection set forth in Subsection 6.88.330 B.2.a. at any time and without notice during hours of operation and at any other time upon reasonable notice.
- C. Signatories to registration. ~~Each and every owner and manager of~~ The person authorized to sign on behalf of and legally bind the collective or cannabis business shall print his or her name and sign the registration application under penalty of perjury certifying that all the information contained therein, and any attachments thereto, is true, complete and correct.
- D. Investigation and determination.
1. Upon receiving a collective's or cannabis business's registration application, the City Manager shall proceed ~~by the order established by Section 6.88.320~~ to investigate the information required in Subsection 6.88.330 A. through C. and evaluate the compliance of the collective or cannabis business with the requirements of this Chapter.
  2. The City Manager shall also investigate the location and the premises for the purpose of assuring that each collective or cannabis business complies with the requirements of this Chapter, including, but not limited to Part 4, and all public health, safety, welfare and zoning laws set forth in this Code and in state and local laws.

3. The Chief of Police shall also conduct a criminal background investigation on any owner or manager of the collective and on any individual members or persons who participate in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical marijuana~~cannabis.

E. Disqualification from registration.

1. Any collective or cannabis business may be disqualified from the registration process for any of the following reasons:
  - a. The collective, cannabis business or any person applying on behalf of a collective or cannabis business, knowingly made a false statement of fact or omitted a fact required to be revealed in the registration process, or any amendment or report or other information required to be made thereunder;
  - b. The collective or cannabis business location or premises is in violation of any building, zoning, health, safety or other provision of this Code; or of any state or local law which substantially affects the public health, welfare or safety;
  - c. The collective or cannabis business violates or has violated the terms and conditions of any requirement of this Code related to the operation of a collective or cannabis business, other than solely because of its existence after the effective date of this Chapter;
  - d. The collective, cannabis business or any one of its owners or managers have owned or leased a location or premises that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the location or premises to be a nuisance within the past five years;
  - e. The collective or cannabis business was disqualified from the registration process under this Chapter on one or more of the grounds provided in this section within five years prior to the date of the current attempt to register;
  - f. The collective's or cannabis business's registration under this Chapter has become null and void within the past five years for any of the reasons set forth in Section 6.88.350;



- g. The collective's or cannabis business's registration, permit, license or any other authorization issued by the city or by any state or local agency and required to operate a medical marijuanacannabis collective, cooperative, dispensary, cannabis business or other such establishment, has been deemed null and void or has been suspended or revoked or otherwise nullified within the past five years;
- h. The collective or cannabis business 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 three hundred feet of the location;
- i. If the collective or cannabis business is a corporation, the corporation is not in good standing or authorized to do business in the state;
- j. The collective or cannabis business conducted, conducts or anticipates conducting a collective or cannabis business on a location or premises and such operation is prohibited under the terms of the lease for the location or premises or under the terms of another such document which memorializes the collective's or cannabis business's right to possess the location or premises;
- k. The collective or cannabis business has as an owner, ~~or~~ manager, or has individual members or persons participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical-marijuanacannabis~~, ~~persons~~ who:
  - i. Are on parole or probation for the possession, sale, manufacture, use, distribution or transportation of a controlled substance, excluding cannabis;
  - ii. Have been convicted of a crime of moral turpitude; or
  - iii. Have been convicted of any misdemeanor or felony within the last ten years involving the following:
    - 1. The use of violence, force, fear, fraud or deception;

2. The unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance, excluding cannabis;
  3. The use of money to engage in criminal activity; or
  4. The unlawful possession or use of a firearm.
- l. The collective's or cannabis business's operation from the location or premises results or will result in an imminent threat to the public's health, safety or welfare; or
  - m. If, based on the investigation conducted pursuant to this section or Section 6.88.360, the City Manager finds that there are grounds for disqualification of a collective or cannabis business because an owner, ~~or~~ manager, or an individual member or person participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical marijuana~~ cannabis is found in violation of Subsection E.1.k. above, and the collective or cannabis business proves conclusively to the City Manager that it has terminated its relationship with that individual so that the individual is prohibited from being involved in the collective or cannabis business as an owner or manager or individual participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical marijuana~~ cannabis on behalf of the collective or cannabis business, then in the City Manager's discretion, the collective or cannabis business may be allowed to continue the registration process, or amended registration process, as the case may be, subject to compliance with all other requirements of this Code.
2. Appeal procedure.
    - a. Notice of intended decision.
      - i. Upon determining the existence of any of the grounds for disqualification of an owner, manager, or individual member or person participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical marijuana~~ cannabis from the registration process pursuant to Section 6.88.330 E.1.m., the Chief of Police may issue to such individual, with a copy to the collective or cannabis business, a notice of intended decision to disqualify.



- ii. The notice of intended decision shall state all the grounds and reasons upon which the disqualification is based.
  - iii. The notice of intended decision shall advise that the disqualification shall become final unless the individual files a written request for hearing before the Chief of Police within the time period specified below.
  - iv. The notice of intended decision shall specify the effective date of the disqualification.
- b. Procedure for hearing before the Chief of Police.
- i. The written request for a hearing before the Chief of Police must be received by the Chief of Police within ten calendar days of the date of service of the notice of intended decision to disqualify.
  - ii. The Chief of Police shall schedule a hearing which shall be held no later than thirty calendar days after receipt of a timely request for hearing.
  - iii. The Chief of Police shall serve a notice of hearing on the individual not later than ten calendar days prior to the scheduled date of the hearing.
  - iv. At the hearing before the Chief of Police, the individual shall be given the opportunity to present witnesses and documentary evidence.
  - v. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police deems reliable, relevant and not unduly repetitious may be considered.
- c. Decision of the Chief of Police.
- i. Within twenty calendar days after the hearing, the Chief of Police shall serve a written decision sustaining, reversing or modifying his or her intended decision on the individual.

- ii. The decision by the Chief of Police after hearing shall become final.
  - iii. The written statement of decision shall contain a notice setting out Section 1.16.010 of this Code.
- F. Completed registration. After verification that ~~the all~~ required application ~~submission fees 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 or cannabis business is in compliance with all requirements of this Chapter, the City Manager shall notify the collective or cannabis business that the annual operating fee and any applicable hourly inspection and/or investigative fee(s), as set forth in Section 6.88.380, are now due and payable to the city. Within ten business days of receiving the collective's or cannabis business's payment of the annual operating fee, as set forth in Section 6.88.380, and any applicable hourly inspection or investigative fees, the City Manager shall mail a notice of a completed registration, and any subsequent updated registration, to the person authorized to accept service of process on behalf of the collective or cannabis business.
- G. Notice of disqualification. If the collective or cannabis business has not paid the fees or taxes required by this Code, has not provided all necessary information, is not in compliance with all the requirements of this Code, or has otherwise been disqualified from the registration process, the City Manager shall mail notice to the person authorized to accept service of process on behalf of the collective or cannabis business advising the collective or cannabis business that it has been disqualified from the registration process.

