



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** David Sykes

**SUBJECT:** SEE BELOW

**DATE:** April 14, 2014

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**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE REPEALING SUSPENDED ORDINANCE NO. 29089 EXCEPT FOR THOSE SECTIONS OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE RELATED TO ZONING CODE VERIFICATION CERTIFICATES PREVIOUSLY UNSUSPENDED BY ORDINANCE NO. 29089, AND AMENDING TITLE 20 BY AMENDING SECTION 20.10.040 OF CHAPTER 20.10, AMENDING SECTION 20.40.100 OF CHAPTER 20.40; AMENDING SECTION 20.50.100 OF CHAPTER 20.50, AMENDING SECTION 20.70.100 OF CHAPTER 20.70, ADDING A NEW PART 9.75 TO CHAPTER 20.80, AND ADDING NEW SECTIONS 20.100.1530, 20.100.1535 AND 20.100.1540 TO PART 13 TO CHAPTER 20.100, ALL TO ESTABLISH LAND USE REGULATIONS PERTAINING TO MEDICAL MARIJUANA COLLECTIVES.**

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend to the City Council the approval of an ordinance amending Title 20 of the Municipal Code to establish land use regulations for Medical Marijuana Collectives.

## **OUTCOME**

The proposed ordinance would update the land use and zoning regulations pertaining to the siting of Medical Marijuana Collectives based on City Council direction provided in December 2013.

## **BACKGROUND**

On September 13, 2011, the Council approved two ordinances regarding medical marijuana establishments:

- Land Use Ordinance: Amending Title 20 (the Zoning Ordinance) of the San Jose Municipal Code to establish land use regulations, and

- **Regulatory Ordinance:** Amending Title 6 (Business Licenses and Regulations) of the Code to establish operational requirements and other procedures.

On October 28, 2011, medical marijuana advocates filed a Petition for Referendum challenging the Regulatory Ordinance and requiring the Council to either repeal the Regulatory Ordinance or put it on the ballot as a referendum for a vote by San Jose residents. On November 8, 2011, the Council suspended the Land Use Ordinance making it effective only if and when the Regulatory Ordinance took effect. On February 14, 2012, the Council repealed the Regulatory Ordinance. Because the Land Use Ordinance was effective only if the Regulatory Ordinance took effect, the repeal of the Regulatory Ordinance resulted in the continued suspension of the Land Use Ordinance and resulted in a lack of legal authorization for medical marijuana establishments to operate in the City. Consequently, Medical Marijuana collectives, cooperatives, and dispensaries [all referred to herein as "Collective(s)"] that operate in San Jose are illegal.

On December 10, 2013, following the City's receipt of numerous concerns from the community regarding the impact of Collectives operating in San Jose, the Council directed the Administration to prepare ordinances to establish clear regulations for Medical Marijuana Collectives by amending Title 20 pertaining to land use regulation and Title 6 addressing operational and other procedural considerations. Specifically, the proposed ordinance amending Title 20 is intended to re-enact the currently suspended ordinance regarding land use parameters for Medical Marijuana Collectives with Council direction to consider the following items, including:

- Consider two options for zoning districts where Collectives can locate: one that is consistent with those zones approved on September 13, 2011 (CG-Commercial General, DC-Downtown Primary Commercial, LI-Light Industrial and CIC-Combined Industrial Commercial) and one option that adds to those zones the IP-Industrial Park zoning district.
- Utilize the buffers that prohibit Collectives to locate within:
  - 1,000 feet of public and/or private schools, all child daycare centers, child daycare located at churches, community/recreation centers, parks, libraries and other Collectives;
  - 500 feet of substance abuse rehabilitation centers; and
  - 150 feet of residential uses, with the 150-foot buffer between Collectives and residential uses measured by the foot path of travel.
- Explore scenarios for a prohibition around assembly uses and 1,000 feet from all sensitive uses (e.g., residential and school uses)
- Maintain the prohibition of Collectives locating on ground floors of buildings within the DC-Downtown Primary Commercial zoning district.

- Maintain the prohibition of Collectives locating on all floors of shopping centers located on a parcel or parcels totaling more than 40 acres. Explore options to make this prohibition congruent with other definitions.
- Allow cultivation in the CIC, LI and HI zoning districts subject to the same restrictions as wineries and breweries (with off-sale only as incidental uses and with sufficient controls to comply with the Enforcement Memorandum and protect existing users from negative impacts).
- Prohibit the siting of any Collective on any parcel that has been the subject of three (3) or more documented and verified code violations and/or nuisance activities within one (1) year of the time in which the site is being considered for a Zoning Verification Certificate.
- Replace the word “church” with “houses of worship” throughout the regulations and include all houses of worship, not just those with child daycare. (Note: the Zoning Ordinance uses the term “church/religious assembly.”)
- Operate as early as from 9:00 a.m. to as late as 9:00 p.m.
- Require the issuance of a Zoning Verification Certificate to those located in zoning districts identified above.

This agenda item provides the Planning Commission the opportunity to conduct a public hearing on the attached draft land use ordinance and to make recommendations to the City Council regarding the specific provisions in this proposed ordinance.

For the Commission’s reference, also attached to this report is a summary of the proposed amendments to Title 6 of the Municipal Code regarding the operational regulations for Medical Marijuana Collectives.

## **ANALYSIS**

This section evaluates the major changes from the original land use ordinance and contains staff’s recommendations regarding individual provisions. The provisions that remain unchanged from the 2011 ordinance are not discussed in depth; however, staff will be available at the Commission meeting to answer questions and receive Commission input on these parameters as well.

### **Maximum Number**

Unlike the original ordinances regulating Collectives, the City Council did not direct a numeric limit. Instead, appropriate zoning districts, buffer zones, and other controls would determine the number of establishments in San Jose.

### Zoning Districts

The original ordinance identified four Zoning Districts as being appropriate for Medical Marijuana Collectives:

- **Commercial General (CG):** This district is typically located on major streets with public transit and is not always located adjacent to neighborhoods.
- **Downtown Primary Commercial (DC):** This district is focused in the Downtown area of San José with a mix of business, cultural, and residential uses, and good access to public transit.
- **Combined Industrial/Commercial (CIC):** This district allows a broad mix of commercial and/or industrial uses. This district is found in a variety of non-residential contexts, not always proximate to transit.
- **Light Industrial (LI):** This district allows warehousing, light manufacturing, and other industrial activities, typically not in pedestrian or transit-oriented locations. The Council included this District to provide more opportunities for Collectives.

The Council asked for an alternative to consider the addition of the IP-Industrial Park Zoning District. This district is intended for research and development, manufacturing, offices, and other premier economic development activities. Given the Envision San Jose 2040 General Plan's emphasis on job creation to improve the City's fiscal health, staff is not recommending the IP District for Medical Marijuana Collectives. For example, the City recently approved a Planning Permit for a 2 million square foot campus in North San Jose. Medical Marijuana Collectives as a neighboring use would not be conducive to attracting additional corporate headquarters and campuses to North San Jose, Edenvale, Evergreen, or North Coyote Valley.

### Distance Requirements

Based on the City's experience with Collectives, the City Council has now directed that some of the buffer areas be increased to prohibit Collectives to locate within:

- Public and private schools, including those associated with religious assembly uses: Increase the distance from 600 to 1,000 feet.
- Child daycare centers, all houses of worship, community/recreation centers, parks, libraries, and other Collectives: Increase the distance from 500 to 1,000 feet.
- 500 feet of substance abuse rehabilitation centers: No change.
- 150 feet of residential uses: No change.

Staff supports all of these modifications. The increases in some distances to 1,000 feet align with the Planning Commission's recommendations from 2011.

Based on the best available data for these sensitive uses, staff estimates that a total of 135 parcels could be eligible as a Collective location. Below is the estimated breakdown by zoning district:

- DC-Downtown Primary Commercial: 0
- CG-Commercial General: 55
- CIC-Combined Industrial/Commercial: 3
- LI-Light Industrial: 77

Given that property owners may apply for property rezoning and that sensitive uses may establish and/or relocate over time, these estimates are only approximate for decision-making purposes only. If the ordinances are approved by the Council, specific sites would need to be evaluated against all of the criteria through the Zoning Verification Certificate process described below.

