MEETING OF THE
CANNABIS COMMISSION

2180 Milvia Street
Redwood Room (6th Floor)

Thursday, July 11, 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. June 6, 2019 Draft Action Minutes
   B. June 13, 2019 (Special meeting) Draft Action Minutes

IV. Planning Staff Report

V. Chairperson’s Report

VI. Subcommittee Report

VII. Discussion and Action Items
   A. Cannabis ordinance changes: Review and discuss recommendations from the
      Ordinance Review Subcommittee and vote on recommendation to Council. Changes
      would relate to delivery-only retailers, lounges, buffers, discretion for Retailers,
      expansion of cultivation beyond the M District, signage, changes in ownership/location
      and retail microbusinesses. Two attachments:
      1. Staff report and draft ordinance language (Revised July 11th to reflect corrected
         zoning language and revised recommendation regarding location of Delivery-Only
         Retailers, uses at Retail Storefront Microbusinesses and new definitions)
      2. Notes from May 22, 2019 Ordinance Review Sub-committee meeting
   B. Review draft equity proposal and vote on recommendation to Council. One attachment:
      1. Staff memo: Draft Proposal for Cannabis Equity Program (includes the 2/22/18
         Cannabis Commission equity recommendation).
   C. 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):

IX. Correspondence
   A. Communications:
      1. Patient Care Collective: Proposed changes related to Retail Storefront
         Microbusinesses
   B. Late Communications: None.

X. Adjournment
Communications to Berkeley boards, commissions, or committees are public records, 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, do not include that information in your communication – you may deliver communications via U.S. Postal Service, or in person, to the Commission Secretary. Please contact the Commission Secretary for further information.

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.
MEETING OF THE
CANNABIS COMMISSION
2180 Milvia Street    Thursday, Jun 6, 2019
Redwood Room (6th Floor)    2:00 PM

DRAFT ACTION MINUTES

I. Call to Order – 2:01 pm

A. Roll Call:

Commissioners present:   Lardner, Poindexter, Malmuth, Cooper

Absent: Rice (excused), Svec Burdick (excused), Cable (unexcused), Brewster (unexcused)

B. Changes to Order of Agenda
None

II. Public Comment: One comment requesting email version of agenda be available.

III. Approval of Minutes

Motion/second to approve the May 2, 2019 minutes (Poindexter/Lardner). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

IV. Planning Staff Report

Secretary Greene noted that Round one of the Cannabis Ordinance changes were passed by the City Council. All changes will become effective by mid-June, 2019. Round two changes will be discussed at a later date. Commissioner Rice (Councilmember Hahn’s appointee) will be terming out with this meeting. The Commission will then have two vacancies (Councilmembers Hahn and Wengraf).

The Cannabis Commission will be holding a meeting to receive public comment on the proposed Cannabis Equity Program on Thursday, June 13, 2019 from 6:30pm to 8:30pm at the South Berkeley Senior Center.
V. Chairpersons Report
Chair Cooper noted that Senate Bill 51 (Hertzberg) passed the California State Senate by a vote of 37-1. SB 51 would authorize the creation of limited charter banks and credit unions and authorizes the use of special purpose checks issued by these institutions for certain purposes, including the payment of state and local taxes, rent, and goods and services, and the purchase of state and local securities. This would create a legal banking structure for the cannabis industry. The bill has not yet gone to the Assembly for a vote.

VI. Ordinance Review Subcommittee Report
A meeting of the Ordinance Review Subcommittee was held on Thursday, May 23, 2019. Subcommittee recommendations are discussed below under item VII.B. Cannabis Ordinance Changes.

VII. Discussion and Action Items

A. Work Program
Public Comment: None

The Commission briefly discussed the proposed work plan, generally, and specifically discussed how the unregulated market could be accurately studied (Strategic Area 3) and what the proposed public education program would include (Strategic Area 4)

Motion/second to approve the Work Program (Poindexter/Malmuth). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

B. Cannabis Ordinance Changes
Public Comment: One comment requesting the status of the five Ordinance elements voted on by Council. Staff informed speaker that they were all adopted.

Commissioners Poindexter and Lardner led a discussion of proposed changes to the Cannabis Ordinance recommended to the Commission at the May 23, 2019 Ordinance Review Subcommittee meeting. Individual items were discussed as outlined below:

Item 8. Microbusinesses
The Commission discussed the restrictions on Retail Storefront Microbusinesses, and concerns from one retail to allow more manufacturing options. Staff explained that the currently proposal restricting the manufacturing component to repackaging will not be permitted by the State. Other options were discussed, including permitting Retailers to have incidental manufacturing with a Zoning Certificate rather than an
Administrative Use Permit. Staff will study the options for manufacturing and distribution and bring options to the July meeting.

Item 1. Delivery-Only Retailers
Commissioners discussed in what zoning districts Delivery-Only Retailers would be permitted, what type of land use approvals would be required for their operation, and whether there should be a limit on the total number of Delivery-Only Retailers in the City of Berkeley. The Commission decided to permit Delivery-Only Retailers in C-prefixed districts, except the C-N, and in M-prefixed districts. They decided against recommending a quota of Delivery-Only Retailers.

