

ORDINANCE NO. NS-2864

AN ORDINANCE OF THE PEOPLE OF THE CITY OF SANTA ANA AMENDING CHAPTER 18 OF THE MUNICIPAL CODE TO DELETE AND REPLACE ARTICLE XIII, TO DELETE SECTION 41-121, DELETE SUBSECTION (B) OF SECTION 41-144, AND AMEND ARTICLE XII OF CHAPTER 21 BY ADDING SECTIONS 21-126, 21-127, 21-128, 21-129 AND 21-130 TO REGULATE THE ESTABLISHMENT, OPERATION AND TAXATION OF MEDICAL MARIJUANA COLLECTIVES AND COOPERATIVES

WHEREAS, in 1996, the California electorate approved Proposition 215, the Compassionate Use Act of 1996, which allows a patient, with a doctor's recommendation, to use marijuana for medical purposes without the fear of prosecution or arrest; and

WHEREAS, in 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical marijuana dispensaries for the distribution of marijuana for medical purposes; and

WHEREAS, cities where medical marijuana dispensaries have been permitted to operate have experienced significant problems, including burglaries and takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in crime (especially thefts and robberies) in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, collective staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to collective customers, collective customers using marijuana and then driving under the influence of marijuana, the sale of illegal drugs other than marijuana in the dispensaries, sales of marijuana to minors; and

WHEREAS, after studying various alternatives for the regulation of medical marijuana dispensaries, considering testimony from members of the public, and reviewing the legal status of medical marijuana dispensaries under applicable law, the City Council finds that the regulation and operation of medical marijuana dispensaries is necessary to protect the public health, safety, and welfare by mitigating the adverse secondary effects from the operations of medical marijuana dispensaries; and

WHEREAS, the City of Santa Ana has a compelling interest in ensuring that marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its seriously ill residents.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SANTA ANA DO ORDAIN AS FOLLOWS:

SECTION 1. The People hereby adopt the recitals and findings set forth above and in the request for Council action-staff report prepared in connection with this ordinance.

SECTION 2. Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby deleted in its entirety and replaced with the following:

Chapter 18

ARTICLE XIII. MEDICAL MARIJUANA COLLECTIVES/COOPERATIVES

18-610. Purposes and intent.

It is the purpose and intent of this article to regulate the collective distribution of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Santa Ana. The regulations in this article, in compliance with the Compassionate Use Act, the Medical Marijuana Program Act, and the California Health and Safety Code (collectively referred to as "State Law") do not interfere with a patient's right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana collectively. Medical marijuana collectives shall comply with all provisions of the Santa Ana Municipal Code ("Code"), State Law, the 2008 California Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under state or local law.

18-611. Definitions.

(a) "Cultivation" and/or "Cultivate" shall mean the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.

(b) "Medical Marijuana Collective" or "Cooperative" or "Collective" means any facility or location where medical marijuana is made available and/or distributed by or to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card in strict accordance with California Health and Safety Code Section 11362.5 et seq., as sometimes amended. A "medical marijuana collective" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to

Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. For purposes of this Municipal Code, "Dispensary" and "Dispensaries" have the same the same meaning as Collective or Cooperative.

(c) "Identification Card" shall have the same definition as that contained in Health and Safety Code § 11362.7 et seq., as sometimes amended.

(d) "Manager" means any person responsible for the establishment, organization, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the functions of president, vice-president, director, operating officer, financial officer, secretary, or treasurer. Ability to control one or more of the following functions shall be prima facie evidence that such person is a manager: (1) to hire, select, or separate employees or staff, including volunteers; (2) to acquire facilities, furniture, equipment or supplies other than occasional replenishment of stock; (3) to disburse funds of the business other than occasional expenditures for replenishment of stock; or (4) to make, or participate in making, policy decisions relative to the operations of the business.

(e) "Marijuana" shall have the same definition as that contained in Health and Safety Code § 11018 as sometimes amended.

(f) "Medical Marijuana" shall have the same definition as that contained in Health and Safety Code § 11362.5 et seq., as sometimes amended.

(g) "Primary Caregiver" shall have the same definition as that contained in Health and Safety Code § 11362.5 and 11362.7, as sometimes amended.

