

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
PART 2, PART 3, PART 4, PART 5, PART 6, AND PART 8
TO CHAPTER 6.88 OF TITLE 6 OF THE SAN JOSE
MUNICIPAL CODE TO MODIFY THE ANNUAL EXTERNAL
AUDIT REQUIREMENT, ADD DEFINITIONS, APPROVE
OTHER CHANGES TO UPDATE THE SAN JOSÉ
MUNICIPAL CODE TO ALIGN WITH STATE
REGULATIONS, AND MAKE OTHER TECHNICAL, NON-
SUBSTANTIVE OR FORMATTING CHANGES**

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"), the provisions of this Ordinance do not constitute a project under File No. PP17-008; and

WHEREAS, the City Council is the decision-making body for this proposed Ordinance; and

WHEREAS, the City Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this proposed Ordinance;

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

SECTION 1. A new section is added to Part 2 of Chapter 6.88 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.88.212.10 Delivery-Only Site

"Delivery-Only Site" means the property, Location, or Premises from which only deliveries of cannabis are initiated.

SECTION 2. A new section is added to Part 2 of Chapter 6.88 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.88.236 Medical Cannabis Business

"Medical Cannabis Business" means a business entity which includes medical cannabis in one or more of its cannabis activities.

SECTION 3. Sections 6.88.300, 6.88.310, 6.88.315, 6.88.330, and 6.88.360 of Part 3 of Chapter 6.88 of Title 6 of the San José Municipal Code is amended to read as follows:

6.88.300 Registration Required

- A. No Cannabis Business shall operate in the City of San José unless and until it has first filed a registration application 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 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. It shall be unlawful for a Person to maintain, manage, operate, conduct, control or own a Cannabis Business unless the 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 to maintain, manage, operate, conduct, control or own a Cannabis Business unless the Cannabis Business is maintained and operated in strict compliance with state law, including without limitation, 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, dispense, or deliver Medical and Non-medical Cannabis.
- F. Notwithstanding Section 6.88.300 E., up to ten (10) new cannabis businesses may be registered to equity business owners and only to conduct transfers of cannabis to customers (i.e., not eligible to engage in cultivation, ~~processing, manufacturing, distribution or testing~~). Up to five of these ten (10) cannabis businesses may be dispensaries and any number of the ten (10) may be delivery only businesses.
- G. To be eligible to register, a Cannabis Business must be able to provide a cannabis 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 of this Code.

6.88.310 Number of Locations

- A. A Cannabis Business shall have a Notice of Completed Registration from the City for each Cannabis Activity and for each Location, and shall also have any applicable state license for each Cannabis Activity at each Location.
- B. A Cannabis Business shall comply with the provisions of this Chapter and of Title 20 of this Code at each of its Locations.
- C. All registered locations must remain registered to, and controlled by, the registered cannabis business listed on its Registration.
- D. A Cannabis Business's number of locations shall conform to the regulations and limitations set forth in Table 6.88-310.

Table 6.88.310
Number of Cannabis Business Locations

	<u>Per B</u>business registered on or before December 18, 2015, and continuously registered since that date	<u>Per B</u>business registered after December 18, 2015	Notes
Cultivation	Up to 2	None	
Processing	Up to 2	Up to 2	
Manufacturing	Up to 2	Up to 2	
Distributing	Up to 2	Up to 2	
Retail Storefront or Dispensary	Up to 2	Up to 1	<u>1, 2</u>
Delivery	Up to 1	Up to 1	<u>1, 2, 3, 4, 5</u>
Testing	Up to 2	Up to 2	
MAXIMUM LOCATIONS	3	3	<u>46</u>

Notes:

1. Businesses registered on or before December 18, 2015, and continuously registered since that date: No more than a total of thirty-two (32) Retail Storefronts or Dispensaries in the City.
2. Businesses registered after December 18, 2015: No more than a total of five (5) Retail Storefronts or Dispensaries in the City.
13. Cannabis shall only be delivered from a location in an Industrial Zoning district.
24. Businesses registered on or before December 18, 2015 and continuously registered since that date: No Medical Cannabis Transfers or Non-medical Cannabis Transfers from more than two (2) locations, including from any delivery location(s).
35. Businesses registered after December 18, 2015: No Medical Cannabis Transfers or Non-medical Cannabis Transfers, via delivery or otherwise, from more than 1 location.
46. No cannabis business shall operate at more than three (3) locations in any combination of cannabis activities.

