



MEMORANDUM

DATE: 07/25/2019
TO: Planning Commission
FROM: Julia Ayres, Associate Planner and Emilio Flamenco, Planning Intern, via
John Swiecki, Community Development Director
SUBJECT: **Workshop: Storefront retail cannabis business regulations**

BACKGROUND

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

Since the Ordinance's adoption, the Planning Commission has approved four Use Permits for cannabis businesses in Crocker Park for cannabis distribution, manufacturing, and delivery. One is currently operational (**Caliva** at 101 South Hill Drive), and the others await State approval of their annual operating licenses and anticipate starting operations within the calendar year.

At the June 20, 2019 City Council meeting, the City Council directed staff to initiate a zoning text amendment to regulate storefront retail cannabis businesses, whereby customers can purchase products in-store. As noted above, the City's current regulations prohibit storefront retail and allow only retail delivery operations that deliver products to customers.

DISCUSSION

City Council Direction to Initiate Zoning Text Amendments

In initiating the zoning code amendment the City Council provided additional direction as noted below:

- Limit the number of storefront retail cannabis businesses citywide to four (4) businesses at any given time;
- Establish storefront retail as a conditionally permitted use (requiring use permit approval) in all zoning districts that allow retail sales (M-1, NCRO, SCRO-1, SP-CRO, TC-1, TC-2; see attachment B).

Consistent with the Council's direction, staff will draft zoning text amendments for review by the Planning Commission and the public at large. Staff has compiled information on the policies of other cities for the Commission's reference and discussion at tonight's workshop to inform the forthcoming draft ordinance.

Comparison of Storefront Retail Cannabis Business Regulations

Staff researched eight storefront retail cannabis ordinances from small to mid-size cities around the State to identify trends and best practices to inform the Commission's study of the issue. Attachment A contains a comparison matrix of these ordinances. Regulatory trends are summarized as follows:

- Application Process: Most jurisdictions studied implemented a multi-tiered process where applicants first had to obtain a license vetting their business, followed by a land use permit to authorize operation at a specific location. Applicant screening is typically most exhaustive at the initial license level (often overseen by Police Departments), in which business ownership and management backgrounds are fully vetted, and other factors related to business operations- such as experience in the industry and in the community- are considered.

Most license application review processes involved scoring applicants on various criteria and ranking applications found to meet a minimum threshold. The ranking could be based on a point-based score tied to the criteria, or could be based on a random lottery of applicants who meet the minimum threshold.

Businesses that successfully obtain a license are then eligible to apply for land use approvals to operate at a specific location and go through the typical discretionary permitting process with the Planning Commission or other designated body.

- Retail License Caps: Most jurisdictions studied imposed caps on the number of cannabis retail storefront establishments allowed to operate in their city, depending on city size and concerns with compatibility with adjacent land uses. Some jurisdictions capped licenses within individual districts in addition to the overall citywide cap.
- Permit/License Renewal: Each jurisdiction studied required applications to be renewed on an annual basis. Some jurisdictions required payment of an annual license renewal fee to fund staff time and efforts in managing and enforcing the regulatory program.

- Application Fees: Application fees ranged up to \$24,000. Some cities require significant upfront application fees associated with the license application (first phase). Others adopted unique Use Permit fees tailored to the perceived complexity of cannabis retail storefront businesses. As a rule, fees must have a direct nexus to the City costs of processing an application. The City of Brisbane does not currently collect higher application fees for cannabis business Use Permit applications.

NEXT STEPS

The Commission's discussion tonight will inform staff's drafting of an ordinance for future review by the Commission and community a public hearing. Staff anticipates the draft ordinance will be scheduled for public hearing in September.