Of all of the above distance requirements, the distance to residential is the most limiting for Collectives. This is because the predominant land use in San Jose is residential. Staff did consider increasing the distance between Collectives and residential uses to 1,000 feet or 1 mile. Staff also explored scenarios for a prohibition around assembly uses and 1,000 feet from all sensitive uses (e.g., residential and school uses). Based on the increased distances mentioned above, staff does not recommend additional distances. These distances would effectively ban Collectives from most parts of San Jose and for this reason, staff is not recommending the greater distances.

### Cultivation

The original regulations would have required on-site cultivation of Medical Marijuana at the same location from which Medical Marijuana is dispensed by the Collective to ensure a “closed-loop system.” In December 2013, the Council directed that Collectives be allowed to cultivate off-site, at a location that is separate from the dispensing location, within the City. This option is allowed in the proposed Title 6 Regulatory Ordinance with sufficient controls to ensure that only Medical Marijuana cultivated by a Collective is dispensed by it. The proposed Title 6 Regulatory Ordinance also maintains the option of a Collective cultivating on-site at the dispensing location instead. Each Collective would be allowed one cultivation site within the City; the cultivation site could either be combined with the Collective’s sole dispensing location or at a separate location.

In accordance with the Council’s direction, a distinct use of off-site cultivation only in the CIC-Combined Industrial/Commercial, LI-Light Industrial, and HI-Heavy Industrial zoning districts is included in the proposed ordinance. Staff is recommending these zoning districts for cultivation only. Unlike wineries or breweries where incidental sales and/or tasting could occur, staff is recommending that no dispensing of any sort occur at a cultivation location. This ensures that the dispensing locations remain clear for enforcement purposes.

### Zoning Verification Certificate

The proposed ordinance would reinstate the Zoning Verification Certificate as the mechanism to confirm that a Collective meets the land use requirements in the Zoning Code. As discussed during the 2011 hearings, the Certificate is for a specific establishment at a specific location. Knowing that land use permits [such as a Conditional Use Permit (CUP)] run with the land rather than the operator/owner of the Collective, staff continues to recommend a Certificate that is specific to a given operator and location.

A Zoning Verification Certificate is non-transferable to different locations or a change in Collective operator at the same location. Each location would need its own verification to determine if the site meets the proposed Zoning and sensitive use distance requirements. A change in Collective operator(s) at the same location would require a new Zoning Verification Certificate. This is due to the dynamic nature of land use. For example, a new sensitive use could have located to the area, and/or the property owner applied for and obtained approval for a rezoning of the property.

### Conclusion

The Commission is encouraged to provide specific input on the zoning districts, distance criteria, and other proposed provisions for the Council's consideration.

## **EVALUATION AND FOLLOW-UP**

If the City Council approves the proposed ordinance, it would facilitate the legal establishment of Medical Marijuana Collectives in San Jose, together with pending changes to Title 6 of the Municipal Code.

### **CEQA**

The environmental impacts of land use regulations for Medical Marijuana Collectives were originally addressed by an Initial Study and documented by a Negative Declaration (ND) under file number PP11-039, and certified as final on June 15, 2011. In addition, Addendum PP11-076 for the original Title 6 Medical Marijuana regulatory program was certified as final on September 1, 2011. Based on the proposed changes to the Municipal Code as described in this report, another Addendum has been prepared under file number PP14-030 because the proposed ordinance contains the same or greater buffer setbacks from sensitive receptors, thereby creating the same or lesser environmental impacts to the population. The addition of cultivation as a potential allowed use would not create new significant impacts because the cultivation use would be regulated with controls to comply with the US Attorney General's Enforcement Memorandum and protect existing uses from negative impacts. This Addendum was prepared pursuant to Section 15164 of the CEQA Guidelines.

## **PUBLIC OUTREACH**

Numerous community and stakeholder meetings have occurred on the topic of Medical Marijuana Collectives since 2009. Additionally, the City Manager's Office is hosting a community meeting on April 26<sup>th</sup> at City Hall at 10:00 a.m. For additional information regarding this meeting, please contact Angelique Gaeta in the City Manager's Office at 408/535-8253.

## **COORDINATION**

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office and City Manager's Office.

/s/

DAVID SYKES, Interim Director

Department of Planning, Building and Code Enforcement

For more information please call Laurel Prevetti at 408/535-7901 or Jenny Nusbaum at 408/535-7872.

### Attachments:

- Draft Ordinance
- Proposed Title 6 Ordinance Summary

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN JOSE REPEALING SUSPENDED ORDINANCE NO. 28958 EXCEPT FOR THOSE PROVISIONS OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE RELATED TO ZONING CODE VERIFICATION CERTIFICATES PREVIOUSLY UNSUSPENDED BY ORDINANCE NO. 29089, AND AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTION 20.10.040 OF CHAPTER 20.10, AMENDING SECTION 20.40.100 OF CHAPTER 20.40; AMENDING SECTION 20.50.100 OF CHAPTER 20.50, AMENDING SECTION 20.70.100 OF CHAPTER 20.70, ADDING A NEW PART 9.75 TO CHAPTER 20.80, AMENDING PART 13 OF CHAPTER 20.100 TO ADD SECTIONS 20.100.1530, 20.100.1535 AND 20.100.1540, ALL TO ESTABLISH LAND USE REGULATIONS PERTAINING TO MEDICAL MARIJUANA COLLECTIVES**

**WHEREAS**, pursuant to the provisions of Chapter 21.06 of Title 21 of the San José Municipal Code, a Negative Declaration (File No. PP11-039) and Addenda thereto (File Nos. PP11-076 and PP14-030) were prepared to identify and analyze the environmental impacts of this Ordinance (the “Negative Declaration”); and

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

**WHEREAS**, on May 13, 2014, after a duly noticed and conducted public hearing, the City Council considered the Addendum for PP14-030 to the previously adopted the Negative Declaration, together with said Negative Declaration as addended, prior to making a decision on the approval of this Ordinance.

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

**SECTION 1.** Suspended Ordinance No. 28958 is hereby repealed, except for Sections 20.100.1500, 20.100.1510, 20.100.1520, 20.100.1525 and 20.100.220 of Title 20 of the San Jose Municipal Code with regard to the Zoning Code Verification Certificate, which Sections were previously unsuspended and made effective through adoption of Ordinance No. 29089.

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

**20.10.040 Interpretation**

- A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of buildings or premises or upon height or buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.
- B. No provision of this Title is intended to nor shall be interpreted or applied to allow or authorize a use or structure that violates federal, state or local law, provided, however that a Medical Marijuana Collective that is in full compliance with all applicable state and local laws and regulations may assert an affirmative defense to criminal or civil enforcement of this Code where such enforcement action is based solely upon those operations by a Collective that are expressly recognized in and fully conform to the provisions of this Code.

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

**20.40.100 Allowed Uses and Permit Requirements**

- A. "Permitted" land uses are indicated by a "P" on Table 20-90.
- B. "Conditional" uses are indicated by a "C" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.

