

ORDINANCE NO. 23-943

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARTESIA, CALIFORNIA, REGARDING ARTICLES 20 AND 44 OF CHAPTER 2 OF TITLE 9 OF THE ARTESIA MUNICIPAL CODE, ESTABLISHING AN ADMINISTRATIVE DESIGN REVIEW FOR COMMERCIAL CANNABIS BUSINESSES, AND REAFFIRMING THAT COMMERCIAL CANNABIS BUSINESSES MAY BE A PERMITTED USE SUBJECT TO THE REVIEW AND APPROVAL OF VARIOUS ENTITLEMENTS WITHIN THE COMMERCIAL GENERAL, COMMERCIAL PLANNED DEVELOPMENT, ARTESIA BOULEVARD SPECIFIC PLAN, ARTESIA BOULEVARD CORRIDOR SPECIFIC PLAN, AND SOUTH STREET SPECIFIC PLAN ZONES THAT ARE SOUTH OF CALIFORNIA STATE ROUTE 91 (ARTESIA FREEWAY)

THE CITY COUNCIL OF THE CITY OF ARTESIA FIND AND DECLARES:

WHEREAS, pursuant to the authority granted to the City of Artesia ("City") by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and,

WHEREAS, adoption and enforcement of comprehensive zoning regulations and other land use regulations lies within the City's police power; and,

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and,

WHEREAS, on November 8, 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), legalizing the use and possession of cannabis and cannabis products by adults aged 21 years and older; and,

WHEREAS, on June 27, 2017, Governor Brown signed into law Senate Bill 94, which repealed the Medical Cannabis Regulation and Safety Act ("MCRSA"), included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA" or "Act"); and,

WHEREAS, MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether non-commercial and commercial cannabis activities could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the state licensing authority and shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval by the state license will violate the provisions of any local ordinance or regulation. State licensing authorities began issuing licenses to cannabis businesses beginning January 1, 2018; and,

WHEREAS, MAUCRSA establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis, including medicinal and adult-use cannabis. The Act designates applicable responsibilities for oversight of cannabis commerce to several State agencies; and,

WHEREAS, in November 2020, Artesia voters approved Measure Q, a ballot measure that would allow for certain taxes to be collected from the cultivation and sale of cannabis in Artesia if the City Council were to lift the current prohibitions on medical and commercial cannabis activities in the City; and

WHEREAS, the Artesia City Council has adopted various ordinances and resolutions to govern the zoning, regulation, and administration of commercial cannabis uses within the City, including Ordinance No. 23-940, 22-929, 22-930, 22-938, and Resolutions 23-2920 and 23-2919; and

WHEREAS, the amendments to Article 20 of the City's Zoning Code provide that permitted commercial cannabis businesses that propose minor exterior changes to an existing building would undergo an administrative design review. The intent of this revision is to expedite the review of such projects while subjecting them to the same standards and criteria in the City's existing design review ordinance; and

WHEREAS, the amendments to Article 44 of the City's Zoning Code are not new regulations. Rather, they reaffirm that permitted commercial cannabis businesses are to only locate south of California State Route 91 (Artesia Freeway) in the following zones: Commercial General, Commercial Planned Development, Artesia Boulevard Specific Plan, Artesia Boulevard Corridor Specific Plan, and South Street Specific Plan. The amendments are intended to reiterate and strengthen the City's current regulations, which have already been uniformly applied by the City; and

WHEREAS, the Planning Commission of the City of Artesia conducted a properly noticed public hearing on May 15, 2023, at which members of the public were afforded an opportunity to comment upon this Ordinance, the recommendations of staff, and other public testimony; and,

WHEREAS, after said public hearing, the Planning Commission recommended that the City Council approve this Ordinance; and,

WHEREAS, the City Council conducted a properly noticed public hearing on June 5, 2023 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and other public testimony.

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

SECTION 1. Recitals. The City Council hereby finds that the foregoing recitals are true and correct and incorporated herein as substantive findings of this Ordinance.

SECTION 2. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to sections 15060(c)(2) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA. This Ordinance does not authorize any commercial cannabis businesses to locate or operate on any particular property. Commercial cannabis uses developed pursuant to the zone text amendments would be independently reviewed and evaluated pursuant to CEQA. Similarly, any design review applications relating to commercial cannabis businesses would also be independently reviewed and evaluated pursuant to CEQA. City staff shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

SECTION 3. Findings. Government Code section 65860 requires a city's zoning ordinance to be consistent with the general plan. Based on all evidence in the record, the City Council finds as follows:

The City's General Plan is the long-range planning document, providing the vision for the future development of the City. The zoning code amendments are consistent with the General Plan in accordance with Government Code section 65860. The following General Plan guiding principles and implementing policies are applicable to this zone text amendment to regulate cannabis-related activities:

- A. The amendments are consistent with Community Policy LU 1.2 and Economic Development Policy Action ED 1.2.3, because the proposed amendments are intended to facilitate the opportunity for the development of expanded commercial uses and employment growth. Amendments to Article 44 of the Artesia Municipal Code ("AMC") reaffirm that commercial cannabis businesses are to locate south of California State Route 91 (Artesia Freeway), only, in the specified zones. Moreover, Amendments to AMC Article 20 will expedite permitted commercial cannabis businesses to open their businesses. Nothing in the proposed amendments create an inconsistency with the goals, policies and objectives of the 2030 General Plan.
- B. The proposed zone text amendments will not adversely affect surrounding properties because the proposed changes are consistent with identified zone uses. Amendments to AMC Article 44 reaffirm existing law, and commercial cannabis uses will continue to be regulated through a rigorous permit process. An administrative design review process will not adversely affect surrounding properties because they would continue to be subject to the same standards of approval as provided in AMC section 9-2.2005 that take into account compatibility with surrounding use and structures on adjacent properties.
- C. The proposed amendments also promote public health, safety, and general welfare and serve the goals and purposes of the General Plan by diversifying the economic base, expanding economic opportunity and enhancing fiscal sustainability. The reaffirmed provisions in AMC Article 44 provide the zones where commercial cannabis businesses may locate while acknowledging that such businesses are still subject to a stringent review and other regulatory standards. Amendments to AMC Article 20 will allow for the expedited review of a commercial cannabis business' design review so that they may more quickly enter the market.
- D. The proposed amendments related to AMC Article 20 review further Community Policy LU 3.2: Monitor the appearance of commercial and retail service facilities to prevent areas of decline by requiring improved maintenance of rehabilitation, as necessary. They implement Policy Action LU 3.2.1: Encourage façade renovation, enhanced parking area landscaping, improved lighting, and the use of pedestrian amenities, and Policy Action LU 3.2.2: Apply City plans and codes to rehabilitation efforts to ensure City standards for maintenance, landscaping and community design are met. Commercial cannabis businesses that propose exterior building modifications will still be evaluated under the criteria found in AMC section 9-2.2005.

SECTION 4. Amendment. Article 20 (Design Review Approval) of Chapter 2 (Zoning) of Title 9 (Planning and Zoning) of the of the Artesia Municipal Code is hereby amended and restated in its entirety as follows:

"Article 20. Design Review Approval

- 9-2.2001 Purpose of Design Review Approval.
- 9-2.2002 Projects Subject to Design Review Approval by Planning Commission or Staff.
- 9-2.2003 Application Requirements.
- 9-2.2004 Notice and Hearing Requirements.
- 9-2.2005 Criteria for Approval of Design Review Applications.
- 9-2.2006 Resolution.
- 9-2.2007 Affirmation by City Council of Certain Design Review Actions of the Planning Commission.
- 9-2.2008 Appeals.
- 9-2.2009 Expiration.

9-2.2001 Purpose of Design Review Approval.

The provisions of this article are intended to establish a process by which certain types of development projects and structures are subject to a discretionary review approval process before the City's Planning Commission, and under specified circumstances before the City Council or Planning Director, to ensure that the site plan, building layout, size, shape, scale, mass, height, architectural design, architectural components, materials, colors, landscaping and other aspects of the physical plan for the development project are compatible with neighboring developments, are appropriate for the site, and achieve the highest level of design that is feasible for the project. The City intends to use this process to improve the aesthetic character of the community, to preserve and enhance property values, protect adjacent properties from adverse impacts caused by development projects, to assist private and public developers to be more cognizant of public concerns for the aesthetics of projects, and to bring about a community that is safe, functional and attractive.

9-2.2002 Projects Subject to Design Review Approval by Planning Commission or Staff.

(a) The following categories of development projects shall be subject to the design review approval process specified in this article and shall be submitted to the Planning Commission for approval:

(1) Subject to the provisions in subsection (b), any building or structure requiring a building permit, or the modification of the exterior design of an existing structure or element thereof, including architectural accents, that are located on a site in any zone other than the Agricultural-Single-Family Residential (A-1), Single-Family Residential (R-1), or Medium Density Residential (M-D-R) Zones, or the Multiple-Residential (M-R) Zone only if the building or structure is a one (1) family dwelling unit; and

(2) Any building or structure requiring a building permit, or the modification of the exterior design of any existing structure or element thereof, that is located in the Agricultural-Single-Family Residential (A-1), Single-Family Residential (R-1) or Medium Density Residential (M-D-R) Zones that is designed for use other than as a dwelling unit or dwelling units; and

(3) Any major wall sign as specified in Article 12 or 12.5 of this chapter.

(b) The following category of development projects shall be subject to the design review approval process specified in this article and shall be submitted to the Planning Commission or Planning Director for approval, as follows:

(1) Sites that have been (1) zoned for commercial cannabis uses, and (2) the property owner or tenant of the subject site has been issued a valid commercial cannabis permit by the City shall be subject to the following:

(i) Major modifications of the exterior design of an existing structure or element thereof, including architectural accents, shall be subject to Planning Commission review as provided in this article. For purposes of this section, a "major modification" shall mean that 60 percent or more of the building façade, as measured in overall linear building footage, is being modified.

(ii) All other minor modifications of the exterior design of an existing structure or element thereof, including architectural accents, shall be subject to the administrative review and approval of the Planning Director, as provided for in this article. For purposes of this section, a "minor modification" shall mean that less than 60 percent of the building façade, as measured in overall linear building footage, is being modified.

(c) The modification of the exterior color of an existing structure or element thereof of any building or structure specified in this subsection shall be

subject to the administrative review and approval of the City Manager or designee in accordance with the following standards and procedures:

(1) The modification of the exterior color is to any building or structure in the City except a single-family residential structure used for residential purposes located in the Agricultural-Single-Family Residential (A-1), Single-Family Residential (R-1) or Medium Density Residential (M-D-R) Zones.

(2) The exterior color shall comply with the City's Color Guidelines, which guidelines shall consist of a photographic database of staff approved examples of projects and colors that are on file with the Planning Department. The City's Color Guidelines shall encourage the highest level of design quality while at the same time provide flexibility to encourage creativity and innovation.

(3) The exterior color shall satisfy the general criteria for design review approval specified in Section 9-2.2005.

(4) The modification of the exterior color shall not be subject to Planning Commission or City Council review and approval unless the applicant appeals the decision of the City Manager or designee pursuant to the provisions of this chapter, in which case the decision shall first be appealed to the Planning Commission and then to the City Council, which decision will then be final.

9-2.2003 Application Requirements.

(a) Contents. Any person requiring design review approval shall submit an application on a form prepared by the City. All information specified on the form shall be provided to the City. An application fee shall be submitted at the time the application is submitted in an amount specified by the City's current fee resolution. With respect to any new structure, the application shall be accompanied by scaled drawings of the site as proposed for development and elevation plans of the structure or structures on the site. If the applicant is not the property owner, the application shall contain the signature of the property owner or the duly authorized representative or agent of the property owner. The accuracy of all information, maps and documents submitted on or with the application shall be the responsibility of the applicant. The applicant shall also submit any additional information required by the application or requested by staff.

(b) Repeated Applications. No person may submit an application for design review of a project where the Planning Director, Planning Commission, or City Council has taken action on a previous application for the same or substantially similar design review application within the previous six (6) months, unless the applicant can show substantially changed conditions, as determined in the Planning Director's reasonable discretion.

9-2.2004 Notice and Hearing Requirements.

Except as otherwise provided in this chapter and except for any design review done pursuant to Section 9-2.2002(b)(1)(ii), all applications for design review approval shall be subject to the notice and hearing requirements specified in Article 23 of this chapter. Notice and hearing shall not be required for a Planning Director decision.

9-2.2005 Criteria for Approval of Design Review Applications.

No application for design review approval shall be approved by the Planning Commission, the City Council or, when otherwise authorized by this chapter, the Planning Director, unless the application, in its final submitted form, or with the imposition of conditions, meets all of the criteria set forth in this section. This section shall not apply to applications for window signs or exposed neon lighting for signs or architectural accents, which shall be approved in accordance with the specific criteria set forth in Articles 12 and 12.5.

(a) The design and layout of the proposed development or structures is consistent with the City's General Plan, any applicable specific plan, any applicable design guidelines, and the development standards set forth in this chapter;

(b) The design of the structures, including the layout, size, shape, mass, height, architectural elements and other design factors are appropriate to the size and shape of the lot and are compatible and harmonious with the uses and structures on adjacent properties;

(c) The design of the project will provide a desirable environment for its occupants, the visiting public and its neighbors through good aesthetic use of high-quality building materials, design elements, colors, textures, and landscape features; and

(d) The building materials and design features are of a quality and type that will remain aesthetically appealing over time without necessitating frequent and unrealistic maintenance or replacement.

9-2.2006 Resolution.

The Planning Commission shall adopt a resolution approving or denying the design review application and setting forth its findings for approval or denial. For Planning Director decisions, the Planning Director shall send the applicant a letter approving or denying the design review application and setting forth their reasons for approval or denial. In the event the application is approved, the Planning Commission or Planning Director, as applicable, may impose conditions that are necessary to satisfy the findings of approval and to ensure compliance with the City's approval.

9-2.2007 Affirmation by City Council of Certain Design Review Actions of the Planning Commission.

Upon approval or denial of any design review application for a project that involves a structure that exceeds thirty-five (35) feet in height that is not otherwise subject to a variance for height, or that includes more than twenty thousand (20,000) square feet of floor area, the Planning Commission's decision shall not become final unless a report regarding the Planning Commission's action is first presented to the City Council and the City Council acts to affirm the Commission's action. If, upon receipt of the report of the Commission's action, the City Council does not act to affirm the Commission's action, the City Council shall either remand the application back to the Commission for further proceedings, or set the matter for public hearing before itself and then approve or deny the application in accordance with the criteria specified in this article. However, even if a design review application for a project involves a structure that exceeds thirty-five (35) feet in height that is not otherwise subject to a variance for height, or includes more than twenty thousand (20,000) square feet of floor area, if it meets the provisions of Section 9-2.2002(b)(1)(ii), then the application shall continue to be subject to a Planning Director decision and shall not require affirmation by either the Planning Commission or the City Council.

9-2.2008 Appeals.

Any action of the Planning Director or Planning Commission approving or denying a design review application may be appealed by any person to the Planning Commission or City Council, respectively, within fifteen (15) days of the date of the decision in accordance with the procedures specified in Article 19 of this chapter. Upon the filing of the appeal, the matter shall be set for hearing before the appeal body. Notice of the appeal hearing shall be provided as required in Article 23 of this chapter. If there is any conflict between the terms of this article and the terms of Article 19, the terms of this article shall prevail.

9-2.2009 Expiration.

Design review approvals that are not inaugurated by the issuance of a building permit and the commencement of construction in accordance with that permit shall become null and void within one (1) year from the date the design review application was approved. This expiration date may be extended by the filing of an application for extension, which application must be filed not less than thirty (30) days prior to the expiration of the original approval or any previously approved extension. In granting or denying the extension, the body that approved the application shall use the original criteria for the grant of the approval specified in Section 9-2.2005 of this article and may impose additional conditions as are deemed necessary to ensure continued compliance with those criteria. The maximum time permitted for an extension shall be a cumulative period of two (2) years, unless the project is also the subject of a subdivision map, in which case the maximum period of extension shall comply with the maximum time permitted for the extension of a tentative subdivision map.”

SECTION 5. Amendment. Article 44 (Commercial Marijuana Use and Cultivation) of Chapter 2 (Zoning) of Title 9 (Planning and Zoning) of the Artesia Municipal Code is hereby amended and restated in its entirety to read as follows:

“Article 44. Commercial Cannabis Use and Cultivation

9-2.4401 - Definitions

9-2.4402 - Allowable Zones for Commercial Cannabis

9-2.4403 – Enforcement; Penalties

9-2.4401 - Definitions

The definitions for cannabis uses in this Chapter shall be as defined in Sections 3-5.504 and 3-2.801 of the Municipal Code.

9-2.4402 - Allowable Zones for Commercial Cannabis

(a) Subject to Chapters 2 and 5 of Title 3, commercial cannabis uses with a valid Commercial Cannabis Permit shall be allowed to locate and operate south of California State Route 91 (Artesia Freeway) in the Commercial General, Commercial Planned Development, Artesia Boulevard Specific Plan, Artesia Boulevard Corridor Specific Plan, and South Street Specific Plan zones. All commercial cannabis uses are expressly prohibited in all other zones, including north of California State Route 91 (Artesia Freeway), overlay zones, and all other existing or future specific plan areas in the City. No person shall establish, operate, maintain, conduct or allow commercial cannabis uses anywhere within the City except as provided herein. The City shall not approve any application for a building permit, conditional use permit, variance or any other entitlement authorizing the establishment, operation, maintenance, development or construction of any commercial cannabis use except as provided herein or as provided in Chapter 2 of Title 3.

(b) Cannabis cultivation outdoors is expressly prohibited in all zones, including overlay zones, and all specific plan areas in the City. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel, or any portion of such parcel, to be used for cultivating cannabis outdoors.

(c) Cannabis cultivation indoors is expressly prohibited all zones, including overlay zones, and all specific plan areas in the City, except as set forth in Section 5.21.04.

(d) Nothing herein is intended to cover any cultivation that is permitted for personal use at a private residence under state law (Health & Saf. Code, § 11362.2, subd. (b)(2), as may be amended).

9-2.4403 – Enforcement; Penalties

In addition to any other enforcement permitted by Chapter 2 of Title 1 of this Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapter 2 of Title 1 of this Code, this article does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 et seq., or Section 11362.1 et seq., as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Chapter 2 of Title 1 of this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern."


SECTION 6. Effective Date. This Ordinance shall become effective 30 days after the Council adopts this Ordinance.

SECTION 7. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance, and, to that end, the provisions hereof are severable. The City Council of the City of Artesia declares that it would have adopted all the provisions of this Ordinance that remain valid if any provisions of this ordinance are declared invalid.

SECTION 8. Adoption, Certification, and Publication. The City Clerk of the City of Artesia shall certify the passage and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and/or posted in the manner required by law.

SECTION 9. Record of Proceedings. The documents and materials associated with this ordinance that constitute the record of proceedings on which these findings are based are located at 18747 Clarkdale Avenue, Artesia, California, 90701. The City Clerk is the custodian of the record of proceedings.

PASSED, APPROVED AND ADOPTED this 12th day of June, 2023.



MONICA MANALO, MAYOR

ATTEST:



JENNIFER ALDERETE, ACTING CITY CLERK
APPROVED TO FORM:



BEST BEST & KRIEGER, CITY ATTORNEY

I, Jennifer Alderete, Acting City Clerk of the City of Artesia, do hereby certify that the foregoing Ordinance was adopted at the Regular City Council Meeting held on the 12th day of June 2023, by the following roll call vote:

AYES: COUNCILMEMBERS: RAMOSO, TREVINO, TAJ, LIMA, MANALO
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE



JENNIFER ALDERETE, ACTING CITY CLERK