

## ORDINANCE NO. 1202

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, AMENDING SECTION 17.11.1040, OF CHAPTER 17.11, TITLE 17 (ZONING) OF THE CALEXICO MUNICIPAL CODE CREATING A SMALL SCALE AND INDUSTRIAL SCALE CANNABIS PERMITTING STRUCTURE

**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**WHEREAS**, on June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act ("MCRSA"), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single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"); 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 to regulate cannabis businesses, including, but not limited to, local zoning and land use requirements. 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. 1191 established the Cannabis Overlay Zone and regulates the number and type of commercial cannabis activities allowed to operate within the City; and,

**WHEREAS**, the proposed Zoning Ordinance would amend Section 17.11.1040 of Chapter 17.11, Title 17 (Zoning) of the Calexico Municipal Code creating a small scale and industrial scale cannabis permitting structure for cultivation, distribution and manufacturing facilities; and,

**WHEREAS**, the subject Zoning 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 June 10, 2019 at which time 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 adopt this Ordinance without adding one parcel to the Cannabis Overlay Zone as presented but did approve the creation a small scale and industrial scale cannabis permitting structure for cultivation, distribution and manufacturing facilities; and,

**WHEREAS**, the City Council conducted a properly noticed public hearing on July 3, 2019 at which time members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and other public testimony.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Ordinance.

**SECTION 2. Amendment to Municipal Code.** Municipal Code Section 17.11.1040 is hereby amended as follows:

"17.11.1040 - Conditional use permit or development agreement required.

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

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

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

The city may authorize up to twenty (20) applicants to operate primary manufacturing facilities. Of these twenty (20) applicants, up to ten (10) applicants may be authorized to operate a small scale primary manufacturing facility, which means a permittee whose gross receipts do not exceed \$500,000 annually, and up to ten (10) applicants may be authorized to operate an industrial scale primary manufacturing facility, which means a permittee whose gross receipts exceed \$500,000 annually. A primary manufacturing facility is any manufacturing facility or any shared-use facility operated for manufacturing. A person permitted to operate a shared use facility shall be known as a primary shared use manufacturing permittee or primary permittee. A person permitted to operate within a shared use facility shall be known as a secondary shared-use manufacturing permittee or secondary permittee. The City may authorize up to thirty (30) secondary permittees to operate within a shared-use facility within the City. Of these thirty (30) secondary permittees, fifteen (15) will be reserved for a small scale primary manufacturing facility and fifteen (15) will be reserved for an industrial scale primary manufacturing facility.

In addition, the city may authorize up to seven (7) retailer, non-storefront retailer, or microbusiness applicants to operate within the city.

Prior to initiating operations and as a continuing requisite to operating a commercial cannabis activity, the applicant shall obtain a validly issued CUP or enter into a fully executed development agreement agreed to by the city council. Initially, applicants will be required to enter a development agreement with appropriate fiscal mitigation measures and terms as approved by the city council. Each applicant may only apply for and operate up to two commercial cannabis activity facilities in the city, unless said applicant is operating a microbusiness. Each CUP or development agreement will include a condition or provision that the applicant shall also obtain and maintain a commercial cannabis activity regulatory permit required by this code.”

**SECTION 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 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 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 pursuant to CEQA and the State CEQA Guidelines, no further environmental review is required prior to the adoption of the proposed amendments to TITLE 17 (ZONING) of the Calexico Municipal Code.

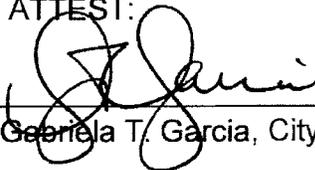
Specifically, the City Council finds that the subject Zoning Ordinance Amendment is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential

for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

**THIS ORDINANCE IS PASSED, ADOPTED, AND APPROVED** at a regular meeting of the City Council of the City of Calexico this 17<sup>th</sup> day of July, 2019.

  
Bill Hodge, Mayor

ATTEST:

  
\_\_\_\_\_  
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Carlos Campos, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) ss.  
CITY OF CALEXICO )

I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance No. 1202 was adopted by the City Council at a regular meeting of the City Council held on the 17<sup>th</sup> day of July 2019 by the following vote:

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

  
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Gabriela T. Garcia, City Clerk