ATTACHMENTS

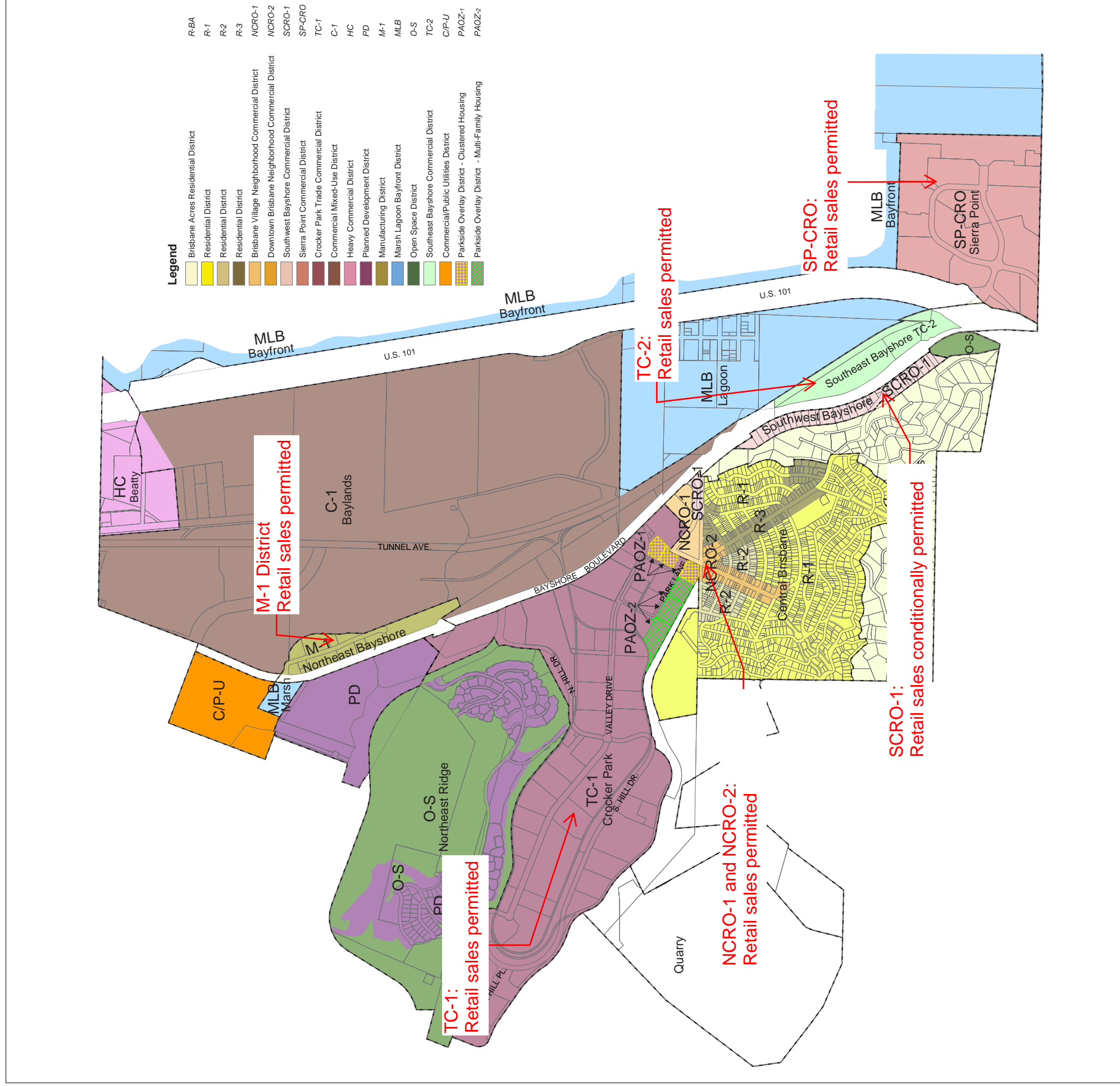
- A. Comparison matrix of storefront retail cannabis regulations
- B. Map of zoning districts that allow retail uses
- C. June 20, 2019 City Council agenda report

