

Article 2: Health Regulated Businesses and Activities

Division 15: Marijuana Outlets

*(“Medical Marijuana Consumer Cooperatives” added 4-27-2011
by O-20043 N.S.; effective 5-27-2011.)*

*(Retitled from “Medical Marijuana Consumer Cooperatives” to “Marijuana
Outlets” on 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

[Editors Note: Amendments as adopted by O-20795 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies O-20793 as a Local Coastal Program Amendment.]

Click the link to view the Strikeout Ordinance highlighting changes to prior language
http://docs.sandiego.gov/municode_strikeout_ord/O-20795-SO.pdf]

§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 but strictly regulating the retail sale of marijuana at *marijuana outlets* in accordance 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), the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7-11362.83), the Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

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

(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§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.

Marijuana outlet means a retail establishment operating with a Conditional Use Permit in accordance with Section 141.0504, where *marijuana*, *marijuana* products, and *marijuana* accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2, respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing *marijuana* and *medical marijuana*. A *marijuana outlet* 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.

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 *marijuana outlet* commensurate with reasonable wages and benefits paid to employees of IRS qualified non-profit organizations who have similar description 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 *marijuana outlet*. It also includes an employee who is in apparent charge of the *marijuana outlet*.

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.)

(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1504 Outlets—Permit Required

- (a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet* Permit issued pursuant to this Division.
- (b) The *marijuana outlet* 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 *marijuana outlet*.
- (c) The issuance of a *Marijuana Outlet* 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.
- (d) A permit applicant must obtain a Conditional Use Permit as required by section 141.0504 prior to obtaining a permit under this Division.
- (e) Applications for *Marijuana Outlet* Permits shall be filed with the City Manager.
- (f) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.
- (g) *Marijuana Outlet* Permits issued pursuant to this Division shall be valid for one year.
- (h) An application for a *Marijuana Outlet* Permit shall be denied if the applicant has had any permit issued pursuant to this Division revoked by the City Manager within the past twelve months of the date of application.

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

(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

(Retitled from “Cooperatives—Permit Required” to “Outlets—Permit Required” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1505 Exemptions

- (a) 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.
- (b) This Division does not apply to the cultivation of six or fewer *marijuana* plants within a private residence or an accessory structure to that residence that is fully enclosed and secure. For the purposes of this section, a private residence means a house, apartment unit, mobile home, or other similar dwelling.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1506 Outlets–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 *marijuana outlets*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from “Cooperatives–Cost Recovery Fees” to “Outlets–Cost Recovery Fees” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1507 Outlets–Background Checks

- (a) All *responsible persons* in the *marijuana outlet* 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 shall 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 *marijuana outlet*.

A conviction is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or “no contest,” regardless of the pendency of any appeal, or expungement pursuant to California Penal Code section 1203.4, 1203.4a, or 1203.41.

- (c) It is unlawful for any *responsible person* to act as a *responsible person* for the *marijuana outlet* 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.)

(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

(Retitled from “Cooperatives–Background Checks” to “Outlets– Background Checks” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1508 Outlets–Operational Requirements

- (a) Verification and Documentation

A marijuana outlet shall maintain and provide upon request by the City a current list of all responsible persons.

- (b) Age Limitations

(1) No person under the age of twenty-one is allowed at or in any *marijuana outlet* unless the person is a *qualified patient* or *state identification card* holder, and if under the age of eighteen, is accompanied by a parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

(2) No person under the age of twenty-one may be employed by or act as a *responsible person* on behalf of a *marijuana outlet*.

- (c) Transportation

All persons transporting medical *marijuana* in connection with a *marijuana outlet* shall do so in accordance with state law and Chapter 14, Article 1, Division 5.

(Retitled from “Cooperatives–Verification and Documentation” to “Cooperatives–Operational Requirements” and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

(Retitled from “Cooperatives–Operational Requirements” to “Outlets–Operational Requirements” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1509 Outlets—Regulatory Actions on Permit

- (a) In addition to any penalties and remedies provided by law, a *Marijuana Outlet* Permit is subject to any of the following regulatory actions:
 - (1) non-compliance with this Division or any condition of this permit;
 - (2) conviction of any crime which would have been grounds for denial of the permit;
 - (3) failure to take corrective action after timely written notice of a violation;
 - (4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation; or
 - (5) violation of any state or local law or regulation pertaining to the business.
- (b) Regulatory action includes the following:
 - (1) Issuance of a verbal warning;
 - (2) Issuance of a written warning;
 - (3) Issuance of a notice of violation;
 - (4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;
 - (5) Suspension of the *Marijuana Outlet* Permit; or
 - (6) Revocation of the *Marijuana Outlet* Permit.

- (c) Written notice of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(b).
- (d) A request for an appeal hearing of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) may be made by the responsible managing officer.
- (e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.
- (f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.
- (g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.
- (h) The hearing shall be conducted by a hearing officer provided by the City Manager.
- (i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.
- (j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Marijuana Outlet* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

(Retitled from “Cooperatives–Not-for-Profit” to “Cooperatives-Regulatory Actions on Permit” and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

(“Retitled from “Cooperatives–Regulatory Actions on Permit” to “Outlets–Regulatory Actions on Permit” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)