

ORDINANCE NO. 564-AC  
REPEALING ORDINANCE NO. 528-AC (AMENDING SECTIONS 96.20, 96.30 AND 92.00  
OF THE NEEDLES ZONING CODE) AND ADDING CHAPTER 12A  
“MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE”  
TO THE NEEDLES MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act (“Act”) (codified as Health and Safety (H&S) Code § 11362.5, *et seq.*), which creates limited immunity from criminal liability under California law, as opposed to federal law, for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, in 2004, Senate Bill 420, known as the Medical Marijuana Program Act (“Program”), became law (codified as H&S Code § 11362.7, *et seq.*), which established a statewide identification card program for qualified medical marijuana patients and their primary caregivers and extended the Act’s limited immunity from criminal liability to collective and cooperative cultivation of medical cannabis; and

WHEREAS, Section 11362.83 of the Program provides that local governments are free to adopt laws that are consistent with State law; and as such, may impose greater restrictions on medical marijuana collectives than those imposed by the Program; and

WHEREAS, in August 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (“Guidelines”) which affirms the immunity of medical marijuana collectives and cooperatives under California law, but makes clear that such entities cannot be operated for profit, may not purchase marijuana from unlawful sources and must have a defined organizational structure that includes detailed records proving that members are legitimate patients; and

WHEREAS, on October 4, 2011, the Second Appellate District of the California Court of Appeal ruled in the case of *Pack v. Superior Court* (199 Cal.App.4th 1070 (2011)) (“*Pack*”), holding that significant provisions of the medical marijuana ordinance of the City of Long Beach, which included regulations permitting and authorizing medical marijuana businesses, are preempted by the federal Controlled Substances Act (“C.S.A”) (21 U.S.C. Section 801, *et seq.*), which bans marijuana for all purposes; and

WHEREAS, in December 2011, California Attorney General Kamala Harris abandoned her efforts to revise the medical marijuana Guidelines and advised the State Legislature that in the opinion of the Attorney General, new legislation is required in order to resolve questions of law regarding medical marijuana that are not answered by existing law; and

WHEREAS, on May 6, 2013, the Supreme Court of California affirmed in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (56 Cal.4th 729 (2013)) (“*City of Riverside*”) that the Act and Program did not preempt local bans of medical marijuana businesses; and

WHEREAS, it is the City Council's intention that this Ordinance shall be deemed to comply with California law as established by the Act and the Program; and

WHEREAS, it is the City Council's intention that nothing in this Ordinance shall be construed to: (a) allow persons to engage in conduct that endangers others or causes a public nuisance; or (b) allow the use of cannabis for non-medical purposes of any kind; or (c) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise not permitted under State law; and

WHEREAS, the City wishes to address the continued proliferation of medical marijuana businesses in the City by granting limited immunity from enforcement of its prohibition of Medical Cannabis Cooperatives and Collectives ("Cooperatives/Collectives"), as defined, to those Cooperatives/Collectives that are in existence, open and operating within the City at the time this Ordinance is adopted, and which comply with the requirements set forth herein, until such time as the City Council adopts a new ordinance to the contrary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEEDLES DOES ORDAIN AS FOLLOWS:

**SECTION 1.** The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act pursuant to Section 15061 (b) 3 of the Guidelines, in that the amendment does not have the potential for causing a significant effect on the environment.

**SECTION 2.** The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the provisions of this ordinance granting limited immunity provided by this ordinance will be deemed invalid and the ban set forth in Section 12A-3 will remain in effect..

**SECTION 3.** Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the City of Needles Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

**SECTION 4.** The City Council hereby declares that by providing the narrow and limited immunity as set forth herein to those Medical Cannabis Cooperatives or Collectives currently open and operating within the City and in compliance with the provisions set forth herein, the City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to a liability for money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any Medical Cannabis

Cooperative or Collective. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Ordinance shall not become a personal liability of any public officer or employee of the City. Nothing in this Ordinance shall be deemed or considered in any respect to constitute authorization to violate any State, federal or local law.

**SECTION 5.** The City Council hereby repeals Ordinance No. 528-AC and adds to the City Code Chapter 12A - "Medical Cannabis Cooperative or Collective" as follows:

ARTICLE 12A  
MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE

Section 12A-1-Purpose and Intent.

The purpose of this Article is to enact new City legislation that (a) prohibits Medical Cannabis Cooperatives or Collectives ("Cooperatives/Collectives"), but (b) grants limited immunity from said prohibition to those Cooperatives/Collectives that are in existence and operating within the City at the time this Article is adopted and which comply with the requirements set forth herein, until such time as City Council enacts new medical marijuana legislation to the contrary.

Section 12A-2-Definitions.

