

To Planning Commission

From Charley Pappas

Subject September 4, 2019 Meeting

#9 Public Hearing: Zoning Ordinance Amendments for Cannabis Uses: Delivery-Only Retailers

September 3, 2019

Dear Commissioners,

As a recently turned out Cannabis Commissioner (chairman and vice chairman), I have reviewed your past conclusions and commented on your upcoming decisions. Hopefully you can find a little time to read my comments; I plan to public comment as well.

I wish my 16 years of my involvement with Berkeley cannabis issues could have been more successful, and a little less frustrating. Varying degrees of lacking political oversight have been compounded with numerous unreasonable delays. A poorly written Prop 64 legalization measure, despite diligent state licensing and ordinance activity is a further complication.

Succinctly, if you check cannabis issue voting in Berkeley since 1972, every cannabis issue on the ballot has trended higher, the last I believe 82%. I will try to check before Wednesday night. Berkeley citizen voters have waited too long for a reasonable, thoughtful cannabis regulation.

Yours truly, Charley Pappas

ps Cannabis delivery was first discussed at a Planning Commission meeting November 2016, accused by a new Commissioner of being “ramrodded” by the then Medical Cannabis Commission when actually a recommendation coming from the City Council.

STAFF REPORT DATE: September 4, 2019 / C Pappas- **“COMMENTARY!”**

TO: Members of the Planning Commission FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing: Zoning Ordinance Amendments for Cannabis Uses: Delivery-Only Retailers- **Important Issues, C Pappas**

RECOMMENDATION Recommend to City Council Zoning Ordinance amendments establish new land use regulations for cannabis retail delivery services (**Delivery-Only Retailers**);

BACKGROUND **7.17.2019, response, 7.25.2017 Council referral,** **“1st NOV. 2016”**

Planning Commission considered Zoning Ordinance cannabis use changes. Changes were Round 2, series comprehensive cannabis amendments, & focused- Retail, Cultivation & Microbusiness uses. Changes consist- amendments to existing uses & regulations for new cannabis uses.

Planning Commission completed deliberations, voted recommendations all cannabis issues except Delivery-Only Retailers (DOR). **Commission voted- prohibit DORs in Mixed Manufacturing (MM) & Mixed Use – Light Industrial (MU-LI) districts, continue discussion other DOR development standards** in September. **“WHY, NO SENSE, MUST BE REVISITED!”**

Ordinance recommendations made at meeting- forwarded to City Council for consideration with Planning Commission’s recommendations for other cannabis uses from July 17, 2019 meeting.

**Staff will present options for Equity selection process to Cannabis Commission & City Council.** Definitions for equity candidates & the selection process are under development. **Quotas & possibly buffers could be modified depending on type selection process chosen by Council.**

DISCUSSION Changes to Zoning Ordinance **“QUOTAS, BUFFERS UNNEEDED LIMITS EXISTING NOW”**

Round 2- comprehensive cannabis amendments currently considered by 3 commissions:

Cannabis Commission, **Community Health Commission (CHC)** & Planning Commission.

Regulations involve changes both Berkeley Municipal Code (BMC) & Zoning Ordinance. **“CHC BIASED- COMPLETELY ANTI-CANNABIS”**

**Commission’s recommendations- changes/additions Zoning Ordinance.**

Considerations and Analysis **“DOZEN OR MORE DOR EXISTING FOR 10+ YEARS!”**

**DORs not currently allowed in Berkeley & would be new cannabis use.** Businesses would deliver cannabis to customers per operational standards BMC Section 12.22.040. **State law, no customer visits permitted at these businesses;** orders are received by phone or electronically.

**DOR businesses deliver into other cities; currently, cannabis businesses in neighboring jurisdictions deliver to Berkeley.**

**Commission considered DOR regulations April 19, 2017 & May 17, 2017 meetings.**

**Commission voted to allow DORs in all C-prefixed districts except C-N,** not make recommendation for level of discretion.

