



*City of Calimesa*  
**REGULAR MEETING OF THE PLANNING COMMISSION**  
**AGENDA**

**Monday, September 11, 2017**  
**6:00 P.M.**

Norton Younglove Multi-Purpose Senior Center  
908 Park Avenue, Calimesa, CA 92320

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*Any public writings distributed by the City to at least a majority of the Commissioners regarding any item on this special meeting agenda will be made available at the public counter at City Hall located at 908 Park Avenue, Calimesa, CA 92320.*

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**ANNOUNCEMENT REGARDING SPEAKER SLIPS**

Anyone wishing to address the City Council either during "Communications from the Public" or on any item on the agenda should fill out a **blue speaker slip** and give that slip to the Commission Secretary **prior to the item being heard**. Please write the number of the agenda item or the subject of your presentation on the slip. **Please observe a time limit of three (3) minutes when giving your presentation**. When called upon, please step forward to the microphone, state your name for the record, whom you represent and any statement you wish to make. **Please be advised that you may not defer your three (3) minutes to another speaker.**

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**CALL TO ORDER**                      6:00 p.m.

**ROLL CALL**                              Chair Brittingham, Vice-Chair Barron, Commissioner Hurt, Commissioner Keith, Commissioner LaRock

**STAFF**                                      Maricela Marroquin, Esq. – Richards, Watson and Gershon  
Megan Shea, Commission Secretary

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

*Anyone wishing to address the Commission on any item within the Commission's jurisdiction that is not on the agenda may do so at this time. This is not a time for City Commission discussion of non-agenda items. After receiving public comments, Commission Members or staff, after being recognized by the Chairperson, may briefly respond to statements made by the public or questions posed by the public. In addition, Commissioners may ask questions for clarification or make a referral to staff for factual information to be reported back to the Commission at a later meeting.*

**APPROVAL OF MINUTES**

**Item 1.     Approve the Minutes of the August 14, 2017 Regular Planning Commission Meeting**

RECOMMENDATION: That the Planning Commission approve the action minutes from the August 14, 2017 meeting.

**PUBLIC HEARING ITEMS**

**Item 2.     ORDINANCE NO. 353 – REGULATING CANNABIS ACTIVITY**

PC Resolution Number 2017-23 – A Resolution of the Planning Commission of the City of Calimesa, California, recommending that the city council adopt an ordinance prohibiting all commercial cannabis activity (both medical and non-medical) except for deliveries of medical

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**Commission Members**

Mike Brittingham, Chairperson ♦ Mike Barron, Vice-Chairperson  
Charles Hurt, Commissioner ♦ John Keith, Commissioner ♦ Larry LaRock, Commissioner

cannibas, making related municipal code amendments, prohibiting outdoor cultivation, and allowing indoor cannabis cultivation consistent with state law, and making environmental findings in support thereof.

RECOMMENDATION: That the Planning Commission open the public hearing, take public comment, close the public hearing, and then vote to adopt the resolution.

### **COMMISSIONERS' REPORTS AND COMMENTS**

*This is the time for additional general comments, announcements, reports on meetings attended, requests of staff, and other issues of concern to Commissioners which may be presented briefly at this time. The Commission may not legally take action on any item presented at this time other than to request staff to investigate a complaint or place an item on a future agenda.*

### **ADJOURNMENT**

Adjourn to a Regular meeting of the Planning Commission meeting on Monday, October 9, 2017 at 6:00 p.m. at the Norton Younglove Multipurpose Senior Center, located at 908 Park Avenue.

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#### **Commission Members**

Mike Brittingham, Chairperson ♦ Mike Barron, Vice-Chairperson  
Charles Hurt, Commissioner ♦ John Keith, Commissioner ♦ Larry LaRock, Commissioner

*City of Calimesa*  
Action Minutes of the Regular Meeting of the  
Planning Commission  
Monday, August 14, 2017

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**CALL TO ORDER:** The meeting was called to order at 6:09 p.m. by Chairperson Brittingham.

**ROLL CALL:**

COMMISSIONERS PRESENT: Chair Brittingham, Vice-Chair Barron, Commissioner Hurt, Commissioner Keith, Commissioner LaRock

COMMISSIONERS ABSENT: None

STAFF PRESENT: Lori Askew, Public Works Director  
Keith Gardner, Community Development Director Consultant  
Kelly Lucia, Assistant Planner  
Megan Shea, Commission Secretary  
Mike Thornton, City Engineer

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT ON NON-AGENDA ITEMS:**

None.

**APPROVAL OF MINUTES**

**Item 1. Approve of Planning Commission Action Minutes**

There are no minutes ready for approval at this time.

**PUBLIC HEARING ITEMS**

**Item 2. PROPOSED DEVELOPMENT PLAN REVIEW 16-01 (DPR 16-01), CONDITIONAL USE PERMIT 16-01 (CUP 16-01), VARIANCE 17-04 (VAR 17-04) AND VARIANCE 17-05 (VAR 17-05);**

PC Resolution Numbers 2017-08, 2017-09, 2017-10, & 2017-11 – Resolutions of the Planning Commission of the City of Calimesa, California, approving Development Plan Review 16-01 for the site design and layout of a convenience store and drive-through car wash; Conditional Use Permit 16-01 for the sale of motor vehicle fuel and the sale of beer and wine for off-site consumption; Variance 17-04 to allow a pylon sign that is 80 feet in height instead of the allowed 45 feet in height with 240 square feet of total sign face area instead of the allowed 80 square feet of sign face area, Variance 17-05 to allow an alcohol permit within 100 feet of residential uses.