- C. "Conditional" uses requiring City Council approval as the initial decision-making body are indicated by a "CC" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit approved by the City Council as set forth in Chapter 20.100. Applications for these uses shall first be considered by the Planning Commission at a public hearing of the Commission for the Commission's report and recommendation on the application to the City Council pursuant to the processes set forth in Chapter 20.100.
- D. "Special" uses are indicated by a "S" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100
- E. "Administrative" uses are indicated by an "A" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- F. "Restricted" land uses are indicated by an "R" on Table 20-90. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective Zoning Code Verification Certificate as set forth in Chapter 20.100.
- G. Land uses not Permitted are indicated by a "-" on Table 20-90. Land uses not listed on Table 20-90 are not permitted.
- H. When the right column of Table 20-90 includes a reference to a Section number or a footnote, the regulations cited in the section number or footnote applies to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

<b>Table 20-90 Commercial Districts and Public/Quasi-Public Zoning District Land Use Regulations</b>						
<b>Use</b>	<b>Zoning District</b>					<b>Notes &amp; Section</b>
	<b>CO</b>	<b>CP</b>	<b>CN</b>	<b>CG</b>	<b>PQP</b>	
<b>General Retail</b>						
Retail sales, goods and merchandise	-	P	P	P	-	Note 21
Alcohol, off-site sales - beer	-	C	C	C	-	Section

and/or wine only						20.80.900; Note 21
Alcohol, off-site sales, full range of Alcoholic Beverages	-	C	C	C	-	Section 20.80.900; Note 21
Aquaculture/Aquaponics	S	S	S	S	S	
Auction	-	-	-	C	C	
Bakery, retail	-	P	P	P	-	Note 21
Certified Farmers' Market	S	S	S	S	S	Part 3.5, Chapter 20.80
Certified Farmers' Market - Small	P	P	P	P	P	Part 3.5, Chapter 20.80
Food, beverage, groceries	-	P	P	P	S	
Neighborhood Agriculture	P	P	P	P	P	Title 7; Note 19
Nursery, Plant	P	P	P	P	P	
Outdoor Vending	-	A	A	A	A	Part 10, Chapter 20.80
Outdoor Vending – Fresh Fruits and Vegetables	P	P	P	P	P	Part 10, Chapter 20.80
Pawn shop/broker	-	C	C	C	-	See Title 6
Seasonal sales						Part 14, Chapter 20.80

Retail Art Studio	-	P	P	P	-	Section 20.80.1175; Note 21
<b>Education and Training</b>						
Child Day Care Center located on an existing School Site or as an incident to an on-site church/religious assembly use involving no Building additions or changes to the Site	P	P	P	P	-	Note 21
Day care center	C	C	C	C	C	
Instructional Art Studios	-	P	P	P	S	
Instructional Art Studios, with live models	-	C	C	C	C	
Private Instruction, personal enrichment	-	P	P	P	S	
School - elementary and secondary (public or private)	C	C	C	C	S	Note 16; Note 20; Note 21
School, driving (class C & M license)	-	P	P	P	S	Note 2; Note 20; Note 21
School, Post Secondary	-	P	P	P	S	Note 3; Note 20; Note 21
School, Trade and Vocational	-	C	C	C	S	Note 16; Note 20; Note 21
<b>Entertainment and Recreation Related</b>						

Arcade, Amusement Game	-	C	C	C	-	Note 21
Dancehall	-	C	C	C	C	Note 21
Poolroom/billiards establishment	-	C	C	C	-	Note 21
Private club or lodge	C	C	C	C	-	
Recreation, Commercial Indoor	-	P	P	P	S	Note 21
Recreation, Commercial Outdoor	-	C	C	C	C	Note 21
Relocated Cardroom	-	-	-	C	-	Section 20.80.1155
Stadium, 2,000 seats or fewer	-	C	C	C	C	Note 17
Stadium, more than 2,000 seats	-	CC	CC	CC	CC	Note 17; Note 18
Theatre, indoor	-	C	C	C	C	Note 21
Theatre, outdoor	-	-	-	C	C	Note 21
<b>Food Services</b>						
Banquet Facility	-	C	C	C	C	
Caterer	-	P	P	P	S	Note 4
Drinking Establishments	-	C	C	C	-	Note 21
Drinking Establishments interior to a full-service hotel/motel that includes 75 or more guest rooms	-	P	P	P	-	Section 20.80.475; Note 21

Public Eating Establishments	-	P	P	P	-	Note 21
Outdoor dining, incidental to a Public Eating Establishment or a retail establishment	-	P	P	P	-	Section 20.40.520; Note 21
Wineries, breweries	-	C	C	C	-	Note 21
Incidental recreational dancing as part of a public eating establishment or drinking establishment	-	P	P	P	-	Note 21
<b>Health and Veterinary Services</b>						
Animal boarding, indoor	P only as incidental to Neighborhood Agriculture; Otherwise prohibited.	P	P	P	P only as incidental to Neighborhood Agriculture; Otherwise S.	Section 20.40.120;
Animal grooming	P only as incidental to Neighborhood Agriculture; Otherwise prohibited.	P	P	P	P only as incidental to Neighborhood Agriculture; Otherwise S.	Section 20.40.120
Emergency ambulance service	C	C	C	C	C	
Hospital/ in-patient facility	C	C	C	C	C	Note 21
Medical Marijuana Collective <del>USE</del> <b>SUSPENDED</b>	-	-	-	R	-	Part 9.75, Chapter 20.80

Office, Medical	P	P	P	P	S	Note 21
Veterinary Clinic	-	P	P	P	C	Note 16
<b>General Services</b>						
Bail Bond Establishment - outside main jail area	-	P outside of Urban Village; S in Urban Village	P	P	-	Part 1.5, Chapter 20.80
Bail Bond Establishment - within main jail area	-	P outside of Urban Village; S in Urban Village	P	P	-	Note 14; Part 1.5, Chapter 20.80
Bed and Breakfast Inn	-	P	P	P	-	Part 2, Chapter 20.80; Note 21
Dry cleaner	-	P	P	P	-	Note 21
Hotel-or Motel	-	P	P	P	-	Note 21
Single Room Occupancy (SRO) Hotel	-	C	C	C	-	Part 15, Chapter 20.80;
Laundromat	-	P	P	P	-	Note 21
Maintenance and repair, small household appliances	-	P	P	P	-	Note 21
Messenger services	P	P	P	P	-	Note 2; Note 21
Mortuary and Funeral Services	P	P	P	P	-	Note 21

Personal Services	-	P	P	P	-	Section 20.200.880; Note 21
Photo processing and developing	-	P	P	P	-	Note 21
Printing and publishing	-	P	P	P	-	Note 21
<b>Offices and Financial Services</b>						
Automatic teller machine	P	P	P	P	S	Section 20.80.200
Business Support	-	P	P	P	-	Note 21
Financial institution	P	P	P	P	-	Note 21
Office, General Business	P	P	P	P	S	Section 20.40.110; Note 21
Payday Lending Establishment	-	R outside of Urban Village; Prohibited in Urban Village	R	R	-	Part 12.5, Chapter 20.80; Section 20.200.875
<b>Public, Quasi-Public and Assembly Uses</b>						
Cemetery	C	C	C	C	C	
Church/religious assembly	C	C	C	C	S	Note 16; Note 20; Note 21
Construction/Corporation Yard associated with Public, Quasi-Public or Assembly Use or Transportation or Utility Use	-	-	-	-	C	

Museums, libraries, parks, playgrounds, or community centers (publicly operated)	P	P	P	P	P	Note 21
Museums, libraries, parks, playgrounds, or community centers (privately operated)	C	C	C	C	S	Note 20; Note 21
<b>Residential</b>						
Emergency Residential Shelter	C	C	C	C	C	Section 20.80.500
Live/Work Uses	-	S	S	S	-	Note 6; Section 20.80.740
Mixed Use residential/commercial	-	C outside of Urban Village; S in Urban Village	C	C	-	Note 6
Residential Care Facility for seven (7) or more persons	C	C	C	C	C	
Residential Service Facility for seven (7) or more persons	C	C	C	C	C	
Single Room Occupancy Living Unit	-	C	C	C	-	Note 6; Part 15, Chapter 20.80
<b>Drive-Through Uses</b>						
Drive-through Uses in conjunction with any use	-	-	C	C	C	

<b>Recycling Uses</b>						
Reverse Vending Machine	A	A	A	A	A	Part 13, Chapter 20.80
Small Collection Facility	A	A	A	A	A	Part 13, Chapter 20.80
<b>Transportation and Utilities</b>						
Data center	-	-	-	C	-	Note 21
Common Carrier	-	-	-	-	C	Note 21
Common Carrier Depot	-	-	-	-	S	Note 21
Community television antenna systems	C	C	C	C	C	
Off-site, alternating use and alternative parking arrangements	S	S	S	S	S	Section 20.90.200
Parking Establishment, Off-street	C	C	C	C	C	
Short term parking lot for uses or events other than on-site	-	-	-	C	C	Note 7
Television, radio studios without antenna/dishes	-	-	-	C	C	
Utility Facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	C	
Utility Facilities including corporation yards, storage or repair yards and	-	-	-	-	C	

warehouses						
Wireless Communication Antenna	C	C	C	C	C	Section 20.100.1300
Wireless Communication Antenna, Slimline Monopole	S	S	S	S	S	Section 20.80.1900
Wireless Communication Antenna, Building Mounted	P	P	P	P	P	Section 20.80.1910
<b>Electrical Power Generation</b>						
Fuel Cells	P	P	P	P	P	
Private Electrical Power Generation Facility	C	C	C	C	C	Note 2
Co-generation Facility	S	S	S	S	S	
<b>Stand-by/backup</b>						
Facilities that do not exceed noise or air standards	A	A	A	P	A	
Facilities that do exceed noise or air standards	C	C	C	C	C	
Temporary Stand-by/Backup	P	P	P	P	P	
Solar Photovoltaic System	P	P	P	P	P	Section 20.100.610 C.7.
<b>Vehicle Related Uses</b>						
Accessory installation, passenger vehicles and pick-up trucks	-	C	C	P	-	

