

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss  
CITY OF SAN JACINTO )

ORDINANCE NO. 19-11

**AN ORDINANCE OF THE CITY OF SAN JACINTO, CALIFORNIA, AMENDING TITLE 9 OF THE SAN JACINTO MUNICIPAL CODE BY AMENDING CHAPTER 9.28, AND RESCINDING CHAPTERS 9.28A, AND 9.28B, CONSISTENT WITH RECENT CHANGED IN STATE LAW CONCERNING THE ADULT USE OF MARIJUANA ACT (AUMU) AND NEW STATE CANNABIS CULTIVATION REGULATIONS APPROVED BY THE OFFICE OF ADMINISTRATIVE LAW EFFECTIVE JANUARY 16, 2019, TO REGULATE THE PERSONAL AND COMMERCIAL USE OF CANNABIS AND CANNABIS PRODUCTS.**

**WHEREAS**, the City of San Jacinto, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

**WHEREAS**, the City desires to properly regulate the use of Cannabis and Cannabis Products within the City to protect the health, safety, and welfare of its citizens and to reduce the potential for negative secondary effects of establishing such activities in San Jacinto; and

**WHEREAS**, on November 8, 2016, California voters moved to approve Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"); and

**WHEREAS**, the AUMA regulates, among other items, the use of cannabis for personal and commercial purposes, including the recreational use of cannabis by adults over 21 years of age; and

**WHEREAS**, to regulate commercial use of cannabis, the AUMA added Division 10 (Cannabis) to the Business & Professions Code, which grants state agencies the exclusive authority to "adopt and enforce local ordinances to regulate businesses licensed under [Division 10], including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under [Division 10] within the local jurisdiction"; and

**WHEREAS**, the previous emergency regulations were adopted by the California Department of Food and Agriculture in December 2017 and readopted in June 2018, and were originally issued through the emergency rulemaking process to meet the legislative mandate to open California's regulated cannabis market on January 1, 2018. The

emergency regulations are no longer in effect, now that the new regulations have been approved by OAL; and

**WHEREAS**, on January 16, 2019, the Office of Administrative Law (OAL) approved the California Department of Food and Agriculture's cannabis cultivation regulations and the regulations went into effect immediately; and

**WHEREAS**, on the 18<sup>th</sup> day of March, 2019, the Planning Commission of the City of San Jacinto conducted a duly noticed public hearing on the proposed changes and recommended that the City Council adopt such Ordinance; and

**WHEREAS**, on the 2<sup>nd</sup> day of April, 2019, the City Council of the City of San Jacinto conducted a duly noticed public hearing on the proposed changes and concluded said hearing on that date, and introduced this Ordinance; and

**WHEREAS**, on the 4<sup>th</sup> day of June, 2019, the City Council of the City of San Jacinto continued the previously duly noticed public hearing on the proposed changes and concluded said hearing on that date, and conducted a second reading of this Ordinance

**WHEREAS**, The City Council determines that this code amendment is not subject to environmental review under the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) sections 15060(c)(2), 15060(c)(3) and 15061(b)(3) in that the proposed regulations do not constitute a project under CEQA and have no potential to result in a direct or reasonably foreseeable indirect physical change in the environment.

**WHEREAS**, all legal prerequisites to the adoption of this Ordinance have occurred.

**THE CITY COUNCIL OF THE CITY OF SAN JACINTO DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Incorporation of Recitals.** The above are true and correct and are incorporated herein by reference.

**Section 2.** Title 9, Chapter 9.28 – Regulation of Marijuana Uses is hereby repealed and replaced by Chapter 9.28 – Regulation of Cannabis Use as shown in Exhibit "1", attached hereto and incorporated by reference.

**Section 3.** Title 9, Chapter 9.28A – Residential Indoor Marijuana Cultivation Permit is hereby repealed.

**Section 4.** Title 9, Chapter 9.28B – Commercial Marijuana Cultivation Permit is hereby repealed.

**Section 5. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 595 S. San Jacinto Avenue, San Jacinto, CA 92583. The custodian for these records is the City Clerk.

**Section 6. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**Section 7. Effective Date.** This Ordinance shall become effective thirty (30) days following its adoption.

**Section 8. Publication.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Jacinto, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Introduced at a regular meeting of the City Council on the 2<sup>nd</sup> day of April 2019.

**ORDINANCE NO. 19-11**

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council on the 18<sup>th</sup> day of June 2019, by the following vote:

**AYES:** Kotyuk, Lopez, Ruiz, Utz

**NAYS:** None

**ABSENT:** Ledezma

**ABSTAIN:** None

**CITY OF SAN JACINTO:**



Russell Utz, Mayor

**ATTEST:**

  
Angela Walton, City Clerk

**APPROVED AS TO FORM:  
BEST BEST & KRIEGER LLP**

  
Michael J. Maurer, City Attorney

**CERTIFICATION**

**State of California )  
County of Riverside) ss  
City of San Jacinto)**

I, Angela Walton, duly appointed City Clerk of the City of San Jacinto, do hereby certify that the foregoing Ordinance No. 19-11 was introduced at a regular meeting of the City Council of the City of San Jacinto on the 2<sup>nd</sup> day of April 2019. Ordinance No. 19-11 was passed, approved, and adopted by the City Council of the City of San Jacinto, California, at a regular meeting of the City Council held on the 18<sup>th</sup> day of June 2019:

**AYES:** Kotyuk, Lopez, Ruiz, Utz  
**NAYS:** None  
**ABSENT:** Ledezma  
**ABSTAIN:** None

WITNESS MY HAND AND OFFICIAL SEAL the 18<sup>th</sup> day of June 2019.

  
\_\_\_\_\_  
Angela Walton, City Clerk  
City of San Jacinto

**ATTACHMENTS:**

Exhibit "1" Chapter 9.28 – Regulation of Cannabis Use

## Chapter 9.28

## REGULATION OF CANNABIS USES

## Sections:

- 9.28.010 – Purpose
- 9.28.020 – Definitions
- 9.28.030 – Personal Use
- 9.28.040 – Cannabis Oriented Business Regulatory Permit Required
- 9.28.050 – Grounds for Denial of a Cannabis Oriented Business Regulatory Permit
- 9.28.060 – Limitations on City's Liability
- 9.28.070 – Compliance with State and Local Law
- 9.28.080 – Taxes and Fees
- 9.28.090 – Penalty for Violation
- 9.28.100 – Inspections and Enforcement
- 9.28.110 – Suspension or Revocation of Cannabis Oriented Business Regulatory Permit
- 9.28.120 – Appeals

**9.28.010 Purpose.**

The purpose of this chapter is to regulate personal, medical, and commercial cannabis uses. Nothing in this chapter shall preempt or make inapplicable any provision of state or federal law. No cannabis use will be permitted except as expressly stated under this code. (Ord. 16-10 § 2 (part))

**9.28.020 Definitions.**

For purposes of this chapter, the definitions listed in Chapter 17.435 as well as the following shall apply:

- A. "Cannabis Oriented Business" has the same meaning as in Chapter 17.435. "*Cannabis Oriented Business*" means any business which cultivates, manufactures, produces, distributes, sells, or tests cannabis or cannabis products, whether wholesale or retail, for medical or recreational purposes."
- B. "Directly engage" in cultivation means to handle the marijuana plants in the cultivation process.
- C. "Indirectly engage" in cultivation means to assist, even if not handling marijuana plants, in the cultivation process.
- D. "Personal use" means to possess, use, or give away to persons 21 years of age or older without any compensation whatsoever.

- E. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
- F. Any term defined in this section also means the very term as defined in the California Business and Professions Code or the California Health and Safety Code, unless otherwise specified. (Ord. 16-10 § 2 (part))

**9.28.030 Personal Use.**

- A. For purposes of this section, personal recreational use, possession, purchase, transport, or dissemination of cannabis shall be considered unlawful in all areas of the city to the extent it is unlawful under California law except as provided herein.
- B. **Outdoor Cultivation.** A person may not plant, cultivate, harvest, dry, or process cannabis plants outdoors in any private residence or accessory structure in the city.
- C. **Indoor Cultivation.** An individual may cultivate cannabis for personal use only within a residential structure or other fully enclosed and locked accessory structure located entirely on residential property owned or legally possessed by him or her, pursuant to the following regulations:
  - 1. The cultivation of cannabis may take place only inside a lawfully existing and fully enclosed and secure private residence, or inside a lawfully existing and fully enclosed and secure accessory structure to a private residence that is located on the same parcel as the private residence. No cultivation shall occur outside of a fully enclosed structure.
  - 2. The primary use of the property shall be for a residence and cultivation is to be considered an incidental use.
  - 3. All areas used for cultivation of cannabis shall comply with all Buildings Codes and Regulations of the San Jacinto Municipal Code and the State of California, as well as all other applicable laws.
  - 4. Cannabis cultivation shall be limited to six cannabis plants per private residence, regardless of whether the cannabis is cultivated inside the residence or in an accessory structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence.
  - 5. There shall be no exterior evidence of cannabis cultivation occurring on the parcel.
  - 6. No more than one room in any structure may be used for cultivation.
  - 7. No room or area in a structure that is used for cultivation shall be accessible to persons under 21 years of age.

8. The cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts; and shall not be conducted in a manner that is hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.
9. Cultivation shall be limited exclusively for the personal use of lawful residents of the property on which the cultivation is occurring.
10. The residence must not be substandard or uninhabitable.
11. The residence must not include more than one cultivation area.
12. The residence must not be used for a day care, a youth center, a tutoring or after-school program, or other similar business, program, or activity that involves persons under twenty-one (21) years of age utilizing the residence.
13. The cultivation area must be used exclusively for residential indoor cannabis. The cultivation area may not be shared with any space used for sleeping, cooking, eating, bathing, or other residential activities.
14. The cultivation area must not be used or prepared in a manner to cultivate more than six cannabis plants.
15. The following chemicals may not be used or stored in the cultivation area:
  - i. Explosive gases, including, but not limited to: butane, propane, xylene, styrene, gasoline, kerosene, oxygen (O<sub>2</sub>), or hydrogen (H<sub>2</sub>).
  - ii. Dangerous poisons, toxins, or carcinogens, including, but not limited to: methanol, iso-propyl alcohol, methylene chloride, acetone, benzene, toluene, or tri-chloro-ethylene.

D. Violations:

1. Any violation of any of the provisions of this Section is unlawful and a public nuisance.
2. Any violation of any of the provisions of this Section shall constitute a misdemeanor violation and upon conviction thereof any violation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.



3. The city may issue an administrative citation, and/or assess an administrative fine of up to one thousand dollars (\$1,000.00) for each violation of this Section.
4. A separate offense occurs for each day any violation of this Section is continued and/or maintained. A separate offense occurs for each cannabis plant that is cultivated without a permit.
5. The remedies provided herein are not to be construed as exclusive remedies, and in the event of violation, the city may pursue any proceedings or remedies otherwise provided by law. (Ord. 16-10 § 3 (part))

E. Section 9.28.040 – 9.28.120 shall not apply to Personal Use regulated under this Section.

**9.28.040 Cannabis Oriented Business Regulatory Permit Required.**

- A. The establishment or operation of any business of commercial cannabis activity, other than a permitted activity associated with a valid Cannabis Oriented Business Permit is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation.
- B. Prior to initiating operations and as a continuing requisite to operating a Cannabis Oriented Business, the applicant wishing to operate a Cannabis Oriented Business shall first obtain a Cannabis Oriented Business Regulatory Permit. An application for a Cannabis Oriented Business Regulatory Permit shall include, but shall not be limited to, the following information:
  1. The name, address and phone number of the applicant. The applicant shall notify the City within 30 days of changes to the address or phone number.
  2. The name, address and phone number of the Owner(s), as defined in Section 5003 – Designation of Owner of Division 42 – Bureau of Cannabis Control of Title 16 – California Code of Regulations.
  3. The name, address and phone number of every person who is managing or is otherwise responsible for the activities of the Cannabis Oriented Business.
  4. A listing of all Cannabis Oriented Business Permits for which the regulatory permit is associated with.
  5. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

6. The name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom the city can provide notice if there are operating problems associated with the Cannabis Oriented Business or refer members of the public who may have any concerns or complaints regarding the operation of the Cannabis Oriented Business.
  7. Any such additional and further information as is deemed necessary by the city manager or designee to administer this section.
- C. Throughout the period in which a Cannabis Oriented Business Regulatory Permit remains active, a Cannabis Oriented Business shall remain in full compliance with the provisions of this code, including the further requirements enumerated in the development code.
  - D. The Cannabis Oriented Business shall remain in compliance with all requirements of state law related to the operation of the Cannabis Oriented Businesses, including but not limited to, the ongoing maintenance of an active state permit, in good standing, for the particular cannabis related activity or activities that the Cannabis Oriented Business engages in.
  - E. A Cannabis Oriented Business Regulatory Permit is non-transferable from one person to another.
  - F. All Regulatory Permits shall expire on December 31<sup>st</sup> of each year and must be renewed annually concurrently with the Business License renewals.
  - G. All applicants for a Cannabis Oriented Business Regulatory Permit for a Cannabis Oriented Business, including any management personnel who are responsible for the day-to-day operations and activities of the cannabis facility, shall be required to submit to, and successfully pass, a fingerprint-based criminal history records check conducted by the City of San Jacinto between 30 and 60 days prior to operation of the Cannabis Oriented Business.
  - H. Based on the information set forth in the application, the city manager or designee may impose reasonable terms and conditions on the proposed operations of the Cannabis Oriented Business in addition to those specified in this chapter.
  - I. Prior to operation of a Cannabis Oriented Business, the Regulatory Permit holder shall provide an approved State License for each business/operation associated with the Regulatory Permit. The Regulatory Permit shall be considered conditional unless and until the applicant provides its State License(s).

**J. Dispensaries and Microbusinesses.**

1. Prior to issuance of a Regulatory Permit, the Cannabis Oriented Business and Regulatory Permit holder shall have received a passing grade (70% or greater) on the Merit Based Rating System established by Resolution by the City Council.
2. Prior to the operation of the Cannabis Oriented Business, the Merit Based Rating System certificate shall be posted in a conspicuous place and shall remain in place during all business hours.

**9.28.050 Grounds for Denial of a Cannabis Oriented Business Regulatory Permit.**

The city manager or designee shall reject an application upon making any of the following findings:

- A. The applicant made false or misleading statements or omissions on the application or during the application process;
- B. The applicant is not the legal representative of the Cannabis Oriented Business;
- C. The applicant has not, or cannot, obtain a Cannabis Oriented Business Permit.
- D. The applicant, or any person who is managing or is otherwise responsible for the activities of the Cannabis Oriented Business, has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, with the exception of medical cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996;
- E. The applicant's application failed to meet the requirements of this chapter or of any other legal requirement that is a prerequisite to issuance of a permit. (Ord. 16-10 § 3 (part))
- F. The Dispensary or Microbusiness failed to receive a passing score (70%) on the Merit Based Rating System.

**9.28.060 Limitations on City's Liability.**

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any Cannabis Oriented Business Regulatory Permit pursuant to this chapter or the operation of any Cannabis Oriented Business approved pursuant to this chapter.

As a condition of approval of a Cannabis Oriented Business Regulatory Permit as provided in this chapter, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying the city from any claims, damages, etc., associated with the operation of the commercial cannabis facility;
- B. Maintain insurance in the amounts and of the types that are acceptable to the city manager or designee;
- C. Name the city as an additionally insured on all city required insurance policies;
- D. Agree to defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a Cannabis Oriented Business Regulatory Permit; and
- E. Agree to 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 the city's approval of a Cannabis Oriented Business Regulatory 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. (Ord. 16-10 § 3 (part))

**9.28.070 Compliance with State and Local Law.**

- A. All Cannabis Oriented Business Facilities shall comply fully with all of the applicable restrictions and mandates set forth in state law. Any documents, reports, filing, financial statements, applications, or other records that are required to be maintained or prepared under any state law regulating commercial cannabis cultivation, manufacture, transportation, distribution, or other activities authorized by the permit shall be maintained by the applicant and made available to the city. At all times that a permit is required by state law for any cannabis related activity, the Cannabis Oriented Business Regulatory Permit holder shall be the named holder of all relevant state licenses.
- B. All Cannabis Oriented Business Facilities shall comply fully with all laws of the city of San Jacinto. Facilities shall not supply, sell, transport, or deliver cannabis products to manufacturers, dispensaries, shops, or other retail locations within the city of San Jacinto that do not have a Cannabis Oriented Business Permit issued by the City of San Jacinto.

**9.28.080 Taxes and Fees.**

Nothing herein shall prevent the city from establishing any lawful fees, taxes, or other charges related to Cannabis Oriented Businesses or the permits for such uses.

**9.28.090 Penalty for Violation.**

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this chapter. Every act prohibited

or declared unlawful, and every failure to perform an act made mandatory by this chapter, shall be a misdemeanor, which may be reduced to an infraction at the discretion of the city attorney or the district attorney. In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of any of the provisions of this chapter is declared a public nuisance and may be abated as provided in Chapter 1.28 and/or under state law.

**9.28.100 Inspections and Enforcement.**

- A. Recordings made by security cameras at any Cannabis Oriented Business shall be made immediately available to the city manager or designee upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.
- B. The city manager or designee shall have the right to enter all Cannabis Oriented Business Facilities from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter.
- C. Operation of the Cannabis Oriented Business in noncompliance with any conditions of approval or the provisions of this chapter shall constitute a violation of the municipal code and shall be enforced pursuant to the provisions of this code. Operation of the Cannabis Oriented Business in noncompliance with any conditions of approval or the provisions of this chapter may result in revocation of a Cannabis Oriented Business Regulatory Permit pursuant to subsection D of this section.

**9.28.110 Suspension or Revocation of Cannabis Oriented Business Regulatory Permit.**

The city manager or designee may summarily suspend or revoke a Cannabis Oriented Business Regulatory Permit if any of the following, singularly or in combination, occur:

- A. The city manager or designee determines that the Cannabis Oriented Business has failed to comply with this chapter or any condition of approval or a circumstance or situation has been created that would have permitted the city manager or designee to deny the permit under the terms of this chapter;
- B. Operations cease for more than ninety (90) calendar days, including during change of ownership proceedings;
- C. Ownership is changed without securing a Cannabis Oriented Business Regulatory Permit;
- D. The Cannabis Oriented Business fails to maintain two hundred forty (240) continuous hours of security recordings;
- E. The Cannabis Oriented Business fails to allow inspection of the security recordings, the activity logs, or the premises by authorized city officials;

- F. The cannabis facility has engaged in the supply, sale, delivery, or distribution of cannabis products to individuals or retail establishments in the city of San Jacinto not licensed by the City of San Jacinto or has otherwise violated an ordinance or law established by the city of San Jacinto; or
- G. The Cannabis Oriented Business has failed to remit or pay any tax, fee, or other consideration owed to the city.
- H. The Regulatory Permit holder has failed to provide the City with copies of all State Permit documents, security plans, and other requirements outlined in this Chapter within 30 days of receiving such documents.
- I. The Cannabis Oriented Business has failed to provide the City with copies of updated security plans within 30 days of receiving approval from the State.

#### **9.28.1150 Automatic Revocation or Suspension.**

The regulatory permit shall be deemed to be immediately revoked or suspended, or any similar action, upon the revocation or suspension, or similar action, of the State License. There shall be no right of appeal for an automatic revocation or suspension, or similar action.

#### **9.28.120 Appeals.**

Any decision regarding the denial, suspension or revocation of a Cannabis Oriented Business Regulatory Permit may be appealed to the city council pursuant to the provisions set forth in Chapter 2.08. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision. The city council may, in its sole discretion, delegate consideration of the appeal to one or more hearing officers. (Ord. 16-10 § 3 (part))