(h) "Qualified Patient" shall have the same definition as that contained in Health and Safety Code § 11362.5 as sometimes amended.

18-612. Scope of article.

The operating standards established in this article apply to any site, facility, location, use, cooperative or business currently operating in the City of Santa Ana, or which commences operations after the effective date of this Article, that distributes, dispenses, stores, sells, exchanges, processes, delivers, or gives away, medical marijuana to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Health & Safety Code § 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof. Any collective in the City of Santa Ana shall operate in conformance with the operating standards set forth in section 18-613 of this Code to assure that the operations of the collective are in compliance with California law and to mitigate the adverse secondary effects from operations of dispensaries.

18-613. Operating standards.

(a) At all times the collective is open, a collective shall provide at least one security guard who is licensed, possesses a valid Department of Consumer Affairs "security guard card", and has a valid Santa Ana Business License. Security guards shall not possess firearms.

(b) The security guard and collective personnel shall monitor the site and the immediate vicinity of the site to assure that patrons immediately leave the site and not consume medical marijuana in the vicinity of the collective or on the property or in the parking lot.

(c) Exterior signage shall be limited to one wall sign not to exceed ten square feet in area and may not be externally or internally illuminated. Interior signage or advertising may not be visible from the exterior.

(d) No recommendations from a doctor for medical marijuana shall be issued on-site.

(e) There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, tobacco or marijuana by patrons.

(f) Hours of operation shall be limited to: Monday--Saturday 10 a.m.--8 p.m. and Sunday 11a.m.--7 p.m.

(g) The property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the property is not detected outside the property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the collective.

(h) A collective shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code § 11362.5 (Proposition 215). This shall include possession of an original valid doctor's recommendation, not more than one year old, for medical marijuana use by the patient.

(i) A collective shall notify patrons of the following both verbally and through posting of a sign in a conspicuous location:

(1) Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.

(2) That loitering on and around the collective site is prohibited by California Penal Code § 647(e) and that patrons must immediately leave the site and not consume medical marijuana in the vicinity of the collective or on the property or in the parking lot.

(3) Forgery of medical documents is a felony crime.

(4) A warning that patrons may be subject to prosecution under federal

marijuana laws.

(5) That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery.

(j) A collective shall not provide marijuana to any individual in an amount not consistent with personal medical use.

(k) A collective shall not store more than \$200.00 in cash reserves overnight on the premises and shall make at least one daily bank drop that includes all cash collected on that business day.

(l) No one under 21 years of age shall be permitted to enter establishment, unless such person is a qualified patient and is accompanied by his or her Primary Caregiver, licensed Attending Physician, parent(s) or documented legal guardian.

(m) A collective shall provide the name and phone number of an on-site staff person to the Police Department and Community Preservation Division for notification if there are operational problems with the establishment.

(n) Each collective operator(s) and employees shall complete a criminal background check. Employees, managers or volunteers may not have been convicted of, or plead guilty/no-contest to a felony or misdemeanor drug charge within the past four years.

(o) Marijuana shall not be grown or cultivated at collective sites, except that cuttings of the marijuana plant may be kept or maintained on-site for distribution to qualified patients and primary caregivers as follows:

(1) The cuttings shall not be utilized by a collective as a source for the provision of marijuana for consumption on-site, however, upon provision to a qualified patient or primary caregiver, that person may use the cuttings to cultivate marijuana plants off-site for their own use and they may also return marijuana from the resulting mature plant for distribution by the collective.

(2) For the purposes of this paragraph, the term "cutting" shall mean a rootless piece cut from a marijuana plant, which is no more than six inches in length, and which can be used to grow another plant in a different location.

(p) A collective shall comply with applicable provisions of the California Health and Safety Code §§ 11362.5 through 11362.83, inclusive.

(q) If food is distributed, the collective shall comply with all relevant state laws and City ordinances pertaining to the preparation, distribution and sale of food.

