

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)
--	--

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): City Council District 9	DATE: 4/4/2014
---------------------	---	-------------------

SUBJECT: Discussion Related to Amending San Diego Municipal Code, Chapter 4, Article 2, Divisions 13, and 15, Related to the Possession of Marijuana for Medical Purposes and the Operations of Medical Marijuana Cooperatives.

PRIMARY CONTACT (NAME, PHONE): Tim Taylor, 619.533.4774	SECONDARY CONTACT (NAME, PHONE): Marisa Berumen, 619.236.7754
--	--

COMPLETE FOR ACCOUNTING PURPOSES

FUND						
FUNCTIONAL AREA						
COST CENTER						
GENERAL LEDGER ACCT						
WBS OR INTERNAL ORDER						
CAPITAL PROJECT No.						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00

FUND						
FUNCTIONAL AREA						
COST CENTER						
GENERAL LEDGER ACCT						
WBS OR INTERNAL ORDER						
CAPITAL PROJECT No.						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Nuesca, Mary	ORIG DEPT.	Flores, Ricardo	04/04/2014
	CFO		
	COO		
	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

STAFF RECOMMENDATIONS:	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	CD9
COMMUNITY AREA(S):	
ENVIRONMENTAL IMPACT:	
CITY CLERK INSTRUCTIONS:	

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 4/4/2014

ORIGINATING DEPARTMENT: City Council District 9

SUBJECT: Discussion Related to Amending San Diego Municipal Code, Chapter 4, Article 2, Divisions 13, and 15, Related to the Possession of Marijuana for Medical Purposes and the Operations of Medical Marijuana Cooperatives.

COUNCIL DISTRICT(S): CD9

CONTACT/PHONE NUMBER: Tim Taylor/619.533.4774

REQUESTED ACTION:

STAFF RECOMMENDATION:

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Discussion Related to Amending San Diego Municipal Code, Chapter 4, Article 2, Divisions 13, and 15, Related to the Possession of Marijuana for Medical Purposes and the Operations of Medical Marijuana Cooperatives.

On March 11, 2014, Council approved Ordinance O-20356, one of three ordinances adopted to regulate Medical Marijuana in the City of San Diego. The other ordinances are O-20043, approved April 27, 2011, and O-19036, approved February 25, 2002 (codified in SDMC Ch. 4, Art. 2, Div. 13 and 15).

As part of the motion adopted by Council in passing O-20356, Council recommended that the Public Safety and Livable Neighborhoods Committee review the previously adopted regulations and recommend any needed amendments related to issues like deliveries by cooperatives, the food safety of edibles, the origin of the product, and the processing of concentrates.

FISCAL CONSIDERATIONS:

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Flores, Ricardo

Originating Department



**City Of San Diego
COUNCILMEMBER MARTI EMERALD
DISTRICT NINE**

M E M O R A N D U M

DATE: March 18, 2014

Reference: M-14-03-04

TO: Honorable Councilmembers

FROM: Councilmember Marti Emerald

SUBJECT: PS&LN Committee Hearing on Medical Marijuana

In approving the Medical Marijuana "Land Use" Ordinance, on February 25, 2014, the City Council asked the Public Safety and Livable Neighborhoods (PS&LN) Committee to review what is referred to as the Public Safety Medical Marijuana Ordinance, to see if it would benefit from any changes. The specific issues the Council wanted to see reviewed included product deliveries by medical marijuana cooperatives, the food safety of edibles, the origin of the product, and the processing of concentrates like hash oil. In addition, there was discussion about ensuring that the fee structure is adequate for full cost recovery.

I am in the process of docketing these matters at an upcoming PS&LN Committee meeting. This review would be limited to San Diego Municipal Code Ch. 4, Art. 2, Divisions 13 and 15 (copy attached), along with the proposed fees for permits and enforcement. The Committee would take public testimony on the issues, discuss your concerns, and then work with the City Attorney's Office on any recommendations for needed Municipal Code amendments.

I would like to invite your comments on the issues identified in the Council action, as well as any other aspects of the subject Municipal Code sections that you believe should be reviewed by PS&LN. Please send your memos to my office, by April 1, 2014. Thank you.

ME/tt

cc: Honorable Mayor

Article 2: Health Regulated Businesses and Activities

Division 13: Medical Marijuana Regulations: Patients and Caregivers

(“San Diego Medical Cannabis Voluntary Verification Card Program” added 2-25-2002 by O-19036 N.S.

