ORDINANCE NO. 10060 (N.S)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE TOADD TITLE 2, DIVISION 1, CHAPTER 25 ADOPTING REGULATIONS RELATING TO MEDICAL MARIJUANA COLLECTIVE FACILITIES

The Board of Supervisors of the County of San Diego, State of California, ordains as follows:

Section 1.

Title 2, Division 1 of the San Diego County Code is amended to add Chapter 25, as follows:

CHAPTER 25: MEDICAL MARIJUANA

Section 21.2501. Legislative Findings And Intent

(a) On November 5, 1996, California voters approved Proposition 215, The Compassionate Use Act of 1996 ("CUA"), which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. and recognized a qualified right to the collective and cooperative cultivation of medical marijuana. The CUA's purposes are to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana" and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." However, nothing in the CUA "shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes."

(b) On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act ("MMPA"), H&S §§ 11362.7 – 11362.83, became law. The MMPA requires the California Department of Public Health to establish and maintain a voluntary registration and identification card program, sets possession guidelines and recognizes a qualified right to the collective and cooperative cultivation of medical marijuana. The MMPA allows cities and counties to adopt and enforce rules consistent with the MMPA. In August 2008, the California Attorney General published "Guidelines For The Security And Non-Diversion Of Marijuana Grown For Medical Use." That document provides counties and cities with California

Department of Justice guidance on the laws governing medical marijuana and preventing diversion of marijuana to illegal non-medical purposes and illicit markets.

(c) The CUA and MMPA contemplate a closed circuit of cultivation, expense-sharing and consumption by qualified patients and primary caregivers with no sales or purchases involving persons outside the collective or cooperative organization.

(d) In many communities in which so-called medical marijuana "dispensaries" have been established, law enforcement agencies have documented the serious and adverse impacts associated with such dispensaries. These communities and the media have reported increased crime, including burglaries, robberies, violence, illegal sales of marijuana to and use of marijuana by minors and others without medical need in the areas immediately surrounding such medical marijuana dispensaries. Other negative secondary effects include the smoking of marijuana in public areas and adverse impacts on neighboring businesses (including odor complaints). The County of San Diego could reasonably anticipate experiencing similar adverse impacts and effects from any marijuana dispensaries established in the unincorporated county.

(e) In July 2009, the County of San Diego implemented a Medical Marijuana Identification Card program through its Health and Human Services Agency and in compliance with the requirements of the MMPA. Section 252 of the San Diego County Administrative Code became effective August 20, 2009, establishing the fees for obtaining a Medical Marijuana Identification Card from the County of San Diego.

(f) Additionally, a number of sources, including the United States Department of Justice's California Medical Marijuana website [which contains various documents and reports related to issues surrounding marijuana use (http://www.usdoj.gov/dea/ongoing/legalization.html)] and the "White Paper on Marijuana Dispensaries" published by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009), have concluded that the establishment of marijuana dispensaries can lead to an increase in crime. Among the crimes citied as typical examples are burglaries, robberies, sales of illegal drugs in the areas immediately surrounding such dispensaries, as well as other public nuisances such as loitering, smoking marijuana in public places, sales to minors and driving while under the influence of marijuana. The Board of Supervisors finds that these data and conclusions justify the implementation of the regulatory and safety measures included in this ordinance.

(g) It is intent of the Board of Supervisors to protect the citizens of the County of San Diego and promote their general welfare and safety by ensuring that marijuana is not diverted for illegal purposes or to illicit markets It is the Board's further intent that medical marijuana be limited to authorized legal use by San Diego County residents who are qualified patients as defined by State law and who suffer from one or more of the following serious medical conditions: AIDS; anorexia; arthritis; cachexia; cancer; chronic pain; glaucoma; migraine; seizures; severe nausea; persistent muscle spasms; any other chronic or persistent medical condition that either limits their ability to conduct one or more major life activity as defined by the American Disability Act of 1990 or may cause harm if not alleviated. It is the further intent of the Board to ensure that only qualified medical marijuana patients and primary caregivers, as defined by State law, associate within the County in order to collectively or cooperatively cultivate marijuana for medical purposes. This Chapter is not intended to apply to personal, individual cultivation and use for legitimate medical purposes as contemplated by the CUA and the MMPA.

