



**STAFF REPORT**  
**5/13/2020**

**TO:** Honorable Mayor and City Council Members  
**FROM:** Luis Lopez, Development Services Director  
**SUBJECT:** Non-Storefront Retail Cannabis Code Amendments

- a. Ordinance No. 1161 amending various sections of Title 17 (Zoning) of the Coachella Municipal Code to update and clarify provisions regarding retail cannabis businesses, specifically with regards to non-storefront retailers, non-storefront retail microbusinesses, storefront retail microbusinesses, and non-retail microbusinesses. (*First Reading*)
- b. Ordinance No. 1162 amending Coachella Municipal Code Chapters 5.68 and 5.69 regarding cannabis cultivation, manufacturing, testing, distribution, and retail regulatory permits, specifically with regards to non-storefront retailers, non-storefront retail microbusinesses, storefront retail microbusinesses, and non-retail microbusinesses. (*First Reading*)

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**STAFF RECOMMENDATION:**

Staff recommends that the City Council introduce for 1<sup>st</sup> reading, by title only, the following Ordinances:

ORDINANCE NO. 1161 - An Ordinance of the City Council of the City of Coachella, California, Amending Coachella Municipal Code Title 17 Zoning, Chapters 17.26 C-G General Commercial Zone, 17.30 M-S Manufacturing Service Zone, 17.32 M-H Heavy Industrial Zone, 17.34 M-W Wrecking Yard Zone, 17.46 IP Industrial Park Overlay Zone, 17.47 RC Retail Cannabis Overlay Zone, 17.84 Retail Cannabis Businesses and 17.85 Commercial Cannabis Activity to Update Cannabis Business Zoning Regulations, including Regulations Specific to Non-Storefront Retail Cannabis Businesses and Microbusinesses.

ORDINANCE NO. 1162 - An Ordinance of the City Council of the City of Coachella, California, Amending Coachella Municipal Code Title 5 Business Licenses and Regulations, Chapters 5.68 Commercial Cannabis Activity Regulatory Permit and 5.69 Cannabis Retailer and Retail Microbusiness Regulatory Permit to Update Cannabis Business Regulatory Permit Regulations, Including Regulations Specific to Non-Storefront Retail Cannabis Businesses and Microbusinesses.

## **BACKGROUND:**

In November of 2016, voters approved Proposition 64, otherwise known as the Control, Regulate, Tax Adult Use of Marijuana Act (“AUMA”) which legalized the adult use of cannabis and created a statutory framework for the state to regulate adult use of cannabis. Senate Bill 94, adopted on June 27, 2017, reconciled standards for medical cannabis with the standards for adult use cannabis activity under a single law, entitled Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”).

The City of Coachella adopted Chapter 17.85 “Medical Cannabis Cultivation Facilities,” in January 2016, to allow commercial medicinal cannabis cultivation, manufacturing, testing, distribution, and transportation activities in the wrecking yard (M-W) zone with a conditional use permit (“CUP”). Since then, the City has allowed both medicinal and adult use cannabis cultivation, manufacturing, testing, distribution, and transportation activities in the M-W zone and IP Industrial Park Overlay Zone for all commercial cannabis activity, and general commercial C-G for testing laboratories only with a CUP. All such businesses also require a regulatory permit to operate.

A City Council study session was held on June 6, 2017 at which time City staff was given direction to prepare and present an ordinance regulating retail cannabis businesses. During the study session, the City Council discussed various potential zoning limitations, including areas within the City that would be suitable and would benefit by such uses, distance limitations between retail cannabis businesses themselves, and distance limitations between these businesses and schools. The City Council took public comment at the meeting, which was generally in favor of allowing such uses. Commenters asked that retail cannabis businesses be allowed in commercial areas, asked the Council to be “business friendly” when considering such uses, and to carefully think about and plan for revenue generated.

