

7/28/2020  
52

ORDINANCE NUMBER O- 21221 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 30 2020

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 141.0504; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 10 BY AMENDING SECTION 141.1004, RELATING TO CANNABIS OUTLETS AND CANNABIS PRODUCTION FACILITIES IN THE 12th UPDATE (PHASE THREE) OF THE LAND DEVELOPMENT CODE.

WHEREAS, the City of San Diego currently regulates cannabis businesses and activities in the Land Development Code of the San Diego Municipal Code (SDMC); and

WHEREAS, the SDMC requires a 100-foot separation requirement between cannabis outlets (CO) and cannabis production facilities (CPF) and residential zones; and

WHEREAS, the proposed amendments clarify that the distance is measured horizontally, in a straight line between the two closest points of the property lines without taking into account any barriers; and

WHEREAS, under current law, Conditional Use Permits (CUP) for COs and CPFs may be extended an additional five years through a Process Two approval process, without considering the distance measurement to sensitive receptors or change in zone; and

WHEREAS, the proposed amendments would now require an amendment of the CUP rather than an extension, allow medical marijuana consumer cooperatives to amend their CUP to convert to a CO, and allow expansion within the same premises when the CUP is amended;

NOW, THEREFORE,

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

Section 1. That Chapter 12, Article 6, Division 3 of the San Diego Municipal Code is amended by amending section 126.0303, to read as follows:

**§126.0303 When a Conditional Use Permit Is Required**

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulations Table in Chapter 13. The decision process is described in Section 126.0304.

- (a) Conditional Use Permits Decided by a Process Two
  - Cannabis outlet* (under circumstances described in Section 141.0504)
  - Cannabis production facilities* (under circumstances described in Section 141.1004)
- (b) Conditional Use Permits Decided by Process Three
  - Agricultural equipment repair shops through *Wireless communication facilities* (under circumstances described in Section 141.0420) [No change in text.]
- (c) Conditional Use Permits Decided by Process Four
  - Botanical gardens and arboretums through Wrecking and dismantling of motor vehicles [No change in text.]
- (d) Conditional Use Permits Decided by Process Five
  - Airports through Zoological parks [No change in text.]

Section 2. That Chapter 14, Article 1, Division 5 of the San Diego Municipal Code is amended by amending section 141.0504, to read as follows:

**§141.0504 Cannabis Outlets**

*Cannabis outlets* that are consistent with the requirements for retailer or dispensary license requirements in the California Business and Professions Code may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *cannabis outlets* are permitted in each City Council District. *Cannabis outlets* are subject to the following regulations.

- (a) *Cannabis outlets* shall maintain the following minimum separation:
- (1) 1,000 feet from resource and population-based city parks, other *cannabis outlets*, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between the *property lines*, in accordance with Section 113.0225.
  - (2) 100 feet from the *property line* of a residentially zoned lot or premises. The distance shall be measured horizontally in a straight line between the two closest points of the *property lines* without regard to topography or structures that would interfere with a straight-line measurement.

(b) through (m) [No change in text.]

(n) A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative as defined in O-20356 converting to a *cannabis outlet*, may be amended in accordance with a Process Two decision as described in Section 112.0503, subject to this Section 141.0504(n).

(1) The separation requirements in Section 141.0504(a) shall not be considered in making the findings required for amendments processed in accordance with Section 141.0504(n).

(2) A change in zoning after the approval date of the current Conditional Use Permit shall not be considered in making the findings required for amendments processed in accordance with Section 141.0504(n).

(3) The *cannabis outlet* or medical marijuana consumer cooperative shall be subject to Section 141.0504(a) if expanded beyond the *premises* identified in the current Conditional Use Permit.

(4) A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative may be amended one or more times as follows:

(A) An application for an amendment may include a request to extend the expiration date for a period not to exceed five years.

(B) An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration

date and the Conditional Use Permit shall automatically be extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted.

Section 3. That Chapter 14, Article 1, Division 10 of the San Diego Municipal Code is amended by amending section 141.1004, to read as follows:

**§141.1004 Cannabis Production Facilities**

*A cannabis production facility* may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than 40 *cannabis production facilities* are permitted in the City of San Diego. *Cannabis production facilities* are subject to the following regulations.

(a) *Cannabis production facilities* shall maintain the following minimum separation:

- (1) 1,000 feet from resource and population-based city parks, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between the *property lines*, in accordance with Section 113.0225.

(2) 100 feet from the *property line* of a residentially zoned *lot* or *premises*. The distance shall be measured horizontally in a straight line between the two closest points of the *property lines* without regard to topography or *structures* that would interfere with a straight-line measurement.

(b) through (g) [No change in text.]

