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COUNCIL MEETING OF:

FEB 11 2020

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

## REVISED AGENDA MATERIAL

**Meeting Date:** February 11, 2020

**Item Number:** 2

**Item Description:** Ordinances 7686-7690

**Revision Submitted By:** Mayor Arreguin, Councilmember Wengraf, Vice Mayor Hahn, Councilmember Droste

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

These short and simple suggested amendments are important to ensure health and wellbeing of the community.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revision agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

**12. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action: Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

**Action:** M/S/C (Arreguin/Kesarwani) to suspend the rules and extend the meeting to 11:30 p.m. and hold over Item 6 and Item 15 to February 11, 2020.

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Robinson, Droste, Arreguin; Noes – Davila, Wengraf; Abstain – None; Absent – Hahn.

**Public Testimony:** The Mayor opened the public hearing. 44 speakers.

**Action:** M/S/C (Arreguin/Kesarwani) to approve the Staff recommendation to adopt the first reading of five ordinances (1. Ordinance No. 7,686-N.S. amending BMC Title 12 (Health and Safety); 2. Ordinance No. 7,687-N.S. amending BMC Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising); 3. Ordinance No. 7,688-N.S. amending BMC Chapter 23C.25 (Cannabis Uses); 4. Ordinance No. 7,689-N.S. amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts); 5. Ordinance No. 7,690-N.S. amending BMC Sub-Title F (Definitions)) to amend the Berkeley Municipal Code which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

With the following amendments:

- Page 17, Section 12.22.035

Approve Alternative A: Staff Recommendation to omit language

- Page 18, Section 12.22.040.B  
Modify the hours of operation to conform to state law. New language would read as follows:

~~12.22.040.B Retailers shall only allow Customer visits between the hours of 9:00 a.m. and 9:00 p.m.~~ **Retailers may be open to the public and conduct deliveries according to the hours of their respective zoning districts, except as restricted by State law (Code of Regulations Title 16, Division 42, Chapter 3, Section 5403).**

- Page 19, Section 12.22.040.E  
Amend Subsection 7 to read as follows:

**7. All Retailers must prominently display a notice as set forth in subsection 12.22.040E that contains the following language:**

**GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. DRIVING WHILE UNDER THE INFLUENCE OF CANNABIS IS ILLEGAL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.**

This is the same language required by state law in California Business and Professions Code Section 26120(c)(1), and is included in labels on cannabis products.

- **Page 19, Section 12.22.040.E**  
**Amend to add the following: This notice shall be reviewed and updated annually by the Berkeley Public Health Department, who shall review the warning requirements and update them as needed to reflect current science on cannabis risks and science on the most effective means to communicate warnings.**
- Page 19, Section 12.22.040.E  
Approve Alternative A: Staff Recommendation to omit language
- Page 20, Section 12.22.040.E

**Approve Alternative A: Staff Recommendation to omit language**

- **Page 20, Section 12.22.040.F**  
**Approve Alternative A: Staff Recommendation to permit consumption of cannabis at a Lounge with a Designated Cannabis Smoking Room Ventilation System.**
- **Page 23, Section 12.22.040.J**  
**Approve Alternative A: Staff Recommendation to omit language. The state already highly regulates packaging, dosage and has regulations to prohibit products or marketing attractive to children.**
- **Page 25, Section 20.40.130.D**  
**Approve Alternative A: Staff Recommendation to allow signage with logos that depict cannabis or a cannabis product existing prior to the adoption of the ordinance, and prohibiting new signage with logos depicting cannabis or cannabis products.**
- **Page 27, Section 23C.25.010.A.3**  
**Approve Alternative A: Staff Recommendation**
- **Page 28, Section 23C.25.010.B.1**  
**Reject amendment. Continue to permit Storefront Retailers who comply with state and local regulations by Zoning Certificate.**
- **Page 28, Section 23C.25.010.B.6**  
**Approve Alternative D: Planning Commission Recommendation**

**Buffers**

**a. Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.**

**b. Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.**

- **Page 29, 23C.25.010.C.1**  
**Approve Alternative A with the following modification:**

1. Seven Delivery-Only Retailers are permitted citywide, four of which shall be operated by Equity Businesses, and three of which shall be non-Equity Businesses.

- Page 29, Section 23C.25.010.C.4  
Approve Alternative B: Planning Commission Recommendation

4. Delivery-Only Retailers are permitted in the M District, shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.

- Page 29, Section 23C.25.010.D  
Approve Alternative A: Staff Recommendation

#### Lounges

1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.

2. Lounges must comply with the operational standards established by the City's Department of Health, Housing and Community Services.

- Page 30, Section 23C.25.020.B - Commercial Cannabis Cultivation  
Approve Alternative B: Planning Commission Recommendation:

#### Commercial Cannabis

Cultivation is permitted with a Zoning Certificate in the M District, subject to the following limitations:

1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.

2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.

- Page 48, Section 23F.04.010 Definitions, Microbusiness  
Approve Alternative B: Planning Commission Recommendation

#### Warehouse Based Non-Store

**Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in the Manufacturing (M) District.

Second readings scheduled for February 11, 2020.

In addition, the Council referred to the City Manager to 1) determine if the City can require businesses to post notices on their website, and 2) ~~analyze the impacts of artificial flavorings/additives and advise if any further regulations are necessary~~ direct the Berkeley Public Health Department to review the issue of flavored cannabis products for combustion or inhalation, and cannabis products whose names imply that they are flavored, and review any additional ingredients that may be hazardous, whether natural or artificial, including vitamin E acetate in inhalation products, and make recommendations for action.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.