City of Brisbane
Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 617 (Zoning Text Amendment RZ-6-16) - Municipal Code amendments to regulate personal cultivation of medical cannabis by qualified patients and caregivers, and medical cannabis businesses.

DATE: April 27, 2017

City Council Goals:

To provide for effective and efficient delivery of City services. (Goal #1)

Purpose:

To update various sections and add a new chapter to Title 17, Zoning, of the Brisbane Municipal Code (BMC) and to Title 8, Health and Safety, to regulate personal cultivation of medical cannabis by qualified patients and caregivers, and medical cannabis businesses.

Recommendation:

That the City Council introduce Ordinance No. 617.

Background:

In early 2016, the City Council considered the local implications of State medical cannabis (marijuana) business regulations enacted in 2015 by the Medical Marijuana Regulation and Safety Act (MMRSA), as well as personal cultivation of medical cannabis allowed under the California Health and Safety Code. The agenda reports and meeting minutes of the February 18 and March 3, 2016 City Council meetings addressing these topics are attached for the Council's reference.

Following extensive discussion, the City Council directed that the Planning Commission initiate zoning code amendments to:

- Expressly ban medical cannabis dispensaries;
- Permit research, development, and testing of medical cannabis by-right in certain zoning districts;

- Allow manufacturing/processing, transporting/distribution, and warehousing of medical cannabis as conditional uses in certain zoning districts;
- Allow personal cultivation of medical cannabis as an accessory use in residential zoning districts, subject to limitations; and
- Allow delivery of medical cannabis or medical cannabis products directly to qualified patients Citywide.

Discussion:

On February 9, 2017, the Planning Commission considered and recommended approval of zoning text amendment RZ-6-16, implementing the City Council's direction, by a vote of 3-0-1 (Anderson abstaining, Munir absent). The recommended zoning text amendments are discussed in detail in the January 23, 2017 Planning Commission staff report, attached for the Council's reference.

Additionally, the Planning Commission reviewed proposed related amendments to BMC Title 8 (Health and Safety) establishing performance standards for personal cultivation of medical cannabis in residential zoning districts. These proposed amendments were presented for the Commission's advisory review and comments only, as the Commission has no formal authority over BMC Title 8.

Title 17 Amendments

In summary, the proposed Zoning Code amendments include:

- Amending BMC Chapter 17.02, Definitions, to define new terms and amend existing definitions of terms related to personal medical cannabis cultivation and medical cannabis businesses (including an express prohibition on dispensaries).
- Amending BMC Chapters 17.06, 17.08, 17.10, & 17.12 to classify personal cultivation of medical cannabis in all residential zones as a permitted accessory use (subordinate to the primary residential use on the property), subject to performance standards for personal cultivation in residential districts established in Title 8 (see discussion of Title 8 amendments below).
- Amend BMC Chapters 17.16 (SCRO-1 District), 17.18 (SP-CRO District) and 17.19 (TC-1 District) to allow a range of medical cannabis businesses either conditionally or by-right, depending on the zone (see January 23, 2017 Planning Commission report for more details).
- Adopt new BMC Chapter 17.33 containing performance standards and application requirements for medical cannabis businesses.

Title 8 Amendments

The Title 8 amendments are also addressed in detail in the January 23, 2017 and February 9, 2017 Planning Commission agenda report.

The proposed amendments would add a new Chapter 8.12 to specifically address the maximum area of cultivation that would be allowed for medical cannabis cultivation by qualified patients or caregivers, as well as the maximum number of plants permitted on any eligible property. Specifically, the Police Department recommends allowing one cultivation area per eligible private residence with a maximum size of 100 square feet. Additionally, the Police Department recommends an overall cap of 50 plants per private residence, regardless of how many qualified patients may reside there or how many qualified patients a qualified caregiver may represent.

Small Family Daycare Homes

During the Planning Commission's review of the draft Title 8 amendments, a concern was raised by Commissioners regarding the potential conflict between small family daycare homes, a permitted use in all residential districts (providing care for up to eight children), and the personal cultivation of medical cannabis by a qualified patient or caregiver in that home. Because State law defines small family daycare homes as a permitted use in any residential zone, no City planning permits are required. State law further preempts the City from requiring a business license for small family daycare homes. As such, the City has no means to regulate the establishment or operations of such facilities.

The State of California does require small family daycare homes to comply with strict operational standards prior to licensing, as summarized in the February 9, 2017 Planning Commission agenda report. City staff contacted the State Health and Human Services Agency (Department of Social Services), which administers the licensing of small family daycare homes but received no response as to whether their licensing procedures addresses the relationship between personal medical cannabis cultivation and the operation of a small family daycare home. As noted in the February 9, 2017 Planning Commission agenda report, the proposed standards contained in the new Chapter 8.12 would ensure that medical cannabis is securely stored and inaccessible to any person other than the cultivator, including small children.

Fiscal Impact:

None.

Measure of Success:

Adoption of regulations to allow for the personal cultivation of medical cannabis by qualified patient and caregivers in residential districts, and allow for certain medical cannabis businesses to operate in the City's commercial districts in a manner that complies with all applicable State regulations, meets the community's needs, and protects the health, safety, and welfare of Brisbane residents.

Attachments:

Planning Commission Resolution RZ-6-16
Draft Ordinance No. 617
Table of redlined text
Planning Commission agenda report from February 9, 2017 meeting

Planning Commission agenda report from January 23, 2017 meeting
Planning Commission minutes of February 9, 2017
City Council agenda report from March 3, 2016 meeting
City Council minutes from March 3, 2017 meeting
City Council agenda report from February 18, 2016 meeting
City Council minutes from February 18, 2016 meeting

John Swiecki, Community Development Director

Clay Holstine, City Manager

RESOLUTION NO. RZ-6-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-6-16
TO THE CITY COUNCIL
AMENDING VARIOUS CHAPTERS AND ADDING CHAPTER 17.33
TO TITLE 17, ZONING, OF THE BRISBANE MUNICIPAL CODE
TO REGULATE PERSONAL CULTVATION OF MEDICAL CANNABIS
AND MEDICAL CANNABIS BUSINESSES

WHEREAS, in October of 2015, Governor Jerry Brown approved AB 266, AB 243, and SB 643, enacting the Medical Marijuana Regulation and Safety Act (MMRSA) within the California Business and Professions Code; and

WHEREAS, the MMRSA establishes licensing and operating requirements for medical cannabis-related businesses throughout the State, and requires medical cannabis-related businesses to obtain a local license in addition to a State license in order to operate; and

WHEREAS, on February 18 and March 3, 2016, the Brisbane City Council reviewed the provisions of the MMRSA and directed the Planning Commission to consider zoning regulations to allow personal cultivation of medical cannabis by qualified patients and caregivers in residential zoning districts, and to consider zoning regulations to allow medical cannabis research and development as a permitted use, and medical cannabis distribution/transporting, manufacturing, and warehousing as conditional uses in certain commercial districts; and

WHEREAS, the draft Resolution proposes amendments to Chapters 17.02, 17.06, 17.08, 17.10, 17.12, 17.16, 17.18, and 17.19, and addition of new Chapter 17.33 to Title 17, Zoning, of the Brisbane Municipal Code to regulate personal cultivation of medical cannabis by qualified patients and caregivers, and medical cannabis distribution/transporting, manufacturing, and warehousing businesses, consistent with the direction of the City Council;

WHEREAS, on January 26th, 2017, the Planning Commission held a public hearing on the draft Ordinance containing all above-referenced zoning text amendments; and

WHEREAS, the minutes of the Planning Commission meeting of January 26th, 2017 are attached and incorporated by reference as part of this resolution; and

WHEREAS, the project is consistent with the City's General Plan and per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review; and

WHEREAS, the exception to CEQA Guidelines Section 15183(a) requiring environmental review as might be necessary to examine project specific significant effects does not apply.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

AYES: Cunningham, Do, Mackin
NOES: None.
ABSTAIN: Anderson
ABSENT: Munir

TuongVan Do
Chairperson

ATTEST:

JOHN SWIECKI, Community Development Director

draft
ORDINANCE NO. 617

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTERS 17.02, 17.06, 17.08, 17.10, 17.12, 17.16, 17.18, AND 17.19, AND ADDING NEW CHAPTERS 8.12 AND 17.33 TO TITLE 8, HEALTH AND SAFETY, AND TITLE 17, ZONING, OF THE BRISBANE MUNICIPAL CODE TO REGULATE PERSONAL CULTIVATION OF MEDICAL CANNABIS AND MEDICAL CANNABIS BUSINESSES

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: A new Chapter 8.12 is added to Title 8, Health and Safety, of the Municipal Code to read as follows:

Chapter 8.12 – Personal Cultivation of Medical Cannabis

8.12.010 - Purpose

The purpose of this Chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 relating to the regulation of cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home.

8.12.020 – Authority

The primary responsibility for enforcement of the provisions of Chapter 8.12 shall be vested in the chief of police or his/her designee.

8.12.030 – Definitions

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section:

"Accessory structure" shall have the same meaning as set forth in Chapter 17.02.

"City" means the City of Brisbane.

"Medical cannabis cultivation area," means the maximum dimensions allowed for the growing of medical cannabis. The cannabis cultivation area shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises.

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.

"Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.

8.12.040 – Personal Cultivation of Medical Cannabis

A. To the extent that the city is required to allow the cultivation of medical cannabis for personal use and consumption under State law, the rules set forth in this section shall apply. Nothing in this section shall be interpreted to permit cultivation of medical cannabis for commercial purposes.

B. An individual qualified patient or primary caregiver shall be allowed to cultivate and process medical cannabis within his/her private residence in compliance with the standards established by this Chapter. A primary caregiver shall cultivate or process medical cannabis only at the private residence of a qualified patient for whom he/she is the primary caregiver, or at the primary caregiver's private residence. Medical cannabis cultivation and processing for personal use shall be in conformance with the following standards:

1. Allowed Number of Medical Cannabis Plants at a Single Residence. No more than six mature or 12 immature cannabis plants per qualified patient may be cultivated at any residence. Notwithstanding the foregoing, no more than a total of 50 plants may be grown at any residence.

2. Allowed Cultivation Areas. Medical cannabis may be cultivated in the interior or exterior of the qualified patient or primary caregiver's primary residential dwelling, subject to the following limitations:

    a. Cultivation must occur in one medical cannabis cultivation area. The cultivation area shall not exceed 100 square feet.

    b. The medical cannabis cultivation and processing area shall be in compliance with the current, adopted edition of the California Building Code, including requirements for mechanical ventilation.

    c. Interior cultivation areas are restricted to one room of a residence, or within a self-contained outside accessory structure that is secured, locked, and fully enclosed. Said accessory structure shall not violate any other ordinance regarding height, location, floor area, lot coverage, or any other zoning restrictions in Title 17, and shall not be constructed or covered with plastic or cloth. If located in a garage, the cultivation or processing use shall not result in a reduction of required off-street parking for the residence. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for personal medical cannabis cultivation or processing;

    d. Exterior cultivation areas must be enclosed by a secure, opaque, solid fence or wall at least six feet in height, consistent with the fence and wall height regulations contained in Title 17. The fence or wall shall include a lockable gate or gates that are locked at all times when the qualified patient or caregiver is not in the immediate area. Said fence or wall shall not violate any other ordinance regarding height and location restrictions, and shall not be constructed or covered with plastic or cloth.

3. Lighting and Electricity Restrictions.

    a. Any medical cannabis cultivation lighting shall not exceed 1,200 watts unless specifically approved by the Building Official.

    b. All electrical equipment used in the cultivation or processing of medical cannabis (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise

hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of medical cannabis is prohibited.

4. Documentation required. A copy of documentation of qualified patient status and/or primary caregiver status consistent with the provisions of California Health and Safety Code Section 11362.5 et seq. shall be maintained at the cultivation premises.

5. Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence.

6. The use of gas products (CO2, butane, etc.) for medical cannabis cultivation or processing is prohibited.

7. From a public right-of-way, there shall be no exterior evidence, including but not limited to odor, view, or other indication of medical cannabis cultivation or processing on the property.

8. The qualified patient or caregiver shall not participate in medical cannabis cultivation in any other residential location within the City of Brisbane.

9. For the convenience of the qualified patient or primary caregiver, to promote building safety, to assist in the enforcement of this chapter, and to avoid unnecessary confiscation and destruction of medical cannabis plants and unnecessary law enforcement investigations, the qualified patient or primary caretaker growing medical cannabis pursuant to this chapter may notify the City of Brisbane regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act.