Motion/second to amend Alternative #1 to read “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, and in M-prefixed zones if they comply with the parking requirements and any security requirements promulgated by the Chief of Police.” (Lardner/Poindexter). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 2: Consumption Lounges
Commissioners discussed how to permit consumption lounges not connected to dispensary/sales. State law appears to currently prohibit that arrangement but may permit such an arrangement in the future

Motion/second to permit Lounges in retailers with a Use Permit “or as otherwise authorized under state law.” (Cooper/Malmuth) The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 3: Retail Buffers
Commissioners briefly discussed proposals for buffers between Retailers, parks and K-12 schools, ranging from 600 feet to 1,000 feet.

Motion/second to adopt proposed Alternative A “Retailers may not be located within 600 feet of another Retailer or public or private elementary school, middle school or High School.” (Cooper/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 4: Discretion for Businesses:
Commissioners briefly discussed the proposed number of total dispensaries. Commission expressed that there should be more than one equity applicant.
Motion/second to accept proposed language of a cap of seven Cannabis Retailers. (Lardner/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 5: Cultivation Beyond the M District
Commissioners discussed whether to permit cultivation in the MM and MU-LI zoning districts. Commissioners also discussed proposed buffers between Cannabis Nurseries and schools or residential districts. Commissioners discussed whether to add outdoor cultivation.

Motion/second to expand cultivation to the MM and MU-LI zoning district, strike the prohibition of outdoor cultivation in 23C.25.020(A)(6) and accept buffer language as proposed. (Lardner/Cooper) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 6: Signage
Commissioners discussed limitations on cannabis-related imagery in store signage.

Commissioners postponed deliberation of Items 6 – 10 of the Ordinance Review Subcommittee report to the next meeting of the Cannabis Commission.

Secretary Greene requested that Commissioners review the recommendations of the Community Health Commission and come to the next meeting prepared to offer general policy direction.

C. Equity Program
Staff informed Commission of the Commission’s public meeting on cannabis equity scheduled for Thursday, June 13, 2019 as well as recent research into other jurisdictions’ equity efforts. Commissioners expressed support for expanding the equity program.

Public comment: One comment. The City of Berkeley should have more than one equity applicant.

VIII. Information Items
None presented.

IX. Correspondence
None received

X. Adjournment

Adjourned at 4:05 pm
Commissioners in attendance: 4 of 8
Members of the public in attendance: Approximately 6
Public comments: 3
Length of meeting: 2 hours and 4 minutes.
SPECIAL MEETING OF THE CANNABIS COMMISSION

2939 Ellis Street
South Berkeley Senior Center
Thursday, Jun 13, 2019
6:30 PM

DRAFT ACTION MINUTES

I. Call to Order – 6:45 pm

A. Roll Call:

Commissioners present: Brewster, Cable, Lardner, Malmuth, and Poindexter.

Absent: Rice (unexcused) and Svec-Burdick (excused)

B. Changes to Order of Agenda

None

C. Public Comment:

None.

II. Consideration of Cannabis Equity Program Options

A. Staff Presentation

Secretary Greene presented on the draft Cannabis Equity Program. In the presentation, staff highlighted existing programs adopted by neighboring jurisdictions, potential eligibility requirements for candidates, and how the program can potentially provide technical business assistance to the final candidate.

B. Questions from the Commission

After the staff’s presentation on the Cannabis Equity Program, the Commission provided commentary on the following parameters of the draft program:
o Evaluation of equity candidate qualifications- expansion of equity criteria to include information relating to viability of candidate (business plan, etc.)

o Candidate criteria- consideration of alternative ownership structures including worker-owned cooperatives (worker cooperative) instead of the individual business owner model

o Selection process considerations: lottery vs. merit based qualifications

o Development of substantial support mechanisms, with a focus on financial, technical, and real estate assistance

C. Public Comment:

Comments from five speakers centered on the following components of the draft proposal:

- Candidate eligibility evaluation - The prioritization of people of color, particularly women of color, as candidates. Victims of War on Drugs include veterans who lose benefits, etc.

- Ownership model of the equity candidate entity (perpetual ownership trust, perpetual promise trust, worker cooperative, employee stock ownership plans, etc.)

- Subjectivity of the equity candidate qualifications- particularly concerning the scope of impact related to the war on drugs

- Limitation of the retail license- Expansion of the types of licenses an eligibility candidate could acquire (delivery, distribution, manufacturing, etc.)

- Workforce development concerns- the availability of vocational training, implementation of labor requirements, and initiating a workforce hiring program facilitated by the City.

- Private funding is available to support equity candidates.

- Need protective mechanisms to prevent equity candidates from predatory practices.

- Interest in creating an impact fund to help equity candidates funded by existing Berkeley cannabis businesses.

Commissioners postponed additional discussion on the draft Cannabis Equity Program to the next regular Cannabis Commission meeting on Thursday, July 11th.

III. Correspondence
None received

IV. Adjournment
Adjourned at 7:45 pm
Commissioners in attendance: 5 of 7
Members of the public in attendance: Approximately 9
Public comments: 5
Length of meeting: 1 hour

APPROVED: ____________________________________________
Elizabeth Greene
Medical Cannabis Commission Secretary
DATE: July 11, 2019

TO: Members of the Cannabis Commission

FROM: Elizabeth Greene, Senior Planner

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

PURPOSE
This memo provides ordinance language for Cannabis Commission consideration that has been updated since the May 2, 2019 meeting. The Commission should review the draft language and make a recommendation to Council.

