

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 12/5/2019

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

**SUBJECT:** **Zoning Text Amendment RZ-3-19; NCRO-1, NCRO-2, M-1, SCRO-1, SP-CRO, TC-1, and TC-2 zoning districts;** Amendments to existing cannabis business regulations to establish cannabis storefront retail businesses as conditionally permitted uses in the City of Brisbane’s commercial zoning districts and allow a maximum of four (4) businesses citywide, subject to approval of a conditional use permit and compliance with performance and other operational standards; City of Brisbane, applicant; Various owners.

**REQUEST:** Zoning text amendments to update the cannabis business regulations in the Brisbane Municipal Code to regulate storefront retail cannabis businesses.

**RECOMMENDATION:** Adoption of Resolution RZ-3-19, recommending approval of the zoning text amendments to the City Council.

**ENVIRONMENTAL DETERMINATION:** Statutorily exempt 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 the exceptions to this categorical exemption referenced in Section 15300.2 of the CEQA Guidelines do 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 and administrative procedures governing cannabis businesses and the licensing thereof are located in Division 10 of the Business and Professions Code, and Division 42 of Title 16 of the California Code of Regulations.

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

Since the Ordinance’s adoption, the Planning Commission has approved four Use Permits for cannabis businesses in Crocker Park for cannabis distribution, manufacturing, and delivery. Two are currently operational (Caliva at 101 South Hill Drive and NorCal Cannabis at 111 South Hill Drive), and one has obtained State approval of their annual operating licenses and anticipate starting operations in early 2020.

One use permit expired as the permitted use had not commenced within one year of the use permit approval.

In March 2019, the City Council ad hoc cannabis issues subcommittee (Mayor Davis and Councilmember O'Connell) recommended the City Council consider initiating an amendment to the existing cannabis business regulations to allow limited cannabis storefront retail businesses where on-site sales are permitted. At the June 20, 2019 City Council meeting, the City Council directed staff to initiate a zoning text amendment to regulate storefront retail cannabis businesses as conditionally permitted uses in the City's commercial zoning districts, with an overall cap of four businesses Citywide.

Subsequently, the Planning Commission held two public workshops on the proposed zoning text amendments on July 25 and October 24, 2019 to consider regulatory trends in other California cities and identify the appropriate regulatory approach for Brisbane.

**DISCUSSION:** The attached draft ordinance proposes the following revisions to the current cannabis business regulations in the zoning ordinance to regulate storefront retail cannabis businesses, based on the City Council's direction and the Planning Commission's subsequent discussions at public workshops.

### **1) New and updated definitions of relevant terms**

The draft ordinance would revise Chapter 17.02, Definitions, to separately define cannabis business types as distinct land uses. Currently, all cannabis business types are defined as subsets of one land use classification called "cannabis businesses." Defining the distinct types of cannabis businesses separately (e.g., cannabis distribution, cannabis manufacturing, cannabis storefront retail sales, etc.) eases implementation of changing and varying regulatory approaches unique to each business type.

### **2) Add cannabis storefront retail sales as conditionally permitted uses in commercial districts**

The draft ordinance would add cannabis storefront retail sales as a conditionally permitted use (use permit required) in the City's commercial districts that currently allow retail sales, including:

- NCRO-1 and NCRO-2 Neighborhood Commercial Districts
- M-1 Manufacturing District
- SCRO-1 Southwest Bayshore Commercial District
- SP-CRO Sierra Point Commercial District
- TC-1 Crocker Park Trade Commercial District
- TC-2 Southeast Bayshore Trade Commercial District

The affected districts are shown in Attachment A.

### **3) Expand districts in which other cannabis business types may operate**

Since the adoption of the City's cannabis business regulations in 2017, interested cannabis business owners have reported anecdotally to staff on the challenging leasing environment in Crocker Park, where available space has typically been larger and more expensive than needed by these types of businesses, or that property owners are precluded by federal law or prefer not to lease to cannabis businesses. Based

on the successful operation of two existing cannabis businesses in Crocker Park, and the relative scarcity of leasable space for such businesses in Crocker Park, it would be prudent to consider whether cannabis businesses other than storefront retail may be appropriate in other districts.

The draft ordinance would allow delivery retail sales as conditionally permitted uses (use permit required) in the SCRO-1, M-1, and TC-2 districts. Additionally, the draft ordinance would allow cannabis distribution, manufacturing, and warehousing uses as conditionally permitted uses (use permit required) in the M-1 district, which allows similar and compatible uses.