#### **6.88.340 Term of Registration**

Each registration shall expire one 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 or cannabis business.

#### **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 Section 6.88.330 E. regarding disqualification;



~~B. Cessation of medical marijuana cannabis cultivation at the location or on the premises that is the designated cultivation site for the collective for ninety days or longer;~~

~~BG. Relocation of the collective or cannabis business to a different location or premises without following the procedures specified in this Code or the City Manager regulations;~~

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

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

~~EF. Violation of the terms or requirements of this Chapter or Title 20 of this Code.~~

#### **6.88.360 Change in Location and Updated Registration Forms**

A. Any time a collective or cannabis business changes its dispensing or cultivation location or premises, it shall, immediately upon obtaining a zoning code verification certificate pursuant to Title 20 of this Code, or if the location or premises is outside of the City of San José, prior to beginning operations at the location or premises, apply to amend its registration with the City Manager. The collective or cannabis business shall file an amended registration form with the City Manager for review along with payment of an ~~registration~~ amendment processing fee, as set forth in Section 6.88.380. A collective or cannabis business may not begin operations at the new location or premises until it receives an amended notice of completed registration for its new location or premises.

B. Within fifteen (15) calendar days of any other change in the information provided in the registration form which is not covered by Subsection A above or Subsection C below, or any change in status of compliance with the provisions of this Chapter, including any change in the collective's or cannabis business's ownership or management ~~members, or a change in any member who participates in the actual cultivation, processing, manufacturing, transporting or dispensing of the medical marijuana/cannabis~~, the collective or cannabis business shall file updated forms containing all information that has changed with the City Manager for review along with payment of an ~~application~~ all applicable fees, as set forth in Section 6.88.380. Upon verification that all required fees have been paid, all necessary information has been provided, and that the collective or cannabis business is in compliance with all requirements of



this Chapter, the City Manager shall provide confirmation that the updated forms have been approved to the person authorized to accept service of process on behalf of the collective or cannabis business.

- C. Within fifteen (15) calendar days of any change in the information provided in the registration form regarding persons authorized to represent the collective or cannabis business and regarding the collective's or cannabis business's agent for service of process, the collective or cannabis business shall file with the City Manager written notification of such change.
- D. ~~Each and every individual owner and manager of~~ The person authorized to sign on behalf of and legally bind the collective or cannabis business shall print his or her name and sign any form required to be updated, under penalty of perjury, certifying that all information contained in the updated forms is true, complete and correct.

#### **6.88.370 Renewal of Registration**

- A. No registration issued under this Chapter may be renewed unless:
  - 1. A new registration form has been filed with the City Manager pursuant to the process set forth in Section 6.88.330 sixty (60) days prior to the expiration date of the current registration;
  - 2. An annual renewal registration fee, as set forth in Section 6.88.380, has been paid by the collective or cannabis business; and
  - 3. The collective or cannabis business and its owners and managers all meet the requirements of this Chapter for registration.
- B. If a new registration form is not filed, or the required fees are not paid prior to the expiration date of the current registration, the registration shall be deemed to have expired on the date of expiration noted on the registration.

#### **6.88.380 Fees and Charges**

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



- B. All fees associated with the registration of a collective or cannabis business shall be as set forth in the schedule of fees and charges established by resolution of the City Council, including, but not limited to the following:
1. ~~An medical marijuana collective~~ application receipt fee for the cost to the city of accepting an application for registration;
  2. ~~An medical marijuana collective~~ application processing fee for the cost to the city of processing an application for registration;
  3. ~~An hourly investigation or inspection~~ fees for any costs incurred by the city above those costs included in the application processing fee which are associated with further investigation and review of an application for registration;
  4. ~~An medical marijuana collective~~ annual operating fee for the cost to the city of operating a medical-marijuanacannabis regulatory program;
    - a. A collective or cannabis business shall have the option of paying the ~~medical-marijuana~~-operating fee in annual, semi-annual, or quarterly payments.
    - b. The selection of the payment dates shall be made prior to the date that the initial payment is due and shall remain unchanged for the duration of the year.
    - c. The initial ~~medical-marijuana~~-operating fee or selected installment thereof shall be paid prior to obtaining a notice of complete registration. Subsequent installments shall be paid on or before the fifteenth of the three, six, and nine months following the initial installment if the quarterly payment term is selected.
    - d. No portion of any ~~medical-marijuana~~-operating fee shall be refunded.
    - e. The ~~medical-marijuana~~-operating fee shall be paid on a fiscal year basis beginning July 1, 2017, and will be prorated accordingly.
  5. ~~An medical marijuana collective~~-amendment processing fee for the cost to the city of reviewing amendments to the registration form filed by the collective or cannabis business; and

6. A ~~medical marijuana collective~~ renewal registration fee for the cost to the city of processing an application to renew a collective's or cannabis business's registration.
7. A GPS tracking device fee and monthly monitoring fee for the costs associated with obtaining and monitoring a required tracking device for all vehicles used by a collective or cannabis business that engages in delivery of cannabis.
87. Any fees for inspection or investigation that are not included within the other fees associated with registration.

#### **6.88.390 Effect of Completed Registration - No Vested Right**

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

### **Part 4 Operating Regulations and Conditions**

#### **6.88.400 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 or cannabis business registered with the City of San José and, if the collective or cannabis business engages in off-site cultivation, the separate cultivation site for that collective or cannabis business.
- C. It shall be unlawful for any person or collective or cannabis business registered under this Chapter, or required to be registered under this Chapter, whether or not such person or collective or cannabis business is actually so registered, to



violate any of the provisions of this part or to violate any provision of regulations promulgated by the City Manager pursuant to Section 6.88.315.

#### **6.88.410 Compliance with the Code**

The collective's or cannabis business's premises and location shall at all times comply with all the provisions of this Code, including but not limited to Title 17, Title 20, Title 23, and Title 24. All occupancies, construction and equipment used therein, shall meet all conditions of the current state, local, building, fire and any other applicable provision of state or local law prior to the cultivating, processing, manufacturing, transporting or dispensing of ~~processing or cultivating of medical-marijuanacannabis~~ at or from the premises or location.

