

ORDINANCE NO. 10461 (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE
REPEALING MEDICAL MARIJUANA COLLECTIVE FACILITY REGULATIONS AND
BANNING MEDICAL AND NON-MEDICAL MARIJUANA FACILITIES

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Legislative Findings and Intent

- (a) The Board of Supervisors finds and determines that the following amendments to the Zoning ordinance to amend the Medical and Non-Medical Marijuana Facility regulations are reasonable and necessary for public health, safety and welfare, and are consistent with the General Plan, and the intent of these amendments is to prohibit the establishment and operation of both Medical and Non-Medical Marijuana Facilities.
- (b) In May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities and counties have the authority to ban medical marijuana land uses.
- (c) On October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective January 1, 2016, which establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, or dispensing within their jurisdictions. Under the MCRSA, cities and counties may continue to ban these marijuana facilities and activities, in which case the state will not issue licenses within those jurisdictions.
- (d) On November 8, 2016, the state voters approved the Adult Use of Marijuana Act, also identified as Proposition 64 (“Prop 64”). Prop 64 legalized adult non-medical use of marijuana and established a state licensing scheme for non-medical marijuana facilities largely patterned on the MCRSA, and generally; (1) allows adults 21 years and older to possess up to one ounce of marijuana and cultivate up to six plants for personal use; (2) regulates and taxes the production, manufacture, and sale of marijuana for adult use; and (3) rewrites criminal penalties so as to reduce the most common marijuana felonies to misdemeanors and allow prior offenders to petition for reduced charges. Prop 64, similar to MCRSA, allows cities and counties to prohibit the establishment of non-medical facilities and licenses that are provided under Prop 64, providing for minimal personal use exceptions.

Meeting Date: 03/15/2017 (2)

Section 2. Section 1110 of the San Diego County Zoning Ordinance definition is hereby amended to read as follows:

Marijuana Facility – Medical and Non-Medical: (a) Any store, office, business, building, property or other facility in or from which marijuana is sold, given, traded, supplied, bartered, consumed, raised, processed, stored, used, cultivated indoors or outdoors, possessed, or transported; (b) This definition shall not apply to cultivation of medical marijuana; (1) by a Qualified Patient where the amount of marijuana at no time exceeds 1.5 times the amount allowed by state law for a single Qualified Patient under Health & Safety Code section 11362.77, and no exchanges of marijuana or reimbursements for marijuana occur; and, (2) by a Primary Care Giver where the amount of marijuana at no time exceeds 1.5 times the amount allowed for a single Primary Care Giver under Health & Safety Code section 11362.77, and no exchanges of marijuana or reimbursements for marijuana occur.

Section 3. Section 6935 of the San Diego County Zoning Ordinance is hereby amended and/or repealed to read as follows:

6935 MEDICAL MARIJUANA COLLECTIVE FACILITIES

Amortization of Nonconforming Medical Marijuana Collective Facilities. Notwithstanding Section 6852, a nonconforming Collective Facility which was lawfully established before April 14, 2017 shall cease operations no later than April 14, 2022. In order for a Collective Facility to be “lawfully” established it must have applied for and obtained a building permit and/or a certificate of occupancy and Sheriff’s Operating Certificate prior to commencing operations, or received County approval of a vested right to continue under previous regulations. The Collective Facility may apply for one six-month extension of this period. The Director may grant that extension upon determining that the operator would be subjected to unreasonable financial hardship if forced to cease operations, considering (1) the term of any applicable lease for the premises and whether it may be modified or terminated; (2) the non-recoverable costs of any improvements that would only be of use to the Collective Facility; (3) the profits which have been received during the period from April 14, 2017 to April 14, 2022, and (4) the potential for other conforming uses to locate on the site.

Any nonconforming medical marijuana collective facility shall not be expanded, enlarged, extended or altered except that the use may be changed to a conforming use.

Section 4. Section 6976 of the San Diego County Zoning Ordinance is hereby amended to read as follows:

6976 PROHIBITION OF MARIJUANA FACILITIES – MEDICAL OR NON-MEDICAL

No person shall cause or permit the establishment, operation, enlargement or transfer of ownership of a facility of marijuana for medical or non-medical purposes, meeting the definition "Marijuana Facility – Medical and Non-Medical" in Section 1110. To the maximum extent allowed by state law this prohibition shall apply throughout all use regulations.

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Section 5. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in the Daily Commerce, a newspaper of general circulation published in the County of San Diego.

Approved as to form and legality
County Counsel

By: Justin Crumley, Senior Deputy

Meeting Date: 03/15/2017 (2)

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 15th day of March, 2017.



DIANNE JACOB
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Jacob, Gaspar, Horn
NOES: Cox, Roberts

ATTEST my hand and the seal of the Board of Supervisors this 15th day of March, 2017.

DAVID HALL
Clerk of the Board of Supervisors

By D. Lopez
Diana Lopez, Deputy



Ordinance No.10461 (N.S.)

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