(Retitled to “Medical Marijuana Regulations: Patients and Caregivers” and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§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), to protect the public health, safety, and welfare.
- (b) Nothing in this Division is intended to override a peace officer’s judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer’s sworn duty to enforce applicable law.
- (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 section 11362.5(d).
- (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 of *marijuana*, or any other transaction, in violation of state law.

(Amended 9-29-2003 by O-19218 N.S.)

(Amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1302 Definitions

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

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

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

Qualified 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 by a physician 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 in accordance with state law, including California Health and Safety Code section 11362.5.

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.

(Amended 9-29-2003 by O-19218 N.S.)

(Amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§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.

(Renumbered from former Section 42.1308, retitled to "State Identification Card Holders: Permissible Amounts of Marijuana" and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011. Former Section 42.1303 repealed.)

§42.1304 Smoking

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

(Renumbered from former Section 42.1313, and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011. Former Section 42.1304 repealed.)

Article 2: Health Regulated Businesses and Activities

Division 15: Medical Marijuana Consumer Cooperatives
*("Medical Marijuana Consumer Cooperatives" added 4-27-2011
by O-20043 N.S.; effective 5-27-2011.)*

§42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing and strictly regulating the cooperative cultivation and exchange of medical *marijuana* among *qualified patients, primary caregivers, and state identification card* holders consistent with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program (California Health and Safety Code sections 11362.7-11362.83). Further, the California Corporations Code may allow some conduct for consumer cooperatives that is not otherwise permissible under the California Health and Safety Code and this Division, such as the distribution of profits to members; in those circumstances, it is the intent of the City that the state and municipal laws governing medical *marijuana* control.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1502 Definitions

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

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Medical marijuana consumer cooperative means a cooperative organized as a consumer cooperative under state law for the purpose of collectively or cooperatively cultivating *marijuana* for medical purposes in accordance with state law.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified 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 by a physician 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, in accordance with state law, including California Health and Safety Code section 11362.5.

Reasonable compensation means compensation for directors, managers, and *responsible persons* of the *medical marijuana consumer cooperative* commensurate with reasonable wages and benefits paid to employees of IRS qualified non-profit organizations who have similar descriptions and duties.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *medical marijuana consumer cooperative*. It also includes an employee who is in apparent charge of the *medical marijuana consumer cooperative*.

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

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1503 Cooperatives—Organization

All persons who organize to collectively and cooperatively cultivate medical *marijuana* pursuant to state law shall organize as a "Consumer Cooperative Corporation" pursuant to California Corporations Code Title 1, Division 3, Part 2.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1504 Cooperatives—Permit Required

- (a) It is unlawful for any person to operate any cooperative, collective, dispensary, or establishment which collectively or cooperatively cultivates medical *marijuana* without a permit issued pursuant to this Division.
- (b) In addition to any other information requested by the City, a permit applicant must provide evidence that the applicant is in compliance with section 42.1503.
- (c) The *medical marijuana consumer cooperative* shall designate one of its officers or managers to act as its responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *medical marijuana consumer cooperative*.
- (d) The issuance of a permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.
- (e) A permit applicant must obtain a conditional use permit as required by Chapter 12, Article 6, Division 3, prior to obtaining a permit under this Division.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1505 Exemptions

- (a) This Division does not apply to persons collectively or cooperatively cultivating medical *marijuana* in the following facilities licensed by the State of California pursuant to California Health and Safety Code Division 2:
 - (1) A clinic licensed pursuant to Chapter 1;
 - (2) A health facility licensed pursuant to Chapter 2;
 - (3) A residential care facility for persons with chronic, life-threatening illnesses licensed pursuant to Chapter 3.01;
 - (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2; or
 - (5) A hospice or a home health agency licensed pursuant to Chapter 8.

- (b) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1506 Cooperatives—Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *medical marijuana consumer cooperatives*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1507 Cooperatives—Background Checks

- (a) All *responsible persons* in the *medical marijuana consumer cooperative* shall undergo fingerprinting prior to acting as a *responsible person*. The fingerprints shall be provided to and kept on file with the City.
- (b) The City may conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* in the *medical marijuana consumer cooperative*.
- (c) It is unlawful for any *responsible person* in a *medical marijuana consumer cooperative* to act as a responsible person for the *medical marijuana consumer cooperative* if he or she:
 - (1) fails to provide their fingerprints to the City; or
 - (2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.
- (d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1508 Cooperatives—Verification and Documentation

- (a) *Responsible persons* shall ensure that all transactions involving money, in-kind contributions, reimbursements, *reasonable compensation*, and *marijuana* are fully documented, including documenting each member's contribution of labor, resources, or money to the *medical marijuana consumer cooperative*, and the source of their *marijuana*.
- (b) Upon the City's request, *responsible persons* for the *medical marijuana consumer cooperative* shall provide to the City an audit of its operations for the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1509 Cooperatives—Not-for-Profit

Responsible persons shall ensure that:

- (a) No *medical marijuana consumer cooperative* operates for profit for itself or its members. Cash and in-kind contributions, reimbursements, and *reasonable compensation* provided by members towards the *medical marijuana consumer cooperative's* actual expenses for the growth, cultivation, and provision of *medical marijuana* shall be allowed in accordance with state law.
- (b) *Medical marijuana consumer cooperative responsible persons*, including directors, managers, and employees, are limited to receiving *reasonable compensation* and shall not receive a bonus.
- (c) Members who bring *medical marijuana* from their own personal grows to the *medical marijuana consumer cooperative*, may be compensated by cash or trade in-kind. Members may be compensated for their expenses as provided by state law at the time the harvest is brought to the *medical marijuana consumer cooperative*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1510 Cooperatives—Age Limitations

- (a) No person under the age of eighteen is allowed at or in any *medical marijuana consumer cooperative* unless the person is a *qualified patient* or *state identification card* holder and accompanied by their parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.
 - (b) No person under the age of eighteen may be employed by or act as a *responsible person* on behalf of the *medical marijuana consumer cooperative*.
- (Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1511 Marijuana—Transportation

All persons transporting *medical marijuana* in connection with a *medical marijuana consumer cooperative* shall do so in accordance with state law.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1512 Marijuana—Packaging and Labeling

Responsible persons for the *medical marijuana consumer cooperative* shall ensure that *medical marijuana*, edible products containing *medical marijuana*, and concentrates comply with the following packaging and labeling requirements:

- (a) *Marijuana*
 - (1) Must be sealed in an airtight manner; and
 - (2) must have a label affixed to the package containing the following information:
 - a. Patient's name;
 - b. Dispensing date;
 - c. Name and address of dispensing cooperative;
 - d. Name of product;
 - e. Product ingredients;
 - f. Product must be used as recommended;
 - g. Product must be kept out of the reach of children;
 - h. Product users must not operate heavy machinery while under the influence of *marijuana*;
 - i. Sale or transfer of product to non-patients is prohibited;

- j. Product is intended for medical use only. Cal. Health & Safety Code § 11362.5; and
- k. Any additional use instructions and warnings that may be applicable.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

(b) Edible Products and Concentrates

(1) Must be labeled with the following:

- a. Patient's name;
- b. Dispensing date;
- c. Name and address of dispensing cooperative;
- d. A warning label; and
- e. The source of the food production.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1513 Interior Signage

A sign shall be posted on a wall in the *medical marijuana consumer cooperative* which states the following:

CANNABIS PATIENT ADVISORY

THIS IS A WARNING REGARDING EDIBLE CANNABIS/MARIJUANA PRODUCTS

CAUTION – Edible products containing cannabis extracts (THC – Tetra Hydro Cannabinol) have serious risks associated with the consumption. KEEP OUT OF THE REACH OF CHILDREN.

Common Names: Cannabis Sativa, Cannabis Indica

Uses: Edible cannabis products must always be consumed with caution! The fact that most edibles are produced in kitchens which have not been certified by the health department creates a risk of serious illness and/or an agonizing painful death. THE CITY OF SAN DIEGO CANNOT REGULATE THIS POTENTIALLY DANGEROUS PRODUCT!

Edible cannabis products provide thirty-seven additional variations of the THC – (Tetra Hydro Cannabinol) molecule over the benefits received from the inhalation of medical cannabis. Patients with terminal cancer, and those suffering from respiratory problems will benefit from orally consuming cannabis since inhalation is impossible for them; however, there are associated side risks. **DO NOT OPERATE A MOTOR VEHICLE OR MACHINERY WITHIN EIGHT HOURS OF CONSUMING EDIBLE CANNABIS PRODUCTS.**

Side Effects: Severe Extreme Anxiety attacks lasting for up to four hours may occur without proper use of this product. Unless you have experience with this substance, do not drive within seven hours of consumption.

Non-Health Department Certified Kitchens: Food products and other ingestible items containing cannabis are usually not produced in Health Department Certified Kitchens. Consuming these products is a risk.

Dosages: It is difficult to regulate the doses of THC in edible products. It is advised that each new lot be tested by consuming only small portions over a period of several hours.

Anxiety Sufferers: Patients suffering from anxiety should consult a physician before considering the use of edible products containing THC. The increased risk of anxiety attacks may be associated with their consumption.

This warning sign was drafted by the Medical Marijuana Task Force (San Diego Resolution R-305305, Medical Marijuana Task Force Report to Council No. 10-060 (Apr 21, 2010)). The City of San Diego is not responsible for the accuracy of the statements contained in this sign and cannot verify its contents.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

Code and the City's Local Coastal Program pertaining to medical marijuana consumer cooperatives.

- March 28, 2011, the City Council voted 5-2-1 to amend the Land Development Code to and the City's Local Coastal Program to include regulations for medical marijuana consumer cooperatives.
- September 27, 2011, the City Council voted 7-1 to repeal the Medical Marijuana Consumer Ordinance rather than calling a special election to place the matter on the ballot.
- April 22, 2013, the City Council held an informational hearing to discuss a new Medical Marijuana Consumer Cooperative Ordinance and voted 8-0 to direct the City Attorney to develop a revised 2011 Medical Marijuana Consumer Cooperative Ordinance that includes City Council directed revisions.

Tomlinson\Chadwick\dn

Primary Contact\Phone: Dan Normandin\619-446-5388, MS 501

Secondary Contact\Phone: Bob Vacchi\619-446-5423, MS 501

City Attorney Contact: Shannon Thomas

COUNCIL ACTION: Start Time: 2:46 PM

Testimony in favor by Kenneth Stance, Tony C., Daniel E. Brooker, Joy Greenfield, Lynn Redeman, Izean Rim, Heal Plastik, James Schmachtenberger, Ken Cole, Robert Riedel, Cynara Velaquez, Jessica C. McElfresh, James Slatic, Nicole Coffman, Rey Vinole, Gregory J. Anthony, John Caparell.

Testimony in opposition by John Swain, Phil Hart, Dennis Boisvert, Adele Falk, Connie Zuniga, Marcie Beckett, Rich Thesing, Scott Chipman, Maria Alicia Hungate, Bruc Musgrave, Ivy Williams, Cara Schajoske, Timothy Tower, Kathleen Mackay, Trina Free, Christine Griffiths, Dean Scott, Judi Strang, Emily Griffiths, Robert Hall, James Robert, Arlana Holland, Karen Lenyoun, Linda Pennington, Linh Luong, Liz Uriostegui, Elizabeth Flores, Matt Carroll, Mara Felsen, Damla Sahicli, Glyn Franks, Evelyn Hogan, Jennifer Tandy, Sam Humeid, Janet Asaro, Nancy Faulstick.

MOTION BY MARTI EMERALD TO ADOPT STAFF'S RECOMMENDATION TO INTRODUCE THE ORDINANCE WITH THE FOLLOWING PROPOSED CHANGES THROUGH INTERLINEATION: 1) ON PAGE 9 OF 19, IN SECTION 141.0614, ADD THE WORDS, "PROVIDED THAT NO MORE THAN FOUR MEDICAL MARIJUANA CONSUMER COOPERATIVES SHALL BE PERMITTED IN EACH CITY COUNCIL DISTRICT. MEDICAL MARIJUANA CONSUMER COOPERATIVES ARE" BETWEEN THE WORDS, "BASE ZONES" AND "SUBJECT TO"; 2) ON PAGE 10 OF 19, IN SECTION D, ADD THE WORDS, "THE SECURITY GUARD SHOULD ONLY BE ENGAGED IN ACTIVITIES RELATED TO PROVIDING SECURITY FOR THE FACILITY, EXCEPT ON AN INCIDENTAL BASIS" AFTER THE WORDS "BUSINESS HOURS"; AND 3) ADD AN ADDITIONAL RECITAL STATING "THESE REGULATIONS ARE INTENDED TO APPLY TO COMMERCIAL RETAIL FACILITIES."

