AGENDA
ITEM

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AGENDA STAFF REPORT

DATE: June 21, 2017

TO: Mayor and City Councilmembers

APPROVED BY: Armando G. Villa, City Manager

PREPARED BY: Carlos Campos & Jill Tremblay, Interim 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 Regulating Commercial Cannabis Activity.

Ordinance No. _____: An Ordinance of the City Council of the City of Calexico, California, Amending Title 5 (Business Licenses and Regulations), Article II, Chapter 5.96 of the Calexico Municipal Code Regulating Commercial Cannabis Activity.

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Recommendation:

Review, introduce, and conduct a first reading of Ordinance Nos. _____ and _____; approve waiving the reading of the full ordinances and read the ordinances 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.

Background:

In 1996, California voters approved Proposition 215, which legalized medical cannabis use in California. Nearly twenty years later, in 2015, the State Legislature passed the Medical Cannabis Regulation and Safety Act ("MCRSA") to provide a statutory framework for regulating and taxing medicinal cannabis businesses and sales.

MCRSA establishes dual licensing of medical marijuana businesses, requiring both local approval and a state license in order for a business to operate legally. In other words, MCRSA requires applicants to provide the relevant state licensing authority with documentation proving their compliance with local ordinances and regulations.

After MCRSA was adopted, in January 2016, the City Council adopted Calexico Municipal (Zoning) Code amendments to prohibit all medicinal commercial cannabis activity in any zone within the City (See Municipal Code Title 17, Chapter 17.11, Article X). The prohibition remains in place at this time.

In November of 2016, California voters approved Proposition 64, otherwise known as the Control, Regulate, Tax Adult Use of Marijuana Act ("AUMA") which legalized the nonmedicinal adult use of cannabis and created a statutory framework for the state to regulate nonmedicinal adult use cannabis.

AUMA, unlike MCRSA, does not require an applicant to provide evidence of local permission prior to being issued a state license. Instead, AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.

Under this system, AUMA allows a nonmedicinal cannabis business licensed by the state to operate within city limits unless the city's municipal code prohibits the use. If the City of Calexico wishes to regulate nonmedical marijuana businesses, it will need to do so before the State begins issuing licenses, by enacting a nonmedical cannabis ordinance/regulation.

The Municipal Code is currently silent on nonmedicinal commercial cannabis for adult use.

With this statewide shift in allowing and comprehensively regulating cannabis (medicinal and nonmedicinal) cities appear to be changing their stances because the stigma has been reduced, there is a need and desire for additional revenue streams, cities do not want to be "left behind," and other states, such as Colorado and Washington, have proven to be case-studies for this new and growing industry.

Though MCRSA and AUMA are similar, there are distinct differences between them (e.g. their license systems, as discussed above) that will impact how state licenses are obtained and how businesses are run and operated. In efforts to harmonize MCRSA and AUMA, California Governor Jerry Brown proposed a Budget Trailer Bill in late April 2017 that seeks to create one master regulatory structure with two separate licensing tracks for medicinal and adult use cannabis businesses.

Also, in late April and early May 2017, more specific regulations for medicinal cannabis cultivation, manufacturing, testing, distribution, and transportation were released by the State ("Regulations"), however, as of the date that this staff report was finalized, these Regulations were in draft form and do not include regulations for nonmedicinal commercial cannabis activities. If the governor's Budget Trailer Bill passes along with the budget by the State's June 15 deadline, regulators will have to overhaul the regulations they have spent the past year creating so they comply with the governor's mandates. Nonmedicinal cannabis regulations are forthcoming.

MCRSA and AUMA allow local jurisdictions to adopt and enforce their own local ordinances to regulate or ban medicinal and/or nonmedicinal cannabis businesses. This could include through local zoning and land use requirements, business license requirements, and other requirements.

The state anticipates that it will begin issuing licenses for all commercial cannabis activity (medicinal and nonmedicinal) by January 2018. Since the City can maintain a degree of local control over commercial cannabis activities, it is recommended that the City adopt regulations covering both medicinal and nonmedicinal cannabis businesses. In addition, if the City fails to adopt regulations regarding nonmedicinal commercial cannabis activity before the State starts issuing licensing, an applicant can apply for and obtain a State license and operate freely in the City.

The City Council adopted regulatory permit standards for commercial cannabis businesses in February 2017. The regulatory permit standards can be found in Municipal Code Chapter 5.96. These regulations deal specifically with how commercial cannabis businesses are allowed to operate. For example, they require certain odor control measures, security plans, and background checks.

Discussion & Analysis:

1. Proposed Zoning Ordinance Amendment

a. Summary

The proposed Zoning Ordinance Amendment (ZOA) provides that up to ten (10) applicants per commercial cannabis business category may operate in the Cannabis Overlay Zone (see Attachment "1" to ZOA for map) after obtaining a conditional use permit (CUP) or development agreement approved by City Council and a regulatory permit. Each applicant may only apply for and operate two (2) commercial cannabis activity facilities in the city.

b. Each Applicant May Operate up to Two Separate Activity Operations

The City may authorize up to ten (10) applicants per commercial cannabis activity category to operate within the City of Calexico. The permitted categories are as follows: cultivation, manufacture, testing, distribution, and transportation. Each applicant may only apply for and operate two commercial cannabis activity facilities or businesses in the city. Testing laboratories are prohibited under state law from holding any other license type.

The City sees a benefit in taking this conservative approach in order to see how the market develops, to understand what the potential impacts of commercial cannabis will be, and to properly and comprehensively vet the applicants. Further, the City wants to avoid a single developer or a few developers monopolizing the industry in Calexico. After receiving public comment at the May 22, 2017 Planning Commission meeting, staff determined that the original restriction of up to 10 total businesses run by ten different operators was too stringent. To be competitive, for example, some cultivators want to also manufacture their product into concentrates.

It is also important to consider potential drawbacks when enacting these types of restrictions. For example, number limits on dispensaries in certain cities, such as Cathedral City, Palm Springs, and Berkeley, have been legally challenged on the grounds of favoritism, discrimination, collusion with city officials; city allowing unlawful monopoly, and city forcing demand into illegal channels.

Another practical limit to cannabis business is electricity demand. At this point in time, electricity needs for cannabis businesses will also serve to limit the number of businesses that can feasibly operate.

It is key to remember that the State laws and regulations continue to develop, the industry is constantly changing, there is a degree of uncertainty at the federal level, technology is advancing, and any regulations that the City may impose can and would be reviewed and amended on an as needed basis.

c. Commercial Cannabis Activity

In the proposed ZOA, commercial cannabis activity includes:

- cultivation,
- manufacture,
- laboratory testing,
- transportation, and

- distribution
- including possession, processing, storing, and labeling incidental to each activity of cannabis, and cannabis products.

Each activity listed above is specifically defined in the ZOA. The definitions conform to MCRSA, AUMA, the proposed Budget Trailer Bill, and the proposed Regulations.

Under the ZOA, commercial cannabis activity does not include:

- delivery,
- dispensing, or
- retail sale
- of cannabis or cannabis products.

The City is not looking to allow delivery (from dispensary/retailer to patient/customer), dispensaries, or retail sale at this time. Delivery, dispensing, and retail sale involve storefronts and direct sale to consumers. State law prohibits individual consumers from purchasing cannabis or cannabis products directly from cultivation, manufacturing, testing, transportation, or distribution facilities. Consumers and patients may only buy cannabis from dispensaries (medicinal) and retailers (nonmedicinal). In other words, all cannabis cultivated and/or manufactured in Calexico would be transported and sold outside of city limits.

d. Cannabis Overlay Zone

The proposed Cannabis Overlay Zone includes the approximately 354.02 acres within the area bounded by railroad tracks on the west; the Adler Canal on the north; West Van de Graff Avenue and Scaroni Avenue on the east; and Weakley Street and Camacho Road on the south. The Cannabis Overlay Zone includes Industrial (IND), Industrial Rail Served (IR) and Commercial.

City staff has proposed this particular area for commercial cannabis activity because it is highly industrialized, has some vacant parcels, and includes parcels that currently constitute a public nuisance due to blight and/or disrepair (e.g. wrecking yards) that should be cleaned up and revitalized. While there are some non-conforming residential uses, they are mostly in the southern portion of the Overlay Zone.

e. Development Agreement or Conditional Use Permit Requirement

Prior to initiating operations and as a continuing requisite to operating a commercial cannabis activity, the applicant will be required to obtain a validly issued CUP or enter into a fully executed development agreement approved 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.

CUPs will not be issued until the effective date of an approved ballot measure authorizing the taxation of commercial cannabis activity in the city. The City is looking at the possibility of getting this type of ballot measure on the ballot this year and if that is not possible, the City would look to propose such a ballot measure during the general election in 2018.

For informational purposes, the following are a few different potential taxation schemes. Dollar amounts and percentages are provided as examples and are based on average tax rates adopted by other California cities.

- Per Square Foot of Canopy: The city could charge a tax of $15 per square foot of canopy space authorized by city permit until June 30, 2020. For every year thereafter, the tax would be increased by $5 per square foot, not to exceed $25 per square foot. On July 1, 2023, the tax would be increased annually according to the CPI for inflation.

- Percentage of Gross Receipts: The city could charge a tax of up to 6 to 8% of gross wholesale receipts for cannabis cultivators and manufacturers.

- Combination: The city could charge a dollar amount per square foot of canopy space in addition to a percentage of gross receipts.

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. The regulatory permit mandates certain operating and building requirements and is further discussed, below.

f. Reimbursement Agreement

With each application, the applicant must provide an executed reimbursement agreement to fully reimburse the City for all fiscal impacts, costs, expenses, and fees, including but not limited to attorney fees and consultant fees, incurred by the City related to the commercial cannabis activity, and a deposit in an amount as provided for in the reimbursement agreement terms.

This type of agreement is typical for development projects that may require additional legal, environmental, or other consultant review.

g. Other Land Use Restrictions

In addition to the above requirements, commercial cannabis activity must conform to the following:

- Commercial cannabis activity shall be limited to no more than seventy-five percent (75%) of the acreage of a legal parcel in the Cannabis Overlay Zone.

- 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. A "sensitive receptor" is defined as an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school; any licensed child care center, daycare center, or any preschool; and parks and playgrounds.

- Each commercial cannabis cultivation facility shall be at least five thousand (5,000) square feet in size.

- Cannabis cultivation, manufacturing, and testing may only occur indoors. Commercial cannabis activity shall not result in the creation of any odors detectable from anywhere off the property boundaries. The use of carbon filtration systems and other mitigation measures shall be used on all commercial cannabis activities that cause such odors.

Commercial cannabis activity permittees or developers shall not allow cannabis to be visible from the public right-of-way, the unsecured areas surrounding the commercial cannabis activity's site, or the commercial cannabis activity's main entrance and lobby.

- No commercial cannabis activity shall operate unless it is in possession of all applicable state and local licenses or permits, except as otherwise permitted by state and/or local law. Every commercial cannabis activity shall submit to the city manager a copy of any and all of its state and local licenses and permits required for its operation. If any other applicable state or local license or permit for a commercial cannabis activity is denied, suspended, modified, revoked, or expired, the permittee shall notify the city manager in writing within ten (10) calendar days.

2. Proposed Municipal Code Amendment Regarding Commercial Cannabis Activity Regulatory Permits

At the time a commercial cannabis activity applicant obtains a CUP or enters into a development agreement, the applicant must also obtain a regulatory permit. The purpose of the regulatory permit is to provide operating and building standards to limit the potential for criminal activity, degradation of the natural environmental, electrical fire hazards, offensive odors and other potential impacts to the community.

The proposed revisions to Calexico Municipal Code Chapter 5.96 establish a process by which the City may issue regulatory permits for commercial cannabis activity.

In addition to complying with the ZOA, commercial cannabis activity would be subject to the following requirements:

- Comprehensive application, including, but not limited to:
    - Comprehensive applicant/entity information.
    - Extensive financial disclosures.
    - Copies of all other state or locally issued cannabis-related permits or licenses.
    - Security plan.
    - Odor control plan.
    - Business plan.
    - Community relations plan.
    - Neighborhood responsibility plan.
    - Proof of adequate insurance.
    - Budget.
    - Authorization for Livescan fingerprinting.
- Federal, state, and local background checks.
- Continued operation in compliance with:
    - Security plan.
    - Odor control plan.
    - Business plan.
    - Community relations plan.
    - Neighborhood responsibility plan.

- 'Seed to sale' or 'track and trace' system that produces historical transactional data for review by the city manager for auditing purposes.
- All records must be available to the City for the past three (3) years on 24 hours' notice.
- Emergency contact manager contact information and 24/7 availability.
- Community relations manager.
- Retail sales prohibited.
- Cannabis consumption prohibited.
- Alcohol prohibited.
- Juveniles prohibited.
- Specialized building standards.
- Regulatory permit must be displayed in a prominent location.
- City manager or designee may make periodic, unannounced inspections.
- Full compliance with state law.

California Environmental Quality Act

The Ordinances are 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.

Planning Commission Action and Discussion:

The Zoning Ordinance Amendment affects the use of land within the City in that it affects how property owners may develop commercial cannabis activity projects in the Cannabis Overlay Zone. Pursuant to California Government Code, Sections 65854 and 65855, the Planning Commission is required to conduct a noticed public hearing to consider any non-urgency ordinance that, among other things, regulates land use, height, size or intensity of land, buildings or structures.

On May 22, 2017, the Planning Commission conducted a duly noticed public hearing to consider Ordinance No. _____.

After much discussion, the Planning Commission decided to recommend adoption of Ordinance No. _____ to City Council. The recommendation was made by a 4-0-1 vote, Chairperson Felix being absent.

Fiscal Impact:

None.

Recommendation:

It is recommended that the City Council review, introduce and conduct a first reading of Ordinance Nos. _____ and _____; approve waiving the reading of the full ordinances and read the ordinances 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.

Attachments:

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 Regulating Commercial Cannabis Activity.

2. Ordinance No. _____: An Ordinance of the City Council of the City of Calexico, California, Amending Title 5 (Business Licenses and Regulations), Article II, Chapter 5.96 of the Calexico Municipal Code Regulating Commercial Cannabis Activity.

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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 REGULATING COMMERCIAL CANNABIS ACTIVITY.

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, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health & Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996"); and,

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate cannabis for medical use under state law; and,

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as California Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate cannabis for medical purposes without being subject to criminal prosecution under the California Penal Code; and,

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical cannabis within its jurisdiction; and,

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical cannabis land uses; and,

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of cannabis are unlawful and subject to federal prosecution without regard to a claimed medical need; and,

WHEREAS, on October 9, 2015, Governor Brown signed the "Medical Cannabis Regulation and Safety Act" ("MCRSA") into law; and,

WHEREAS, MCRSA became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, MCRSA contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the MCRSA, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of cannabis..." (California Health and Safety Code §11362.777(c)(4)); and,

WHEREAS, California has adopted, through ballot initiative, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") (Proposition 64) to regulate the personal, medical, and commercial use of cannabis pursuant to local authority preserved in the AUMA; and

WHEREAS, AUMA look effect on November 9, 2016; and

WHEREAS, outdoor cultivation of cannabis plants can produce a strong odor detectable far beyond property boundaries; and,

WHEREAS, unregulated indoor cannabis cultivation and manufacturing and subsequent testing, distribution, and transportation has the potential to adversely affect the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and,

WHEREAS, based on the experiences of other jurisdictions, unregulated commercial cannabis activity could have negative effects on public health, safety, and welfare of the citizens of Calexico; and,

WHEREAS, based on the findings above, the potential establishment of unregulated cannabis cultivation, manufacturing, testing, distribution, and transportation facilities in the City poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and,

WHEREAS, the issuance or approval of a conditional use permit, development agreement, or any other applicable entitlement for cannabis cultivation, manufacturing, testing, distribution, and transportation activities will substantially reduce the aforementioned threat to public health, safety, or welfare; and,

WHEREAS, the City Council of the City of Calexico ("City Council") intends to adopt a new Chapter under Title V, *Business Licenses and Regulations*, establishing a regulatory permit scheme for cannabis cultivation, manufacturing, distribution, testing, and transportation activities, such that each proposed commercial cannabis activity must have both a conditional use permit, development agreement or other applicable entitlements *and* a regulatory permit prior to operation; and

WHEREAS, the City Council desires to amend its current cannabis zoning regulations such that commercial cannabis activity is restricted to a designated "Cannabis Overlay Zone" as shown in Exhibit "1" attached hereto and incorporated herewith; and,

WHEREAS, the Planning Commission of the City of Calexico ("Planning Commission") conducted a properly noticed public hearing on May 22, 2017 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 June 21, 2017 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and other public testimony; and

WHEREAS, the City Council conducted a second reading of this Ordinance at a properly noticed public hearing on _____, 2017 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, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Amendment to the Calexico Municipal Code. Title 17 (Zoning), Chapter 17.11, Article X of the Calexico Municipal Code is hereby amended and restated as follows:

"ARTICLE X. Commercial Cannabis Activity

17.11.1010 Purpose and intent.

It is the purpose and intent of this chapter to regulate the cultivation, manufacturing, testing, distribution, and transportation of medicinal and nonmedicinal adult use cannabis (including cannabis products and edible cannabis products) within the City of Calexico.

Delivery of cannabis within the city is prohibited. Additionally, cannabis dispensaries and retail sales (including microbusinesses) are prohibited in the city.

The regulations and prohibitions in this chapter are enacted to ensure the health, safety, and welfare of the residents of the city. The regulations and prohibitions herein, which are in compliance with the Compassionate Use Act of 1996 ("CUA"), the Medical Marijuana Program ("MMP"), the Medical Cannabis Regulation and Safety Act ("MCRSA"), the Control, Use, Tax Adult Use of Marijuana Act ("AUMA"), (collectively, "State law"), do not interfere with the use and possession of cannabis as authorized under State law.

Nothing in this chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance, or(2) allow any activity relating to the cultivation, manufacturing, testing, distribution, transportation, or use of cannabis that is otherwise illegal under California state law.

17.11.1020 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not explicitly defined in this chapter, the common and ordinary meaning of the word shall apply.

"Applicant" means a person applying for a conditional use permit, desiring to enter into a development agreement, or applying for any other applicable entitlement under this chapter. An "applicant" includes all representatives, agents, parent entities, or subsidiary entities of the applicant.

"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, 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. "Cannabis" also means marijuana as defined in California Health and Safety Code Section 11018. "Cannabis" does not include the mature stalks of the plan, fiber produced from the stalks, oil or cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plan which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

"Cannabis Overlay Zone" means the approximately 354.02 acres within the area bounded by railroad tracks on the west; the Adler Canal on the north; West Van de Graff Avenue and Scaroni Avenue on the east; and Weakley Street and Camacho Road on the south. The Cannabis Overlay Zone includesIndustrial (IND), Industrial Rail Served (IR) and Commercial.

"Cannabis products" has the same meaning as marijuana products in Section 11018.1 of the California Health and Safety Code. When the term "cannabis" is used in this chapter, it shall include "cannabis products."

"City manager" means the city manager of the City of Calexico or designee.

"Commercial cannabis activity" includes cultivation, manufacture, laboratory testing, transportation and distribution (including possession, processing, storing, and labeling incidental to each activity) of cannabis, and cannabis products. For purposes of this chapter, "commercial cannabis activity" does not include delivery, dispensing, or retail sale of cannabis or cannabis products.

"Conditional Use Permit" or "CUP" means a conditional use permit issued under this chapter.

"Cultivate" or "cultivation" means any commercial activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" means the commercial transfer of cannabis or cannabis products to a customer.

"Developer" means a person who has a fully negotiated and executed development agreement with the City under this chapter. A "developer" includes all representatives, agents, parent entities, or subsidiary entities of the developer.

"Development Agreement" means an agreement entered into between the City and an applicant under this chapter pursuant to Section 65865 of the California Government Code.

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

"Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 of the California Food and Agricultural Code. An edible cannabis product

is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code. When the term "cannabis" is used in this chapter, it shall include "edible cannabis products."

"Indoor" means within a fully enclosed and secure building.

"Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Sections 66410 *et seq.* of the California Government Code).

"Manufacture" means to compound, blend, extract, infuse or otherwise make or prepare a cannabis product.

"Permittee" means the individual or applicant to whom a conditional use permit has been issued under this chapter. A permittee includes all representatives, agents, parent entities, or subsidiary entities of the permittee.

"Person" includes any individual, firm, co-partnership, joint venture, association, corporation, Limited Liability Company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

"Retailer" means a person or entity that sells cannabis or cannabis products to customers. The term "retailer" shall also include the term "dispensary," as defined under MCRSA.

"Sensitive receptors" include an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school; any licensed child care center, daycare center, or any preschool; and parks and playgrounds.

"Testing" means subjecting cannabis to laboratory testing for active compounds and purity prior to distribution for consumption.

"Transportation" means transferring cannabis and/or cannabis products from one person or entity permitted under this chapter, permitted by another local California jurisdiction, and/or licensed under State Law to another person or entity permitted under this chapter, permitted by another local California jurisdiction, and/or licensed under State Law.

Words and phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources:

A. The Compassionate Use Act of 1996 ("CUA");

B. The Medical Marijuana Program ("MMP"); and

C. The Medical Cannabis Regulation and Safety Act ("MCRSA"); and

D. Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA")."

17.11.1030 Commercial cannabis activity -- Permitted locations and standards.

A. Commercial cannabis activity 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.

B. Commercial cannabis activity shall be limited to no more than seventy-five percent (75%)

of the acreage of a legal parcel in the Cannabis Overlay Zone.

C. Each commercial cannabis cultivation facility shall be at least five thousand (5,000) square feet in size.

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.

E. Cannabis cultivation, manufacturing, and testing may only occur indoors. Commercial cannabis activity shall not result in the creation of any odors detectable from anywhere off the property boundaries. The use of carbon filtration systems and other mitigation measures shall be used on all commercial cannabis activities that cause such odors. Commercial cannabis activity permittees or developers shall not allow cannabis to be visible from the public right-of-way, the unsecured areas surrounding the commercial cannabis activity's site, or the commercial cannabis activity's main entrance and lobby.

F. No commercial cannabis activity shall operate unless it is in possession of all applicable state and local licenses or permits, except as otherwise permitted by state and/or local law. Every commercial cannabis activity shall submit to the city manager a copy of any and all of its state and local licenses and permits required for its operation. If any other applicable state or local license or permit for a commercial cannabis activity is denied, suspended, modified, revoked, or expired, the permittee shall notify the city manager in writing within ten (10) calendar days.

G. Except as required in this chapter, CUPs shall be reviewed, issued, denied, suspended, revoked, and/or renewed in accordance with Chapter 17.01, Article V. *Conditional Use Permit Regulations.* If any provision of this chapter conflicts with any provision of Title 17, Chapter 17.01, Article V of this code, the provision in this chapter shall control.

17.11.1040 Conditional use permit or development agreement required.

The City may authorize up to ten (10) applicants per commercial cannabis activity category to operate within the City of Calexico. The commercial cannabis activity categories permitted include cultivation, manufacture, testing, distribution, and transportation. 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. CUPs will not be issued until the effective date of an approved ballot measure authorizing the taxation of commercial cannabis activity in the city. Each applicant may only apply for and operate up to two (2) commercial cannabis activity facilities in the city. 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.

17.11.1050 Application fee and reimbursement agreement.

At the time an applicant submits an application under this chapter, the applicant shall also supply an application fee in an amount to be determined by resolution by the city council, an executed

reimbursement agreement on a form provided by the city to fully reimburse the City for all fiscal impacts, costs, expenses, and fees, including but not limited to attorney fees and consultant fees, incurred by the City related to the commercial cannabis activity, and a deposit in an amount as provided for in the reimbursement agreement terms.

17.11.1060 Cannabis transfer between permitted commercial cannabis activities only.

A commercial cannabis activity shall not transfer cannabis or cannabis products to or from another commercial cannabis activity, unless both activities are in possession of all required state and local licenses and permits.

17.11.1070 Permits not transferable.

CUPs issued pursuant to this chapter are not property and have no value. CUPs may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a cannabis business CUP shall be unlawful and void, and shall automatically revoke the permit.

17.11.1080 Prohibited operations.

Any commercial cannabis activity that does not have both a CUP or development agreement and a regulatory permit required under this code is expressly prohibited in all city zones and is hereby declared a public nuisance that may be abated by the city and is subject to all available legal remedies, including, but not limited to civil injunctions. Cannabis delivery, dispensaries, and retailers are prohibited in all city zones and are hereby declared a public nuisance that may be abated by the city and is subject to all available legal remedies, including, but not limited to civil injunctions.

17.11.1090 Penalties for violations.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties.

B. Violations of this chapter constitute an infraction or misdemeanor and may be enforced by any applicable law.

C. Violations of this chapter are hereby declared to be public nuisances.

D. Each person is guilty of a separate offense each day a violation is allowed to continue and every violation of this chapter shall constitute a separate offense and shall be subject to all remedies.

E. All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof."

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 this 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.

ORDINANCE PASSED AND APPROVED at a regular meeting of the City Council of the City of Calexico this _____day of _____, 2017.

_____
Armando G. Real, Mayor

ATTEST:

_____
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, Interim 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 _____ 2017 and was adopted by the following vote:

AYES:

NOES:

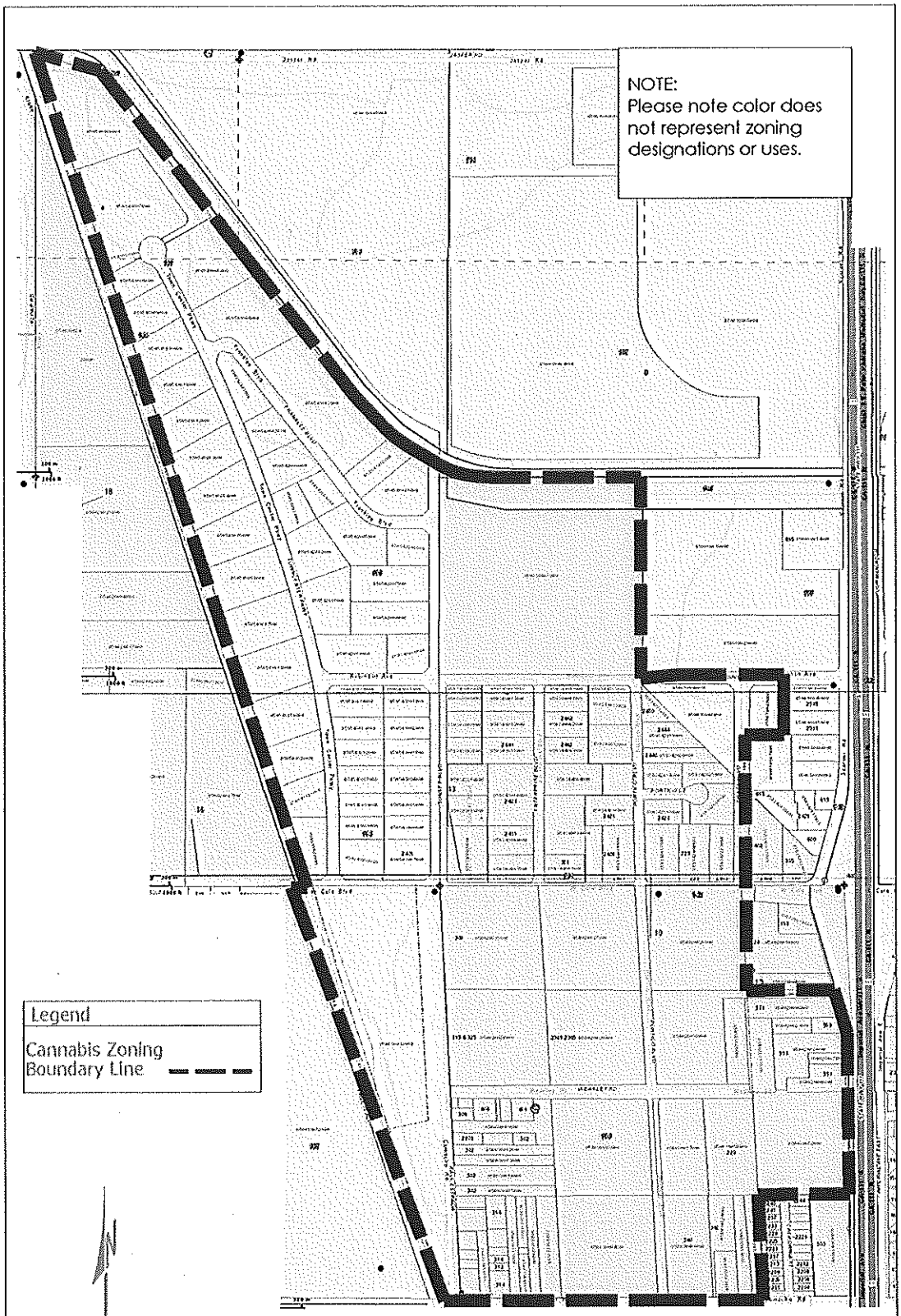
ABSENT:

ABSTAIN:

_____

Gabriela T. Garcia, City Clerk

EXHIBIT "1"



CITY OF CALEXICO	APPROVED BY:		DRAWN BY: OMAR N. DATE: 04/18/2017	PROJECT DESCRIPTION: Cannabis Zoning APN'S	SHEET TITLE: PROJECT LOCATION MAP	SHEET: A01

8121

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING TITLE 5 (BUSINESS LICENSES AND REGULATIONS), ARTICLE II, CHAPTER 5.96 OF THE CALEXICO MUNICIPAL CODE REGULATING COMMERCIAL CANNABIS ACTIVITY.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health & Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996"); and,

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate cannabis for medical use under state law; and,

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as California Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate cannabis for medical purposes without being subject to criminal prosecution under the California Penal Code; and,

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical cannabis within its jurisdiction; and,

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical cannabis land uses; and,

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of cannabis are unlawful and subject to federal prosecution without regard to a claimed medical need; and,

WHEREAS, on October 9, 2015, Governor Brown signed the "Medical Cannabis Regulation and Safety Act" ("MCRSA") into law; and,

WHEREAS, MCRSA became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, MCRSA contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the MCRSA, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of cannabis..." (California Health and Safety Code §11362.777(c)(4)); and,

WHEREAS, California has adopted, through ballot initiative, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") (Proposition 64) to regulate the personal, medical, and commercial use of cannabis pursuant to local authority preserved in the AUMA; and

WHEREAS, AUMA look effect on November 9, 2016; and

WHEREAS, unregulated indoor cannabis cultivation and manufacturing and subsequent testing, distribution, and transportation has the potential to adversely affect the health and

safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and,

WHEREAS, based on the experiences of other jurisdictions, unregulated commercial cannabis activity could have negative effects on public health, safety, and welfare of the citizens of Calexico; and,

WHEREAS, the City Council of the City of Calexico ("City Council") desires to update Title 5, *Business Licenses and Regulations*, Article II, Chapter 5.96, which has established a regulatory permit scheme for cannabis cultivation, manufacturing, distribution, testing, and transportation activities, such that each proposed commercial cannabis activity must have both a conditional use permit, development agreement or other applicable entitlements *and* a regulatory permit prior to operation; and

WHEREAS, the City Council conducted a properly noticed public hearing on June 21, 2017 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and other public testimony; and

WHEREAS, the City Council conducted a second reading of this Ordinance at a properly noticed public hearing on _____, 2017 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, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Amendment to the Calexico Municipal Code. Title 5 (Business Licenses and Regulations), Article II, Chapter 5.96 of the Calexico Municipal Code is hereby amended and restated as follows:

"Chapter 5.96. — Commercial Cannabis Activity Regulatory Permit.

5.96.010 - Purpose and intent.

It is the purpose and intent of this chapter to regulate the cultivation, manufacturing, testing, distribution, and transportation of medicinal and nonmedicinal adult use cannabis (including cannabis products and edible cannabis products) within the City of Calexico.

The regulations and prohibitions in this chapter are enacted to ensure the health, safety, and welfare of the residents of the city. The regulations and prohibitions herein, which are in compliance with the Compassionate Use Act of 1996 ("CUA"), the Medical Marijuana Program ("MMP"), the Medical Cannabis Regulation and Safety Act ("MCRSA"), the Control, Use, Tax Adult

Use of Marijuana Act ("AUMA"), (collectively, "State law"), do not interfere with the use and possession of cannabis as authorized under State law.

Nothing in this chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance, or(2) allow any activity relating to the cultivation, manufacturing, testing, distribution, transportation, or use of cannabis that is otherwise illegal under California state law.

5.96.020 – Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not explicitly defined in this chapter, the common and ordinary meaning of the word shall apply.

"Applicant" means a person applying for a regulatory permit under this chapter. An "applicant" includes all representatives, agents, parent entities, or subsidiary entities of the applicant.

"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, 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. "Cannabis" also means marijuana as defined in California Health and Safety Code Section 11018. "Cannabis" does not include the mature stalks of the plan, fiber produced from the stalks, oil or cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plan which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

"Cannabis products" has the same meaning as marijuana products in Section 11018.1 of the California Health and Safety Code. When the term "cannabis" is used in this chapter, it shall include "cannabis products."

"City manager" means the city manager of the City of Calexico or designee.

"Commercial cannabis activity" includes the cultivation, manufacture, distributing, laboratory testing, and transportation (including possession, processing, storing, and labeling incidental to such activities) of cannabis and cannabis products as provided in this chapter. "Commercial cannabis activity" does not include delivery, dispensing, or retail sale of cannabis or cannabis products.

"Cultivate" or "cultivation" means any commercial activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" means the commercial transfer of cannabis or cannabis products to a customer.

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

"Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 of the California Food and Agricultural Code. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code. When the term "cannabis" is used in this chapter, it shall include "edible cannabis products."

"Manufacture" means to compound, blend, extract, infuse or otherwise make or prepare a cannabis product.

"Owner" means any of the following: (1) All persons with an aggregate ownership interest of 20 percent (20%) or more in the applicant, unless such interest is solely a security, lien, or encumbrance; (2) the chief executive officer of an entity or nonprofit; (3) all members of the board of directors of a nonprofit; or (4) an individual that will be participating in the direction, control, or management of the permitted commercial cannabis activity.

"Permittee" means the individual or applicant to whom a regulatory permit has been issued under this chapter. A permittee includes all representatives, agents, parent entities, or subsidiary entities of the permittee.

"Person" includes any individual, firm, co-partnership, joint venture, association, corporation, Limited Liability Company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

"Premises" means the designated structures and land specified in the regulatory permit application that are in the possession of an used by the applicant or permittee to conduct the commercial cannabis activity. The premises must be a contiguous area and may only be occupied by one licensee.

"Retailer" means a person or entity that sells cannabis or cannabis products to customers. The term "retailer" shall also include the term "dispensary," as defined under MCRSA.

"Testing" means subjecting cannabis to laboratory testing for active compounds and purity prior to distribution for consumption.

"Transportation" means transferring cannabis and/or cannabis products from one person or entity permitted under this chapter, permitted by another local California jurisdiction, and/or licensed under State Law to another person or entity permitted under this chapter, permitted by another local California jurisdiction, and/or licensed under State Law.

Words and phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources:

A. The Compassionate Use Act of 1996 ("CUA");

B. The Medical Marijuana Program ("MMP"); and

C. The Medical Cannabis Regulation and Safety Act ("MCRSA"); and

D. Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA")."

5.96.030 – Regulatory permit required.

Prior to initiating operations and as a continuing requisite to operating a commercial cannabis activity, the legal representative of the persons wishing to operate and/or lease out a facility for commercial cannabis activity shall first obtain a conditional use permit or fully execute a development agreement approved by city council or other entitlement as required under Title 17 (Zoning), Chapter 17.11, Article X of this code and then obtain a regulatory permit from the city manager and shall pay an application fee as established by resolution adopted by the city council as amended from time to time.

5.96.040 - Regulatory permit application.

An application for a regulatory permit shall include, but shall not be limited to, the following information:

A. The name, address, and telephone number of the applicant.

B. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement operating agreement, and fictitious business name statement.

C. The name, address, telephone number, title, and function of each of the interested parties described in Section 5.96.150.

D. A legible copy of each applicant's photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

E. A list of the license or permit types (including license or permit numbers) held by the applicant that involve the operation of a commercial cannabis activity, including the date the license or permit was issued and the jurisdiction or State license authority that issued the license or permit.

F. Whether the applicant has been denied a license or permit by the City, any other jurisdiction, and/or the State that involves the operation of a commercial cannabis activity. The applicant shall provide a description of the license or permit applied for, the name of the jurisdiction or State license authority that reviewed the license or permit application, and the date of denial.

G. The proposed commercial cannabis activity's physical address, telephone number, website address, and email address.

H. Contact information for the applicant's designated primary contact person including the name, title, address, phone number, and email address of the individual.

I. A list of every fictitious business name the applicant is operating under including the address where the business is located.

J. Financial information including the following:

1. A list of funds belonging to the commercial cannabis business held in savings, checking, or other accounts maintained by a financial institution. The applicant shall provide for each account, the financial institution's name, the financial institution's address, account type, account number, and the amount of money in the account.

2. A list of loans made to the commercial cannabis business. For each loan, the applicant shall provide the amount of the loan, the date of the loan, term(s) of the loan, security provided for the loan, and the name, address, and phone number of the lender.

3. A list of investments made into the commercial cannabis business. For each investment, the applicant shall provide the amount of the investment, the date of the investment, term(s) of the investment, and the name, address, and phone number of the investor.

4. A list of all gifts of any kind given to the applicant for its use in conducting commercial cannabis activity. For each gift the applicant shall provide the value of the gift or description of the gift, and the name, address, and phone number of the provider of the gift.

K. A copy of the applicant's completed application for electronic fingerprint images submitted to the Department of Justice and Federal Bureau of Investigation.

L. A list of each applicant's misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of *nolo contendre*.

M. A complete and detailed diagram of the proposed premises showing the boundaries of the property and the proposed premises to be permitted, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, windows, doorways, and common or shared entryways, storage areas and exterior lighting. The diagram must show the areas in which all commercial cannabis activity will take place, including but not limited to, limited-access areas.

N. A detailed security plan outlining the measures that will be taken to ensure the safety of persons and property on the premises. As part of the security plan, a lighting plan is required that shows existing and proposed exterior and interior lighting that will provide adequate security lighting for the commercial cannabis activity and premises. The security plan must be prepared by a qualified professional and include provisions in compliance with the following:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least two hundred forty (240) concurrent hours of digitally recorded documentation in a format approved by the city manager. The cameras shall be in use twenty-four (24) hours per day, seven days per week. The areas to be covered by the security cameras

shall include, but are not limited to, the public areas, storage areas, employee areas, all doors and windows, and any other areas as determined to be necessary by the city manager.

2. The premises shall be alarmed with an audible interior and exterior alarm system, unless waived for extenuating circumstances by the city manager that is operated and monitored by a recognized security company, deemed acceptable by the city manager. Any change in the security company shall be subject to the approval of the city manager. All current contact information regarding the security company shall be provided to the city manager.

3. Entrance to the cultivation, manufacturing, and testing areas and any storage areas shall be locked at all times, and under the control of cannabis facility staff.

4. All cannabis shall be securely stored, and a reliable, commercial alarm system shall be installed and maintained where the cannabis is secured.

5. A licensed security guard, licensed by the California Department of Consumer Affairs, shall be present at the premises during all hours of operation. If the security guard is to be armed, then the security guard shall possess at all times a valid security guard card and firearms permit issued by the California Department of Consumer Affairs.

6. A heavy-gauge chain-link (or other material as approved by the city manager) fence a minimum of 8-feet in height shall be constructed around the perimeter of the premises to prevent public access and obscure the cannabis cultivation facility from public view. Screening can include landscaping or vinyl slats, as permitted by law enforcement.

O. An odor control plan that describes the air treatment system or other methods that will be implemented to prevent odors generated by the commercial cannabis activity from being detected outside the building(s) on the premises.

P. A comprehensive business operations plan that includes the following:

1. Business plan. A plan describing how the commercial cannabis activity business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include plans for handling cash and transporting cannabis and cannabis products to and from the premises, if applicable.

2. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the surrounding community, including the neighborhood and businesses, and how the designee can be contacted.

3. Neighborhood responsibility plan. A plan addressing any adverse impacts of the proposed commercial cannabis activity on the surrounding area.

4. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the commercial cannabis activity.

5. Budget. A copy of the applicant's most recent annual budget for operations.

Q. The name and address of the owner and lessor of the real property upon which the commercial cannabis activity is to be operated. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a commercial cannabis activity will be operated on his or her property.

R. Authorization for the city manager to seek verification of the information contained within the application.

S. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

T. A full and complete copy of the applicant's most current application submitted to and approved by the applicable State licensing authority.

U. Any such additional and further information as is deemed necessary by the city manager to administer this chapter.

5.96.050 - Background check.

The City will provide each applicant, including any management personnel who are responsible for the day-to-day operations of the commercial cannabis activity, with a 'request for live scan service' form, which must be taken to a live scan operator for fingerprinting. Each applicant must submit their fingerprint images to the Calexico Police Department, California Department of Justice, and the Federal Bureau of Investigation for fingerprint-based criminal history records review and reporting to the City.

5.96.060 - Additional terms and conditions.

Based on the information set forth in the application, the city manager may impose reasonable terms and conditions on the proposed operations of the commercial cannabis activity in addition to those specified in this chapter.

5.96.070 – Regulatory permit denial.

The city manager may deny an application for a regulatory permit or renewal of a regulatory permit upon making any of the following findings:

A. The applicant or the premises for which a regulatory permit is applied does not qualify for a permit under this chapter.

B. The applicant fails to comply with the provisions of this chapter.

C. The applicant has failed to provide information required by the city manager.

D. The applicant or permittee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the city manager determines that the applicant or permittee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the

city manager shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or permittee to be issued a permit based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the city manager shall include, but not be limited to, the following:

1. A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

2. A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

3. A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the California Penal Code.

4. A felony conviction involving fraud, deceit, or embezzlement.

E. The applicant, or any of its officers, directors, or owners, has been sanctioned by a State licensing authority or a city, county, or city and county for unlicensed commercial cannabis activities or has had a State license revoked in the three years immediately preceding the date the application is filed with the city manager.

F. The commercial cannabis activity is not properly organized or operating in strict compliance pursuant to the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), and any other applicable law, rules and regulations.

5.96.080 – Regulatory permit term.

A regulatory permit is valid for two (2) years from the date that the permit is issued, unless suspended or revoked sooner.

5.96.090 – Regulatory permit renewal process.

A. To renew a regulatory permit, a completed permit renewal form and renewal permit fee shall be received by the city manager from the permittee no earlier than sixty (60) calendar days before the expiration of the permit and no later than the last business day before the expiration of the permit.

B. In the event the regulatory permit is not renewed prior to the expiration date, the permittee must cease all commercial cannabis activity.

5.96.100 – Regulatory permit surrender.

Every permittee who surrenders, abandons, or quits the permitted premises after a certificate of occupancy is issued, or who closes the permitted premises for a period exceeding thirty (30) consecutive calendar days after a certificate of occupancy is issued, shall, within thirty (30)

calendar days after closing, surrendering, quitting, or abandoning the permitted premises, surrender the permit to the city manager. The city manager may seize the permit of a permittee who fails to comply with the surrender provisions of this section and may proceed to revoke the permit.

5.96.110 – Regulatory permit suspension and revocation.

The city manager may suspend, modify, or revoke a cannabis cultivation permit issued pursuant to the provisions of this Chapter for any of the following reasons:

A. One or more of the circumstances upon which a regulatory permit could be denied exists or has occurred;

B. One or more conditions of the regulatory permit has been violated; or

C. The permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this chapter.

5.96.120 – Appeals.

Any decision regarding the denial, suspension, or revocation of a regulatory permit may be appealed to a hearing officer. Notice of and the procedures governing such hearing shall be provided pursuant to Title 1, Chapter 1.26 of the code. The appellant shall request an appeal within thirty (30) calendar days from the date of the decision.

5.96.130 – Operating standards.

A. Indoor cultivation only. A permittee shall only cultivate cannabis in a fully enclosed and secure building. A permittee shall not allow cannabis or cannabis products on the premises to be visible from the public right of way, the unsecured areas surrounding the buildings on the premises, or the premises' main entrance and lobby.

B. Odor control. A permittee shall comply with the odor control plan that is submitted during the application process and approved by the city manager. Commercial cannabis activity premises shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the building(s) that is distinctive to its operation is not detected outside the premises, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the commercial cannabis activity. As such, applicants must install and maintain the following equipment or any other equipment which the city manager or designee determines has the same or better effectiveness:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

2. An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.

Should compliance with the odor control plan fail to properly control odor, the city manager may impose additional or modified plan restrictions.

C. 'Seed to sale' or 'track and trace'. Commercial cannabis activity businesses shall have an electronic 'seed to sale' or 'track and trace' system that produces historical transactional data for review by the city manager for auditing purposes.

D. Records. A commercial cannabis activity business shall maintain the following records in printed format for at least three (3) years on the premises and shall produce them to the city within 24 hours after receipt of the city's request:

1. The name, address, and telephone numbers of the owner and landlord of the property.

2. The name, date of birth, address, and telephone number of each manager and staff of the commercial cannabis activity business; the date each was hired; and the nature of each manager's and staff's participation in the business.

3. A written accounting of all income and expenditures of the commercial cannabis activity business, including, but not limited to, cash and in-kind transactions.

4. A copy of the commercial cannabis activity business' commercial general liability insurance policy and all other insurance policies related to the operation of the business.

5. A copy of the commercial cannabis activity business' most recent year's financial statement and tax return.

6. An inventory record documenting the dates and amounts of cannabis received at the premises, the daily amounts of cannabis on the premises, and the daily amounts of cannabis transported from the premises.

A commercial cannabis activity business shall report any loss, damage, or destruction of these records to the City Manager within 24 hours of the loss, damage, or destruction.

E. Security. A permittee shall comply with the security plan that is submitted during the application process as approved by the city manager. A permittee shall report to the Calexico Police Department all criminal activity occurring on the premises. Should compliance with the security plan fail to properly secure the commercial cannabis activity premises, the city manager may impose additional or modified plan restrictions.

F. Retail sales prohibited. No person shall conduct any retail sales of any good or services on or from permitted premises.

G. Cannabis consumption prohibited. No person shall smoke, ingest, or otherwise consume cannabis in any form on, or within 20 feet of, the premises.

H. Alcohol prohibited. No person shall possess, consume, or store any alcoholic beverage on the cultivation premises.

I. Juveniles prohibited. No one under the age of eighteen (18) shall be on the commercial cannabis activity premises or operate a commercial cannabis activity in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.

5.96.140 – Building standards.

A building that houses a commercial cannabis activity shall comply with the following requirements:

A. Entrances. All entrances into the buildings on the premises shall be locked at all times with entry controlled by the permittee's managers and staff. Codes for entry shall be provided to Law Enforcement and Fire Protection personnel to allow access to the buildings 24-hours a day, 7 days a week.

B. Main entrance and lobby. The premises shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the premises and to verify whether they are allowed in the building.

C. Activity area. All cultivation, manufacturing, or testing areas in any building on the premises shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee.

5.96.150 – Interested parties.

A. A permittee shall provide the city with names and addresses of all of the following interested parties:

1. Persons with at least a 10% interest in the commercial cannabis activity;

2. Partners, officers, directors, and stockholders of every corporation, limited liability company, or general or limited partnership that owns at least 10% of the stock, capital, profits, voting rights, or membership interest of the commercial cannabis activity or that is one of the partners in the commercial cannabis activity;

3. The managers of the commercial cannabis activity; and

4. The staff of the commercial cannabis activity.

B. The permittee shall notify the city of any change in the information above within 30 calendar days of the change.

C. All interested parties, as described in subsection A, must submit to fingerprinting and a criminal background check by the city.

D. No person shall be an interested party, as described in subsection A of this Section, if he or she is charged with or convicted of a felony; has been charged with or convicted of a violation of California Penal Code section 186.22 (participation in a criminal street gang); or is currently on parole or probation for an offense relating to the sale or distribution of a controlled substance. "Convicted" within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted. "Charged" within the meaning of this section means (1) an indictment was issued by a grand jury, or an information, complaint, or similar pleading was issued by the United States Attorney, district attorney, city attorney, or other governmental official or agency authorized to prosecute crimes, and (2) the criminal proceedings are currently pending.

5.96. 160 -- Premises restricted.

A. No permittee shall open their commercial cannabis activity premises to the public.

B. No permittee shall allow anyone on the premises, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters.

C. A manager must be on the premises at all times that any other person, except for security guards, is on the premises.

5.96.170 – Emergency contact manager.

A commercial cannabis activity permittee shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the commercial cannabis activity.

5.96.180 - Community relations manager.

Each cannabis facility shall provide the city manager with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom the city can provide notice if there are operating problems associated with the cannabis facility or refer members of the public who may have any concerns or complaints regarding the operation of the cannabis facility. Each cannabis facility shall also provide the above information to its business neighbors located within one hundred (100) feet of the cannabis facility as measured in a straight line without regard to intervening structures, between the front doors of each establishment.

5.96.190 – Display of regulatory permit.

The permittee shall display its current valid permit issued in accordance with this chapter inside the lobby or waiting area of the main entrance to the premises. The permit shall be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the premises.

5.96.200 – Inspections and enforcement.

A. Recordings made by security cameras at any commercial cannabis activity business shall be made immediately available to the city manager upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

B. The city manager shall have the right to enter all cannabis facilities from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter.

C. Operation of the cannabis facility in non-compliance with any conditions of approval or the provisions of this chapter shall constitute a violation of the municipal code and shall be enforced pursuant to the provisions of this code.

D. The city manager may summarily suspend or revoke a cannabis regulatory permit if any of the following, singularly or in combination, occur:

1. The city manager or designee determines that the commercial cannabis activity business has failed to comply with this chapter or any condition of approval or a circumstance or situation has been created that would have permitted the city manager or designee to deny the permit under Section 5.96.070;

2. Operations cease for more than thirty (30) calendar days, including during change of ownership proceedings;

3. Ownership is changed without securing a regulatory permit;

4. The cannabis facility fails to maintain two hundred forty (240) continuous hours of security recordings; or

5. The cannabis facility fails to allow inspection of the records, security recordings, the activity logs, or the premises by authorized city officials.

5.96.210 - Permits not transferable.

Regulatory permits issued pursuant to this chapter are not transferable.

5.96.220 – Limitations on city's liability.

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any regulatory permit pursuant to this chapter or the operation of any commercial cannabis activity approved pursuant to this chapter. As a condition of approval a regulatory permit as provided in this chapter, the applicant or its legal representative shall:

A. Execute an agreement indemnifying the city from any claims, damages, etc., associated with the operation of the cannabis facility;

B. Maintain insurance in the amounts and of the types that are acceptable to the city manager or designee;

C. Name the city as an additionally insured on all city required insurance policies;

D. Agree to defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a regulatory permit; and

E. Agree to reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of any legal challenge related to the city's approval of a regulatory permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

5.96.230 - Compliance with state law.

All commercial cannabis activity shall comply fully with all of the applicable restrictions and mandates set forth in state law, including without limitation the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, the Medical Cannabis Regulation and Safety Act, and the Control, Regulate, and Tax Adult Use of Marijuana Act.

5.96.240 - Violations.

A. Any violation of any of the provisions of this chapter is unlawful and a public nuisance.

B. Any violation of any of the provisions of this chapter shall constitute a misdemeanor violation and upon conviction thereof any violation shall be punishable by a fine not to exceed one thousand dollars ($1,000.00), or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

C. In lieu of issuing a misdemeanor citation, the city may issue an administrative citation, and/or assess an administrative fine of up to one thousand dollars ($1,000.00) for each violation of this chapter.

D. A separate offense occurs for each day any violation of this chapter is continued and/or maintained.

E. The remedies provided herein are not to be construed as exclusive remedies, and in the event of violation, the city may pursue any proceedings or remedies otherwise provided by law."

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 this 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.

ORDINANCE PASSED AND APPROVED at a regular meeting of the City Council of the City of Calexico this _____ day of _____, 2017.

_____
Armando G. Real, Mayor

ATTEST:

_____
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, Interim 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 _____ 2017 and was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Gabriela T. Garcia, City Clerk