

ORDINANCE NUMBER O- 20794 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 22 2017

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.4033; AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 BY RETITLING THE DIVISION, AMENDING SECTIONS 42.1301 AND 42.1302, REPEALING SECTION 42.1303, RETITLING AND RENUMBERING SECTION 42.1304 TO SECTION 42.1303, AND ADDING NEW SECTION 42.1304; AMENDING CHAPTER 4, ARTICLE 3, DIVISION 10 BY AMENDING SECTIONS 43.1002 AND 43.1005, ALL RELATING TO MARIJUANA REGULATIONS

WHEREAS, in 1996, the voters of California approved Proposition 215, known as the Compassionate Use Act of 1996, allowing the medical use of marijuana and establishing an affirmative defense for certain marijuana related criminal offenses; and

WHEREAS, in 2003, the City of San Diego (City) adopted marijuana possession limits for qualified patients and their caregivers who obtain an identification card; and

WHEREAS, in 2004, a statewide identification card program with corresponding marijuana possession limits for qualified patients and caregivers became effective in the California Health and Safety Code, known as the Medical Marijuana Program; and

WHEREAS, the Medical Marijuana Program provides immunity from arrest for qualified patients and caregivers who voluntarily obtain county issued medical marijuana identification cards, and who possess no more than 8 ounces of dried marijuana per qualified patient, and no more than six mature or twelve immature marijuana plants per qualified patient, or an amount consistent with a doctor's recommendation for the patient's needs; and

WHEREAS, Health and Safety Code section 11362.77(c) allows cities to adopt ordinances allowing qualified patients and primary caregivers with identification cards to exceed state law possession limits and still maintain immunity from arrest; and

WHEREAS, in 2003, the City adopted such increased limits for identification card holders in Municipal Code section 42.1303; and

WHEREAS, the City's possession limits for identification card holders also contained medical marijuana cultivation regulations; and

WHEREAS, when the state and City medical marijuana possession regulations were adopted, there was no statewide or City regulation of medical marijuana dispensaries or collectives; and

WHEREAS, in 2011, the City began regulating Medical Marijuana Consumer Cooperatives; and

WHEREAS, in 2015, the state adopted comprehensive regulations governing commercial activities involving medical marijuana in the Medical Cannabis Regulation and Safety Act; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA), which applies regardless of any medical use; and

WHEREAS, the AUMA expressly decriminalizes and allows adults age twenty-one and older to possess, process, transport, purchase, obtain, or give away to persons age twenty-one and older no more than 28.5 grams of marijuana and no more than 8 grams of concentrated cannabis; and

WHEREAS, the AUMA also decriminalizes and allows adults age twenty-one and older to possess, plant, cultivate, harvest, dry, or process, whether indoors or outdoors, up to a total of six marijuana plants per residence, and to possess the marijuana produced by such plants; and

WHEREAS, additionally, the AUMA establishes a comprehensive set of statewide regulations for commercial, non-medical marijuana business activities; and

WHEREAS, the AUMA allows cities to regulate but not prohibit indoor cultivation of up to a total of six marijuana plants per residence, including cultivation in an accessory structure on the grounds of a private residence, and to regulate or prohibit outdoor cultivation of the six marijuana plants, as well as commercial marijuana business activity; and

WHEREAS, in light of these developments in state and local law, and in the interest of applying consistent law enforcement guidelines, the City now desires to amend the Municipal Code to rely solely on state law for medical marijuana possession limits for qualified patients and primary caregivers with identification cards; and

WHEREAS, consistent with the AUMA, as expressly allowed by Business and Professions Code section 26200(a), the City desires to prohibit marijuana sales, offers to sell, and distribution at special event venues; and

WHEREAS, in the interest of public health and safety, including the reduction of second hand smoke exposure, the City desires to prohibit smoking, vaping, and ingesting of marijuana or marijuana products in public places, places open to the public, vaping lounges, and at special events; and

WHEREAS, the City also desires to adopt marijuana cultivation regulations applicable to all personal marijuana cultivation, regardless of medical use, consistent with state law; and

WHEREAS, outdoor marijuana cultivation can expose neighbors and animals to unwanted odors, mold, ground and air contamination from pesticides, along with crime related to unsecured plants; and

WHEREAS, the processing of marijuana into marijuana concentrates, oils or products can cause explosions, fire and injuries from the dangerous use of volatile, flammable, or toxic substances, in pressurized and unpressurized extractions systems; and

WHEREAS, the Council of the City of San Diego finds that in the interest of public health and safety, indoor personal marijuana cultivation should be regulated as described herein; and

WHEREAS, the Council of the City of San Diego also finds that in the interest of public health and safety, outdoor personal marijuana cultivation should be prohibited; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 40 of the San Diego Municipal Code is amended by amending section 22.4033, to read as follows:

§22.4033 Sales or Distribution of Goods in Special Event Venue

- (a) It is unlawful for any Person to sell, resell, or offer to sell or resell, any Goods, food or beverages in a Special Event Venue, except:
- (1) from any Building; or,
 - (2) from any tent, booth or temporary structure expressly authorized pursuant to a Special Event Permit; or,
 - (3) as authorized pursuant to a Conditional Use Permit, issued in accordance with the City of San Diego Land Development Code.
- (b) It is unlawful to sell, resell, offer to sell, or distribute marijuana or marijuana products within a Special Event Venue.

Section 2. That Chapter 4, Article 2, Division 13 of the San Diego Municipal Code is amended by retitling the Division, amending sections 42.1301 and 42.1302, repealing section 42.1303, retitling and renumbering section 42.1304 to section 42.1303, and adding new section 42.1304, to read as follows:

Article 2: Health Regulated Businesses and Activities

Division 13: Marijuana Regulations

§42.1301 Purpose and Intent

- (a) It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), the Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act (Proposition 64) to protect public health, safety, and welfare.
- (b) [No change in text.]
- (c) Nothing in this Division is intended to reduce the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.
- (d) This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of *marijuana*, or any other transaction, in violation of state law.

§42.1302 Definitions

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

Marijuana [No change in text.]

Marijuana processing means the creation or manufacturing of marijuana concentrate, including concentrated cannabis or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

Marijuana products has the same meaning as in California Health and Safety Code section 11018.1.

Primary caregiver [No change in text.]

Private residence has the same meaning as in California Health and Safety Code section 11362.2(b)(5).

Qualified patient [No change in text.]

Vaping has the same meaning as in section 43.1001 of this Code.

Volatile solvents means volatile organic compounds, including explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O₂ or H₂, and dangerous poisons, toxins or carcinogens, such as methanol, iso-propyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloro-ethylene.

§42.1303 Smoking and Vaping Marijuana or Marijuana Products

Smoking, *vaping*, and ingesting of *marijuana* or *marijuana products* is prohibited in any public place or in any place open to the public. Any person who violates this section is guilty of an infraction.

§42.1304 Marijuana Cultivation

- (a) Personal indoor *marijuana* cultivation is subject to the following regulations:

- (1) Indoor *marijuana* cultivation for personal use, in a manner and amount consistent with state law, may occur in an area of no more than 64 square feet.
 - (2) For purposes of this section, indoor *marijuana* cultivation includes cultivation in a fully enclosed and secure accessory structure to a *private residence* located upon the grounds of a *private residence*, consistent with state law.
 - (3) The use of gas products or *volatile solvents*, including carbon dioxide (CO₂), methane, or any other flammable or non-flammable gas, for *marijuana* cultivation or *marijuana processing* is prohibited.
- (b) No person shall plant, cultivate, harvest, dry, or process *marijuana* plants outdoors in anything other than a secured structure upon the grounds of a *private residence*.

Section 3. That Chapter 4, Article 3, Division 10 of the San Diego Municipal Code is amended by amending sections 43.1002 and 43.1005 to read as follows:

§43.1002 Prohibitions

- (a)-(g) [No change in text.]
- (h) It is unlawful to smoke, *vape*, and ingest *marijuana* or *marijuana* products at Special Events.
 - (i) It is unlawful to *vape* *marijuana* or *marijuana* products in a *vaping lounge*.

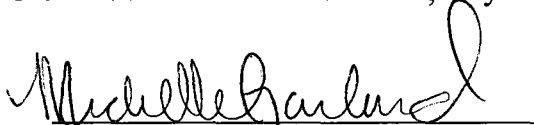
§43.1005 Exemptions

- (a) Prohibitions on *smoking in places of employment* do not apply to areas exempt under California Labor Code section 6404.5(e).
- (b)-(d) [No change in text.]
- (e) Except as prohibited by Section 43.1002(i), prohibitions on *vaping* do not apply to a *vaping lounge* or an *electronic cigarette shop* provided that such a business establishment obtains a *police permit* to operate as an *electronic cigarette retailer* as required in San Diego Municipal Code section 33.4503 and that the area for *vaping* is not accessible to anyone under 21 years of age, except active duty military personnel with a valid United States Armed Forces identification card.
- (f) [No change in text.]

Section 4. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Michelle A. Garland
Deputy City Attorney

MAG:jvg
January 12, 2017
January 31, 2017 Cor. Copy
February 1, 2017 Rev.
Or.Dept: Police
Doc. No.: 1407112_9


I hereby certify that the foregoing Ordinance was passed by the Council of the City of

San Diego, at this meeting of FEB 14 2017.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2/22/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.4033; AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 BY RETITLING THE DIVISION, AMENDING SECTIONS 42.1301 AND 42.1302, REPEALING SECTION 42.1303, RETITLING AND RENUMBERING SECTION 42.1304 TO SECTION 42.1303, AND ADDING NEW SECTION 42.1304; AMENDING CHAPTER 4, ARTICLE 3, DIVISION 10 BY AMENDING SECTIONS 43.1002 AND 43.1005, ALL RELATING TO MARIJUANA REGULATIONS

Chapter 2

Article 2: Administrative Code

Division 40: Special Events

§22.4033 ~~Unlawful to Sell~~ Sales or Distribution of Goods in Special Event Venue without Authorization

- (a)** It is unlawful for any Person to sell, resell, or offer to sell or resell, any Goods, food or beverages in a Special Event Venue, except:
 - (a1)** from any Building; or,
 - (b2)** from any tent, booth or temporary structure expressly authorized pursuant to a Special Event Permit; or,
 - (e3)** as authorized pursuant to a ~~e~~Conditional u~~Use p~~Permit, ~~pursuant to~~ issued in accordance with the City of San Diego Land Development Code.

- (b) It is unlawful to sell, resell, offer to sell, or distribute marijuana or marijuana products within a Special Event Venue.

Chapter 4

Article 2: Health Regulated Businesses and Activities

Division 13: Medical Marijuana Regulations: ~~Patients and Caregivers~~

§42.1301 Purpose and Intent

- (a) It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), ~~and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), the Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act (Proposition 64)~~ to protect public health, safety, and welfare.
- (b) [No change in text.]
- (c) Nothing in this Division is intended to reduce the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.
- (d) This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of *marijuana*, or any other transaction, in violation of state law.

§42.1302 Definitions

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

Marijuana [No change in text.]

Marijuana processing means the creation or manufacturing of marijuana concentrate, including concentrated cannabis or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

Marijuana products has the same meaning as in California Health and Safety Code section 11018.1.

Primary caregiver [No change in text.]

Private residence has the same meaning as in California Health and Safety Code section 11362.2(b)(5).

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

Qualified patient [No change in text.]

~~*SDPD*~~ means the City of San Diego Police Department.

