

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 15 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 42.1502, 42.1504, 42.1505, 42.1507, AND BY AMENDING AND RENUMBERING SECTIONS 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, AND 42.1513, RELATING TO MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, in 2011 the City of San Diego adopted public safety based permit requirements and operating regulations for Medical Marijuana Consumer Cooperatives, such as prohibitions against any individual from operating or being employed at a Medical Marijuana Consumer Cooperative who has been convicted of certain types of crimes and imposing labeling requirements on products; and

WHEREAS, the City of San Diego desires to clarify and reorganize these regulations, and to add a process for permit revocations; NOW, THEREFORE,

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

Section 1. That Chapter 4, Article 2, Division 15 of the San Diego Municipal Code is amended by amending sections 42.1502, 42.1504, 42.1505, 42.1507, and by amending and renumbering sections 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, and 42.1513, to read as follows:

§42.1502 Definitions

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

Marijuana [No change in text.]

Medical marijuana consumer cooperative means a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83. A *medical marijuana consumer cooperative* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

Primary caregiver through Violent felony [No change in text.]

§42.1504 Cooperatives-Permit Required

- (a) It is unlawful for any person to operate any *Medical marijuana consumer cooperative* without a *Medical Marijuana Consumer Cooperative Permit* issued pursuant to this Division.
- (b) through (c) [No change in text.]
- (d) The issuance of a *Medical Marijuana Consumer Cooperative 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.
- (f) Applications for *Medical Marijuana Consumer Cooperative Permits* shall be filed with the City Manager.

- (g) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.
- (h) *Medical Marijuana Consumer Cooperative* Permits issued pursuant to this Division shall be valid for one year.
- (i) An application for a *Medical Marijuana Consumer Cooperative* Permit shall be denied if the permit was revoked by the City Manager within the past twelve months.

§42.1505 Exemption

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.

§42.1507 Cooperatives–Background Checks

- (a) [No change in text.]
- (b) The City shall 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) through (2) [No change in text.]
- (d) [No change in text.]

§42.1508 Cooperatives–Operational Requirements

(a) Verification and Documentation

- (1) *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*.
- (2) 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.
- (3) A *medical marijuana consumer cooperative* shall maintain and provide upon request by the City a current list of all *responsible persons*.

(b) Not-for-Profit

Responsible persons shall ensure that:

- (1) 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.

(2) *Medical marijuana consumer cooperative responsible persons*, including directors, managers, and employees, are limited to receiving *reasonable compensation* and shall not receive a bonus.

(3) 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*.

(c) Age Limitations

(1) 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.

(2) 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*.

(d) Transportation

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

(e) 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:

(1) *Marijuana* must be sealed in an airtight manner, and 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.

(2) Edible Products and Concentrates must be labeled with the following:

- (A) Patient's name;

- (B) Dispensing date;
 - (C) Name and address of dispensing cooperative;
 - (D) A warning label that contains the cannabis patient advisory information required in section 42.1508(f); and
 - (E) The source of the food production.
- (3) *Medical Marijuana Consumer Cooperatives* are encouraged to label products for potency.
- (4) The City of San Diego may at any time have medical *marijuana* tested for pesticides, mold, mildew, and/or bacteria, and make such testing results available to consumers.

(f) 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 *marijuana* products contain cannabis extracts (THC – Tetra Hydro Cannabinol).

Marijuana is not regulated as a food ingredient and therefore the County Department of Environmental Health does not have any regulatory authority over this ingredient in edibles.

§42.1509 Cooperatives-Regulatory Actions on Permit

- (a) In addition to any penalties and remedies provided by law, a *Medical Marijuana Consumer Cooperative* Permit is subject to any of the following regulatory actions:
- (1) non-compliance with this Division or any condition of this permit;
 - (2) conviction of any crime which would have been grounds for denial of the permit;
 - (3) failure to take corrective action after timely written notice of a violation; or
 - (4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation.
- (b) Regulatory action includes the following:
- (1) Issuance of a verbal warning;
 - (2) Issuance of a written warning;
 - (3) Issuance of a notice of violation;
 - (4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

- (5) Suspension of the *Medical Marijuana Consumer Cooperative* Permit; or
 - (6) Revocation of the *Medical Marijuana Consumer Cooperative* Permit.
- (c) Written notice of the regulatory actions taken pursuant to section 142.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(c).
- (d) A request for an appeal hearing of the regulatory actions taken pursuant to section 142.1509(b)(2) through (b)(6) may be made by the responsible managing officer.
- (e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.
- (f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.
- (g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.
- (h) The hearing shall be conducted by a hearing officer provided by the City Manager.

- (i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.
- (j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Medical Marijuana Consumer Cooperative* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

Section 2. 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 3. 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 _____
Shannon M. Thomas
Deputy City Attorney

SMT:als
01/06/15
Or.Dept: Council–District 9
Doc. No. 930012

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)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor