



THE CITY OF SAN DIEGO

## Report to the Planning Commission

**DATE ISSUED:** December 2, 2021

**REPORT NO. PC-21-062**

**HEARING DATE:** December 9, 2021

**SUBJECT:** AMENDMENTS RELATED TO CANNABIS OUTLETS. PROCESS FIVE.

### **SUMMARY**

**Issue:** Should the Planning Commission recommend City Council approve the amendments related to Cannabis Outlets?

**Staff Recommendation:** Recommend City Council approve the amendments related to Cannabis Outlets.

**City Strategic Plan Goal(s)/Objective(s):** Goal #3: Create and sustain a resilient and economically prosperous City. Objective #3: Diversify and grow the local economy.

**Environmental Review:** The Environmental Policy Section of the Planning Department has reviewed the Amendments to the Land Development Code and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162. Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified Environmental Impact Report (EIR) for the Land Development Code EIR No. 96-0333/SCH No. 96081056; and the 2008 General Plan EIR No. 104495/SCH No. 2006091032, certified by the City Council on March 10, 2008, Resolution No. R-303473.

**Fiscal Impact Statement:** Adoption of the proposed amendments will result in an increase to annual revenue by increasing location options to fill the four Cannabis Outlet storefront retailers per Council District.

**Housing Impact Statement:** The proposed amendments would not have an impact on the provision of housing in the City of San Diego.

### **BACKGROUND**

California was the first state in the nation to legalize cannabis for medicinal use (1996). In March of 2014 the City of San Diego amended the Land Development Code to include regulations for medical

marijuana consumer cooperatives. Later, California became the fifth state to legalize adult (recreational) use on November 8, 2016, when voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA).

The Medical and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) was signed into law on June 27, 2017, which established the general framework for the regulation, licensing, and taxation of commercial medicinal and adult-use cannabis businesses in California. MAUCRSA became effective on January 1, 2018.

With the passage of Prop. 64 in 2016, the City of San Diego adopted San Diego Municipal Code (SDMC) regulations to allow specific types of commercial cannabis businesses, including Cannabis Outlets, Cannabis Production Facilities and cannabis testing facilities to operate in specific land use zones of the City. As separately regulated uses, all new Cannabis Outlets and Cannabis Production Facilities require approval of a Process Three Conditional Use Permit (CUP); these CUPs are granted for five years at a time, and renewals/amendments may be processed to continue operations for additional five-year increments. The SDMC allows for 36 Cannabis Outlet storefront retailers (four per Council District) for medicinal and adult-use sales, and a total of 40 Cannabis Production Facilities citywide for cannabis cultivation, manufacturing and distribution activities. There are no limits on the number of cannabis testing facilities and they are allowed by right in certain zones. To date, DSD has issued CUPs for 26 retail Cannabis Outlets (23 in operation) and 40 Cannabis Production Facilities (18 in operation). Currently four cannabis testing facilities operate within the city, performing quality control testing of cannabis goods as they pass through the industry supply chain. Following CUP approval, a cannabis business is required to obtain a building construction permit to ensure compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted standards in effect at the time the building construction permit is issued.

In 2017, City Council approved amendments to the Land Development Code to address the implementation of the AUMA in the City of San Diego. In 2020, additional amendments were made to the code as part of the Land Development Code 12<sup>th</sup> update.

California recently updated its cannabis regulatory structure by consolidating the work of three different state programs into a single state agency called the Department of Cannabis Control (DCC). DCC is responsible for the licensing, inspection, enforcement and regulation of all cannabis activities in California. Prior to the issuance of a state license, cannabis businesses must first obtain approval from their respective local jurisdiction as part of DCC’s dual-licensing process.

Today’s proposed amendments are intended to make the City and State regulations align. These amendments mainly address differences in operating hours, types of sensitive uses and the distances from those types of uses.

The proposed regulations would have no impact on the provision of housing in the City of San Diego. Cannabis outlets are not permitted in a zone that allows residential use.

## **DISCUSSION**

### **A. Operating hours:**

San Diego Municipal Code currently allows cannabis outlets to operate between the hours of 7:00 a.m. and 9 p.m. seven days a week. The state code currently allows cannabis outlets to operate between 6:00 a.m. and 10 p.m. The proposed amendment would bring the City and State hours of operations into alignment with both being between 6:00 a.m. and 10 p.m., seven days a week.

### **B. Sensitive uses:**

San Diego Municipal Code currently recognizes 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, schools and residential zones as sensitive uses.

The proposed amendments would remove resource and population-based city parks, churches, playgrounds, libraries owned and operated by the City of San Diego, residential care facilities and residential zones as sensitive uses to align with current State requirements. Child care centers, minor oriented facilities and schools will remain as sensitive uses as to not conflict with State law.

### **C. Distance and Measurements**

San Diego Municipal Code sets the distance between all current City recognized sensitive uses at 1000 feet from all permitted cannabis outlets.

The distance between permitted cannabis outlets and other cannabis outlets will remain at 1000 feet. Distance between permitted cannabis outlets will continue to be measured as they are now which accounts for natural topographical barriers and constructed barriers.

The proposed amendments would change the distance between the remaining City recognized sensitive uses to 600 feet. Amendments will also change how 600-foot distance will be measured. The remaining sensitive uses will be measured between property lines and shall be measured horizontally in a straight line between the two closest points of the property lines, buildings, or use locations. The distance shall be measured horizontally without regard to topography or structures that would interfere with a straight-line measurement, to align with current State law.

### **D. Council District Redistricting**

San Diego Municipal Code sets a cap of four cannabis outlets in each City Council District. Currently, the redistricting process is underway and in the next few months the current City Council District Boundaries will change. Since redistricting could result in one or more

cannabis outlets changing Council Districts the amendments include language to allow the currently permitted cannabis outlets to continue operating if they are redistricted into a City Council District, creating a Council District exceeding their Cannabis Outlet cap. These code amendments also allow currently permitted outlets to make amendments to their Conditional Uses Permits (CUP) without the change of Council District being taken into account.

**Conclusion:**

Staff recommends City Council approve the amendments related to Cannabis Outlets. The code amendments will make the City code more consistent with current State law.

Respectfully submitted,



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Attachments:

1. Draft Ordinance

**§113.0225 Measuring Distance Between Uses**

When there is a separation requirement between uses, the distance of the separation shall be measured as follows, except as specified by state law. See Diagram 113-02E.

**Diagram 113-02E**

**Distance Between Uses**

[No change in text.]

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

(c) When measuring distance for separation requirements for *cannabis outlets* in Section 141.0504(a)(1) or *cannabis production facilities*, the measurement of distance between the uses shall take into account natural topographical barriers and constructed barriers such as *freeways or flood control channels* that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

**§§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~~ No more than four *cannabis outlets* are permitted in each City Council District, unless the location of a cannabis outlet is redistricted after it was permitted to a different City Council

District resulting in more than four *cannabis outlets* in the 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.~~ The distance shall be measured between the *property lines*, in accordance with Section 113.0225.

(2) 600 feet from child care centers and *minor-oriented facilities* in which the child care center or *minor-oriented facility* is the *primary use* of the *premises*, 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**(b)**.

~~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) thru (d) [No change in text.]

- (e) The name and emergency contact phone number of the designated responsible managing operator shall be provided to the Development Services Department and San Diego Police Department, with the emergency number for the business posted in a location visible from outside the *cannabis outlet* in character size at least two inches in height.
- (f) The *cannabis outlet* shall operate only between the hours of 6:00 a.m. and 10:00 p.m., seven days a week.
- (g) 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) [No change in text].
- (2) A change in zoning or change in Council District 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) through (4) [No change in text].

DRAFT





# Amendments Related to Cannabis Outlets

	<b>State of California</b>	<b>City of San Diego</b>	<b>Proposed</b>
<b>Hours of Operations</b>	6 am – 10 pm	7am – 9pm	6am - 10pm
<b>Separation: Daycare/Child Care Centers</b>	600 ft	1,000 ft	600 ft
<b>Separation: Schools</b>	600 ft	1,000 ft	600 ft
<b>Separation: Youth Center/Minor-Oriented Facilities</b>	600 ft	1,000 ft	600 ft
<b>Separation: Playgrounds</b>	None	1,000 ft	None
<b>Separation: Churches</b>	None	1,000 ft	None
<b>Separation: Residential Care Facilities</b>	None	1,000 ft	None
<b>Separation: City Parks</b>	None	1,000 ft	None
<b>Separation: Libraries</b>	None	1,000 ft	None
<b>Separation: Other Cannabis Outlets</b>	None	1,000 ft	1,000 ft
<b>Separation: Residential Zone</b>	None	100 ft	None
<b>Use: Microbusiness</b>	Allowed	Not Allowed	Not Allowed
<b>Use: Delivery-Only</b>	Allowed	Not Allowed	Not Allowed
<b>Use: Consumption Lounge</b>	Allowed	Not Allowed	Not Allowed
<b>Use: Cannabis Event</b>	Allowed	Not Allowed	Not Allowed
<b>Social Equity Implementation</b>	Policy	No Policy	Expected in 2022