

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 13 TO "MEDICAL MARIJUANA REGULATIONS: PATIENTS AND CAREGIVERS."

AMENDING SECTIONS 42.1301 AND 42.1302; REPEALING SECTIONS 42.1303, 42.1304, 42.1305, 42.1306 AND 42.1307; AMENDING AND RENUMBERING SECTION 42.1308 TO SECTION 42.1303; REPEALING SECTIONS 42.1309, 42.1310, 42.1311, AND 42.1312; AND AMENDING AND RENUMBERING SECTION 42.1313 TO SECTION 42.1304, AND BY AMENDING CHAPTER 4, ARTICLE 2, BY ADDING A NEW DIVISION 15, TITLED "MEDICAL MARIJUANA CONSUMER COOPERATIVES," AND ADDING NEW SECTIONS 42.1501, 42.1502, 42.1503, 42.1504, 42.1505, 42.1506, 42.1507, 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, AND 42.1513 ALL RELATING TO MEDICAL MARIJUANA REGULATIONS FOR QUALIFIED PATIENTS, CAREGIVERS, AND MEDICAL MARIJUANA CONSUMER COOPERATIVES.

This ordinance amends San Diego Municipal Code Chapter 4, Article 2, Division 13, and adds a new Division 15 all related to adopting and enforcing laws consistent with the California Health and Safety Code sections governing medical marijuana. Cal. Health & Safety Code § 11362.5 (Compassionate Use Act of 1996), §§ 11362.7-11362.83 (Medical Marijuana Program).

This ordinance provides those who possess a Medical Marijuana Program state identification card protection from arrest when such persons possess certain specified amounts of medical marijuana. This ordinance establishes a regulatory system for governing the collective or cooperative cultivation of marijuana by requiring such entities to form as consumer cooperatives

pursuant to state law, to obtain a City permit, and to follow various regulations, including documentation of transactions, age limitations, and packaging and labeling requirements.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

MTN:amt
03/14/11
03/29/11 REV.
Or.Dept:PSNS

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 13 TO "MEDICAL MARIJUANA REGULATIONS: PATIENTS AND CAREGIVERS," AMENDING SECTIONS 42.1301 AND 42.1302; REPEALING SECTIONS 42.1303, 42.1304, 42.1305, 42.1306 AND 42.1307; AMENDING AND RENUMBERING SECTION 42.1308 TO SECTION 42.1303; REPEALING SECTIONS 42.1309, 42.1310, 42.1311, AND 42.1312; AND AMENDING AND RENUMBERING SECTION 42.1313 TO SECTION 42.1304, AND BY AMENDING CHAPTER 4, ARTICLE 2, BY ADDING A NEW DIVISION 15, TITLED "MEDICAL MARIJUANA CONSUMER COOPERATIVES," AND ADDING NEW SECTIONS 42.1501, 42.1502, 42.1503, 42.1504, 42.1505, 42.1506, 42.1507, 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, AND 42.1513 ALL RELATING TO MEDICAL MARIJUANA REGULATIONS FOR QUALIFIED PATIENTS, CAREGIVERS, AND MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, on October 6, 2009, the City Council created a citizen advisory task force known as the Medical Marijuana Task Force (MMTF) for the purpose of recommending guidelines for patients and caregivers, the structure and operation of collectives and cooperatives, and police enforcement related to medical marijuana; and

WHEREAS, the MMTF produced two reports, one addressing land use and zoning issues dated November 12, 2009, and one addressing regulations outside of land use and zoning dated April 21, 2009; and

WHEREAS, on May 26, 2010, the Public Safety and Neighborhood Services Committee directed the City Attorney to prepare an ordinance incorporating the MMTF recommendations for regulations outside land use and zoning, to add a requirement that all cooperatives organize

as statutory entities, and to add additional labeling requirements on medical marijuana in the ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 2, Division 13 of the San Diego Municipal Code is amended by amending the title of Division 13, by amending sections 42.1301 and 42.1302, by repealing sections 42.1303, 42.1304, 42.1305, 42.1306, 42.1307, 42.1309, 42.1310, 42.1311, and 42.1312, by amending and renumbering section 42.1308 to section 42.1303, and by amending and renumbering section 42.1313 to section 42.1304, to read as follows:

Division 13: Medical Marijuana Regulations: Patients and Caregivers

§ 42.1301 Purpose and Intent

- (a) It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), to protect the public health, safety, and welfare.
- (b) Nothing in this Division is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

- (c) Nothing in this Division is intended to reduce the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).
- (d) This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

§ 42.1302 Definitions

For the purpose of this Division the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Processed marijuana means harvested *marijuana* that is in a form other than a live plant.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief in accordance with state law, including California Health and Safety Code section 11362.5.

SDPD means the City of San Diego Police Department.

State identification card means the card issued to a patient or caregiver in accordance with California Health and Safety Code sections 11362.71-11362.76.

§ 42.1303 State Identification Card Holders: Permissible Amounts of Marijuana

A person in possession of a current and valid *state identification card* and who is within the jurisdictional limits of the City, is not subject to arrest by the *SDPD* for possession of *marijuana*, or detention by the *SDPD* longer than necessary to verify his or her status, or seizure by the *SDPD* of *marijuana* in his or her possession, if the amount of *marijuana* possessed is within the following limits:

(a) *Processed Marijuana - Qualified Patients.*

An individual who is a *qualified patient* may possess the total amount of *processed marijuana*, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

(b) *Processed Marijuana - Primary Caregivers.*

An individual who is a *primary caregiver* may possess no more than the amount specified in section 42.1303(a) for each *qualified patient* for whom the individual serves as a verified *primary caregiver*, except that such amount shall not exceed two pounds, or an amount consistent with the physician's recommendation, whichever is less.

(c) *Indoor Plants - Qualified Patients.*

A *qualified patient* may possess a maximum of twenty-four unharvested *marijuana* plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

(d) *Indoor Plants - Primary Caregivers.*

A *primary caregiver* may possess no more than the amount of *marijuana* specified in section 42.1303(c) and growing in the space specified in 42.1303(c), for each *qualified patient* for whom the individual serves as a *primary caregiver*, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

(e) *Outdoor/Greenhouse Plants.*

No unsupervised outdoor *marijuana* cultivation shall be permitted. Growing *marijuana* shall only be permitted in a fully enclosed

yard with a minimum six-foot fence perimeter or a greenhouse or structure that must be locked and contained. The amount of *marijuana* grown in the enclosed yard with a minimum six-foot fence perimeter or greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to sections 42.1303(c) and 42.1303(d).

- (f) Possession of *marijuana* in amounts which exceed those set forth in section 42.1303(a)-(d) by persons with *state identification cards* will be evaluated by *SDPD* on a case-by-case basis according to the totality of the circumstances, taking into account facts such as whether the amount possessed is consistent with a physician's recommendation.

§ 42.1304 Smoking

Qualified patients, including those with *state identification cards*, are prohibited from smoking *marijuana* in any public place or in any place open to the public.

Any person who violates this section is guilty of an infraction.

Section 2. That Chapter 4, Article 2 of the San Diego Municipal Code is hereby amended by adding new Division 15, and by adding new sections 42.1501, 42.1502, 42.1503, 42.1504, 42.1505, 42.1506, 42.1507, 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, and 42.1513, to read as follows:

Division 15: Medical Marijuana Consumer Cooperatives

§ 42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing and strictly regulating the cooperative cultivation and exchange of medical *marijuana* among *qualified patients, primary caregivers, and state identification card* holders consistent with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program (California Health and Safety Code sections 11362.7-11362.83). Further, the California Corporations Code may allow some conduct for consumer cooperatives that is not otherwise permissible under the California Health and Safety Code and this Division, such as the distribution of profits to members; in those circumstances, it is the intent of the City that the state and municipal laws governing medical *marijuana* control.