- (r) The location, interior and exterior, shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than ninety days. The Police Department may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the Police Department may seek a warrant or court order for the recordings.
- (s) The location shall have a centrally-monitored fire and burglar alarm system and the building or the portion of the building where the collective is located shall contain a fire-proof safe;
- (t) No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed;
- (u) No collective shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by members towards the collective's actual expenses of the growth, cultivation, and provision of medical marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented.
- (v) If the collective operator is not the owner of the property where the collective is to operate, the operator shall provide evidence that the property owner(s) consent to the operation of a collective on the property.

18-614. Reserved.

18-615. Zones permitted.

No collective shall operate within a residential (R-1, R-2, R-3, R-4, RE, CR) zone, Professional (P) zone, Arterial Commercial (C-5) zone, Planned Shopping Center (C-4) zone, Specific Development (SD), Specific Plan (SP) or Agricultural (A-1) zone. A Collective may only operate in an Industrial zone (M-1, M-2) in accordance with this Article.

18-616. Separation requirements.

- (a) No collective shall be located within 500 feet of another Medical Marijuana Collective or Cooperative or within 1,000 feet of any:
 - (1) School;
 - (2) Park;
 - (3) Residential zone.

18-617.01 Cooperative/Collective registration required.

Within 30 days after the adoption of this Chapter, the Director of Planning and Building shall prepare Cooperative/Collective registration application forms and a related administrative policy. Each collective interested in operating pursuant to this article may submit an application together with a non-refundable processing fee in an amount established by the City Council within 60 days after the adoption of this article, the Director shall stop accepting applications and process all applications received.

The Director or his or her designee shall determine whether each application demonstrates compliance with this article. Each application that is in compliance with this article shall be placed on a qualified registration list and the Director shall notify the applicant in writing of its qualified registration status. Once all applications are processed, the Director shall hold a "lottery" process in an open and public location and select 20 applications. Each applicant may then choose to file an application for a Regulatory Safety Permit pursuant to Section 18-617.2.

The Director shall maintain the qualified registration list and update it on an annual basis. Any applicant on the list must submit a written request each year to maintain its status on the list and the Director may place new applicants on the list in order in which the applications are received.

18-617.01 Cooperative/Collective regulatory safety permit.

(a) Every Medical Marijuana Collective shall obtain a Regulatory Safety Permit from the Police Department. The applicant shall pay a non-refundable fee in an amount established by the City Council. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, in or upon any premises within the City a Medical Marijuana Collective without the required permit.

(b) A copy of the Regulatory Safety Permit shall be displayed at all times in a place visible to the public.

(c) A Regulatory Safety Permit shall be valid for a period of one (1) year, unless sooner revoked. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

18-617.2. Medical marijuana collective – regulatory permit application process.

(a) Any Medical Marijuana Collective desiring a regulatory safety permit required by this article shall, prior to initiating operations and after receiving notice of its successful registration under section 18-617.01, complete and file an application to the Chief of Police on a form supplied by the Police Department. The application shall be filed together with a nonrefundable fee as establish by resolution of the City Council, to defray, the cost of investigation required by this article. The application shall contain all of the following:

(1) The address of the property where the proposed Medical Marijuana Collective(s) will operate;

(2) A site plan describing the property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act;

(3) Exterior photographs of the entrance(s), exits(s), street frontage(s), parking, front, rear and side(s) of the proposed property;

(4) Photographs depicting the entire interior of the proposed property;

(5) If the property is being rented or leased or is being purchased under contract, a copy of such lease or contract;

(6) If the property is being rented or leased, written proof that the property owner, and landlord if applicable, were given notice that the property will be used as a Medical Marijuana Collective, and that the property owner, and landlord if applicable, agree(s) to said operations;

(7) The name, address, telephone number, title and function(s) of each manager, employee, volunteer, etc.;

(8) For each manager, employee, volunteer, a fully legible copy of one valid government issued form of photo identification, such as State Driver's License or Identification Card;

(9) If the Medical Marijuana Collective is a corporation, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's Bylaws;

(10) If the Medical Marijuana Collective is an unincorporated association, a copy of the Articles of Association;

(11) The name and address of the applicant's current agent for Service of Process;

(12) A copy of the applicant's Board of Equalization Seller's Permit;

(13) A copy of the Medical Marijuana Collective Operating Standards, listed in Section 18-613, containing a statement dated and signed by the responsible party on-site stating under penalty of perjury, that they read, understand and shall ensure compliance with the aforementioned operating standards.