#### **4) Establish use permit procedures and performance standards for cannabis storefront retail**

The Planning Commission discussed regulatory approaches in depth at their July 25 and October 24 public workshops and reached a general consensus that a use permit would be the appropriate regulatory tool, as opposed to a competitive licensing process followed by a use permit process. Unlike a competitive licensing process, where dozens or hundreds of businesses may prospectively enter into the competition for a limited number of licenses, the use permit process requires applicants to secure a physical location and obtain property owner authorization first. Based on staff's knowledge of the available leasable inventory in the commercial districts under consideration, the proposed process is sufficient to manage the expected number of applications.

The draft ordinance stipulates that only one use permit application may be submitted by any business owner (even if they hold only partial ownership), and a business owner may operate no more than one cannabis storefront retail business. This provision is intended to prevent monopolization of both the land use approval process and actual business operation after the land use is approved, and allow for a greater opportunity for prospective businesses.

While staff does not expect a deluge of applications, there are provisions in the ordinance setting forth how multiple applications filed at the same time will be processed. Specifically, as described in Section 17.33.045 of the draft ordinance, staff will process use permit applications in the order in which they are deemed complete pursuant to the Permit Streamlining Act. To be deemed complete, the applications must fully respond to all of the application criteria outlined in the ordinance, including:

- A business operations plan describing procedures for employee training and customer education, the business marketing strategy, proposed improvements to the exterior of the premises, proposed community benefits, a proposed operational budget, proof of capitalization, and a business operations financial pro forma. All other components of a business operations plan applicable to all other types of cannabis businesses would also be required.
- A security plan describing establishing storefront entry controls, security personnel requirements, limited access areas accessible only to authorized individuals, secure storage areas, a cash management plan, window treatments, and other information as required for all other types of cannabis businesses. The Police Department has recommended specifically that stores in the NCRO-1 and NCRO-2 districts (Visitacion Avenue and the Brisbane Village Shopping Center) have internal "mantraps" whereby security personnel and screening occurs within the building, and that stores in the other zoning districts have uniformed security stationed outside the building to conduct security screening.
- A safety plan describing the fire prevention, suppression, HVAC and alarm systems.

- A statement certifying that the business owner(s) and managerial employees have not been convicted of an offense that is substantially related to the qualifications, functions, or duties of operating a cannabis storefront retail business, as defined by the State Bureau of Cannabis Control or successor agency. Convictions of such offenses shall be confirmed through a criminal background check conducted by the police chief or their designee.

Once four applications have been deemed complete, all other pending applications would be formally put on hold until the Commission has acted on the complete applications. Should one or more applications be denied by the Commission, the pending applications would be reactivated until one or more are deemed complete. Once four use permits have been issued, the City would stop accepting use permit applications for cannabis storefront retail businesses. Should a business issued a use permit fail to commence operation within a year, rendering the use permit void or such a permit is revoked at some time in the future, the City would open the application process again.

The draft ordinance would also require businesses issued use permits to submit an annual report to the Community Development Director and Police Chief regarding compliance with the conditions of approval and performance standards for the business. This annual report would provide a regular opportunity for staff to evaluate the business and flag a permit for potential review by the Commission should compliance prove to be an ongoing issue.

  
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Julia Ayres, Senior Planner

  
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John Swiecki, Community Development Director

**ATTACHMENTS:**

- A. Annotated zoning map showing affected districts
- B. Draft Resolution RZ-3-19 including the draft ordinance

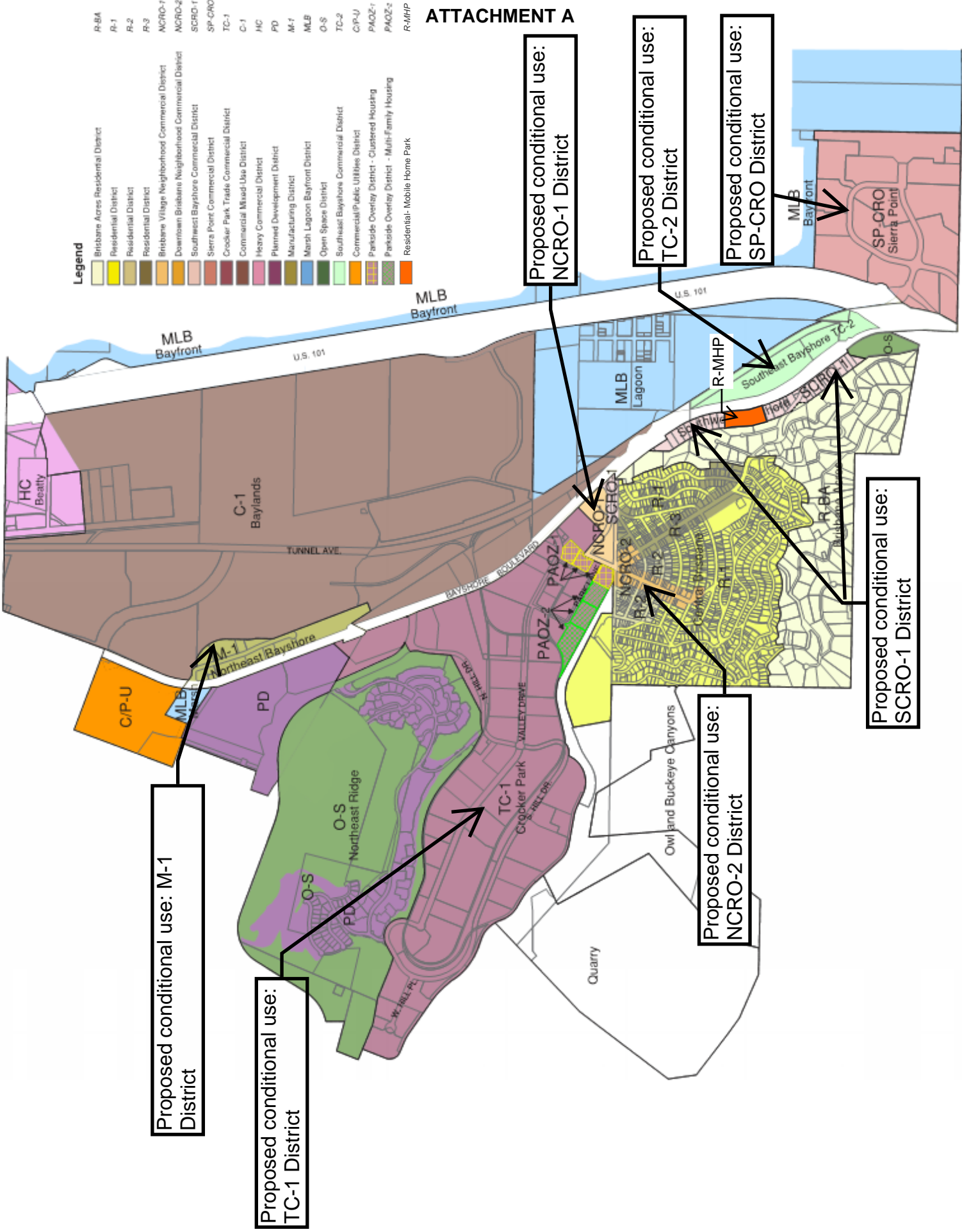
# ATTACHMENT A

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# ATTACHMENT A

**Legend**

Light Yellow	Brisbane Acres Residential District
Yellow	Residential District
Light Green	Residential District
Light Blue	Residential District
Light Purple	Brisbane Village Neighborhood Commercial District
Light Orange	Downstream Brisbane Neighborhood Commercial District
Light Red	Southeast Bayshore Commercial District
Light Brown	Sierra Point Commercial District
Light Green	Crocker Park Trade Commercial District
Light Blue	Commercial Mixed-Use District
Light Purple	Heavy Commercial District
Light Orange	Planned Development District
Light Red	Manufacturing District
Light Blue	Marsh Lagoon Bayfront District
Light Green	Open Spaces District
Light Purple	Southeast Bayshore Commercial District
Light Orange	Commercial/Park/Utilities District
Light Red	Parkside Overlay District - Clustered Housing
Light Brown	Parkside Overlay District - Multi-Family Housing
Light Green	Residential Mobile Home Park



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# ATTACHMENT B

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draft  
RESOLUTION NO. RZ-3-19

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING  
APPROVAL OF ZONING TEXT AMENDMENT RZ-3-19  
AMENDING THE BRISBANE MUNICIPAL CODE  
TO REGULATE STOREFRONT RETAIL CANNABIS BUSINESSES  
TO THE CITY COUNCIL

WHEREAS, in September 2017, the City Council adopted Ordinance 617 amending Title 17, Zoning of the Brisbane Municipal Code to regulate adult and medicinal cannabis testing laboratories, cannabis distribution, manufacturing, and delivery-only retail businesses, subject to location limitations and performance standards established in Chapter 17.33, and prohibiting commercial cannabis cultivation and storefront retail cannabis businesses, such ordinance becoming effective in October 2017; and

WHEREAS, on April 4, 2019, the City Council ad hoc subcommittee on cannabis issues recommended the City Council initiate zoning text amendments to allow up to four storefront retail cannabis businesses, subject to Use Permit approval, in the City's commercial districts; and

WHEREAS, on June 20, 2019, the City Council voted to initiate the zoning text amendment as described by the cannabis issues ad hoc subcommittee; and

WHEREAS, on July 25, 2019 and October 24, 2019, the Planning Commission held public workshops on policy considerations and potential components of an ordinance regulating storefront retail cannabis businesses; and

WHEREAS, on December 5, 2019, the Planning Commission conducted a hearing of a draft ordinance regulating storefront retail cannabis businesses, 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 December 5, 2019 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 the exceptions to this categorical exemption referenced in Section 15300.2 of the CEQA Guidelines do 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:  
NOES:  
ABSENT:

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PAMALA SAYASANE  
Chairperson

ATTEST:

\_\_\_\_\_  
JOHN SWIECKI, Community Development Director

draft  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING CHAPTER 17.33 OF THE BRISBANE MUNICIPAL CODE  
CONCERNING STOREFRONT RETAIL CANNABIS BUSINESSES

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

**SECTION 1: A new Section 17.02.209- Distribution, Cannabis is added to Chapter 17.02 of the Zoning Ordinance, to read as follows:**

17.02.209 – Distribution, cannabis.

“Distribution, cannabis” means a business engaged in the procurement, sale, and transport of cannabis and cannabis products between commercial entities licensed by the State of California. Distribution, cannabis does not include delivery of cannabis or cannabis products to a consumer.

**SECTION 2: A new Section 17.02.508- Manufacturing, Cannabis is added to Chapter 17.02 of the Zoning Ordinance, to read as follows:**

17.02.508 – Manufacturing, cannabis.

“Manufacturing, cannabis” means a business engaged in the production, preparation, propagation, or compounding of cannabis or 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 cannabis or cannabis products or labels or relabels its container.

**SECTION 3: Section 17.02.675 – Research and development of Chapter 17.02 of the Zoning Ordinance 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, not including cannabis or cannabis products. See Section 17.02.676, Research and development, cannabis.

**SECTION 4: Section 17.02.685 – Retail sales and rental of Chapter 17.02 of the Zoning Ordinance 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 cannabis or cannabis products. See Section 17.02.686, Retail sales, cannabis.

**SECTION 5: A new Section 17.02.686- Retail sales, Cannabis is added to Chapter 17.02 of the Zoning Ordinance, to read as follows:**

17.02.686- Retail sales, Cannabis

- A. "Retail sales, cannabis delivery" means an establishment engaged in the retail sale of adult-use and/or medicinal use cannabis and/or cannabis products exclusively by delivery to the customer. “Retail sales,

cannabis delivery” does not include any storefront component whereby customers purchase products at the physical premises of the retail establishment.

- B. "Retail sales, cannabis storefront" means an establishment engaged in the retail sale of adult-use and/or medicinal use cannabis and/or cannabis products directly to the consumer at the physical premises of the retail establishment. See Section 17.02.109(C), Cannabis retail delivery.

**SECTION 6: Section 17.02.790 – Warehousing of Chapter 17.02 of the Zoning Ordinance 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 *cannabis* or *cannabis* products. See Section 17.02.791, Warehousing, cannabis.

**SECTION 7: A new Section 17.02.791- Warehousing, Cannabis is added to Chapter 17.02 of the Zoning Ordinance, to read as follows:**

17.02.791 – Warehousing, cannabis.

“Warehousing, cannabis” means the storage, wholesale, and distribution of cannabis and cannabis products.

**SECTION 8: Section 17.14.030 – Conditional uses in the NCRO-1 district of Chapter 17.14 of the Zoning Ordinance is amended to read as follows:**

17.14.030 - Conditional uses in the NCRO-1 district.

The following conditional uses are allowed in the NCRO-1 district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

- A. Bars.
- B. Commercial recreation-commercial gym and health facilities.
- C. Cultural facilities.
- D. Educational facilities.
- E. Gasoline service stations.
- F. Meeting halls.
- G. Outdoor sales and rental, when associated with an adjacent use within a structure.
- H. Places of worship.
- I. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title;
- J. Temporary uses.
- K. Veterinary clinics.
- L. Day care centers.

**SECTION 9: Section 17.14.040 – Conditional uses in the NCRO-2 district of Chapter 17.14 of the Zoning Ordinance is amended to read as follows:**

17.14.040 – Conditional uses

The following conditional uses are allowed in the NCRO-2 District, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

- A. Bars.
- B. Commercial recreation-commercial gym and health facilities.
- C. Cultural facilities.
- D. Educational facilities.

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- E. Meeting halls.
- F. Mixed use in single-family dwellings.
- G. Outdoor sales and rental, when associated with an adjacent use within a structure.
- H. Places of worship.
- I. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title;
- J. Small family day care homes.
- K. Temporary uses.
- L. Veterinary clinics.
- M. The following conditional uses are allowed only when part of a mixed-use and when located above or behind nonresidential uses:
  1. Day care centers.
  2. Dwelling units.
  3. Family day care homes.
  4. Group care homes.