Section 21.2502 <u>Definitions</u>

(a) "Primary Care Giver" has the same meaning as defined by State statutes, including but not limited to Health & Safety Code sections 11362.5(e) and 11362.7(d). As explained in *People v. Mentch* (2008) 45 Cal.4th 274, a "primary caregiver" is a person who (1) consistently provides caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.

(b) "Qualified Patient" has the same meaning as defined by State law, including but not limited to Health & Safety Code sections 11362.7(f) and 11362.5(b).

(c) "Medical Marijuana Collective" or "Collective" means any association or combination of Primary Caregivers and/or Qualified Patients collectively or cooperatively cultivating and/or storing marijuana for medical purposes as provided in Health & Safety Code section 11362.775.

(d) "Medical Marijuana Collective Facility" or "Collective Facility" means any location at which members of a Medical Marijuana Collective collectively or cooperatively cultivate or exchange marijuana among themselves or reimburse each other or the Medical Marijuana Collective for cultivation, overhead costs and operating expenses. "Medical Marijuana Collective Facility" or "Collective Facility" does not mean or include the following facilities licensed pursuant to the following provisions of Division 2 of the Health and Safety Code:

(1) A clinic licensed pursuant to Chapter 1;

(2) A health facility licensed pursuant to Chapter;

(3) A residential care facility for persons with chronic, life-threatening illnesses licensed pursuant to Chapter 3.01;

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2; or

(5) A residential hospice or a home health agency licensed pursuant to Chapter 8.

(e) "Marijuana" has the same meaning as defined by Health & Safety Code section 11018.

(f) "Caregiver Events" means visits, consultations, transactions, interactions or other events involving a Qualified Patient and his or her Primary Caregiver designated by the Qualified Patient and his or her Primary Caregiver to demonstrate that the Primary Caregiver meets the requirements of state law, including but not limited to Health & Safety Code section 11362.5(e), other relevant statutes and court decisions.

(g) "Responsible Persons" means those members of the Collective who shall be jointly and severally responsible for operating the Collective Facility in compliance with State law and this Ordinance.

(h) "Applicant" or "Applicants" means those persons who are completing and executing the Application for a Medical Marijuana Collective Facility Operating Compliance Certificate ("Operating Certificate").

Section 21.2503 <u>Operating Certificate Required; Applications</u>

(a) A Collective may only operate a Collective Facility in the unincorporated area of San Diego County if a valid Medical Marijuana Collective Facility Operating Compliance Certificate ("Operating Certificate") has been issued by the Sheriff's Department to a member of the Collective.

(b) The procedure for obtaining an Operating Certificate, including appeals of denials and revocations, shall be as set forth in Chapter 1 of the County of San Diego Uniform Licensing Procedure, except as set forth in this Chapter and

in addition, shall be subject to the specific requirements and regulations set forth in this Chapter.

(c) The form of application for an Operating Certificate shall be developed by the Sheriff's Department. At a minimum, the form of application developed by the Sheriff shall require the applicant(s) to provide sufficient information deemed necessary by the Sheriff to make an initial determination that (1) the Applicant(s) will be operating a legitimate Collective Facility in compliance with State and this Ordinance, and (2) the Applicant(s) is or are the owner(s) of the property for which the Operating Certificate is sought or have the written permission of the owner(s) of the property for which the license is sought.

(d) As a condition for obtaining an Operating Certificate from the Sheriff, the Applicant must show proof that the location has been approved by the Department of Planning and Land Use, Zoning Division, and a building permit (including a tenant improvement permit) has been applied for if required by the California Building Code.

(e) The form of application, which upon completion shall be signed by the Applicant(s), shall also require the Applicant(s), at a minimum, to make the following express representations:

(1) That no activities prohibited by State law will occur on or at the Collective Facility with the knowledge of the Responsible Person(s).

(2) That the Collective Facility, the Collective and its members will comply with all provisions of this Chapter and State law pertaining to medical marijuana.

(f) An Operating Certificate issued pursuant to this section shall be valid only for the address for which it was issued.

(g) Section 21.108(c) of the County of San Diego Uniform Licensing Procedure shall not apply to the issuance of Operating Certificates for Collective Facilities.

(h) The Applicant(s) shall provide to the Sheriff along with a completed application and fee for the Operating Certificate, evidence that any required building permit (including a tenant improvement permit) issued by the Department of Planning and Land Use has passed final inspection and occupancy approval has been issued before the Sheriff's Operating Certificate can be effective.

(i) For purposes of facilitating the provisions of this ordinance, a Collective must have a unique identifying name that will be entered onto the application for an Operating Certificate.

(j) The fee for an Operating Certificate shall be as provided in section 21.1901 of the County Code of Regulatory Ordinances.

(k) The application for an Operating Certificate shall designate and identify one or more persons as Responsible Persons. The designated Responsible Person(s) shall include the Applicant(s).

(l) An Operating Certificate shall not be issued where a Responsible Party has a felony conviction.

Section 21.2504 <u>Infrastructure Requirements For Collective Facilities</u>

(a) <u>Alarms, Closed Circuit Television</u>.

(1) A Sheriff Department-licensed, 24-hour centrally monitored alarm system is required.

(2) Closed Circuit Television (CCTV) video monitoring shall be installed that meets the following criteria:

(A) Continuous 24-hour operation and recording with minimum archival period of 14 days.

(B) Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in interior and exterior areas where marijuana is present at any time.

(C) Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in the immediate exterior areas of doors, windows or other avenues of potential access.

(D) All CCTV recordings shall be accessible to law or code enforcement officers at all times during operating hours and otherwise upon reasonable request. All CCTV recording systems shall have the capability of producing tapes, DVDs or other removable media of recordings made by the CCTV system.

(E) To prevent tampering, the recorder shall be kept in a secure location and all recordings shall be date and time stamped.

(b) Windows.

(1) Windows and glass panes shall have vandal-resistant glazing, shatter-resistant film, glass block, or bars installed equipped with latches that may be released quickly from the inside to allow exit in the event of emergency.

(2) Windows vulnerable to intrusion by a vehicle must be protected by bollards or landscaping grade separation reasonably sufficient to prevent such intrusion.

(c) Roofs, roof hatches, sky lights, ceilings.

For buildings in which a Collective Facility is located:

(1) All means of gaining unauthorized access to the roof shall be eliminated. Exterior roof ladders shall be secured with locked ladder covers.

(2) Roof hatches and skylights shall be secured so as to prevent intrusion.

(3) Where a Collective Facility is located in a building with other tenants, the Collective Facility shall be secured against unauthorized access from other tenant spaces or common areas, including access through crawl spaces, ceiling spaces, ventilation systems or other access points concealed from the common areas.

(d) Visibility.

(1) No marijuana may be visible from any location off the property on which a Collective Facility is located.

(2) Exterior landscaping within 10 feet of any building in which a Collective Facility is located shall be free of locations which could reasonably be considered places where a person could conceal themselves considering natural or artificial illumination.

(3) Exterior building lighting and parking area lighting must be in compliance with County of San Diego Light Pollution Code (Sections 51.201-51.209 of the San Diego County Code), County of San Diego Zoning Ordinance (Sections 6322 - 6326), and California Energy Code (Title 24-Chapter 6 of the California Code of Regulations). Lighting must be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty feet.

(f) Fire suppression system: An approved automatic fire sprinkler system, designed in compliance with NFPA 13, shall be provided in buildings and portions thereof used as a Collective Facility.

(g) Parking

A Collective Facility shall conform to the requirements of Zoning Ordinance Section 6762 and shall be considered an "Office" occupancy type for purposes of that Section.

(h) Entrances, exits, doors.

(1) A Collective Facility shall have a single plainly identified primary entrance/exit site that is visible from public or common areas.

(2) Any exit or entrance that is not visible from a public or common area shall be plainly marked as an emergency exit only. Such emergency exists shall be self-closing, self-locking, equipped with an alarm and not used except in an emergency.

(3) Any aluminum door shall be fitted with steel inserts at the lock receptacles.

(4) Any outward opening doors shall be fitted with hinge stud kits, welded hinges or set-screw hinge pins.

(5) Panic exit hardware shall be "push-bar" design.

(6) Double doors shall be fitted with three-point locking hardware and push-bars consistent with fire agency regulations or requirements.

(7) All emergency exits shall be solid core doors featuring hinge-pin removable deterrence. Emergency exit doors shall have latch guards at least 12 inches in length protecting the locking bolt area. Latch guards shall be of minimum 0.125-inch thick steel, affixed to the exterior of the door with non-removable bolts, and attached so as to cover the gap between the door and the doorjamb for a minimum of six inches both above and below the area of the latch.

(8) All glass doors or doors with glass panes shall have shatter-resistant film affixed to prevent glass breakage.

(i) The provisions of this section do not apply to the following Collective Facilities:

(1) A Collective Facility operated by a Qualified Patient where the amount of marijuana at no time exceeds 1.5 times the amount allowed by state law for a single Qualified Patient under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

(2) A Collective Facility operated by a Primary Care Giver where the amount of marijuana at no time exceeds the amount allowed by state law for a single Primary Care Giver under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

Section 21.2505 <u>Operating Requirements For Collective Facilities</u>

(a) The hours of operation of a Collective Facility shall be no earlier than 8 a.m. and no later than 8 p.m., seven days a week.

(b) No persons under the age of eighteen are allowed at, in or on a Collective Facility, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.

(c) In order to facilitate verification that a Collective Facility is operating pursuant to State and local laws, the following records must be maintained at the Collective Facility at all times and available for inspection by the Sheriff's Department:

(1) A record identifying all current Qualified Patient members of the Collective associated with the Collective Facility. The record shall identify each Qualified Patient's designated Primary Caregiver, the name of the physician providing the recommendation for medical marijuana and shall reflect whether the recommendation is written or oral. The record shall identify the city and county of residence for each Qualified Patient and his or her Primary Caregiver.

(2) A record identifying all current Primary Caregiver members of the Collective associated with the Collective Facility, and the persons for whom they are the designated Primary Caregiver. The record will show the city and county of residence for all Qualified Patients and Primary Caregivers.

(3) A current record of Caregiver Events for each Member of the Collective associated with the Collective Facility. Such record should include, at a minimum, the dates, times, duration, participants and nature of the Caregiver Event(s). Such record shall not include information protected by Federal or State medical information privacy laws.

(4) A record identifying the source or sources of all marijuana currently on the premises of the Collective Facility or that has been on the premises during the two-year period preceding the current date. The record shall reflect the grower and the address and location of cultivation of the identified marijuana.

(5) All marijuana at the Collective Facility must at all times be physically labeled with information which, used in conjunction with the record required by section 21.2505(c)(4), will allow for ready identification of the specific Collective member who is the source of the marijuana.

(6) All marijuana at the Collective Facility must at all times be physically labeled with the monetary amount to be charged (or "price" for purposes of this subparagraph only) to a Collective member as reimbursement for cost of cultivation, overhead and operating expenses. Marijuana that is stored in bulk, and which is distributed by requested weight amount, shall be labeled with the price-per-ounce. Marijuana that is stored and distributed in fixed weight packages shall be labeled with the price and weight of the marijuana in the package.

(7) Current records of all transactions involving money and/or marijuana occurring in connection with the operation and activities of the Collective or the Collective Facility during the two-year period preceding the current date. Such records must include at a minimum the following information: (a) The names the persons involved, the person's membership status in the Collective associated with the Collective Facility, and whether they are a Qualified Patient or a Primary Caregiver; (b) the amount of cash involved, if any, (c) the amount of marijuana involved, if any, (d) the method of payment if not by cash, and (d) if marijuana was involved, the Collective member who was source of the marijuana.

(8) An agreement, signed by each member of the Collective associated with the Collective Facility and who is a source of marijuana to the Collective Facility as identified by sections 21.2505(c)(4) and 21.2505(c)(5), that:

(A) within seven days of request by the Sheriff's Department, the Member will produce for inspection by law enforcement a record, current to within 48 hours, of costs of cultivation, overhead and operating expenses; and

(B) the location of the cultivation of the marijuana supplied by the Member shall be subject to inspection for physical verification by appropriate law enforcement or fire agencies.