Proposed DOR Zoning Ordinance language- Section 23C.25.010.C; Amendments would allow DORs following development standards:

Issue- Staff Recommendation

Quota- No recommendation given

Location- **C-prefixed districts (except C-N), not on ground floor adjacent to street frontage. M-prefixed districts per regulations for Warehouse Based Non-Store Retailers**

Discretion- None for DORs in C-prefixed districts - **for 2 recommendations. M-prefixed districts = Selection process and ZC**

Buffer- 300 feet from Schools, City-operated community centers and skate parks

Questions for Commission:

**How important are quota limits for DORs?**

**Selection process needed, or businesses be established on a first-come, first-served basis?**

**“NUTSHELL, LITTLE REGULATION FOR LOW IMPACT DOR-ALL DISTRICTS!”**

## General Plan Review:

Staff determined no changes necessary to General Plan as result of draft zoning amendment.

Proposed changes would add development standards for existing & new cannabis use types. Uses very similar to non-cannabis uses already permitted.

General Plan- specific policies support zoning ordinance changes:

Policy LU-1 Community Character: Maintain character of Berkeley, special, diverse, unique place to live and work.

Action LU-7.C: Carefully evaluate, monitor new & existing uses to minimize/eliminate negative impacts on adjacent residential uses.

Actions LU-26.A and LU-27.A: **Require ground-floor commercial uses oriented to street & sidewalks, encourage vital & appealing pedestrian experience.** ***“SOUNDS SILLY”***

CEQA Review: Businesses proposed in ordinance similar to many other commercial uses in City of Berkeley Zoning Ordinance. Businesses not have impacts greater than other commercial uses.

**Buffers from schools & requirements for neighborhood compatibility will help protect neighborhoods from negative effects of commercial uses.** Annual State & local reviews each business ensure meeting State & local regulations. No additional impacts expected from uses & no additional environmental evaluation is necessary. ***“B.S. WITH LIMITED AVAILABILITY”***

**CONCLUSION**

Staff recommends the Planning Commission:

1. Consider the analysis and recommendations included with this report;
2. Consider the questions proposed in the report;
3. Consider attached revised Zoning Ordinance language; and
4. Identify recommendation through a vote of the Commission.

Chapter 23C.25 CANNABIS USES- 23C.25.010 Cannabis Retail Uses

## C. Delivery-Only Retailers

1. Delivery-Only Retailers are permitted citywide.

2. Delivery-Only Retailers- approval through selection process set forth in Section 12.22.020.

3. ALTERNATIVE A: **Delivery-Only Retailers permitted with Zoning Certificate in C-prefixed Districts other than C-N District.** ***“YES, WHY NO C-N?”***

3. ALTERNATIVE B: **Delivery-Only Retailers permitted in C-prefixed Districts other than the C-N District, approval Administrative Use Permit-** ***“UNEDEED RESTRICTION”***

4. Delivery-Only Retailers approval through the selection process Section 12.22.020.

5. Delivery-Only Retailers in M-prefixed Districts be evaluated/regulated for Zoning purposes same as Warehouse-Based NonStore Retailers, & subject to numeric & buffer requirements Section for Delivery-Only Retailers.

6. Delivery-Only Retailers not located within 300 feet of any School or City-operated community center or skate park.

7. **Delivery-Only Retailers not located on ground floor of building adjacent to street frontage in C-prefixed Districts.-** ***“ADA VIOLATION”***

**Planning Commission Meeting Agenda July 17, 2019**

**11. Action:** Public Hearing on Comprehensive Cannabis

RECOMMENDATION Hold a public hearing to hear and receive comments on the proposal for “Round 2” of Comprehensive Cannabis Zoning Ordinance amendments.

ATT 1. STAFF REPORT DATE: July 17, 2019 TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing: Zoning Ordinance Amendments for Cannabis Uses.

Consumption Lounges (“Lounges”) commercial locations where customers are allowed to consume cannabis. Consumption consists- smoking or vaping, though edibles also consumed at Lounges. State limits consumption to Storefront Retailers, & consumption limited to cannabis; non-cannabis food & beverages cannot be served on same premises.

