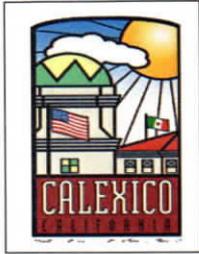


**AGENDA
ITEM**

9



AGENDA STAFF REPORT

DATE: November 20, 2019

TO: Mayor and City Council

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

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

SUBJECT: Conduct a Second Reading and Adopt Ordinance 1206 - Amending Section 17.11.1040 of the Calexico Municipal Code Increasing the Number of Potential Cannabis Retailer, Non-Storefront Retailer, and Microbusiness Permits from Seven (7) to Twelve (12)

=====

Recommendation:

Conduct a Second Reading and Adopt Ordinance 1206 - Amending Section 17.11.1040 of the Calexico Municipal Code Increasing the Number of Potential Cannabis Retailer, Non-Storefront Retailer, and Microbusiness Permits from Seven (7) to Twelve (12).

Background:

In June 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) was signed into law. MAUCRSA establishes a regulatory structure for cannabis cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale.

The City, in compliance with MAUCRSA, established a Cannabis Overlay Zone (“Zone”) in July 2017, which allowed cannabis cultivation, manufacturing, testing, and distribution.

In December 2018, the City Council voted to allow up to five (5) retail cannabis businesses in the Zone. Then, in April 2019, the City Council increased the number of potential retailers in the Zone from five (5) to seven (7). With regards to cannabis retail, it has been the City’s practice to incrementally reconsider and raise the number of allowable cannabis retailers based on applicant interest and market demand. City staff now wishes to propose another increase in potential cannabis retail businesses in the Zone from seven (7) to twelve (12).



The Calexico Planning Commission reviewed this item on October 28, 2019. The item passed unanimously and the Planning Commission recommended that City Council approve the proposed Ordinance amending Section 17.11.1040 of the Calexico Municipal Code increasing the number of potential Cannabis Retailer, Non-Storefront Retailer, and Microbusiness Permits from Seven (7) to Twelve (12).

Discussion & Analysis:

The City's current ordinance allows seven (7) retail cannabis businesses (retail, non-storefront retail, and microbusiness) to locate in the Zone. As of the date of this staff report, the City has issued seven (7) conditional use permits to cannabis retail applicants. This proposed Ordinance would allow up to five (5) additional businesses to operate in the Zone.

In reviewing the potential increase in cannabis retail businesses, staff has considered concentration in the Zone and impacts to the City.

Staff does not foresee a concentration problem in the Zone with the addition of five retail businesses. According to applicants, demand for cannabis and cannabis products supports adding more retail businesses in the Zone. Also, the State may deny a retailer license if it determines that approving the license would result in an excessive concentration of retailers in one area. Under State law, an excessive concentration exists when "the ratio of cannabis retailers to population in the census tract in which the retailer would be located exceeds the countywide ratio, unless denial of the state license application would unduly limit the development of the legal cannabis market so as to perpetuate the illegal market for cannabis or cannabis products." In other words, City staff believes the additional businesses are appropriate to support demand, but the state could potentially deny them if it finds an excessive concentration.

Furthermore, staff does not anticipate that the additional retailers will adversely impact the City's services or negatively affect the general welfare of the citizens. Additional businesses in the Zone will help to revitalize the area with new development, which has been a main goal since the Zone was established.

On November 6, 2019 the Calexico City Council voted to approve Ordinance 1206 after holding a public hearing, introducing and conducting a first reading by title only and waive the reading of the full ordinance amending Section 17.11.1040, of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code increasing the number of potential cannabis retailer, non-storefront retailer, and microbusiness permits from seven (7) to twelve (12).

Fiscal Impact:

None.

Coordinated With:

City Attorney.

Attachments:

1. Ordinance 1206 - An Ordinance of the City Council of the City of Calexico, California, Amending Section 17.11.1040 of the Calexico Municipal Code Increasing the Number of Potential Cannabis Retailer, Non-Storefront Retailer, and Microbusiness Permits from Seven (7) to Twelve (12).

ORDINANCE 1206

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING SECTION 17.11.1040 OF THE CALEXICO MUNICIPAL CODE INCREASING THE NUMBER OF POTENTIAL CANNABIS RETAILER, NON-STOREFRONT RETAILER, AND MICROBUSINESS PERMITS FROM SEVEN (7) TO TWELVE (12).

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 Zoning Ordinance Amendment would amend Section 17.11.1040 of the Calexico Municipal Code to increase the maximum number of City permits issued to retailer, non-storefront retailer, and microbusiness applicants from seven (7) to twelve (12); 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 Zoning Ordinance 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. Zoning Ordinance Amendment. Municipal Code Section 17.11.1040 is hereby amended. Additions are underlined. Deletions are stricken.

“17.11.1040 – Conditional use permit or development agreement required.

The city may authorize up to ten (10) applicants to operate the following type of facility: laboratory testing.

The city may authorize up to twenty (20) applicants to operate the following type of facility: cultivation. Of these twenty (20) applicants, up to ten (10) applicants may be authorized to operate a small scale cultivation facility, which means a permittee whose gross receipts do not exceed \$500,000 annually, and up to ten (10) applicants may be authorized to operate an industrial scale cultivation facility, which means a permittee whose gross receipts exceed \$500,000 annually.

The city may authorize up to twenty (20) applicants to operate the following type of facility: distribution. Of these twenty (20) applicants, up to ten (10) applicants may be authorized to operate a small scale distribution facility, which means a permittee whose gross receipts do not exceed \$500,000 annually, and up to ten (10) applicants may be authorized to operate an industrial scale distribution facility, which means a permittee whose gross receipts exceed \$500,000 annually.

The city may authorize up to twenty (20) applicants to operate primary manufacturing facilities. Of these twenty (20) applicants, up to ten (10) applicants may be authorized to operate a small scale primary manufacturing facility, which means a permittee whose gross receipts do not exceed \$500,000 annually, and up to ten (10) applicants may be authorized to operate an industrial scale primary manufacturing facility, which means a permittee whose gross receipts exceed \$500,000 annually. 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. Of these thirty (30) secondary permittees, fifteen (15) will be reserved for a small scale primary manufacturing facility and fifteen (15) will be reserved for an industrial scale primary manufacturing facility.

In addition, the city may authorize up to ~~seven~~ twelve (~~7~~ 12) 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. 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 TITLE 17 (ZONING) of 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.

Bill Hodge, Mayor

ATTEST:

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. 1206 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:

Gabriela T. Garcia, City Clerk