The form of the agreement required by this subdivision shall be determined by the Sheriff's Department, and shall require as a minimum the full name, home address, cultivation site address, home and emergency telephone numbers and the agreement required by this section.

(9) A record showing the identification of the Responsible Persons for the Collective by name, home address and telephone number.

(10) A clearly-visible, posted document identifying the names of the Responsible Persons and their emergency contact telephone numbers.

(d) The total quantity of marijuana located at any Collective Facility shall not exceed the maximum quantity limits set by state law, as established by statute and court decisions, in relation to the number of Qualified Patients and Primary Caregivers that are members of the Collective.

(e) All marijuana at a Collective Facility must have been cultivated at that Collective Facility or have as its source a member or members of the Collective with which the Collective Facility is associated.

(f) Only marijuana as herein defined is allowed at the Collective Facility. No food or drink containing marijuana is allowed.

(g) No smoking or any other consumption or ingestion of marijuana is allowed at a Collective Facility.

(h) Only persons who are members of the Collective that is associated with a Collective Facility shall collectively or cooperatively cultivate, store or exchange marijuana among themselves, or reimburse each other or the Medical Marijuana Collective for cultivation, overhead costs and operating expenses, at the Collective Facility.

(i) Collective Facilities shall be available for inspection by the Sheriff, the Director of Planning and Land Use, the fire authority having jurisdiction or their respective authorized representatives, at all times during operating hours and upon reasonable notice during non-operating hours.

(j) A Collective Facility shall have on its premises, posted in a prominent location, a copy of its Operating Certificate and a document that provides the names, home addresses, home telephone numbers and 24-hour emergency telephone numbers of its operators.

(k) A licensed, uniformed security guard shall be present at a Collective Facility at all times during Hours of Operation pursuant to section 21.2505(a).

(l) The provisions of this section do not apply to the following Collective Facilities:

(1) A Collective Facility operated by a Qualified Patient where the amount of marijuana at no time exceeds 1.5 times the amount allowed by state law for a single Qualified Patient under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

(2) A Collective Facility operated by a Primary Care Giver where the amount of marijuana at no time exceeds the amount allowed by state law for a single Primary Care Giver under Health & Safety Code section 11362.77, only cultivation occurs, and no exchanges of marijuana or reimbursements for marijuana occur.

Section 21.2506 <u>Facility Limits; Naming</u>

(a) A Collective may operate only one Collective Facility where members of the Collective exchange marijuana among themselves or reimburse each other or the Collective for cultivation, overhead costs and operating expenses. A Collective may operate additional Collective Facilities where only cultivation occurs, all of which must meet the requirements of this ordinance except as expressly provided by this ordinance.

(b) A Collective must have a unique identifying name, identified on the Operating Certificate Application, for purposes of tracking membership and facilities

Section 21.2507 <u>Administrative and Civil Penalties</u>

(a) An Operating Certificate may be revoked for any violation of state law or this Chapter, or for failure to comply with conditions listed on the Operating Certificate. Revocation proceedings, hearings and appeals shall be conducted as set forth in Chapter 1 of the County of San Diego Uniform Licensing Procedure. Administrative civil penalties shall be assessed pursuant to sections 18.201 et seq. of this Code or successor or amended administrative civil penalty provisions as may be adopted.

(b) In a civil action filed by the County to enforce provisions of this Ordinance, a court may assess a maximum civil penalty of $2500 per violation for each day during which any violation of any provision of this Ordinance is committed, continued, permitted or maintained by such person(s). As part of said civil action, a court may also assess a maximum civil penalty of $6000 for each

day any person intentionally violates an injunction prohibiting the violation of any provision of this Ordinance.

(c) Any violation of this Chapter may also be deemed a public nuisance and may be enforced by any remedy available to the County for abatement of public nuisances.

Section 21.2508 **Severability**.

(a) If any part of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY _____
SENIOR DEPUTY

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 30th day of June, 2010.

PAM SLATER-PRICE
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Slater-Price, Horn
NOES: Roberts

ATTEST my hand and the seal of the Board of Supervisors this 30th day of June, 2010.

THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors

By _____
Catherine Santos, Deputy

Ordinance No. 10060 (N.S.)
Meeting Date: 6/30/10 (5)