#### **6.88.420 Security**

- A. The premises or location shall be equipped with, and at all times be monitored by, a web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the premises or location. The system shall be fully functional prior to processing or cultivating of medical-marijuanacannabis at the premises or location. The recordings of the monitoring shall be maintained for a period of not less than thirty (30) 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 or cannabis business 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 separate fire and burglar alarm systems. Both systems shall be fully functional at all times and prior to processing or cultivating medical-marijuanacannabis at the premises or location. At a minimum, these systems shall cover the perimeter of the premises or location and shall focus on those areas where medical-marijuanacannabis is cultivated, stored, manufactured, processed, or dispensed. Both systems shall comply with all requirements of Chapter 17.12 of this Code and Title 24 of this Code.
1. The burglar alarm system shall be installed and programed to be a functionally complete burglar alarm system per the manufacturer's guidelines. The system shall be provided with secondary power and monitoring by a UL listed central station service.



2. The fire alarm system shall be an automatic fire alarm system that provides both fire department and occupant notification. Where an approved automatic sprinkler system is installed and the notification devices/appliances activate via sprinkler water flow, the sprinkler system may be used as fire detection for the alarm system. A minimum of one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal. The system shall be provided with secondary power and monitoring by a UL listed central station service.
- C. If the collective or cannabis business maintains records in a printed format pursuant to Section 6.88.500, then the premises shall contain a fire-proof safe and all records required by this Chapter shall be stored in that safe.
- D. Exterior lighting on the premises and parking area lighting for the location shall be balanced and shall not result in glare on adjoining properties, shall complement the security systems required in Subsections A and B above to ensure that all areas of the location are visible, and shall provide increased lighting at all entrances to the premises. The lighting required in this subsection shall be turned on from dusk to dawn.
- E. ~~Medical marijuana~~Cannabis shall be stored in buildings that are completely enclosed, and in a locked vault or safe, or other secured storage structure which is bolted to the floor or structure of the premises.
- F. Windows and roof hatches of the premises shall be secured from the inside with effective means so as to prevent unauthorized entry, and shall be equipped with latches or a similar mechanism 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 or cannabis business. 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 all requirements of Chapter 17.12 of this Code and Title 24 of this Code.
- H. No person shall be in possession of any firearm while on the premises or location without having first obtained a license from the appropriate state or local agency authorizing the person to be in possession of such firearm.



- I. Persons in possession of a firearm while on the premises or location must provide the City Manager and the Chief of Police, ten (10) days before bringing the firearm onto the premises or location, 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);
  3. A copy of his or her California driver's license or California identification card; and
  4. Any other information reasonably required by the Chief of Police to show that the individual is in compliance with the provisions of all laws regarding the possession and use of a firearm.
  
- J. There shall be a minimum of one security personnel on duty twenty-four (24) hours a day, seven (7) days a week at each of the collective's or cannabis business's cultivation sites. If the collective or cannabis business has a separate site for dispensing only, there shall also be a minimum of one security personnel at that location during its hours of operation. The security personnel shall provide security inside the premises, along the outside perimeter of the premises, at parking sites immediately adjacent to the premises and used by members of the collective or cannabis business, and at sidewalks adjacent to the collective's or cannabis business's location. The collective or cannabis business shall employ security personnel subject to the following requirements:
  1. All security personnel shall register and maintain valid registration status with the State of California's Department of Consumer Affairs. At no time shall any security personnel register with the state at any level that is less than that of a proprietary private security officer. Proof of application and registration for all security personnel shall be maintained by the collective or cannabis business and shall consist of copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.
  2. While on duty, all security personnel shall have a nameplate containing the security personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate shall be exhibited prominently on the clothing, at chest level, and shall be visible and easily read at all times.



The nameplate shall be a minimum of two inches high and four inches wide, with the required information printed in capital letters, at least three-fourths inches high and in a contrasting color. As an alternative to a nameplate, the security personnel's name and the word "SECURITY" may be embroidered on the security personnel's outermost garment with the required information meeting the above specifications and located at chest level.

#### **6.88.425 Identification Display Requirements**

- A. While at the collective's or cannabis business's premises or location, each owner, manager, and individual member or person engaged in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana/cannabis shall, at all times while engaged in the duties of his or her position for the collective or cannabis business, wear in plain sight, on his or her person and at chest level, a valid identification badge, issued by the Chief of Police and containing such information, including a suitable photograph, as the Chief of Police may require.
- B. While engaged in the duties of his or her position for the collective or cannabis business, but not at the collective's or cannabis business's premises or location, each owner, manager and individual member or person engaged in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana/cannabis shall at all times have in his or her possession a valid identification badge, issued by the Chief of Police and containing such information, including a suitable photograph, as the Chief of Police may require, and upon request by the Chief of Police or any other city official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law pertaining to collectives and cannabis businesses, produce such valid identification badge for inspection.
- C. No owner, manager, or individual member or person engaged in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana/cannabis shall engage in any activities on behalf of the collective or cannabis business with which he or she is registered, without first obtaining a valid identification badge.
- D. Identification badges shall expire one year after issuance.
- E. Identification badges are the property of the City of San José and shall be immediately collected by the collective or cannabis business ~~and provided to the~~



~~chief of police~~ within twenty-four (24) hours of their expiration, or within twenty-four (24) hours of the termination of the collective's or cannabis business's relationship with the owner, manager, or individual member or person participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical marijuana~~cannabis.

F. Identification badges collected by the collective or cannabis business pursuant to Subsection E above shall be provided to the Chief of Police within seventy-two (72) hours of collection, expiration, or termination of the collective's or cannabis business's relationship with the owner, manager, or individual member or person participating in the cultivation, processing, manufacturing, transporting or dispensing of cannabis.

G. Identification badges shall remain at the collective's or cannabis business's premises when not in use. Owners, managers, and individual members or persons participating in the cultivation, processing, manufacturing, transporting or dispensing of cannabis shall not take identification badges home or off-premises, except in the case of traveling off-premises on official business of the collective or cannabis business, including delivery or transport of cannabis.

#### **6.88.430 Cultivation of ~~Medical Marijuana~~Cannabis**

A. No cultivation of ~~medical marijuana~~cannabis at the premises or location shall be visible with the naked eye from any public or other private property, nor shall ~~medical marijuana~~cannabis or any product containing ~~medical marijuana~~cannabis be visible from the exterior of any premises used by the collective or cannabis business.

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

C. The extraction and refinement of chemical compounds from ~~medical marijuana~~cannabis by way of a solvent-based method utilizing compressed flammable gases or alcohol in violation of state law is prohibited. No collective or cannabis business shall possess, dispense or transport any ~~medical marijuana~~cannabis manufactured by such method. All extraction and refinement equipment used by a collective or cannabis business shall be subject to review by, and approval of, the city pursuant to Chapter 17.12 of this Code or Title 24 of this Code.

D. No collective ~~shall~~ allow more medical ~~marijuana~~cannabis or plants per member, other than the amounts permitted pursuant to state law, to be stored or provided



at the collective's or medical cannabis business's premises. All medical ~~marijuanacannabis~~ possessed by a collective or medical cannabis business must be stored on the collective's or medical cannabis business's premises.

