

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Zoning Ordinance Provisions Pertaining to Minimum Distance of Cannabis Businesses from Schools and Daycare Facilities

DATE: January 4, 2018

### **City Council Goals:**

4. To promote economic development that stabilizes and diversifies the tax base.

### **Purpose:**

For the City Council to determine if it wishes to direct staff to initiate a zoning text amendment to consider amending Brisbane Municipal Code (BMC) Chapter 17.33 regarding the prohibition of cannabis businesses within 600 feet of a school or daycare facility.

### **Recommendation:**

That the City Council provide direction as it deems appropriate.

### **Background/Discussion:**

The City Council adopted Ordinance 617 in October 2017 to allow certain types of cannabis-related businesses to operate in the City, subject to specific permitting requirements and defined operational standards.

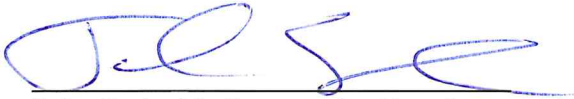
BMC Chapter 17.33 includes a requirement that new cannabis businesses be located more than 600 feet from schools, daycares, or youth centers. The July 20, 2017 City Council report regarding Ordinance 617 contains maps of this buffer as applied to Brisbane's schools and daycares (excerpts attached). As discussed in the July 20 Council report, the 600 foot buffer is consistent with State law (Business and Professions Code Section 26054, excerpts attached). However, it should be noted that State law allows local jurisdictions to specify a different radius, which could be greater or less than the 600 feet specified by the State. The method of measuring that distance is as specified in State Health and Safety Code Section 11362.768, from property line to property line.

Subsequent to adoption of Ordinance 617, a prospective cannabis business interested in locating in Brisbane has noted that the 600-foot buffer requirement represents a significant business constraint by restricting allowable locations in an industrial market (Crocker Park) with limited vacancy.

In exploring options to expand potential opportunities for cannabis businesses in Crocker Park, the Zoning Ordinance could be amended to modify, reduce, or eliminate this buffer requirement. The prospective cannabis business has expressed an interest in filing a zoning text amendment to modify this 600-foot requirement. Given that this is a broad policy matter of Citywide interest, staff felt it appropriate to bring the matter forward to the City Council before a code amendment is formally initiated. Alternatively the City Council also has the authority and discretion to initiate such an amendment.

**Attachments:**

1. City Council agenda report of July 20, 2017 (excerpts)
2. State Business and Professions Code Section 26054 (excerpts)



John Swiecki, Community Development Director



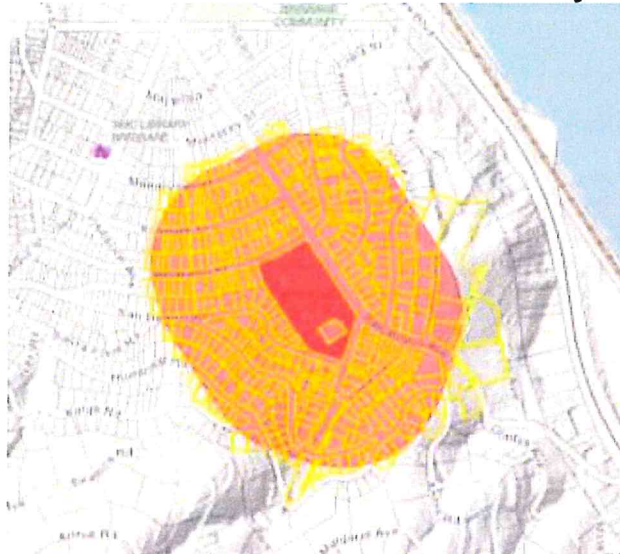
Clay Holstine, City Manager

~~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

**State of California**

**BUSINESS AND PROFESSIONS CODE**

**Section 26054**

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26054. (a) A licensee shall not sell alcoholic beverages or tobacco products on or at any premises licensed under this division.

(b) A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.

(c) It shall not be a violation of state or local law for a business engaged in the manufacture of cannabis accessories to possess, transport, purchase, or otherwise obtain small amounts of cannabis or cannabis products as necessary to conduct research and development related to the cannabis accessories, provided the cannabis and cannabis products are obtained from a person licensed under this division permitted to provide or deliver the cannabis or cannabis products.

(d) It shall not be a violation of state or local law for an agent of a licensing authority to possess, transport, or obtain cannabis or cannabis products as necessary to conduct activities reasonably related to the duties of the licensing authority.

(Amended by Stats. 2017, Ch. 27, Sec. 38. (SB 94) Effective June 27, 2017. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)