

ORDINANCE NO. 1191

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, on November 8, 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), legalizing the use and possession of cannabis and cannabis products by adults aged 21 years and older; and,

WHEREAS, on June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act (“MCRSA”), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA” or “Act”); and,

WHEREAS, MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether non-commercial and commercial cannabis activities could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the state licensing authority and shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval by the state license will violate the provisions of any local ordinance or regulation. State licensing authorities began issuing licenses to cannabis businesses beginning January 1, 2018; and,

WHEREAS, MAUCRSA establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis, including medicinal and adult-use cannabis. The Act designates applicable responsibilities for oversight of cannabis commerce to several State agencies; and,

WHEREAS, City Council Ordinance No. 1177 established the Cannabis Overlay District and regulates the number and type of commercial cannabis activities allowed to operate within the City; and,

WHEREAS, the proposed Ordinance would amend Title 17 (Zoning), Chapter 17.11, Article X to (i) comply with current City policies and State law; (ii) to allow cannabis manufacturing shared-use facilities as a permitted commercial cannabis activity; (iii) to allow retail

cannabis businesses as permitted commercial cannabis activity; (iv) to allow cannabis nurseries as permitted commercial cannabis activity; and,

WHEREAS, the subject Municipal Code Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378 of the California Public Resources Code, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant impact on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and,

WHEREAS, the Planning Commission of the City of Calexico ("Planning Commission") conducted a properly noticed public hearing on November 19, 2018 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 City Council intends to adopt a revised Chapter 5.96 establishing a revised regulatory permit scheme for commercial cannabis 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 Planning Commission of the City of Calexico ("Planning Commission") conducted a properly noticed public hearing on November 19, 2018 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 December 19, 2018 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 commercial cultivation, manufacturing, testing, distribution, and retail sale and delivery of cannabis (including cannabis products, cannabis concentrate, and edible cannabis products) in accordance with State law in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA").

Nothing in this chapter shall be construed to:

- A. Allow persons to engage in conduct that endangers others or causes a public nuisance; or
- B. Allow any activity relating to the cultivation, manufacturing, testing, distribution, transportation, or use of cannabis that is otherwise illegal under California state law, or
- C. Interfere with the use and possession of cannabis as authorized under MAUCRSA.

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 an owner applying for a conditional use permit, desiring to enter into a development agreement, or applying for any other applicable entitlement under this chapter.

"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. For purposes of this Code, "cannabis" includes industrial hemp.

"Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

"Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. When the term "cannabis" is used in this chapter, it shall include "cannabis products."

“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.

“City manager” means the city manager of the city of Calexico or designee.

“Commercial cannabis activity” includes the cultivation, manufacture, laboratory testing, distribution, delivery, and retail sale (including possession, processing, storing, and labeling incidental to each activity, as applicable) of cannabis, and 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. A cannabis nursery is considered a “cultivation” use.

“Customer” means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.

“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, and 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.

“Manufacturer” means a permittee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Microbusiness” means a commercial business that engages in at least three of the following commercial cannabis activities: cultivation of cannabis on an area less than ten thousand (10,000) square feet, Level 1 manufacturing, distribution, and retail sale under this chapter, provided such permittee can demonstrate compliance with all requirements imposed by this chapter and State law on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the permittee engages in such activities.

“Non-storefront retailer” means a cannabis retailer that provides cannabis exclusively through delivery.

“Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Operation” means any act for which a permit is required under the provisions of this chapter, or any commercial transfer of cannabis or cannabis products.

“Owner” means any of the following:

- (1) A person with an aggregate ownership interest of twenty percent (20%) or more in the applicant, unless the 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;
- (4) An individual entitled to a share of at least 20 percent of the profits of the commercial cannabis business;
- (5) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust; or
- (6) 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 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.

“Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one permittee.

“Purchaser” means the customer who is engaged in a transaction with a permittee for purposes of obtaining cannabis or cannabis products.

“Retailer” means a permittee that sells and/or delivers cannabis or cannabis products to customers.

“Sell,” “sale,” and “to sell” include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a permittee to the permittee from whom the cannabis or cannabis product was purchased.

“Sensitive receptors” include an institution of learning for persons under twenty-one 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.

“Shared-use facility” means a premises registered by a primary manufacturing permittee at which multiple cannabis manufacturers may operate at separate times.

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

“Testing laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

(2) Licensed by the Bureau of Cannabis Control within the Department of Consumer Affairs.

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 Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”).

17.11.1030 - Commercial cannabis activity—Permitted locations and standards.

A. Commercial cannabis cultivation, manufacturing (including shared-use facilities), laboratory testing, distribution, retailers, non-storefront retailers, and microbusinesses 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 cultivation or manufacturing facilities shall be limited to no more than seventy-five percent of the acreage of a legal parcel in the cannabis overlay zone.

C. Each commercial cannabis cultivation facility shall be at least five thousand square feet (5,000 sf) in size, except for microbusinesses, and nurseries, which may be less than five thousand square feet (5,000 sf) in size.

D. Commercial cannabis activity shall be located a minimum distance of six hundred 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 laboratory 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 or the unsecured areas surrounding the commercial cannabis activity's site.

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 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, 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 to operate each of the following types of facilities: cultivation, laboratory testing, and distribution. The City may authorize up to ten (10) applicants to operate primary manufacturing facilities. A primary manufacturing facility is any manufacturing facility or any shared-use facility operated for manufacturing. A person permitted to operate a

shared use facility shall be known as a primary shared use manufacturing permittee or primary permittee. A person permitted to operate within a shared use facility shall be known as a secondary shared-use manufacturing permittee or secondary permittee. The City may authorize up to fifteen (15) secondary permittees to operate within a shared-use facility within the City. In addition, the city may authorize up to five (5) retailer, non-storefront retailer, or microbusiness applicants to operate within the city. Prior to initiating operations and as a continuing requisite to operating a commercial cannabis activity, the applicant shall obtain a validly issued CUP or enter into a fully executed development agreement agreed to by the city council. Initially, applicants will be required to enter a development agreement with appropriate fiscal mitigation measures and terms as approved by the city council. Each applicant may only apply for and operate up to two commercial cannabis activity facilities in the city, unless said applicant is operating a microbusiness. Each CUP or development agreement will include a condition or provision that the applicant shall also obtain and maintain a commercial cannabis activity regulatory permit required by this code.

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 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.

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 19th day of December, 2018.



Lewis Pacheco, Mayor

ATTEST:



Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

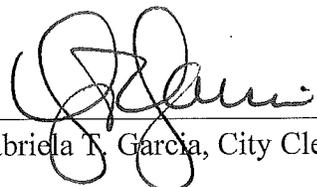


Carlos Campos, City Attorney

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

I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance No. 1991 was adopted by the City Council at a regular meeting of the City Council held on the 19th day of December 2018 and was adopted by the following vote:

AYES: Pacheco, Escobar, Romero, Arreola-Fernandez
NOES: None
ABSENT: Hodge



Gabriela T. Garcia, City Clerk