



## 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

  
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John Swiecki, Community Development Director

  
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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.

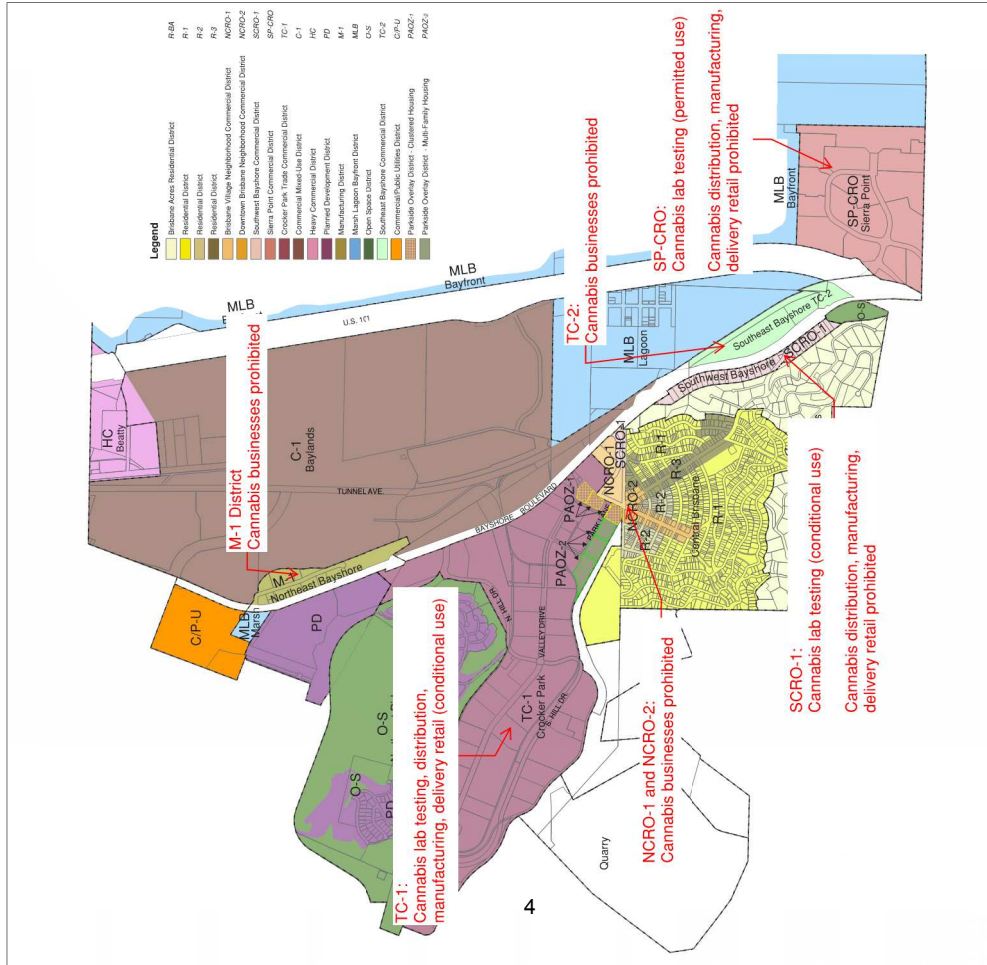
**Attachments**

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



LSA

0 0.125 0.25 0.5  
MILES

Revised: March 10, 2018  
Reviewed: May 15, 2018  
Revised: May 29, 2018  
Revised: June 19, 2018  
Revised: February 2020  
Revised: February 2022  
Revised: July 2023

## 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

**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.

**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