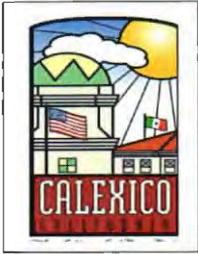


**AGENDA
ITEM**

6



AGENDA STAFF REPORT

DATE: February 19, 2020

TO: Mayor and City Council

APPROVED BY: David B. Dale, City Manager *DD*

PREPARED BY: Christopher Velasco, Contract Planner *CV*

SUBJECT: Second Reading and Adoption of Ordinance No. 1210 - An Ordinance of the City Council of the City of Calexico, California, Amending Section 17.11.1020, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Adding One Parcel to the Cannabis Overlay Zone

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Recommendation:

Staff recommends that the City Council conduct the second reading and adopt of the following Ordinance by title only:

Ordinance No. 1210 - An Ordinance of the City Council of the City of Calexico, California, Amending Section 17.11.1020, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Adding One Parcel to the Cannabis Overlay Zone.

Background:

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), legalizing the use and possession of cannabis and cannabis products by adults aged 21 years and older.

On June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act ("MCRSA"), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA" or "Act").

MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether non-commercial and commercial cannabis activities could occur in a particular jurisdiction.

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Specifically, California Business and Professions Code section 26200 provides that MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the state licensing authority and shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval by the state license will violate the provisions of any local ordinance or regulation. State licensing authorities began issuing licenses to cannabis businesses beginning January 1, 2018.

MAUCRSA establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis, including medicinal and adult-use cannabis. The Act designates applicable responsibilities for oversight of cannabis commerce to three State agencies.

On July 5, 2017, the City Council adopted Ordinance No. 1177 allowing commercial cannabis cultivation, manufacturing, testing, and distribution in the Cannabis Overlay Zone. On the same date, Ordinance No. 1178 was also adopted, which created a regulatory permit scheme for commercial cannabis businesses.

On May 2, 2018, the City Council appointed two council members to serve on the Cannabis Industry Ad-Hoc Sub-Committee. The sub-committee met on June 21, 2018 and recommended to analyze expanding commercial cannabis activities within the Cannabis Overlay Zone to generate additional revenue to the City of Calexico. The City Council met on August 1, 2018, heard the recommendations from the sub-committee, and suggested that the City hold a Community Cannabis Forum.

The City publicized and held a Community Cannabis Forum on October 11, 2018, to provide information to the public regarding the City's current cannabis regulations and cannabis businesses permitted under State law that could be allowed in the City. Comments were taken from the public.

In November of 2019, the City received a letter from Campillo Enterprises, Inc. requesting that the item be re-introduced.

Both the Planning Commission and the City Council have previously rejected the same measure in 2019. On December 18, 2019, the Cannabis Industry Ad-Hoc Sub-Committee met and discussed the matter and recommended that the item be reintroduced for debate at both the Planning Commission and City Council. On January 13, 2020 the Planning Commission held a duly noticed public meeting and voted to approve Resolution No. 2020-04 recommending that the City Council approve this change to the Calexico Municipal Code.

Discussion:

1. Proposed Zoning Ordinance Amendment

a. Summary

The proposed Zoning Ordinance Amendment (ZOA) does change the area of the Cannabis Overlay Zone ("Zone") as it currently exists. The first main change in the ZOA is the addition of 120 W. Cole Boulevard, Calexico, CA 92231 (APN: 058-020-019-000) to the Zone; currently the parcel is zoned as Commercial Highway (CH). Currently, the following commercial cannabis uses are allowed in this Zone: cultivation, manufacturing, testing and distribution.

b. Cannabis Overlay Zone Expansion

The proposed expansion of the Cannabis Overlay Zone (Zone) to include 120 W. Cole Boulevard, Calexico, CA (APN: 058-020-019-000). Currently, the site maintain two large metal shell buildings designed for Industrial uses.

The expansion would be contiguous with the existing Zone, please refer to "Attachment A" for a Map delineating the proposed inclusion of this parcel. This parcel contains two warehouse buildings, the following building size estimates were calculated by the Engineering Department using Google Earth Pro and would have to be verified with the owner; however, given the high accuracy of this program we can state that the estimates are within a reasonable deviation from the actual building sizes. On the northern end of the parcel, abutting W. Cole Boulevard lies one structure that is approximately 25,200 square feet (SF). On the southern section of the parcel lies another structure that abuts Scaroni Avenue measures approximately 53,800 SF. Combined the inclusion of this parcel to the Zone would add just over 79,000 SF of warehouse space to the Zone.

City staff and the Planning Consultant have discussed this matter in detail. The site does have space designed for industrial and distribution uses that would require minor tenant improvements to be suited for Commercial Cannabis Activity. As interest in the Zone increases, particularly from firms seeking to establish Cultivation, Manufacturing and Distribution operations in the City there has been a declining stock of existing building space available for lease. Limited "move-in" ready space within the Zone negatively effects small businesses more acutely then large firms, which have substantial capital develop new industrial scale buildings. New construction is cost prohibitive to small business owners; by adding this parcel to the Zone it lowers the cost of entry for smaller firms seeking to become a part of the local cannabis industry. For the reasons stated above we recommend that this parcel, 120 W. Cole Boulevard, Calexico, CA (APN:058-020-019-000) be added to the Zone.

On February 5, 2020 the City Council held a public hearing and conducted the first reading by title only and approved the ordinance.

2. California Environmental Quality Act

The 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. The City has determined it can be seen with certainty that no environmental impacts can occur from allowing cannabis business in an existing industrial area because the uses are similar to those already allowed in this area and there are no operational components specific to cannabis uses that would result in impacts beyond those already allowed in the proposed Cannabis Overlay Zone.

Attachment(s):

1. Ordinance No. 1210 An Ordinance of the City Council of the City of Calexico, California, Amending Section 17.11.1020, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Adding One Parcel to the Cannabis Overlay Zone.

ORDINANCE NO. 1210

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING SECTION 17.11.1020, OF CHAPTER 17.11, TITLE 17 (ZONING) OF THE CALEXICO MUNICIPAL CODE ADDING ONE PARCEL TO THE CANNABIS OVERLAY ZONE

WHEREAS, pursuant to the authority granted to the City of Calexico ("City") by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and,

WHEREAS, adoption and enforcement of comprehensive zoning regulations and other land use regulations lies within the City's police power; and,

WHEREAS, on November 8, 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), legalizing the use and possession of cannabis and cannabis products by adults aged 21 years and older; and,

WHEREAS, on June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act ("MCRSA"), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and,

WHEREAS, MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether non-commercial and commercial cannabis activities could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses, including, but not limited to, local zoning and land use requirements. State licensing authorities began issuing licenses to cannabis businesses beginning January 1, 2018; and,

WHEREAS, MAUCRSA establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis, including medicinal and adult-use cannabis. The Act designates applicable responsibilities for oversight of cannabis commerce to several State agencies; and,

WHEREAS, City Council Ordinance No. 1191 established the Cannabis Overlay Zone and regulates the number and type of commercial cannabis activities allowed to operate within the City; and,

WHEREAS, the proposed Zoning Ordinance would amend Sections 17.11.1020

of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code to add one parcel to the Cannabis Overlay Zone and create a small scale and industrial scale cannabis permitting structure for cultivation, distribution and manufacturing facilities; and,

WHEREAS, the subject Zoning Code Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378 of the California Public Resources Code, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant impact on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and,

WHEREAS, the Planning Commission of the City of Calexico ("Planning Commission") conducted a properly noticed public hearing on January 13, 2020 at which time members of the public were afforded an opportunity to comment upon this Ordinance, the recommendations of staff, and other public testimony; and,

WHEREAS, after said public hearing, the Planning Commission recommended that the City Council adopt this Ordinance adding one parcel to the Cannabis Overlay Zone; and,

WHEREAS, the City Council conducted a properly noticed public hearing on _____, 2020 at which time members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and other public testimony.

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

SECTION 1. Recitals. The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Ordinance.

SECTION 2. Amendment to Municipal Code. The definition of "Cannabis overlay zone" found in Municipal Code Section 17.11.1020 – Definitions, is hereby amended with additional underlined text and deleted stricken text as follows:

"Cannabis overlay zone" means the approximately 354.02 acres within the area bounded by railroad tracks on the west; the Adler Canal on the north; West Van de Graff Avenue and Scaroni Avenue on the east; and Weakley Street and Camacho Road on the south. The "Cannabis overlay zone" also means 120 W. Cole Boulevard, Calexico, CA 92231 Accessors Parcel Number: 058-020-019-000. The Cannabis Overlay Zone includes Industrial (IND), Industrial Rail Served (IR) and Commercial."

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 5. 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 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.

SECTION 6. 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 7. CEQA. The City Council finds that pursuant to CEQA and the State CEQA Guidelines, no further environmental review is required prior to the adoption of the proposed amendments to TITLE 17 (ZONING) of the Calexico Municipal Code.

Specifically, the City Council finds that the subject Zoning Ordinance Amendment is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

THIS ORDINANCE IS PASSED, ADOPTED, AND APPROVED at a regular meeting of the City Council of the City of Calexico this 5th day of February, 2020.

Bill Hodge, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney

I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the 5th day of February 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gabriela T. Garcia, City Clerk