

ORDINANCE NO. NS-3035

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF SANTA ANA AMENDING VARIOUS
PORTIONS OF CHAPTER 41 (ZONING) OF THE SANTA
ANA MUNICIPAL CODE RELATING TO NOXIOUS USES,
MEDICAL OFFICES OPERATED BY GOVERNMENT,
GOVERNMENT-SUBSIDIZED, NOT-FOR-PROFIT, OR
PHILANTHROPIC ENTITIES, AND DEFINITIONS FOR
OTHER OFFICE USES

WHEREAS, pursuant to SB 1000, the City was required to address Environmental Justice in the General Plan Update due to a number of disadvantaged communities located within the City; and

WHEREAS, the City Council adopted the General Plan Update on April 19, 2022, which included numerous goals, policies, and implementation actions associated with addressing environmental justice; and

WHEREAS, developing, adopting, implementing, and enforcement of environmental laws, regulations, and policies can help address longstanding environmental impacts on communities; and

WHEREAS, Land Use Element action 3.2 states that the City will undertake updating the zoning code's development and operational standards to address incompatibility of industrial uses in close proximity to sensitive receptors; and

WHEREAS, the absence of clear and consistent use of terms and definitions for professional, business, and administrative office, medical office, and counseling service is inconsistent with the goals expressed by Santa Ana Municipal Code (SAMC) Section 41-1 (Purpose) in that the City cannot effectively carry out regulations and provide for their enforcement without clear and enforceable terms and definitions; and

WHEREAS, the absence of a conditional use permit requirement for medical offices operated by government, government-subsidized, not-for-profit, or philanthropic entities is inconsistent with the goals expressed by SAMC Section 41-1 (Purpose) in that discretion by the Planning Commission and City Council cannot be exercised to ensure that the location and operation of such facilities are compatible with the scale, character, and nature of surrounding properties and neighborhoods as specified in SAMC sections 41-1 (a), (b), (e), and (f); and

WHEREAS, AB 358 was adopted August of 2021, authorizing property owners that meet specified requirements to install and operate electrified fences on their property to protect and secure commercial or industrial property, but the absence of locally-adopted standards in the Zoning Code allowing and regulating electrified fences on private property poses a threat to the health, safety, and welfare of property owners and passers-by in Santa Ana, leading to potentially dangerous configurations of electrified fences that

do not meet local development standards that would otherwise ensure the safe design and installation of such fences; and

WHEREAS, there have been near daily police and/or code enforcement-related incidents regarding transient populations trespassing on and causing damage to private, non-residential properties abutting railroad rights-of-way in Santa Ana; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare due to the absence of regulations on noxious uses in close proximity to schools, parks, and residences; the absence of conditional use requirements on medical offices operated by government, government-subsidized, not-for-profit, or philanthropic entities in the Professional (P) zone; the lack of clear land use definitions that may work an adverse impact on existing communities, as well as negatively impact property values, personal privacy, and fire safety; and the lack of standards for the installation of electric fences on private property. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a two-thirds vote of the City Council; and

WHEREAS, pursuant to Santa Ana City Charter sections 415 and 417, based on the above findings, this Ordinance is declared by the City Council to be necessary as an emergency measure to protect and preserve the health, safety and welfare of the citizens of the City of Santa Ana and will become effective immediately if passed by the affirmative votes of at least two-thirds (2/3) of the members of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth above.

NOW, THEREFORE, the City Council of the City of Santa Ana does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as finding by the City Council.

Section 2. Section 41-44.6 (Counseling services) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-44.6. - Counseling services.

A facility where personnel provide counseling services in individual or group sessions that focus specifically on mental development, recovery, rehabilitative vocational assistance, and employment preparation for the purposes of achieving independence, and/or integration in the workplace and community. For a practice providing counseling services specializing in substance abuse, this includes a facility that provides substance abuse counseling practiced by a licensed professional, on an outpatient basis, with or without the dispensing of medication onsite. "Counseling services" does not include "Medical office," which is separately defined.

Section 3. Section 41-54.5 (Electric fence) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-54.5. - Electric fence.

"Electric Fence" and "Electrified Fence" shall mean any fence powered by an electrical energizer with characteristics outlined and defined in California Civil Code Section 835 used to protect and secure industrial property.

Section 4. Section 41-121 (Reserved) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-121. - Medical office Reserved.

A medical office is a facility providing consultation, diagnosis, therapeutic, preventive, surgical, or corrective personal treatment services by doctors or dentists, and their support staff, to support the healing of humans, wherein such medical doctors and dentists are licensed. These facilities can be at health centers, individual doctor or dentist offices, and exclude practices providing counseling services specializing in substance abuse, homeless support services, and medical research laboratories.

