MEETING OF THE
CANNABIS COMMISSION

2180 Milvia Street
Redwood Room (6th Floor)

Thursday, May 2, 2019
2:00 PM

AGENDA

I. Call to Order
   A. Roll Call and Ex Parte Communication Disclosures
   B. Changes to Order of Agenda

II. Public Comment

III. Approval of Minutes
   A. April 4, 2019 Draft Action Minutes

IV. Planning Staff Report

V. Chairperson’s Report

VI. Subcommittee Report

VII. Discussion and Action Items
   A. Discuss revisions to mission statement and BMC Section 12.26.110. Two attachments:
      1. Existing mission statement
      2. BMC Section 12.26.110
   B. Work Program: Discuss and amend and vote on draft work plan. One attachment:
      1. Draft Work Plan
   C. Discuss draft cannabis ordinance changes and possibly vote on a ordinance change sub-committee. Changes would relate to delivery-only retailers, lounges, buffers, discretion for Retailers, expansion of cultivation beyond the M District, signage, changes in ownership/location. One attachment:
      1. Staff report and draft ordinance language
   D. Discuss and possibly vote on a special meeting related to Equity program options and ways to encourage participation. One attachment:
      1. 3/15/18 Equity Program recommendations from Chair Brewster
   E. Ideas for next meeting.

VIII. Information Items (In compliance with the Brown Act, no action may be taken on these items; however, they may be discussed and placed on a subsequent agenda for action):
   A. Peace and Justice Commission: Forum on Access and Disability Rights

IX. Correspondence
   A. Communications:
      1. Charley Pappas: Mission Statement comments
      2. Charley Pappas: Cannabis Commission background
3. Charley Pappas: Summary of Berkeley cannabis ballot measures

B. Late Communications: None.

X. Adjournment

Cannabis Commission Secretary: Elizabeth Greene, 1947 Center Street, 2nd Floor, Berkeley CA 94704
Phone: 510-981-7484, Email: EGreene@cityofberkeley.info

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Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Department of Planning and Development, Zoning Counter, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley, and at the Reference Desk, of the Main Library, 2090 Kittredge Street, Berkeley, California, during regular business hours. Please contact the Commission Secretary for further information.

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.
DRAFT ACTION MINUTES

I. Call to Order – 2:05 pm

A. Roll Call and Ex Parte Communication Disclosures

Commissioners present: Cooper, Brewster, Poindexter, Rice, Svec-Burdick, Malmuth

Absent: Cable (excused)

Staff Present: Secretary Elizabeth Greene, Mark Sproat, and Claire Kostohryz.

Ex Parte Communications: None

B. Changes to Order of Agenda

None

II. Public Comment

One comment. We would like to welcome members Poindexter, Svec-Burdick, and Malmuth to the committee.

III. Approval of Minutes

Motion/second to approve the March 7, 2019 Draft Action Minutes (Cooper/Rice). The motion carried 6-0-0-1 (Ayes: Cooper, Rice, Poindexter, Svec-Burdick, Malmuth. Noes: None. Abstain: None. Absent: Cable.)

IV. Planning Staff Report

Discussed the April 2nd City Council meeting where they moved to pass the ordinance on cannabis. This included changes to the security guard requirement for distributors and cultivators, the font size of cannabis signage, dynamic deliveries, and the cap for retail establishments. Staff mentioned the late items.

V. Chairperson’s Report

Thankful to the supportive council members at the April 2nd Council Meeting where cannabis was talked about until 12:30AM. We should question why cannabis is always put on the bottom of agenda at the meetings. Also thank you to staff for their hard work.

VI. Subcommittee Report

No report.

VII. Discussion and Action Items
A. Review and discuss studies related to youth use of cannabis.

Public Comment: Two comments. Make sure the commission is focused on regulation of legal cannabis and be skeptical of articles regarding cannabis.

The Commissioners discussed how there are few statistics regarding youth use for California, and how any study should be viewed critically. There is a lot of fear mongering around this issue and there should be an educational component of their mission statement to make sure that reputable information is being distributed.

Public Comment: Two comments. If Berkeley High School’s youth rates are different, it might be a bigger educational issue and should be compared to schools of a similar stature.

B. Update on ordinance changes and equity proposal view next steps for cannabis regulations in Berkeley, with estimated timeline.

Public Comment: Five comments. The City should focus on equity as a way to right the wrongs of the war on drugs. In order for it to be more than a symbolic effort, equity permits should be applied to all of the supply chain. Money is the biggest issue that low income communities face, it can cost one million dollars just to meet compliance.

The Commissioners expressed that equity should be on the next meeting agenda and the discussion should be focused around implementation and workforce equity policies.

Public Comment: One comment. Provide an incentive to companies who implement equity policies.

C. Discuss and vote on revisions to mission statement and BMC Section 12.26.110.

Public Comment: None.

Councilmember Cooper felt the mission statement didn’t reflect the current work the commission does. The Commissioners brainstormed some edits to make such as the removal of the requirement to have a member from a cooperative, remove the word “medical”, and amend the amount of commissioners that should come from the cannabis industry.

Motion/second to revise the mission statement to authorize three member of the commission to be from distinctly different cannabis businesses of different license types (Cooper/Rice). The motion carried 6-0-0-1 (Ayes: Cooper, Rice, Poindexter, Svec-Burdick, Malmuth. Noes: None. Abstain: None. Absent: Cable.)

Motion/second for Cooper to revise 12.26.110 A and redraft B and C to align with the discussion, remove any reference to collectives and medical marijuana and bring back to the Commission for a final vote. (Brewster/Poindexter). The motion carried 6-0-0-1 (Ayes: Cooper, Rice, Poindexter, Svec-Burdick, Malmuth. Noes: None. Abstain: None. Absent: Cable.)

Public Comment: None.
D. Work Program: Discuss items to be included on draft work plan.

Public Comment: Three comments. Lounges and taxes should be readdressed in the next year.

The commissioners discussed that they would like to see equity, cannabis signage, buffers, on site consumption, delivery only, special events, taxes, expanding M district cultivation, educational events, and microbusinesses.

Public Comment: None.

E. Ideas for next meeting.

The Commission did not discuss this item.

VIII. Information Items (In compliance with the Brown Act, no action may be taken on these items; however, they may be discussed and placed on a subsequent agenda for action):

A. Abridged Commissioners’ Manual

IX. Correspondence

A. Communications: None.

B. Late Communications:

1. Lynn Silver: e-mail regarding youth cannabis use information in April packet
2. Orlando Taylor: petition regarding cannabis equity
3. Staff: Color copy of charts from Politifact article (Item VII.A)
4. Charley Pappas: copy of BCC flyer regarding commercial cannabis activity
5. Charley Pappas: letter, including focus list of cannabis issues

X. Adjournment

Adjourned at 4:04 P.M.
Four late items were distributed at the meeting.
Commissioners in attendance: 6 of 7
Members of the public in attendance: 6
Public comments: 14
Length of meeting: 1 hour and 59 minutes

APPROVED: ____________________________________________
Elizabeth Greene
Cannabis Commission Secretary
Cannabis Commission Mission Statement
2018

Mission:
To ensure that cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community. The commission shall consist of nine members. At least one commissioner shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

The purpose of this Section is to ensure that cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. A cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides cannabis to more than one dispensary.

B. The commission shall recommend to the City operational and safety standards for Cannabis Collectives and Dispensaries, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Cannabis Collective or dispensary in Berkeley or to relocate an existing Cannabis Collective or dispensary. The commission shall advise the City as to whether the proposed Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Cannabis Collective or dispensary commences lawful operation.

C. The commission will monitor the compliance of Cannabis Collectives and dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action. (Ord. 7545-NS § 1, 2017: Ord. 7161-NS § 3, 2010: Ord. 7068-NS § 3 (part), 12/08/08)
DRAFT
Berkeley Cannabis Commission’s 2019-2020 Work Plan

MISSION

The Berkeley Cannabis Commission ensures that cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

STRATEGIC ISSUE AREAS

To carry out its mission, the Cannabis Commission will work in the following areas over the next year:

- Finalize ordinances to regulate cannabis businesses in Berkeley
- Consider options for an equity program for new cannabis Retailers and large Cultivators
- Continue to provide feedback to Council regarding the cannabis industry in Berkeley
- Promote ongoing community education regarding cannabis

ACTIVITIES

Within each of these strategic issue areas, the Commission will focus on the following specific activities over the next year.

Strategic Issue Area 1: Finalize ordinances to regulate cannabis businesses in Berkeley.

- Deliverables:
  - Recommendations for Municipal Code and Zoning Ordinance language to develop operating standards, development standards and signage requirements for cannabis businesses.
  - Timing: Summer/Fall 2019

Strategic Issue Area 2: Consider options for an equity program for new cannabis Retailers and large Cultivators.

