



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

JUAN LUNA  
Chair  
MARTIN GAMEZ  
Vice-Chair  
ALBERT ESCOBEDO  
JONATHAN LEIVA  
KEVIN ROMERO  
ABDUL OBAID  
Alternate Commissioner

## CITY OF MENDOTA PLANNING COMMISSION AGENDA

City Council Chambers  
Mendota, CA 93640  
SPECIAL MEETING  
March 27, 2017  
6:00 P.M.

VINCE DiMAGGIO  
City Manager  
CRISTIAN GONZALEZ  
Public Works/Planning Director  
JEFF O'NEAL  
City Planner

The Mendota City Planning Commission welcomes you to its meetings; regular meetings are scheduled for the 3rd Tuesday every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Planning Commissioners may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phone off. Thank you for your respect and consideration.**

Any public writings distributed by the City of Mendota to at least a majority of the Planning Commission regarding any item on this special meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours.

### **CALL TO ORDER**

### **ROLL CALL**

### **FLAG SALUTE**

### **FINALIZE THE AGENDA**

1. Adoption of final Agenda.

### **MINUTES AND NOTICE OF WAIVING OF READING**

1. Approval of the minutes of the regular meeting of February 21, 2017.
2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

## **PUBLIC HEARING**

1. Public Hearing to adopt **Resolution No. PC 17-01**, recommending that the City Council adopt an ordinance amending parts of the Mendota Municipal Code relating to outdoor advertising.
  - a. *Receive report from Economic Development Manager Flood*
  - b. *Inquiries from Planning Commissioners to staff*
  - c. *Chair Luna opens the public hearing*
  - d. *Once all comment has been received, Chair Luna closes the public hearing*
  - e. *Commission considers Resolution No. PC 17-01 for adoption*
  
2. Public Hearing to adopt **Resolution No. PC 17-02**, recommending that the City Council adopt an ordinance amending the Mendota Municipal Code relating to permit application processing and siting locations for the installation of new wireless telecommunications facilities.
  - a. *Receive report from City Attorney Kinsey*
  - b. *Inquiries from Planning Commissioners to staff*
  - c. *Chair Luna opens the public hearing*
  - d. *Once all comment has been received, Chair Luna closes the public hearing*
  - e. *Commission considers Resolution No. PC 17-02 for adoption*
  
3. Public Hearing to adopt **Resolution No. PC 17-03**, recommending that the City Council adopt an ordinance amending Chapter 8.36 of the Mendota Municipal Code relating to recreational marijuana use and cultivation.
  - a. *Receive report from City Attorney Kinsey*
  - b. *Inquiries from Planning Commissioners to staff*
  - c. *Chair Luna opens the public hearing*
  - d. *Once all comment has been received, Chair Luna closes the public hearing*
  - e. *Commission considers Resolution No. PC 17-03 for adoption*

## **PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA**

The public is invited to speak to the Planning Commission at this time about any item that is not on the Agenda. Please limit your comments to five (5) minutes. Please note that the Planning Commission cannot take action on any item not listed on the agenda.


## **PLANNING DIRECTOR UPDATE**

## **PLANNING COMMISSIONERS' REPORTS**

**ADJOURNMENT**

**CERTIFICATION OF POSTING**

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota Planning Commission Special Meeting of Monday, March 27, 2017 was posted on the outside bulletin board of City Hall, 643 Quince Street on Friday, March 24, 2017 at 3:40 p.m.

  
\_\_\_\_\_  
Celeste Cabrera, Deputy City Clerk



## CITY OF MENDOTA PLANNING COMMISSION MINUTES

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**Regular Meeting**

**Tuesday, February 21, 2017**

**6:30 p.m.**

**Meeting called to order by Chairperson Luna at 6:33 PM.**

### **Roll Call**

**Commissioners Present:** Commissioners Martin Gamez, Juan Luna, Jonathan Leiva, Albert Escobedo, Abdul Obaid, and Kevin Romero (at 6:36 p.m.).

**Commissioners Absent:** None.

**Staff Present:** Matt Flood, Economic Development Manager; and Celeste Cabrera, Deputy City Clerk.

**Flag Salute led by Commissioner Luna.**

### **FINALIZE THE AGENDA**

1. Adoption of final Agenda.

A motion was made by Commissioner Escobedo to adopt the agenda, seconded by Commissioner Luna; unanimously approved (4 ayes, absent: Romero).

At 6:36 p.m. Commissioner Romero entered the Council Chambers.

### **SWEARING IN**

1. Deputy City Clerk Cabrera to swear in Albert Escobedo, Jonathan Leiva, Kevin Romero, and Abdul Obaid.

Deputy City Clerk Cabrera swore in the Commissioners.

2. Reorganization of the Planning Commission.

A motion was made by Commissioner Escobedo to appoint Commissioner Luna as Chairperson, seconded by Commissioner Romero; unanimously approved (5 ayes).

A motion was made by Chairperson Luna to appoint Commissioner Gamez as Vice-Chairperson, seconded by Commissioner Leiva; unanimously approved (5 ayes).

### **MINUTES AND NOTICE OF WAIVING OF READING**

1. Approval of the minutes of the regular meeting of December 20, 2016.
2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

A motion to approve items 1 and 2 was made by Commissioner Romero, seconded by Commissioner Escobedo; unanimously approved (5 ayes).

### **PLANNING WORKSHOP**

1. City staff to give brief presentations on the role of the Planning Commission and various planning policies, processes, and functions.

Chairperson Luna reported on the responsibilities of Planning Commissioners.

Economic Development Manager Flood explained the purpose of the General Plan; the purpose of the zoning ordinance; types of items that will come before the Commission; the role of project conditions contained in Conditional Use Permits and Site Plan Reviews; summarized parliamentary procedure; and the importance of completing the Statement of Economic Interests.

### **PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA**

None offered.

### **PLANNING DIRECTOR UPDATE**

Economic Development Manager Flood provided an update on various projects.

Discussion was held on the possible development of apartment complexes and the Commission thanked Public Works Department staff for their hard work.

### **PLANNING COMMISSIONERS' REPORTS**

None offered.

### **ADJOURNMENT**

At the hour of 7:09 p.m. with no more business to be brought before the Planning Commission, a motion for adjournment was made by Commissioner Escobedo, seconded by Commissioner Romero; unanimously approved (5 ayes).

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Juan Luna, Chairperson

ATTEST:

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Matt Flood, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** MATT FLOOD, ECONOMIC DEVELOPMENT MANAGER  
**SUBJECT:** RESOLUTION TO RECOMMEND THE CITY COUNCIL ADOPT AN ORDINANCE  
MODIFY THE ZONING CODE AS IT PERTAINS TO OUTDOOR ADVERTISING  
(SIGNS)  
**DATE:** MARCH 27, 2017

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**ISSUE**

Shall the Planning Commission adopt a Resolution recommending the Mendota City Council adopt an Ordinance modifying the Zoning Code as it relates to Outdoor Advertising (Signs) in Commercial Districts?

**BACKGROUND**

Members of the business community had requested that, in an effort to be more business-friendly, the City Council consider modifying the Zoning Code as it relates to outdoor advertising (signs). In the past two years the City council, Planning Commission, staff, and the public have been working on adjusting the regulations to increase flexibility while still preserving the health, safety, and aesthetic look of our community.

As part of the process of formulating these changes, staff analyzed the needs and practices of our business community, what laws other municipalities have and how they are implemented, and other considerations that would provide an appropriate and comparable perspective while facilitating the modernization of our Zoning Code.

With those elements acquired, staff presented the information to the City Council at a couple of its meetings and left with the following recommendations to implement in commercial sectors:

- Allow 50% of window space to contain signs advertising products or services.
- Allow free-standing signs in the C-3 district.
- Allow A-frame type signs.
- Allow temporary signs to advertise certain irregular and limited occasions.

Attached to this report (as “Exhibit A” to the Resolution for consideration by this body) is the proposed ordinance, which integrates these changes into the Mendota Municipal Code (MMC).

**ANALYSIS**

Once implemented, the changes proposed will provide more options to the Business Community for legally advertising their products and services while at the same time making it clear for Planning and Code Enforcement to process and apply the codes as it relates to signage.