Auto dealer, wholesale, no on-site storage	P	P	P	P	-	
Car wash, detailing	-	-	C	C	-	
Gasoline Service or Charge Station	-	C	C	P	C	Note 8, Note 15
Gasoline Service or Charge Station with incidental service and repair	-	C	C	P	C	Note 9, Note 13
Glass sales, installation and tinting	-	-	C	P	-	Note 13
Leasing (rental) passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	C	P	-	Note 2
Sale, brokerage, or lease, commercial vehicles	-	C	C	C	-	Note 13
Sale or brokerage, Passenger Vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	S	P	-	Note 12, Note 13
Sale, vehicle parts	-	S	P	P	-	Note 11
Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks	-	C	C	P	-	Note 10, Note 13
<b>Historic Reuse</b>						
Historic Landmark Structure reuse	S	S	S	S	S	Part 8.5 Chapter

						20.80
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**Notes applicable to all Commercial Districts:**

1. In the CP District, landscaping materials, such as rock, mulch, and sand are limited to prepackaged sales.
2. No on site storage of vehicles permitted in the CP and CN Zoning Districts.
3. Includes public and private colleges and universities, as well as extension programs and business schools.
4. Not a catering facility.
5. No on site storage of vehicles permitted.
6. Mixed-Use residential/commercial only under an approved Urban Village plan with an implementation financing strategy approved by the City Council or in a Signature Project consistent with the General Plan. Live/work in an area with an Urban Village designation or Urban Village Overlay in the General Plan shall be consistent with applicable approved Urban Village plans.
7. Use must be less than twenty-four (24) hours.
8. No incidental repair or service permitted.
9. Incidental repair includes non-invasive engine service, maintenance and repair, including but not limited to air conditioning service, fuel system service, electrical service, coolant system service, tune-up, fluid exchanges, steering and suspension system service, brake system service, transmission adjustment and service, lube, oil change, smog check, diagnostics and vehicle inspections, stock catalytic converters and manifolds, as well as tires, batteries and accessories installation. Does not allow body repair, welding, vehicle restorations, other types of exhaust system repair, the removal of cylinder heads, engines, transmissions/transfer cases and differentials, or painting.
10. Includes non-invasive engine service, maintenance and repair, including but not limited to air conditioning service, carburetor and fuel injection system service, electrical service, radiator coolant system service, and tune-up, fluid exchanges, steering and suspension system service, brake system service, transmission adjustment and service, lube, oil change, and smog check, diagnostics and vehicle inspections, stock catalytic converters and manifolds, as well as tires, batteries and accessories installation. Does not allow body repair, welding, vehicle restorations, other types of exhaust system repair, the removal of cylinder heads, engines, transmissions/transfer cases and differentials, or painting.

11. No outdoor sales areas or dismantling allowed.
12. In the CG District, incidental repair of vehicles requires a Special Use Permit. Incidental repair of vehicles is prohibited in all other commercial districts.
13. All vehicle-related repair, service, and accessory or other installation shall be conducted within a fully enclosed building.
14. Bail bond establishments shall not be located and are prohibited uses on the ground floors of Structures located within the main jail area, as that area is defined in Section 20.80.070 of Chapter 20.80 of this title. Bail bond establishments are allowed as shown on Table 20-90 on other, above-ground floors of Structures. All bail bond establishments shall meet all distance requirements specified in Section 20.80.075 of Chapter 20.80 of this Title.
15. Charging stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-site are permitted in all Commercial Zoning Districts.
16. Public schools are subject to the regulations of this Title, subject to the provisions of California Government Code Section 53094 for classroom facilities.
17. Primary uses include sporting events, assembly venues, concerts, and entertainment events of similar character and intensity. Incidental support uses include offices, locker rooms, retail, Public Eating Establishments, Drinking Establishments, Outdoor Vending Facilities, and other commercial uses of similar character and intensity.
18. Use Permit applications for Stadiums that consist of more than 2,000 seats and that are in Airport Influence Areas shall be referred to the Santa Clara Airport Land Use Commission prior to approval by the City.
19. Neighborhood Agriculture in conformance with this Title is a Permitted Use that may operate on a Site without a Permanent Building on that Site.
20. The City Council is the decision-making body for Special Use Permit Appeals for this use pursuant to Section 20.100.220 of this Title.
21. In the PQP Public/Quasi-Public Zoning District, the following uses may be allowed as a use supporting and incidental to a primary PQP use:
  - a. Offices, retail, Public Eating Establishments, and other commercial uses of similar character and intensity, with approval of a Special Use Permit; and

- b. Drinking Establishments, Off-sale of Alcoholic Beverages, Arcade Amusement Games, Poolroom/Billiards Establishments, wineries, breweries, and Data Centers, with approval of a Conditional Use Permit.

**SECTION 4.** Section 20.50.100 of Chapter 20.50 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.50.100 Allowed Uses and Permit Requirements**

- A. "Permitted" land uses are indicated by a "P" on Table 20-110.
- B. "Permitted" uses which may be approved only on property designated on the Land Use/Transportation Diagram of the General Plan, as amended, with the Combined Industrial/Commercial land use designation or, in the case of hotel/motel establishments, which may also be approved on property designated on the Land Use/Transportation Diagram of the General Plan, as amended, with the Preferred Hotel Site Overlay, are indicated by a "P<sup>GP</sup>" on Table 20-110.
- C. "Conditional" uses are indicated by a "C" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.

"Conditional" uses which may be approved only on property designated on the Land Use/Transportation Diagram of the General Plan, as amended, with the Combined Industrial/Commercial designation or, in the case of hotel/motel establishments, may also be approved on property designated on the Land Use/Transportation Diagram of the General Plan, as amended, with the Preferred Hotel Site Overlay, are indicated by a "C<sup>GP</sup>" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.

- D. "Conditional" uses requiring City Council approval as the initial decision-making body are indicated by a "CC" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit approved by the City Council as set forth in Chapter 20.100. Applications for these uses shall first be considered by the Planning Commission at a public hearing of the Commission for the Commission's report and recommendation on the application to the City Council pursuant to the processes set forth in Chapter 20.100.

"Conditional" uses which may be approved only on property designated on the Land Use/Transportation Diagram of the General Plan, as amended, with the Combined Industrial/Commercial designation are indicated by a "CC<sup>GP</sup>" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter

20.100.

- E. "Special" uses are indicated by a "S" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- F. "Administrative" uses are indicated by an "A" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- G. "Restricted" land uses are indicated by an "R" on Table 20-110. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective Zoning Code Verification Certificate as set forth in Chapter 20.100.
- H. Land uses not permitted are indicated by a "-" on Table 20-110. Land uses not listed on Table 20-110 are not permitted.
- I. When the right column of Table 20-110 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San Jose Municipal Code.

