



## **Planning Commission Staff Report**

October 2, 2019

**Project:** Amendments to the Benicia Municipal Code pertaining to Delivery-Only and Microbusiness Uses

### **Staff Recommendation**

Move to adopt the resolution recommending that the City Council of the City of Benicia adopt an ordinance amending Chapter 17.32 (I Industrial Districts) and Chapter 17.84 (Cannabis Regulations) of Title 17 (Zoning) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA).

### **Project Description**

The proposed project would amend Benicia Municipal Code Chapter 17.84 (Cannabis) to establish a license category for delivery-only cannabis operations and remove the limitation on the number of microbusinesses. Corresponding amendments would be made to Chapter 17.32 (Industrial Districts) of the Benicia Municipal Code in order to allow delivery-only uses with the approval of a use permit in the Limited Industrial (IL), General Industrial (IG), Waterfront Industrial (IW) and Industrial Park (IP) Districts. The proposed project would also increase to \$5,000 the amount of cash and/or cannabis that delivery drivers may carry.

The proposed amendments follow a recommendation by the Planning Commission on August 14, 2019 and subsequent direction by the City Council on September 3, 2019.

### **Public Noticing**

In accordance with Government Code Section 65091, notice of public hearing was published in the Benicia Herald and posted at Benicia City Hall on September 20, 2019.

### **Project Location**

The amendments to the BMC Chapter 17.32 (Industrial Districts) and Chapter 17.84 (Cannabis) as proposed in the attached resolution (Attachment 1) would be effective city-wide.

### **Background**

#### *Prior City Council and Planning Commission Action*

During consideration of amendments to regulations for retail cannabis uses on August 14, 2019, the Planning Commission recommended to the City Council that there be

established a license category for cannabis delivery-only operations. Such businesses would be permitted to sell cannabis and cannabis products to customers only through delivery and customers would not be permitted on the premises of a delivery-only operation. The Planning Commission further recommended that cannabis delivery-only operations and microbusinesses should be limited in location to the industrial park of the City of Benicia and that there should not be a limit on the number of businesses, but that each business should be subject to review of a use permit by the Planning Commission and a public safety license (see Attachment 2, Planning Commission minutes).

The City Council subsequently considered the Planning Commission's recommendation during a public hearing on September 3, 2019 and initiated the zoning amendment by directing staff to draft the amendments for consideration by the Planning Commission and City Council. The Council directed that industrial parcels south of I-780 also be eligible locations for microbusiness and delivery-only operations (see Attachment 3, Excerpt City Council minutes).

### *Current Regulations*

On February 20, 2018, the City Council adopted ordinances to allow cannabis business uses in specified zoning districts of Benicia. Cannabis microbusiness, manufacturing, cultivation and distribution uses are allowed in Limited Industrial (IL), General Industrial (IG), Water Related Industrial (IW), and Industrial Park (IP). Cannabis testing is allowed in IL, IG, IW, IP, and Office Commercial (CO).

BMC Section 17.84.050(A)(2) limits the number of cannabis microbusinesses to one (1). Delivery of cannabis is allowed only as a component of an approved cannabis retailer or microbusiness. BMC Section 17.84.050 (Cannabis businesses – General provisions) requires a minimum distance of 600 feet from schools for all cannabis businesses.

The BMC requires all cannabis uses to apply for and receive approval of a public safety license from the Police Chief. All cannabis uses also require approval of a use permit from the Planning Commission following a public hearing. All cannabis businesses must renew their public safety license annually through the Police Department, and all cannabis use permits must be reviewed annually by staff. To date, one use permit has been approved and one Public Safety License has been issued, both to a cannabis manufacturing use at 4690 East Second Street.

## **Analysis**

### *Delivery-Only Operations*

The proposed cannabis delivery-only use would allow for non-storefront retail delivery of cannabis from industrial districts. These uses would be subject to approval of a use permit and public safety license, consistent with all other cannabis uses. The proposed amendments would not establish a limitation on the number of cannabis delivery-only retailer uses.

The proposed amendments would add Delivery-Only Operation to the list of cannabis uses permitted in Industrial Districts (BMC Chapter 17.32). Cannabis Delivery-Only Operations would also be added to the list of cannabis permit types provided in BMC Section 17.84.050.A.

The Municipal Code currently contains regulations for Delivery Operations in BMC Section 17.84.100.F. These requirements would still apply to retailers and microbusinesses engaged in the delivery of cannabis and cannabis products. These requirements would now also apply to Delivery-Only Operations. Further, the amount of cash and/or cannabis products that may be carried at any one time would be increased from \$3,000 to \$5,000 in accordance with the current State regulations.

#### *Microbusiness Operations*

Currently, one microbusiness operation may be permitted in Benicia subject to approval of a use permit and public safety license. The proposed amendments would remove the limitation on the number of microbusiness uses and would not modify zoning districts in which these uses may be allowed. The proposed amendment would align with the permitting for other cannabis uses in Benicia: there is no limitation on the number of licenses that may be granted for cultivation, manufacturing and distribution.

#### **Consistency with the General Plan**

The proposed amendments to the Benicia Municipal Code are consistent with the following Goals and Policies of the Benicia General Plan:

- Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
  - Program 2.5.C: Evaluate future uses on a cost/revenue basis, taking into account economic diversity for the long term and environmental and community costs and benefits.
- Goal 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia.
  - Policy 2.6.1: Preserve industrial land for industrial purposes and certain compatible “service commercial” and ancillary on-site retail uses.
  - Policy 2.6.2: Other land uses should not adversely affect existing industrial and commercial land uses.
- Goal 2.11: Encourage the retention and continued evolution of the lower Arsenal into a historic/cultural/commercial/industrial center of mutually compatible uses.
  - Policy 2.11.1: Retain and expand the mix of compatible and balanced uses in the lower Arsenal area.
- Goal 2.13: Support the economic viability of existing commercial centers.

- Policy 2.12.1: Direct new commercial ventures first, towards Downtown, and second, to other existing economic centers (instead of dispersing resources to new areas).
- Goal 4.4: Reduce the incidence of substance abuse and strive for a drug- free community.
- Goal 4.6: Prevent and reduce crime in the community.

### **California Environmental Quality Act**

The proposed project is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060, subd. (c)(2) because it 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.

### **Next Steps**

#### *Solano Airport Land Use Commission*

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The airport land use commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The City of Benicia anticipates that the proposed amendments will be heard by the ALUC in October 2019; however, a hearing date has not yet been set. The purpose of the hearing would be to evaluate the consistency of the proposed zoning amendments with the Travis Air Force Base Airport Land Use Plan.

#### *Benicia City Council*

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.

**ATTACHMENTS:**

1. Draft Resolution with Exhibit A
2. Planning Commission Minutes, August 14, 2019
3. Excerpt City Council Minutes, September 3, 2019

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