Part of an appropriate analysis of such a law is understanding the overarching philosophical principle in the creation of outdoor advertising ordinances. Each community has different provisions depending on their need, with “need” being defined in this case as balancing what businesses want with the type of image the community (both residents and businesses) wishes to convey to visitors. In other words, the ordinance needs to help businesses as well as keep the business districts safe, clean, and beautiful.

The provisions contained in this ordinance satisfy this need by creating an unprecedented flexibility while still providing the limits and enforcement tools that are needed in order to maintain the health, safety, and aesthetic look of our community.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Staff recommends that the Planning Commission discuss the proposed ordinance, that the Chair open a hearing to take comment from the public, then the Commission adopt Resolution No. PC 17-01, forwarding a recommendation to the City Council to adopt Ordinance No. 17-04.



**PLANNING COMMISSION  
OF THE CITY OF MENDOTA  
FRESNO COUNTY, CALIFORNIA**

**RESOLUTION NO. PC 17-01**

**A RESOLUTION OF THE CITY OF MENDOTA PLANNING COMMISSION  
RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MENDOTA ADOPT  
AN ORDINANCE AMENDING PARTS OF THE ZONING CODE (TITLE 17 OF THE  
MENDOTA MUNICIPAL CODE) RELATING TO OUTDOOR ADVERTISING  
(SIGNS)**

**WHEREAS**, on February 15, 2017, the City Council voted to adopt a Resolution of Intention to Initiate an Amendment to various sections of the Zoning Code (Title 17 of the Mendota Municipal Code [MMC]) relating to Outdoor Advertising (Signs) provisions; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council"; and

**WHEREAS**, City Staff has prepared a proposed Ordinance Amending the provisions of Title 17 that relate to the changes desired by Council, a copy of which is attached hereto as Exhibit "A" (the "Proposed Ordinance"); and

**WHEREAS**, on March 15, 2017, the City published notice in the Firebaugh Mendota Journal advising that the Planning Commission would conduct a public hearing on the Proposed Ordinance at its March 27, 2017, special meeting; and

**WHEREAS**, on March 27, 2017, the Planning Commission conducted a duly-noticed public hearing on the Proposed Ordinance; and

**WHEREAS**, Staff has reviewed the Proposed Ordinance, and has determined that the approval of the Proposed Ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Staff has also determined that, alternatively, the Proposed Ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**WHEREAS**, Section 17.08.040(H) of the Mendota Municipal Code provides that the City Council shall hold a public hearing on the proposed amendments “not less than ten days nor more than forty (40) days after the filing of the commission’s resolution by the council,” and that notice of said council hearing “shall be given as provided in Section 17.08.040(F).”

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission for the City of Mendota hereby recommends to the City Council approval of the Proposed Ordinance, attached hereto and made a part of this resolution as Exhibit “A.”

**BE IT FURTHER RESOLVED** that the Planning Commission finds the approval of this ordinance is not subject to CEQA, pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the Planning Commission finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**BE IT FURTHER RESOLVED** that the Secretary shall file this Resolution No. PC 17-01 with the City Council, and shall schedule a public hearing before the City Council on the Proposed Ordinance no less than ten (10) days nor more than forty (40) days after the adoption of this resolution. The Secretary shall also provide notice of the City Council hearing as provided under Section 17.08.040 of the Mendota Municipal Code no later than 10 days before the hearing.

**PASSED AND ADOPTED** by the Planning Commission of the City of Mendota at a special meeting held on the 27<sup>th</sup> of March, 2017, upon a motion by \_\_\_\_\_, a second by \_\_\_\_\_, and by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

ATTEST:

\_\_\_\_\_  
Juan Luna, Chair

\_\_\_\_\_  
Matt Flood, City Clerk

EXHIBIT A

BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA

AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AMENDING  
SECTIONS 17.04.110, 17.44.050(K),  
17.52.050(K), 17.56.050(K), AND  
17.88.010, OF THE MENDOTA  
MUNICIPAL CODE RELATED TO  
OUTDOOR ADVERTISING (SIGNS)

ORDINANCE NO. 17-04

The City Council of the City of Mendota does hereby ordain as follows:

Section 1. The following definition is added to Subsection (C) of Section 17.04.110 of Chapter 17.04 of Title 17 of the Mendota Municipal Code:

**“Temporary Sign” means a sign that is installed, erected, or displayed on the property of a business advertising the opening, establishment, or new location of a business, change of ownership of the business, or sales related to the opening or closing of that business.**

Section 2. Subsection (g) of Subsection (11) of Subsection (A) of Section 17.88.010 of Chapter 17.88 of Title 17 of the Mendota Municipal Code is hereby added to read as follows:

**g. Temporary signs may be permitted in a non-residential district for a maximum of thirty (30) days, subject to the following regulations:**

- i. A sign permit is obtained from the planning department prior to the installation of such a sign, via a completed sign application, and a graphical color rendering of the sign.**
- ii. The content of such a sign contains no more than the name, address, phone number, website, hours of operation, logo of the business, and nature of the event.**
- iii. It is composed of a wood, plastic, banner, flag or similarly durable material.**
- iv. The size of such a sign is no more than fifty (50) square feet.**
- v. Only one such sign is allowed per street frontage, per business.**

Section 3. Subsections (g) and (h) of Subsection (1) of Subsection (K) of Section 17.44.050 of Chapter 17.44 of Title 17 of the Mendota Municipal Code is hereby added to read as follows:

**g. Where County, State, or Federal law does not prohibit such, the posting of signs without a permit on the inside of a window advertising the business, services, and products offered on the premises, not to exceed 50% of the total area of the window and be done in a manner that inhibits the ability of law enforcement to see inside of the business.**

**h. One A-frame or other standing sign of a temporary nature per street frontage without a permit, not to exceed ten (10) square feet in area, including the area occupied by any fixture at or near parallel to the face of the sign, and four (4) feet in height, placed within five (5) feet of the building that the business occupies and not encroaching on the public-right-of way.**

Section 4. Subsection (K) of Section 17.52.050 of Chapter 17.52 of Title 17 of the Mendota Municipal Code is hereby amended to read as follows:

**K. Outdoor Advertising. The provisions of the C-1 district, Section 17.44.050(K)(1)(a), (b), (d), and (f), (g), and (h) shall apply, with one free-standing sign per street frontage permitted, subject to the following regulations:**

- 1. The sign shall only contain the name of the business or businesses, principal services provided, and the address of the location.**
- 2. The sign shall not exceed seventy-five (75) square feet in area or twenty (20) feet in height.**
- 3. Any lighting or other forms of illumination utilized shall not create a hazard to drivers or cause a visual or noise disturbance to any surrounding residential area.**

Section 5. Subsection (K) of Section 17.56.050 of Chapter 17.56 of Title 17 of the Mendota Municipal Code is hereby amended to read as follows:

**K. Outdoor Advertising. The provisions of the C-1 district, Section 17.44.050(K)(1)(a), (b), (d), (e), and (f), (g), and (h) shall apply.**

Section 6. The City Council of the City of Mendota hereby finds that the amendments contained herein solely constitute changes to regulations, and do not authorize or approve any development or physical changes. As such, they have no potential to significantly affect the environment, and are therefore not subject to the California Environmental Quality Act (CEQA) as indicated in CEQA Guidelines §15061(b)(3).

Section 7. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Mendota City Council hereby

declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 8. Within fifteen (15) days of the adoption of this Ordinance, a summary thereof, including the names of the City Council Members voting for and against it, shall be prepared by the City Attorney for publication in the *Firebaugh-Mendota Journal*, and a certified copy of the Ordinance shall be posted in the office of the City Clerk.

