



CITY COUNCIL AGENDA REPORT

Meeting Date: April 4, 2019

From: John Swiecki, Community Development Director

Subject: Cannabis Business Regulations

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

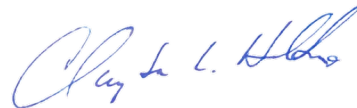
Cannabis business regulations that balance the community's goals for economic development and maintaining Brisbane's quality of life.

Attachments

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

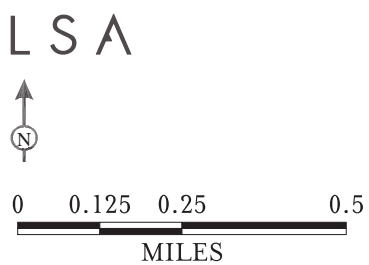
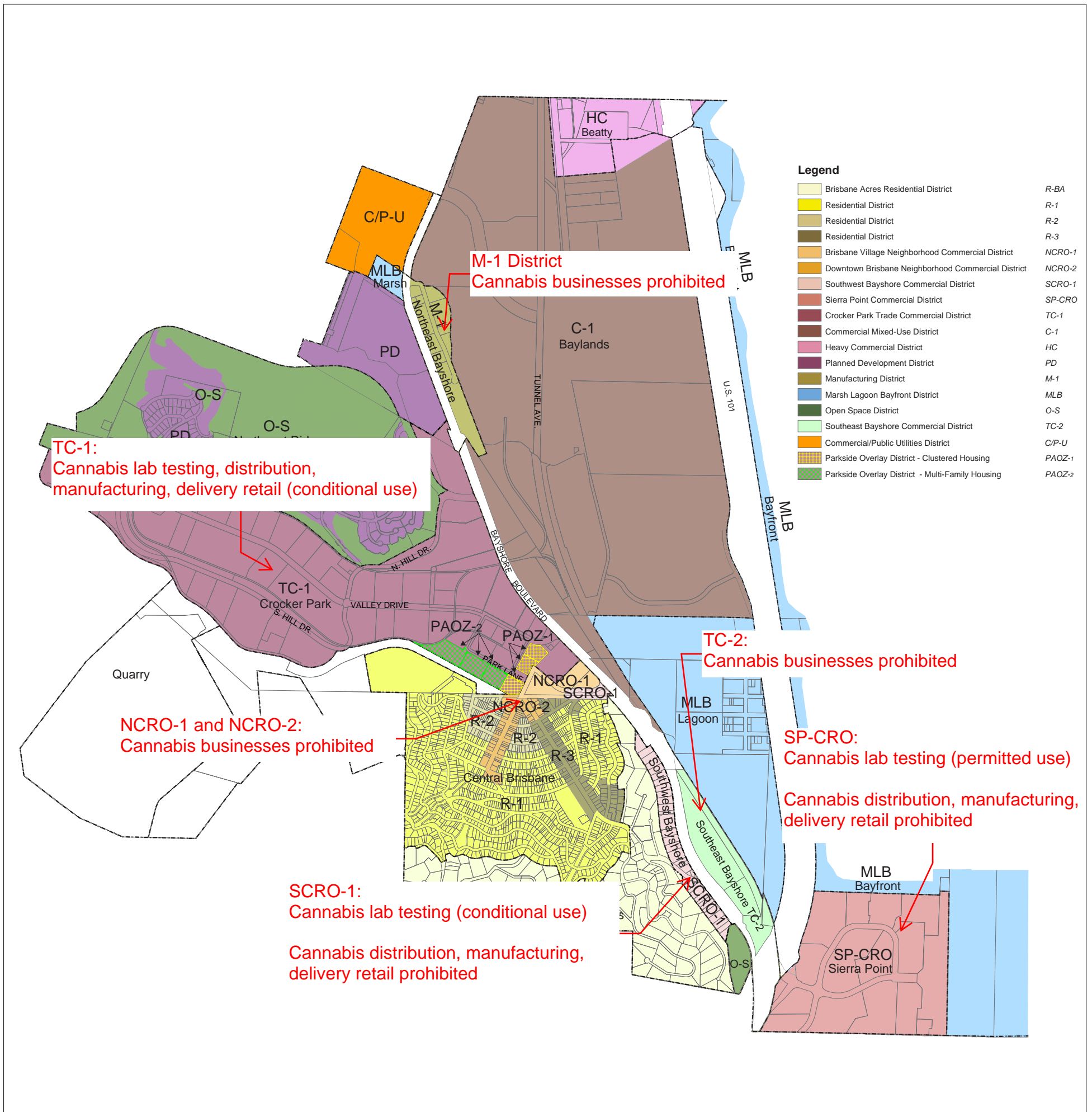


John Swiecki, Community Development Director



Clay Holstine, City Manager

Zoning Map City of Brisbane



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



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 - \$10 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 |

Daly 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 Daly 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.

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)