

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.]						
<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 131-02B [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 <i>Marquees</i> [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.]																							
<i>Medical marijuana consumer cooperatives</i>		-	-												-	-									
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses , Theater <i>Marquees</i> [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.]													
<i>Medical marijuana consumer cooperatives</i>	-			-			-			-		-		
Nightclubs & Bars over 5,000 square feet in size through Separately Regulated Signs Uses, Theater <i>Marquees</i> [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 >> 3 rd >> 4 th >>	CN ⁽¹⁾ -	CR-		CO-		CV-		CP-		
		1-	1-	2-	1-	1-	1-				
		1 2 3	1 1	1 2	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	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.]															
<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.]															

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							
		IP-		IL-			IH-		IS-
[See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	1 st & 2 nd >>								
	3 rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4 th >>	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.]							
<i>Medical marijuana consumer cooperatives</i>		-	-	-	-	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.

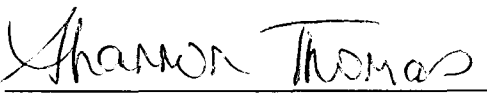
Section 10. That if the SDCRAA determines that this ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for MCAS Miramar, Gillespie Field, Montgomery Field, or Brown Field Airports, the ordinance shall be submitted to the City Council for reconsideration.

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.

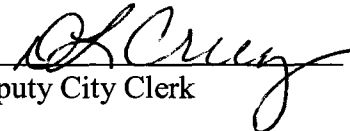
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Shannon Thomas
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).