§ 42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Medical marijuana consumer cooperative means a cooperative organized as a consumer cooperative under state law for the purpose of collectively or cooperatively cultivating *marijuana* for medical purposes in accordance with state law.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

Reasonable compensation means compensation for directors, managers, and *responsible persons* of the *medical marijuana consumer cooperative*

commensurate with reasonable wages and benefits paid to employees of IRS qualified non-profit organizations who have similar descriptions and duties.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *medical marijuana consumer cooperative*. It also includes an employee who is in apparent charge of the *medical marijuana consumer cooperative*.

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

§ 42.1503 Cooperatives—Organization

All persons who organize to collectively and cooperatively cultivate medical *marijuana* pursuant to state law shall organize as a "Consumer Cooperative Corporation" pursuant to California Corporations Code Title 1, Division 3, Part 2.

§ 42.1504 Cooperatives—Permit Required

- (a) It is unlawful for any person to operate any cooperative, collective, dispensary, or establishment which collectively or cooperatively cultivates medical *marijuana* without a permit issued pursuant to this Division.

- (b) In addition to any other information requested by the City, a permit applicant must provide evidence that the applicant is in compliance with section 42.1503.
- (c) The *medical marijuana consumer cooperative* shall designate one of its officers or managers to act as its responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *medical marijuana consumer cooperative*.
- (d) The issuance of a permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.
- (e) A permit applicant must obtain a conditional use permit as required by Chapter 12, Article 6, Division 3, prior to obtaining a permit under this Division.

§ 42.1505 Exemptions

- (a) This Division does not apply to persons collectively or cooperatively cultivating *medical marijuana* in the following facilities licensed by the State of California pursuant to California Health and Safety Code Division 2:
 - (1) A clinic licensed pursuant to Chapter 1;
 - (2) A health facility licensed pursuant to Chapter 2;

- (3) A residential care facility for persons with chronic, life-threatening illnesses licensed pursuant to Chapter 3.01;
 - (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2; or
 - (5) A hospice or a home health agency licensed pursuant to Chapter 8.
- (b) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

§ 42.1506 Cooperatives—Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *medical marijuana consumer cooperatives*.

§ 42.1507 Cooperatives—Background Checks

- (a) All *responsible persons* in the *medical marijuana consumer cooperative* shall undergo fingerprinting prior to acting as a *responsible person*. The fingerprints shall be provided to and kept on file with the City.
- (b) The City may conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* in the *medical marijuana consumer cooperative*.
- (c) It is unlawful for any *responsible person* in a *medical marijuana consumer cooperative* to act as a responsible person for the *medical marijuana consumer cooperative* if he or she:

- (1) fails to provide their fingerprints to the City; or
 - (2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.
- (d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

§ 42.1508 Cooperatives—Verification and Documentation

- (a) *Responsible persons* shall ensure that all transactions involving money, in-kind contributions, reimbursements, *reasonable compensation*, and *marijuana* are fully documented, including documenting each member's contribution of labor, resources, or money to the *medical marijuana consumer cooperative*, and the source of their *marijuana*.
- (b) Upon the City's request, *responsible persons* for the *medical marijuana consumer cooperative* shall provide to the City an audit of its operations for the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles.

§ 42.1509 Cooperatives—Not-for-Profit

Responsible persons shall ensure that:

- (a) No *medical marijuana consumer cooperative* operates for profit for itself or its members. Cash and in-kind contributions, reimbursements, and *reasonable compensation* provided by members towards the *medical marijuana consumer cooperative's* actual expenses for the growth,

cultivation, and provision of medical *marijuana* shall be allowed in accordance with state law.

- (b) *Medical marijuana consumer cooperative responsible persons*, including directors, managers, and employees, are limited to receiving *reasonable compensation* and shall not receive a bonus.
- (c) Members who bring medical *marijuana* from their own personal grows to the *medical marijuana consumer cooperative*, may be compensated by cash or trade in-kind. Members may be compensated for their expenses as provided by state law at the time the harvest is brought to the *medical marijuana consumer cooperative*.