Proposed Zoning Ordinance changes allow Storefront Retailers to operate on-site Lounge with Use Permit approval. Lounges could be limited to edibles only, or could allow smoking and vaping. Lounges need to meet operational standards- City’s Dept of Health, Housing and Community Services.

Issue                      Staff Recommendation

Location                  C-prefixed districts, only in conjunction with a Storefront Retailer

Discretion                Use Permit

**Commission Question:**  **Should Lounges be permitted in Berkeley?**

**“WHY YOUR**

**DECISION?”**

Location of Cultivation Uses. Cultivation businesses (“Cultivators”) grow cannabis plants for sale to other cannabis businesses. State- different licenses based on size, with indoor grows ranging from 500 sq ft- 22,000 sq ft. Cultivators not open to public. Current ordinance limits cultivators to Manufacturing (M) District.

**In 2014, Cannabis Commission expressed concern to Council- M District did not provide sufficient opportunity for cannabis cultivation operations.** Council forwarded referral to Commission (November 18, 2014) consider expansion Cultivation uses into MM & MU-LI districts. Commission considered at five meetings: November 18, 2015, December 16, 2015, May 18, 2016, November 16, 2016, December 21, 2016- then folded referral into comprehensive cannabis discussion which began in 2017.

Proposed ordinance changes allow Cultivators locate in Mixed Manufacturing (MM) & Mixed Use-Light Industrial (MU-LI) Districts buffers proposed 600 ft from Schools, 300 ft from R-prefixed districts. Buffer from R-prefixed districts could be reduced with a Use Permit.

Issues                      Staff Recommendation

Location                  Allow in MM and MU-LI (currently only in M District)

Discretion                ZC

Buffer                      M - 300 ft schools, community centers (existing) MM, MU-LI - 600 ft schools, community centers, 300 ft residentially-zoned properties (may be reduced with a UP)

**Question for Commission:**  **Is cultivation appropriate use in MM, MU-LI Districts?** **“YES!”**

Retail Storefront Microbusinesses. Microbusinesses uses which allow vertical integration of multiple cannabis uses (except Testing Laboratories). Microbusiness must have 3 of following use types: Cultivator, Manufacturer, Distributor & Retailer. Zoning Ordinance allows Microbusinesses subject to regulations for each activity conducted on premises. City developed custom license type, Retail Nursery Microbusiness, to allow cannabis Nursery, sell product (plants, seeds) to public. Retail Storefront Microbusinesses- another Berkeley custom license type. Allow limited manufacturing & distribution at Storefront Retailers. Staff created license type to address request from existing Storefront Retailers- repackage products bought on wholesale basis & to transport goods related to business without hiring third party, similar to noncannabis retailers. This use would be interchangeable with a cannabis Storefront Retailer.

Issue                      Staff Recommendation

Location                  C-prefixed districts, only in conjunction with Storefront Retailer

Discretion                ZC

Uses                        Limit uses to Storefront Retailer, limited manufacturing (infusions & repackaging), & limited distribution (only products sold at Retailer).

**Question for Commission:**

□ Should Microbusinesses associated with Storefront Retailers be treated differently than other Microbusinesses? **“YES”**

Selection Process and Equity Considerations Staff will present options for an Equity selection process to Cannabis Commission & City Council. Equity candidates definitions; & selection process are under development. Quotas, possibly buffers could be modified depending type of selection process chosen by Council.

Section 23C.25.010 Cannabis Retail

...either a Use Permit, or a Zoning Certificate if an Equity Candidate

5. Storefront Retailer may operate as Retail Storefront Microbusiness as Ch 12.21 obtaining required State, local licenses.

6. ALTERNATIVE A: Storefront Retailers not 600 ft of another Storefront Retailer or a School.

6. ALTERNATIVE B: Storefront Retailers not 600 ft of another Storefront Retailer, public, private elementary school, 1,000 ft public, private middle school, high school, 600 ft of a City-operated community center or skate park. **“UNNEEDED RESTRICTION, SPACES UNAVAILABLE”**

6. ALTERNATIVE C: Storefront Retailers, 1,000 ft of any School, junior college, university, day care center, park, youth center or library. **“COMPLETELY REDICULOUS”**

Section 23C.25.020 Commercial Cannabis Cultivation

B. Commercial Cannabis Cultivation permitted with Zoning Certificate in M, MM, MU-LI Districts: **“HOW LONG BEFORE SENSIBLE CULTIVATION REGULATIONS!?!”**

Planning Commission Meeting Agenda Minutes July 17, 2019

Staff latest comprehensive cannabis program options. Staff asked Planning Commission for recommendations on zoning amendment considerations- following focus: storefront retail buffers, lounges (commercial consumption), expansion cultivation beyond Manufacturing zoning district (M), microbusinesses as storefront retailers, operation of delivery-only retailers, other minute definition changes. Commission discussed the proposed amendments, but continued discussion on aspects of delivery-only services to September 4, 2019 hearing more time for community input.

Public Comments: 3

Motion/Second/Carried (Sharenko /Kapla) to apply existing cannabis retail buffer to new equity candidate & apply staff’s recommended buffer (600 feet from elementary schools, community centers other Storefront Retailers, & **1,000 feet from middle and high schools) to all new cannabis retail business that enter the market;** **“UNNEEDED RESTRICTION, SPACES UNAVAILABLE”**

to support for **staff’s recommendation concerning commercial consumption lounges, microbusinesses, & distribution operations;** **“REASONABLE THANK YOU”**  
**& to oppose expansion of cultivation & delivery-only uses into MM, MU-LI zoning districts.**

Ayes: Beach, Fong, Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: Vincent and Wrenn. (8-0-1-0) **“PERHAPS MOST DISAPPOINTING, ZERO CULTIVATION IN BERKELEY, CANNABIS COMMISSION ESTIMATED \$1MIL TAX REVENUE, IS THERE ANY POSSIBLE CULTIVATION SPACE IN M-ZONE? WHY DOR RESTRICTION? COULD BE IN CONJUNCTION WITH MICRO BUSINESS & PRESERVE COMMERCIAL SPACES, SHORT SIGHTED PLANNING COMMISSION!?!”**

# Item 11: Referral to Facilitate Toxic Remediation

Justin Horner, Associate Planner

**23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses**

D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:

1. Is required to allow a proposed new building or other proposed new Use;
2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;
3. Will remove a structure which represents an unabatable attractive nuisance to the public;
4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

**23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing  
or Community, Institutional or Other Non-residential Uses**

**[proposed changes in red]**

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3. Will remove a structure which represents an unabatable attractive nuisance to the public; ~~or~~
4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project-; or

5. Is required to allow the remediation of toxic soil in conformance with Department of Toxic Substance Control (DTSC) clean-up requirements and a City of Berkeley toxic clean-up and monitoring program.

**Chapter 23E.80**  
**MU-LI Mixed Use-Light Industrial District Provisions**

D. Except as permitted under [23E.80.045](#), subdivisions A.1 or A.2, in order to approve a Use Permit under Section [23E.80.045](#) to change the use of or remove more than 25% of the floor area of a building currently or most recently used for manufacturing, wholesale trade or warehousing, the Zoning Officer or Board must find:

1. Any necessary Use Permits that have been approved to provide comparable quality replacement manufacturing, wholesale trade and/or warehousing space in Berkeley at a comparable rent and that such replacement space will be available before the demolition or change of use of the space; or
2. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the District which make it financially infeasible to reuse the building for any of the range of manufacturing, wholesale trade or warehouse uses permitted in the District. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings; and
3. Appropriate mitigation has been made for loss of the manufacturing, warehousing or wholesale trade space in excess of 25% of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.

**Chapter 23E.80**  
**MU-LI Mixed Use-Light Industrial District Provisions**

D. Except as permitted under [23E.80.045](#), subdivisions A.1 or A.2, in order to approve a Use Permit under Section [23E.80.045](#) to change the use of or remove more than 25% of the floor area of a building currently or most recently used for manufacturing, wholesale trade or warehousing, the Zoning Officer or Board must find:

1. Any necessary Use Permits that have been approved to provide comparable quality replacement manufacturing, wholesale trade and/or warehousing space in Berkeley at a comparable rent and that such replacement space will be available before the demolition or change of use of the space; or

2. As a result of lawful business and building activities, there are exceptional physical circumstances ~~(exclusive of the presence of hazardous materials in the building(s), soil or groundwater)~~ found at the building not generally found in industrial buildings in the District which make it financially infeasible to reuse the building for any of the range of manufacturing, wholesale trade or warehouse uses permitted in the District. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings; ~~and or~~

3. As a result of previous building activities there are hazardous materials that are required to be remediated and monitored which could not otherwise be fully characterized, remediated or monitored without demolition or the building(s), and

3 4. In the case of subdivisions D.2 or D.3, the Zoning Officer or Board must also find aAppropriate mitigation has been made for loss of the manufacturing, warehousing or wholesale trade space in excess of 25% of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.

**Matrix of Existing Berkeley's Cannabis Use Regulations**  
**Planning Commission**  
**September 4, 2019**

**Commercial Districts**

	<b>Non-cannabis equivalent?</b>	<b>C-1</b>	<b>C-N</b>	<b>C-E</b>	<b>C-NS</b>	<b>C-SA</b>	<b>C-T</b>	<b>C-SO</b>	<b>C-W</b>	<b>C-DMU</b>
<b>Cultivation</b>	None	Not mentioned – assume incompatible								
<b>Manufacturing</b>	Light Manufacturing	AUP (incidental only)	UP (incidental only)	UP (incidental only)	Prohibited	AUP (incidental only)	AUP (incidental only)	AUP (incidental only)	AUP < 5,000 sf; UP > 5,000 sf	AUP (incidental only)
<b>Testing Labs</b>	Testing Labs	Not mentioned – assume incompatible								
<b>Distribution</b>	Wholesale Trade	AUP (incidental only)	UP (incidental only)	UP (incidental only)	Prohibited	AUP (incidental only)	AUP (incidental only)	AUP (incidental only)	AUP < 5,000 sf; UP > 5,000 sf	AUP (incidental only)
<b>Storefront Retail</b>	None	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)	ZC (with selection process)
<b>Delivery-Only Retail</b>	??	Regulations not yet in place								
<b>Microbusiness</b>	None	Allowed per the regulations for each of the involved cannabis uses								

**Manufacturing Districts**

	<b>Non-cannabis equivalent?</b>	<b>M</b>	<b>MM</b>	<b>MU-LI</b>	<b>MU-R</b>
<b>Cultivation</b>	None	ZC	Not mentioned – assume incompatible		
<b>Manufacturing</b>	Light Manufacturing	ZC up to 20,000 sf AUP up to 40,000 sf UP over 40,000 sf	ZC up to 20,000 sf AUP up to 40,000 sf UP over 40,000 sf	ZC up to 20,000 sf AUP up to 30,000 sf UP over 30,000 sf	AUP up to 5,000 sf UP over 5,000 sf
<b>Testing Labs</b>	Testing Labs	Prohibited	AUP up to 20,000 sf UP over 20,000 sf	UP	Prohibited
<b>Distribution</b>	Wholesale Trade	ZC up to 20,000 sf AUP up to 40,000 sf UP over 40,000 sf	ZC up to 20,000 sf AUP up to 40,000 sf UP over 40,000 sf	ZC up to 20,000 sf AUP up to 30,000 sf UP over 30,000 sf	AUP up to 5,000 sf UP over 5,000 sf
<b>Storefront Retail</b>	None	Retail prohibited	Retail prohibited	Retail prohibited	Retail prohibited
<b>Delivery-Only Retail</b>	??	Regulations not yet in place			
<b>Microbusiness</b>	None	Allowed per the regulations for each of the involved cannabis uses			