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CITY OF SAN DIEGO

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April 17, 2013

REPORT TO MAYOR AND CITY COUNCILMEMBERS

PERFORMANCE OF COMMITMENTS IN JOINT STATEMENT DATED JANUARY 29,
2013

On January 29, 2013, the Mayor, City Council President and City Attorney issued a Joint Statement pertaining to marijuana dispensaries that reflected an agreement between the City Council and Mayor. A copy of the Joint Statement is attached.

Three steps were agreed upon in the attached Joint Statement.

1. Our office was directed not to dismiss the pending civil enforcement actions.
2. "In order to preserve the status quo, the current zoning laws will be enforced";
3. "The Mayor and City Attorney will bring to the City Council in public session a zoning ordinance, similar to what was previously adopted for discussion purposes, post-haste."

The following is the status of the three agreed upon steps.

1. Our office was directed not to dismiss the pending civil enforcement actions.
Offers to dismiss the cases were withdrawn. The court denied an application by some defendants for dismissal that was based on the Mayor's earlier directive.

2. "In order to preserve the status quo, the current zoning laws will be enforced."
Enforcement cases are referred by Neighborhood Code Compliance Department, which serves under the Mayor. Since January 29, 2013, there have been no referrals.

We are aware that illegally operating dispensaries have been opened. We have submitted to Neighborhood Code Compliance a list of over 20. We have heard of more and refer complainants to Neighborhood Code Compliance.

Currently, it is clear that the zoning laws are not being enforced. Our office was primarily responsible for shuttering over 100 illegal dispensaries in 2011-2012. The City should not rely upon the U.S. Attorney to do so as she is not responsible for enforcing our zoning laws and federal law enforcement decides its own priorities.

April 17, 2013

My office has deferred to the Mayor and City Council to decide whether to enforce our zoning laws. We will follow that directive, but we will not lead the public to believe that our current zoning laws are being enforced, when they are not.

3. "The Mayor and City Attorney will bring to the City Council in public session a zoning ordinance, similar to what was previously adopted for discussion purposes, post-haste."

On March 28, 2011, two ordinances were introduced to Council as amendments to the San Diego Municipal Code: one affecting the Land Development Code and the City's Local Coastal Program pertaining to Medical Marijuana Dispensaries (O-2011-24 Rev. 1), and amendments relating to Medical Marijuana Regulations for qualified patients, caregivers, and consumer cooperatives (O-20042, relating to land use, and O-20043, the non-land use regulations.)

Attached hereto is the March 14, 2011 Report to Council and a copy O-20042.

Along with this Report, we have also submitted a Memorandum of Law discussing the current state of the law involving marijuana dispensaries.

JAN I. GOLDSMITH, City Attorney

By /s/ Jan I. Goldsmith

Jan I. Goldsmith
City Attorney

JG:cbs

Attachments

cc: Andrea Tevlin, Independent Budget Analyst

RC-2013-7

For Immediate Release: Tuesday, January 29, 2013

Contact: Irene McCormack, 619 453-4988
Gina Coburn, 619 847-5566
Katie Keach, 619 235-5268



**JOINT STATEMENT BY
MAYOR BOB FILNER
CITY COUNCIL PRESIDENT TODD GLORIA
CITY ATTORNEY JAN GOLDSMITH**

Today, the City Council met in Closed Session to address civil enforcement actions that were filed against marijuana dispensary operators and property owners to compel compliance with the City's zoning laws.

On a unanimous vote (with Councilmember Faulconer absent) and with agreement by the Mayor, the Council directed the City Attorney not to dismiss the cases. In order to preserve the status quo, the current zoning laws will be enforced. Dispensaries should not open in violation of existing laws.

The Mayor and City Attorney will bring to the City Council in public session a zoning ordinance, similar to what was previously adopted, for discussion purposes, post-haste. Although no member of the City Council may commit at this point to the substance of an ordinance, the goal is to try and get in place as soon as possible a zoning amendment that will allow medical marijuana dispensaries to operate in designated areas of the City.

