

ORDINANCE NUMBER O- 20858 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 17 2017

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 15 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 42.1501, 42.1502, 42.1504, 42.1506, 42.1507, 42.1508, AND 42.1509, AND ADDING NEW SECTION 42.1510, RELATING TO MARIJUANA PRODUCTION FACILITIES AND THE DISTRIBUTION AND TRANSPORT OF MARIJUANA AND MARIJUANA PRODUCTS.

WHEREAS, the City of San Diego currently allows for the issuance of permits for the retail sales of medical and recreational marijuana and marijuana products in marijuana outlets in accordance with the laws of the State of California, notwithstanding that marijuana remains illegal under federal law; and

WHEREAS, the City of San Diego currently prohibits the commercial cultivation, distribution and storage, production and testing of medical and recreational marijuana and marijuana products; and

WHEREAS, the City of San Diego desires to allow for the commercial cultivation, distribution and storage, production and testing of medical and recreational marijuana and marijuana products; and

WHEREAS, the commercial cultivation, distribution and storage, production and testing of recreational marijuana and marijuana products will not be allowed until the State of California begins issuing licenses pursuant to Proposition 64; NOW, THEREFORE,

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

Section 1. That Chapter 4, Article 2, Division 15 of the San Diego Municipal Code is amended by amending sections 42.1501, 42.1502, 42.1504, 42.1506, 42.1507, 42.1508, and 42.1509, and adding new section 42.1510, to read as follows:

Chapter 4: Health and Sanitation

Article 2: Health Regulated Businesses and Activities

Division 15: Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana

§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*, and the raising, harvesting, processing, wholesaling, distributing, storing, and producing of *marijuana* and *marijuana* products at *marijuana production facilities* 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 cultivation, 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 Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

§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 cannabis in California Business and Professions Code section 26001.

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.

Marijuana production facility means individual or combined uses, operating with a Conditional Use Permit in accordance with section 141.1004, engaged in the agricultural raising, harvesting, and processing of *marijuana*; wholesale distribution and storage of *marijuana* and *marijuana* products; and production of goods from *marijuana* and *marijuana* products consistent with the requirements of State of California Statutes and the California Departments of Food and Agriculture, Consumer Affairs, and Public Health regulations.

Primary caregiver through *Qualified patient* [No change in text.]

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 or a *marijuana production facility*. It also includes an employee who is in apparent charge of a *marijuana outlet* or a *marijuana production facility*.

State identification card through *Violent felony* [No change in text.]

§42.1504 Marijuana Outlets and Marijuana Production Facilities—Permit Required

- (a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet Permit* or a *marijuana production facility* without a *Marijuana Production Facility Permit* issued pursuant to this Division.
- (b) *Marijuana outlets* and *marijuana production facilities* shall designate one officer or manager to act as a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *marijuana outlet* or a *marijuana production facility*.
- (c) The issuance of a *Marijuana Outlet Permit* or *Marijuana Production Facility 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 sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.
- (e) Applications for *Marijuana Outlet Permits* and *Marijuana Production Facility Permits* shall be filed with the City Manager.
- (f) [No change in text.]

- (g) *Marijuana Outlet Permits and Marijuana Production Facility Permits* issued pursuant to this Division shall be valid for one year.
- (h) An application for a *Marijuana Outlet Permit* or a *Marijuana Production Facility 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.

§42.1506 Marijuana Outlets and Marijuana Production Facilities–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* and *marijuana production facilities*.

§42.1507 Marijuana Outlets and Marijuana Production Facilities –Background Checks and Reporting Convictions

- (a) Prior to acting as a *responsible person* in a *marijuana outlet* or a *marijuana production facility*, all persons shall undergo fingerprinting. 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* for a *marijuana outlet* or a *marijuana production facility*.

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 a *marijuana outlet* or a *marijuana production facility* if he or she:
 - (1) through (2) [No change in text.]
- (d) [No change in text.]
- (e) A *responsible person* who is convicted of a *violent felony* or crime of moral turpitude shall report the conviction to the City Manager within 48 hours.

§42.1508 Marijuana Outlets and Marijuana Production Facilities –Operational Requirements

- (a) Verification and Documentation

A *marijuana outlet* and a *marijuana production facility* 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* or *marijuana production facility* 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* or a *marijuana production facility*.

§42.1509 Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit

- (a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Marijuana Outlet Permit*

and a *Marijuana Production Facility* Permit are subject to regulatory actions for the following reasons:

(1) through (5) [No change in text.]

(b) Regulatory action includes the following:

(1) through (4) [No change in text.]

(5) Suspension of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit; or

(6) Revocation of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit.

(c) through (i) [No change in text.]

