

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 17.32 (I INDUSTRIAL DISTRICTS) AND CHAPTER 17.84 (CANNABIS REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE PERTAINING TO CANNABIS DELIVERY-ONLY AND MICROBUSINESS OPERATIONS, AND FINDING THE 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, the Planning Commission, at a special meeting on August 14, 2019, recommended initiation of an amendment to the Cannabis regulations to establish a license category for delivery-only operations and eliminate the cap on licenses for cannabis microbusiness operations; and

WHEREAS, the City Council at a regular meeting on September 3, 2019 initiated the zoning amendment and directed that delivery-only and microbusiness uses be authorized in Industrial Districts and further directed that the regulations for cannabis delivery uses be modified to limit the value of cash and/or cannabis within the delivery vehicle to five-thousand dollars (\$5,000) consistent with State statute; and

WHEREAS, the proposed amendments to Benicia Municipal Code Chapter 17.32 and Chapter 17.84 reflect the City Council direction provided on September 3, 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.
3. The proposed amendments recommended by the Planning Commission are consistent with the City's General Plan.
4. The project is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15060 of the CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect change in the

environment, and pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia does hereby recommend that the City Council of the City of Benicia adopt the ordinance included as Exhibit A to this resolution, amending Chapter 17.32 (I Industrial Districts) and Chapter 17.84 (Cannabis Regulations) of Title 17 (Zoning) of the Benicia Municipal Code.

On motion of Commissioner _____ and seconded by Commissioner _____, the above Resolution is introduced and passed by the Planning Commission of the City of Benicia at a regular meeting of the Commission held on the 16th day of September 2019 and adopted by the following vote:

Ayes: Commissioners

Noes: Commissioners

Absent: Commissioners

Abstain:

Kari Birdseye, Chair

Date

CITY OF BENICIA

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.32 (I INDUSTRIAL DISTRICTS) AND CHAPTER 17.84 (CANNABIS REGULATIONS) OF TITLE 17 (ZONING), 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, the Planning Commission, at a special meeting on August 14, 2019, recommended initiation of an amendment to the Cannabis regulations to establish a license category for delivery-only operations and eliminate the cap on licenses for cannabis microbusiness operations; and

WHEREAS, the City Council at a regular meeting on September 3, 2019 initiated the zoning amendment and directed that delivery-only and microbusiness uses be authorized in Industrial Districts and further directed that the regulations for cannabis delivery uses be modified to limit the value of cash and/or cannabis within the delivery vehicle to five-thousand dollars (\$5,000) consistent with State statute; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on October 2 and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to cannabis delivery and microbusiness uses to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. _____ on October 15, 2019.

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

Section 1. Section 17.32.020 (IL, IG, IW and IP districts – Land use regulations) of Chapter 17.32 (Industrial Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to add the following use in alphabetical order (deletions in ~~striketrough~~, additions in underline):

EXHIBIT A

IL, IG, IW and IP Districts: Land Use Regulations

- P – Permitted
- U – Use Permit
- L – Limited (See “Additional Use Regulations”)
- – Not Permitted

	IL	IG	IW	IP	Additional Regulations
* * *					
Other Uses					
Cannabis Cultivation Operation	U	U	U	U	(O)
<u>Cannabis Delivery-Only Operation</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>(O)</u>
Cannabis Distribution	U	U	U	U	(O)
Cannabis Manufacturing Operation	U	U	U	U	(O)
Cannabis Microbusiness	U	U	U	U	(O)
Cannabis Testing Laboratory	U	U	U	U	(O)

Section 2. Chapter 17.84 (Cannabis) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows (deletions in ~~striketrough~~, 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, safety, and welfare of the residents of the city of Benicia. The regulations in this chapter are meant to ensure compliance with the Compassionate Use Act, the Medical Marijuana Program Act, and the Medicinal and Adult Use Cannabis Regulation and Safety Act (hereinafter the “state cannabis laws”) and are not intended to and do not interfere with a patient’s right to use medical cannabis as authorized by the state cannabis laws. Nor do these regulations criminalize the possession or cultivation of cannabis for medical or nonmedical purposes as permitted by the state cannabis laws. Cannabis businesses within the city must comply with all provisions of the Benicia Municipal Code for obtaining permits for a cannabis business and must comply with the state cannabis laws and all other applicable local and state laws. (Ord. 18-03 § 1).

17.84.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

“Applicant” means a person who is required to file an application for a cannabis business under this chapter, including an individual owner, managing partner, officer of a corporation, or any other dispensary operator, management member, employee, or agent of a cannabis business.

“Cannabis” shall have the meaning set forth in Business and Professions Code Section 26001(f) and as subsequently amended.

“Cannabis business” shall include:

1. Any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity takes place.
2. Any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license under Business and Professions Code Sections 26000 and following, including but not limited to cannabis cultivation, cannabis distribution, cannabis manufacturing, cannabis testing and cannabis retail sales, and the operation of a cannabis microbusiness.

“Cannabis product” shall have the same meaning as in Health and Safety Code Section 11018.1.

“Canopy” means all areas occupied by any portion of a cannabis plant, encompassing all vertical planes (i.e., stacking of plants), whether contiguous or noncontiguous on any one site. The canopy shall be measured by taking the longest length and widest width of existing plants (including all gaps, walkways, and open areas between plants) and multiplying the longest length by the longest width to get the area of the cannabis canopy. Each level of a stacked cultivation will be calculated as a separate canopy.

“Childcare center” means a licensed day care facility that provides nonmedical care to children under 18 years of age on a less than 24-hour basis, and includes infant centers, nursery schools,

preschools, extended day care facilities, large family day care homes, and school age child care centers.

“Commercial cannabis activity” shall include the cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

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

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer or patient. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“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.

“Learning center” means a facility that provides appointment- or classroom-based tutoring, test preparation, drivers’ education, instruction in science, technology, engineering, arts and math (STEAM), and similar instruction for school-aged youth, and state-licensed adult day programs for individuals with developmental or physical disabilities.

“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.

“Public Park” means an area of land, owned by a public agency, including local, state and/or federal entities, that provides outdoor recreation facilities and programming or provides open space recreational opportunities.

“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, consistent with curriculum content standards adopted by the California State Board of Education, 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; California Water Code Section 13276; all state regulations adopted pursuant to MAUCRSA; any license issued pursuant to MAUCRSA; and all other applicable laws of the state of California regulating cannabis or cannabis products.

“Testing laboratory” means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products. (Ord. 18-03 § 1).

“Youth Center” shall have that meaning set forth in Section 11353.1 of the Health and Safety Code, as that section may be amended.

17.84.030 Residential cultivation of cannabis.

A. No more than six living cannabis plants for personal use may be cultivated at an individual residential unit. Cultivation must not be visible from a public place, including a public right-of-way, and shall only occur:

1. Inside an occupied and inhabited dwelling unit; or
2. Inside a fully enclosed, locked, and secured accessory structure to an occupied and inhabited dwelling unit located in the rear yard or side yard of the same lot where there is (a) no visual or minimal olfactory evidence of cultivation detectable from the public right-of-

way or from adjoining properties, (b) the structure is placed at least five feet from the rear yard and side yard property lines, and (c) the structure is no more than 10 feet tall.

B. The drying and processing of cannabis for personal use shall only occur in a fully enclosed structure and shall not be visible from a public place, including a public right-of-way.

C. Persons cultivating cannabis in a residence shall comply with all applicable building code requirements set forth in the Benicia Municipal Code, there shall be no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of cannabis cultivation, and the cannabis cultivation shall comply with Health and Safety Code Section 11362.2(a)(3) as it may be amended. (Ord. 18-04 § 1).

17.84.040 Cannabis businesses – Use permit and license required to operate.

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon property located within the city, the operation of a cannabis business unless that person has first obtained and continues to maintain in full force and effect a valid use permit for commercial cannabis activity issued by the city for that property and a valid cannabis public safety license issued by the city to the owner and/or operator of the cannabis business, pursuant to Chapter 9.60 BMC. (Ord. 18-03 § 1).

17.84.050 Cannabis businesses – General provisions.

A. Cannabis Businesses Allowed.

1. Only those types of cannabis businesses set forth in this section shall be allowed within the city. Any and all cannabis businesses, activities, nonprofits, associations, enterprises, collectives, cooperatives or dispensaries not expressly described herein are expressly prohibited.

- a. Cannabis retailer (“retailer”).
- b. Cannabis manufacturing operation (“manufacturer”).
- c. Cannabis testing laboratory (“testing labs”).
- d. Cannabis distributor (“distributor”).
- e. Cannabis cultivation operation (“cultivator”).
- f. Cannabis microbusiness (“microbusiness”).
- g. Cannabis delivery-only operations (“delivery”).

2. No more than one cannabis retailer is permitted in the city.

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

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

~~4~~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.

a. Cannabis Retailers – Applications Received Prior to September 10, 2018.

Notwithstanding subsection (A)(1) of this section, cannabis retail businesses whose retail cannabis proposals were received prior to September 10, 2018, 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 application for a cannabis business is deemed complete by City staff. 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.

b. Cannabis Retailers – Applications Received After September 10, 2018.

Notwithstanding subsection (A)(1) of this section, cannabis retail businesses whose cannabis use permit and/or public safety license applications were received after September 10, 2018, may not operate on a parcel or lot located within 600 feet of a child care center, youth center, learning center, any residential district of the City, or public park, any of which were in existence at the time the use permit application for a cannabis business is deemed complete by City staff. 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. All Other Cannabis Businesses. Notwithstanding subsection (A)(1) of this section, a cannabis business manufacturing operation, testing laboratory, distributor, cultivation operation, microbusiness or delivery-only operation 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 application for a cannabis business is deemed complete by City staff. 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).

17.84.060 Use permit for commercial cannabis activities – Requirements.

A. Except as set forth in this chapter, use permits for commercial cannabis activities shall be processed in accordance with Chapter 17.104 BMC (Use Permits and Variances). The city council shall establish any necessary use permit procedures, by resolution, specific to commercial cannabis activities.

B. Use Permits for Retail and Microbusinesses. Because only one cannabis retailer and one cannabis microbusiness is permitted, an application period for ~~these~~ this businesses shall be established to allow the selection of the best applicants. The competitive process for selection of the best applicants to be placed on the qualified registration list shall be established by resolution of the city council.

C. Use permit for applications for cannabis retailers shall include a statement as to whether the use will include delivery of cannabis and cannabis products to locations outside the cannabis retail facility. If delivery services will be provided, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this chapter and state law.

D. The planning commission shall review and approve or deny all complete use permit applications for commercial cannabis activities by utilizing the criteria for approval or denial set forth in this chapter and by separate resolution of the city council. The planning commission shall only approve as many use permits for cannabis applications as permitted by BMC 17.84.050(A). After reviewing an application, the planning commission shall determine whether to issue the use permit for commercial cannabis activities with conditions, or deny the use permit for commercial cannabis activities.

E. Imposition of Permit Fees. Every application for a use permit for commercial cannabis activities shall be accompanied by an application fee (in an amount established by resolution of the city council) at an amount calculated to recover the city's full cost of reviewing and issuing

said permit and the filing of a complete required application pursuant to this chapter. The application fee shall be in addition to any other fees or costs, such as business license fees, permit fees, fingerprinting, photographing or background check, as may be imposed by the city or other governmental agencies. (Ord. 18-03 § 1).

17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.

A. Criteria for Issuance. In addition to the findings required by Chapter 17.104 BMC, the planning commission, or the city council on appeal, shall make all of the following findings in determining whether to grant, modify, or deny a use permit for any cannabis business:

1. The cannabis business applicant has been placed on the cannabis qualified registration list.
2. The use permit for cannabis application is complete and the applicant has submitted all information and materials required.
3. 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 a school.
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.

2. The manufacturing operation includes adequate quality control measures to ensure any cannabis product manufactured at the site meets industry standards.

3. The manufacturing operation does not pose a significant threat to the public or to neighboring uses from explosion or from the release of harmful gases, liquids, odors or substances.

C. Supplemental Findings – Cannabis Testing Laboratory. 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 testing lab:

1. The owners, permittees, operators, and employees of the testing lab will not be associated with any other form of commercial cannabis activity.

2. The testing lab is accredited by an appropriate accrediting agency as approved by the state and further described in California Code of Regulations, Title 16, Section 5702 and as it may be amended.

3. The testing lab operating plan demonstrates proper protocols and procedures for statistically valid sampling methods and accurate certification of cannabis and cannabis products for potency, purity, pesticide residual levels, mold, and other contaminants according to adopted industry standards.

D. Criteria for Denial. The planning commission shall deny an application that meets any one of the following criteria:

1. Any supervisor, employee, or person having a 10 percent or more financial interest in the cannabis business has been convicted of a felony or a drug-related misdemeanor reclassified by California Penal Code Section 1170.18 (Proposition 47) within the past 10 years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;
2. Any person who is listed on the application or is an owner or operator, is a licensed physician making patient recommendations for medical cannabis pursuant to Health and Safety Code Section 11362.7;
3. Any person who is listed on the application or is an owner or operator is less than 21 years of age;
4. The proposed cannabis business does not comply with the provisions of this chapter or state cannabis laws; and
5. The planning commission is unable to make a required finding contained in this chapter.

E. Planning Commission Determination. If the planning commission denies the application, the planning commission shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to BMC 17.84.080. (Ord. 18-08 § 1; Ord. 18-03 § 1).

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.

4. Minors. Persons under the age of 21 years shall not be allowed on the premises of a cannabis business unless they are a qualified patient or a person with an identification card as those phrases are defined by Health and Safety Code Sections 11362.79(c) and (f). Persons under the age of 18 years shall not be allowed on the premises of a cannabis business unless they are accompanied by a parent or guardian at all times. The entrance to cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

5. Every cannabis business shall display, at all times during its regular business hours, the use permit for cannabis and cannabis public safety license issued for such cannabis business in a conspicuous place so that the same may be readily seen by all persons entering the cannabis business.

6. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises of the cannabis business that sells alcoholic beverages, or otherwise allow alcoholic beverages to be possessed, distributed, or consumed on the premises.

7. No cannabis business shall be a retailer of tobacco products.

8. A cannabis business shall be considered a commercial or industrial use, as the case may be, relative to the city's parking requirements in Chapter 17.74 BMC in an amount most

similar to the uses contained in the parking requirements as determined by the community development director.

9. Smoking, ingesting, or consuming cannabis on the premises of a cannabis business shall be prohibited. A notice prohibiting smoking, ingesting and consuming cannabis shall be clearly and legibly posted in the cannabis business and shall not obstruct the entrance or windows.

10. Operation of a cannabis business shall not result in illegal redistribution or sale of cannabis obtained, or the use or distribution in any manner which violates state cannabis law or this chapter.

11. Odors. All cannabis businesses shall be sited and/or operated in a manner that prevents cannabis odors from being detected off site. All structures utilized for indoor cannabis cultivation shall be equipped and/or maintained with sufficient ventilation controls (e.g., carbon scrubbers) to eliminate nuisance odor emissions from being detected off site.

12. Site Plan.

a. The site plan shall include a lobby waiting area at the entrance to the cannabis business used to receive and screen customers (if applicable), employees, patrons, and guests of the cannabis business and a separate and secure designated area for dispensing cannabis (if applicable) and conducting other operations of the cannabis business.

b. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

13. Cannabis businesses 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.

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).

8. A cannabis retail operation that delivers cannabis and/or cannabis products shall also be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (1) through (7) of subsection (F) of this section.

C. Supplemental Conditions – Manufacturers. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis manufacturing operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Manufacturers shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to the members of the general public.

2. Manufacturers 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.

3. Standard of Equipment. Manufacturing, processing and analytical testing devices used by manufacturers 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 official and fire code official.

4. 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.

5. Edible Product Manufacturing. Manufacturers that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permit holders shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

D. Supplemental Conditions – Cultivators. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis cultivation operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Cultivators shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to members of the general public.
2. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.
3. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.
4. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).
5. Screening. Cannabis plants shall not be easily visible from off site.
6. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.060.

E. Supplemental Conditions – Microbusinesses.

1. ~~The retail aspect of microbusinesses shall be limited to deliveries only and a microbusiness. No on-site customers are permitted.~~ A microbusiness that engages in retail sales of cannabis and/or cannabis products shall sell cannabis and/or cannabis products to customers exclusively through delivery. The premises of a microbusiness shall not be open to the public.

If the microbusiness delivers cannabis and/or cannabis products, the microbusiness shall be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (1) through (7) of subsection (F) of this section.

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. Permittees shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

11. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

12. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.

13. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

14. Screening. Cannabis plants shall not be easily visible from off site.

15. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.060.

F. Supplemental Conditions – Delivery-Only Operations. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis Delivery-Only Operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

~~1. Delivery of cannabis to locations outside a permitted cannabis retailer shall only be permitted in conjunction with a cannabis retail facility that has a physical location and a retail storefront in Benicia open to the public or a licensed and permitted retail location outside of Benicia. A cannabis retailer shall not conduct sales exclusively by delivery.~~

21. Delivery of cannabis, whether from a facility located within or outside of Benicia, requires compliance with Chapter 9.60 BMC including obtaining the public safety license.

32. Any person who delivers cannabis shall have in possession a copy of all licenses and permits required by the state of California and the city.

43. A licensed cannabis business which is authorized to conduct deliveries in Benicia shall provide to the chief of police a list of all vehicles to be used for delivery of cannabis and cannabis products, including the vehicle's make, model, year, license plate number and vehicle identification number. The cannabis business shall update the list prior to any vehicle being added to or removed from service.

54. Payments may be made via credit card, check, other means of cashless payment, or by cash. Customers must be provided the option of making payments by noncash payments. Delivery drivers shall not carry more than a combined total of ~~\$3,000~~ \$5,000 in cash and/or cannabis or cannabis products at any one time while delivering cannabis and/or cannabis products under this chapter.

65. Delivery vehicles shall not be marked or otherwise identified with advertisements, the name of the cannabis business, or any other distinctive marking associated with cannabis.

76. Delivery of cannabis shall be made directly to the residence or business address of the designated recipient. Deliveries to any other location are prohibited.

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

8. Delivery-only Operations shall sell cannabis and cannabis products to customers exclusively through delivery. A Delivery-only Operation must have physical premises to store the cannabis goods for delivery. The premises of a Delivery-only Operation shall not be open to the public.

G. 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).

17.84.130 No vested rights.

No person(s) shall have any vested rights to any permit, right or interest under this chapter, regardless of whether such person(s) cultivated, sold, distributed or otherwise engaged in acts related to the use of cannabis prior to adoption of the ordinance codified in this chapter. (Ord. 18-03 § 1).

17.84.140 Public nuisance.

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city. (Ord. 18-03 § 1).

Section 3. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County Clerk.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

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