

ORDINANCE NO. 797
COMMERCIAL MARIJUANA OPERATIONS

AN 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 STANDARDS FOR COMMERCIAL MARIJUANA OPERATIONS IN THE CITY

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

SECTION 1. 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. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from "medical marijuana" or "marijuana" to "medical cannabis" or "cannabis", and making other technical changes to the Act. SB 837 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis.

e. 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.

3. 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.

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 and potentially significant negative impact upon the environment and upon the public health, safety, and welfare of the community.

4. 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 must be addressed now that there is a mechanism to address the problem with MMRSA.

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. If safe facilities are not in place after AUMA passes, users will continue to use the dangerous black market.

SECTION 2. 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. 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 indoor 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 cultivation, processing, extraction, manufacturing, testing, distribution, and transportation of cannabis and cannabis products.

SECTION 4. 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.

(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, 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. The Medical Marijuana Regulation and Safety Act has been retitled as the Medical Cannabis Regulation and Safety Act, and is hereinafter referred to as the "Act".

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

"Act" means the Medical Marijuana Regulation and Safety Act, now called the Medical Cannabis Regulation and Safety Act. Both names may be used interchangeably, but shall have the same meaning.

"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.

"*Cannabis*" or "*marijuana*" shall have the meaning set forth in California Business and Professions Code section 19300.5(f). Cannabis and marijuana may be used interchangeably, but shall have the same meaning.

"*City*" means the City of Coalinga.

"*Commercial Marijuana Operation*" or "*Marijuana Operation*" means any commercial marijuana activity allowed under the Act and the implementing regulations, as the Act 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 Regulatory Permit*" or "*Regulatory Permit*" means the permit required under this section to have a Commercial Marijuana Operation, and any prior permit granted by the City under Urgency Ordinance No. 791 pursuant to the Registration process.

"*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 used by the Business Owner in connection with the Marijuana Operations.

"*Premises Owner*" means the fee owner(s) of the Premises where Marijuana Operations are occurring.

"*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.* Business Owners 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) *Minimum Operational Requirements and Restrictions.* The following operational requirements and restrictions shall apply to all Commercial Marijuana Operations:

(1) *The Act and Other State Laws.* The Marijuana Operations shall at all times be in compliance with the Act and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under the Act, and any other applicable State law. The Operator shall obtain required licenses under the Act prior to opening for business, or if the State is not ready to issue licenses under the Act 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 the Act and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under the Act.

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 the Act 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. Adequate signage of this prohibition shall be displayed throughout the facility.

(5) *Alcoholic Beverages.* No Marijuana Operation shall hold or maintain a retail 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.

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

(7) *Distribution.* There shall be no deliveries from the Premises of cannabis or cannabis containing products except to another 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 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. In addition, a Commercial Marijuana Operation shall not be located within 1800 feet from any existing school or proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(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 laws and regulations relating to the use of those products, to ensure the safety of that operation. The Coalinga Fire Department shall inspect and approve the Premises for use of the products prior to City's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement.

e. The Operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the Marijuana Operations.

f. The Operator shall comply with all environmental laws and 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, if a smell extends beyond a property line:

- a. An exhaust air filtration system with odor control that prevents internal odors and pollen 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 the Act 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. 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 translucent 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 application.

- (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 security and lighting as approved by the Police Chief and Community Development Director.
 - 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. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of the Act, include interior monitoring of all access points of the site from the interior, and be of a 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 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. Coalinga Police Department or Department designee shall have access to all security systems.
 - m. Subject to the provisions below regarding the use and handling of Confidential Information, IP access for remote monitoring of security cameras by the Coalinga Police Department or Department designee.
 - n. Subject to the provisions below regarding the use and handling of Confidential Information, 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 the Coalinga Police Department or Department designee for duplication upon demand. In addition, upon request by the Coalinga Police Department the Responsible Party shall duplicate the records for the Coalinga Police Department or Department designee.

- o. Hardened bullet resistant windows for exterior windows as part of any new or existing 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 cannabis products as approved by the Police Chief.
- r. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis.
- s. State of the art network security protocols and equipment need to be in place to protect computer information.
- t. 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, subject to review by the City Council if requested by the Business Owner.

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, and matters relating to customers, vendors, tenants, agreements, and business records (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 Business Owner or Operator, (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, the 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 the diagram and floor plan on file with the City as part of the application 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.