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City	County	Responsible Department/ Hearing Body	Retail License Cap	Business to Business Buffer?	Application fee	Application Process	Muni Code	Other notes
Pacifica	San Mateo	Police dept. and Planning Commission	6	Max. 2 per district	\$1,000 for public safety license. \$10k deposit required for Use Permit (refundable based on actual incurred project costs)	Two-tiered process: 1) Public safety license- background check and security plan approval by PD. 2) Use Permit lottery- all PSL holders entered in random lottery to rank order in which Use Permit can be applied for, up to 6 total/2 per district maximums. Use Permit review by Planning Commission conducted in order of ranking.	Ch. 4, Article 48	One application max. per applicant
Santa Rosa	Sonoma	Planning Commission	Initially 2; cap eliminated June 2019	600 ft	\$11,745 - \$16,732 for Use Permit depending on level of site modifications + \$2,246 public hearing fee.	Two-tiered process IF within 600 ft of another pending or approved retail application: For such applications, first complete application "wins", other competing applications are voided. Applications more than 600 ft from others go straight to hearing. 2) Use Permit review by Planning Commission	20-46.080	One application max. per applicant.
Capitola	Santa Cruz	City Manager/ Planning Commission	2	500 ft path of travel min.	\$1600 for Tier 1; \$3000 deposit for Tier 2 (actual time and materials recouped from applicant)	Two-Tiered process: 1) Retail Cannabis License eligibility review by City Manager-appointed subcommittee. Subcommittee ranks applications based on criminal activity in area, background checks on owner/operator, experience in retail sales, legal cannabis sales, residency in area. 2) Top applicants must obtain Use Permit approval for specific site within 6 mos of selection	Chapter 5.36	List of subjective criteria considered
Pasadena	Los Angeles	City Manager/ Planning Commission	6; no more than one per Council district	1000 ft to other retail or cultivation business; 500 ft to testing labs	\$24,293 for all phases	Two-Tiered Process: 1) Eligibility review by City Manager- appointed subcommittee. Subcommittee ranks applications based on business plan, qualifications of owners/operators, neighborhood compatibility, and security. 2) Top six scoring applicants invited to submit Conditional Use Permit application. 3) Approved Use Permits eligible for cannabis license approval	Section 17.50.066	Criteria for cannabis license
Sebastopol	Sonoma	Planning Dept	2	1000 ft		Use permit	Ch. 17.360	Application checklist
Salinas	Monterey	Community Development Dept.	5	1000 ft	\$3,026.75 (see note)	Administrative permit. Applications reviewed and approved by City Manager-appointed subcommittee (representing City depts).	Ch. 5, Article 7	Overview from city website
Ukiah	Mendocino	Planning Commission	None	None	\$3000 deposit; \$1000 annual renewal fee	Use Permit	Div. 6, Ch. 8	
Eureka	Humboldt	Development Services Dept/ City Council/ Planning Commission	At discretion of City Council		N/A online	Two-tiered process: 1) City issued RFP for interested businesses to apply to be eligible to apply for business license and land use permits. Subcommittee reviewed and ranked applications and presented rankings to Council. Council determined which businesses would be eligible to apply for license. 2) Council approved businesses apply for cannabis license and Use Permit	Ch. 158	

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Zoning Map City of Brisbane



LSA



Revised: March 19, 2018
 Revised: May 16, 1988
 Revised: May 29, 1992
 Revised: April 1996
 Revised: February 2000
 Revised: February 2002
 Revised: July 2003



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CITY COUNCIL AGENDA REPORT

Meeting Date: June 20, 2019

From: John Swiecki, Community Development Director

Subject: Initiate Retail Storefront Cannabis Business Zoning Text Amendments

Community Goal/Result

Economic Development

Purpose

To consider initiating a zoning text amendment to permit retail storefront cannabis businesses.

Recommendation

As recommended by the cannabis issues ad hoc subcommittee, direct staff to initiate a zoning text amendment for Planning Commission review to allow retail storefront cannabis businesses subject to the parameters noted in the discussion section of this staff report.

Background

At the April 4, 2019 City Council meeting (agenda report and minutes attached), the cannabis issues ad hoc subcommittee (Mayor Davis and Councilmember O'Connell) recommended that the City Council consider allowing retail storefront cannabis businesses in Brisbane. The subcommittee recommended allowing such businesses in any zoning district which allows retail uses subject to approval of a Use Permit, and limiting the maximum number of storefront retail businesses to up to four (4) businesses at any time.

At that time, the majority of the Council indicated support for such a zoning text amendment and requested the subcommittee further consider the matter to help provide more direction to the Planning Commission.

Discussion

The subcommittee met on May 1, 2019 to further discuss their initial land use regulation recommendations. The subcommittee confirmed their recommendation that the Planning Commission consider a zoning text amendment to allow up to four storefront retail cannabis businesses to operate subject to Use Permit approval in any zoning district where retail uses are permitted.

City staff will prepare draft zoning text amendment language reflecting the council's direction, which will be subject to a public hearings before the Planning Commission and City Council.

