

ORDINANCE NO. 1177

**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 took 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.

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 plant, 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 plant 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 includes Industrial (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.

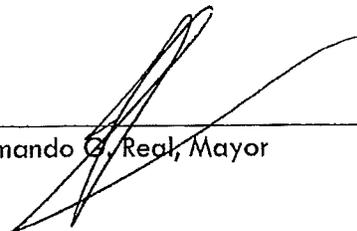
SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The 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.

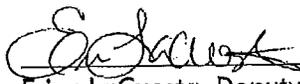
SECTION 6. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity 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 5th day of July, 2017.



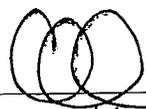
Armando G. Real, Mayor

ATTEST:



Erica LaCuesta, Deputy City Clerk

APPROVED AS TO FORM:



Carlos Campos, Interim City Attorney

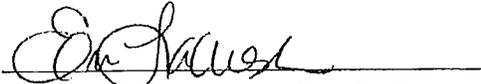
I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the 5th day of July, 2017 and was adopted by the following vote:

AYES: REAL, HURTADO, PACHECO, ESCOBAR

NOES: NONE

ABSENT: HODGE

ABSTAIN: NONE



Erica LaCuesta, Deputy City Clerk