



MEMORANDUM

DATE: 2/11/2020
TO: City Council Cannabis Ad Hoc Subcommittee
FROM: John Swiecki, Community Development Director
SUBJECT: **Planning Commission Recommendations for Storefront Retail Cannabis Businesses**

Background

On June 20, 2019, the City Council initiated zoning text amendments to the City's existing cannabis business regulations to regulate storefront retail cannabis business. This included direction to the Planning Commission to allow up to four such businesses in the City's commercial districts, subject to use permit approval.

Following two public workshops on July 25 and October 24, 2019, on December 5, 2019 the Planning Commission reviewed draft zoning text amendments RZ-3-19 to allow up to four storefront retail cannabis businesses with prior approval of a use permit in the City's commercial districts and in compliance with defined operating standards (Zoning Text Amendment RZ-3-19).

Discussion

The meeting of December 5, 2019 was well-attended by the public, the majority of whom were Brisbane residents concerned with the proposed maximum number of four businesses, the location of such businesses in districts in the City's downtown area and in residential neighborhoods, or who opposed allowing storefront retail cannabis businesses in Brisbane completely. The meeting was also attended by some cannabis business industry representatives and business owners speaking in favor of the draft zoning amendments.

Ultimately, the Commission recommended the City Council approve the draft ordinance. Provisions of note include:

- Allowing a business owner with an existing use permit to apply for and operate up to one additional retail cannabis storefronts if fewer than four unique use permit applications are submitted or if an approved use permit become null and void or be revoked by the Planning Commission pursuant to BMC Chapter 17.48.
- Limiting operating hours for retail cannabis storefronts to 8 AM to 8 PM.
- Prohibiting cannabis retail storefronts and delivery businesses in the SCRO-1 zoning district.
- Allowing no more than one retail cannabis storefront in the NCRO-1 zoning district.
- Allowing no more than one retail cannabis storefront in the NCRO-2 zoning district.

Next Steps

The draft ordinance as recommended by the Planning Commission is tentatively scheduled for public hearing at City Council on March 5, 2020.

Attachments

- [December 5, 2019 Planning Commission meeting agenda report](#)

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 12/5/2019

FROM: Julia Ayres, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-3-19; NCRO-1, NCRO-2, M-1, SCRO-1, SP-CRO, TC-1, and TC-2 zoning districts;** Amendments to existing cannabis business regulations to establish cannabis storefront retail businesses as conditionally permitted uses in the City of Brisbane’s commercial zoning districts and allow a maximum of four (4) businesses citywide, subject to approval of a conditional use permit and compliance with performance and other operational standards; City of Brisbane, applicant; Various owners.

REQUEST: Zoning text amendments to update the cannabis business regulations in the Brisbane Municipal Code to regulate storefront retail cannabis businesses.

RECOMMENDATION: Adoption of Resolution RZ-3-19, recommending approval of the zoning text amendments to the City Council.

ENVIRONMENTAL DETERMINATION: Statutorily exempt per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review, and the exceptions to this categorical exemption referenced in Section 15300.2 of the CEQA Guidelines do not apply

APPLICABLE REGULATIONS: Procedures for zoning amendments are provided in BMC Chapter 17.50. The City’s zoning regulations regarding cannabis businesses are located in BMC Chapter 17.33. State regulations and administrative procedures governing cannabis businesses and the licensing thereof are located in Division 10 of the Business and Professions Code, and Division 42 of Title 16 of the California Code of Regulations.

BACKGROUND: In September 2017, the City Council adopted Ordinance 617 to allow cannabis warehousing/distribution, manufacturing, delivery-only retail, and lab testing with the approval of a Use Permit in the Crocker Industrial Park (TC-1 District), and lab testing in the Southwest Bayshore area (SCRO-1 District) with the approval of a Use Permit. Cannabis lab testing is allowed by-right (no Use Permit required) in Sierra Point (SP-CRO District). Modifications to these regulations were subsequently adopted in 2018 to reduce buffer requirements from schools and daycares and to extend allowable operating hours of these businesses (Ordinances 625 and 632).

Since the Ordinance’s adoption, the Planning Commission has approved four Use Permits for cannabis businesses in Crocker Park for cannabis distribution, manufacturing, and delivery. Two are currently operational (Caliva at 101 South Hill Drive and NorCal Cannabis at 111 South Hill Drive), and one has obtained State approval of their annual operating licenses and anticipate starting operations in early 2020.

One use permit expired as the permitted use had not commenced within one year of the use permit approval.

In March 2019, the City Council ad hoc cannabis issues subcommittee (Mayor Davis and Councilmember O'Connell) recommended the City Council consider initiating an amendment to the existing cannabis business regulations to allow limited cannabis storefront retail businesses where on-site sales are permitted. At the June 20, 2019 City Council meeting, the City Council directed staff to initiate a zoning text amendment to regulate storefront retail cannabis businesses as conditionally permitted uses in the City's commercial zoning districts, with an overall cap of four businesses Citywide.

Subsequently, the Planning Commission held two public workshops on the proposed zoning text amendments on July 25 and October 24, 2019 to consider regulatory trends in other California cities and identify the appropriate regulatory approach for Brisbane.

DISCUSSION: The attached draft ordinance proposes the following revisions to the current cannabis business regulations in the zoning ordinance to regulate storefront retail cannabis businesses, based on the City Council's direction and the Planning Commission's subsequent discussions at public workshops.

1) New and updated definitions of relevant terms

The draft ordinance would revise Chapter 17.02, Definitions, to separately define cannabis business types as distinct land uses. Currently, all cannabis business types are defined as subsets of one land use classification called "cannabis businesses." Defining the distinct types of cannabis businesses separately (e.g., cannabis distribution, cannabis manufacturing, cannabis storefront retail sales, etc.) eases implementation of changing and varying regulatory approaches unique to each business type.

2) Add cannabis storefront retail sales as conditionally permitted uses in commercial districts

The draft ordinance would add cannabis storefront retail sales as a conditionally permitted use (use permit required) in the City's commercial districts that currently allow retail sales, including:

- NCRO-1 and NCRO-2 Neighborhood Commercial Districts
- M-1 Manufacturing District
- SCRO-1 Southwest Bayshore Commercial District
- SP-CRO Sierra Point Commercial District
- TC-1 Crocker Park Trade Commercial District
- TC-2 Southeast Bayshore Trade Commercial District

The affected districts are shown in Attachment A.

3) Expand districts in which other cannabis business types may operate

Since the adoption of the City's cannabis business regulations in 2017, interested cannabis business owners have reported anecdotally to staff on the challenging leasing environment in Crocker Park, where available space has typically been larger and more expensive than needed by these types of businesses, or that property owners are precluded by federal law or prefer not to lease to cannabis businesses. Based

on the successful operation of two existing cannabis businesses in Crocker Park, and the relative scarcity of leasable space for such businesses in Crocker Park, it would be prudent to consider whether cannabis businesses other than storefront retail may be appropriate in other districts.

The draft ordinance would allow delivery retail sales as conditionally permitted uses (use permit required) in the SCRO-1, M-1, and TC-2 districts. Additionally, the draft ordinance would allow cannabis distribution, manufacturing, and warehousing uses as conditionally permitted uses (use permit required) in the M-1 district, which allows similar and compatible uses.

4) Establish use permit procedures and performance standards for cannabis storefront retail

The Planning Commission discussed regulatory approaches in depth at their July 25 and October 24 public workshops and reached a general consensus that a use permit would be the appropriate regulatory tool, as opposed to a competitive licensing process followed by a use permit process. Unlike a competitive licensing process, where dozens or hundreds of businesses may prospectively enter into the competition for a limited number of licenses, the use permit process requires applicants to secure a physical location and obtain property owner authorization first. Based on staff's knowledge of the available leasable inventory in the commercial districts under consideration, the proposed process is sufficient to manage the expected number of applications.

The draft ordinance stipulates that only one use permit application may be submitted by any business owner (even if they hold only partial ownership), and a business owner may operate no more than one cannabis storefront retail business. This provision is intended to prevent monopolization of both the land use approval process and actual business operation after the land use is approved, and allow for a greater opportunity for prospective businesses.

While staff does not expect a deluge of applications, there are provisions in the ordinance setting forth how multiple applications filed at the same time will be processed. Specifically, as described in Section 17.33.045 of the draft ordinance, staff will process use permit applications in the order in which they are deemed complete pursuant to the Permit Streamlining Act. To be deemed complete, the applications must fully respond to all of the application criteria outlined in the ordinance, including:

- A business operations plan describing procedures for employee training and customer education, the business marketing strategy, proposed improvements to the exterior of the premises, proposed community benefits, a proposed operational budget, proof of capitalization, and a business operations financial pro forma. All other components of a business operations plan applicable to all other types of cannabis businesses would also be required.
- A security plan describing establishing storefront entry controls, security personnel requirements, limited access areas accessible only to authorized individuals, secure storage areas, a cash management plan, window treatments, and other information as required for all other types of cannabis businesses. The Police Department has recommended specifically that stores in the NCRO-1 and NCRO-2 districts (Visitacion Avenue and the Brisbane Village Shopping Center) have internal "mantraps" whereby security personnel and screening occurs within the building, and that stores in the other zoning districts have uniformed security stationed outside the building to conduct security screening.
- A safety plan describing the fire prevention, suppression, HVAC and alarm systems.

- A statement certifying that the business owner(s) and managerial employees have not been convicted of an offense that is substantially related to the qualifications, functions, or duties of operating a cannabis storefront retail business, as defined by the State Bureau of Cannabis Control or successor agency. Convictions of such offenses shall be confirmed through a criminal background check conducted by the police chief or their designee.

Once four applications have been deemed complete, all other pending applications would be formally put on hold until the Commission has acted on the complete applications. Should one or more applications be denied by the Commission, the pending applications would be reactivated until one or more are deemed complete. Once four use permits have been issued, the City would stop accepting use permit applications for cannabis storefront retail businesses. Should a business issued a use permit fail to commence operation within a year, rendering the use permit void or such a permit is revoked at some time in the future, the City would open the application process again.

The draft ordinance would also require businesses issued use permits to submit an annual report to the Community Development Director and Police Chief regarding compliance with the conditions of approval and performance standards for the business. This annual report would provide a regular opportunity for staff to evaluate the business and flag a permit for potential review by the Commission should compliance prove to be an ongoing issue.



Julia Ayres, Senior Planner



John Swiecki, Community Development Director

ATTACHMENTS:

- A. Annotated zoning map showing affected districts
- B. Draft Resolution RZ-3-19 including the draft ordinance
(not included in 02/20/20 subcommittee report)

Proposed conditional use: M-1 District

Proposed conditional use: TC-1 District

Proposed conditional use: NCRO-1 District

Proposed conditional use: TC-2 District

Proposed conditional use: SP-CRO District

Proposed conditional use: NCRO-2 District

Proposed conditional use: SCRO-1 District