<b>Table 20-110 Industrial Districts Land Use Regulations</b>						
<b>Use</b>	<b>Zoning District</b>					<b>Applicable Sections &amp; Notes</b>
	<b>CIC</b>	<b>TEC</b>	<b>IP</b>	<b>LI</b>	<b>HI</b>	
<b>Industry</b>						
Auction	C	C	C <sup>GP</sup>	C <sup>GP</sup>	-	
Industrial services	-	-	-	P	P	
Laboratory, processing	P	P	P	P	P	
Manufacturing and assembly						

Light	P	P	P	P	-	
Medium	P	P	P	P	P	
Heavy	-	-	-	-	P	
Research and development	P	P	P	-	-	
Catalog and mail order	P	P	P	P	-	
Construction / Corporation yard	-	-	-	S	S	
Establishment for the repair, cleaning of household, commercial or industrial equipment or products	-	-	-	P	P	
Extraction of minerals from the ground, including quarrying	-	-	-	-	C	
Hazardous materials storage facility	-	-	-	C	C	
Hazardous waste facility	-	-	-	-	C	
Junkyard	-	-	-	-	C	
Miniwarehouse/ministorage	-	-	-	P	P	
Outdoor uses or storage, industrial	-	-	-	S	P	Section 20.50.210
Private Power Generation	C	C	C	C	C	
Stockyard, including slaughter	-	-	-	-	C	
Warehouse/distribution facility	P	P	P	P	P	

Wholesale sale establishment	P	S	S	P	P	
Wineries, breweries	P	P	P	P	P	
<b>Additional Uses</b>						
Any use not set forth in Tables 20-30, 20-50, 20-90	-	-	-	-	C	
Any use without a permanent fully enclosed Building on-site	C	C	C	S	S	
Commercial support	-	P	P	-	-	Note 5; Section 20.50.110
Retail sales, goods and merchandise	P	P	-	-	-	Note 5; Section 20.50.110
Retail art studio	P	P	-	-	-	
Alcohol, off-site sales –beer and/or wine only	C	C	-	-	-	Note 5; Section 20.50.110
Alcohol, off-site sales, full range of alcoholic beverages	C	C	-	-	-	Note 5; Section 20.50.110
Alcohol, off-site sales –beer and/or wine only and incidental to a winery/brewery	C	C	C	C	C	Note 12; Section 20.50.110
Alcoholic beverages, off-site sales –distilled spirits only and incidental to a distillery	C	C	C	C	C	Note 12; Section 20.50.110
Bakery, retail	P	P	-	-	-	Note 5; Section 20.50.110
Aquaculture; Aquaponics	S	S	S	S	S	
Certified Farmers' Market	-	S	S	-	-	Part 3.5, Chapter 20.80
Certified Farmers' Market -	-	P	P	-	-	Part 3.5, Chapter 20.80

Small						
Food, beverage, groceries	P	P	-	-	-	Note 5; Section 20.50.110
Neighborhood Agriculture	P	P	P	P	P	
Nursery, plant	P	P	-	C	C	
Outdoor Vending	A	A	-	A	A	Part 10, Chapter 20.80
Outdoor Vending – Fresh Fruits and Vegetables	P	P	P	P	P	Part 10, Chapter 20.80
Large format commercial establishment	-	-	C <sup>GP</sup>	C <sup>GP</sup>	-	
Large format commercial establishment, associated commercial	-	-	C <sup>GP</sup>	C <sup>GP</sup>	-	Section 20.50.115
Warehouse retail	-	-	C	C	C	Section 20.50.130
Sales, office furniture, industrial equipment, machinery	P	P	-	C	-	
Seasonal sales	P	P	P	P	P	Part 14, Chapter 20.80
<b>Education and Training</b>						
Day care center	C	C	C <sup>GP</sup>	C <sup>GP</sup>	-	
School, driving (class A & B license)	-	-	-	P	P	
Instructional art studios	P	P	-	-	-	
Instructional art studios, live models	C	C	-	-	-	

Private instruction, personal enrichment	P	P	-	-	-	
School- elementary and secondary (public or private)	C	C	-	-	-	Note 11
School, post secondary	C	C	C	-	-	
School, trade and vocational	C	C	-	C	C	
<b>Entertainment and Recreation Related</b>						
Recreation, commercial / indoor	P	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup> on lands with other General Plan land use designations	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 5, Section 20.50.110
Recreation, commercial / outdoor	C	-	-	-	-	
Relocated cardroom	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	Section 20.80.1155
Performing arts production and rehearsal space, excluding performances	P	C	C	C <sup>GP</sup>	-	
Stadium, 2,000 seats or fewer including incidental support uses	C <sup>GP</sup>	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup>	-	-	-	Note 15

		on lands with other General Plan land use designations				
Stadium, more than 2,000 seats including incidental support uses	CC <sup>GP</sup>	-	-	-	-	Note 15; Note 16
<b>Food Services</b>						
Caterer	P	P	-	-	-	
Drinking establishments	C	C	-	-	-	
Drinking establishments interior to a full-service hotel/motel that includes 75 or more guest rooms	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	P <sup>GP</sup>	-	-	Section 20.80.475; Note 13
Drinking establishment in conjunction with a winery or brewery	C	C	C	C	C	
Public eating establishments	P	P	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Outdoor dining, incidental to a public eating establishment	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113

<b>Health and Veterinary Services</b>						
Animal boarding, indoor	P	P	-	-	-	Note 14
Animal grooming	P	P	-	-	-	Note 14
Emergency ambulance service	C	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	
Hospital/in-patient facility	C	C	C	-	-	Note 6
Medical Marijuana Collective <del>{USE SUSPENDED}</del>	R	-	-	R	-	Part 9.75, Chapter 20.80
<u>Medical Marijuana Collective, Cultivation Site Only</u>	<u>R</u>	<u>-</u>	<u>-</u>	<u>R</u>	<u>R</u>	<u>Part 9.75, Chapter 20.80</u>
Office, medical	P	P	C	-	-	Note 5, Section 20.50.110
Veterinary clinic	P	P	-	-	-	Note 14
<b>General Services</b>						
Crematory	-	-	-	C <sup>GP</sup>	C	Note 7
Mortuary, without funeral services	-	-	-	P	P	
Dry cleaner	P	P	-	-	-	
Hotel / motel	P	P on lands with a General Plan land use designation of Transit Employment Center; P <sup>GP</sup> on lands with other General Plan land use designations	C <sup>GP</sup>	-	-	Note 13

Laundromat	P	P	-	-	-	
Maintenance and repair, small household appliances	P	P	-	-	-	
Messenger services	P	P	-	-	-	
Personal services	P	P	-	-	-	Note 5, Section 20.50.110
Photo processing and developing	P	P	P	P	P	
Printing and publishing	P	P	P	P	P	
Social service agency	-	C	C	C	C	
<b>Offices and Financial Services</b>						
Automatic teller machine	P	P	P	P	P	Section 20.80.200
Business support	P	P	-	-	-	
Financial institution	P	P	-	C <sup>GP</sup>	-	Note 5, Section 20.50.110
Office, general business	P	P	P	-	-	
Office, research and development	P	P	P	-	-	
<b>Public, Quasi-Public and Assembly Uses</b>						
Church / Religious assembly	C	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup> on lands with other	C <sup>GP</sup>	C <sup>GP</sup>	-	

		designations				
<b>Residential</b>						
Emergency residential shelter, more than 50 beds	C	C <sup>GP</sup>	C <sup>GP</sup>	C	-	Section 20.80.500
Emergency residential shelter, 50 beds or fewer	P	C	C <sup>GP</sup>	C	-	Section 20.80.500
Living quarters, custodian, caretakers	-	-	-	-	C	Note 1
<b>Drive-Through Use</b>						
Drive-through in conjunction with any use	C	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	
<b>Recycling Uses</b>						
Recycling processing facility	-	C	C	S	S	
Recycling transfer facility	-	C	C	S	S	
Large collection facility	-	-	-	-	P	
Reverse vending	A	A	A	A	A	
Small collection facility	A	A	A	A	A	
<b>Transportation and Utilities</b>						
Common carrier	-	-	-	C	P	
Common carrier depot	S	S	S	S	S	
Community television antenna systems	C	C	C	C	C	

Data center	S	S	S	S	S	
Off-site, alternating and alternative use parking arrangements	S	S	S	S	S	Section 20.90.200
Parking establishment not permitted in Tables 20-30, 20-50 and 20-90	C	C	C	C	C	
Parking establishment, off-street	C	C	C	C	C	
Television, radio studio	C	C	C	C	C	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	C	
Wireless communication antenna	C	C	C	C	C	Section 20.100.1300
Wireless communication antenna, Slimline Monopole	S	S	S	S	S	Section 20.80.1900
Wireless communication antenna, Building mounted	P	P	P	P	P	Section 20.80.1910
<b>Power Generation</b>						
Base Load Facility	-	-	-	-	C	
Stationary Peaking Facility	-	-	-	C	C	
Transportable Peaking Facility	-	-	-	C	C	
Private Power Generation Facility	C	C	C	C	C	
Co-generation Facility	S	S	S	S	S	

