

Solano County Airport Land Use Commission

675 Texas Street Suite 5500
Fairfield, CA 94533
Tel 707.784.6765
Fax 707.784.4805

LAND USE COMPATIBILITY DETERMINATION: APPLICATION FORM

TO BE COMPLETED BY STAFF		
APPLICATION NUMBER: <u>ALUC 19-09</u>	FILING FEE: <u>\$500</u>	
DATE FILED: <u>6/7/2019</u>	RECEIPT NUMBER: <u>4911</u>	
JURISDICTION:	RECEIVED BY: <u>N.F. (signature)</u>	
PROJECT APN(S):		
TO BE COMPLETED BY THE APPLICANT		
I. GENERAL INFORMATION		
NAME OF AGENCY: <u>City of Benicia</u>		DATE: <u>06/06/19</u>
ADDRESS: <u>250 East L Street, Benicia, CA 94510</u>		
E-MAIL ADDRESS: <u>SThorsen@ci.benicia.ca.us</u>	DAYTIME PHONE: <u>707-746-4382</u>	FAX: <u>707-747-1637</u>
NAME OF PROPERTY OWNER: <u>N/A</u>		DATE:
ADDRESS: <u>N/A</u>		DAYTIME PHONE:
NAME OF DOCUMENT PREPARER: <u>Suzanne Thorsen, Principal Planner</u>		DATE: <u>05/28/19</u>
ADDRESS: <u>250 East L Street, Benicia, CA 94510</u>	DAYTIME PHONE: <u>707-746-4382</u>	FAX:
NAME OF PROJECT: <u>City of Benicia Zoning Text Amendment for Cannabis Retail</u>		
PROJECT LOCATION: <u>City of Benicia - citywide</u>		
STREET ADDRESS: <u>N/A</u>		

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

TO BE COMPLETED BY THE APPLICANT

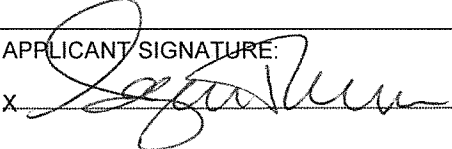
II. DESCRIPTION OF PROJECT

This application includes amendments to the Benicia Zoning Ordinance regarding:

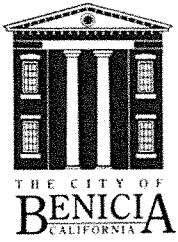
Retail Sales of Cannabis

Please see enclosed Planning Commission items and draft amendments.

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

TO BE COMPLETED BY THE APPLICANT	
II. DESCRIPTION OF PROJECT (CONT'D)	
POTENTIAL PROJECT EMISSIONS: (i.e. smoke, steam, glare, radio, signals): N/A	
PROJECT AIRPORT LAND USE COMPATIBILITY PLAN: Travis AFB	COMPATIBILITY ZONE: D & E
PERCENTAGE OF LAND COVERAGE: N/A	MAXIMUM PERSONS PER ACRE: N/A
THE FOLLOWING INFORMATION MUST BE SUBMITTED AS A MINIMUM REQUIREMENT: <ul style="list-style-type: none"> <input type="checkbox"/> JURISDICTION REFERRAL LETTER: <input type="checkbox"/> ENVIRONMENTAL DOCUMENTATION: <input checked="" type="checkbox"/> LOCATION MAP: Affected areas included <input type="checkbox"/> ASSESSOR'S PARCEL MAP, with subject property marked in red: N/A <input type="checkbox"/> SITE PLAN, drawn to scale and fully dimensioned including topographical information, and 8 1/2 x 11 inch reduction(s): N/A <input type="checkbox"/> ELEVATIONS, if located in APZ, clear zones and A,B,C compatibility zones or over 200' in height, plus 8 1/2 x 11 inch reduction(s) : N/A <input type="checkbox"/> WIND TURBINE STUDY, including cumulative impact studies. Such studies shall include an analysis of (1) the individual effects of the proposed project, and (2) as required by law, an analysis of the cumulative effects of the proposed project considered in connection with the effects of past projects, the effects of other current projects and proposed projects, and the effects of probable future projects, including (i) the probable build out for wind energy development of the remaining vacant parcels within the wind resource areas described in the Solano County General Plan and (ii) any probable replacement of existing turbines or meteorological towers with structures having different dimensions. N/A <input type="checkbox"/> SUPPLEMENTAL INFORMATION: Staff Report & Proposed Amendment <input type="checkbox"/> FEES: <input type="checkbox"/> ELECTRONIC COPIES OF ALL APPLICATION MATERIALS ON A CD: 	
APPLICANT SIGNATURE: x 	DATE: 6/6/2019
DOES THE PROJECT PROPOSE THE DEMOLITION OR ALTERATION OF ANY EXISTING STRUCTURES ON THE PROJECT SITE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, describe below:	

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.



Planning Commission Staff Report

June 5, 2019

Project: Amendments to Benicia Municipal Code to Prohibit Retail Cannabis in Benicia

EXECUTIVE SUMMARY

The proposed amendments to Benicia Municipal Code would ban retail cannabis businesses in the City of Benicia. The amendments encompass changes to Chapter 17.84 (Cannabis), section 17.28.020 (CC, CO, CG, and CW districts – Land use regulations), section 17.32.020 (IL, IG, IW and IP districts – Land use regulations), and section 17.70.070 (Home occupations) of the Benicia Municipal Code.

RECOMMENDATION

Move to adopt the resolution recommending that the City Council of the City of Benicia adopt an ordinance amending Chapter 17.84 (Cannabis Regulations) and amending additional sections of Title 17 (Zoning) of the Benicia Municipal Code, after a public hearing and determination that the project is exempt from CEQA.

BACKGROUND

City Council Direction

On April 2, 2019, the City Council agreed to discuss a request from Councilmember Largaespada as part of the City's two-step agenda process regarding adding additional sensitive use categories to the buffers required of retail cannabis businesses. After discussing the proposed buffers on May 7, 2019, meeting, the City Council voted 4-1 to direct staff to bring back an amendment to the cannabis ordinance banning all retail cannabis sales in Benicia.

The motion to ban all retail cannabis sales did not, in and of itself, have the effect of banning retail cannabis businesses because the City Council's direction requires amendment to Title 17, Zoning, of the Benicia Municipal Code in order to effect a ban on retail cannabis businesses.

Because such amendments are changing in zoning regulations, the Planning Commission is required to hold a noticed public hearing, consider the proposed amendments to the Benicia Municipal Code, and make a recommendation to the City Council on whether or not to adopt the amendments.

The City's current cannabis regulations prohibit any cannabis business from locating within 600 feet of a school providing instruction in kindergarten through twelfth grade. The two-step request proposed adding additional sensitive uses to the location restrictions by specifying that any cannabis business could not be located within 600 feet of a child care center, youth center, learning center, residential zone or public park.

PROPOSED ZONING TEXT AMENDMENTS

The draft ordinance (Attachment 1A) proposes amending the following sections of Benicia Municipal Code to prohibit retail cannabis in Benicia:

- BMC Sections 17.84.020, 17.84.050, 17.84.060, 17.84.070, and 17.84.100. (Cannabis).
- BMC Section 17.28.020 (CC, CO, CG, and CW districts – Land use regulations) – delete “Cannabis Retail Operation” from the table showing uses that are allowed in commercial zoning districts. The current ordinance lists “Cannabis Retail Operation” as a conditional use (meaning a Use Permit is required) and cross-references BMC Chapters 9.60 (Cannabis Public Safety License) and 17.84 (Cannabis);
- BMC Section 17.32.020 (IL, IG, IW and IP districts – Land use regulations) – delete “Cannabis Retail Operation” from the table showing uses that are allowed in industrial zoning districts. The current ordinance lists “Cannabis Retail Operation” as a prohibited use and cross-references BMC Chapters 9.60 (Cannabis Public Safety License) and 17.84 (Cannabis); and
- BMC Section 17.70.070 (Home occupations) – delete reference to cannabis retail.

PROJECT LOCATION:

The proposed amendments would apply throughout the City of Benicia, specifically in the zoning districts where retail cannabis businesses are currently allowed that are beyond 600 feet of a school offering K-12 instruction (Attachment 2). These City-wide locations can be found as follows:

- Community Commercial (CC) zoning districts are located in various locations south of Military East and West;
- General Commercial (CG) zoning districts are located generally at Columbus Parkway and Rose Drive; Southampton Road and Chelsea Hills Drive; East 2nd Street and Military East; East 5th Street and Military East; Adams Street and Grant Street in the Benicia Arsenal; and East 2nd Street and Lake Herman Road; and
- Waterfront Commercial (CW) zoning districts are located in the vicinity of the Benicia Marina extending from East 2nd Street to East 5th Street, south of East E Street.

The effect of the proposed amendments to the Benicia Municipal Code would be a prohibition on retail cannabis businesses in Benicia. One microbusiness with retail delivery would remain a permitted use. Manufacturing, testing labs, distributor, and cultivation businesses would remain permitted uses, subject to the BMC requirements which include a 600-buffer from K-12 schools, zoning, Public Safety License and Use Permit.

CEQA Analysis	The ordinances and resolution noted in this Ordinance are not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060, subd. (c)(2) because the ordinances and resolution will not result in a direct or reasonably foreseeable indirect physical change in the environment and pursuant to CEQA Guidelines section 15061, subd. (b)(3) because there is no possibility the activity in question may have a significant effect on the environment. Furthermore, Business and Professions Code Section 26055(h) exempts from Division 13 of the Public Resources Code, the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity whereby the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13.
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NEXT STEPS

The proposed amendments require a noticed public hearing at the City Council and two readings. If the amendments are adopted at the second reading, the amendments would become effective 30 days later.

ATTACHMENT(S):

1. Resolution
 - A. Ordinance
2. Map Showing Areas Affected

*For more information contact: Shawna Brekke-Read, Community Development Director
Phone: 707.746.4277
E-mail: sread@ci.benicia.ca.us*

RESOLUTION 19- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BENICIA ADOPT AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE CHAPTER 17.84 (CANNABIS REGULATIONS) AND AMENDING ADDITIONAL SECTIONS OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE, AND FINDING THE TEXT AMENDMENTS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, on February 20, 2018, City Council adopted Ordinance 18-3 establishing new cannabis regulations by adding Benicia Municipal Code Chapter 17.84 and making further amendments to Title 17 (Zoning) related to cannabis; and

WHEREAS, on April 1, 2019 the City Council initiated the first step of its two-step agenda process, by reviewing the City's cannabis regulations and considering the addition of more sensitive uses to retail cannabis businesses required buffers; and

WHEREAS, the City Council, at a regular City Council meeting on May 7, 2019 approved a motion to ban retail cannabis and in so doing, directed staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis businesses; and

WHEREAS, the City Council at a regular meeting on May 21, 2019 considered a request for reconsideration of direction to staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis and the City Council did not decide to reconsider the May 7, 2019 direction to prohibit retail cannabis within the City of Benicia; and

WHEREAS, the Planning Commission at a special meeting on June 5, 2019 conducted a duly noticed public hearing, considered amendments to the Benicia Municipal Code Title 17 to prohibit retail cannabis, adopted this resolution, and recommended approval of said amendments to Title 17 to the City Council; and

WHEREAS, the proposed amendments reflect the City Council direction provided on May 7, 2019 and May 21, 2019.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Benicia as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its finding, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff report, and other related materials.

Cannabis Retail: Locations ZONED CG, CC, CW

POTENTIALLY AFFECTED



PARCELS CURRENTLY

ELIGIBLE FOR RETAIL

CANNABIS Zoned: General

Commercial (CG) Community

Commercial (CC) Waterfront

Commercial (CW)

INELIGIBLE Parcels Zoned:

General Commercial (CG)

Community Commercial (CC)

Waterfront Commercial (CW)

600 Foot School Buffer

City Limits

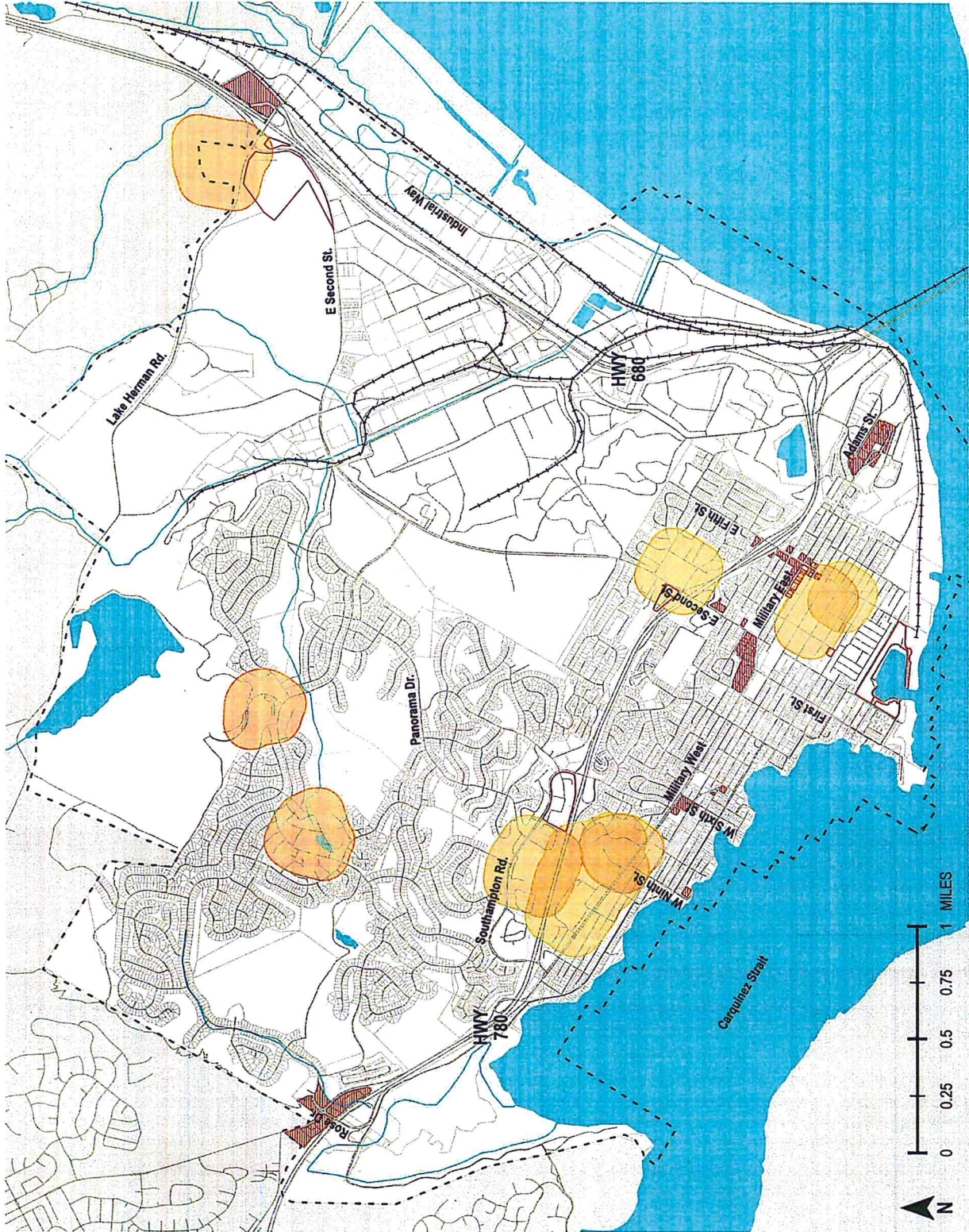
NOTES

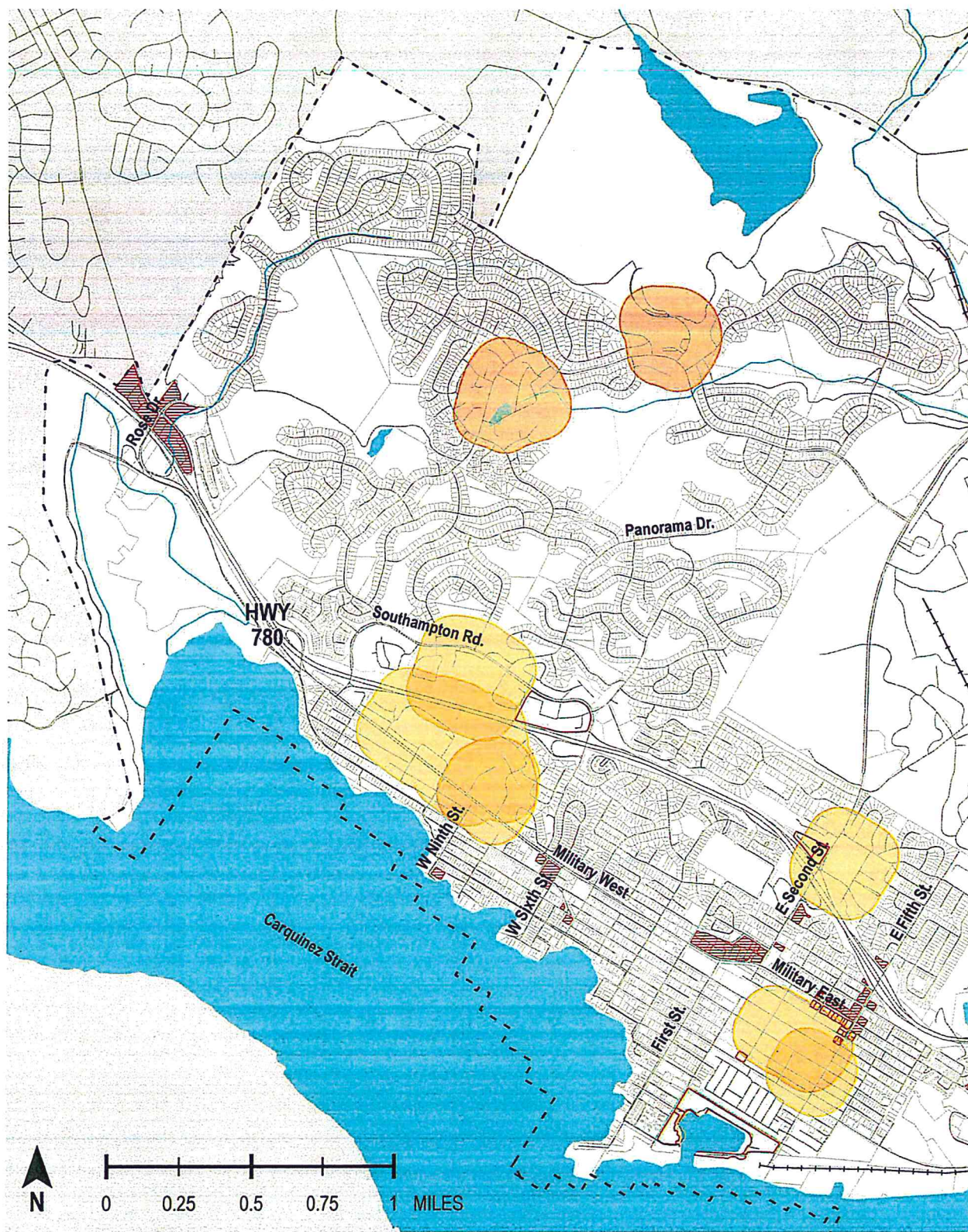
1. If any part of a parcel is within 600 feet of a school, the entire parcel is ineligible for cannabis business operations.
2. A parcel's inclusion on this map does not necessarily mean that the property is available, unoccupied, or that the property owner is seeking cannabis business tenants.
3. A parcel's inclusion on this map is informational only and does not imply any endorsement of Cannabis Public Safety License or Cannabis Use Permit.
4. Parcels have been deemed ineligible for factors such as:
 - Within 600 feet of a school
 - City owned land
 - Current Alcoholic Beverage License
 - HOA bylaws

For further information please visit:
<https://www.ci.benicia.ca.us/cannabis>



June 2019





CITY OF BENICIA

ORDINANCE NO. 19-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.84 (CANNABIS REGULATIONS) AND AMENDING ADDITIONAL SECTIONS OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on February 20, 2018, City Council adopted Ordinance 18-3 establishing new cannabis regulations by adding Benicia Municipal Code Chapter 17.84 and making further amendments to Title 17 (Zoning) related to cannabis; and

WHEREAS, on April 1, 2019 the City Council initiated the first step of its two-step agenda process, by reviewing the City's cannabis regulations and considering the addition of more sensitive uses to retail cannabis businesses' required buffers; and

WHEREAS, the City Council, at a regular City Council meeting on May 7, 2019 approved a motion to ban retail cannabis and in so doing, directed staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis businesses; and

WHEREAS, the City Council at a regular meeting on May 21, 2019 considered a request for reconsideration of direction to staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis and the City Council did not decide to reconsider the May 7, 2019 direction to prohibit retail cannabis within the City of Benicia; and

WHEREAS, the proposed amendments reflect the City Council direction provided on May 7, 2019 and May 21, 2019; and

WHEREAS, the Planning Commission at a special meeting on June 5, 2019 conducted a duly noticed public hearing, considered amendments to the Benicia Municipal Code Title 17 to prohibit retail cannabis, adopted Resolution _____, and recommended approval of said amendments to Title 17 to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments on _____, 2019, and introduced Ordinance No. _____ on _____, 2019.

NOW, THEREFORE, the City Council of the City of Benicia does hereby ordain as follows:

Section 1. Section 17.28.020 (CC, CO, CG and CW districts – Land use regulations) of Chapter 17.28 (Commercial Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows (deletions in ~~striketrough~~, additions in underline):

Ambulance Services	P	P	–	P	
Animal Sales and Services					
Animal Boarding	L20	–	–	–	
Animal Hospitals	L20	L20	–	–	
Artists' Studios	P	–	–	L20	
Banks and Savings and Loans	L2	L2	–	L2	
Building Materials and Services	P	P	L12	L20	
Cannabis Retail Operation	–	–	–	–	(O)
Catering Services	P	P	–	P	
Commercial Filming	L20	L20	L20	L20	
Commercial Recreation and Entertainment	L5	L21	–	L5	
Game Center	L8	L8	–	L8	
Communication Facilities	P	P	P	P	
Eating and Drinking Establishments	L4	L4	L4	L4	
Mobile Food Vending	P	P	P	P	(N)
With Wine and Beer Service	L4	L4	L4	L4	
With Full Alcoholic Beverage Service	U	U	U	U	
With Take-Out Service	L4	L4	L4	L4	(D)
Limited	L4	L4	L4	L4	(D)
Food and Beverage Sales	L6	L6	–	L7	
Funeral and Interment Services	L9	–	–	–	
Horticulture, Limited	P	P	–	–	
Laboratories	P	P	–	P	
Maintenance and Repair Services	P	P	L12	P	
Marine Sales and Services	–	–	P	–	
Nurseries	P	P	–	U	

EXHIBIT A

4. No one other than a resident of the dwelling shall be employed on-site or report to work at the site in the conduct of a home occupation.
5. No kilns shall be permitted, and a home occupation shall comply with the performance standards prescribed by BMC 17.70.240; provided, that no noise shall be perceptible at or beyond the property line.
6. Not more than one truck, with a maximum capacity of one ton, incidental to a home occupation shall be kept on the site. The number of parking spaces available to a dwelling unit housing a home occupation shall not be reduced to less than two.
7. A home occupation shall not create pedestrian, automobile, or truck traffic significantly in excess of the normal amount in the district.
8. No motor vehicle repair, beauty shop nor barber shop shall be permitted, and a home occupation shall not include an office nor sales room open to visitors without prior appointments, and there shall be no advertising of the address of the home occupation that results in attracting persons to the premises.
9. No cannabis-related uses including, but not limited to, ~~retail~~, testing/laboratory, manufacturing, commercial cultivation, shall be allowed.

D. The permit for a home occupation that is not operated in compliance with these regulations shall be revoked by the community development director after 30 days' written notice unless the home occupation is altered to comply.

Section 4. Chapter 17.84 of Title 17 of the Benicia Municipal Code (Cannabis) is hereby amended to read as follows (deletions in ~~strike through~~, additions in underline):

Sections:

- 17.84.010 Purpose and intent.
- 17.84.020 Definitions.
- 17.84.030 Residential cultivation of cannabis.
- 17.84.040 Cannabis businesses – Use permit and license required to operate.
- 17.84.050 Cannabis businesses – General provisions.
- 17.84.060 Use permit for commercial cannabis activities – Requirements.
- 17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.
- 17.84.080 Appeal from planning commission determination.
- 17.84.090 Suspension and revocation by planning commission.
- 17.84.100 Cannabis businesses – Conditions of operation.
- 17.84.110 Business license tax liability.
- 17.84.120 Annual review of cannabis businesses.
- 17.84.130 No vested rights.
- 17.84.140 Public nuisance.

17.84.010 Purpose and intent.

It is the purpose and intent of this chapter to regulate the cultivation, manufacturing, sale, delivery, testing and distribution of medical and adult-use cannabis in order to ensure the health,

“Distribution” means the procurement, storage, sale, and transport of cannabis and cannabis products between licensees.

“Drug paraphernalia” shall have the meaning set forth in California Health and Safety Code Section 11014.5, and as subsequently amended.

“Edible cannabis product” means cannabis that is intended to be used, in whole or in part, for human consumption.

“Identification card” shall have the meaning set forth in California Health and Safety Code Section 11362.712, and as may be amended from time to time.

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

“Medicinal cannabis” or “medicinal cannabis product” shall have the meaning set forth in California Business and Professions Code Section 26001(ai), which includes cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at California Health and Safety Code Section 11362.5, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Operator” means any person responsible for management of the cannabis business, any person listed on the cannabis business’s articles of incorporation, any person owning an interest in the cannabis business, and any person that supervises another employee of the cannabis business.

“Owner” shall have that meaning set forth in Business and Professions Code Section 26001(al) and as it may be amended.

“Permittee” means any person issued a use permit for cannabis under this chapter.

“Physician” means a licensed medical doctor, including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

“Property” means the designated structure or structures and land specified in the use permit for cannabis application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted.

~~“Qualified registration list” means the list established through a competitive process to determine the best applicants for use permits for cannabis businesses that have retail components, including microbusinesses.~~

“School” means any public or private school providing instruction in kindergarten or any of grades one to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

“State cannabis laws” means and includes California Health and Safety Code Sections 11362.1 through 11362.45, 11362.5 (Compassionate Use Act of 1996) and 11362.7 to 11362.83 (Medical Marijuana Program); California Business and Professions Code Sections 26000, et seq. (Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”)); all state laws enacted or amended pursuant to SB-94, Chapter 27, Statutes of 2017; the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029;

EXHIBIT A

ed. Cannabis cultivation operation (“cultivator”).

fe. Cannabis microbusiness (“microbusiness”). ~~g. Cannabis delivery operations (“deliveries”).~~

~~2. No more than two cannabis retailers are permitted in the city.~~

~~3~~2. No more than one microbusiness is permitted in the city.

~~4~~3. An owner or operator of a cannabis business may own or operate more than one cannabis business within the city.

~~5. All retail operations shall occur in a fully enclosed permanent structure.~~

B. Limitations on Location.

1. Permissible Zoning. Subject to limitations described in this chapter or other parts of the zoning ordinance, cannabis businesses may only operate in the zones specified in Division II or Division III of the zoning ordinance.

2. Areas and Zones Where Cannabis Businesses Are Not Permitted. Notwithstanding subsection (A)(1) of this section, a cannabis business may not operate on a parcel or lot located within 600 feet of a school that is in existence at the time the use permit for a cannabis business is issued. This distance shall be calculated as a straight line from any parcel line of the property on which the cannabis business is located to the parcel line of the real property on which the facility, building, or structure, or portion of the facility, building or structure, in which the listed use occurs or is located. Locational restrictions shall apply to an entire parcel if any portion of the parcel is located within the applicable buffer distance.

C. Transfer of Use Permits for Cannabis Businesses.

1. Permit – Site Specific. A permittee shall not operate a cannabis business under the authority of a use permit for a commercial cannabis activity at any place other than the address of the cannabis business stated in the application for the permit. All permits issued by the city pursuant to this chapter shall be nontransferable to a different location.

2. Transfer of a Permitted Commercial Cannabis Activity. A permittee shall not transfer ownership or control of a cannabis business or attempt to transfer a use permit for a commercial cannabis activity to another person unless and until the transferee obtains an amendment to the permit from the planning commission to the permitting requirements of this chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the community development department in accordance with all provisions of this chapter accompanied by the required transfer review application fee.

3. Request for Transfer with a Revocation or Suspension Pending. No use permit for a commercial cannabis activity may be transferred (and no permission for a transfer may be issued) when the community development department has notified the permittee in writing that the permit has been or may be suspended or revoked for noncompliance with this chapter and a notice of such suspension or revocation has been provided.

4. Transfer without Permission. Any attempt to transfer a use permit for commercial cannabis activity either directly or indirectly in violation of this chapter is declared void, and the permit shall be deemed revoked. (Ord. 18-03 § 1).

4. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to another permitted cannabis business.
5. The design of the storefront or structure within which the cannabis business will operate is architecturally-compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.
6. The proposed size of the cannabis business is appropriate to meet the needs of the local Benicia community for access to cannabis and that the size complies with all requirements of the city's zoning regulations.
7. The location is not prohibited under the provisions of this chapter or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the city's zoning regulations will be accomplished.
8. The cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.
9. The cannabis business is not likely to violate any provision of the BMC or conditions imposed by a city-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.
10. The applicant has not made a false statement of material fact or omitted a material fact in the application for a use permit for cannabis, as known at the time of determination on the application.
11. The cannabis business's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.

B. Supplemental Findings – Cannabis Manufacturing Operation. In addition to the findings required for the approval of a use permit for cannabis as set forth in subsection (A) of this section, the planning commission, or the city council on appeal, shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for cannabis for a manufacturer:

1. The manufacturing operation, as proposed, may utilize nonvolatile or volatile solvents for purposes of extracting cannabinoids. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the Benicia Municipal Code (BMC) including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

17.84.080 Appeal from planning commission determination.

An applicant or any interested party who disagrees with the planning commission's decision to issue, issue with conditions, or to deny or revoke a use permit for a commercial cannabis activity may appeal the planning commission's decision to the city council in accordance with the appeal provisions of Chapter 1.44 BMC. (Ord. 18-03 § 1).

17.84.090 Suspension and revocation by planning commission.

A. Authority to Suspend or Revoke a Use Permit for Cannabis. Any permit issued under the terms of this chapter may be suspended or revoked by the planning commission under BMC 17.128.060.

B. In addition to the required findings set forth in BMC 17.128.060(D), a use permit for a commercial cannabis activity may be revoked if it appears to the planning commission that the cannabis business has violated any of the requirements of this chapter, the cannabis business is being operated in a manner which violates the operational requirements or security plan required by the zoning code, the cannabis business is being operated in a manner which constitutes a nuisance, the cannabis business has ceased to operate for thirty 30 days or more, or the cannabis business is being operated in a manner which conflicts with or violates state cannabis law.

C. Any use permit for a commercial cannabis activity revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the permittee to any uses authorized by the use permit.

D. Revocation, expiration or nullification of a cannabis public safety license pursuant to BMC 9.60.060 and 9.60.070 shall automatically terminate the use permit for a commercial cannabis activity issued to the licensee and shall terminate the ability of the licensee to operate a cannabis business without initiation of revocation proceedings by the planning commission. (Ord. 18-03 § 1).

17.84.100 Cannabis businesses – Conditions of operation.

A. All Cannabis Businesses. All cannabis businesses shall be operated, maintained, and managed on a day-to-day basis in compliance with the following operational conditions and requirements:

1. State Licensing. A cannabis business shall maintain a state cannabis license at all times and shall comply with all applicable state licensing requirements, regulations, conditions, and standards. The failure to maintain a state license, revocation of a state cannabis license, or lapse in renewal of a state cannabis license shall be the basis for immediate termination of the right to operate a cannabis business under a city use permit for cannabis.
2. Cannabis Public Safety License. A cannabis business shall maintain a cannabis public safety license, issued under Chapter 9.60 BMC, at all times. The failure to maintain a cannabis public safety license, revocation of a cannabis public safety license, or lapse in renewal of a cannabis public safety license shall be the basis for immediate termination of the right to operate a cannabis business under a use permit for cannabis.
3. Employees. It shall be unlawful for the applicant, owner, operator, or any other person effectively in charge of any cannabis business to employ any person who is not at least 21 years of age.

existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

14. Security. The cannabis business shall at all times comply with all elements of its security plan, submitted as a part of its cannabis public safety license application pursuant to BMC 9.60.040.

15. Signage. The cannabis business shall comply with all applicable provisions of BMC Title 18.

16. Additional Conditions. The planning commission may impose additional conditions which it deems necessary to ensure that operation of the cannabis business will be in accordance with the standards and regulations provided in the zoning code, the standards set forth by separate resolution of the city council, and applicable state laws.

B. Supplemental Conditions – Retailers.

~~1. In addition to the conditions of operation set forth in subsection (A) of this section, a cannabis retail operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:~~

~~2. Retailers shall not sell drug paraphernalia and implements that may be used to ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5.~~

~~3. Retailers shall not be enlarged in size (i.e., increased floor area) without the planning commission's prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.~~

~~4. Retailers that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid official identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.~~

~~5. Hours of Operation. Retailers may only operate during the hours between 10:00 a.m. through 8:00 p.m. The planning commission may further restrict a retailer's days and hours of operation as a condition of a use permit for cannabis. A retailer shall post its approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.~~

~~6. Retailers shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.~~

~~7. State Seller's Permit. Retailers shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).~~

1. Microbusinesses shall not make any cannabis or cannabis products available for sale to customers on the Microbusiness property. Microbusinesses may deliver cannabis from the microbusiness property to a customer at a physical address beyond the microbusiness property. The retail aspect of microbusinesses shall be limited to deliveries only. No on-site customers are permitted.
2. Microbusinesses shall not sell drug paraphernalia and implements that may be used to ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5.
3. Microbusinesses that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid official identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.
4. Hours of Operation. The planning commission may restrict a microbusiness's days and hours of operation as a condition of a use permit for cannabis. Microbusinesses shall post their approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.
5. Microbusinesses shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.
6. State Seller's Permit. Microbusinesses shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).
7. Microbusinesses may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.
8. Standard of Equipment. Manufacturing, processing and analytical testing devices used by microbusinesses must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city's building code official and fire code official.
9. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.
10. Edible Product Manufacturing. Microbusinesses that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products.

~~821.~~ Deliveries of cannabis shall only occur only between the hours of 8:00 a.m. and 8:00 p.m.

EG. Maintenance, Access to, and Inspection of Records.

1. Every cannabis business shall maintain on site, at the property designated for the operation of the cannabis business, all records of the cannabis business.
2. Financial Records. The cannabis business shall maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements, (including any in-kind contributions), and any and all reasonable compensation for services provided by the cannabis business, as well as records of all operational expenditures and costs incurred by the cannabis business in accordance with generally accepted accounting practices and standards typically applicable to business records.
3. Record Retention Period. The records required in this subsection shall be maintained by the cannabis business for a period of five years and shall be made available to the city within 24 hours of written request, subject to the authority set forth in subsection (G)(4) of this section.
4. A duly designated city police department or finance department representative may enter and shall be allowed to inspect the premises of every cannabis business as well as the financial and membership records of the cannabis business required by this chapter at any time during the cannabis business's designated business hours, or at any appropriate time to ensure compliance and enforcement of the provisions of this chapter. It shall be unlawful for any owner, operator, or any other person having any responsibility over the operation of the cannabis business to refuse to allow, impede, obstruct or interfere with an inspection of the cannabis business or the required records thereof. (Ord. 18-10 § 1; Ord. 18-09 § 1; Ord. 18-08 §§ 2, 3; Ord. 18-03 § 1).

17.84.110 Business license tax liability.

An operator of a cannabis business shall be required to apply for and obtain a business tax certificate pursuant to Chapter 5.04 BMC as a prerequisite to obtaining a use permit for cannabis pursuant to the terms of this chapter. Cannabis businesses shall be subject to sales tax and other applicable taxes in a manner required by state law. (Ord. 18-03 § 1).

17.84.120 Annual review of cannabis businesses.

The community development department is hereby authorized to conduct an annual review of the operation of each permitted use permit for a commercial cannabis activity within the city for full compliance with the operational, recordkeeping, nuisance and other requirements of this chapter. A fee in an amount established by resolution of the city council shall be collected in order to reimburse the city for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any cannabis business which, upon completion of an annual review, is found not to be in compliance with the requirements of this chapter or which is operating in a manner which constitutes a public nuisance. Staff may, based upon its annual review of the operation of a cannabis business, place on a planning commission meeting agenda, a proposal to suspend or revoke a use permit for cannabis. (Ord. 18-03 § 1).

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____, 2019, and adopted at a regular meeting of the Council held on the _____ day of _____, 2019, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk