

ORDINANCE NO. 1114

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, AMENDING CHAPTERS 17.84 AND 17.85, OF TITLE 17 (ZONING) OF THE COACHELLA MUNICIPAL CODE REGARDING RETAIL CANNABIS BUSINESSES.

WHEREAS, pursuant to the authority granted to the City of Coachella (“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 2015, California enacted the Medical Cannabis Regulation and Safety Act (“MCRSA”); and,

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”); and,

WHEREAS, Senate Bill 94, signed by the governor on June 27, 2017, repealed MCRSA and reconciled the standards for medical marijuana with the standards for adult-use cannabis activity under a single law, entitled Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and,

WHEREAS, the City Council desires to amend the regulations in Chapter 17.84 in order to (i) allow both medicinal and recreational adult use retail cannabis businesses by conditional use permit in certain areas of the City, and (ii) impose additional development standards on retail cannabis businesses; and,

WHEREAS, the City Council desires to amend the regulations in Chapter 17.85 in order to (i) clarify that retail cannabis businesses (including delivery from retail cannabis businesses) are no longer prohibited in all City zones, and (ii) to update the Chapter such that it is compliant with and references current State law; and,

WHEREAS, the Planning Commission conducted a properly noticed public hearing on November 15, 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 such hearing, the Planning Commission recommended by a 4/0 vote that the City Council approve this Ordinance; and,

WHEREAS, the City Council conducted a properly noticed public hearing on November 29, 2017 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff and public testimony; and,

WHEREAS, the City Council gave staff additional direction with regards to this Ordinance; and

WHEREAS, the City Council conducted an additional properly noticed public hearing on January 17, 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 COACHELLA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Amendment to Chapter 17.84 of Zoning Code. Chapter 17.84 of the Coachella Zoning Code is hereby amended in its entirety:

“Chapter 17.84 – RETAIL CANNABIS BUSINESSES

17.84.010 -- Purpose and Intent.

It is the purpose and intent of this chapter to regulate the retail sale of medicinal cannabis and nonmedicinal cannabis for adult use (including cannabis products and edible cannabis products) within the City of Coachella.

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 Act (“MMP”), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) (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 retail sale or use of cannabis that is otherwise illegal under California state law.

17.84.020 – Definitions.

For the purposes of this chapter, the following definitions shall apply.

“Applicant” means an owner that applies for a development agreement or conditional use permit 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; 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” 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 other 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 division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the 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.

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

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform.

“Microbusiness” means a retail cannabis business that must engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.

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

“Owner” means any of the following: (1) a person with an aggregate ownership interest of 20 percent (20%) or more in the person applying for the permit, unless such interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit; or (4) an individual who will be participating in the direction, control, or management of the person applying for the permit.

“Permittee” means any person holding a valid permit under this chapter.

“Person” includes any individual, firm, 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 conditional use permit application or development agreement that are in the possession of an used by the applicant or permittee to conduct the retail cannabis business. The premises must be a contiguous area and may only be occupied by one permittee.

“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 who the cannabis or cannabis product was purchased.

“Retail cannabis business” or “retailer” means a business that sells and/or delivers cannabis or cannabis products to customers.

“State License” means a license issued by the State of California, as listed in California Business and Professions Code Section 26050.

17.84.030 – Development Agreement or Conditional use permit required.

A. The City may authorize a total of four (4) retail cannabis businesses to operate in the City of Coachella. No more than one (1) retail cannabis business may operate in Sub-Zone #2 (as described in Chapter 17.47), subject to a development agreement. If applications are submitted for a greater number of conditional use permits than are permitted by this section, selection among the applicants shall be made by a process, and subject to criteria, established by city council resolution. Conditional use permits for all other commercial cannabis businesses shall be issued in accordance with the zoning separation requirements in this Chapter and Chapter 17.47.

B. Prior to initiating operations and as a continuing requisite to operating a retail cannabis business, including a retailer or microbusiness, the owner of the proposed retail cannabis business shall obtain (i) either an executed development agreement or a valid conditional use permit from the City as required by this Code, (ii) a regulatory permit from the city manager and shall pay application fees as established by resolution adopted by the city council as amended from time to time, and (iii) a State license for each commercial cannabis activity use authorized under development agreement or conditional use permit. Unless otherwise stated in this Section, the provisions found in Chapter 17.74 *Conditional Uses* shall apply.

C. Changes in State license type, business owner, or operation will require an amendment to the approved conditional use permit.

D. A retailer with a physical address outside of the City that wishes to deliver cannabis or cannabis products to a customer in the City is not required to obtain a conditional use permit under this chapter, but is required to obtain a City business license.

E. This chapter does not apply to the individual possession of cannabis for personal adult use, as allowed by State law. Personal possession and use of cannabis in compliance with State law are permitted in the City of Coachella.

17.84.040 – Retail cannabis businesses – Permitted locations and standards.

A. Retail cannabis businesses may be located in the RC Retail Cannabis Overlay Zone, as described in Chapter 17.47, upon issuance of (i) a fully executed development agreement by City and Owner or valid CUP, whichever is applicable, (ii) a regulatory permit as described in Chapter 5.69, and (iii) a valid State license, or as otherwise permitted in this code.

B. Retail cannabis businesses shall comply with all regulations set forth in this Chapter, Chapter 5.69, and Chapter 17.47.

C. Every retail cannabis business shall submit to the city manager a copy of any and all of its State license(s) and local permits required for its operation. If any other applicable State license or local permit for a retail cannabis business is denied, suspended, modified, revoked, or expired, the permittee shall notify the city manager in writing within ten (10) calendar days.

D. Each applicant for a development agreement or CUP issued under this chapter must submit, along with a development agreement/CUP application, a building façade plan. Building façade plans shall include renderings of the exterior building elevations for all sides of the building. All building façades shall be tastefully done and in keeping with the high architectural quality and standards of the City of Coachella. The retail cannabis business facade and building signs shall be compatible and complimentary to surrounding businesses and shall add visual quality to the area.

E. Except as required in this chapter, development agreements shall be reviewed, issued, denied, suspended, revoked, and/or renewed in accordance with Chapter 17.100 entitled *Development Agreements*, and CUPs shall be reviewed, issued, denied, suspended, revoked, and/or renewed in accordance with Chapter 17.74 entitled *Conditional Uses*. If any provision of this chapter conflicts with any provision of Chapters 17.74 or 17.100 of this code, the provision in this chapter shall control.

17.84.050 – 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 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.

17.84.060 – Prohibited operations.

Any retail cannabis business that does not have both (i) a development agreement or CUP, (ii) a regulatory permit required under this code, and (iii) a State license(s) 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. Non-storefront retailers are prohibited in all zones in the City.

17.84.070 – Grounds for permit denial, suspension, and revocation

Any conditional use permit issued pursuant to the provisions of this chapter may be denied, suspended, or revoked by the Planning Commission upon receiving satisfactory evidence that the applicant or permittee or owner, its agent(s), employee(s), or any person connected or associated with the applicant or permittee:

- A. Has knowingly made false statements in the applicant’s application or in any reports or other supporting documents furnished by the applicant;
- B. Has failed to maintain a valid State license;
- C. Has failed to comply with any applicable provision of the Coachella Municipal Code, including, but not limited to this chapter, the City’s building, zoning, and health and public safety regulations;
- D. Has failed to comply with any condition imposed on the conditional use permit;
or
- E. Has allowed the existence of or created a public nuisance in violation of the Coachella Municipal Code.

17.84.080 – Personal Cultivation

City residents are permitted to cultivate cannabis on private residential property for personal use and in accordance with State law, subject to the following standards:

A. Outdoor Cultivation

1. Cultivation for personal use is only permitted on private residential property developed with at least one residential dwelling unit. No more than six (6) cannabis plants are permitted to be cultivated at a private residence. Property owners retain the right to prohibit renters from cultivation and any renter choosing to cultivate shall first obtain written authorization from the property owner to cultivate on site.

2. Outdoor cultivation is limited to rear and side yard areas and only if screened by a solid block wall no less than six (6) feet in height.

3. Outdoor cultivation shall not be visible from surrounding public streets or adjoining properties. As such cannabis plants may not grow above the height of the property line walls unless screened by another approved screening method.

4. Outdoor cultivation within 600 feet of a school, daycare center, or youth center is prohibited.

B. Indoor Cultivation

1. Indoor cultivation must have adequate ventilation. Structural ventilation, electrical, gas, or plumbing changes to accommodate indoor cultivation are required to obtain a building permit from the City’s Building and Safety Department.

2. The use of volatile solvents, as defined in California Health and Safety Code Section 11362.3(d), including, but not limited to, butane, propane, xylene, gasoline,

kerosene, and other dangerous and poisonous toxins or carcinogens, are prohibited for indoor cultivation at a private residence.

17.84.090--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, administrative penalties, permit suspension, and permit revocation.

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. Amendment to Section 17.85.010 of the Coachella Municipal Code.

Section 17.85.010 is hereby amended with underlined additions and stricken redactions as follows:

“17.85.010 - 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 cannabis (including cannabis products and edible cannabis products) within the City of Coachella.

~~Delivery of cannabis within the city is prohibited. Additionally, cannabis dispensaries and retail sales are prohibited in the city.~~

The regulations in this chapter are enacted to ensure the health, safety, and welfare of the residents of the city. These regulations, in compliance with the Compassionate Use Act of 1996 (“CUA”), the Medical Marijuana Program (“MMP”), the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) ~~Medical Cannabis Regulation and Safety Act (“MCRSA”)~~, and 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 consumption of cannabis that is otherwise illegal under California state law.”

SECTION 4. Amendment to Section 17.85.020 of the Coachella Municipal Code.

Section 17.85.020 is hereby amended with underlined additions and stricken redactions as follows:

“17.85.020 – Definitions.

...

“Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transportation and distribution 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. Zoning restrictions on cannabis retailers and microbusinesses can be found in Chapters 17.47 and 17.84.

...

“Microbusiness” means a retail cannabis business that must engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.

...

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

...

“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.~~

...

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

- A. CUA (California Health and Safety Code Section 11362.5);
 - B. MMP (California Health and Safety Code Sections 11362.7 through 11362.83);
- and
- C. MAUCRSA (California Business and Professions Code Sections ~~19300~~ 26000 *et seq.*); and
 - D. ~~AUMA (California Business and Professions Code Sections 26000 et seq.).”~~

SECTION 5. Amendment to Section 17.85.030 of the Coachella Municipal Code.

Section 17.85.030 is hereby amended with underlined additions and stricken redactions as follows:

“17.85.030 - Commercial cannabis activity permitted.

Commercial cannabis activity permitted under this chapter includes cultivation, manufacture, distribution, testing, and transportation (including possession, processing, storing, and labeling incidental to such activity). Prior to engaging in any such commercial cannabis activity in the city, one must obtain either a development agreement or conditional use permit (CUP), and a regulatory permit as required by this code, subject to the provisions of the CUA, MMP, MCRSA, AUMA MAUCRSA, and any other state laws pertaining to cannabis. ~~Cannabis dispensaries, deliveries, and retailers are prohibited in all city zones.”~~

SECTION 6. Amendment to Section 17.85.080 of the Coachella Municipal Code.

Section 17.85.080 is hereby amended with stricken redactions as follows:

“**17.85.080 – Prohibited operations.**

Any commercial cannabis activity that does not have both (i) a development agreement or CUP and (ii) 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.”~~

SECTION 7. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

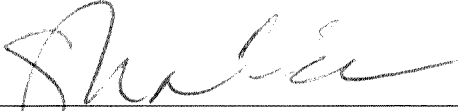
SECTION 8. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The 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.

SECTION 9. 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 10. 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.

PASSED, APPROVED and ADOPTED this 14th day of February, 2018.




Steven A. Hernandez
Mayor

ATTEST:



Angela M. Zepeda
City Clerk

APPROVED AS TO FORM:



Carlos Campos
City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF COACHELLA)


I HEREBY CERTIFY that the foregoing Ordinance No. 1114 was duly and regularly introduced at a meeting of the City Council on the 17th day of January, 2018, and that thereafter the said ordinance was duly passed and adopted at a regular meeting of the City Council on the 14th day of February, 2018.

AYES: Councilmember Bautista, Councilmember Brown, Mayor Pro Tem Sanchez, and Mayor Hernandez.

NOES: None.

ABSENT: None.

ABSTAIN: Councilmember Martinez.



Andrea J. Carranza, MMC
Deputy City Clerk