(21) *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 application for a Regulatory Permit. The Commercial Marijuana Operation shall not operate at any place other than the address of the Marijuana Operation stated in the Regulatory Permit.

(e) *Commercial Marijuana Regulatory Permit.* No person or entity shall operate a Commercial Marijuana Operation within the City of Coalinga without first obtaining a Commercial Marijuana Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial marijuana activity that will be allowed at that site. No commercial marijuana activity will be allowed unless specifically identified in the Regulatory Permit.

(f) *Conditional Use Permit.* Prior to, or concurrently with, applying for a Regulatory Permit, the Applicant shall process a Conditional Use Permit as required by the City's Land Use Regulations. Information that may be duplicative in the two applications can be incorporated by reference. The Conditional Use Permit shall run with the Regulatory Permit and not the land.

(g) *Applications for Regulatory Permits and Responsible Party Designation.*

(1) *Application.* Applications for Regulatory Permits shall be filed by the proposed Business Owner(s) with the Police Chief and include the information set forth herein. The Police Chief may request such information he or she deems necessary to determine who the applicant is.

The applicant shall certify under penalty of perjury that all of the information contained in the application is true and correct. The application shall contain the following items for the Business Owner, Operator and all Responsible Parties known at the time (if different than the Business Owner), and any other party designated below, to the extent the same shall apply:

- a. The full name, present address, and telephone number, including such information to the Premises Owner.
- b. Date of birth.
- c. Tax identification number.
- d. The address to which notices relating to the application is to be mailed.
- e. Previous addresses for the five (5) years immediately preceding the present.
- f. The height, weight, color of eyes and hair.
- g. Photographs for identification purposes (photographs shall be taken by the Police Department).
- h. All business, occupation, or employment for the five (5) years immediately preceding the date of submittal of the application form.
- i. The Marijuana Operation business history, including whether the Business Owner 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 Premises Owner, the application form must be accompanied with a notarized acknowledgment from the Premises Owner that Marijuana Operations will occur on its 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 Operator. 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 Operator and Responsible Parties shall be provided to the Police Chief and updated within twenty-four (24) hours of any changes.

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

o. 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.

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

(2) *Improper or Incomplete Application.* If the applicant has completed the application improperly, or if the application is incomplete, the Police Chief shall, within thirty (30) days of receipt of the original application, notify the applicant of such fact.

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

(4) *Other Permits or Licenses.* The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Regulatory Permit.

(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. Persons who are listed as a Business Owner on a Regulatory Permit shall not be required to obtain an Employee Permit if such person also serves as an employee or contractor. All Responsible Parties, except the Business Owner, shall be required to obtain an Employee Permit.

(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 and pertinent to the Employee Permit.
- h. Authorization for the City, its agents and employees to seek verification of the information contained within the application.
- i. The name of the Business Owner holding the Regulatory Permit and the Operator for which such person is proposed to work.

(i) *Application Fees.*

Every application for a Regulatory Permit, 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.

(j) *Investigation and Action on Application.*

(1) 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 of the applicant and all employees and independent contractors. All applicants for a Regulatory Permit and Employee Permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Coalinga Police Department.

(2) For Regulatory Permits, after the background checks and investigation are complete, and in no case later than ninety (90) days after receipt of a properly completed application, the Police Chief shall issue a recommendation that the City Council approve or deny a Regulatory Permit in accordance with the provisions of this section. The recommendation for approval shall include conditions the Police Chief deems reasonable under the circumstances to protect the public health, safety, and welfare of the community. The recommendation shall be forwarded to the City Council for action following any required noticing and public hearings, and may be processed concurrently with any other entitlements necessary for the Marijuana Operation.

(3) For Employee Permits, 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.

(k) *Term of Permits and Renewals.*

Regulatory Permits issued under this Chapter 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.

(l) *Grounds for Denial of Regulatory Permit.*

The grounds for denial of a Regulatory Permit shall be one or more of the following:

(1) The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.

(2) 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.

(3) 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 application.

(4) Consistent with the Act or other applicable State law, 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 felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or
- e. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything

that would otherwise ban the permittee from obtaining a State license under the Act.

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

(5) Consistent with the Act or other applicable State law, the Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

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

(7) 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.

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

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

(1) 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.

(2) Consistent with the Act or other applicable State law, the applicant 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 felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or

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

(3) Consistent with the Act or other applicable State law, the applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

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

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

(n) *Notice of Decision and Final Action.*

(1) *Regulatory Permit.* Action on the Regulatory Permit shall be as follows:

a. The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a Regulatory Permit, and the date and time when the City Council will consider action on the Regulatory Permit, to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid.

b. Following a public hearing before the City Council, the Council may grant the Regulatory Permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community, or it may deny the issuance of the Regulatory Permit for any of the grounds specified in this section. The decision of the Council shall be final, subject to judicial review below.

(2) *Employee Permit.* Action on the Employee Permit shall be as follows:

a. 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, subject to judicial review.

(o) *Suspension and Revocation of Regulatory Permit or Employee Permit.*

(1) *Regulatory Permit.* The City Council may suspend or revoke the Regulatory Permit of a Commercial Marijuana Operation when any of the following occur:

a. The Marijuana Operation is conducted in violation of any provision of this section, the Act, or any other applicable state law.

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

c. A failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.

d. A failure 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.

- e. A failure to comply with the terms and conditions of the Regulatory Permit or any conditional use permit issued in connection therewith.
- f. Any act which would be considered grounds for denial of the Regulatory Permit in the first instance.

(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 provision of this section, the Act, or any other applicable law relating to the Marijuana Operation.
- c. Violates or fails to comply with the terms and conditions of the Employee Permit.

(3) *Procedures for Revoking Regulatory Permits.* For Regulatory Permits, the procedures for revoking conditional use permits shall be utilized except that the matter shall be heard by the City Council in the first instance, and shall be subject to the same judicial process as applied to a Conditional Use Permit. (See, Coalinga Municipal Code section 9-6.114 Effective dates, expiration, extensions, modifications, and revocation of approvals).

(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 Regulatory Permit and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under either of 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.

(p) *Effect of Denial or Revocation.* When the City Council shall have denied a Regulatory Permit or revoked a Regulatory Permit, or the Police Chief shall have denied or revoked an Employee Permit, no new application for a Regulatory Permit and no new application for an Employee Permit shall be accepted and no Regulatory Permit or Employee Permit shall be 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 Regulatory Permit or Employee Permit.

(q) *Abandonment.* In addition to the suspension or revocation of a Regulatory Permit, a Regulatory Permit shall be deemed abandoned if Marijuana Operations cease for a period of more than ninety (90) consecutive days. Before restarting operations, a new Regulatory Permit 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.

(r) *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.

(s) *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).

In addition to the foregoing, for cultivation operations the total under canopy square footage shall be included in the square footage calculation.

If more than one Commercial Marijuana Operation operates on the Premises, whether within a single building or multiple buildings, each Regulatory Permit holder 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 issuance of a certificate of occupancy. 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, or portion thereof, once the City begins to collect the tax revenue. In no event shall the Business Owner be required to pay more than the Revenue Fee.

(t) *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. Those records shall be maintained for a minimum of five (5) years.

(u) *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.

(v) *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.

(w) *Insurance.* The Business Owner shall at all times carry a comprehensive general liability policy in the minimum amount of One Million Dollars (\$1,000,000) combined single limit policy, , 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.

(x) *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.

(y) *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.

(z) *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.

SECTION 5. EFFECTIVE DATE; EXPIRATION OF URGENCY ORDINANCE 791.

This Ordinance shall take effect 30 days after its adoption. Following the Effective Date, Urgency Ordinance No. 791 covering the same topic shall be deemed to have expired. If the Effective Date of this Ordinance is for whatever reason extended, Urgency Ordinance No. 791 shall remain in effect according to its terms during the extended period.

SECTION 6. PUBLICATION.

The City Clerk is directed to cause this ordinance or a summary of this ordinance to be published as required

The foregoing Ordinance was introduced by the City Council of the City of Coalinga, California, at a special meeting held on October 27, 2016, and was passed and adopted by the City Council at a regular meeting held on November 3, 2016, by the following vote:

AYES: Raine, Vosburg, Keough, Ramsey

NOES: Lander

ABSENT: None

ABSTAIN: None

APPROVED:



Mayor
City of Coalinga

ATTEST:



City Clerk/Deputy City Clerk
City of Coalinga