BACKGROUND
The Commission originally considered these issues at its May 2, 2019 and June 6, 2019 meetings. Actions were taken on the following items:

A. Delivery-Only Retailers: The location and discretion for Delivery-Only Retailers (in C-prefixed districts (except C-N) and M-prefixed districts with a Zoning Certificate)
B. Lounges: Allow at Retailers or as otherwise permitted by State law
C. Buffers for Storefront Retailers: Keep existing buffers (Alternative A)
D. Quota for Storefront Retailers: Approve proposed language
E. Cultivation: Approve proposed language except prohibition on outdoor cultivation.

DISCUSSION
The updates to the ordinance language fall into two categories: format and text changes to make the information easier to use and find; and new policies and definitions. The changes in the first category have resulted in modified ordinance language, such as developing the term “Storefront Retailer” and changing the numbering and order of the Delivery-Only Retailer section. These changes, however, did not change policy direction. For this reason, the report will focus on the second category.

Below are the revised policies and definitions:

1. Delivery-Only Retailers
Based on new information, staff has determined that Delivery-Only Retailers are very similar to Warehouse Based Non-Store Retailers (WBNSR) (i.e. Wine.com, Amazon fulfillment centers, etc.) These uses are allowed in most of the manufacturing districts. Staff recommends that Delivery-Only Retailers be allowed to locate in manufacturing districts subject to the same regulations as a WBNSR, subject to any buffer or quota requirements for Delivery-Only Retailers. Staff did not change the recommendation for Delivery-Only Retailers in Commercial districts.
2. **Retail Storefront Microbusinesses**
   Staff learned that the previous recommendation did not conform to State regulations regarding Microbusinesses. Staff has revised the definition to allow N-manufacturing licenses (infusions and packaging)

3. **Definitions**
   Definitions have been provided or modified for the following terms:
   A. Minor Cannabis Cultivation Facility
   B. Cultivate and Commercial Cultivation
   C. Cannabis Retailer
   D. Storefront Retailer

**NEXT STEPS**
Staff recommends that the Commission consider the following questions:

A. **Delivery-only Retailers:**
   1. Should there be a quota for D-oRs? If so, what?
   2. Do you agree with staff recommendations for buffers and ground floor restrictions in C-prefixed districts?
   3. The staff recommendation for DoRs in manufacturing districts has changed. Does the Commission want to keep its original recommendation or support staff’s revised recommendation?

B. **Discretion for businesses**
   1. Do you agree with the staff recommendation to change the discretion for non-Equity Storefront Retailers from a Zoning Certificate to a Use Permit?

C. **Signage**
   1. Do you agree with the staff recommendation to treat DoR signage in M areas like manufacturing uses?
   2. Do you agree with the staff recommendation to prohibit depictions of cannabis/cannabis products on store signage?

D. **Change in Location**
   1. Should Retailers be required to be in good standing before a new location is considered?

E. **Microbusiness**
   1. Should there be a separate category, with new restrictions, for Microbusinesses at Storefront Retailers?

F. **CHC Recommendations**
   1. Should new ordinance language be considered to incorporate the changes proposed by the CHC (see Attachments B and C)?

**ATTACHMENTS**
   A. Updated Draft Ordinance language, 7-11-19
   B. September 13, 2018 CHC letter to Council
   C. Review of CHC Recommendations
Delivery-only Retailers

Section 23C.25.010

C. Delivery-Only Retailers

1. Delivery-Only Retailers are permitted citywide.

2. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.

3. ALTERNATIVE A: Delivery-Only Retailers are permitted with a Zoning Certificate in C-prefixed Districts other than the C-N District.

3. ALTERNATIVE B: Delivery-Only Retailers are permitted in C-prefixed Districts other than the C-N District subject to approval of an Administrative Use Permit.

4. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.

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

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

7. Delivery-Only Retailers may not be located on the ground floor of a building adjacent to a street frontage in C-prefixed Districts.

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

| Delivery-Only Retailer | ZC or AUP | 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. Subject to restrictions on the ground floor; see Section 23C.25.010. |
23E.04 Definitions

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

**Ways to reduce public smoking/lounges**

23C.25.010.D

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

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

12.21.020

“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.F 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.

**Buffers for Retailers**

23C.25.010.B
3.6. ALTERNATIVE A: Storefront Cannabis Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, middle school or high school.

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

3.6. ALTERNATIVE C: Storefront Cannabis Retailers may not be located within 600 feet of any School, junior college, university, day care center, park, youth center or library another Retailer or a public or private elementary school, middle school or high school.

Discretion for businesses

23C.25.010.B

1. Seven Cannabis Storefront Retailers as defined in Section 12.21.020 shall be permitted in C-prefixed Districts as of right with a Zoning Certificate, either a Use Permit, and must maintain in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security regulations promulgated by the Chief of Police Chapters 12.21 and 12.22 and security regulations that may be promulgated by the Chief of Police.

2. Storefront Retailers shall be subject to approved through the selection process as set forth in Section 12.22.020.

3. Up to seven Storefront Retail permits may be issued, one of which is reserved for an Equity Candidate, as defined in Section 12.21.020. No additional Retailers. This limit to the number of Storefront Retailers shall not be reconsidered for a period of three years from the effective date of this ordinance.

Expansion of cultivation beyond M District

Chapter 23C.25.020

B. Commercial Cannabis Cultivation, as defined in BMC Section 12.21.010, 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. Commercial Cannabis Cultivation shall be limited to only occur at
licensed Cannabis Businesses.

