AGENDA ITEM

8

AGENDA STAFF REPORT

DATE: November 20, 2019

TO: Mayor and City Council

APPROVED BY: David B. Dale, City Manager DD

PREPARED BY: Christopher Velasco, Planning Consultant
Jill Trembley, Assistant City Attorney, Best Best & Krieger

SUBJECT: Conduct a Second Reading and Adopt Ordinance 1205 - Amending Sections 5.96.020 and 17.11.1020 of the Calexico Municipal Code to Remove Industrial Hemp from the Definition of Cannabis

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Recommendation:

Conduct a Second Reading and Adopt Ordinance 1205 - Amending Sections 5.96.020 and 17.11.1020 of the Calexico Municipal Code to Remove Industrial Hemp from the Definition of Cannabis

Background:

City's Existing Regulations

Currently, applicants wishing to grow industrial hemp in the City must first comply with the City's stringent commercial cannabis cultivation zoning and operating requirements because "industrial hemp" is included in the definition of "cannabis" in the Calexico Municipal Code.

I. What is "Industrial Hemp"?

"Industrial hemp" is defined as, "a crop that is limited to types of the plant *Cannabis sativa L.* having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom." (Cal. Food & Ag. Code, § 81000(d).)

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II. How are Cannabis and Hemp Different?

Cannabis and hemp are in the cannabis family but are not the same.

The main difference between the two plants is the level of Tetrahydrocannabinol or THC. Cannabis can contain up to thirty five percent (35%) of THC, while hemp has a low level, oftentimes under one percent (1%). Hemp does not produce a "high" when smoked or ingested.

Hemp is grown outdoors, is typically taller and thinner with skinnier leaves. Cannabis is mostly grown indoors in a carefully-controlled, humid environment. Hemp is often grown for its oils and fibers, while cannabis is grown for medical purposes and recreational use.

III. New Federal and California Laws

A. Federal Law: The Agriculture Improvement Act of 2018 (2018 Farm Bill)

The Agriculture Improvement Act of 2018 (otherwise known as the 2018 Farm Bill) effective January 1, 2019, removed hemp from Schedule I of the federal Controlled Substances Act. Thus, hemp is no longer federally regulated as a controlled substance.

B. State Law

1. Senate Bill 1409 Industrial Hemp.

Under SB 1409, "industrial hemp" will no longer be defined restrictively in the California Uniform Controlled Substances Act as a fiber or oilseed crop. The bill also authorizes the state Department of Food and Agriculture ("CDFA") to carry out, pursuant to the federal Agricultural Act of 2014, an agricultural pilot program for industrial hemp.

2. Senate Bill 153 Industrial Hemp.

SB 153 is intended to conform California hemp law to the requirements for a state plan under the 2018 Farm Bill. The bill includes enforcement penalties for negligent and grossly negligent conduct; conditions on eligibility to participate in the industrial hemp program; agency reporting requirements to transmit registered-cultivator information first to the CDFA and then to the Secretary of Agriculture, and; a new deadline–May 1, 2020 (previously January 31)–for California to submit its 2018 Farm Bill state plan to United States Department of Agriculture.

3. Assembly Bill 228 Food, Beverage, and Cosmetic Adulterants: Industrial Hemp Products.

Assembly Bill 228 proposes to establish a regulatory framework for industrial hemp products to be used as a good, beverage, or cosmetic.

IV. Planning Commission Action

The Calexico Planning Commission reviewed this item on October 28, 2019. The item

passed unanimously. The Planning Commission recommends that the City Council adopt the proposed Ordinance amending Sections 5.96.020 and 17.11.1020 of the Calexico Municipal Code to remove Industrial Hemp from the definition of Cannabis.

Discussion & Analysis:

City staff is proposing to specifically exclude "industrial hemp" from the definition of cannabis in its Municipal Code provisions regarding business licensing and zoning. If the proposed Ordinance is adopted, the City would treat industrial al hemp the same as any other agricultural crop.

While there will be no City-specific requirements, industrial hemp growers will have to comply with Imperial County registration procedures and regulations.

All growers of industrial hemp for commercial purposes must register with the Imperial County Agricultural Commissioner prior to cultivation. Registration applications are available on the *CDFA Industrial Hemp Program* web page. The annual registration fee is $900.00 In accordance with California Food and Agriculture Code ("FAC") Section 81005(c), a county board of supervisors may also establish a fee to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing state law. Registration is valid for one year from the date of issuance. FAC Section 81006(d) requires registrants to obtain a laboratory test report indicating the percentage of content of THC prior to harvest. If the industrial hemp crop tests over the legal limit of 0.3%, it must be destroyed.

Hemp products have been steadily gaining popularity in the last few years and especially since recreational cannabis became legal in California in 2018.

According to the North American Industrial Hemp Council, more than 25,000 products can be made from hemp. For example, CBD oil extracted from hemp is advertised as being able to treat a wide variety of ailments. Also, hemp fibers can be used for textiles, paper, building materials, and other industrial products. Raw materials such as hurds, or shives, are short woody fibers typically found inside the stalk. They are used for making bedding materials, absorbents, particle board, ceiling panels, compost, and other industrial products.

Hemp can also be used as a food product as either raw seeds or oils. Hemp oil is pressed from the seeds for a concentration of protein, meaning both food product forms are utilizing hempseed as a nutritional resource. Seeds can also be ground up for flour or mixed with water to create hempseed milk.

In addition to being a source for many products, hemp is an environmentally friendly crop. Hemp grows in a variety of climates and soil types, is naturally resistant to most pests, and grows very tightly spaced allowing it to outcompete most weeds.

While cultivating, processing, and manufacturing hemp are the most obvious areas where new jobs can be created, the industry will also have a pressing need for

managers, compliance officers, accountants, marketing specialists, retail employees, transporters, researchers, and the like. City staff believes that relaxing the City's industrial hemp regulations will encourage farmers to grow industrial hemp in the City, which would bolster the local economy and create jobs for Calexico citizens.

On November 6, 2019 the Calexico City Council voted to approve Ordinance 1205 after holding a public hearing, introducing, and conducting a first reading by title only and waive the reading of the full ordinance amending Sections 5.96.020 and 17.11.1020, of the Calexico Municipal Code removing "industrial hemp" from the definition of "cannabis."

Fiscal Impact:

None.

Coordinated With:

City Attorney.

Attachments:

1. Ordinance 1205 - An Ordinance of the City Council of the City Of Calexico, California, Amending Sections 5.96.020 and 17.11.1020 of the Calexico Municipal Code to Remove Industrial Hemp from the Definition of Cannabis.

ORDINANCE 1205

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING SECTIONS 5.96.020 AND 17.11.1020 OF THE CALEXICO MUNICIPAL CODE TO REMOVE INDUSTRIAL HEMP FROM THE DEFINITION OF CANNABIS.

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, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis; and,

WHEREAS, in compliance with MAUCRSA, the City has 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 Calexico Municipal Code ("CMC" or "Code") Ordinance would amend Code Sections 5.96.020 and 17.11.1020 to remove "industrial hemp" from the definition of "cannabis," the effect being that industrial hemp will not be regulated under the City's Business License and Zoning Code Chapters relating to commercial cannabis; and,

WHEREAS, the Planning Commission of the City of Calexico ("Planning Commission") conducted a properly noticed public hearing on October 28, 2019 at which time members of the public were afforded an opportunity to comment on the proposed Code Amendment, the recommendations of staff, and other public testimony; and,

WHEREAS, after said public hearing, the Planning Commission recommended that the City Council of the City of Calexico ("City Council") adopt this Ordinance; and,

WHEREAS, the City Council conducted a properly noticed public hearing on November 6, 2019 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. Incorporation of 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. Calexico Municipal Code Amendment. The definition of "cannabis" found in Calexico Municipal Code Section 5.96.020 is hereby amended. Additions are underlined. Deletions are stricken.

"5.96.020 – Definitions.

...

"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indicia, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. ~~For purposes of this code, "cannabis" includes industrial hemp.~~ For purposes of this Chapter, "cannabis" does not include industrial hemp.

..."

SECTION 2. Calexico Municipal Code Amendment. The definition of "cannabis" found in Calexico Municipal Code Section 17.11.1020 is hereby amended. Additions are underlined. Deletions are stricken.

"17.11.1020 – Definitions.

...

"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indicia, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. ~~For purposes of this code, "cannabis" includes industrial hemp.~~ For purposes of this Chapter, "cannabis" does not include industrial hemp.

..."

SECTION 3. CEQA. The City Council finds that pursuant to the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, no further environmental review is required prior to the adoption of the proposed amendment to the Calexico Municipal Code. Specifically, the City Council finds that the subject Municipal Code Amendment is not subject to 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.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or

application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

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

SECTION 6. Certification. The City Council shall sign this Ordinance, and the City Clerk shall certify passage and adoption of this Ordinance and enter it into the book of original Ordinances of the City. The City Clerk shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed 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.

THIS ORDINANCE IS PASSED, APPROVED, and ADOPTED by the City Council of the City of Calexico, California, at a regular meeting held this 20th day of November 2019.

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Bill Hodge, Mayor

ATTEST:

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Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

_____

Carlos Campos, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela T. Garcia, City Clerk, do hereby certify the above Ordinance No. 1205 was approved at a regular City Council meeting held on the 20th day of November 2019, by the following vote to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Gabriela T. Garcia, City Clerk