**RECOMMENDATION:** That the Planning Commission open the public hearing, take public comment, close the public hearing, and then vote to adopt the resolution.

Community Development Director Gardner presented the project and summarized the staff report. Chair Brittingham opened the public hearing.

Jenna Marcroft of 746 W. County Line Rd. spoke in opposition to the proposed gas station. Her concerns include blight, crime, health effects, noise, property value etc.

Tim Beemer of 741 W. County Line Rd. spoke in opposition of the proposed gas station. Mr. Beemer expressed that the project would diminish quality of life, negatively affect traffic, and would bring “too many gas stations”.

Matt Liesemeyer is the applicant, and he spoke on security measures, enhanced architectural features including noise/sound walls, and made himself available to any other questions for the Commission and public.

Commissioner Hurt asked the applicant how they deter panhandlers at their stores.

Mainor Bojorquez (also representing the applicant), responded to Commissioner Hurt’s question regarding panhandlers. The stores have a stringent training program to deter the issue.

Vice-Chair Barron asked the applicant to clarify his hours of operation of the carwash. The applicant asked for the hours in the Conditions of Approval to be updated from ending at 7:00 pm to be changed to 9:00 pm. Vice-Chair Barron also asked if the City Emblem could be added to the pylon sign as previously agreed upon. The applicant was in agreement and it will be updated on the project’s Conditions of Approval.

Commissioner LaRock asked the applicant to explain further the ingress and egress measures of the project.

Commissioner Hurt inquired as to how many of the parking spaces are designated accessible (handicapped) spaces. Staff answered the required amount is one space.

Chair Brittingham would have preferred to have the carwash on the opposite side of the project if that had been an option. He then asked when 7<sup>th</sup> place would be affected by the project. City Engineer Thornton explained when construction and grading begins, traffic will be rerouted.

Laura Blakenberg of 741 W. County Line Rd expressed concern over possible traffic issues associated with the proposed project. City Engineer Thornton said that traffic signage should assist drivers to the correct direction.

**ACTION:** Vice-Chair Barron moved to approve PC Resolution Numbers 2017-08, 2017-09, 2017-10, & 2017-11 (with changes to the Conditions of approval to operating hours) and the motion was seconded by Commissioner Keith. **Motion passed 5 – 0**

**Item 3. PROPOSED VARIANCE NO. 17-03; RESIDENTIAL SUBDIVISION MONUMENT SIGN**

PC Resolution Number 2017-12 – A Resolution of the Planning Commission of the City of Calimesa, California, approving variance 17-03, a variance to section 18.50.150 Permitted Signs – Residential Districts of the Calimesa Municipal Code to allow a 120 square-foot monument sign which is 6’ tall to be constructed in lieu of the 20 square-foot, 4’ tall maximum allowance, to be located at APN: 413-633-007 in lot “U” of tract 26811 in the residential low zoning district subject to the findings as set forth in this resolution

RECOMMENDATION: That the Planning Commission open the public hearing, take public comment, close the public hearing, and then vote to adopt the resolution.

Commissioner Hurt is not in favor of this variance and asked why the Commission should make an exception for one project over another?

Commissioner LaRock inquired as to what the proposed foliage/landscape plan is around the monument sign. Community Director Gardner replied that there is an approved landscape plan in Planning.

Commissioner Keith agreed that the original sign that meets code standards looks silly up against the large hill.

ACTION: Vice-Chair Barron moved to approve PC Resolution Number 2017-12 and the motion was seconded by Commissioner LaRock. **Motion passed 4 – 1**

**BUSINESS ITEMS**

**Item 4. FIRST ONE-YEAR EXTENSION TTM 31613; 18-LOT RESIDENTIAL SUBDIVISION**

RECOMMENDATION: That the Planning Commission adopts Planning Commission Resolution No. 2017-13 approving an extension of the approval of Tentative Tract Map 31613 to subdivide approximately 10.2 acres into 18 residential lots and one lettered lot to be utilized for drainage purposes in the rural residential zoning district (APN: 409-100-011), subject to the conditions of approval set forth in exhibit A of this resolution.

Chairperson Brittingham disclosed that he lives directly across the street from the project so he will abstain from voting. Commissioner LaRock asked what may be expected to happen during the one-year extension. Community Development Director explained that the developer is allowed to request the extensions in order to secure funding, bonds, etc.

ACTION: Commissioner Hurt moved to approve PC Resolution Number 2017-13 and the motion was seconded by Commissioner Keith. **Motion passed 4 – 0 – 1.**

**COMMISSION MEMBERS REPORT AND COMMENTS:**

- Commissioner Hurt – None.
- Vice-Chair Barron – None.
- Commissioner Keith – Mr. Keith understands rural communities not wanting growth in their communities but it can be a good thing. Staff did a lot of work on project.
- Commissioner LaRock – Mr. LaRock spoke on neighborhood identifiers and monument signs and why he is in favor of the variance voted on at this meeting.
- Chair Brittingham – Chairperson Brittingham thanked members of the public for coming out, voicing their opinion and being heard.

**ADJOURNMENT:**

The Planning Commission meeting was adjourned at 7:25 p.m. to a Special meeting of the Planning Commission meeting on Monday, August 28th at 6:30 p.m. at the Norton Younglove Multipurpose Senior Center, located at 908 Park Avenue.

Respectfully submitted,



Megan Shea  
Planning Commission Secretary



## **Agenda Item No. 2**

# **STAFF REPORT**

## **CITY OF CALIMESA PLANNING COMMISSION MEETING**

**SUBJECT:** ORDINANCE NO. 353 – AN ORDINANCE OF THE CITY OF CALIMESA PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, PROHIBITING OUTDOOR CULTIVATION, AND ALLOWING INDOOR CANNABIS CULTIVATION CONSISTENT WITH STATE LAW, AND MAKING ENVIRONMENTAL FINDINGS IN SUPPORT THEREOF

**MEETING DATE:** September 11, 2017

**PREPARED BY:** Kevin Ennis, City Attorney  
Amy Greyson, Assistant City Attorney  
Maricela Marroquin, Esq.

**PRESENTED BY:** Maricela Marroquin, Esq.

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**RECOMMENDATION:** It is staff's recommendation that the Planning Commission recommend that the City Council adopt Ordinance No. 353, an Ordinance of the City of Calimesa prohibiting all commercial cannabis activity (both medical and non-medical) except for deliveries of medical cannabis, making related Municipal Code amendments, prohibiting outdoor cultivation, and allowing indoor cannabis cultivation consistent with State law, and making environmental findings in support thereof.

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### **BACKGROUND:**

#### **A. The Compassionate Use Act and Related Statutes**

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate cannabis for medical use under State law. In 2003, the California Legislature adopted SB 420, entitled the Medical Marijuana Program ("MMP"), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate cannabis for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP required or imposed an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical cannabis within its jurisdiction. Numerous court decisions have held that the CUA and MMP provide criminal law immunities for qualified patients, persons with identification cards, and primary

caregivers for possessing, storing and cultivating cannabis, but do not preempt local land use ordinances from prohibiting medical cannabis businesses, deliveries, storage, and cultivation. See *Maral v. City of Live Oak*, 221 Cal.App.4th 975, 984 (2013); *Kirby v. County of Fresno*, 242 Cal.App.4th 940, 969-70 (2015); *Safe Life Caregivers v. City of Los Angeles*, 243 Cal.App.4th 1029, 1032 (2016).

In 2015, Governor Brown signed into law the Medical Cannabis Regulation and Safety Act (“MCRSA”). The MCRSA established State licensing requirements for medical cannabis businesses and safety and testing standards for medical cannabis and medical cannabis products. The MCRSA established a dual licensing scheme whereby a medical cannabis business was required to obtain both a local license and a State license to legally operate in the State. The MCRSA allowed a city to maintain local control over whether medical cannabis businesses could operate in its jurisdiction.

### **B. The Control, Regulate and Tax Adult Use of Marijuana Act of 2016**

The Control, Regulate and Tax Adult Use of Marijuana Act (“the AUMA”) was approved by a majority of California voters on November 8, 2016. As a result, it is now legal for persons 21 years of age or older to: (1) smoke or ingest cannabis or cannabis products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and (3) possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in, or upon the grounds of, a private residence.

The AUMA established a comprehensive system of State licensing to regulate commercial cannabis activity, which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis products. The AUMA retained local control by requiring that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

Under the AUMA, the growth and sale of cannabis is taxed by the State, and any local jurisdiction that decides to permit commercial cannabis activities may also levy their own local taxes on commercial non-medical cannabis activities, subject to voter approval. A portion of the proceeds of the taxes adopted by the AUMA will be allocated to grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with implementation of the AUMA. Local governments are prohibited from receiving these grants if they ban (1) commercial cannabis cultivation, (2) the outdoor cultivation of cannabis, including on private residences, or (3) the retail sale of cannabis or cannabis products. Since the City currently prohibits cannabis dispensaries (i.e., retail sales), it would not be eligible for any of these grants.

The AUMA allows for the planting, cultivating, harvesting, drying and processing (“cultivation activities”) of up to six cannabis plants in, or upon the grounds of, a private residence, as well as the possession of any cannabis produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, but a city is not required to adopt any regulations pertaining to cannabis cultivation. The AUMA also authorizes a city to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of cannabis is lawful in the State under Federal law.



### **C. The Medicinal and Adult-Use Cannabis Regulation and Safety Act**

On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018. The City is now required to provide the newly created Bureau of Cannabis Control with a copy of any ordinance related to commercial cannabis activity and the contact information for the person designated by the City to serve as the contact person regarding commercial cannabis activity within the jurisdiction.

### **D. Problems Associated with Cannabis**

Cities in California and across the nation have reported negative effects of cannabis related activities. As cannabis plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary or robbery, and creating the potential for violent acts related to such criminal activity. By prohibiting commercial cannabis activity within City limits, the City is protecting the public health, safety and welfare. In Denver, burglary or attempted burglary accounted for 64% of cannabis-industry-related crime while theft accounted for another 11% of cannabis-industry-related crime in 2014. Overall, cannabis businesses make up less than 1% of all businesses in Denver but account for approximately 11% of all reported business burglaries from 2012-2015.

A 2016 study, “A Micro-Temporal Geospatial Analysis of Medical Cannabis Dispensaries and Crime in Long Beach California” found that an increase of one dispensary per square mile related to a 0.4% to 2.6% increase in property crime. Additionally, greater densities of medical cannabis dispensaries were related to higher rates of violent crimes in areas adjacent to the dispensary locations. The 2016 study found that a citywide decline in dispensaries from the March 2012 peak of 37 dispensaries to the August/September 2013 low of 5 dispensaries, was associated with a decline of 182.5 violent crimes per year and 219.3 property crimes per year. Comparatively, an equivalent drop of alcohol outlets was associated with a decline of only 26.2 violent crimes and 113.9 property crimes per year. These results suggest that local agencies that enact and enforce bans on dispensaries will reduce crime in neighborhoods next to where the dispensaries are located.