- E. The cultivation of ~~medical-marijuanacannabis~~ outdoors is prohibited within the City of San José.
- F. Every collective or cannabis business shall maintain complete records regarding the amount of ~~medical-marijuanacannabis~~ cultivated, processed, stored, manufactured or destroyed at its cultivation site or sites. The amounts of medical cannabis and non-medical cannabis cultivated, processed, stored, manufactured or destroyed shall be identified and recorded separately.
- G. In addition to any records required to be kept pursuant to this section, every collective or cannabis business shall fully comply with all track-and-trace requirements under state law.
- GH. All water used in the cultivation of ~~medical-marijuanacannabis~~ shall be legally obtained and shall be applied in accordance with state and local laws.

#### **6.88.435 Off-Site Cultivation**

- A. No ~~medical-marijuanacannabis~~ shall be dispensed from a cultivation site, unless that site also serves as the collective's or cannabis business's sole dispensing location.
- B. To the extent allowed by law in the local jurisdiction, one of a collective's or cannabis business's cultivation sites may be located outside of the City of San José and within the State of California. A cultivation site outside of the City of San José shall not be a collective's or cannabis business's sole cultivation site. Nothing in this Chapter allows cultivation at any location, except to the extent allowed by the law of the relevant jurisdiction.
- C. Two collectives or cannabis businesses may share a single cultivation site within the City of San José provided that the ~~medical-marijuanacannabis~~ cultivated or manufactured by each collective or cannabis business is kept separate. ~~Notwithstanding Section 6.88.212, manufacturing shall not occur at a cultivation site that is shared by two collectives.~~ A shared cultivation site shall not be a collective's or cannabis business's sole dispensing location and no ~~medical-marijuanacannabis~~ shall be dispensed from a shared cultivation site.



- D. A cultivation site that does not serve as the collective's or cannabis business's sole dispensing location shall not be open to the public.
- E. ~~The collective shall maintain complete records regarding the amount of medical marijuana cultivated, processed, stored, manufactured or destroyed at its cultivation site.~~ Every collective or cannabis business shall maintain complete records regarding the amount of cannabis cultivated, processed, stored, manufactured or destroyed at its cultivation site or sites. The amounts of medical cannabis and non-medical cannabis cultivated, processed, stored, manufactured or destroyed shall be identified and recorded separately.
- F. The collective or cannabis business shall maintain complete records regarding the transporting of ~~medical marijuana~~cannabis from the collective's or cannabis business's off-site cultivation site to the collective's or cannabis business's dispensing location, or to the dispensing location or off-site cultivation site of another collective or cannabis business registered with the City of San José or licensed by the State. Such records shall include the date and time the ~~medical marijuana~~cannabis was transported, the amount of ~~medical marijuana~~cannabis transported, whether the cannabis was medical or non-mendical, whether the ~~medical marijuana~~cannabis was in flower, concentrate or edible form, and the strain of ~~medical marijuana~~cannabis transported.
- G. All transporting of ~~medical marijuana~~cannabis from a collective's or cannabis business's cultivation site to its dispensing location, or between two registered or licensed collectives or or cannabis businesses, shall be conducted between the hours of 6:00 a.m. and midnight.
- H. All water used in the cultivation of ~~medical marijuana~~cannabis shall be legally obtained and shall be applied in accordance with state and local laws.
- I. The City Manager shall promulgate regulations pursuant to Section 6.88.315 to ensure that collectives or cannabis businesses control, record, and track their ~~medical marijuana~~cannabis throughout the cultivation, processing, manufacturing, transporting and dispensing processes in accordance with state law, ~~and any guidelines adopted by the California Attorney General.~~

#### **6.88.440 Collective or Cannabis Business Operations**

- A. No dispensing location for the collective or cannabis business shall be open to the public between the hours of 9:00 p.m. and 9:00 a.m. on any given day.
- ~~B. No collective shall operate for profit.~~



- BC. ~~Except as provided in Section 6.88.465, only medical marijuana that was cultivated, processed, and manufactured by the collective at the collective's premises or location, including any separate cultivation site, in strict accordance with state law and this chapter, may be stored and dispensed from said premises and/or location. All medical marijuana dispensed by a collective must comply with all other provisions of this chapter and all regulations promulgated by the city manager pursuant to Section 6.88.315. All cannabis cultivated, processed, manufactured, obtained, purchased, or distributed by the collective or cannabis business must be stored and dispensed in strict accordance with state law and this Chapter. All cannabis dispensed by a collective or cannabis business must comply with all other provisions of this Chapter, all regulations promulgated by the City Manager pursuant to Section 6.88.315, and state law.~~
- C. ~~D.~~—In-kind contributions, monetary contributions and property contributions provided by members towards ~~the a~~ 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. On the fifteenth day of each month, the collective shall provide a detailed accounting of overhead expenses to its membership. Contributions for overhead expenses shall be made through direct billing or through in-kind contribution. Monetary contributions shall be made by cash, personal check, cashier's check or credit card.
- D. All sales and transfers of cannabis by a medical or non-medical cannabis business shall be fully documented, in writing, at the time of the sale or transfer.
- E. ~~On the fifteenth day of each month, the theEach collective or cannabis business 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. account for all mMonetary contributions or payments. Monetary contributions or payments shall be made by cash, personal check, cashier's check or credit card. All accountings, billings, and contributions (whether in-kind, monetary or property) shall be fully documented, in writing and in accordance with Part 5 of this Chapter, and shall be submitted to the director of finance on a quarterly basis.~~
- F. No persons under the age of twenty-one (21) shall be allowed at the location. The collective or cannabis business shall verify the age of every person entering the premises with an electronic age verification device.



- G. ~~and n~~ No medical ~~marijuana~~cannabis transfers shall be made by ~~athe~~ collective to a person under the age of twenty-one (21).
- H. ~~G.~~ For a collective, n No medical ~~marijuana~~cannabis shall be provided, sold or transferred to any persons other than the individual collective members who participate, either directly or through a primary caregiver, in the collective cultivation of medical ~~marijuana~~cannabis at or upon the premises and/or location of that collective.
- I. For a medical cannabis business, no medical cannabis shall be provided, sold, or transferred to any person who is not a qualified medical patient or primary caregiver, and who is not age twenty-one (21) or older.
- J. For a non-medical cannabis business, no non-medical cannabis shall be provided, sold, or transferred to any person who is not age twenty-one (21) or older.
- K. Prior to transferring medical or non-medical cannabis to any person, an electronic age verification device shall be used to determine the age of the person attempting to obtain cannabis. The electronic age verification device may be mobile or fixed, and must be able to retain a log of all scans that includes the following information: date, time, and age. This log shall be kept for a minimum of 180 days.
- LH. Notwithstanding any other provision of state law, No medical ~~marijuana~~cannabis 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.
- M. No collective or cannabis business 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.
- NJ. ~~Medical marijuana~~Cannabis may not be inhaled, smoked, eaten, ingested, vaped, or otherwise used or consumed at the premises and/or location, in the parking areas of the premises and/or location, within three hundred feet of the premises and/or location on the public right-of-way, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79.
- OK. Each collective or cannabis business shall operate and maintain an on-site twenty-four-hour landline telephone number at the premises for receiving



complaints and other inquiries regarding the collective or cannabis business. An individual member or person engaged in the management of the collective or cannabis business shall be responsible for receiving, logging, and responding to these complaints and other inquiries on a daily basis. The log shall be maintained in the records of the collective or cannabis business and in accordance with Part 5 of this Chapter.