**SECTION 10: Section 17.16.030 – Conditional uses of Chapter 17.16 of the Zoning Ordinance 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;

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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.
28. Research and development, cannabis, 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, and subject to compliance with Chapter 17.33 of this title;
29. Restaurants;
30. Retail sales and rental;
31. Retail sales, cannabis delivery, subject to compliance with Chapter 17.33 of this Title;
32. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title;
33. Single-family dwellings and single-family dwellings with accessory dwelling units in compliance with the provisions of Chapter 17.43 of this Title;
34. Storage;
35. Veterinary clinics;
36. Warehousing;
37. Single-room occupancy units.

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 11: Section 17.18.030 – Conditional uses of Chapter 17.18 of the Zoning Ordinance is amended to read as follows:**

17.18.030 - Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Child care centers when:

1. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
2. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and
3. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code Section 8.28.040, as per the recommendations of a professionally-prepared acoustical analysis report.

B. Medical facilities.

C. Commercial recreation.

D. Transit/transportation facilities.

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- E. Temporary uses.
- F. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title.

**SECTION 12: Section 17.19.030 – Conditional uses of Chapter 17.19 of the Zoning Ordinance 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. Distribution, cannabis, subject to compliance with Chapter 17.33 of this Title;
- F. Educational facilities;
- G. Freight forwarders, subject to compliance with the provisions of Section 17.19.065 of this chapter;
- H. Gasoline service stations;
- I. Manufacturing, cannabis, subject to compliance with Chapter 17.33 of this Title;
- J. Medical facilities;
- K. Meeting halls;
- L. Night operations, when subject to the provisions of Section 17.19.060 of this chapter;
- M. Places of worship;
- N. 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;
- O. Research and development, cannabis, 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, and subject to compliance with Chapter 17.33 of this Title;
- P. Retail sales, cannabis delivery, subject to compliance with Chapter 17.33 of this Title;
- Q. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title;
- R. Temporary uses;
- S. Veterinary clinics;
- T. Warehousing, cannabis, subject to compliance with Chapter 17.33 of this Title.

**SECTION 13: Section 17.20.020 – Conditional uses of Chapter 17.20 of the Zoning Ordinance is amended to read as follows:**

17.20.020 - Conditional uses.

Conditional uses allowed in the M-1 district, subject to obtaining a use permit, are as follows:

- A. As specified in Chapter 17.32;
- B. Commercial recreation;
- C. Distribution, cannabis, subject to compliance with Chapter 17.33 of this Title;
- D. Gasoline service stations;
- E. Heavy equipment repair and automotive repair shop (both automobile light repair and automobile heavy repair, including for vehicle fleets), including EPA-compliant fueling facilities accessory to such operations;
- F. Manufacturing, cannabis, subject to compliance with Chapter 17.33 of this Title;
- G. Outside storage of trucks and equipment, when properly screened;



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- H. Restaurant and bars connected with restaurant use; and
- I. Warehousing, cannabis, subject to compliance with Chapter 17.33 of this Title.

**SECTION 14: Section 17.21.020 – Conditional uses of Chapter 17.21 of the Zoning Ordinance is amended to read as follows:**

17.21.020 - Conditional uses.

Conditional uses allowed in the TC-2 commercial district, subject to obtaining a use permit, are as follows:

- A. As specified in Chapter 17.32;
- B. Commercial recreation;
- C. Gasoline service stations;
- D. Heavy equipment repair and automotive repair shop (both automobile light repair and automobile heavy repair, including for vehicle fleets), including EPA-compliant fueling facilities accessory to such operations;
- E. Outside storage of trucks and equipment, when properly screened;
- F. Restaurant and bars connected with restaurant use;
- G. Retail sales, cannabis delivery, subject to compliance with Chapter 17.33 of this Title; and
- H. Retail sales, cannabis storefront, subject to compliance with Chapter 17.33 of this Title.

**SECTION 15: Chapter 17.33- Cannabis businesses of the Zoning Ordinance is amended in its entirety to read as follows:**

17.33.010 - Purposes of chapter.

The purpose of this chapter is to regulate the operation of businesses engaged in the distribution, manufacture, retail sales, and warehousing of cannabis and cannabis products, and the research and development of cannabis and 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 - 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:

- A. “Applicant” shall mean a person or entity that submits an application or an application for renewal of a use permit or business license.
- B. “Authorized individuals” shall mean individuals employed by the applicant and any outside vendors, contractors, or other individuals conducting a legitimate business that requires access to limited-access areas. Individuals who are solely retail customers shall not be considered authorized individuals.
- C. “Business owner” shall have the same meaning as provided in Section 26001 of the California Business and Professions Code, or successor statutes.
- D. "Cannabis business" means a business engaged in distribution, manufacture, retail delivery or retail storefront, research and development, or warehousing of cannabis or cannabis products.
- E. “Limited-access area” shall mean an area in which cannabis goods are stored or held and is only accessible to a business owner and authorized individuals.

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- F. "Managerial employee" shall mean general managers, shift managers, or any other employees who make operational or management decisions that directly impact business operations.
- G. "Objectionable conditions that constitute a nuisance" shall mean public consumption of cannabis products, disturbance of the peace, disposing of litter or trash, or excessive loud noise.
- H. "Premises" shall have the same meaning as provided in Section 26001 of the California Business and Professions Code, or successor statutes.
- I. "Storefront" shall mean the front facade of a cannabis storefront retail business.

17.33.030 - Performance standards for all cannabis businesses.

All cannabis businesses must comply with all of the operating standards contained in this section, subject to review and approval by the Police Chief and Community Development Director.

- A. State License. Pursuant to Division 10 of the State Business and Professions Code, cannabis businesses shall hold a valid state license prior to commencing operations within Brisbane. For businesses that require a conditional use permit approval of such use permit shall constitute local authorization concerning an annual State license. For businesses that do not require a conditional use permit, issuance of a business license shall constitute the required local authorization concerning an annual State license.
- B. Hours of Operation.
  - 1. Cannabis businesses involving cannabis distribution, manufacturing, delivery retail sales, and warehousing shall be closed to the general public.
  - 2. Cannabis businesses involving cannabis delivery retail sales and storefront retail sales shall be closed between the hours of ten (10:00) p.m. and eight (8:00) a.m.
  - 3. All other cannabis businesses 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 use permit for a cannabis business that requires a use permit.
- C. Odor Control. Odors shall be contained on the premises 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. Except as provided by Section 17.33.045 of this Chapter, no business activities shall be visible from the exterior of the building.
- E. Labeling. Labels and packages of cannabis and cannabis products shall meet all state and federal labeling requirements.
- F. 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.
- G. Notification of Change in Ownership or Managerial Employee. All applicants shall notify the Brisbane Police Department immediately upon a change in ownership and within ten (10) days of the hiring of a new managerial employee. New business owners or managerial employee must provide all applicable information required by Section 17.33.040(B) and shall be required to submit to fingerprinting and a criminal background investigation.

## 17.33.040 – Required permit or license application materials.

- A. Prior to the city's granting of a use permit or business license for a cannabis business, the applicant must demonstrate compliance with all operating standards set forth in Section 17.33.030 by providing the materials described in this Section.
- B. In addition to the submittal requirements associated with the use permit or business license application, the applicant must provide all of the following information:
1. The name of the business and an explanation of the legal form of business ownership, e.g., a corporation, partnership, etc., and the name and address for each business owner and managerial employee. For each business owner and managerial employee, a fully legible copy of one valid government-issued form of photo identification, such as a state driver's license or identification card issued by the State Department of Motor Vehicles (or equivalent), a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a permanent resident card.
  2. The address and assessor's parcel number(s) of the location of the proposed business(es), and the name and contact information for the property owner(s).
  3. A description of the specific state license type(s) that the applicant plans to obtain. The applicant shall specifically document how it will meet the state licensing requirements.
  4. A business operations plan describing the following:
    - a. The nature of the business and, as applicable, product types, average production amounts for each product type, and source of cannabis material.
    - b. A written description of, on average, the weight in pounds of both raw and processed materials that will be received, stored on-site, and distributed from the premises on a daily basis.
    - c. A description of measures to manage and reduce solid waste and green waste associated with the business(es) in coordination with the City's franchise waste hauler for the premises.
    - d. A description of how the business will comply with each required performance standard described in Section 17.33.030 of this Chapter.
    - e. A budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation costs. The budget must demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds.
    - f. Proof of capitalization, in the form of documentation of cash or other liquid assets on hand, letters of credit or other equivalent assets.
    - g. A business operations financial pro forma showing projected estimated expenses, revenue, and cash flow for at least three years of operation.
  5. Plans showing all proposed building and site improvements, including site plans, floor plans, mechanical, plumbing (including details showing all sewers and floor drains) and electrical plans. At a minimum, the plans shall:
    - a. Label and distinguish between the existing and proposed improvements and show all proposed exterior building, interior building, and site modifications.
    - b. Show, if applicable, all fixtures, equipment, and building improvements to be utilized for the production and processing of cannabis products.
    - c. Comply with all applicable California Building Codes, as amended in Title 15 of this Code.