Comment from Mayor Bob Filner: "I will be working very hard in the next 30 days to bring an ordinance to the City Council that ensures that the zoning law allows for reasonable regulation of medical marijuana dispensaries in the City of San Diego. As I've said before, I want those who legitimately need medical marijuana for the relief of pain to have access to it legally. That is the compassionate thing to do."

Comment from City Council President Todd Gloria: "Today's action by the Mayor and Council is a critical step forward for patients seeking safe access and for neighborhoods concerned about the impacts of dispensaries. I look forwarding to scheduling a hearing on a proposed ordinance soon."

Comment from City Attorney Jan Goldsmith: "I appreciate the Mayor's leadership in moving the City toward a solution on medical marijuana dispensaries. Our office looks forward to working with the Mayor and City Council on an ordinance. In the meantime, we will maintain the status quo through enforcement of current laws."

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REPORT TO THE CITY COUNCIL

DATE ISSUED: March 14, 2011

REPORT NO. 11-040

ATTENTION: Council President and City Council

SUBJECT: ORDINANCE REGULATING MEDICAL MARIJUANA COOPERATIVES; AMENDMENTS TO THE LAND DEVELOPMENT CODE AND THE CITY'S LOCAL COASTAL PROGRAM PERTAINING TO MEDICAL MARIJUANA COOPERATIVES; AND ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA REGULATIONS FOR QUALIFIED PATIENTS, CAREGIVERS, AND CONSUMER COOPERATIVES.

REQUESTED ACTIONS:

1. Approve an ordinance amending the Land Development Code and the City's Local Coastal Program pertaining to medical marijuana cooperatives.
2. Approve an ordinance amending the Municipal Code relating to medical marijuana regulations for qualified patients, caregivers, and consumer cooperatives.

STAFF RECOMMENDATION: Approve the ordinances.

SUMMARY:

There are two ordinances under consideration for approval. The first relates to land use issues pertaining to medical marijuana cooperatives (land use ordinance). It would define the term "medical marijuana consumer cooperative" and establish a process by which medical marijuana consumer cooperatives (cooperatives) can be permitted in the City of San Diego.

The land use ordinance would limit medical marijuana consumer cooperatives to the Industrial Light zone (IL-3-1), the Industrial Small Lot zone (IS-1-1), and in the Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-2-1, CC-2-2, CC-2-3 and CR-2-1). Cooperatives would also be allowed in corresponding zones within Planned Districts. The Land Use Ordinance would make all applications for a medical marijuana consumer cooperative subject to a Process 4 Conditional Use Permit (CUP), and would require that the cooperative be located at least 1,000 feet from schools, playgrounds, libraries, child care facilities, youth facilities, churches, parks, and other cooperatives. Requirements and restrictions regarding signage, security, lighting and hours of operation would be imposed, and on-site medical consultations as an accessory use would be prohibited.

The second ordinance pertains to the public safety aspects of medical marijuana (public safety ordinance). It reflects the recommendations of the Medical Marijuana Task Force (MMTF) as they relate to patients and caregivers, the structure and operation of cooperatives, and police enforcement. In addition to the recommendations of the MMTF, the Public Safety and Neighborhood Services Committee included a requirement that all cooperatives organize as statutory entities pursuant to the Attorney General's Guidelines, and that labels on medications include the patient's name, name of the cooperative, address, and if an edible product, the source of that food production.

BACKGROUND

On October 6, 2009, the San Diego City Council voted to establish a Medical Marijuana Task Force to advise the City Council on: (1) guidelines for medical marijuana patients and primary caregivers; (2) guidelines for the structure and operation of medical marijuana cooperatives and/or collectives; and (3) guidelines for police department enforcement regarding medical marijuana. The resolution establishing the MMTF further provided that the MMTF was to report back to the City Council by the end of 2009 with recommendations regarding land use and zoning issues. The Council appointed eleven members, with a broad range of perspectives and backgrounds, to serve on the MMTF.

Land Use Ordinance:

The MMTF met five times over the course of five weeks to discuss recommendations for the land use and zoning of medical marijuana collectives and cooperatives within the City of San Diego. The meetings were conducted pursuant to the Brown Act and open to the public.

The MMTF voted on recommendations for a number of specific land use and zoning-related issues, outlined in their Report to the City Council.

On March 24, 2010, the Task Force presented their report to the Land Use and Housing Committee (LU&H), which passed the following motion on a 3-1 vote (Lightner, Faulconer, Gloria – Yea, Young – Nay):

Direct the City Attorney to develop an ordinance for the regulation of medical marijuana dispensaries using the recommendations of the MMTF, but with the following changes:

- All applications will be subject to a Process 4 Conditional Use Permit
- Proof of Non-Profit status required for the CUP
- Eliminate Commercial Neighborhood and Commercial Visitor zones from the list of allowable zones. Any commercial zones must be without residential uses.
- Provide analysis of the IL3 and IS zones, as detailed in Councilmember Faulconer's memo.
- Additional consideration must be given to the zones with Planned District Ordinances.
- Distance Requirement of 1000 feet from the uses described in the Task Force Report, including distance between dispensaries.
- Additional distance requirement of 1000 feet for parks and places of worship.

- Existing dispensaries must come into compliance with the new ordinance.
- Clear definitions provided for terms describing distance requirements.
- Full cost recovery to mitigate any costs borne by the City

Subsequently, LU&H Chairman Todd Gloria issued a memo clarifying that the intent of Committee was to allow medical marijuana consumer cooperatives only in Industrial Light Zone 3 and Industrial Small Lot Zones (IL-3-1 and IS-1-1), and in Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-2-1, CC-2-2, CC-2-3 and CR-2-1).

Other elements of the land use ordinance, as recommended by the MMTF, include the following:

- Requirement that signage for cooperatives must note the name of the business, and limited to two colors.
- Hours of operation limited to 7AM to 9PM, seven days a week.
- Cooperatives are required to have an operable security system and a licensed security guard present during business hours.
- Cooperatives required to have adequate lighting.
- On-site medical consultation prohibited as an accessory use.

Public Safety Ordinance:

The public safety ordinance makes the municipal code consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health & Safety Code sections 11362.711362.9 (Medical Marijuana Program). The public safety ordinance contains the following elements:

- Limits the permissible amounts of marijuana that may be legally possessed by state identification card holders to one pound or an amount consistent with the physician's recommendation, whichever is less;
- Limits the number of plants that can be legally grown by state identification card holders to a maximum of twenty four un-harvested 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;
- As to state identification card holders, provides that medical marijuana cultivation shall be only permitted in a fully enclosed yard with a six-foot fence perimeter or a greenhouse or structure that must be locked and contained;
- Prohibits the smoking of medical marijuana in any public place or in any place open to the public;
- Provides for a permitting process for medical marijuana cooperatives;
- Requires that each cooperative designate one of its officers or managers to act as its responsible managing officer;
- Requires all responsible persons in the cooperative undergo a background check conducted by the City;
- Provides that all permitting costs be recovered by the City;

- Requires that all transactions involving medical marijuana in a medical marijuana consumer cooperative be fully documented and that an annual audit of these transactions be provided to the City upon request;
- Prohibits cooperatives from operating for profit;
- Limits compensation to cooperative responsible persons, directors, managers, and employees, and prohibits bonuses;
- Prohibits persons under the age of eighteen at or in any medical marijuana cooperative unless the person is a qualified patient or state identification card holder and accompanied by their parent, legal guardian or their primary caregiver who is over the age of eighteen;
- Requires that all medical marijuana, edible products containing medical marijuana and concentrates meet specific packaging and labeling requirements.

DISCUSSION OF LAND USE ORDINANCE

The proposed land use ordinance is based on the motion passed by LU&H and initiated by the City Council concerning the land use issues pertaining to medical marijuana consumer cooperatives. In accordance with the motion passed by LU&H, the ordinance would permit medical marijuana consumer cooperatives in the Industrial Light zone (IL-3-1), the Industrial Small Lot zone (IS-1-1), and in the Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-2-1, CC-2-2, CC-2-3 and CR-2-1). Additionally, cooperatives would be permitted in any planned district zone, subdistrict, district or overlay that allows light industrial uses or which allows commercial use and, except for watchkeeper's quarters, prohibits residential uses. The applicable planned district zones have been identified and are shown in the Table 1 below.

Attachment 1 illustrates the locations of zones throughout the city that would permit medical marijuana cooperatives.

In addition to zone limitations, the siting of a medical marijuana cooperative would be further restricted under the Ordinance by a required distance separation of 1,000 feet from schools, parks, churches, child care facilities, playgrounds, libraries owned and operated by the City of San Diego, youth-serving facilities, and other cooperatives. Attachment 2 includes citywide and district by district maps which illustrate a 1,000 foot radius around the known locations of these uses. It should be noted that these maps contains only the distance-separated uses that could be identified with the SanGIS mapping technology, and should not be considered a comprehensive analysis of where these uses are located. If the ordinance is approved and an application to site a medical marijuana cooperative is submitted, the Development Services Department will conduct a case-by-case survey to determine if a given location meets all of the distance separation requirements.

TABLE 1 – Planned District Zones

Planned District:	Applicable Zones, Districts, Subdistricts, or Overlay	Zone Code
Barrio Logan	Subdistrict D	BLPD-REDEVELP-SUBD BLPD SUBD-D
Carmel Valley	EC Zone	CVPD-EC
Cass Street Commercial	No Applicable Zones	
Central Urbanized	No Applicable Zones	
Centre City	No Applicable Zones	
Gaslamp Quarter	No Applicable Zones	
Golden Hill	No Applicable Zones	
La Jolla	No Applicable Zones	
La Jolla Shores	No Applicable Zones	
Marina	No Applicable Zones	
Mid Cities Communities	No Applicable Zones	
Mission Beach	No Applicable Zones	
Mission Valley	MV-CO, MV-CV, MV-CR, MV-I Zones	MVPD-MV-CO-CV MVPD-MV-CO MVPD-MV-CV MVPD-MV-CR MVPD-MV-I
Mount Hope	No Applicable Zones	
Old Town	No Applicable Zones	
Otay Mesa	Industrial Subdistrict, Commercial Subdistrict,	OMDD-COMMERL-SUBD OMDD-INDUST-SUBD
San Ysidro	CSF, CR, CT Zones, Industrial Zone.	SYIO-CSF-2 SYIO-CSF-2-3 SYIO-CSF-3 SYIO-CSR-1 SYIO-CSR-2 SYIO-CSR-3 SYIO-CT-2-3
Southeast San Diego	Commercial Zones 2 and 3, Industrial Zone	SESPD-CSF-2 SESPD-CSF-3 SESPD-CSR-2 SESPD-CSR-3 SESPD-CT-2 SESPD-CT-3 SESPD-I-1 SESPD-I-2

It should be noted that LU&H asked that proof of non-profit status be required as a condition of the CUP. However, as noted in the City Attorney's report, Conditional Use Permits create a right that attaches to the land, not to any individual permittee. Therefore this recommendation was not included in the land use ordinance. However, the public safety ordinance prohibits cooperatives from operating for profit.

FISCAL CONSIDERATIONS: Adoption of these ordinances will not result in any fiscal impact to the City. All costs associated with permitting and regulation of medical marijuana collectives will be paid by the applicant.

ENVIRONMENTAL REVIEW: Both ordinances are exempt from CEQA, Section 15061(b)(3) which states that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

CONCLUSION

Testimony at the City Council as well as the advisory groups reflects a broad spectrum of opinion as to the level of restriction that is appropriate to site medical marijuana cooperatives. The proposed land use ordinance reflects the motion passed by the Land Use and Housing Committee and initiated by the City Council. The public safety ordinance reflects the direction given by the Public Safety and Neighborhood Services Committee.

ALTERNATIVES

Numerous alternatives have been suggested throughout the public process. The City Council may choose to adopt land use regulations for medical marijuana facilities that reflect the suggestions of the MMTF, the Code Monitoring Team, the Community Planners Committee, the Planning Commission or other recommendations suggested in public testimony.

The *Medical Marijuana Task Force* report includes the following recommendations that are distinct from the Ordinance.

