

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 632 (Zoning Amendment RZ-6-18) - Zoning Text amendments to Chapter 17.33 of Title 17, Zoning, of the Brisbane Municipal Code to modify the permitted operating hours for cannabis businesses

DATE: November 8, 2018

City Council Goals:

To promote economic development that stabilizes and diversifies the tax base. (#4)

Purpose:

To modify the cannabis business performance standards to extend the permitted operating hours for retail deliveries, and to allow discretion in limiting the operating hours for other permitted cannabis businesses.

Recommendation:

That the City Council introduce Ordinance No. 632.

Background:

In September 2017, the City Council adopted Ordinance 617 to regulate certain types of cannabis-related businesses within the City, subject to certain performance standards and permitting processes as detailed in the Ordinance. The City Council subsequently adopted Ordinance 625 in April 2018 to eliminate a prohibition against cannabis businesses within 600 feet of a school or daycare. At that public hearing, a prospective cannabis business applicant (which subsequently received Use Permit approval from the Commission in May 2018) requested that the City Council eliminate the prohibition the product deliveries on and off-site between the hours of 7 PM and 8 AM (BMC Section 17.33.020.B). Though the Council did not act on that request at that time, Council directed staff to bring forward modified operating hour provisions in the future.

Consistent with the Council's direction in April 2018, the Planning Commission considered zoning text amendments (RZ-6-18) containing modified operating hour standards at their regular meeting of October 25, 2018. These zoning text amendments are described in detail in the October 25, 2018 Planning Commission agenda report, as well as the attached redlined zoning

text excerpts and draft Ordinance 632 (attached). The Commission recommended adoption of the zoning text amendments as drafted by a vote of 5-0.

Discussion:

Planning and Police Department staff evaluated the security concerns that initially influenced staff's recommendations for limiting the operating hours for cannabis businesses. Through this review, staff determined that standard security protocols, technology, and physical security systems (e.g., truck cages to secure loading and unloading operations) that are required by the Police Department as a condition of operation of any cannabis business in Brisbane effectively mitigate many of the security concerns associated with typical cannabis lab testing, distribution, manufacturing, and delivery-only retail operations. However, controlling the operating hours of delivery-only retail was seen as critical to maintaining the safety of delivery drivers and retail customers due to the individualized nature of such deliveries.

The proposed zoning text amendments would revise BMC Section 17.33.020.B to allow retail deliveries to operate up to 10 PM (compared to the current cut off time of 7 PM). All other cannabis business operations (e.g., business to business distribution deliveries) would be subject to any operating hour limitations established in the underlying zoning district, unless otherwise modified by the Planning Commission in its approval of a Use Permit if warranted based on specific business characteristics or site locations.

Fiscal Impact:

None.

Measure of Success:

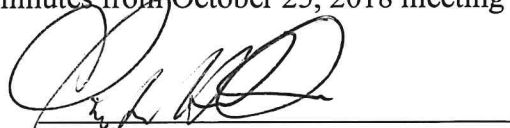
Adoption of Ordinance 632 will allow cannabis businesses to operate in an economically viable manner that protects public safety.

Attachments:

1. Draft Ordinance No. 632 redlined text
2. Draft Ordinance No. 632
3. Planning Commission Resolution RZ-6-18 (without attachments)
4. Planning Commission agenda report and minutes from October 25, 2018 meeting



John Swiecki, Community Development Director



Clay Holstine, City Manager

Ordinance 632 (RZ-6-18) Proposed Zoning Text Amendments: **Redline Text**

Black text = Existing Municipal Code text

Red underline text = Proposed new Municipal Code text

~~Red-strikeout~~ = Proposed deleted Municipal Code text

Chapter 17.33 - CANNABIS BUSINESSES

17.33.020 - Performance standards for cannabis businesses.

All cannabis businesses and research and development businesses involving 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, cannabis businesses shall hold a valid state license for the equivalent state license type. Research and development testing laboratories for cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 26100 of the California Business and Professions Code, as may be amended from time to time.

B. Hours of Operation. All cannabis businesses shall be closed to the general public. Cannabis businesses that provide retail d~~liveries~~ and pick-ups shall be closed between the hours of ~~ten seven~~ (10 ~~7~~:00) p.m. and eight (8:00) a.m. All other cannabis business operations shall be subject to the operating hour regulations either as established in the underlying zoning district in which the business is located or as established by the Planning Commission in its approval of a conditional use permit for a cannabis business that requires a conditional use permit.

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 cannabis or cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of 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:

ATTACHMENT 1

1. Diversion, theft, loss, or any criminal activity involving the 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 cannabis and 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).

draft
ORDINANCE NO. 632

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING CHAPTER 17.33 OF TITLE 17, ZONING, OF
THE BRISBANE MUNICIPAL CODE
TO MODIFY CANNABIS BUSINESS REGULATIONS**

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

SECTION 1: Section 17.33.020 of Chapter 17.33 – Cannabis Businesses of the Municipal Code is amended to read as follows:

17.33.020 - Performance standards for cannabis businesses.

All cannabis businesses and research and development businesses involving 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, cannabis businesses shall hold a valid state license for the equivalent state license type. Research and development testing laboratories for cannabis must hold a valid certificate of accreditation from the State of California per the requirements of Section 26100 of the California Business and Professions Code, as may be amended from time to time.

B. Hours of Operation. All cannabis businesses shall be closed to the general public. Cannabis businesses that provide retail deliveries and pick-ups shall be closed between the hours of ten (10:00) p.m. and eight (8:00) a.m. All other cannabis business operations shall be subject to the operating hour regulations either as established in the underlying zoning district in which the business is located or as established by the Planning Commission in its approval of a conditional use permit for a cannabis business that requires a conditional use permit.

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 cannabis or cannabis products, shall occur within the building where the business is being conducted. No production, distribution, warehousing, display, or wholesale of 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 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 cannabis and 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).

SECTION 2: 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 3: 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 4: 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 _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor W. Clarke Conway

ATTEST:

City Clerk

APPROVED AS TO FORM:

Michael Paul

City Attorney

RESOLUTION NO. RZ-6-18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-6-18
TO THE CITY COUNCIL
AMENDING CHAPTER 17.33 OF TITLE 17, ZONING OF THE BRISBANE MUNICIPAL
CODE
TO MODIFY CANNABIS BUSINESS REGULATIONS

WHEREAS, in September 2017, the City Council adopted Ordinance 617 amending Title 17, Zoning of the Brisbane Municipal Code to regulate certain cannabis-related businesses in the City of Brisbane, subject to location limitations and performance standards established in Chapter 17.33, such ordinance becoming effective in October 2017; and

WHEREAS, BMC Chapter 17.33 imposes certain performance standards upon cannabis businesses, including prohibiting business operations between the hours of 7 PM and 8 AM; and

WHEREAS, on March 15, 2018, the City Council adopted Ordinance 625 containing amendments to Chapter 17.33 to eliminate location restrictions on cannabis businesses where otherwise permitted or conditionally permitted by the underlying zoning district; and

WHEREAS, during deliberations for Ordinance 625 the City Council directed the Planning Commission to consider amendments to BMC Chapter 17.33 to reevaluate the operating hour limitations for cannabis business established in BMC Section 17.33.020; and

WHEREAS, on October 25, 2018, the Planning Commission held a public hearing on the draft Ordinance containing all above-referenced zoning text amendments, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and


WHEREAS, the minutes of the Planning Commission meeting of October 25, 2018 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: Gomez, Gooding, Mackin, Patel, Sayasane
NOES: None.
ABSENT: None.


Coleen Mackin
Chairperson

ATTEST:

JOHN SWIECKI, Community Development Director

DRAFT
BRISBANE PLANNING COMMISSION
Action Minutes of October 25, 2018
Regular Meeting

A. CALL TO ORDER

Chairperson Mackin called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Gomez, Gooding, Mackin, Patel, and Sayasane.
Absent: None.
Staff Present: Senior Planner Johnson, Associate Planner Ayres.

C. ADOPTION OF AGENDA

Commissioner Gomez moved adoption of the agenda. Commissioner Patel seconded the motion and it was approved 5-0.

D. CONSENT CALENDAR

Commissioner Gooding moved adoption of the consent calendar. Commissioner Sayasane seconded the motion but abstained from voting on item D.1.i (August 23, 2018 meeting minutes). The motion was approved 5-0.

E. ORAL COMMUNICATIONS

There were none.

F. WRITTEN COMMUNICATIONS

There were none.

G. NEW BUSINESS

1. **PUBLIC HEARING: Zoning Text Amendment RZ-6-18;** Zoning Text Amendments to Chapter 17.33 of Title 17, Zoning, of the Brisbane Municipal Code to modify the permitted operating hours for cannabis businesses; Citywide; City of Brisbane, applicant.

Associate Planner Ayres presented the staff report. She answered Commissioner questions regarding how compliance with the delivery-only retail hour limitations would be enforced and confirmed the Police Department's support of the zoning text amendments.

Chairperson Mackin opened the public hearing.

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October 25, 2018
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DRAFT

Rand Martin spoke in favor of the proposed zoning text amendments. He answered Commissioner questions regarding the business community's desired operating hour cutoff, how cannabis businesses ensure security of delivery drivers and product in delivery-only retail operations.

Commissioner Gooding moved to close the public hearing. Commissioner Gomez seconded the motion and it was approved 5-0.

Commissioner Gooding moved adoption of Resolution RZ-6-18 recommending approval of the zoning text amendments to the City Council. Commissioner Gomez seconded the motion and it was approved 5-0.

~~H. ITEMS INITIATED BY STAFF~~

~~Senior Planner Johnson announced the City Council adopted the mobile home park zoning text amendments as recommended by the Planning Commission. He reminded the Commission of their special November meeting schedule, with the cancellation of the two regular meetings and scheduling of two special meetings on November 15 and 29. Associate Planner Ayres announced the Design Permit application package for 3000-3500 Marina Boulevard would be scheduled for public hearing on November 29.~~

~~I. ITEMS INITIATED BY THE COMMISSION~~

~~There were none.~~

~~J. ADJOURNMENT~~

~~Commissioner Gooding moved to cancel the next regular meeting of Thursday, November 8, 2018 and to adjourn to the special meeting of Thursday, November 15, 2018. Commissioner Gomez seconded the motion and the meeting adjourned at 8:55 p.m.~~

~~Attest:~~


~~_____
John A. Swiecki, Community Development Director~~

~~NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at www.brisbaneca.org.~~

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 10/25/18

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

SUBJECT: **Zoning Text Amendment RZ-6-18;** Zoning Text Amendments to Chapter 17.33 of Title 17, Zoning, of the Brisbane Municipal Code to modify the permitted operating hours for cannabis businesses; Citywide; City of Brisbane, applicant.

REQUEST: Zoning text amendments to modify the cannabis business operating hours established in BMC Chapter 17.33 as requested by the City Council.

RECOMMENDATION: Adoption of Resolution RZ-6-18, recommending approval of the zoning text amendments to the City Council.

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: Procedures for zoning amendments are provided in BMC Chapter 17.50. The City's zoning regulations regarding cannabis businesses are located in BMC Chapter 17.33. State regulations governing the operation and permitting of cannabis businesses are located in Division 10 of the California Business and Professions Code, commencing with Section 26000.

BACKGROUND/DISCUSSION:

In September 2017, the City Council adopted Ordinance 617 to regulate certain types of cannabis-related businesses within the City, subject to certain performance standards and permitting processes as detailed in the Ordinance. The City Council subsequently adopted Ordinance 625 in April 2018 to eliminate a prohibition against cannabis businesses within 600 feet of a school or daycare. At that public hearing, a prospective cannabis business applicant (which subsequently received Use Permit approval from the Commission in May 2018) requested that the City Council eliminate the prohibition the product deliveries on and off-site between the hours of 7 PM and 8 AM (BMC Section 17.33.020.B). Though the Council did not act on that request at that time, Council directed staff to bring forward modified operating hour provisions in the future.

Following adoption of Ordinances 617 and 625, the Planning Commission has approved two Use Permits for delivery-only retail, distribution/warehousing, and light manufacturing cannabis businesses in Crocker Park, and staff continues to field significant interest from cannabis companies regarding potential operations in the City. The two businesses that have received Use Permits thus far, as well as prospective applicants, have identified the delivery operating hour limitations as a significant constraint to their business model, particularly pertaining to deliveries directly to the consumer.

Consistent with the Council's direction in April 2018, staff has drafted modified operating hour standards in conjunction with the Police Department to allow more flexibility for cannabis businesses. The proposed amendments are shown in redline format in Attachment 1 and in draft ordinance format in Attachment 2.

Proposed Zoning Text Amendments

As noted above, staff worked with the Police Department to ensure that the proposed zoning text amendments would allow increased flexibility for cannabis businesses while simultaneously ensuring that business operations remain safe. As the Use Permit process for cannabis businesses has evolved, the Police Department has developed more standardized protocols to ensure safety of all the stages of on and off-loading related to distribution and retail deliveries.

The proposed zoning text amendments would revise BMC Section 17.33.020.B to allow retail deliveries (deliveries direct to the consumer) up to 10 PM (as compared to the current cut off time of 7 PM). All other cannabis business operations (e.g., business to business deliveries as a function of a distribution business) would be subject to any operating hour limitations established in the underlying zoning district, unless otherwise modified by the Planning Commission in its approval of a Use Permit if warranted based on specific business characteristics or site locations. It should be noted that the Commission has the authority to impose operating hour limitations as conditions of approval of any Use Permit.

ATTACHMENTS:

1. ~~Redlined text of proposed zoning amendment~~
2. ~~Draft Resolution RZ-6-18, including the draft ordinance~~