<b>Stand-by/Back-up/Small-scale Renewable Power</b>						
Facilities that do not exceed noise and air standards	P	P	P	P	P	
Facilities that do exceed noise and air standards	C	C	C	C	C	
Temporary stand-by-backup	P	P	P	P	P	
Solar Photovoltaic System	P	P	P	P	P	Section 20.100.610 C.7.
<b>Vehicle Related Uses</b>						
Auto dealer, wholesale, no on-site storage	P	P	P	-	-	
Car wash, detailing	C	C	-	-	-	
Gas or charge station, excluding incidental service or repair	P	C	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 2, Note 8
Gas or charge station with incidental service and repair	P	C	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 3
Sale, brokerage, or lease (rental) of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	-	C	-	Note 10
Warehouse indoor retail sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	C	C	C	Section 20.50.140
Repair and cleaning of vehicles	C	-	-	P	P	Note 4
Sale or lease of commercial trucks, buses, trailers,	C	-	-	C	-	

campers, boats, mobilehomes, construction equipment						
Sale, vehicle parts	P	P	-	P/S	-	Note 9
Vehicle tow yard	-	-	-	C	S	
Vehicle wrecking, including sales of parts	-	-	-	-	C	
<b>Historic Reuse</b>						
Historic landmark Structure reuse	S	S	S	S	S	Part 8.5 Chapter 20.80

Notes:

1. Site must be seven (7) acres or more.
2. No incidental repair or service.
3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune- up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
4. All vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
5. Retail; recreation, commercial/indoor establishments; public eating establishments; outdoor dining, incidental to a public eating establishment; financial institutions; medical clinics; medical offices; and personal service establishments are permitted in the IP District subject to the limitations of commercial support use, Section 20.50.110. Public eating establishments in the LI or HI districts are limited to a maximum of 650 gross square feet in size.
6. Refer to the General Plan for criteria to determine if the use is permissible at the proposed location.
7. Crematories shall be separated by at least 500 linear feet from residential uses, schools, and day care centers, which distance(s) shall be measured from the nearest points of the Parcel boundary on which the crematory is proposed and the Parcel boundary on which the residential, school or day care center use is located.
8. Charging stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-site are permitted in all industrial zoning districts.

9. Vehicle parts sales are permitted in the LI District when the total floor area dedicated to retail display and open to the public occupies no more than 15% of the gross floor area of the individual tenant space. Vehicle parts sales establishments that exceed 15% of the gross floor area of the individual tenant space are subject to a Special Use Permit.
10. Any incidental vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
11. Public schools are subject to the regulations of this Title, subject to the provisions of California Government Code Section 53094 for classroom facilities.
12. Off-sale of Alcoholic Beverages. The total square footage of alcoholic beverages on display in a retail area and the total square footage of retail floor area in which alcoholic beverages are displayed for sale shall be the lesser of the following:
  - a. Two hundred fifty (250) gross square feet; or
  - b. Five (5) percent of the winery's, brewery's, or distillery's entire gross floor area; and any and all alcoholic beverages made available for retail sale shall be limited only to those alcoholic beverages manufactured and produced on-site.
13. At least two hundred (200) rooms and four (4) or more stories in Height are required for hotels located in the TEC Transit Employment Center Zoning District.
14. In the TEC Zoning District, all uses involving any type of care for animals, including but not limited to grooming, boarding, and medical care, must be conducted wholly inside a Building.
15. Primary uses include sporting events, large assembly, concerts, and entertainment events of similar character and intensity. Incidental support uses include offices, locker rooms, retail, Public Eating Establishments, Drinking Establishments, Outdoor Vending Facilities, and other commercial uses of similar character and intensity.
16. Use Permit applications for stadiums that consist of more than 2,000 seats and that are in an airport influence area shall be referred to the Santa Clara Airport Land Use Commission prior to approval by the City.

**SECTION 5.** Section 20.70.100 of Chapter 20.70 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.70.100 Allowed Uses and Permit Requirements**

- A. "Permitted" land uses are indicated by a "P" on Table 20-140.
- B. "Conditional" uses requiring planning commission approval as the initial decision-making body are indicated by a "C" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a

conditional use permit approved by the Planning Commission, or City Council on appeal, as set forth in Chapter 20.100.

C. "Conditional" uses requiring City Council approval as the initial decision-making body are indicated by a "CC" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit approved by the City Council as set forth in Chapter 20.100. Applications for these uses shall first be considered by the Planning Commission at a public hearing of the commission for the commission's report and recommendation on the application to the City Council pursuant to the processes set forth in Chapter 20.100.

D. "Special" uses are indicated by a "S" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.

E. "Administrative" uses are indicated by an "A" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.

F. "Restricted" land uses are indicated by an "R" on Table 20-90. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective Zoning Code Verification Certificate as set forth in Chapter 20.100.

G. Land uses not permitted are indicated by a "-" on Table 20-140. Land uses not listed on Table 20-140 are not permitted.

H. The column of Table 20-140, under the heading "Additional Use Regulations for the DG Area," identifies further regulations on the uses of ground-floor building space within a portion of the DC Zoning District. The portion of the DC District included in the DG Area is described in Section 20.70.520. These regulations apply to ground-floor building space, defined as Downtown Ground-Floor Space ("DG Area"), in Section 20.70.520 of this Chapter. If there are no additional regulations on properties located in the DG Area noted in this column, the use regulations for the DG Area remain those regulations of the DC Zoning District.

I. The "Parking" column of Table 20-140 establishes the required parking. The amount of parking may not be increased or decreased unless modified by the Director as set forth in Sections 20.70.320 and 20.70.330 of this Chapter.

J. When the right column of Table 20-140 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

<b>Table 20-140 Downtown Districts Land Use Regulations</b>		
<b>Use</b>	<b>Zoning District</b>	<b>Applicable Notes &amp; Sections</b>

	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to all Downtown Districts
<b>Offices and Financial Services</b>					
Automatic teller machine	P	P		No parking	Section 20.80.200
Business support	P	P	S, Notes k and n	No parking	
Financial institution	P	P	S, Note n	2.5 per 1,000 sq. ft.*	
Financial services	P	P	S, Notes m and n	No parking	
Offices, business and administrative	P	P	S, Notes i and n	2.5 per 1,000 sq. ft.*	Section 20.70.110
Payday lending establishment	R	R			Part 12.5, Chapter 20.80; Section 20.200.875
Research and development	P	P	-	2.5 per 1,000 sq. ft.*	Note 1
<b>General Retail</b>					
Alcohol, off-site sales - beer and/or wine only	C	C		No parking	Section 20.80.900
Alcohol, off-site sales - full range of alcoholic beverages	C	C		No parking	Section 20.80.900
Auction	S	-	-	No parking	
Certified farmers'	S	S		No parking	Part 3.5,

market					Chapter 20.80
Certified farmers' market - small	P	P		No parking	Part 3.5, Chapter 20.80
Food, beverage, groceries	P	P		No parking	
Open air sales establishments and areas	S	S		No parking	
Outdoor vending	S	S		No parking	Part 10, Chapter 20.80
Outdoor vending - fresh fruits and vegetables	P	P		No parking	Part 10, Chapter 20.80
Pawn shop, pawn broker	C	C	Note b	No parking	
Retail sales, goods and merchandise	P	P	Note a	No parking	
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
<b>Education and Training</b>					
Day care center	P	P	S, Notes c and n	No parking	
Post-secondary school	P	P	-	1 per 360 sq. ft.	
Trade school	P	P	-	1 per 360 sq. ft.	
School, elementary (grades K-8)	C	C	-	1 per teacher and employee	
Personal enrichment,	P	P	-, Note d	1 per 360 sq. ft.	

