

Meeting Date: 4/14/2015

Report Type: Consent

Report ID: 2015-00310

Title: (Pass for Publication) Ordinance Amending Sacramento City Code to Update and Comply with Current Federal and State Laws

Location: Citywide

Recommendation: 1) Review an Ordinance Amending Sacramento City Code Section 1.28.010 Relating to Penalties; Repealing Section 9.04.030 Relating to Loitering; Repealing Chapter 9.08 Relating to Drug Offenses; Adding Chapter 9.08 Relating to Public Consumption of Marijuana; Repealing and Adding Section 9.44.210 Relating to Criminal Penalties; and Repealing Section 9.44.270 Relating to the Mistreatment Of Animals; and 2) pass for publication the ordinance title as required by Sacramento City Charter § 32(c), with the Ordinance to be adopted on April 23, 2015.

Contact: Michael Benner, Senior Deputy City Attorney (916) 808-5346, Office of the City Attorney

Presenter: None

Department: City Attorney

Division: City Attorney

Dept ID:

Attachments:

1-Description/Analysis

2-Background

3-Ordinance (Redline)

4-Ordinance (Clean)

City Attorney Review

Approved as to Form

Gustavo Martinez

3/27/2015 3:53:43 PM

Approvals/Acknowledgements

Department Director or Designee: Sandra Talbott - 3/24/2015 4:50:10 PM

Description/Analysis

Issue Detail: Periodically, the City Attorney's Office compiles a list of certain sections of the Sacramento City Code ("SCC") that need to be repealed or amended due to constitutional infirmities, preemption by state law issues, or for the sake of clarity.

Policy Considerations: Reviewing the Sacramento City Code to repeal or amend unclear, preempted, or unconstitutional sections of the Code is consistent with the City Attorney's Office mission of providing the highest quality legal services to the City of Sacramento.

Economic Impacts: None.

Environmental Considerations: This action is not a "project" subject to CEQA because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, §§ 15002(d), 15379, 15601(b)(3).)

Sustainability: Not applicable.

Commission/Committee Action: On March 10, 2015, the Law and Legislation Committee approved staff's recommendation and authorized the ordinance to go to the City Council for review and approval.

Rationale for Recommendation: The City Attorney's Office has reviewed the sections of the City Code that are the subject of this report. These sections need to be amended or repealed for clarity and for consistency within the Code, State law and the U.S. Constitution. These revisions are being requested to implement these needed changes.

Financial Considerations: Modification of Chapter 9.44 to bring it in line with State law regarding fines may have minimal impact on the fines collected, as Animal Care Services uses mainly Administrative Penalties to enforce Chapter 9.44.

Local Business Enterprise (LBE): Not applicable.

Background:

Sections to be Repealed

SCC § 9.04.030 – Loitering; Unconstitutional

SCC Chapter 9.08, Articles I and II related to loitering related to drug activities and display of drug paraphernalia; preempted by State law

SCC § 9.44.210 – Criminal punishment for animal violations; repealed and re-adopted to comply with State law limits on infraction punishments.

SCC § 9.44.270 – Mistreatment of animals; preempted by State law

Sections to be Amended

SCC § 1.28.010 (D)(2)(c)(iv) – Service of Administrative Penalties; Amended for consistency within the City Code.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted **00/00/2015**

AN ORDINANCE AMENDING SACRAMENTO CITY CODE SECTION 1.28.010, RELATING TO PENALTIES; REPEALING SECTION 9.04.030, RELATING TO LOITERING; REPEALING CHAPTER 9.08, RELATING TO DRUG OFFENSES; ADDING CHAPTER 9.08, RELATING TO PUBLIC CONSUMPTION OF MARIJUANA; REPEALING AND ADDING SECTION 9.44.210, RELATING TO CRIMINAL PENALTIES; AND REPEALING SECTION 9.44.270, RELATING TO THE MISTREATMENT OF ANIMALS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

A. Subsection D.2.c.iv of section 1.28.010 of the Sacramento City Code is amended to read as follows:

iv. ~~In the event thelf a~~ violation relates to an event occurring on, or a condition existing on a property in the city, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.

B. Except as amended by subsection A above, all provisions of section 1.28.010 remain unchanged and in full effect.

SECTION 2

Section 9.04.030 of the Sacramento City Code is repealed.

~~9.04.030 Loitering.~~

~~_____A._____ For purposes of this section, "loitering" means entering and remaining on any premises specified by this section under such circumstances that a reasonable person would conclude that the person who has entered and remains on such premises:~~

~~_____1._____ Does not have a purpose legitimately connected with the business or activity of the legal occupant of the premises; and~~

~~_____ 2. _____ Does not have a bona fide intent to exercise a constitutional right;
and~~

~~_____ 3. _____ Is causing public inconvenience or annoyance.~~

~~_____ B. _____ It is unlawful and a violation of this section if any person:~~

~~_____ 1. _____ Loiters in any bus depot, railway station, airport or on the grounds
of any common carrier, or in a place open to the public immediately adjacent to
any bus depot, railway station, airport, or common carrier, including any ancillary
food service premises maintained primarily for the convenience of the customers
of said carrier, except those parts of such depot, station, airport, or grounds
thereof that are occupied by business other than that of a common carrier or
ancillary food service; and~~

~~_____ 2. _____ Such person refuses to comply with the lawful order of the police,
owner, occupant or agent thereof to leave the premises or, after complying with
such lawful order, such person returns within forty-eight (48) hours and resumes
loitering as defined above.~~

SECTION 3

Chapter 9.08 of the Sacramento City Code is repealed.

~~Chapter 9.08 DRUG OFFENSES~~

~~Article I. Loitering Related to Drug Activities~~

~~9.08.010 Legislative findings and purpose.~~

~~_____ A. _____ Like many other communities across this nation, the city is
experiencing an increase in the street sales of amphetamines, heroin, LSD,
marijuana, rock cocaine, and other controlled substances as defined in the
California Health and Safety Code.~~

~~_____ B. _____ It is the intent of the city council to assist law enforcement
personnel of the city in abating the sale of controlled substances, and in reducing
the impact of such illegal activity on the city's quality of life. The city council finds
that the sale of controlled substances constitutes a continuing public nuisance
that undermines the public health, safety, and welfare. Illegal drug sales
encourage criminal and gang-related activity, depreciate property values,
damage to the city's image, business environment, and economic development,
and breed fear, discontent, and pessimism in the community. (Prior code §
26.02.101)~~

~~9.08.020 Definitions~~

~~_____ As used in this article, the following terms have the meanings respectively
ascribed to them:~~

~~“Loiter” means to delay or linger on any premises specified by this article under such circumstances that a reasonable person would conclude that the person who delays or lingers on such premises:~~

~~1. Does not have a legitimate purpose connected with the lawful business or activity of the legal occupant of the premises; and~~

~~2. Does not have a bona fide intent to exercise a constitutional right;~~

~~3. Has the intent to commit a crime as opportunity may be discovered.~~

~~“Public place” means an area open to the public or exposed to public view, and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not) and buildings open to the general public, including those that serve food or drink, provide entertainment, or are engaged in selling products or goods to the public, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.~~

~~“Validated” gang member means a person who satisfies at least two of the following seven criteria:~~

~~1. Admits his or her membership in a gang;~~

~~2. Is tattooed with gang logo or names;~~

~~3. Is repeatedly in the company of validated gang members;~~

~~4. Is involved in gang-related crimes with other validated gang members;~~

~~5. Is named by two or more validated gang members as being a member of their gang;~~

~~6. Is in a photo that indicates gang affiliation;~~

~~7. Identifies himself or herself as a gang member in county jail, California youth authority, or prison correspondence. (Prior code § 26.02.102)~~

~~9.08.030 Acts prohibited.~~

~~It is unlawful for any person to loiter in a public place with the intent to commit an offense specified in Division 10, Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code. (Prior code § 26.02.103)~~

~~9.08.040 Circumstances manifesting intent.~~

~~_____ A. _____ Among the circumstances that should be considered in determining whether a person has the requisite intent to engage in drug-related activity in violation of Division 10, Chapter 6 (commencing with Section 11350)~~

~~and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code are that the person:~~

~~_____ 1. _____ Has been convicted in any court in this state, within five years prior to arrest under this chapter, of a violation involving the use, possession or sale of any of the substances referred to in Division 10, Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code;~~

~~_____ 2. _____ Has been convicted, within five years prior to arrest under this article, of a violation of any laws of a political subdivision of this state or of any laws of any other state if such laws are substantially similar to the provisions regulating the use, possession or sale of any of the substances referred to in Chapters 6 (commencing with Section 11350) and 6.5 (commencing with Section 11400) of the California Health and Safety Code;~~

~~_____ 3. _____ Is currently subject to an order prohibiting his or her presence in a high drug activity geographic area;~~

~~_____ 4. _____ Is a “validated” gang member;~~

~~_____ 5. _____ Is under the influence of a controlled substance;~~

~~_____ 6. _____ Possesses “drug paraphernalia” as defined in Article II of this chapter;~~

~~_____ 7. _____ Acts as in concert with others to alert them upon the arrival of law enforcement officers;~~

~~_____ 8. _____ Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity;~~

~~_____ 9. _____ Uses signals or language indicative of summoning purchasers of illegal drugs;~~

~~_____ 10. _____ Repeatedly beckons to, stops, attempts to stop, or engages in conversations with pedestrians or motor vehicle occupants indicative of summoning purchasers of illegal drugs;~~

~~_____ 11. _____ Repeatedly passes to, or receives from, pedestrians or motor vehicle occupants money, small objects, or packages;~~

~~_____ 12. _____ Repeatedly approaches occupants of motor vehicles and either reaches into the vehicle or engages in hand-to-hand contact with the occupants of the vehicle.~~

~~_____ B. _____ The circumstances set forth in subsection A of this section should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity.~~

~~_____ C. _____ No one circumstance or combination of circumstances set forth in subsection A of this section is necessarily determinative of intent. Intent must be determined by evaluating the particular circumstances of each case. (Prior code § 26.02.104)~~

9.08.050 Violation - Penalty

~~_____ A violation of any provision of this article is a misdemeanor, punishable as set forth in the California Penal Code. (Prior code § 26.02.106)~~

Article II Drug Paraphernalia

9.08.060 Definitions.

~~_____ As used in this article, the following terms shall be ascribed the following meanings:~~

~~_____ “Business” means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.~~

~~_____ “Display” means to show to a patron or have in a manner so as to be available for viewing.~~

~~_____ “Distribute” means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. “Distribute” includes both sales and gifts.~~

~~_____ “Controlled substance” means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive, as said sections now exist or may hereafter be amended, renumbered or added to in any way.~~

~~_____ “Drug paraphernalia” means all equipment, products and materials of any kind which are intended by a person charged with a violation of this article for use in manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the state of California. “Drug paraphernalia” includes, but is not limited to, all of the following:~~

- ~~1. Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;~~
- ~~2. Isomerization devices intended for use in increasing the potency of any species of plant which is a controlled substance;~~
- ~~3. Testing equipment intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;~~
- ~~4. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose intended for use in cutting controlled substances;~~
- ~~5. Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;~~
- ~~6. Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;~~
- ~~7. Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;~~
- ~~8. Containers and other objects intended for use in storing or concealing controlled substances; and~~
- ~~9. Objects intended for use in injecting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - ~~a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,~~
 - ~~b. Water pipes,~~
 - ~~c. Carburetion tubes and devices,~~
 - ~~d. Smoking and carburation masks,~~
 - ~~e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,~~
 - ~~f. Miniature cocaine spoons, and cocaine vials,~~
 - ~~g. Chamber pipes,~~
 - ~~h. Carburetor pipes,~~~~

~~_____ i. _____ Air-driven pipes,~~

~~_____ j. _____ Bong.~~

~~_____ In determining whether an object is “drug paraphernalia,” a court or other authority may consider in addition to all other logically relevant factors, the following:~~

~~_____ 1. _____ Statements by an owner or by anyone in control of the object concerning its use;~~

~~_____ 2. _____ The proximity of the object to controlled substances;~~

~~_____ 3. _____ The existence of any residue of controlled substances on the object;~~

~~_____ 4. _____ Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver to persons whom he knows intend to use the object to facilitate a violation of the laws of the state of California relating to controlled substances;~~

~~_____ 5. _____ Descriptive materials or instructions, written or oral, accompanying the object which explain or depict its use;~~

~~_____ 6. _____ National and local advertising concerning its use;~~

~~_____ 7. _____ The manner in which the object is displayed for sale, including its proximity to other objects falling within the definition of drug paraphernalia;~~

~~_____ 8. _____ Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;~~

~~_____ 9. _____ The existence and scope of legitimate uses for the object in the community; and~~

~~_____ 10. _____ Expert testimony concerning its use.~~

~~_____ “Person” means a natural person or any firm, partnership, association, corporation, or cooperative association. (Prior code § 70.01.100)~~

9.08.070 Display of drug paraphernalia

~~_____ A. _____ Except as authorized by law, it is unlawful for any person to maintain or operate any business knowing or under circumstances where he or she should reasonably know that drug paraphernalia is displayed at such business.~~

~~_____ B. _____ Except as authorized by law, it is unlawful for any person who is the owner of a business, an employee thereof or who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business. (Prior code § 70.01.101)~~

9.08.080 Distribution of drug paraphernalia

~~_____ Except as authorized by law, it is unlawful for any person to distribute to another person drug paraphernalia, knowing or under circumstances where he or she should reasonably know that it will be used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the state of California. (Prior code § 70.01.102)~~

9.08.090 Exceptions

~~_____ A. _____ This article shall not apply to any of the following:~~

~~_____ 1. _____ Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist or veterinarian.~~

~~_____ 2. _____ Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes drug paraphernalia to his or her patient.~~

~~_____ 3. _____ Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia.~~

~~_____ B. _____ No provision of this article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the state of California or require any act which is prohibited by any law of the state of California. Nor shall any provision of this article be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the state of California. (Prior code § 70.01.103)~~

9.08.100 Violation - Penalty

~~_____ A. _____ Misdemeanor. Any person who violates any provision of this article is guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding five hundred dollars (\$500.00). A person who violates the provisions of Section 9.08.080 of this chapter shall be deemed to be guilty of a separate offense for each day or portion thereof, during which the violation continues.~~

~~_____ B. _____ Public Nuisance. A violation of any provision of this article is declared to be a public nuisance subject to abatement pursuant to Section 731 of~~

~~the Code of Civil Procedure or pursuant to the procedures specified in Title 8 of this code. (Prior code § 70.01.104)~~

~~Article III Public Consumption of Marijuana~~

~~9.08.110 Findings and purpose~~

~~On November 5, 1996, the voters of the state of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code (the "Compassionate Use Act"). That section permits, for purposes of state law, the limited use, cultivation and possession of marijuana for specified medical purposes. However, the use, cultivation and possession of marijuana for other purposes remains illegal within this state and is presently illegal under federal laws.~~

~~While recognizing the enactment of Health and Safety Code Section 11362.5, the city council believes that the open and public use of marijuana, which might otherwise be permitted by that section, is injurious to public health in many of the same ways that tobacco consumption is injurious to public health, due to exposure to second-hand smoke. Further, the open and public consumption of marijuana is potentially harmful to youths in that it sets a deleterious example regarding the use of illicit drugs. Therefore, the city council believes it is necessary to balance the uses of marijuana permitted by Section 11362.5 with the concerns for public health and safety. (Ord. 99-027 § 2; Ord. 99-001 § 1; prior code § 37.04.400)~~

~~9.08.120 Places where consumption of marijuana is prohibited.~~

~~A. Notwithstanding California Health and Safety Code Section 11362.5 or any preceding provisions of this chapter and Chapter 8.80 of this code, the consumption of marijuana, by or through "smoking," as defined in Section 8.80.030 of this code, is prohibited at any of the following locations to which members of the public have access:~~

~~1. Upon or within one thousand (1,000) feet of the grounds of any school or park;~~

~~2. In or within one hundred (100) feet of any building or facility to which members of the public have access, except in a health facility or clinic; or~~

~~3. Within one hundred (100) feet of any other person, other than a "primary caregiver," as that term is defined in California Health and Safety Code Section 11362.5(e).~~

~~B. As used in this section, the following definitions shall apply:~~

~~1. "School" means any institution of learning for minors, whether public or private, including any special institution of education or any nursery, elementary, middle, junior high, or senior high school. This definition does not include a vocational or professional institution of higher education, including a junior or community college, college or university.~~

~~2. "Park" means and includes all parks, parkways, malls, plazas, greenbelts, gardens, lakes and other property owned by the city and used, operated or maintained for recreational purposes.~~

~~3. "Health facility" means a facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, including convalescence and rehabilitation, or for any one of those purposes, for one or more persons, to which the persons are admitted for a twenty-four (24) hour stay or longer.~~

~~4. "Clinic" means an organized outpatient health facility which provides medical, surgical, dental, optometric, podiatric, or psychological advice, services, or treatment to patients who remain less than twenty-four (24) hours. (Ord. 99-027 § 2; Ord. 99-001 § 1; prior code § 37.04.401)~~

9.08.130 Violation – Penalty

~~A. First Violation. Any first violation of this chapter by a person shall be an infraction, and shall be subject to punishment as provided in California Government Code Section 36900(b).~~

~~B. Second and Subsequent Violations. Except as provided below, any second and subsequent violation of this chapter by a person shall be a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) imprisonment in county jail for a term not to exceed six months, or both such fine and imprisonment.~~

~~Exception: Notwithstanding the above, a violation of this chapter is an infraction when the complaint is filed charging the offense as an infraction, in which case the violation shall be subject to and punishable as provided in California Government Code Section 36900(b). (Ord. 99-027 § 2; Ord. 99-001 § 1; prior code § 37.04.402)~~

9.08.140 Nonexclusivity

~~Nothing in this chapter shall limit or preclude the enforcement of other applicable laws. (Ord. 99-027 § 2; Ord. 99-001 § 1; prior code § 37.04.403)~~

SECTION 4

Chapter 9.08 of the Sacramento City Code is added:

Chapter 9.08 PUBLIC CONSUMPTION OF MARIJUANA

9.08.010 Findings and purposes.

On November 5, 1996, the voters of the state of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code (the "Compassionate Use Act"). That section permits, for purposes of state law, the limited use, cultivation and possession of marijuana for specified medical purposes. However, the use, cultivation and possession of marijuana for other purposes remains illegal within this state and is presently illegal under federal laws.

While recognizing the enactment of Health and Safety Code Section 11362.5, the city council believes that the open and public use of marijuana, which might otherwise be permitted by that section, is injurious to public health in many of the same ways that tobacco consumption is injurious to public health, due to exposure to second-hand smoke. Further, the open and public consumption of marijuana is potentially harmful to youths in that it sets a deleterious example regarding the use of illicit drugs. Therefore, the city council believes it is necessary to balance the uses of marijuana permitted by Section 11362.5 with the concerns for public health and safety.

9.08.020 Places where consumption of marijuana is prohibited.

A. Notwithstanding California Health and Safety Code Section 11362.5 or any preceding provisions of this chapter and Chapter 8.80 of this code, the consumption of marijuana, by or through "smoking," as defined in Section 8.80.030 of this code, is prohibited at any of the following locations to which members of the public have access:

1. Upon or within 1,000 feet of the grounds of any school or park;
2. In or within 100 feet of any building or facility to which members of the public have access, except in a health facility or clinic; or
3. Within 100 feet of any other person, other than a "primary caregiver," as that term is defined in California Health and Safety Code Section 11362.5(e).

B. As used in this section, the following definitions shall apply:

1. "School" means any institution of learning for minors, whether public or private, including any special institution of education or any nursery, elementary, middle, junior high, or senior high school. This definition does not include a vocational or professional institution of higher education, including a junior or community college, college or university.

2. “Park” means and includes all parks, parkways, malls, plazas, greenbelts, gardens, lakes and other property owned by the city and used, operated or maintained for recreational purposes.

3. “Health facility” means a facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, including convalescence and rehabilitation, or for any one of those purposes, for one or more persons, to which the persons are admitted for a twenty-four (24) hour stay or longer.

4. “Clinic” means an organized outpatient health facility which provides medical, surgical, dental, optometric, podiatric, or psychological advice, services, or treatment to patients who remain less than twenty-four hours.

9.08.030 Violation – Penalty.

A. First Violation. Any first violation of this chapter by a person shall be an infraction, and shall be subject to punishment as provided in California Government Code Section 36900(b).

B. Second and Subsequent Violations. Except as provided below, any second and subsequent violation of this chapter by a person shall be a misdemeanor, punishable by a fine not to exceed \$1,000.00, imprisonment in county jail for a term not to exceed six months, or both such fine and imprisonment.

Exception: Notwithstanding the above, a violation of this chapter is an infraction when the complaint is filed charging the offense as an infraction, in which case the violation shall be subject to and punishable as provided in California Government Code Section 36900(b).

9.08.140 Nonexclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

SECTION 5

Section 9.44.210 of the Sacramento City Code is repealed:

9.44.210 Violation – Criminal penalties.

~~— A. — Any person violating Section 9.44.100, 9.44.660 or 9.44.770 of this chapter is guilty of a misdemeanor punishable as set forth in Section 1.28.010 of this code. Any person violating Section 9.44.680 of this chapter is guilty of a misdemeanor punishable as set forth in Section 9.44.680.~~

~~_____ B. _____ Any person violating subsection A or C of Section 9.44.490 of this chapter, or subsection A or C of Section 9.44.430 of this chapter is guilty of an infraction, and shall be subject to the following: upon the first violation, a fine of three hundred dollars (\$300.00) for each animal with respect to which there is a violation, and a second or subsequent violation, a fine of not less than five hundred dollars (\$500.00) for each animal with respect to which there is a violation. If the person no longer possesses the animal, he or she is still responsible for any and all fines assessed to him or her.~~

~~_____ C. _____ Any person violating subsection B or (F)(3) of Section 9.44.490 of this chapter, or subsection B or (F)(3) of Section 9.44.430 of this chapter is guilty of an infraction, and shall be subject to the following: upon the first violation, a fine of five hundred dollars (\$500.00) for each animal with respect to which there is a violation, and a second or subsequent violation, a fine of not less than one thousand dollars (\$1,000.00) for each animal with respect to which there is a violation. If the person no longer possesses the animal, he or she is still responsible for any and all fines assessed to him or her.~~

~~_____ D. _____ Any person violating any other subsection of Section 9.44.490, any other subsection of Section 9.44.430, any other section of Article IV of this chapter, or any other section of Article V of this chapter is guilty of an infraction, and shall be subject to the following: upon the first violation, a fine of one hundred dollars (\$100.00) for each animal with respect to which there is a violation, and a second or subsequent violation, a fine of not less than five hundred (\$500.00) for each animal with respect to which there is a violation. If the person no longer possesses the animal, he or she is still responsible for any and all fines assessed to him or her.~~

~~_____ E. _____ Any person violating any other provision of this chapter is guilty of an infraction.~~

~~_____ F. _____ Every person violating any provision of this chapter shall be deemed guilty of a separate offense for each day, or portion thereof, during which such violation continues and shall be punishable therefor as provided in this section.~~

SECTION 6

Section 9.44.210 is added to the Sacramento City Code to read as follows:

9.44.210 Violation – Criminal penalties.

A. Except as otherwise specified in this chapter, any person violating any provision of this chapter is guilty of an infraction, punishable as follows:

1. A fine not exceeding \$100 for a first violation;
2. A fine not exceeding \$200 for a second violation of the same section within one year;

3. A fine not exceeding \$500 for each additional violation of the same section within one year.

B. For the purposes of subsection A of this section, multiple violations occurring at the same time are not considered subsequent violations that qualify for the increased fine amounts; however, each violation is punishable by a separate fine.

C. Any person violating section 9.44.100, 9.44.660, or 9.44.770 is guilty of a misdemeanor punishable as set forth in section 1.28.020. Any person violating section 9.44.680 is guilty of a misdemeanor punishable as set forth in that section.

D. If the person no longer possesses the animal, he or she is still responsible for any and all fines assessed.

SECTION 7

Section 9.44.270 of the Sacramento City Code is repealed:

9.44.270 Mistreatment prohibited.

~~It is unlawful for any person to treat, control or maintain any animal in a cruel or inhumane manner. It shall be the duty of the animal care services manager of the city and his or her assistants or deputies to immediately report any evidence of mistreatment of animals to the Sacramento Society for the Prevention of Cruelty to Animals.~~

SECTION 8

If any provision of this ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this ordinance. The city council declares that it would have passed this ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

SECTION 9

The adoption of this ordinance is not intended to and does not affect any administrative, civil, criminal, or other actions or proceedings brought or to be brought to implement or enforce any provisions of the Sacramento City Code, as they existed prior to the effective date of this ordinance. The provisions of the Sacramento City Code as

they exist prior to the effective date of this ordinance shall continue to be operative and effective with regard to any such actions or proceedings.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted **00/00/2015**

AN ORDINANCE AMENDING SACRAMENTO CITY CODE SECTION 1.28.010, RELATING TO PENALTIES; REPEALING SECTION 9.04.030, RELATING TO LOITERING; REPEALING CHAPTER 9.08, RELATING TO DRUG OFFENSES; ADDING CHAPTER 9.08, RELATING TO PUBLIC CONSUMPTION OF MARIJUANA; REPEALING AND ADDING SECTION 9.44.210, RELATING TO CRIMINAL PENALTIES; AND REPEALING SECTION 9.44.270, RELATING TO THE MISTREATMENT OF ANIMALS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

- A. Subsection D.2.c.iv of section 1.28.010 of the Sacramento City Code is amended to read as follows:
- iv. If a violation relates to an event occurring on, or a condition existing on a property in the city, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.
- B. Except as amended by subsection A above, all provisions of section 1.28.010 remain unchanged and in full effect.

SECTION 2

Section 9.04.030 of the Sacramento City Code is repealed.

SECTION 3

Chapter 9.08 of the Sacramento City Code is repealed.

SECTION 4

Chapter 9.08 of the Sacramento City Code is added:

Chapter 9.08 PUBLIC CONSUMPTION OF MARIJUANA

9.08.010 Findings and purposes.

On November 5, 1996, the voters of the state of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code (the "Compassionate Use Act"). That section permits, for purposes of state law, the limited use, cultivation and possession of marijuana for specified medical purposes. However, the use, cultivation and possession of marijuana for other purposes remains illegal within this state and is presently illegal under federal laws.

While recognizing the enactment of Health and Safety Code Section 11362.5, the city council believes that the open and public use of marijuana, which might otherwise be permitted by that section, is injurious to public health in many of the same ways that tobacco consumption is injurious to public health, due to exposure to second-hand smoke. Further, the open and public consumption of marijuana is potentially harmful to youths in that it sets a deleterious example regarding the use of illicit drugs. Therefore, the city council believes it is necessary to balance the uses of marijuana permitted by Section 11362.5 with the concerns for public health and safety.

9.08.020 Places where consumption of marijuana is prohibited.

A. Notwithstanding California Health and Safety Code Section 11362.5 or any preceding provisions of this chapter and Chapter 8.80 of this code, the consumption of marijuana, by or through "smoking," as defined in Section 8.80.030 of this code, is prohibited at any of the following locations to which members of the public have access:

1. Upon or within 1,000 feet of the grounds of any school or park;
2. In or within 100 feet of any building or facility to which members of the public have access, except in a health facility or clinic; or
3. Within 100 feet of any other person, other than a "primary caregiver," as that term is defined in California Health and Safety Code Section 11362.5(e).

B. As used in this section, the following definitions shall apply:

1. "School" means any institution of learning for minors, whether public or private, including any special institution of education or any nursery, elementary, middle, junior high, or senior high school. This definition does not include a vocational or professional institution of higher education, including a junior or community college, college or university.
2. "Park" means and includes all parks, parkways, malls, plazas, greenbelts, gardens, lakes and other property owned by the city and used, operated or maintained for recreational purposes.

3. "Health facility" means a facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, including convalescence and rehabilitation, or for any one of those purposes, for one or more persons, to which the persons are admitted for a twenty-four (24) hour stay or longer.

4. "Clinic" means an organized outpatient health facility which provides medical, surgical, dental, optometric, podiatric, or psychological advice, services, or treatment to patients who remain less than twenty-four hours.

9.08.030 Violation – Penalty.

A. First Violation. Any first violation of this chapter by a person shall be an infraction, and shall be subject to punishment as provided in California Government Code Section 36900(b).

B. Second and Subsequent Violations. Except as provided below, any second and subsequent violation of this chapter by a person shall be a misdemeanor, punishable by a fine not to exceed \$1,000.00, imprisonment in county jail for a term not to exceed six months, or both such fine and imprisonment.

Exception: Notwithstanding the above, a violation of this chapter is an infraction when the complaint is filed charging the offense as an infraction, in which case the violation shall be subject to and punishable as provided in California Government Code Section 36900(b).

9.08.140 Nonexclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

SECTION 5

Section 9.44.210 of the Sacramento City Code is repealed:

SECTION 6

Section 9.44.210 is added to the Sacramento City Code to read as follows:

9.44.210 Violation – Criminal penalties.

A. Except as otherwise specified in this chapter, any person violating any provision of this chapter is guilty of an infraction, punishable as follows:

1. A fine not exceeding \$100 for a first violation;

2. A fine not exceeding \$200 for a second violation of the same section within one year;
3. A fine not exceeding \$500 for each additional violation of the same section within one year.

B. For the purposes of subsection A of this section, multiple violations occurring at the same time are not considered subsequent violations that qualify for the increased fine amounts; however, each violation is punishable by a separate fine.

C. Any person violating section 9.44.100, 9.44.660, or 9.44.770 is guilty of a misdemeanor punishable as set forth in section 1.28.020. Any person violating section 9.44.680 is guilty of a misdemeanor punishable as set forth in that section.

D. If the person no longer possesses the animal, he or she is still responsible for any and all fines assessed.

SECTION 7

Section 9.44.270 of the Sacramento City Code is repealed:

SECTION 8

If any provision of this ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this ordinance. The city council declares that it would have passed this ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

SECTION 9

The adoption of this ordinance is not intended to and does not affect any administrative, civil, criminal, or other actions or proceedings brought or to be brought to implement or enforce any provisions of the Sacramento City Code, as they existed prior to the effective date of this ordinance. The provisions of the Sacramento City Code as they exist prior to the effective date of this ordinance shall continue to be operative and effective with regard to any such actions or proceedings.