

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2022-015

**ORDINANCE OF THE CITY OF SAN LEANDRO CITY COUNCIL AMENDING
TITLE 4, CHAPTERS 4-33 AND 4-38 OF THE SAN LEANDRO MUNICIPAL CODE
PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITS AND PERMITTED
COMMERCIAL CANNABIS ACTIVITY AND AMENDING TITLE 1, CHAPTER 1-12
OF THE SAN LEANDRO MUNICIPAL CODE PERTAINING TO CITATIONS-
VIOLATIONS**

The City Council of the City of San Leandro does **FIND** as follows:

WHEREAS, San Leandro Municipal Code (“SLMC”) Chapter 4-33, Cannabis Dispensary Permits, establishes procedures by which the City of San Leandro awards permits for the dispensing of cannabis, in accordance with State Law; and

WHEREAS, SLMC Chapter 4-33, Section 4-33-100(d) defines a “dispensary” as any business or entity that “sells, distributes, dispenses, stores, exchanges, processes, delivers, makes available, cultivates, transmits and/or gives away cannabis or cannabis-infused products in the City”; and

WHEREAS, SLMC Section 4-33-300 provides that the failure to comply with the conditions imposed upon the dispensary permitting procedures is subject to the City’s nuisance abatement process and other administrative code enforcement mechanisms; and

WHEREAS, SLMC Chapter 4-38, Permitted Commercial Cannabis Activity, establishes regulations for commercial cannabis activity in the City of San Leandro; and

WHEREAS, SLMC Section 4-38-500 provides that any commercial cannabis activity in violation of Chapter 4-38 within the City of San Leandro is unlawful and shall be declared a public nuisance; and

WHEREAS, SLMC Chapter 1-12, Citation – Violations, establishes criminal, civil, and administrative remedies by which the City of San Leandro may prevent, discourage, abate, or otherwise address any violation of the Municipal Code, including nuisance abatement; and

WHEREAS, SLMC Section 1-12-140 provides administrative remedies by which the City of San Leandro may enforce separate and continuing violations; and

WHEREAS, on November 8, 2016, voters approved the Adult Use of Marijuana Act (AUMA) to allow recreational use of cannabis for persons over the age of 21. AUMA limits cultivation of cannabis plants for California residents up to 6 plants indoors and for personal use; and

WHEREAS, on June 27, 2017, the State adopted SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which established a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing

and sale of both of the following: (1) medicinal cannabis and medicinal cannabis products for patients with valid physician's recommendations; and (2) adult-use cannabis and adult-use cannabis products for adults 21 years of age and over; and

WHEREAS, local governments in California may restrict or completely ban commercial cannabis activities, except deliveries and transportation through local jurisdictions; and

WHEREAS, cannabis plants, whether grown indoors or outdoors, especially as they mature prior to harvest, may produce a distinctive odor that may be detectable far beyond property boundaries; and

WHEREAS, the strong smell of cannabis has been deemed a nuisance and can alert persons to the location of the valuable plants, creating a risk of burglary, robbery, armed robbery, and other crimes; and

WHEREAS, there has been an increased number of unauthorized cannabis cultivation in the City of San Leandro;

WHEREAS, the Council desires to amend SLMC Section 4-33-100 and Section 4-38-500 to revise the definition of “dispensary” and prohibited commercial cannabis activities to include “cultivation” in efforts to reduce the number of unauthorized cannabis cultivation in the City of San Leandro; and

WHEREAS, the Council desires to amend SLMC Section 4-33-300, Section 4-38-500, and Section 1-12-140 to add administrative remedies by which the City of San Leandro may enforce a single violation of the provisions regulating cannabis dispensary permits and commercial cannabis activity within the City of San Leandro, and consistent with the intent to allow the City to abate the nuisance created by the unauthorized cultivation of cannabis.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN LEANDRO, DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings All of the City Council’s findings above are true and correct and incorporated herein by reference.

SECTION 2. Amendments to San Leandro Municipal Code

A. The City Council hereby amends Chapter 4-33, Cannabis Dispensary Permits, Section 4-33-100, Definitions, and Section 4-33-300, Compliance with State Law and Municipal Code, to read as follows (with additions underlined and deletions in strikethrough):

“4-33-100 – DEFINITIONS

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

...

(d) "Cannabis Dispensary" or "Dispensary" shall mean a business or other entity that sells, distributes, dispenses, stores, exchanges, processes, delivers, makes available, cultivates, transmits and/or gives away cannabis or cannabis-infused products in the City. This includes an establishment that delivers cannabis and cannabis products as part of a retail sale.

...”

“4-33-300 – COMPLIANCE WITH STATE LAW AND MUNICIPAL CODE.

(a) A Dispensary must comply with all applicable state and local laws, policies, rules and regulations, including but not limited to the California Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, the San Leandro Municipal Code, the San Leandro Zoning Code, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), and the San Leandro Administrative Code including any and all rules and regulations related to the land use entitlement process, Dispensary operations, annual Dispensary permit fee, annual business license fee, and the Americans with Disabilities Act in order to be in compliance with the Dispensary permit.

The Dispensary must comply with any and all Conditions of Approval imposed upon it pursuant to any land use permit or entitlement granted. In accordance with San Leandro Municipal Code section 4-38-300, no Dispensary may cultivate cannabis within the City.

Failure to comply with the Conditions of Approval or any conditions imposed upon a Dispensary permit by the City Manager, and all applicable local and state laws or regulations, and failure to pay when due all fees may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City’s nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution as defined in San Leandro Municipal Code Chapter 1-12, including enforcement procedures set forth in section 1-12-140.”

B. The City Council hereby amends Chapter 4-38, Permitted Commercial Cannabis Activity, Section 4-38-500, Enforcement, to read as follows (with additions underlined and deletions in strikethrough):

“4-38-500 – ENFORCEMENT.

(a) Any cultivating, infusing, manufacturing, packaging, testing, or transporting commercial cannabis activity within the City and without a permit under this Chapter or in violation of this Chapter is expressly prohibited and is hereby declared to be unlawful and a public nuisance.

(b) Any person who willfully or knowingly: (1) engages in a violation of this Chapter; or (2) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this Chapter is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this Chapter.

(c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists.

(d) Any person in violation of any provision of this Chapter or who causes another person to be in violation of this Chapter shall have committed a misdemeanor. In addition, such violation may be punishable by a fine of up to One Thousand Dollars (\$1,000.00) for each violation and for each day the applicable violation continues to persist., in addition to the remedies for nuisance abatement provided in City of San Leandro Municipal Code Chapter 1-12 section 1-12-140.

(e) Any person in violation of any provision of this Chapter may be subject to an administrative fine of up to One Thousand Dollars (\$1,000.00) per offense.

(f) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City., in addition to the remedies for nuisance abatement provided in City of San Leandro Municipal Code Chapter 1-12 section 1-12-140.

(g) Any person in violation of any provision of this Chapter shall be reported to the State Bureau of Cannabis Control, or other applicable licensing authority as defined in Section 26000 of the Business and Professions Code.”

C. The City Council hereby amends Chapter 1-12, Citation - Violations, Section 1-12-140, Separate and Continuing Violations, to read as follows (with additions underlined and deletions in strikethrough):

“1-12-140 SINGLE, SEPARATE AND CONTINUING VIOLATIONS.

A single offense shall be deemed committed if a single violation of this code occurs at any unlicensed, unpermitted, unauthorized, or unapproved property. A single violation may include issuance of a written order prohibiting future violations of this Code, establishing fines for subsequent violations, and authorizing the City, or an agent or contractor of the City, to enter onto the affected property and abate the condition that is the subject of said enforcement action, and allowing recovery by the City of the costs of enforcement actions. A separate offense shall be deemed committed each day a violation of this Code occurs or continues. Any condition of real property that constitutes a violation of this Code, where the same, substantially similar, or related violations have been the subject of two (2) or more enforcement actions within any twelve (12) month period, is deemed to be a continuing violation. For the purposes of this section, “enforcement action” shall mean any notice of violation, including a warning or courtesy notice, hearing, citation, complaint or petition, or any administrative or judicial order under authority of this Chapter or pursuant to any other legal authority. Any subsequent enforcement action with respect to such continuing violation may include issuance of a written order prohibiting future violations of this Code, establishing fines for subsequent violations, and authorizing the City, or an agent or contractor of the City, to enter onto the affected property and abate the condition that is the subject of said enforcement action, and allowing recovery by the City of the costs of future enforcement actions.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 4. Effective Date

This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Cox and passed to print on the 17th day of October 2022 by the following called vote:

Members of the Council:

- AYES: Councilmembers Aguilar, Azevedo, Ballew, Cox, Lopez, Simon and Cutter (7)
- NOES: None (0)
- ABSENT: None (0)

ATTEST: _____
Kelly B. Clancy, Acting City Clerk

Passed and adopted the 7th day of November 2022 after publication on October 21, 2022 by the following called vote:

Members of the Council:

- AYES: (0)
- NOES: (0)
- ABSENT: (0)

ATTEST: _____
Kelly B. Clancy, Acting City Clerk