In February 2018, the City Council adopted an ordinance, which among other things, allowed five (5) retail cannabis businesses to operate within the City.

In April 2019, the City adopted new retail cannabis regulations, including updating the language to reflect changes in State law; reducing the “minimum project area” size from thirty (30) acres to ten (10) acres in the MS-IP (Manufacturing Service - Industrial Park) overlay zone; expanding area of Sub-Zone #1 *Pueblo Viejo*; adding a new Sub-Zone #3 *Dillon Road Corridor*; adding property development standards for microbusinesses; allowing ten (10) retail cannabis businesses to operate in the City; and allowing retail cannabis businesses in the M-W Wrecking Yard Zone and the IP Industrial Park Overlay Zone, in addition to the RC Retail Cannabis Overlay Zone.

Staff has been working to update the City’s zoning regulations for cannabis businesses based on City Council comments, public comments, internal review of the Zoning Map and General Plan, staff meetings, and current State law.

On March 11, 2020 City Council gave staff direction to pursue two code amendments to consider allowing “interim outdoor cannabis cultivation farms” and “non-storefront retail cannabis businesses.” Because the next growing season for outdoor cultivation is not imminent, that code

amendment will be further studied and brought to the Planning Commission and City Council in the summer months. The Zoning Ordinance presented herein deals strictly with allowing “non-storefront retail cannabis businesses” in the various commercial and industrial districts of the City. The cannabis business regulatory permit Chapters are also presented and have been developed so that all cannabis chapters in the Municipal Code are consistent.

The Planning Commission reviewed the proposed Zoning Ordinance Amendment on April 15, 2020 and recommended it to City Council for adoption.

## **DISCUSSION/ANALYSIS:**

### **I. SUMMARY OF BOTH ORDINANCES**

The proposed Zoning Ordinance would amend Title 17 (Zoning), Chapters 17.26, 17.30, 17.32, 17.34, 17.46, 17.47, 17.84, and 17.85 to (i) allow non-storefront retailers in the C-G General Commercial Use Zone, M-S Manufacturing Service Zone, M-H Heavy Industrial Zone, M-W Wrecking Yard Zone, and RC Retail Cannabis Overlay Zone and subject to certain property development standards, (ii) clarify the different types of cannabis microbusinesses that may operate in different City zones, and (iii) comply with current City policies and State law.

The proposed Regulatory Permit Ordinance would amend Title 5 Business Licenses and Regulations, Chapters 5.68 and 5.69. In both chapters, definitions are updated and clarified to specifically describe storefront retailers, non-storefront retailers, non-retail microbusinesses, storefront retail microbusinesses, and non-storefront retail microbusinesses. Terminology is updated in Chapter 5.69 to use “retail cannabis business” to describe all cannabis business types that have a retail component.

### **II. NON-STOREFRONT RETAILERS**

#### **A. Non-storefront Retailer Defined**

Currently, the City does not allow non-storefront retailers. The proposed Ordinances would allow non-storefront retailers to operate in certain zones in the City (described below) subject to certain development standards (described below). The City is not proposing to limit the number of non-storefront retailers, but these uses will be limited by land use restrictions, e.g. they will be limited to certain zones and have distancing/spacing restrictions, which are discussed below.

A “non-storefront retailer” means a cannabis retailer that provides cannabis **exclusively through delivery**. Like the name implies, these businesses do not have a retail storefront that is open to the public. Rather, the business will obtain cannabis and cannabis products, secure the merchandise on site, and then deliver it to customers. Customers do not come to the business location.

State law and regulations regarding cannabis delivery ensure documented transfer from the retailer to the customer. All deliveries of cannabis goods must be performed by a delivery employee (at least 21 years of age) who is directly employed by a licensed retailer and be made in person. The process of delivery begins when the delivery employee leaves the retailer’s licensed premises with the cannabis goods for delivery and ends when the delivery employee returns to the retailer’s licensed premises after delivering or attempting to deliver the cannabis goods. A delivery

employee of a licensed retailer shall, during deliveries, carry a copy of the retailer’s current license, a copy of the QR Code certificate issued by the Bureau of Cannabis Control, the employee’s government-issued identification, and an identification badge provided by the employer. Prior to providing cannabis goods to a delivery customer, a delivery employee shall confirm the identity and age of the delivery customer. A delivery employee may not carry cannabis goods with a value in excess of \$5,000 at any time. (Bus. & Prof. Code, §§ 26013, 26090.) QR is short for “Quick Response” and these codes are used to take a piece of information from a transitory media and put it onto a person’s cell phone. Once on the cell phone, it gives the person information about the business.

In February 2020, new cannabis regulations were enacted requiring cannabis retailers and delivery services to post QR codes in their storefront windows and carry it with them while transporting or delivering cannabis products. These regulations are designed to help consumers identify licensed cannabis retail stores, assist law enforcement, and support the legal cannabis market. It has been reported that illicit cannabis sales in California in 2019 were estimated at \$8.3 billion, while legalized sales were expected to reach \$3 billion.

#### **B. Zones Where Non-storefront Retailers are Allowed**

The ZOA proposes to allow non-storefront retailers in the following zones:

- C-G General Commercial Use Zone;
- M-S Manufacturing Service Zone;
- M-H Heavy Industrial Zone;
- M-W Wrecking Yard Zone; and
- RC Retail Cannabis Overlay Zone.

Non-storefront retailers would be permitted as conditional uses in the above zones, meaning that they must secure a conditional use permit (“CUP”) or development agreement prior to operating.

#### **C. Property Development Standards**

The ZOA proposes that non-storefront retailers be subject to three property development standards:

- A minimum of one hundred (100) feet separation from any residential structure;
- be at least five hundred (500) feet from any other storefront retail or non-storefront retail cannabis business; and
- may not be located in the City’s Pueblo Viejo District.

The ZOA defines “Pueblo Viejo District” as that area in the city bounded by Cesar Chavez Street to the south, 1st Street to the west, Grapefruit Boulevard to the north, and 9th Street to the east.

#### **D. Regulatory Permit Provisions Regarding Non-Storefront Retailers**

While the non-storefront retailer business type would be new to Coachella, storefront retailers are currently allowed to deliver cannabis to customers, provided they comply with the City's regulations on cannabis delivery. Non-storefront retailers would have to follow the same delivery-specific rules. Municipal Code Section 5.69.140 subsection C states that "All deliveries of cannabis must be performed in compliance with State law and corresponding state-issued regulations." The proposed Regulatory Permit Ordinance does not propose any new regulations in addition to those required by existing State law.

The State has promulgated the following regulations, in addition to many others, specific to delivery, which will apply to deliveries in and from Coachella businesses:

- All deliveries shall be performed by a delivery employee who is at least 21 years of age and is directly employed by a licensed retailer.
- A delivery employee shall carry a copy of the retailer's current license, the employee's government-issued identification, and an identification badge provided by the employer.
- A delivery employee may only deliver cannabis goods to a physical address in California.
- A delivery employee shall not deliver cannabis goods to a building leased by a public agency or a school.
- A licensed retailer's delivery employee shall only travel in an enclosed motor vehicle; cannabis goods shall be locked in an enclosed box and cannot be visible to the public.
- A vehicle used for the delivery shall be outfitted with a dedicated Global Positioning System (GPS) device.
- A delivery employee shall not carry cannabis goods with a value in excess of \$5,000 at any time.
- A licensed retailer shall prepare a hard copy or electronic delivery request receipt for each delivery of cannabis goods.
- While making deliveries, a delivery employee shall only travel from the retailer's licensed premises to the delivery address; from one delivery address to another delivery address; or from a delivery address back to the retailer's licensed premises.

#### **III. MICROBUSINESSES**

The City's current regulations distinguish between microbusinesses with a retail component and microbusinesses without a retail component. The proposed ZOA and Regulatory Permit Ordinance further clarify the regulations related to microbusinesses.

**A. Types of Microbusinesses**

The proposed ZOA adds new definitions to specify the three types of microbusinesses: non-retail, storefront retail, and non-storefront retail microbusinesses.

A “non-retail microbusiness” is a commercial business that engages in indoor cultivation of cannabis on an area less than ten thousand (10,000) square feet, Level 1 manufacturing, and distribution. Like the name implies, there is no retail component to the business.

A “storefront retail microbusiness” is a commercial business that engages in storefront retail cannabis sales and at least two of the following: indoor cultivation of cannabis on an area less than ten thousand (10,000) square feet, Level 1 manufacturing, and distribution.

A “non-storefront retail microbusiness” is a commercial business that engages in non-storefront retail cannabis sales and at least two of the following: indoor cultivation of cannabis on an area less than ten thousand (10,000) square feet, Level 1 manufacturing, and distribution.

**B. Zones Where Microbusinesses are Allowed**

**1. Non-retail Microbusinesses**

The Municipal Code currently allows non-retail microbusinesses in the following zones:

- M-W Wrecking Yard Zone; and the
- IP Industrial Park Overlay Zone.

**2. Storefront Retail Microbusinesses**

The Municipal Code currently allows storefront retail microbusinesses in the following zones:

- M-W Wrecking Yard Zone;
- IP Industrial Park Overlay Zone; and the
- RC Retail Cannabis Overlay Zone.

**3. Non-storefront Retail Microbusinesses**

The ZOA proposes to allow non-storefront retail microbusinesses in the following zones:

- C-G General Commercial Use Zone;
- M-S Manufacturing Service Zone;
- M-H Heavy Industrial Zone;

- M-W Wrecking Yard Zone; and
- RC Retail Cannabis Overlay Zone.

**C. Microbusinesses Conditionally Permitted**

All microbusiness types are permitted as conditional uses in the above zones, meaning that they must secure a CUP or development agreement prior to operating.

**D. Regulatory Permit Provisions**

All microbusiness types must obtain a regulatory permit in addition to their CUP or development agreement. The proposed Regulatory Permit Ordinance, like the Zoning Ordinance Amendment, includes definitions of the three types of microbusinesses: non-retail microbusiness, storefront retail microbusiness, and non-storefront retail microbusiness. Naturally, all microbusinesses must follow City and State regulations specific to the types of cannabis businesses operated under each microbusiness permit/license.

Some additional State regulations, which Coachella microbusinesses must comply with, are as follows:

- All cultivation, manufacturing, distribution, and retail activities performed by a microbusiness shall occur on the same licensed premises.
- A microbusiness shall comply with all the security rules and requirements applicable to the corresponding license type suitable for the activities of the permittee.
- Areas of the licensed premises for manufacturing and cultivation shall be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use.
- A microbusiness engaging in cultivation activities shall maintain cultivation plan(s) and all records evidencing compliance with the environmental protection measures.

**FISCAL IMPACT:**

None.

**ALTERNATIVES:**

- 1) Introduce for 1<sup>st</sup> reading, Ordinance No. 1161 and Ordinance No. 1162 as presented.
- 2) Introduce for 1<sup>st</sup> reading, Ordinance No. 1161 and Ordinance No. 1162 with amendments.
- 3) Recommend denial of Ordinance No. 1161 and Ordinance No. 1162.
- 4) Continue this item and provide staff with direction.

**RECOMMENDED ALTERNATIVE(S):**

Staff recommends Alternative #1 or Alternative #2 above.

Attachments:      Ordinance No. 1161 Zoning Ordinance Amendment (1<sup>st</sup> Reading)  
                         Ordinance No. 1162 Regulatory Permit Ordinance (1<sup>st</sup> Reading)