For purposes of this Article, the words outlined in this subsection shall have the following definitions:

- (A) "Act" shall mean the Compassionate Use Act, known commonly as Proposition 215, codified as Health & Safety ("H&S") Code §11362.5, *et seq.*
- (B) "City" shall mean the City of Needles.
- (C) "Marijuana Business Tax" shall be defined as taxes imposed in City of Needles Ordinance No. 543-AC, titled "An Ordinance of the People of The City of Needles, California Adding to Chapter 20, Article VIII "Marijuana Business Tax" to the Needles Municipal Code."
- (D) "Medical Cannabis" and "Medical Marijuana" shall be defined in strict accordance with H&S Code §§ 11362.5 and 11362.7, *et seq.*
- (E) "Medical Cannabis Cooperative or Collective" shall mean any non-residential facility or location, whether fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or to three (3) or more qualified patients and their primary caregivers who collectively or cooperatively share physician recommended cannabis or marijuana in a manner strictly consistent with State law, including but not limited to, the Act, the Program and the Guidelines, as may be amended from time to time.

The term "Medical Cannabis Cooperative or Collective" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety

Code;

- (2) A health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
  - (3) 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;
  - (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
  - (5) A state licensed residential hospice;
  - (6) A home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code §§ 11362.5 and 11362.7 *et. seq.*, for the cultivation, storage, or use by a qualified patient or patients or that patient's or patients' primary caregiver or caregivers, incidental to a residential use by, and for the sole use of, the patient or patients who reside at such residential use location.
- (F) "Program" shall mean the Medical Marijuana Program Act, known commonly as Senate Bill 420, codified as H&S Code §11362.7, *et seq.*
- (G) "Guidelines" shall mean the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use.

Section 12A-3-Prohibited Activities

- (A) Notwithstanding Section 95.01 of Article V Part III (Variances), in no event shall a Medical Cannabis Cooperative or Collective ("Cooperative/Collective"), as defined, be considered a permitted or conditionally permitted use in any land use zoning district. A Cooperative/Collective is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefore.
- (B) No outdoor cultivation or outdoor growing of Medical Marijuana shall be permitted within the City of Needles. Any cultivation not inconsistent with California state law, or this Ordinance, as such laws may be amended from time to time, shall at all times occur indoors, in a secure, locked and fully enclosed structure that includes solid walls and a ceiling, roof or top, as consistent with all applicable State, County and City laws, regulations, ordinances and building codes.

Section 12A-4-Limited Immunity

Notwithstanding the activities prohibited by this Article, and notwithstanding that

Cooperatives/Collectives are not and shall not become a permitted use in the City for so long as this Article remains in effect, a Cooperative/Collective shall not be subject to the remedies set forth herein for violation of this Article, so long as the Cooperative/Collective continually complies with the following:

- (A) The Cooperative/Collective is in existence, open and operating within the City on the date this Article is adopted and approved by at least four affirmative votes of the Needles City Council. For the purposes of this Chapter, the terms “open and operating” shall mean those Cooperatives/Collectives which are currently sharing physician recommended cannabis or marijuana in compliance with state law, including the Act, Guidelines and Program, and have paid all Marijuana Business Taxes when due as of the date this Article is adopted.;
- (B) The Cooperative/Collective is not in violation of U.S. Department of Justice guidelines/priorities, including those prohibiting:
  - (1) Distribution of marijuana to minors;
  - (2) Providing revenue from the sale of marijuana to criminal enterprises, gangs and/or cartels;
  - (3) Diverting marijuana from a state where it is legal under state law to a state where it is illegal;
  - (4) Using marijuana activity as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
  - (5) Using or engaging in violence or use of firearms in the cultivation and/or distribution of marijuana;
  - (6) Contributing to drugged driving and/or the exacerbation of other adverse public health consequences associated with marijuana use;
  - (7) Growing marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and/or
  - (8) Possessing or use of marijuana on federal property.
- (C) The Cooperative/Collective is in full compliance with the Act, the Program and the Guidelines, and any amendments thereto;
- (D) The Cooperative/Collective pays all legally required taxes and fees, including but not limited to, the Marijuana Business Tax, and sales tax pursuant to state and local law, as well as all other City and state imposed taxes and fees;
- (E) The Cooperative/Collective does not have any unpaid financial, fee, or tax obligation to

the City that is not paid in full when due, including any assessed fines, penalties, tax, business tax, fee, interest or other costs (collectively "unpaid tax obligations"). A Cooperative/Collective shall not be in breach of this subsection if it enters into and fully performs per the terms of a written offer and compromise or other written settlement agreement with the City that satisfies any unpaid tax obligations. This subsection shall not deprive any Cooperative/Collective of rights, if any, to appeal or seek judicial determination of the propriety of any amounts alleged by the City as unpaid tax obligations, and a Cooperative/Collective shall not lose its claim of limited immunity hereunder due to the pendency of any such appeal or judicial determination;

- (F) The Cooperative/Collective is only open between the hours of 9:00 a.m. and 7:00 p.m., excluding delivery service, which shall not operate or make deliveries between the hours of 9:00 p.m. and 9:00 a.m.;
- (G) The Cooperative/Collective maintains sales, inventory and patient records in a secure location within the City of Needles, available to the City Manager or Designee to review upon 24 hour notice;

In the event said records are provided to City Manager or Designee, it shall be the Cooperative/Collective's responsibility to ensure patient identities are redacted sufficiently to meet any applicable requirements of HIPPA and any other applicable State or federal laws or regulations. Such records shall include, without limitation, records of all inventory received and/or sold, revenue and monies received, cost of inventory, patient records, physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by such primary caregiver;

- (H) Cannabis is kept in a secured manner during business and non-business hours;
- (I) The Cooperative/Collective prohibits on-site smoking, ingestion, or consumption of cannabis on the Premises of the Cooperative/Collective, and the building entrance to a Cooperative/Collective is clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming cannabis or marijuana on the premises or within 500 feet of the Cooperative/Collective is prohibited.

The term "Premises" as used in this Section includes the actual building of the Cooperative/Collective, as well as any accessory structures, parking areas and the entire real property on which the Cooperative/Collective is situated;

- (J) Signage for the Cooperative/Collective complies with the City sign ordinance;
- (K) Alcoholic beverages are not provided, sold, stored, kept, located, dispensed, distributed, or consumed on the Premises. The Cooperative/Collective does not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages;
- (L) Windows and/or entrances of Cooperatives/Collectives are not obstructed and maintain a

clear view into the Premises during business hours;

- (M) No one under 18 years of age is a member of a Cooperative/Collective without notarized written authorization of a parent or legal guardian. No person under 18 enters the Premises of the Cooperative/Collective unless accompanied by a parent or legal guardian;
- (N) Physician services are not provided on the Premises.

“Physician services” does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site with additional permitting;

- (O) The Premises and building in which the Cooperative/Collective is located, as well as the operations conducted therein, fully comply with all applicable building codes, the Americans with Disability Act, the Act, Program and Guidelines;
- (P) The Cooperative/Collective does not distribute, sell, dispense, or administer cannabis to anyone other than qualified patient members of the Cooperative/Collective and/or their primary caregivers;
- (Q) The Cooperative/Collective distributes only cannabis cultivated by a member of the Cooperative/Collective or the member’s primary caregiver;
- (R) The Cooperative/Collective conducts an inventory on the first business day of each week and records the total quantity of each form of cannabis on the Premises. These records shall be maintained for two (2) years from the date created or longer if required by State or Federal law;
- (S) On the first day of each month, the Cooperative/Collective provides the City Manager with a written report containing the following information:
  - (1) Bills of lading and a description of all inventory shipments received (including those received by the Cooperative/Collective, weight of any cannabis flowers, edibles and concentrates) since prior report;
  - (2) The description and weight of inventory in the possession or control of the Cooperative/Collective;
  - (3) The number of Cooperative/Collective members;
  - (4) The total gross revenue received from prior month’s sales; and
  - (5) A copy of any sales tax reports provided to the State Board of Equalization or other taxing agencies.

- (T) The Cooperative/Collective, at the time opened, is not operated within: a residence; within one thousand (1,000) feet of a school, recreation center or youth center; or within two hundred (200) feet of a public playground, park, child care or day care facility, or church. All distances shall be measured in a straight line, without regard to intervening structures or topography, from the nearest point of the building or structure in which the Cooperative/Collective is located to the nearest property line of those uses described in this Subsection;
- (U) Operations of the Cooperative/Collective do not cease for more than 90 calendar days;
- (V) The Cooperative/Collective provides the City, or allows the City inspection of, the security recordings, the activity logs, sales and revenue records, documents and any other required reports, and financial and sales data requested by the City.
- (W) No person who owns/operates a Cooperative/Collective has been convicted of:
  - (1) A homicide;
  - (2) Within the preceding 10 years, any serious or violent felony listed in Penal Code Section 1192.7(c) or Section 667.5(c);
  - (3) Within the preceding 10 years, any violation of subdivisions (d) or (e) of Health and Safety Code Section 11357, or Section 11361 and/or Articles 1, 3, 5, 6, or 7 of Chapter 6 of Division 10 of the Health and Safety Code;
  - (4) Within the preceding 5 years, any felony violation of Health and Safety Section 11358, Section 11359 or Section 11360;
  - (5) Within the preceding 5 years, any violation of the Compassionate Use Act or Medical Marijuana Program Act.

