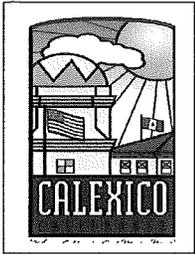


**AGENDA  
ITEM**

**9**



# AGENDA STAFF REPORT

**DATE:** April 3, 2019

**TO:** Mayor and Councilmembers

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

**PREPARED BY:** Miguel Figueroa, Assistant City Manager *MH*  
 Carlos Campos & Jill Tremblay, City Attorney

**SUBJECT:** Ordinance No. \_\_\_\_\_ an Ordinance of the City Council of the City of Calexico, California, Amending Title 17 (Zoning), Chapter 17.11, Article X of the Calexico Municipal Code Increasing the Number of Retail Cannabis Applicants Allowed to Operate Within the City.

=====

**Recommendation:**

Review, introduce, and conduct a first reading of Ordinance No. \_\_\_\_\_ adopting Planning Commission’s recommendation to increase the number of retail cannabis permits from five to fifty, approve waiving the reading of the full ordinance and read the ordinance by title only.

or

Review, introduce, and conduct a first reading of Ordinance No. \_\_\_\_\_ adopting staff’s recommendation to increase the number of retail cannabis permits from five to seven, approve waiving the reading of the full ordinance and read the ordinance by title only.

**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 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”).

MAUCRSA gives local jurisdictions the authority to adopt and enforce local ordinances regulating cannabis businesses.



In July 2017, the City Council adopted Ordinance No. 1177 allowing commercial cannabis cultivation, manufacturing, testing, and distribution in the Cannabis Overlay Zone.

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 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 other cannabis businesses that could be allowed in the City. Comments were taken from the public.

The City Council met in December 2018 and amended its Zoning Code allowing, among other things, five retail cannabis businesses to operate in the City's Cannabis Overlay Zone.

The City began accepting cannabis retailer applications in January 2019. Staff publicized the process, explaining that cannabis retailer applications would be processed on a first come, first served basis. The City received a total of fourteen applications. The first four spots were secured. Three applicants tied for the fifth spot.

On March 25, 2019, staff recommended that the Planning Commission increase the number of retailer permits from five to seven to accommodate all three applicants that were tied for the fifth spot. The Planning Commission held a public hearing on the item and received comments from the audience. After deliberating, the Planning Commission made a recommendation to City Council to allow fifty retailer permits.

## **Discussion & Analysis**

### **Summary**

The Planning Commission has recommended that City Council increase the number of cannabis retailers in the City from five to fifty. City staff maintains its recommendation made to the Planning Commission to increase the number of cannabis retailers from five to seven.

### **Proposed Zoning Ordinance Amendment**

The City's existing cannabis regulations allow up to five retailers to operate within the Cannabis Overlay Zone. After this limit was adopted, the City began accepting applications on a first come, first served basis. Fourteen applications were received in total. After the first four applications were received, three complete applications came in fifth place on February 4, 2019. These three applications were date stamped, but not time stamped. Rather than holding a lottery to determine which of the three applicants

could move forward with the entitlement process, City staff recommended that the Planning Commission increase the number of allowable retailers from five to seven.

The Planning Commission held a public hearing to discuss this item on March 25, 2019. At the meeting, the council chambers was packed with individuals who spoke in support of increasing the number of cannabis retailer permits to well over the recommended seven permits. During their deliberations, the Planning Commission expressed support for at least allowing all fourteen of the applicants to move forward with the conditional use permit process. The Planning Commission ultimately voted to recommend that City Council adopt an ordinance allowing fifty cannabis retailers.

The Calexico Police Chief believes that his department is not adequately staffed to deal with more than seven cannabis retailers. City staff is also concerned that there are not enough Code Enforcement Officers to handle over seven cannabis retailers and certainly not fifty retailers.

In light of the Police Chief's concerns and staff's similar apprehension, staff is proposing its initial recommendation to increase the cannabis retailers to seven as an alternative to the Planning Commission's recommendation.

### **California Environmental Quality Act**

The 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.

### **Fiscal Impact:**

None.

### **Alternatives:**

1. Adopt the Planning Commission's recommendation to increase the number of retail cannabis permits from five to fifty.
2. Adopt City staff's recommendation to increase the number of retail cannabis permits from five to seven.
3. Provide alternative direction.

**Recommendation:**

Review, introduce, and conduct a first reading of Ordinance No. \_\_\_\_\_; approve waiving the reading of the full ordinance and read the ordinance by title only; and set a Public Hearing for the next regularly scheduled City Council meeting for the second reading and adoption, and direct staff to provide public notice as required by law.

**Attachment:**

1. Ordinance No. \_\_\_\_\_ an Ordinance of the City Council of the City of Calexico, California, Amending Title 17 (Zoning), Chapter 17.11, Article X of the Calexico Municipal Code Increasing the Number of Retail Cannabis Applicants Allowed to Operate Within the City.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING CHAPTER 17.11 OF TITLE 17 (ZONING) OF THE CALEXICO MUNICIPAL CODE INCREASING THE NUMBER OF RETAIL CANNABIS APPLICANTS ALLOWED TO OPERATE WITHIN THE CITY.**

**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 District and regulates the number and type of commercial cannabis activities allowed to operate within the City; and,

**WHEREAS**, the proposed Ordinance would amend Chapter 17.11 of Title 17 (Zoning) allowing \_\_\_\_\_ (\_\_\_\_\_) additional retail cannabis businesses to operate within the Cannabis Overlay Zone increasing the number of such businesses from five (5) to \_\_\_\_\_ (\_\_\_\_); and,

**WHEREAS**, the subject Municipal 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 March 25, 2019 at which 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 an ordinance increasing the number of cannabis retail permits from five to fifty; and,

**WHEREAS**, the City Council reviewed and discussed this Ordinance on April 3, 2019; and

**WHEREAS**, the City Council conducted a properly noticed public hearing on April 17, 2019 at which 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.** Municipal Code Section 17.11.1040 is hereby amended with additional underlined text and deleted stricken text as follows:

"17.11.1040 - Conditional use permit or development agreement required.

The city may authorize up to ten (10) applicants to operate each of the following types of facilities: cultivation, laboratory testing, and distribution. The City may authorize up to ten (10) applicants to operate primary manufacturing facilities. A primary manufacturing facility is any manufacturing facility or any shared-use facility operated for manufacturing. A person permitted to operate a shared use facility shall be known as a primary shared use manufacturing permittee or primary permittee. A person permitted to operate within a shared use facility shall be known as a secondary shared-use manufacturing permittee or secondary permittee. The City may authorize up to fifteen (15) secondary permittees to operate within a shared-use facility within the City. In addition, the city may authorize up to ~~five~~ \_\_\_\_\_ (~~5~~ \_\_\_\_\_) retailer, non-storefront retailer, or microbusiness applicants to operate within the city. Prior to initiating operations and as a continuing requisite to operating a commercial cannabis activity, the applicant shall obtain a validly issued CUP or enter into a fully executed development agreement agreed to by the city council. Initially, applicants will be required to enter a development agreement with appropriate fiscal mitigation measures and terms as approved by the city council. Each applicant may only apply for and operate up to two commercial cannabis activity facilities in the city, unless said applicant is operating a microbusiness. Each CUP or development agreement will include a condition or provision that the applicant shall also obtain and maintain a commercial cannabis activity regulatory permit required by this code."

**SECTION 3. Effective Date.** This Ordinance shall take effect thirty (30) days after its adoption.

**SECTION 4. 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 5. 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 6. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lewis Pacheco, Mayor

ATTEST:

\_\_\_\_\_  
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

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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 \_\_\_\_\_ day of \_\_\_\_\_ 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Gabriela T. Garcia, City Clerk