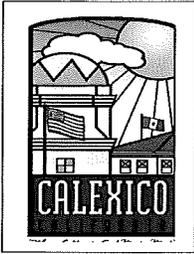


**AGENDA
ITEM**

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AGENDA STAFF REPORT

DATE: August 2, 2016

TO: Mayor and City Council

APPROVED BY: Armando G. Villa, City Manager *Armando G. Villa*

PREPARED BY: Carlos Campos, Interim City Attorney

SUBJECT: Second Reading of Ordinance No. 1170 - An Ordinance of the City Council of the City of Calexico, California, Adding Chapter 5.98 to the City of Calexico Municipal Code Regulating Off-Site Display and Sale of Automobiles in the City

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Recommendation:

City Council approve Ordinance No. 1170:

Ordinance No. 1170 An Ordinance of the City Council of the City of Calexico, California, Adding Chapter 5.98 to the City of Calexico Municipal Code Regulating Off-Site Display and Sale of Automobiles in the City.

Background:

In February 2016, the City Council considered the off-site display and sale of automobiles within the City and heard public comment from both sides of the issue. Concerns were raised that automobile tent sales result in competition with established automobile sales businesses in the City, discourage dealerships from opening "brick and mortar" stores in the City, create unfair business climate for local businesses, create public safety concerns, and are aesthetically displeasing. Potential benefits of "tent sales" were also discussed, including increased competition, providing citizen consumers with more options in convenient locations; additional business activity within the City, and additional sales tax revenues to the City.

On March 15, 2016, the City Council adopted Ordinance No. 1166, imposing a temporary moratorium on off-site display and sale of automobiles at "tent sales" within the City of Calexico, which lasted 45 days. The temporary moratorium has since expired.

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On July 5, 2016, the City Council again reviewed the issue and directed staff to study the economic impacts of off-site display and sale of automobiles and to create an Ordinance that reasonably regulates such sales.

Discussion:

Staff is requesting that the City Council consider the attached Ordinance regarding off-site display and sale of automobiles.

The proposed Ordinance would allow any automobile dealership to conduct one annual off-site automobile sale. Each sale may only occur during the month of July. Prior to conducting such a sale, however, the dealership would have to apply to the City for a permit to operate a temporary sale of not more than three consecutive calendar days in length. A complete application would include payment of an administrative fee (to be set by City Council by resolution), authorization for the underlying property owner, and a comprehensive site plan laying out the technicalities of the sale event.

The City Manager or designee would review each application and must make the following findings before issuing a permit:

- The proposed temporary sale will be located, operated, and maintained in a manner consistent with each of the applicable provisions of the Municipal Code.
- The proposed site shall be fully improved and shall be located within a commercial or industrial zone.
- The proposed temporary sale will not be detrimental to property or improvements in the surrounding area or to the public health, safety, or welfare.
- The proposed temporary sale will have no significant adverse environmental effects.
- The proposed site is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the temporary use will or reasonably might generate.
- Adequate temporary parking to accommodate vehicular traffic to be generated by the use will be available either on-site or at alternate locations acceptable to the City Manager.
- The permit's applicant has paid all required fees and deposits owed to the city, both related to the applied-for permit and to any other matter, in a timely manner, including any past-due payments for other permits if applicable.

The City Manager will also have the discretion to impose certain conditions on each temporary use permit, which include, but are not limited to:

- Provision of temporary parking facilities, including vehicular ingress and egress;
- Regulation of nuisance factors such as prevention of glare or direct illumination of adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases, and heat;
- Regulation of temporary structures and facilities, including placement, height, size, and location of equipment, tents, or open spaces, including buffer areas and other yards;
- Provision of sanitary facilities, solid waste collection, and disposal;
- Provision of security or safety measures, including adequate lighting;
- Regulation of size and location of signs;
- Regulation of operating hours and days, including limitation of the duration of the temporary use to a shorter time period than that requested;
- Submission of a performance bond or other security to assure that any temporary facilities or structures used for the proposed temporary use will be removed from the site following the event and that the property will be restored to its former condition;

The Ordinance also allows the City Manager to revoke a permit if any conditions of the permit or Ordinance are committed. Any appeal of the City Manager's decision(s) may be sought through judicial review.

Attachment:

1. Ordinance No. 1170 - An Ordinance of the City Council of the City of Calexico, California, Adding Chapter 5.98 to the City of Calexico Municipal Code Regulating Off-Site Display and Sale of Automobiles in the City.

ORDINANCE NO. 1170

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADDING CHAPTER 5.98 TO THE CITY OF CALEXICO MUNICIPAL CODE REGULATING OFF-SITE DISPLAY AND SALE OF AUTOMOBILES IN THE CITY.

WHEREAS, on February 16, 2016, the City Council of the City of Calexico ("City Council") considered the effects of the off-site display and sale of automobiles within the City of Calexico ("City"), including the off-site display and sale of automobiles at certain events referred to as "tent sales," at which numerous automobiles are made available for sale to members of the public at a single location; and

WHEREAS, on March 15, 2016, the City Council adopted interim urgency ordinance No. 1166 pursuant to California Government Code Section 65858(a), which temporarily prohibited off-site display and sale of automobiles in the City, with exceptions, pending review and amendment to the Calexico Municipal Code; and

WHEREAS, on July 5, 2016, the City Council revisited the issue and directed staff to study the economic impacts from off-site display and sale of automobiles and provide an ordinance for consideration that reasonably regulates such activity;

WHEREAS, the City Council conducted a first reading of this ordinance on July 19, 2016; and

WHEREAS, in light of the staff presentation and public testimony, the City Council finds that the reasonable regulation of off-site display and sale of automobiles within the City can provide economic and community benefits to the City.

NOW, THEREFORE, the City Council of the City of Calexico does hereby ordain as follows:

SECTION 1. Addition of Title 5, Article II, Chapter 5.98 to the Calexico Municipal Code. Chapter 5.98 of the Calexico Municipal Code is hereby added to read as follows:

"Chapter 5.98 Off-Site Display and Sale of Automobiles

- 5.98.010 - Definitions.
- 5.98.020 - Decision-maker.
- 5.98.030 – Permit required.
- 5.98.040 - Limitation on number.
- 5.98.050 - Findings.
- 5.98.060 - Conditions.
- 5.98.070 - Effective date and duration.
- 5.98.080 - Decision.

- 5.98.090 - Revocation.
- 5.98.100 - Modification.
- 5.98.110 - Appeal.
- 5.98.120 – Fee.

5.98.010 - Definitions.

For the purposes of this chapter, the following definitions shall apply:

“City Manager” shall mean the City Manager of the City of Calexico, or his or her designee.

“Off-site display and sale of automobiles” shall mean the off-site display and sale of three (3) or more vehicles or vessels, including but not limited to automobiles, light trucks, recreational vehicles, trailers, campers, commercial trucks, construction equipment, boats or other watercraft, motorcycles or all-terrain vehicles, or other similar forms of motorized vehicular transport. Off-site display and sale shall mean the display and sale of three (3) or more vehicles or vessels during regular business hours on a year-round basis.

5.98.020 - Decision-maker.

Decisions as to the approval or denial of temporary use permits for off-site display and sale of automobiles shall be made by the City Manager.

5.98.030 – Permit required.

- A. A complete off-site display and sale of automobiles permit application must be filed at least 30 days prior to the date of the proposed event. Applications filed less than 30 days from the date of the proposed event, or incomplete applications, will not be accepted.
- B. Each application shall be submitted on the form provided by the City, and shall be accompanied by:
 - 1. The fee set forth in the City’s adopted Fee Resolution;
 - 2. Authorization from the underlying property owner; and,
 - 3. A site plan which shows all proposed activities including tents, shade structures, temporary fencing or barricades, generators, temporary power lines, temporary communication lines, air conditioning equipment, inflatable devises, spot lights, stages or entertainment areas, portable restrooms, trash receptacles, signage and banners, decorative lighting, food vending activities, locations for remote radio or television broadcast activities, portable lighting, and/or jump tents and other play equipment, shall be provided. If an activity is not shown and specifically approved on the site plan, it shall not be permitted.

The site plan shall be adequately detailed to show all proposed activities, shall be fully dimensioned and shall be at a scale adequate to depict the proposed site and the scope of the event.

5.98.040 - Limitation on number and month.

Issuance of temporary use permits for off-site sale and display of automobiles shall be limited to one (1) permit per dealership per calendar year and shall only be permitted during the month of July.

5.98.050 - Findings.

The following findings must be made prior to approval of a temporary use permit for off-site sale and display of automobiles by the City Manager:

- A. The proposed temporary off-site display and sale of automobiles will be located, operated, and maintained in a manner consistent with each of the applicable provisions of the code, including the provisions of this chapter.
- B. The proposed site shall be fully improved and shall be located within a commercial or industrial zone.
- C. The proposed temporary off-site display and sale of automobiles will not be detrimental to property or improvements in the surrounding area or to the public health, safety, or welfare.
- D. The proposed temporary off-site display and sale of automobiles will have no significant adverse environmental effects.
- E. The proposed site is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the temporary use will or reasonably might generate.
- F. Adequate temporary parking to accommodate vehicular traffic to be generated by the use will be available either on-site or at alternate locations acceptable to the City Manager.
- G. The permit's applicant has paid all required fees and deposits owed to the city, both related to the applied-for permit and to any other matter, in a timely manner, including any past-due payments for other permits if applicable.

5.98.060 - Conditions.

In approving an application for a temporary use permit for off-site automobile sales, the City Manager may impose conditions that are deemed necessary to ensure that

the permit will be in accordance with the findings required by Section 5.98.040. These conditions may include, but are not limited to:

- A. Provision of temporary parking facilities, including vehicular ingress and egress;
- B. Regulation of nuisance factors such as prevention of glare or direct illumination of adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases, and heat;
- C. Regulation of temporary structures and facilities, including placement, height, size, and location of equipment, tents, or open spaces, including buffer areas and other yards;
- D. Provision of sanitary facilities, solid waste collection, and disposal;
- E. Provision of security or safety measures, including adequate lighting;
- F. Regulation of size and location of signs;
- G. Regulation of operating hours and days, including limitation of the duration of the temporary use to a shorter time period than that requested;
- H. Submission of a performance bond or other security to assure that any temporary facilities or structures used for the proposed temporary use will be removed from the site following the event and that the property will be restored to its former condition;
- I. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this chapter.

5.98.070 - Effective date and duration.

A temporary use permit for off-site sale and display of automobiles shall be effective for the dates specified by the City Manager, not to exceed three (3) days plus such time as the City Manager approves for setting up and dismantling the site, unless otherwise specified in this chapter.

5.98.080 - Decision.

For all temporary use permits for off-site sale and display of automobiles, the City Manager shall prepare a written decision within ten (10) calendar days of the date a completed application is filed. The decision shall contain the findings of fact upon which the decision is made.

5.98.090 - Revocation.

A temporary use permit for off-site sale and display of automobiles may be revoked by the City Manager effective immediately upon verbal or written notice for violation of the terms of the permit.

5.98.100 - Modification.

The City Manager may require changes in the terms or conditions of an approved temporary use permit for off-site sale and display of automobiles at any time while it is in effect, if needed, to ensure that the use may continue to operate consistent with the required findings.

5.98.110 - Appeal.

The City Manager's decision to approve or deny an application for a temporary use permit for off-site sale and display of automobiles, or to revoke or modify an approved temporary use permit for off-site sale and display of automobiles, may be appealed by filing a written notice of such appeal with the city manager's office within five business days of the decision. Such appeal shall set forth, with particularity, the facts upon which the appeal is being made. The city manager shall decide the appeal within one working day. The decision shall be final except for judicial review. Judicial review under this chapter shall be subject to the expedited review process established under California Code of Civil Procedure Section 1094.8. Any agreement to follow the process established under Section 1094.8 shall not be deemed an admission regarding the type of conduct at issue.

5.98.120. – Fee.

The application shall be accompanied by a fee established by resolution of the City Council to cover the cost of processing the application prescribed in this chapter.”

SECTION 2. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

SECTION 4. Certification. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

SECTION 5. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico at the regular meeting this _____ day of August, 2016.

Luis J. Castro
Mayor

ATTEST:

Gabriela Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos
City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF CALEXICO)

I, Gabriela Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Calexico held on the _____ day of August, 2016, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Gabriela Garcia
City Clerk