PL. None of the following items shall be allowed on the premises or at the location or in the parking area for the premises or location:

1. Any controlled substances, other than medical-marijuanacannabis as defined herein;
2. Any paraphernalia used for the ingestion of any type of controlled substance, except for medical-marijuanacannabis;
3. Alcoholic beverages; or
4. Firearms, except in strict compliance with federal, state and local laws and with Section 6.88.420.I.

QM. A sign shall be posted in a conspicuous location inside the premises advising, in English, Spanish and Vietnamese, the following: "Both the sale of marijuanacannabis and the diversion of marijuanacannabis ~~for non-medical purpose~~ to persons under age twenty-one (21) are violations of state law. The use of marijuanacannabis may impair a person's ability to operate a motor vehicle or heavy machinery. Loitering at the location of a medical marijuanacannabis collective or cannabis business for an illegal purpose is prohibited by California Penal Code Section 647(h). This collective or cannabis business is registered in accordance with the laws of the City of San José."

R. All activities conducted at a collective or cannabis business shall at all times fully comport with the provisions of California Health & Safety Code Sections 11362.5 et seq. through Section 11362.83 the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Cannabis Regulation and Safety Act, the Adult Use of Marijuana Act, and any other applicable state laws or regulations, as the same may be amended from time to time; provided, however, that if there is a conflict between the provisions of this Code and and the provisions of state law, the most restrictive law allowed to apply shall govern and control.

~~All owners, managers and individual members participating in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana shall, at all~~



~~times while engaged in said activities on behalf of the collective, wear or possess valid identification badges provided by the city pursuant to Section 6.88.425.~~

#### **6.88.445 Deliveries of Medical Marijuana Cannabis**

- A. Except as provided in Section 6.88.435 and Section 6.88.465 and Subsection C below, collectives or cannabis businesses are prohibited from delivering ~~medical marijuanacannabis~~ to any person or location within the city.
- B. Except as provided in Section 6.88.435 and Section 6.88.465 or in Subsection C below, collectives or cannabis businesses are prohibited from transporting medical ~~marijuanacannabis~~ from its premises or location.
- C. Collectives or cannabis businesses that are registered pursuant to this Chapter may apply for registration to deliver medical cannabis, non-medical marijuanacannabis, or both within the city following the implementation of an application process and promulgation of regulations governing delivery of medical and non-medical marijuanacannabis. The City Manager shall promulgate regulations pursuant to Section 6.88.315 to establish an application process and procedures to allow collectives and cannabis businesses registered pursuant to this Chapter to deliver ~~medical marijuanacannabis~~ within the city. The regulations shall also include security procedures, vehicle requirements, ~~medical marijuanacannabis~~ storage requirements, age verification requirements, and hours of the day during which deliveries may be made. The fees associated with the registration process for delivery shall be as set forth in the schedule of fees and charges established by resolution of the City Council.
- ~~D. No person shall deliver medical marijuana to any person or location within the city, regardless of the origin of the medical marijuana, except for medical marijuana transfers made to a qualified patient by the qualified patient's primary caregiver.~~

#### **6.88.446 Mobile Dispensaries Prohibited**

- A. Only a collective or cannabis business registered pursuant to this Chapter may dispense ~~medical marijuanacannabis~~ in the City of San José.
- B. Except as provided in Subsection 6.88.445.C, a registered collective or cannabis business may only dispense from its sole dispensing location.

#### **6.88.450 Owner, Manager and Membership Requirements**

- A. No owner, manager, or any member or person who will be participating in the ~~actual~~ cultivation, processing, manufacturing, transporting or dispensing of ~~the medical marijuana~~ cannabis shall:
1. Be on parole or probation for the possession, sale, distribution or transportation of a controlled substance other than cannabis, or
  2. Have been convicted of a crime of moral turpitude, or convicted within the last ten years of any misdemeanor or felony involving any one of the following:
    - a. The use of violence, force, fear, fraud or deception;
    - b. The unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance;
    - c. The use of money to engage in criminal activity; or
    - d. The unlawful possession or use of a firearm.
  3. Be under the age of twenty-one.
- B. Collective Mmembers shall sign an agreement with the collective that states that members shall not distribute medical marijuana cannabis to nonmembers and that members shall not use medical marijuana cannabis for other than medicinal purposes.
- C. ~~The A~~ collective shall terminate the membership of any member violating any provisions of this Chapter. The collective shall maintain a log of members terminated for violating the provisions of this Chapter. The log shall include any information required by the Chief of Police, including but not limited to the member's name, date and time of the incident(s), section(s) of this Chapter violated, and the date the membership was terminated.
- D. A cannabis business shall ban, prohibit, or otherwise refuse entry to any person violating the provisions of this Chapter. The cannabis business shall maintain a log of persons banned, prohibited, or otherwise refused entry for violating the provisions of this Chapter. The log shall include any information required by the Chief of Police, including but not limited to the member's name (if available), brief description (if name is not available), date and time of the incident(s), section(s)



of this Chapter violated, and the date the person was banned, prohibited, or otherwise refused entry.

DE. Each collective or cannabis business shall designate an on-site representative who shall be present during all hours of the collective's or cannabis business's operation. The on-site designated representative shall meet the following minimum requirements:

1. Be a manager for the collective or cannabis business;
2. Comply with all laws and ordinances;
3. Carry on his or her person, at all times when he or she is functioning as the on-site representative, a valid government issued photo identification card or license;
4. Upon request by the Chief of Police, ~~or~~ any other city official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law regarding collectives or cannabis businesses, produce such photo identification card or license for inspection;
5. Be available at the telephone number identified in the registration as the on-site landline telephone number for the premises;
6. Cooperate fully with the Chief of Police, ~~and~~ any other city official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law regarding collectives or cannabis businesses with any inquiry, inspection, request, or investigation necessary or appropriate to implement the requirements of this Code or to enforce any other state or local law;
7. Immediately report to the Chief of Police any violations of state or local law or conditions which the on-site designated representative knows, or reasonably should know, exist on the premises and at the location and could result or have resulted in harm or an imminent threat of harm to the health, safety or general welfare of any person or member of the public; and
8. Immediately report to the Chief of Police, the county health department, and, if a collective, to the members of the collective, any information indicating that any person member experienced an adverse reaction to, or

other difficulty related to, any ~~medical-marijuanacannabis~~ procured from the collective or cannabis business.

~~EF.~~ No collective owner, manager, or individual member or person of the collective participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical-marijuanacannabis~~ shall fail to make a report to the Chief of Police, immediately upon discovery of any conduct which raises a reasonable suspicion that a misdemeanor or felony crime under the laws of the state has been committed on the collective's premises or location.

~~FG.~~ No collective owner, manager, or individual member or person of the collective participating in the cultivation, processing, manufacturing, transporting or dispensing of ~~medical-marijuanacannabis~~ shall fail to report any conduct which raises a reasonable suspicion of a violation of this Chapter to the Chief of Police within twenty-four hours of its discovery.

#### **6.88.460 Dispensing and Packaging of Medical-MarijuanaCannabis**

A. All ~~medical-marijuanacannabis~~ shall be packaged in ~~an-a tamper-evident, opaque-child-resistant container-package in accordance with Section 26120 of the Business and Professions Code and any other applicable state law or regulation, which shall contain a label that clearly states, the following:~~

- ~~1. The name, address and on-site landline telephone number of the collective;~~
- ~~2. The container contains medical-marijuanacannabis; and~~
- ~~3. The amount of medical-marijuanacannabis in the container.~~

B. ~~In addition, Labels on medical marijuanacannabis shall contain a label that clearly states, the following also provide the following information:~~

- ~~1. The name, address and on-site landline telephone number of the collective;~~
- ~~2. The container contains medical cannabis;~~
- ~~3. The amount of medical cannabis in the container;~~
- ~~4. The complete legal name of the qualified patient who will be using the medical marijuanacannabis;~~



52. If the person obtaining the medical marijuanacannabis is a primary caregiver obtaining medical marijuanacannabis 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;
63. The name of the attending physician recommending the use of medical marijuanacannabis for the qualified patient; and
74. The date the medical marijuanacannabis was provided.

~~C. All medical marijuana shall also be accompanied by a leaflet or insert that clearly states, in English, Spanish and Vietnamese, the following:~~

- ~~1. A list of the chemicals and/or substances that were used during the cultivation, processing and manufacturing of the medical marijuana;~~
  - ~~2. Health and safety warnings regarding proper use and storage of the particular medical marijuana product, including, but not limited to potential side effects, suggested dosage, warnings regarding operation of motor vehicles and heavy machinery, and direction that the medical marijuana be stored in a clean and dry place, and be kept out of the reach of children; and~~
  - ~~3. A statement that the City of San José neither warrants nor guarantees the quality or safety of the medical marijuana contained therein.~~
- ~~D. All edible medical marijuana products shall be placed in opaque packaging, without photos or images of food on the label. Packaging that makes the edible product attractive to children or imitates candy is prohibited. Edible medical marijuana products shall not imitate commercially produced goods marketed to children. The edible product must have a label or be accompanied by a leaflet or insert that clearly states, in English, Spanish and Vietnamese, the source of the food production in addition to all of the information required by Subsections 6.88.460.A, B, and C.~~
- 6.88.465 Collective to Collective Transfers Transfers Between Collectives and Cannabis Businesses**

A. Notwithstanding Sections 6.88.430.D and ~~6.88.440.C~~ of this Chapter, a collective or cannabis business in possession of a valid notice of completed registration may transfer medical marijuanacannabis to another collective or cannabis business located within the State of California provided said collective or cannabis business is registered, licensed, or otherwise lawfully operating pursuant to state law and the law in the relevant local jurisdiction. A collective or cannabis business may also receive transfers of cannabis from another



collective or cannabis business located within the State of California provided said collective or cannabis business is registered, licensed, or otherwise lawfully operating pursuant to state law and the law in the relevant local jurisdiction.

- B. ~~Collective to collective~~ Transfers made pursuant to this section shall be subject to all restrictions and requirements regarding the transportation of ~~medical marijuanacannabis~~ into the City of San José, must comply with all other provisions of this Chapter and state law, and must comply with all regulations promulgated by the City Manager pursuant to Section 6.88.315.
- C. ~~Collective to collective~~ Transfers made pursuant to this section shall be subject to all taxes imposed by state and local law.

#### **6.88.470 Public Safety and Safety of Location**

- A. Each collective or cannabis business shall operate in a manner such that the cultivation of ~~medical marijuanacannabis~~ does not adversely affect the health or safety of nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts.
- B. Each collective or cannabis business shall utilize appropriate air purification systems and air scrubbers wherever ~~medical marijuanacannabis~~ is cultivated, processed, manufactured or dispensed so as to prevent the odor of ~~medical marijuanacannabis~~ from emanating beyond the walls of the ~~collective's~~ premises.
- C. The cultivation of ~~medical marijuanacannabis~~ shall not create hazards due to the use or storage of materials, processes, products or wastes.
- D. All electrical equipment used in the cultivation of ~~medical marijuanacannabis~~ 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 marijuanacannabis~~ is prohibited.
- E. Each and every collective or cannabis business shall ensure that it has safe growing facilities, chemicals and fertilizers are properly stored, carbon dioxide levels are tested (if carbon dioxide is added to the air within the collective's or cannabis business's premisescultivation areas), areas are properly vented, and mold is tested and controlled.

#### **6.88.480 Property Maintenance**



The owner and/or manager of a collective or cannabis business shall keep the premises and location in a clean and safe condition by, at a minimum, performing all of the following tasks:

- A. Properly remove and store all trash, litter, rubbish and debris on the premises and location at the end of each business day; and
- B. Properly dispose of all trash, litter, rubbish and debris from the premises and location; and
- C. Remove graffiti placed upon the premises and location within forty-eight (48) hours of its occurrence; and
- D. Keep driveways, sidewalks, parkstrips, fire access roads and streets on or adjacent to the premises and location clear and clean; and
- E. Provide lighting on the premises and location to ensure the safety of the public and the employees of the collective or cannabis business; and
- F. Otherwise operate in a manner that does not create or result in any significant adverse impacts upon its premises and location or within three hundred feet of the premises and location.

