

ORDINANCE NUMBER O- 19218 (NEW SERIES)

ADOPTED ON SEP 29 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 BY AMENDING SECTIONS 42.1301, 42.1302, 42.1303, 42.1304, 42.1305, AND 42.1306; BY RENUMBERING AND AMENDING EXISTING SECTIONS 42.1307 AND 42.1308 RESPECTIVELY TO 42.1309 AND 42.1310; BY ADDING NEW SECTIONS 42.1307 AND 42.1308; BY DELETING EXISTING SECTION 42.1311; BY RENUMBERING AND AMENDING EXISTING SECTIONS 42.1309 AND 42.1310 RESPECTIVELY TO 42.1311 AND 42.1312; AND BY ADDING NEW SECTION 42.1313, ALL RELATING TO THE SAN DIEGO MEDICAL CANNABIS VOLUNTARY VERIFICATION CARD PROGRAM.

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 Sections 42.1301, 42.1302, 42.1303, 42.1304, 42.1305, and 42.1306, to read as follows:

§42.1301 Purpose and Intent

- (a) It is the intent of the Council to adopt an ordinance, consistent with California Health and Safety Code section 11362.5 (Medical Use of Marijuana), that would enact a medical cannabis voluntary verification card [verification card] program to be administered by an external contracting agency.

- (b) Nothing in this Division is intended to override an officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with an officer's sworn duty to enforce applicable law.
- (c) Nothing in this section is intended to reduce the rights of a *medical cannabis patient* or *primary caregiver* otherwise authorized by Health and Safety Code section 11362.5(d).

§42.1302 Definitions

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

Medical Cannabis 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 in writing by a physician practicing within San Diego County 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.

Primary Caregiver means the individual designated by the *medical cannabis patient* exempted under this Division who has consistently assumed responsibility for the housing, health, or safety of the *medical cannabis patient*. A *primary caregiver* may be a person whose only responsibility for the patient's health care is the provision of medical cannabis, provided that the *primary caregiver* is the patient's sole provider of medical cannabis.

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

§42.1303 Eligibility For Verification Card Program

California residents 18 or older who meet the criteria of the verification process set forth under this Division are eligible to participate in the verification card program.

§42.1304 Content of Verification Cards

- (a) Each individual *medical cannabis patient* verification card will bear the name of the cardholder, a serial number, a picture or photograph of the cardholder, and the date of expiration on the card.
- (b) The *primary caregiver* verification card will bear the name of the *primary caregiver*, serial number, a picture or photograph of the cardholder, and the date of expiration of the card.
- (c) Both *medical cannabis patient* and *primary caregiver* verification cards shall display a message from the City advising that it is illegal to distribute marijuana or to use marijuana for non-medical purposes.
- (d) Both *medical cannabis patient* and *primary caregiver* verification cards shall display a message from the City stating that the City is not responsible for any loss or injury related to the use of cannabis or participation in the verification card program.
- (e) Both *medical cannabis patient* and *primary caregiver* verification cards will bear contact information which law enforcement

[CORRECTED 09/17/03]

authorities may access twenty-four hours a day to verify the card is not counterfeit or expired and to verify the amount of marijuana the cardholder is permitted to possess.

- (f) Information which is specifically not to be listed on the card includes the address, telephone number, medical condition, or social security number of the person to whom the card is issued.

§42.1305 Applicability

- (a) [No change in text.]
- (b) By recognizing the verification card, SDPD agrees that, unless an officer has reasonable suspicion that the card is counterfeit or that the bearer is not the person authorized to carry the card, any person bearing this card may lawfully possess marijuana consistent with a physician's recommendation without being subject to arrest for possession of marijuana, or detention for longer than necessary to verify his or her status, or seizure of the cannabis in his or her possession, if the amount of cannabis possessed is permissible in accordance with section 42.1308.

§42.1306 Application Process

- (a) Adults 18 years and older must provide the following when applying for a *medical cannabis patient* verification card:
 - (1) through (2) [No change in text.]
 - (3) A waiver form signed by the applicant stating that the applicant:
 - (1) has received a copy of this ordinance; (2) understands the

applicability and limitations of the verification card; and (3) agrees to hold the City and the City's verification card program contractor harmless from all damages or injuries to any person or property which arise from the applicant's use or possession of cannabis or participation in the verification card program.

(b) Persons applying for a medical cannabis *primary caregiver* verification card must:

- (1) Provide proof of identity in the form of a current and valid government-issued photo identification showing that the applicant is 18 years of age or older; and
- (2) Provide proof of a law enforcement background check which verifies that the applicant is not on parole or probation, and does not have any prior conviction for a serious or violent felony, as defined in the California Penal Code, or a felony conviction for selling any illegal drug.
- (3) Be accompanied by all patients for whom the applicant serves as a *primary caregiver*, not to exceed four *medical cannabis patients* per *primary caregiver*, including the *primary caregiver*. All such *medical cannabis patients* must apply for and be issued a *medical cannabis patient* verification card and sign and complete a *Primary Caregiver Certification Form* in the presence of a medical cannabis program staff member.

[CORRECTED 09/17/03]

- (A) *Medical cannabis patients* will be deleted from a *primary caregiver's* list upon the written request of either the *primary caregiver* or the *medical cannabis patient* or following the expiration of either the *medical cannabis patient's* or the *primary caregiver's* verification card. All *medical cannabis patients* currently registered with a *primary caregiver* will be notified of the expiration of that the *primary caregiver's* verification card.
- (B) *Medical cannabis patients* may be added at any time to a *primary caregiver's* list by following the procedure outlined in section (c)(3) above as long as the total number of *medical cannabis patients* for that particular *primary caregiver* does not exceed four, including the *primary caregiver*.
- (4) Provide a signed waiver form stating that the applicant: (1) has received a copy of this ordinance; (2) understands the applicability and limitations of the verification card; and (3) agrees to hold the City and the City's verification card program contractor harmless from all damages or injuries to any person or property which arise from the use or possession of cannabis or participation in the verification card program by the *primary caregiver* and his or her patients.

Section 2: That Chapter 4, Article 2, Division 13, of the San Diego Municipal Code is amended by renumbering and amending existing Sections 42.1307 and 42.1308 respectively to 42.1309 and 42.1310 to read as follows:

§42.1309 Verification Process

- (a) The City Manager may enter an agreement with an agency to operate the verification card program. The contracting agency shall satisfy itself as to the accuracy of the documents presented in the support of the application, including the physician's written recommendation of cannabis use for the applicant. The agency shall maintain a record of the steps taken to verify the documentation in support of the application.
- (b) In its contract with the City, the contracting agency shall agree to defend, indemnify, and hold harmless the City, its officers, agents, and employees, for any claims or liability for injuries to persons or property connected with, caused, or claimed to be caused by the contracting agency's performance of its duties under the contract, except for claims or liability arising from the established sole negligence or willful misconduct of the City, its officers, agents, or employees.

§42.1310 Expiration

Based upon the physician's recommendation, the verification card for the *medical cannabis patient* and *primary caregiver* shall be effective for no more than two years. Lost or stolen verification cards must be reported to the issuing agency which will cancel the original card and issue a new one containing a new serial number, at the applicant's expense. A list of canceled cards will be available to law enforcement authorities. A *medical cannabis patient* or *primary caregiver* renewing his or her verification

card upon its expiration must re-submit an application in accordance with section 42.1306.

Section 3: That Chapter 4, Article 2, Division 13, of the San Diego Municipal Code is amended by adding new Sections 42.1307 and 42.1308, to read as follows:

§42.1307 Eligibility - *Primary Caregivers*

In addition to meeting the application requirements set forth in section 42.1306(c), a *primary caregiver* shall comply with the following requirements as a condition of participating in the verification card program:

- (a) A *primary caregiver* shall complete all training and instruction in the implementation of this ordinance required by the City or its designated implementing agency.
- (b) A *primary caregiver* shall only charge the amount necessary to reimburse the *primary caregiver* for the direct and actual costs of growing marijuana for qualified *medical cannabis patients*.

§42.1308 Permissible Amounts of Marijuana

A person in possession of a current and valid verification card, 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 medicinal cannabis possessed is within the following limits:

- (a) *Processed Marijuana - Medical Cannabis Patients.*

An individual who is a *medical cannabis 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 above for each *medical cannabis patient* for whom the individual serves as a verified *primary caregiver* as defined in

section 42.1302(a) not to exceed two pounds, or an amount consistent with the physician's recommendation, whichever is less.

(c) *Indoor Plants - Medical Cannabis Patients.*

A *medical cannabis patient* may possess a maximum of twenty-four unharvested 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 medical cannabis specified above and growing in the space specified above in subsection c, for each *medical cannabis patient* for whom the individual serves as a verified *primary caregiver* as defined above in section 42.1302(a), not to exceed a total of forty-eight plants in a growing area not to exceed 94 square feet, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

(e) Outdoor/Greenhouse Plants

No outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to sections 42.1311(c) and 42.1311(d) above.

(f) Possession of cannabis in amounts which exceed those set forth in this section by individuals asserting medical necessity or *primary caregiver* status 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 person is in possession of a current valid verification card, and whether the amount possessed is consistent with a physician's recommendation

Section 4: That Chapter 4, Article 2, Division 13, of the San Diego Municipal Code is amended by deleting existing Section 42.1311.

Section 5: That Chapter 4, Article 2, Division 13, of the San Diego Municipal Code is amended by renumbering and amending existing Sections 42.1309 and 42.1310 respectively to 42.1311 and 42.1312, to read as follows:

§42.1311 Fees

The agency administering the verification card program may charge every applicant for a verification card a fee sufficient to cover the costs of the program.

[CORRECTED 09/17/03]

A fee waiver program for applicants unable to pay the entire application fee shall be offered and administered by the contracting agency.

§42.1312 Records

In the interest of privacy and protecting patient/doctor confidentiality, all forms containing medical information submitted shall be returned to the applicant once the application has been processed. No copies of these forms shall be kept. The contracting agency shall maintain individual records identified only by serial number. The record shall contain only the name of the applicant, the type of proof of identity submitted, the name and contact information of the recommending physician, the date and manner in which the physician's recommendation was verified, the date and type of other documents submitted, the date and serial number of the verification card, and the date the verification card will expire. Upon request from law enforcement, the contracting agency is authorized to verify the current status of verification card and the amount of marijuana the cardholder is permitted to possess based only upon the serial number. Under no circumstances is the personal medical information of the applicant to be included in the record.

Section 6: That Chapter 4, Article 2, Division 13, of the San Diego Municipal Code is amended by adding new Section 42.1313 to read as follows:

§42.1313 Smoking

Smoking cannabis in any public place or in any place open to the public is prohibited. Any person who violates this section is guilty of an infraction.

[CORRECTED 09/12/03]


[CORRECTED 09/17/03]

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

Section 8. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED AS TO FORM ONLY:

CASEY GWINN, City Attorney

By 
Lisa A. Foster
Deputy City Attorney

LAF:jab
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09/08/03COR.COPY
09/12/03COR.COPY2
09/17/03REV.
Or.Dept:Atty
O-2004-05

[CORRECTED 09/08/03]