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 and Non-medical Cannabis, including, but not limited, to the following subjects:
1. Registration, review, investigation, priority order and disqualification process for Cannabis Businesses and forms necessary thereto.
 2. Internal or external security requirements for the operation of Cannabis Businesses.
 3. Storage or display of cannabis.

4. Criteria necessary to promote the safe cultivation, manufacture, distribution and testing of 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. Unless a later date is specified in a regulation, a regulation shall become effective upon date of publication.

D. The City Manager shall promulgate regulations to ensure that a Cannabis Business controls, records, and tracks their cannabis throughout the cultivation, processing, manufacturing, distributing, transporting, transferring, dispensing, delivering, testing, and disposing processes in accordance with state law.

6.88.330 Registration Process

- A. Registration review. 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 Collective or Cannabis Business desiring to obtain a Notice of Completed Registration shall file a registration application with the City Manager that shall contain such accurate, complete and truthful information as is required pursuant to the application process set forth in the regulations promulgated by the City Manager pursuant to Section 6.88.315.
- 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 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 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 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's Private Medical Record.

2. Required consent for inspection of Location and Premises.

- a. As part of the registration process, the 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 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. The person or persons authorized to sign on behalf of and legally bind the 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 Cannabis Business's registration application, the City Manager shall proceed to investigate the information provided by the

Cannabis Business and evaluate the compliance of the 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 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 Cannabis Business and on any individual persons who participate in the cultivation, processing, manufacturing, distributing, transporting, transferring, ~~or~~ dispensing, delivering, ~~or~~ testing, or disposing of cannabis.

E. Disqualification from registration.

1. Any Cannabis Business may be disqualified from the registration process for any of the following reasons:
 - a. The Cannabis Business or any person applying on behalf of a 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 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 Cannabis Business violates or has violated the terms and conditions of any requirement of this Code or any state law related

to the operation of a Cannabis Business, other than solely because of its existence after the effective date of this Chapter;

- d. The 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 (5) years;
- e. The Cannabis Business was disqualified from the registration process under this Chapter on one or more of the grounds provided in this Section within five (5) years prior to the date of the current attempt to register;
- f. The Cannabis Business's registration under this Chapter has become null and void within the past five (5) years for any of the reasons set forth in Section 6.88.350;
- g. The 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 cannabis Collective, cooperative, Dispensary, business or other such establishment, has been deemed null and void or has been suspended or revoked or otherwise nullified within the past five (5) years;
- h. The 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 (300) feet of the Location;
- i. If the Cannabis Business is a corporation, the corporation is not in good standing or authorized to do business in the state;

- j. The Cannabis Business conducted, conducts or anticipates conducting a 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 Cannabis Business's right to possess the Location or Premises;
- k. The Cannabis Business has as an Owner, Manager, or has persons participating, whether directly or indirectly, in the cultivation, processing, manufacturing, distributing, ~~transporting~~, transferring, ~~or~~ dispensing, delivering, testing, or disposing of cannabis, 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 (10) 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;
 - 4. Theft; or
 - 5. The unlawful possession or use of a firearm.

I. The 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;

m. The Cannabis Business or any one of its Owners or Managers owns or has owned or operated a cannabis business with any unpaid liability due to the City; or

nn. 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 Cannabis Business because an Owner, Manager, or a person participating, whether directly or indirectly, in the cultivation, processing, manufacturing, distributing, transporting, transferring, dispensing, ~~or delivering, testing, or disposing~~ of cannabis is found in violation of subsection E.1.k. above, and the 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 Cannabis Business as an Owner or Manager or individual participating, whether directly or indirectly, in the cultivation, processing, manufacturing, transporting, dispensing, or testing of cannabis on behalf of the Cannabis Business, then in the City Manager's discretion, the 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 person

participating, whether directly or indirectly, in the cultivation, processing, manufacturing, transporting, dispensing, or testing of 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 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 (10) 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 (30) 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 (10) 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 (20) 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 the 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 all required application fees, 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 Cannabis Business is in compliance with all requirements of this Chapter, the City Manager shall notify the 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 (10) business days of receiving the 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 Completed Registration, and any subsequent updated registration, to the person authorized to accept service of process on behalf of the Cannabis Business.

- G. Notice of disqualification. If the 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 cannabis business advising the Cannabis Business that it has been disqualified from the registration process.

6.88.360 Change in Location and Updated Registration Information

- A. Any time a Cannabis Business changes any of its Locations or Premises, or adds an additional location, it shall, immediately upon obtaining a Zoning Code Verification Certificate pursuant to Title 20 of this Code, prior to beginning operations at the Location or Premises, apply to amend its registration with the City Manager. The Cannabis Business shall file an amended registration application with the City Manager for review along with payment of an amendment application processing fee, as set forth in Section 6.88.380. A Cannabis Business may not begin operations at the new Location or Premises until it receives an amended Notice of Completed Registration and any associated State license for its new Location or Premises.

- B. Prior to making a physical change, alteration or modification of a Registered Location or Premises which materially or substantially alters the Location or Premises or the use of the Location or Premises, the Cannabis Business shall receive approval from the City Manager. Prior approval shall be obtained by providing a written request for the modification, filing any applicable amendment application(s), obtaining all applicable permits and other authorizations, and paying all applicable fees.

1. Material or substantial changes, alterations, or modifications requiring approval include, but are not limited to:
 - a. The removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway, or passage alters or changes limited-access areas within the licensed premises;
 - b. The removal, creation, or relocation of a wall or barrier; and
 - c. Changing the activities conducted in or the use of an area identified in the last premises diagram provided to the City Manager.
2. Physical changes, alterations or modifications must comply with all current building, fire, and any other applicable provision of state or local law.

BC. Within fifteen (15) calendar days of any other change in the information provided in the registration application which is not covered by Subsection A or B above or subsection C-D below, or any change in status of compliance with the provisions of this Chapter, or any change in the status of compliance with County or State laws and regulations, including any change in the Cannabis Business's ownership or management, the Cannabis Business shall file updated application forms containing all information that has changed with the City Manager for review along with payment of 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 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 Cannabis Business.

~~CD~~. Within fifteen (15) calendar days of any change in the information provided in the registration application regarding persons authorized to represent the Cannabis Business and regarding the Cannabis Business's agent for service of process, the Cannabis Business shall file with the City Manager written notification of such change.

~~DE~~. The person authorized to sign on behalf of and legally bind the Cannabis Business shall print his or her name and sign any application form required to be updated, under penalty of perjury, certifying that all information contained in the updated application is true, complete and correct.

SECTION 4. Sections 6.88.410, 6.88.425, 6.88.435, 6.88.436, 6.88.440, and 6.88.445 of Part 4 of Chapter 6.88 of Title 6 of the San José Municipal Code is amended to read as follows:

6.88.410 Compliance with the Code

The 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, ~~distributing, testing,~~ transporting, ~~transferring, distributing,~~ dispensing, ~~or-delivering,~~ ~~testing, and disposing~~ ~~of~~ cannabis at or from the Premises or Location.

6.88.425 Identification Display Requirements

- A. While at the Cannabis Business's Premises or Location, each Owner, Manager, and individual person engaged, whether directly or indirectly, in the cultivation, processing, manufacturing, distributing, testing, transporting, delivery, handling or dispensing of cannabis shall, at all times while engaged in the duties of his or her position for the Cannabis Business, wear in plain sight, on his or her person and above the waist, 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, whether directly or indirectly, in the duties of his or her position for the Cannabis Business, but not at the Cannabis Business's Premises or Location, each Owner, Manager and individual person engaged in the cultivation, processing, manufacturing, distribution, transporting, transferring, dispensing, delivering, testing, ~~transporting, delivery,~~ handling or ~~dispensing~~ disposing of cannabis shall at all times have in his or her possession a valid identification badge, issued by the Chief of Police.
- C. 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 Cannabis Businesses, each Owner, Manager and individual person engaged, whether directly or indirectly, in the cultivation, processing, manufacturing, distribution, transporting, transferring, dispensing, delivering, testing, ~~transporting, delivery,~~ handling or ~~dispensing~~ disposing of cannabis shall produce such valid identification badge for inspection.
- D. No Owner, Manager, or individual person engaged, whether directly or indirectly, in the cultivation, processing, manufacturing, distribution, transporting, transferring, dispensing, delivering, testing, ~~transporting, delivery,~~ handling or

- ~~dispensing-disposing~~ of cannabis shall engage in any activities on behalf of the Cannabis Business, without first obtaining a valid identification badge.
- E. Identification badges shall expire one (1) year after the date of issuance.
- F. Identification badges are the property of the City of San José and shall be immediately collected by the Cannabis Business upon termination of the Cannabis Business's relationship with the Owner, Manager or individual person participating or involved in the cultivation, processing, manufacturing, distribution, ~~transporting, transferring,~~ testing, ~~dispensing, transporting,~~ deliver~~ing~~y, handling or ~~dispensing-disposing~~ of cannabis, or within twenty-four (24) hours of their expiration.
- G. Identification badges collected by the Cannabis Business pursuant to subsection F above shall be provided to the Chief of Police within seventy-two (72) hours of collection, expiration, or termination of the Cannabis Business's relationship with the Owner, Manager, or individual person participating, whether directly or indirectly, in the cultivation, processing, manufacturing, distribution, ~~transporting, transferring, dispensing, delivering,~~ testing, ~~transporting, delivery,~~ handling or ~~dispensing-disposing~~ of cannabis.
- H. Identification badges shall remain at the Cannabis Business's Premises when not in use.
- I. Owners, Managers, and individual persons participating, whether directly or indirectly, in the cultivation, processing, manufacturing, distribution, testing, transporting, delivery, handling or dispensing of cannabis shall not take identification badges home or off the Cannabis Business's Premises, except in the case of traveling off-Premises on official business of the Cannabis Business, including delivery or transport of cannabis.

6.88.435 Cultivation Site

- A. No cannabis shall be dispensed from a Cultivation Site, unless that site also serves as the Cannabis Business's registered dispensing Location.
- B. Two (2) Cannabis Businesses may share a single Cultivation Site within the City of San José provided that the cannabis cultivated or manufactured by each Cannabis Business is kept separate. A shared Cultivation Site shall not be a Cannabis Business's dispensing Location and no cannabis shall be dispensed from a shared Cultivation Site.
- C. A Cultivation Site that does not serve as the Cannabis Business's registered dispensing Location shall not be open to the public.
- D. Every 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.
- E. The Cannabis Business shall maintain complete records regarding the transporting of cannabis to, from or between any of its Locations or other businesses licensed by the state. Such records shall include, but not be limited to, the date and time the cannabis was transported, the amount of cannabis transported, whether the cannabis was Medical Cannabis or Non-medical Cannabis, whether the cannabis was in flower, concentrate or edible form, and the strain of cannabis transported.
- F. All transporting of cannabis shall be conducted between the hours of 6:00 a.m. and midnight.