Section 12A-5-No Vested or Nonconforming Rights

This Article prohibits Medical Cannabis Cooperatives and Collectives. Neither this Article, nor any other provision of this Code, or action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or non-conforming right or benefit regarding any Cooperative/Collective. Any immunity or benefit conferred by this Article shall expire permanently and in full on the effective date of the City Council's enactment of new medical marijuana legislation contrary to this Article.

Section 12A-6-Security Plan

In order to receive and maintain limited immunity as provided for in this Article, the Cooperative/Collective and its operators shall develop a security plan including the following measures:

- (A) Digital security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 240 concurrent hours of digitally recorded documentation in a format approved by the City Manager or Designee;

The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, any cultivation areas, storage areas, all doors and windows, medical cannabis tending areas, all areas where Cooperative/Collective staff and volunteers will interact or engage in transactions with members, all sales activities and transactions involving trade or exchange of cannabis for monetary compensation or anything of value, all exterior parking areas and any other areas as determined by the City Manager or Designee.

Recordings made by the security cameras shall be made available to the City Manager or Designee upon 24 hours notice.;

Nothing in this Section shall compel a Cooperative/Collective or require the City to voluntarily disclose or deliver said recording to any Federal government entity or agency absent a court order or subpoena.

- (B) The Cooperative/Collective premises shall be alarmed with an alarm system that is operated and monitored by a properly licensed security company. Any security personnel, armed personnel and armed security personnel of the Cooperative/Collective shall have and possess on their person any required federal, State and local permits and licenses. In addition, the Cooperative/Collective shall provide the City Manager or Designee with proof of general liability insurance coverage, including coverage for negligence/malfeasance by the Cooperative/Collective, its employees, volunteers, security personnel and armed security personnel. Said policy shall be in a form and in amounts acceptable to City and shall name City as an additional insured. Minimum coverage shall be \$1 million per claim and \$2 million in the aggregate.;
- (C) The entrance to the Cannabis dispensing area and any storage areas shall be secured at all times, and under the control of Cooperative/Collective staff;
- (D) The business entrance(s) and all window areas shall be illuminated during evening hours. The Cooperative/Collective shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed;
- (E) All windows on the building that house the Cooperative/Collective shall be appropriately secured and all cannabis securely stored; and
- (F) Tending scales shall be used for the sale or trade of any and all cannabis. All tending scales are to be in a digital (LED) display, character size a minimum of 1 inch. A separate surveillance camera shall monitor each LED scale display so that the LED scale readout can be read remotely.

Section 12A-7-Enforcement

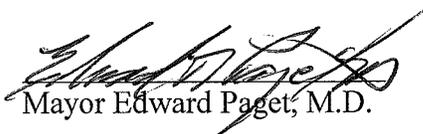
- (A) The City Manager or Designee shall have the right to enter the Cooperative/Collective from time to time for the purpose of making reasonable inspections to observe and enforce compliance with this Article and all laws of the City and State of California upon 24 hour notice.
- (B) Failure to comply with the provisions of the Article, the City Code, or any other State or City law, shall result in the limited immunity under this Article being revoked. Such operation of the Cooperative/Collective in non-compliance with the above shall constitute a public nuisance and violation of the Municipal Code and shall be subject to a \$500.00 per day per violation fine and may be enforced through any lawful remedy, including, but not limited to, the provisions of this Article and the City of Needles Municipal Code. Any non-compliance with this Article, the City Code or ordinances, State law, the Act, the Program or the Guidelines shall also be subject to a restraining order and temporary and permanent injunctive relief.
- (C) Any person violating any of the provisions of this Article or any provisions or part hereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than a five hundred dollars (\$500.00) per violation or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. The conviction and punishment of any person for failure to pay a required tax shall not excuse or exempt such person from any civil action for violation of this Article or other City law. No civil action shall prevent criminal prosecution for any violation of the provisions of this Article or any state or City law.

**SECTION 6.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Needles, California, approves an amendment to the City Code.

**INTRODUCED AND READ** for the first time and ordered posted at a regular meeting of the City Council of the City of Needles, California, held on the 12th day of November, 2014, by the following roll call vote:

AYES:	Council Members Kidd, Frazier, Campbell and Gudmundson
NOES	Council Members Lopez and Gudmundson
ABSENT	None
ABSTAIN	None

  
Mayor Edward Paget, M.D.

Attest: Dale Jones  
City Clerk Dale Jones, CMC

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Needles, California, held on the 25th day of November, 2014.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor Edward Paget, M.D.

(Seal)

Attest: \_\_\_\_\_  
City Clerk Dale Jones, CMC

Approved as to form:

John Pinkney  
City Attorney John Pinkney