The Chief of Police shall have sixty (60) calendar days in which to investigate the application and background of the applicant. The department of building safety and

housing, the fire department and the Orange County Health Department shall inspect the premises proposed to be devoted to the collective establishment and shall make separate recommendations to the Chief of Police or designee concerning compliance with the foregoing provisions.

The Chief of Police or designee, after receiving the application and aforementioned recommendations, shall grant the permit if he finds:

- (1) The required fee has been paid.
- (2) The application conforms in all respects to the provisions of this article.
- (3) The applicant has not knowingly made a material misrepresentation in the application.
- (4) The applicant has fully cooperated in the investigation of his application.
- (5) The applicant has not had a regulatory safety permit or other similar license or permit denied or revoked for cause by this City or any other city located in or out of this state within the five (5) years prior to the date of application.
- (6) The collective as proposed by the applicant would comply with all applicable laws including, but not limited to, health, zoning, fire and safety requirements.
- (7) The applicant has demonstrated compliance with the California Department of Justice, Office of the Attorney General, "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" standards.

18-617.3. Medical marijuana collective – regulatory permit annual renewal

(a) Applications for the renewal of a permit shall be filed with the Chief of Police at least sixty (60) calendar days before the expiration of the current permit. Temporary permits will not be issued. Any permittee allowing his or her permit to lapse or which permit expired during a suspension shall be required to submit a new registration application and pay the corresponding original application fees.

(b) Any person desiring to obtain a renewal of his/her respective permit shall file a written application under penalty of perjury on the required form with the Chief of Police who shall conduct an investigation. The application shall be accompanied by a nonrefundable filing fee established by separate resolution of the City Council to help defray the cost of the investigation required by this article. An applicant shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether said permit should be renewed.

18.617.4 Maintenance of records.

A Medical Marijuana Collective shall maintain records at the location accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the location; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; (3) the full name, address, and telephone number(s) of all patient members to whom the collective provides medical marijuana, a copy of a government-issued identification card for all patient members; (4) the full name, address, and telephone number(s) of all primary caregiver members to whom the collective provides medical; (5) all receipts of the collective, including but not limited to all contributions, reimbursements, and reasonable compensation, whether in cash or in kind, and all expenditures incurred by the collective for the cultivation of medical marijuana; and (6) proof of compliance with the California Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. These records shall be maintained by the collective for a period of five years and shall be made available by the collective to the Police Department and/or Community Preservation Division upon request. If they are not produced as requested the City may seek a search warrant, subpoena, or court order. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage or destruction of the records shall be reported to the Police Department within 24 hours of the loss, destruction or damage.

18-617.5 Audits.

Annual Audits. No later than February 15 of every year, each collective shall file with the City one copy of an audit of its operations of the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. The audit shall include but not be limited to a discussion, analysis, and verification of each of the records required to be maintained pursuant to this article.

18-618. Inspection and enforcement responsibilities.

The Community Preservation Division may enter and inspect the location of any collective between the hours of 10:00 a.m. and 8:00 p.m., or at any reasonable time, to ensure compliance with this article. In addition, a designated unit within the Police Department may enter and inspect the location of any collective and the recordings and records maintained as required by this article, except that the inspection and copying of private medical records shall be made available to the Police Department only pursuant to a properly executed search warrant, subpoena, or court order. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

18-619. Applicability to existing medical marijuana operations.

Any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this article must immediately cease operation until such time, if any, when it complies fully with the requirements of this article. No medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status.

18-620. Compliance with this article and state law.

(a) It is unlawful for any person to (i) cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana or (ii) own, establish, operate, use or permit the establishment or operation of a medical marijuana collective or cooperative, or to participate as an employee, contractor, agent or volunteer of a collective or cooperative, except as provided in this article, and pursuant to any and all other applicable local and state laws.

(b) It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana except as provided in Health and Safety Code Sections 11362.5 *et seq.*, and pursuant to any and all other applicable local and state laws.

