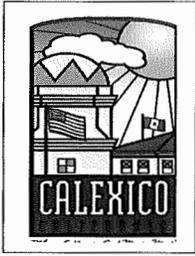


**AGENDA
ITEM
9**



AGENDA STAFF REPORT

DATE: May 1, 2019

TO: Honorable Mayor and City Council

APPROVED BY: David Dale, City Manager *MD for D.D.*

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

SUBJECT: Hold a Public Hearing, and Review, Introduce and Conduct a First Reading of the Following Ordinance Waive the Reading of the Full Ordinance and Read by Title Only:

Ordinance No. _____ An Ordinance of the City Council of the City of Calexico, California, Amending Chapters 17.05, 17.07, and 17.11 Of Title 17 (Zoning) of the Calexico Municipal Code Regarding Cannabis Testing Laboratories.

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Recommendation:

Hold a public hearing, and 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.

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 grants local jurisdictions control over commercial cannabis activities. 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 businesses, including, but not limited to, local zoning and land use requirements.

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.

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| AGENDA ITEM |
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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. Last year, this Ordinance was revised and updated.

The Calexico Planning Commission reviewed this Ordinance at its regularly scheduled meeting of February 11, 2019. The Planning Commission reviewed the staff report and Ordinance and held a public hearing. The Commission discussed the conditional use permit requirement for testing laboratories in all proposed zones and then voted to recommend approval of the Ordinance to City Council.

Discussion & Analysis:

1. Proposed Zoning Ordinance Amendment

a. Summary

The proposed Zoning Ordinance Amendment (“Ordinance”) would allow cannabis testing laboratories in certain commercial and industrial zones in addition to the Cannabis Overlay Zone where they are currently allowed.

b. Cannabis Testing in Commercial and Industrial Zones

Cannabis testing laboratories test small samples of distinct traceable cannabis batches to determine potency, to analyze active compounds found in cannabis flowers, concentrates, and infused products, and to identify any microorganisms, pesticides, or residual solvents present in each sample. These types of testing methods are common in testing food products and pharmaceuticals.

Staff believes that it is appropriate to allow cannabis testing laboratories in certain commercial and industrial zones, with a conditional use permit (“CUP”). Currently, medical services, which could include laboratories, are permitted in all of the City’s Commercial Zones (Municipal Code § 17.05.120) and “laboratories” are permitted in all of the City’s Industrial Zones. (Municipal Code § 17.07.120). As noted above, there is little practical difference between testing cannabis and testing other food, pharmaceuticals, or items for consumer use. The cannabis samples to be tested at such facilities are very small in size, testing methods and equipment are substantially similar to those used in other testing laboratories allowed by right or by CUP in the City’s commercial and industrial zones, and testing laboratories are prohibited from selling or giving cannabis directly to individuals. Therefore, the use would be appropriate in commercial and industrial zones with a CUP.

Other cities, such as San Diego, are allowing cannabis testing laboratories in the same zones as they allow testing laboratories generally. Similarly, the City of Coachella allows testing laboratories in their general commercial zone in addition to zones that allow cannabis businesses generally.

c. Amendment to Chapter 17.05 Commercial Zones

Calexico Municipal Code Chapter 17.05 sets forth zoning regulations for Commercial Zones within the City. Municipal Code Section 17.05.120 includes a table, which shows which uses are permitted by right, conditionally permitted, and prohibited in each of the four Commercial Zones: CO – Commercial Office, CH – Commercial Highway, CS – Commercial Specialty, and CN – Commercial Neighborhood.

The proposed amendment to Chapter 17.05 adds “cannabis testing laboratories” to the table found in Section 17.05.120. Cannabis testing laboratories are proposed to be conditionally allowed, i.e. allowed by condition use permit, and these laboratories are only allowed in CO-Commercial Office, CH – Commercial Highway, and CS – Commercial Specialty Zones. Cannabis testing laboratories would not be allowed in the CN – Commercial Neighborhood Zone.

The amendment refers the reader to the zoning regulations more specifically set forth in Chapter 17.11, which are discussed below.

The purpose of this proposed amendment is to make Chapter 17.05 consistent with the proposed amendments to Chapter 17.11. And for the reasons expressed above and below, staff believes that cannabis testing laboratories are an appropriate use for the CO, CH, and CS Zones.

d. Amendment to Chapter 17.07 Industrial Zones

Calexico Municipal Code Chapter 17.07 sets forth zoning regulations for Industrial Zones within the City. Municipal Code Section 17.07.120 includes a table, which shows which uses are permitted by right, conditionally permitted, and prohibited in each of the three Industrial Zones: I – General Industrial Zone, IL – Light Industrial Zone, and BP – Business Park.

The proposed amendment to Chapter 17.07 adds “cannabis testing laboratories” to the table found in Section 17.07.120. Cannabis testing laboratories are proposed to be conditionally allowed, i.e. allowed by condition use permit, and these laboratories would be allowed in all Industrial Zones.

The amendment refers the reader to the zoning regulations more specifically set forth in Chapter 17.11, which are discussed below.

The purpose of this proposed amendment is to make Chapter 17.07 consistent with the proposed amendments to Chapter 17.11. And for the reasons expressed above and below, staff believes that cannabis testing laboratories are an appropriate use for the Industrial Zones.

e. Amendment to Chapter 17.11, Article X Commercial Cannabis Activity

The proposed Ordinance makes it clear that testing laboratories may be located in CO-Commercial Office, CH – Commercial Highway, CS – Commercial Specialty, BP – Industrial Business Park, I – Industrial, IR – Industrial Rail Served, and IL - Industrial Light Zones upon either issuance of a CUP or full execution of a development agreement approved by city council and issuance of a regulatory permit, or as otherwise permitted in this code.

The proposed Ordinance additionally allows cannabis testing laboratories to operate within the 600 foot distance limitation that is applied to other commercial cannabis activity uses, such as cultivation, manufacturing, distribution, and retail. The distance limitation is removed for these laboratories because cannabis samples to be tested at such facilities are very small in size, testing methods and equipment are substantially similar to those used in other testing laboratories allowed by right or by CUP in the City’s commercial and industrial zones, and testing laboratories are prohibited from selling or giving cannabis directly to individuals.

California Environmental Quality Act

The proposed 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.

Fiscal Impact:

None.

Recommendation:

It is recommended that the City Council adopt Ordinance No. _____.

Attachment:

Ordinance No. _____ An Ordinance of the City Council of the City of Calexico, California, Amending Chapters 17.05, 17.07, and 17.11 Of Title 17 (Zoning) of the Calexico Municipal Code Regarding Cannabis Testing Laboratories.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING CHAPTERS 17.05, 17.07, AND 17.11 OF TITLE 17 (ZONING) OF THE CALEXICO MUNICIPAL CODE REGARDING CANNABIS TESTING LABORATORIES.

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. 1177 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 three Chapters of Title 17 (Zoning) as follows: (i) Chapter 17.05 would be amended to allow cannabis testing laboratories as a conditional use in some commercial zones; (ii) Chapter 17.07 would be amended to allow cannabis testing laboratories as a conditional use in all industrial zones, (iii) and Chapter 17.11, Article X to allow cannabis testing laboratories in designated commercial and industrial zones and remove the 600 foot distance limitation from schools for testing laboratories only; 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 February 11, 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 approve this Ordinance; and,

WHEREAS, the City Council conducted a properly noticed public hearing on May 1, 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. Section A of the table in Municipal Code Section 17.05.120 is hereby amended with additional underlined text as follows:

“17.05.120 - Permitted and conditional uses—C zones.

The following uses shall be permitted uses where the symbol “P” appears and shall be permitted uses subject to a conditional use permit where the symbol “C” appears in the column beneath each zone designation; where the symbol “X” appears the use is prohibited.

...

| A. Administrative and Professional Services | CO | CN | CH | CS |
|---|----|----|----|----|
| <u>1.</u> Including, but not limited to administrative offices; financial institutions, accounting and auditing services; | P | P | P | P |

| | | | | |
|---|----------|----------|----------|----------|
| clerical and legal services; counseling services; public utility company offices; medical, dental and related health services | | | | |
| <u>2. Cannabis testing laboratories (See Chapter 17.10, Article X.)</u> | <u>C</u> | <u>X</u> | <u>C</u> | <u>C</u> |

...”

SECTION 3. Amendment to Municipal Code. Section A of the table in Municipal Code Section 17.07.120 is hereby amended with additional underlined text as follows:

“17.07.120 - Permitted and conditional uses—I zones.

The following uses shall be permitted uses where the symbol “P” appears and shall be permitted uses subject to a conditional use permit where the symbol “C” appears in the column beneath each zone designation. Where the symbol “X” appears the use shall be prohibited.

| | | | I | IL | BP |
|------------------|-----------|--|----------|----------|----------|
| A. Manufacturing | | | | | |
| | <u>9.</u> | <u>Cannabis testing laboratories (See Chapter 17.11, Article X.)</u> | <u>C</u> | <u>C</u> | <u>C</u> |

...”

SECTION 4. Amendment to Municipal Code. Section 17.11.1030 of the Municipal Code is hereby amended to include additional underlined text as follows:

“17.11.1030 - Commercial cannabis activity—Permitted locations and standards.

A. Commercial cannabis cultivation, manufacturing (including shared-use facilities), laboratory testing, distribution, retailers, non-storefront retailers, and microbusinesses may be located in the cannabis overlay district, upon either issuance of a CUP or full execution of a development agreement approved by city council and issuance of a regulatory permit, or as otherwise permitted in this code. Testing laboratories may be located in CO – Commercial Office, CH – Commercial Highway, CS – Commercial Specialty, BP – Industrial Business Park, I – Industrial, IR – Industrial Rail Served, and IL - Industrial Light Zones upon either issuance of a CUP or full execution of a development agreement approved by city council and issuance of a regulatory permit, or as otherwise permitted in this code.

...

D. Commercial cannabis activity shall be located a minimum distance of six hundred (600) feet away from any sensitive receptor. The distance shall be measured at the nearest point between any part of the building containing the cannabis use and any lot line of the sensitive receptor. This six hundred (600) foot distance limitation shall not apply to cannabis testing laboratories."

SECTION 5. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 6. 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 7. 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 8. 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 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, 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, APPROVED, 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:

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:

Gabriela T. Garcia, City Clerk