Section 9. This ordinance shall become effective and in full force at 12:00 midnight on the 31<sup>st</sup> day following its adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 11<sup>th</sup> day of April, 2017 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2017 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Rolando Castro, Mayor

ATTEST:

\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kinsey, City Attorney

**A G E N D A   I T E M   -   S T A F F   R E P O R T**

**DATE:**        March 24, 2017

**TO:**            Honorable Members of the Planning Commission of the City of Mendota

**FROM:**        Vince DiMaggio, City Manager  
                  John P. Kinsey, City Attorney

**SUBJECT:**    Resolution Recommending that the City Council of the City of Mendota Adopt an Ordinance Amending the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for the Installation of New Wireless Telecommunications Facilities

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**RECOMMENDATION:**

Adopt a Resolution that:

- A. Recommends that the City Council adopt an ordinance that would provide a comprehensive update to Title 17 of the Mendota Municipal Code (“MMC”) to (i) regulate the time, place, and manner of construction of new wireless telecommunications facilities; (ii) restrict or limit the siting of wireless telecommunications facilities in residential and commercial zoning districts to the extent allowed under applicable state or federal laws; and (iii) clarify the application requirements and procedures for construction of new wireless telecommunications facilities (“WCF”).
- B. Finds the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.
- C. Directs the Secretary to schedule a public hearing before the City Council on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

**BACKGROUND:**

In 1996, Congress passed the Telecommunications Act of 1996 (“TCA”), in order to increase competition within the telecommunications industry by creating lower prices, higher quality service, and rapid technological development, and while preserving the authority of local governments over zoning and land use matters. Section 253(a) of the TCA precludes state and local governments from enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including wireless services. However, under section

253(c), cities and local governments may exercise reasonable control over the time, place, and manner of construction of WCF. Furthermore, under section 332(c)(8), cities generally retain local zoning authority over WCF siting locations, subject to some limitations.

Previously, City Staff had been advised of incidents of telecommunications companies erecting wireless facilities within public rights-of-way without (i) notice to the local government(s) in question or (ii) engaging in any permitting process for the construction and placement of such facilities. In addition, area cities have all been approached by at least one company claiming to be a telecommunications company, and purporting to “inform” the local agencies that they are going to commence work on a telecommunications tower within a public right-of-way.

On November 22, 2016, the City Council adopted Ordinance No. 16-12, an interim urgency ordinance, “Enacting a Temporary Moratorium on New and Relocated Wireless Telecommunications Facilities within Public Rights-of-Ways, Pursuant to Government Code Section 65858.” The interim urgency ordinance temporarily halted the issuance of any permits for new and relocated WCFs until the City could fully analyze the impacts of WCF installations on public rights of way. The urgency ordinance was extended by the City Council on December 13, 2016.

On January 24, 2017, the City Council adopted Resolution No. 17-08: Resolution of Intention to Initiate an Amendment to Title 17 of the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for Installations of New Wireless Telecommunications Facilities. (**Exhibit “A.”**)

## **DISCUSSION:**

The City presently does not have any provisions of its Ordinance that govern the erection of wireless facilities within the City. In light of the foregoing, City Staff believes it is important to consider reasonable restrictions on the permitting of wireless facilities within the City, including the permitting of wireless facilities within public rights-of-way. City Staff wishes to implement a comprehensive update to the MMC for regulating the installation of WCF without triggering preemption under the TCA or applicable state law.

As a result of the foregoing, Staff has developed proposed modifications to Title 17 of the Mendota Municipal Code to (i) regulate the time, place, and manner of construction of new wireless telecommunications facilities; (ii) restrict or limit the siting of wireless telecommunications facilities in residential and commercial zoning districts to the extent allowed under applicable state or federal laws; and (iii) clarify the application requirements and procedures for construction of new wireless telecommunications facilities. A copy of the proposed ordinance is attached hereto as **Exhibit “B.”**

Staff is also recommending that the City follow the procedures set forth in Chapter 17.08.040 of the Mendota Municipal Code for the amendment, as the regulations affect land uses within the City. As a result, as part of its consideration and adoption of the proposed resolution, City Staff recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Title 17 of the

Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

## **CONCLUSION**

Based on the foregoing, Staff recommends that the Planning Commission adopt a resolution recommending that the City Council adopt the Proposed Ordinance, which would amend Title 17 of the Mendota Municipal Code to (i) regulate the time, place, and manner of construction of new wireless telecommunications facilities; (ii) restrict or limit the siting of wireless telecommunications facilities in residential and commercial zoning districts to the extent allowed under applicable state or federal laws; and (iii) clarify the application requirements and procedures for construction of new wireless telecommunications facilities.

Staff also recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

## Attachments

**Ex. “A”:** City Council, City of Mendota, Resolution No. 17-08: Resolution of Intention to Initiate an Amendment to Title 17 of the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for Installations of New Wireless Telecommunications Facilities

**Ex. “B”:** [Proposed] Ordinance Amending the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for Installations of New Wireless Telecommunications Facilities



**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**RESOLUTION OF INTENTION TO INITIATE  
AN AMENDMENT TO TITLE 17 OF THE  
MENDOTA MUNICIPAL CODE RELATING  
TO PERMIT APPLICATION PROCESSING  
AND SITING LOCATIONS FOR  
INSTALLATIONS OF NEW WIRELESS  
TELECOMMUNICATIONS FACILITIES**

**RESOLUTION NO. 17-08**

**WHEREAS**, in 1996, Congress passed the Telecommunications Act of 1996 (“TCA”), in order to increase competition within the telecommunications industry by creating lower prices, higher quality service, and rapid technological development, and while preserving the authority of local governments over zoning and land use matters; and

**WHEREAS**, section 253(a) of the TCA precludes state and local governments from enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including wireless services; and

**WHEREAS**, under section 253(c) of the TCA and section 7901.1 of the California Public Utilities Code, the City may exercise reasonable control over the time, place, and manner of construction of wireless telecommunications services (“WCF”); and

**WHEREAS**, under section 332(c)(7) of the TCA, the City generally retains local zoning authority over WCF siting locations subject to certain, narrow limitations; and

**WHEREAS**, California Public Utilities Code section 7901 provides that the City may require telecommunications companies to obtain permits before constructing WCF on public rights of way; and

**WHEREAS**, the City has been advised of recent incidents of telecommunications companies erecting wireless facilities within public rights-of-way without notice to the local government authorities or engaging in any permitting process for the construction and placement of such facilities. In addition, area cities have all been approached by at least one company claiming to be a telecommunications company, and purporting to “inform” the local agencies that they are going to commence work on a telecommunications tower within a public right-of-way; and

**WHEREAS**, the City presently does not have any provisions of its Ordinance that govern the erection of WCF within the City; and

**WHEREAS**, the City believes it is important to consider reasonable restrictions on the permitting of WCF within the City, including the permitting of WCF within public rights-of-way; and

**WHEREAS**, in light of the foregoing, the City seeks to add and amend provisions to the Municipal Code relating to the application process for installations and siting locations of WCF;

**WHEREAS**, Section 17.08.040 of the Mendota Municipal Code provides the procedure for the enactment of amendments to the City's Zoning Code, which is located at Title 17 of the Mendota Municipal Code; and

**WHEREAS**, although the Chapter 8.36 is not located in Title 17, the regulation of certain aspects of medical marijuana, including cultivation and dispensaries, imposes potential regulations on land use, and therefore the City in an abundance of caution is employing the procedures set forth in Section 17.08.040 to consider an amendment to Chapter 8.36 of the Mendota Municipal Code; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council."

**NOW, THEREFORE, BE IT RESOLVED** that the City Council for the City of Mendota hereby authorizes Staff to proceed with the preparation of a comprehensive update to Title 17 of the Mendota Municipal Code to (i) regulate the time, place, and manner of construction of new wireless telecommunications facilities; (ii) restrict or limit the siting of wireless telecommunications facilities in residential and commercial zoning districts to the extent allowed under applicable state or federal laws; and (iii) clarify the application requirements and procedures for construction of new wireless telecommunications facilities.

**BE IT FURTHER RESOLVED** that the Secretary shall schedule a public hearing before the Planning Commission on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of this resolution.

  
\_\_\_\_\_  
Rolando Castro, Mayor

**ATTEST:**

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 24<sup>th</sup> day of January, 2017, by the following vote:

**AYES: 5 – Mayor Castro, Mayor Pro Tem Martinez, Councilors Amador, Rosales, and Silva.**

**NOES: 0**

**ABSENT: 0**

**ABSTAIN: 0**



**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA, CALIFORNIA,  
AMENDING THE MENDOTA MUNICIPAL  
CODE RELATING TO PERMIT APPLICATION  
PROCESSING AND SITING LOCATIONS  
FOR THE INSTALLATION OF NEW WIRELESS  
TELECOMMUNICATIONS FACILITIES**

**ORDINANCE NO. 17-06**

**WHEREAS**, in 1996, Congress passed the Telecommunications Act of 1996 (“TCA”), in order to increase competition within the telecommunications industry by creating lower prices, higher quality service, and rapid technological development, and while preserving the authority of local governments over zoning and land use matters; and

**WHEREAS**, section 253(a) of the TCA precludes state and local governments from enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including wireless services; and

**WHEREAS**, under section 253(c) of the TCA and section 7901.1 of the California Public Utilities Code, the City may exercise reasonable control over the time, place, and manner of construction of wireless telecommunications facilities (“WCF”); and

**WHEREAS**, under section 332(c)(7) of the TCA, the City generally retains local zoning authority over WCF siting locations subject to certain, narrow limitations; and

**WHEREAS**, California Public Utilities Code section 7901 provides that the City may require telecommunications companies to obtain permits before constructing WCF on public rights of way; and

**WHEREAS**, the City has been advised of recent incidents of telecommunications companies erecting WCF within public rights-of-way without notice to the local government authorities or engaging in any permitting process for the construction and placement of such facilities. In addition, area cities have all been approached by at least one company claiming to be a telecommunications company, and purporting to “inform” the local agencies that they are going to commence work on a telecommunications tower within a public right-of-way; and

**WHEREAS**, the City presently does not have any provisions of its Ordinance that govern the erection of WCF within the City; and

**WHEREAS**, the City believes it is important to consider reasonable restrictions on the permitting of WCF within the City, including the permitting of WCF within public

rights-of-way; and

**WHEREAS**, in light of the foregoing, the City seeks to add and amend provisions to the Municipal Code relating to the application process for installations and siting locations of WCF.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1:** Title 17 of the Mendota Municipal Code amended to read as follows:

**Chapter 17.16 – R-A SINGLE-FAMILY RESIDENTIAL/AGRICULTURAL DISTRICT**

**17.16.040 – Uses expressly prohibited.**

Uses expressly prohibited in the R-A single-family residential/agricultural district are as follows:

[. . .]

E. Advertising structures;

**F. Wireless telecommunications facilities**

**Chapter 17.20 - R-1-A SINGLE-FAMILY/LOW DENSITY RESIDENTIAL DISTRICT**

**17.20.040 - Uses expressly prohibited.**

Uses expressly prohibited in the R-1-A single-family/low density residential district are as follows:

[. . .]

F. Truck parking;

**G. Wireless telecommunications facilities**

**Chapter 17.24 - R-1 SINGLE-FAMILY/MEDIUM DENSITY RESIDENTIAL DISTRICT**

**17.24.040 - Uses expressly prohibited.**

In the R-1 single-family/medium density residential district, uses expressly prohibited are as follows:

[. . .]

G. Labor camps;

**H. Wireless telecommunications facilities.**

**Chapter 17.28 - R-2 MEDIUM/HIGH DENSITY RESIDENTIAL DISTRICT**

**17.28.040 - Uses expressly prohibited.**

In the R-2 medium/high density residential district, uses expressly prohibited are as follows:

[. . .]

E. Truck parking;

**F. Wireless telecommunications facilities**

**Chapter 17.32 - R-3 HIGH DENSITY MULTIPLE-FAMILY RESIDENTIAL DISTRICT**

**17.32.040 - Uses expressly prohibited.**

In the R-3 high density multiple-family residential district, uses expressly prohibited are as follows:

[. . .]

F. Truck parking;

**G. Wireless telecommunications facilities**

**Chapter 17.40 - MHP MOBILEHOME PARK DISTRICT**

**17.40.040 - Uses expressly prohibited.**

In the MHP mobilehome park district, uses expressly prohibited are as follows:

[. . .]

E. Truck parking;

**F. Wireless telecommunications facilities.**

**Chapter 17.44 - C-1 NEIGHBORHOOD SHOPPING CENTER DISTRICT**

**17.44.030 - Uses permitted subject to conditional use permit.**

In the C-1 neighborhood shopping center district, uses permitted subject to conditional use permit are as follows:

[. . .]

E. Water pump station;

**F. Wireless telecommunications facilities.**

**Chapter 17.48 - C-2 COMMUNITY SHOPPING CENTER DISTRICT**

**17.48.030 - Uses permitted subject to conditional use permit.**

In the C-2 community shopping center district, uses permitted subject to conditional use permit are as follows:

[. . .]

L. Water pump stations;

**M. Wireless telecommunications facilities.**

**Chapter 17.52 - C-3 CENTRAL BUSINESS AND SHOPPING DISTRICT**

**17.52.030 - Uses permitted subject to conditional use permit.**

In the C-3 central business and shopping center district, uses permitted subject to conditional use permit are as follows:

[. . .]

II. Social facilities;

**JJ. Wireless telecommunications facilities.**

**Chapter 17.56 - S-C SPECIAL COMMERCIAL DISTRICT**

**17.56.030 - Uses permitted subject to conditional use permit.**

In the S-C special commercial district, uses permitted subject to conditional use permit are as follows:

[. . .]

**J. Wireless telecommunications facilities;**

**K. Other uses as determined by the planning commission.**

**Chapter 17.60 - M-1 LIGHT MANUFACTURING DISTRICT**

**17.60.030 - Uses permitted subject to conditional use permit.**

[. . .]

S. Banquet hall;

**T. Wireless telecommunications facilities.**

**Chapter 17.64 - M-2 HEAVY MANUFACTURING DISTRICT**

**17.64.030 - Uses permitted subject to conditional use permit.**

In the M-2 heavy manufacturing district, uses permitted subject to conditional use permit are as follows:

[. . .]

AAA. Other uses which by written decision are determined by the commission to be obnoxious or detrimental to the public welfare by reason of the emission of odor, dust, smoke, gas, noise, vibration or other causes;

**BBB. Wireless telecommunications facilities.**

## **Chapter 17.68 - P OFF-STREET PARKING DISTRICT**

### **17.68.030 - Uses permitted subject to conditional use permit.**

In the P off-street parking district, uses permitted subject to conditional use permit are as follows:

[. . .]

B. Incidental commercial uses within a parking structure with a height greater than two stories;

**C. Wireless telecommunications facilities.**

## **Chapter 17.72 - A-D AIRPORT DEVELOPMENT DISTRICT**

### **17.72.030 - Uses permitted subject to conditional use permit.**

In the A-D airport development district, uses permitted subject to conditional use permit are as follows:

[. . .]

C. Caretakers' residences;

**D. Wireless telecommunications facilities.**

## **Chapter 17.76 - UR URBAN RESERVE DISTRICT**

### **17.76.030 - Uses permitted subject to conditional use permit.**

In the UR urban reserve district, uses permitted subject to conditional use permit are as follows:

A. Water pump stations;

**B. Wireless telecommunications facilities.**



## **Chapter 17.80 - P-F PUBLIC FACILITIES DISTRICT**

### **17.80.030 - Uses permitted subject to conditional use permit.**

In the P-F public facilities district, uses permitted subject to conditional use permit are as follows:

[ . . . ]

L. Sewer and water treatment plants;

**M. Wireless telecommunications facilities.**

[ . . . ]

## **Chapter 17.100 – WIRELESS TELECOMMUNICATIONS FACILITIES (“WCF”)**

### **17.100.010 – Purpose.**

**The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting, and installation of wireless telecommunications facilities. These regulations are intended to protect and promote the public health, safety and welfare of the residents of the City of Mendota, to preserve community character, protect aesthetic quality in accordance with the guidelines and intent of the Telecommunications Act of 1996, and to encourage siting in preferred locations to minimize aesthetic impacts and to minimize the intrusion of these uses into residential areas.**

### **17.100.020 – Definitions.**

**The following abbreviations, phrases, terms, and words shall have the meanings assigned in this Section or, as appropriate, in this Chapter of the Mendota Municipal Code, as may be amended from time to time, unless the context indicates otherwise. Words that are not defined in this Section or other Chapters or Sections of the Mendota Municipal Code shall have the meanings as set forth in Chapter 6 of Title 47 of the United States Code, Part 1 of Title 47 of the Code of Federal Regulations, and, if not defined therein, their common and ordinary meaning.**

**Antenna. A device used in communications designed to radiate and/or capture electromagnetic signals and its associated equipment. The term includes a macrocell Antenna and a microcell Antenna.**

**Base station. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined**

herein or any equipment associated with a tower. The term Base Station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).
3. Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs 1 and 2 above that has been reviewed and approved by the City.

**Collocation.** The installation of antennas operated by different entities in close proximity so that use of substantial elements of the facility such as the antenna tower, equipment shelter, or fenced enclosures are shared.

Collocation also includes replacement of an existing tower with one capable of supporting additional antennas.

**Facility.** See wireless telecommunications facility.

**Radio frequency (“RF”).** Electromagnetic radiation in the portion of the spectrum from 3 kilohertz (kHz) to 300 gigahertz (GHz).

**Stealth design.** Design techniques that blend the facility or additions with the natural or man-made environment in such a manner as to be effectively unnoticeable.

**Stealth structure.** A self-supporting antenna tower designed to closely resemble a commonplace object that effectively blends with its surroundings.

**Tower.** See antenna tower.

**Wireless communications.** The transmission and/or reception of information through space using electromagnetic energy.

**Wireless telecommunications facility (“WCF”).** Structures and/or equipment, including antennas, antenna towers, equipment cabinets, buildings, generators, fencing, access roads and the land upon which they are situated, associated with wireless communications.

**Wireless communications service.** All FCC-licensed back-haul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.

### **17.100.030 – Application Requirements**

In addition to meeting standard application submittal requirements for conditional use permits pursuant to Section 17.08.050 of this title, all applicants

for wireless telecommunications facilities shall provide the information listed below. The City may waive any of the submittal requirements listed below or require additional information based upon specific project factors:

**A. Geographic Service Area.** Identify the geographic service area for the subject installation, including a map showing all the applicant's existing sites in the local service network associated with the gap the facility is meant to close. Describe how this service area fits into and is necessary for the company's service network.

**B. Visual Impact Analysis.** A visual impact analysis shall be provided showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility. A map depicting where the photos were taken shall be included.

**C. Narrative.**

**1. Height.** Show the height of the facility. Carriers must provide evidence that establishes that the proposed facilities have been designed to the minimum height required from a technological standpoint for the proposed site. If the tower will exceed the maximum permitted height limit, as measured from grade, a discussion of the physical constraints (topographical features, etc.) making the additional height necessary shall be required.

**2. Maintenance.** Describe the anticipated maintenance and monitoring program for the antennas, back-up equipment, and landscaping.

**3. Noise/Acoustical Information.** As part of the Application for Environment Initial Study, provide manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties.

**4. Concept Landscape Plan.** Provide a plan showing all proposed landscaping, screening, and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

**5. Fire Service.** Provide evidence of compliance with applicable fire safety regulations or a service letter from the applicable fire district.

**6. Hazardous Materials.** Listing of all hazardous materials to be used onsite.

**7.** For all applications for facilities located in the public right of way, include on the plot plan the location of parking for maintenance personnel.

**8. A letter stating the applicant's willingness to allow other carriers to co-locate on their facilities wherever technically and economically feasible, and aesthetically desirable.**

**9. The lease area of the proposed wireless telecommunications facility on the plot plan.**

**10. For all applications for wireless telecommunications facilities operating below 1200 megahertz, submit a copy of the Federal Communications Commission Licensing Application Form 601, Main Form, Pages 1 through 4, Schedule A, Page 1, Schedule D, Page 1 and Schedule H, Pages 1 through 3. The application shall be reviewed by the Sheriff's Wireless Services Unit to determine potential interference with the Regional Communication System. Interference with that system may be grounds for denial.**

#### **17.100.050 – Application Procedure**

**A. Tiered Permitting System. Applications for installation or modification of wireless telecommunication facilities will be designated into one of three tiers.**

**1. Tier 1 Permits. Tier 1 permit application procedure will apply to:**

**a. Any modification of an existing tower or base station that does not substantially change the physical dimensions of that tower or base station and involves: (i) the collocation of new transmission equipment, (ii) the removal of transmission equipment, or (iii) the replacement of transmission equipment.**

**b. Any collocation that does not substantially change the physical dimensions of an existing tower or base station.**

**2. Tier 2 Permits. Tier 2 permit application procedure will apply to any modification that substantially changes the physical dimensions of an existing tower or base station. Substantial changes as determined within this section shall include:**

**a. For facilities not located in the public rights-of-way:**

**i. The height of the Tower is increased by (I) more than ten (10) percent, or (II) by the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty (20) feet, whichever is greater; or**

**ii. There is added an appurtenance to the body of the Tower that would protrude from the edge of the Tower by (I) more than twenty (20) feet, or (II) more than the width of the Tower at the level of the appurtenance, whichever is greater.**

**b. For facilities located in the public rights-of-way and for all Base Stations:**

- i. The height of the Tower or Base Station is increased by more than ten (10) percent or ten (10) feet, whichever is greater; or**
- ii. There is added an appurtenance to the body of that structure that would protrude from the edge of that structure by more than six (6) feet; or**
- iii. It involves the installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure; or**
- iv. It involves the installation of any new equipment cabinets on the ground if there is no pre-existing ground cabinet associated with that structure.**

**c. For any existing tower or base station at the time an application is filed:**

- i. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or**
- ii. There is entailed in the proposed modification any excavation or deployment outside of the current site of the tower or base station; or**
- iii. The proposed modification would cause the concealment/camouflage elements of the tower or base station to be defeated; or**
- iv. The proposed modification would not comply with the conditions associated with the prior siting approval of construction or modification of the tower or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding thresholds in this section.**

**d. To measure changes in height for the purposes of this section, the baseline is:**

- i. For deployments that are or will be separated horizontally, measured from the original Support Structure;**

**3. Tier 3 Permits. Any installation of a new wireless telecommunications facility that is not a (3) A Tier 3 WCF Permit shall be required for the siting**

of any new WCF that is not a Collocation subject to a Tier 1 or 2 WCF Permit.

**B. Permit Review Time Periods.** The timeframe for review of an application shall begin to run when the application is submitted, but shall be tolled if the City finds the application incomplete and requests that the applicant submit additional information to complete the application. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the City will notify the applicant within 10 days of this submission if the additional information failed to complete the application.

**1. Tier 1 Processing Time.** For Tier 1 permits, the City will act on the WCF application together with any other City permits required for a proposed WCF modification, within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

**2. Tier 2 Processing Time.** For Tier 2 permits, the City will act on the application within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

**3. Tier 3 Processing Time.** For Tier 3 permits, the City will act on the application within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

**C. Development Standards.**

Except as otherwise provided in this Section, a proposed WCF Project shall comply with the following standards:

- 1. Shall utilize the smallest footprint possible;**
- 2. Shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure;**
- 3. Shall be screened from public view;**
- 4. Shall be architecturally compatible with the existing site;**
- 5. Shall be placed at a location that would not require the removal of any required landscaping or would reduce the quantity of landscaping to a level of noncompliance with the Zoning Code;**
- 6. An Antenna, Base Station, or Tower shall be designed to minimize its visibility from off-site locations and shall be of a “camouflaged” or “stealth” design, including concealment, screening, and other techniques to hide or blend the Antenna, Base Station, or Tower into the surrounding area;**

- 7. A building-mounted Antenna, Base Station, or Tower shall be architecturally compatible with the existing building on which the Antenna, Base Station, or Tower is attached;**
- 8. For any Tier 2 or Tier 3 WCF proposed to be attached on an historic building or, as designated by Section 15.04.130, historic review shall also be required;**
- 9. Except as otherwise permitted by the Spectrum Act, a building-mounted WCF may extend fifteen (15) feet beyond the permitted height of the building in the zone district;**
- 10. Except as otherwise permitted by the Spectrum Act, a tower or other stand-alone Tier 3 WCF Project shall not exceed sixty-five (65) feet in height; and**
- 11. A tower or other stand-alone Tier 3 WCF may encroach into the interior/street side and rear setback.**

#### **D. Conditions for Approval.**

**In addition to any other conditions of approval permitted under federal and state law and this Code that the zoning administrator deems appropriate or required under this Code, all WCF Projects approved under this Chapter, whether approved by the zoning administrator or deemed granted by operation of law, shall be subject to the following conditions of approval:**

- 1. Permit conditions. The grant or approval of a WCF Tier 1 Permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by the Spectrum Act.**
- 2. As-built plans. The applicant shall submit to the zoning administrator an as-built set of plans and photographs depicting the entire WCF as modified, including all Transmission Equipment and all utilities, within ninety (90) days after the completion of construction.**
- 3. Applicant shall hire a radio engineer licensed by the State of California to measure the actual radio frequency emission of the WCF and determine if it meets FCC's standards. A report, certified by the engineer, of all calculations, required measurements, and the engineer's findings with respect to compliance with the FCC's radio frequency emission standards shall be submitted to the Planning Division within one year of commencement of operation.**
- 4. Indemnification. To the extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the**

**indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion and at Applicant's expense, elect to defend any such action with attorneys of its own choice.**

**5. Compliance with applicable laws. The applicant shall comply with all applicable provisions of the Code, any permit issued under this Code, and all other applicable federal, state and local laws (including without limitation all building code, electrical code and other public safety requirements). Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.**

**6. Compliance with approved plans. The proposed Project shall be built in compliance with the approved plans on file with the Planning Division.**

**E. Denial of Application. If the City denies a wireless telecommunications facility application, the City will notify the applicant of the denial in writing of the reasons for the denial.**

**F. Removal of Abandoned Equipment. A WCF (Tier 1, Tier 2, or Tier 3) or a component of that WCF that ceases to be in use for more than ninety (90) days shall be removed by the applicant, Wireless Communications Service provider, or property owner within ninety (90) days of the cessation of use of that WCF. A new conditional use permit shall not be issued to an owner or operator of a WCF or a Wireless Communications Service provider until the abandoned WCF or its component is removed.**

**G. Permit Revocation. The zoning administrator may revoke any WCF permit if the permit holder fails to comply with any condition of the permit. The zoning administrator's decision to revoke a permit shall be appealable to the planning commission and the decision of the planning commission may be appealed to the city council, as provided in Section 17.08.050.**

**SECTION 2.** The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.



**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason 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 the Ordinance. The City Council of the City of Mendota hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4.** The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

**SECTION 5.** This ordinance shall become effective and in full force at 12:00 midnight on the 31<sup>st</sup> day following its adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 11<sup>th</sup> day of April, 2017 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2017, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Rolando Castro, Mayor

ATTEST:

\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kinsey, City Attorney

**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**RESOLUTION NO. PC 17-02**

**RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF  
MENDOTA ADOPT AN ORDINANCE AMENDING THE MENDOTA MUNICIPAL  
CODE RELATING TO PERMIT APPLICATION PROCESSING AND SITING  
LOCATIONS FOR THE INSTALLATION OF NEW WIRELESS  
TELECOMMUNICATIONS FACILITIES**

**WHEREAS**, on January 24, 2017, the City Council voted to adopt a Resolution of Intention to Initiate an Amendment to Title 17 of the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for Installations of New Wireless Telecommunications Facilities (the "Resolution of Intention"); and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council"; and

**WHEREAS**, City Staff has prepared a proposed Ordinance Amending Title 17 of the Mendota Municipal Code Relating to Permit Application Processing and Siting Locations for Installations of New Wireless Telecommunications Facilities, a copy of which is attached hereto as Exhibit "A" (the "Proposed Ordinance"); and

**WHEREAS**, on March 15, 2017, the City published notice in the Firebaugh Mendota Journal advising that the Planning Commission would conduct a public hearing on the Proposed Ordinance at its March 27, 2017, special meeting; and

**WHEREAS**, on March 27, 2017, the Planning Commission conducted a duly-noticed public hearing on the Proposed Ordinance; and

**WHEREAS**, Staff has reviewed the Proposed Ordinance, and has determined that the approval of the Proposed Ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Staff has also determined that, alternatively, the Proposed Ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**WHEREAS**, Section 17.08.040(H) of the Mendota Municipal Code provides that the City Council shall hold a public hearing on the proposed amendments “not less than ten days nor more than forty (40) days after the filing of the commission’s resolution by the council,” and that notice of said council hearing “shall be given as provided in Section 17.08.040(F).”

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission for the City of Mendota hereby recommends to the City Council approval of the Proposed Ordinance, attached hereto and made a part of this resolution as Exhibit “A.”

**BE IT FURTHER RESOLVED** that the Planning Commission finds the approval of this ordinance is not subject to CEQA, pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the Planning Commission finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**BE IT FURTHER RESOLVED** that the Secretary shall file this Resolution No. PC 17-02 with the City Council, and shall schedule a public hearing before the City Council on the Proposed Ordinance no less than ten (10) days nor more than forty (40) days after the adoption of this resolution. The Secretary shall also provide notice of the City Council hearing as provided under Section 17.08.040 of the Mendota Municipal Code no later than 10 days before the hearing.

**PASSED AND ADOPTED** by the Planning Commission of the City of Mendota at a special meeting held on the 27<sup>th</sup> of March, 2017 upon a motion by \_\_\_\_\_, a second by \_\_\_\_\_, and by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

ATTEST:

\_\_\_\_\_  
Juan Luna, Chair

\_\_\_\_\_  
Matt Flood, Secretary

**A G E N D A   I T E M   -   S T A F F   R E P O R T**

**DATE:**        March 24, 2017

**TO:**            Honorable Members of the Planning Commission of the City of Mendota

**FROM:**        Vince DiMaggio, City Manager  
                  John P. Kinsey, City Attorney

**RE:**            Resolution Recommending that the City Council of the City of Mendota Adopt an Ordinance Amending the Mendota Municipal Code Relating Recreational Marijuana Use and Cultivation

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**RECOMMENDATION:**

Adopt a Resolution that:

- A. Recommends that the City Council adopt an ordinance that would provide a comprehensive update to Chapter 8.36 of the Mendota Municipal Code (“MMC”) to (i) regulate the cultivation of marijuana for personal use; (ii) prohibit the location of commercial marijuana operations and dispensaries within the City; (iii) prohibit the delivery of marijuana; (iv) clarify the City’s enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of marijuana use and cultivation within the City.
- B. Finds the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.
- C. Directs the Secretary to schedule a public hearing before the City Council on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

**BACKGROUND:**

In 1996, California voters approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes. In 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.

In late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the “Act”). The Act is effective as of January 1, 2016. The Act provides a statewide program for the licensing and regulation of commercial cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of marijuana. The Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether.

On November 8, 2016, the voters of the State of California adopted the Adult Use of Marijuana Act (“AUMA”). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use.

As a result of the foregoing, City Staff has been exploring potential amendments to the City of Mendota Municipal Code concerning the cultivation of marijuana for personal use, and the location of marijuana operations and dispensaries in the City.

On January 24, 2017, the City Council adopted Resolution No. 17-09: Resolution of Intention to Initiate an Amendment to Chapter 8.36 of the Mendota Municipal Code Relating to Recreational Marijuana Use and Cultivation. (**Exhibit “A.”**)

#### **DISCUSSION:**

Staff is recommending that the Council consider and adopt a resolution of intention authorizing City Staff to proceed with the preparation of a comprehensive update to Chapter 8.36 of the Mendota Municipal Code to (i) regulate the cultivation of marijuana for personal use; (ii) prohibit the location of commercial marijuana operations and dispensaries within the City; (iii) prohibit the delivery of marijuana; (iv) clarify the City’s enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of marijuana use and cultivation within the City. A copy of the proposed ordinance is attached hereto as **Exhibit “B.”**

Staff is also recommending that the City follow the procedures set forth in Chapter 17.08.040 of the Mendota Municipal Code for the amendment, as the regulations affect land uses within the City. As a result, as part of its consideration and adoption of the proposed resolution, City Staff recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

## CONCLUSION

Based on the foregoing, Staff recommends that the Planning Commission adopt a resolution recommending that the City Council adopt the Proposed Ordinance, which would amend Chapter 8.36 of the Mendota Municipal Code to (i) regulate the cultivation of marijuana for personal use; (ii) prohibit the location of commercial marijuana operations and dispensaries within the City; (iii) prohibit the delivery of marijuana; (iv) clarify the City's enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of marijuana use and cultivation within the City.

Staff also recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

### Attachments

**Ex. "A":** City Council, City of Mendota, Resolution No. 17-09, Resolution of Intention to Initiate amending Chapter 8.36 of the Mendota Municipal Code relating to recreational marijuana and cultivation.

**Ex. "B":** [Proposed] Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to Recreational Marijuana Use and Cultivation.

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**RESOLUTION OF INTENTION TO INITIATE  
AN AMENDMENT TO CHAPTER 8.36 OF  
THE MENDOTA MUNICIPAL CODE  
RELATING TO RECREATIONAL MARIJUANA  
USE AND CULTIVATION**

**RESOLUTION NO. 17-09**

**WHEREAS**, in 1996, the People of the State of California approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes; and

**WHEREAS**, in 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card; and

**WHEREAS**, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the "Act"), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of medical marijuana; and

**WHEREAS**, on November 8, 2016, the voters of the State of California adopted the Adult Use of Marijuana Act ("AUMA"). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use.

**WHEREAS**, in 2012, as amended in 2016, the City adopted Chapter 8.36 of the Mendota Municipal Code pertaining to Medical Marijuana (the "Marijuana Ordinance"). The Marijuana Ordinance bans commercial marijuana cultivation, commercial deliveries, and dispensaries in the City based upon various health, safety and welfare, and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference.

**WHEREAS**, in light of the adoption of the AUMA, the City seeks to update the Marijuana Ordinance.

**WHEREAS**, the City of Mendota has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Medical Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Fresno County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests.

**WHEREAS**, under the Act and the AUMA, the City retains its police powers and land use authority to regulate or ban marijuana activities, including commercial marijuana operations, cultivation, distribution and consumption for the health, safety, and welfare of the citizens of Mendota.

**WHEREAS**, Section 17.08.040 of the Mendota Municipal Code provides the procedure for the enactment of amendments to the City's Zoning Code, which is located at Title 17 of the Mendota Municipal Code; and

**WHEREAS**, although the Chapter 8.36 is not located in Title 17, the regulation of certain aspects of medical marijuana, including cultivation and dispensaries, imposes potential regulations on land use, and therefore the City in an abundance of caution is employing the procedures set forth in Section 17.08.040 to consider an amendment to Chapter 8.36 of the Mendota Municipal Code; and

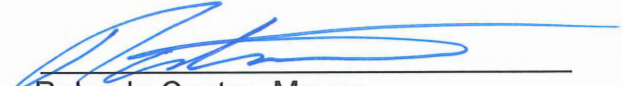
**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council."

**NOW, THEREFORE, BE IT RESOLVED** that the City Council for the City of Mendota hereby authorizes Staff to proceed with the preparation of a comprehensive update to Chapter 8.36 of the Mendota Municipal Code to (i) regulate the cultivation of marijuana for personal use; (ii) prohibit the location of commercial marijuana operations and dispensaries within the City; (iii) prohibit the delivery of marijuana; (iv) clarify the City's enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of marijuana use and cultivation within the City.

**BE IT FURTHER RESOLVED** that the Secretary shall schedule a public hearing before the Planning Commission on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of this resolution.

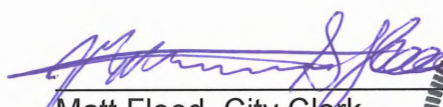



  
\_\_\_\_\_  
Rolando Castro, Mayor

**ATTEST:**

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 24<sup>th</sup> day of January, 2017, by the following vote:

**AYES: 5 – Mayor Castro, Mayor Pro Tem Martinez, Councilors Amador, Rosales, and Silva.**  
**NOES: 0**  
**ABSENT: 0**  
**ABSTAIN: 0**

  
\_\_\_\_\_  
Matt Flood, City Clerk



**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA, CALIFORNIA,  
AMENDING CHAPTER 8.36 OF THE  
MENDOTA MUNICIPAL CODE RELATING  
TO RECREATIONAL MARIJUANA USE AND  
CULTIVATION**

**ORDINANCE NO. 17-05**

**WHEREAS**, in 1996, the People of the State of California approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes; and

**WHEREAS**, in 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card; and

**WHEREAS**, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the "Act"), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of medical marijuana; and

**WHEREAS**, on November 8, 2016, the voters of the State of California adopted the Adult Use of Marijuana Act ("AUMA"). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use.

**WHEREAS**, in 2012, as amended in 2016, the City adopted Chapter 8.36 of the Mendota Municipal Code pertaining to Medical Marijuana (the "Marijuana Ordinance"). The Marijuana Ordinances bans commercial marijuana cultivation, commercial deliveries, and dispensaries in the City based upon various health, safety and welfare, and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference.

**WHEREAS**, in light of the adoption of the AUMA, the City seeks to update the Marijuana Ordinance.

**WHEREAS**, the City of Mendota has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Medical Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Fresno County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests.

**WHEREAS**, under the Act and the AUMA, the City retains its police powers and land use authority to regulate or ban marijuana activities, including commercial marijuana operations, cultivation, distribution and consumption for the health, safety, and welfare of the citizens of Mendota.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1:** Chapter 8.36 of the Mendota Municipal Code amended in its entirety to read as follows:

**8.36.010 – Purpose & intent.**

It is the purpose and intent of this Chapter 8.36, pursuant to Section 25123(d) of the Government Code to regulate the cultivation, processing, extraction, manufacturing, testing, distribution, transportation, sale, and consumption of marijuana to preserve the public peace, health, safety and general welfare of the citizens of the City of Mendota. It is also the purpose and intent of this Chapter 8.36 to continue in effect the City of Mendota's prohibition of marijuana dispensaries and limitations on the places where marijuana may be consumed.

**8.36.020 – Relationship with other laws.**

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible and consistent with federal and state enactments and in furtherance of the purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this Mendota Municipal Code found to be in conflict.

**8.36.030 – Definitions.**

Notwithstanding any other provision in the Mendota Municipal Code, for purposes of this Chapter 8.36, the following terms shall have the following meanings:

“Act” means the Adult Use of Marijuana Act (“AUMA”) or Proposition 64. The terms “Act,” “Adult Use of Marijuana Act,” “AUMA,” and “Proposition 64” may be used interchangeably, but shall have the same meaning.

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

**“Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and the designated primary caregivers of patients and persons with identification cards to cultivate medical marijuana.**

“Commercial marijuana operation” means any commercial cannabis activity as set forth in California Business and Professions Code Section 19300.5(k) and allowed under the Act, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

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

“Delivery” means the commercial transfer of medical marijuana from a dispensary to a qualified patient, primary caregiver or person with an identification card, as defined in Section 11362.7 of the California Health & Safety Code, through any means of transport or delivery service. The term “Delivery” also includes the use by a medical marijuana dispensary, as defined herein, of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the transfer of medical marijuana by a dispensary.

“Medical marijuana” or “medical cannabis” means “medical cannabis” as defined in Section 19300.5, subdivision (af) of the California Business & Professions Code.

“Marijuana dispensary” or “dispensary” means any facility or location, whether fixed or, where marijuana is offered, provided, sold, made available or otherwise distributed to more than two (2) persons.

“Person” means any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization or entity, however formed.

“Recreational marijuana” or “recreational marijuana use” means all uses of cannabis not included within the definition of “medical marijuana use.”

### **8.36.040 – Regulations applicable to the consumption of marijuana.**

No person shall smoke, ingest, or otherwise consume either recreational or medical marijuana in the city of Mendota unless such smoking, ingesting or consumption occurs

entirely within that person's principal place of residence or on the premises of that person's principal place of residence but out of public view. "Out of public view" shall mean out of view from public rights-of-way where members of the public are lawfully entitled to be. The phrase "inside a private residence" shall mean inside habitable areas and shall include garages, whether attached or detached, and other accessory buildings.

Medical marijuana may also be consumed within a clinic, health care facility, residential care facility, or residential hospice licensed pursuant to applicable provisions of the California Health and Safety Code.

All consumption shall be done in a manner so as to not cause a nuisance to nearby residents with noxious odors or other adverse health and safety impacts.

### **8.36.050 – Cultivation of marijuana.**

- A. Personal use cultivation. An individual person shall be allowed to cultivate medical or recreational marijuana to the extent permitted by applicable State law, within his or her private residence, in an attached garage, or in an accessory building if the property is detached single-family residential. Cultivation for personal use shall be subject to the following requirements:
1. Area. The marijuana cultivation area shall not exceed thirty-two (32) square feet measured by the canopy and not exceed ten feet (10') in height per residence. This limit applies regardless of the number of qualified patients or persons residing in the residence. The cultivation area shall be a single designated area.
  2. Lighting. Marijuana cultivation lighting shall not exceed a total of one thousand two hundred (1,200) watts.
  3. Building code requirements. Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, setback, height requirements, and parking requirements.
  4. Gas products. The use of gas products (CO<sub>2</sub>, butane, etc.) for marijuana cultivation or processing is prohibited.
  5. Evidence of cultivation. From a public right-of-way or other public space there shall be no exterior evidence of marijuana cultivation occurring on the site.
  6. Residence. The person shall reside in the residence where the marijuana cultivation occurs.

7. Cultivation elsewhere in City. The person shall not participate in marijuana cultivation in any other location within the City of Mendota.
8. Incidental use. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for marijuana cultivation.
9. Ventilation. The marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the residence, or property line for detached single-family residential, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the California Building Code Section 1203.4, Natural Ventilation, or 402.3, Mechanical Ventilation (or its equivalent(s)).
10. Storage of chemicals. Any chemicals used for marijuana cultivation shall be stored outside of the habitable areas of the residence and outside of public view from neighboring properties and public rights-of-way.
11. Nuisance. The marijuana cultivation area shall: not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts; and not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.
12. Property owner authorization. For rental property, the lessee shall obtain written authorization from the property owner or property management company to cultivate marijuana.
13. Notification. The owner and any lessee of the residence upon which cultivation will occur shall inform the Police Department of the intent to cultivate marijuana and pick up a handout setting forth the owner and lessee responsibilities under this section. This notification shall be provided prior to the commencement of the cultivation except that, for existing cultivation, the information shall be provided within ten (10) days of the effective date of this chapter. The Police Department may direct the owner and lessee to the Department of Planning and Development Services for more information about building code and permit requirements that may be applicable if alterations or additions to the residence are contemplated. The Police Department and Department of Planning and Development Services shall keep patient information confidential to the extent required by law.

14. Additional requirements for garages and accessory buildings. The following additional requirements shall apply for personal use cultivation that occurs in a garage or accessory building: the garage or accessory building shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The garage or building shall include a burglar alarm monitored by an alarm company or private security company. The garage or building, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through an open door.

**B. Collective or cooperative cultivation. The collective or cooperative cultivation of marijuana shall be prohibited in the City.**

#### **8.36.60 – Marijuana dispensaries.**

- A. Commercial marijuana operations. Commercial marijuana operations as defined in Section 8.36.030 are prohibited within the City.
- B. Dispensaries. Marijuana dispensaries as defined in Section 8.36.030 are prohibited within the City.
- C. Exceptions. The following facilities providing medical marijuana to qualified patients are not subject to the dispensary ban so long as they comply with this section, the Mendota Municipal Code, Health and Safety Code Sections 11362.5 and 11362.7 *et seq.* and all other applicable laws, and hold a current and valid state license duly issued in accordance with the applicable California law:
  1. A clinic, as defined in Section 1200 of the Health & Safety Code;
  2. A health care facility, as defined in Section 1250 of the Health & Safety Code;
  3. A residential care facility for persons with chronic life-threatening illness, as defined in Section 1568.01 of the Health & Safety Code;
  4. A residential care facility for the elderly, as defined in Section 1569.2 of the Health & Safety Code;
  5. A home health agency, as defined in Section 1727 of the Health & Safety Code, or a hospice that operates in accordance with Section 1726 of the Health & Safety Code; and
  6. A pharmacy, as defined in Section 4037 of the Business and Professions Code.

- D. Deliveries. The delivery of marijuana as defined in Section 8.36.030 is prohibited in the City regardless of whether the delivery is initiated within or outside of the City, and regardless of whether a technology platform is used for delivery by the dispensary.

#### **8.36.070 – Violation and enforcement.**

Each and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by Title 1, Chapter 1.20 of this Code. Additionally, as a nuisance *per se*, any violation of this chapter shall be subject to injunctive relief, payment to the city of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, civil penalties as set by the city council by resolution and any other relief or remedy available at law or equity. The city may also pursue any and all remedies and actions available and applicable under local and state laws for any violations of this chapter. The Mendota Police Department, with administrative assistance from the city manager's office, shall have primary responsibility for enforcement of the provisions of this chapter; however, nothing herein shall limit the ability of the City's designated code enforcement officer to enforce the provisions of this chapter as may be necessary from time-to-time.

Should a court of competent jurisdiction subsequently determine that the criminal penalty provision renders this Chapter unlawful, the City intends that such penalties be severable from the remaining penalty provisions and the City will only pursue non-criminal remedies for violations of this Chapter.

Nothing in this chapter shall be construed as imposing on the enforcing officer or the City of Mendota any duty to issue any notice to abate, nor to abate, nor to take any other action with regard to any violation of this chapter, and neither the enforcing officer nor the city of Mendota shall be held liable for failure to issue an order to abate, nor for failure to abate, nor for failure to take any other action with regard to any violation of this chapter.

#### **8.36.080 – Judicial Review.**

Judicial review of a decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the Section 1094.5 of the California Code of Civil Procedure. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in Section 1094.6 of the California Code of Civil Procedure, which shall be applicable for such actions.

#### **8.36.090 – Severability.**

If any part of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.



**SECTION 2.** The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason 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 the Ordinance. The City Council of the City of Mendota hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4.** The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

**SECTION 5.** This ordinance shall become effective and in full force at 12:00 midnight on the 31<sup>st</sup> day following its adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 11<sup>th</sup> day of April, 2017 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2017, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Rolando Castro, Mayor

ATTEST:

\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kinsey, City Attorney

**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**RESOLUTION NO. PC 17-03**

**RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF  
MENDOTA ADOPT AN ORDINANCE AMENDING CHAPTER 8.36 OF THE  
MENDOTA MUNICIPAL CODE RELATING TO RECREATIONAL MARIJUANA USE  
AND CULTIVATION**

**WHEREAS**, on January 24, 2017, the City Council voted to adopt a Resolution of Intention to Initiate an Amendment to Chapter 8.36 of the Mendota Municipal Code Relating to Recreational Marijuana Use and Cultivation (the "Resolution of Intention"); and

**WHEREAS**, although Chapter 8.36 is not located in Title 17, the regulation of certain aspects of recreational marijuana, including cultivation and dispensaries, imposes potential regulations on land use, and therefore the City in an abundance of caution is employing the procedures set forth in Section 17.08.040 to consider an amendment to Chapter 8.36 of the Mendota Municipal Code; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

**WHEREAS**, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council"; and

**WHEREAS**, City Staff has prepared a proposed Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to Recreational Marijuana Use and Cultivation, a copy of which is attached hereto as Exhibit "A" (the "Proposed Ordinance"); and

**WHEREAS**, on March 15, 2017, the City published notice in the Firebaugh Mendota Journal advising that the Planning Commission would conduct a public hearing on the Proposed Ordinance at its March 27, 2017, special meeting; and

**WHEREAS**, on March 27, 2017, the Planning Commission conducted a duly-noticed public hearing on the Proposed Ordinance; and

**WHEREAS**, Staff has reviewed the Proposed Ordinance, and has determined that the approval of the Proposed Ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines,

because it has no potential for resulting in physical change to the environment, directly or indirectly. Staff has also determined that, alternatively, the Proposed Ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**WHEREAS**, Section 17.08.040(H) of the Mendota Municipal Code provides that the City Council shall hold a public hearing on the proposed amendments “not less than ten days nor more than forty (40) days after the filing of the commission’s resolution by the council,” and that notice of said council hearing “shall be given as provided in Section 17.08.040(F).”

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission for the City of Mendota hereby recommends to the City Council approval of the Proposed Ordinance, attached hereto and made a part of this resolution as Exhibit “A.”

**BE IT FURTHER RESOLVED** that the Planning Commission finds the approval of this ordinance is not subject to CEQA, pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the Planning Commission finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

**BE IT FURTHER RESOLVED** that the Secretary shall file this Resolution No. PC 17-03 with the City Council, and shall schedule a public hearing before the City Council on the Proposed Ordinance no less than ten (10) days nor more than forty (40) days after the adoption of this resolution. The Secretary shall also provide notice of the City Council hearing as provided under Section 17.08.040 of the Mendota Municipal Code no later than 10 days before the hearing.

**PASSED AND ADOPTED** by the Planning Commission of the City of Mendota at a special meeting held on the 27<sup>th</sup> of March, 2017 upon a motion by \_\_\_\_\_, a second by \_\_\_\_\_, and by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

ATTEST:

\_\_\_\_\_  
Juan Luna, Chair

\_\_\_\_\_  
Matt Flood, Secretary