



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: September 1, 2022 REPORT NO. PC-22-046
HEARING DATE: September 8, 2022
SUBJECT: Proposed Cannabis Municipal Code Amendments, Process 5

SUMMARY

Issue: SHOULD THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE PROPOSED SAN DIEGO MUNICIPAL CODE AMENDMENTS RELATED TO CANNABIS OPERATIONS?

Staff Recommendation: Request that the Planning Commission provide a recommendation to approve the proposed ordinances adopting requested revisions to the San Diego Municipal Code (SDMC) including amending:

- a. SDMC Section 141.0504 (Redistricting);
- b. SDMC Sections 126.0108, 126.0110, and 126.0114 (CUP Recission);
- c. SDMC Sections 42.1502, 42.1504 and 42.1507 (Tax Responsibilities); and
- d. SDMC Section 141.0504 (CUP Extensions).

Community Planning Group Recommendation: On June 28, 2022, staff presented the proposed SDMC revisions to the Community Planners Committee. Proposed actions a., b., and d. were approved by a vote of 24-3-1. Item c. was approved by a vote of 20-1-2. See Attachment 1 for the minutes.

Environmental Review: This activity is not a project as defined by CEQA Guidelines Section 15378 and is thus not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3). This determination is predicated on CEQA Guidelines Section 15004, which provides direction to lead agencies on the appropriate timing for environmental review. Any future projects would be subject to environmental review in accordance with the City's Land Development Code and CEQA.

Fiscal Impact Statement: Adoption of the proposed Municipal Code amendments may result in additional new cannabis activity and revenue in the future.

Additional Stakeholder Meetings: On August 11, 2022 and August 18, 2022, the Development

Services Department (DSD) Cannabis Business Division (CBD) convened virtual stakeholder input meetings to present and seek comment from the public (Attachment 2, Meeting Notice). As such, the proposed changes to SDMC Sections 42.1502 and 42.1507 have been amended to reflect stakeholder input.

BACKGROUND

The Development Services Department (DSD) Cannabis Business Division (CBD) oversees administration of cannabis businesses operating in the City of San Diego, including permitting, compliance/enforcement and program development activities. CBD is also responsible for the development of the City's first cannabis equity assessment in partnership with the City's Department of Race and Equity. As such, CBD staff is bringing forward an action item related to Municipal Code amendments to address City Council redistricting as well as provide for more effective compliance in relation to cannabis Conditional Use Permits (CUP) and issues associated with cannabis tax compliance. This report also provides an informational update on the development of the draft equity assessment that will be moving forward to City Council in the Fall.

City of San Diego Cannabis Regulatory Background/Legal Framework

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 CUP; these CUPs are granted for five years at a time, and renewals/amendments must be processed to continue cannabis operations for additional five-year increments. The SDMC currently 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 27 retail cannabis outlets (24 in operation) and 40 cannabis production facilities (25 in operation). Currently four cannabis testing facilities operate within the city, performing quality control testing of cannabis goods as they pass through the supply chain.

DISCUSSION OF SDMC AMENDMENTS:

1. Redistricting

[Section 5.1](#) of the San Diego City Charter requires the creation of a Redistricting Commission at the beginning of each decade, after the U.S. Census, to adopt plans which specify the boundaries of districts for the City Council. The redrawing of district boundaries is designed to ensure local legislatures are representative of the City's diverse population. On Wednesday, December 15, 2021, the City of San Diego Redistricting Commission voted 7-0-2 to approve the final map which can be reviewed in [Map 92973 \(link is external\)](#). The new boundaries will take effect after the City's next general election in November 2022.

[SDMC 141.0504](#) allows a maximum of four COs per Council District. By changing Council District boundaries, the redistricting process will impact the number COs in one district by pushing the number of operating COs over the allowed limit per Council District. Redistricting does not affect Cannabis Production Facilities (CPFs); they are limited to 40 CUPs City-wide per [SDMC 141.1004](#) and not restricted per Council District.

Redistricting will allow force (1) additional CUP over the existing cap in District 1, which will make a total of 10 CUPs available for other Citywide CO's. Please see table below:

Council District	Number of COs Allowed	Number of Existing COs	# of COs after Redistricting	Redistricting Outcome	Total allowed per District after Redistricting
District 1	4	4	5	No CUPs available	5
District 2*	4	4	2	2 available	4
District 3	4	2	4	No CUPs available	4
District 4*	4	1	3	1 available	4
District 5*	4	1	1	3 available	4
District 6*	4	4	3	1 available	4
District 7	4	4	2	2 available	4
District 8	4	4	3	1 available	4
District 9	4	3	4	No CUPs available	4
Total	36	27	27	10 CUPs available	37

*Note there are seven new Cannabis Outlet applications pending: Three in District 2, one in District 4, one in District 5, one in District 6, and one in District 8.

On February 3, 2021, the City Attorney's Office issued a [memo](#) on the outcome of redistricting on cannabis CUPs in relation to redistricting. As such, the proposed code amendments will address the cannabis outlet cap to comply with the City Attorney's Office memo. Therefore, staff recommends amending [SDMC 141.0504](#) as recommended in Attachment 4.

2. Cannabis Conditional Use Permit Recission

The San Diego Municipal Code stipulates that cannabis production facilities (CPFs) must

obtain a CUP to operate. The Land Development Code allows up to 40 CPFs City-wide.

Staff review indicates a total of nine (9) CPF CUPs for facilities that have not become operational or ceased operation and should be considered abandoned. Generally, the City does not proactively rescind CUPs. However, cannabis permits are unique due to the limited number of permits available. Therefore, it is important for CUPs to be made available to allow the industry to grow and generate new sources of cannabis product and tax revenue.

The current process for voluntary cancellation or rescission of a CUP for a non-operational facility depends on whether or not a permit has been utilized per [SDMC 126.0108](#). If the permit was never utilized, a Process One cancellation can be processed. For CPFs that did utilize their permits, a permit may be rescinded according to Process One if the property complies with all use and development regulations. If it does not, the rescission will require a Process Three Hearing Officer decision, appealable to the Planning Commission. If no appeal is received, the revocation will be recorded by the County of San Diego.

To allow new applicants the opportunity to obtain a CUP, the City's Cannabis Business Division (CBD) staff identified abandoned CUPs and began processing voluntary cancellations and rescissions per [SDMC Section 126.0110](#). CBD requested owner and permittee concurrence on abandoning the CUPs and processing the rescission/revocation per SDMC 126.0110 via certified mail sent to responsible parties on February 22, 2022.

Staff's experience is that responsible parties for abandoned cannabis CUPs are difficult to locate and correspond with. Because the current CUP cancellation/rescission process depends upon voluntary approval by both the property owner and the CUP holder, the current Municipal Code abandonment procedures are extremely difficult to implement. As of August 2022, one CUP abandonment is in processed. In addition, five CUP's were determined to not have been utilized and are considered void. CBD staff sent letters to the operators and requested documentation by September 1, 2022 to determine permit utilization.

Because the cancellation/rescission process per SDMC 126.0110 is voluntary, a property is not eligible if all parties to a CUP cannot reach agreement. Staff requests that new abandonment language be included in the Municipal Code to allow the City to make a Process One determination if a cannabis CUP is no longer being used. Staff is proposing to amend Municipal Code Section 126.0108 in order to ensure that if abandonment occurs, City staff has the ability to rescind the CUP in an expedited manner. The language included in Attachment 4 is suggested to be incorporated into SDMC 126.0108. In the event a CUP does not comply with items 1 thru 6, the City Manager may make a determination to rescind the CUP through a Process 1 cancellation.

An additional amendment to Section 126.0108 includes the ability of the City Manager to revoke the CUP and operating permit for non-payment of cannabis taxes. This will ensure full tax compliance for cannabis businesses within the City of San Diego.

The following table provides information on the businesses proposed to be abandoned due

to non-operation:

Address	CUP#	Date Approved	Utilization Date	Expiration Date	Current Status
8390 Miramar Place	2068281	03/06/2019	3/21/2021	03/21/2024	CUP Not Utilized.
10170 Sorrento Valley Road	2071481	12/06/2018	12/6/2021	12/6/2023	Building sold and business disbanded.
5752 Oberlin Dr. Ste 111, 112	2058040	8/15/2018	10/17/2021	10/17/2023	CUP Not Utilized.
5550 Oberlin Drive, Ste A	2070984	10/03/2018	8/30/2021	08/30/2023	CUP Not Utilized.
8333 Clairemont Mesa Blvd. Ste 100, 205, 214	2066187	9/19/2018	10/4/2021	10/04/2023	Owners moved to another county. Abandoned.
9220 Mira Este Court	2063424	02/20/2019	3/7/2022	03/07/2024	CUP Not Utilized.
7542 Trade Street	2064703	09/05/2018		09/19/2023	Abandoned.
8859 Balboa Avenue	2068552	8/15/2018	8/30/2021	8/30/2023	CUP Not Utilized.
4655 Ruffner Rd.	2135497	6/13/2019	6/13/2022	6/13/2024	Recission in Process.

3. Cannabis tax payment responsibilities

There have been several instances where cannabis production facilities have not paid their taxes, but the operator(s) have continued to operate cannabis businesses at other locations using a different company name. As a result, the Treasurer’s Office and the CBD evaluated the current Municipal Code language and has determined that amendments to the code should be adopted in order to prohibit an operator from opening separate new cannabis operations within the City if there is an outstanding tax liability owed to the City. Staff proposes amendments to SDMC 42.1502, 42.1504 and 42.1507 that can be found in Attachment 4.

4. Cannabis permit expiration date regulations

CUPs for most types of conditional uses do not expire. However, the SDMC places a five-year time limit on cannabis CUPs (see SDMC 141.0504 for Cannabis Outlets, COs, and SDMC 141.1004 for Cannabis Production Facilities (CPFs)). Those code sections also state that COs

and CPFs can amend their permits for another five-year term.

SDMC 126.0114(d) outlines the process for amending CUPs to extend expiration dates: An amendment to an existing development permit will not affect the original expiration date of the permit unless a change is specifically requested. In such cases, the application must be deemed complete prior to the development permit expiration date and the development permit will automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.

Allowing CUPs to remain in effect while their amendments are being processed is reasonable. However, SDMC 126.0114 does not provide for a time limit on this extension. Applicants may take as long as they like to process. In the context of a five-year time limit, this can lead to applicants taking an extended amount of time to process their amendments, effectively extending their CUPs for up to a year or more in some cases. There are five amendments in the process with CUPs that have already expired, with expiration dates ranging from 1/29/2020 to 9/29/2021.

Research indicates that amendments cost 63% as much as the original permit, but they take 108 days (3.6 months) longer to process. The average cost paid by a successful applicant for a new Cannabis CUP in the City of San Diego is approximately \$22,371, with an average processing time of 447 days (14.7 months). To date, approximately 11 CUP amendments have been processed to a decision, with an average cost of \$14,165 and an average processing time of 555 days (18.2 months). Amendments cost less, but take more time.

Staff has significant equity and due process concerns with these extended amendment periods and how they can function as “holding” a spot. Therefore, staff is proposing municipal code changes to address the issue which can be found in Attachment 4.

[SDMC 141.0504\(n\)\(4\)](#) outlines the cannabis CUP amendment process. Amendments extend the expiration date for a period not to exceed five years. An 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 existing CUP is automatically extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted.

Staff has found that applicants have used this code process to continue extending their CUP application while not actually seeing the amendment application through to decision. Because there is a cap on the number of cannabis CUPs, this prevents other applicants from applying for a CUP because there are no permits available.

As shown in Attachment 4, staff requests that SDMC 141.0504(n)(4) be amended to prohibit the indefinite extensions of cannabis CUPs as to allow other eligible applicants to be able to process their permits.

CONCLUSION:

The legal cannabis industry in San Diego is still in its infancy. As the industry grows in our City, it will be important to continuously monitor its growth in order to ensure that existing businesses are adhering to the San Diego Municipal Code regulations and that equity is a primary driver for new and emerging businesses. As a first step, adopting revisions to the code to help enforce provisions of the code on the limited number of conditional use permits is essential to addressing issues with tax compliance and abandonment. Laying on the equity driven approach which is in the process of being adopted is vital to ensuring a well-functioning cannabis industry that is obtainable to all stakeholders.

ALTERNATIVES

1. Approve REQUESTED ACTION(S) with modifications.
2. Deny REQUESTED ACTION(S) if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



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LOWE/LNG

Attachments:

- 1) Community Planners Committee June 28, 2022 Minutes
- 2) Stakeholder Meeting Notice
- 3) Stakeholder SDMC Amendment Correspondence
- 4) Strikeout/Underline Ordinance Changes