(h) A Conditional Use Permit for a *cannabis production facility* may be amended in accordance with a Process Two decision as described in Section 112.0503, subject to this section.

(1) The separation requirements in Section 141.1004(a) shall not be considered in making the findings required for amendments processed in accordance with Section 141.1004(h).

(2) A change in zoning after the approval date of the current Conditional Use Permit shall not be considered in making the findings required for amendments processed in accordance with Section 141.1004(h)(1).

(3) The *cannabis production facility* shall be subject to Section 141.1004(a) if expanded beyond the *premises* identified in the current Conditional Use Permit.

(4) A Conditional Use Permit for a *cannabis production facility* may be amended one or more times as follows:

(A) An application for an amendment may include a request to extend the expiration date for a period not to exceed five years.

- (B) An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date and the Conditional Use Permit shall automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.

(i) through (k) [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 prior to becoming effective, this Ordinance shall be submitted to the San Diego County Regional Airport Authority (SDCRAA) for a consistency determination.

That if the SDCRAA finds this Ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for San Diego International Airport, Marine Corps Air Station Miramar, Gillespie Field, Montgomery Field, and Brown Field Airports (collectively, Airports), this Ordinance shall take effect and be in force on the thirtieth day from and after the finding of consistency, or on the thirtieth day from and after its final passage, whichever is later, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That if the SDCRAA determines that this Ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the City Council for reconsideration.

That if the SDCRAA determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, the City Council may amend this Ordinance to accept the proposed modifications, and this Ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this Ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That a proposed decision by the City Council to overrule a determination of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote. The proposed decision and findings shall be forwarded to the SDCRAA, the California Department of Transportation, Division of Aeronautics, and the airport operators for the Airports. The City Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by the public agencies shall be considered and a final decision to overrule a determination of inconsistency shall require a two-thirds vote.

That if the City Council makes a final decision to overrule a determination of inconsistency, this Ordinance shall take effect and be in force on the thirtieth day from and after that final decision, except that the provisions of this Ordinance inside the Coastal Overlay Zone,



which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 6. That no permits shall be issued for development that is inconsistent with the provisions of this Ordinance unless complete applications for such permits are submitted to the City prior to the date on which the applicable provisions of this Ordinance become effective.

Section 7. That Ordinance O-2020-65 has been recently considered by the City Council and amends San Diego Municipal Code sections also amended by this Ordinance; therefore, the City Clerk, with the written approval and concurrence of the City Attorney, is authorized to reconcile the numbering of sections and placement of text within these sections upon the final passage of the Ordinances, without further action by the City Council, pursuant to San Diego Charter section 275.

APPROVED: MARA W. ELLIOTT, City Attorney

By: /s/ Corrine L. Neuffer  
Corrine L. Neuffer  
Deputy City Attorney


CLN:als  
07/02/2020  
07/14/2020 Rev. Copy  
Or.Dept: Planning Dept.  
Doc. No.: 2349734\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 07/28/2020.

ELIZABETH S. MALAND  
City Clerk

By /s/ Connie Patterson  
Deputy City Clerk

Approved: 7/29/20  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

(Note: The date of final passage is July 30, 2020, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

**STRIKEOUT ORDINANCE**

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

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 141.0504; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 10 BY AMENDING SECTION 141.1004, RELATING TO CANNABIS OUTLETS AND CANNABIS PRODUCTION FACILITIES IN THE 12th UPDATE (PHASE THREE) OF THE LAND DEVELOPMENT CODE.

**§126.0303 When a Conditional Use Permit Is Required**

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulations Table in Chapter 13. The decision process is described in Section 126.0304.

**(a) Conditional Use Permits Decided by a Process Two**

*Cannabis outlet (under circumstances described in Section 141.0504)*

*Cannabis production facilities (under circumstances described in Section 141.1004)*

**(a)(b) Conditional Use Permits Decided by Process Three**

*Agricultural equipment repair shops through Wireless communication facilities (under circumstances described in Section 141.0420) [No change in text.]*

**(b)(c) Conditional Use Permits Decided by Process Four**

Botanical gardens and arboretums through Wrecking and dismantling of motor vehicles [No change in text.]

~~(e)~~(d) Conditional Use Permits Decided by Process Five

Airports through Zoological parks [No change in text.]

**§141.0504 Cannabis Outlets**

*Cannabis outlets* that are consistent with the requirements for retailer or dispensary license requirements in the California Business and Professions Code may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *cannabis outlets* are permitted in each City Council District. *Cannabis outlets* are subject to the following regulations.

(a) *Cannabis outlets* shall maintain the following minimum separation ~~between uses, as measured between property lines, in accordance with Section 113-0225:~~

- (1) 1,000 feet from resource and population-based city parks, other *cannabis outlets*, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The

distance shall be measured between the property lines, in accordance with Section 113.0225.

- (2) 100 feet from the property line of a residential zone residentially zoned lot or premises. The distance shall be measured horizontally in a straight line between the two closest points of the property lines, without regard to topography or structures that would interfere with a straight-line measurement.
- (b) through (m) [No change in text.]
- (n) ~~An extension of time for a~~ Conditional Use Permit for a ~~granted to a cannabis outlet or medical marijuana consumer cooperative as defined in O-20356 converting to a cannabis outlet,~~ shall comply with the requirements of Section 126.0111, with the following exceptions: may be amended in accordance with a Process Two decision as described in Section 112.0503, subject to this Section 141.0504(n).
- (1) ~~The extension shall be for no more than five years.~~
- (2) ~~A decision on an application for an extension of time shall be made in accordance with Process Two. Appeals of a decision to approve an extension of time shall be made to the Planning Commission.~~
- (3)(1) ~~The separation requirements in Section 141.0504(a) shall not be considered in making the findings required in Section 126.0111(g) for amendments processed in accordance with Section 141.0504(n), when a specified use in Section 141.0504(a) has located within the required distance after the approval date of the initial current Conditional Use Permit.~~

~~(4)(2)~~ A change in zoning after the approval date of the ~~initial~~ current Conditional Use Permit shall not be considered in making the findings required in ~~Section 126.0111(g)~~ for amendments processed in accordance with Section 141.0504(n).

~~(3)~~ The *cannabis outlet* or medical marijuana consumer cooperative shall be subject to Section 141.0504(a) if expanded beyond the premises identified in the current Conditional Use Permit.

~~(4)~~ A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative may be amended one or more times as follows:

~~(A)~~ An application for an amendment may include a request to extend the expiration date for a period not to exceed five years.

~~(B)~~ An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date and the Conditional Use Permit shall automatically be extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted.

**§141.1004 Cannabis Production Facilities**

A *cannabis production facility* may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no

more than 40 *cannabis production facilities* are permitted in the City of San Diego. *Cannabis production facilities* are subject to the following regulations.

- (a) *Cannabis production facilities* shall maintain the following minimum separation ~~between uses, as measured between property lines, in accordance with Section 113.0225:~~
- (1) 1,000 feet from resource and population-based city parks, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between the property lines, in accordance with Section 113.0225.
  - (2) 100 feet from the property line of a residential zone residentially zoned lot or premises. The distance shall be measured horizontally in a straight line between the two closest points of the property lines without regard to topography or structures that would interfere with a straight-line measurement.
- (b) through (g) [No change in text.]
- (h) ~~An extension of time for a~~ A Conditional Use Permit ~~granted to~~ for a *cannabis production facility* ~~shall comply with the requirements of section~~

~~126.0111 with the following exceptions:~~ may be amended in accordance with a Process Two decision as described in Section 112.0503, subject to this section.

- ~~(1)~~ The extension shall be for a maximum of five ~~(5)~~ years,
- ~~(2)~~ A decision on an application for an extension of time shall be made in accordance with Process Two. Appeals of a decision to approve an extension of time shall be made to the Planning Commission.
- ~~(3)~~(1) The separation requirements in Section ~~141.0504(a)~~ 141.1004(a) shall not be considered in making the findings required for amendments processed in accordance with Section 141.1004(h), in Section 126.0111(g) when a specified use in Section 141.1004(a) has located within the required distance after the approval date of the initial current Conditional Use Permit.
- ~~(4)~~(2) A change in zoning after the approval date of the ~~initial current~~ Conditional Use Permit shall not be considered in making the findings required in ~~Section 126.0111(g)~~ for amendments processed in accordance with Section 141.1004(h)(1).
- ~~(3)~~ The *cannabis production facility* shall be subject to Section 141.1004(a) if expanded beyond the *premises* identified in the current Conditional Use Permit.
- ~~(4)~~ A Conditional Use Permit for a *cannabis production facility* may be amended one or more times as follows:



- (A) An application for an amendment may include a request to extend the expiration date for a period not to exceed five years.
- (B) An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date and the Conditional Use Permit shall automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.

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

CLN:als  
07/02/2020  
07/14/2020 Rev. Copy  
Or.Dept: Planning Dept.  
Doc. No.: 2349706\_2

Passed by the Council of The City of San Diego on JUL 28 2020, 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"/>
Jennifer Campbell	<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"/>
Monica Montgomery	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 30 2020.

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 Connie Patterson, 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

JUL 14 2020, and on JUL 30 2020.

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 Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21221