instructional art					
School, elementary (grades K - 8)	C	C	-	1 per teacher and employee	
High school (grades 9 - 12)	C	C	-	.75 per teacher and employee and 1 per each 10 students	
<b>Entertainment and Recreation Related</b>					
Amusement arcade	C	-	Note e	No parking	
Movie theater	P	P		No parking	
Recreation commercial / indoor	P	P		No parking	
Poolroom	S	-		No parking	
Private club or lodge	P	P	-	1 per 360 sq. ft.	
<b>Food Services</b>					
Banquet facility	P	P		No parking required	
Caterer	P	P	C, Note f	No parking	
Drinking establishments	C	C		No parking	
Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight	CC	-		No parking	Note 7

and 6:00 a.m.					
Drinking establishments interior to a full-service hotel/motel with 75 or more guest rooms	P	P		No parking	Section 20.80.475
Public eating establishments	P	P		No parking	Note 9
Wineries, breweries	C	C		No parking	
<b>Health and Veterinary Services</b>					
Animal grooming	P	P	-	No parking	
Animal boarding, indoor	P	P	-	No parking	
Emergency ambulance service	C	-	-	No parking	
Hospital/ in-patient medical facility	C	-	-	1.5 per doctor	
Medical or dental clinic / out-patient facility	P	P	-	1.5 per doctor	
<u>Medical Marijuana Collective</u>	<u>R</u>	<u>=</u>	<u>=</u>	<u>No parking</u>	<u>Part 9.75, Chapter 20.80</u>
Veterinarian	P	P	-	1.5 per doctor	
<b>General Services</b>					
Bed and breakfast	P	P	S, Note I	.35 per room	Part 2, Chapter 20.80

Hotel/motel	P	P	-, Note l	.35 per room	
Maintenance and repair of household appliances	P	P	-	No parking	
Mortuary and funeral services	C	C	-	.75 per employee and vehicle	
Personal services	P	P	Note g	No parking	
Printing and publishing	P	P	Note h	No parking	
<b>Public, Quasi-Public and Assembly Uses</b>					
Auditorium	C	-	-	No parking	
Cemetery	C	C	-	No parking	
Church/religious assembly	P	P		No parking	
Information center	P	P		No parking	
Museums, libraries	P	-	P	No parking	
Parks, playgrounds, or community centers	P	P	Note j	No parking	
<b>Residential</b>					
Residential shelter	C	-	-	1 per 4 beds, 2.5 per 1,000 sq. ft.*	
Live/work	P	S		1.5 per unit	Section 20.70.120

Residential multiple dwelling	P	P	-	1 per unit	
Residential care facility for seven or more persons	C	C	-	.75 per employee	
Residential services facility for seven or more persons	C	C	-	.75 per employee	
Single room occupancy living unit	S	S	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy living unit	S	S	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy hotel	S	S	-	.6 per room	Part 15, Chapter 20.80
<b>Residential Accessory Uses</b>					
Accessory buildings and structures	P	P	-	No parking	Note 2
<b>Recycling Uses</b>					
Reverse vending	S	S	-	No parking	Part 13, Chapter 20.80
Small collection facility	S	S	-	No parking	Part 13, Chapter 20.80
<b>Transportation and Communication</b>					
Community television antenna systems	C	-	-	No parking	
Off-site and alternating use parking	P	P	-	N/A	Section 20.90.200

arrangements					
Parking establishment, off-street	P	P	-	N/A	
Private electrical power generation facility	C	C	-	1 for each vehicle used in the operation of such facility	
Standby generators that do not exceed noise or air standards	A	A	-	N/A	
Temporary stand-by / backup generators	P	P	-	N/A	
Short term parking lot for uses or events other than on-site	S	S		N/A	
Radio and television studios	P	-	Note n	No parking	
Wireless communication antenna	S	-	-	No parking	Section 20.80.1900
Wireless communication antenna, building mounted	P	-	-	No parking	Section 20.80.1900
<b>Electrical Power Generation</b>					
Solar photovoltaic system	P	P	-	No parking	Section 20.100.610 C.7.
<b>Vehicle Related Uses</b>					

Accessory installation for cars and passenger trucks	P	-	-	No parking	
Car wash, detailing	P	-	-	No parking	
Gas or charge station	P	-	-	No parking	Note 3, Note 8
Gas or charge station with incidental service and repair	P	-	-	No parking	Note 3
Sale and lease, vehicles and equipment (less than one ton)	P	-	-	1.5 per employee	Note 4
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	P	-	-	2 per bay or .75 per employee	Note 5
Sale, vehicle parts, new	P	-	-	No parking required	
<b>Historic Reuse</b>					
Historic landmark structure reuse	S	S		Section 20.90.220E.	Part 8.5 Chapter 20.80

Notes:

**Notes applicable to the DG Area only:**

- a. Excluding second-hand stores not dealing primarily in antiques, artworks, or vintage clothing.
- b. Only as a use incidental to a retail jewelry store, otherwise, not permitted.
- c. Only as a use incidental to existing on-site office use, otherwise not permitted.

- d. Culinary/art school with public classes and public demonstrations allowed, includes such areas as dance, music, martial arts, and fine arts.
- e. Allowed only as an incidental use to other allowed recreation uses.
- f. Only as a use incidental to restaurant, grocery or bakery uses for primarily on-site sales, otherwise not permitted.
- g. Excludes check-cashing services, photography studios, weight loss centers, interior decorating, and bail bond services.
- h. Only if dedicated primarily to on-site retail customer copy services, otherwise not permitted.
- i. Exception for travel agencies and real estate agencies which are the only permitted uses.
- j. Community centers are not allowed.
- k. Exception for copy shops and mail centers which are the only permitted uses.
- l. Use of ground floor to be primarily dedicated to customer-related public services.
- m. Includes financial retail services such as payroll advances, foreign currency exchange, debt card services and related financial services products but excludes check cashing except as an ancillary use.
- n. In order to be a permitted use, the space to be occupied shall have been vacant on January 1, 2012, the size of the space of such use shall be limited in size to a total maximum area of no greater than twenty thousand (20,000),square feet, and the space shall not be located within a corner tenant space that is directly adjacent to the intersection of two (2) public streets. Any use that does not meet all of the criteria specified above in this note may be allowed with a Special Use permit, and a Special Use Permit is and shall be required.

**Notes applicable to Downtown Primary Commercial (DC) Zoning District, including DG Area:**

- 1. Excludes manufacturing uses.
- 2. No lot may be used solely for an accessory structure or building.
- 3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- 4. All activity must be conducted indoors.

5. Non-engine and exhaust-related service and repair allowed as incidental use.
6. Limited to instrumental and vocal music and readings. Also, notwithstanding the provisions of Section 20.200.940B., incidental instrumental and vocal music shall be allowed between the hours of 6:00 a.m. and 12:00 a.m.
7. Maximum occupancy load shall be that maximum occupancy load determined by the City Fire Marshal.
8. Pedestal charging stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-site are permitted in all Downtown Zoning districts.

\*Under the Parking Management Plan, October 2001, the Code may be changed to reduce the parking allotments for these uses. The reduction would be to two and one-half (2 ½) spaces per one thousand (1,000) square feet when BART is opened.

Fifteen (15) percent of total parking requirement must be provided off-site.

9. Includes on-site outdoor dining area(s).

**SECTION 6.** Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read in its entirety as follows:

**Part 9.75  
Medical Marijuana Collectives**

**20.80.750**            **Purpose**

The purpose of this Part is to further fulfill the purposes and intents set forth in Chapter 6.88 of Title 6 of the San José Municipal Code.

**20.80.755**            **Definitions**

Unless expressly defined in this Title otherwise, the terms used in this Part shall have the meanings ascribed to them in Chapter 6.88 of Title 6 of the San José Municipal Code.

**20.80.760**            **Compliance Required**

- A. No person shall operate, or suffer or allow the operation of, a Medical Marijuana Collective; provided, however, that a person may assert an affirmative defense to

a criminal or civil enforcement action brought to enforce the provisions of this Title where the person, Collective or activity is in full compliance with all of the applicable terms, provisions and conditions of this Code, including without limitation the provisions of this Part.