- d. Be stamped by an appropriately licensed professional, as may be required by the California Building Code or other applicable codes.
6. A security plan describing and documenting how the business owner(s) will secure the premises twenty-four (24) hours per day, seven (7) days per week, and how waste derived from 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. Maintain a commercial burglar alarm monitoring system, camera, and video surveillance system. The camera and video recording surveillance system must be capable of providing surveillance of both interior and exterior areas of the cannabis storefront retail business and must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the property. The recordings shall be maintained at the cannabis storefront retail business for a period of not less than thirty (30) days and shall be provided to the City Police Department within twenty-four (24) hours of a written request from the Police Department. A sign shall be posted inside and at the entrances to the establishment indicating that the premises are under camera/video surveillance.
    - b. Notify the Brisbane Police Department immediately after discovering any of the following:
      - i. Diversion, theft, loss, or any other criminal activity involving the cannabis or any agent or employee of the business.
      - ii. The loss or unauthorized alteration of business records related to employees or agents of the business.
      - iii. Significant discrepancies identified during inventory.
      - iv. Any other breach of security.
    - c. Prevent individuals from remaining on the premises if they are not engaged in activity expressly related to the operations of the business.
    - d. Establish limited access areas accessible only to authorized individuals including security measures to both deter and prevent unauthorized entrance into areas containing cannabis or cannabis products and the prevention of theft of cannabis or cannabis products.
    - e. Store all finished cannabis and cannabis products in a secured and locked room, safe, or vault, and in a manner that prevents diversion, theft, and loss.
    - f. Provide tamper proof and tamper evident packaging for finished cannabis products.
    - g. Prevent off-site impacts to adjoining or near properties.
    - h. A cash management plan describing cash counting/reconciliation procedures, cash storage, cash transport, deposit into a banking institution (if any), and employee training.
    - i. Maintain a record of all authorized individuals that are not employees of the licensee who enter the limited-access areas. The record shall include the name of the individual, the company the individual works for, the reason the individual entered the limited-access area, the date, and the times the individual entered and exited the limited-access area. These records shall be maintained for at least 90 days, unless a greater retention period is required by the Bureau of Cannabis Control, and shall be made available to the Police Chief immediately upon request.
  7. The business or its employees shall not receive consideration or compensation for permitting an individual to enter the limited-access areas.
  8. A detailed safety plan describing the fire prevention, suppression, HVAC and alarm systems the premises will have in place. The plan shall consider all possible fire, hazardous material, and inhalation risk and threats and shall describe procedures and physical mechanisms to address each specific situation.

9. A statement certifying that the business owner(s) and managerial employees have not been convicted of an offense that is substantially related to the qualifications, functions, or duties of operating a cannabis storefront retail business, as defined by the State Bureau of Cannabis Control or successor agency. Convictions of such offenses shall be confirmed through a criminal background check conducted by the police chief or their designee, and shall be grounds for automatic rejection of the use permit application.
10. Application processing 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. Signature of the property owner on the application. The signature(s) shall certify that the property owner 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.

17.33.045. –Requirements for cannabis storefront retail sales businesses.

- A. Number of Businesses Limited. No more than four (4) cannabis storefront retail sales businesses may operate in the City of Brisbane at any time. No business owner, whether in whole or in part, shall operate more than one (1) cannabis storefront retail sales business in the City of Brisbane.
- B. Use Permit Required.
  1. A use permit shall be required for cannabis storefront retail sales. Changes in business ownership may be approved by the police chief and Community Development Director consistent with the provisions of subsection A of this Section 17.33.045 and Section 17.33.040 of this Chapter.
  2. No business owner, whether in whole or in part, shall submit more than one use permit application for a cannabis storefront retail business.
- C. Use Permit Application Review Procedure. Use permit applications shall be processed in the order in which the Community Development Director deems the application complete pursuant to the Permit Streamlining Act. When four (4) cannabis storefront retail sales use permit applications have been deemed complete, any other pending applications shall be put on hold. Should one or more use permit applications be denied or withdrawn, all on hold applications shall be reinstated until such a time as one or more applications are deemed complete, at which point all other pending applications shall again be put on hold. When four use permits have been approved, all other on hold applications shall be rejected.
- D. Use Permit Application. Use permit applications for cannabis storefront retail sales businesses must contain the following:
  1. All information required in Section 17.33.040 of this Chapter.
  2. A business plan showing all information required by Section 17.33.040 of this Chapter and the following information:
    - a. Procedures for employee training on differences in products, potency of products, customer service, and/or laws governing personal use of cannabis and cannabis products.
    - b. Procedures for customer education regarding cannabis products, including the potency and effects of products.
    - c. Description of key aspects of the business marketing strategy.

- d. Description of proposed improvements to the exterior of the premises, as applicable, including landscaping, signage, lighting, entry experience, parking, and other physical improvements related to neighborhood compatibility.
  - e. Description of proposed community benefits, if any, including job creation or proposed partnerships with existing Brisbane businesses (e.g., procurement of goods and services from local businesses).
3. A security plan showing all information required by Section 17.33.040 of this Chapter and the following information:
- a. Storefront entry control. The security plan shall show how customer entry to the storefront will be controlled to ensure that only individuals age 21 and older, or medicinal cannabis patients, can access the retail products and purchase goods. The following requirements shall be required at a minimum:
    - i. For storefront cannabis retail businesses in the Neighborhood Commercial Districts (NCRO-1 and NCRO-2 zoning districts) and Sierra Point Commercial District, storefront entry shall be controlled via an indoor mantrap lobby. All customer identification verification and security screening shall occur within the mantrap lobby, and all security personnel shall be stationed within the mantrap lobby. The design of the mantrap shall be developed in consultation with the Brisbane Police Department and the Building Division of the Community Development Department.
    - ii. For storefront cannabis retail businesses in the M-1, SCRO-1, TC-1, or TC-2 zoning districts, the premises shall have uniformed security personnel located outside of the premise entrance/exit.
  - b. Security personnel. Security personnel who are at least 21 years of age shall be hired to provide on-site security services for the permitted retail premises during the hours of operation. All security personnel hired by the applicant shall be licensed by the State Bureau of Security and Investigative Services; shall not be an employee of any Inspecting Department or any agency, department, or office responsible for regulating cannabis businesses; and shall comply with Chapters 11.4 and 11.5 of Division 3 of the California Business and Professions Code.
    - i. If multiple cannabis storefront retail businesses are contained within the same building, security personnel may be shared by all businesses to serve the entire building. In this circumstance, each use permit applicant shall include in the applicant's security plan an explanation of how security personnel will be shared amongst the businesses, including how the security personnel will be hired and managed.
    - ii. All businesses sharing security personnel services shall be held responsible, on a joint and several basis, for any violations of the requirements set forth in this Chapter and other applicable rules and regulations, relative to the hiring of security personnel. Any failure to maintain compliance with these requirements shall be grounds to suspend, revoke, or take other adverse action against all such permit holders' permits.
  - c. Limited-access areas. The security plan shall provide limited-access areas of the premises that only authorized individuals may access. The door to limited access areas shall remain closed when not in use during regular business hours. Authorized individuals who are not employed by the applicant shall be escorted by a managerial employee of the permit holder at all times while within the limited-access area.
  - d. Medicinal cannabis consultation area. If the applicant intends to sell medicinal cannabis, the security plan shall show a designated area for medical cannabis customer consultation.

- e. Windows and window coverings. Unless otherwise required by the police chief, storefronts shall be primarily glass, and window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like.
- E. Required Findings of Approval. In addition to the findings required for the granting of a use permit, as set forth in Section 17.40.060 of Chapter 17.40 of this Title, no use permit shall be granted for a storefront cannabis retail sales business unless the planning commission also finds and determines that:
  - 1. The business owner(s) and managerial employees have demonstrated experience in owning, managing and operating the type of cannabis business for which the license is being sought, and/or demonstrate knowledge of cannabis industry best practices and applicable State regulations, as demonstrated by the business operations plan.
  - 2. The business start-up and ongoing operations are financially viable, as demonstrated by the business operations plan.
- F. Annual Report Required. Within one (1) year of approval of a use permit for cannabis storefront retail sales, commencing from the effective date of the use permit approval, the business owner shall submit an annual report to the Community Development Director and police chief addressing how the business operations have complied with the conditions of approval of the use permit..

17.33.050. - Revocation of use permit or business license.

- A. Should the police chief or Community Development Director determine at any time that a cannabis business subject to use permit approval does not comply with the conditions of the use permit or the performance standards set forth in Section 17.33.030, the use permit shall be subject to the revocation procedures outlined in Chapter 17.48 of this Title and the business license shall be subject to the revocation procedures outlined in Chapter 5.16 of this Title.
- B. Should the police chief and Community Development Director determine that the results of a fingerprinting and criminal background investigation reveal a criminal conviction subsequent to the use permit or business license approval that conflict with the provisions of Section 17.33.045 of this Chapter, the business license shall be subject to the revocation procedures outlined in Chapter 5.16 of this Title. Should the business license be revoked, the Community Development Director shall schedule a public hearing at the next available Planning Commission meeting to initiate revocation proceedings for the use permit pursuant to Chapter 17.48 of this Title.

**SECTION 16:** 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 17:** 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 18:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Cannabis Storefront Retail  
Draft Ordinance

\* \* \*

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 \_\_\_\_\_, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:



\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Legal Counsel