(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 or the *Marijuana Production Facility* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

§42.1510 Transportation

The transportation of *marijuana* and *marijuana* products between facilities licensed by the State of California pursuant to Business and Professions Code, Division 10, is permitted.

Section 2. 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 3. That this Ordinance shall take effect and be in force when Ordinance O- 20859, creating land use regulations for marijuana production facilities and testing takes effect, but no sooner than the thirtieth day from and after its final passage.

Section 4. No marijuana production facility may be used for recreational marijuana purposes until the State of California has begun issuing licenses for commercial marijuana activities, as defined in California Business and Professions Code section 26001.

Section 5. That, upon final passage, the Clerk is directed to transmit copies of this Ordinance to the State of California Departments of Consumer Affairs (Bureau of Cannabis Control), Food and Agriculture, and Public Health.

APPROVED: MARA W. ELLIOTT, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
07/11/2017
09/12/2017 Rev.Copy
Or.Dept: Planning
Doc. No.: 1503088_5

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 03 2017.

ELIZABETH S. MALAND
City Clerk

By *Jinda Bruin*
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

(Note: This ordinance was returned unsigned by the Mayor's Office to the Office of the City Clerk on October 17, 2017. Pursuant to the San Diego Charter Section 295(a) (2), the Mayor has 10 business days from the date the ordinance was transmitted to sign or veto the ordinance, said deadline being close of business on October 17, 2017. Therefore the date of expiration of that time shall be deemed the date of its final passage.)

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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Chapter 4: Health and Sanitation

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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~~ Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

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Primary caregiver through *Qualified patient* [No change in text.]

~~*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* or a *marijuana production facility*. It also includes an employee who is in apparent charge of a the *marijuana outlet* or a *marijuana production facility*.

State identification card through *Violent felony* [No change in text.]

§42.1504 Marijuana Outlets and Marijuana Production Facilities–Permit Required

- (a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet Permit* or a *marijuana production facility* without a *Marijuana Production Facility Permit* issued pursuant to this Division.

- (b) ~~The Marijuana outlets and marijuana production facilities~~ shall designate one of its officers or managers to act as its a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *marijuana outlet* or a *marijuana production facility*.
- (c) The issuance of a *Marijuana Outlet Permit* or *Marijuana Production Facility 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 sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.
- (e) Applications for *Marijuana Outlet Permits* and *Marijuana Production Facility Permits* shall be filed with the City Manager.
- (f) [No change in text.]
- (g) *Marijuana Outlet Permits* and *Marijuana Production Facility Permits* issued pursuant to this Division shall be valid for one year.
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§42.1506 **Marijuana Outlets and Marijuana Production Facilities–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 and marijuana production facilities*.

§42.1507 **Marijuana Outlets and Marijuana Production Facilities –Background Checks and Reporting Convictions**

- (a) ~~All responsible persons in the marijuana outlet shall undergo fingerprinting prior to acting as a responsible person. Prior to acting as a responsible person in a marijuana outlet or a marijuana production facility, all persons shall undergo fingerprinting.~~ 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~~ for the a marijuana outlet or a marijuana production facility. 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.
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- (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* or a *marijuana production facility*.

- (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.~~

§42.1509 **Marijuana Outlets and Marijuana Production Facilities—Regulatory Actions on Permit**

(a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Marijuana Outlet* Permit and a *Marijuana Production Facility* Permit is are subject to any of the following regulatory actions for the following reasons:

(1) through (5) [No change in text.]

(b) Regulatory action includes the following:

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(5) Suspension of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit; or

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licensed by the State of California pursuant to Business and Professions Code,
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SMT:als
07/11/2017
09/12/2017 Rev.Copy
Or.Dept: Planning
Doc. No.: 1503090_5

Passed by the Council of The City of San Diego on OCT 03 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 type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" 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"/>

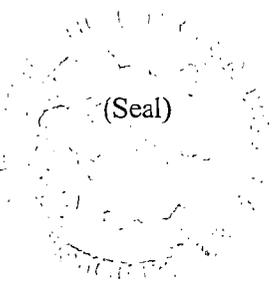
Date of final passage OCT 17 2017

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

By Ginda Bruin, Deputy



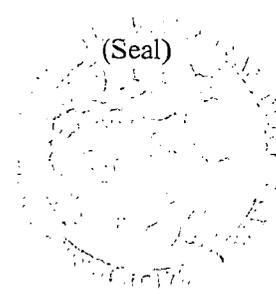
I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 11 2017, and on OCT 17 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.

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

By Ginda Bruin, Deputy



Office of the City Clerk, San Diego, California
Ordinance Number O- <u>20858</u>