- B. In addition to the requirements set forth in Subsection 20.80.760.A above, no person shall operate, or suffer or allow the operation of, a Medical Marijuana Collective until such time as a Zoning Code Verification Certificate has been duly applied for and issued by the Director pursuant to the provisions of Chapter 20.100 of this Title, which Zoning Code Verification Certificate confirms full conformance of a proposed Medical Marijuana Collective with all of the applicable locational siting requirements of this Title. The application for such Zoning Code Verification Certificate shall be filed pursuant to the requirements and processes set forth in said Chapter 20.100.
- C. Notwithstanding the foregoing, all persons who choose to be involved with medical marijuana or a Medical Marijuana Collective do so entirely at their own risk that such involvement may constitute a violation of federal or state law.

**20.80.765                    Personal Use Cultivation**

The provisions of this Part are not intended to and shall not regulate the cultivation or possession of Medical Marijuana for a medical use as Personal Use Cultivation in full compliance with all applicable state and local laws by a Qualified Patient or Primary Caregiver at their primary residence located within a zoning district that allows for residential uses.

~~20.80.770                    Maximum Number~~

~~No more than a maximum of ten (10) Medical Marijuana Collectives shall be sited in the City, and no more than two (2) Medical Marijuana Collectives shall be sited in each City Council District, as those Districts are defined by ordinance of the City.~~

**20.80.775                    Restrictions and Conditions**

The location and operation of Medical Marijuana Collectives shall be subject to and shall comply with all of the following restrictions and conditions set forth in this Section, in addition to those restrictions and conditions that may be imposed on a Medical Marijuana Collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws, regulations or policies. Anyone operating, or allowing or suffering the operation of, a Medical Marijuana Collective shall comply with, or shall cause the compliance with, all of the following restrictions and conditions set forth in this Section, in addition to those restrictions and conditions that may be imposed on a Medical Marijuana Collective under or pursuant to other provisions of the San José Municipal Code or other applicable state or local laws, regulations or policies, at all times at the Medical Marijuana Collective; provided, however, that if there is a

conflict between the provisions of this Section and the provisions of any other applicable state or local law, the most restrictive law allowed to apply shall govern and control:

- A. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of ~~six hundred (600)~~ one thousand (1,000) feet from any parcel on which a public or private school exists ~~or on which a church that includes a school exists~~, and distances under this subsection shall be measured in a straight line between the boundary lines of the parcels that are closest to one another; and
- B. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of ~~five hundred (500)~~ one thousand (1,000) feet from any parcel on which any of the following uses exists: a child day care center, church/religious assembly ~~that includes child day care~~, a community or recreation center, a park, a library, ~~a substance abuse rehabilitation center~~, or another Medical Marijuana Collective, or another Medical Marijuana Collective, Cultivation Site Only, ~~nor on a parcel of real property that is closer than a minimum of one hundred fifty (150) feet from residentially zoned real property~~, and all distances under this subsection shall be measured in a straight line between the boundary lines of the parcels that are closest to one another; and
- C. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of five hundred (500) feet from any parcel on which a substance abuse rehabilitation center is located, as measured in a straight line between the boundary lines of the parcels that are closest to one another; and
- D. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of one hundred and fifty (150) feet from any residential use as measured by the foot path of travel; and
- E. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective ~~or Medical Marijuana Collective, Cultivation Site Only~~ that is located in the Light Industrial Zoning District shall be located on a parcel of real property that is within either of the following areas:
  - 1. Those certain Enterprise Zones that have been or may be created and whose boundaries have been or may be established through a resolution adopted by the City Council or by the City Manager pursuant to a resolution adopted by the City Council; or

2. Those other business incentive zones (such as a foreign trade zone) that may be created and whose boundaries are established through a formal, public action taken by the City Council.
- F. No Medical Marijuana Collective shall be located on the ground floor of structures or buildings located on real property that, in whole or in part and at the time of issuance of a Zoning Code Verification Certificate, is within the ~~CP-Commercial Pedestrian Zoning District~~ or the DC-Downtown Primary Commercial Zoning District.
- G. No Medical Marijuana Collective shall be located or shall operate on any floor of a retail commercial shopping center located on a parcel or parcels totaling over forty (40) acres in size.
- H. All activities conducted at a Medical Marijuana Collective shall at all times fully comport with the provisions of California Health & Safety Code Sections 11362.5, *et. seq.* through Section 11362.83, as the same may be amended from time to time; and
- I. No retail sales of any products shall occur or be allowed at a Medical Marijuana Collective; provided, however, that transfers of Medical Marijuana products in strict compliance with Chapter 6.88 of Title 6 of this Code and all applicable State laws may occur; and
- J. The hours within which a Medical Marijuana Collective may choose to operate shall be within the hours of 9:00 a.m. and ~~8:00~~ 9:00 p.m.
- ~~I. Cultivation of Medical Marijuana only for and only on the site of a Medical Marijuana Collective may occur as a part of the operation of a Medical Marijuana Collective use, and no marijuana cultivated off of the site of that Medical Marijuana Collective shall be distributed or otherwise transferred to another person or entity by that Medical Marijuana Collective.~~

**SECTION 7.** Part 13 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended by adding new Sections to be numbered and entitled and to read as follows:

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

- A. A Medical Marijuana Collective shall keep, or cause to be kept, a true and correct copy of the Zoning Code Verification Certificate issued by the Director for that Medical Marijuana Collective **and for any Medical Marijuana Collective, Cultivation Site Only**, in legible condition, on the premises of that Medical

Marijuana Collective and on the premises of any Medical Marijuana Collective, Cultivation Site Only.

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

**20.100.1535            Updated Certificate – Medical Marijuana Collective**

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

**20.100.1540            Nontransferability – Medical Marijuana Collective**

A Zoning Code Verification Certificate may not be transferred or assigned; this includes without limitation a prohibition of a transfer or assignment to another Medical Marijuana Collective that plans to operate on the same site.

**PASSED FOR PUBLICATION OF TITLE** this            day of            ,  
2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**Summary of Proposed Ordinance Amending Title 6 of the San José Municipal Code to Add a New Chapter 6.88 to Establish Regulations Pertaining to Medical Marijuana Collectives and to the Individual Cultivation and Use of Medical Marijuana (“Regulatory Ordinance”)**

The proposed Regulatory Ordinance is substantially similar to the ordinance as adopted by City Council in 2011 with changes to allow off-site cultivation and to eliminate the express limit on the number of medical marijuana collectives (“collectives”) allowed to operate within the City. Limits on the number of collectives would rely instead on appropriate zoning districts and buffers between sensitive uses as established in the Zoning Ordinance that is before the Planning Commission.

Each collective would be allowed to dispense medical marijuana from only one location in the City. Each collective would be allowed one cultivation site within the City; the cultivation site could either be combined with the collective’s sole dispensing location or at a separate location.

The Regulatory Ordinance would establish an affirmative defense to civil and criminal enforcement of the Municipal Code for those who operate in strict compliance with all of the City and State laws regarding medical marijuana.

Registration with the City would be required by the Regulatory Ordinance and would be administered by the City Manager. The registration process would entail each collective providing detailed information about its proposed operation including a management plan, a security plan, the medical marijuana cultivation procedures to be utilized, a site floor plan, and an odor management plan. Certain information would also be required for each owner, manager or individual member who will be participating in the actual cultivation, processing or dispensing of medical marijuana, including complete legal name, date of birth, a copy of a valid government issued photo identification card, and a list of all criminal convictions.

A collective could be disqualified from registration based on certain criteria. These would include convictions for certain misdemeanor or felony crimes, the collective having conducted itself in a manner that creates or results in a public nuisance, or the collective location or premises being in violation of any building, zoning, health, or safety code. The term of the registration would be for one year. However, the registration could become null and void sooner in certain circumstances, including for any of the reasons that would be grounds for disqualification from registration, the cessation of medical marijuana cultivation by the collective for 90 days or longer, or the relocation of the collective. The registration would be nontransferable.

Collectives would be required to have security cameras and maintain the recordings for 90 days. A security guard would be required on the premises during business hours. Comprehensive requirements for the packaging of medical marijuana would be established.

Collectives would be required to maintain certain records pertaining to each member, the transfer of medical marijuana to each member, and the transfer of medical marijuana from any separate cultivation site to the sole dispensing location. Each collective would have to provide an audit of its financial operations to the City Manager annually.

Personal use cultivation would be allowed within the private residence of either the qualified patient or the qualified patient's primary caregiver. Medical marijuana cultivation would be required to remain at all times incidental to the residential use of the property.