~~G. The City Manager shall promulgate regulations pursuant to Section 6.88.315 to ensure that Cannabis Businesses control, record, and track their cannabis throughout the cultivation, processing, manufacturing, transporting and dispensing processes in accordance with state law.~~

6.88.436 Manufacturing Site

- A. No cannabis shall be dispensed from a Location that is only a Manufacturing Site.
- B. Each Cannabis Business engaged in the Manufacture of Cannabis shall maintain complete records regarding the amount of cannabis received, processed, stored, manufactured or destroyed at its Manufacturing Site. The amounts of Medical Cannabis and Non-medical Cannabis received, processed, stored, manufactured or destroyed shall be identified and recorded separately.
- C. Any Cannabis Business engaged in the Manufacture of Cannabis shall maintain complete records regarding the transporting of cannabis to, from or between any of its Locations or other businesses licensed by the state. Such records shall include, but not be limited to, the date and time the cannabis was transported, the amount of cannabis transported, whether the cannabis was medical or non-medical, whether the cannabis was in flower, concentrate or edible form, and the strain of cannabis transported.
- D. All cannabis shall be packaged in a tamper-evident, child-resistant package in accordance with Section 26120 of the Business and Professions Code and any other applicable state law or regulation.
- E. All transporting of cannabis shall be conducted between the hours of 6:00 a.m. and midnight.

~~F. The City Manager shall promulgate regulations pursuant to Section 6.88.315 to require that any Cannabis Business engaged in the Manufacture of Cannabis control, record, and track cannabis under its ownership or control throughout the processing, manufacturing, and transporting processes in accordance with state law.~~

6.88.440 Cannabis Business Operations

- A. Only a Dispensary or Retail Storefront shall be open to the public. Cannabis Business Locations that are not Dispensaries or Retail Storefronts shall not be open to the public. A Dispensary or Retail Storefront shall be open to the public during hours of the day that are in accordance with the regulations promulgated by the City Manager pursuant to Section 6.88.315.
- B. All cannabis cultivated, processed, manufactured, distributed, transported, transferred, obtained, purchased, dispensed, delivered, or distributed tested by the Cannabis Business must be stored and dispensed in strict accordance with state law, this Chapter and other provisions of this Code.
- C. All cannabis dispensed by a 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.
- D. All contributions (whether in-kind, monetary or property) shall be fully documented, in writing, at the time of their receipt by the Cannabis Business and in accordance with Part 5 of this Chapter.
- E. 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.

- F. Each Cannabis Business shall account for all monetary contributions or payments. Monetary contributions or payments shall be made by cash, personal check, cashier's check, debit card 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.
- G. No persons under the age of twenty-one (21) shall be allowed at the Location.
- H. A Dispensary or Retail Storefront shall verify the age of every person entering the Premises with an Electronic Age Verification Device, excepting verified employees of the Dispensary; verified employees of another Cannabis Business or State licensee; and City, County and/or State officials on official business.
- I. No Medical Cannabis Transfers shall be made by a Cannabis Business to a person under the age of twenty-one (21).
- J. No Medical Cannabis shall be provided, sold, or transferred to any person who is not a Qualified Patient or Primary Caregiver, and who is not age twenty-one (21) or older.
- K. No Non-medical Cannabis shall be provided, sold, or transferred to any person who is not age twenty-one (21) or older.
- L. 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, without exception. 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 (or birthdate, or both).

- M. The electronic age verification log shall be kept for a minimum of one hundred eighty (180) days.
- N. Notwithstanding any other provision of state law, no Medical Cannabis provided to a Primary Caregiver may be provided by the Primary Caregiver to any person other than the Primary Caregiver's Qualified Patient for whose care the Primary Caregiver is responsible.
- O. No 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.
- P. 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 (300) feet of the Premises and/or Location on the public right-of-way, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79.
- Q. No cannabis shall be taken into a restroom at the Premises and/or Location, including temporary restrooms in the parking areas of the Premises and/or Location.
- R. Each Cannabis Business shall operate and maintain an on-site twenty-four (24)-hour landline telephone number at the Premises for receiving complaints and other inquiries regarding the Cannabis Business. A person engaged in the management of the 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 Cannabis Business and in accordance with Part 5 of this Chapter.

- S. 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 cannabis as defined herein;
 2. Any paraphernalia used for the ingestion of any type of controlled substance, except for cannabis;
 3. Alcoholic beverages; or
 4. Firearms, except in strict compliance with federal, state and local laws and with Section 6.88.420 J.
- T. A sign shall be posted in a conspicuous location inside the Premises advising, in English, Spanish and Vietnamese, the following: "Both the sale of cannabis and the diversion of cannabis to persons under age twenty-one (21) are violations of state law. The use of cannabis may impair a person's ability to operate a motor vehicle or heavy machinery. Loitering at the Location of a Cannabis Business for an illegal purpose is prohibited by California Penal Code Section 647(h). This Cannabis Business is registered in accordance with the laws of the City of San José."
- U. All water used in any Cannabis Activity shall be legally obtained and shall be applied in accordance with state and local laws.
- V. All electricity used in any Cannabis Activity shall be legally obtained and shall be used in accordance with state and local laws.
- W. The extraction and refinement of chemical compounds from cannabis by way of a Solvent-based method utilizing compressed flammable gases or alcohol in violation of state law is prohibited. No Cannabis Business shall possess, dispense or transport any cannabis manufactured unlawfully. All extraction and refinement equipment used by a 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.

- X. Any hazardous materials shall be used and stored in full compliance with Chapter 17.68 of this Code.
- Y. All activities conducted at a Cannabis Business shall at all times fully comport with the provisions of California Health & Safety Code Section 11362.5 et seq., the Compassionate Use Act, the Medical Marijuana Program Act, the Adult Use of Marijuana Act, the Medicinal and Adult-Use Cannabis Regulation and Safety 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 the provisions of state law, the most restrictive law allowed to apply shall govern and control.

6.88.445 Deliveries of Cannabis

- A. Except as provided in Subsection B below, Cannabis Businesses are prohibited from delivering cannabis to any person or location within the City.
- B. Cannabis dispensaries that are registered pursuant to this Chapter may apply for registration to deliver Medical Cannabis, Non-medical Cannabis, or both.
- C. The City Manager shall promulgate regulations pursuant to Section 6.88.315 to establish an application process and procedures to allow Cannabis Businesses registered pursuant to this Chapter to deliver cannabis within the City. The regulations shall also include security procedures, vehicle requirements, cannabis 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.

SECTION 5. A new section is added to Part 4 of Chapter 6.88 of Title 6 of the San José Municipal Code to be numbered, entitled and to read as follows:

6.88.431 Delivery-Only Site.

- A. No cannabis shall be dispensed from a Delivery-Only Site.**
- B. A Delivery-Only Site shall not be open to the public.**
- C. Every Delivery-Only Business shall maintain complete records regarding the amount of cannabis stored at, and delivered from, its Delivery-Only Site. The amounts of Medical Cannabis and Non-medical Cannabis stored and delivered shall be identified and recorded separately.**
- D. Every Delivery-Only Business shall maintain complete records regarding the transporting of cannabis to, from or between any of its Locations or other businesses licensed by the State. Such records shall include, but not be limited to, the date and time the cannabis was transported, the amount of cannabis transported, whether the cannabis was Medical Cannabis or Non-medical Cannabis, whether the cannabis was in flower, concentrate or edible form, and the strain of cannabis transported.**

SECTION 6. Section 6.88.500 of Part 5 of Chapter 6.88 of Title 6 of the San José Municipal Code is amended to read as follows:

6.88.500 Maintenance of Records

- A. Each 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 Medical Cannabis transactions, the following information concerning each patient or Primary Caregiver served by the Medical Cannabis Business:
 - a. Name and a confidential patient or Primary Caregiver number unique to that individual which is used solely for the log identified in Subsection 2.h. below;
 - b. A copy of a valid government issued photo identification card or license;
 - c. A copy of the patient's or Primary Caregiver's Identification Card or the Physician's Recommendation for the patient or Primary Caregiver;
 - d. The date the patient or Primary Caregiver started being served by the Medical Cannabis Business;
 - e. The name and telephone number of each Primary Caregiver, along with a copy of every written designation for every Qualified Patient that designated the person as his or her Primary Caregiver;

- f. The name, business address and telephone number of each Attending Physician who provided a Physician's Recommendation for any patient or Primary Caregiver;
 - g. The records of all Qualified Patients with a valid Identification Card and Primary Caregivers with a valid Identification Card may be maintained ~~by the~~ ~~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 f.; and
 - h. 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 patient or Primary Caregiver number to whom it was provided.
- 3. 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 Cannabis Business;
 - 4. All receipts of the Cannabis Business, including but not limited to all sales, contributions and all expenditures incurred by the Cannabis Business;
 - 5. An up-to-date log documenting each and every sale or transfer of cannabis reflecting the amount sold or transferred, the form or product category in which the cannabis was sold or transferred, and the date and time sold or transferred;

6. An up-to-date log documenting the date, time, nature, and response by the Cannabis Business to all complaints received by the Cannabis Business pursuant to Subsection 6.88.440 R. of this Chapter;
7. A copy of the annual audit reports required pursuant to Section 6.88.600 of this Chapter; and
8. Proof of completed registration with the City Manager in conformance with this Chapter.

9. A copy of all licenses or certifications required by any state, county or local law or regulation for any aspect of the business's operations. These include, but are not limited to, the following:

a. State cannabis license(s);

b. Food safety or handling;

c. Pesticide safety or handling; and

d. Equipment or machinery operation;

- B. All records required by this Chapter shall be maintained by the Cannabis Business for a period of five (5) years and shall be made available by the Cannabis Business to the City Manager, any City official charged with enforcing the provisions of this Code, or any state official charged with enforcing state law regarding 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 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 Cannabis Business may maintain, all records required by this Section shall be stored by the 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.

SECTION 7. Section 6.88.600 of Part 6 of Chapter 6.88 of Title 6 of the San José Municipal Code is amended to read as follows:

6.88.600 Audits

- A. Effective through December 31, 2023, No later than September 30 of every odd numbered 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. No later than September 30 of every even numbered year, each Cannabis Business shall file with the City Manager a review 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. In the event the audit or review, completed and certified

by an independent certified public accountant, results in an opinion other than an unqualified opinion, or if there was not an audit completed of its financial operations for the previous calendar year, the Cannabis Business shall be required to file annual audits until an unqualified opinion is expressed.

B. Effective January 1, 2024, a Collective or Cannabis Business may be required, at the City Manager's discretion, to file with the City Manager an annual audit of its financial operations, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles, if the Collective, Cannabis Business, or Cannabis Business Owner(s) receives a notification from a government or regulatory agency regarding a lawsuit, tax finding, regulatory violation, or improper internal controls. If required, the audit shall be filed with the City Manager by September 30. In the event the audit, completed and certified by an independent public accountant, results in an opinion other than an unqualified opinion, the Collective or Cannabis Business may be required to file annual audits at the City Manager's discretion based on factors including, but not limited to, the City's review of the annual audit, final City-issued tax audit findings, a lawsuit, or improper internal controls.

SECTION 8. Sections 6.88.800 and 6.88.810 of Part 8 of Chapter 6.88 of Title 6 of the San José Municipal Code is amended to read as follows:

6.88.800 Existing Cannabis Operations

A. Any existing 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 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, manufacture, testing, sales, transfers, distribution, processing, transporting, delivery or giving away of cannabis. To establish an affirmative defense to civil and criminal enforcement of the provisions of the San José Municipal Code, the person seeking to invoke the defense must 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 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 any and all state and local laws.
- C. It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this Chapter, or to any other federal, state or local government agency having jurisdiction over any of the activities of Cannabis Businesses.
- D. It shall be the responsibility of the Owners, Managers or persons working at or for the Cannabis Business to ensure that the 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, processing, manufacturing, distributing, transporting, transferring, dispensing, delivering, testing, disposing, ~~transportation, manufacture, provision, testing, delivery,~~ and sale of cannabis.

PASSED FOR PUBLICATION of title this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk