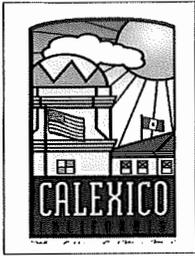


**AGENDA
ITEM**

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AGENDA STAFF REPORT

DATE: July 17, 2019

TO: Mayor and City Council

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

PREPARED BY: Christopher Velasco, Planning Consultant *CV*

SUBJECT: Conduct a Second Reading by Title Only and Adopt Ordinance No. 1202 – An Ordinance Amending Section 17.11.1040, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Creating a Small Scale and Industrial Scale Cannabis Permitting Structure

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Recommendation:

Conduct a Second Reading by Title Only and Adopt Ordinance No. 1202 – An Ordinance Amending Section 17.11.1040, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Creating a Small Scale and Industrial Scale Cannabis Permitting Structure.

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On June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act (“MCRSA”), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single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. 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.

On June 10, 2019 the Planning Commission recommended approval of the ordinance changes to the Commercial Cannabis Permitting Structure unanimously. The motion to approve the addition of the one parcel into the Cannabis Overlay Zone failed in motion.

On June 3, 2019, the City Council adopted the ordinance changes to the Commercial Cannabis Permitting Structure unanimously, with Councilwoman Fernandez absent. The City Council directed us to remove language from the ordinance changes that would add one parcel to the Cannabis Overlay Zone.

Discussion & Analysis:

1. Proposed Zoning Ordinance Amendment

a. Summary

The proposed Zoning Ordinance Amendment (ZOA) does change the Commercial Cannabis Activity Permit structure. Specifically, the proposed ZOA does change the structure of

Commercial Cannabis Activity Permits into two categories for cultivation, manufacturing and distribution.

b. Changes to the Commercial Cannabis Activity Permit (CCAP) Structure

The proposed Zoning Ordinance Amendment (ZOA) would revise the definitions of Manufacturing, Distribution, and Cultivation. The intent of this ZOA is to promote a robust and socially equitable cannabis industry within the City of Calexico. The revisions would create two classes of Commercial Cannabis Activity Regulatory Permits (CCAP), one Industrial Scale and one Small Scale. In October 2018, the first CCAP’s were issued and in the proceeding eight months we have seen the number of available permits for Manufacturing, Cultivation and Distribution decline by 50%, 50% and 60% respectively. Larger businesses take a longer amount of time when making investment decisions as they have their own internal bureaucratic processes, while small businesses can move to invest relatively quickly.

We must strike a balance between generating tax revenue for the City of Calexico while at the same time providing equitable access for small businesses and entrepreneurs seeking to enter the local cannabis industry. Many of these small businesses are owned by local Imperial Valley residents. Larger businesses tend to come from outside the County. The reasoning behind having two separate trajectories for cannabis businesses is to offer CCAP’s for large, tax revenue generating businesses, while having enough CCAP’s for small businesses, ensuring that everyone has equitable access to the burgeoning commercial cannabis industry in Calexico. The proposed ZOA would increase the number of CCAP Permits; please see the charts below for more information:

| Current Structure | Number of CCAP |
|-------------------|----------------|
| Manufacturing | 10 |
| Distribution | 10 |
| Cultivation | 10 |

| Proposed Structure | Number of CCAP |
|----------------------------------|----------------|
| Industrial Scale – Manufacturing | 10 |
| Industrial Scale – Cultivation | 10 |
| Industrial Scale – Distribution | 10 |
| Small Scale – Manufacturing | 10 |
| Small Scale – Cultivation | 10 |
| Small Scale – Distribution | 10 |

1. Changes to Ordinance 1191, 17.11.020

a. Current Definition of Manufacturing.

“**Manufacturing**” means a permittee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis productions or labels or relabels its container.

Proposed ZOA Definition Manufacturing.

“Industrial Scale Manufacturing” means a permittee whose gross receipts exceed \$500,000 annually that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis productions or labels or relabels its container.

“Small Scale Manufacturing” means a permittee whose gross receipts do not exceed \$500,000 annually that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis productions or labels or relabels its container.

b. Current Definition of Distribution.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities permitted or licensed under this chapter, another local California jurisdiction, and State law.

Proposed ZOA Definition Distribution.

“Industrial Scale Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities permitted or licensed under this chapter, another local California jurisdiction, and State law, whose gross receipts exceed \$500,000 annually.

“Small Scale Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities permitted or licensed under this chapter, another local California jurisdiction, and State law, whose gross receipts do not exceed \$500,000 annually.

c. Current Definition of Cultivation.

“Cultivate” or **“cultivation”** means any commercial activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. A cannabis nursery is considered a “cultivation” use.

Proposed ZOA Definition of Cultivation.

“Cultivate, Industrial Scale” or **“Industrial Scale Cultivation”** means any commercial activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis that exceeds ten thousand (10,000) square feet. A cannabis nursery is considered an “Industrial Scale Cultivation” use if it exceeds ten thousand (10,000) square feet.

“Cultivate, Small Scale” or **“Small Scale Cultivation”** means any commercial activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis that does not exceed ten thousand (10,000) square feet. A cannabis nursery

is considered a “Small Scale Cultivation” use if it does not exceed ten thousand (10,000) square feet.

- d. Microbusinesses. After consulting with the City Attorney, we have decided against changing the ZOA definition of “Microbusiness” and will not recommend removing words “retail sale” and “retailers” from the definition. The intent of changing the definition was to allow for Microbusiness applications to be processed and their subsequent CCAP and CUP’s issued. City Attorney and Staff are working to release an “Information Bulletin” clarifying that the “retail” component of the Microbusiness Permit is not available and any application stating a storefront or non-storefront retailer use will be denied. However, any applicant may choose from all other categories included in the Microbusiness application.

2. Changes to 17.11.020 – Conditional Use Permit or development agreement required.

a. Current Definition.

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 with fiscal mitigation measures and terms as approved by city council. Each applicant may only apply for and operate up to two commercial cannabis activity facilities in the city, unless the said applicant is operating a microbusiness. Each CUP or development agreement will include a condition or provision that the applicant shall obtain and maintain a commercial cannabis activity regulatory permit required by this code.

b. Proposed ZOA Definition.

The city may authorize up to ten (10) applicants to operate each of the following types of facilities: Industrial Scale Cultivation, Small Scale Cultivation, laboratory testing, Industrial Scale Distribution and Small Scale Distribution. The City may authorize up to ten (10) applicants to operate primary Industrial Scale Primary Manufacturing and Small Scale 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 thirty (30) secondary permittees to operate within a shared-use facility within the City. In addition, the city may authorize up to seven (7) 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 with fiscal mitigation measures and terms as approved by city council. Each applicant may only apply for and operate up to two commercial cannabis activity facilities in the city, unless the said applicant is operating a microbusiness. Each CUP or development agreement will include a condition or provision that the applicant shall obtain and maintain a commercial cannabis activity regulatory permit required by this code.

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.

Fiscal Impact:

Undetermined at this time.

Attachments:

1. Ordinance No. 1202 - An Ordinance of the City Council of the City of Calexico, California, Amending Section 17.11.1040, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code Creating a Small Scale and Industrial Scale Cannabis Permitting Structure.