**6.88.490 Performance Standards**

- A. The owner, manager and/or operator of a collective or cannabis business shall not conduct the operations of the collective or cannabis business in a manner that creates or results in a public nuisance on the premises and location or within three hundred feet of the premises and location, including but not limited to:
  - 1. Disturbance of the peace;
  - 2. Illegal drug activity;
  - 3. Public drunkenness;
  - 4. Drinking in public;
  - 5. Gambling;
  - 6. Prostitution;

7. Sale of stolen goods;
  8. Public urination;
  9. Theft;
  10. Assaults;
  11. Batteries; or
  12. Acts of vandalism.
- B. The collective or cannabis business shall maintain a log of any public nuisance activity on the premises and location or within three hundred feet of the premises and location. The log shall include any information required by the Chief of Police, including but not limited to the date and time of the occurrence; the type of activity; the circumstances surrounding the activity; the identity of any persons involved in the activity, if known; the corrective action taken by the collective or cannabis business; and the police case number, if applicable.

## Part 5 Records

### 6.88.500 Maintenance of Records

- A. Each collective or cannabis business 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 owner, landlord and/or lessee of the location;
  2. For collectives or medical cannabis businesses, Tthe following information concerning each member of the collective, or each patient or primary caregiver served by the medical cannabis business:
    - a. Name and a confidential member, patient, or primary caregiver number unique to that individual which is used solely for the log identified in Subsection 7. below;
    - b. A copy of a valid government issued photo identification card or license;



- c. A copy of the member's, patient's, or primary caregiver's identification card or the physician's recommendation for the member, patient, or primary caregiver;
  - d. The date the member, patient, or primary caregiver joined the collective or started being served by the medical cannabis business; ~~and~~
  - e. For a collective, Tthe nature of the member's participation in the collective cultivation of medical ~~marijuana~~cannabis;
  3. — f. 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~~ person as his or her primary caregiver;
  4. — g. The name, business address and telephone number of each attending physician who provided a physician's recommendation for any member of the collective, patient, or primary caregiver;
  5. — h. The records of all qualified patients with a valid identification card and primary caregivers with a valid identification card may be maintained by the collective or medical cannabis business using only the identification card number issued by the state pursuant to California Health and Safety Code Section 11362.7 et seq., in lieu of the information required by Subsections 6.88.500 A.2.a. through eg., 6.88.500 A.3., and 6.88.500 A.4.; and
  - i. An up-to-date log documenting each and every transfer of medical cannabis reflecting the amount provided, the form or product category in which the medical cannabis was provided, the date provided, the time provided and the member, patient, or primary caregiver number to whom it was provided.;
6. Up-to-date information for all savings accounts, checking accounts, investment accounts, credit or debit card processing accounts and trusts associated with the operation of the collective or cannabis business;
  7. All receipts of the collective or cannabis business, including but not limited to all sales, contributions and all expenditures incurred by the collective or cannabis business; ~~for the cultivation of medical marijuana~~cannabis;

8. An up-to-date log documenting each and every sale or transfer of medical marijuana/cannabis reflecting the amount provided/sold or transferred, the form or product category in which the medical marijuana/cannabis was provided/sold or transferred, and the date provided~~and~~, the time provided~~and~~ the member number to whom it was provided;
  9. An up-to-date log documenting the date, time, nature, and response by the collective or cannabis business to all complaints received by the collective or cannabis business pursuant to Subsection 6.88.440 OK. of this Chapter;
  10. A copy of the annual audit reports required pursuant to Section 6.88.600 of this Chapter; and
  11. Proof of completed registration with the City Manager in conformance with this Chapter.
- B. All records required by this section shall be maintained by the collective or cannabis business for a period of five years and shall be made available by the collective or cannabis business to the City Manager, ~~and~~ any city official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law regarding collectives or cannabis businesses, in accordance with Sections 6.88.330 B. and 6.88.700 of this Chapter.
- C. At the request of the City Manager, any city official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law regarding collectives or cannabis businesses, 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 or cannabis business may maintain, all records required by this section shall be stored by the collective or cannabis business at the location in a printed format in a fire-proof safe or in an unalterable electronic format with a documented system for regular information backup that is satisfactory to the City Manager.

## Part 6 Audits



### 6.88.600 Audits

No later than September 30 of every year, each collective or cannabis business 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, or any state official charged with enforcing state law regarding collectives or cannabis businesses, may enter the location at any time during the hours of operation without notice and inspect the location of any collective or cannabis business as well as the recordings and records maintained pursuant to this Chapter in accordance with Section 6.88.330 B.
- 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 cannabis business), or any other person having any responsibility over the operation of the collective or cannabis business to refuse to allow, impede, obstruct or interfere with an inspection, or the review or copying of records and closed-circuit monitoring authorized and required under this Chapter, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.
- C. The Chief of Police, ~~and~~ any other city official charged with enforcing the provisions of this ~~chapter~~ Code, or any state official charged with enforcing state law regarding collectives or cannabis businesses, may enter the location at any time during the hours of operation and without notice to obtain samples of ~~the medical marijuana~~ cannabis to test for law enforcement and/or public safety purposes. Any samples obtained by the city shall be logged, recorded, and maintained in accordance with departmental standards. At all other times, the Chief of Police, ~~and~~ any other city official charged with enforcing the provisions



of this ~~chapter Code~~, or any state official charged with enforcing state law regarding collectives or cannabis businesses, may enter the location to obtain samples of ~~medical marijuana~~cannabis upon reasonable notice.

## Part 8 Application of Chapter; Other Legal Duties

### 6.88.800 Existing ~~Medical Marijuana~~Cannabis Operations

- A. Any existing ~~medical marijuana~~cannabis collective, dispensary, operator, establishment, business or provider that does not hold a Notice of Completed Registration from the City of San José at the time of the effective date of this Chapter is not in compliance with the San José Municipal Code, and shall immediately cease operations. This Chapter does not create any defense to civil or criminal enforcement of the provisions of the San José Municipal Code until such time, if any, that all requirements of this Chapter are met.
- B. No ~~medical marijuana~~cannabis collective, dispensary, operator, establishment, business or provider is a legally established use under the provisions of this Code whether in existence before or after the effective date of this Chapter.

### 6.88.810 Compliance with this Chapter and State Law

- A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of ~~marijuana~~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 establish compliance with all other applicable state and local laws.
- B. It is unlawful for any person to cause, permit or engage in any activity related to ~~medical marijuana~~cannabis, and a person may not establish an affirmative defense to civil and criminal enforcement of the provisions of the San José Municipal Code unless in strict compliance with ~~Health and Safety Code Sections 11362.5 et seq. and pursuant to~~ any and all ~~other~~ state and local laws.
- CB.** It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the city under this Chapter, or to any other federal, state or local government agency having jurisdiction over any of the activities of collectives or cannabis businesses.



DC. It shall be the responsibility of the owners, managers, and the members or persons working at or for the collective or cannabis business to ensure that the collective or cannabis business is, at all times, operating in a manner compliant with all applicable state and local laws. Nothing in this Chapter shall be construed as authorizing any actions which violate state law with regard to the cultivation, transportation, manufacture, provision, and sale of marijuanacannabis.