Section 5. Section 41-127.5 (Professional, business, and administrative office) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-127.5. - Professional, business, and administrative office.

A professional, business, or administrative office is an establishment providing direct, "over-the-counter" services or business services to consumers or clients (e.g., insurance agencies, real estate offices, travel agencies, utility company offices, etc.) and office-type facilities occupied by businesses providing professional services and/or engaged in the production of intellectual property.

Section 6. Section 41-199.4 (Noxious uses) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-199.4. - Noxious uses.

- (a) Any use other than eating establishments listed in Section 41-472 or 41-472.5 of this Chapter, regardless of the zoning district it is established or proposed to be established in, that requires a permit from a regional, state, or federal agency to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances that is located within 500 linear feet of a public park, school (K-12) as defined by Section 11362.768 of the Health and Safety Code, or property used or zoned for residential purposes requires a conditional use permit.
- (b) The 500 linear foot distance shall be measured from the outermost boundary of the subject property to the closest point of any public park, school, or property used or zoned for residential purposes.
- (c) The property owner or business operator of a business regulated by subsection (a) shall be responsible for notifying the City of any requirement to obtain a permit

from a regional, state, or federal agency. Notification to the City must be made prior to obtaining any permit from a regional, state, or federal agency for the business activities listed in subsection (a).

- (d) A business regulated by this section shall be in compliance with all provisions established by this Code and all applicable federal, state, or local regulations and conditions established by regulating and permitting agencies.

Section 7. Section 41-313 (Uses permitted in P district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-313. - Uses permitted in P district.

The following uses are permitted in the P district:

- (a) Professional, business, and administrative offices where no merchandise is sold.
- (b) Banks, savings and loan offices, credit unions, and mortgage and finance companies.
- (c) Travel agencies.
- (d) Medical and dental offices.
- (e) Art galleries, art and photography studios.
- (f) Museums and science centers.
- (g) Print and copy services.
- (h) Pharmacies, limited to the dispensing of goods and merchandise related to health care only, and excluding drive-through facilities.
- (i) Child care facilities.
- (j) Non-freestanding commercial and service uses which do not exceed ten (10) per cent of the floor space of the building in which they are located and which are supportive of, compatible with, and integrated into the professional and business uses on the same property, excluding drive-through facilities, and commercial uses which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- (k) Freestanding restaurants, cafes, and eating establishments, excluding drive-through facilities and excluding any eating establishment specified in section 41-313.5.

Section 8. Section 41-313.5 (Uses subject to a conditional use permit in the P district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-313.5. - Uses subject to a conditional use permit in the P district.

The following may be permitted in the P district, subject to the issuance of a conditional use permit:

- a. Convalescent hospitals, nursing homes, rest homes and extended care facilities.
- b. Hospitals.
- c. Trade and professional schools.
- d. Health clubs and gymnasiums.
- e. Recreational or entertainment uses if carried on in conjunction with any of the uses specified in clauses (e), (f) and (k) of section 41-313.
- f. Ambulance and emergency medical response services.
- g. Non-freestanding commercial and service uses which are open at any time between the hours of 12:00 midnight and 5:00 a.m., provided that such uses also meet the standards for commercial and service uses permitted under section 41-313, and further provided that such uses have less than twenty thousand (20,000) square feet of floor area.
- h. Eating establishments open at any time between the hours of 12:00 midnight and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.
- i. Banquet facilities, subject to development and operational standards set forth in section 41-199.1.
- j. Banquet facilities as an ancillary use, subject to development and operational standards set forth in section 41-199.1.
- k. Adult day care facilities.
- l. Clubs, fraternities and lodges.
- m. Bail bond uses, subject to development and operation standards set forth in section 41-323.
- n. Churches and accessory church buildings.
- o. Parking lots and parking structures subject to compliance with the requirements of Section 41-324.
- p. Medical offices operated by government, government-subsidized, not-for-profit, or philanthropic entities.

Section 9. Section 41-365 (Uses permitted in the C1 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-365. - Uses permitted in the C1 district.

The following uses are permitted in the C1 district:

- (a) Retail and service uses.

- (b) Professional, business, and administrative and business offices.
- (c) Automobile parking lots and parking structures.
- (d) Automobile sales, but excluding truck, trailer, tractor and boat sales.
- (e) Churches and accessory church buildings.
- (f) Mortuaries.
- (g) Theaters.
- (h) Hospitals, clinics, and sanitariums.
- (i) Animal hospitals and veterinaries.
- (j) Plant nurseries.
- (k) Gymnasiums.
- (l) Golf courses, both regulation and miniature, and driving ranges.
- (m) Public utility structures, including electric distribution and transmission substations.
- (n) Restaurants, cafes, and eating establishments, other than those specified in Section 41-365.5.
- (o) Schools and studios operated for commercial or public purposes.
- (p) Childcare facilities.
- (q) Service stations.
- (r) Automobile servicing.
- (s) Tattoo and/or body art establishments, subject to the development and operational standards set forth in Section 41-199.3.
- (t) Medical offices.