§ 42.1510 Cooperatives—Age Limitations

- (a) No person under the age of eighteen is allowed at or in any *medical marijuana consumer cooperative* unless the person is a *qualified patient* or *state identification card* holder and accompanied by their parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.
- (b) No person under the age of eighteen may be employed by or act as a *responsible person* on behalf of the *medical marijuana consumer cooperative*.

§ 42.1511 Marijuana—Transportation

All persons transporting medical *marijuana* in connection with a *medical marijuana consumer cooperative* shall do so in accordance with state law.

§ 42.1512 Marijuana—Packaging and Labeling

Responsible persons for the *medical marijuana consumer cooperative* shall ensure that medical *marijuana*, edible products containing medical *marijuana*, and concentrates comply with the following packaging and labeling requirements:

(a) *Marijuana*

(1) Must be sealed in an airtight manner; and

(2) must have a label affixed to the package containing the following information:

- a. Patient's name;
- b. Dispensing date;
- c. Name and address of dispensing cooperative;
- d. Name of product;
- e. Product ingredients;
- f. Product must be used as recommended;
- g. Product must be kept out of the reach of children;
- h. Product users must not operate heavy machinery while under the influence of *marijuana*;
- i. Sale or transfer of product to non-patients is prohibited;
- j. Product is intended for medical use only. Cal. Health & Safety Code § 11362.5; and

k. Any additional use instructions and warnings that may be applicable.

(b) Edible Products and Concentrates

(1) Must be labeled with the following:

- a. Patient's name;
- b. Dispensing date;
- c. Name and address of dispensing cooperative;
- d. A warning label; and
- e. The source of the food production.

§ 42.1513 Interior Signage

A sign shall be posted on a wall in the *medical marijuana consumer cooperative* which states the following:

CANNABIS PATIENT ADVISORY

THIS IS A WARNING REGARDING EDIBLE CANNABIS/MARIJUANA PRODUCTS

CAUTION – Edible products containing cannabis extracts (THC – Tetra Hydro Cannabinol) have serious risks associated with the consumption. KEEP OUT OF THE REACH OF CHILDREN.

Common Names: Cannabis Sativa, Cannabis Indica

Uses: Edible cannabis products must always be consumed with caution! The fact that most edibles are produced in kitchens which have not been certified by the health department creates a risk of serious illness and/or an agonizing painful

death. THE CITY OF SAN DIEGO CANNOT REGULATE THIS POTENTIALLY DANGEROUS PRODUCT! Edible cannabis products provide thirty-seven additional variations of the THC – (Tetra Hydro Cannabinol) molecule over the benefits received from the inhalation of medical cannabis. Patients with terminal cancer, and those suffering from respiratory problems will benefit from orally consuming cannabis since inhalation is impossible for them; however, there are associated side risks. DO NOT OPERATE A MOTOR

VEHICLE OR MACHINERY WITHIN EIGHT HOURS OF CONSUMING EDIBLE CANNABIS PRODUCTS.

Side Effects: Severe Extreme Anxiety attacks lasting for up to four hours may occur without proper use of this product. Unless you have experience with this substance, do not drive within seven hours of consumption.

Non-Health Department Certified Kitchens: Food products and other ingestible items containing cannabis are usually not produced in Health Department Certified Kitchens. Consuming these products is a risk.

Dosages: It is difficult to regulate the doses of THC in edible products. It is advised that each new lot be tested by consuming only small portions over a period of several hours.

Anxiety Sufferers: Patients suffering from anxiety should consult a physician before considering the use of edible products containing THC. The increased risk of anxiety attacks may be associated with their consumption.

This warning sign was drafted by the Medical Marijuana Task Force (San Diego Resolution R-305305, Medical Marijuana Task Force Report to Council

No. 10-060 (Apr 21, 2010)). The City of San Diego is not responsible for the accuracy of the statements contained in this sign and cannot verify its contents.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Mary T. Nuesa
Mary T. Nuesa
Chief Deputy City Attorney

MTN:amt
03/14/11
03/29/11 REV.
Or.Dept:PSNS

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor