

ORDINANCE NO. NS-2929

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA CREATING CHAPTER 40 OF THE SANTA ANA MUNICIPAL CODE, "REGULATION OF ADULT-USE COMMERCIAL CANNABIS RETAIL ACTIVITIES", TO REGULATE ADULT-USE RETAIL CANNABIS ACTIVITIES AND RELATED DELIVERY SERVICES, EXCEPTING MEDICINAL RETAIL, AND PROHIBITING ALL OTHER COMMERCIAL CANNABIS ACTIVITIES

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. In 1996, the California electorate approved Proposition 215, the Compassionate Use Act which allows a patient, with a doctor's recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest.

B. In 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes.

C. In 2005, the California Board of Equalization began issuing seller's permits for sales consisting of medical cannabis.

D. In 2008, the California Attorney General issued guidelines for the security and non-diversion of cannabis grown for medical use.

E. On November 4, 2014, Santa Ana voters approved Santa Ana's Medical Marijuana Regulatory Program ordinance ("Measure BB") which was codified in Chapters 18 and 21 of the Santa Ana Municipal Code. Such regulations govern medicinal marijuana and the retail sale thereof.

F. In 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA") further amended in 2016 as the Medical Cannabis Regulation and Safety Act ("MCRSA"), which established regulations and a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing.

G. In 2016, the voters of the State of California approved and passed Proposition 64 also known as the Adult Use of Marijuana Act ("AUMA").

H. In 2017, the Governor signed into law Senate Bill 94 also known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

I. Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical cannabis.

J. The City Council of the City of Santa Ana intends that nothing in this article shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law.

K. The City of Santa Ana has a compelling interest in ensuring that cannabis is not sold in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which these businesses may operate, and in providing access of cannabis to residents.

Section 2. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including by not limited to, Article IX, Section 7 of the California Constitution, the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program (California Health and Safety Code Section 11362.7 et seq.), the Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643; hereafter “MMRSA”), the Adult Use of Marijuana Act (Proposition 64), and the Medical and Adult Use Cannabis Regulation and Safety Act (SB 94; hereafter “MAUCRSA”).

Section 3. Pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, the adoption of this ordinance is exempt from CEQA review pursuant to California Code of Regulations section 15061(b)(3), which is applicable if it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment. As a result, a Notice of Exemption will be filed upon the adoption of this ordinance.

Section 4. The City hereby amends the Santa Ana Municipal Code (“SAMC”) by adding Article 1 to Chapter 40, entitled “Regulation of Adult-Use Commercial Cannabis Retail Activities” as follows:

Chapter 40

ARTICLE 1. REGULATION OF ADULT-USE COMMERCIAL CANNABIS RETAIL ACTIVITIES

Section 40-1. Purpose and Intent.

A. The purpose and intent of this article is to regulate Adult-Use commercial cannabis retail business activities, as defined in this article, in order to ensure the

health, safety and welfare of the residents of the City of Santa Ana by establishing regulations necessary for an Adult-Use cannabis retail business to obtain and maintain a Regulatory Safety Permit. Any Adult-Use retail cannabis businesses operating in the City of Santa Ana shall at all times be in compliance with current State Law and this article. All Adult-Use cannabis retail facilities shall operate in accordance with the regulations in this article and with the conditions of approval associated with the applicable zone for the parcel of real property upon which the Adult-Use cannabis retail activities are conducted. Any Adult-Use retail cannabis business shall qualify for and receive a Regulatory Safety Permit from the City of Santa Ana as provided by this article and operate only in a zone in compliance with Santa Ana Municipal Code before commencing with any Adult-Use cannabis retail activity. Any Adult-Use cannabis retail business without a Regulatory Safety Permit is in violation of this article. The regulations in this article, in compliance with the Compassionate Use Act, the Medicinal Marijuana Program Act, SB 94, AB 133, Proposition 64, and the California Health and Safety Code (collectively referred to as "State Law") do not interfere with the right to use cannabis or medicinal cannabis as authorized under State Law, nor do they criminalize the possession of Adult-Use commercial cannabis or medicinal cannabis as authorized under State Law. All other commercial cannabis activities, including but not limited to, cultivation, manufacture, distribution, and testing of cannabis are prohibited and banned in the City of Santa Ana.

B. Any person operating a medicinal marijuana collective/cooperative (as defined in Chapter 18 of this Code) as of December 14, 2017, or who has a RSP application pending to operate a medicinal marijuana collective/cooperative, and has met all of the requirements of Chapter 18, shall be allowed to apply for a Regulatory Safety Permit for the sale of Adult-Use cannabis provided that they enter into the Adult-Use Cannabis Retailer Operating Agreement with the City.

C. The Adult-Use Cannabis Retailer Operating Agreement shall be a legally binding written agreement between each Adult-Use cannabis retail business operator and the City, executed by the City Manager, or his or her designee, and in a form and substance satisfactory to the Executive Director of Planning and Building and the City Attorney, and containing those provisions necessary to ensure that the requirements of this article are satisfied.

Section 40-2. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this article. All definitions are intended to comply with those set forth by the State of California for all Adult-Use cannabis retail activities.

1. **"Applicant"** means a person who is required to file an application for a permit under this article, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of an Adult-Use cannabis retail business.

2. **“Adult-Use”** means cannabis or cannabis products that are intended to be used for non-medicinal purposes by a person 21 years of age or older.
3. **“Adult-Use Cannabis Retailer Operating Agreement”** means the written agreement entered into by and between the City and the Adult-Use cannabis retail business operator which will specify terms and conditions for operating the retail business, including local hiring and sourcing, community benefit plans, and fees to compensate for anticipated impacts on City services.
4. **“Adult-Use cannabis retail activity”** includes the delivery or sale of adult-use cannabis or cannabis product, except as set forth in section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers, excepting medicinal cannabis retail.
5. **“Adult-Use cannabis retail business”** means an Adult-Use retail business that obtains a Regulatory Safety Permit and engages in the delivery or sale of Adult-Use cannabis, or an Adult-Use cannabis product, except as related Business and Professions Code Section 19319, or Health and Safety Code Sections 11362.1 through 11362.45, as amended from time to time, excepting medicinal cannabis retail.
6. **“Authorized City of Santa Ana representative”** any police officer, city employee or agent of the city designated by the director of any city department which has the authority and responsibility to enforce provisions as set forth in this article.
7. **“Business owner”** means any of the following:
 - a. A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
 - b. The chief executive officer.
 - c. A member of the board of directors.
 - d. An individual who will be participating in the direction, control, or management of the person applying for a license.
8. **“Cannabis”** or **“cannabis product”** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis Ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

9. **"City"** means the City of Santa Ana, a charter city and municipal corporation.
11. **"Commercial vehicle"** means a vehicle as defined in Vehicle Code section 260.
12. **"Concentrated cannabis product"** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.
13. **"Customer"** means a natural person 21 years of age or over.
14. **"Delivery"** means the commercial transfer of cannabis or cannabis products from a retail cannabis business to a customer up to an amount determined to be authorized by the State of California, or any of its departments or divisions. "Delivery" also includes the use by a retail cannabis business of any technology platform owned, controlled, and/ or licensed by the retail cannabis business, or independently licensed by the State of California under the State law (as amended from time to time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed retail cannabis business of cannabis or cannabis products. For the purposes of this article, "delivery" does not include distribution or purchase of cannabis from a licensed cultivator, and cannabis products from a licensed manufacturer, for sale to a licensed cannabis retail business.
15. **"Delivery employee"** means an individual employed by a licensed retail cannabis business who delivers cannabis goods from the permitted retail premises to a qualified patient or primary caregiver or customer at a physical address.
16. **"Display"** means cannabis goods that are stored in the licensed retail business during the hours of operation.
17. **"Display case"** means a container in the licensed retail business where cannabis goods are stored and visible to customers.
18. **"Edible cannabis product"** means manufactured cannabis that is intended to be used, in whole or in part, for consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

19. **“Free sample”** means any amount of commercial cannabis goods provided to a purchaser of cannabis without cost or payment or exchange of any other thing of value.
20. **“Labor Peace Agreement”** means a legally binding agreement between an employer and a labor organization in which the employer agrees to remain neutral in the event its employees wish to vote to unionize.
21. **“License/Licensee”** means a license issued by the State and includes both an A-license (Adult-Use) and an M-license (Medicinal), and the holder of such license.
22. **“Limited-access area”** means an area in which cannabis goods are stored or held and which is only accessible to a Licensee and the Licensee’s employees and contractors.
23. **“Medicinal/Medical cannabis” or “medicinal cannabis product”**, means cannabis or a product containing cannabis, including, but not limited to, concentrates, and extractions, intended to be sold for use by qualified patients in California pursuant to the Compassionate Use Act of 1996, found at Section 11362.5 of the California Health and Safety Code. Medicinal cannabis retail is regulated by Chapter 18 and Chapter 21 of the Santa Ana Municipal Code.
24. **“Operating hours”** means the hours within a day during which a permitted commercial cannabis retail business may allow cannabis customers to enter the retail premises and purchase cannabis goods.
25. **“Ownership interest”** means an interest held by a person who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more.
26. **“Package” and “Packaging”** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. “Package” and “packaging” does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a Licensee.
27. **“Person”** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
28. **“Premises”** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or Licensee to conduct the Adult-Use cannabis retail activity.