10. The medical cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes; and

11. The medical cannabis cultivation or processing shall not adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.

8.12.050 – Public Nuisance

It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any incorporated area of the City to cause or allow such premises to be used for the outdoor or indoor cultivation of cannabis plants for medicinal purposes, or processing thereof as described herein, or to process, cultivate or allow the cultivation of cannabis plants for medicinal purposes in any manner that conflicts with the limitations imposed in this Chapter.

8.12.060 – Penalties

A. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a period of time not to exceed six months, or by a fine not to exceed $500.00, or both, for each violation. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the

provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction.

B. Any person convicted of an infraction under this chapter shall be punished by:
   1. A fine not exceeding $150.00 for a first violation;
   2. A fine not exceeding $250.00 for each additional violation of this chapter within one year.

SECTION 2: A new Section 17.02.107 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

Section 17.02.107 – Cannabis

"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Marijuana" shall have the same meaning as cannabis for the purposes of this Title.

"Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

A. "Medical cannabis" means cannabis intended for use by medical cannabis patients pursuant to Section 11362.5 of the California Health and Safety Code.

B. "Medical cannabis product" means a product containing cannabis, including, but not limited to, concentrates, extractions, topical treatments, or edible products intended to be sold for use by medical cannabis patients pursuant to Section 11362.5 of the California Health and Safety Code.

SECTION 3: A new Section 17.02.208 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

17.02.208 – Dispensary

"Dispensary" means premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

SECTION 4: Section 17.02.410 in Chapter 17.02 – Definitions of the Municipal Code is amended to read as follows:

17.02.410 - Home occupation.

"Home occupation" means the conduct of a trade or profession, the offering of a service, the conduct of a business, or the handcraft manufacture or products, in a dwelling unit by the occupants thereof as an accessory use incidental to residential occupancy, and in accord with the regulations prescribed in this title. Home occupation does not include personal cultivation of medical cannabis.

SECTION 5: A new Section 17.02.526 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

17.02.526 – Medical Cannabis Business

"Medical cannabis business" means a business engaged in the distribution, manufacture, or warehousing of medical cannabis products. Medical cannabis businesses do not include retail sale of medical cannabis or medical cannabis products, or commercial cultivation of medical cannabis.

A. "Medical cannabis distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between commercial entities licensed by the State of California. Distribution includes "transport" as defined by California Health and Safety Code Section 19300.5(am), as may be amended. Distribution does not include delivery of medical cannabis or medical cannabis products to a primary caregiver or qualified patient.

B. "Medical cannabis manufacturing" means the production, preparation, propagation, or compounding of manufactured medical cannabis or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container.

C. "Medical cannabis warehousing" means the storage, wholesale, and distribution of medical cannabis products. Medical cannabis warehousing does not include storage, wholesale, or distribution of medical cannabis.

SECTION 6: A new Section 17.02.602 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

17.02.602 – Personal cultivation of medical cannabis

"Personal cultivation of medical cannabis" means the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis by a qualified patient or the patient's primary caregiver for personal use by the qualified patient, as those terms are defined by the California Health and Safety Code, as may be amended.

SECTION 7: A new Section 17.02.628 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

17.02.628 – Primary Caregiver

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.

SECTION 8: A new Section 17.02.657 is added to Chapter 17.02 – Definitions of the Municipal Code to read as follows:

17.02.657 – Qualified Patient

"Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.

SECTION 9: Section 17.02.675 in Chapter 17.02 – Definitions of the Municipal Code is amended to read as follows:

17.02.675 - Research and development.

"Research and development" means a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including medical cannabis and medical cannabis products.

SECTION 10: Section 17.02.685 in Chapter 17.02 – Definitions of the Municipal Code is amended to read as follows:

17.02.685 - Retail sales and rental

"Retail sales and rental" means an establishment engaged in the sale or rental of goods directly to the consumer and may include the rendering of services incidental to such sale or rental of goods, but does not include sale of medical or non-medical cannabis or cannabis products. See Section 17.02.208, dispensary.

SECTION 11: Section 17.02.790 in Chapter 17.02 – Definitions of the Municipal Code is amended to read as follows:

17.02.790 - Warehousing.

"Warehousing" means an establishment engaged in the storage, wholesale and distribution of manufactured products, supplies or equipment. Warehousing does not include warehousing of medical cannabis products. See Section 17.02.526.C, medical cannabis warehousing.

SECTION 12: Section 17.06.020 in Chapter 17.06 – R-1 Residential District of the Municipal Code is amended to read as follows:

17.06.020 – Permitted Uses

A. Single-family dwellings.
B. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12.
C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
D. Small family day care homes.
E. Secondary dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

SECTION 13: Section 17.08.020 in Chapter 17.08 – R-2 Residential District of the Municipal Code is amended to read as follows:

17.08.020- Permitted Uses

A. Single-family dwellings.
B. Duplexes.
C. Multiple family dwellings containing not more than six (6) dwelling units.
D. Dwelling groups.
E. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12.

F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
G. Small family day care homes.

SECTION 14: Section 17.10.020 in Chapter 17.10 – R-3 Residential District of the Municipal Code is amended to read as follows:

17.10.020 – Permitted Uses

A. Multiple-family dwellings;
B. Single-family dwellings;
C. Duplexes;
D. Dwelling groups;
E. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12;
F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title;
G. Small family day care homes.

SECTION 15: Section 17.12.020 in Chapter 17.10 – R-BA Brisbane Acres Residential District of the Municipal Code is amended to read as follows:

17.12.020 - Permitted uses.

The following permitted uses shall be allowed in the R-BA district:
A. Single-family dwellings;
B. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12;
C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title;
D. Small family day care homes;
E. Secondary dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

SECTION 16: Section 17.16.030 in Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District of the Municipal Code is amended to read as follows:

17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;
2. Contractor's yards;
3. Convalescent homes;
4. Cultural facilities;
5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;

8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. Large family day care homes;
13. Light fabrication;
14. Live/work developments;
15. Media studios;
16. Medical facilities;
17. Meeting halls;
18. Mobilehome parks in compliance with Section 17.32.110;
19. Motels;
20. Multiple-family dwellings and dwelling groups;
21. Offices;
22. Outdoor sales and rental;
23. Personal services;
24. Places of worship;
25. Printing;
26. Product showrooms;
27. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33;
28. Restaurants;
29. Retail sales and rental;
30. Single-family dwellings;
31. Storage;
32. Veterinary clinics;
33. Warehousing;

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

SECTION 17: Section 17.18.020 in Chapter 17.18 - SP-CRO Sierra Point Commercial District of the Municipal Code is amended to read as follows:

17.18.020 - Permitted uses.

The following uses shall be allowed in the SP-CRO district:

A. Offices;
B. Hotels;
C. Retail sales and rental;
D. Restaurants;
E. Bars;

F. Financial institutions;
G. Personal services;
H. Commercial gyms and health facilities;
I. Meeting halls;
J. Marinas;
K. Research and development, including the use of live insects, rodents, rabbits, fish, and amphibians subject to the performance standards set forth in Section 17.18.045. Research and development involving the use of live dogs (Canis genus) cats (Felis genus), or nonhuman primates is prohibited. Research and development involving the use of other live animals not otherwise permitted or prohibited herein may be permitted upon the granting of a conditional use pursuant to Section 17.18.030. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33.

SECTION 18: Section 17.19.030 in Chapter 17.19 - TC-1 Crocker Park Trade Commercial District of the Municipal Code is amended to read as follows:

17.19.030 - Conditional uses.

Conditional uses allowed in the Crocker Park district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.19.050 of this chapter, are as follows:

A. Active records management services;
B. Commercial recreation;
C. Cultural facilities;
D. Day care centers when ancillary to other operation of another use;
E. Educational facilities;
F. Freight forwarders, subject to compliance with the provisions of Section 17.19.065 of this chapter;
G. Gasoline service stations;
H. Medical cannabis businesses subject to compliance with Chapter 17.33;
I. Medical facilities;
J. Meeting halls;
K. Night operations, when subject to the provisions of Section 17.19.060 of this chapter;
L. Places of worship;
M. Research and development where the planning director determines, as a result of the risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will constitute a major component of the research and development activities to be conducted on the site. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33;
N. Temporary uses;
O. Veterinary clinics.

SECTION 19: A new Chapter 17.33 is added to Title 17, Zoning, of the Municipal Code to read as follows:

Chapter 17.33 – Medical Cannabis Businesses

17.33.010 – Purposes of chapter

The purpose of this chapter is to regulate the operation of medical cannabis businesses, and the research and development of medical cannabis and medical cannabis products, to safeguard the public health and general welfare of business owners and employees and of the City of Brisbane at large.

17.33.020 – Performance standards for medical cannabis businesses

All medical cannabis businesses and research and development businesses involving medical cannabis must comply with all of the operating standards contained in this section, subject to review and determination by the Police Chief.

A. State license and accreditation. Beginning at such a time that the State has begun to issue licenses and at all times thereafter, medical cannabis businesses shall hold a valid State license for the equivalent State license type. Research and development testing laboratories for medical cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 19300.5 of the California Business and Professions Code, as may be amended from time to time.

B. Hours of Operation. All medical cannabis businesses shall be closed to the general public. Deliveries and pick-ups shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m.

C. Odor Control. Odors shall be contained on the property on which the business is located. If the City receives any odor complaints, permittees shall work with the Building Official to correct odor concerns. Unresolved or repeated odor complaints may be the basis for suspension or revocation of the business license or use permit, as applicable.

D. Location of Business Activities. All aspects of the business, with the exception of incidental loading and off-loading of medical cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of medical cannabis products shall be visible from the exterior of the building.

E. Security Measures. All operators shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system. Additional security measures may be required by the Police Chief consistent with the requirements of Section 17.33.030.B.8 of this Chapter.

F. Security Breach. All operators shall notify the Brisbane Police Department immediately after discovering any of the following:

1. Diversion, theft, loss, or any criminal activity involving the medical cannabis or any agent or employee of the business.

2. The loss or unauthorized alteration of business records related to employees or agents of the business.

3. Significant discrepancies identified during inventory.

4. Any other breach of security.

G. Labeling. Labels and packages of medical cannabis products shall meet all State and Federal labeling requirements.

H. Inspections and Records. Inspections shall be scheduled by the Police Chief whenever deemed necessary by the Police Chief. Inspections shall take place at a reasonable time with prior notice to the business operator. Upon request, the business operator shall timely provide the Police Chief with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation.

I. Notification of Change in Ownership or Managerial Employee. All operators shall notify the Brisbane Police Department immediately upon a change in ownership or the hiring of new managerial employees. New business owners or managerial employees must provide all applicable information required by Section 17.33.030.B.

17.33.030 – Permit application for medical cannabis business

A. Prior to the City's granting of a use permit or business license for a medical cannabis business or research and development business involving medical cannabis, the applicant must demonstrate compliance with all operating standards contained in Section 17.33.020.

B. In addition to the applicable submittal requirements associated with the use permit or business license application, the business operator must provide all of the following information on such forms provided by the City prior to use permit or business license issuance:

1. The name and address for each business owner and an explanation of the legal form of business ownership.

2. Until such time when State licenses are being processed and issued pursuant to California Business and Professions Code Chapter 3.5, as may be amended, each owner and managerial employee shall submit electronic fingerprint images and related information required by the Brisbane Police Department. The fingerprint images shall be used to determine the existence and content of a record of state or federal convictions or arrests, including those for which the person is free on bail or on his or her own recognizance pending trial or appeal.

3. The address and Assessor's Parcel Number(s) of the location of the proposed business, and the name and contact information for the property owner(s).

4. A description of the specific State license type(s) that the applicant either has obtained or plans to obtain. The applicant shall specifically document how it will meet the State licensing requirements.

5. A description of the nature of the business, product types, average production amounts for each product type, and source of medical cannabis material, as applicable.

6. Plans showing all proposed building and site improvements, including site plans, floor plans, mechanical, plumbing (including details showing all sewers, floor drains) and electrical plans. The plans shall clearly label and distinguish between the existing and proposed improvements and show all exterior building, interior building, and site modifications.

At a minimum, plans shall:

a. Show all fixtures, equipment, and building improvements to be utilized for the production and processing of medical cannabis products.

b. Comply with all applicable California Building Codes, as amended in Title 15.

c. Be reviewed and stamped by an appropriately licensed engineer.

7. A description of measures to reduce solid waste and green waste associated with the business.

8. A description and documentation of how the owner(s) will secure the premises 24 hours per day, seven (7) days per week, and how waste derived from medical cannabis will be disposed of in a manner to ensure it may not be utilized for unlawful purposes. These security measures shall include, but may not be limited to, the following:

a. Preventing individuals from remaining on the premises if they are not engaged in activity expressly related to the operations of the permit.

b. Establishing limited access areas accessible only to authorized personnel including security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products.

c. Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner that prevents diversion, theft, and loss.

d. Providing tamper proof and tamper evident packaging for finished medical cannabis products.

e. Preventing off-site impacts to adjoining or near properties.

9. A written description of the weight in pounds of both raw and processed materials that will be received, stored on-site, and distributed from the site on a daily basis.

10. Application processing and permit fees, as applicable.

11. Signature of the business owner(s). The signature(s) shall be evidence of the owner's express consent to allow the Police Chief or his/her designee to enter and inspect the premises upon reasonable notice. The signature(s) shall additionally certify under penalty of perjury that the information submitted in the application, including all supporting documents and materials, is to the best of the owner(s) knowledge and belief, true, accurate, and complete.

12. The application shall be signed by the property owner(s). The signature(s) shall certify that he/she/it has reviewed the application, approves the use of the property for the purposes stated in the application, and agrees to allow the Police Chief or designee to enter and inspect the premises upon reasonable notice.

17.33.040. Revocation of use permit or business license.

A. Should the Police Chief determine at any time that the medical cannabis business does not comply with the performance standards set forth in Section 17.33.020, the use permit shall be subject to the revocation procedures outlined in Chapter 17.48.

B. Should the Police Chief determine at any time that the medical cannabis business subject only to a building license does not comply with the performance standards set forth in Section 17.33.020, the business license shall be subject to the revocation procedures outlined in Chapter 5.16.

SECTION 20: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 21: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 22: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Mayor Lori Liu

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:



_____
City Attorney

Ord. 617 (RZ-6-16) Proposed Amendments: Redline Text

Chapter 8.12- Personal Cultivation of Medical Cannabis (NEW)

Chapter/Section	Proposed Text
Chapter 8.12 – Personal Cultivation of Medical Cannabis	
8.12.010 - Purpose	The purpose of this Chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 relating to the regulation of cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home.
8.12.020 – Authority	The primary responsibility for enforcement of the provisions of Chapter 8.12 shall be vested in the chief of police or his/her designee.
8.12.030 – Definitions	For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section: "Accessory structure" shall have the same meaning as set forth in Chapter 17.02. "City" means the City of Brisbane. "Medical cannabis cultivation area," means the maximum dimensions allowed for the growing of medical cannabis. The cannabis cultivation area shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises. "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended. "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.
8.12.040 – Personal Cultivation of Medical Cannabis	A. To the extent that the city is required to allow the cultivation of medical cannabis for personal use and consumption under State law, the rules set forth in this section shall apply. Nothing in this section shall be interpreted to permit cultivation of medical cannabis for commercial purposes. B. An individual qualified patient or primary caregiver shall be allowed to cultivate and process medical cannabis within his/her private residence in compliance with the standards established by this Chapter. A primary caregiver shall cultivate or process medical cannabis only at the private residence of a qualified patient for whom he/she is the primary caregiver, or at the primary caregiver's private residence. Medical cannabis cultivation and processing for personal use shall be in conformance with the following standards: 1. Allowed Number of Medical Cannabis Plants at a Single Residence. No more than six mature or 12 immature cannabis plants per qualified patient may be cultivated at any residence. Notwithstanding the foregoing, no more than a total of 50 plants may be grown at any residence.

	2. Allowed Cultivation Areas. Medical cannabis may be cultivated in the interior or exterior of the qualified patient or primary caregiver's primary residential dwelling, subject to the following limitations: a. Cultivation must occur in one medical cannabis cultivation area. The cultivation area shall not exceed 100 square feet. b. The medical cannabis cultivation and processing area shall be in compliance with the current, adopted edition of the California Building Code, including requirements for mechanical ventilation. c. Interior cultivation areas are restricted to one room of a residence, or within a self-contained outside accessory structure that is secured, locked, and fully enclosed. Said accessory structure shall not violate any other ordinance regarding height, location, floor area, lot coverage, or any other zoning restrictions in Title 17, and shall not be constructed or covered with plastic or cloth. If located in a garage, the cultivation or processing use shall not result in a reduction of required off-street parking for the residence. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for personal medical cannabis cultivation or processing; d. Exterior cultivation areas must be enclosed by a secure, opaque, solid fence or wall at least six feet in height, consistent with the fence and wall height regulations contained in Title 17. The fence or wall shall include a lockable gate or gates that are locked at all times when the qualified patient or caregiver is not in the immediate area. Said fence or wall shall not violate any other ordinance regarding height and location restrictions, and shall not be constructed or covered with plastic or cloth. 3. Lighting and Electricity Restrictions. a. Any medical cannabis cultivation lighting shall not exceed 1,200 watts unless specifically approved by the Building Official. b. All electrical equipment used in the cultivation or processing of medical cannabis (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of medical cannabis is prohibited. 4. Documentation required. A copy of documentation of qualified patient status and/or primary caregiver status consistent with the provisions of California Health and Safety Code Section 11362.5 et seq. shall be maintained at the cultivation premises. 5. Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence. 6. The use of gas products (CO2, butane, etc.) for medical cannabis cultivation or processing is prohibited. 7. From a public right-of-way, there shall be no exterior evidence, including but not limited to odor, view, or other indication of medical cannabis cultivation or processing on the property.

	8. The qualified patient or caregiver shall not participate in medical cannabis cultivation in any other residential location within the City of Brisbane. 9. For the convenience of the qualified patient or primary caregiver, to promote building safety, to assist in the enforcement of this chapter, and to avoid unnecessary confiscation and destruction of medical cannabis plants and unnecessary law enforcement investigations, the qualified patient or primary caretaker growing medical cannabis pursuant to this chapter may notify the City of Brisbane regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act. 10. The medical cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes; and 11. The medical cannabis cultivation or processing shall not adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.
8.12.050 – Public Nuisance	It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any incorporated area of the City to cause or allow such premises to be used for the outdoor or indoor cultivation of cannabis plants for medicinal purposes, or processing thereof as described herein, or to process, cultivate or allow the cultivation of cannabis plants for medicinal purposes in any manner that conflicts with the limitations imposed in this Chapter.
8.12.060 – Penalties	A. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a period of time not to exceed six months, or by a fine not to exceed $500.00, or both, for each violation. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction. B. Any person convicted of an infraction under this chapter shall be punished by: 1. A fine not exceeding $150.00 for a first violation; 2. A fine not exceeding $250.00 for each additional violation of this chapter within one year.

Chapter 17.02- Definitions

Chapter/Section	Proposed Text
Section 17.02.107 - Cannabis	"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound,

	manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Marijuana" shall have the same meaning as cannabis for the purposes of this Title. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. A. "Medical cannabis" means cannabis intended for use by medical cannabis patients pursuant to Section 11362.5 of the California Health and Safety Code. B. "Medical cannabis product" means a product containing cannabis, including, but not limited to, concentrates, extractions, topical treatments, or edible products intended to be sold for use by medical cannabis patients pursuant to Section 11362.5 of the California Health and Safety Code.
17.02.208 – Dispensary	"Dispensary" means premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.
17.02.410 - Home occupation.	"Home occupation" means the conduct of a trade or profession, the offering of a service, the conduct of a business, or the handcraft manufacture or products, in a dwelling unit by the occupants thereof as an accessory use incidental to residential occupancy, and in accord with the regulations prescribed in this title. Home occupation does not include personal cultivation of medical cannabis.
17.02.526 – Medical Cannabis Business	"Medical cannabis business" means a business engaged in the distribution, manufacture, or warehousing of medical cannabis products. Medical cannabis businesses do not include retail sale of medical cannabis or medical cannabis products, or commercial cultivation of medical cannabis. A. "Medical cannabis distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between commercial entities licensed by the State of California. Distribution includes "transport" as defined by California Health and Safety Code Section 19300.5(am), as may be amended. Distribution does not include delivery of medical cannabis or medical cannabis products to a primary caregiver or qualified patient. B. "Medical cannabis manufacturing" means the production, preparation, propagation, or compounding of manufactured medical cannabis or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container. C. "Medical cannabis warehousing" means the storage, wholesale, and distribution of medical cannabis products. Medical cannabis warehousing does not include storage, wholesale, or distribution of medical cannabis.
17.02.602 – Personal	"Personal cultivation of medical cannabis" means the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis by a qualified patient or the patient's primary caregiver for personal use by the qualified patient, as those terms

cultivation of medical cannabis	are defined by the California Health and Safety Code, as may be amended.
17.02.628 – Primary Caregiver	"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.
17.02.657 – Qualified Patient	"Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.5 et seq., as may be amended.
17.02.675 - Research and development.	"Research and development" means a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including medical cannabis and medical cannabis products.
17.02.685 - Retail sales and rental	"Retail sales and rental" means an establishment engaged in the sale or rental of goods directly to the consumer and may include the rendering of services incidental to such sale or rental of goods, but does not include sale of medical or non-medical cannabis or cannabis products. See Section 17.02.208, dispensary.
17.02.790 - Warehousing.	"Warehousing" means an establishment engaged in the storage, wholesale and distribution of manufactured products, supplies or equipment. Warehousing does not include warehousing of medical cannabis products. See Section 17.02.526.C, medical cannabis warehousing.

Chapter 17.06 – R-1 Residential District

Chapter/Section	Proposed Text
17.06.020 – Permitted Uses	A. Single-family dwellings. B. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12. C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title. D. Small family day care homes. E. Secondary dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

Chapter 17.08 – R-2 Residential District

Chapter/Section	Proposed Text
17.08.020- Permitted Uses	A. Single-family dwellings. B. Duplexes. C. Multiple family dwellings containing not more than six (6) dwelling units. D. Dwelling groups. E. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12. F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title. G. Small family day care homes.

Chapter 17.10 - R-3 Residential District

Chapter/Section	Proposed Text
17.10.020 – Permitted Uses	A. Multiple-family dwellings; B. Single-family dwellings; C. Duplexes; D. Dwelling groups; E. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12; F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title; G. Small family day care homes.

Chapter 17.12 – R-BA Residential District

Chapter/Section	Proposed Text
17.12.020 - Permitted uses.	The following permitted uses shall be allowed in the R-BA district: A. Single-family dwellings; B. Accessory structures and uses incidental to a permitted use, including personal cultivation of medical cannabis in compliance with Title 8, Chapter 8.12; C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title; D. Small family day care homes; E. Secondary dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

Chapter 17.16 – SCRO-1 Southwest Bayshore Commercial District

Chapter/Section	Proposed Text
17.16.030 - Conditional uses.	A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter: 1. Commercial recreation/commercial gym and health facilities; 2. Contractor's yards; 3. Convalescent homes; 4. Cultural facilities; 5. Duplex dwelling units; 6. Educational facilities; 7. Emergency shelters with more than twelve (12) beds; 8. Financial institutions; 9. Food production; 10. Group care homes; 11. Hotels; 12. Large family day care homes; 13. Light fabrication; 14. Live/work developments; 15. Media studios; 16.Medical facilities; 17. Meeting halls; 18. Mobilehome parks in compliance with Section 17.32.110; 19. Motels; 20. Multiple-family dwellings and dwelling groups; 21. Offices; 22. Outdoor sales and rental;

	23. Personal services; 24. Places of worship; 25. Printing; 26. Product showrooms; 27. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33; 28. Restaurants; 29. Retail sales and rental; 30. Single-family dwellings; 31. Storage; 32. Veterinary clinics; 33. Warehousing; B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses. C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

Chapter 17.18- SP-CRO Sierra Point Commercial District

Chapter/Section	Proposed Text
17.18.020 - Permitted uses.	The following uses shall be allowed in the SP-CRO district: A. Offices; B. Hotels; C. Retail sales and rental; D. Restaurants; E. Bars; F. Financial institutions; G. Personal services; H. Commercial gyms and health facilities; I. Meeting halls; J. Marinas; K. Research and development, including the use of live insects, rodents, rabbits, fish, and amphibians subject to the performance standards set forth in Section 17.18.045. Research and development involving the use of live dogs (Canis genus) cats (Felis genus), or nonhuman primates is prohibited. Research and development involving the use of other live animals not otherwise permitted or prohibited herein may be permitted upon the granting of a conditional use pursuant to Section 17.18.030. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33.

Chapter 17.19 - TC-1 Crocker Park Trade Commercial District

Chapter/Section	Proposed Text
17.19.030 - Conditional uses.	17.19.030 - Conditional uses. Conditional uses allowed in the Crocker Park district, subject to obtaining a use

Chapter/Section	Proposed Text
	permit and if conducted in accordance with the performance standards set forth in Section 17.19.050 of this chapter, are as follows: A. Active records management services; B. Commercial recreation; C. Cultural facilities; D. Day care centers when ancillary to other operation of another use; E. Educational facilities; F. Freight forwarders, subject to compliance with the provisions of Section 17.19.065 of this chapter; G. Gasoline service stations; H. Medical cannabis businesses subject to compliance with Chapter 17.33; I. Medical facilities; J. Meeting halls; K. Night operations, when subject to the provisions of Section 17.19.060 of this chapter; L. Places of worship; M. Research and development where the planning director determines, as a result of the risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will constitute a major component of the research and development activities to be conducted on the site. Research and development involving medical cannabis is additionally subject to the requirements in Chapter 17.33; N. Temporary uses; O. Veterinary clinics.

Chapter 17.33 – Medical Cannabis Businesses (New)

Chapter 17.33 – MEDICAL CANNABIS BUSINESSES	
17.33.010 – Purposes of chapter	The purpose of this chapter is to regulate the operation of medical cannabis businesses and the research and development of medical cannabis and medical cannabis products to safeguard the public health and general welfare of business owners and employees and of the City of Brisbane at large.
17.33.020 – Performance standards for medical cannabis businesses	All medical cannabis businesses and research and development businesses involving medical cannabis must comply with all of the operating standards contained in this section, subject to review and determination by the Police Chief. A. State license and accreditation. Beginning at such a time that the State has begun to issue licenses and at all times thereafter, medical cannabis businesses shall hold a valid State license for the equivalent State license type. Research and development testing laboratories for medical cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 19300.5 of the California Business and Professions Code, as may be amended from time to time. B. Hours of Operation. All medical cannabis businesses shall be closed to the general public. Deliveries and pick-ups shall be prohibited between the hours of

	7:00 p.m. and 8:00 a.m. C. Odor Control. Odors shall be contained on the property on which the business is located. If the City receives any odor complaints, permittees shall work with the Building Official to correct odor concerns. Unresolved or repeated odor complaints may be the basis for suspension or revocation of the business license or use permit, as applicable. D. Location of Business Activities. All aspects of the business, with the exception of incidental loading and off-loading of medical cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of medical cannabis products shall be visible from the exterior of the building. E. Security Measures. All operators shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system. Additional security measures may be required by the Police Chief consistent with the requirements of Section 17.33.030.B.8 of this Chapter. F. Security Breach. All operators shall notify the Brisbane Police Department immediately after discovering any of the following: 1. Diversion, theft, loss, or any criminal activity involving the medical cannabis or any agent or employee of the business. 2. The loss or unauthorized alteration of business records related to employees or agents of the business. 3. Significant discrepancies identified during inventory. 4. Any other breach of security. G. Labeling. Labels and packages of medical cannabis products shall meet all State and Federal labeling requirements. H. Inspections and Records. Inspections shall be scheduled by the Police Chief whenever deemed necessary by the Police Chief. Inspections shall take place at a reasonable time with prior notice to the business operator. Upon request, the business operator shall timely provide the Police Chief with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation. I. Notification of Change in Ownership or Managerial Employee. All operators shall notify the Brisbane Police Department immediately upon a change in ownership or the hiring of new managerial employees. New business owners or managerial employees must provide all applicable information required by Section 17.33.030.B.
17.33.030 – Permit application for medical cannabis business	A. Prior to the City's granting of a use permit or business license for a medical cannabis business or research and development business involving medical cannabis , the applicant must demonstrate compliance with all operating standards contained in Section 17.33.020. B. In addition to the applicable submittal requirements associated with the use permit or business license application, the business operator must provide all of the

following information on such forms provided by the City prior to use permit or business license issuance:

1. The name and address for each business owner and an explanation of the legal form of business ownership.

2. Until such time when State licenses are being processed and issued pursuant to California Business and Professions Code Chapter 3.5, as may be amended, each owner and managerial employee shall submit electronic fingerprint images and related information required by the Brisbane Police Department. The fingerprint images shall be used to determine the existence and content of a record of state or federal convictions or arrests, including those for which the person is free on bail or on his or her own recognizance pending trial or appeal.

3. The address and Assessor's Parcel Number(s) of the location of the proposed business, and the name and contact information for the property owner(s).

4. A description of the specific State license type(s) that the applicant either has obtained or plans to obtain. The applicant shall specifically document how it will meet the State licensing requirements.

5. A description of the nature of the business, product types, average production amounts for each product type, and source of medical cannabis material, as applicable.

6. Plans showing all proposed building and site improvements, including site plans, floor plans, mechanical, plumbing (including details showing all sewers, floor drains) and electrical plans. The plans shall clearly label and distinguish between the existing and proposed improvements and show all exterior building, interior building, and site modifications.

At a minimum, plans shall:

a. Show all fixtures, equipment, and building improvements to be utilized for the production and processing of medical cannabis products.

b. Comply with all applicable California Building Codes, as amended in Title 15.

c. Be reviewed and stamped by an appropriately licensed engineer.

7. A description of measures to reduce solid waste and green waste associated with the business.

8. A description and documentation of how the owner(s) will secure the premises 24 hours per day, seven (7) days per week, and how waste derived from medical cannabis will be disposed of in a manner to ensure it may not be utilized for unlawful purposes. These security measures shall include, but may not be limited to, the following:

a. Preventing individuals from remaining on the premises if they are not engaged in activity expressly related to the operations of the permit.

b. Establishing limited access areas accessible only to authorized personnel including security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products.

c. Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner that prevents diversion, theft, and loss.

	d. Providing tamper proof and tamper evident packaging for finished medical cannabis products. e. Preventing off-site impacts to adjoining or near properties. 9. A written description of the weight in pounds of both raw and processed materials that will be received, stored on-site, and distributed from the site on a daily basis. 10. Application processing and permit fees, as applicable. 11. Signature of the business owner(s). The signature(s) shall be evidence of the owner's express consent to allow the Police Chief or his/her designee to enter and inspect the premises upon reasonable notice. The signature(s) shall additionally certify under penalty of perjury that the information submitted in the application, including all supporting documents and materials, is to the best of the owner(s) knowledge and belief, true, accurate, and complete. 12. The application shall be signed by the property owner(s). The signature(s) shall certify that he/she/it has reviewed the application, approves the use of the property for the purposes stated in the application, and agrees to allow the Police Chief or designee to enter and inspect the premises upon reasonable notice.
17.33.040. Revocation of use permit or business license.	A. Should the Police Chief determine at any time that the medical cannabis business does not comply with the performance standards set forth in Section 17.33.020, the use permit shall be subject to the revocation procedures outlined in Chapter 17.48. B. Should the Police Chief determine at any time that the medical cannabis business subject only to a building license does not comply with the performance standards set forth in Section 17.33.020, the business license shall be subject to the revocation procedures outlined in Chapter 5.16.

City of Brisbane
Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 2/9/17

FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-6-16** for amendments to Chapters 17.02, 17.06, 17.08, 17.10, 17.12, 17.16, 17.18, and 17.19, and adding new Chapter 17.33 to Title 17, Zoning, of the Brisbane Municipal Code to regulate personal cultivation of medical cannabis by qualified patients and caregivers, and medical cannabis businesses; City of Brisbane, applicant; Location: Citywide. **Continued from the January 26, 2017 meeting.**

SUPPLEMENTAL REPORT:

At the January 26, 2017 Planning Commission meeting, the Planning Commissioner voted unanimously (3-0-2) to continue the public hearing for this application to tonight's meeting. The January 26, 2017 agenda report is attached (Attachment B) for reference.

Family Child Care Homes: Licensing Requirements and Safeguards

Prior to tonight's continued hearing, an individual Commissioner requested additional information about how to prevent exposure of children to medical cannabis cultivated at a private residence that is operated as a family child care home.

Family child care homes provide care, protection and supervision to children for periods of less than twenty-four (24) hours per day while the parents or guardians are away. Family child care homes must be licensed by the State in addition to obtaining any applicable discretionary permits and a business license from the City of Brisbane. Small family child care homes (eight or fewer children) are permitted uses and large family child care homes (nine to 14 children) are conditionally permitted uses in all residential districts.

State licensing regulations for family child care homes are contained in Title 22, Division 12, Chapter 3 of the California Code of Regulations. Section 102417(g)(4) of Article 6 (see excerpt provided in Attachment A) outlines safety requirements for family child care homes, including secure storage requirements for any item that could pose a danger to a child. This includes medical or recreational cannabis.

Proposed Requirements for Secure Cultivation and Storage Areas
The proposed amendments to Title 8, Health and Safety, contain performance standards for medical cannabis cultivation. These standards include the following security requirements:

- *Proposed Section 8.12.040.B.2.c*: Interior cultivation areas are restricted to one room of a residence, or within a self-contained outside accessory structure that is secured, locked, and fully enclosed.
- *Proposed Section 8.12.040.B.2.d*: Exterior cultivation areas must be enclosed by a secure, opaque, solid fence or wall at least six feet in height, consistent with the fence and wall height regulations contained in Title 17. The fence or wall shall include a lockable gate…

These proposed standards would ensure that medical cannabis is securely stored and inaccessible to any person other than the cultivator.

Additionally, per Section 102392 of Article 3, the Department of Social Services must conduct an on-site visit to the proposed child care home before granting a license. Every licensed child care home is subject to unannounced site visits by the Department once every five years, or at any time based on a complaint filed with the Department. The Department will inspect any part of the family child care home to which children have access, including outdoor areas (Section 102391, Article 3). These provisions ensure that homes with unsafe or unsecured medical cannabis cultivation or storage areas may not be licensed, and allow parents, neighbors, or any other concerned party to file a complaint in the case of noncompliance.

STAFF RECOMMENDATION

Adoption of the attached draft Resolution RZ-6-16 recommending approval of the proposed zoning text amendments to the City Council.

ATTACHMENTS:
A. Excerpts from California Code of Regulations, Title 22, Division 12, Chapter 3
B. January 26, 2017 Planning Commission meeting agenda report

Excerpts from California Code of Regulations, Title 22
Division 12, Chapter 3

Article 4. ENFORCEMENT PROVISIONS

Section 102391, Inspection Authority of The Department

(a) Any duly authorized officer, employee, or agent of the Department shall, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, the regulations adopted by the Department governing family child care homes, and in accordance with Section 102396.

(b) The licensee shall permit the Department to inspect the family child care home, and to privately interview children or staff, to determine compliance with or to prevent violations of family child care laws or regulations. The Department shall exercise this authority as specified in Health and Safety Code Section 1596.8535(a).

(c) The licensee shall permit the Department to inspect any part of the family child care home in which family child care services are provided or to which children have access.

(d) The licensee shall permit the Department to inspect, audit, and copy children's records or other family child care home records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:

(1) Licensing representatives shall not remove the following current records unless the same information is otherwise readily available in another document or format:

(A) Current emergency information cards for current children in care as specified in Section 102417(g)(7).

(B) The current roster of children in care as specified in Section 102417(g)(8).

(C) Children's immunization records as specified in Section 102418(g).

(D) Documentation of completion of health and safety training by the licensee and other personnel as specified in Sections 102368(d) and 102416(c).

(E) Any other records containing current emergency or health-related information for current children in care or staff.

(2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the licensee or designated substitute.

(3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.

Section 102392, Site Visits

(a) Site visits to family child care homes shall be conducted as specified in Health and Safety Code Sections 1596.8535(a) [as referenced in Section 102391(b)] and 1597.55a.

Health and Safety Code Section 1597.55a provides in part:

"Every family day care home shall be subject to unannounced visits by the department as provided in this section. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site visit prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer at the facility.

(c) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subdivision (b)...

(d) Under no circumstance shall the department visit a licensed family day care home less often than once every five years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853.

(g) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

City of Brisbane
Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 1/26/17

FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-6-16** for amendments to Chapters 17.02, 17.06, 17.08, 17.10, 17.12, 17.16, 17.18, and 17.19, and adding new Chapter 17.33 to Title 17, Zoning, of the Brisbane Municipal Code to regulate personal cultivation of medical cannabis by qualified patients and caregivers, and medical cannabis businesses; City of Brisbane, applicant; Location: Citywide.

REQUEST: City Council-initiated zoning text amendments to add new definitions and modify existing definitions of medical cannabis-related terms; conditionally allow medical cannabis distribution, manufacturing, and warehousing in the TC-1 district; allow research and development (laboratory testing) of medical cannabis in the TC-1, SCRO-1, and SP-CRO districts; and establish performance standards and permit application requirements for medical cannabis businesses.

RECOMMENDATION: Recommend approval of Zoning Text Amendment RZ-6-16 via adoption of Resolution RZ-6-16.

ENVIRONMENTAL DETERMINATION: The project is consistent with the General Plan per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

APPLICABLE REGULATIONS: The Medical Marijuana Regulation and Safety Act is codified in Sections 19300-19360 of the California Business and Professions Code. State regulations governing the personal cultivation and use of medical cannabis by qualified patients and caregivers ("Compassionate Use Act") is located in the California Health and Safety Code Sections 11362.7 - 11362.85. Zoning Code definitions are located in BMC Chapter 17.02. Permitted uses in the R-1, R-2, R-3, and R-BA residential districts are located in BMC Chapters 17.06, 17.08, 17.10, and 17.12, respectively. SCRO-1 zoning district regulations are located in BMC Chapter 17.16. SP-CRO zoning district regulations are located in BMC Chapter 17.18. TC-1 zoning district regulations are located in BMC Chapter 17.19. BMC Chapter 17.32 contains general regulations applicable to a variety of building and land uses throughout the City.

DISCUSSION:

In October 2015, passage of the Medical Marijuana Regulation and Safety Act (MMRSA) enacted State regulations for licensing and regulation of medical cannabis (marijuana) businesses. The MMRSA establishes a dual licensing structure, whereby a business must obtain

a local license or permit from the local jurisdiction prior to obtaining a State license. If local jurisdictions do not allow the proposed medical cannabis business, the business cannot obtain a State license. This vests ultimate authority with the City to determine what medical cannabis businesses, if any, should be allowed to operate. Medical cannabis businesses included in MMRSA include commercial cultivation, retail sales ("dispensaries") and direct-to-consumer delivery, distribution/transporting, laboratory testing, and manufacturing.

Enacted by a voter initiative in 1996, the Compassionate Use Act enacted a licensing process for qualified patients or caregivers to cultivate medical cannabis for the patient's personal consumption (not sale). Qualified patients must be suffering from terminal or life-altering illnesses (defined in the statute), obtain a prescription for medical cannabis from a doctor, and obtain an identification card from the county health department. Caregivers must also obtain an identified card from the county. Identification cards must be renewed annually. Under the Compassionate Use Act, a qualified patient or caregiver may grow up to six mature or 12 immature plants per qualified patient. Local jurisdictions have the authority to control where cultivation can occur on a property, and may adopt other performance standards for cultivation.

The City Council reviewed the provisions of the MMRSA and the State's regulations for personal cultivation of medical cannabis in the spring of 2016. Following extensive discussion, the City Council directed that zoning code amendments be initiated to:

- Expressly ban medical cannabis dispensaries;
- Permit research, development, and testing of medical cannabis by-right in certain zoning districts;
- Allow manufacturing/processing, transporting/distribution, and warehousing of medical cannabis as conditional uses in certain zoning districts; and
- Allow personal cultivation of medical cannabis as an accessory use in residential zoning districts, subject to limitations.
- Allow delivery of medical cannabis or medical cannabis products directly to qualified patients Citywide.

Text Amendments

Chapter 17.02, Definitions

New definitions address personal medical cannabis cultivation and related terms, and medical cannabis business terms, including distribution, manufacturing, and warehousing. Modifications to definitions of home occupation and retail sales clarify that these terms do not include medical cannabis businesses. The definition of research and development is also modified to specifically include testing of medical cannabis. Amendments to the definition of "Retail sales and rental" to specifically exclude cannabis dispensaries accomplishes the express ban on dispensaries.

Because delivery of medical cannabis is not in and of itself a "land use," no amendments to the zoning ordinance are necessary to allow the activity to occur.

Chapters 17.06, 17.08, 17.10, & 17.12 – Personal Cultivation in Residential Districts

The proposed amendments modify the "permitted uses" sections of all residential district regulations to classify personal cultivation of medical cannabis as a permitted accessory use (subordinate to the primary residential use on the property). Designating personal cultivation as an accessory use effectively prohibits "grow houses," where vacant homes or properties are used to exclusively to cultivate medical cannabis. A reference is also added to the performance standards for personal cultivation in residential districts established in Title 8 (see discussion of Title 8 amendments below).

Chapters 17.16, 17.18 and 17.19 – Medical Cannabis Businesses in Commercial Districts

The amendments to Chapter 17.16, SCRO-1 District, 17.18, SP-CRO District, and Chapter 17.19, TC-1 District, clarify that research and development (permitted by-right in the SP-CRO and TC-1 Districts, and conditionally permitted in the SCRO-1 District) of medical cannabis must comply with the performance standards and application requirements for medical cannabis businesses established in a new Chapter 17.33, Medical Cannabis Businesses (see discussion below). Additionally, medical cannabis distribution, manufacturing, and warehousing are proposed as conditional uses in the TC-1 district, subject to compliance with the performance standards in new Chapter 17.33.

17.33 – Performance Standards and Application Requirements for Medical Cannabis Businesses

New Chapter 17.33 establishes strict performance standards and application requirements for medical cannabis businesses and research and development involving medical cannabis. Performance standards include requirements for State licensing and accreditation, hours of operation, odor control, security measures and plans, and inspections by the Police Chief upon reasonable notice. Additionally, the Chapter requires applicants to submit business owner information, background checks, documentation of the business type, documentation of applicable State licensing, building and tenant improvement plans, and a 24/7 security plan before a use permit or business license may be issued. A separate application checklist (see Attachment D) must be completed and submitted with any use permit, or business license application and would be reviewed by the Police Department, Community Development Department, Public Works Department, and Fire Department. Businesses that do not operate in compliance with the performance standards established in the Chapter may be subject to use permit or business license revocation, as determined by the Police Chief.

The Police Department has reviewed and recommends the performance standards and application requirements set forth in the draft text amendments.

Title 8: Performance Standards for Personal Cultivation of Medical Marijuana

Chapter 8.12 - Personal Cultivation of Medical Marijuana

The resolution also proposes adding a new Chapter 8.12 to Title 8, Health and Safety, containing performance standards for the personal cultivation of medical cannabis. While the Commission

does not administer or have authority over Title 8, the regulations pertain to the proposed zoning text amendments, and are provided for information in Attachment B.

The City Council expressed great concern with the potential for "grow houses," where private residences are used exclusively for cultivation of medical cannabis by multiple qualified patients or a caregiver representing multiple patients. The Police Department has recommended allowing one cultivation area per eligible private residence at a maximum size of 100 square feet. Additionally, the Police Department recommends an overall cap of 50 plants per private residence, regardless of how many qualified patients may reside there or how many qualified patients a qualified caregiver may represent.

Other recommended performance standards include requirements to secure cultivation areas in one room of a residence, in a secured accessory structure, or in a locked, fenced outdoor enclosure. All cultivation areas would additionally be required to comply with all applicable health and safety codes.

STAFF RECOMMENDATION

Adoption of the attached draft Resolution RZ-6-16 recommending approval of the proposed zoning text amendments to the City Council.

ATTACHMENTS:

A. ~~Table of Redlined Text~~
B. ~~Draft Title 8 Regulations for Personal Cultivation~~
C. Medical Marijuana Regulation and Safety Act excerpts regarding dual licensing structure
D. Draft Medical Cannabis Business Compliance Checklist
E. ~~Draft Resolution RZ-6-16 (including the Draft Ordinance)~~

6. The use of gas products (CO_2, butane, etc.) for medical cannabis cultivation or processing is prohibited.

7. From a public right-of-way, there shall be no exterior evidence, including but not limited to odor, view, or other indication of medical cannabis cultivation or processing on the property.

8. The qualified patient or caregiver shall not participate in medical cannabis cultivation in any other residential location within the City of Brisbane.

9. For the convenience of the qualified patient or primary caregiver, to promote building safety, to assist in the enforcement of this chapter, and to avoid unnecessary confiscation and destruction of medical cannabis plants and unnecessary law enforcement investigations, the qualified patient or primary caretaker growing medical cannabis pursuant to this chapter may notify the City of Brisbane regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act.

10. The medical cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes; and

11. The medical cannabis cultivation or processing shall not adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.

8.12.050 – Public Nuisance

It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any incorporated area of the City to cause or allow such premises to be used for the outdoor or indoor cultivation of cannabis plants for medicinal purposes, or processing thereof as described herein, or to process, cultivate or allow the cultivation of cannabis plants for medicinal purposes in any manner that conflicts with the limitations imposed in this Chapter.

8.12.060 – Penalties

A. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a period of time not to exceed six months, or by a fine not to exceed $500.00, or both, for each violation. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction.

B. Any person convicted of an infraction under this chapter shall be punished by:

1. A fine not exceeding $150.00 for a first violation;

2. A fine not exceeding $250.00 for each additional violation of this chapter within one year.

California Business and Professions Code Excerpts
ARTICLE 4, Licensing [Beginning §19320]

19320.

(a) All commercial cannabis activity shall be conducted between licensees, except as otherwise provided in this chapter.

(b) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a local license, permit, or other authorization from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(c) Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport or where any equipment that is not currently transporting medical cannabis or medical cannabis products permanently resides.

(d) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other authorization. Local authorities shall notify the bureau upon revocation of a local license, permit, or other authorization. The bureau shall inform relevant licensing authorities.

(e) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license.

(f) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(g) Nothing in this chapter shall be construed to supersede or limit state agencies, including the Department of Food and Agriculture, the State Water Resources Control Board, and the Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

(Amended (as added by Stats. 2015, Ch. 689, Sec. 4) by Stats. 2016, Ch. 32, Sec. 23. Effective June 27, 2016.)

19321.

(a) A license issued pursuant to this chapter shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(b) Notwithstanding subdivision (b) of Section 19320, the premises or person that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter only if (1) a completed application and all required

documentation and approvals for licensure are submitted to the licensing authority no later than the deadline established by the licensing authority and (2) the applicant continues to operate in compliance with all local and state requirements, except possession of a state license pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any premises or person that can demonstrate to the authority's satisfaction that the premises or person was in operation and in good standing with the local jurisdiction by January 1, 2016.

(c) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Medical Cannabis Business Compliance Checklist

This checklist shall be completed by the applicant and attached to a use permit or business license application for medical cannabis businesses or research and development businesses involving medical cannabis. Incomplete checklists will delay permit processing.

BUSINESS AND OWNER INFORMATION

Name of Business _____

Name of Business Owner(s) _____

_____

_____

BUSINESS TYPE

☐ Sole Proprietorship ☐ Corporation ☐ LLC ☐ Partnership

MANAGEMENT EMPLOYEE INFORMATION

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

PROPERTY INFORMATION

Street Address _____

APN(s) _____

Property Owner _____

Owner Address _____

Owner Email _____

Owner Phone _____

Zoning District: Select Zoning District

☐ SP-CRO ☐ SCRO-1 ☐ TC-1

ACTIVITY TYPE (Check all that apply)

☐ Research and development ☐ Manufacturing ☐ Warehousing ☐ Distribution

ON-SITE MEDICAL CANNABIS INFORMATION

	Weight (lbs) to be received on property on a daily basis	Weight (lbs) to be stored on property on a daily basis	Weight (lbs) to be transported from property on a daily basis
Raw (unprocessed) medical cannabis	_____ **lbs**	_____ **lbs**	_____ **lbs**
Processed medical cannabis/medical cannabis products	_____ **lbs**	_____ **lbs**	_____ **lbs**

ATTACHMENTS
Attach the following documents to this checklist:

☐ **Documentation of Business Organization**
Sole Proprietor –Fictitious Business Name Statement (if different than owner's name)
Corporation –Articles of Incorporation and Corporate Bylaws
LLC –Articles of Organization and Operating Agreement
Partnership –Partnership Agreement

☐ **Live Scans** (for business employees listed on application) obtained from Brisbane Police

☐ **Copy of State License, if Available (or Statement of Which License will be Obtained)**

☐ **State Certificate of Good Standing** for business owner *(the State in which the entity is organized can provide information about how to obtain one)*

☐ **List of All Individuals or Entities that Own the Business,** including their percentage of ownership. If other entities are part of the ownership, provide the same list of ownership for the entity. The goal is to see the underlying ownership by individuals. *The City may require additional documentation at its discretion.*

☐ **City of Brisbane Business License Application** with verification of fee payment

☐ **Written Description of Operations.** A written statement describing the following:
- Business activity, product, production, and sources.
- Hours of operation
- Odor control
- Visibility of operation
- Labeling

☐ **Building , Site and Floor Plans**
- Five (5) sets of plans.

Consult with Community Development Department staff for plan submittal requirements.

☐ **Stormwater Control**
- All applications proposing between 2,500 and 10,000 square feet of new or replacement impervious surfaces on a site must complete the Small Projects Checklist.
- All applications proposing more than 10,000 square feet of new or replacement impervious surfaces on a site must complete the C.3/C.6 Project Checklist.

☐ **Wastewater Pre-Treatment Control (For Industrial Users)**
- Provide a completed wastewater discharge permit application from the San Francisco Public Utilities Commission.
- SFPUC approval of the wastewater discharge permit is required prior to building permit issuance.

☐ **Description of Water Infrastructure**
- Expected source of water
- Level of water use (gallons per day).

This information must include the business as well as the entire parcel.

☐ **Security Plan**, **Security Measures** and **Security Breach Response**
- Describe and document a 24/7 Security Plan.
- Address security measures and responses to security breaches.

☐ **Fees**
- Use permit, building permit, or business license application fee; refer to the master fee schedule.

BUSINESS OWNER

By signing below, I(we) expressly

- consent to entry and inspection of the premises by the City of Brisbane Police Chief, or designee, upon reasonable notice;
- acknowledge that a use permit or building permit does not authorize nor provide immunity or defense to any activity prohibited under federal law, statute, rule or regulation; and
- hereby release, indemnify and hold harmless the City of Brisbane, and its agents, officers, elected officials, employees and contractors from losses of any kind resulting from the use permit or business license application.

I(we) certify under penalty of perjury that the information submitted in this application, including all supporting documents and materials is, to the best of my(our) knowledge and belief, true, accurate, and complete. I(we) further certify that I(we) am(are) authorized to sign this application and thereby bind the applicant and all of applicant's owners to compliance with all permit conditions.

_____ _____
Signature Date

_____
Name and Title

PROPERTY OWNER

By signing below, I certify that I have reviewed this application, and approve of the use of the property for the purposes stated in the application. I expressly consent to entry and inspection of the premises by the City of Brisbane Police Chief, or designee, upon reasonable notice. I further certify that I am authorized to sign this application.

_____ _____
Signature Date

_____
Name and Title

Chairperson Do opened the public hearing.

Brian Baker, manager of The Davey Tree Expert Company, addressed the Commission in support of the application. He answered Commissioner's questions regarding temperature monitoring of the wood chip piles on the site and proximity of parked vehicles to the debris storage areas.

Commissioner Anderson moved and Commissioner Cunningham seconded to close the public hearing. The motion was approved 4-0.

After deliberation, Commissioner Anderson moved adoption of Resolution UP-10-16, seconded by Commissioner Mackin. The motion was approved 4-0.

H. OLD BUSINESS

1. **CONTINUED PUBLIC HEARING: Zoning Text Amendment RZ-6-16;** Zoning Text Amendments to Chapters 17.02, 17.06, 17.08, 17.10, 17.12, 17.16, 17.18, 17.19, and adding new Chapter 17.33 to Title 17, Zoning, of the Brisbane Municipal Code to define and regulate medical cannabis-related activities and businesses in various zones within the City of Brisbane; City of Brisbane, applicant.

Associate Planner Capasso gave the staff presentation.

Commissioner Mackin asked whether the City could coordinate with the State Department of Social Services to prevent the licensing of family day care homes that may also be used for personal medical cannabis cultivation.

Commissioner Cunningham noted inconsistencies in terms relating to primary caregivers in the draft Title 8 amendments, which were not included in the resolution under consideration by the Planning Commission. Staff indicated the inconsistencies would be eliminated prior to being presented to the City Council.

Commissioner Mackin asked if the proposed Title 8 amendments compelled individuals growing medical cannabis to notify the Police Department. Associate Planner Capasso indicated the Title 8 text did not require Police Department notification, but it was encouraged and would be maintained as confidential information and would not constitute a public record.

Commissioner Mackin asked if an individual voluntarily notified the Police Department that they were cultivating medical cannabis, and that information was not a public record, would the City be precluded from providing that information to the State Department of Social Services if that individual then applied for a family day care home license?

Director Swiecki indicated staff would follow up on that prior to the City Council's consideration of the Title 8 amendments.

Commissioner Anderson asked if the Council had considered the Federal status of cannabis.

Director Swiecki noted that during the Council's discussions, legal risk associated with allowing medical cannabis-related uses consistent with State law was not identified as a major concern.

Commissioner Anderson asked if Federal senate bill S. 683 (introduced 2015), reclassifying marijuana as a Class II controlled substance and exempting possession, manufacturing, cultivation, and other activities involving medical cannabis regulated by individual States, had been passed. Staff indicated they would research the issue.

Commissioner Mackin said she understood retail dispensaries and commercial cultivation were controversial, but she believed there could be significant financial benefits for communities that allow those uses. She thought the Council should revisit their policy direction regarding dispensaries and commercial cultivation and consider the potential benefits in addition to the concerns they had expressed.

Commissioner Anderson stated it was inappropriate for the City to license businesses for a product prohibited under Federal law.

Chairperson Do opened the public hearing. Seeing no persons wishing to address the Commission, Commissioner Cunningham moved and Commissioner Mackin seconded to close the public hearing. The motion was approved 4-0.

After discussion, Commissioner Cunningham moved and Commissioner Mackin seconded to adopt Resolution RZ-6-16, recommending approval of the Title 17 amendments to the City Council as drafted. The motion was approved 3-0-1 (Commissioner Anderson abstaining).

I. ITEMS INITIATED BY STAFF

Director Swiecki said Development Agreement DA-1-16 was approved by the Council as recommended by the Commission. He announced the City Council would hold a Baylands public hearing on February 16th, and was tentatively scheduled to consider recreational cannabis issues on March 2nd.

J. ITEMS INITIATED BY THE COMMISSION

Chairperson Do asked if the Planning Commissioner Academy was still accepting registration. Director Swiecki said the event had sold out, and indicated he would keep the Commission apprised of future training opportunities should they arise.

Chairperson Do expressed her thanks to former Commissioners Carolyn Parker and Dave Reinhardt for their service. She welcomed new Commissioners Cunningham and Mackin.

K. SELECTION OF PLANNING COMMISSION OFFICERS

After discussion, the Commission agreed to postpone officer selection to the March 9th meeting when all Commissioners would be present. It was the consensus of the Commission to appoint Commissioner Anderson on an interim basis to fill the vacant Vice Chair position.

City of Brisbane
Agenda Report

DATE: City Council meeting of March 3, 2016

TO: Mayor and City Council

FROM: Michael Roush, City Attorney
Teresa L. Stricker, Deputy City Attorney

SUBJECT: Further Discussion Concerning Cultivation of Medical Marijuana for Personal Use

PURPOSE

The purpose of this item is to confirm the Council direction at the Council's last meeting that cultivation of medical marijuana for personal use would be allowed without restriction in all zoning districts, or to provide clarifying direction to staff concerning this item.

BACKGROUND

A. The Medical Marijuana Regulation and Safety Act

Last fall, the Legislature passed the Medical Marijuana Regulation and Safety Act. The Act consists of three separate pieces of legislation governing the licensing and control of medical marijuana businesses in the state. With certain limitations, the Act generally protects cities' local licensing practices, zoning ordinances and police power.

Among other things, the Act establishes dual licensing structure requiring *both* a state license and any local license or permit required by ordinance for medical marijuana-related businesses.

The Act requires state licensing for businesses engaged in cultivation, retail sales (so called "dispensaries"), distribution, transportation and delivery of medical marijuana or medical marijuana products. The Act restricts the number of categories of state medical marijuana licenses any business may hold, and prohibits medical marijuana licensees from also holding state licenses to sell alcohol. The Act also limits "vertical integration" by requiring third party distribution, transportation and testing of medical marijuana products.

The Act further establishes uniform security requirements for dispensaries and transporters, regulates physicians and recognizes local authority to levy taxes and fees.

B. Prior Council Consideration

At its meeting on February 18, 2016, the Council discussed these medical marijuana regulations and took action, as well as provided direction to staff, concerning the application of these regulations in Brisbane.

The Council adopted a resolution confirming that commercial cultivation of medical marijuana is banned in Brisbane, and decided not to consider amending the zoning ordinance to allow commercial cultivation.

Concerning personal cultivation of medical marijuana, there was a consensus that that personal cultivation, as defined under State law, should be allowed. Council also agreed that deliveries of medical marijuana, as defined under State law, would not be banned.

Council directed staff to initiate a zoning ordinance amendment to (a) add an express ban on medical marijuana dispensaries, (b) allow research, development and testing of marijuana as a matter of right in certain zoning districts and (c) allow manufacturing, processing, warehousing, transporting and distributing of marijuana as a conditional use in certain zoning districts.

C. Concerns About Grow Houses Raised by the Mayor

Following the meeting, the Mayor expressed a concern to staff that by not imposing any restrictions on personal cultivation beyond what state law imposes, the City may open the door for large "grow houses," i.e., residences where large numbers of marijuana plants are grown. The Mayor asked staff to place this item on the agenda to confirm the Council's direction, or for Council to provide clarifying direction.

DISCUSSION

The new state law permits cultivation of marijuana for *personal* medical use so long as the cultivation occurs within a 100 square foot area for an individual qualifying patient and within a 500 square foot area for a primary caregiver of up to five patients.

Those engaged in personal cultivation for medical use within these strict limits will *not* need a business license from the state under the new state laws. But cultivation of medical marijuana beyond the limits prescribed by the state constitutes commercial cultivation and will require a state license. And the Act phases out the existing model of marijuana cooperatives and collectives one year after the state commences issuing licenses.

The new state laws did not change existing state law establishing immunity from arrest for patients with medical marijuana cards who possess up to 6 mature or 12 immature plants,

or up to 8 ounces of processed marijuana. These state laws provide immunity from arrest for a greater amount of marijuana with permission from a doctor.

The new state laws do not restrict the authority of cities to adopt zoning regulations to ban or further restrict personal cultivation of marijuana in their local jurisdictions if they choose. Brisbane does not currently regulate cultivation of marijuana for *personal* use. The Mayor has asked whether allowing personal cultivation of medical marijuana would permit "grow houses" in Brisbane.

Under the new state laws, a primary caregiver may cultivate only up 500 square feet without a state-issued commercial cultivation license. It is unclear how many mature plants could be successfully grown in such an area in cases where a doctor has authorized a large number of plants per patient.

One of the issues in the confirmed grow house situation that the Police Department investigated last year was that it appeared no one was actually residing in the house, although all of the tenants on the lease had medical marijuana cards and at least one of the tenants had the property address on his driver's license. Because the tenants had not exceeded the large number of marijuana plants prescribed on their medical marijuana cards, the District Attorney's Office would not prosecute.

The City may restrict personal cultivation of medical marijuana to reduce the likelihood of another grow house situation without completely banning all personal cultivation of medical marijuana within its jurisdiction. Should the Council wish to impose restrictions on personal cultivation of marijuana, however, it must do so by amending the zoning ordinance. State law preempts cities from making the possession or cultivation of marijuana a crime.

For example, the City may choose to restrict personal cultivation to residential zones and allow cultivation only at a patient or caregiver's *primary* residence. Alternatively, the City may restrict the size of the cultivation area allowed in any zone well below the 100 square foot/500 square foot maximums state law establishes for cultivation by patients and caregivers without a state business license. Similarly, a city may be able to limit the number of plants a patient may cultivate in any zone.

Should the Council wish to consider imposing restrictions on personal cultivation of medical marijuana without banning personal cultivation entirely, staff recommends that Council direct staff to initiate a zoning text amendment process before the Planning Commission to consider options for accomplishing that goal.

Teresa L. Stricker, Deputy City Attorney

Clayton Holstine, City Manager

Mr. Hershman and Senator Hill for continually holding opportunities in Brisbane for residents to interact with Senator Hill.

A. New Employee Introductions

1. **Ricardo Monroy – Recreation Program Coordinator**
2. **Jeff Franco – Recreation Program Coordinator**
3. **Frank Lozano – Maintenance Worker I**
4. **Randy Thomas – Maintenance Worker I**
5. **Michelle Moneda – Part Time Code Enforcement Officer**

Human Resources Director Saguisag-Sid introduced each employee and gave a background about each of them. Councilmember's welcomed the new employees to the City.

B. New web-based police blotter - Commander Meisner & Kyle Adams

Commander Meisner talked about the police blotter on Facebook and the software that resident Kyle Adams designed to make information more timely, organized, and searchable. Mr. Adams gave a demonstration of the software that he developed for Brisbane. Councilmembers thanked Mr. Adams for his time and effort.

ORAL COMMUNICATIONS NO. 1

There were no members of the public wishing to speak.

CONSENT CALENDAR

CM Liu asked to remove Consent Calendar Item A.

B. Approve Monthly Investment Report as of December 31, 2016

C. Receive update on Plan Bay Area 2040

CM Conway made a motion, seconded by CM O'Connell, to approve Consent Calendar Items B & C as proposed. The motion carried unanimously by all present.

A. Adopt City Council Minutes of February 4, 2016

CM Liu pointed out a typographical error on Page 3, noting that it should be "AB 1362" instead of "SB 1362". With that change, she made a motion, seconded by CM O'Connell, to adopt the minutes as amended. The motion carried unanimously by all present.

OLD BUSINESS

A. Confirm the Council's previous direction or provide clarifying direction on the cultivation of medical marijuana for personal use

Mayor Lentz indicated that he had contacted staff after the last meeting to express his concern that the Council might not have had time to fully discuss and give direction on the personal caregiver part of the cultivation of medical marijuana. He reviewed what the current direction provides for and his concern over having multiple caregivers and multiple plants which would allow for a

commercial grow house in residential Brisbane.

He said he wanted to get clarity from the other Councilmembers on their direction to the Planning Commission. He also said that there was currently no business license needed for a personal medical marijuana caregiver even though it could be a business.

Paul Bouscal said he was speaking on behalf of the community and said he was opposed to "collaboratives" and recalled a situation on his block where there turned out to be an illegal grow house. He stated that the risk of fire and burglary was greater with a grow house in the neighborhood.

Councilmembers asked questions of Police Chief Macias and Deputy City Attorney Stricker about language in a proposed ordinance that would prevent illegal grow houses in residential neighborhoods. They discussed regulating collaborative and collective cultivation by the number of plants and the size of the area of cultivation in certain zoning districts.

Kima Hayuk said that he had Avascular Necrosis and that he had a medical marijuana card to help him with his pain. He agreed that medical marijuana grow houses should not be allowed in residential neighborhoods. He requested that an allowance for up to six plants for personal growth and use of medical marijuana. He said he was speaking on behalf on many residents. He asked that any language that was adopted would allow for six mature or twelve small plants be allowed to be grown for personal use.

Mayor Lentz asked that Councilmembers discuss and consider making an adjustment to the direction that was previously given to the Planning Commission.

After Councilmember questions and discussion, they concurred that additional language options should be considered by the Planning Commission that would allow those to grow medical marijuana for personal use but possibly putting restrictions on the amount of plants or amount of square footage of the growing area, in an effort to close the loop hole which would allow grow houses in residential neighborhoods.

NEW BUSINESS

A. Consider introduction of Ordinance No. 600, waiving first reading, amending Division VII of Title 9 of the Brisbane Municipal Code to clarify the scope and meaning of the City's Weapon Control Regulations to conform those regulations to current Federal and State law

Deputy City Attorney Stricker said that the Calguns Foundation contacted City staff to inform them that, in their view, state and federal law preempted the City's current regulations governing how firearms may be carried in Brisbane. She said that this assertion caused City staff to take a comprehensive look at the City's 50-plus year old weapon control ordinance.

She then talked about the City's current weapon control regulations which she said had not been changed in any significant way since their adoption in 1962. She went through the different sections of the current ordinance and the recommended amendments regarding carrying provisions, the narrowing of restrictions on sales to minors, narrowing and clarifying the discharge and use restrictions, incorporating State law terms and definitions, and clarifying the scope of the weapons that would be regulated.

City of Brisbane
Agenda Report

DATE: City Council meeting of February 18, 2016

TO: Mayor and City Council

FROM: Michael Roush, City Attorney
Teresa L. Stricker, Deputy City Attorney

SUBJECT: Medical Marijuana Regulations

CITY COUNCIL GOALS

To assure the safety of property and citizens residing, working, or visiting Brisbane.

To preserve and enhance livability and diversity of neighborhoods.

To preserve the unique current character of Brisbane.

To promote economic development that stabilizes and diversifies the tax base.

PURPOSE

The purpose of this item is for the Council to determine, in light of new state laws regulating medical marijuana-related businesses, whether to follow the recommendations of the Health and Safety Committee ("Committee") regarding the City's existing marijuana regulations and possible new marijuana regulations.

None of the new regulations recommended by the Committee would restrict the *use* of marijuana in Brisbane.

RECOMMENDATIONS

1. The Committee recommends that the Council adopt the resolution that accompanies this report to confirm that under the state's new medical marijuana laws, the state may *not* issue a license to cultivate medical marijuana within Brisbane because the City's zoning ordinance bans commercial cultivation of marijuana in every zone.

2. The Committee further recommends that the Council *not* consider amending the zoning ordinance to allow commercial cultivation of medical marijuana.

3. The Committee also recommends that the Council consider adopting a variety of *new* medical-marijuana related regulations. In particular, the Committee recommends that the Council:

   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider banning the cultivation of marijuana for *personal* medical use;
   - Direct staff to draft an ordinance banning the delivery of marijuana or marijuana products to qualifying patients, primary caregivers and testing facilities located within Brisbane;
   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider adopting an *express* prohibition against marijuana dispensaries; and
   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider banning other types of marijuana-related businesses in Brisbane, such as those engaged in researching and developing, manufacturing/processing, warehousing, testing, transporting and distributing of marijuana and/or marijuana products.

4. Should *any* marijuana-related businesses be allowed to operate in Brisbane, whether restricted or not, staff recommends that the Council consider directing staff to draft an ordinance requiring such businesses to obtain a license from the City.

5. Staff recommends that the Council plan to adopt any legislation imposing new regulations on marijuana-related businesses *no later than early 2017* to ensure that those regulations take effect well before the state begins issuing licenses to such businesses.

BACKGROUND

Last fall, the Legislature passed the Medical Marijuana Regulation and Safety Act. The Act, as originally enacted, consists of three separate pieces of legislation governing the licensing and control of medical marijuana businesses in the state. With certain limitations, the Act generally protects cities' local licensing practices, zoning ordinances and police power.

Among other things, the Act establishes dual licensing structure requiring *both* a state license and any local license or permit required by ordinance for medical marijuana-related businesses.

The Act requires state licensing for businesses engaged in cultivation, retail sales (so called "dispensaries"), distribution, transportation and delivery of medical marijuana or medical marijuana products. The Act restricts the number of categories of state medical marijuana licenses any business may hold, and prohibits medical marijuana licensees from also holding state licenses to sell alcohol. The Act also limits "vertical integration" by requiring third party distribution, transportation and testing of medical marijuana products.

The Act further establishes uniform security requirements for dispensaries and transporters, regulates physicians and recognizes local authority to levy taxes and fees.

DISCUSSION

Many anticipate a rapid growth in marijuana-related businesses once the state begins issuing licenses for such businesses. Brisbane, like other cities statewide, may wish to consider imposing local restrictions on such businesses within the broad latitude cities retain to regulate in this area.

On January 20, 2016, the Committee met to discuss the new state laws pertaining to medical marijuana and to consider new local regulations in this area. The Committee makes the following recommendations to Council:

1. **The Committee Recommends that Council Adopt a Resolution to Confirm that, under State Law, the State May *Not* Issue a License to Cultivate Medical Marijuana in Brisbane Because the City's Zoning Ordinance Bans *Commercial* Cultivation of Marijuana.**

Under the new state law, the state may *not* issue a license to cultivate medical marijuana in any city that bans cultivation within its jurisdiction. As originally enacted, however, the Act provided that the state was to become the sole licensing authority for commercial cultivation of medical marijuana in any city that did not have local land-use regulation governing commercial cultivation in effect prior to March 1, 2016.

The League of Cities advised, based on the Act's original language, that cities that did *not* have a land-use regulation governing commercial cultivation in effect on March 1, 2016 may be *preempted* from banning or regulating commercial cultivation of medical marijuana in the future. The League took the view that, under such circumstances, the city would lose all authority to regulate commercial cultivation of medical marijuana within its jurisdiction. If a city had *any* local land-use regulation governing commercial cultivation in effect by the March 1, 2016 deadline, the League advised that the city would retain its local control over commercial cultivation and may amend its regulations in the future.

Under Brisbane's current zoning ordinance, commercial cultivation of marijuana is not a permitted use in any zoning district. Cultivation of marijuana for commercial use is neither specifically defined in the zoning ordinance nor similar in nature or character to any land use defined in the ordinance. Under section 17.01.080 of the Brisbane Municipal Code – which prohibits any land use that is not specifically defined as a permitted or conditional use – commercial cultivation of marijuana is a non-permitted use in every zone.

The Act expressly permits cities to rely on general zoning ordinance provisions that prohibit all uses that are not explicitly listed as a permitted or conditional use to ban commercial cultivation of medical marijuana. The League of Cities recommended that any city that relies on such "permissive zoning principles" to ban commercial cultivation adopt a resolution, prior to the March 1, 2016 deadline, explaining that interpretation of its zoning ordinance and clarifying that under the Act, the state may not issue a license to cultivate medical marijuana within the city. For this reason, the Committee recommended that the Council adopt such a resolution.

After the Committee met, the Legislature passed an urgency bill amending the Act to remove the March 1, 2016 deadline for local governments to have land-use regulations in effect governing commercial cultivation. This amendment, which took effect on February 3, 2016, eliminated any argument that cities that do not have commercial cultivation regulations in place by March 1, 2016 lose their local authority to regulate commercial cultivation in the future.

Although the March 1, 2016 deadline has now been lifted, staff nevertheless recommends that the Council adopt the resolution currently before the Council to avoid any confusion later, once the state begins issuing licenses to commercial cultivators, about whether the state may issue a license to cultivate marijuana in Brisbane.

2. The Committee recommends that Council *NOT* Amend the City's Zoning Ordinance to Allow *Commercial* Cultivation in Brisbane.

The Committee further recommends that Council *not* consider amending the City's zoning ordinance to allow commercial cultivation of medical marijuana in Brisbane in any zoning district.

Should, however, the Council wish to consider allowing commercial cultivation in certain zones, as either a permitted or conditional use, staff recommends that Council take three separate actions.

First, staff recommends that Council adopt, at its February 18th meeting, the proposed resolution to clarify that under *current* law, the state may not issue a license to cultivate marijuana in Brisbane.

Second, staff recommends that if Council wishes to allow any commercial cultivation of medical marijuana in Brisbane, that the Council direct staff to initiate a zoning text amendment process before the Planning Commission to consider options to permit commercial cultivation of medical marijuana in certain zones.

Third, to the extent that commercial cultivation of medical marijuana is to be allowed anywhere in Brisbane, whether regulated or not, staff recommends that Council direct staff to draft an ordinance requiring such businesses to obtain a license from the City.

3. The Committee Recommends that Council Direct Staff to Initiate a Zoning Text Amendment Process Before the Planning Commission to Consider Banning Cultivation of Marijuana for *Personal* Use in Every Zone.

State law permits cultivation of marijuana for *personal* medical use so long as the cultivation occurs within a 100 square foot area for an individual qualifying patient and within a 500 square foot area for a primary caregiver of up to five patients.

Those engaged in cultivation for personal medical use will *not* need a license from the state under the new state laws. But cultivation of medical marijuana beyond the strict limits prescribed by the state for personal cultivation constitutes commercial cultivation and will require a state license. And the Act phases out the existing model of marijuana cooperatives and collectives one year after the state commences issuing licenses.

The new state laws do not restrict the authority of cities to ban or further restrict personal cultivation of marijuana in their local jurisdictions if they choose. Although as discussed above, the City's zoning ordinance bans cultivation of marijuana for *commercial* purposes, Brisbane does not currently regulate cultivation of marijuana for *personal* use.

The Committee recommends that Council direct staff to initiate a zoning text amendment process before the Planning Commission to consider prohibiting in every zone the cultivation of marijuana for *personal* use.

4. The Committee Recommends that the Council Direct Staff to Draft an Ordinance Banning *Delivery* of Medical Marijuana to Any Brisbane Location.

Under the Act, a marijuana dispensary may obtain a separate state license to deliver medical marijuana or marijuana products to qualified patients, primary caregivers or testing facilities. The Act permits only licensed dispensaries to engage in such "delivery" services; common carriers such as UPS or Federal Express may not obtain a medical marijuana delivery license under state law. The Act provides that all medical marijuana delivery services will be subject to regulations that will be adopted in the future by the state's newly-created Bureau of Medical Marijuana Regulation.

The Act explicitly provides that cities retain the authority to ban or restrict delivery of medical marijuana in their jurisdictions. But there are two limits the Act imposes on cities' authority to regulate medical marijuana deliveries. First, state law does *not* permit cities to rely on permissive zoning principles to ban medical marijuana deliveries. Rather, the Act specifically requires any local ban on medical marijuana deliveries to be *express*. Second, cities may *not* restrict businesses with delivery licenses from using public roads within their jurisdictions to transport medical marijuana or medical marijuana products to and from locations outside of their jurisdictions.

Brisbane does not currently have any regulation that expressly bans or restricts the delivery of medical marijuana within Brisbane.

It is unclear at this time whether criminal activity will increase in cities that allow medical marijuana deliveries under the state's new licensing structure. And the state has not yet adopted regulations that will ultimately govern state-licensed medical marijuana delivery services. For these reasons, the Police Chief recommends that the City ban all medical marijuana deliveries at this time. Based on the Chief's recommendation, the Committee recommends that the Council adopt an ordinance banning all marijuana deliveries *to or from* any Brisbane location.

To accomplish that goal, staff recommends that the Council direct staff to draft an ordinance amending the City's business regulation provisions of the Municipal Code to prohibit the delivery of marijuana or marijuana products as a business in the City. As explained above, however, such an ordinance would *not* prevent the use of public roads in Brisbane to deliver medical marijuana to and from locations outside of Brisbane. Once the state licensing program commences, and it is clearer what impact medical marijuana

deliveries have in other communities, the Council may then revisit whether to allow medical marijuana deliveries in Brisbane.

Should the Council nevertheless wish to allow any medical marijuana deliveries in Brisbane at this time, staff recommends that the Council direct staff to draft an ordinance requiring businesses delivering medical marijuana in Brisbane to obtain a license from the City.

5. **The Committee Recommends that the Council Direct Staff to Initiate a Zoning Text Amendment Process Before the Planning Commission to Consider Expressly Banning Marijuana *Dispensaries* in Every Zone.**

Although the City's zoning ordinance does not currently contain an express probation against marijuana dispensaries, staff interprets the zoning ordinance to prohibit such businesses in every zone under the permissive zoning principles discussed above.

Because, however, it could be argued that marijuana dispensaries are similar in character or nature to permitted retail uses, this interpretation may be challenged in the future. Although we believe the City would likely prevail against any such challenge, the City may be required to devote significant staff time and incur considerable legal fees in the process.

Accordingly, the Committee recommends that Council direct staff to initiate a zoning text amendment process before the Planning Commission to consider *expressly* prohibiting marijuana dispensaries in every zone.

If dispensaries are to be allowed, whether restricted or not, staff recommends that Council direct staff to draft an ordinance requiring such businesses to obtain a license from the City to operate in Brisbane.

6. **The Committee Recommends that the Council Direct Staff to Initiate a Zoning Text Amendment Process Before the Planning Commission to Consider Banning *Other Types of Marijuana-Related Businesses* in Every Zone.**

There are a variety of other types of marijuana-related businesses that may seek to establish themselves in Brisbane once the state starts issuing licenses under the Act. Such businesses include those engaged in researching and developing, manufacturing/ processing, warehousing, testing, distributing and transporting of marijuana or marijuana products. Under the City's current zoning ordinance, these businesses would be permitted to operate in any zone in Brisbane that permits, as a matter of right, the same types of land uses for other types of substances or products.

For example, research and development is permitted as a matter of right in the Sierra Point Commercial District. Research and development, fabrication and warehousing are permitted as a matter of right in the Crocker Park Trade Commercial District. And research and development, light manufacturing/processing, and warehousing are all uses that are permitted as a matter of right in the Manufacturing (M-1) zone.

The Committee recommends that Council direct staff to initiate a zoning text amendment process before the Planning Commission to explore options to ban these types of marijuana-related businesses in Brisbane.

To the extent such businesses are to be allowed as a permitted or conditional use, staff recommends that Council direct staff to draft an ordinance requiring such businesses to obtain a license from the City to operate in the Brisbane.

TIMING CONSIDERATIONS

As we understand it, the state expects to begin issuing medical marijuana licenses in January 2018. But the state may begin sooner.

To avoid confusion about what regulations exist in Brisbane once the state begins issuing medical marijuana licenses, staff recommends that the Counsel aim to adopt *by early 2017* any new regulations it may wish to impose on marijuana-related businesses.

FISCAL IMPACT

The fiscal impact of adopting the proposed resolution is the potential *saved* staff time, including the costs of legal services, by clarifying now, long before the state begins issuing licenses, that state law precludes the state from issuing licenses to cultivate marijuana in Brisbane.

The fiscal impact of considering the new marijuana regulations discussed above is the staff time, including the costs of legal services, associated with exploring legislative options, drafting legislation and reports, and attending Planning Commission and Council meetings on these issues.

Teresa L. Stricker, Deputy City Attorney

Clayton Holstine, City Manager

$5,000 would be needed to award the contract. She also said that if Council voted to approve the additive alternate of the Quarter Pipe Transition an additional supplemental appropriation of $16,077.59 would need to be approved.

Councilmembers asked questions about the additional fundraising for the "donation" bricks, the possible reasons for receiving just one bid, the original estimates of the project vs. the amount it will end up actually costing, and about the green scape around the project.

Malcolm Barnes suggested naming the new Skatepark "8 Mile" since it was near the historic "7 Mile House" and also related to the movie.

After further discussion, and acknowledging the community's great job in fundraising for the project, CM Conway made a motion to award the contract to Spohn Ranch Skateparks, approve the addition of the Quarter Pipe Transition, and approve the supplemental appropriations as noted above. CM Liu seconded the motion and the motion carried unanimously by all present.

Councilmembers also acknowledged Malcolm Barnes creativity in suggesting a name.

B. Consider items related to new State laws governing medical marijuana-related businesses:

1. **Consider adoption of Resolution No. 2016-07 confirming that State Law precludes the State from issuing any license to cultivate medical marijuana with the City of Brisbane because the City's zoning ordinance bans commercial cultivation of marijuana in every zone**

2. **Discussion of, and provide direction to staff regarding, possible new regulations governing the cultivation of marijuana for commercial and/or personal use and a variety of marijuana-related businesses, including businesses engaged in researching and developing, manufacturing/processing, warehousing, testing, transporting, distributing, dispensing and/or delivering of marijuana or marijuana products**

Deputy City Attorney Stricker said that the purpose of this item was for the Council to determine, in light of the new State laws regulating medical marijuana-related businesses, whether to follow the recommendations of the Council's Health and Safety Subcommittee regarding the City's existing marijuana regulations and possible new marijuana regulations. She said that none of the new regulations recommended by the Committee would restrict the *use* of marijuana in Brisbane.

She then reviewed the Council Subcommittee's five recommendations listed as follows:

1. The Committee recommends that the Council adopt the resolution that accompanies this report to confirm that under the state's new medical marijuana laws, the state may *not* issue a license to cultivate medical marijuana within Brisbane because the City's zoning ordinance bans commercial cultivation of marijuana in every zone.

2. The Committee further recommends that the Council *not* consider amending the zoning ordinance to allow commercial cultivation of medical marijuana.

3. The Committee also recommends that the Council consider adopting a variety of *new* medical-marijuana related regulations. In particular, the Committee recommends that the Council:

   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider banning the cultivation of marijuana for *personal* medical use;

   - Direct staff to draft an ordinance banning the delivery of marijuana or marijuana products to qualifying patients, primary caregivers and testing facilities located within Brisbane;

   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider adopting an *express* prohibition against marijuana dispensaries; and

   - Direct staff to initiate a zoning text amendment process before the Planning Commission to consider banning other types of marijuana-related businesses in Brisbane, such as those engaged in researching and developing, manufacturing/processing, warehousing, testing, transporting and distributing of marijuana and/or marijuana products.

4. Should *any* marijuana-related businesses be allowed to operate in Brisbane, whether restricted or not, staff recommends that the Council consider directing staff to draft an ordinance requiring such businesses to obtain a license from the City.

5. Staff recommends that the Council plan to adopt any legislation imposing new regulations on marijuana-related businesses *no later than early 2017* to ensure that those regulations take effect well before the state begins issuing licenses to such businesses.

After initial Councilmember discussion of the various recommendations proposed, they asked questions of Deputy City Attorney Stricker and Police Commander Meisner.

Michele Salmon then read a letter from her husband Dan Ryan about the need for medical marijuana for illnesses such as Rheumatoid Arthritis. He urged the Council to not make it more difficult for citizens to get the medicine that they may need.

Michele Salmon urged the Council not to legislate by supposition and exceptions and not to adopt ordinances based on fear.

After further Councilmember questions, clarifications, and discussion, CM Conway made a motion, seconded by CM Liu, to adopt Resolution No. 2016-07, noting that the spelling of the Mayor's name needed correction. The motion carried unanimously by all present.

Council also decided *not* to consider amending the zoning ordinance to allow commercial cultivation.

Councilmembers were in consensus that personal cultivation of medical marijuana for personal use should be allowed and that deliveries of medical marijuana, as defined under State law, would not be banned.

Councilmembers also directed staff to initiate a zoning ordinance amendment to (a) add an express ban on medical marijuana dispensaries, (b) allow research, development and testing of marijuana as a matter of right in certain zoning districts and (c) and make manufacturing, processing, warehousing, transporting and distributing of marijuana a conditional use in certain zoning districts.

C. Consider adoption of Resolution No. 2016-06 establishing guidelines for the selection of Mayor and Mayor Pro Tem

City Manager Holstine said that the Council had recently met to discuss options for establishing guidelines/rules for the selection of the Mayor and Mayor Pro Tem. He said that the proposed resolution reflected the direction that Council gave staff at that time.

He said that the staff report also proposed additions to the resolution regarding rules for developing and maintaining a rotation list.

After Councilmember discussion, it was the consensus not to include that additional language. Councilmembers also noted that Mayor Pro Tempore should be fully spelled out throughout the document.

With those corrections, CM O'Connell made a motion, seconded by CM Davis, to adopt the resolution as amended. The motion carried unanimously by all present.

STAFF REPORTS

A. City Manager's Report on upcoming activities

City Manager Holstine reminded Council about the upcoming Tuesday night Coyote Workshop and of the May 5th City Council Meeting conflict with the City Attorney's League of California Cities meeting. He said that the City Council Meeting of May 5th would probably not be needed.

He also said that San Mateo County Election's Office was recommending the use of the Brisbane City Hall Community Room as a voting center in future elections due to the handicap accessibility issues that they found at the Community Center. He said that staff would work with the County to make sure the public was fully informed of this change.

MAYOR/COUNCIL MATTERS

A. Countywide Assignments/Subcommittee Reports

Councilmembers reported on the various meetings that they attended including the San Mateo County Library JPA Meeting, the Affordable Housing Subcommittee Meeting, a Workforce Housing Survey that would be going out to City Employees, and an upcoming Town Hall Meeting being held by Jackie Speier on February 22nd in San Carlos.

B. Written Communications

There were no written communications reported.