

ORDINANCE NO. 786
COMMERCIAL MARIJUANA OPERATIONS
(Urgency Ordinance)

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COALINGA: (1) AMENDING TITLE 5, CHAPTER 15, PERTAINING TO MEDICAL MARIJUANA TO ADD A NEW SECTION 5.15.07 REMOVING THE CURRENT BAN ON COMMERCIAL MARIJUANA CULTIVATION IN THE CITY; (2) AMENDING THE DEFINITIONS SECTION OF TITLE 9, CHAPTER 1, ARTICLE 2 TO ADDRESS COMMERCIAL MARIJUANA OPERATIONS IN THE CONTEXT OF CROP CULTIVATION AND INDUSTRY, LIMITED; AND (3) AMENDING TITLE 9, CHAPTER 5, ARTICLE 1 OF THE CITY'S DEVELOPMENT CODE TO ADD A NEW SECTION 9-5.128 PERTAINING TO THE INTERIM STANDARDS FOR COMMERCIAL MARIJUANA OPERATIONS IN THE CITY PENDING THE ADOPTION OF A PERMANENT ORDINANCE

THE CITY COUNCIL OF THE CITY OF COALINGA DOES ORDAIN AS FOLLOWS:

SECTION 1. URGENCY ORDINANCE FINDINGS.

1. State Law Findings.

a. In 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances.

b. In 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and provide additional statutory guidance regarding medical marijuana use. These statutes are codified at Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations.

c. On October 9, 2015, almost 20 years after passage of the Compassionate Use Act, the Governor signed the Medical Marijuana Regulation and Safety Act ("Act"), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial marijuana operations.

d. Pending before the voter this November is the Adult Use of Marijuana Act ("AUMA"). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use.

2. City of Coalinga Marijuana Regulatory History.

a. In 2010, the City adopted Title 5, Chapter 15, of the Coalinga Municipal Code pertaining to Medical Marijuana (2010 Ordinance). The 2010 ordinance placed a complete ban on commercial marijuana cultivation and dispensaries in the City based in part upon the fact that there were no State regulatory controls. The City was concerned that without adequate uniform State wide regulatory controls in place, commercial marijuana cultivation and dispensaries would become a nuisance.

b. The 2010 Ordinance provided for personal use cultivation under limited circumstances.

c. The City exempted from the dispensary ban State licensed health care clinics and residential care facilities distributing marijuana to their patients, as further described in the 2010 Ordinance.

d. At the time the City adopted the commercial cultivation ban, the issue of other commercial marijuana operations, such as manufacturing, testing and distribution, were not considered an area of concern in need of regulation. Now, with the adoption of MMRSA, these other commercial marijuana operations are imminent. The Council specifically finds that these other commercial marijuana operations fall into the definitions of Crop Cultivation or Industry, Limited, as set forth in the City's Development Code (Title 9) and are allowed in the same zone districts those uses are allowed.

e. The Council specifically finds that commercial cultivation falls into the definition of Crop Cultivation as set forth in the City's Development Code (Title 9) and once this prior allowable use is restored by lifting the ban, commercial cultivation operations will be allowed in the same zone districts that use is allowed.

f. To avoid possible ambiguity created through the development of laws relating to commercial marijuana operations, it is necessary to amend the definitions of Crop Cultivation and Industry, Limited, as set forth in the City's Development Code (Title 9)

g. In removing the commercial cultivation ban for the reasons set forth below, which will restore previously allowed uses, and in light of other commercial marijuana operations being imminent, there is a need to impose regulatory requirements on commercial marijuana operations to protect the public health, safety and welfare. Because commercial marijuana operations may be allowed by right (without a discretionary permit) in some zone districts, there is a need to ensure that the regulatory requirements are in place at the time the cultivation ban is lifted and before a commercial marijuana operation has a chance to open, which might occur before the City has had a chance to process a permanent ordinance regulating commercial marijuana operations.

h. A permanent regulatory ordinance is not currently ready for processing because there is still uncertainty surrounding the regulatory environment in two respects. First, the State Bureau of Medical Marijuana Regulation, charged with adopting regulations for implementing MMRSA, is still working on the regulations. Second, if the voters approve AUMA in November, additional regulations by both the State and City may be necessary.

i. In removing the commercial cultivation ban restoring a previously allowed uses, and with commercial marijuana operations being imminent, there is a concern that commercial marijuana operations may occur in zones the City wishes to preserve for other uses, or zones in

which the use may be deemed offensive. Therefore, there is a need to limit commercial marijuana operations to certain zone districts until the City has had a chance to evaluate their compatibility and process a permanent ordinance designating the appropriate zone districts.

3. Consumer Safety.

a. The health and safety of medical marijuana patients/users is an immediate concern. There is an urgent and immediate need for safe product especially in light of the state's adoption of MMRSA. Currently patients that need medical marijuana have no way to know the quality of their product, how it was processed, whether it is contaminated with pesticides or other harmful substances, and what the dosage is. Allowing commercial marijuana manufacturing, extraction, and testing facilities to be able to immediately open by qualified professionals and experts in the field will address this immediate health and safety concern.

b. The lack of accurate cannabis dosing and labeling guidelines affects the health and safety of users. This results in overdosing or under-dosing. (See **Exhibit B**, Studies and Reports, **Tab 1**: June 23/30 2015 AMA Research Letter: Cannabinoid Dose and Label Accuracy in Edible Medical Cannabis Products.)

c. Pesticide residues are found in marijuana; residue levels are not federally regulated; this leads to patient health complications. (See, **Exhibit B**, Studies and Reports, **Tab 2**: April 22, 2013 Research Article for the Journal of Toxicology: Determination of Pesticide Residues in Cannabis Smoke; **Tab 3**: September 3, 2015 Journal of Toxicological Sciences Article, Understanding Dabs: Contamination Concerns of Cannabis Concentrates and Cannabinoid Transfer During the Act of Dabbing; **Tab 4**: 2013 The Werc Shop, Inc. Laboratory Report, Determination of Pesticides in Cannabis Smoke.)

d. Many medical cannabis products are currently cultivated, processed, and prepared by private entities that are not regulated by external agencies; there is a lack of quality control with marijuana products. (See, **Exhibit B**, Studies and Reports.)

e. Ocean Grown's proposed operation at the former Claremont Custody Center site will provide a safe product. Ocean Grown's implementation of MMRSA will address these consumer safety issues. Ocean Grown is a premium cannabis company that produces clean, safe and consistent lab-tested medicine. Ocean Grown prioritizes regulation and safety.

Ocean Grown has put together a team of experts and professionals that will ensure a quality safe product with the ability to tailor dosages to patient needs. Ocean Grown will be able to serve an entire previously unregulated industry. Ocean Grown's expert team is comprised of the following individuals:

1. Kelly Dalton, Co-Founder and CEO with 20 years industry experience;
2. Casey Dalton, Co-Founder and President with 17 years' experience adhering to state and city regulations;
3. Chip Clements, Owner of environmental consulting firm;
4. Kevin Berson, Business Consultant with 20 years' experience in consulting and business development with global firms;
5. Ariel Clark, Cannabis Attorney with 8 years' experience in cannabis space and cannabis legislation;
6. David Schnider, IP Attorney with 3 years' experience in cannabis space and 25+ years trademark experience;

7. Jeff Cohen, cannabis-focused CPA and tax advisor;
 8. Michael Perlman, Operations with 15 years growing experience, Fertigation expert and cultivation designer; and
 9. Dan Dalton, Marketing with 20+ years' experience.
- (See, **Exhibit F**, Ocean Grown's PowerPoint.)

f. Ocean Grown needs to be able to complete its testing facility in the earliest possible time, before there is time to process a permanent ordinance, so that Ocean Grown can address this urgent community and State wide need. Many citizens of Coalinga testified during the multiple Council meetings and workshops on this issue about their needs, and the needs of their families, for a safe product.

4. Failure to Have Regulations: Health and Safety Consequences.

a. As noted, on October 9, 2015, the State adopted MMRSA, which took effect January 1, 2016. MMRSA mandated a comprehensive state licensure and regulatory framework for cultivation, manufacturing, distribution, transportation, testing, and dispensing of medical marijuana on a commercial basis, but implementing regulations have yet to be written and state licenses may not be available until as late as 2018.

b. Since the adoption of MMRSA there have been numerous inquiries from individuals and entities, both from within and outside the City of Coalinga, seeking to start a commercial marijuana operation in the City. The qualifications, expertise, and backgrounds of most of these individuals and entities are unknown. In the absence of a formal regulatory framework, there are potential serious adverse consequences to the community. There are numerous well publicized studies and reports, as well as numerous documented incidents in Fresno County and throughout the State, which show that unregulated marijuana operations have a significant adverse effect on the community.

c. The numerous health, safety, and welfare concerns associated with unregulated marijuana operations include, among others, home drug labs, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, problems associated with mold, fungus, and pests, and environmental contamination. These concerns have been exemplified throughout Fresno County and the State as evidenced by numerous area agency police reports and news articles and stories. (See, **Exhibit C**, Sampling of Representative Articles; **Tab 1**: February 5, 2014 Los Angeles Times, Making Butane Hash a Lethal Mix in Home Drug Labs; **Tab 2**: April 2, 2013, ABC 30 Action News, Butane Honey Oil Lab Found in Fresno County; **Tab 3**: April 25, 2016, ABC 30 Action News, Fresno Man Pleads Guilty to Manslaughter for Death of Sammy Mercado; **Tab 4**: October 17, 2013, SF Gate, Rash of Hash-Oil Lab Blasts Prompt Warnings; **Tab 5**: April 24, 2015, NBC Southern California, Danger Next Door: Butane Honey Oil "Fires Off Like a Bomb")

d. The City finds that in the absence of a formal regulatory framework the adverse impacts frequently associated with commercial marijuana operations will occur, resulting in an unregulated, unstudied and potentially significant negative impact upon the environment and upon the public health, safety, and welfare of the community.

5. Inability to Open: Health and Safety Consequences.

a. There is a large black market run by criminal organizations in the Coalinga area, and State wide, where medical marijuana patients have to acquire their marijuana. Every time a

patient purchases marijuana from the black market they not only have no idea as to the quality and dosage of the product, they are dealing with dangerous criminals, often hardened gang members. Purchasing on the black market is directly associated with criminal activity and is harmful to the surrounding neighborhoods. There are very limited options in the Coalinga area, and none in Fresno County, where patients can acquire marijuana through a local dispensary. But even those local dispensaries are unregulated as to quality of product and dosage. While it may be safer to purchase from the one known facility in Goshen, or in the Bay Area, the same product can be, and is, purchased more conveniently on the black market locally. Purchasing marijuana in this way is a significant health and safety risk to the patient, and the neighborhood where these transactions take place, that must be immediately addressed now that there is a mechanism to address the problem with MMRSA. (See, **Exhibit D**, Articles; **Tab 1**: The Daily Caller, February 9, 2015, Legal US Weed is Killing Drug Cartels; **Tab 2**: The Washington Post, January 11, 2015 Losing Marijuana Business, Mexican Cartels Push Heroin and Meth; **Tab 3**: Time, April 8, 2015 U.S. Legalization of Marijuana Has Hit Mexican Cartels' Cross-Border Trade; see also, **Exhibit L**, June 29, 2016 Michael Green Letter; and **Exhibit M**, June 29, 2016 Casey Dalton Letter.)

b. If AUMA is approved by the voters, this problem will be magnified. AUMA specifically recognizes that currently the adult use of marijuana is only accessed through an illegal and unregulated market. In order for law enforcement to crackdown on the underground black market that currently benefits drug cartels and gangs, it will be necessary to have a facility processing a safe product in place upon AUMA being approved. If safe facilities are not in place if, and when, AUMA passes, users will continue to use the dangerous black market.

c. The criminal organizations that run the black market are fearful of a regulated product. It will put them out of business. Mayor Pro Tem Keough testified during the Council meetings to his personal experience where a known gang member drug dealer he knew through his work at the School District told him the City of Coalinga's actions will put him out of business. Preventing crime and putting criminals out of business, especially in light of Proposition 47 (Reduced Penalties for Some Crimes Initiative) and AB 109 (Public Safety Realignment), which has allowed these criminals to proliferate, is an immediate public health, safety and welfare need. (See, **Exhibit E**, Analysis of Legislative Text; **Tab 1**: California Department of Corrections and Rehabilitation Fact Sheet, 2011 Public Safety Realignment; **Tab 2**: California Department of Corrections and Rehabilitation, What You Need to Know About Proposition 47.)

d. There is an immediate concern that the many existing and pending marijuana facilities opening in the State, especially in Southern California, to implement MMRSA and AUMA should it pass, will preclude the viability of a commercial marijuana operation being able to open in Coalinga. There is a high probability that if commercial marijuana facilities are not allowed to immediately take steps to open in Coalinga, the City will have missed its window of opportunity because of supply and demand;

c. Claremont Custody Center is a unique facility. Previous attempts by the City to occupy Claremont after the State abandoned the facility have been unsuccessful. Should the City miss its window of opportunity, it would need to find another use for Claremont which would be extremely difficult as Claremont has remained empty since August 2011. The California Department of Corrections and Rehabilitation has been unwilling to populate the Claremont Custody Center for the last five years costing the City revenue and jobs.

d. Should Claremont remain empty, there is an increased risk of criminal activity at Claremont along with the degradation of the natural environment and increased fire risks especially in a continuing statewide drought.

e. Claremont is unlike any other facility in the State proposed to house commercial marijuana operations. As a former prison site, it is uniquely secure. The no see, hear, or smell rules will be easy to implement. It is centrally located, away from residential neighborhoods. As a commercial marijuana facility, it has the highest probability of success in addressing the many issues described in these findings, especially when managed and operated by the experts and professional team Ocean Grown has assembled. (See, **Exhibit F**, Ocean Grown PowerPoint.)

f. The City is in debt of approximately \$ 2.8 million directly associated with the closure of Claremont in 2011. The City received no financial help from the State for this loss of revenue. The City also had to lay off 98 full-time and 10 on-call employees because of the closure, many of them Coalinga residents and all purchasers of goods and services in Coalinga, making the financial toll of the closure on the City much higher. The unemployment costs associated with Claremont from 2011-present total \$ 661,524.55 (See, **Exhibit G**, City General Ledger Detailed Trial Balance Personnel Division for Claremont Custody Center.)

In addition to the loss of revenue, Claremont carries annual maintenance costs and expenses as follows:

2011:	\$7,733,729.00
2012:	\$2,043,955.00
2013:	\$ 244,757.00
2014:	\$ 138,018.00
2015:	\$ 40,897.00
2016:	\$ \$25,625.00

(See, **Exhibit H**, City Financial Records; **Tab 1**: FY 2011 to FY 2016 Claremont Custody Center Fund 453 Revenue and Expense; **Tab 2**: , June 30, 2011 through June 30, 2014 City of Coalinga Statement of Revenue, Expenditures and Changes in Fund Balance; **Tab 3**: 2015-2016 City General Ledger Detailed Trial Balance Claremont Custody Center General Operations Fund-Electric; **Tab 4**: 2015-2016 City General Ledger Detailed Trial Balance Claremont Custody Center General Operations Fund-Water, Gas, Sanitation & Sewer; **Tab 5**: 2015-2016 City General Ledger Detailed Trial Balance Claremont Custody Center General Operations Fund-Building Repairs & Maintenance.)

g. In addition to the \$2.8 million dollar debt from Claremont, for fiscal year 2016/2017 the City is starting the year with an additional budget deficit of \$800,000. If the Claremont debt and other deficit cannot be closed this fiscal year, cuts will need to be made to public safety. There will be a loss of fire fighters and police officers as well as a risk to the City's locally controlled ambulance service through the fire department. There is the potential for the loss of 10-15 public safety first responder positions. This is a significant and immediate impact to the public's health and safety.

h. The current debt from Claremont along with the continued loss of revenue from maintaining Claremont could affect the City's credit rating and borrowing ability. This in turn will lead to higher borrowing costs, with even more loss of revenue, and a need for further cuts. After public safety, essential neighborhood services could be cut, such as parks maintenance and

code enforcement. When neighborhoods start to become rundown, this in turn leads to blight, nuisances and increased criminal activity.

i. The ability to sell Claremont is during this small window of opportunity. The sale of Claremont will allow the City to remove the debt directly associated with the closure of Claremont. This will in turn allow the City to avoid the immediate health and safety impacts identified herein. The sale of Claremont to Ocean Grown, with their expertise and professionals, and the ability to move forward at the earliest feasible time with their proposed testing, extraction, and manufacturing facility will address the immediate need for a facility able to produce a safe product. The City cannot afford to lose this opportunity to not only sell Claremont, but to sell it to an organization with the expertise to be successful.

j. The closure of Claremont in 2011 resulted in the loss of 108 jobs in the City. Many residents moved because they could not find jobs after Claremont closed and moved. (See, County Unemployment Statistics which have always been substantially above the state average, **Exhibit I**, California Employment Division Department; **Tab 1**: March 29, 2013, Report 400 C Monthly Labor Force Data for Counties, Annual Average 2011 – Revised; **Tab 2**: June 17, 2016 Report 400 C, Monthly Labor Force Data for Counties, May 2016 - Preliminary.) Regardless, there is an urgent and immediate need for jobs in the City of Coalinga. This is demonstrated by the fact that Ocean Grown's job fair held on June 2, 2016 attracted 200 local job applicants, most of them qualified to perform one of the 50 job openings expected to occur immediately upon opening, with many more jobs after operations are underway. Some of those job applicants spoke during the June 23, 2016 Council meeting. One applicant in particular described how he lost his job at Claremont with the closure, then recently lost his job in the oil fields, and now will have to move if he cannot find work. The lack of jobs in the City and the effects of closing Claremont are well documented. Many residents cannot find a job to provide food on the table for their families. They struggle with odd jobs or have to travel far away, or simply have to move somewhere else. The reopening of Claremont as a commercial marijuana facility is estimated to bring not less than 100 jobs in the first year alone, with salaries ranging from \$30,000 to \$115,000. (See, **Exhibit E**, Ocean Grown PowerPoint.) These jobs are essential, will be immediately filled, and allow residents to stay out of poverty.

k. The problems with unemployment are well documented. It results in increased incidents of domestic violence, depression, etc. Getting these people employed at the earliest feasible time will address these serious health and safety issues. (See, **Exhibit J**, Studies and Reports, **Tab 1**: December 16, 1999 Risk Factors of Injury to Women from Domestic Violence; **Tab 2**: Research Article for Public Health Reports, January-February 2003, Neighborhood Environment, Racial Position, and Risk of Police-Reported Domestic Violence: A Contextual Analysis.)

l. Michael Green, local cannabis expert, provides numerous grounds to support the need for an urgency ordinance including, but not limited to, the following:

1. The threat to the health, safety and general welfare of Coalinga citizens;
2. The denial of safe access to any form of medical cannabis or cannabis products to qualified patients;
3. Local crime and lawlessness including the pervasive underground cannabis economy; and

4. The lack of a regulated market to compete with illicit and quasi-legal activities that are causing serious problems, both locally and statewide. (See, **Exhibit L**, June 29, 2016 Michael Green Letter.)

SECTION 2. URGENCY ORDINANCE: ADOPTION OF SECTION 5.15.07.

Section 5-15.07, of Chapter 15, of Title 5, of the Coalinga Municipal Code is hereby adopted to read as follows:

Sec. 5-15.07 - Commercial Operations.

Notwithstanding anything to the contrary in this chapter, Commercial Marijuana Operations may occur as allowed by the applicable zoning and pursuant to Title 9, Chapter 5, Article 1, Standards for Specific Uses and Activities, Section 9-5.128 Marijuana Cultivation, Manufacturing, Testing, Transportation and Distribution.

SECTION 3. URGENCY ORDINANCE: AMENDMENT OF DEFINITIONS SECTION OF TITLE 9.

The Definitions of Crop Cultivation and Industry, Limited in Article 2, of Chapter 1, of Title 9, of the Coalinga Municipal Code are hereby amended to read as follows:

Article 2. - Definitions.

Crop cultivation. The cultivation of tree, vine, field, forage, and other plant crops intended to provide food or fibers. The classification excludes wholesale or retail nurseries, vineyards and ancillary wineries and distilleries. This classification includes the cultivation of cannabis.

Industry, limited. Establishments engaged in light industrial activities taking place primarily within enclosed buildings and producing minimal impacts on nearby properties. This classification includes operations such as manufacturing finished parts or products primarily from previously prepared materials; commercial laundries and dry cleaning plants; mobile home manufacturing; monument works; printing, engraving and publishing; computer and electronic product manufacturing; furniture and related product manufacturing; and industrial services. This classification includes the processing, extraction, manufacturing, testing, distribution, and transportation of cannabis and cannabis products.

SECTION 4. URGENCY ORDINANCE: ADOPTION OF SECTION 9-5.128.

Section 9-5.128, of Article 1, of Chapter 5, of Title 9, of the Coalinga Municipal Code is hereby adopted to read as follows:

Section 9-5.128. - Marijuana Cultivation, Manufacturing, Testing, Transportation and Distribution.

*For ease of reference the complete text of Section 9-5.128 is contained in **Exhibit A***

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.

The City Council adopts the following findings, each one which is an independent basis for finding this Ordinance exempt from CEQA.

1. Adoption of this Ordinance is exempt from CEQA because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15060(c)(2).) The Ordinance adopts regulations on an otherwise unregulated use. Any physical changes to the environment that might be caused by commercial marijuana operations already exist. The Ordinance is designed to prevent potential physical changes in the environment that currently exist.
2. Adoption of this Ordinance is exempt from CEQA under the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) The Ordinance will not have a significant effect on the environment because the Ordinance adopts regulations on an otherwise unregulated use. Without the ordinance commercial marijuana operations could open and potentially cause a significant effect on the environment. Numerous well publicized studies and reports, as well as historical evidence of incidents in Fresno County, have shown that unregulated marijuana operations could cause a significant effect on the environment. These regulations are designed to avoid those potential impacts that currently exist.
3. CEQA does not apply to ministerial projects, only discretionary projects. (CEQA Guidelines § 15268(a).) There are no discretionary approvals to be considered with implementation of the Ordinance.
4. To the extent this Ordinance allows existing structures, facilities and mechanical equipment to operate in conformity with the Ordinance, those operations fall under the Class 1 Categorical exemption for the minor alteration of existing structures, facilities, and mechanical equipment. (CEQA Guidelines § 15301.) To meet this test, the minor alterations must result in a negligible or no expansion of use beyond the existing use. Any existing structures, facilities, and mechanical equipment currently operating in the City that might be utilized for commercial marijuana operations must be either operating a similar, non-marijuana use, or zoned to operate a similar non-marijuana use. With particular respect to the Claremont Custody Center site, to the extent the use changes from the previous correctional housing institution, the change to a commercial marijuana operation would be considered a less intensive use and not an expansion of use.
5. To the extent this Ordinance will apply to the Claremont Custody Center site, the Ordinance falls under the Class 15 Categorical exemption for minor land divisions. (CEQA Guidelines § 15315.) This exemption applies to the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the decision is in conformance with the General Plan and zoning, no variances or exceptions are required, and all services and access to the proposed parcels to local standards are available. The Claremont Custody Center site is proposed to be parceled off through a lot line adjustment or lot split, so that the City may retain a portion for public facilities use, as further described in the record relating to the pending Disposition and Development Agreement currently pending before the Council and schedule to be considered the same night as this Ordinance.

SECTION 6. PUBLIC HEARING NOTICE.

The City published a notice of this July 7, 2016 public hearing to consider this proposed urgency ordinance and related actions in the Fresno Bee on June 27, 2016, and also posted the notice on June 24, 2016 at the following locations: The Coalinga Post Office located at 218 West Durian Avenue, Coalinga, California 93210; the Chamber of Commerce located at 265 West Elm Avenue, Coalinga, California 93210; Coalinga City Hall located at 155 W. Durian Avenue, Coalinga, California 93210; and the Oil Derrick located at 300 Coalinga Plaza (also known as Frame Park). A copy of the notice is attached as **Exhibit K**.

SECTION 7: SEVERABILITY.

If any article, section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The Council hereby declares that it would have adopted this Ordinance and adopted each article, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8. EFFECTIVE DATE; EXTENSIONS.

This ordinance shall go into effect immediately and be in full force and operation for forty-five (45) days from its adoption (until August 21, 2016), unless extended by the Council as authorized by California Government Code sections 36937 and 65858.

The foregoing Ordinance was introduced, read and adopted at a regular meeting of the City Council held on July 7, 2016, by the following vote, to wit:

AYES: Raine, Vosburg, Keough, Ramsey
NOES: Lander
ABSENT: None
ABSTAIN: None

APPROVED:



Mayor, City of Coalinga

ATTEST:



City Clerk/Deputy City Clerk

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EXHIBIT A

Section 9-5.128. - Marijuana Cultivation, Manufacturing, Testing, Transportation and Distribution.

(a) *Purpose.* The purpose of this section is to adopt local regulations applicable to commercial marijuana operations as may be permitted under the California Medical Marijuana Regulation and Safety Act ("MMRSA"), adopted on October 9, 2015, with legislative bills AB 243, AB 266, and SB 643, or subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

(b) *Definitions.* Except as set forth herein, or where a different meaning is clearly intended by the language, the definitions set forth in MMRSA shall apply to interpretations under this section.

"*Applicant*" means a person who is required to file an application for a permit under this section.

"*Business Owner*" means the owner(s) of the Marijuana Operations. For corporations and limited liability companies, Business Owner means the President, Vice President, and any shareholder owning a 10% or greater share of the corporation or company. For partnerships, Business Owner means all general partners and managing partners.

"*City*" means the City of Coalinga.

"*Commercial Marijuana Operation*" or "*Marijuana Operation*" means any commercial marijuana activity allowed under MMRSA and the implementing regulations, as MMRSA and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

"*Commercial Marijuana Permit*" means the blanket permit to operate deemed to have been granted upon completion of Registration.

"*Employee Permit*" means the permit required under this section for every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Commercial Marijuana Operation.

"*Non-Commercial and Recreational Marijuana Activity*" means all uses not included within the definition of Commercial Marijuana Operation, including the personal use, cultivation, or consumption of marijuana, whether medical or recreational.

"*Operator*" means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Marijuana Operations.

“*Ordinance*” means the ordinance adopting this section, and including the terms of this section, which may be commonly referred to as the City’s “Commercial Marijuana Ordinance”.

"*Police Chief*" means the Police Chief of the City of Coalinga or his or her designee.

"*Premises*" or “*Site*” means the actual building(s), and/or designated units/suites, as well as any accessory structures, parking areas, or other immediate surroundings, and includes the entire parcel of property.

“*Premises Owner*” means all owners of the Premises where Marijuana Operations are occurring.

“*Registration*” means completion of the requirements of this section to open a Commercial Marijuana Operation in the City.

“*Responsible Party*” shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the Marijuana Operations.

(c) *Permitted Uses and Zoning.* Businesses meeting the requirements of this section shall be allowed to conduct the following Commercial Marijuana Operations in the MBL - Light Manufacturing/Business zone district of the City:

- Cultivation.
- Processing.
- Extraction.
- Manufacturing.
- Testing.
- Distribution.
- Transportation.

The Commercial Marijuana Operation shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing the Commercial Marijuana Operation.

Dispensaries are expressly prohibited unless approved by the voters of the City of Coalinga.

(d) *Operational Requirements and Restrictions.* The following operational requirements and restrictions shall apply to all Commercial Marijuana Operations:

(1) *MMRSA and Other State Laws.* The Marijuana Operations shall at all times be in compliance with MMRSA and the implementing regulations, as well as all required State license(s) under MMRSA, and any other applicable State law. The Operator shall obtain required MMRSA licenses prior to opening for business, or if the State is not ready to issue MMRSA licenses prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of MMRSA and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under MMRSA.

If recreational cannabis becomes lawful in California, and the Operator uses the approved Marijuana Operations for commercial recreational cannabis, the Operator shall meet or exceed the health and safety requirements of MMRSA in any operations relating to recreational marijuana.

(2) *Register of Employees.* The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request.

(3) *Signage.* There shall be no signage or markings on the Premises, or off-site, which in any way evidences that Marijuana Operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.

(4) *Marijuana Consumption.* No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Marijuana Operations. Adequate signage of this prohibition shall be displayed throughout the facility.

(5) *Alcoholic Beverages.* No Marijuana Operation shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Marijuana Operations.

(6) *Transportation.* Transportation shall only be conducted according to activity permitted by State law.

(7) *Deliveries.* There shall be no deliveries from the premises except to a State or local licensed or permitted cannabis business.

(8) *Non-Commercial Marijuana Activity.* No Non-Commercial or Recreational Marijuana Activity shall occur on the premises.

(9) *Retail Sales.* The retail sale of marijuana is expressly prohibited.

(10) *Public Access.* There shall be no public access to the premises.

(11) *Minors.* It shall be unlawful for any Operator, Responsible Party, or other person in charge of any Marijuana Operations to employ any person who is not at least eighteen (18) years of age, or any older age if set by the State.

(12) *Distance separation from schools.* Marijuana Operations shall comply with the distance separation requirements from schools as required by State law.

(13) *Hours of Operation.* Commercial Marijuana Operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances.

(14) *Building and Related Codes.* The Marijuana Operation shall be subject to the following requirements:

a. The Premises in which the Marijuana Operations occur shall comply with all applicable local, state and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.

b. The Responsible Party shall ensure that the Premises has sufficient electrical load for the Marijuana Operations.

c. Butane and other flammable materials are permitted to be used for extraction and processing provided the Operator complies with all applicable fire and building codes and any other requirements of the Coalinga Fire Department to ensure the safety of that operation.

e. The Operator shall comply with requirements pertaining to use of commercial kitchen facilities for the Marijuana Operations.

f. The Operator shall comply with all environmental regulations pertaining to the Marijuana Operations, including the use and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm.

(15) *Odor control.* Marijuana Operations shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the outside the Premises, outside the building housing the Marijuana Operations, or anywhere on adjacent property or public rights-of-way. As such, Marijuana Operations must install and maintain the following equipment or any other equipment which the City's Building Official 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.

(16) *Consumable Products.* Marijuana Operations that manufacture products in the form of food or other comestibles shall obtain and maintain the appropriate approvals from the State Department of Public Health for the provision of food or other comestibles, unless otherwise governed by MMRSA and licensed by the State.

(17) *Secure Building*. All Marijuana Operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures) and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid non-opaque material provided other security measures exist to ensure that the Marijuana Operation cannot be seen, heard or smelled beyond the property line. The precise building construction and material to be used shall be identified and provided to the City prior to construction and provided with the Registration.

(18) *Premises Security*. The following security conditions shall apply:

- a. Alarm System (both perimeter, fire and panic).
- b. Remote monitoring of alarm systems.
- c. Perimeter lighting systems (motion sensor) for after-hours security.
- d. Perimeter fencing with constantina wire and lighting around the property perimeter.
- e. Use of drive gates with card key access or similar to access the facility.
- f. Entrance areas to be locked at all times areas, and under the control of a designated Responsible Party.
- g. Use of access control systems to limit access to grow and processing areas.
- h. Camera systems (360 degree perimeter, interior monitoring of all access points of the site from the interior) minimum 5 mega pixel in resolution.
- i. All security systems at the site are attached to an uninterruptable power supply that provide 24 hour of power.
- j. 24 hour armed security patrols by a recognized security company licensed by the California Department of Consumer Affairs, or otherwise acceptable to the Police Chief.
- k. All current contact information regarding the security company shall be provided to the Police Chief.
- l. Law enforcement access to all security systems.
- m. IP access for remote monitoring of security cameras by the Police Department.

n. Any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to any law enforcement agency for duplication upon demand. In addition, upon request by any law enforcement agency, the Responsible Party shall duplicate the records for that agency.

o. Hardened bullet resistant windows for exterior windows as part of any new construction.

p. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.

q. Electronic track and trace systems for product.

r. Premises may be audited by the City for compliance on a quarterly basis.

s. City may conduct random spot checks of product inventories, and cash, where applicable.

t. State of the art network security protocols and equipment need to be in place to protect computer information.

u. The foregoing requirements shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin.

Confidentiality Statement

The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the premises and video and/or audio feeds or recordings of the premises ("Recipients") may receive or be provided with confidential information relating to the Marijuana Operations, which may include the following: data, records, plans, concepts and matters relating to customers, vendors and tenants, agreements, business records including, without limitation, business records relating to intellectual property, marketing and sales plans, pricing and other business strategies (whether or not implemented); research and development plans or projects; computer materials such as programs, instructions and printouts; software including, without limitation, any source codes, object codes, algorithms and other engineering information; formulas; business improvements and processes; information regarding the skills and compensation of executives; intellectual property rights and strategies including, without limitation, any work on patents, trademarks or tradenames, prior to any filing or the use thereof in commerce; financing terms and strategies; in each case together with all reports, summaries, studies, notes, compilations, analyses and other documentation which contain or otherwise reflect or are generated from any of the foregoing, and in each case regardless of the media in which the information is maintained (collectively "Confidential Information").

To the extent Confidential Information is acquired without a warrant from access to the premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Premises owner, Operator, Responsible Party or business (including its employees, contractors and agents conducting business within the premises) arising from or related to the Marijuana Operations, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information.

Notwithstanding the foregoing, City may disclose Confidential Information:

1. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.
2. In connection with any City enforcement proceeding relating to compliance with City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

(19) *Deliveries of Supplies and Transportation of Product.* The following rules apply to the deliveries and transportation:

a. Deliveries to the Premises of supplies shall only occur as provided for in diagram and floor plan on file with the City as part of the Registration process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Marijuana Operation.

b. The transportation of marijuana samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting marijuana samples and products. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

(20) *Premises Maintenance.* The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises or Commercial Marijuana Operation shall not be maintained in a manner that causes a public or private nuisance.

(e) *Owner/Operator Restrictions.* No Business Owner or Operator shall not open or operate a Marijuana Operation in the City if any of the following exist:

(1) The Business Owner or Operator has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was

suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.

(2) The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the Registration.

(3) The Business Owner or Operator, or any Responsible Person, has been:

- a. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
- b. Convicted of any of the offenses listed in Business and Professions Code section 19323; or
- c. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
- d. Convicted of a crime involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act; or
- e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee.

A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(4) The Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(5) The Business Owner or Operator is under eighteen (18) years of age, or any older other age set by the State.

(6) The Marijuana Operation does not comply with the zoning ordinance standards of the City of Coalinga or the development standards set forth in this Title.

(7) The required annual business license fee, annual regulatory fee or revenue raising fee has not been paid.

(f) *Registration and Responsible Party Designation.* Any person desiring to open a Commercial Marijuana Operation in the City shall first comply with the requirements of this subsection.

(1) *Registration.* Not less than sixty (60) days prior to the planned opening of any Marijuana Operation in the City, the Operator shall register their business with the Coalinga

Police Department and provide information on a form approved by the Police Chief to ensure compliance with this Section. Within thirty (30) days of Registration, the Police Chief shall inform the Operator whether it has satisfied the requirements of this subsection, in which case the Registration process shall be completed and the Business Owner shall be deemed to have a permit to operate (Commercial Marijuana Permit). If the requirements of this subsection are not satisfied, the Registration shall be incomplete and Police Chief shall inform the Operator of the reasons for non-compliance, at which time the Operator will have an opportunity to correct any deficiencies. The Police Chief shall have thirty (30) days to review any new information and make a determination. No Marijuana Operation shall commence until the Registration is complete.

(2) *Registration Fee.* The Business Owner shall pay a fee set by Resolution of the City Council to cover the costs of Registration.

(3) *Registration Information and Responsible Party Designation.* The information required to be submitted under this subsection shall be submitted with a certification under penalty of perjury that all of the information is true and correct, and shall include at a minimum the following:

- a. The full name, present address, and telephone number of the Premises Owner, Business Owner, Operator, and Responsible Parties.
- b. Date of birth of the Business Owner, Operator, and Responsible Parties.
- c. Tax identification number of the Business Owner, Operator, and Responsible Parties.
- d. The address to which notices relating to the Registration is to be mailed.
- e. Previous addresses for the five (5) years immediately preceding the present of the Business Owner, Operator, and Responsible Parties.
- f. The height, weight, color of eyes and hair of the Business Owner, Operator, and Responsible Parties.
- g. Photographs for identification purposes (photographs shall be taken by the Police Department) of the Business Owner, Operator, and Responsible Parties.
- h. All business, occupation, or employment of the Business Owner, Operator, and Responsible Parties for the five (5) years immediately preceding the date of submittal of the registration form.
- i. The Marijuana Operation business history of the Business Owner, Operator, and Responsible Parties, including whether the Business Owner, Operator, and Responsible Parties while previously operating in this or another city, county or state has had a marijuana related

license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.

j. Complete property ownership and lease details, where applicable. If the Business Owner is not the legal owner of the property, the registration from must be accompanied with a notarized acknowledgment from the owner that Marijuana Operations will occur on his or her property.

k. A descriptive business plan for the Marijuana Operation, including a detailed list of all Marijuana Operations proposed to occur on the Premises.

l. A diagram and floor plan of the entire premises, denoting all the use of areas proposed for Marijuana Operations, including, but not necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

m. The name or names of the person or persons having the management or supervisory responsibilities for the Marijuana Operations. The Operator shall designate one or more Responsible Parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Responsible Parties shall be provided to the Police Chief and updated within two (2) hours of any changes.

n. Whether the person or persons having the management or supervisory responsibilities for the Marijuana Operation have been convicted of a crime, the nature of such offense, and the sentence received therefore.

o. The names of all employees, independent contractors, and other persons who will work at the Marijuana Operation or be involved in transportation/delivery related services for the Marijuana Operation.

p. The proposed security arrangements for insuring the safety of persons and to protect the premises from theft.

q. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Marijuana Operation and the property line of any school as set forth in the Operational Requirements.

s. Authorization for the City, its agents and employees to seek verification of the information submitted.

(4) *Criminal History Records Check.* In addition to the registration information, the Business Owner, Operator, and Responsible Parties shall submit to a fingerprint-based criminal history records check conducted by the Coalinga Police Department

(5) *Changes in Information.* Except as may otherwise be provided, the information provided in this subsection shall be updated upon any change within ten (10) days.

(g) *Location of Uses.* The Commercial Marijuana Operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plan of the Premises submitted with the Registration. The Commercial Marijuana Operation shall not operate at any place other than the address of the Marijuana Operation stated in the Registration.

(h) *Employee Permits.*

(1) *Permit Required.* Every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Marijuana Operation shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work.

(2) *Application.* Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:

- a. Name, current resident address, and telephone number.
- b. Date of birth.
- c. Tax identification number.
- d. Height, weight, color of eyes, and hair.
- e. Photographs for identification purposes (photographs shall be taken by the Police Department).
- f. Be fingerprinted by the Police Department.
- g. Such other identification and information as deemed necessary by the Police Chief.
- h. Authorization for the City, its agents and employees to seek verification of the information contained within the application.

(3) *Application Fees.* Every application for a Employee Permit, or renewal shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general review and processing of the application.

(4) *Investigation and Action on Application.*

a. Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check. All applicants shall be required to submit to a fingerprint-based criminal history records check conducted by the Coalinga Police Department.

b. After the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation.

(5) *Term of Permit and Renewals.* Employee Permits issued under this section shall expire one (1) year following the date of issuance. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in this section. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits except that the Police Chief shall renew annual permits for additional one year periods if the circumstances and information provided with the initial application have not materially changed.

(6) *Grounds for Denial of Employee Permit.* The grounds for denial of an Employee Permit shall be one or more of the following:

a. The applicant has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.

b. The applicant has been:

(i) Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or

(ii) Convicted of any of the offenses listed in Business and Professions Code section 19323; or

(iii) Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

(iv) Convicted of a crime involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act; or

(v) Has engaged in misconduct related to the qualifications, functions or duties of a permittee.

c. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

d. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.

e. An applicant is under eighteen (18) years of age, or any older age set by the State.

(7) *Notice of Decision and Final Action.* The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chief's decision on an Employee permit shall be final.

(i) *Suspension and Revocation of Registration or Employee Permit.*

(1) *Registration.* The Planning Commission may suspend or revoke the Registration of a Commercial Marijuana Operation when any of the following occur.

a. The Business Owner, Operator, or Responsible Party, or their agents have committed any one or more of the following acts: (i) any act which would be considered grounds for not opening in the first instance; (ii) engages in or permits misconduct substantially related to the qualifications, functions or duties of the Business Owner, Operator, or Responsible Party; (iii) conducts the business in a manner contrary to the health, safety, or welfare of the public; (iv) fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.

b. The Marijuana Operation is conducted in violation of any provision of this section or any local or State law, statute, rule or regulation relating to the Marijuana Operation.

c. The Marijuana Operation is conducted in such a manner as to create a public or private nuisance.

d. The Marijuana Operation results in excessive calls for public safety services (police and fire). Excessive calls for service shall mean calls for service which substantially exceed the average calls for service generated by similar businesses in similar areas. During any six-month period, a ten percent (10%) excess in calls for service will be presumed to be a violation of this condition.

e. Failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.

(2) *Employee Permit.* The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:

- a. Any act which would be considered a ground for denial of the permit in the first instance.
- b. Violates any other provision of this section or any local or State law, statute, rule or regulation relating to his or her permitted activity.
- c. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
- d. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
- e. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
- f. Violates or fails to comply with the terms and conditions of the permit.

(3) *Procedures for Revoking Registration.* For Registration, the procedures for revoking conditional use permits shall be utilized.

(4) *Procedures for Revoking Employee Permits.* Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chief's decision shall be final, subject to judicial review as set forth in this section.

(5) *Immediate Suspension.* The Police Chief may immediately suspend or revoke a Registration and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under the following circumstances:

- a. The Business Owner or Operator is convicted of a public offense in any court for the violation of any law which relates to the Marijuana Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
- b. The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

(6) *Effect of Denial or Revocation.* When the Planning Commission has revoked a Registration, or the City Council upon appeal, or the Police Chief shall have denied or revoked an Employee Permit, no new registration and no new application for an Employee Permit shall be accepted and no Registration shall be deemed complete or Employee Permit issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the Registration or Employee Permit.

(j) *Abandonment.* In addition to the suspension or revocation of a Registration, a Registration shall be deemed abandoned if Marijuana Operations cease for a period of more than ninety (90) consecutive days. Before restarting operations, a new Registration shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the “public enemy”; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.

(k) *Water Availability.* As a condition of opening for business, the Premises Owner, Business Owner, Operator, and all Responsible Parties shall be deemed to have acknowledged and agreed to the following if the Marijuana Operation is connected to the City’s water system.

The City's source of water comes through a contract with the Bureau of Reclamation ("Bureau"). The Bureau has indicated that it will report the use of City water for Marijuana Operations to the Department of Justice. While the City believes that supplying water to the site does not impair the Bureau contract, should the Bureau, Department of Justice, or other governing agency take actions affecting the City's Bureau contract because of the Marijuana Operation, the City may be forced to curtail or commingle water supply to the Site. Under those circumstances, the Marijuana Operation may be required to find alternative sources of water supply. If that happens, the City agrees to work with the Premises Owner, Business Owner, and Operator to find an alternative water source, which may include the commingling of water, accessing a well, or having water delivered to the Site by separate contract, but the City cannot provide any guarantees. The Premises Owner, Business Owner, and Operator assume all risk associated with water supply to the Site, including all costs associated therewith. The Premises Owner, Business Owner, Operator, and all Responsible Parties shall hold harmless, release, indemnify, and defend the City, its officers, employees, and agents, from any liability associated with the curtailment of water because of the foregoing. This release includes any damages to the Premises Owner, Business Owner, Operator, and all Responsible Parties, its employees and contractors, and third parties, and includes the risk of lost revenue, profits and consequential damages.

(l) *Fees and taxes.* All Marijuana Operations shall pay applicable fees and taxes, which may include one or more of the following.

(1) *Business License Fee.* The Business Owner shall at all times maintain a current and valid business certificate and pay all business taxes required by Title 3, Chapter 1, of the Coalinga Municipal Code pertaining to Business Licensing.

(2) *Regulatory License Fee.* The Business Owner shall pay an annual regulatory license fee (“Regulatory Fee”) to cover the costs of anticipated enforcement relating to the Marijuana Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Marijuana Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

(3) *Revenue Raising Fee.* An annual revenue raising fee (“Revenue Fee”) for the privilege of having the right to operate in the City.

Revenue Fee Finding

The City Council specifically finds that it is approving this Ordinance allowing Commercial Marijuana Operations to open in the City on the express understanding that the business will pay the Revenue Fee to the City as set forth herein, and that without the Revenue Fee, the City Council would not have adopted this Ordinance allowing Commercial Marijuana Operations to open in the City. By opening a Commercial Marijuana Operation in the City, the Premise Owner, Business Owner, Operator, and all Responsible Parties agree that if the Revenue Fee is challenged by any one of them or a third party and set aside, the business must cease operations.

a. *Amount of Fee and Terms of Payment.* The Revenue Fee shall be an annual fee of twenty-five (\$25.00) per square foot for the first 3,000 square feet and ten dollars (\$10.00) per square foot for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet).

If more than one Commercial Marijuana Operation operates on the Premises, each Business Owner shall be responsible for paying the fee. The Fee shall be payable in advance, in not less than quarterly installments, with the first quarterly payment due prior to opening. The first payment shall be prorated so that future payments coincide with calendar year quarters, but in no event shall the first payment be less than the equivalent of one full quarterly payment. Except for the first quarterly payment, all quarterly payments shall be received by the City before the end of the quarter.

b. *Alternative Voter Approved Tax.* If the voters of the City approve a tax rate which is equivalent to the Revenue Fee, the Business Owner shall pay the tax in lieu of the Revenue Fee once the City begins to receive the tax revenue.

c. *Accounting.* The Business Owner shall maintain accounting books governing the entire operation of the Premises, in accordance with generally accepted accounting principles or other methods approved by the Finance Director or his/her designee. The books shall, at a minimum, contain information in sufficient detail, as determined by the Finance Director or his/her designee, necessary for the City to verify payment of the Revenue Fee.

The books should be open for inspection by the Finance Director or his/her designee during regular business hours Monday through Thursday, 7 a.m. to 6 p.m., excluding City recognized holidays, and at all other times within a reasonable time upon request. The books and supporting data shall be maintained for not less than a period of five (5) years following the calendar year in which they were generated.

The books, documents, records and accounts relating to the Revenue Fee shall be audited at the end of the business fiscal year by a certified public accountant. The report of such accountant and all work papers utilized in the preparation of such audit shall be submitted to the Finance Director. The Finance Director shall review the report and work papers and may require any further information from the Business Owner. The Finance Director may submit such documents and information to a certified public accountant selected by the City for review.

The City may require, at any time, an audit of the books, documents, records and accounts relating to the Revenue Fee by a certified public accountant. Such audit shall be in addition to the annual audit. Any inaccuracy found in the revenues previously reported to the City shall be adjusted accordingly. If such additional audit shall disclose an inaccuracy of greater than two percent (2%) error with respect to the revenues reported by the Business Owner for the period of the audit, the cost thereof shall be paid to the City by the Business Owner. Otherwise, the cost of the audit shall be borne by the City.

Any information obtained pursuant to the provisions of this subsection shall be deemed confidential and shall not be subject to public inspection except in connection with the enforcement of the provisions of this subsection, as may be required to comply with the Public Records Act, or pursuant to the order of any court or administrative agency of competent jurisdiction.

(m) *Record Keeping.* The Responsible Party shall make and maintain complete, accurate and legible records of the permitted Marijuana Operations evidencing compliance with the requirements of this section which shall be subject to audit in accordance with this section.

(n) *Access to records.* Each Marijuana Operation shall allow the Police Chief to have access to the books, records, accounts, and any and all data relevant to its Marijuana Operation for the purpose of conducting a financial audit or diversion examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hours after receipt of the Police Chief's written request(s).

(o) *Inspection.* Marijuana Operations shall be open for inspection by any City law enforcement officer or City code enforcement officer at any time the Marijuana Operation is operating, at any other time upon responding to a call for service related to the property where the Marijuana Operations is occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any Marijuana Operation shall be made immediately available to the Police Chief upon verbal request. No search warrant or subpoena shall be needed to view the recorded materials.

(p) *Indemnification.* In authorizing Commercial Marijuana Operations under this section, the City makes no guarantees or promises as to the lawfulness of the approved activity under State or Federal law, and the Business Owner, Operator and all Responsible Parties are obligated to comply with all applicable laws. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to the adoption of this Ordinance or the operation of any Commercial Marijuana Operation approved pursuant to this Ordinance or under State or federal law. The Business Owner, Operator and all Responsible Parties shall defend, hold harmless, release, and indemnify the City, its agents, officers, and employees, from any liability associated with the approved use or adverse determinations made by the State or Federal government. An adverse determination could include cessation of operations.

The Business Owner agrees 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 Commercial Marijuana Operations operating under the authority of this Ordinance. 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 permittee of its obligation hereunder.

If requested by the City Attorney, the Business Owner shall execute an agreement memorializing the requirements of this subsection.

(q) *Insurance.* The Business Owner shall at all times carry a comprehensive general liability policy in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit policy, and for automobiles, a comprehensive automobile liability policy in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit, as shall protect the Business Owner and City from claims for such damages, and which policy shall be issued by an "A" rated insurance carrier. Such policy or policies shall be written on an occurrence form. The City Manager, in consultation with City's Risk Manager, may allow the Business Owner to obtain lesser amounts of insurance where multiple Business Owners are operating on the Premises, provided at all times the minimum insurance set forth herein is applicable to the Marijuana Operations.

The Business Owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain

a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.

Coverage provided hereunder by the Business Owner shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

(r) *Violations: Enforcement.*

(1) Any person that violates any provision of this section shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

(2) Any use or condition caused or permitted to exist in violation of any of the provisions of this section shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Coalinga Municipal Code.

(3) Any person who violates, causes, or permits another person to violate any provision of this section commits a misdemeanor.

(4) The violation of any provision of this section shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

(5) In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this section may be subject to an administrative fine of up to one thousand dollars (\$1000.00) for each violation and for each day the violation continues to persist.

(s) *Severability.* The provisions of this section are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this section or of the Regulatory Permit issued pursuant to this section, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this section.

(t) *Judicial review.* Judicial review of a decision made under this section or any actions taken pursuant to this section, may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.