(c) It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this article, or to any other local, state or federal government agency having jurisdiction over any of the activities of collectives.

(d) It shall be the sole responsibility of the members engaged in the management of the collective to ensure that the collective is at all times operating in a manner compliant with all applicable state laws and this article. Nothing in this article shall be construed as authorizing any actions which violate state law with regard to the cultivation, transportation, provision, and sale of medical marijuana.

18-621. Violation and enforcement.

Each and every violation of this article shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by this Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the collective's registration, revocation of the certificate of occupancy for the location, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also

pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the collective and persons related or associated with the collective.

SECTION 3. Section 41-121 of the Santa Ana Municipal Code is hereby deleted in its entirety.

SECTION 4. Subsection (b) of Section 41-144 of the Santa Ana Municipal Code is hereby deleted in its entirety.

SECTION 5. Chapter 21, Article XII of the Santa Ana Municipal Code, comprised of sections 21-126, 21-127, 21-128, 21-129 and 21-130, is hereby added such that it reads as follows:

Sec. 21-126. Purpose.

This article is required for the purpose of fixing the rate of taxation for Marijuana Collectives/Cooperatives and for the purpose of providing a tax levy for the usual and current expenses of the City of Santa Ana. The taxes required to be paid under this article are declared to be required pursuant to the taxing power of the City of Santa Ana solely for the purpose of obtaining revenue and are not regulatory permit fees.

Sec. 21-127. Marijuana collectives/cooperatives – Annual business license tax assessment.

(a) Annual business license tax assessment for Marijuana Collectives/Cooperatives:

(1) Every Collective/Cooperative whether it is organized or conducted as a "not for profit" business, a "non-profit" business, or a "for-profit" business, shall pay an annual business license tax in accordance with Chapter 21 of this Code and the Sections and Subsections hereunder.

(2) For the purposes of this article, a Marijuana Collective/Cooperative is defined in section 18-611 of this Municipal Code and is considered to be a business as that term is defined in Section 21-3 of this Chapter.

(3) For the purposes of this article, a Collective/Cooperative is not considered to be a religious or charitable organization.

(4) "Medical Marijuana Collective/Cooperative" or "Collective/Cooperative" shall mean any activity regulated or permitted by Chapter 18 of this Municipal Code.

(5) For the purposes of this article, a Marijuana Collective/Cooperative is not considered to be a business or person having a "specified exemption" or "specified exclusion" from business license taxation as set forth in Sections 21-48

and 21-49 of this Chapter.

(6) For the purposes of this article, a "Nonprofit Organization" shall mean any institution or organization that is exempted from taxes measured by income or gross receipts pursuant to Article XIII, Section 26 of the California Constitution as codified under Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code and Section 37101 (c) of the Government Code or Sub-Chapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986. An institution or organization operating as a Collective/Cooperative and claiming a gross receipts assessment business license tax exemption under this section shall have the burden of furnishing to the collector such information as the collector may require to validate the claim of exemption including but not limited to such a determination by the California Franchise Tax Board or any other information requested by the collector.

(7) For the purposes of this article, "gross receipts" shall mean any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for marijuana whatsoever, including, but not limited to, membership dues, reimbursements provided by members, regardless of form, or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation or provision of marijuana or any transaction related thereto. "Gross receipts" shall also include without limitation anything else of value obtained by a Collective/Cooperative. The term "gross receipts" shall also include the total amount of the sale price of all sales, the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, merchandise, for which a charge is made or credit allowed, including all refunds, cash credits and properties of any amount or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom, on account of the cost of the property sold, the cost of materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included. "Gross receipts" shall also include the amount of any federal, manufacturer's or importer's excise tax included in the price of property sold, even though the manufacturer or importer is also the retailer thereof and whether or not the amount of such tax is stated as a separate charge. "Gross receipts" shall not include the amount of any federal tax imposed on or with respect to retail sales whether or not the amount of such tax is stated as a separate charge. "Gross receipts" shall not include the amount of any federal tax imposed on or with respect to retail sales whether imposed upon the retailer or the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge, or any California state, city or city and county sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the

sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale. "Gross receipts" shall be calculated without any deduction on account of any of the following:

- (i) The cost of tangible property sold or bartered;
 - (ii) The cost of materials or products used, labor or service cost, interest paid, losses, or other expense; or
 - (iii) The cost of transportation of the marijuana, or other property or product.
- (b) Business license tax rates for Marijuana Collectives/Cooperatives.