Unregulated cultivation enterprises often utilize substandard electrical wiring to avoid detection by illegally and dangerously diverting electricity. Some cities that allow cannabis cultivation operations have reported that the electrical use at these locations often surpasses what the electrical grid can withstand. In addition, indoor cannabis cultivation requires

extensive amounts of water, aggravating California's drought conditions. According to the California Department of Fish and Wildlife, cannabis plants use six to eight gallons of water per plant, per day. Indoor cannabis cultivation can also produce dangerous levels of mold because of the combination of warm temperatures and high humidity found in many indoor cultivation operations.

#### **E. Ad Hoc Committee**

The City established an Ad Hoc Committee to study the issue of whether the City should allow cannabis businesses to operate in the City. The Ad Hoc Committee met several times to discuss issues such as law enforcement activities surrounding cannabis businesses, code enforcement, potential licensing procedures for cannabis businesses, and potential taxes that could be imposed on cannabis businesses. The Ad Hoc Committee toured a cannabis cultivation facility and met with the Sherriff's Department to obtain information regarding cannabis businesses from the law enforcement's perspective. Ultimately, the Ad Hoc Committee recommended that the City Council ban all cannabis based activities but consider retaining and expanding the allowance for deliveries of medicinal cannabis to people in their home, and ban outdoor cannabis cultivation.

#### **F. Joint City Council and Planning Commission Workshop**

On June 12, 2017, a Joint City Council/Planning Commission Workshop Meeting was held so that the City Council and Planning Commission could provide City Staff with direction on whether to: (1) prepare a Zoning Text Amendment for a full ban of cannabis-based commercial, industrial, and agricultural activities; (2) prepare a Zoning Text Amendment for an allowance of all or some cannabis-based activities; or (3) provide alternative direction to staff. The City Attorney's office and Sherriff's Department gave presentations regarding the State regulatory scheme under the AUMA and explained what activities the City could prohibit or regulate; current Calimesa cannabis regulations; the problems associated with cannabis-related businesses; how Calimesa voted on the AUMA; how surrounding cities were regulating cannabis; the issues explored by the Ad Hoc Committee, and the Ad Hoc Committee's recommendation pertaining to cannabis activities.

The City Council and Planning Commission provided the following direction to staff: (1) ban all commercial cannabis activity except for deliveries of medical cannabis to qualified patients and primary caregivers; (2) ban all outdoor cannabis cultivation; and (3) do not regulate indoor cultivation for personal use beyond the regulations set forth under State law. The draft Ordinance imposes regulations consistent with the direction provided by the City Council and Planning Commission.

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### **DISCUSSION:**

#### **A. The City's Current Cannabis-Related Regulations**

Currently the Calimesa Municipal Code explicitly forbids "medical marijuana distribution facilities and mobile medical marijuana dispensaries". The City passed these regulations by Ordinance No. 341 on February 26, 2016. The Calimesa Municipal Code does allow for delivery of medical cannabis to "care facilities," including hospice facilities and health care agencies engaged in home hospice care, as long as the delivery of the medical cannabis is to the care facility or the hospice agency for administration to the patient. Direct distribution

of medical cannabis to patients by mobile dispensaries is prohibited.

The City also currently has in place a moratorium on all commercial non-medical cannabis activities and uses. This means that, during the pendency of the current moratorium, the City does not allow for the establishment any non-medical cannabis businesses. That moratorium was established in December 2016 and will expire, unless extended, in December 2017.

## **B. The Proposed Ordinance Prohibits All Types of Cannabis Businesses and Activities**

The proposed Ordinance would amend Chapters 5.05, 9.50, and 18.135 of the Calimesa Municipal Code to expressly prohibit commercial cannabis activity and uses, whether for medical or non-medical purposes. The proposed Ordinance would also explicitly prohibit outdoor cultivation of cannabis throughout the City, and allow limited indoor cultivation of cannabis at private residences. The proposed Ordinance would also allow the delivery of cannabis to a qualified patient or a primary caregiver from a business located outside the city and licensed under the MAUCRSA or any other provision of law that permits State licenses for medical cannabis businesses.

Specifically, the proposed Ordinance would amend Chapter 5.05 of the Calimesa Municipal Code pertaining to business licenses to delete references to definitions that only apply in the context of medical cannabis since the City is expanding its regulations to address both medical and non-medical cannabis. The proposed Ordinance would add the definition of commercial cannabis activity which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and/or cannabis products, for medical, non-medical, or any other purposes, and includes the activities of any business licensed by the State under Division 10 of the Business and Professions Code. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transport, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Health and Safety Code section 11362.765.

The proposed Ordinance would amend Section 5.05.210 of the Calimesa Municipal Code to specifically prohibit the City from approving an application for a business license for commercial cannabis activity, which would prohibit both medical and non-medical cannabis businesses from operating in the City. The proposed Ordinance would also amend Chapter 9.50 of the Calimesa Municipal Code to prohibit all commercial cannabis activity, whether or not for profit. The proposed Ordinance also prohibits all deliveries except for the delivery of cannabis to a qualified patient or a primary caregiver from a business located outside the city and licensed under the MAUCRSA or any other provision of law that permits State licenses for medical cannabis businesses. The proposed Ordinance would not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery to a person located outside the city, where such transport does not involve delivery within the jurisdictional limits of the city, since the City is not authorized to prohibit these activities under

State law. The proposed Ordinance also amends Chapter 18.135 of the Calimesa Municipal Code to prohibit all commercial cannabis uses which is defined as the use of any property for commercial cannabis activity.

**C. The Proposed Ordinance Prohibits Cannabis Cultivation to the Extent Allowed Under State Law**

The proposed Ordinance amends Chapter 18.135 of the Calimesa Municipal Code to prohibit outdoor cannabis cultivation. The proposed Ordinance allows the indoor cultivation of cannabis in a private residence, or inside a fully enclosed and secured structure located at the residential site. As proposed, a “fully enclosed and secure structure” is defined to mean a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.”

**D. The Proposed Ordinance Exempts the Personal Use of Cannabis**

Consistent with State law, the proposed Ordinance contains exemptions that allow persons 21 years of age or older to: smoke or ingest cannabis or cannabis products; possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in a private residence, or inside an accessory structure located upon the grounds of a private residence.

The proposed Ordinance also includes a catch-all exception that states the proposed Ordinance shall not prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA. Business and Professions Code section 26054(c) provides that it shall not be a violation of local law for a manufacturer of cannabis accessories to possess, transport, purchase or otherwise obtain cannabis and cannabis products as necessary to conduct research and development related to the cannabis accessories. This catch all exception would ensure that the City is not prohibiting activities that it is preempted from prohibiting pursuant to State law.

**G. General Plan Consistency Finding**

Staff has determined the proposed amendment is intended to implement Goals LU-1 and LU-3 of the Land Use Element which state: “Goal LU-1: preserve and enhance the small-town atmosphere of Calimesa” and “Goal LU-3: an arrangement of land uses that achieves maximum compatibility between land uses and especially with existing neighborhoods.” Commercial cannabis businesses would not be compatible with the small-town atmosphere of Calimesa or other businesses operating in the City. The proposed Ordinance is also intended to implement Goal SAF-1 of the Safety Element which states: “minimize injury, loss of life, property damage, and other impacts caused by safety hazards of all types.” Commercial cannabis businesses, particularly commercial cannabis cultivation activities, have caused explosions and fires in other cities which have lead to property damage. Prohibiting these uses will therefore minimize injury, loss of life, and property damage.

## H. Environmental Determination

The proposed Ordinance is considered a “project” pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (14 CCR § 15000 et seq.). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity except for the delivery of medical cannabis will have a significant effect on the environment. The project will not result in a permanent alteration of property nor the construction of any new or expanded structures. Therefore, the project by itself does not result in any physical changes in the environment. The project is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20% that do not result in any changes in land use or density. Since the project is prohibiting all commercial cannabis uses, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore also exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

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**FISCAL IMPACT:** There is no immediate financial impact or budget action necessary as a result of the recommended action.

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### ATTACHMENTS:

Attachment A: Ordinance No. 353  
Attachment B: PC Resolution No. 2017-23

**PC RESOLUTION NO. 2017-23**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALIMESA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, PROHIBITING OUTDOOR CULTIVATION, AND ALLOWING INDOOR CANNABIS CULTIVATION CONSISTENT WITH STATE LAW, AND MAKING ENVIRONMENTAL FINDINGS IN SUPPORT THEREOF**

The Planning Commission of the City of Calimesa hereby finds and determines that:

**WHEREAS**, proposed Ordinance No. 353, attached hereto as Exhibit “A” and incorporated herein by reference, is a City-initiated proposal to amend Chapters 5.05, 9.50, and 18.135 of the Calimesa Municipal Code to expressly prohibit commercial cannabis activity and uses, whether for medical or non-medical purposes. The proposed Ordinance would also explicitly prohibit outdoor cultivation of cannabis throughout the City, and allow limited indoor cultivation of cannabis at private residences. The proposed Ordinance would allow the delivery of cannabis to a qualified patient or a primary caregiver from a business located outside the city and licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act or any other provision of law that permits State licenses for medical cannabis businesses.

**WHEREAS**, the proposed Ordinance is consistent with the General Plan. The proposed Ordinance is intended to implement Goals LU-1 and LU-3 of the Land Use Element which state: “Goal LU-1: preserve and enhance the small-town atmosphere of Calimesa” and “Goal LU-3: an arrangement of land uses that achieves maximum compatibility between land uses and especially with existing neighborhoods.” The proposed Ordinance is also intended to implement Goal SAF-1 of the Safety Element which states: “minimize injury, loss of life, property damage, and other impacts caused by safety hazards of all types.”

**WHEREAS**, the proposed Ordinance would not be detrimental to the public interest, health, safety, convenience, or welfare of the City because it will prohibit the establishment of cannabis businesses in the City which could be injurious to the public health, safety, and welfare of the community as a result of the secondary effects associated with cannabis businesses.

**WHEREAS**, public notice of the public hearing was published in the Calimesa News Mirror on September 1, 2017.

**WHEREAS**, on September 11, 2017, the Planning Commission held a duly notice public hearing wherein the Planning Commission took public comment regarding proposed Ordinance No. 353 and then closed the public hearing.

**WHEREAS**, the proposed Code Amendments are considered a “project” pursuant to the California Environmental Quality Act (CEQA). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity except for the delivery of medical cannabis will have a significant effect on the environment. The project will not result in a permanent alteration of property nor the construction of any new or expanded structures. Therefore, the project by itself does not result in any physical changes in the environment. The project is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20% that do not result in any changes in land use or density. Since the project is prohibiting all

commercial cannabis uses, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore also exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations.

**NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CALIMESA DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** That each and all of the findings set forth above are adopted herein in full.

**Section 2.** That the Planning Commission recommends that the City Council adopt proposed Ordinance No. 353 as set forth in Exhibit A to this resolution.

**PASSED, APPROVED AND ADOPTED**, this 11<sup>th</sup> day of September, 2017.

\_\_\_\_\_  
MIKE BRITTINGHAM, CHAIRPERSON

ATTEST:

\_\_\_\_\_  
MEGAN SHEA, SECRETARY

## ORDINANCE NO. 353

**AN ORDINANCE OF THE CITY OF CALIMESA PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, PROHIBITING OUTDOOR CULTIVATION, AND ALLOWING INDOOR CANNABIS CULTIVATION CONSISTENT WITH STATE LAW, AND MAKING ENVIRONMENTAL FINDINGS IN SUPPORT THEREOF**

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

**SECTION 1. Findings.** The City Council of the City of Calimesa, as the legislative body of the City, makes the following findings in support the adoption of this Ordinance.

A. The City of Calimesa, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. Over the years, the City has adopted previous ordinances pertaining to cannabis to address municipal options and issues presented by changes in state law. Then, on February 26, 2016, the City Council adopted Ordinance No. 341-U to prohibit all medical marijuana cultivation, medical marijuana distribution facilities and the manufacture, cultivation, sale, dispensing, delivery and distribution of medical marijuana in all zones, subject to certain exceptions. On December 5, 2016, the City Council adopted Urgency Ordinance No. 346-U, an interim ordinance prohibiting all commercial non-medical marijuana activities and uses, prohibiting all outdoor marijuana cultivation on private residences in the City and prohibiting the issuance of all business licenses and building permits and other land use entitlement for the same. The City Council subsequently extended the Urgency Ordinance No. 346-U through the adoption of Urgency Ordinance No 347-U, which extended the moratorium through December 4, 2017.

C. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA established a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

D. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, sections 26000, *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division



10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

E. On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity can occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to marijuana businesses beginning January 1, 2018. The MAUCRSA also requires that a city provide a copy of its ordinance regarding commercial cannabis activity to the Bureau of Cannabis Control.

F. On September 11, 2017, the Planning Commission of the City of Calimesa held a public hearing regarding this Ordinance, at which time all persons interested in the contents of this Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2017-23 recommending that the City Council adopt this Ordinance, to prohibit all commercial cannabis activity except for the delivery of medical cannabis, prohibit outdoor cannabis cultivation, and allow indoor cannabis cultivation as required by State law.

G. On October 2, 2017, the City Council of the City of Calimesa held a public hearing on this Ordinance, at which time all persons interested in the changes had the opportunity and did address the City Council on these matters. Following the receipt of public testimony and all evidence, the City Council closed the public hearing.

H. All legal prerequisites to the adoption of this Ordinance have occurred.

**SECTION 2. Environmental Determination.** The adoption of this Ordinance is considered a “project” pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (14 CCR § 15000 et seq.). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity except for the delivery of medical cannabis will have a significant effect on the environment. The project will not result in a permanent alteration of property nor the construction of any new or expanded structures. Therefore, the project by itself does not result in any physical changes in the

environment. The project is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20% that do not result in any changes in land use or density. Since the project is prohibiting all commercial cannabis uses, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore also exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

**SECTION 3.** Section 5.05.010 (Definitions) of Chapter 5.05 (Licenses) of Title 5 (Business Licenses and Regulations) of the Calimesa Municipal Code is hereby amended to delete the definitions of “Care facility”, “Compassionate Use Act”, “Identification card”, “Marijuana”, “Medical marijuana”, “Medical marijuana distribution facility”, “Medical Marijuana Program or MMP”, “MMRSA”, “Mobile medical marijuana dispensary”, “Primary caregiver”, and “Qualified patient”, and to amend the definitions of “Cultivation” and “Delivery” and to add the definitions of “Cannabis”, “Commercial cannabis activity”, “Distribution”, “Manufacture”, and “MAUCRSA” in alphabetical order as follows with all other provisions of Section 5.05.010 remaining unchanged:

“Cannabis” means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis, and any product containing cannabis. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code Section 11018.5.

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products for medical, non-medical, or any other purposes and includes the activities of any business licensed by the State under Division 10 of the Business and Professions Code. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transport, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Health and Safety Code section 11362.765.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

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

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

**SECTION 4.** Section 5.05.210 (License does not permit business otherwise prohibited or unlawful) of Chapter 5.05 (Licenses) of Title 5 (Business Licenses and Regulations) of the Calimesa Municipal Code is hereby amended to read as follows:

“A. The payment of a license fee required by the provisions of this chapter or any other ordinance and its acceptance by the city and the issuance of such license to any person shall not entitle the holder thereof to carry on any business unless he has complied with all of the requirements of this code and all other applicable requirements of state and federal law.

B. The payment of a license fee and its acceptance by the city and the issuance of a license to any person shall not be considered approval or authorization of any unlawful activity or conduct in violation of any local, state, or federal law, statute, ordinance, rule, or regulation. Any such license shall be void.

C. No license shall be issued for any commercial cannabis activity, and the issuance of any business license for any commercial cannabis activity, or any business prohibited by federal, or any city or local law, is void. The city shall also not issue any business license for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

D. No license shall be issued to any person for any business or other use for any business prohibited by federal, state, or other city or local law, and any such license to any business prohibited by federal, state or other city or local law is void.”

**SECTION 5.** Chapter 9.50 (Medical Marijuana Activities) of Title 9 (Public Peace, Morals and Welfare) of the Calimesa Municipal Code is hereby amended to read as follows:

## **“CHAPTER 9.50 CANNABIS PROHIBITIONS AND REGULATIONS**

- Section 9.50.010: Definitions.**  
**Section 9.50.020: Prohibited activities.**  
**Section 9.50.030: Exceptions.**  
**Section 9.50.040: Violation, penalty.**

### **9.50.010 Definitions.**

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Cannabis” means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5.

“Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

“Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

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

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

“Person” means any natural person, firm, corporation, association, club, society, partnership, joint venture, limited liability company, sole proprietorship, collective, cooperative, coop, non-profit, estate, trust, receiver, syndicate, or any other organization, group or entity or combination of organizations or entities of any kind whatsoever, however formed, as well as trustees, heirs, executors, administrators, and/or assigns, and shall also include any owner, operator, manager, proprietor, employee, agent, officer, volunteer, salesperson, trustees, heirs, executors, administrators and assigns. The term “person” shall also include all persons who have an ownership or leasehold interest in any real property, premises and/or structures in which commercial cannabis activity is occurring.

“Primary caregiver” shall have the same meaning as is defined in California Health and Safety Code section 11362.7(d), as the same may be amended from time to time.

“Qualified patient” means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, as the same may be amended from time to time.

#### **9.50.020 Prohibited activities.**

Subject to the exceptions set forth in Section 9.50.030, the following activities are prohibited in the city:

A. Commercial cannabis activity, whether or not for profit, is prohibited in the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city.

B. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. Subsection A above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time.

D. Subject to the exceptions set forth in Section 9.50.030 below, and to the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products, to or from any location are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city.

**9.50.030 Exceptions.**

A. The delivery of cannabis to a qualified patient or a primary caregiver from a business located outside the city and licensed under the MAUCRSA or any other provision of law that permits State licenses for medical cannabis businesses, shall be permitted into the city.

B. Nothing in this chapter shall prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

C. Nothing in this chapter shall prohibit a person 21 years of age or older from engaging in any activities authorized under California Health and Safety Code section 11362.1.

D. Nothing in this chapter shall prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant Business and Professions Code section 26054(c) and (d), as the same may be amended from time to time, or any other provision of the MAUCRSA.

**9.50.040 Violation, penalty.**

In addition to any other enforcement permitted by this Chapter 9.50 of the Calimesa Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Section 1.20.010 of the Calimesa Municipal Code, no provision of this Chapter authorizes a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code section 11362.71, *et seq.* or section 11362.1, *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Section 1.20.010 of the Calimesa Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

**SECTION 6.** Section 18.05.040 (Applicability) of Chapter 18.05 (General Provisions) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby amended to delete subsection C and to re-letter subsection D as subsection C.

**SECTION 7.** Section 18.10.020 (Definitions) of Chapter 18.10 (Definitions) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby

amended to delete the definitions of “Care facility”, “Compassionate Use Act”, “Cultivation”, “Delivery”, “Marijuana”, “Medical marijuana”, “Medical marijuana cultivation”, “Medical marijuana distribution facility”, “Medical marijuana product”, “Medical Marijuana Program or MMP”, “MMRSA”, “Mobile medical marijuana dispensary”, “Person with an identification card”, “Primary caregiver”, “Qualified patient”, and “Serious medical condition”, and to add the definition of “Commercial cannabis activity” with all other provisions of Section 18.10.020 remaining unchanged:

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.”

**SECTION 8.** Table 18.20.030 (Uses Permitted Within Residential Districts) of Section 18.20.030 (Use regulations for residential districts) of Chapter 18.20 (Residential zone districts) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby amended to delete “Medical marijuana cultivation”, “Medical marijuana distribution facility”, and “Mobile medical marijuana dispensary” from the table, and to add “Commercial cannabis activity” and Footnote “m” to Section J (Other) to Table 18.20.030 as follows, with all other provisions of Section 18.20.030 remaining unchanged:

Use	O-S-R	R-E	R-R	R-L	R-L-M	R-M	R-H
Commercial cannabis activity <sup>m</sup>	X	X	X	X	X	X	X

Footnote “m” shall read as follows: “The prohibition on commercial cannabis activity is subject to the exceptions set forth in Section 18.135.040.”

**SECTION 9.** Table 18.30.030 (Uses Permitted Within Industrial Districts) of Section 18.30.030 (Use regulations for industrial districts) of Chapter 18.30 (Industrial zone districts) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby amended to delete “Medical marijuana cultivation”, “Medical marijuana distribution facility”, and “Mobile medical marijuana dispensary” from the table, and

to add “Commercial cannabis activity” and Footnote “e” to Section G (Miscellaneous) of Table 18.30.030 as follows, with all other provisions of Section 18.30.030 remaining unchanged:

Use	O-S-R	R-E	R-R	R-L	R-L-M	R-M	R-H
Commercial cannabis activity <sup>e</sup>	X	X	X	X	X	X	X

Footnote “e” shall read as follows: “The prohibition on commercial cannabis activity is subject to the exceptions set forth in Section 18.135.040.”