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

F. Cannabis Cultivation Facilities 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.

F. Cannabis Cultivation Facilities may not be located within the distances from sensitive uses listed in the table below shall have the following buffers from sensitive uses at the time of establishment:

<table>
<thead>
<tr>
<th>District</th>
<th>Sensitive Uses</th>
<th>Buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>Schools or City-operated community centers or skate parks</td>
<td>300 feet</td>
</tr>
<tr>
<td>MM</td>
<td>Schools or City-operated community centers or skate parks</td>
<td>600 feet</td>
</tr>
<tr>
<td></td>
<td>R-prefixed district</td>
<td>300 feet (may be reduced with a Use Permit)</td>
</tr>
<tr>
<td>MU-LI</td>
<td>Schools or City-operated community centers or skate parks</td>
<td>600 feet</td>
</tr>
<tr>
<td></td>
<td>R-prefixed district</td>
<td>300 feet (may be reduced with a Use Permit)</td>
</tr>
</tbody>
</table>

Signage

20.40.110 Permitted signs.

A. Retailers that have a storefront and allow customer visits are allowed on-premises signs as set forth in BMC Chapter 20.24.

B. Delivery-only Retailers in C-prefixed districts are allowed business complex signs as set forth in BMC Section 20.16.070.

C. Delivery-Only Retailers in M-prefixed districts and N on-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32. (Ord. 7646-NS § 1 (part), 2019)
20.40.120 Number of signs permitted on premises.
   A. The number of on-premises signs for Cannabis Retailers are limited to BMC Section 20.24.030.
   B. The number of on-premises signs for Cannabis non-retailers and Delivery-Only Retailers in M-prefixed districts are limited to BMC Section 20.32.030. (Ord. 7646-NS § 1 (part), 2019)

20.40.130 Sign area limitations.
   A. The sign area for all signs of Retailers that have a storefront shall not exceed seven and a half (7.5) percent of the building face of the premises or seventy-five (75) square feet, whichever is less.
   B. The sign area for all signs of Delivery-Only Retailers in C-prefixed districts are subject to BMC Section 20.16.070.
   C. The sign area for all signs of Delivery-Only Retailers in M-prefixed districts and non-Retailers shall not exceed twelve (12) square feet.
   D. Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.

Changes in Location
Section 23C.25.010.A.

3. Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.

Retail Storefront Microbusinesses
Section 12.21.020

2. “Retail Storefront Microbusiness” is restricted to a Retailer, a Type N Manufacturer and a Distributor limited to activities related to products sold in the Retailer portion of the business. Distribution for other State Licensees or Cultivation of any kind are not permitted. 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.

23C.25.010.B

5. A Storefront Retailer may operate as a Retail Storefront Microbusiness as defined in Chapter 12.21 subject to obtaining all required State and local licenses.

23F.04

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 microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See BMC Chapter 12.21 for definition and limitations.

Additional Definitions (12.21.020)

J. “Cannabis Cultivation Facility" or "Facility" shall have the same meaning as “cultivation site” as set forth in Section 26001 of the Businesses and Professions Code. It includes “Major Cannabis Cultivation Facility”, defined as follows:

“Major Cannabis Cultivation Facility” means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

“Minor Cannabis Cultivation Facility” means a facility that is less than 10,000 sf in total canopy area.

P. "Cultivate” and “Commercial Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis requiring a license pursuant to MAUCRSA, as amended from time to time.

AA. “Microbusiness” shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes “Retail Nursery Microbusiness”, defined as follows:

1. “Retail Nursery Microbusiness” is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those
products directly related to this business. No cannabis consumption is permitted on site.

12. “Retail Storefront Microbusiness” is restricted to a Storefront Retailer, a Type N Manufacturer and a Distributor limited to activities related to products sold in the Retailer portion of the business. Distribution for other State Licensees or Cultivation of any kind are not permitted. These businesses must follow the development standards for Retailers provided in Chapter 23C.25.

EE. Cannabis Retailer

1. “Cannabis Retailer” means both Storefront Retailers with a location to which Customers, Qualified Patients, or Primary Caregivers may come to acquire Cannabis or any other good or service, and Delivery-Only Retailers.

2. "Cannabis Retailer" shall mean an ACB (“A-Retailer”) or MCB (“M-Retailer”) that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

GG. “Storefront Retailer” is a Retailer with a location to which Customers, Qualified Patients or Primary Caregivers may come to acquire Cannabis or any other good or service.
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;¹ and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight.² 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%.³

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%),⁴ 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.⁵

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.⁶ The NASEM study found “substantial evidence”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.

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 Arreguin and the City Council referred the

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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.

• 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 for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; 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

RATIONALE 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 2\textsuperscript{nd}. The Council’s decision is in **bold** text.

- No expansion of cannabis quota (**Expanded to 7, with the 7\textsuperscript{th} restricted to an equity candidate** – see 23C.25.010.F.1)
- Deliveries limited to medicinal cannabis (**No limits on deliveries** - see 12.22.040.H)
- Retail outlet buffers of 1,000 feet (**Held over to Round 2** - see options for 23C.25.010.A)
- Prohibit cannabis Retailers from holding or maintaining a license to sell tobacco (**Tobacco cannot be sold at a Retailer** – see 12.21.040.J.1)
- Prohibit cannabis Retailers from holding or maintaining a license to sell alcohol (**Alcohol cannot be sold at a Retailer** – see 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** – see 20.40.030 and .040)
- Prohibit advertising of products in Berkeley that cannot be sold in Berkeley (**No product advertising except in Retailers** – see 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
- Products containing synthetic cannabinoids (check with Lisa)
- Cannabis flower with potency in excess of 20% THC content
- Cannabis products with THC content in excess of 50%
- Cannabis flower with an added charactering flavor
- Cannabis products (edibles) with an added characterizing flavor, other than hard lozenges or chocolates with no additional flavors
- Cannabis with packaging, labelling or marketing that includes claims of health, therapeutic or curative effects or references to “potency”, “strength”, “high” or “natural”
- Cannabis or cannabis products with additives designed to increase potency, additive potential, or create unsafe combination, such as nicotine, alcohol, caffeine
- 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
- Infused beverages, powders, gels or concentrates to make cannabis infused beverages
- 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>
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</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>Item</td>
<td>Description</td>
<td>Reasoning</td>
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<tr>
<td>Item VII.A.1 - Attachment C</td>
<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>
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<td></td>
<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>
</tr>
<tr>
<td></td>
<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>
</tr>
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<td></td>
<td>Retain original packaging</td>
<td>Would only apply to Berkeley businesses – reasoning for this regulation is unclear. Limited staff resources to enforce.</td>
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<tr>
<td></td>
<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>
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<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>
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<tr>
<td></td>
<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>
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<td>Warning signs in stores regarding pregnancy, impaired driving, underage use, schizophrenia, breathing problems, immigrant status, or probation/parole status</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>Increase taxes</td>
<td>Studies indicate that higher taxes drive the illicit market, providing easier access to youth</td>
<td>9.04.136</td>
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<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</td>
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(Would be a new chapter)
Minutes from the Cannabis Commission Subcommittee Meeting on Thursday, May 23rd 2019.

Agenda amended to bring item 8, micro businesses, to number one. All other agenda items remain the same.

**Item 8. Microbusinesses**
- Public comment from Patients Care Collective: state does not recognize a P-Type manufacturer: no volatile solvents
- If PCC reverts to type P, they lose micro business status
- Their application specifically says “mechanical” which excludes CO2.
- Asked for their license to be grandfathered in as a manufacturing license not involving solvents so that they can continue to operate while they apply for a license.
- Public comment: a micro business can be cultivation, manufacture, distribution, dispensing, this creates a narrow category retail storefront

Comments from subcommittee:
- Language makes micro business not comply with state law
- We can perhaps cut and paste language from MAUCRSA

Subcommittee moves to push item 8 to the larger commission with recommendation to the PCC group to send an email proposing language to the commission.

**Item 1. Delivery only retailers**
Public comment: We should get this approved because it is a huge lack in Berkeley. Zoning certificate means you could go ahead and apply for a permit. I recommend that. Adult use permit would take forever. Question is where can they be located. This was a very heated debate over the years. People don’t want it taking up valuable retail space. The city wants people to be able to walk in. Alternative would make it second story or not prime retail space. Allowed to exist in manufacturing zones with already-existing manufacturing permits.
Public comment: There is a whole bunch of stuff from previous subcommittees. All this stuff is done.

Subcommittee recommendations:
On Section 23C.25.010. We move to strike Item #2, because it did not include any clear criteria. We move to strike “as part of a micro business” in Item #3. We move to strike Item 1. Alternate #2. Reintroduce #3 “an existing manufacturer can also get a delivery-only retailer license with a zoning certificate.

Item #4 remains the same except the typo is removed.

**Item 2. Consumption Lounges**
Public comment: There is no place in Berkeley where people can safely use. I don’t think we should limit this to existing retailers. I really hope that the commission advocates for having lounges existing as lounges outside of an existing retailer. Existing retailers don’t have the square footage.
Public comment: There should be restrictions on how people can transport themselves on leaving a lounge to avoid driving while high.
Public comment: Similar debate happening in West Hollywood. Bar vs. Restaurant approach (in a bar, you can drink, but you can’t take alcohol home with you, in a restaurant you can carry out what you don’t consume).
Public comment: We could have non-retail consumption and retail consumption.
Public comment: We could have use permitted in designated areas.

Subcommittee Recommendations:
In subsection 12.21.020.DD we move to strike “is a Storefront Retailer”

We are trying to create a new entity in which people could consume on-site: a lounge-only license in which people could consume in a room that meets ventilation and other requirements. The entity would need a state license. It would be like a bar in that lounges could sell product for use on site, but customers could not leave the premises with anything they’ve purchased. We already have distributed-transport only. We could have retailer-lounge only.

Public comment: we should tailor this to a specific state license that is not a retail dispensary. Look into how SF has done tiered lounges.

**Item 3. Retail Buffers** — Subcommittee proposes Alternative A

**Item 4. Discretion for Businesses**

Subcommittee feels there should be more than one equity license. Otherwise we approve the suggested language.

**Item 5. Cultivation beyond the M District**

Subcommittee moves that the city should reconsider outdoor cultivation due to environmental concerns, allowing for greenhouses (which are considered outdoor), energy usage, tax revenue.

**Item 6. Signage**

Subcommittee approves the suggested language.

**Item 7. Changes in Ownership/Location**

-Discussion on whether or not we should put in criteria around cooperative models or other requirements.
Public comment: Ownership and location change should be dealt with separately.
Public comment: You have locally grown industries, maybe brands, there is industry consolidation happening. On one side, there are brands that distribute to California. We have the
opportunity to merge with them, and let’s say we want to merge that brand nationally and internationally. The result [of a cooperative requirement] is that you’ll keep the local Berkeley brands in Berkeley.
-Molly: What about offering it to the workers first as a requirement.

-This is an under discussed topic and we want the commission to dig in as a whole.

**Item 9. Equity**

Public comment: Look into SF’s program. They have 90 equity applicants. Oakland has an unsuccessful program.

Beyond this, subcommittee decided to discuss this further at the public meeting devoted to this topic.

**Item 10. Recommendations from the Community Health Commission**

We agree with staff recommendations except:
-Exit packaging warning labels are unnecessary
-Warning signs in stores should merely state that cannabis is illegal under federal law, without special warnings for immigrants or minors.
DATE: July 11, 2019

TO: Cannabis Commission

FROM: Elizabeth Greene, Senior Planner, Planning and Development Department

SUBJECT: Draft Proposal for Cannabis Equity Program

PURPOSE
This memo provides components for a draft equity selection program for Cannabis Commission consideration (Attachment A). The Commission should review the components of the program and make recommendations to Council. The components will be included with a resolution which will be presented to the Council along with ordinance language for cannabis uses. The resolution and ordinance are anticipated for Council review in the fall of 2019.

BACKGROUND
In early 2018, the Cannabis Commission developed an equity selection process and presented it to the Council at the March 20, 2018 work session (Attachment B). On April 2, 2019, the Council voted to set aside an additional Storefront Retailer slot for an equity candidate. The Council did not discuss a selection process at this time, but did express a desire for an expeditious selection of an equity candidate.

City staff conducted additional research into cannabis equity programs in place in California cities, and best practices recommended by equity experts. Based on this research and the City’s time and funding resources, staff developed a draft proposal. The research and proposal were presented at a June 13, 2019 special meeting of the Cannabis Commission. Public comment was taken at this meeting; see the meeting minutes for general concepts discussed at this meeting.

DISCUSSION
The selection program can be broken down into three questions:

1. Who qualifies as an equity candidate?
2. What will be the selection process?
3. How will the City assist the winning candidate/team?

Staff has modified the draft program based on comments expressed at the June 13th meeting. The details of the proposed program and reasoning are listed below:

Equity candidate characteristics (See Attachment C for diagram):

1. All candidates must be a member of the Berkeley community, defined as living or working in Berkeley for at least 10 years between 1971 and 2016.
2. In addition, candidates must fall into one of two categories:
   a. Convicted of a cannabis crime between 1971 and 2016; OR
b. Meets two of the three following criteria:
   i. Is currently a member of a low-income household (80% or less of Alameda County AMI); and/or
   ii. Is a member of an impacted family (grandparent, parent, child, grandchild or sibling convicted of a cannabis crime); and/or
   iii. Has been a resident of an area redlined for economic reasons (see Attachment D for map).

Reasoning: The Cannabis Commission recommended that only those individuals directly impacted by the War on Drugs, as demonstrated by a cannabis conviction, be considered for equity permits. Staff believes that persons who are low-income, live in an economically disadvantaged community (as demonstrated by redlined status) and/or have a family member who has been incarcerated for a cannabis crime have also been impacted by the War on Drugs, and that expanding the pool of candidates will ensure an adequate number of eligible candidates.

Selection process:
1. The selection of a seventh Storefront Retailer will be through a lottery.
2. Eligible applicants for the lottery will be teams that provide an application with the following information:
   a. Proof of State organization (LLC, co-operative, non-profit, etc.)
   b. Proof that the organization is 51% owned or controlled by equity candidates
   c. Business Plan
3. At least 120 days will be provided for applicants to submit an application.
4. Staff will review the application to ensure that the organization meets the equity criteria and that the business plan provides adequate information to demonstrate that the team could be successful if selected.

Reasoning: Feedback from the June 13th special meeting focused on the need to have some merit considerations to verify that the selected applicant has a reasonable chance at operating a successful business. Non-profits which assist potential entrepreneurs create business plans at no cost are available, so the business plan requirement should not be a barrier to applying.

Assistance for selected team:
1. The City will provide technical assistance, similar to the program already in place for small business (Uptima Bootcamp). The cost is approximately $1,200 for 12 hours of advice.

Reasoning: Research showed that the barriers most commonly faced by equity candidates are lack of capital and lack of business/technical expertise. Providing technical assistance would address one of these barriers. Staff should be able to establish this kind of program relatively quickly, as it will be based on an existing program for non-cannabis businesses. Cannabis taxes could pay for the technical assistance.
NEXT STEPS
The Cannabis Commission will review the draft equity components and vote on a recommendation for Council.

ATTACHMENTS
A. Draft equity program components
B. Cannabis Commission equity proposal, February 22, 2018
C. Diagram of equity candidate requirements
D. Berkeley redlining map
<table>
<thead>
<tr>
<th>Component</th>
<th>Details</th>
<th>Reasoning</th>
<th>Other options</th>
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<td>Equity candidate characteristics</td>
<td>Must live or work in Berkeley for at least 10 years between 1971 and 2016, and either have a cannabis conviction (1971-2016) or have two of the three characteristics: 1) Low income household (80% of County AMI or less; 2) Member of an impacted family; and/or 3) Lived in an economically disadvantaged Berkeley community for 5 years between 1971 – 2016.</td>
<td>• General support at June 13th meeting. • Staff recommends using the HOLC (redlined) map to define “economically disadvantaged community” because these areas experienced years of disinvestment based on racial and economic demographics.</td>
<td>• Priority for persons of color, women • Broaden convictions beyond cannabis • Allowing time as Berkeley college student to replace residency will benefit persons with privilege. • Use Districts 2 and 3 for economically disadvantaged community</td>
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<td>Selection process</td>
<td>• Use a lottery system. • Lottery will be open to teams that are at least 51% owned/controlled by persons meeting the equity criteria and can demonstrate a reasonable expectation of success if selected. • Require applicants to give proof of organizational status (approved by State), (to prove it meets ownership criteria). • Require applicants to submit a Business Plan. • Staff will review BP to ensure applicants meet ownership and business plan criteria</td>
<td>• Lotteries are a quick process and do not require significant staff resources to implement. • Resources are available to provide free assistance with business plans. • Addresses mtg concern: Merit considerations (business plan) were added to eliminate applicants with very little chance of success, even with City assistance. • Addresses mtg concern: Selecting an individual is problematic – fewer resources and at risk for predatory partnerships.</td>
<td>• Use a merit-based system – will take longer, and disadvantage applicants without business/technical expertise and capital.</td>
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### Equity program, post 6-13-19

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<th>Assistance from City</th>
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<td>• Set aside taxes from existing businesses to provide technical assistance. Could also pay for local and State fees depending on the amount set aside.</td>
<td>• Research demonstrated that barriers most commonly faced by equity candidates are lack of capital and business/technical expertise.</td>
<td>• Provide no- or low-interest loans or waive fees for equity businesses.</td>
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<tr>
<td>• Technical assistance (accounting, legal, personnel, marketing) expected to cost approximately $1,200 for 12 hours (not counting staff administration time).</td>
<td>• Cannabis taxes can pay for programs. City could also compete for a State grant to offset equity program costs.</td>
<td>• Create funds for investment in impacted communities</td>
</tr>
<tr>
<td>• Fee waivers could cost $2,120 - $32,000+ depending on the fees waived.</td>
<td>• Cannabis businesses generally cannot get loans from banks and are not eligible for City programs that have federal funding.</td>
<td>• Consider program to train employees for the cannabis industry – broader impact than selecting a business run by equity candidates.</td>
</tr>
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<td></td>
<td>• Grants from the State could provide additional funding to assist equity candidates.</td>
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Outline of Selection Process Options for Cannabis Retail and Cultivation Businesses

Option 1

- Allow a certain number of Storefront Retailers per geographical area/zoning district. This will add up to a maximum of 32 businesses (26 new + 6 existing). See below for calculation and reasoning.
- Large Cultivators limited to 6 locations in the M District
- Applicants must have a location and an Administrative Use Permit (AUP) to apply
  - Allows the public to review and comment on these projects/locations.
- Allocate half of the available licenses (13 for Retail, 3 for Cultivators).
  - Applications for remaining 13 slots will be accepted after 3 years to determine impact on equity.
- No limit for other cannabis businesses, including Delivery-only Retailers.
- No selection process – first-come, first-served for all license types.
- All businesses (except Medicinal Retailers) pay 2% into the General Fund. This money will be earmarked like Soda Tax to be spent in a way to improve equity in Berkeley (no definition of that yet).
- Delivery-only and storefront Retail businesses will have a 600 feet buffer from schools only.
  (Other proposed business types, buffers remain – 300 feet from schools.)
- Revisit after 3 years to determine impact on equity.

Option 2

- Allow a certain number of Storefront Retailers (Medicinal, Adult-Use or both) per geographical area/zoning district. This will add up to a maximum of 32 businesses (26 new + 6 existing). See below for calculation and reasoning.
- Large Cultivators limited to 6 locations in the M District.
- No limit for other cannabis businesses, including Delivery-only Retailers.
- Selection process for storefront Retailers and large Cultivators:
  - Allocate half of available slots (13 for Retail and 3 for Cultivators) for equity candidates only.
    - Establish a short window (one day?) during which Equity applications will be accepted
    - Retail applications will not need a location; cultivators will require a location.
    - Applications will consist of information to determine equity standing and any information required for the State for a license, except that Retailers will not submit information related to a location.
- All applications with staff-verified equity status will be entered into a lottery.
- Thirteen applications will be selected by a lottery. These applicants will have nine months to find a location.
  - Applications for remaining 13 slots will be accepted after the nine month period expires.
    - Same process to select the general applicants (application window, lottery), without equity status check.
  - All applicants will have 2 years from the time of selection to establish a business. A one year extension may be granted if the applicant has a location and State license, and has applied for a building permit.
- Delivery-only will only have a buffer from schools. Storefront Retailers will have a 600-foot buffer from schools and each other. The proposed buffers for other businesses remain – 300 feet from schools.
- Revisit after 3 years to determine impact on equity.

**Numeric Calculation**

Staff evaluated the commercial districts that are available in the city. All districts were assigned a minimum of one storefront Retail slot. Additional storefront Retail slots were assigned to some districts based on the size of the district, the area that is ineligible due to a school, and the existence of existing dispensaries. The C-1 and the C-SA have two distinct areas, so those were each evaluated separately.

- C-1 (University) – 1
- C-1 (Telegraph) – 1
- C-SA (Sacramento) – 1 (already has 1)
- C-SA (Lorin) – 3 (already has 1)
- C-W – 4 (already has 1)
- C-NS – 1
- C-SO – 1
- C-E – 1
- C-N – 1
- C-DMU – 2
- C-T – 0 (Already has 2)

Each C-N district – 1 (There are 11 separate C-N locations = Claremont Hotel; Claremont/Prince; Alcatraz/College; MLK/Dwight; MLK/Hearst; MLK/Virginia; MLK/Rose; Euclid; Hopkins/Fountain; Hopkins/Monterey; Gilman.)

Total new storefront Retailers = 26.

26 new storefront Retailer locations
+ 6 existing storefront Retailer locations (one of these will be the Apothecarium)
32 total storefront Retailer locations
MEMBER OF THE BERKELEY COMMUNITY

Berkeley Resident or employed in Berkeley for 10 years between 1971 and present. Years attending a college in Berkeley can be applied to the residency/employment requirement.

AND

TWO OF THE FOLLOWING

LOW INCOME

Have a household income below 80% of the average median income (AMI) in Berkeley for 2018.

MEMBER OF AN IMPACTED FAMILY

Have a family member who received a cannabis conviction between 1971 to 2016.

RESIDENT OF AN ECONOMICALLY DISADVANTAGED CENSUS TRACT

TBD

OR

AND

CANNabis CONVICTION

Has received a cannabis conviction between 1971 and 2016.
June 27, 2019

Cannabis Commission
Elizabeth Greene, Secretary
1947 Center St., 2nd Floor
Berkeley, CA 94704

RE: Proposed changes to the Retail Storefront Microbusinesses licensing

Dear Commissioners and Ms. Greene,

I am writing in hopes of suggesting alternatives to the proposed changes in the Cannabis Ordinance related to Retail Storefront Microbusinesses (RSM) and manufacturing. I plan to attend the meeting on July 11, 2019, where I hope to discuss this issue with Commissioners. I am sending this letter in advance for the benefit of that conversation. I welcome the opportunity to discuss the matter with Commissioners and staff in advance, if that is helpful.

On May 22, 2019, the Ordinance Review Subcommittee of the Cannabis Commission discussed changes to the Cannabis Ordinance related to RSM. Proposed changes would have restricted RSM licensing at the local level to businesses holding these licenses: "Retailer, a Type P Manufacturer (repackaging) and a Distributor Transport-only Self-Distribution licenses." This limited definition of RSM was designed to prevent manufacturing in retail zones. However, the proposal is inconsistent with state law and regulations and ignores the fact that one licensed Microbusiness, as defined by the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), already operates pursuant to local and state licenses in the C-T zone on Telegraph Avenue.

Section 5500(a) of Title 16 of the California Code of Regulations requires a Microbusiness to engage in three of the four primary commercial cannabis activities authorized under MAUCRSA – cultivation, manufacturing, distribution, and retail. However, a licensee holding only a Type P manufacturing license is not eligible for a Microbusiness license from the California Department of Consumer Affairs (CDCA). Because cultivation is not allowed in the retail districts, RSM in Berkeley must seek state licensure for manufacturing, distribution, and retail. Therefore, RSM authorized under the proposed changes to the Cannabis Ordinance would be ineligible for licensing as a Microbusiness under state law and regulations.

Patients Care Collective (PCC) was established as a nonprofit organization at its current location on Telegraph Avenue in 2001. Like most of the early patients’ associations, we engaged in all of the necessary cannabis activity to support the association’s mission. This included providing medicine to patients, weighing, packaging, labeling, and acquisition. Acquisition is now referred to as distribution or self-distribution. With the advent of state licensing, we selected the Microbusiness
option to maintain our ability to engage in retail and distribution activity on the same premises. We also applied for manufacturing activity for the purpose of producing rosin using a small table-top press. Rosin is the collected resin pressed out of cannabis flowers by a vice-like device. There are no solvents used in this mechanical extraction process.

CDCA recently approved PPC’s Provisional Microbusiness license, based in part, on the local authorization by the city for the activities described in the application: retail, distribution, and manufacturing. The proposed changes in the Cannabis Ordinance would make our continued operation, as currently licensed by the city and state, impossible. The Commissioners and staff discussed this issue at their meeting on June 6, 2019. I would like to make two suggestions for consideration and discussion. The Cannabis Commission could recommend language that would:

1. Adopt changes necessary to harmonize manufacturing with broader land use goals (i.e. no manufacturing in retail zones) but allow an exception for previously authorized manufacturing licensees. In this scenario, PCC would continue to operate as currently licensed with the understanding that the only manufacturing allowed will be the mechanical production of rosin without the use of any solvents whatsoever. This option would permit the continued use of a table-top workspace in the facility and pose no risk to neighbors or visitors. There would also be some additional space needed for sanitation, storage, and other routine activities related to rosin production. This space is minimal.

2. Allow PCC to obtain an incidental manufacturing permit with a Zoning Permit instead of an Administrative Use Permit. The permit could specify the size and nature of incidental manufacturing activity allowed.

Of course, we are open to other solutions that address the city’s concerns related to land use, while preventing a disruption in operations at PCC.

I look forward to speaking with you on July 11, 2019 and welcome your comments or questions in advance. You may reach me at don@patientscarecollective.com or (323) 326-6347.

Thank you,

Don Duncan
Director of Government Affairs