(1) Every Collective/Cooperative, excepting a qualified "Nonprofit Organization", whether it is organized or conducted as a "not for profit" business, a "non-profit" business, or a "for-profit" business, shall pay a separate business license tax at a rate of up to ten percent (10%) of the gross receipts generated or otherwise received for each branch establishment or separate property location of the business. The gross receipts tax shall be initially set at a rate of five percent (5%). The maximum tax rate shall not exceed ten percent (10%) of gross receipts. This tax shall not be adjusted for inflation pursuant to Section 21-121 of this Chapter.

(2) Notwithstanding the maximum tax rate of ten percent (10%) of gross receipts imposed under subsection (b)(1), the City Council may in its discretion at any time by ordinance implement a lower gross receipts tax rate for all Marijuana Collectives/Cooperatives, as defined in such ordinance, subject to the maximum rate of ten percent (10%) of gross receipts. The City Council may by ordinance increase any such gross receipts tax rate from time to time, not to exceed the maximum gross receipts tax rate established under subsection (b)(1).

(3) As part of the gross receipts tax imposed by this article, each Collective/Cooperative shall pay a minimum basic rate of two thousand dollars annually for each separate branch location or separate property location of the business.

- (c) Modification, Repeal or Amendment.

The City Council may repeal the ordinance codified in this article, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. The City Council may likewise by ordinance adopt and add additional provisions to any other article of this Chapter and relate them to this article, or amend any existing provisions of any article of this Chapter as they may already relate to this article in any manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. If the City Council repeals said ordinance or any provision of this article, it may subsequently reenact it without voter

approval, as long as the reenacted ordinance or section does not result in an increase in the tax or taxes imposed herein.

(d) Administration - rules, regulations, and guidelines; interpretation/clarification.

In order to aid in the City's collection of taxes due under this article and to ensure that all Marijuana Collectives/Cooperatives are taxed consistently to the best of the City's ability, the collector, with the concurrence of the City Attorney, may promulgate rules, regulations, and guidelines, to implement and administer this article including, but not limited to rules, regulations, and guidelines harmonizing other provisions of this Chapter with the provisions of this article in any manner not inconsistent with the intent of this article and which does not result in an increase in the tax or taxes imposed herein. The collector may also, with the concurrence of the City Attorney, interpret or clarify the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this article.

(e) Occasional transactions – Exemptions.

(1) The provisions of this article shall not apply to persons having no fixed place of business within the City of Santa Ana who come into the City for the purpose of transacting a specific item of Marijuana Collective/Cooperative business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five days during any calendar year.

(2) For any person not having a fixed place of business within the City of Santa Ana who comes into the City for the purpose of transacting Collective/Cooperative activities, the business tax payable by such person may be apportioned by the collector in accordance with this Chapter.

(f) Reporting and Remittance.

Beginning as set forth in subsection (k) below, and monthly thereafter, each Marijuana Collective/Cooperative (except qualified Nonprofit Organizations exempt from taxes measured by income or gross receipts) required to pay a tax based on gross receipts under this article, shall report to the City any gross receipts received during the preceding monthly reporting period and shall likewise remit to the City the taxes due and owing during said period. For purposes of this section, month shall mean calendar month, and taxes shall begin to accrue on the date that a person or entity first receives a business license or other permit to operate as a Collective/Cooperative.

The payment of the two thousand dollars minimum basic rate gross receipts tax required annually for each separate branch location or separate property location of the business in accordance subsection (b)(3), shall be made annually prior to the beginning of the fiscal year beginning April first of the current year and expiring on the thirty-first

day of March of the following year. In the case of a new Collective/Cooperative the minimum basic rate gross receipts tax shall be paid in advance prior to any new business activity being undertaken. Every new licensee shall pay in advance an amount equal to one-quarter ($\frac{1}{4}$) of the annual minimum basic rate gross receipts tax, for each quarter and fraction of a quarter remaining during the period for which the new license is issued.