- Deliverables:
  - Provide options for an equity business selection process based on feedback from organizations involved with first-time entrepreneurs and cannabis businesses, and feedback from community members.
  - Timing: Summer/Fall 2019
Strategic Issue Area 3: Continue to provide feedback to Council regarding the cannabis industry in Berkeley.

- Deliverables:
  - Investigate taxes in other jurisdictions and impact on businesses and unregulated market
  - Provide feedback on impact of new regulations on Berkeley’s cannabis industry
  - Provide direction on changes to consider as State regulations change

- Timing: Ongoing

Strategic Issue Area 4: Promote ongoing community education regarding cannabis use

- Deliverables:
  - In conjunction with the Community Health Commission, study reports regarding the impact of cannabis on youth and the general population
  - Recommend ways to publicize safe and responsible use of cannabis

- Timing: Ongoing

RESOURCES NEEDED

The Cannabis Commission does not anticipate any additional resources needed beyond the staff time required to staff the Commission and provide Council reports and updates related to the activities in this work plan.
DATE: May 2, 2019

TO: Members of the Cannabis Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Comprehensive Cannabis, Round 2: Draft Ordinance Language for additional cannabis uses and development standards

PURPOSE
This memo provides draft ordinance language for Cannabis Commission consideration related to uses and development standards that were not included in the initial comprehensive cannabis ordinances approved by the Council on April 23, 2019. The Commission should review the draft language and make a recommendation to Council.

BACKGROUND
On July 25, 2017, the Council asked the Cannabis Commission and City staff to make recommendations on regulations and licensing for commercial cannabis businesses as permitted under Proposition 64, the Adult Use of Marijuana Act (Attachment B). In early 2018, the Cannabis Commission, Planning Commission and Community Health Commission considered draft regulations for operational and development standards for all businesses in the cannabis supply chain, such as security measures, operational permits, quotas, and buffers from sensitive uses. The commissions also considered other issues such as advertising and consumption at temporary events and at Retailers, and Berkeley specific uses such as Retail Nursery Microbusinesses.

The Council held work sessions on March 20, 2018 and October 9, 2018 to consider more controversial aspects of the ordinance. Issues which the Council discussed and gave direction on were included in an initial ordinance package (Round 1). This group of ordinances was discussed by the Council at its April 2, 2019 meeting prior to adoption. Issues which did not have clear Council direction or which had not been considered by the commissions were set aside for a second round of discussions (Round 2).

DISCUSSION
The issues which are part of the second round of discussion are listed below.

1. Delivery-only Retailers
2. Consumption Lounges
3. Retail buffers
4. Retail level of discretion
5. Expansion of cultivation uses outside of the M District
6. Signage – depictions of logos on signage
7. Changes in ownership or location
8. Retail Storefront Microbusinesses
9. Equity Program
10. Recommendations from the Community Health Commission (CHC)
Most of these issues did not have clear direction from the Council or had not been considered by the Commissions. The issues of logos on signage and changes in ownership were removed from the Round 1 document for additional evaluation due to comments from the public. The Retail Store Microbusiness language was added to allow Retailers to codify the ability of storefronts to engage in packaging and limited distribution of product, activities the Council has allowed on a temporary basis up to this point.

Attachment A contains proposed language from City staff on most of these issues. Recommendations for an equity program are still being developed and will be brought to the Cannabis Commission at a later meeting.

The CHC recommendations were provided to the Council in a September 13, 2018 letter (Attachment B). Because this letter included many detailed recommendations, staff has drafted a document outlining them (Attachment C). The recommendations relate primarily to the location and approval of Retailers, the products to be sold at Retailers, and how products are to be packaged and marketed. Attachment C identifies which recommendations have already been considered by the Council in Round 1, and which are being considered at this time. Staff did not provide ordinance language for most of these recommendations, as the issues in many cases were either covered by state law or would be specific to Berkeley businesses, limiting their ability to compete in the market and requiring significant city staff in order to enforce.

**NEXT STEPS**
The draft ordinance language and the recommendations from the CHC will be reviewed by the Cannabis Commission and Community Health Commission, with the Planning Commission reviewing only Zoning Ordinance changes. The Commission can recommend changes to proposed ordinance language or propose ordinance language where none was provided. The Cannabis Commission will consider options for an Equity program to be used to select a seventh dispensary at a future meeting. It is anticipated that recommendations from the commissions on these issues will be considered by Council in Fall 2019.

**ATTACHMENTS**
A. Draft Ordinance language
B. September 13, 2018 CHC letter to Council
C. Review of CHC Recommendations
Delivery-only Retailers

Section 23C.25.010

F. Cannabis Delivery-only Retailer

1. Alternate 1: ## Cannabis Delivery-only Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones, except for C-N, if they comply with the quota for the district, the parking requirements and any security requirements promulgated by the Chief of Police.

2. Alternate 2: ## Cannabis Delivery-only Retailers as defined in Section 12.21.020 shall be permitted with an Administrative Use Permit in C-prefixed zones, except for C-N, if they comply with the quota for the district, the parking requirements, and any security requirements promulgated by the Chief of Police.

3. Cannabis Delivery-only Retailers shall be approved through a selection process as set forth in Section 12.22.020

4. Cannabis Delivery-only Retailers may also be permitted with an Administrative Use Permit in manufacturing districts as part of a Microbusiness.

4. Delivery-only Retailers may not be located within 300 feet of any feet of any public or private K-12 school, city operated community center or skatepark.

Use Tables in C-1, C-E, C-NS, C-SA, C-T, C-SO, C-W, and C-DMU

<table>
<thead>
<tr>
<th>Cannabis Delivery-only Retailer</th>
<th>ZC or AUP</th>
<th>ZC/AUP shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020</th>
</tr>
</thead>
</table>

Use Tables in M, MM, MU-LI and M-UR
Ways to reduce public smoking/lounges

23C.25.010.H

H. Lounges

1. Approved Retailers may seek a Use Permit for a Lounge, as defined in Section 12.21.020.DD.

2. Lounges shall meet the operational standards established by the City’s Department of Health, Housing and Community Services.

12.21.020.DD

“Lounge” is a Storefront Retailer that has a designated cannabis smoking room or a room for consuming edibles that meets State requirements.

“Designated Cannabis Smoking Room” means a designated area on the premises of a Cannabis Business where customers may smoke cannabis.

“Designated Cannabis Smoking Room Ventilation System” means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion.

12.22.040.G Consumption of Cannabis

2. Notwithstanding subsection 12.22.040.G.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System. Retailers that allow Customer visits, with the exception of smoking. Smoking of Cannabis is prohibited at Retailers. For purposes of this subdivision, the term "smoking" does not include the use of an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic
cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This is a limited exception to BMC Section 12.70.040.

Buffers for Retailers

23C.25.010

B. ALTERNATIVE A: EXISTING and PC/CC RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, middle school or high school.

B. ALTERNATIVE B: STAFF RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, 1,000 feet of a public or private middle or high school or 600 feet of a City-operated community center or skatepark.

B. ALTERNATIVE C: CHC RECOMMENDATION - Retailers may not be located within 1,000 feet of any public or private K-12 school, junior college, college, university, day care center, park, youth center or library.

Discretion for businesses

23C.25.010.F

1. SixSeven Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with either a Zoning Certificate or through the Equity Business approval process in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

Expansion of cultivation beyond M District

Chapter 23C.25.020

A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as defined in Chapters 12.21 and 12.22 and MAUCRSA, shall be permitted as a matter of right with a Zoning Certificate in the M, MM and MU-LI Districts, subject to the following limitations:

1. Such locations shall be limited to licensed Cannabis Businesses.
2. Cannabis may not be dispensed, and client, patient or member services or retail sales are prohibited, at such locations.

3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet of total canopy area, except that separate spaces used by different licensees may be aggregated on the same location.

4. There is no numeric limit for Cannabis Cultivation Facilities under 10,000 sf in total canopy area, up to 48,000 sf.

5. Up to six Major Cannabis Cultivation Facilities between the size of 10,000 sf and 22,000 sf in total canopy area are permitted.

6. Outdoor commercial cultivation is prohibited.

7. The total canopy area used for cannabis cultivation shall not exceed 180,000 square feet.

B. Cannabis nurseries, as defined in Chapter 12.21 are considered Cannabis Cultivation uses and are subject to the same regulations as Cultivators.

C. Such locations shall comply with all regulations in Chapter 12.22, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within 300 feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

D. Such locations shall have the following buffers from sensitive uses

<table>
<thead>
<tr>
<th>District</th>
<th>Buffer</th>
<th>Sensitive Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>300 feet</td>
<td>Public or private elementary school, middle school or high school, or City-operated community center or skatepark.</td>
</tr>
<tr>
<td>MM</td>
<td>600 feet</td>
<td>Public or private elementary school, middle school or high school, or City-operated community center or skatepark.</td>
</tr>
</tbody>
</table>
### 300 feet (may be reduced with a Use Permit)  
**Residentially-zoned district**

<table>
<thead>
<tr>
<th>MU-LI</th>
<th>600 feet</th>
<th>Public or private elementary school, middle school or high school, or City-operated community center or skatepark.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>300 feet (may be reduced with a Use Permit)</td>
<td><strong>Residentially-zoned district</strong></td>
</tr>
</tbody>
</table>

### Signage

Section 20.40.130.D

D. Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.

### Changes in Ownership/Location

Section 23C.25.010.E

E. Retailers may see approval for a change of ownership or location. Applications for a change of ownership or location shall be evaluated based on the requirements for approval of an application to operate a Cannabis Business in place at the time of the proposed change.

### Retail Storefront Microbusinesses

Section 12.21.020.W

2. “Retail Storefront Microbusiness” is restricted to a Retailer, a Type P Manufacturer (repackaging) and a Distributor Transport-only Self-Distribution licenses, as defined by MAUCRSA. These businesses must follow the development standards for Retailers provided in Chapter 23C.25.
Signage for Retail Nursery Microbusinesses and Retail Storefront Microbusinesses shall be subject to the regulations for Storefront Retailers.

A Cannabis Retailer may operate as a Retail Storefront Microbusiness, subject to obtaining all required State and local licenses.

(Add “Retail Storefront Microbusiness” to all use tables that allow Cannabis Retailers)

Microbusiness: Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.

Retail Nursery Microbusiness: A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.

Retail Storefront Microbusiness: A Storefront Retailer that also has a Manufacturer and Distributor license, limited to Type P manufacturing and Distributor Transport-only Self-distribution license.
ACTION CALENDAR

September 13, 2018

To: Honorable Mayor and Members of the City Council
From: Community Health Commission
Submitted by: Nuha Afzal Khalfay, Chairperson, Community Health Commission
Subject: A Public Health Approach to the Proposed Cannabis Ordinance(s)

RECOMMENDATION
We recommend that the City Council delay the development timeline, approval, and implementation of the proposed cannabis ordinances for the City of Berkeley until the health protection and promotion measures outlined in this document have been fully integrated into the proposed ordinances, and take appropriate measures such as a moratorium to assure that the state does not issue licenses to businesses in Berkeley until such time as local policy is defined.

SUMMARY
California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing, and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguin and the City Council referred the development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

Recent study findings indicate that legalization of recreational cannabis should be carried out cautiously, to prevent undue exposure of youth, pregnant women, and the expansion of problem use; that unfettered expansion and diversification of products and of marketing are not prudent; and that, like tobacco and alcohol, cannabis use may pose significant risks to public health, especially when initiated early.

In this document we take the lessons learned from the public health responses to tobacco and alcohol use and recommend limits on cannabis access, cultivation, sales and marketing in the City of Berkeley, as well as methods for investment in addressing problem cannabis usage and promoting the public’s health.
FISCAL IMPACTS OF RECOMMENDATION
Limited loss in local tax revenue from the delay in implementing the relevant cannabis ordinances. Long-term savings to the Police, Fire, and Health, Housing & Community Services Departments, as well as the Berkley Unified School District, from decreases in problem use among youth and pregnant women.

CURRENT SITUATION AND ITS EFFECTS
Based on the most reliable and up-to-date scientific evidence, while legalization can help mitigate the negative social effects of the war on drugs, excessively rapid introduction of newly legalized recreational cannabis ("cannabis"), presents a significant potential threat to the public health, safety, and welfare of the residents of Berkeley, and particularly to youth and pregnant women.

Even before legalization of adult use of cannabis, the perception of risk from cannabis consumption has dropped from 58.3% to 31.1% among youth nationally between 2000 and 2016; and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight. Between 2009 and 2016 use in Northern California pregnant women increased from 4.2% to 7.1, in teen mothers the increase was from 12.5% to 21.8%, and in young mothers ages 18 to 24 years use rose from 9.8% to 19%.

In 2013-2015, the prevalence of lifetime marijuana use (7 or more times) among 11th graders in the Berkeley Unified School District (BUSD) was 38%, almost double that of the state as a whole (19.2%) and substantively more than for Alameda county (22.0%), indicating that Berkeley youth have not had difficulty obtaining marijuana for recreational use. For BUSD 11th graders, 11.4% of boys and 4.4% of girls used marijuana on more than 10 days in the previous month, vs. 8.6% and 4.7% respectively, in Alameda County.

In 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence

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5 Ibid.
of association of cannabis use with harm in a wide range of areas.\textsuperscript{6} The NASEM study found “substantial evidence”\textsuperscript{7} to support the following conclusions:

a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;

b) Maternal cannabis smoking during pregnancy is associated with low birth weight in offspring;

c) Cannabis use is associated with increased risk of motor vehicle crashes;

d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;

e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and

f) Increases in cannabis use frequency are associated with developing problem cannabis use.

The NASEM study found that less conclusive, but still worrisome, emerging evidence exists for a wide range of other harms, including impaired academic achievement and educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others.

An additional concern is that even in states that have legalized adult use of marijuana, Federal immigration authorities are deporting immigrants (documented or undocumented) for cannabis possession, use, or working in the industry. At a time of heightened risk to the immigrant community, alerting immigrants to this additional legal hazard is important.

In light of these issues and other health effects, the Community Health Commission recommends setting a prudent and thoughtful approach to the complex issues surrounding legalization that should include strengthening the protection of youth and informing pregnant women and others on the foreseeable impacts of the legalization of adult use of recreational marijuana.

\textbf{BACKGROUND}

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguín and the City Council referred the


\textsuperscript{7} The Academies defined Substantial Evidence as follows: There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest.
development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

The Community Health Commission wants to assure that the local ordinances put in place to regulate cannabis in Berkeley reflect a public health approach. We propose that the City of Berkeley’s cannabis ordinances address the following issues to make sure the public’s health is being protected:

RETAIL OUTLETS

- **Limit retail outlets to six.** Existing regulation for retail sales of medicinal marijuana limit the number of locations to six. As these six have been allowed to sell adult recreational as well as medicinal marijuana, we recommend that the City limit the total number of retail outlets for both medicinal and adult recreational use to six. We also know from tobacco that outlet density is positively correlated with youth cigarette smoking.\(^8\) Thus, for a city the size of Berkeley, with a population of approximately 121,240, six retail outlets are sufficient to provide a ratio of 1 outlet per 20,206 people.\(^9\) Los Angeles County is recommending 1 storefront outlet per 52,000 residents and Washington State started with 1:22,000 residents. If even 1-2 new retailers are allowed, they should be limited to “equity applicants.”

- Community input is needed on the decision to open any additional outlets and where these should be situated. We recommend a Conditional Use Permit to assure that the community is heard and so that the burden of retail outlets is not concentrated on one area of the City.

- Delivery-only retail establishments should only be allowed for delivery of medicinal marijuana. To reduce youth access, no additional delivery-only businesses should be allowed for adult recreational use. All sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Off-site Delivery to the Consumer of adult use Cannabis or Cannabis Products is not allowed. Cannabis Retailing by means of Internet ordering or telephone ordering and Delivery to the Consumer service is prohibited in Berkeley.

- Any new retail outlet should have a 1,000 feet buffer from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant’s business is located.

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• Cannabis Retailers should sell only Cannabis and other Cannabis Products, produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell other goods, including but not limited to food; tobacco products; alcoholic beverages; non-cannabis medicines or supplements, or items of clothing. The Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from the City of Berkeley. A Cannabis Retailer may not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. A Cannabis Retailer may not hold or maintain a license to sell tobacco products from the City of Berkeley or the State of California. A permit shall not be issued to authorize Cannabis Retailing in a Pharmacy.

• Lounges and other methods of on-site consumption of recreational marijuana should be prohibited. No Cannabis Product shall be smoked, ingested or otherwise consumed on the premises of a permit holder or in the public right-of-way within twenty-five feet of a Cannabis Retailer. Cannabis Retailers shall post a sign near their entrances and exits providing notice of this policy.

RESTRICTIONS ON ADVERTISING AND MARKETING

• Mirror the current BMC 20.66.030 Tobacco product advertising: No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location within one thousand four hundred feet of the perimeter of any school.

• No claims may be made in Advertising or Marketing materials in Berkeley for Cannabis or Cannabis Products or brands that assert such products are safe because they are regulated by the state or local licensing authority (e.g., “state-approved” or “state-licensed”). This restriction does not apply to the display of license or permit numbers where required.

• Advertising and Marketing materials in Berkeley for adult-use Cannabis or Cannabis Products or brands may not include claims of therapeutic or curative effects.

• Products that may not be sold in Berkeley may not be Advertised in Berkeley.

• Advertising and Marketing materials in Berkeley for Cannabis and Cannabis Products or brands may not be Attractive to Children or Youth.

• Advertising and Marketing materials in Berkeley may not depict activities or conditions considered risky when under the influence of Cannabis, such as operating a motorized vehicle or boat, being pregnant, or breastfeeding.

PROHIBITED PRODUCT TYPES
(a) Cannabis Retailers should not offer for sale, or possess with intent to sell or offer for sale or use:

i) Any Cannabis or Cannabis Product that is Attractive to Children or Youth.

ii) Any Cannabis or Cannabis Product with Packaging or Labeling that is Attractive to Children or Youth.

iii) Synthetic cannabinoid containing products.

iv) Cannabis flower with potency in excess of 20% THC content.

v) Cannabis Products with THC content in excess of 50%.

vi) Cannabis flower to which a Characterizing Flavor has been added.

vii) Cannabis Products, other than those Edible Cannabis Products noted in (b) below, to which a Characterizing Flavor has been added.

viii) Cannabis or Cannabis Products whose Packaging, Labeling, or Marketing materials include claims of health, therapeutic or curative effects, or claims related to “potency” (beyond listing of cannabinoid content), “strength,” “high,” or being “natural.”

ix) Cannabis or Cannabis Products that contain any noncannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include, but are not limited to, nicotine, caffeine and alcohol [excepting a minimum of alcohol that is residual from manufacturing or required solvents for the cannabis containing product if the product’s Packaging, Labeling and Marketing make no other reference to alcoholic beverages].

x) Any Cannabis Product that would otherwise be classified as a potentially hazardous food (as defined in the Health and Safety Code 113871), including a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation.

xi) Any Cannabis-infused ready-to-drink beverages, powders, gels or other concentrates with instructions for the preparation of Cannabis-infused beverages.

xii) Any Cannabis product that the Health, Housing and Community Services Department determines is easily confused with a commercially available food without Cannabis.

(b) A Cannabis Retailer may sell no more than 10 (ten) product variations (SKUs) of Edible Cannabis Products, with or without Characterizing Flavors, in the form of hard lozenges, or chocolates with no additional flavors, with individually wrapped servings not exceeding 10 mg THC, and packages not exceeding 100 mg per package.
(c) Tinctures and other non-Edible Cannabis Products may not have Characterizing Flavors, may not exceed 1,000 mg THC per package for adult-use, and must have clear instructions and dispensing mechanism such as a marked dropper or other device for dispensing doses of 10 mg THC or less.

(d) Cannabis or a Cannabis Product is presumed to have a Characterizing Flavor if a Manufacturer or any of the Manufacturer's agents or employees has:

i) Made a public statement or claim that the Cannabis or Cannabis Product has or produces a Characterizing Flavor, including, but not limited to, text and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate information about the flavor, taste, texture or aroma of a Cannabis Product; or

ii) Taken actions directed to consumers that would reasonably be expected to result in consumers believing that the Cannabis or Cannabis Product imparts a Characterizing Flavor.

Every Cannabis Retailer shall maintain on the Premises the original Labeling and Packaging provided by the Manufacturer for all Cannabis Products that are sold or offered for sale by the establishment separately from the original Packaging designed for retail sale to the consumer. The original Labeling and Packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

WARNING LABELS

- The “exit packaging” for cannabis products, including edibles, should have large warning labels.

Any Opaque Exit Package provided by the retailer for Cannabis or Cannabis Product purchased by a customer must carry one of the following warnings in a black-outlined yellow box covering 20% of the front panel of the exit packaging and using at least 12 point font. Each of the warnings should be provided on an equal proportion of exit packaging provided. The Department of HHCS should review and update warnings as needed based on current scientific evidence at least every three years. Stickers are acceptable.

  a. **Are you pregnant or breastfeeding?** According to the Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby’s health, including causing low birth weight and developmental problems. **GOVERNMENT HEALTH WARNING.**

  b. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes. **GOVERNMENT HEALTH WARNING.**
c. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain. **GOVERNMENT HEALTH WARNING.**

d. Marijuana use may be associated with greater risk of developing **schizophrenia** or other psychoses. Risk is highest for frequent users. **GOVERNMENT HEALTH WARNING.**

e. Smoking marijuana long term may make breathing problems worse. **GOVERNMENT HEALTH WARNING.**

**PRICING AND DISCOUNTING**

- **PROHIBITION ON THE SALE OF CANNABIS FOR LESS THAN THE LISTED** **PRICE.** No Cannabis Retailer shall: (1) honor or accept a Price Reduction Instrument in any transaction related to the sale of Cannabis or Cannabis Products to a consumer; (2) sell or offer for sale Cannabis or Cannabis Products through any multi-package discount or otherwise provide to a consumer any Cannabis or Cannabis Products for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; (3) sell, sell at a discount, offer for sale, or otherwise provide any product other than Cannabis or Cannabis Products in exchange for the purchase of Cannabis or Cannabis Products; or (4) otherwise sell, offer for sale, or provide Cannabis or Cannabis Products for less than the Listed Price. In addition, Cannabis Retailers must sell, offer for sale, or provide Cannabis or Cannabis Products for the same listed price every day of the week in a given week.

- **PRICE FLOOR FOR CANNABIS AND CANNABIS PRODUCTS.** The Department of HHCS is authorized, but not required, after 5 years from the effective date of this measure, to establish minimum prices for Cannabis and Cannabis Products. If such a Price Floor is established, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; City of Berkeley Department of HHCS must review the appropriateness of the Price Floor at least every two years and may adjust the Price Floors at that time to account for changes in the consumer price index, or other considerations related to reducing illegal commerce. The Department of HHCS may promulgate such rules as may be necessary for the purpose of carrying out this section.

**REQUIRED IN-STORE SAFETY INFORMATION**

- A Cannabis Retailer must display a warning sign prominently behind the main dispensing counter. The sign must be at least 3 feet by 3 feet and be displayed at eye height (i.e., with mid-point 5 feet above the floor).

**WARNING:**
1. **Are you pregnant or breastfeeding?** According to the U.S. Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby’s health, including causing low birth weight and developmental problems.

2. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes.

3. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing teen brain.

4. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users.

5. Smoking marijuana long-term may make **breathing problems worse**.

   THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:

  - **ARE YOU AN IMMIGRANT?** Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California. This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

  - **ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

  - **ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
The Department of HHCS shall review and, if necessary, update the text of the required warnings as needed, but no less than once every three years, based on current scientific evidence and legal information.

REstrictions on Branded Merchandise

- No Cannabis Business or Cannabis or Cannabis Product brand identification, including logos, trademarks or names, may be used or licensed for use on clothing, toys, games, or game equipment, or other items that are typically marketed primarily to or used primarily by persons under the age of 21, or that are Attractive to Children or Youth.

TAX PROPOSALS AND USES FOR SAID TAX

- The City of Berkeley recently reduced the tax on adult use cannabis from 10% to 5%. To be most effective at addressing the harms caused by the past criminalization of marijuana possession and to promote the public’s health, we recommend in one year that the City Council raise the tax, with a ceiling of 15% of gross receipts, and an additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured or sold by the taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17%. Experience from other states has shown a rapid fall in price in the first two years post-legalization, which will be likely to increase youth consumption.

- Building on the success of the Sugar Sweetened Beverage Tax and its board, we recommend that the City Council establish a Cannabis Tax Community Advisory Board of nine residents of the City of Berkeley to recommend use of tax proceeds and priorities for funding, make annual recommendations on the spending of tax proceeds, recommend appropriate efforts to evaluate previous expenditures, and to review the annual report. Spending decisions would remain with the City Council, which may choose not to accept any particular recommendation of the Cannabis Tax Community Advisory Board.

  - The Board shall have at least one public health professional, one expert in addiction or substance use prevention and treatment, one physician, a representative of a community based organization, a representative of community clinics, a school nurse or school-based mental health professional, a representative of a community based organization serving low income people, the city health officer or his or her designee. At least
two members shall be residents of communities disproportionately affected by drug-related incarceration.

- The Board shall advise and make recommendations on how to best to spend funds to the City Council, to:
  1. Prevent cannabis consumption by youth, during pregnancy or in excessive or harmful ways;
  2. Prevent other forms of substance abuse or addiction;
  3. Prevent other leading causes of illness, injury and premature death in the community whether or not arising from cannabis use; and/or
  4. Promote wellness and reduce inequity in health conditions;
  5. Reduce negative social impact of substance abuse;
  6. Reduce drug–related incarceration, including, for example:
     i. Support to reduce new drug-related incarceration;
     ii. Programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA;
     iii. Re-entry programs for those released from incarceration to avoid recidivism; and
     iv. Job training programs and other community-based and educational programs, especially those that will minimize drug-related incarceration.

- Recommended activities may include promoting or implementing policy, systems or environmental changes to create a healthier community or to reduce drug-related incarceration, providing education, or community-based programs serving residents of the City of Berkeley with a focus on low-income communities.

RATIONAL FOR RECOMMENDATION
We are making these recommendations as we have learned from the public health experience with tobacco and alcohol that products intended for adults are often marketed and accessible to children and youth. We have also learned from the other states that have recently legalized adult use of marijuana that changes in consumption patterns and pricing may put the public’s health at risk. Therefore, the Community Health Commission is making the above recommendations to safeguard the health, safety and welfare of the residents of the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED
The alternative action is to allow the current discussion to go forward without the input of the Community Health Commission; this is not a viable option.

ENVIRONMENTAL SUSTAINABILITY
These measures are likely to reduce second hand smoke exposures from marijuana, exposure of cannabis business employees to second-hand smoke, and to delay or decrease water and electricity consumption related to cannabis production or sale.

**CONTACT PERSON**
Robert Terrones, Secretary, Community Health Commission, (510) 981-5324

Attachments:


6. The Academies defined Substantial Evidence as follows: There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest. ¹ Safeway (3), Berkeley Bowl (2), Whole Foods (2), Traders Joes, Berkeley Natural Grocery, Monterey Market, Star Grocery.


This attachment includes the recommendations from the September 13, 2018 CHC letter to Council, divided into the following categories:

Group A: A list of the issues from that report that have been addressed in Round 1: and
Group B: A list of the remaining issues to be considered in Round 2, divided into:
   1. Those with recommended ordinance language in Attachment A; and
   2. Those without recommended ordinance language.

The issues listed in Group A are provided for information only; action has already been taken on these recommendations.

The Commission should review the issues listed in Group B and consider recommendations to make to Council regarding them. In the case of the issues without recommended ordinance language, staff has provided reasoning why the issue does not need or should not have ordinance language. The Commission can choose to make a recommendation to support the staff reasoning or develop ordinance language for individual items. In most cases, the section where ordinance language could be added is provided.

Group A: CHC recommendations considered in Round 1

The following issues were considered by the City Council on April 2nd. The Council’s decision is in bold text.

- No expansion of cannabis quota ([Expanded to 7, with the 7th restricted to an equity candidate](23C.25.010.F.1)
- Deliveries limited to medicinal cannabis ([No limits on deliveries](12.22.040.H)
- Retail outlet buffers of 1,000 feet ([Held over to Round 2](23C.25.010.A)
- Prohibit cannabis Retailers from holding or maintaining a license to sell tobacco ([Tobacco cannot be sold at a Retailer](12.21.040.J.1)
- Prohibit cannabis Retailers from holding or maintaining a license to sell alcohol ([Alcohol cannot be sold at a Retailer](12.21.040.J.2)
- Lounges/on-site consumption (non-combustible consumption (edibles and vaping) ([Held over to Round 2](12.22.040.G.2)
- No cannabis product advertising in any publicly visible location within 1,400 feet of a school ([No product advertising except in Retailers](20.40.030 and .040)
- Prohibit advertising of products in Berkeley that cannot be sold in Berkeley ([No product advertising except in Retailers](20.40.030 and .040)}
• Prohibit advertising and marketing of cannabis or cannabis products that may be attractive to children or youth (No product advertising except in Retailers – see 20.40.030 and .040)
• Prohibit claims in advertising that assert safety because of state or local licensing (Signs warn that product is not tested for safety – see 12.22.040.F.3)
• Require noticing for required signage inside Retailers: 3’x3’ signs, minimum 28 point font, displayed at eye level, prominently behind main dispensing counter
• Require retailers to have signs in stores (and provide to customer if a delivery) with warnings regarding impaired use of heavy machinery, not tested for health, safety and efficacy, potential health risks (general), sales of medicinal cannabis only to card-carrying patients, prohibition on diversion of product, and prohibition on sales to persons under the age of 21. (Retailers are required to have these signs – see 12.22.040.F)

Group B: CHC recommendations to consider in Round 2

To discuss as part of Comprehensive Cannabis Ordinance, Round 2:

• Increase discretion for Retailers from ZC to AUP or UP
• Increase Retailer buffers to 1,000 feet

RESTRICTIONS ON SALES

• Require deliveries to be ordered in person in the dispensary (no phone or internet orders)
• Limit sales at cannabis Retailers to cannabis and cannabis products – no food, tobacco products, alcoholic beverages, non-cannabis medicines or supplements, or clothing.
• Prohibit cannabis Retailers from holding or maintaining a food services or cottage food establishment permit
• Prohibit pharmacies from selling cannabis
• Prohibit sales of cannabis for less than listed prices
• Suggest development of a price floor for cannabis and cannabis products
• Prohibit sales of items with cannabis business, cannabis, or cannabis product brand identification on items typically used by persons under 21 (such as clothing, toys, games, game equipment)

RESTRICTIONS ON USE IN COMMERCIAL ESTABLISHMENTS

• Prohibit Lounges for smoking or not incidental to Retailers (Retailer would be incidental)

RESTRICTIONS ON ADVERTISING

• Prohibit claims of therapeutic or curative effects on cannabis and cannabis products.
• Prohibit advertising and marketing materials that depict activities or conditions considered risky when under the influence of cannabis (operating a vehicle, pregnancy, breastfeeding) – would apply to advertising within a Retailer, since that is the only place in Berkeley that advertising of cannabis products is allowed.

RESTRICTIONS ON PRODUCTS

• Prohibit sales of:
  o Cannabis or cannabis products attractive to children or youth
  o Cannabis or cannabis products packaged or labelled to be attractive to youth
o Products containing synthetic cannabinoids (check with Lisa)

o Cannabis flower with potency in excess of 20% THC content

o Cannabis products with THC content in excess of 50%

o Cannabis flower with an added characterizing flavor

o Cannabis products (edibles) with an added characterizing flavor, other than hard lozenges or chocolates with no additional flavors

o Cannabis with packaging, labelling or marketing that includes claims of health, therapeutic or curative effects or references to “potency”, “strength”, “high” or “natural”

o Cannabis or cannabis products with additives designed to increase potency, additive potential, or create unsafe combination, such as nicotine, alcohol, caffeine

o Any cannabis product that would be classified as a potentially hazardous food per CA Health and Safety Code 113871, including products that are temperature sensitive

o Infused beverages, powders, gels or concentrates to make cannabis infused beverages

o Any cannabis product that is easily confused with a non-cannabis product

• Prohibit cannabis Retailers from selling more than 10 product variations (SKUs) of edibles

• Limit individual servings to 10 mg THC and packages not exceeding 100 mg per package

• Prohibit tinctures or other non-edible cannabis products with added flavors or exceeding 1,000 mg THC and require tinctures to have clear instructions and a marked dropper

LABELLING/PACKAGING REQUIREMENTS

• Retailers must retain original labels and packaging provided by the manufacturer, and must retain the packaging until the sale of the entire contents of the package,

• Exit packaging must include warning labels regarding pregnancy, breastfeeding, impaired driving, harm to developing brain, schizophrenia, breathing problems

SIGNAGE REQUIREMENTS

• Signs must be behind the main counter, at least 3 feet by 3 feet in area, and displayed at eye level.

• Require stores to have signs regarding pregnancy, breastfeeding, impaired driving, harm to developing brain, schizophrenia, breathing problems, immigrant status, probation/parole status or non-medical use by persons between 18 and 21.

TAX REQUIREMENTS

• Increase taxes beyond 10%

• Establish a Cannabis Tax Community Advisory Board to recommend use of cannabis tax revenue (similar to Sugar-Sweetened Beverage Tax Board)

1. Round 2 issues with drafted ordinance language in Attachment A:

• Discretion for Retailers;
• Buffers between Retailers and sensitive uses; and
• Consumption Lounges.
## 2. Round 2 issues without proposed ordinance language:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Reasoning</th>
<th>Relevant portion of code if change is considered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibit phone or internet orders</td>
<td>Would only apply to Berkeley businesses, putting them at a disadvantage when competing against businesses located in other jurisdictions. Limited city staff resources to enforce.</td>
<td>12.22.040.H</td>
</tr>
<tr>
<td>Retailers can only sell cannabis, cannabis products and cannabis accessories</td>
<td>State only allows sale of cannabis goods, cannabis accessories and the licensee’s branded merchandise (Sections 5041.1 and 5407) (Branded merchandise must be approved by the Bureau of Cannabis Control.) Would only apply to Berkeley businesses, putting them at a disadvantage when competing against businesses located in other jurisdictions. Limited city staff resources to enforce.</td>
<td>12.21.020 – definitions (amend Retailer, define cannabis accessories)</td>
</tr>
<tr>
<td>Retailers may not be a food service establishment or cottage food establishment</td>
<td>Currently prohibited by State law, though there is a bill going through the Assembly that would allow Lounges/Consumption Cafes to serve food and non-alcoholic beverages at a Lounge – AB 1461.</td>
<td>12.22.040 (or a new section if one is created for Lounges/Consumption Cafes)</td>
</tr>
<tr>
<td>Prohibit cannabis sales at Pharmacies</td>
<td>State only allows sale of cannabis goods, cannabis accessories and the licensee’s branded merchandise (Section 5407).</td>
<td>12.21.020 - definitions</td>
</tr>
<tr>
<td>Prohibit claims of therapeutic or curative effects</td>
<td>Already prohibited by State law (Sections 40410 and 40525)</td>
<td>12.22.040.E</td>
</tr>
<tr>
<td>Prohibit advertising depicting activities which would be risky while using cannabis</td>
<td>State requires warnings regarding use while pregnant, breastfeeding or driving machinery (Sections 40404 and 40408)</td>
<td>12.22.040.E</td>
</tr>
<tr>
<td>Prohibit sales of temperature sensitive products</td>
<td>City and State already have regulations for holding requirements. Butters are only product allowed with a temperature requirement.</td>
<td>12.21.040.K</td>
</tr>
<tr>
<td>Prohibit sales of cannabis products based on potency, synthetic cannabis, characterizing flavors or types or variety of product</td>
<td>Would only apply to Berkeley businesses, putting them at a disadvantage when competing against businesses located in other jurisdictions. Limited staff resources to enforce.</td>
<td>12.22.040 (create new subsection)</td>
</tr>
<tr>
<td>Limit serving size or number of servings per package, have special warning on packages</td>
<td>Would only apply to Berkeley businesses, putting them at a disadvantage when competing against businesses located in other jurisdictions. Limited staff resources to enforce.</td>
<td>12.22.040 (create new subsection)</td>
</tr>
<tr>
<td>Retain original packaging</td>
<td>Would only apply to Berkeley businesses – reasoning for this regulation is unclear. Limited staff resources to enforce.</td>
<td>12.22.040 (Retailers) and/or 12.22.050 (Distributors)</td>
</tr>
<tr>
<td>Warning labels on exit packaging</td>
<td>Might not be a significant additional cost to Berkeley businesses. Staff could support as long as warnings are supported by research.</td>
<td>12.22.040.F (Retailers)</td>
</tr>
<tr>
<td>Prohibit sales of product at reduced prices</td>
<td>Some price reductions already prohibited by the State (free giveaways, buy one, get one free, free product with donation, contests, sweepstakes or raffles – Section 5040). Would only apply to Berkeley businesses, putting them at a competitive disadvantage against businesses located in other jurisdictions. Limited staff resources to enforce.</td>
<td>12.22.040 (Retailers)</td>
</tr>
<tr>
<td>Develop a price floor for cannabis and cannabis products</td>
<td>Would apply only to Berkeley businesses, putting them at a disadvantage when competing against businesses located in other jurisdictions. Limited staff resources to enforce.</td>
<td>12.22.040 (Retailers)</td>
</tr>
<tr>
<td>Issue</td>
<td>Description</td>
<td>Code</td>
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<tr>
<td>Warning signs in stores regarding pregnancy, impaired driving,</td>
<td>Might not be a significant additional cost to Berkley businesses. Staff could support as long as warnings are supported by research.</td>
<td>12.22.040.F</td>
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<td>underage use, schizophrenia, breathing problems, immigrant status,</td>
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<td>or probation/parole status</td>
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<tr>
<td>Increase taxes</td>
<td>Studies indicate that higher taxes drive the illicit market, providing easier access to youth</td>
<td>9.04.136</td>
</tr>
<tr>
<td>Establish a Cannabis Tax Community Advisory Board</td>
<td>Taxes from cannabis businesses may be used for a variety of issues in addition to health education and substance abuse prevention, such as equity programs and arts programs. Would require additional staff resources.</td>
<td>Title 7 (Would be a new chapter)</td>
</tr>
</tbody>
</table>
TO: Berkeley Cannabis Commission
FROM: Commissioner Brewster
RE: Berkeley Equity Program

Task: We have been asked to make a recommendation to the City Council regarding the City’s Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

Considerations: it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City’s Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an “Office of Cannabis,” and/or a “Cannabis Director,” (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included “recommendations” and “notes on recommendations,” so that the Commission may consider my reasoning.

Equity Statement

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis related (see “Related” below) offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;

   - Recommendation No. 1 (ADD) and

     - Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition.

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City’s Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on
Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

A. Any conviction within the state of California, prior to January 2017, for a cannabis offense - **Recommendation No. 2 (ADD)** or a cannabis related offense including both non-violent felonies and misdemeanors; OR

B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or cannabis related offense;
   - To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.
   - Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.

C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;

   - **Recommendation No. 3** treat the Low-Income Threshold as a preferential, but not qualifying factor.

D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
   - The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers ….

2. **Recommendation No. 4:** Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.

Notes:

**Recommendation No. 1:** We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where
funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.

**Recommendation No. 2:** If we limit qualifying offenses to cannabis only, we will miss a huge population of individuals who were initially targeted for a Cannabis offense but ultimately charged for another non-violent crime. For example – an individual is detained by police on suspicion of selling Cannabis. On contact, it is discovered that the individual actually is in possession of a small amount of another controlled substance (such as cocaine). He is ultimately arrested/convicted for possession of a controlled substance 11350. Or perhaps it turns out he has drug paraphernalia such as a pipe, he would be charged with an 11364 which is not specifically a cannabis offense. These individuals were victims of the War on Drugs and should benefit from the City’s Equity Program. The onus is on the applicant to demonstrate to the satisfaction of the City that they meet this requirement and the City may, at its discretion, determine that the applicant has failed to meet this threshold.

**Recommendation No. 3:** Meeting the Low-Income threshold alone does not demonstrate that an applicant has been adversely affected by the War on Drugs, and to treat this element as a singularly qualifying factor, detracts from the overall purpose of the Equity Program. Conversely, using the Low-Income-Threshold as an additional qualifying factor, thus requiring applicants to both demonstrate that they/their parents meet the income threshold AND have been affected by Law Enforcement Actions for cannabis offenses, the Equity Program will likely exclude numerous otherwise qualified candidates. This is especially true considering the high cost of living in the City of Berkeley compared to the wider cost of living in Alameda County). Therefore, it is recommended that we treat demonstration of meeting the Low-Income-Threshold as a preferential factor.

**Recommendation No. 4:** It’s not enough to give identified Equity applicants a leg up in the application process. These applicants will be far behind the major stakeholders in the industry by definition (e.g. they or their parents, will have a criminal background and/or will have served jail time for cannabis offenses, and will likely have limited financial means or access to wealth streams.) The largest barriers for entry into the Cannabis industry are access to capital and access to real estate. Without City support efforts towards diversifying the Cannabis industry with Equity businesses will fall short and ultimately fail. It is therefore incumbent on the Cannabis Commission to recommend, and the Berkeley City Council to pass measures to support our Equity based Cannabis recommendations by setting aside a portion of the cannabis tax revenue to support this group.

Additionally, I propose that the Commission recommends the implementation of a voluntary contribution program as part of the licensing and renewal process in which all Cannabis Stakeholders are encouraged to reinvest in our Equity Community by making a contribution to the Cannabis Equity Fund. Specific levels could be set (encouraged) based on annual revenue or, more simply, based on number of employees (e.g. 0-5 employees $1,000; 5-10 employees $1,500; 10-20 employees $2,000; etc.) Commensurate with this voluntary contribution, could be a voluntary community service contribution in which Cannabis Stakeholders could offset their Equity Program Contributions with volunteer time. The goal is to effect a mentorship program which would ostensibly incubate Equity Applicants without the constraints associated with incubation efforts in Oakland and San Francisco.
(a) The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

1. Failure or inability to comply with the provisions of this division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow, water quality, and fish and wildlife.

2. Conduct that constitutes grounds for denial of licensure under Chapter 2 (commencing with Section 480) of Division 1.5, except as otherwise specified in this section and Section 26059.

3. Failure to provide information required by the licensing authority.

4. The applicant, owner, or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

   (A) A **violent felony conviction**, as specified in subdivision (c) of Section 667.5 of the Penal Code.

   (B) A **serious felony conviction**, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

   (C) **A felony conviction involving fraud, deceit, or embezzlement.**

   (D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell,
furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(E) A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 (commencing with Section 480) of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

(6) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority.

(8) Failure to obtain and maintain a valid seller’s permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(9) Any other condition specified in law.
## UNIFORM ACT (URA) INCOME LIMITS

### STATE: CALIFORNIA

#### 80% LOW INCOME LIMITS

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**Note:** The document contains a table listing income limits for different counties in California, calculated at 80% of the median income. The table shows the income limits for 1 to 8 persons for each county.
2nd Annual BERKELEY FORUM ON ACCESS AND DISABILITY RIGHTS:

Berkeley’s ADA Transition Plan Update and perspectives on inclusivity for persons with disabilities living, working, studying, and visiting in Berkeley, CA with interactive panel presentations and discussion.

THIS meeting is being held in a wheelchair accessible location. ASL Interpreting Services provided. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) or DBednarska@cityofberkeley.info (email) at least five business days before the meeting date. Please refrain from wearing scented products to this meeting.

8 May 2019
3pm-5pm
Ed Roberts Campus
3075 Adeline St
Berkeley | 94703

Admission Free
Donations Welcome

Panelists

Katherine Zigmont
Operations Director, World Institute on Disability

Andrew Brozyna
Deputy Director, City of Berkeley Public Works Department

Rita Maran, Moderator - CRPD Subcommittee Chair

Sponsored by the City of Berkeley Peace & Justice Commission’s Subcommittee on the UN Convention on the Rights of Persons with Disabilities, the Berkeley Commission on Disability and in coordination with the Disability Rights Education and Defense Fund (DREDF), and the Ed Roberts Campus
PEACE & JUSTICE COMMISSION SUBCOMMITTEE:
CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
MEETING AGENDA
Wednesday, May 8, 2019 at 3:00pm-5:00pm
Ed Roberts Campus, 3075 Adeline St, Berkeley, CA, 94703

AGENDA
1. Roll Call; Quorum check; Call to Order
2. Announcements; Members’ Reports; Introductions
3. Panel: 2nd Annual Berkeley Forum on Access and Disability Rights
4. Public Comments: Interactive Discussion
5. Adjourn

ADA Disclaimer
“This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) or DBednarska@cityofberkeley.info (email) at least five business days before the meeting date. Please refrain from wearing scented products to this meeting.”

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Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U. S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Health Services Department located at 1947 Center Street, 3rd Floor.

Commission Contact Information
Breanne Slimick, Secretary
Peace and Justice Commission
City of Berkeley
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7018 (voicemail)
bslimick@cityofberkeley.info (email)
Dear Michael and commissioners,

I indeed believe the commission statement needs updating, but perhaps only minor. As I believe staff stated most of the commission time has been spent on application and regulatory ordinance/licensing.

However, other aspects of the mission statement should remain even if having received scant attention or focus. As I stated, I believe the City Attorney should explain/clarify what and how any commission suggestions can be implemented considering your mission statement is the product of Measure T (2010), with roots in Measure R (2008), Measure JJ (2004).

My chronological ballot measure background follows, and then my suggestions...

Best, Charley Pappas

p.s.
Attached- #1- Background, chronology, mission statement, comments
Attached- #2- Measure-T, Measure-JJ, Measure-R

p.p.s.
Please forward to Owen Poindexter, Marissa Svec-Burdick, Ezra Malmuth
Background Information- Berkeley Cannabis Commission Origination, Formation, Revision


**PAMCA, May 2004** reaction to lack of Mayor & City council action- regulating/ permitting Berkeley dispensaries. By June enough signatures gathered for ballot placement. Provisions a “peer review committee” established by 3 existing dispensaries (the Alliance of Berkeley Patients). Peer review committee- decide approval new dispensaries. Measure R reaction/opposition, Mayor & City council June 2004 capped Berkeley dispensaries to 3. Measure R failed by 900+ votes, recounted failing by less than 200 votes. **3rd recount stymied lost Texas voting machines.** 2008, local judge rewrote Measure R; Measure JJ passed & created Berkeley medical cannabis commission consisting of 2 members appointed by each existing dispensary.

2010, vehement public comment objections to commission make up/lack of action- City council sub-committee resulting in Measure T, medical cannabis commission re-formation.

Berkeley adopted incomplete dispensary/cultivation locations zoning ordinances despite state provision/ encouragement “Nothing in section prohibit city...adopting ordinances/policies further restrict location/ establishment medical marijuana cooperative, collective, dispansary, operator, establishment, or provider.”

**February 17, 2004**
Oakland City Council Ordinance No. 12585, “...permitting distribution medical cannabis to authorized patients through 4 licensed dispensaries. City of Oakland’s administering these permits & monitoring the dispensaries is considered successful, & has become a role model for the nation.” Limits medical cannabis dispensaries to 4 starting June 1.

**May 2004**
Measure R, Patients Access to Medical Cannabis Act (PAMCA)- in reaction to lack of Mayor & City council action regulating & permitting dispensaries in Berkeley. By June, enough signatures for ballot placement. Provisions: a “peer review committee” to be established by the 3 existing dispensaries in Berkeley (who as the Alliance of Berkeley Patients) wrote the ballot measure; peer review committee decide/approval for new additional dispensaries; Measure R failed by 900+ votes; 2nd recount fails by under 200 votes; 3rd recount was stymied by lost voting machines in Texas, prompting Measure JJ 2008 by Alameda Co. Judge

**June 2004**
Berkeley City Council medical cannabis dispensary moratorium (3 existing) Measure R opposition & reacting to Oakland moratorium- “…parade of pot clubs...moving to Berkeley…” Council member Linda Maio

**Nov 3 2008**
Measure JJ, Berkeley Patients Access to Medical Cannabis Act (PAMCA)- By 2008, a local judge rewrote Measure R into Measure JJ when passing, created Berkeley medical cannabis commission, 2 members appointed by each existing dispensary.

**May 2010**
Berkeley Mayor and City Council discuss taxation possibilities concerning Prop 19, Marijuana Legalization Initiative, Regulate, Control and Tax Cannabis Act of 2010. Dozens of cannabis activists, most notably members of 40 Acres Medical Marijuana Growers Collective, spoke vehemently opposing the Measure JJ formulated medical cannabis commission, as well as a disappointing status quo considering only 3 permitted medical cannabis dispensaries, a lack of patient choices, services and price competition.

**June 6, 13, 20, 2010**
Berkeley City Council marijuana subcommittee (Bates, Capetelli, Moore) meet with large public comment formulating, recommending Measure T for City Council approval.

**Nov 2 2010**
Measure T, amendment to Berkeley’s medical cannabis ordinance In 2010, forceful objections to the commission make up and lack of action initiated the formation of a City council sub-committee resulting in Measure T- including the re-formation of the medical cannabis commission; adding 1 new dispensary; allowing 180k sq ft medical cannabis cultivation in the M-Zone only; private residential patient collectives.

**Commission Reformation Chronology:** Displays Mayor and Council continuing delays for Measure
T implementation including 7 months without 9 appointees until first commission meeting can occur.

July 21, 2011- **First meeting of the MCC.** Mandated by Measure T to be standard commission.

**Commission Background/Revision - Page 2**

Oct. 25, 2011- **Dispensary & Cultivation subcommittees begin meeting.** Ultimately decide to marshal MCC efforts around first developing Dispensary guidelines, cultivation ordinance, Measure T

May 2, 2013- **Dispensary regulations completed.** They are a BCC Action Calendar item, along with request to increase dispensaries permitted to six from four.

May 21, 2013- **Councilmember Moore recommends postponement-** medical cannabis regulations, 1st of several cultivation delays- “waiting for state proposals”, item he placed on Action Calendar.

Oct. 1, 2013, July 22, 2014- 2nd **Cultivation subcommittee convenes.** Through 17 meetings develop draft i) position paper for allowing cultivation beyond the M District, ii) cultivation operational guidelines, iii) license selection criteria.

June 4, 2014- **Cultivation requested in additional areas:** MCC sends BCC position paper to study expanding cultivation beyond the M District.

July 8, 2014- **Berkeley City Council (BCC) passes Dispensary rules & selection criteria.** Retains limit of four dispensaries, otherwise, votes for MCC over staff versions.

11/18/14- **BCC refers to the Planning Commission (PC) expanding cultivation areas.** PC will study this issue and report back to the BCC.

March 20, 2015- **Berkeley Staff & City Manager,** final acceptance date- new medical cannabis dispensary applications.

April 30, 2015- **Berkeley Staff & City Manager,** final application corrections- 7 applicants chosen from 12.

Sept. 2, 2015- **PC assigns high priority to study of expanding cultivation** beyond the M District.

Sept. 29, 2015- **Mayor & City Council,** Mayor tries to stop permit process- fails, Community Partnership 4 Health application (Charles Pappas et al) denied reconsideration- “deadline is a deadline / not fair to other applicants”, 6 applicants allowed for round 4 rather than top 5 candidates.

Oct. 9, 2015- **California Medical Marijuana Regulation & Safety Act (MMRSA) passes state assembly,** requests local jurisdiction ordinances / input, minor adjustments to existing Berkeley guidelines, still no BCC cultivation ordinance approval (180k sq. ft. cultivation = $1 million city tax revenue / yr- MCC subcommittee estimate 2013).

Dec. 16, 2015- **PC codifies 180k SF max citywide for cultivation, removes six-location limit.** This action is part of writing language for minor adjustments to bring Berkeley into compliance with MMRSA. MMRSA compliance document forwarded to BCC.

Feb. 4, 2016- **MCC votes on recommendation for Dispensary license.** MCC deliberation sent to BCC.

BCC votes on Cultivation license selection criteria- **Done deal sometime last year with Council ordinance approval preceding longer selection licensing sometime later in the year- check with Staff**

PC forwards BCC recommendations for expanding cultivation beyond M District

BCC votes on areas to expand cultivation beyond the M District- Long ago agreement, no discussion, vote!

CC recommends Delivery only dispensary/ Nursery ordinance & selection/ licensing permit process- Complete lack of delivery only progress, nursery soon!!

CC reviews ordinance changes, recommends to BCC- Staff predicts in 10/17 comprehensive cannabis regs Council passage by 6/18; Ha Ha- new estimate Fall 2019.
CC considered AUMA implications, new regulations, consumption, etc.- Surface barely scratched...
Berkeley Measure T- 2010 Peer Review Committee/Cannabis Commission

Comments after revised Commission chronology: Succinctly, the progress of the medical and then cannabis commission displays from the outset, even until recently, a contrast between commission steady regular timely progress and unfortunate, undeniable slow review, oversight, lack of decision making by Mayor/Council. What I have pointed out for so long, a continuation of the status quo.

Simply check the chronology for commission vs Council actions: dispensary application formation-commission 22 months; application process approval & application acceptance- Council 14 months, then 10 months; first application accepted; first permit- Council 14 more months; 2nd & 3rd permits 18 months from application outset; only 1 new dispensary- May 2018, 38 months from application acceptance, 7.5 years from ballot Measure-T; Cultivation recommendation regulation considerations – commission 18 months; Council- 14 month discussion delay; cultivation regulation & licensing completed- commission 9 months ending July 2014; Council passes ordinance 3.5 years later, over 4 years until licensing/selection process with a result of 0 cultivation permits in over restricted, lack of space M-Zone, Measure-T 8.5 years!

In conclusion, certainly there is no doubt Mayor /Council delays have sadly and significantly eroded the interest and attention of local positive and productive cannabis entrepreneurs whose meeting input, attendance and comment have steadily diminished. Likewise, qualified commissioners have resigned in frustration without Council attention and prompt appointee replacement until this month. (Jan. 2017, last appointees!)


The purpose of this Section is to ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. A medical cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

B. New Dispensaries. The commission shall recommend to the City operational and safety standards for Medical Cannabis Collectives and Dispensaries, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The commission shall advise the City as to whether certify that the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. The commission will monitor the compliance of Medical Cannabis Collectives and dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action.

Charley Pappas- Commission Statement Revision
Dispensary, cultivator, collective replaced by up to 3 experienced cannabis operators (licensed, applicant, or anecdotal)
New Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis collective or dispensary when consulted by entity for advice, or city officials for recommendation
Monitor the compliance of Medical Cannabis Collectives and dispensaries- with increasingly less existing and future dispensary participation (excepting BPG), this unfortunately has not been the case, but a few neighborhood complaints surfaced previously and therefore the commission should pay attention to any negative and positive occurrences regarding cannabis activity
Basically, not radical changes in this Council crafted/voter mandate hoping for increased knowledgeable input action progress locally in cannabis affairs for citizen and community benefit!
**2004-2010 Summaries-Measure T, Measure JJ, Measure R**

**2010 Measure T- Brief Summary**
Shall the Berkeley Municipal Code be amended to: allow residential medical cannabis collectives, with up to 200 square feet of cultivation; allow six locations in the Manufacturing District for cultivation; allow a fourth dispensary; require dispensaries to be at least 600’ from public and private schools and other dispensaries; permit new and relocated dispensaries only in C districts; change the makeup of the Medical Cannabis Commission; and permit the Council to adopt other amendments?

**2010 Measure T Additional**
23E.16.070 Medical Cannabis Uses A.1. Subject to the licensing requirement of paragraph 3, four medical cannabis dispensaries as defined in Section 12.26.030 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police. When applicable, Zoning Certificates for medical cannabis uses shall be issued without undue delay and following normal and expedient consideration of the permit application.

**2008 Measure JJ**
CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE JJ PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008
This measure would amend the Berkeley Municipal Code to have the following material effects:

1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to possess or cultivate more. The amendment retains but modifies the current limit of 10 outdoor cannabis plants on a single parcel, to only count plants that are visible from other property. The ordinance would eliminate the existing limits of 12.5 pounds of dried cannabis and 50 cannabis plants that a collective composed of qualified patients and primary caregivers can possess, and provide instead that such a collective may possess a reasonable quantity of dried cannabis and cannabis plants to meet the medical needs of patient members as long as no more cannabis is accumulated than is necessary to meet such needs.

2. The ordinance would establish a Peer Review Committee composed to certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, and to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.

3. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as “Drug Control Officers” for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), and reasonably accommodate the provision of medical cannabis to patients and their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.

4. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.

5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.

6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City’s existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise permitted.

Current law- such uses would be subject to use permit & require public hearing.

MEASURE JJ, the Patients’ Access to Medical Cannabis Act of 2008, ENSURES RESPONSIBLE REGULATION, PROTECTS SAFE ACCESS, and ENDS POLITICAL GRIDLOCK. MEASURE JJ is a citizens’ initiative to control medical cannabis (marijuana) through reasonable zoning regulations and a city oversight commission. It includes City Council approved limits on the number and location of
medical cannabis dispensaries in our city. • MEASURE JJ ENSURES RESPONSIBLE REGULATION
Currently, there is no clear framework for dispensary oversight. JJ creates a city commission that controls dispensaries, protects neighborhoods and businesses, and helps patients. It prohibits dispensaries in residential areas. It protects property values and neighborhood character. • JJ PROTECTS SAFE ACCESS JJ ensures that patients have access to medical cannabis that is safe, responsible, and controlled by doctors under state law. It aligns Berkeley medical cannabis law with current state law. • JJ ENDS POLITICAL GRIDLOCK JJ provides clear direction and a framework for City staff and dispensary operators to maintain the status quo of no more than 3 well-regulated “good neighbor” dispensaries. JJ ensures that our tax-paying dispensaries are not shut down by the current unworkable permitting process. JJ is a fact-based, experience-proven approach to medical cannabis regulation. It deputizes trustworthy dispensaries to work with the City to develop controls and regulations. It recognizes existing Berkeley dispensaries' track record of beneficial community engagement. JJ’s changes are incremental, but vital for the future of medical cannabis in Berkeley. Once again, Berkeley can lead the way in effectively integrating medical cannabis under city permission and control. Medical cannabis is working in Berkeley. To keep it working, we must take the next step: sensible regulation.

2004 Measure R
Shall the City’s ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives? Financial Implications: Possible increase law enforcement costs & possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.

Impartial Analysis from Berkeley's City Attorney

Measure would amend the Berkeley Municipal Code- have following material effects:

1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to posses or cultivate more. The amendment retains but modifies the current limit of 10 outdoor cannabis plants on a single parcel, to only count plants that are visible from other property.

2. Ordinance would eliminate existing limits of 12.5 pounds of dried cannabis & 50 cannabis plants that a collective composed of qualified patients & primary caregivers can possess, & provide instead that such a collective may possess a reasonable quantity of dried cannabis & cannabis plants to meet medical needs of patient members as long as no more cannabis accumulated than necessary to meet such needs.

3. The ordinance would establish a Peer Review Committee composed to certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, & to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.

4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as "Drug Control Officers" for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), & reasonably accommodate the provision of medical cannabis to patients & their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.

5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.

6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City's existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise permitted. Under current law such uses would be subject to a use permit and thus require a public hearing.