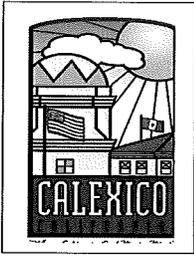


**AGENDA
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AGENDA STAFF REPORT

DATE: March 7, 2018

TO: Mayor and Members of the Calexico City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Ralph Morales, Building/Planning/Code Enforcement Manager
Carlos Campos, City Attorney

SUBJECT: Ordinance No. _____. An Urgency Ordinance of the City Council of the City of Calexico enacted pursuant to California Government Code Section 36937 proposing to amend Section 5.98.040 of the Calexico Municipal Code to allow for the off-site sale and display of vehicle ("Tent Sale") events between the months of March and July

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Recommendation:

Approve Ordinance No. _____. An Urgency Ordinance of the City Council of the City of Calexico enacted pursuant to California Government Code Section 36937 amending Section 5.98.040 of the Calexico Municipal Code to allow for the off-site sale and display of vehicle ("Tent Sale") events between the months of March and July.

Background:

On February 16, 2016, the City Council of the City of Calexico considered the effects of the off-site display and sale of automobiles ("Tent Sales") within the City of Calexico, 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. Subsequently, 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.

The City Council revisited the issue on July 5, 2016, 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. As a result, on August 2, 2016 the City Council adopted Ordinance No. 1170 regulating off-site display and sale of automobiles in the City.

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Specifically, Ordinance No. 1170 limits each dealership to one (1) permit per calendar year and said permit may only be used to host a sale in the month of July.

On January 11, 2017 the City Council discussed amending Ordinance No 1170, however, no action was taken.

Discussion:

California Government Code, Section 36937(b) provides that an urgency ordinance for the immediate preservation of the public peace, health or safety shall take effect immediately upon adoption. The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public peace, health and safety of its citizens.

Currently, Section 5.98.040 of the Calexico Municipal Code provides that Tent Sales may only occur during the month of July through the issuance of a Temporary Use Permit as outlined in Chapter 5.98 of the Calexico Municipal Code.

City Staff believes that limiting the one (1) tent sale per calendar year to the month of July is prohibitive to businesses and consumers due to the summer heat and the concentration of all Tent Sales within one month. Moreover, limiting Tent Sales to only the summer month of July may also negatively impact some residents that are sensitive to the summer heat. Additionally, the staff finds that the negative effects on the public peace, health and safety will occur in Calexico as a result of only allowing the off-site display and sale of automobiles during the summer month of July.

Based on the facts set forth above, City Staff is recommending the adoption of the proposed Urgency Ordinance which would address the concerns outlined above by allowing for Tent Sales to occur during the months between March and July as opposed to only allowing Tent Sales in the month of July.

Attachment:

1. Urgency Ordinance No. _____ - An Urgency Ordinance of the City Council of the City of Calexico enacted pursuant to California Government Code Section 36937 proposing to amend Section 5.98.040 of the Calexico Municipal Code to allow for the off-site sale and display of vehicle ("Tent Sale") events between the months of March and July

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937 AMENDING SECTION 5.98.040 OF THE CALEXICO MUNICIPAL CODE TO ALLOW OFF-SITE SALE AND DISPLAY OF VEHICLE (“TENT SALE”) EVENTS BETWEEN THE MONTHS OF MARCH AND JULY.

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 (“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; and

WHEREAS, on August 2, 2016 the City Council adopted Ordinance No. 1170 regulating off-site display and sale of automobiles in the City. Specifically, Ordinance No. 1170 limits each dealership to one (1) permit per calendar year and said permit may only be used to host a sale in the month of July; and

WHEREAS, on January 11, 2017 the City Council discussed amending Ordinance No 1170, however, no action was taken; and

WHEREAS, the City Council believes that limiting the one (1) tent sale per calendar year to the month of July is prohibitive to businesses and consumers due to the summer heat and the concentration of all off-site display and sale of automobiles within one month; and

WHEREAS, limiting Tent Sales to only the summer month of July may negatively impact some residents that are sensitive to the summer heat; and

WHEREAS, the City Council finds that negative effects on the public peace, health and safety will occur in Calexico as a result of only allowing the off-site display and sale of automobiles during the month of July; and

WHEREAS, based on the facts set out above, the City Council finds that there is a current and immediate threat to public peace, health and safety, which may be addressed by enactment of an urgency ordinance allowing for Tent Sales to occur between the months of March and July as opposed to only allowing Tent Sales in the summer month of July; and

WHEREAS, California Government Code Section 36937(b) provides for the adoption of an urgency ordinance for the immediate preservation of the public peace, health or without following the procedures otherwise required for the adoption of an ordinance; and

WHEREAS, in accordance with Government Code Section 36937(b), such an urgency ordinance requires a four-fifths vote of the entire City Council.

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

SECTION 1. Urgency Findings.

A. California Government Code, Section 36937(b) provides that an urgency ordinance for the immediate preservation of the public peace, health or safety shall take effect immediately upon adoption; and

B. The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public peace, health and safety of its citizens; and

C. Based on the recitals set forth above, which are hereby incorporated by reference, the City Council finds that this Urgency Ordinance, and the regulations set forth herein, are necessary for the immediate preservation of public peace, health and safety in order to protect residents and local businesses from the adverse effects of only allowing the off-site display and sale of automobiles ("Tent Sales") during the summer month of July; and

D. Based on the recitals set forth above, which are hereby incorporated by reference, the City Council finds that the City's existing regulations only allowing the off-site display and sale of automobiles during the month of July does not adequately protect the public peace, health and safety of the citizens of Calexico from the actual and potential impacts arising from only allowing the off-site display and sale of automobiles in the City during the summer month of July; and

E. Based on the recitals set forth above, which are hereby incorporated by reference, it is also hereby found that the public health need of the community is met by allowing the off-site display and sale of automobiles between the months of March and July as opposed to only allowing Tent Sales during the summer month of July which reduces the quality of life within the community to the extent that the overall public health is detrimentally affected. Thus, only allowing the off-site display and sale of

automobiles during the summer month of July would detrimentally affect the City and the public health of the City and its residents.

SECTION 2. Amendment to Calexico Municipal Code Section 5.98.040. Calexico Municipal Code Section 5.98.040 is hereby amended to read as seen below. Deleted language is ~~stricken~~ and added language is underlined.

5.98.040 - Limitation on number and months.

"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 between during the months of March and July."

SECTION 3. Compliance with California Environmental Quality Act. 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; it prevents changes in the environment pending the completion of the contemplated study of impacts.

SECTION 4. Severability. If any 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 sentence, clause, or phrase thereof, irrespective of the fact that any one or more sentence, clause, or phrase be declared unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective immediately upon adoption if adopted by at a least four-fifths (4/5) vote of the City Council.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico at the regular meeting this 7th day of March 2018.

Maritza Hurtado
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 Urgency Ordinance was adopted at a regular meeting of the City Council of the City of Calexico held on the 7th day of March 2018, by the following vote:

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

Gabriela Garcia
City Clerk