Fiscal Impact

Retail sales of cannabis products originating in Brisbane would contribute sales tax. Additional cannabis retail sales tax would also be collected should the cannabis retail sales tax approved by the City Council on June 6, 2019 be confirmed by the voters in November.

Measure of Success

Cannabis business regulations that balance the community's goals for economic development and maintaining Brisbane's quality of life.

Attachments

1. April 4, 2019 City Council agenda report and meeting minutes



John Swiecki, Community Development Director



Clay Holstine, City Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: April 4, 2019

From: John Swiecki, Community Development Director

Subject: Cannabis Business Regulations

VIII.A

VII.A

Community Goal/Result

Economic Development

Purpose

To discuss the City's cannabis business regulations.

Recommendation

Discuss the cannabis issues ad hoc subcommittee recommendations regarding cannabis business taxation and retail storefront businesses and provide direction to staff as necessary.

Background

The City Council adopted Ordinance 617 in September 2017 to allow cannabis distribution, lab testing, manufacturing, and delivery-only retail with Use Permit approval in Crocker Park (TC-1 District), lab testing with Use Permit approval in Southwest Bayshore (SCRO-1 District), and lab testing by-right (no Use Permit) in Sierra Point (SP-CRO District). Modifications to these regulations were subsequently adopted in 2018 to reduce buffer requirements and extend operating hours (Ordinances 625 and 632).

Since adoption of Ordinance 617, the Planning Commission has approved four Use Permits for cannabis businesses in Crocker Park for cannabis distribution, manufacturing, and delivery. Of these four businesses, one is currently operational (Caliva, 101 South Hill Drive), and the others anticipate starting operations in the summer and fall.

Discussion

The cannabis issues ad hoc subcommittee (Mayor Davis, Councilmember O'Connell) met on March 13 to discuss the City's existing cannabis business land use regulations and potential taxation structures.

Land Use Regulations

The subcommittee discussed the potential for allowing limited storefront retail cannabis businesses, subject to Use Permit approval, in the City's commercial districts (see zoning map, Attachment 1). The subcommittee recommended limiting the number of storefront retail businesses allowed to operate in the City to up to four (4) businesses, with buffers between businesses to avoid an overconcentration in any neighborhood. This is consistent with the approach taken by most small and mid-sized jurisdictions in the State that allow storefront

retail cannabis businesses. A local example of this approach is Pacifica, which will allow a maximum of six storefront retail businesses in the City subject to a competitive Conditional Use Permit process.

Tax Structure

Different types of taxation structures have been adopted by cities throughout the Peninsula, as shown in Attachment 2. The subcommittee recommended a range of taxation levels for each type of cannabis business, based on existing State taxes and the unique characteristics of each business type:

- Retail (delivery and storefront): 4%-5%
- Manufacturing: 3%-4%
- Distribution: 2%
- Testing: 1%-2%

Next Steps

Should the Council wish to modify the current cannabis business land use regulations to allow storefront retail cannabis businesses, the Council should give direction to the Planning Commission to prepare a draft ordinance for the Council's review. Cannabis tax ballot measure language is due to the County Clerk by August 9, 2019.

Fiscal Impact

Excise taxes placed on cannabis businesses in Brisbane would have an expected positive impact on the City's General Fund. Staff may conduct additional analysis based on the Council's discussion regarding potential revenue generation.

Measure of Success

Cannabis business regulations that balance the community's goals for economic development and maintaining Brisbane's quality of life.

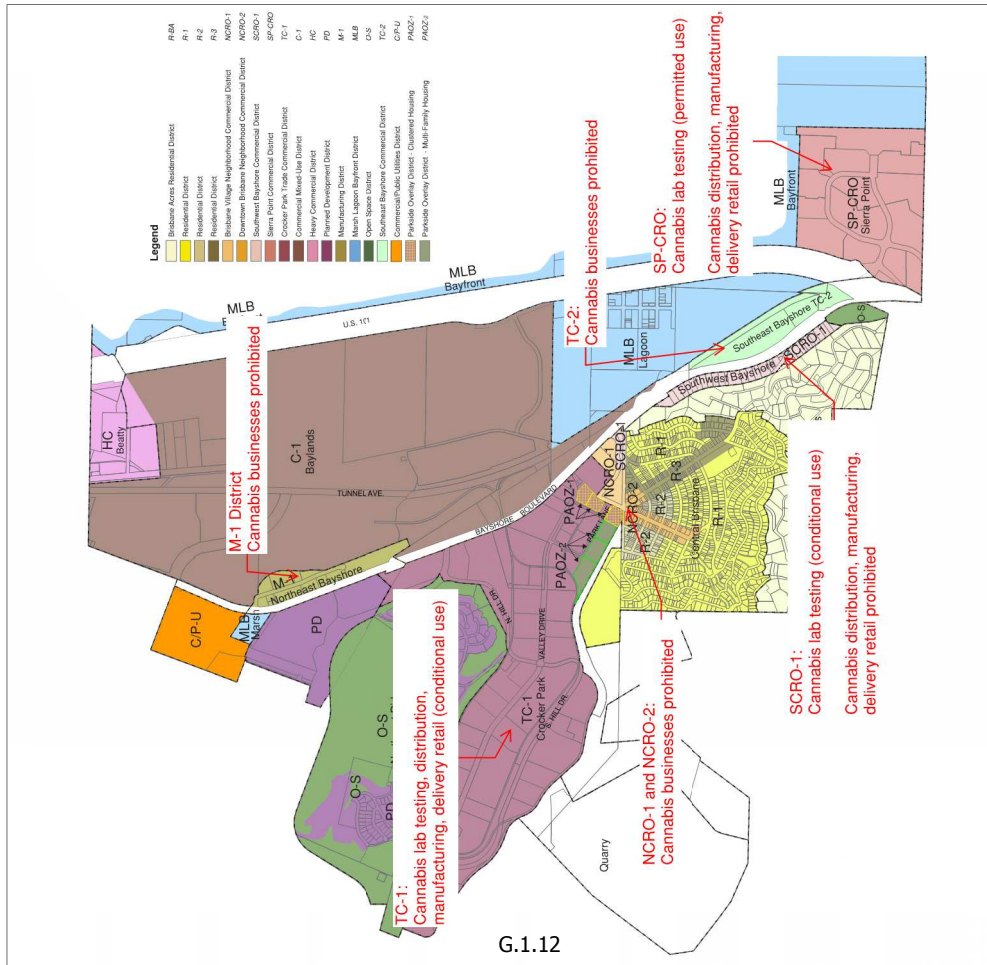
Attachments

1. Zoning map annotated by staff
2. Table of tax rates adopted in the Peninsula

John Swiecki, Community Development Director

Clay Holstine, City Manager

Zoning Map City of Brisbane



L S A

Revised: March 10, 2018
 Approved: May 15, 2018
 Revised: May 29, 2018
 Approved: June 11, 2018
 Revised: February 2020
 Approved: February 2020
 Revised: July 2022



Cannabis Tax by City in San Mateo and Santa Clara County At a Glance

City	Rate	Outcome of Ballot Vote
Daly City	Up to 10% Retail Gross Receipts Council: No yet to approve.	Yes
Half Moon Bay	\$2 - \$110 per square foot for cultivation 6% Retail Gross Receipts 2.5% Testing 3% Distribution 4% for manufacturing Tax passed, but no commercial cultivation, retail sales, and manufacturing allowed	Yes
Morgan Hill	\$15 per canopy square foot for cultivation Up to 10% Retail Gross Receipts Council: No Vote yet to approve.	Yes
Mountain View	Up to 9% Retail Gross Receipts No cannabis businesses currently have permits to operate	Yes
Pacifica	6% Retail Gross Receipts, up to 10%	Yes
Redwood City	4% initially, up to 10% Retail Gross Receipts 2.5% Cannabis Nursery gross receipts 4.0% Delivery-Only Retail Sales gross receipts Council: Medical Cannabis Delivery Only for now.	Yes
San Carlos	Up to 10% Commercial Gross Receipts Council: Retail storefront not permitted	Yes
San Jose	Up to 10% Commercial Gross Receipts	Yes
Santa Clara	Up to 10% Retail Gross Receipts \$25 per square foot for cultivation Council: No Vote yet to approve.	Yes
South San Francisco	Maximum 5% Delivery Only Retail gross receipts 2.5% Testing gross receipts Maximum 4% Cultivation gross receipts Maximum 3% Distribution gross receipts Maximum 5% Manufacturing gross receipts Council: Retail storefront not permitted	Yes

ATTACHMENT 2

Daily City – YES (@ 76%)

Tax marijuana businesses at rates of up to 10% of gross receipts to fund general city purposes. Currently cannabis businesses are not permitted in the City of Daily City. Measure UU (11/2018)

Half Moon Bay – YES (@ 60%)

Tax marijuana businesses at the following rates to fund general city services Measure AA (11/2018):

- \$2 - \$10 per square foot for cultivation ;
- 6% of gross receipts for retail (currently no retail sales is permitted);
- 2.5% for testing;
- 3% for distribution; and
- 4% for manufacturing.

The “nursery” ordinance (allowing growing of only cannabis “starts,” or seedlings), and the cannabis tax measure passed.

The measures on commercial cultivation, retail sales, and manufacturing of cannabis products (which were all advisory measures) did not pass. Measure SS (11/2018)

Morgan Hill – YES (@ 78%)

Tax marijuana businesses at annual rates up to \$15.00 per canopy square foot for cultivation and up to 10% of gross receipts for all other marijuana businesses. Not allowed to date. Measure I (11/2018)

Mountain View - YES (@ 80%)

Tax marijuana businesses up to 9% of gross receipts to fund general city purposes. Measure Q (11/2018)
Mountain View will permit a total of four (4) cannabis businesses, consisting of two (2) storefront retail and two (2) non-storefront retail cannabis businesses. No cannabis businesses currently have permits to operate within Mountain View.

Pacifica – YES (@78%)

Marijuana operations would initially be taxed at the rate of 6% for each one dollar of a marijuana operation's gross receipts. This tax may be decreased or increased up to a maximum of 10%, if after the second anniversary of the effective date of the tax, such decrease or increase is approved by a majority vote of the total membership of the City Council. Measure G (11/2017)

Redwood City - YES (@ 77%)

Authorize the city to tax marijuana businesses at initial rates from 1% to 4%, with a 10% maximum, to fund general city services. Currently cannabis storefronts are not permitted. Measure DD (11/2018)

- 2.5% of gross receipts for Cannabis Nursery Businesses
- 4.0% of gross receipts for Delivery-Only Cannabis Retail Sales (all cannabis retailers operating in the city regardless of whether their business is located in the City)

City Council approved a phased approach to cannabis regulations. Phase 1 and 2 will continue to allow medicinal cannabis delivery. Phase 3 potentially would allow cannabis delivery from non-storefront retail delivery facilities located within the City. Phase 4 potentially would allow storefront retail facilities located within the City.

ATTACHMENT 2

San Carlos – YES (@ 77%)

Authorize the city to enact an excise tax on marijuana businesses at rates of up to 10% on gross receipts to fund general city purposes. Measure NN (11/2018)

Retail sales are not permitted in the City. Manufacturing, distribution, testing, and some cultivation uses are permitted within designated zoning districts.

San Jose – YES (@78%)

The City Council has the flexibility to set the tax rate lower than 10%, to set different tax rates respectively for medical and recreational marijuana businesses, or to change the tax rates in the future. Measure U (2010)

Santa Clara – YES (@ 75%)

Authorize the city to tax commercial marijuana businesses up to 10% of gross receipts and up to \$25 per square foot for cultivation. Measure M (11/2018)

The City target date to end its temporary ban on commercial cannabis activities is June 30, 2019.

South San Francisco – YES (@ 74%)

Authorize the city to tax marijuana businesses at various rates up to 5% of gross receipts to fund general city purposes. There will be a business license tax for all types of commercial cannabis operations permitted within the City at a minimum rate of 1% for gross receipts. Additionally, Measure LL would establish the following maximum rates for permitted cannabis uses:

- a maximum of 2.5% of gross receipts for Testing
- a maximum of 4% of gross receipts for Cultivation
- a maximum of 3% of gross receipts for Distribution
- a maximum of 5% of gross receipts for Manufacturing
- a maximum of 5% of gross receipts for Delivery Only

As those particular uses are defined in Chapter 20.410 of the South San Francisco Municipal Code. Measure LL (11/2018)

Retail sales are not permitted in the City. Manufacturing, distribution, testing, and some cultivation uses are permitted within designated zoning districts.

Outside of San Mateo & Santa Clara County -**San Francisco – YES (@ 65%)**

Tax marijuana businesses with gross receipts over \$500,000 at rates between 1% and 5%, exempting retail sales of medical marijuana, and expanding the marijuana business tax to businesses not physically located in San Francisco. Proposition D (11/2018)

Emeryville - YES (@ 85%)

Enact a marijuana business tax at a rate of up to 6% of gross receipts to fund general city purposes. Measure S (11/2018)

Megan Sebay, San Mateo Mosquito & Vector Control District's Public Health Education and Outreach Officer, provided a brief update on the District's activities and invited members of the public to attend their upcoming Open House Event.

CONSENT CALENDAR

- A. **Accept Investment Report as of December 2018**
- B. **Approve Excelsior Running Club's Second Annual Star City San Bruno Mountain Half Marathon as a Co-sponsored Event**
- C. **Approve BDW Holiday Arts and Crafts Fair Fundraiser as a Co-sponsored Event**

CM Conway made a motion, seconded by CM Lentz, to approve Consent Calendar Items A and C. The motion was carried unanimously by all present.

Ayes: Councilmember Conway, Cunningham, Lentz, O'Connell and Mayor Davis
Noes: None
Absent: None
Abstain: None

CM O'Connell made a motion, seconded by CM Conway, to approve Consent Calendar B. The item was approved on an 4-0-1 vote. CM Lentz recused himself from this item due to a conflict of interest and left the dais.

Ayes: Councilmember Conway, Cunningham, O'Connell and Mayor Davis
Noes: None
Absent: None
Recused: Councilmember Lentz

NEW BUSINESS

- A. **Discuss the Cannabis Issues Ad Hoc Subcommittee Recommendations Regarding Cannabis Business Taxation and Retail Storefront Businesses and Provide Direction to Staff as Necessary.**

Community Development Director Swiecki reported that the Cannabis Issues Ad Hoc Subcommittee met on March 13, 2019 to discuss the City's existing cannabis business land use regulations and potential taxation structures. The subcommittee discussed the potential for allowing limited storefront retail cannabis businesses, subject to Use Permit approval, in the City's commercial districts and the subcommittee recommended a range of taxation levels for each type of cannabis business, based on existing State taxes and the unique characteristics of each business type.

Councilmember Conway expressed that the City is not ready to allow storefront retail cannabis businesses.

Economic Development Director Bull and Cannabis Issues Ad Hoc Subcommittee members Mayor Davis and Councilmember O'Connell shared the trends and findings from San Mateo County and the State around Cannabis Retail Storefront Businesses and Cannabis Business Taxation.

Carolyn Parker asked if medical marijuana research is allowed in Brisbane.

Michelle Diztiser advocated for lowering taxes to curb the illicit market and attract more operators.

After some Council discussion and questions, Council directed staff to do the following:

- draft business license tax ballot language listing a range of taxation levels for each type of cannabis business, based on existing State taxes and the unique characteristics of each business type, and discuss with the Cannabis Issues Ad hoc Subcommittee
- draft land use regulations for allowing limited storefront retail and discuss with Cannabis Issues Ad hoc Subcommittee before the Planning Commission drafts an ordinance for the Council's review

- B. **Consider Approval of Resolution No. 2019-08 and Resolution No. GVMD 2019-01, Approving Amendments to the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County.**

City Engineer Breault reported that in the years since the implementation of the Water Supply Agreement (WSA) in 2009, both the San Francisco Public Utilities Commission and the Wholesale Customers found the need to address substantive issues. These seven (7) issues are the following:

1. Oversight of SFPUC's Capital Improvement Program
2. Tier 1 Drought Allocation Plan
3. SFPUC's Required 2018 Decisions (customer permanency and supply guarantee increase)
4. Asset Classification
5. Wholesale Capital Fund
6. Water System Improvement Program (WSIP) Completion Date
7. Regional Groundwater Storage & Recovery Project

After some Council discussion and questions of City Engineer Breault, CM Conway made a motion, seconded by CM Cunningham, to Approve of Resolution No. 2019-08 and Resolution No. GVMD 2019-01, Approving Amendments to the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County. The motion was carried unanimously by all present.

Ayes: Councilmember Conway, Cunningham, Lentz, O'Connell and Mayor Davis
Noes: None
Absent: None
Abstain: None