

**Citizens Safe Access Ordinance,  
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Headed for the Ballot in the Next Election**

Sponsored by the California Cannabis Coalition and authored by Jeffrey A. Lake, Esq. and Jessica C. McElfresh, Esq. of Lake APC, the Citizens Safe Access Ordinance (“CSAO”) ballot initiative was recently filed with the San Diego City Clerk. On January 11, 2011, the California Cannabis Coalition will begin gathering signatures to put the CSAO on the ballot for the next election in the City of San Diego, which will most likely be in June 2011.

To help gather signatures to ensure that the CSAO qualifies for the ballot, or to sign the petition, please contact the California Cannabis Coalition at [www.calcc.info](http://www.calcc.info) or 619-467-1235.

The Citizens Safe Access Ordinance will amend the San Diego City Municipal Code to regulate the operation of medical marijuana centers within the City, thereby protecting complying operators and their patient-members from the threat of civil or criminal litigation from the City Attorney’s Office based upon alleged land use violations of the City’s Municipal Code.

The most important provisions of the CSAO are summarized as follows:

- The CSAO will authorize Medical Cannabis Centers to cultivate and dispense medical cannabis to qualified patients and primary caregivers.
- Medical Cannabis Centers will be allowed in most Commercial and Industrial zones as long as they are not within 600 feet of schools, playgrounds, libraries, or day care centers, within 500 feet of residential rehabilitation facilities or other Centers, or located in residential buildings.
- A cap will be placed on the number of Centers. Only those Centers with an approved Seller’s Permit issued by the California Board of Equalization on or before the date the initiative is approved for the ballot will be allowed to operate within the City.
- Centers that meet the cap requirement will be allowed a three year grace period to comply with the requirements of the initiative.
- Centers may relocate to any permissible zone at any time within the grace period as long as they meet the requirements of the initiative.
- Operators of Medical Cannabis Centers may transfer ownership or control of their Centers at any time as long as the Centers continue to meet the requirements of the initiative.
- Center operators will be required to follow strict operational plans that require a detailed security plan, specific floor plans, limited hours of operation, and signage restrictions.

- Persons with certain recent felony convictions may be disqualified from operating or working in a Cannabis Center. However, this does not include convictions for marijuana-related offenses.
- Minors (under 18 years of age) will not be allowed on the premises of a Cannabis Center unless accompanied by a parent or guardian.

**The Full Text of the CSAO Follows:**

To ensure safe access to medical cannabis for all qualified patients and their primary caregivers, shall the City of San Diego add this Section to the Municipal Code to enact regulations and procedures for Medical Cannabis Centers, including zoning restrictions and operational requirements?

WHEREAS, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled "The Compassionate Use Act of 1996" (Act); and

WHEREAS, the intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and

WHEREAS, the State enacted Senate Bill 420 in 2003, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Marijuana Program (Program), to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program; and

WHEREAS, to protect the public health, safety, and welfare, the City desires to modify the Municipal Code consistent with the Program, regarding the location and operation of Medical Cannabis Centers in the City; and

WHEREAS, it is the City's intention that nothing in this Section shall be construed to do any of the following:

1. To allow persons to engage in conduct that endangers others or causes a public nuisance as defined by the California Civil Code;
2. To allow the use of cannabis for non-medical purposes; or
3. To allow any activity relating to the cultivation, distribution, transportation, possession, or consumption of cannabis that is otherwise not permitted by state law; and

WHEREAS, pursuant to California Health and Safety Code Sections 11362.5 and 11362.7 et seq., the State Department of Health, acting by and through the state's counties, is to

be responsible for establishing and maintaining a voluntary medical cannabis identification card program for qualified patients and primary caregivers;

WHEREAS, California Health and Safety Code Section 11362.71 (b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matters set forth in Section 11362.71, et seq.;

WHEREAS, the Attorney General of the State of California, Edmund G. Brown, published the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use in August 2008, suggesting guidelines for the governing of a medical cannabis collective or cooperative;

WHEREAS, this Measure is compatible with meeting the intent of "The Compassionate Use Act of 1996" (Act);

WHEREAS, this Measure will not adversely affect the orderly development of property, in that Medical Cannabis Centers would be subject to zoning restrictions and operational requirements; and

WHEREAS, this Measure is compatible with the general objectives of the general plan and any applicable specific plan, in that this use would be allowed in commercial and industrial districts; NOW, THEREFORE

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

Section 1. TITLE. These provisions of the Municipal Code shall be known as the Citizens Safe Access Ordinance ("CSAO"). The CSAO shall be applicable in the City of San Diego ("City").

Section 2. PURPOSE AND INTENT. It is the purpose and intent of the CSAO to regulate the locations of Medical Cannabis Centers in order to promote the health, safety, and general welfare of residents and businesses within the City. It is neither the intent nor the effect of this Section to condone or legitimize the use or possession of cannabis except as allowed by California law.

Section 3. DEFINITIONS. For the purpose of the CSAO, the following words and phrases shall have the following meanings:

(a) Applicant. A person who is required to file an application for a business tax certificate under this Section, including an individual director, managing partner, officer of a corporation or any other incorporator, operator, manager, employee, or agent of the Center.

(b) Day Care Center. As defined in California Health and Safety Code Section 1596.76 and licensed pursuant to California Health and Safety Code Sections 1596.70 and 1596.90 et seq.

(c) Drug Paraphernalia. As defined in California Health and Safety Code Section 11364, and as may be amended from time to time.

(d) Dwelling Unit. As defined in the Chapter 11, Article 3, Division 1.

(e) Identification Card. As defined in California Health and Safety Code Sections 11362.5 and 11362.7 et seq., and as may be amended from time to time.

(f) Library. Any public library, excluding professional libraries such as law libraries, operated by the City and clearly identified on the outside of the facility as a library.

(g) Medical Cannabis Center (“Center”). Any collective, association, cooperative, affiliation, or collection of persons where multiple qualified patients or primary caregivers associate to provide education, referral, or network services, and facilitate or assist in the lawful distribution or cultivation of medical cannabis at a fixed place of business located in the zones listed in Section 4(a) below. "Center" shall include any facility where the primary purpose is to dispense medical cannabis that has been recommended by a physician in good standing with State Medical Licensing Board, and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in accordance with California Health and Safety Code Section 11362.5 and 11362.7 et seq. The Center shall not include dispensing by primary caregivers to qualified patients in the following locations, so long as the location of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code or by applicable state laws:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the state Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the state Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code; provided that any such clinic, health care facility, hospice or residential care facility complies with

applicable laws, including, but not limited to, Health and Safety Code Sections 11362.5 and 11362.7 et seq.

No part of the definition of Center, or any other provision of the CSAO, shall restrict, limit, or alter the rights of qualified patients and primary caregivers to collectively cultivate medical cannabis for personal use at their residence in a single dwelling unit; multiple dwelling unit; rooming house; clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code; health care facility licensed pursuant to Chapter 2 of Division 2 of the state Health and Safety Code; residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code; and residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code, pursuant to California Health and Safety Code Sections 11362.5 and 11362.7 et seq.

(h) Multiple Dwelling Unit. As defined in the Chapter 11, Article 3, Division 1.

(i) Person. An individual, collective, cooperative, nonprofit mutual benefit corporation, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.

(j) Person with an Identification Card. As set forth in California Health and Safety Code Section 11362.7 et seq., and as amended from time to time.

(k) Physician. A licensed medical doctor, including a doctor of osteopathic medicine, as defined in the California Business and Professions Code.

(l) Playground. Any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds, that is open to the public, as defined in California Health and Safety Code Section 104495(a)(1).

(m) Primary Caregiver. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

(n) Qualified Patient. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

(o) Rehabilitation Residential Care Facility. A facility that provides in-house drug or alcohol treatment or rehabilitation programs for residents on a 24-hour basis, including residential and community care facilities as defined by the state or county. Housing for senior citizens, nursing homes, convalescent homes, work furlough and probationary residential facilities, and emergency shelters are not residential care facilities.

(p) Rooming House. As defined in the Chapter 11, Article 3, Division 1.

(q) School. An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a pre-school, an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, but excludes colleges, universities and graduate schools whether public or private.

(r) Single Dwelling Unit. As defined in the Chapter 11, Article 3, Division 1.

#### Section 4. LIMITATIONS ON THE PERMITTED LOCATION OF A CENTER.

(a) Permissible Zoning for Centers. A Center may only be located within the Commercial – Regional (CR), Commercial – Office (CO), Commercial – Community (CC), Commercial – Neighborhood (CN), Commercial – Visitor (CV), Industrial – Park (IP), Industrial – Light (IL), Industrial – Heavy (IH), Industrial – Small Lot (IS) zoned areas of the City as so designated in the San Diego Municipal Code, Chapter 13, Article 1, Division 5, Chapter 13, Article 1, Division 6, and City Zoning map.

(b) Areas and Zones Where Centers Not Permitted. Notwithstanding subparagraph (a) above, a Center shall not be allowed or permitted in the following locations or zones:

1. On a parcel located within a 600 foot radius of Schools, Playgrounds, Libraries, and Day Care Centers;
2. On a parcel located within 500 feet of a Rehabilitation Residential Care Facility;
3. On a parcel located within 500 feet of another permitted Center; or
4. In a Single Dwelling Unit, Multiple Dwelling Unit, or a Rooming House.

(c) Distance Measurements. With the exception of Section 4(b)(1), which specifies that the distance from the Center to Schools, Playgrounds, Libraries, and Day Care Centers shall be a 600 foot radius, the distance between the Center and the above-listed uses in subdivisions (b)(2) and (b)(3), shall be measured in a straight line between the two closest points of the property lines, as set forth in Chapter 11, Article 3, Division 2.

(d) Enforcement. Neighborhood Code Compliance for the City of San Diego shall enforce the zoning and distance provisions of this Section of the CSAO.

Section 5. LIMITATIONS ON THE PERMITTED NUMBER OF CENTERS. Only those Centers which were operating in the City of San Diego with an approved Seller's Permit from the California State Board of Equalization issued on or before the date that the ballot

initiative for the CSAO was approved for the ballot shall be allowed to operate in the City of San Diego.

Section 6. OPERATIONAL REQUIREMENTS FOR CENTERS. Center operations shall be permitted and maintained only in compliance with the following day-to-day operational standards:

(a) Criminal History. The operator is required to perform a background check of directors, corporate officers, managers, operators and all employees. The background check shall consist of fingerprint verification of the identity and criminal history of all employees, managers, operators, officers, and directors. Grounds for disqualification from operating or working in a medical cannabis Center shall include any past convictions for any felony within the past five years; any felony or misdemeanor involving theft or fraud, including the receipt of stolen property within the past seven years; and any crime specified in California Penal Code Section 1192.7 within the past twenty years. However, this disqualification includes an exception for persons convicted of, or on probation or parole for, the following crimes as a felony or a misdemeanor: a violation of California Health and Safety Code Sections 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570; and a conviction for the equivalent of these crimes as a felony or a misdemeanor in another state or under federal law. That persons are on probation or parole for a violation of California Health and Safety Code Sections 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570, or their equivalents as felonies or misdemeanors under the law of another state or federal law, shall not be grounds for disqualification.

(b) Minors. It is unlawful for any Center operator or other person responsible for any Center to employ any person under 18 years of age. Persons under the age of 18 shall not be allowed on the premises of the Center unless they are a qualified patient or a primary caregiver, and they are in the physical presence of their parent or guardian. The entrance to the Center shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are prohibited from entering the premises unless they are a qualified patient or a primary caregiver, and they are in the physical presence of their parent or guardian.

(c) Dispensing Operations. The following restrictions shall apply to all dispensing operations by the Center:

1. The Center shall only dispense to qualified patients or primary caregivers with a currently valid physician's recommendation in compliance with the criteria in California Health and Safety Code Sections 11362.5 and 11362.7 et seq. Centers shall require such persons to provide valid official identification, such as a California Department of Motor Vehicles driver's license or California State Identification Card in addition to a copy of the doctor's recommendation, noting the doctor's name, address, phone number, and license number.

2. Prior to approval of membership, collective personnel shall obtain verification from the recommending physician's office personnel that the individual requesting membership is or remains a qualified patient pursuant to California Health & Safety Code Sections 11362.5 and 11362.7 et seq. Once membership has been approved, verification shall also be conducted upon the expiration of the patient's recommendation.
3. The Center shall neither have a physician on-site to evaluate patients nor to provide a recommendation or prescription for the use of medical cannabis.
4. The Center shall obtain medical cannabis only from a location cultivated by the collective or from its members in accordance with applicable zoning regulations in the jurisdiction in which it is cultivated, or any requirements which may be imposed by the State.
5. The Center shall not provide cannabis to any individual in an amount not consistent with personal medical use.
6. The Center must keep accurate records with the following information:
  - a. The name, address, and Medical Cannabis Identification Card (MMIC), if applicable, of the patient; and
  - b. The name, address, phone and business name of the patient's doctor.

(d) Smoking Restriction. The following medical cannabis smoking restriction shall apply to all Centers:

1. Cannabis shall not be smoked by patients on the premises of the Center. The term "premises" includes the actual building, as well as any accessory structures, parking lot, or parking areas which are under the control of the Center operator.

(e) Operation Plan. The Center director, officer, manager, or operator shall develop a detailed Operation Plan and shall operate the Center in accordance with the Operation Plan.

1. Floor Plan. The Center shall have a waiting area at the entrance of the Center to receive patients that is accessible to the public. The Center must have a separate and secure designated area for dispensing medical cannabis accessible only to staff and qualified patients and caregivers who are members of the collective.
2. Restrooms. Restrooms shall remain locked and under the control of collective staff at all times.
3. Storage. The Center shall have suitable locked storage on premises for after-hours storage of medical cannabis. Suitable structures are locked vaults, safes, or other means that are bolted onto the floor or structure of the facility.

4. Security Plans. The Center shall provide adequate security on the premises, including provisions for adequate lighting and alarms, in order to ensure the safety of persons and to protect the premises from theft. All security guards employed by Centers shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. No guards may be employed with temporary Security Guard Cards.
5. Security Cameras. Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises. Security video shall be maintained for a period of at least 7 days. All areas of the Center, including any parking areas which are under the control of the Center operator, must be recorded.
6. Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the Center at all times.
7. Hours of Operation. Centers are permitted to operate between the hours of 7:00 AM and 10:00 PM only, seven days a week.

(f) Center Signage and Notices.

1. All Centers shall display a legible indoor sign in a conspicuous location containing the following warnings:
  - a. Diversion of cannabis for non-medical purposes is a violation of state law;
  - b. Use of medical cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery; and
  - c. Loitering on and around the Center site is prohibited by California Penal Code Section 647(e).
2. Signs on the premises shall not obstruct the entrance or windows.
3. Business identification signage shall comply with the City's Sign Ordinance as described in Chapter 14, Article 2, Division 12 of the San Diego Municipal Code, and be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed twelve square feet in area or 25 percent of the window area, whichever is less.

(g) Compliance with Other Requirements. The Center operator shall comply with all provisions of all local and state regulations or laws.

(h) Alcoholic Beverages. No Center shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

Section 7. MEDICAL CANNABIS VENDING MACHINES. No person shall maintain, use, or operate a vending machine which dispenses medical cannabis in the City of San Diego unless such machine is located within a Center in a separate and secure designated area accessible only to staff, qualified patients, and caregivers who are members of the collective.

Section 8. CENTERS OPERATING PRIOR TO EFFECTIVE DATE OF THIS SECTION. Centers that were operating in the City of San Diego with an approved Seller's Permit from the California State Board of Equalization for a valid address in the City of San Diego issued on or before the date that the ballot initiative for the CSAO was approved for the ballot shall be deemed Pre-Existing Uses of real property. The following shall apply to all Centers that qualify as Pre-Existing Uses:

(a) Legal Use of Real Property for Three Years. The Centers shall be deemed legal uses of the real property upon which they are situated in the City of San Diego for a period of three (3) years from the date of the adoption of the CSAO, provided that they comply with all portions of the CSAO, other than the locational provisions set forth herein in Section 4.

(b) Comply with All Requirements of the CSAO within Three (3) Years or Cease Operation. Prior to the expiration of the three (3) year nonconforming period from the effective date of the CSAO, all Medical Cannabis Centers that qualify as Pre-Existing Uses shall either comply with all requirements of this Section, or cease operation no later than the end of the three (3) year amortization period.

1. If at the end of the three (3) year amortization period, two or more Medical Cannabis Centers comply with all distance requirements in Section 4, except that the Centers are located on parcels within 500 feet of each other, measuring the distance in a straight line between the two closest points of the property lines, as defined in Chapter 11, Article 3, Division 2, the Medical Cannabis Center that began operating at its current location at the earliest date shall be eligible to remain open.
2. To allow the City to determine which Center began operating at the earliest date, a Medical Cannabis Center shall demonstrate when it began operating at its current location based on when the Center first received a Seller's Permit for that location from the State of California Board of Equalization, or alternatively as determined by a court of law with competent jurisdiction.
3. If a Center that qualifies as a Pre-Existing Use, but is not able to comply with all distance requirements in Section 4 by the end of the three (3) year amortization period, that Center shall be permitted to relocate to another location that complies with the distance requirements in Section 4 by the end of the amortization period, thus complying with all requirements of the CSAO.

4. A Center that qualifies as a Pre-Existing Use shall qualify to remain open during the three (3) year amortization period as well as after the end of the amortization period, if the Center complies with all provisions of the CSAO.
5. Operators of Centers shall be allowed to transfer ownership or control of Centers within their ownership or control at any time so long as the Centers are in compliance with the provisions of this Section.

(c) Enforcement. Neighborhood Code Compliance for the City of San Diego shall enforce the provisions of this Section of the CSAO.

Section 9. SEVERABILITY. If any provision of the CSAO is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect.