

**CITY OF SAN DIEGO  
OFFICE OF THE CITY CLERK  
MEMORANDUM  
(619) 533-4000**

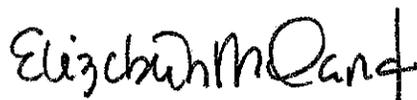
**DATE:** April 11, 2011  
**TO:** Lea Fields-Bernard, Rules Committee Consultant  
**FROM:** Elizabeth Maland, City Clerk  
**SUBJECT:** Ballot Proposal for Rules Committee Review

---

Attached is a ballot proposal regarding safe access, filed with my office today for placement on an upcoming Rules Committee meeting agenda pursuant to Council Policy (CP) 000-21. The proponent is Eugene Z. Davidovich with the San Diego Chapter of Americans for Safe Access.

Through CP 000-21, a proposal receives Rules Committee review and comment, and may be forwarded to the Council for consideration and possible placement on the ballot.

My office will keep a copy of the safe access ballot proposal and re-submit it to you after the deadline for proposed ballot measures submitted under CP 000-21 for the June, 2012 primary election has passed. While that deadline has yet to be confirmed, it appears that it will be in early January, so that the Rules Committee may review such proposals at its January 11, 2012 meeting.



Elizabeth Maland  
City Clerk

Attachment

cc: Diana JuradoSainz, Legislative Coordinator

RECEIVED  
CITY CLERK'S OFFICE

11 APR 11 AM 10:29

SAN DIEGO, CALIF.

**BALLOT PROPOSAL TO THE SAN DIEGO CITY COUNCIL VIA THE RULES  
COMMITTEE**

***IN ACCORDANCE WITH SAN DIEGO CITY COUNCIL POLICY (CP) 000-21***

**SAN DIEGO SAFE ACCESS BALLOT PROPOSAL**

**Developed and Written by Americans for Safe Access:**

**Edited by: Eugene Davidovich, San Diego Americans for Safe Access**

**Submitted to San Diego City Clerk on April 11, 2011**

2425 Broadway #  
San Diego CA 92102

WHEREAS voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS the California State Legislature adopted Senate Bill 420, the Medical marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing patients and primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS the California Attorney General published "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Purposes" in 2008, acknowledging that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with state law; and

WHEREAS crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of a Medical Cannabis Dispensing Collective (MCDC); and complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of sensible regulations; and

WHEREAS California courts upheld the legality of MCDC's under state law, including *People v. Hochanadel*, 98 Cal.Rptr.3<sup>rd</sup> 347, and *People v. Urziceanu*, 132 Cal.App.4<sup>th</sup> 747;

THEREFORE, BE IT RESOLVED That the City of San Diego does hereby enact the following:

**Purpose and Intent**

To implement the provision of California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as described by the California Attorney General in "Guidelines For The Security And Non-diversion Of Marijuana Grown For Medical Use," published August 2008, which states in Section IV(C)(1) that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with the guidelines.

To help ensure that seriously ill San Diego residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate by a physician in accordance with California law.

To help ensure that the qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatments are not subject to arrest, criminal prosecution, or sanction.

To protect citizens from the adverse impacts of unregulated medical cannabis distribution, storage, and use practices.

To establish a new section in the San Diego municipal code pertaining to the permitted distribution of medical cannabis in San Diego consistent with state law.

Nothing in this ordinance purports to permit activities that are otherwise illegal under state and local law.

## **Definitions**

The following phrases, when used in this Chapter, shall be construed as defined in California Health and Safety Code Sections 11362.5 and 11362.7:

- "Person with an identification card;"
- "Identification card;"
- "Primary caregiver," and
- "Qualified patient."

The following phrases, when used in this Chapter, shall be construed as defined below:

"Medical Cannabis Dispensing Collective" or "MCDC". Qualified patients, persons with identification cards who associate, as an incorporated or unincorporated association, within the City of San Diego, in order to collectively or cooperatively provide medical marijuana from a licensed or permitted location pursuant to this Chapter for use exclusively by their registered members, in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7., et seq.

## **Taxes and Licensing**

A certificate of payment of the business tax pursuant to Chapter III, Article 1 of this San Diego Municipal Code shall be required to establish or operate a Medical Cannabis Dispensing Collective (MCDC). MCDC sales shall be subject to sales tax in a manner required by state law.

## **Location**

The location at which an MCDC distributes medical cannabis must meet the following requirements:

The location must be in a Non-Residential Zone appropriate for Commercial, Manufacturing, Industrial, or Retail Sales uses, including health care use;

The location must not be within a 600 foot radius of a school, as measured in Section 11362.768 of the California Health and Safety Code;

The location must not be within 600 feet of another MCDC.

## **Police Department Procedures and Training**

- (1) Within six months of the date that this Chapter becomes effective, the training materials, handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.
- (2) Medical cannabis-related activities shall be the lowest possible priority of the Police Department.
- (3) Qualified patients, their primary caregivers, and MCDC's who come into contact with law enforcement shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if they are in compliance with the provisions of this Chapter.

