

ORDINANCE NO. 1175

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CALEXICO, CALIFORNIA AMENDING CHAPTER 5.96
REGARDING REGULATORY PERMITS FOR CANNABIS
CULTIVATION, MANUFACTURING, AND DISTRIBUTING.**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as 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 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 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 Jerry Brown signed the “Medical Cannabis Regulation and Safety Act” (“MCRSA”) into law; and,

WHEREAS, the Act 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...” (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”) to regulate the personal, medical, and commercial use of marijuana pursuant to local authority preserved in the AUMA; and

WHEREAS, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, when AUMA passed, many of its provisions took effect on November 9, 2016, including the ability to cultivate marijuana inside a private residence or accessory structure; and

WHEREAS, several California cities have reported negative impacts of cannabis distribution and delivery uses, including illegal sales and distribution of cannabis, trespassing, theft, violent robberies and robbery attempts; and,

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

WHEREAS, without regulation, the indoor cultivation and manufacturing of cannabis and subsequent testing, distribution, and transportation has potential adverse effects to 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 adequate security is necessary; and,

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of cannabis distribution uses and unregulated medical cannabis cultivation facilities; and,

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, mobile dispensaries, and unregulated cannabis cultivation facilities in the City and 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 business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare;

and,

WHEREAS, the regulatory requirement imposed upon issuance or approval of conditional use permits and regulatory permits for cannabis cultivation, manufacturing, distribution, testing, and transportation facilities will combat any potential threat to public health, safety, or welfare; and

WHEREAS, the City intends to adopt a new Chapter under Title 5, Business Licenses and Regulations, establishing a regulatory permit scheme for cannabis cultivation, manufacturing, distribution, testing, and transportation facilities; and

WHEREAS, the City Council conducted a properly noticed public hearing on January 25, 2017 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and 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 adopts the foregoing recitals as its findings in support of the following regulations and further finds that the following regulations are necessary and appropriate to protect the health, safety and welfare of the residents and businesses of Calexico from the identified adverse impacts of cannabis cultivation, processing, dispensing, delivery, and distribution within the City limits.

SECTION 2. Amendment to the Calexico Municipal Code. Chapter 5.96 of the Calexico Municipal Code is hereby amended in its entirety, to read as follows:

“Chapter 15.96. – Cannabis Uses.

5.96.010 - Purpose and intent.

Cannabis cultivation, manufacturing, distribution, testing, or transportation facilities shall be permitted, in accordance with the criteria and procedures set forth in this code, upon application and approval of a regulatory permit pertaining to the operation of the facility. Prior to obtaining a regulatory permit under this chapter, all applicants must obtain and maintain a conditional use permit pertaining to the location of the facility, which has been validly issued by the city per the code.

5.96.020 - Cannabis cultivation facilities.

Cannabis cultivation facilities permitted under this chapter include facilities where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, manufactured into cannabis products, tested, distributed, or transported, or that does all or any combination of

those activities, that holds a valid conditional use permit pursuant to this code and a regulatory permit pursuant to this chapter, subject to the provisions of the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83), the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, the 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 State laws pertaining to cultivating cannabis.

5.96.030 - Number of permitted cannabis cultivation, manufacturing, distribution, transportation, and testing facilities.

The number of permitted cannabis cultivation, manufacturing, distribution, transportation, and testing facilities permitted in the city shall be determined by resolution of the city council.

5.96.040 - Application period.

Applications may be submitted during those application periods designated from time to time by resolution of the city council and the applications will be prioritized for processing based on the number of points assigned to each application that has been submitted and deemed complete by the city during the application period.

5.96.050 - Priority point system.

Each application submitted and deemed complete by the city during the application period will be evaluated for priority of processing based on certain criteria set forth in a priority point system approved by resolution of the city council.

5.96.060 - Regulatory permit required.

A. Prior to initiating operations and as a continuing requisite to operating a cannabis cultivation, manufacturing, distribution, testing, or transportation facility, the legal representative of the persons wishing to operate a cannabis facility shall first obtain a conditional use permit pursuant to the applicable provisions of this code and then obtain a regulatory permit from the city manager or designee under the terms and conditions set forth in this chapter. The legal representative shall file an application with the city manager or designee upon a form provided by the city and shall pay an application fee as established by resolution adopted by the city council as amended from time to time. An application for a regulatory permit shall include, but shall not be limited to, the following information:

1. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the cannabis facility.

2. Whether delivery service of cannabis to any location outside the cannabis facility will be provided and the extent of such service.

3. The address of the location of the cannabis facility.

4. A site plan and floor plan of the cannabis facility denoting all the use of areas of the cannabis facility, including storage, cultivation, exterior lighting and dispensing.

5. A security plan that addresses how the following measures shall be implemented or complied with:

a. 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 or designee. 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 or designee.

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

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

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

e. A licensed security guard, licensed by the California Department of Consumer Affairs, shall be present at the cannabis facility 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. The name and address of the owner and lessor of the real property upon which the cannabis facility 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 cannabis collective or cooperative cannabis facility will be operated on his or her property.

7. Authorization for the city manager or designee to seek verification of the information contained within the application.

8. 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.

9. Any such additional and further information as is deemed necessary by the city manager or designee to administer this section.

B. The initial regulatory permit application period for cannabis cultivation, manufacturing, distribution, testing, or transportation facilities will not begin until either the city council approves a development agreement for the site or until after the effective date of an approved ballot measure authorizing the taxation of commercial cannabis cultivation, manufacturing, distribution, testing, or transportation facilities in the city.

5.96.070 - Background check.

All applicants for a regulatory permit for a cannabis facility, including any management personnel who are responsible for the day-to-day operations and activities of the cannabis facility shall be required to submit to a fingerprint-based criminal history records check conducted by the Calexico Police Department.

5.96.080 - Grounds for denial.

The city manager or designee shall reject an application upon making any of the following findings:

A. The applicant made one or more false or misleading statements or omissions on the application or during the application process;

B. The cannabis facility's related cooperative or collective is not properly organized 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;

C. The applicant is not a primary caregiver or qualified patient or the legal representative of the cannabis facility;

D. The cannabis facility is not permitted in the proposed area; or

E. The applicant, or any person who is managing or is otherwise responsible for the activities of the cannabis facility has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act,

with the exception of cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.

5.96.090 - 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 cannabis facility 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.

5.96.100 - Additional terms and conditions.

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

5.96.110 - Compliance with state law.

All cannabis facilities shall comply fully with all of the applicable restrictions and mandates set forth in state law and federal law, including without limitation the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, and the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA").

5.96.120 - Hours.

All cannabis facilities may only be open between the hours of 8:00 a.m. and 10:00 p.m. and may operate as many as seven days per week.

5.96.130 - Cannabis secured.

All cannabis and cannabis products shall be kept in a secured manner during business and non-business hours.

5.96.140 - Consumable cannabis products.

If consumable cannabis products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on-site or offered for distribution, then the cannabis facility shall secure any approval from Imperial County Public Health Department required for handling food products.

5.96.150 - Sales taxes.

All cannabis facilities must pay any applicable sales tax pursuant to federal, state, and local law.

5.96.160 - Point of sale system.

Cannabis facilities shall have an electronic point of sale system that produces historical transactional data for review by the city manager or designee for auditing purposes.

5.96.170 - Odor control.

Cannabis facilities shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the cannabis facility that is distinctive to its operation is not detected outside the cannabis facility, 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 cannabis facility. As such, cannabis facilities must install and maintain the following equipment or any other equipment which the city manager or designee determines has the same or better effectiveness:

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

B. 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.

5.96.180 - Records.

All cannabis facilities shall perform an inventory on the first business day of each month and shall record the total quantity of each form of cannabis on the premises. These records shall be maintained for two years from the date created and shall be made available to the city manager or designee upon request.

5.96.190 - Community relations.

Each cannabis facility shall provide the city manager or designee 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.

5.96.200 - Compliance.

All cannabis facilities and their related collectives or cooperatives shall fully comply with all the provisions of the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), all applicable provisions of this code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit.

5.96.210 - Inspections and enforcement.

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

B. The city manager or designee 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 or designee 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 cannabis facility 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 5.96.090;

2. Operations cease for more than ninety (90) 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 security recordings, the activity logs, or the premises by authorized city officials.

5.96.220 - Appeals.

Any decision regarding the denial, suspension or revocation of a regulatory permit may be appealed to a hearing officer pursuant to the provisions set forth in Chapter 3.28. The procedures governing suspension and revocation in Chapter 3.52 shall apply equally to the denial of a regulatory permit. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision.

5.96.230 - Cessation of operations.

In the event a qualified cannabis facility that receives a regulatory permit ceases to operate for any reason, the city manager or designee shall consider the next qualified applicant on the waiting list placed in order of application and provide an opportunity for new applicants to be considered for a permit.

5.96.240 - Permits not transferable.

Regulatory permits issued pursuant to this chapter are not transferable.

5.96.250 - 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 pursuant to the procedures set forth in Title 3.

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.

5.96.260 - Definitions.

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 (California Health and Safety Code Section 11362.5);

B. The Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83); and

C. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008; and

D. The Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643); and

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

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 5. 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 each 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.

If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.

SECTION 6. 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 7. 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 on this 15th day of February, 2017.



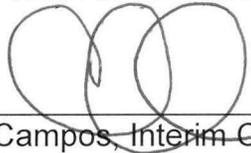
Armando G. Real, Mayor

ATTEST:



Gabriela T. Garcia, Deputy City Clerk

APPROVED AS TO FORM:



Carlos Campos, Interim City Attorney

I, Gabriela T. Garcia, Deputy 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 15th, of February, 2017, and was adopted by the following vote:

AYES:	Real, Pacheco, Hodge
NOES:	Hurtado
ABSENT:	Escobar
ABSTAIN:	None



Gabriela T. Garcia, Deputy City Clerk