(g) Delinquent date-Penalty.

Any individual or entity who fails to pay the taxes required by this article when due shall be subject to penalties and interest as set forth in accordance with this Chapter. The collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

(h) Payment of tax does not authorize unlawful business.

(1) The payment of a business tax required by this article, and its acceptance by the City, shall not entitle any person to carry on any Collective/Cooperative unless the person has complied with all of the requirements of this Code and all other applicable laws, nor to carry on any Collective/Cooperative in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Collective/Cooperative is in violation of any law.

(2) No tax paid under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any legal business in an illegal manner, or any business in violation of any ordinance of the City. Nothing in this article implies or authorizes that any activity connected with the distribution or possession of marijuana is legal unless otherwise authorized and allowed by California and federal law. Nothing in this section shall be applied or construed as authorizing the sale of marijuana.

(i) Business license tax certificate - Required.

There are imposed upon all persons engaged in transacting and carrying on any Collective/Cooperative business activity in the City taxes in the amounts prescribed in this article. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any business in the City without first having procured a business license from the City under this Chapter and having paid the taxes set forth in this article, and without complying with any and all applicable provisions contained in this Chapter. The carrying on of any Collective/Cooperative without complying with all the provisions of this article shall constitute a separate violation of this Chapter for each and every day that such Collective/Cooperative is so carried on.

(j) Classification of business license assessment type – term and renewal.

The business license issued to Marijuana Collectives/Cooperatives shall be classed as a gross receipts assessment type, issued for the same term of license as set forth in Section 21-71 (c) and shall be subject to renewal in accordance with Sections 21-72(c), 21-73(c), and 21-77 of this Chapter.

(k) Operative Date.

Upon the approval by the majority of the voters of the City of Santa Ana at the November 4, 2014 general election, the taxes imposed by this article shall become operative and shall be applied by the collector upon all Marijuana Collectives/Cooperatives.

Sec. 21-128. Effect of state and federal reference/authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this article or Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this article is expanded or limited as a result of changes in State or Federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this article.

Sec. 21-129. Violation deemed misdemeanor - penalty.

Any person violating any of the provisions of this article or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by the maximum penalties provided for in Penal Code section 19.

Sec. 21-130. Severability.

Should any provision of this article, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this article or Chapter or the application of this article or Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

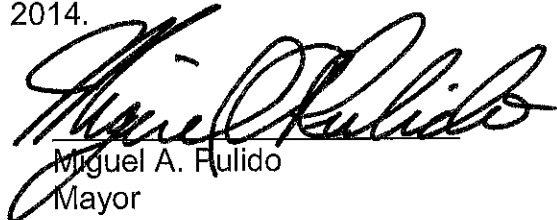
SECTION 6. Council to Make Future Amendments to Voter Approved Ordinance. This is a City Council sponsored initiative ordinance which traditionally would only be subject to amendment by the Voters of the City of Santa Ana. However, pursuant to Section 9217 of the California Elections Code the City Council reserves the right and authority to amend or repeal the ordinance without any restrictions.

SECTION 7. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The People of the City of Santa Ana hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. Effective Date. After its adoption by the voters, this ordinance shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code sections 9217 and 15400 and as provided by law.

SECTION 9. Competing Measures. In the event that this measure and another measure or measures relating to the regulation of medical marijuana in the City of Santa Ana appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes required to pass than the other measure or measures, the provisions of this measure shall prevail in their entirety over the competing measure or measures, and the competing measure or measures shall be null and void.

ADOPTED this 9th day of December, 2014.


Miguel A. Fulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: Laura A. Rossini
Jose Sandoval
for Chief Assistant City Attorney

AYES: Councilmembers: Amezcuca, Benavides, Martinez, Pulido, Reyna, Sarmiento, Tinajero (7)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2864 to be the original ordinance adopted by the voters of the City of Santa Ana on November 4, 2014 and certified by the City Council on December 9, 2014.

Date: 12/23/2014

Maria D. Huizar
Clerk of the Council
City of Santa Ana