#### **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 or cannabis business'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 or cannabis business and persons related to, or associated with, the collective or cannabis business. Additionally, when the City Manager determines that there is an imminent threat to public health, safety, or welfare, the collective's or cannabis business's registration shall immediately become null and void.
- B. Notwithstanding an initial verification of compliance by the collective or cannabis business with the provisions of this Chapter, any collective or cannabis business later found to be in violation of any of the requirements of this Chapter at any time is subject to the enforcement provisions provided in this section.

#### **6.88.830 Release of Liability and Hold Harmless**

The collective or cannabis business and its owners, managers, members, agents, invitees, contractors and employees 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 cannabis business and its owners, managers, members, agents, invitees, contractors and employees ~~or its members~~ for violation of federal or state laws and from any and all legal liability related to or arising from the registration of the collective or cannabis business or the enforcement of the provisions of this Chapter, in a form satisfactory to the city's risk manager. In addition, the collective or cannabis business and its owners, managers, members, agents, invitees, contractors and employees ~~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 or cannabis business's owners, managers, members, agents, invitees, contractors and employees members arising out of the possession, cultivation, manufacturing or dispensing and/or on- or off-site use of medical-marijuanacannabis provided at the location or premises, in a form satisfactory to the city's risk manager.

#### **6.88.840 Registration Nontransferable**

A. 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.

B. Notwithstanding Subsection A above and Subsection 6.88.350 D, a collective or cannabis business wishing to transfer ownership or management of the collective or cannabis business may do so provided that:

1. The collective or cannabis business shall submit all required forms, pay any associated fees, and follow any procedures specified in the City Manager Regulations.

4.2. The collective or cannabis business receives a new or amended notice of completed registration confirming the change in ownership or management.

### **Part 9**

#### **Personal Use Cultivation Requirements and Regulations**

#### **6.88.900 Requirements and Regulations**

A. Nothing in this Chapter shall be deemed to make unlawful personal use cultivation of medical marijuana or non-medical cannabis at the private residence of either a qualified patient, ~~or the qualified patient's primary caregiver for use by the qualified patient,~~ or a person age twenty-one (21) or older, if such cultivation is conducted pursuant to state law. Health and Safety Code Sections 11362.765 through 11362.775.

B. Any medical cannabis personal use cultivation must be conducted in strict compliance with the following provisions:



1. A qualified patient and primary caregiver shall be allowed to cultivate medical ~~marijuana~~cannabis within the private residence of either the qualified patient or the qualified patient's primary caregiver for the qualified patient's personal use;
2. The building being used for the cultivation shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities;
3. Medical ~~marijuana~~Cannabis cultivation shall remain at all times incidental to the residential use of the property;
4. The qualified patient or the primary caregiver shall reside in the residence where the medical ~~marijuana~~cannabis cultivation occurs;
5. The medical ~~marijuana~~cannabis cultivation area shall be in compliance with all current building and fire codes, including without limitation, Chapter 17.12 of this Code, Title 24 of this Code, and the current adopted edition of the California Building Code Section 1203.4 - Natural Ventilation; or Section 402.3 - Mechanical Ventilation;
6. The cultivation shall not adversely affect public health or safety through the creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or be hazardous because of the use or storage of materials, processes, products or wastes, or for any other reason;
7. All electrical equipment used in the cultivation of medical ~~marijuana~~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~~cannabis is prohibited;
8. From a public right-of-way, there shall be no exterior evidence of medical ~~marijuana~~cannabis cultivation occurring at the property;
9. Medical ~~marijuana~~Cannabis cultivated for personal use as provided herein shall not be distributed to any person, collective or cannabis business in violation of state law; ~~beyond those identified in Section 6.88.262 B. or to any collective;~~



- ~~40.10.~~ ~~Only medical marijuanacannabis transfers, as defined in Section 6.88.242, may be transacted between qualified patients and their primary caregivers engaging in personal use cult~~All water used in the cultivation of medical marijuanacannabis shall be legally obtained and shall be applied in accordance with state and local laws;
- ~~4211.~~ Notwithstanding the number of qualified patients or primary caregivers residing at the private residence, medical marijuanacannabis cultivation shall be limited to a single space within a single room that is not a garage. The single space in the single room shall be no larger than fifty square feet and all medical marijuanacannabis plants shall be arranged in a single layer;
- ~~4312.~~ Medical marijuanacannabis cultivated for personal use by a qualified patient shall be exclusively for his or her personal medical use and shall not be provided, donated, sold, or distributed to any other person or entity;
- ~~4413.~~ Medical marijuanacannabis cultivated for personal use by a primary caregiver shall be exclusively for the personal medical use of that primary caregiver's designated qualified patients and shall not be provided, donated, sold, or distributed to any other person or entity;
- ~~4514.~~ The area used for any medical marijuanacannabis cultivation, processing, manufacturing or storage shall be secured in a manner so as to prevent access by anyone other than a qualified patient or primary caregiver; and
- ~~4615.~~ The extraction or refinement of chemical compounds from medical marijuanacannabis for personal use by way of a solvent-based extraction method utilizing compressed flammable gases or alcohol is prohibited.

C. Any non-medical cannabis personal use cultivation must be conducted in strict compliance with the following provisions:

1. Not more than six (6) living marijuanacannabis plants may be planted, cultivated, harvested, dried, or processed inside a private residence, or inside an accessory building, as defined in Title 20 of this Code, to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use. These activities shall only be engaged in by a person over the age of twenty one (21). ~~inside a private residence, or inside an accessory building, as defined in Title 20 of this Code, to a private residence that is fully enclosed and secure and located upon the~~



grounds of the private residence, as an incidental use to the primary private residential use, provided that marijuana Cannabis in excess of 28.5 grams produced by plants kept for indoor personal cultivation must be stored in a locked space on the grounds of the private residence not visible from the public right-of-way;

2. Any personal cultivation shall comply with all requirements of this Code, including without limitation, Chapter 17.12 of this Code, Title 24 of this Code, and the current adopted edition of the California Building Code Section 1203.4 - Natural Ventilation, or Section 402.3 - Mechanical Ventilation;
3. The cultivation shall not adversely affect public health or safety through the creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or be hazardous because of the use or storage of materials, processes, products or wastes, or for any other reason;
4. All electrical equipment used in the cultivation of 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 cannabis is prohibited;
5. All water used in the cultivation of cannabis shall be legally obtained and shall be applied in accordance with state and local laws; and
6. The extraction or refinement of chemical compounds from cannabis for personal use by way of a solvent-based extraction method utilizing compressed flammable gases or alcohol is prohibited.

RD:TLC:LCP  
11/3/2017

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk