

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 617 (Zoning Text Amendment RZ-6-16) - Municipal Code amendments to regulate personal cultivation of medicinal and non-medicinal cannabis and medicinal and non-medicinal cannabis businesses.

DATE: July 20, 2017

City Council Goals:

To provide for effective and efficient delivery of City services. (Goal #1)

Purpose:

To amend various sections of, and add a new chapter to, Title 17, Zoning, of the Brisbane Municipal Code (BMC) and to add a new chapter to Title 8, Health and Safety, to regulate personal cultivation of medicinal and non-medicinal cannabis, and regulate medicinal and non-medicinal cannabis businesses.

Recommendation:

That the City Council reintroduce Ordinance No. 617.

Background:

On June 1, 2017, the City Council held a public hearing to consider proposed Municipal Code amendments to regulate the personal cultivation of medicinal cannabis and certain medicinal cannabis businesses in Brisbane. The City Council also considered personal cultivation of non-medicinal cannabis and non-medicinal cannabis businesses as stipulated in the Adult Use of Marijuana Act (AUMA). The June 1, 2017 staff report is attached for reference.

At that meeting, the City Council directed staff to amend Draft Ordinance 617 to expand the Planning Commission-recommended cannabis business regulations to include non-medicinal cannabis manufacturing, distribution (includes transporting and warehousing), and testing (research and development). The Council also directed staff to amend the Draft Ordinance to allow both indoor and outdoor personal cultivation of non-medicinal cannabis on residential properties subject to the same performance standards drafted for personal cultivation of medicinal cannabis.

The City Council further directed staff to bring back additional information regarding the proposed State budget trailer bills intended to unify medicinal and non-medicinal cannabis business regulation. The Council also requested additional information about limitations on the location of cannabis businesses, the type of retail operations that could be licensed (e.g., walk-up storefronts vs. delivery only), and how the City could potentially obtain local revenue from cannabis businesses. This information is provided in the discussion below.

Discussion:

Revised Draft Ordinance 617: Adult Use Personal Cultivation and Business Regulations

Draft Ordinance 617 was revised to reflect the Council’s direction to expand the proposed personal cultivation and business regulations to include adult use (non-medicinal) uses. As drafted, Ordinance 617 contains the following provisions:

- Adopt regulations and performance standards for personal cultivation of medicinal **and non-medicinal** cannabis on residential properties. The draft Ordinance has been revised to apply the draft performance standards for personal medicinal cannabis cultivation to non-medicinal cannabis (shown in highlighted text in the draft Ordinance, and in purple in the redline text).
- Adopt regulations and performance standards for medicinal **and non-medicinal** cannabis businesses, limited to distributors (including transporting and warehousing), manufacturers, and testing laboratories, as conditional or permitted uses, as applicable, in the TC-1, SCRO-1, and SP-CRO Districts. The draft Ordinance has been revised to apply the draft business standards for medicinal cannabis businesses to non-medicinal cannabis businesses (shown in highlighted text in the draft Ordinance, and in purple in the redline text).
- Ban all cannabis retailers in the City.
- Allow cannabis deliveries originating from retailers outside of the City to occur on City streets.

The Draft Ordinance was also revised to reflect updated terminology for certain terms (shown in highlighted text in the Draft Ordinance, and in purple in the redline text) to be consistent with new terminology in Senate Bill 94, discussed in more detail below.

Senate Bill (SB) 94: Medicinal and Adult-Use Cannabis Regulation and Safety Act

On June 27, 2017, Governor Brown signed Senate Bill (SB) 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). SB 94 establishes a unified Statewide regulatory system for the commercial cultivation, production, and sale of medicinal (medical) and non-medicinal (“adult use”) cannabis, detailed below.

Unified Business Licensing Procedures

Prior to adoption of SB 94, two different licensing systems were established by the Medical Cannabis Regulation and Safety Act (MCRSA), which regulated medicinal cannabis businesses,

and the Adult Use of Marijuana Act (AUMA), which regulated non-medicinal (“adult use”) cannabis businesses. SB 94 eliminates the separate licensing systems and creates a unified licensing system for six commercial cannabis business categories, as detailed in the table below.

With the exception of testing laboratory licenses, which may be used to test medicinal and non-medicinal cannabis and cannabis products, all licenses will be designated “M” or “A” license types according to whether the business is dedicated to medicinal cannabis or cannabis products (“M”) or non-medicinal, adult use products (“A”). Except for testing laboratories, licensees may hold multiple licenses, but each physical business premise may only be associated with one license type. For example, a business owner may be granted distributor and cultivation licenses, but the premises for cultivation and distribution must be physically separate and distinct. A microbusiness license is the only license type that would allow multiple business categories to be conducted on the same site.

Table 1. MAUCRSA Licensing Structure for Medicinal and Adult Use Cannabis Businesses

Business Category	License Types Available	Business Description
Cultivation	14 license types	Small, medium, and large-scale indoor, outdoor, and combined indoor/outdoor commercial (non-personal) cultivation of cannabis.
Manufacturing	2 license types	Production, preparation, propagation, or compounding of cannabis or cannabis products.
Testing laboratory	1 license type	A laboratory or facility that tests of cannabis or cannabis products.
Retailer	1 license type	Retail sale and delivery of cannabis or cannabis products to customers. A retailer’s premises may be closed to the public and sales may be conducted exclusively by delivery. Cities may regulate whether retailer may be open to the public.
Distributor	1 license type	Procurement, sale, and transport of cannabis and cannabis products between other licensed businesses.
Microbusiness	1 license type	A vertically integrated business that includes small-scale cultivation, distribution, manufacturing, and retail operations.

The new unified licensing system consolidates distributor and transporting license types that were previously distinct in the MCRSA and AUMA regulations. It also replaces the term “dispensary” with “retailer,” and replaces the term “medical” with “medicinal.” As noted previously, Draft Ordinance 617 has been revised to reflect this new terminology.

SB 94 also unifies the State’s licensing procedure in regards to consultation with local governments. Previously, the MCRSA and AUMA contained slightly different procedures for the State’s review of medicinal and non-medicinal cannabis business license applications. These procedures are discussed in the June 1, 2017 agenda report, attached for reference. Under SB 94, one procedure is established for both medicinal and non-medicinal cannabis businesses whereby the State will contact a local jurisdiction upon receiving an application for a license, and the local jurisdiction must confirm to the State whether or not the business is permitted. This simplified

system ensures that local jurisdictions are an integral part of the application approval process. Cities wishing to regulate or ban cannabis businesses must still adopt such regulations prior to the State licensing commencing in January 2018.

Cannabis Business Location Restrictions

The MAUCRSA also provides a unified prohibition of **any** medicinal and non-medicinal cannabis business within 600 feet of a school, day care, or youth center. Local jurisdictions may adopt more stringent restrictions, but may not establish lesser restrictions. These restrictions do not apply to individuals cultivating cannabis for personal medicinal or adult use. The figures below show the State's 600-foot radius applied to Brisbane Elementary School and Lipman Middle School. Any property outlined in yellow is included in the 600-foot measurement, even if part of the property lies outside of the 600-foot radius.

Figure 1. 600-Foot Radius: Brisbane Elementary School



Figure 2. 600-Foot Radius: Lipman Middle School



Within Crocker Park, the 600-foot radius would capture almost all properties along Park Place, all properties on Park Lane, and properties on the south side of Valley Drive in the 200, 300, and 400 blocks. The City's primary retail corridors along Visitacion Avenue (NCRO-2 District) and in the Brisbane Village Shopping Center (NCRO-1 District) fall outside of the State-mandated 600-foot restriction for cannabis businesses.

Advertising cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, K-12 school, playground, or youth center is also prohibited under the MAUCRSA. The City's only billboard advertising sign, located at 3745 Bayshore Boulevard, is located within 1,000 feet of the Community Park playground and is thus subject to the advertising ban.

Personal Cultivation

SB 94 does not materially impact the existing personal cultivation regulations for either medicinal or non-medicinal cannabis, including the requirement for a physician's recommendation and identification card for medicinal cannabis patients. Those regulations are discussed in detail in the June 1, 2017 agenda report, attached for reference.

Cannabis Retailer Regulations

Under the new MAUCRSA regulations, retail cannabis businesses that sell cannabis or cannabis products directly to the consumer are classified as "retailers" (formerly referred to as "dispensaries"). A retailer must have a physical premise where its business activities take place. However, the MAUCRSA explicitly states that retailers may close their store to the public and sell their products exclusively by delivery. Deliveries may only originate from a licensed retailer.

The attached Draft Ordinance prohibits cannabis retail sales. Should the Council determine that it wants to permit cannabis retailers, it is recommended that Council consider acceptable locations (e.g., appropriate zoning districts, minimum distances from schools or residential zones, etc.) and operating standards (e.g., whether storefront sales would be allowed).

Taxation

The MAUCRSA retains the 15% State excise tax imposed by the AUMA for medicinal and non-medicinal cannabis retail sales, borne by the purchaser, though it slightly modifies the method of calculating the excise tax based on the type of transaction occurring (traditional retailer to customer sale vs. sales between licensed businesses). The MAUCRSA also retains the cultivation tax imposed by the AUMA, with slight modifications to the parties and transactions subject to the tax. It should be noted that personal cultivation of cannabis is not subject to the cultivation tax.

The MAUCRSA mandates that the State establish a safe and viable method to collect cash payments for taxes and fees related to the regulation of cannabis activity throughout the state, no later than January 1, 2018. Any cannabis tax revenues collected by the State will be located in a dedicated Cannabis Tax Fund, separate from the State's General Fund.

The MAUCRSA did not significantly alter the AUMA's taxation distribution and does not preempt local taxation. Other than its normal business license tax, the City's current licensing and taxing structure does not provide for the imposition of other taxes, licenses, or fees on

cannabis businesses. Any new local taxes would need to comply with voter approval under Proposition 218. As before, local governments that ban cultivation or retail sales of cannabis are not eligible to receive State cannabis tax revenues for local programs addressing enforcement or other programs related to the legalization of cannabis, as defined in Section 34019 of the State Revenue and Taxation Code.

If the Council is interested in potentially adopting a business license fee or other tax on cannabis businesses, it is recommended that City Council action on draft Ordinance 617 proceed separately from the taxation discussion, as it is not a land use issue.

Fiscal Impact:

None.

Measure of Success:

Adoption of regulations to allow for the personal cultivation of medicinal and non-medicinal cannabis by qualified patient and caregivers and adults 21 years or older in residential districts, and allow for certain medicinal and non-medicinal cannabis businesses to operate in the City's commercial districts in a manner that complies with all applicable State regulations, meets the community's needs, and protects the health, safety, and welfare of Brisbane residents. Proactively addressing cannabis activities and businesses ensures that the City retains local land use control over such activities and businesses.

Attachments:

Revised Draft Ordinance No. 617

Revised table of redlined text

City Council agenda report from June 1, 2017 meeting



John Swiecki, Community Development Director



Clay Holstine, City Manager