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

Vaping has the same meaning as in section 43.1001 of this Code.

Volatile solvents means volatile organic compounds, including explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O₂ or H₂, and dangerous poisons, toxins or carcinogens, such as methanol, iso-propyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloro-ethylene.

§42.1303 State Identification Card Holders: Permissible Amounts of Marijuana

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

(a) *Processed Marijuana – Qualified Patients.*

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

(b) *Processed Marijuana – Primary Caregivers.*

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

(c) *Indoor Plants – Qualified Patients.*

A *qualified patient* may possess a maximum of twenty-four unharvested *marijuana* plants growing in an area of no more than

~~64 square feet, or an amount consistent with the physician's recommendation, whichever is less.~~

(d) ~~Indoor Plants—Primary Caregivers.~~

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

(e) ~~Outdoor/Greenhouse Plants.~~

~~No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter or a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter or greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to sections 42.1303(c) and 42.1303(d).~~

(f) ~~Possession of marijuana in amounts which exceed those set forth in section 42.1303(a)-(d) by persons with state identification cards will be evaluated by SDPD on a case-by-case basis according to the totality of the circumstances, taking into account facts such as~~

~~whether the amount possessed is consistent with a physician's
recommendation.~~

§42.13043 **Smoking and Vaping Marijuana or Marijuana Products**

~~Qualified patients, including those with state identification cards, are prohibited
from sSmoking, vaping, and ingesting of marijuana or marijuana products is
prohibited~~ in any public place or in any place open to the public. Any person who
violates this section is guilty of an infraction.

§42.1304 **Marijuana Cultivation**

(a) Personal indoor marijuana cultivation is subject to the following
regulations:

- (1) Indoor marijuana cultivation for personal use, in a manner and
amount consistent with state law, may occur in an area of no more
than 64 square feet.
- (2) For purposes of this section, indoor marijuana cultivation includes
cultivation in a fully enclosed and secure accessory structure to a
private residence located upon the grounds of a private residence,
consistent with state law.
- (3) The use of gas products or volatile solvents, including carbon
dioxide (CO2), methane, or any other flammable or non-flammable
gas, for marijuana cultivation or marijuana processing is
prohibited.

- (b) No person shall plant, cultivate, harvest, dry, or process *marijuana* plants outdoors in anything other than a secured structure upon the grounds of a *private residence*.

Chapter 4

Article 3: Environmental Health Quality Controls

Division 10: Regulations on Smoking and Use of Electronic Cigarettes

§43.1002 Prohibitions

- (a)-(g) [No change in text.]
- (h) It is unlawful to smoke, *vape*, and ingest *marijuana* or *marijuana* products at *Special Events*.
- (i) It is unlawful to *vape* *marijuana* or *marijuana* products in a *vaping lounge*.

§43.1005 Exemptions

- (a) Prohibitions on *smoking* in *places of employment* do not apply to areas exempt under California Labor Code section 6404.5(d)(~~e~~).
- (b)-(d) [No change in text.]
- (e) Except as prohibited by Section 43.1002(i), ~~P~~rohibitions on *vaping* do not apply to a *vaping lounge* or an *electronic cigarette shop* provided that such a business establishment obtains a *police permit* to operate as an *electronic cigarette retailer* as required in San Diego Municipal Code section 33.4503 and that the area for *vaping* is not accessible to ~~minors~~

anyone under 21 years of age, except active duty military personnel with a
valid United States Armed Forces identification card.

(f) [No change in text.]

MAG:jvg
January 12, 2017
January 31, 2017 Cor. Copy
February 1, 2017 Rev.
Or.Dept: Police
Doc. No.: 1407162_11

Passed by the Council of The City of San Diego on FEB 14 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 22 2017

AUTHENTICATED BY: KEVIN L. FAULCONER
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 JAN 31 2017, and on FEB 22 2017.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

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

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20794