- (4) Qualified patients, their primary caregivers, and MCDC's who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patients, primary caregiver, or MCDC, but are otherwise in compliance with the provisions of this Chapter, shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized of (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim by a qualified patient, primary caregiver, or MCDC is credible; and (3) proof of status as a qualified patient, primary caregiver, or MCDC can be provided to the Police Department within three (3) business days of the date of contact with law enforcement.

### **Operational Standards**

- (1) Signs displayed on the exterior of the property shall conform to existing regulations;
- (2) The location shall be monitored at all times by a closed circuit video recording system for security purposes. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on the site;
- (3) The location shall have a centrally-monitored alarm system;
- (4) Interior building lighting, exterior building lighting and parking area lighting must be in compliance with applicable regulations, and must be of sufficient brightness and color rendition so as to allow the ready identification of any individual committing a crime on site at a distance of no less than 40 feet (a distance that should allow a person reasonable action time upon recognition of a viable threat);
- (5) Adequate overnight security shall be maintained so as to prevent unauthorized entry;
- (6) Absolutely no cannabis product may be visible from the building exterior;
- (7) Any beverage or edible produced, provide, or sold at the MCDC containing cannabis shall be so identified, as part of the packaging, with a prominent and clearly legible warning advising that the product contains cannabis and that it is to be consumed only by qualified patients;
- (8) No persons under the age of 18 shall be allowed on site, unless the individual is a qualified patient and accompanied by his or her parent or documented legal guardian;
- (9) At any given time, no MCDC may possess more cannabis or cannabis plants that would reasonably meet the needs of its registered patient members;
- (10) A sign shall be posted in a conspicuous location inside the structure advising; "The diversion of cannabis (marijuana) for non-medical purposes is a violation of state law and will result in membership expulsion. Loitering at the location of a Medical Cannabis Dispensing Collective is grounds for expulsion. The use of cannabis may impair a persons' ability to drive a motor vehicle or operate heavy machinery.";
- (11) No MCDC may provide medical cannabis to any persons other than qualified patients and designated primary caregivers who are registered members of the MCDC and whose status to possess cannabis

- pursuant to state law has been verified. No medical cannabis provided to a primary caregiver may be supplied to any person(s) other than the qualified patient(s) who designated the primary caregiver;
- (12) No outdoor cultivation shall occur at an MCDC location unless it is; a) not visible from anywhere outside of the MCDC property and b) secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;
- (13) No MCDC shall cause or permit the establishment or maintenance of the sale or dispensing of alcohol beverages for consumption on the premises or off-site of the premises;
- (14) No dried medical cannabis shall be stored in structures without at least four walls and a roof, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical cannabis be stored in a safe or vault that is not bolted to the floor or structure of the facility; and
- (15) Medical Cannabis may be consumed onsite only as follows:
- a. The smoking or vaporizing of medical cannabis shall be allowed provided that appropriate seating, restrooms, drinking water, ventilation, air purification system, and patient supervision are provided in a room or enclosed area separate from other MCDC service areas.
  - b. The maximum occupancy of the onsite consumption area shall meet applicable occupancy requirements.
  - c. The MCDC shall use an activated charcoal filter, or other device sufficient to eliminate all odors associated with medical cannabis use from adjoining businesses and public walkways. The fan used to move air through the filter shall have the capacity sufficient to ventilate the square footage of the separate room or enclosed area in which medical cannabis use is permitted.
- (16) MCDCs must verify that each member (1) is legally entitled to possess or consume medical cannabis pursuant to state law; and (2) is a resident of the State of California.
- (17) All MCDC operators, employees, managers, members, or agents, shall be qualified patients or the designated primary caregivers of qualified patients. MCDC operators, employees, managers, members, or agents, shall not sell, barter, give away, or furnish medicine to anyone who is not a qualified patient or primary caregiver, registered as a member of the MCDC, and entitled to possess cannabis under state law.
- (18) MCDCs shall maintain accurate patient records necessary to demonstrate patient eligibility under the law for every MCDC member, including (1) a copy of the valid driver's license or Department of Motor Vehicle identification card, (2) a patient registration form, and (3) a current valid letter of recommendation for the use of medical cannabis written by a state-licensed physician. All patient records shall be kept in a secure location, regarded as strictly confidential, and shall not be provided to law enforcement without a valid subpoena or court order.
- (19) Operating hours for MCDC's shall not exceed the hours between 8:00 AM and 10:00 PM daily.

(20)MDCs must have at least one security guard with a Guard Card issued by the California Department of Consumer Affairs on duty during operating hours.

**Severability**

If any section, sub-section, paragraph, sentence, or word of this Article is deemed to be invalid, the invalidity of such provision shall not affect the validity of any other sections, sub-sections, paragraphs, sentences, or words of this Article, or the application thereof; and to that end, the sections, sub-sections, paragraphs, sentences, and words of this Article shall be deemed severable.