Section 10. Section 41-375.1 (Uses permitted in the C1-MD district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-375.1. - Uses permitted in the C1-MD district.

The following uses are permitted in the C1-MD district:

- (a) Retail and service uses, other than those specified in section 41-375.2.
- (b) Professional, business, and ~~administrative and business~~ offices where no merchandise is sold.
- (c) Medical ~~and dental~~ offices.
- (d) Theaters and cinemas.
- (e) Gymnasiums and health clubs.
- (f) Travel agencies, with no embarking or disembarking of passengers.
- (g) Art galleries and art and photography studios.
- (h) Museums and science centers.
- (i) Restaurants, cafes, and eating establishments other than those specified in section 41-375.2, excluding eating establishments with drive-thru window service.
- (j) Child care facilities.

Section 11. Section 41-424 (Uses permitted in the C5 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-424. Uses permitted in the C5 district.

The following uses are permitted in the C5 district:

- (a) Professional, business, and ~~Administrative and professional~~ offices.
- (b) Retail and service uses.
- (c) Automobile parking lots, but excluding the sale or storage of automobiles, trucks, trailers, boats, or tractors, whether new or used.
- (d) Churches, chapels, mortuaries, and theaters.
- (e) Government buildings.
- (f) Restaurants and cafes, other than those specified in Section 41-424.5.
- (g) Schools and studios operated for commercial or public purposes.
- (h) Child care facilities.

- (i) The printing, publishing, and circulation of a newspaper, including plant and office.
- (j) Two-family dwellings not exceeding one (1) unit per three thousand (3,000) square feet of lot area, provided such units front on a secondary or local street.
- (k) Gymnasiums and health clubs.
- (l) Medical offices.

Section 12. Section 41-521 (Uses permitted in the C-SM district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-521. - Uses permitted in the C-SM district.

The following uses are permitted in the C-SM district:

- (a) Retail and service uses.
- (b) Professional, business, and administrative, ~~and business~~ offices.
- (c) Public parking lots and parking structures.
- (d) Animal hospitals and veterinarians.
- (e) Gymnasiums, health clubs, and martial arts studios.
- (f) Public utility structures, including electric distribution and transmission substations.
- (g) Restaurants, cafes, coffeehouses, and eating establishments, other than those provided in section 41-522, excluding the establishment of drive through service facilities.
- (h) Schools and studios operated for commercial or public purposes.
- (i) Child care facilities.
- (j) Art galleries, museums and exhibit halls.
- (k) Plant nurseries.
- (l) Theaters.
- (m) Furniture stores.
- (n) Youth amusement rides ancillary to grocery, general merchandise and department retail store uses.

(o) Medical offices.

Section 13. Section 41-683 (Discontinuance of nonconforming building or use) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-683. - Discontinuance of nonconforming building or use.

Except as provided in section 41-683.5 and 41-683.6, if a nonconforming use is discontinued, or if a nonconforming building is vacant, unused or unoccupied for a period of twelve (12) consecutive months, any subsequent use must conform in every respect to the provisions of this chapter, and a nonconforming building may not thereafter be used or occupied until it conforms in every respect to the provisions of this chapter.

Section 14. Section 41-683.6 (Discontinuance of nonconforming noxious use) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41.683.6. - Discontinuance of nonconforming noxious use.

- (a) If a nonconforming use of a building regulated by Section 41-199.4 requires a new certificate of occupancy for any reason other than a change in business name with no change in owner of the business, legal nonconforming status shall be lost and any subsequent use must conform in every respect to the provisions of this chapter.
- (b) If a nonconforming use of a building regulated by Section 41-199.4 is in violation of any applicable federal, state, or local regulation for a period of sixty (60) consecutive days, receives three noncompliant notices from a federal, state, or local regulatory agency in a one (1) year period, or is in violation for a total of ninety (90) days in a one (1) year period, legal nonconforming status shall be lost and any subsequent use of the building shall conform in every respect to the provisions of this chapter.

Section 15. Section 41-610.5 (Wall and fence requirements in the industrial and commercial zones) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-610.5. - Wall and fence requirements in the industrial and commercial zones.

- (a) In the industrial and commercial zones, walls and fences shall not exceed ten (10) feet in height, and shall not exceed four (4) feet in height where the wall or fence extends into the required front yard or any required landscaped area.
- (b) On any lot in a C1, C2, C4, or C5 district, a concrete block wall not less than five (5) feet in height shall be erected along any property line contiguous to any residentially zoned property, except that such wall shall not exceed the height limitations prescribed in subsection (a) of this section. This requirement may be waived by the planning commission upon a finding that the abutting property is in a period of transition to nonresidential use, or that, due to special circumstances, the wall would not promote the public health, safety, or welfare.

(c) Barbed wire is not permitted as part of a wall or fence except as follows:

- (1) In the M1, M2 and LM districts: barbed wire is permitted subject only to the restrictions set forth hereinafter.
- (2) In the C1, C2, C4 and CM districts: barbed wire is permitted only in a rear yard or side yard which is not viewable from a public street and is subject to the restrictions set forth hereinafter.
- (3) Barbed wire may not be used above the height limitations set forth in subsection (a) of this section.
- (4) Barbed wire may not be used as part of any wall or fence which is adjacent to property used for residential purposes or to property which is used as a school, church, park, or youth center.

(d) Electric fences shall only be permitted in the M1 and M2 districts subject to the issuance of a minor exception pursuant to Article V of this Chapter and shall meet the requirements set forth in California Civil Code Section 835 and below:

- (1) Electric fences shall only be permitted on properties abutting a railroad right-of-way.
- (2) Electric fences shall be located at least one hundred and fifty (150) linear feet from a property used for residential or public park use, or any property zoned for such a use, or schools (K-12) as defined by Section 11362.768 of the Health and Safety Code.
- (3) Electric fences are only permitted in a rear or side yard which is not viewable from a public street.
- (4) No electric fence shall be permitted, installed, or used unless it is completely surrounded and screened by a nonelectric wall that is at least six (6) feet in height. In no case shall the electric fence encroach into any required setback area.
- (5) Electric fences may exceed the height of the surrounding nonelectric wall by up to 18 inches.
- (6) Any portion of the electric fence extending beyond the height of the surrounding nonelectric screen wall shall be angled away from the property line at a 45-degree upward slope.
- (7) Electric fences shall be set back from existing walls and fences in a manner so as to prevent accumulation of debris and to prevent unsafe conditions from forming in any resulting gap from the setback required by this subsection.

- (8) In no case shall an electric fence exceed the maximum fence height established in subsection (a).
- (9) Electric fences shall be installed to be as minimally intrusive as possible.
- (10) No electric fence shall be energized during advertised business hours.
- (11) Electric fences shall be identified by prominently placed warning signs that are legible from both sides of the fence. At minimum, the warning signs shall meet all of the following criteria:
- (A) The warning signs are placed at each gate and access point, and at intervals along the fence not exceeding thirty (30) feet.
 - (B) The warning signs are adjacent to any other signs relating to chemical, radiological, or biological hazards.
 - (C) The warning signs are marked with written warning or a commonly recognized symbol for shock, a written warning or a commonly recognized symbol to warn people with pacemakers, and a written or commonly recognized symbol about the danger of touching the fence in wet conditions.
- (12) Electric fences equipped with monitored alarm systems may require an alarm use permit.
- (13) Accessibility to emergency personnel and first responders must be maintained through the use of a knox box or other access feature as determined by the Orange County Fire Authority and the Santa Ana Police Department.
- (14) The applicant and property owner shall enter into an agreement holding the City of Santa Ana harmless from all legal actions that may arise due to the operation of the electrified fence. The agreement shall be recorded with the property and shall release the City of Santa Ana from all liability whatsoever.

Section 16. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA). Pursuant to CEQA and the CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to Sections 15060(c)(2) and 15060(c)(3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines.

Section 17. The City Council hereby declares, based on the findings set forth above, the urgency exists and that this Ordinance is necessary and appropriate to preserve the public health, safety, and welfare.

Section 18. This ordinance shall become effective immediately upon its adoption.

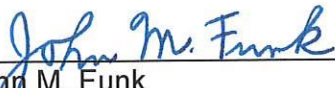
Section 19. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 20. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this 20th day of December, 2022.


Valerie Amezcua
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: 
John M. Funk
Chief Assistant City Attorney

AYES:	Councilmembers	<u>Amezcua, Bacerra, Hernandez, Lopez,</u> <u>Penaloza, Phan, Vazquez (7)</u>
NOES:	Councilmembers	<u>None (0)</u>
ABSTAIN:	Councilmembers	<u>None (0)</u>
NOT PRESENT:	Councilmembers	<u>None (0)</u>

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-3035 to be the original ordinance adopted by the City Council of the City of Santa Ana on December 20, 2022, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 12/28/22


Clerk of the Council
City of Santa Ana