INTRODUCE THE ORDINANCE WITH THE FOLLOWING INSTRUCTIONS TO: 1) DIRECT STAFF TO RETURN TO THE APPROPRIATE COMMITTEE, ONE YEAR FROM ADOPTION, TO DISCUSS HOW EFFECTIVE THE ORDINANCE IS IN PROVIDING SAFE ACCESS WHILE NEGATING AVOIDABLE NEGATIVE IMPACTS; 2) HAVE THE POLICE DEPARTMENT AND OTHER CITY DEPARTMENTS TASKED WITH ENFORCEMENT PROVIDE REGULAR UPDATES AT PUBLIC SAFETY AND LIVABLE NEIGHBORHOODS COMMITTEE ON HOW THE ORDINANCE IS WORKING; 3) AFTER TWO YEARS IN PLACE, OR AT THE DISCRETION OF THE COMMITTEE CHAIR, HAVE COUNCIL REVIEW THE ORDINANCE'S EFFECTIVENESS TO ENSURE IT IS MEETING THE NEEDS OF THE NEIGHBORHOODS WHILE PROVIDING SAFE COMPASSIONATE ACCESS, 4) IF THE ORDINANCE IS TOO LAX OR TOO STRICT OR THE FEES TOO LOW OR TOO HIGH, COUNCIL SHOULD MAKE THE NECESSARY ADJUSTMENTS; 5) REQUEST THAT THE PUBLIC SAFETY AND LIVABLE NEIGHBORHOODS COMMITTEE EXAMINE THE "PUBLIC SAFETY" ORDINANCE THAT WE HAVE IN PLACE (I.E. SAN DIEGO MUNICIPAL CODE, CHAPTER 4, ARTICLE 2, DIVISION 13 AND 15) AND MAKE THE NECESSARY AMENDMENTS TO THE MUNICIPAL CODE RELATED TO SAFETY ISSUES LIKE DELIVERY, FOOD SAFETY OF EDIBLES, ORIGIN OF PRODUCT, AND PROCESSING OF HASH OILS; AND 6) DIRECT DEVELOPMENT SERVICES TO COME UP WITH HOW TO PUT THE FOUR MEDICAL MARIJUANA CONSUMER COOPERATIVES PER DISTRICT CAP IN PLACE. Second by Sherri Lightner.

Passed by the following vote:

Yea: Sherri Lightner, Kevin Faulconer, Todd Gloria, Myrtle Cole, Lorie Zapf, Scott Sherman, David Alvarez, Marti Emerald;

Nay: Mark Kersey;

Recused: (None);

Not Present: (None).

ITEM-S500: Consideration of Nominee for Appointment to the Funds Commission.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2014-464 Cor. Copy) ADOPTED AS RESOLUTION R-308779

Council confirmation of the following appointment by the Council of the City of San Diego, in compliance with San Diego Charter Section 41, to serve as a member of the Funds Commission, for the term ending as indicated:

<u>NAME</u>	<u>CATEGORY</u>	<u>TERM ENDING</u>
John Peelle	Citizen	January 28, 2017



**OFFICE OF COUNCILMEMBER MYRTLE COLE
FOURTH COUNCIL DISTRICT**

M E M O R A N D U M

DATE: April 1, 2014

TO: Councilmember Marti Emerald, Chair, Public Safety & Livable
Neighborhoods Committee

FROM: Councilmember Myrtle Cole, Fourth Council District

Myrtle Cole

SUBJECT: PS&LN Committee Hearing on Medical Marijuana

Thank you for the opportunity to identify areas of interest and concern related to the Public Safety Medical Marijuana Ordinance. I request that the following sections of the Municipal Code be reviewed and strengthened:

§42.1506: Cooperatives—Cost Recovery Fees

The City must ensure cost-neutral program oversight of medical marijuana cooperatives. The current ordinance states, “The City may recover its costs in the form of a permit fee for the costs of permitting and regulating medical marijuana consumer cooperatives.” In 2009, the City Council adopted a comprehensive General Fund User Fee Policy to assist with determining the appropriate level of fees for services and related cost-recovery revenues. The Policy was intended to require a fee review and adjustment process as part of the City’s annual budget process. I recommend that annual inflationary or other technical adjustments to fees and staffing levels shall (not may) be made to ensure proper oversight of Medical Marijuana Cooperatives and the enforcement and closure of illegal dispensaries.

The City should learn from the County’s experience in which the County’s cost recovery fell short of covering the amount of money spent to permit and regulate one dispensary.

§42.1304: Smoking

The Ordinance should stipulate that smoking or consumption of medical marijuana in any other form shall not be allowed on-site at a consumer cooperative. This would address the concerns about vapor lounges, DUIs, recreational use, etc.

§42.1504: Cooperatives—Permit Required

The Ordinance should limit the ownership and operations to the original applicant. Transfer of ownership should be prohibited.

§42.1507: Cooperatives—Background Checks

The Ordinance should read “shall” conduct rather than “may” conduct a background check of all responsible persons. Additionally, the Ordinance should include any person who has been convicted of “any felony” rather than “violent felony”.

§42.1507: Cooperatives—Verification and Documentation/Facility Inspections

A set timeframe should be identified for the verification of transactions clause as to how often records will be inspected. Collective facility inspections should be conducted bi-monthly to include: member source records, quantities on site, business practices (i.e. security guard), record keeping, etc.

§42.1511: Marijuana—Transportation

All persons transporting medical marijuana in conjunction with a medical marijuana consumer cooperative shall do so in accordance with state law. The City should identify additional regulations and licensing requirements for cooperatives that provide delivery service.

§42.1512: Marijuana—Packaging and Labeling

The City must implement rules designed to keep medical marijuana and other drugs away from children. Products containing marijuana should not be made, packaged or promoted/advertised in a way that might appeal to children. Marijuana products should also be sold in child-proof containers free of cartoons or bright colors.

Additionally, to ensure health, safety and quality assurance of food production, the Ordinance should stipulate that any food-type/edible item be inspected by the Public Health Department. There should also be a requirement for a certified kitchen. Packaging and labeling should indicate the amount of THC in the product or the amount recommended per individual.

Zero-Tolerance/Permit Revocation

Lastly, I would support the inclusion of a zero-tolerance policy that would include revocation of a CUP and Public Safety Permit if any cooperative is found to be in violation of any regulation(s) set forth in the Municipal Code.

I look forward to the upcoming PS&LN Committee hearing regarding this matter. Any questions regarding this memo may be directed to Pamela Ison of my staff, pison@sandiego.gov or x66701.

MC:pi



City of San Diego
Councilmember Scott Sherman
Seventh District

MEMORANDUM

DATE: April 1, 2014
TO: Councilmember Marti Emerald
FROM: Councilmember Scott Sherman 
RE: Medical Marijuana Public Safety Ordinance

In response to your March 18, 2014 memorandum, I submit for your consideration the following recommendations be included in the Medical Marijuana Public Safety Ordinance. These recommendations are derived from concerns communicated to my office from District 7 constituents as well as some best practices from other cities with medical marijuana ordinances.

Infraction System and Grounds for Revocation

Instruct Code Compliance to develop a penalty system for the cooperatives. This system culminates with clear grounds for revocation of the Public Safety Permit.

Limitation on Ownership/Operation

Determine a limitation on the number of cooperatives a single individual or entity may not own, operate, or be designated as a *responsible person* for more than a certain number of cooperatives.

Public Safety Permit

Require cooperatives to renew their Public Safety Permit annually.

Insurance

Cooperatives must maintain appropriate insurance as required by City Attorney and Risk Management.

Delivery Services

Determine regulations for the operations and number of delivery services within the City.

Collectives Limited to Dispensing

The cooperative will act solely as a dispensing agent. Growing of *marijuana* and production of alternate forms such as hash oil and edibles are not permitted on site.

Limit Sales Solely to Marijuana

Require that sales at dispensaries be limited solely to *marijuana* and the related accessories. The following forms of *marijuana* are acceptable for sale:

- A) Leaf
- B) Hash
- C) Edibles

On-Site Use Prohibited

The use of *marijuana* at the cooperative is prohibited.

"Shall Conduct" Background Checks

Change the wording of Section 42.1507(b) from "may conduct" to "shall conduct." The cost will be borne by the *responsible person*.

Conviction of Crimes

Amend Section 42.1507(b) and 42.1507(c)(2) to extend to any person convicted of a felony.

Age Limitation

Amend section 41.1510(a) to only state that "No person under the age of eighteen is allowed at or in any *medical marijuana consumer cooperative*."

Indoor Plants- *Qualified Patients*

Amend Section 42.1303(c) to state that "A *qualified patient* may possess a maximum of six unharvested *marijuana* plants..." This adheres to state default guidelines.

The above are my recommendations for changes to the current Medical Marijuana Public Safety Ordinance. I encourage the Public Safety & Livable Neighborhoods Committee to focus on regulations that will emphasize providing medical marijuana to qualified patients in a safe manner. I believe my suggestions will help prevent bad-faith operators and encourage collectives to be responsible businesses. Thank you for your consideration.