- Allow collectives or cooperatives in all commercial and industrial zones
- 1,000 foot distance requirement from schools, playgrounds, libraries, child care facilities and youth facilities (the ordinance also includes parks and churches)
- Do not allow cooperatives within a 500-foot radius of another cooperative (the ordinance increases this distance requirement to 1,000 feet).
- Cooperatives with fewer than 100 members obtain a use permit through Process 2.
- Cooperatives with 100 or more members obtain a use permit through Process 3.

The *Code Monitoring Team* made the following recommendations:

- The distance requirement for medical marijuana cooperatives should be 600 feet, which is the same distance used for off-site sales of alcohol.

- Medical marijuana cooperatives should be permitted in all commercial zones regardless of whether or not residential uses are present since the ordinance does not treat residential uses as a sensitive use with distance requirements.
- Medical marijuana cooperatives should be permitted in industrial zones that allow retail uses such as pharmacies.
- Medical marijuana cooperatives should be a Conditional Use Permit approved via Process Three (Hearing Officer) with appeal to the Planning Commission.

The *Community Planners Committee* made the following recommendations:

- Include a 1,000-foot buffer between medical marijuana cooperatives and colleges or universities.
- Any minor under 18 years old, who has a medical marijuana prescription, would have to have their parent or legal guardian purchase the medical marijuana.
- Permit the community planning groups to request a waiver to the regulations to allow for more locations for cooperatives in their communities, with approval of the community planning group.
- Allow Collectives and Cooperatives to continue to operate for up to one year after passage of the ordinance, while going through the process to obtain a permit.
- Community Planners Committee requests the ordinance be sent back to CPC for review if there are substantial changes resulting in modifications to the permitted locations or zones.

The *Planning Commission* discussion included recommending that the ordinance be approved, but with a provision that colleges and universities be included in the uses requiring a 1,000 foot buffer. The Planning Commission also recommended that a 6-month grace period be extended to existing medical marijuana cooperatives after the Ordinance is adopted. The planning Commission discussion also included a request to analyze the number of parcels that would qualify for siting medical marijuana dispensaries and a caution that the Ordinance, as written, may be too restrictive to enable the provision of safe access to medical marijuana.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

- On October 6, 2009, the San Diego City Council voted to establish a MMTF.
- On January 5, 2010, the City Council voted to refer the recommendations of the MMTF to the Land Use and Housing Committee
- On March 24, 2010, the Land Use and Housing Committee directed the City Attorney to prepare an ordinance based on the recommendations of the Medical Marijuana Task, but with changes as described above.
- On April 28, 2010, the Public Safety and Neighborhood Services Committee directed the City Attorney to review the MMTF Report and bring back legal recommendations to the Committee.
- On May 26, 2010, the Public Safety and Neighborhood Services Committee directed the City Attorney to develop an ordinance for the regulation of medical marijuana cooperatives using the recommendations of the MMTF with two changes to the recommendations: 1) All cooperatives must be statutory entities as per the Attorney General's Guidelines; and 2) that labels on medications must include the patient's name,

name of the cooperative, address, and if an edible product, the source of that food production.

- On September 13, 2010, the City Council voted 6-1 to initiate amendments to the Land Development Code and the City's Local Coastal Program pertaining to medical marijuana cooperatives consistent with the recommendations from the Land Use and Housing Committee. A motion to include colleges and universities in the 1,000 foot distance separation from medical marijuana cooperatives failed by a 3-4 vote.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Code Monitoring Team (CMT): On October 13, 2010 the Code Monitoring Team made the following recommendations:

- The distance requirement for medical marijuana cooperatives should be the same distances used for off-site sales of alcohol.
- Medical marijuana cooperatives should be permitted in all commercial zones regardless of whether or not residential uses are present since the ordinance does not treat residential uses as a sensitive use with distance requirements.
- Medical marijuana cooperatives should be permitted in industrial zones that allow retail uses such as pharmacies.
- Medical marijuana cooperatives be a conditional use permit approved via Process Three (Hearing Officer) with appeal to the Planning Commission.

These recommendations have not been included in the ordinance, but are listed as alternatives.

Community Planners Committee: On October 26, 2010, the Community Planners Committee voted to support the Land Use and Housing recommendations, but with the following amendments:

- Amend Land Use and Housing Recommendations to add a 1,000-foot buffer between medical marijuana cooperatives and colleges or universities.
- Any minor under 18 years old, who has a medical marijuana prescription, would have to have their parent or legal guardian purchase the medical marijuana.
- Permit the community planning groups to request a waiver to the regulations to allow for more locations for cooperatives in their communities, with approval of the community planning group.
- Allow Collectives and Cooperatives to continue to operate for up to one year after passage of the ordinance, while going through the process to obtain a permit.
- Community Planners Committee requests the ordinance be sent back to CPC for review if there are substantial changes resulting in modifications to the permitted locations or zones.


These recommendations have not been included in the ordinance, but are listed as alternatives.

Planning Commission: On January 20, 2011 the Planning Commission held a hearing in accordance with state law to discuss the land use ordinance. The motion, which

received a 3-2 vote, included support for the ordinance with a request that colleges and universities be included in the 1,000-foot distance separation requirements, and that a 6-month grace period be considered for existing dispensaries to come into compliance. Other comments from the Planning Commissioners which were not included in the motion included requests to analyze the number of parcels that would qualify for siting medical marijuana dispensaries and a caution that the Ordinance, as written, may be too restrictive to enable the provision of safe access to medical marijuana.

Additional Public Outreach: The MMTF made presentations to numerous community organizations and Community Planning Groups, including the Community Planners Committee.

Respectfully submitted,


Stephen Hill

2009-2010 Land Use and Housing Committee Consultant

Attachments:

1. Zone Location Map
2. 1000-Foot Radius Maps

CLERK'S FILE COPY

(O-2011-24 REV.2)

ORDINANCE NUMBER O- 20042 (NEW SERIES)DATE OF FINAL PASSAGE APR 27 2011

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 113.0103; AMENDING CHAPTER 12,
ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303;
AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY
AMENDING SECTION 131.0222, TABLE 131-02B;
AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY
~~AMENDING SECTION 131.0322, TABLE 131-03B;~~
~~AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY~~
AMENDING SECTION 131.0422, TABLE 131-04B;
AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY
AMENDING SECTION 131.0522, TABLE 131-05B;
AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY
AMENDING SECTION 131.0622, TABLE 131-06B;
AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY
ADDING A NEW SECTION 141.0614 AND RENUMBERING
THE CURRENT SECTION 141.0614 TO 141.0615; AND
AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY
AMENDING SECTION 151.0103, ALL RELATED TO
MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the
Compassionate Use Act, that allows the use of marijuana for medical purposes when
recommended by a physician and excludes from criminal prosecution the patient and the primary
caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical
Marijuana Program Act [MMPA], that established requirements for the issuance of voluntary
identification cards; provided a defense to criminal charges related to the cultivation, possession,
sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit;
exempted from prosecution qualified patients and designated primary caregivers who associate

to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the

Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution; and

WHEREAS, on October 6, 2009, the San Diego City Council formed a Medical Marijuana Task Force in part for the purpose of advising on land use and zoning issues; and

WHEREAS, the land use recommendations of the Medical Marijuana Task Force have been considered by the City Council, which now desires to exercise its police powers solely to provide for the zoning of medical marijuana consumer cooperatives in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW,

THEREFORE,

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

Section 1. That Chapter 11, Article 3, Division 1, of the San Diego Municipal Code is amended by amending section 113.0103 to read as follows:

§113.0103 Definitions

Abutting property to Marquee [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.

MHPA to Planned Urbanized Communities [No change in text.]

"Playground" means any outdoor premises or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by any person less than eighteen (18) years old.

Premises to Yard [No change in text.]

Youth-oriented facility means any establishment that primarily provides services intended for people under the age of 18 years, such as youth hostels, youth centers, and youth clubs.

Section 2. That Chapter 12, Article 6, Division 3, of the San Diego Municipal Code is amended by amending section 126.0303 to read as follows:

§126.0303 When a Conditional Use Permit Is Required

[No change in text.]

(a) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops to Major transmission, relay, or communication switching station [No change in text.]

Medical marijuana consumer cooperatives

Museums to *Wireless communication facilities* (under circumstances

described in Section 141.0420)

(b) [No change in text.]

(c) [No change in text.]

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

Legend for Table 131-02B

[No change in text.]

Table 131-02B
Use Regulations Table of Open Space Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹¹⁾ -
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]					
Medical marijuana consumer cooperatives		-	-	-	-		-
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees – [No change in text.]		[No change in text.]					

Footnotes for Table 131-02B [No change in text.]

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

Legend for Table 131-03B

[No change in text.]

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]			
<i>Medical marijuana consumer cooperatives</i>					
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]			

Footnotes for Table 131-03B [No change in text.]

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

Legend for Table 131-04B
[No change in text.]

Table 131-04B
Use Regulations Table of Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																							
	1 st & 2nd >>	RE-			RS-												RX-		RT-						
	3rd >>	1-			1-												1-		1-						
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice		[No change in text.]																							
Medical marijuana consumer cooperatives		-			-												-		-						
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]																							

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through Separately Regulated Commercial Services Uses, Massage Establishment, Specialized Practice [No change in text.]		[No change in text.]											
Medical marijuana consumer cooperatives		-			-			-			-		-
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]											

Footnotes for Table 131-04B [No change in text.]

Section 3. That Chapter 13, Article 1, Division 5, of the San Diego Municipal Code is amended by amending section 131.0522, Table 131-05B to read as follows:

§131.0522 Use Regulations Table for Commercial Zones

The uses allowed in the commercial zones are shown in the Table 131-05B.

Legend for Table 131-05B

[No change in text.]

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1 st & 2 nd >>	CN ⁽¹⁾ -			CR-		CO-		CV-		CP-
	3 rd >>	1-			1-	2-	1-		1-		1-
	4 th >>	1	2	3	1	1	1	2	1	2	1
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]									
<i>Medical marijuana consumer cooperatives</i>		-	-	-	C	-	-	-	-	-	-
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zone																	
	1 st & 2 nd >> 3 rd >> 4 th >>	CC-																	
		1-			2-			3-		4-					5-				
		1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																	
Medical marijuana consumer cooperatives		-			C			-		-					-				
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]																	

Footnotes to Table 131-05B [No change in text.]

Section 4. That Chapter 13, Article 1, Division 6, of the San Diego Municipal Code is amended by amending section 131.0622, Table 131-06B to read as follows:

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in the Table 131-06B.

Legend for Table 131-06B

[No change in text.]

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/Subcategories	Zone Designator	Zones								
	1 st & 2 nd >> 3 rd >> 4 th >>	IP-		IL-			IH-		IS-	
		1-	2-	1-	2-	3-	1-	2-	1-	
		1	1	1	1	1	1	1	1	
Open Space through Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]								
Medical marijuana consumer cooperatives		-	-	-	-	C	-	-	C	
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Community Entry Signs [No change in text.]		[No change in text.]								
Neighborhood Identification Signs through Theater Marquees [No change in text.]		[No change in text.]								

Footnotes to Table 131-06B [No change in text.]

Section 5. That Chapter 14, Article 1, Division 6, of the San Diego Municipal Code is amended by adding a new section 141.0614 and by renumbering the current section 141.0614 to section 141.0615.

§141.0614 Medical Marijuana Consumer Cooperatives

Medical marijuana consumer cooperatives may be permitted to operate for a maximum of five years with a Conditional Use Permit decided in accordance with Process 3 in the zones indicated with a "C" in the Use Regulations Table in Chapter 13, Article 1 (Base Zones), subject to the following regulations.

- (a) *Medical marijuana consumer cooperatives* shall not be permitted within 600 feet of *schools, parks, churches, child care facilities, playgrounds,*

libraries owned and operated by the City of San Diego, *youth-serving facilities*, or other *medical marijuana consumer cooperatives*.

- (b) Consultations by medical professionals shall not be a permitted *accessory use* at a *medical marijuana consumer cooperatives*.
- (c) *Medical marijuana consumer cooperatives* shall comply with the following requirements:

(i) ~~Provide adequate lighting shall adequately illuminate the interior~~

of the *medical marijuana consumer cooperative*, facade, and the immediate surrounding area, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

(ii) Provide adequate security which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and present during business hours.

(iii) Post signs on the outside of the *medical marijuana consumer cooperative* that contain only the name of the business, and shall be limited to two colors.

(iv) Post, in a location visible from outside of the *medical marijuana consumer cooperative*, the name and emergency contact phone number of an operator or manager in character size at least two inches in height.

(v) *Medical marijuana consumer cooperatives* shall be permitted to operate only between the hours of 7:00 a.m. to 9:00 p.m., seven days a week.

- (vi) Obtain a permit required pursuant to Chapter 4, Article 2, Division 15.

§141.0615 Nightclubs and Bars over 5,000 Square Feet in Size

[No Change in Text.]

Section 6. That Chapter 15, Article 1, Division 1, of the San Diego Municipal Code is amended by amending section 151.0103 to read as follows:

§151.0103 Applicable Regulations

- (a) [No change in text.]
- (b) The following regulations apply in all planned districts:
- (1) Land Development Code, Chapter 11 (Land Development Procedures);
 - (2) Land Development Code, Chapter 12 (Land Development Reviews), except Chapter 12, Article 6, Division 6, where specifically excluded in the planned district regulations;
 - (3) Child care facilities regulations contained in Section 141.0606; and
 - (4) *Medical marijuana consumer cooperative* regulations contained in section 141.0614. In addition, in planned districts where planned district-specific zones are applied, *medical marijuana consumer cooperatives* may be permitted, as follows:
 - (A) In any planned district zone, subdistrict, district or overlay that allows commercial use and, except for watchkeeper's quarters, prohibits residential uses; and

(B) In any planned district zone, subdistrict, district or overlay that allows light industrial uses, except as prohibited in section 151.0103(b)(4)(A).

Section 7. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 8. That prior to becoming effective, this ordinance shall be submitted to the
San Diego County Regional Airport Authority (SDCRAA) for a consistency determination.

Section 9. That if the SDCRAA finds this ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for Marine Corps Air Station (MCAS) Miramar, Gillespie Field, Montgomery Field, and Brown Field Airports, this ordinance shall take effect and be in force on the thirtieth day from and after the finding of consistency, except that the provisions of this ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 10. That if the SDCRAA determines that this ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for MCAS Miramar, Gillespie Field, Montgomery Field, or Brown Field Airports, the ordinance shall be submitted to the City Council for reconsideration.

Section 11. That if the SDCRAA determines that this ordinance is conditionally consistent with the ALUCPs for MCAS Miramar, Gillespie Field, Montgomery Field, or Brown Field Airports, but that consistency is subject to proposed modifications, the City Council may

amend this ordinance to accept the proposed modifications, and this ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

~~Section 12. That a proposed decision by the City Council to overrule a determination~~
of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote; the proposed decision and findings shall be forwarded to the SDCRAA, California Department of Transportation, Division of Aeronautics, and the airport operators for the MCAS Miramar, Gillespie Field, Montgomery Field, or Brown Field Airports; and the City Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by the public agencies shall be considered and any a final decision to overrule a determination of inconsistency shall require a two-thirds vote.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon Thomas
Shannon Thomas
Deputy City Attorney

ST:als
3/11/2011
3/29/2011 REV.
3/30/2011 REV.1
4/13/2011 REV.2
Or.Dept: LU&H
PL#2010-01398

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 12 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Note: This ordinance was returned unsigned by the Mayor's Office to the Office of the City Clerk on April 27, 2011, at 4:20 P.M.
See San Diego City Charter Section 295 (a) (2).

I, Elizabeth S. Maland, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said city.

ELIZABETH S. MALAND, City Clerk

By T. Stevens, Deputy

Dated 3-4-13

Passed by the Council of The City of San Diego on APR 12 2011, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 27 2011

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAY 28 2011

, and on APR 27 2011

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

20042

Ordinance Number O-