29. **“Primary Caregiver”** has the same meaning as that term is defined in Section 11362.5 of the Health and Safety Code.
30. **“Private Residence”** shall have the same definition as that contained in Health and Safety Code section 11362.2(5) and also means a lawfully established structure, suitable for human occupancy as required by section 17922 and 17958 of the California Health and Safety Code. A recreational vehicle does not constitute a lawfully established structure for the purposes of this article.
31. **“Private security officer”** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.
32. **“Publicly owned land”** means any building or real property that is owned by a city, county, state, federal, or other government entity.
33. **“Purchase”** means obtaining cannabis goods in exchange for consideration.
34. **“Purchaser”** means a person who is engaged in a transaction with a Licensee for purposes of obtaining cannabis goods.
35. **“Qualified patient”** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.
36. **“Responsible person”** means any of the following:
- a) A person who causes a Code violation to occur.
 - b) A person who maintains or allows a Code violation to continue, his or her action or failure to act.
 - c) A person whose agent, employee, or independent contractor causes a Code violation by its failure to act.
 - d) A person who is the owner of, and/or a person who is a lessee or sub lessee with the current right of possession of, real property where property-related Code violation occurs.
 - e) A person who is the on-site manager of a business who normally works daily at the site when the business is open and is responsible for the activities of such premises. For the purposes of this article “person” includes a natural person or legal entity, and the owners, majority stakeholders, corporate officers, trustees, and general partners of a legal entity.
37. **“Retail area”** means a building, room, or other area upon the licensed cannabis retail business premises in which cannabis goods are sold or displayed.
38. **“Retail business”** means a premises where adult-use cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered,

either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

39. **“Regulatory Safety Permit (RSP)”** means a permit issued by the City pursuant to this article to an Adult-Use cannabis retail business.

40. **“Security monitoring”** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

41. **“Sell,” “sale,” and “to sell”** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

42. **“Sublet”** means to lease or rent all or part of a leased or rented property.

43. **“State”** means the State of California.

Section 40-3. Compliance with State and Local Licensing Requirements

Any Adult-Use cannabis retail business as defined by the State of California and the City of Santa Ana shall operate in conformance with all regulations and standards set forth in this article to assure that the operations of any Adult-Use cannabis retail business as defined by the State of California and allowed by the City of Santa Ana are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Adult-Use cannabis retail businesses shall be required to obtain a Regulatory Safety Permit (RSP) from the City of Santa Ana and a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Co-location of Adult-Use cannabis retail and Medicinal cannabis retail proposed on any one site shall occur only if authorized by the State and the City of Santa Ana and only if allowed pursuant to the City's Zoning Code. Any commercial cannabis activity not specifically permitted by this article is prohibited.

Section 40-4. Maximum Number of Regulatory Safety Permits

The total number of Adult-Use cannabis retail businesses in operation shall be determined based on the number of locations which have been issued a Regulatory Safety Permit by the City of Santa Ana. In no case shall the City of Santa Ana allow

more than the following commercial cannabis retail businesses to operate within City limits, regardless of the location's compliance with any other Section specified in this article:

- A. 20 total medicinal cannabis retail businesses (as regulated by Article XIII of Chapter 18);
- B. 30 total adult-use cannabis retail businesses (which could include any or all of the medicinal cannabis retail businesses).

Section 40-5. Zoning Compliance and Regulatory Safety Permit Requirements

Adult-Use cannabis retail activities are expressly prohibited in all zones in the City of Santa Ana; however, specific commercial cannabis retail businesses are allowed as a special use in the Industrial zone (M-1, M-2). The only allowed current permit type pursuant to this article is for Adult-Use commercial cannabis retail sales. Adult-Use cannabis retail businesses shall apply for and conduct business only in the appropriate zones as described in Table 40-5 and the City of Santa Ana's zoning ordinance as a requisite for obtaining a Regulatory Safety Permit. No Adult-Use cannabis retail business may operate in the City of Santa Ana without a Regulatory Safety Permit.

This Land Use Table 40-5 shall be used to determine whether a commercial cannabis business is permitted – "P", or not permitted – "X". Any Adult-Use cannabis retail business in the City of Santa Ana shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

| Commercial Cannabis Business Activities Use Type | City of Santa Ana Municipal Code Table 40-5 | | | |
|--|---|----------|----------|----------------------------|
| | Land Use Classification | M-1 Zone | M-2 Zone | Regulatory Permit Required |
| Cultivator | Indoor - Type A | X | X | NA |
| Cultivator | Indoor - Type B | X | X | NA |
| Cultivator | Indoor - Type C | X | X | NA |
| Nursery | Indoor/Outdoor - Type D | X | X | NA |
| Manufacturing | Manufacturing | X | X | NA |
| Retail | Medicinal Retail (SAMC Chapter 18) | P | P | Yes |
| Retail | Adult-Use Retail | P | P | Yes |
| Testing Laboratory | No Retail | X | X | NA |

| | | | | |
|-----------------------|--|---|---|-----------|
| Distribution | Freight/Transport | X | X | NA |
| Micro-Business | Cultivation / Retail / Manufacture Distribution | X | X | NA |

Section 40-6. Separation Requirements

(a) No Adult-Use cannabis retail business shall be located within 1,000 feet of any:

- (1) School (K-12) as defined by Section 11362.768 of the Health and Safety Code; or
- (2) Park; or
- (3) Existing Residential zone.

(b) No Adult-Use cannabis retail business shall be located within 500 feet of another retail cannabis business, except for permitted co-location.

Section 40-7. Exception

Commercial cannabis cultivation is expressly prohibited in all zones and all specific plan areas in the City); provided, however, that six (6) plants per private residence may be cultivated indoors within a legally permitted structure for personal use in compliance with all applicable local and State regulations.

Section 40-8. General Provisions for Adult-Use Cannabis Retail Activities in the City of Santa Ana

1. Regulatory Safety Permit Required

- a. Each Adult-Use cannabis retail business shall obtain a Regulatory Safety Permit (RSP).
- b. It shall be unlawful for any person, association, partnership, limited liability company, or corporation to engage in, conduct or carry on, in or upon any premises within the City of Santa Ana any Adult-Use cannabis retail business without a RSP. An Adult-use cannabis retail business shall register and obtain a RSP from the City of Santa Ana prior to operation. The RSP applicant shall pay an annual non-refundable application fee in an amount established by the City Council.
- c. A copy of the RSP shall be displayed at all times in a place visible to the public.
- d. A RSP shall be valid for a period of one (1) year from the date of issuance, unless sooner revoked. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

2. Maintenance of Records and Reporting

All records shall be maintained by the Adult-Use cannabis retail business for a period of five (5) years and shall be made available by the Adult-Use cannabis retail business to an authorized City of Santa Ana representative upon request. If they are not produced as requested the City may seek a search warrant, subpoena, or court order. In addition to all other formats that the Adult-Use cannabis retail business may maintain, these records shall be stored by the business at the location in a printed format in a fire-proof safe or filing cabinet. Any loss, damage or destruction of the records shall be reported to the Police Department within 24 hours of the loss, destruction or damage.

- a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.
- b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations section 1968.
- c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.
- d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.
- e. Contracts with other businesses regarding commercial cannabis retail activity.
- f. Permits, licenses, and other local authorizations to conduct the commercial cannabis retail activity.
- g. Security records.
- h. Proof of building ownership or landlord letter acknowledging business type.
- i. Proof of insurance.

3. Operational Standards for Adult-Use Cannabis Business Retail Activities

- a. The location, interior and exterior, shall be monitored at all times by web-based closed circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained unaltered in a secure location for a period of not less than ninety (90) days. The police department may request the recordings in connection with an investigation.

- b. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet.
- c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the police department or their designee on request.
- d. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.
- e. Adult-Use cannabis retail businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis retail activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.
- f. No physical modification of the licensed premises is allowed without written prior permission by the City of Santa Ana and payment of any additional fees required by the City.
- g. Adult-Use cannabis business retail businesses shall provide adequate off-street parking and comply with the City of Santa Ana Municipal Code parking requirements in order to service customers without causing negative impact.
- h. The Adult-Use cannabis retail business shall provide adequate disabled access parking per the requirements in the California Building Code.
- i. The Adult-Use cannabis retail business shall minimize nuisances such as trash, litter, and graffiti.
- j. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.
- k. Adult-Use cannabis retail business facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building.
- l. A permitted Adult-Use cannabis retail business entity shall have 180 days after permit issuance by the City of Santa Ana to begin initial operations, unless

otherwise approved by the Director of Planning and/or his or her designee. A permitted Adult-Use cannabis retail business entity that ceases to operate for more than 180 calendar days shall be deemed “abandoned” and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Director of Planning or designee.

- m. The Adult-Use cannabis retail business shall comply with all State regulations regarding:
 - i. Testing, labeling and storage of all cannabis products.
 - ii. Use of appropriate weighing devices.
 - iii. Electrical and plumbing regulations subject to periodic and unannounced inspections to ensure compliance.
 - iv. State deadlines for applying for a State license and receiving a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks.
- n. The Adult-Use cannabis retail business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an “A” rated insurance carrier in an amount no less than Two Million Dollars, with primary coverage, naming the City of Santa Ana as additional insured.
- o. No free samples of any cannabis or cannabis product may be distributed at any time.
- p. All agents, private security officers or other persons acting for or employed by an Adult-Use cannabis retail business shall display a laminated identification badge at least 2” X 2” in size, issued by the business. The badge, at a minimum, shall include the business’s “doing business as” name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee’s face.
- q. All private security officers acting for or employed by an Adult-Use cannabis retail business shall be licensed by the State and issued a business license from the City of Santa Ana.
- r. The Adult-Use cannabis retail business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows and the building or portion of the building where the business is located shall contain a fire-proof safe or fire proof filing cabinet and include a safety and security plan.
- s. The Adult-Use cannabis retail business shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains,

monitors and responds to the alarm system. The alarm company shall obtain a City of Santa Ana business license.

- t. The Adult-Use cannabis retail business shall provide the name and phone number of an on-site staff person to the police department and the Code Enforcement Division of the Planning and Building Agency for notification if there are operational problems with the establishment.
- u. The Adult-Use cannabis retail business must obtain and maintain a valid City business license and certificate of occupancy at all times as a condition for receiving, renewing, and maintaining its regulatory safety permit.
- v. Occupancy shall not exceed that required under the Uniform Building Code and Uniform Fire Code, and the maximum occupancy load shall be posted at the main entrance.
- w. For any Adult-Use cannabis retail business with two (2) or more employees, the business owner shall attest that he/she has entered into a labor peace agreement and provide a copy of the agreement to the City.
- x. Each Adult-Use cannabis retail business owner, operator(s) and employee(s) shall complete a criminal background check and wear a visible photo ID at all times during working hours. Owners, operators, employees, managers or volunteers may not have been convicted of, or pled guilty/no-contest to a felony or misdemeanor drug charge within the past four (4) years; nor shall they be a person required to register as a controlled substance offender pursuant to Health & Safety Code section 11590.

4. Additional Operational Standards for Adult-Use Cannabis Retail Business

- a. At all times the Adult-Use cannabis retail business is open, it shall provide at least one private security guard who is licensed, possesses a valid Department of Consumer Affairs "security guard card", and has a valid business license from the City of Santa Ana.
- b. The private security guard and adult-use retail cannabis business personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the retail business or on the property or in the parking lot.
- c. Exterior signage shall comply with Article XI of Chapter 41 of the Santa Ana Municipal Code. Interior signage or advertising may not be visible from the exterior. Retail cannabis businesses must comply with the advertising and marketing provisions of Business and Professions Code §§ 26150-26155.

- d. There shall be no on-site sales of alcohol or tobacco products, (excluding rolling papers and lighters) and no on-site consumption of food, alcohol or tobacco by patrons.
- e. Hours of operation shall be limited to: 7 a.m. to 11 p.m. daily. No licensed retail business shall be open to the public between the hours of 11:01 p.m. and 6:59 a.m. of any day.
- f. The Adult-Use cannabis retail business shall notify patrons of the following both verbally and through posting of a sign in a conspicuous location:
 - i. Secondary sale, barter or distribution of adult-use cannabis is a crime and can lead to arrest.
 - ii. That loitering on and around the retail site is prohibited by California Penal Code § 647(e) and that patrons must immediately leave the site and not consume cannabis in the vicinity of the retail site or on the property or in the parking lot.
 - iii. A warning that patrons may be subject to prosecution under federal cannabis laws.
 - iv. That the use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery.
- g. No one under the age of 21 shall be allowed to enter an Adult-Use cannabis facility unless the licensed Adult-Use cannabis facility holds a medicinal use cannabis RSP issued by the City and retail license issued by the State, and the licensed premises for the adult-use cannabis license and medicinal cannabis license are the same in accordance with Business and Professions Code section 26140.
- h. If food is distributed, the retail business shall comply with all relevant State laws, County and City ordinances pertaining to the preparation, distribution and sale of food.
- i. All Adult-Use cannabis retail businesses shall establish and implement a program to incentivize the recycling of used containers.
- j. Adult-Use cannabis retail businesses shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.
- k. Adequate signage shall clearly state who has inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.
- l. Shipments of cannabis goods may only be accepted during regular business hours.

- m. Inventory shall be secured using a lockable storage system during non-business hours.
- n. No cannabis product shall be visible from the exterior of the business.
- o. All required labelling shall be maintained on all product, as required by State law, at all times.
- p. Educational tours of adult-use retail cannabis businesses shall be allowed.

5. Additional Operational Standards for Adult-Use Cannabis Delivery Services

- a. Adult-Use cannabis deliveries may be made only from an Adult-Use cannabis retail business permitted by the City in compliance with this article, and in compliance with all State regulations.
- b. All employees who deliver cannabis shall have valid identification and a copy of the Adult-Use cannabis retail business' Regulatory Safety Permit and State license at all times while making deliveries.
- c. All Adult-Use cannabis retail businesses shall maintain proof of vehicle insurance for any and all vehicles being used to transport cannabis goods as required by State law.
- d. Deliveries may only take place during normal operating hours of the Adult-Use cannabis retail business.
- e. During delivery, the delivery employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers. The delivery request documentation shall comply with State law.
- f. A licensed delivery employee shall not leave the State of California while possessing cannabis products.
- g. An Adult-Use cannabis retail business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State.
- h. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.
- i. Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

- j. Each delivery request shall have a receipt prepared by the Adult-Use cannabis retail business with the following information:
 - i. Name and address of the Adult-Use cannabis retail business
 - ii. The name of the employee who delivered the order
 - iii. The date and time the delivery request was made
 - iv. The complete delivery addresses
 - v. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested.
 - vi. The total amount paid for the delivery including any fees or taxes.
- k. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.
- l. No cannabis delivery vehicle shall display signs, decals or any other form of advertisement with the exception of a maximum four-inch by four-inch decal.
- m. Inspections by an authorized City of Santa Ana representative may be conducted anytime during regular business hours.

Section 40-9. Adult-Use Cannabis Retail Selection Process

1. Adult-Use Cannabis Retail – Registration Application and Regulatory Safety Permit Required

a. Existing medicinal cannabis business operators, or those with pending applications for a medicinal RSP, who desire to operate an adult cannabis retail business shall apply for the commercial cannabis Regulatory Safety Permit (“RSP”) on or before December 14, 2017. The Director of Planning and Building shall review such application and issue the RSP, without consideration of the merit based point system, so long as they satisfy all other requirements of this article and Chapter 18.

b. The Regulatory Safety Permit (“RSP”) selection process will be conducted in two phases, Phase 1 (Registration Application) and Phase 2 (Regulatory Safety Permit Application). Registration Applications will be reviewed by the Director of Planning and Building or designees(s) for completeness and compliance, and if eligible, will be placed on the “Regulatory Safety Permit (“RSP”) Eligibility List” and entered into the Phase 2 Regulatory Safety Permit Application process. In Phase 2, the City of Santa Ana has established a merit based point system to objectively award permits as described in the Regulatory Safety Permit Application.

2. Phase 1 – Registration Application

- a. Following the adoption of this article, the Director of Planning and Building shall prepare Adult-Use cannabis retail business registration application forms and a

related administrative policy. Each Adult-Use cannabis retail business interested in operating pursuant to this article may submit an application together with a non-refundable application fee in an amount established by the City Council.

- b. The Registration Application period shall be thirty (30) calendar days from the date the applications are released. Following the application period, the Director of Planning and Building or designee(s) shall stop accepting applications and review all applications received in Phase 1. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "RSP Eligibility List" and shall be notified in writing whether they are a "RSP Eligible Applicant" or not. Each applicant on the RSP Eligibility List may then choose to file an application for a RSP in Phase 2.
- c. The requirements for Phase 1 include but are not limited to:
 - i. All application documents required in the City's Phase 1 Registration Application package.
 - ii. Application was submitted during the application period.
 - iii. Application forms are filled out completely.
 - iv. Business Owner(s)/Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application.
 - v. Phase 1 application fee is paid.
 - vi. A signed statement that the proposed location of the Adult-Use cannabis retail business on the application meets the zoning criteria established in this article including, but not limited to, any and all sensitive use separation criteria required by this article.
- d. The Director of Planning and Building or his or her designee(s) shall determine whether each application demonstrates compliance with the minimum requirements (above) and be placed on the RSP Eligibility List and entered into the Phase 2 application and review process.
- e. The Director of Planning and Building or his or her designee(s) shall review each application upon submission and ensure that the application is complete. Incomplete applications will be promptly rejected and the applicant shall be notified in writing of the deficiencies. The applicant shall be given an opportunity to cure any incomplete or deficient application prior to the conclusion of the application processing term, if such time period is applicable.

3. Phase 2 - Regulatory Safety Permit Application

- a. Each applicant identified on the RSP Eligibility List may choose to complete and file a RSP application to the Director of Planning and Building. The application shall be filed together with a nonrefundable fee as established by resolution of the City Council, to defray the cost of investigation required by this article.
- b. The RSP application period shall be open for thirty (30) calendar days and may run concurrently with the Phase 1 review period. Following the RSP application period, the Director of Planning and Building or his or her designee(s) shall stop accepting applications and review all applications received in Phase 2.
- c. The Director of Planning and Building or designee(s) will review all application documents required in the City's Phase 2 application package plus the additional requirements in subsection (d) below. The Director of Planning and Building or his or her designee(s) will use a merit based point system to review and rank each of applications from the most to the least points and objectively award the top applicants a RSP. A complete description of the merit based point system and all merit based point considerations shall be included with the application forms.
- d. Phase 2 requirements include but are not limited to:
 - i. All application documents required in the City's Phase 2 RSP application package.
 - ii. Phase 2 RSP application fee is paid and a comprehensive owner background check is completed.
 - iii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.
 - iv. The Planning Manager or designee has issued a Zoning Clearance documenting compliance with the following:
 - 1. The use is permitted;
 - 2. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing; and,
 - 3. No zoning violations exist on the property.

- e. The Director of Planning and Building or his or her designee(s) shall review each application upon submission and ensure that the application is complete. Incomplete applications will be promptly rejected and the applicant shall be notified that business day of the deficiencies. The applicant shall be given an opportunity to cure any incomplete or deficient application prior to the conclusion of the application processing term, if such time period is applicable.

4. Regulatory Safety Permit Annual Renewal

- a. Applications for the renewal of a permit shall be filed with the Director of Planning and Building or designee(s) at least sixty (60) calendar days before the expiration of the current permit. Temporary permits will not be issued. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.
- b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Planning and Building or designee(s) who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this article. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Planning and Building or designee(s) in order to determine whether said permit should be renewed.

5. Appeal of Denial of Regulatory Safety Permit / Denial of RSP Renewal

The City Manager or his or her designee(s) will review all Regulatory Safety Permit applications and renewal requests, along with all other relevant information, and determine if a RSP should be granted and/or renewed. If the City Manager determines that the permit shall not be granted and/or renewed, the reasons for denial shall be provided in writing to the applicant. No such denial shall become effective until the applicant for the regulatory safety permit and/or renewal has been notified in writing by certified mail of the right to appeal the denial decision pursuant to the provisions of Chapter 3 of this Code. If a timely appeal is filed, the denial shall be effective only upon decision of the City Council. Otherwise, the denial shall become effective after the timely appeal period has passed. The matter may be subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

Section 40-10. Audits.

Annual audits. No later than June 30th of every year, each licensed Adult-Use cannabis retail business shall file with the City an audit or financial review of its operations of the previous calendar year. The form and contents of the document shall be specified by the Executive Director of Finance and Management Services, or his or her designee(s).

Section 40-11. Inspection and enforcement responsibilities.

The Code Enforcement Division of the Planning and Building Agency may enter and inspect the location of any Adult-Use cannabis retail business between the hours of 7: 00 a.m. and 11:00 p.m., or at any reasonable time, to ensure compliance with this article. In addition, any police officer may enter and inspect the location of any commercial cannabis retail business and the recordings and records maintained as required by this article, except that the inspection and copying of private medical records shall be made available to the police department only pursuant to a properly executed search warrant, subpoena, or court order. It is unlawful for any owner, responsible person, landlord, lessee, member including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the commercial cannabis retail business to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed- circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

Section 40-12. Violation and enforcement.

1. Violation/enforcement.

Each and every violation of this article shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by this Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the Adult-Use cannabis retail business Regulatory Safety Permit, revocation of the certificate of occupancy for the location, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and State laws for any violations committed by the Adult-Use cannabis retail business and persons related or associated with the business.

2. Suspension or revocation.

When an authorized City of Santa Ana representative finds that any person holding a regulatory safety permit under the provisions of Chapter 40 has violated the provisions of this chapter or is found guilty of conduct which would form the basis of denial of the regulatory safety permit as set forth in Article XIII of Chapter 18 or is guilty of any violation of Article XIII of Chapter 18, s/he may revoke or suspend the regulatory safety permit. No such revocation shall become effective until the regulatory safety permit holder has been notified in writing by certified mail of the right to appeal the revocation decision pursuant to the provisions or Chapter 3 of this Code. If a timely appeal is filed, the revocation shall be effective only upon decision of the City Council. Otherwise, the revocation shall become effective after the timely appeal period has passed.

Section 40-13. Transfer of Ownership.

1. Upon the transfer of any interest in an Adult-Use cannabis retail business, the regulatory safety permit shall be null and void. Any person, firm or entity desiring to own and operate the Adult-Use cannabis retail business shall make a new application. Prior to or concurrent with the submission of said application the transferee shall obtain all required business licenses, post all required security deposits, acquire all necessary, certificates, permits or other licenses allowing the doing of any act which the person paying or holding the same would not otherwise be entitled to do; and any permit, license, variance or other instrument of approval or evidence that any conditions exist as required by any other section of this Code or by any statute or code provisions of the state must first be obtained or complied with before the doing of any act or thing for which it is required. A fee as established by resolution of the City Council shall be payable for each such application involving transfer of any interest in an existing commercial cannabis retail business. The provisions of this section shall apply to any person, firm, or entity applying for a regulatory safety permit for premises previously used as such establishment.
2. Any such transfer of any interest in an existing Adult-Use cannabis retail business or any application for an extension or expansion of the building or other place of business of the commercial cannabis retail business shall require inspection and compliance with section 40-11 of this article.
3. The owner or operator of an Adult-Use cannabis retail business shall be responsible for notifying the City of any intention to rename, change management, or convey the business to another person/entity. Notification to the City must be made a minimum of sixty (60) days prior to such transfer.

Section 40-14. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Regulatory Safety Permits pursuant to this article or the operation of any Adult-Use cannabis retail business approved pursuant to this chapter. As a condition of approval of a Regulatory Safety Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the Adult-Use cannabis facility or the prosecution of the applicant or business or its members for violation of federal or State laws;
2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;
3. Name the City as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Regulatory Safety Permit; and
5. Agree to indemnify and reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to this ordinance and/or the City's approval of a Regulatory Safety Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

Section 40-15. Fees and Taxes

All Adult-Use cannabis retail businesses shall pay applicable fees and taxes, which shall include one or more of the following:

1. **Application Fees.** The business owner shall submit a non-refundable fee to cover the cost of processing an application for the Adult-Use cannabis retail business. These fees may be divided into two fees according to Registration Application Fee (Phase 1) and RSP Application Fee (Phase 2).
2. **Regulatory Safety Permit Renewal Fees.** The business owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.
3. **Business License Taxes.** The business owner shall at all times maintain a current and valid City of Santa Ana business license and shall pay all business license taxes, deposits, charges, fees, deficiencies, penalties, interest, and other associated assessments as may be required pursuant to ordinances of the City of Santa Ana and/or the Santa Ana Municipal Code.
4. **Adult-Use Cannabis Retailer Operating Agreement Fees.**
5. **Additional cannabis-specific gross receipts, excise taxes, or other municipal tax approved by the voters of the City of Santa Ana.**
6. **All required state taxes including sales and use taxes, business/franchise or income taxes, payroll taxes, etc.**
7. **All required federal taxes.**

Section 5. 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 6. 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 21st day of November, 2017.



Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: 

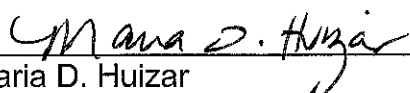
Lisa Storck
Assistant City Attorney

| | | |
|--------------|----------------|---|
| AYES: | Councilmembers | <u>Benavides, Martinez, Solorio, Tinajero,</u> <u>Villegas (5)</u> |
| NOES: | Councilmembers | <u>None (0)</u> |
| ABSTAIN: | Councilmembers | <u>Pulido, Sarmiento (2)</u> |
| NOT PRESENT: | Councilmembers | <u>None (0)</u> |

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2929 to be the original ordinance adopted by the City Council of the City of Santa Ana on November 21, 2017, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 11/24/2017



Maria D. Huizar
Clerk of the Council
City of Santa Ana