**SECTION 10.** Table 18.39.050 (Downtown Business District Permitted Uses) of Section 18.39.050 (Use regulations for downtown business district zones) of Chapter 18.39 (Downtown Business District) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby amended to delete “Medical marijuana cultivation”, “Medical marijuana distribution facility”, and “Mobile medical marijuana dispensary” from the table, and to add “Commercial cannabis activity” and Footnote “j” to the Table 18.39.050 as follows, with all other provisions of Section 18.39.050 remaining unchanged:

Uses	Downtown Village Commercial (DVC)	Downtown Neighborhood Commercial (DNC)	Downtown Visitor-Serving (DVS)
Commercial cannabis activity <sup>j</sup>	X	X	X

Footnote “j” shall read as follows: “The prohibition on commercial cannabis activity is subject to the exceptions set forth in Section 18.135.040.”

**SECTION 11.** Table 18.40.020 (Uses Permitted Within Public/Quasi-Public District) of Section 18.40.020 (Public/quasi-public (P/Q) district) of Chapter 18.40 (Special Districts) of Title 18 (Zoning, Land Use and Development Regulations) of the Calimesa Municipal Code is hereby amended to delete “Medical marijuana cultivation”, “Medical marijuana distribution facility”, and “Mobile medical marijuana dispensary” from the table, and to add “Commercial cannabis activity” and Footnote “a” to the table as follows, with all other provisions of Section 18.40.020 remaining unchanged:

Use	Condition of Use
Commercial cannabis activity <sup>a</sup>	X





the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

“Commercial cannabis use” means the use of any property for commercial cannabis activity.

“Compassionate Use Act” means the Compassionate Use Act of 1996 (Proposition 215), codified as California Health and Safety Code Section 11362.5.

“Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

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

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

“Indoor” means within a fully enclosed and secure structure.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

“Medical Marijuana Program” means California Health and Safety Code Sections 11362.7 through 11362.83, as such statutes may be amended from time to time.

“Outdoors” means any location that is not within a fully enclosed and secure structure.

“Person” means any natural person, firm, corporation, association, club, society, partnership, joint venture, limited liability company, sole proprietorship, collective, cooperative, coop, non-profit, estate, trust, receiver, syndicate, or any other organization, group or entity or combination of organizations or entities of any kind whatsoever, however formed, as well as trustees, heirs, executors, administrators, and/or assigns, and shall also include any owner, operator, manager, proprietor, employee, agent, officer, volunteer, salesperson, trustees, heirs, executors, administrators and assigns. The term “person” shall also include all persons who have an ownership or leasehold interest in any real property, premises and/or structures in which commercial cannabis activity is occurring.

“Primary caregiver” shall have the same meaning as is defined in California Health and Safety Code section 11362.7(d), as the same may be amended from time to time.

“Private residence” means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

“Qualified patient” means a person who is entitled to the protections of California Health and Safety Code section 11362.5, as the same may be amended from time to time, but who does not have an identification card.

#### **18.135.020 Prohibited Uses**

A. Commercial cannabis uses are expressly prohibited in all zones and overlay districts in the city. No person shall establish, operate, maintain, conduct or allow commercial cannabis uses anywhere within the city. The city shall not approve any application for a building permit, conditional use permit, variance, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any commercial cannabis use.

B. Outdoor cannabis cultivation is expressly prohibited everywhere in the city. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating cannabis outdoors.

C. Indoor cannabis cultivation, including cultivation by a qualified patient and primary caregiver, is prohibited except in strict compliance with Section 18.135.030.

#### **18.135.030 Indoor cannabis cultivation**

It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the city to cause or allow such real property to be used for the cultivation of cannabis except in strict compliance with the requirements set forth below.

A. Cannabis cultivation shall only occur indoors at a private residence, or inside an accessory structure located upon the grounds of a private residence.

B. Only persons (21) years of age or older may cultivate cannabis. Any cannabis cultivation must comply with the requirements set forth in California Health and Safety Code sections 11362.1 and 11362.2.

C. Cannabis cultivation is permitted only within fully enclosed and secure structures.

**18.135.040 Exceptions.**

A. The delivery of cannabis to a qualified patient or a primary caregiver from a business located outside the city and licensed under the MAUCRSA, or any other provision of law that permits State licenses for medical cannabis businesses, shall be permitted into the city.

B. Nothing in this chapter shall prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

C. Nothing in this chapter shall prohibit a person 21 years of age or older from engaging in any activities authorized under California Health and Safety Code section 11362.1.

D. Nothing in this chapter shall prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to Business and Profession Code section 26054(c) and (d), as the same may be amended from time to time, or any other provision of the MAUCRSA.

**18.135.050 Violation, penalty.**

In addition to any other enforcement permitted by this Chapter 18.135 of the Calimesa Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Section 1.20.010 of the Calimesa Municipal Code, no provision of this Chapter authorizes a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code section 11362.71, *et seq.* or section 11362.1, *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Section 1.20.010 of the Calimesa Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

**SECTION 14. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 15. Savings Clause.** Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

**SECTION 16. Certification.** The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

**INTRODUCED AND APPROVED UPON FIRST READING** this \_\_\_\_ day of \_\_\_\_\_, 2017, upon the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**PASSED, APPROVED AND ADOPTED UPON SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JEFF HEWITT, MAYOR

ATTEST:

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Darlene Gerdes, City Clerk/City Treasurer