



**BENICIA CITY COUNCIL
CITY COUNCIL MEETING AGENDA**

**Benicia City Hall 250 East L. Street
September 3, 2019
6:00 PM**

Call To Order (6:00 P.M.)

1. Roll Call

2. Pledge Of Allegiance

3. Reference To The Fundamental Rights Of The Public

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

4. Study Session - Discussion Of Priority Development Areas / Production Development Areas

5. Announcements (7:00 P.M.)

5.A - MAYOR'S OFFICE HOURS

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's office of City Hall from 6:00 to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through City Hall by calling 707-746-4200.

5.B - OPENINGS ON BOARDS AND COMMISSIONS

- Building Board of Appeals
1 Full Term, Expiring July 31, 2023
- Economic Development Board

2 Full Terms, Expiring July 31, 2023

- Library Board of Trustees
3 Full Terms, Expiring July 31, 2022

- Community Sustainability Commission
3 Full Terms, Expiring July 31, 2023
1 Student Term, Expiring July 31, 2020

- Open Government Commission
1 Partial Term, Expiring July 31, 2021

6. Proclamations

6.A - NATIONAL PREPAREDNESS MONTH

[Proclamation - National Preparedness Month](#)

6.B - INTERNATIONAL LITERACY DAY

[Proclamation - International Literacy Day](#)

6.C - WORLD DUCHENNE AWARENESS DAY

[Proclamation - World Duchenne Awareness Day](#)

7. Appointments

None

8. Presentations

8.A - DEEP GREEN PRESENTATION BY MCE

9. Adoption Of Agenda

10. Opportunity For Public Comments

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or

members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

11. Written Comment

12. Public Comment

13. Consent Calendar

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, Staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

13.A - AUGUST 20, 2019 CITY COUNCIL MINUTES (City Clerk)

Approve minutes.

[August 20 2019 City Council Meeting Minutes](#)

13.B - DENIAL OF THE CLAIM AGAINST THE CITY BY BRIAN COURTNEY AND REFERRAL TO INSURANCE CARRIER (City Attorney)

The claimant alleges that his car was damaged when his car drove over a water main cap that was sticking up.

Recommendation:

Deny the claim against the City by Brian Courtney and refer to insurance carrier.

[Staff Report - Courtney Claim](#)

[1. Redacted Claim Form - Courtney Claim](#)

13.C - SECOND READING AND ADOPTION OF AN ORDINANCE TO REPEAL AND REPLACE THE BENICIA MUNICIPAL CODE CHAPTER 5.52 MASSAGE (Police Chief)

The proposed ordinance will repeal and replace Chapter 5.52 of the Benicia Municipal Code (Massage) to increase the operating requirements for massage businesses in the City of Benicia, as well as require California Massage Therapy Council certification for all employees performing massage in the City of Benicia. The purpose and intent of these changes are to protect the public health, safety and welfare by providing the orderly regulation of businesses providing massage therapy services by discouraging prostitution and related illegal activities carried on under the guise of massage therapy. The Council introduced this ordinance on August 20, 2019. This action will adopt the ordinance.

Recommendation:

Adopt the ordinance to repeal and replace Chapter 5.52 of the Benicia Municipal Code to enhance the enforcement of criminal statutes relating to the illegal conduct of operators and employees of massage businesses.

[Staff Report - Massage Ordinance Second Reading](#)

[1. Massage Ordinance](#)

13.D - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

14. Business Items

14.A - INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.84 OF THE BENICIA MUNICIPAL CODE PERTAINING TO RETAIL CANNABIS OPERATIONS (PUBLIC HEARING); AND DISCUSSION OF POSSIBLE REVISIONS PERTAINING TO CANNABIS DELIVERY AND MICROBUSINESS USES (Interim Community Development Director)

The proposed project would amend Benicia Municipal Code Chapter 17.84 (Cannabis) to reduce the number of permitted cannabis retailers from two (2) to one (1), amend and add certain definitions, and change the permissible locations of cannabis retailers for which applications have not yet been received (see Attachment 1). The Planning Commission conducted a public hearing on August 14, 2019 and recommended against adoption of the proposed ordinance (5-0).

In addition to a hearing on the draft amendments for cannabis retail operations, the City Council is asked to provide feedback and direction on potential future revisions to the Cannabis Ordinance. Such revisions, as recommended by a consensus of the Planning Commission on August 14, 2019, include:

- Establish a license classification for delivery-only retail operations.
- Remove the limitation on the number of cannabis microbusinesses.
- Limit the location of delivery-only and microbusiness uses to the Industrial Districts within the Benicia Industrial Park, north of Interstate Highway 780.
- Clarify the applicability of the 600-foot buffer requirement for sensitive adjacent land uses to account for physical barriers to access, such as a freeway.

Recommendation:

1.a. Move to waive the first reading and introduce an ordinance of the City Council amending Chapter 17.84 (Cannabis Regulations) of the Benicia Municipal Code and find the ordinance exempt under the California Environmental Quality Act.

OR

1.b. Approve the Planning Commission's recommendation against adoption of an ordinance amending the Benicia Municipal Code to prohibit retail cannabis businesses and do not introduce an ordinance of the City Council amending Chapter 17.84 (Cannabis Regulations) of the Benicia Municipal Code (BMC).

2. Discuss and provide direction to staff on additional amendments to the BMC regarding cannabis delivery-only operations and additional cannabis microbusiness uses, including limitations on the locations where such uses may be located, and clarifying application of buffer requirements when the buffer is bisected by a physical barrier, such as a freeway.

[Staff Report - Cannabis Retail Amendments](#)

[1. Draft Ordinance - Cannabis Retail Amendments](#)

[2. Excerpt Council Minutes, May 7, 2019](#)

[3. Excerpt Council Minutes, May 21, 2019](#)

[4. Planning Commission Minutes, June 5, 2019](#)

[5. Excerpt Council Minutes, June 18, 2019](#)

[6. Planning Commission Draft Minutes, August 14, 2019](#)

[7. Buffer for Commercial Properties](#)

14.B - TWO-STEP REQUEST FOR CLIMATE EMERGENCY RESOLUTION (City Manager)

Mayor Patterson submitted a two-step process request for Council's consideration of adopting the Climate Emergency Resolution (Attachment 1). Cities are adopting this resolution to mobilize cities to end city-wide greenhouse gas emissions. A draft City of Benicia Climate Emergency Resolution is included as Attachment 2.

Recommendation:

Discuss the request and provide direction to staff.

[Staff Report - Climate Emergency Resolution](#)

[1. Two-Step Request, Mayor Patterson](#)

[2. Draft City of Benicia Climate Emergency Resolution](#)

15. Adjournment (11:00 P.M.)

Public Participation

The Benicia City Council and its Boards and Commissions welcome public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Alan Shear, the ADA Coordinator, at (707) 746-4200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the

City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

Contact Your Council Members

If you would like to contact the Mayor or a Council Member, please call the number listed below to leave a voicemail message.

Mayor Patterson: 746-4213

Vice Mayor Strawbridge: 746-4213

Council Member Campbell: 746-4213

Council Member Young: 746-4213

Council Member Largaespada: 746-4213



PROCLAMATION

IN RECOGNITION OF

National Preparedness Month

WHEREAS, September is National Preparedness Month, a time set aside annually to encourage Americans to take necessary steps to prepare for any and all emergencies in their homes, businesses and communities; and

WHEREAS, the City of Benicia has made it a high priority to continue to build a strong and viable “culture of preparedness” throughout the community with partners like the Community Emergency Response Team (CERT), Benicia Amateur Radio Club (BARC), and the Benicia Fire Department Volunteers; and

WHEREAS, those who prepare for emergencies recover faster and can help others who also may be affected, demonstrating community spirit in the face of adversity; and

WHEREAS, emergency preparedness is a shared responsibility, and every family that is able should prepare to be self-sufficient for the first 72 hours after disaster strikes; and

WHEREAS, Benicia families can start their preparedness actions by making an emergency plan, stocking at least three days of essential supplies, including water and food that won’t spoil and a hand-crank or battery-powered radio and extra batteries to hear emergency information. Everyone should register for emergency alerts at www.AlertSolano.com; and

WHEREAS, the theme of National Preparedness Month for 2019 is “**Prepared, Not Scared. Be Ready for Disasters.**”

NOW, THEREFORE, BE IT RESOLVED THAT I, Elizabeth Patterson, Mayor of the City of Benicia and on behalf of the City Council of the City of Benicia, hereby proclaim September as National Preparedness Month, a time to remember and a time to prepare, and I encourage all citizens to be ready for emergencies by taking steps to prepare for emergencies at home, at work and in our community.



Elizabeth Patterson, Mayor
September 3, 2019



PROCLAMATION

IN RECOGNITION OF

International Literacy Day: September 8, 2019

WHEREAS, a literate and educated public is one of the foundations of a democratic society; and

WHEREAS, the Benicia Public Library's Adult Literacy Program, established in 1987, has steadfastly worked to provide basic literacy skills to adults in Benicia; and

WHEREAS, in addition to providing literacy tutoring for English-speaking adults, the Benicia Public Library Literacy Program also provides classes for new English speakers, developing literacy in English from the ground up; and

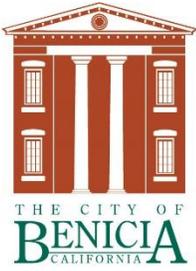
WHEREAS, the program additionally provides General Education Diploma (GED) classes for residents seeking to complete their high school education; and

WHEREAS, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has declared September 8, 2019 as International Literacy Day, with the theme "Education Transforms Lives";

NOW, THEREFORE, BE IT RESOLVED THAT I, Elizabeth Patterson, Mayor of the City of Benicia and on behalf of the City Council of the City of Benicia, hereby proclaim September 8, 2019 as International Literacy Day in the City of Benicia, and encourage all who seek to improve their reading and writing skills, to learn English, or to garner a GED, to visit the Benicia Public Library.



Elizabeth Patterson, Mayor
September 3, 2019



PROCLAMATION

IN RECOGNITION OF

World Duchenne Awareness Day

WHEREAS, Duchenne muscular dystrophy (Duchenne) is the most common fatal genetic disorder diagnosed in childhood, affecting approximately one in every 5,000 live male births each year; and

WHEREAS, the Duchenne gene is found on the X-chromosome and it primarily affects boys; however, it occurs across all races and cultures; and

WHEREAS, Duchenne results in progressive loss of strength and is caused by a mutation in the gene that encodes for dystrophin. Because dystrophin is absent, the muscle cells are easily damaged. The progressive muscle weakness leads to serious medical problems, particularly issues relating to the heart and lungs. People with Duchenne typically live into their late twenties; and

WHEREAS, Duchenne can be passed from parent to child, but approximately 35% of cases occur because of a random spontaneous mutation. In other words, it can affect anyone. Although there are medical treatments that may help slow its progression, there is currently no cure for Duchenne; and

WHEREAS, because it is a rare disease, one of our greatest tools in the fight to end Duchenne is raising awareness; and

WHEREAS, on September 7, 2019, the fifth World Duchenne Awareness Day will take place. Duchenne organizations around the world will raise awareness for all people living with Duchenne muscular dystrophy.

NOW, THEREFORE, BE IT RESOLVED THAT I, Elizabeth Patterson, Mayor of the City of Benicia, and on behalf of the City Council of the City of Benicia, hereby proclaim September 7, 2019 as World Duchenne Awareness Day in the City of Benicia and encourage the residents of the City of Benicia to increase their understanding and awareness of Duchenne muscular dystrophy.



Elizabeth Patterson, Mayor
September 3, 2019

DRAFT

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
AUGUST 20, 2019
7:00 PM

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

CALL TO ORDER

Mayor Patterson called the Closed Session to order at 5:30 p.m.

All Council Members were present.

1) CLOSED SESSION (5:30 P.M.)

1.A - CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54757.6

Agency designated representatives: City Manager, Assistant City Manager, Human Resources Manager

Employee Organizations: Benicia Fire Fighters Association, Middle Management Employees, Police Management Employees, Senior Management Employees, and Unrepresented Employees

1.B - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section §54956.9(d)(1)

Name of Case: Benicia Harbor Corporation vs. City of Benicia, Solano County Superior Court Case No. FCS051970

2) CONVENE OPEN SESSION (7:00 P.M.)

Mayor Patterson called the Open Session to order at 7:14 p.m.

3) ROLL CALL

All Council Members were present.

4) PLEDGE OF ALLEGIANCE

Kim Imboden led the Pledge of Allegiance.

5) REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC

6) ANNOUNCEMENTS

DRAFT

6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY

Ben Stock, City Attorney, stated there were no reportable actions taken during Closed Session.

6.B - MAYOR'S OFFICE HOURS

6.C - OPENINGS ON BOARDS AND COMMISSIONS

Lorie Tinfow, City Manager, discussed the recent notices some tenants in the Arsenal received. The repair requirement falls on the property owner, not the tenant. The City has been talking to the owner for months and he is in the process of doing the repairs. He is focusing on the repairs that are required to be done within 72 hours. The notice was given because the tenants needed to be aware of the building and fire code violations that pose a safety risk.

7) **PROCLAMATIONS**

8) **APPOINTMENTS**

9) **PRESENTATIONS**

10) **ADOPTION OF AGENDA**

On motion of Council Member Young, seconded by Council Member Largaespada, Council approved the Adoption of the Agenda, as presented, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson
Noes: (None)

11) **OPPORTUNITY FOR PUBLIC COMMENTS**

12) **WRITTEN COMMENT**

One item received (copy on file).

13) **PUBLIC COMMENT**

1. Celeste Smeland - Ms. Smeland discussed concern regarding the 72-hour notices that the tenants in the Arsenal building received. She asked for clarification on who is responsible for certain repairs.
2. Jason Kremmin - Mr. Kremmin discussed concern regarding the U.S. Military.
3. Marilyn Bardet - Ms. Bardet discussed concern regarding the 72-hour notices that the tenants in the Arsenal building received.

DRAFT

4. Gretchen Burgess - Ms. Burgess discussed how thankful she was for various things in the City.
5. Citizen - the citizen discussed previous inspections that were done on the building in the Arsenal, as well as concerns regarding conflicting inspection reports.

14) CONSENT CALENDAR

14.A - JULY 16, 2019 CITY COUNCIL MINUTES (City Clerk)

July 16 2019 City Council Meeting Minutes 

14.B - RESPONSE TO THE SOLANO COUNTY GRAND JURY REPORT ON WASTEWATER TREATMENT PLANTS (Public Works Director)

- Staff Report - Solano County Grand Jury Response 
1. Resolution - Solano County Grand Jury Response 
 2. Draft Letter - Solano County Grand Jury Response 
 3. Solano County Grand Jury Report Cover Letter 
 4. Solano County Grand Jury Report 

RESOLUTION 19-76 - A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BENICIA DIRECTING THE CITY MANAGER TO RESPOND TO THE SOLANO COUNTY GRAND JURY 2018-2019 WASTEWATER TREATMENT PLANTS REPORT ON BEHALF OF THE CITY

14.C - APPROVAL OF CONSULTANT AGREEMENT WITH DU-ALL SAFETY FOR SAFETY PROGRAM DEVELOPMENT AND TRAINING FOR THE WATER AND WASTEWATER DIVISIONS (Public Works Director)

- Staff Report - Du-All Safety Contract 
1. Resolution - Du-All Safety Contract 
 2. Consultant Agreement - Du-All Safety Contract 

RESOLUTION 19-77 - A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONSULTANT AGREEMENT WITH DU-ALL SAFETY TO COMPLETE THE SAFETY PROGRAM DEVELOPMENT AND IMPLEMENTATION FOR THE WATER AND WASTEWATER DIVISIONS IN FISCAL YEAR 2019-20 AT A NOT-TO-EXCEED COST OF \$80,971 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

14.D - APPROVAL OF RENEWAL AGREEMENT WITH ACCELA, INC. FOR PERMITTING SOFTWARE (Interim Community Development Director)

Staff Report- Accela Renewal Agreement 

DRAFT

- 1. Resolution- Accela Renewal Agreement 
- 2. Accela Renewal Order Form 

RESOLUTION 19-78 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A RENEWAL AGREEMENT WITH ACCELA, INC. FOR PERMITTING SOFTWARE

- 14.E - APPROVAL OF UPDATED FIELD UTILITIES AND STREETS SUPERVISOR JOB DESCRIPTION (Human Resources Manager)**

- Staff Report - Field Utilities and Streets Supervisor Job Description 
- 1. Resolution - Field Utilities and Streets Supervisor Job Description 
- 2. Updated Field Utilities and Streets Supervisor Job Description 

RESOLUTION 19-79 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN UPDATE TO THE JOB DESCRIPTION FOR THE CLASSIFICATION FIELD UTILITIES AND STREETS SUPERVISOR

- 14.F - APPROVE THE AGREEMENT BETWEEN THE CITY OF BENICIA AND BENICIA POLICE MANAGEMENT EMPLOYEES (Human Resources Manager)**

- Staff Report - Police Management Employees 
- 1. Resolution - Police Management Employees 
- 1a. Exhibit A - Police Management Employees MOU - 8-1-2019 – 6-30-2021 

RESOLUTION 19-80 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BENICIA AND THE BENICIA POLICE MANAGEMENT EMPLOYEES

- 14.G - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)**

On motion of Vice Mayor Strawbridge, seconded by Council Member Largaespada, Council approved the Consent Calendar, as presented, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson
Noes: (None)

15) BUSINESS ITEMS

- 15.A - INTRODUCTION OF AN ORDINANCE TO AMEND THE BENICIA MUNICIPAL CODE CHAPTER 5.52 MESSAGE (Police Chief)**

DRAFT

- Staff Report - Massage Ordinance 
1. California Massage Therapy Act 
2. Massage Ordinance 

ORDINANCE 19- - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF BENICIA REPEALING BENICIA MUNICIPAL CODE CHAPTER 5.52 (MASSAGE) IN ITS ENTIRETY AND REPLACING WITH BENICIA MUNICIPAL CODE CHAPTER 5.52 (MASSAGE), AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Detective Michelle King, Benicia Police Department, reviewed the staff report.

Vice Mayor Strawbridge and Staff discussed the fees, the requirement to obtain a business license, the number of massage businesses in Benicia (26), where they are located, and whether the fees would cover Staff's cost for supervision and inspections.

Council Member Young and Staff discussed the requirement for every practitioner to be certified, whether the certificates have the person's picture on it, the photo ID card requirement, and details on the business that was shut down due to illegal activity.

Council Member Largaespada and Staff discussed whether neon signs were allowed.

Council Member Campbell and Staff discussed the issue of prostitution, the certification process, the California Massage Therapy Council's laws, rules, and whether the California Massage Therapy Council would have a sustainable budget to sustain investigations.

Mayor Patterson disclosed exparté communications. She asked if the language 'no sexually suggestive advertising' could be applied to all advertisements in town. They also discussed the rules regarding waiting rooms.

Public Comment:

1. Shawna Radford - Ms. Radford discussed concern regarding having to wear a nametag, being able to lock the doors for safety, and the need to clarify between sole proprietress and businesses who employ others.
2. Gretchen Burgess - Ms. Burgess discussed support for independent massage therapists.
3. Katherine Black - Ms. Black discussed concern regarding the nametag requirement. She did not receive a notice from the City.

Mayor Patterson and Staff discussed the nametag/certified ID that is provided by the California Massage Therapy Council, whether it could be posted on the wall rather than being worn, and concern regarding the requirement to keep doors unlocked.

DRAFT

Council Member Campbell discussed various ways therapists could identify themselves without wearing a nametag.

Council Member Young and Staff discussed the requirements for hot/cold water and a toilet, agreement that a certificate and a card with a photo ID on it somewhere in the room, and how Staff would respond to complaints of misconduct by a practitioner.

Ben Stock, City Attorney, suggested an amendment to the language in section 5.52.050 Section A, under operating requirements that would read 'CMTC certification shall be worn by and be clearly visible on massage practitioner's person, or displayed in a room where the massage occurs and within view of the client during working hours and at all times when a massage practitioner is inside the business or when providing a mobile massage.' Mr. Stock stated that the issue of locking the door is addressed in other sections of the ordinance and is clear.

On motion of Council Member Largaespada, seconded by Council Member Young, Council approved the Introduction and First Reading of the above ordinance, as amended with language suggested by Staff, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

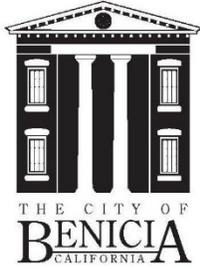
16) **COUNCIL MEMBER COMMITTEE REPORTS:**

16.A - COUNCIL MEMBER COMMITTEE REPORTS

[Committee Reports](#) 

17) **ADJOURNMENT (9:30 P.M.)**

Mayor Patterson adjourned the meeting at 8:46 p.m.



AGENDA ITEM
CITY COUNCIL MEETING DATE – SEPTEMBER 3, 2019
CONSENT CALENDAR

TO : City Council

FROM : City Attorney

SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY BRIAN COURTNEY AND REFERRAL TO INSURANCE CARRIER**

EXECUTIVE SUMMARY:

The claimant alleges that his car was damaged when his car drove over a water main cap that was sticking up.

RECOMMENDATION:

Deny the claim against the City by Brian Courtney and refer to insurance carrier.

BUDGET INFORMATION:

The claim is for an unstated amount.

BACKGROUND:

Mr. Courtney alleges that he drove over a water main cap that was sticking up, causing damage to his vehicle. Staff noted the failure of the valve can lid was likely caused by failure to maintain the private driveway surface. A cost estimate was not provided, so the amount of the claim is undetermined.

NEXT STEPS:

Upon rejection of the claim, the City Clerk should issue a rejection notice to Brian Courtney using Plan JPA/ABAG's Form No. 3 of the Plan JPA/ABAG Plan Claims Procedures Manual and process with a proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to the Claims Examiner for ABAG Plan and the City Attorney.

ALTERNATIVE ACTIONS:

Pay the claim.

General Plan	N/A
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Strategic Plan	N/A
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CEQA Analysis	Denial of this claim is not a project under Section 15378(b) of the California Environmental Quality Act (CEQA) Guidelines, which excludes administrative activities of government.
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ATTACHMENT:

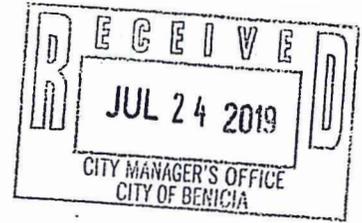
1. Redacted Claim Form – Courtney Claim

For more information contact: Benjamin Stock, City Attorney

Phone: 707-746-4204

E-mail: bstock@ci.benicia.ca.us

CLAIM AGAINST THE CITY OF BENICIA



Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): Brian Courtney

2. CLAIMANT'S ADDRESS: _____
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: _____ JRK.PHONE: _____

3. AMOUNT OF CLAIM: \$ no estimate yet (Attach copies of bills/estimates)
estimate in process

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case _____

Unlimited Civil Case _____

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

Brian Courtney
(Name)

(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: 7/24/2019 TIME OF INCIDENT: 7:15 Am

LOCATION OF INCIDENT: 3000 Bayshore Rd. Benicia, CA, 95687

6. Describe the incident or accident including your reason for believing that the City is liable for your damages: A water main cap was popped up or was sticking up and I ran over it causing damage to my undercarriage of my car.

7. Describe all damages which you believe you have incurred as a result of the incident: engine oil pan or transmission damage causing fluid to leak out. Under carriage body damage.

8. Names of public employee(s) causing the damages you are claiming:

N/A There was no markers indicating that there was work being done or damage. I talked/met with Ted Corder /supervisor for City of Benicia

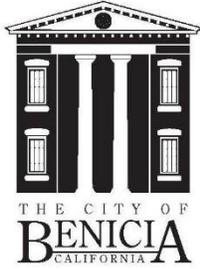
Brian Courtney _____ 7/24/19 _____
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

Police Report was taken # 192050020
Officer Mark Simonson



AGENDA ITEM
CITY COUNCIL MEETING DATE – SEPTEMBER 3, 2019
CONSENT CALENDAR

TO : City Manager

FROM : Police Chief

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE TO REPEAL AND REPLACE THE BENICIA MUNICIPAL CODE CHAPTER 5.52 MASSAGE**

EXECUTIVE SUMMARY:

The proposed ordinance will repeal and replace Chapter 5.52 of the Benicia Municipal Code (Massage) to increase the operating requirements for massage businesses in the City of Benicia, as well as require California Massage Therapy Council certification for all employees performing massage in the City of Benicia. The purpose and intent of these changes are to protect the public health, safety and welfare by providing the orderly regulation of businesses providing massage therapy services by discouraging prostitution and related illegal activities carried on under the guise of massage therapy. The Council introduced this ordinance on August 20, 2019. This action will adopt the ordinance.

RECOMMENDATION:

Adopt the ordinance to repeal and replace Chapter 5.52 of the Benicia Municipal Code to enhance the enforcement of criminal statutes relating to the illegal conduct of operators and employees of massage businesses.

BUDGET INFORMATION:

Under the proposed ordinance, staff recommends removing the permit requirement and replacing it with a requirement for certification with the state. In removing the permit requirement, the associated fees will no longer be relevant and can be eliminated. Those fees were: “Massage Establishment Permit” of \$688.00 and its renewal fee of \$319.00. The proposed ordinance would establish in its place a “Massage Registration Certificate” with an associated fee of \$49.00, which would be reflected in the fee schedule. The fee for the “Massage Registration Certificate” reflects the resources that are spent on processing the registration.

BACKGROUND:

The current massage ordinance is located in Benicia Municipal Code Chapter 5.52. The ordinance was first adopted on August 19, 2008. The ordinance was amended and updated on February 3, 2009.

The current massage ordinance requires a person, association, partnership or corporation to obtain a permit to operate a massage establishment or provide home visit massage services (Benicia Municipal Code (BMC) § 5.32.030). Additionally, such a massage establishment or home visit service is required to pay the City's business registration tax, including the business license tax (BMC 5.32.040). The ordinance, however, exempts certain businesses from the permit requirement, including massage practitioners or massage therapists who are duly certified by the Massage Therapy Organization as set forth in Business and Profession Code § 4600 et seq.

To be permitted, an applicant must submit an application with required information, including information that will aid the police department to determine if they have a history of criminal conduct or improper behavior at other massage businesses (BMC 5.52.060(D)). The Chief of Police then has 60 days to review the application and decide whether to grant the permit, with or without conditions, and make the required findings about the application, including that the applicant has not made any material misrepresentations, that the applicant has not been convicted of relevant crimes or had adverse action taken against them regarding their massage business in the past five years, and that the establishment would otherwise comply with relevant laws (BMC § 5.52.060(E)).

The permit fee associated with this process is \$688.00 initially, and \$319.00 for each renewal.

The ordinance also provides minimum requirements for massage establishments and home visit operations. Those requirements cover a host of issues, including posting and displaying of the permit, minimum sanitary provisions, record keeping, and other measures aimed at preventing and deterring illegal behavior. See BMC §§ 5.52.070 – 5.52.080.

The current ordinance allows for the suspension or revocation of the permit only under the following circumstances, which are appealable:

“if it is found that the permittee does not possess the qualifications for the permit as required by this chapter, has been convicted of any violation of the provisions of this chapter or any lesser included offense, has made a material misrepresentation on the permit application or renewal or has violated any mandatory provisions of this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit. For purposes of this section, permittee shall include the managing responsible officer or employee. Further, the permittee shall be responsible for those acts of its employees which are done in the course and scope of their employment by the permittee.”

Enforcement challenges

The Benicia Police Department investigates tips and leads on massage establishments within the City related to illegal and/or criminal activity. In January 2018 an undercover operation was conducted in the city of Benicia, involving two separate massage establishments. Ultimately, the operation resulted in an arrest for prostitution. The business license for the involved establishment was revoked because of the business' violations. The involved business did not

initially need a massage permit because of the current BMC. The owner of the establishment was CAMTC certified, so the business never received a permit from the Police Department.

The challenges of enforcement under the current ordinance relate to the effort and proof required to suspend or close an establishment. As it stands currently, to suspend a massage establishment permit there must be: 1) a conviction of any violation of the provisions of this chapter 2) a material misrepresentation on the permit application or renewal or 3) a violation of the condition of the permit or any laws that would be grounds for denial of the permit.

While obtaining a criminal conviction for prostitution at a massage establishment is not impossible, it currently does not align with current methods to rescue victims of human trafficking. Our department's goal is not to gain a criminal conviction of a possible victim, as opposed to obtaining criminal convictions of the "pimps and johns". Our hope and focus is to rescue possible victims of human trafficking from illicit massage establishments and prevent the possibility of recruitment of further victims.

Additionally, operations to obtain the evidence in order to pursue a criminal conviction is multi-dimensional and involves hours of operational planning, numerous officers for safety purposes, funds to pay for services, and coordination with the District Attorney's Office, victim advocates, and often translators. This effort is very involved, and while not impossible, it depletes the resources available for other operations and the results are minimal.

DISCUSSION:

The Governor of California signed SB 731 on September 27, 2008, and AB 619 on August 4, 2011, which respectively adopted and amended Section 4600 *et seq.* of the California Business and Professions Code. Such legislation was intended to protect individuals who receive massage, protect communities from prostitution and illicit activity, and also facilitate legitimate massage by creating a centralized regulation of education, background, and permitting. Pursuant to the legislation, massage providers may voluntarily apply for and receive a certificate from the state's California Massage Therapy Council (CAMTC) per the California Massage Therapy Act. Once an individual obtains a CAMTC certificate, he or she is able to practice in any city or county without being required to obtain a local license or permit. Similarly, a massage business that uses only CAMTC-certified massage practitioners is not required to obtain a separate local license or permit. However, the local jurisdiction retains the ability to require health and safety regulations, and to require that practitioners and businesses register with the jurisdiction. The jurisdiction retains the ability to require zoning restrictions, building regulations, and business licensing, as long as those regulations also affect other "professional or personal service businesses" (e.g. dentistry, medicine, chiropractors, optometrists, attorneys, etc.).

Given this system, many jurisdictions in California are adopting massage ordinances with the intent of regulating the practice of massage in accordance with the program described above. When used in conjunction with a strong local ordinance, a city can reduce the burden of enforcement, resulting in making it harder for illicit businesses to comply, and easier to shut such illicit businesses down.

The proposed ordinance allows the City to maintain the ability to regulate, inspect, and monitor massage businesses while shifting much of the administrative work and background checks to the CAMTC.

The current ordinance only makes massage establishment permits necessary if the establishment is owned by a non-CAMTC certified individual, or the establishment allows a non-CAMTC certified therapist to work for them. Appropriately, the current fee and cost of a “Massage Establishment Permit” is \$688.00. This fee encompasses background checks of non-CAMTC certified owners, fingerprinting, any history of the establishment or geographical location of the establishment, as well as other verifications that must be done to ensure the accuracy of the application.

The proposed ordinance shifts this work by requiring CAMTC certification. With the proposed changes to BMC Chapter 5.52, permits would no longer be necessary because it requires all massage practitioners to be CAMTC certified. With the adoption of the proposed ordinance, massage establishments will be required to register with the Police Department in order to verify their employees are CAMTC certified. All current massage establishments will be required to re-register with the Police Department bi-annually. The “Massage Registration Certificate” fee has been calculated at \$49.00. This calculation takes into account a police officer’s hourly rate and the projected amount of time required during the registration process and future inspections ensuring compliance to the ordinance. Accordingly, we recommend the City Council amend the current City Fee Schedule, eliminating the current “Massage Establishment Permits”, and adding a “Massage Registration Certificate” fee at \$49.00.

The registration certificate will expire after two years, causing all massage establishments to have to re-register bi-annually to maintain a current certificate.

Additionally, with the adoption of the new BMC Chapter 5.52, operational requirements according to the municipal code would increase. These operational requirement changes also include the CAMTC certification of each massage practitioner on site. Practitioners will be required to wear CAMTC certification cards while performing massage and copies of their CAMTC certification must remain on site at all times. Employees practicing massage are only able to perform massage under the name on their CAMTC certificate.

The operational requirements also include keeping advertising clean and having no sexually suggestive ads posted on the internet. The proposed ordinance would also enforce visibility requirements into the massage establishment (no more than 10% of the entrance can be blocked). A clause in proposed BMC Chapter 5.52 also addresses transfers of ownership and does not allow re-application within one year of revocation. The proposed ordinance also includes a stipulation that all massage establishments will be required to operate according to the regulations set forth by the Massage Therapy Council Act. If an establishment were to repeatedly violate or not correct the violations, their registration certificate could be revoked or suspended.

Ordinances in Other Cities

The following summary of ordinances from nearby cities provides a reference for Council consideration:

Massage Ordinance - Policy in Other Cities		
City	Policy	Registration Fees
Pinole	Any Massage Practitioner practicing must be CAMTC certified and is required to register for a permit to operate in the city. Any massage establishment must also have a registration certificate or operator permit.	No fee for practitioner registration.
Pacifica	CAMTC certification and local registration are required.	Non-refundable fee set by a resolution of the City Council.

Because of the negative impacts described earlier in this report, staff recommends repealing and replacing Chapter 5.52 (Massage) of the BMC effective 60 days from its adoption date. Staff recommends the repeal and replacement of the ordinance because the proposed ordinance differs considerably from the current ordinance. The proposed changes will require CAMTC certification for any person who is practicing massage in the city of Benicia, as well as require a local registration certificate from the Police Department for any massage establishment doing business within the City. This certificate will include a fee set by City Council resolution. It will also increase operational requirements and standards.

CAMTC certification is helpful because it requires completion of an approved educational program; it also requires therapists to pass an examination and a background check funded by the state. This will enable enforcement officers to easily verify certification and file a complaint or report if any municipal codes or operator requirements are violated.

With requiring CAMTC certification for all massage practitioners, subjects do not need to be criminally convicted for their certification to be suspended or revoked. Without their CAMTC certification, they are not permitted to work or operate in the City.

NEXT STEPS:

Adopt the proposed ordinance, thereby repealing the current one and replacing it with the version proposed. Upon the adoption of proposed ordinance and the Benicia Municipal Code updated, notice will be provided to those already registered with a business license in the City of Benicia. Massage establishments will be given approximately 60 days to apply for permits to operate within the City and show conformance to operate under the new BMC.

ALTERNATIVE ACTIONS:

Decline to repeal the current ordinance, thereby declining to adopt the proposed ordinance, and therefore leaving the current Benicia Municipal Code Chapter 5.52 (Massage) as is, which has proven inadequate in ensuring the legitimacy of businesses offering massage therapy or providing suitable tools for enforcement of those businesses operating in violation of the code.

General Plan	Goal: #2.28: Improve and maintain public facilities and services
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Strategic Plan	Strategic Issue #1: Protecting Community Health and Safety
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CEQA Analysis	The proposed amendments are exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3), the “general rule” exemption, which states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
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ATTACHMENTS:

1. Massage Ordinance

For more information contact: Erik Upson, Police Chief

Phone: 707-746-4265

E-mail: eupson@ci.benicia.ca.us

CITY OF BENICIA

ORDINANCE NO. 19-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA REPEALING AND REPLACING BENICIA MUNICIPAL CODE CHAPTER 5.52 MASSAGE

THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN AS FOLLOWS:

Section 1.

Chapter 5.52 (Massage) will be repealed in its entirety and replaced with the following:

**CHAPTER 5.52
MASSAGE**

Sections:

5.52.010 Purpose

5.52.020 Definitions

5.52.030 Required CAMTC certification and local registration

5.52.040 Massage business registration

5.52.050 Operating requirements

5.52.060 Inspection by officials

5.52.070 Notifications

5.52.080 Change of location or name

5.52.090 Exemptions

5.52.100 Violations and penalties

5.52.110 Administrative citations and fines

5.52.120 Denial, suspension and revocation of registration certificates

5.52.130 Public nuisance

5.52.010 Purpose

A. In enacting this chapter, the city council recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The city council further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

B. Furthermore, it is the purpose and intent of this chapter to address the negative impacts to reduce or prevent neighborhood blight and to protect and preserve the quality of city neighborhoods and commercial districts; and to enhance enforcement of criminal statutes relating to the illegal conduct of operators and employees of massage businesses.

C. It is the council's further purpose and intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature in 2008, as well as subsequent amendments, in Business and Professions Code sections 4600 et seq., to restrict the commercial practice of massage in the city to those persons duly certified to practice by the California Massage Therapy Council, and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

5.52.020 Definitions

For the purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

"Business" includes, but is not limited to, everything about which a person can be employed, and means that which occupies the time, attention, and labor of men and women for the purpose of producing a livelihood or profit, and connotes the efforts of men and women by varied and diverse methods of dealing with each other, to improve their economic conditions, and for the purposes of this chapter shall include, without limitation, all such efforts to provide massage, as well as the advertising and soliciting of massages, The term "business" includes, but is not limited to, a massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners and therapists.

"California Massage Therapy Council" or "CAMTC" means the massage therapy organization formed pursuant to California Business and Professions Code Section 4602.

"Certification officer" means a representative of the Benicia Police Department or designees.

"Certified massage practitioner" means any individual certified by the California Massage Therapy Council as a certified massage therapist or as a certified massage practitioner pursuant to California Business and Professions Code Sections 4600 et seq.

"City Registration Certificate" means a registration certificate issued by the certification officer upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this chapter.

"Client" means the customer or patron who pays for or receives massage services.

"Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

"Employee" means any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business, including but not limited to an independent contractor.

"Health officer" means a representative from the County of Solano Environmental Health or designee and/or a person designated by the City of Benicia to conduct health and safety inspections.

"Hearing officer" shall mean any person appointed by the city manager to preside over the hearings described in this chapter. The hearing officer can have no pecuniary interest in the outcome of the hearing, or interest in or bias regarding the case. If the appointee is a city employee, the appointee cannot work in the department that is administering the citation, nor can any decision of the hearing officer be made subject to the employee's performance evaluation in his/her regular job.

"Massage" or "massage therapy," means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

"Massage business" means any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through mobile massage services. Any business that offers any combination of massage therapy and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage business under this chapter. The term "massage business" includes a certified massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship.

"Mobile massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operation's address set forth in the massage business's City Registration Certificate.

"Operator" or "massage business operator" means any and all owners of a massage business.

"Owner" or "massage business owner" means any of the following persons:

1. Any person who is a general partner of a general or limited partnership that owns a massage business.
2. Any person who has a five (5%) percent or greater ownership interest in a corporation that owns a massage business.
3. Any person who is a member of a limited liability company that owns a massage business.
4. Any person who has a five (5%) percent or greater ownership interest in any other type of business association that owns a massage business.

"Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

"Practitioner" or "massage practitioner" shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).

"Reception and waiting area" means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

"Registration" means the registration required by this chapter to operate a massage business.

"School of massage" means any school or institution of learning that is recognized as an approved school pursuant to Business and Professions Code division 2, chapter 10.5, as currently drafted or as may be amended.

"Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.

"Solicit" means to request, ask, demand or otherwise arrange for the provision of services.

5.52.030 Required CAMTC certification and local registration

A. Individuals. On and after the effective date of this chapter, it shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the city unless that individual is a current certified massage practitioner.

B. Businesses. On and after the effective date of this chapter, it shall be unlawful for any business to provide massage for compensation within the city unless all individuals employed by the massage business to perform massage, whether as an employee, independent contractor, or sole proprietorship, are certified massage practitioners and said business has obtained a valid City Registration Certificate as provided in section 5.52.040.

5.52.040 Massage business registration

A. Application. The registration application for a City Registration Certificate shall include all of the following:

1. Legal name of the massage business.
2. Address and telephone number of the massage business.
3. Legal names of all owners of the massage business.

4. A list of all of the massage business's employees and independent contractors who are performing massage and their current CAMTC certification.
5. Residence address and telephone number of all owners of the massage business.
6. Business address and telephone number of all owners of the massage business.
7. The form of business under which the massage business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).
8. Each owner or operator of the massage business who is not a CAMTC-certified massage practitioner shall submit an application for a background check, including the following: the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business, spa, wellness facility, sauna, hot tub facility, bathhouse, or similar business owned or operated by the individual whether inside or outside the County of Solano and its incorporated cities.
9. For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.
10. For all owners, a signed statement that all of the information contained in the application is true and correct under penalty of perjury; that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code Sections 4600, et seq., any local, state, or federal law, or the provisions of this chapter may result in revocation of the business's City Registration Certificate.

B. Issuance. Upon providing by the massage business of the foregoing documentation, the certification officer shall issue the massage business a City Registration Certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one year after an application or renewal is denied or a certificate is revoked. The certification officer may decline to issue a City Registration Certificate if any of the required information is not true, complete, or correct, or if an individual required to submit to a background check pursuant to subsection (a)(8) above fails to pass such background check. City Registration Certificates may not be issued to a massage business seeking to operate at a particular location if:

1. Another massage business is or was operating at that particular location and that massage business is currently serving a suspension or revocation pursuant to Section 5.52.130 of this chapter, during the pendency of the suspension or one year following revocation.

2. Another massage business is or was operating at that particular location and that massage business has received a notice of suspension, revocation or fine issued pursuant to Sections 5.52.130 and 5.52.120, during the ten-day period following receipt of the notice or while any appeal of a suspension, revocation or fine is pending.
3. Another massage business is or was operating at that particular location and that massage business has outstanding fines issued pursuant to Section 5.52.120, that have not been paid.

C. Amendment. A massage business shall apply to the city to amend its City Registration Certificate within thirty (30) days after any change in the registration information, including, but not limited to, the hiring or termination of certified massage practitioners, the change of the business's address, or changes in the owner's addresses and/or telephone numbers.

D. Renewal. A massage business shall apply to the city to renew its City Registration Certificate at least thirty (30) days prior to the expiration of said City Registration Certificate. If an application for renewal of a City Registration Certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.

E. Fees. The registration application, and any amendment to or renewal of an existing registration certificate, shall be accompanied by a fee as specified by city council resolution, no part of which shall be refundable. The provisions of this section shall not prevent the city from establishing additional fees for safety inspections as may be conducted from time to time, and for the background checks, fingerprinting, and subsequent arrest notification for owners of a massage business who are not CAMTC-certified and who are subject to such background checks pursuant to this chapter. Fees for appeal are established by city council resolution.

F. Transfer. A City Registration Certificate shall not be transferred to a new potential owner except with the prior written approval of the certification officer. A written request for such transfer must be provided, along with an application for registration from the new owner, who must meet all of the requirements of this chapter. In the event of denial, notification of the denial and reasons therefore shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail. A City Registration Certificate may not be transferred during any period of suspension or one year following revocation pursuant to Section 5.52.130, during the ten-day period following a massage businesses' receipt of a notice of suspension, revocation or fine issued pursuant to Sections 5.52.120 and 5.52.130, or while any appeal of a suspension, revocation or fine is pending. Further, a City Registration Certificate may not be transferred until all outstanding fines issued pursuant to Section 5.52.120 have been paid.

5.52.050 Operating requirements

On or after the effective date of this chapter, no person shall engage in, conduct, carry on, or permit any massage within the city unless all of the following requirements are met:

A. CAMTC certification shall be worn by and clearly visible on the massage practitioner's person, or displayed in a room where the massage occurs and within view of the client, during

working hours and at all times when the massage practitioner is inside a massage business or providing mobile massage.

B. Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall nevertheless terminate at 10:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business, to inform clients of the requirement that services must cease and the building vacated of all patrons at 10:00 p.m.

C. A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. For mobile massage, the massage practitioner shall make a list of the services and the cost of such services available for review by the client in advance of performing any service. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall an operator or a massage practitioner request or charge a fee for any service other than those on the list of services available and posted in the reception area of the business or provided to the client in advance of any mobile massage services.

D. A copy of the CAMTC certificate of each and every massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises. For mobile massage, the massage practitioner shall have the CAMTC certification on his or her person when providing services. CAMTC certificates of former employees and/or contractors shall be removed as soon as those massage practitioners are no longer employed by or offering services through the massage business.

E. For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or other city officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years and be immediately available for inspection during business hours.

F. Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

G. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths, pools and bathtubs shall be thoroughly cleaned and

disinfected as needed, and at least once each day the premises are open, with an appropriate disinfectant approved by the Solano County Health Officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Solano County Health Officer. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.

H. Instruments utilized in performing massage shall not be used on more than one client unless they have been sterilized, using approved sterilization methods.

I. All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or breasts. For the purposes of this section, "outer garments" means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.

J. No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

K. No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.

L. No massage business shall place, publish or distribute, or cause to be placed, published or distributed any sexually suggestive advertising relating to massage services, including advertising that depicts any portion of the human body that reasonably suggests to prospective clients that any service is available other than those services listed as an available service pursuant to subsection Section 5.52.060(B), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter. All advertising shall list the name of the business listed on the registration certification application, or if a sole practitioner, the name under which the practitioner is certified, as well as the practitioner's CMTC certification number.

M. No massage shall be given unless the client's genitals are, at all times, fully covered. A massage practitioner shall not, in the course of administering any massage, make physical contact with the genitals, or anus, of any other person regardless whether the contact is over or under the person's clothing. Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider is prohibited.

N. The entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present unless the massage establishment is a business entity owned by one individual with one or no employees or

independent contractors and where there is no staff available to assure security for clients and massage staff engaged in performing massage services.

O. No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises. For the purpose of this subsection, there is an irrebuttable presumption that the visibility is impermissibly blocked if more than ten (10%) percent of the interior reception and waiting area is not visible from the exterior window.

P. All signs shall be in conformance with current city ordinances.

Q. Minimum lighting consisting of at least one artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.

R. Ventilation shall be provided in accordance with applicable building codes and regulations.

S. Hot and cold running water shall be provided at all times.

T. Adequate dressing, locker and toilet facilities shall be provided for clients.

U. A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

V. Pads used on massage tables shall be covered with material acceptable to the Solano County Health Officer.

W. All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.

X. A massage practitioner shall operate only under the name specified in his or her CAMTC certificate and city practitioner registration certificate. A massage business shall operate only under the name specified in its City Registration Certificate.

Y. No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business.

Z. Other than custodial or maintenance staff, no persons shall be permitted within the premises of a massage business between the hours of 11:00 p.m. and 6:00 a.m., except in the event of an emergency where the owner needs to be present.

AA. Compliance with any and all regulations required by CMTC.

5.52.060 Inspection by officials

The investigating and enforcing officials of the city, including, but not limited to, the police, code enforcement officer, building official or designee, and County Health Department shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this chapter. The city may charge a fee for any safety inspections to cover the cost of the inspection as established by city council resolution.

5.52.070 Notifications

A. A massage business shall notify the certification officer, or his or her designee, of any changes described in Section 5.52.040(C), pursuant to the timelines specified therein.

B. A registrant shall report to the certification officer any of the following within ninety-six (96) hours of the occurrence:

1. Arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;
2. Resignations, terminations, or transfers of practitioners employed by the registrant's massage business;
3. Any event involving the registrant's massage business or the massage practitioners employed therein that constitutes a violation of this chapter or state or federal law.

C. This provision requires reporting to the certification officer even if the massage business believes that the certification officer has or will receive the information from another source.

5.52.080 Change of location or name

No business, business operator, or massage practitioner shall operate under any name or conduct any massage establishment or home visit service under any designation or at a location not specified in the approved city registration certificate.

5.52.090 Exemptions

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

A. Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

B. Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.

C. Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.

D. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

E. Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

F. Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

1. The massage services are made equally available to all participants in the event;
2. The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;
3. The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;
4. The sponsors of the event have been advised of and have approved the provisions of massage services;
5. The persons providing the massage services are not the primary sponsors of the event.

5.52.100 Violations and penalties

A. Unless otherwise exempted by the provisions of this chapter, every person, whether acting as an individual, owner, employee or agent of the owner, or operator who gives massages or conducts a massage business in violation of this chapter shall be guilty of a misdemeanor. The city attorney may reduce the penalty to an infraction.

B. Any massage business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business and Professions Code Section 17200, et seq., and the city attorney or district attorney may, in the exercise of discretion, in addition to, or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of Solano County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including, but not limited to, fines, attorneys' fees and costs.

C. All remedies provided for in this chapter are cumulative.

5.52.110 Administrative citations and fines

A. Violations. Upon a finding by the certification officer or any other city enforcement officer that a business has violated any provision of this chapter, the officer may issue an administrative citation resulting in administrative fines pursuant to BMC Chapter 1.10.

B. Separate violations. Each violation of any provision of this chapter shall constitute a separate violation. Each client to whom massage is provided or offered in violation of this

chapter shall also constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.

C. Outstanding fines. All outstanding fines resulting from administrative citations must be paid prior to the issuance or renewal of any registration.

D. Appeals. Appeals of administrative citations may be made pursuant to the appeal procedures in BMC Chapter 1.10.

5.52.120 Denial, suspension and revocation of registration certificates

A. Reasons. City Registration Certificates may be denied, suspended or revoked by the certification officer upon finding any of the following grounds:

1. A massage practitioner is no longer in possession of current and valid CAMTC certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage business to provide massage.
2. An owner or sole proprietor is required to register under the provisions of California Penal Code section 290 (sex offender registration); is convicted of California Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225—11235 (red light abatement), California Health and Safety Code §§ 11570 et seq. (Drug Abatement Act), or Cal. Civ. Code 3480 (Public Nuisance); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision, or any prior disciplinary action by CAMTC (not including non-payment or insufficient education).
3. The city determines that a material misrepresentation was included on the application for a certificate of registration or renewal.
4. Violations of any of the following occurred on the premises of a massage business or were committed by a massage practitioner: California Business and Professions Code sections 4600 et seq.; any local, state, or federal law; or the provisions of this chapter.

B. Procedures. Written notice of the denial, suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal hearing before the hearing officer.

C. Time period of suspension. The certification officer may suspend a City Registration Certificate for a period between five (5) days and the end of the license term, at his or her discretion.

D. Effective date of suspension or revocation. Suspension or revocation issued pursuant to subsection (b) will be effective ten (10) days from the date appearing on the order, unless a timely appeal is filed in accordance with subsection (E).

E. Appeal. The decision of the certification officer is appealable to the hearing officer.

1. An appeal must be in writing, and be hand-delivered or mailed to the city clerk.
2. An appeal must be received by the city clerk on or before the effective date of suspension or revocation provided by subsection (D) or the date of the letter of written denial.
3. The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the hearing officer. No massage business may open pending the appeal of a written denial of a City Registration Certificate.
4. A hearing shall be scheduled before the hearing officer within thirty (30) days. Either the appellant or the certification officer may request, in writing directed to the hearing officer, a continuance of the hearing. Such requests must be supported by good cause. The decision whether to grant a continuance is at the discretion of the hearing officer, who shall consider whether granting the continuance poses a threat to public health or safety in light of the severity of the violations alleged.
5. The decision of the hearing officer shall be a final administrative order, with no further administrative right of appeal or reconsideration. The hearing officer may sustain a denial, suspension or revocation, overrule a denial, suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension. However, no revocation or suspension shall be reduced to a length of less than a five-day suspension. Further the hearing officer may stay the effective date of any suspension for a reasonable time following a hearing.

F. Reapplication. No reapplication will be accepted within one year after a certificate is revoked.

G. Evidence. The following rules shall apply to any hearing required by this section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of evidence and discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

5.52.130 Public nuisance

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The city may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business pursuant to BMC Chapter 8.04, or in any manner provided by law.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3.

Effective Date. This ordinance shall be in full force and effective sixty (60) days after its adoption and shall be published and posted as required by law.

On motion of Council Member Largaespada, seconded by Council Member Young, the foregoing ordinance was introduced at a regular meeting of the City Council on the 20th day of August, 2019, and adopted at a regular meeting of the Council held on the 3rd day of September, 2019, by the following vote:

Ayes:

Noes:

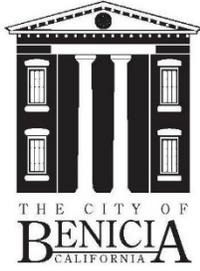
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date



AGENDA ITEM
CITY COUNCIL MEETING DATE – SEPTEMBER 3, 2019
BUSINESS ITEMS

TO : City Manager

FROM : Interim Community Development Director

SUBJECT : **INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.84 OF THE BENICIA MUNICIPAL CODE PERTAINING TO RETAIL CANNABIS OPERATIONS (PUBLIC HEARING) AND DISCUSSION OF POSSIBLE REVISIONS PERTAINING TO CANNABIS DELIVERY AND MICROBUSINESS USES**

EXECUTIVE SUMMARY:

The proposed project would amend Benicia Municipal Code Chapter 17.84 (Cannabis) to reduce the number of permitted cannabis retailers from two (2) to one (1), amend and add certain definitions, and change the permissible locations of cannabis retailers for which applications have not yet been received (see Attachment 1). The Planning Commission conducted a public hearing on August 14, 2019 and recommended against adoption of the proposed ordinance (5-0).

In addition to a hearing on the draft amendments for cannabis retail operations, the City Council is asked to provide feedback and direction on potential future revisions to the Cannabis Ordinance. Such revisions, as recommended by a consensus of the Planning Commission on August 14, 2019, include:

- Establish a license classification for delivery-only retail operations.
- Remove the limitation on the number of cannabis microbusinesses.
- Limit the location of delivery-only and microbusiness uses to the Industrial Districts within the Benicia Industrial Park, north of Interstate Highway 780.
- Clarify the applicability of the 600-foot buffer requirement for sensitive adjacent land uses to account for physical barriers to access, such as a freeway.

RECOMMENDATION:

1.a. Move to waive the first reading and introduce an ordinance of the City Council amending Chapter 17.84 (Cannabis Regulations) of the Benicia Municipal Code and find the ordinance exempt under the California Environmental Quality Act.

OR

1.b. Approve the Planning Commission’s recommendation against adoption of an ordinance amending the Benicia Municipal Code to prohibit retail cannabis businesses and do not introduce

an ordinance of the City Council amending Chapter 17.84 (Cannabis Regulations) of the Benicia Municipal Code (BMC).

2. Discuss and provide direction to staff on additional amendments to the BMC regarding cannabis delivery-only operations and additional cannabis microbusiness uses, including limitations on the locations where such uses may be located, and clarifying application of buffer requirements when the buffer is bisected by a physical barrier, such as a freeway.

BUDGET INFORMATION:

On November 29, 2018, following the passage of a Benicia cannabis excise tax, the City Council set the retail cannabis tax rate at 5%. Based on previous cannabis tax revenue estimates prepared by financial consulting firm HdL for the City, HdL estimated tax revenue for two retail cannabis businesses would be approximately \$250,000 annually. Reducing the number of cannabis retailers is likely to reduce the estimated tax revenue associated with this use.

While the proposed change would likely reduce the projected revenue from retail cannabis by half, the City would gain from a new revenue source with the proposed amended change to allow delivery-only businesses. These businesses would generate 2% in excise tax plus an additional 1% in state sales tax and potentially another 1% in the City's local use and transaction tax (if the product is delivered within Benicia). Staff anticipates that we will have at least one delivery business within the next twelve months and that business could generate in excess of \$100,000 in total tax revenue.

BACKGROUND:

City Council Direction

On February 20, 2018, the City Council adopted Ordinance 18-3, establishing new cannabis regulations by adding BMC Chapter 17.84 and making further amendments to Title 17 (Zoning) related to cannabis.

On April 2, 2019, the City Council agreed to discuss a request from Councilmember Largaespada as part of the City's two-step agenda process to increase the number of sensitive land use categories to the buffers required of cannabis retailers. After discussing the proposed buffers at the May 7, 2019 meeting, the City Council voted 4-1 to direct staff to prepare an amendment to the Cannabis Ordinance that would ban all cannabis retailers in Benicia (Attachment 2, "Except City Council Minutes, May 7, 2019"). The Council subsequently reconsidered its action on May 21, 2019, and after receiving public comment, voted to have staff return with an ordinance banning retail cannabis businesses. (Attachment 3, "Excerpt City Council Minutes, May 21, 2019").

Following the City Council's direction, on June 5, 2019, the Planning Commission conducted a noticed public hearing to consider the amendments to the Benicia Municipal Code that would ban cannabis retailers citywide. Following public comment, the Planning Commission voted on, but did not pass, a draft resolution that would have recommended that the City Council adopt an ordinance banning cannabis retailers. (Attachment 4, "Planning Commission Minutes, June 5, 2019").

On June 18, 2019, the City Council conducted a hearing on a proposed ordinance to ban cannabis retailers citywide. However, after further deliberations, the City Council provided subsequent direction to staff to prepare amendments that would limit the number of cannabis retailers to one (1), and expand the sensitive land uses buffer requirements for all retail cannabis applications received after September 10, 2018 (Attachment 5, “Excerpt City Council Minutes, June 18, 2019”).

On August 14, 2019, the Planning Commission conducted a public hearing and did not recommend approval of the proposed amendments to limit the number of permitted cannabis retailers to one (1), to amend the sensitive land uses buffer requirements for cannabis retailers, and to amend and add certain definitions to the Cannabis Ordinance (5-0). The Planning Commission further recommended that the City Council initiate amendments to the cannabis regulations to allow delivery-only as a permitted use, subject to a use permit and public safety license; to eliminate the limitation on the number of microbusiness uses; to limit delivery-only and microbusiness uses to the Benicia Industrial Park; and to clarify the application of buffer requirements when the buffer is interrupted by a physical barrier to sensitive land uses, such as a freeway (Attachment 6, “Planning Commission Draft Minutes, August 14, 2019”).

Current Regulations

The Zoning Ordinance allows cannabis business uses in specified zoning districts of Benicia. Cannabis retail is allowed in Community Commercial (CC), General Commercial (CG) and Waterfront Commercial (CW) districts. Cannabis manufacturing, distribution, cultivation, and microbusiness are allowed in Limited Industrial (IL), General Industrial (IG), Water Related Industrial (IW), and Industrial Park (IP). Cannabis testing is allowed in IL, IG, IW, IP, and Office Commercial (CO).

BMC Section 17.84.050 (Cannabis businesses – General provisions) requires a minimum distance of 600 feet from schools for all cannabis businesses.

BMC Section 17.84.050(A)(2) limits the number of permitted cannabis retailers to two (2). BMC Section 17.84.050(A)(3) limits the number of cannabis microbusinesses to one (1). Delivery of cannabis is allowed only as a component of an approved cannabis retailer or microbusiness and is not allowed as a standalone use.

The BMC requires all cannabis uses to apply for and receive approval of a public safety license from the Police Chief. All cannabis uses also require approval of a use permit from the Planning Commission following a public hearing. All cannabis businesses must renew their public safety license annually through the Police Department, and all cannabis use permits must be reviewed annually by staff. To date, one use permit has been approved and one public safety license has been issued, both to a cannabis manufacturing use at 4690 East Second Street.

Current Cannabis Retail Applications

In July 2018, the City issued a Request for Proposals (RFP) for cannabis retailers and microbusinesses. In accordance with the approved cannabis ordinance, the City provided location specifications regarding zoning and school distance buffer locations. Nine (9) proposals were submitted for cannabis retailer permits and no proposals were received for microbusiness

permits. The cannabis retailer proposals are currently undergoing public safety license review by the Chief of Police.

Each cannabis retailer application will be evaluated and scored on the basis of compliance with the “Criteria for Issuance” established in Section 17.84.070 of the cannabis ordinance and the scoring and evaluation criteria adopted by the City Council. Utilizing the scoring and evaluation criteria adopted by the City Council, the panel appointed to score retail applicants will place applicants on a Qualified Registration List. Once the list has been completed, the Planning Commission will be provided with the Qualified Registration List and shall either:

- a) Approve the Qualified Registration List presented and recommended by the Community Development Director.
- b) Deny the Qualified Registration List presented by the Community Development Director and approve an amended Qualified Registration List by making findings supporting the amended Qualified Registration List.
- c) Deny the Qualified Registration List and direct the Community Development Director to return to the Planning Commission with an amended Qualified Registration List.

Proposed Amendments to Benicia Municipal Code

The draft ordinance proposes amending the Benicia Municipal Code to reduce the number of cannabis retailers permitted in Benicia from two (2) to one (1), and to modify the sensitive land use buffer requirements for such businesses, including the following key amendments:

- BMC Section 17.84.020: amend the definition for “School” and add definitions for “Childcare center”, “Learning center”, “Public park” and “Youth center”. These definitions pertain to the minimum 600-foot separation (“buffer”) required between cannabis retailers and specified sensitive land uses.
- BMC Section 17.84.050: Amend the limitations on cannabis business location to require that applications received after September 10, 2018 be required to maintain a minimum 600-foot separation (buffer) from childcare centers, learning centers, public parks and youth centers and residential districts, in addition to schools. Applications received before September 10, 2018, which are currently under review through the cannabis retailer RFP, would still need to maintain a minimum 600-foot buffer from schools as currently required.

The proposed cannabis retailer amendments are generally consistent with the City Council’s direction on June 18, 2019. Staff has proposed that the definition for parks include parks owned by a public agency, since the essential use and character of these facilities in Benicia is similar to that of a City-owned facility.

The proposed amendments would apply throughout the City of Benicia, specifically in the zoning districts where retail cannabis businesses are currently allowed. These city-wide locations are:

- Community Commercial (CC) zoning districts are located in various locations south of Military East and West;

- General Commercial (CG) zoning districts are located generally at Columbus Parkway and Rose Drive; Southampton Road and Chelsea Hills Drive; East 2nd Street and Military East; East 5th Street and Military East; Adams Street and Grant Street in the Benicia Arsenal; and East 2nd Street and Lake Herman Road; and
- Waterfront Commercial (CW) zoning districts are located in the vicinity of the Benicia Marina extending from East 2nd Street to East 5th Street, south of East E Street.

The effect of the proposed amendments to the Benicia Municipal Code would be to reduce the number of permitted retail cannabis uses from two (2) to one (1) and to decrease the locations where such uses may be located due to buffer requirements. Due to the nature of uses that fall within 600 feet of most commercial areas (notably residential districts, parks and learning centers), most commercial property in Benicia would be ineligible for a cannabis retail use, except for the interchange at Interstate 680 and Lake Herman Road (see map, Attachment 7). One microbusiness with retail delivery would remain a permitted use. Manufacturing, testing labs, distributor, and cultivation businesses would remain permitted uses.

Additional Delivery-Only and Microbusiness Amendments for Council Consideration

Based on comments received during the cannabis ordinance review process, staff seeks City Council direction on the following potential future amendments to the cannabis ordinance:

- Amend Sec. 17.84.050 to establish a cannabis delivery-only retailer license.
- Remove the limitation on the number of permitted cannabis microbusinesses.
- Limit the location of all delivery-only and microbusiness cannabis uses to the Industrial Districts within the Benicia Industrial Park, north of Interstate Highway 780.

The proposed cannabis delivery-only use would allow for non-storefront retail delivery of cannabis from facilities that are based in the Benicia Industrial Park without a limitation on the number of use permits. These uses would be subject to approval of a public safety license and use permit, consistent with all other cannabis businesses.

With regard to microbusiness, Council feedback and direction is requested on removing the limitation on the number of microbusiness licenses. Pursuant to the state definition of microbusiness use, these facilities are comprised of multiple cannabis uses (e.g., cultivation, manufacturing, distribution, delivery). There is no limitation on the number of cultivation, manufacturing or distribution uses that may be permitted in Benicia.

The City’s Community Development Department and Office of Economic Development have received multiple inquiries from businesses and commercial brokers about an interest to locate delivery-only businesses in Benicia. The City has received interest from three businesses, one of which is an existing business in Benicia, expressing interest in developing a cannabis microbusiness.

Planning Commission Recommendation

At an August 14, 2019 special meeting following a public hearing, the Planning Commission recommended the City Council not amend the current regulations for cannabis retail uses in Benicia. The Commission’s recommendation, on 5-0 vote, followed a discussion about the City’s

consideration of this matter leading up to the original adoption of the cannabis ordinances in 2018. No members of the public provided comment at the public hearing.

On the topic of the retail zoning amendment, commissioners commented that reducing the number of licenses would have an adverse effect due to the absence of local competition and consumer choice, that limiting cannabis to commercial areas within the Industrial Park would contradict prior testimony regarding public safety, that childcare buffers seem unnecessary due to the restrictions on child access that require parents or guardians to sign children in and out, and that the 600-foot buffer that excludes an entire parcel even when there is a minor overlap seems to contradict the intent of the regulations and does not make sense when the buffer is bisected by a major barrier, such as a freeway.

With regard to delivery-only and microbusiness uses, commissioners expressed a consensus opinion that the City should consider an amendment to the cannabis ordinance that would allow delivery-only with approval of a use permit and public safety license, and that there should not be a limitation on the number of microbusiness licenses. Commissioners commented that there is not a limit on the individual uses of a microbusiness (manufacturing, distribution, cultivation) and questioned why the number of microbusiness uses should be limited. They commented that locating delivery-only and microbusiness uses in the Industrial Park would be appropriate because they are not intended to generate customer foot traffic.

The Planning Commission video can be viewed online at www.ci.benicia.ca.us/agendas.

Solano Airport Land Use Commission

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The City of Benicia anticipates that the proposed amendments will be heard by the ALUC on September 12, 2019. The purpose of the hearing would be to evaluate the consistency of the proposed zoning amendments with the Travis Air Force Base Airport Land Use Plan.

NEXT STEPS:

Prior to adoption of the ordinance, the City Council must conduct a second reading which is scheduled for September 17, 2019. If the amendments are adopted at the second reading, they would become effective 30 days later.

If the City Council initiates further amendments to the Benicia Municipal Code, staff anticipates that they would be brought forward for public hearing before the Planning Commission in Fall, 2019.

ALTERNATIVE ACTIONS:

The City Council could choose not to amend the cannabis ordinance for retail cannabis or may choose to take an alternative action on amendments to the zoning ordinance. Changes to the proposed ordinance may require a subsequent hearing before the Planning Commission.

General Plan	<p>Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.</p> <p>Program 2.5.C: Evaluate future uses on a cost/revenue basis, taking into account economic diversity for the long term and environmental and community costs and benefits.</p>
	<p>Goal 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia.</p> <p>Policy 2.6.1: Preserve industrial land for industrial purposes and certain compatible “service commercial” and ancillary on-site retail uses.</p> <p>Policy 2.6.2: Other land uses should not adversely affect existing industrial and commercial land uses.</p>
	<p>Goal 2.11: Encourage the retention and continued evolution of the lower Arsenal into a historic/cultural/commercial/industrial center of mutually compatible uses.</p> <p>Policy 2.11.1: Retain and expand the mix of compatible and balanced uses in the lower Arsenal area.</p>
	<p>Goal 2.13: Support the economic viability of existing commercial centers.</p> <p>Policy 2.12.1: Direct new commercial ventures first, towards Downtown, and second, to other existing economic centers (instead of dispersing resources to new areas).</p>
	<p>Goal 4.4: Reduce the incidence of substance abuse and strive for a drug-free community.</p>
	<p>Goal 4.6: Prevent and reduce crime in the community.</p>

Strategic Plan	<p>Strategic Issue #3: Strengthening Economic & Fiscal Conditions</p> <p>Strategy #1: Implement Economic Development Strategy</p> <p>Strategy #2: Strengthen Benicia Industrial Park competitiveness</p> <p>Strategy #3: Retain and attract business</p>
	<p>Strategic Issue #4: Preserving and Enhancing Infrastructure</p> <p>Strategy #4: Provide adequate funding for ongoing infrastructure needs</p>

CEQA Analysis	The proposed project is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060, subd. (c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and pursuant to CEQA Guidelines section 15061, subd. (b)(3) because there is no possibility the activity in question may have a significant effect on the environment. Furthermore, Business and Professions Code Section 26055(h) exempts from Division 13 of the Public Resources Code, the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity whereby the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13.
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ATTACHMENT(S):

1. Draft Ordinance – Cannabis Retail Amendments
2. Excerpt City Council Minutes, May 7, 2019
3. Excerpt City Council Minutes, May 21, 2019
4. Planning Commission Minutes, June 5, 2019
5. Excerpt City Council Minutes, June 18, 2019
6. Planning Commission Draft Minutes, August 14, 2019
7. Buffer for Commercial Properties

For more information contact: Alan Shear, Interim Community Development Director

Phone: 707.746.4277

E-mail: ashear@ci.benicia.ca.us

CITY OF BENICIA

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.84 (CANNABIS REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on February 20, 2018, City Council adopted Ordinance 18-3, establishing new cannabis regulations by adding Benicia Municipal Code Chapter 17.84 and making further amendments to Title 17 (Zoning) related to cannabis; and

WHEREAS, on April 1, 2019, the City Council initiated the first step of its two-step agenda process, by reviewing the City’s cannabis regulations and considering the addition of more sensitive uses to retail cannabis businesses’ required buffers; and

WHEREAS, the City Council, at a regular City Council meeting on May 7, 2019, approved a motion to ban retail cannabis and in so doing, directed staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis businesses; and

WHEREAS, the City Council, at a regular meeting on May 21, 2019, considered a request for reconsideration of direction to staff to prepare amendments to the Benicia Municipal Code to prohibit retail cannabis and the City Council did not decide to reconsider the May 7, 2019 direction to prohibit retail cannabis within the City of Benicia; and

WHEREAS, the proposed amendments reflect the City Council direction provided on May 7, 2019 and May 21, 2019; and

WHEREAS, the Planning Commission, at a special meeting on June 5, 2019, conducted a duly noticed public hearing, considered amendments to the Benicia Municipal Code Title 17 to prohibit retail cannabis, and did not recommend approval of said amendments to Title 17 to the City Council; and

WHEREAS, on June 18, 2019, the Benicia City Council conducted a public hearing and first reading on the amendments to ban retail cannabis and provided direction to staff to prepare amendments that would modify the buffer requirements for retail cannabis applications received after September 10, 2019 and reduce the number of retail cannabis use permits from two (2) to one (1); and

WHEREAS, the Planning Commission, at a special meeting on August 14, 2019, conducted a duly noticed public hearing, considered amendments to the Benicia Municipal Code Title 17 to modify buffer requirements for retail cannabis, reduce the number of retail cannabis use permits, add definitions of certain sensitive land uses, and recommended approval of said amendments to Title 17 to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments on _____, 2019, and introduced Ordinance No. _____ on _____, 2019.

NOW, THEREFORE, the City Council of the City of Benicia does hereby ordain as follows:

Section 1. Chapter 17.84 of Title 17 of the Benicia Municipal Code (Cannabis) is hereby amended to read as follows (deletions in ~~striketrough~~, additions in underline):

Sections:

- 17.84.010 Purpose and intent.
- 17.84.020 Definitions.
- 17.84.030 Residential cultivation of cannabis.
- 17.84.040 Cannabis businesses – Use permit and license required to operate.
- 17.84.050 Cannabis businesses – General provisions.
- 17.84.060 Use permit for commercial cannabis activities – Requirements.
- 17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.
- 17.84.080 Appeal from planning commission determination.
- 17.84.090 Suspension and revocation by planning commission.
- 17.84.100 Cannabis businesses – Conditions of operation.
- 17.84.110 Business license tax liability.
- 17.84.120 Annual review of cannabis businesses.
- 17.84.130 No vested rights.
- 17.84.140 Public nuisance.

17.84.010 Purpose and intent.

It is the purpose and intent of this chapter to regulate the cultivation, manufacturing, sale, delivery, testing and distribution of medical and adult-use cannabis in order to ensure the health, safety, and welfare of the residents of the city of Benicia. The regulations in this chapter are meant to ensure compliance with the Compassionate Use Act, the Medical Marijuana Program Act, and the Medicinal and Adult Use Cannabis Regulation and Safety Act (hereinafter the “state cannabis laws”) and are not intended to and do not interfere with a patient’s right to use medical cannabis as authorized by the state cannabis laws. Nor do these regulations criminalize the possession or cultivation of cannabis for medical or nonmedical purposes as permitted by the state cannabis laws. Cannabis businesses within the city must comply with all provisions of the Benicia Municipal Code for obtaining permits for a cannabis business and must comply with the state cannabis laws and all other applicable local and state laws. (Ord. 18-03 § 1).

17.84.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

“Applicant” means a person who is required to file an application for a cannabis business under this chapter, including an individual owner, managing partner, officer of a corporation, or any other dispensary operator, management member, employee, or agent of a cannabis business.

“Cannabis” shall have the meaning set forth in Business and Professions Code Section 26001(f) and as subsequently amended.

“Cannabis business” shall include:

1. Any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity takes place.
2. Any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license under Business and Professions Code Sections 26000 and following, including but not limited to cannabis cultivation, cannabis distribution, cannabis manufacturing, cannabis testing and cannabis retail sales, and the operation of a cannabis microbusiness.

“Cannabis product” shall have the same meaning as in Health and Safety Code Section 11018.1.

“Canopy” means all areas occupied by any portion of a cannabis plant, encompassing all vertical planes (i.e., stacking of plants), whether contiguous or noncontiguous on any one site. The canopy shall be measured by taking the longest length and widest width of existing plants (including all gaps, walkways, and open areas between plants) and multiplying the longest length by the longest width to get the area of the cannabis canopy. Each level of a stacked cultivation will be calculated as a separate canopy.

“Childcare center” means a licensed day care facility that provides nonmedical care to children under 18 years of age on a less than 24-hour basis, and includes infant centers, nursery schools, preschools, extended day care facilities, large family day care homes, and school age child care centers.

“Commercial cannabis activity” shall include the cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer or patient. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“Distribution” means the procurement, storage, sale, and transport of cannabis and cannabis products between licensees.

“Drug paraphernalia” shall have the meaning set forth in California Health and Safety Code Section 11014.5, and as subsequently amended.

“Edible cannabis product” means cannabis that is intended to be used, in whole or in part, for human consumption.

“Identification card” shall have the meaning set forth in California Health and Safety Code Section 11362.712, and as may be amended from time to time.

“Learning center” means a facility that provides appointment- or classroom-based tutoring, test preparation, drivers’ education, instruction in science, technology, engineering, arts and math (STEAM), and similar instruction for school-aged youth, and state-licensed adult day programs for individuals with developmental or physical disabilities.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Medicinal cannabis” or “medicinal cannabis product” shall have the meaning set forth in California Business and Professions Code Section 26001(ai), which includes cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at California Health and Safety Code Section 11362.5, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Operator” means any person responsible for management of the cannabis business, any person listed on the cannabis business’s articles of incorporation, any person owning an interest in the cannabis business, and any person that supervises another employee of the cannabis business.

“Owner” shall have that meaning set forth in Business and Professions Code Section 26001(al) and as it may be amended.

“Permittee” means any person issued a use permit for cannabis under this chapter.

“Physician” means a licensed medical doctor, including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

“Property” means the designated structure or structures and land specified in the use permit for cannabis application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted.

“Public Park” means an area of land, owned by a public agency, including local, state and/or federal entities, that provides outdoor recreation facilities and programming or provides open space recreational opportunities.

“Qualified registration list” means the list established through a competitive process to determine the best applicants for use permits for cannabis businesses that have retail components, including microbusinesses.

“School” means any public or private school providing instruction in kindergarten or any of grades one to 12, consistent with curriculum content standards adopted by the California State Board of Education, inclusive, but does not include any private school in which education is primarily conducted in private homes.

“State cannabis laws” means and includes California Health and Safety Code Sections 11362.1 through 11362.45, 11362.5 (Compassionate Use Act of 1996) and 11362.7 to 11362.83 (Medical Marijuana Program); California Business and Professions Code Sections 26000, et seq. (Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”)); all state laws enacted or amended pursuant to SB-94, Chapter 27, Statutes of 2017; the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029; California Water Code Section 13276; all state regulations adopted pursuant to MAUCRSA; any license issued pursuant to MAUCRSA; and all other applicable laws of the state of California regulating cannabis or cannabis products.

“Testing laboratory” means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products. (Ord. 18-03 § 1).

“Youth Center” shall have that meaning set forth in Section 11353.1 of the Health and Safety Code, as that section may be amended.

17.84.030 Residential cultivation of cannabis.

A. No more than six living cannabis plants for personal use may be cultivated at an individual residential unit. Cultivation must not be visible from a public place, including a public right-of-way, and shall only occur:

1. Inside an occupied and inhabited dwelling unit; or
2. Inside a fully enclosed, locked, and secured accessory structure to an occupied and inhabited dwelling unit located in the rear yard or side yard of the same lot where there is (a) no visual or minimal olfactory evidence of cultivation detectable from the public right-of-way or from adjoining properties, (b) the structure is placed at least five feet from the rear yard and side yard property lines, and (c) the structure is no more than 10 feet tall.

B. The drying and processing of cannabis for personal use shall only occur in a fully enclosed structure and shall not be visible from a public place, including a public right-of-way.

C. Persons cultivating cannabis in a residence shall comply with all applicable building code requirements set forth in the Benicia Municipal Code, there shall be no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of cannabis cultivation, and the cannabis cultivation shall comply with Health and Safety Code Section 11362.2(a)(3) as it may be amended. (Ord. 18-04 § 1).

17.84.040 Cannabis businesses – Use permit and license required to operate.

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon property located within the city, the operation of a cannabis business unless that person has first obtained and continues to maintain in full force and effect a valid use permit for commercial cannabis activity issued by the city for that property and a valid cannabis public safety license issued by the city to the owner and/or operator of the cannabis business, pursuant to Chapter 9.60 BMC. (Ord. 18-03 § 1).

17.84.050 Cannabis businesses – General provisions.

A. Cannabis Businesses Allowed.

1. Only those types of cannabis businesses set forth in this section shall be allowed within the city. Any and all cannabis businesses, activities, nonprofits, associations, enterprises, collectives, cooperatives or dispensaries not expressly described herein are expressly prohibited.

- a. Cannabis retailer (“retailer”).
- b. Cannabis manufacturing operation (“manufacturer”).
- c. Cannabis testing laboratory (“testing labs”).
- d. Cannabis distributor (“distributor”).
- e. Cannabis cultivation operation (“cultivator”).
- f. Cannabis microbusiness (“microbusiness”).
- g. Cannabis delivery operations (“delivery”).

2. No more than ~~one~~^{two} cannabis retailer ~~is s~~^{are} permitted in the city.

3. No more than one microbusiness is permitted in the city.

4. An owner or operator of a cannabis business may own or operate more than one cannabis business within the city.

5. All retail operations shall occur in a fully enclosed permanent structure.

B. Limitations on Location.

1. Permissible Zoning. Subject to limitations described in this chapter or other parts of the zoning ordinance, cannabis businesses may only operate in the zones specified in Division II or Division III of the zoning ordinance.

2. Areas and Zones Where Cannabis Businesses Are Not Permitted.

a. Cannabis Retailers – Applications Received Prior to September 10, 2018.
Notwithstanding subsection (A)(1) of this section, cannabis retail businesses whose cannabis use permit applications were received prior to September 10, 2018, may not operate on a parcel or lot located within 600 feet of a school that is in existence at the time the use permit for a cannabis business is issued. This distance shall be calculated as a straight line from any parcel line of the property on which the cannabis business is located to the parcel line of the real property on which the facility, building, or structure, or portion of the facility, building or structure, in which the listed use occurs or is located. Locational restrictions shall apply to an entire parcel if any portion of the parcel is located within the applicable buffer distance.

b. Cannabis Retailers – Applications Received After September 10, 2018.
Notwithstanding subsection (A)(1) of this section, cannabis retail businesses whose cannabis

use permit applications were received after September 10, 2018, may not operate on a parcel or lot located within 600 feet of a child care center, youth center, learning center, any residential district of the City, or public park, any of which were in existence at the time the use permit for a cannabis business is issued. This distance shall be calculated as a straight line from any parcel line of the property on which the cannabis business is located to the parcel line of the real property on which the facility, building, or structure, or portion of the facility, building or structure, in which the listed use occurs or is located. Locational restrictions shall apply to an entire parcel if any portion of the parcel is located within the applicable buffer distance.

c. All Other Cannabis Businesses. Notwithstanding subsection (A)(1) of this section, a cannabis business may not operate on a parcel or lot located within 600 feet of a school that is in existence at the time the use permit for a cannabis business is issued. This distance shall be calculated as a straight line from any parcel line of the property on which the cannabis business is located to the parcel line of the real property on which the facility, building, or structure, or portion of the facility, building or structure, in which the listed use occurs or is located. Locational restrictions shall apply to an entire parcel if any portion of the parcel is located within the applicable buffer distance.

C. Transfer of Use Permits for Cannabis Businesses.

1. Permit – Site Specific. A permittee shall not operate a cannabis business under the authority of a use permit for a commercial cannabis activity at any place other than the address of the cannabis business stated in the application for the permit. All permits issued by the city pursuant to this chapter shall be nontransferable to a different location.

2. Transfer of a Permitted Commercial Cannabis Activity. A permittee shall not transfer ownership or control of a cannabis business or attempt to transfer a use permit for a commercial cannabis activity to another person unless and until the transferee obtains an amendment to the permit from the planning commission to the permitting requirements of this chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the community development department in accordance with all provisions of this chapter accompanied by the required transfer review application fee.

3. Request for Transfer with a Revocation or Suspension Pending. No use permit for a commercial cannabis activity may be transferred (and no permission for a transfer may be issued) when the community development department has notified the permittee in writing that the permit has been or may be suspended or revoked for noncompliance with this chapter and a notice of such suspension or revocation has been provided.

4. Transfer without Permission. Any attempt to transfer a use permit for commercial cannabis activity either directly or indirectly in violation of this chapter is declared void, and the permit shall be deemed revoked. (Ord. 18-03 § 1).

17.84.060 Use permit for commercial cannabis activities – Requirements.

A. Except as set forth in this chapter, use permits for commercial cannabis activities shall be processed in accordance with Chapter 17.104 BMC (Use Permits and Variances). The city

council shall establish any necessary use permit procedures, by resolution, specific to commercial cannabis activities.

B. Use Permits for Retail and Microbusinesses. Because only ~~a limited number of one cannabis~~ retailer and one cannabis microbusiness ~~are~~is permitted, an application period for these businesses shall be established to allow the selection of the best applicants. The competitive process for selection of the best applicants to be placed on the qualified registration list shall be established by resolution of the city council.

C. Use permit for applications for cannabis retailers shall include a statement as to whether the use will include delivery of cannabis and cannabis products to locations outside the cannabis retail facility. If delivery services will be provided, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this chapter and state law.

D. The planning commission shall review and approve or deny all complete use permit applications for commercial cannabis activities by utilizing the criteria for approval or denial set forth in this chapter and by separate resolution of the city council. The planning commission shall only approve as many use permits for cannabis applications as permitted by BMC 17.84.050(A). After reviewing an application, the planning commission shall determine whether to issue the use permit for commercial cannabis activities with conditions, or deny the use permit for commercial cannabis activities.

E. Imposition of Permit Fees. Every application for a use permit for commercial cannabis activities shall be accompanied by an application fee (in an amount established by resolution of the city council) at an amount calculated to recover the city's full cost of reviewing and issuing said permit and the filing of a complete required application pursuant to this chapter. The application fee shall be in addition to any other fees or costs, such as business license fees, permit fees, fingerprinting, photographing or background check, as may be imposed by the city or other governmental agencies. (Ord. 18-03 § 1).

17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.

A. Criteria for Issuance. In addition to the findings required by Chapter 17.104 BMC, the planning commission, or the city council on appeal, shall make all of the following findings in determining whether to grant, modify, or deny a use permit for any cannabis business:

1. The cannabis business applicant has been placed on the cannabis qualified registration list.
2. The use permit for cannabis application is complete and the applicant has submitted all information and materials required.
3. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to a school.
4. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to another permitted cannabis business.

5. The design of the storefront or structure within which the cannabis business will operate is architecturally-compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.
6. The proposed size of the cannabis business is appropriate to meet the needs of the local Benicia community for access to cannabis and that the size complies with all requirements of the city's zoning regulations.
7. The location is not prohibited under the provisions of this chapter or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the city's zoning regulations will be accomplished.
8. The cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.
9. The cannabis business is not likely to violate any provision of the BMC or conditions imposed by a city-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.
10. The applicant has not made a false statement of material fact or omitted a material fact in the application for a use permit for cannabis, as known at the time of determination on the application.
11. The cannabis business's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.

B. Supplemental Findings – Cannabis Manufacturing Operation. In addition to the findings required for the approval of a use permit for cannabis as set forth in subsection (A) of this section, the planning commission, or the city council on appeal, shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for cannabis for a manufacturer:

1. The manufacturing operation, as proposed, may utilize nonvolatile or volatile solvents for purposes of extracting cannabinoids. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the Benicia Municipal Code (BMC) including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

2. The manufacturing operation includes adequate quality control measures to ensure any cannabis product manufactured at the site meets industry standards.

3. The manufacturing operation does not pose a significant threat to the public or to neighboring uses from explosion or from the release of harmful gases, liquids, odors or substances.

C. Supplemental Findings – Cannabis Testing Laboratory. In addition to the findings required for the approval of a use permit for cannabis as set forth in subsection (A) of this section, the planning commission, or the city council on appeal, shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for cannabis for a testing lab:

1. The owners, permittees, operators, and employees of the testing lab will not be associated with any other form of commercial cannabis activity.

2. The testing lab is accredited by an appropriate accrediting agency as approved by the state and further described in California Code of Regulations, Title 16, Section 5702 and as it may be amended.

3. The testing lab operating plan demonstrates proper protocols and procedures for statistically valid sampling methods and accurate certification of cannabis and cannabis products for potency, purity, pesticide residual levels, mold, and other contaminants according to adopted industry standards.

D. Criteria for Denial. The planning commission shall deny an application that meets any one of the following criteria:

1. Any supervisor, employee, or person having a 10 percent or more financial interest in the cannabis business has been convicted of a felony or a drug-related misdemeanor reclassified by California Penal Code Section 1170.18 (Proposition 47) within the past 10 years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

2. Any person who is listed on the application or is an owner or operator, is a licensed physician making patient recommendations for medical cannabis pursuant to Health and Safety Code Section 11362.7;

3. Any person who is listed on the application or is an owner or operator is less than 21 years of age;

4. The proposed cannabis business does not comply with the provisions of this chapter or state cannabis laws; and

5. The planning commission is unable to make a required finding contained in this chapter.

E. Planning Commission Determination. If the planning commission denies the application, the planning commission shall specify in writing the reasons for the denial of the application, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to BMC 17.84.080. (Ord. 18-08 § 1; Ord. 18-03 § 1).

17.84.080 Appeal from planning commission determination.

An applicant or any interested party who disagrees with the planning commission’s decision to issue, issue with conditions, or to deny or revoke a use permit for a commercial cannabis activity may appeal the planning commission’s decision to the city council in accordance with the appeal provisions of Chapter 1.44 BMC. (Ord. 18-03 § 1).

17.84.090 Suspension and revocation by planning commission.

A. Authority to Suspend or Revoke a Use Permit for Cannabis. Any permit issued under the terms of this chapter may be suspended or revoked by the planning commission under BMC 17.128.060.

B. In addition to the required findings set forth in BMC 17.128.060(D), a use permit for a commercial cannabis activity may be revoked if it appears to the planning commission that the cannabis business has violated any of the requirements of this chapter, the cannabis business is being operated in a manner which violates the operational requirements or security plan required by the zoning code, the cannabis business is being operated in a manner which constitutes a nuisance, the cannabis business has ceased to operate for thirty 30 days or more, or the cannabis business is being operated in a manner which conflicts with or violates state cannabis law.

C. Any use permit for a commercial cannabis activity revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the permittee to any uses authorized by the use permit.

D. Revocation, expiration or nullification of a cannabis public safety license pursuant to BMC 9.60.060 and 9.60.070 shall automatically terminate the use permit for a commercial cannabis activity issued to the licensee and shall terminate the ability of the licensee to operate a cannabis business without initiation of revocation proceedings by the planning commission. (Ord. 18-03 § 1).

17.84.100 Cannabis businesses – Conditions of operation.

A. All Cannabis Businesses. All cannabis businesses shall be operated, maintained, and managed on a day-to-day basis in compliance with the following operational conditions and requirements:

1. State Licensing. A cannabis business shall maintain a state cannabis license at all times and shall comply with all applicable state licensing requirements, regulations, conditions, and standards. The failure to maintain a state license, revocation of a state cannabis license, or lapse in renewal of a state cannabis license shall be the basis for immediate termination of the right to operate a cannabis business under a city use permit for cannabis.

2. Cannabis Public Safety License. A cannabis business shall maintain a cannabis public safety license, issued under Chapter 9.60 BMC, at all times. The failure to maintain a cannabis public safety license, revocation of a cannabis public safety license, or lapse in renewal of a cannabis public safety license shall be the basis for immediate termination of the right to operate a cannabis business under a use permit for cannabis.

3. Employees. It shall be unlawful for the applicant, owner, operator, or any other person effectively in charge of any cannabis business to employ any person who is not at least 21 years of age.

4. Minors. Persons under the age of 21 years shall not be allowed on the premises of a cannabis business unless they are a qualified patient or a person with an identification card as those phrases are defined by Health and Safety Code Sections 11362.79(c) and (f). Persons under the age of 18 years shall not be allowed on the premises of a cannabis business unless they are accompanied by a parent or guardian at all times. The entrance to cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.
5. Every cannabis business shall display, at all times during its regular business hours, the use permit for cannabis and cannabis public safety license issued for such cannabis business in a conspicuous place so that the same may be readily seen by all persons entering the cannabis business.
6. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises of the cannabis business that sells alcoholic beverages, or otherwise allow alcoholic beverages to be possessed, distributed, or consumed on the premises.
7. No cannabis business shall be a retailer of tobacco products.
8. A cannabis business shall be considered a commercial or industrial use, as the case may be, relative to the city's parking requirements in Chapter 17.74 BMC in an amount most similar to the uses contained in the parking requirements as determined by the community development director.
9. Smoking, ingesting, or consuming cannabis on the premises of a cannabis business shall be prohibited. A notice prohibiting smoking, ingesting and consuming cannabis shall be clearly and legibly posted in the cannabis business and shall not obstruct the entrance or windows.
10. Operation of a cannabis business shall not result in illegal redistribution or sale of cannabis obtained, or the use or distribution in any manner which violates state cannabis law or this chapter.
11. Odors. All cannabis businesses shall be sited and/or operated in a manner that prevents cannabis odors from being detected off site. All structures utilized for indoor cannabis cultivation shall be equipped and/or maintained with sufficient ventilation controls (e.g., carbon scrubbers) to eliminate nuisance odor emissions from being detected off site.
12. Site Plan.
 - a. The site plan shall include a lobby waiting area at the entrance to the cannabis business used to receive and screen customers (if applicable), employees, patrons, and guests of the cannabis business and a separate and secure designated area for dispensing cannabis (if applicable) and conducting other operations of the cannabis business.

b. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

13. Cannabis businesses shall not be enlarged in size (i.e., increased floor area) without the planning commission's prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

14. Security. The cannabis business shall at all times comply with all elements of its security plan, submitted as a part of its cannabis public safety license application pursuant to BMC 9.60.040.

15. Signage. The cannabis business shall comply with all applicable provisions of BMC Title 18.

16. Additional Conditions. The planning commission may impose additional conditions which it deems necessary to ensure that operation of the cannabis business will be in accordance with the standards and regulations provided in the zoning code, the standards set forth by separate resolution of the city council, and applicable state laws.

B. Supplemental Conditions – Retailers.

1. In addition to the conditions of operation set forth in subsection (A) of this section, a cannabis retail operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

2. Retailers shall not sell drug paraphernalia and implements that may be used to ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5.

3. Retailers shall not be enlarged in size (i.e., increased floor area) without the planning commission's prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

4. Retailers that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid official identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

5. Hours of Operation. Retailers may only operate during the hours between 10:00 a.m. through 8:00 p.m. The planning commission may further restrict a retailer's days and hours of operation as a condition of a use permit for cannabis. A retailer shall post its approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.

6. Retailers shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

7. State Seller’s Permit. Retailers shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

C. Supplemental Conditions – Manufacturers. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis manufacturing operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Manufacturers shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to the members of the general public.

2. Manufacturers may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

3. Standard of Equipment. Manufacturing, processing and analytical testing devices used by manufacturers must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city’s building official and fire code official.

4. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.

5. Edible Product Manufacturing. Manufacturers that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permit holders shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

D. Supplemental Conditions – Cultivators. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis cultivation operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Cultivators shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to members of the general public.

2. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

3. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.

4. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

5. Screening. Cannabis plants shall not be easily visible from off site.

6. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.060.

E. Supplemental Conditions – Microbusinesses.

1. The retail aspect of microbusinesses shall be limited to deliveries only. No on-site customers are permitted.

2. Microbusinesses shall not sell drug paraphernalia and implements that may be used to ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5.

3. Microbusinesses that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid official identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

4. Hours of Operation. The planning commission may restrict a microbusiness's days and hours of operation as a condition of a use permit for cannabis. Microbusinesses shall post their approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.

5. Microbusinesses shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

6. State Seller's Permit. Microbusinesses shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

7. Microbusinesses may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

8. Standard of Equipment. Manufacturing, processing and analytical testing devices used by microbusinesses must be UL (Underwriters Laboratories) listed or otherwise certified by an

approved third party testing agency or engineer and approved for the intended use by the city’s building code official and fire code official.

9. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.

10. Edible Product Manufacturing. Microbusinesses that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permittees shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

11. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

12. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.

13. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

14. Screening. Cannabis plants shall not be easily visible from off site.

15. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.060.

F. Supplemental Conditions – Delivery Operations. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis delivery operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Delivery of cannabis to locations outside a permitted cannabis retailer shall only be permitted in conjunction with a permitted cannabis retail facility that has a physical location and a retail storefront in Benicia open to the public or a licensed and permitted retail location outside of Benicia. A cannabis retailer shall not conduct sales exclusively by delivery.

2. Delivery of cannabis, whether from a facility located within or outside of Benicia, requires compliance with Chapter 9.60 BMC including obtaining the public safety license.

3. Any person who delivers cannabis shall have in possession a copy of all licenses and permits required by the state of California and the city.

4. A licensed cannabis business which is authorized to conduct deliveries in Benicia shall provide to the chief of police a list of all vehicles to be used for delivery of cannabis and cannabis products, including the vehicle’s make, model, year, license plate number and vehicle identification number. The cannabis business shall update the list prior to any vehicle being added to or removed from service.

5. Payments may be made via credit card, check, other means of cashless payment, or by cash. Customers must be provided the option of making payments by noncash payments. Delivery drivers shall not carry more than a combined total of \$3,000 in cash and/or cannabis or cannabis products at any one time while delivering cannabis and/or cannabis products under this chapter.

6. Delivery vehicles shall not be marked or otherwise identified with advertisements, the name of the cannabis business, or any other distinctive marking associated with cannabis.

7. Delivery of cannabis shall be made directly to the residence or business address of the designated recipient. Deliveries to any other location are prohibited.

8. Deliveries of cannabis shall only occur only between the hours of 8:00 a.m. and 8:00 p.m.

G. Maintenance, Access to, and Inspection of Records.

1. Every cannabis business shall maintain on site, at the property designated for the operation of the cannabis business, all records of the cannabis business.

2. Financial Records. The cannabis business shall maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements, (including any in-kind contributions), and any and all reasonable compensation for services provided by the cannabis business, as well as records of all operational expenditures and costs incurred by the cannabis business in accordance with generally accepted accounting practices and standards typically applicable to business records.

3. Record Retention Period. The records required in this subsection shall be maintained by the cannabis business for a period of five years and shall be made available to the city within 24 hours of written request, subject to the authority set forth in subsection (G)(4) of this section.

4. A duly designated city police department or finance department representative may enter and shall be allowed to inspect the premises of every cannabis business as well as the financial and membership records of the cannabis business required by this chapter at any time during the cannabis business's designated business hours, or at any appropriate time to ensure compliance and enforcement of the provisions of this chapter. It shall be unlawful for any owner, operator, or any other person having any responsibility over the operation of the cannabis business to refuse to allow, impede, obstruct or interfere with an inspection of the cannabis business or the required records thereof. (Ord. 18-10 § 1; Ord. 18-09 § 1; Ord. 18-08 §§ 2, 3; Ord. 18-03 § 1).

17.84.110 Business license tax liability.

An operator of a cannabis business shall be required to apply for and obtain a business tax certificate pursuant to Chapter 5.04 BMC as a prerequisite to obtaining a use permit for cannabis pursuant to the terms of this chapter. Cannabis businesses shall be subject to sales tax and other applicable taxes in a manner required by state law. (Ord. 18-03 § 1).

17.84.120 Annual review of cannabis businesses.

The community development department is hereby authorized to conduct an annual review of the operation of each permitted use permit for a commercial cannabis activity within the city for full compliance with the operational, recordkeeping, nuisance and other requirements of this chapter. A fee in an amount established by resolution of the city council shall be collected in order to reimburse the city for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any cannabis business which, upon completion of an annual review, is found not to be in compliance with the requirements of this chapter or which is operating in a manner which constitutes a public nuisance. Staff may, based upon its annual review of the operation of a cannabis business, place on a planning commission meeting agenda, a proposal to suspend or revoke a use permit for cannabis. (Ord. 18-03 § 1).

17.84.130 No vested rights.

No person(s) shall have any vested rights to any permit, right or interest under this chapter, regardless of whether such person(s) cultivated, sold, distributed or otherwise engaged in acts related to the use of cannabis prior to adoption of the ordinance codified in this chapter. (Ord. 18-03 § 1).

17.84.140 Public nuisance.

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city. (Ord. 18-03 § 1).

Section 2. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County Clerk.

Section 4. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

Section 5. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____, 2019, and adopted at a regular meeting of the Council held on the _____ day of _____, 2019, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

EXCERPT MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
MAY 7, 2019
7:00 PM

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

CALL TO ORDER

Mayor Patterson called the Closed Session to order at 6:00 p.m.

All Council Members were present.

1) **CLOSED SESSION (6:00 P.M.)**

1.A - CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54757.6

Agency designated representatives: City Manager, Assistant City Manager, Human Resources Manager

Employee Organizations: Benicia Police Officers Association, Benicia Public Service Employees Association, Benicia Fire Fighters Association, Benicia Dispatchers Association, Benicia Supervisor and Professional Association, Middle Management Employees, Police Management Employees, Senior Management Employees, and Unrepresented Employees

1.B - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section §54956.9(d)(1)

Name of Case: Benicia Harbor Corporation vs. City of Benicia, Solano County Superior Court Case No. FCS051970

2) **CONVENE OPEN SESSION (7:00 P.M.)**

Mayor Patterson called the Open Session to order at 7:03 p.m.

3) **ROLL CALL**

All Council Members were present.

4) **PLEDGE OF ALLEGIANCE**

Kyle Ochendusko led the Pledge of Allegiance.

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14.A

- AMENDMENTS TO BENICIA MUNICIPAL CODE SECTION 17.84.050 (Cannabis) (Community Development Director)

Staff Report - Cannabis Ordinance

1. BMC Chapter 17.84(Cannabis)

2. Map Showing 600-Foot Buffers from Residential Zoning Districts, Parks, and Schools

Shawna Brekke-Read, Community Development Director, reviewed the staff report.

Council Member Young and Staff clarified the current zoning requirements for cannabis dispensaries.

Council Member Campbell and Staff discussed the 600-ft. buffer around parks, buffers around residential areas.

Council Member Largaespada and Staff discussed what would happen if the existing applicants were grandfathered into the current zoning, and what the City is doing to track its expenses vs. potential revenues from cannabis sales.

Mayor Patterson and Staff discussed the issue of grandfathering in existing applicants to the current zoning, and what would happen if they transferred ownership.

Mayor Patterson suggested limiting the public comment to three minutes due to the many public speakers waiting to talk. Council majority did not agree to limiting the public comment time.

Public Comment:

1. Aimee Madjoub - Ms. Madjoub spoke in support of increasing the buffer zones.
2. Claudia Claverie - Ms. Claverie spoke in support of increasing the buffer zones.
3. Tom Wilson - Mr. Wilson spoke in opposition of increasing the buffer zones.
4. Tom Hamilton - Mr. Hamilton spoke in opposition of increasing the buffer zones.
5. Mittie Railsback - Ms. Railsback spoke in support of increasing the buffer zones.
6. Jack Baldassari - Mr. Baldassari spoke in support of increasing the buffer zones.
7. Sandra Alassio - Ms. Alassio urged Council to make this a win-win situation for all involved.
8. Drake Hampton - Mr. Hampton spoke in support of increasing the buffer zones.
9. Cheer Cao Gibbon - Ms. Gibbon spoke in support of increasing the buffer zones.
10. Karen Burns - Ms. Burns spoke in support of increasing the buffer zones.
11. Alan Schwartzman - Mr. Schwartzman spoke in opposition of increasing the buffer zones.
12. John Pruett - Mr. Pruett spoke in opposition of increasing the buffer zones.
13. Joan Westerman - Ms. Westerman spoke in support of increasing the buffer zones.
14. Josh Udovich - Mr. Udovich requested the City remove the property hold requirement as well as allow the other applicants/operators remain within the current system.
15. Molly Manoukian - Ms. Manoukian spoke in support of increasing the buffer zones.
16. Dirk Manoukian - Mr. Manoukian spoke in support of increasing the buffer zones.

17. Larry Fullington - Mr. Fullington spoke in support of increasing the buffer zones.
18. Andres Soto - Mr. Soto spoke in opposition of increasing the buffer zones.
19. Craig Snider - Mr. Snider spoke in opposition of increasing the buffer zones.
20. Carol Hazenfield - Ms. Hazenfield spoke in opposition of increasing the buffer zones.
21. Kenneth Boman - Mr. Boman spoke in opposition of increasing the buffer zones.
22. Chad Mahalich - Mr. Mahalich spoke in support of increasing the buffer zones.
23. Haleigh Parkinson - Ms. Parkinson spoke in support of increasing the buffer zones.
24. Chris Hester - Mr. Hester spoke in opposition of increasing the buffer zones.
25. Frank Hartig - Mr. Hartig spoke in support of increasing the buffer zones.

Council Member Young clarified Council's previous decision on the current buffer zones, the issue of property values, fairness to the current applicants, and crime statistics. He could not support increasing the buffer zones.

Vice Mayor Strawbridge discussed the previous Council's vote on cannabis dispensaries, the need to combat youth using cannabis.

Council Member Largaespada discussed his reasons for bringing this issue forward, the previous Council's decision regarding cannabis dispensaries, Prop 64, and the stats of the previous poll the City put out regarding cannabis and dispensaries. He was open to finding a win-win for the applicants who have started the permit process.

Mayor Patterson discussed concern regarding putting a cannabis retail business in the Industrial Park because of previous concern stated by the Benicia Industrial Park Association and the Police Chief.

Council Member Campbell discussed his previous request for larger buffers around schools and parks, the idea of putting one dispensary in the Industrial Park to see how it went, and Prop 64. He discussed concern regarding the current permitting process and applicants. He would like to try one site to see how it goes. He would like to grandfather in the nine applicants.

Mayor Patterson made a motion to ban retail cannabis sales in Benicia. The motion was seconded by Vice Mayor Strawbridge.

Council Member Young stated there was support for making cannabis available in Benicia. He could not support banning retail sales of cannabis in Benicia.

Council Member Largaespada stated he was a no vote on banning dispensaries. His amendment was regarding zoning. He would support Council Member Campbell's suggestion to grandfather in the nine applicants with the proposed buffers, he could vote for that.

Vice Mayor Strawbridge discussed the need for a business to fit in a community. She has not seen a good fit for a dispensary.

Mayor Patterson discussed an article written in the New York Times about California being an exporter state. She discussed the concept of trying to break down the black market with the legalization of cannabis. The problem with the black market is they don't have to pay the taxes, the application fees, etc. So they are out competing with the legal establishments that have been made because over 60% of the cities in California have banned the sale of retail cannabis. In spite of the facts and the fact that tobacco is the gateway drug and it's the greatest problem with birth defects. Despite that alcohol is a problem with cardiovascular issues, etc. Also, in spite of the fact that the whole reason marijuana got scheduled as a Schedule One Drug was because of politics in the 1930's in an effort to counter the immigration from Mexico. In spite of all of the scientific facts and information and the fact that she could walk down a street in Denver, Colorado and there was 25 dispensaries, and no one was shooting. She spends a lot of time in Davis, California, and they have retail cannabis and they have great schools, parks, and it is very family oriented. She stated she thought Vice Mayor Strawbridge was right. It did not seem to be a fit for Benicia - to take three small properties that would be allowed in the small buffer and convince the property owners to kick out the current tenants and put in retail cannabis. Or, worse yet, put them out in the Industrial Park. She did not see how that was a win-win. We want to be serious about economic development and public safety and protecting our schools and youth. What we ought to do is do what the successful communities have done and recognize that it's okay to have retail cannabis in locations in Benicia, but not in the Industrial Park. That is why she offered the ban. It is more straight forward and transparent. Then we can get on and do what needs to be done in the City. Cannabis is not the greatest threat that Benicia has. This is a waste of Staff's, Council, and the community's time if we can't live with the decision we made. It is better that we wait and bide our time until people realize it isn't a great threat.

On motion of Mayor Patterson, seconded by Vice Mayor Strawbridge, Council approved the motion to ban retail cannabis in Benicia, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Mayor Patterson

Noes: Council Member Young

EXCERPT MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
MAY 21, 2019
7:00 PM

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

CALL TO ORDER

Mayor Patterson called the Closed Session to order at 6:00 p.m.

Present: Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young,
Mayor Patterson
Absent: Council Member Campbell
Excused: None

1) **CLOSED SESSION (6:00 P.M.)**

1.A - CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED
LITIGATION

Significant exposure to litigation pursuant to Government Code Section
54956.9(d)(2):

Number of potential cases: 2

2) **CONVENE OPEN SESSION (7:00 P.M.)**

Mayor Patterson called the Open Session to order at 7:06 p.m.

3) **ROLL CALL**

Present: Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young,
Mayor Patterson
Absent: Council Member Campbell
Excused: None

4) **PLEDGE OF ALLEGIANCE**

Council Member Young led the Pledge of Allegiance.

5) **REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC**

6) **ANNOUNCEMENTS**

6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY

14.F - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

On motion of Council Member Young, seconded by Vice Mayor Strawbridge, Council approved the adoption of the Consent Calendar, as presented, on a roll call by the following vote:

Ayes: Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

15) BUSINESS ITEMS

15.A - RECONSIDERATION OF VOTE TO BAN ALL RETAIL CANNABIS SALES (City Manager)

Staff Report- Reconsideration Vote 

1. [Email from Mayor Patterson requesting reconsideration_May 9 2019](#) 

Mayor Patterson read a statement regarding her motion to ban retail cannabis in Benicia. "I'd like to clarify the effect of my May 7, 2019 motion regarding retail cannabis businesses. Although my motion was to "ban retail cannabis," that motion cannot, by law, have the effect of banning retail cannabis. In order to ban retail cannabis businesses in Benicia, the City's municipal code must be amended by review of the Planning Commission, and two separate public meetings (a first and second reading) of the City Council. The May 7 motion did not ban retail cannabis; instead it had the effect of furthering the process toward a ban. It provided direction to staff to begin the mandated process for amending the municipal code. My request for reconsideration is to clarify the motion, (and I hope that we could clarify it by reconsideration as approved tonight, and then that clarification would be approved on June 6th, 2019), and to consider other options as discussed by council members at the May 7th meeting."

Council Member Young discussed having a possible scenario that would be a win-win situation as suggested by Council Member Largaespada suggested at the last meeting. He asked Staff to confirm that the City had received a lawsuit against the City as a result of the motion and vote at the last meeting. He and Staff discussed the issue of setting aside funds to protect the City against claims regarding this issue. Council Member Young thought that the City needed to come up with a number to discuss before the budget is decided.

Public Comment:

1. John Burke - Mr. Burke stated he thought the discussion on this issue should wait until all five Council Members are present.
2. Dave Hampton - Mr. Hampton spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.

3. Anne Lazo - Ms. Lazo spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
4. Sandy Lee - Ms. Lee spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
5. Greg Crippen - Mr. Crippen spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
6. Judith Crippen - Ms. Crippen spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
7. Susan Street - Ms. Street spoke in support of reconsideration of the vote banning retail cannabis.
8. Michael Ogieglo - Mr. Ogieglo spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
9. Joshua Clark - Mr. Clark spoke in support of reconsideration of the vote banning retail cannabis.
10. Ken Van Story - Mr. Van Story stated he had nothing to add to what Mr. Clark said.
11. Tom Hamilton - Mr. Hamilton spoke in support of reconsideration of the vote banning retail cannabis.
12. Craig Montgomery - Mr. Montgomery stated he had nothing to add to Mr. Hamilton's statement.
13. Citizen - the citizen spoke in support of reconsideration of the vote banning retail cannabis.
14. Patrice Heller - Ms. Heller spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
15. Carin Coleridge - Ms. Coleridge discussed concern regarding putting a dispensary on East N Street.
16. Ralph Dennis - Mr. Dennis spoke in support of reconsideration of the vote banning retail cannabis.
17. Vicki Dennis - Ms. Dennis spoke in support of reconsideration of the vote banning retail cannabis.
18. Jason Kishineff - Mr. Kishineff discussed the issue of democracy.
19. Tricia Grant - Ms. Grant spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
20. Chad Mahalich - Mr. Mahalich spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
21. Molly Manoukian - Ms. Manoukian spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
22. Dirk Manoukian - Mr. Manoukian spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
23. Haleigh Parkinson - Ms. Parkinson spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
24. Nikki Davis - Ms. Davis wants a win-win for everyone involved. She urged Council to wait to vote until all five Council Members are present.
25. Joan Westerman - Ms. Westerman read BUSD's adopted resolution regarding cannabis dispensaries.

26. Jack Baldassari - Mr. Baldassari spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
27. Claudia Claverie - Ms. Claverie spoke in opposition to the reconsideration of the vote to ban all retail cannabis sales in Benicia.
28. Tyler Champlin - Mr. Champlin - spoke in support of reconsideration of the vote banning retail cannabis.
29. Thelma Bentley - Ms. Bentley spoke in opposition to the reconsideration of the vote to ban all retail cannabis in Benicia.
30. Kathy Kerridge - Ms. Kerridge spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia. She urged Council to wait to vote until all Council Members are present.
31. Paula Schwartz - Ms. Schwartz spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
32. Lois Requist - Ms. Requist spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
33. Steve Jones - Mr. Jones spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia. He urged Council to wait to vote until all five Council Members are present.
34. Diane Savard - Ms. Savard spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
35. Madolyn Dean - Ms. Dean spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia. She urged Council to wait to vote until all five Council Members are present.
36. James Li - Mr. Li spoke in opposition to the reconsideration of the vote to ban all retail cannabis in Benicia.
37. Ed Coffey - Mr. Coffey spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
38. Gretchen Burgess - Ms. Burgess spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
39. Maximilian Burgess - Mr. Burgess spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
40. Craig Snider - Mr. Snider spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.
41. Anthony Shannon - Mr. Shannon spoke in favor of the reconsideration of the vote to ban all retail cannabis sales in Benicia.

Council Member Young discussed the need to have the full Council here to vote on this issue, adjusting the residential buffer zones by increasing them by 100-150 ft., the cannabis the youth get is from the black market not the dispensaries, the issue of crime with dispensaries, the possibility of starting a citizen initiative to allow retail cannabis dispensaries to show whether the community really wanted retail cannabis, and Council voting to put the issue on an upcoming ballot. He urged Council to wait for Council Member Campbell for the vote, and urged them to vote for a reconsideration.

Mayor Patterson discussed her frustration at the 5/7/19 meeting that caused her to put the motion to ban the sale of retail cannabis. She was hopeful Council would vote to

reconsider the motion. She is grossly disappointed with what has happened and hoped Council could right the vote.

Council Member Largaespada reminded Council that Council Member Campbell supported the motion to ban retail cannabis, the issue of the threat of a lawsuit, the original intent to revisit the zoning regulations for recreational marijuana sales, the zoning regulations in other cities, other cities being undecided or a hard no on retail cannabis sales, how democracy works, and Benicia's current zoning regulations for dispensaries. He could not support a reconsideration on the motion to ban retail cannabis sales in Benicia.

Mayor Patterson read her statement from the 5/7/19 City Council meeting minutes.

Vice Mayor Strawbridge discussed why she did not think retail cannabis sales was a good fit for Benicia. She felt Council was not listening to the school district or the residents. She discussed how students were getting cannabis and edibles. She was concerned about leadership and why the Mayor made a motion to ban cannabis and then turned around and asked for reconsideration. She would not be supporting a reconsideration based on what she has said tonight.

Council Member Young discussed the points made by Council Member Largaespada tonight. He discussed the previous polls and votes regarding cannabis. He did not understand how the existence of a dispensary across the street from a daycare, karate studio, or anywhere else would impact the operation of those businesses.

Council Member Young stated he would make a motion to reconsider the previous action taken by Council on 5/7/19, in deference of Council Member Campbell's repeated request to have one dispensary. He did not think it was proper or fair to ignore that, as he is potentially the third vote either direction. How do we let two people make a decision that will affect the entire community? It will be a 2-2 vote and will fail.

Council Member Young made a motion to reconsider the vote taken on 5/7/19 to ban retail cannabis.

Mayor Patterson seconded the motion with a request to substitute the following language: 'To clarify the effect of the 5/7/19 motion regarding retail cannabis business. Her motion was to ban retail cannabis. That motion cannot, by law, have the effect of banning retail cannabis. In order to ban retail cannabis in Benicia, the City's Municipal Code must be amended by review of the Planning Commission, and two separate public meetings (a first and second reading) of the City Council. The May 7 motion did not ban retail cannabis; instead it had the effect of furthering the process toward a ban. It provided direction to staff to begin the mandated process for amending the municipal code. My request for reconsideration is to clarify the motion, and on June 6th to consider other options as discussed by Council Members at the May 7th meeting.'

Council Member Young discussed concern regarding potential lawsuits.

On motion of Council Member Young, seconded by Mayor Patterson, Council denied, the motion to reconsider the 5/7/19 vote to ban retail cannabis in Benicia, on a roll call by the following vote:

Ayes: Council Member Young, Mayor Patterson

Noes: Council Member Largaespada, Vice Mayor Strawbridge

MINUTES OF THE
SPECIAL MEETING – PLANNING COMMISSION

June 5, 2019

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

1. Opening of Meeting

2. Pledge of Allegiance

3. Roll Call of Commissioners

Present: Commissioners Dravnieks Apple, Catton, Eckmeyer, Stock, and
Chair Birdseye
Absent: Commissioners Macenski and Mollica
Staff Present: Shawna Brekke-Read, Community Development Director
Nira Doherty, Assistant City Attorney
Suzanne Thorsen, Principal Planner
Dorothy Dickson-Dodds, Recording Secretary

4. Reference to Fundamental Rights Of Public

5. Adoption of Agenda

On motion of Commissioner Dravnieks Apple, seconded by Commissioner Catton, the agenda was adopted, by the following vote:

Ayes: Commissioners Dravnieks Apple, Catton, Eckmeyer, Stock, and Chair
Birdseye
Noes: None
Absent: Commissioners Macenski and Mollica
Abstain: None

6. Opportunities for Public Comments

7. Written

8. Public Comments

REGULAR AGENDA ITEMS

9.A) The proposed amendments to Benicia Municipal Code would ban retail cannabis businesses in the City of Benicia. The amendments encompass changes to Chapter 17.84 (Cannabis), section 17.28.020 (CC, CO, CG, and CW districts – Land use regulations), section 17.32.020 (IL, IG, IW and IP districts – Land use regulations), and section 17.70.070 (Home occupations) of the Benicia Municipal Code.

Ms. Brekke-Read provided a presentation.

Commissioner Eckmeyer asked how many hearings and community meetings regarding Cannabis has the city held. She asked what portion of the public comments are in favor and how much against the ban at the City Council meeting. She asked what the breakdown of correspondence was for the ban and opposed to the ban.

Ms. Brekke-Read said upon adoption of the Cannabis regulations on February 20, 2018, there have been eighteen public meetings; four additional meetings were held in 2018-19 related to refinements to the ordinance, fees and taxes. Since April 2019, there have been three City Council meetings on the topic of cannabis retail.

Ms. Brekke-Read said most of the correspondence has been in favor of banning retail cannabis based on what was provided to the Planning Commission.

Chair Birdseye said she attended the May 28 City Council meeting and tallied 17 individuals for the ban and 22 to keep the ordinance as is.

In response to a question from the Commission, Ms. Brekke-Read clarified that RFP's (Request for Proposal) for the cannabis retail licenses were received in the summer of 2018. Initial review, scoring and evaluations and site visits and interviews took place in the autumn. At the end of 2018 requests were sent to all applicants for supplemental information, which was submitted at the beginning of 2019. The reviewing process was continuing leading up to the City Council' two-step process.

Further responding to Commission questions, Ms. Brekke-Read clarified that the proposed ordinance has been referred to the Solano County Airport Land Use Commission (ALUC) in accordance with State law. This is consistent with past practice on other recent zoning amendments.

Chair Birdseye invited individuals to speak.

PUBLIC COMMENT OPEN:

1. Tanner Kelly, Harvest Law Group, representing Authentic 707, spoke in opposition to ban all retail cannabis sales in Benicia. He spoke regarding the hearing

- process to adopt the regulations and requested that the city respect the will of the voters.
2. Fred Railsback, Benicia resident, thanked the Planning Commission for their time. He spoke in favor to ban all retail cannabis in Benicia. He spoke regarding the decisions of other cities to disallow dispensaries and encouraged the city to watch and learn from other jurisdictions, including in relation to sales tax revenue.
 3. Ann Lazo, Benicia resident, spoke in favor to ban all retail cannabis in Benicia. She spoke regarding a social media survey, expressed concern about public safety and commented on the sales tax revenue potential for retail establishments.
 4. Joan Westerman, teacher, read a resolution adopted by the Benicia Board of Education, that is requesting no cannabis retail be within 1,000 feet of a school and day care. She commented that the city should listen to the concerns of the School Board and Police Officers Association.
 5. Minnie Railsback, Benicia resident, spoke in favor to ban all retail cannabis in Benicia. She said that she initially supported cannabis but did not realize that retail could be so close to residences. She said that the concerns of the industrial park, School Board, and Police Offices Association are red flags.
 6. Craig Snider, Benicia resident, spoke in opposition to ban all retail cannabis in Benicia. He told the Commissioners about an active petition to allow two retail cannabis in Benicia. He commented that cannabis is legal in California and that in his experience dispensaries are safe to visit and appropriate in family-oriented towns.
 7. Jack Bethards, Benicia resident and business owner, spoke in favor to ban all retail cannabis in Benicia. He commented on security concerns related to cash businesses and endorses the position of the Board of Education.
 8. Patrice Hellini, spoke in favor to ban all retail cannabis in Benicia. She commented on her experiences in other locations and expressed concerns regarding public safety, public health, impacts to youth, impacts to community character and education. She encouraged the city to listen to the concerns of the Police Officers Association, School Board and other community members.
 9. Dennis Gard, Benicia resident, spoke in favor to ban all retail cannabis in Benicia. He echoed the concerns of the Police Officers Association. He said that in the 50 years he has lived in Benicia there have been many positive changes but does not feel that retail cannabis is a step the city needs to take.
 10. Mary Ames, Benicia resident, spoke in opposition to ban retail cannabis in Benicia. She said that she respects the work that the Planning Commission did to balance community concerns and that the ordinance was a good compromise. She spoke regarding independent analysis, the extent of prior outreach, and cited studies regarding crime, teen use, property values and impaired driving.
 11. Kathy Kerridge, Benicia resident, spoke in opposition to ban retail cannabis in Benicia. She encouraged the city to keep the ordinance that was passed in 2018 and stated that this proposal is unfair to those retail applicants who have invested

money relying on Benicia's good name. She commented that changing the regulations would have adverse impacts to Benicia's reputation and funding for drug education. She commented that Benicia residents should be able to shop at a local dispensary. She commented on local events related to alcohol consumption.

12. Aimeel Majdoub, Benicia resident, spoke in favor to ban retail cannabis in Benicia. She commented on her family experience with drug addiction and the loss of her son. She said that she sat on Vallejo's medical marijuana stakeholder group and feels there should be separation requirements, that it would be wrong to put dispensaries where children walk.
13. Bart Sullivan, Benicia resident, spoke in opposition to ban retail cannabis in Benicia. He stated that he would prefer to see legal means to control cannabis distribution and commented on the availability of alcohol, tobacco and vaping products within close proximity to schools and parks.
14. Tom Hamilton, Benicia resident and business owner, spoke in opposition to ban retail cannabis in Benicia. He commented on the cash business model and said that many people use debit cards to purchase cannabis products. He suggested that the city should honor the citizens votes and spoke regarding positive economic effects of cannabis retail.
15. Malin Coleridge, Benicia resident, spoke in favor to ban retail cannabis in Benicia. She is concerned about bringing cannabis to Benicia due to compatibility with existing businesses and cited other jurisdictions that have banned cannabis retail.
16. Thelma Bentley, Benicia resident, spoke in favor to ban retail cannabis in Benicia. She expressed concerns about youth access and commented that other cities have not seen the retail tax revenue that they projected.
17. Reva Flexen, Benicia Resident, spoke in opposition to ban retail cannabis in Benicia. She said that dispensaries do not necessarily keep large quantities of cash on hand and spoke regarding the cleanliness and security of many dispensaries. In a follow up comment, Ms. Flexen commented on economic factors, such as the loss of a major employer, that can affect community quality of life, in reference to Richmond and Vallejo.
18. Zhuangwu Li, Benicia resident, spoke in favor to ban retail cannabis in Benicia.
19. Phyllis DeBois, Benicia resident, spoke in opposition to ban retail cannabis in Benicia. She said that Benicians should not have to go elsewhere to purchase cannabis products, that dispensaries are not for youth. She referenced tobacco, alcohol and prescription opiates already available for purchase within the city limits.
20. Christina Zeus, Benicia resident, spoke in favor to ban retail cannabis in Benicia. She commented on concerns about youth access, public safety, and public health.
21. Stuart Hall, Benicia resident, spoke in favor to ban retail cannabis in Benicia. He commented on the current quality of the Benicia community and expressed

concerns about negative effects on personal health and wellbeing as well as community character resulting from cannabis and other drug use.

22. Maggie Cool, Benicia resident, spoke in opposition to ban retail cannabis in Benicia. She is a food scientist who commented that cannabis is growing industry. Cannabis is legal in the state and legalization is happening nationwide. She suggested that Benicia should give retail cannabis a chance and not be left behind.
23. Harriett Morgan, spoke in favor to ban retail cannabis in Benicia. As a teacher and former school counselor, she commented on the prevalence of marijuana usage in schools. She stated that Benicia is not ready for cannabis due to issues that have not been addressed. She felt that the community was not adequately surveyed on this issue.

PUBLIC COMMENT CLOSED

Chair Birdseye thanked all speakers and clarified that the Planning Commission is asked to consider the matter of land use, whether retail cannabis be allowed in our community.

Commissioner Eckmeyer thanked people in the audience for coming and speaking to the Commission. A ban on cannabis retail would not ban cannabis, and as the zoning code states, it would allow cannabis in other areas outside retail. It produces the most tax revenue for the City. She said if the City bans retail, we will miss this economic opportunity. She said she has read the restrictions on cannabis - the laws that are necessary on cannabis. The security is higher than tobacco and alcohol stores. She talked about the requirements for entering a cannabis retail and the security.

Commissioner Apple said she spoke to people in the Columbus Parkway and Rose Drive area, who are concerned about retail cannabis. She shared her research of crime activity at Rose Drive and Columbus Parkway and questioned whether cannabis retail should be allowed in that location.

In response to a Commission request, Ms. Brekke-Read clarified that an applicant submits a pre-application and they meet with all the departments. The first application submitted is a public safety license to the Police Department. The Police Chief reviews the applicant's security plan. The Chief then notifies the applicant to tell them if the license is approved; however, the Public Safety License is not yet issued. She then explained the applicant submits a Use Permit, which requires a public hearing of the Planning Commission. After a Use Permit is approved by the Planning Commission the Public Safety License can be issued.

Ms. Doherty, Assistant City Attorney, further explained the required findings of the Cannabis Ordinance in Chapter 17.84 of the Municipal Code. The Planning Commission must make findings when issuing a permit for any kind of cannabis business and are specific to the safety and viability in terms of nuisance conditions for a given location.

Chair Birdseye said that the Planning Commission is the governing body and has the authority to determine if the specific site is a good location for cannabis retail.

Ms. Brekke-Read answered clarifying questions about a 600-foot buffer around K-12 schools. Prior to adoption of the ordinance, the Planning Commission contemplated additional buffers, however City Council adopted an ordinance that established a 600-foot buffer around only K-12 schools.

Commissioner Catton said the Commission spent a lot of time on this matter and weighed many of the concerns expressed tonight. The General Plan has an economic development goal but while maintaining health, safety and quality of life. There are many requirements for security for these facilities and children will not be walking in to purchase cannabis. There is police department and zoning review, with the use permit and public safety license which are reviewed annually. Benicia will still allow cannabis manufacturing and micro business and cultivation with a use permit. She has a concern with banning only retail while allowing these other uses. On the basis of the General Plan, she cannot draw that difference with the process we have and also what is allowed.

Commissioner Stock spoke regarding the RFP process, in which there are nine applicants for two retail licenses. He is challenged by the thought of a cannabis retail establishment next to a tutoring center. He commented that maybe there should be more restrictions, expressed concerns about police, and inquired whether revenue could exceed costs.

In response to a question from Commissioner Stock, Ms. Doherty that the Planning Commission would deny a retail cannabis application if the required findings could not be met, and then another applicant would be brought forward. She referenced studies completed with regard to the tax rate.

Chair Birdseye said this body carefully made the decision after hours of research and discussion, and we came up with an ordinance that is good for our community. She commented on the long process for adoption of the ordinance and the split feedback from the community. She spoke on the serious consideration given by the Planning Commission on adoption of the regulations and felt that it was the best compromise community. She said that in her view, very little has changed since the adoption of the regulations and the process to initiate the proposed amendment was not fair to the community.

On motion of Commissioner Catton, seconded by Commissioner Eckmeyer, the Commission voted not to recommend the amendments set forth in the Planning Commission agenda for June 5 by the following vote:

Ayes: Commissioners Catton, Eckmeyer, and Chair Birdseye

Noes: Commissioners Dravnieks Apple and Stock

Absent: Commissioners Macenski and Mollica

Abstain: None

11) COMMUNICATION FROM STAFF - None

12) COMMUNICATION FROM COMMISSIONERS - None

13) ADJOURNMENT

Chair Birdseye adjourned the meeting at 9:35 P.M.

EXCERPT MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JUNE 18, 2019
7:00 PM

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

CALL TO ORDER

Mayor Patterson called the Closed Session to order at 5:15 p.m.

All Council Members were present.

1) CLOSED SESSION (5:15 P.M.)

1.A - CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):

Number of potential cases: 1

1.B - CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54757.6

Agency designated representatives: City Manager, Assistant City Manager, Human Resources Manager

Employee Organizations: Benicia Police Officers Association, Benicia Public Service Employees Association, Benicia Fire Fighters Association, Benicia Dispatchers Association, Benicia Supervisor and Professional Association, Middle Management Employees, Police Management Employees, Senior Management Employees, and Unrepresented Employees

2) CONVENE OPEN SESSION (7:00 P.M.)

Mayor Patterson called the Open Session to order at 7:05 p.m.

3) ROLL CALL

All Council Members were present.

4) PLEDGE OF ALLEGIANCE

Nouae Vue led the Pledge of Allegiance.

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15.A - INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.84 AND SECTIONS 17.28.020, 17.32.020, AND 17.70.070 OF THE BENICIA MUNICIPAL CODE TO PROHIBIT RETAIL CANNABIS BUSINESSES; AND DISCUSSION AND DIRECTION TO STAFF REGARDING ALTERNATIVE AMENDMENTS TO THE BENICIA MUNICIPAL CODE REGARDING CANNABIS BUSINESSES AND PERMITTED USES (PUBLIC HEARING) (Community Development Director)

Staff Report - First Reading Retail Ban

1. Draft Ordinance
2. Planning Commission Minute Order, June 5, 2019
3. Map Show Affected Areas

Shawna Brekke-Read, Community Development Director, reviewed the staff report and a PowerPoint presentation.

Council Member Campbell and Staff discussed the net revenue and expenses associated with retail cannabis operations, and whether the City would have ongoing costs to monitor cannabis operations.

Vice Mayor Strawbridge and Staff discussed the revenue projections done by Hdl, the excise tax (6%), the costs to hire Hdl, and the annual compliance review.

Council Member Largaespada reviewed how much the cities of Vallejo and Campbell pay for expenses to monitor/implement cannabis businesses.

Mayor Patterson discussed the cities who have recreational cannabis businesses in operation.

Council Member Campbell and Staff discussed the issues of audits, land use permits and public safety licenses.

Mayor Patterson and Staff discussed the current BMC on cannabis permits and annual reviews.

Council Member Campbell and Staff discussed the nine retail cannabis applications on file, and whether the City has to approve any of the nine applications.

Public Comment:

1. Bob Livesay - Mr. Livesay spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
2. Craig Montgomery - Mr. Montgomery spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
3. Cheer Cao Gibbon - Ms. Gibbon spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.

4. Sandra Alassio - Ms. Alassio spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
5. Kristin Kirkpatrick - Ms. Kirkpatrick discussed concern regarding having a retail cannabis dispensary right across the street from her home.
6. Tricia Grant - Ms. Grant spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
7. Greg Kremenliel - Mr. Kremenliel spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
8. Mary Amey - Ms. Amey spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
9. Amy Madjoub - Ms. Madjoub spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
10. Jack Baldassari - Mr. Baldassari spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
11. Patrice Heller - Ms. Heller spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
12. Linda Dunphy - Ms. Dunphy spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
13. Dirk Fulton - Mr. Fulton spoke in support of retail cannabis, but with the stricter zoning requirements. He discussed concern regarding allowing a retail dispensary in the Columbus Parkway location, as parking would be very difficult.
14. Tom Hamilton - Mr. Hamilton spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
15. Sandy Lee - Ms. Lee spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
16. Karin Elizabeth - Ms. Elizabeth spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
17. Jean Walker - Ms. Walker spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
18. Molly Manoukian - Ms. Manoukian spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
19. Chad Mahalich - Mr. Mahalich spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
20. Mittie Railsback - Ms. Railsback spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
21. Malin Coleridge - Ms. Coleridge spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
22. Joan Westerman - Ms. Westerman spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
23. Christine Zeuss - Ms. Zeuss spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.

24. Lori Grundman - Ms. Grundman spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
25. Ruby Wallis - Ms. Wallis discussed alcohol use in Benicia.
26. Tracey Sea Dashjian - Ms. Dashjian spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
27. Tanner Kelly - Mr. Kelly Ms. Elizabeth spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
28. Lee Sherwood - Mr. Sherwood spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
29. Olivia Johnston - Ms. Johnston spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
30. Will Emes - Mr. Emes spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
31. Craig Snider - Mr. Snider spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.
32. Thomas Keene - Mr. Keene spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
33. Fred Railsback - Mr. Railsback spoke in support of the proposed ordinance banning retail cannabis sales in Benicia.
34. Citizen - the citizen spoke in opposition to the proposed ordinance and in favor of upholding Planning Commission's recommendation against adoption of an ordinance prohibiting retail cannabis sales.

Council Member Young discussed the issue of adolescents not being allowed to purchase cannabis, the legal requirements for retail dispensaries, the issue of crime, coming up with a compromise, allowing one dispensary to see what happens, and his support for the Planning Commission's recommendation.

Vice Mayor Strawbridge discussed her position on cannabis during her campaign, the recent motion by Mayor Patterson to ban retail cannabis, and allowing a micro business in the Industrial Park that does deliveries (that does not have a retail counter).

Council Member Campbell discussed the past actions taken by Council regarding cannabis dispensaries, the issue of fairness, support for increased buffers, support for a micro business with deliveries, potential lawsuits, support for having one dispensary in Benicia, getting an advisory vote on whether to have a dispensary in Benicia, and how to choose which one of the nine applicants to open a dispensary. He suggested having staff rank the applicants, send it to the Planning Commission for approval, then bringing it to Council for final review. He wanted all the buffers Council Member Largaespada discussed to be considered.

Mayor Patterson discussed support for one dispensary, amend the existing ordinance to allow one cannabis store for one year, and based on their performance a second cannabis store could be added the second year. She discussed support for having it come back to the Council for consideration, but not amending the ordinance. She discussed agreement with having a 500 ft. buffer around City parks, the need to define schools in Section 17.84.050 paragraph B, so that it refers to schools consistent with State curriculum. She and Staff clarified that if her suggestions are approved the current ordinance would be amended to reflect the changes.

Council Member Campbell discussed the issue of buffers, concern regarding adding a second retail after the first year (leave that up to a future council), and support for only one retail cannabis establishment.

Council Member Young discussed the language '600 ft. or where children congregate' in the state statute, delivery operations in the Industrial Park, whether there are any applicants for micro businesses, a delivery-only business who approached him interested in doing business in Benicia, support for a delivery only business in the Industrial Park, support for compromising and having one dispensary as suggested by Council Member Campbell, and support for 500 ft. or 400 ft. buffers around City parks.

Council Member Largaespada stated he could not get behind having one test location to see how it goes. He discussed the issue of fairness to the residents, buffers, and being open to Vice Mayor Strawbridge's proposed compromise.

Council Member Young discussed why Council did not discuss the specific locations with the residents (they were discussing zoning, not specific addresses),

Council Member Young made a motion that was seconded by Council Member Campbell, to uphold the Planning Commission's recommendation, to leave the current ordinance alone, and to dedicate tax revenues to road repairs. The motion failed.

Mayor Patterson discussed a possible motion that would uphold the existing ordinance, with the modification of allowing only one retail cannabis dispensary, defining schools (consistent with State curriculum), add a stand-alone delivery service with no store front in the Industrial Park, and adding the 500 ft. buffer around City parks. Council Member Young seconded the motion.

Council Member Young, Mayor Patterson, and Staff discussed Council Member Campbell's suggestion to have Staff rank the applicants, send the rankings to the Planning Commission, who would choose one, and having Council make the final decision. Staff stated it would be best to have a resolution articulating that process that would accompany the revised ordinance.

Mayor Patterson stated that the motion was to give direction to Staff to amend the current ordinance as stated above and to create a resolution that provides for all applicants to go

before the Planning Commission, and then automatically come before the City Council for a final decision.

Council member Campbell discussed allowing one dispensary and having Council ultimately decide which one to allow after they are ranked and recommended by the Planning Commission. He could only support a 600 ft. buffer around City parks. He did not support any other delivery businesses other than the one micro business. That is as far as he was willing to go.

Mayor Patterson stated she did not want to lose Council Member Campbell's vote, so she would be happy to remove the delivery-only business from her motion. She discussed the issue of a 500 ft. buffer and a 600 ft. buffer, and what effects that could have on an application. She asked Staff to bring back something showing the effect of a 500 ft. and 600 ft. buffer so that if the effect of a 600 ft. buffer was detrimental to processing an application. She stated that it would definitely affect one application at this time.

Council Member Campbell clarified that it didn't affect any of the original nine applicants, as they have been grandfathered in under the current ordinance.

Ben Stock, City Attorney, clarified that the Mayor's motion was to keep the existing ordinance, but add a buffer to the existing applicants of 500 or 600 ft.

Council Member Campbell stated he understood that the original nine applicants would be grandfathered in under the existing rules set by the previous council.

Mr. Stock clarified that what Council Member Campbell was suggesting was to have the initial nine applicants fall under the existing buffers that are in the current ordinance, and all future applicants must abide by different buffers. Future applicants would have to fall under the buffers being discussed tonight. Council Member Largaespada's proposed buffers would go into effect after the initial applications were processed.

Council Member Campbell stated that he wanted to give the initial nine applicants a shot at it. There is no guarantee any of the nine applicants will be okayed when you consider the CEQA issues, parking issues, traffic issues, etc.

Mayor Patterson stated that was not the motion she made.

Council Member Largaespada discussed concern with the process and discussion tonight. He asked where the one dispensary would go with the proposed buffers.

Council Member Campbell stated he was going along with all of Council Member Largaespada's buffers. That goes on from this day forward, not retroactive. The nine applicants who have nine locations are still in play. From the nine locations maybe one will be selected or maybe all nine will have trouble with meeting traffic, parking issues, etc. But the nine applicants and their locations have been identified. The buffers are the buffers are all the ones Council Member Largaespada wanted, it is just that they go

from here forward, and they don't apply to those nine applicants. The buffers which the previous council agreed on are what the nine applicants would have expected to apply and have those buffers and rules kick in at that time. That is the compromise. We are compromising what a previous council wanted and what the current council wants as much as possible to do that without muddying up even more the zoning and code laws and the sheer process of trying to get through this in some form.

Council Member Largaespada stated he was concerned that one dispensary could still end up on East N street across from residential.

Council Member Campbell stated that it could. Not to put any prejudice on any of the spots here, but for all nine applicants it is fair game to bring forward their reasoning on why they should be accepted and then Council could look at them and decide which one to choose. Council could say for any legitimate reasons the project won't work. We have to get out of this first legal hole that we have created for ourselves by two councils coming to two different conclusions. Once we get that over then we can look at whether a dispensary is still a fit for the City.

Mayor Patterson asked if there was any further discussion on the motion.

Council Member Largaespada asked if her motion listed residential areas and daycare. She confirmed her motion did not list residential and daycare.

Mayor Patterson stated she was hearing support for all the buffers around the list that Council had on the request, all the applicants would go forward with the hearing process, we would give direction to staff, and she didn't think she needed to repeat any of the rest of that. The buffers only apply to future applicants.

On motion of Council Member Young, seconded by Council Member Campbell, Council denied upholding the Planning Commission's recommendation, to leave the current ordinance alone, and to dedicate tax revenues to road repairs, on a roll call by the following vote:

Ayes: Council Member Young

Noes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Mayor Patterson

On motion of Mayor Patterson, seconded by Council Member Young, Council approved upholding the existing ordinance, with the modifications of allowing only one retail cannabis dispensary, defining schools (consistent with State curriculum) and amending the buffer to 600 ft. from a child care center, youth center, learning center, residential zone or City park, with additional direction to Staff, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Young, Mayor Patterson

Noes: Council Member Largaespada, Vice Mayor Strawbridge

On motion of Council Member Young, seconded by Council Member Largaespada, at 11:33 p.m., Council approved hearing the remainder of the agenda items, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

DRAFT
MINUTES OF THE
REGULAR MEETING – PLANNING COMMISSION
AUGUST 14, 2019
7:00 P.M.

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

- 1) **OPENING OF MEETING**
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **ROLL CALL OF COMMISSIONERS**

Present: Commissioners Dravnieks-Apple, Catton, Macenski, Stock, and Chair Birdseye
Absent: Commissioners Eckmeyer and Mollica
Staff Present:
Alan Shear, Interim Community Development Director
Nira Doherty, Assistant City Attorney
Victoria Walker, Contractor
Mario Giuliani, Economic Development Manager
Suzanne Thorsen, Principal Planner
Della Olm, Recording Secretary

- 4) **REFERENCE TO FUNDAMENTAL RIGHTS OF PUBLIC**
- 5) **ADOPTION OF AGENDA**

On motion of Commissioner Dravnieks-Apple, seconded by Commissioner Stock, the Planning Commission approved the agenda on a roll call by the following vote:

Ayes: Commissioners Catton, Dravnieks-Apple, Macenski, Stock, and Chair Birdseye
Noes: (None)

- 6) **OPPORTUNITIES FOR PUBLIC COMMENTS**

None

7) **WRITTEN**

None

8) **PUBLIC COMMENTS**

None

9) **REGULAR AGENDA ITEMS**

9.A Amendments to the Benicia Municipal Code pertaining to Cannabis Retailers and Discussion of Possible Revisions to Pertaining to Cannabis Delivery and Cannabis Microbusiness Uses

Cannabis Amendments Staff Report 

1. Draft Resolution with Exhibit A 

2. Excerpt Council Minutes 05072019 

3. Excerpt Council Minutes 05212019 

4. PC Draft Minutes 06052019 

5. Excerpt Council Minutes 06182019 

Ms. Thorsen, Principal Planner, provided a presentation.

Commissioner Stock asked for clarification and does not support the proposed changes to the zoning ordinance.

Vice Chair Macenski aired concerns about buffers and adjacency. He supports two retail locations for market competition reasons.

Commissioner Catton discussed the childcare center buffer and stated she agrees with Commissioners Stock and Macenski.

Commissioner Apple discussed the public park buffer and inquired about the definition of public park in the staff report. Ms. Thorsen provided clarification. Commissioner Apple supports one permit as a trial run for cannabis retail in Benicia.

Mr. Giuliani, Economic Development Director, entered the meeting at 7:24pm.

Chair Birdseye supports issuing two cannabis retail licenses.

Vice Chair Macenski asked for clarification on the definition and intent of buffers. Ms. Doherty, Assistant City Attorney, provided clarification.

PUBLIC COMMENT:
None.

Vice Chair Macenski recommends that the staff report for the City Council reflects that further guidance is needed related to the applicability of the 600 foot buffer in regards to adjacency and how a parcel may qualify for exclusion from the buffer zone.

On motion of Commissioner Stock, seconded by Commissioner Macenski, the Planning Commission voted to deny the resolution recommending that the City Council of the City of Benicia adopt an ordinance amending Ch. 17.84 (Cannabis Regulations) of Title 17 (Zoning) of the Benicia Municipal Code, after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), on a roll call by the following vote:

Ayes: Commissioners Catton, Dravnieks-Apple, Macenski, Stock, and Chair Birdseye
Noes: (None)

The Commissioners discussed microbusiness and delivery-only cannabis business locations.

Ms. Doherty provided input when asked for clarification on state law regarding cannabis businesses.

Mr. Giuliani provided clarification on tax revenue from cannabis sales in the City of Benicia.

The Commissioners recommend to the City Council that cannabis delivery-only and microbusinesses should be limited in location to the industrial park of the City of Benicia,

but that there should not be a limit on the number of businesses. Each of these businesses should be subject to review of a use permit by the Planning Commission and a public safety license. In addition, the Planning Commission recommends that the City Council should consider revising the 600 foot buffer zone to account for logical barriers of travel that are not intended for adjacent land uses such as a highway.

10) COMMUNICATION FROM STAFF

Ms. Thorsen introduced Ms. Walker, a contracted consultant who will assist the Community Development Department, including a focus on cannabis. She also introduced Ms. Danielle Crider, the new Associate Planner. Finally, she introduced Mr. Shear, Interim Community Development Director who is also Assistant City Manager.

Ms. Doherty asked for a Special Commission meeting reviewing the cannabis business applications by the end of August.

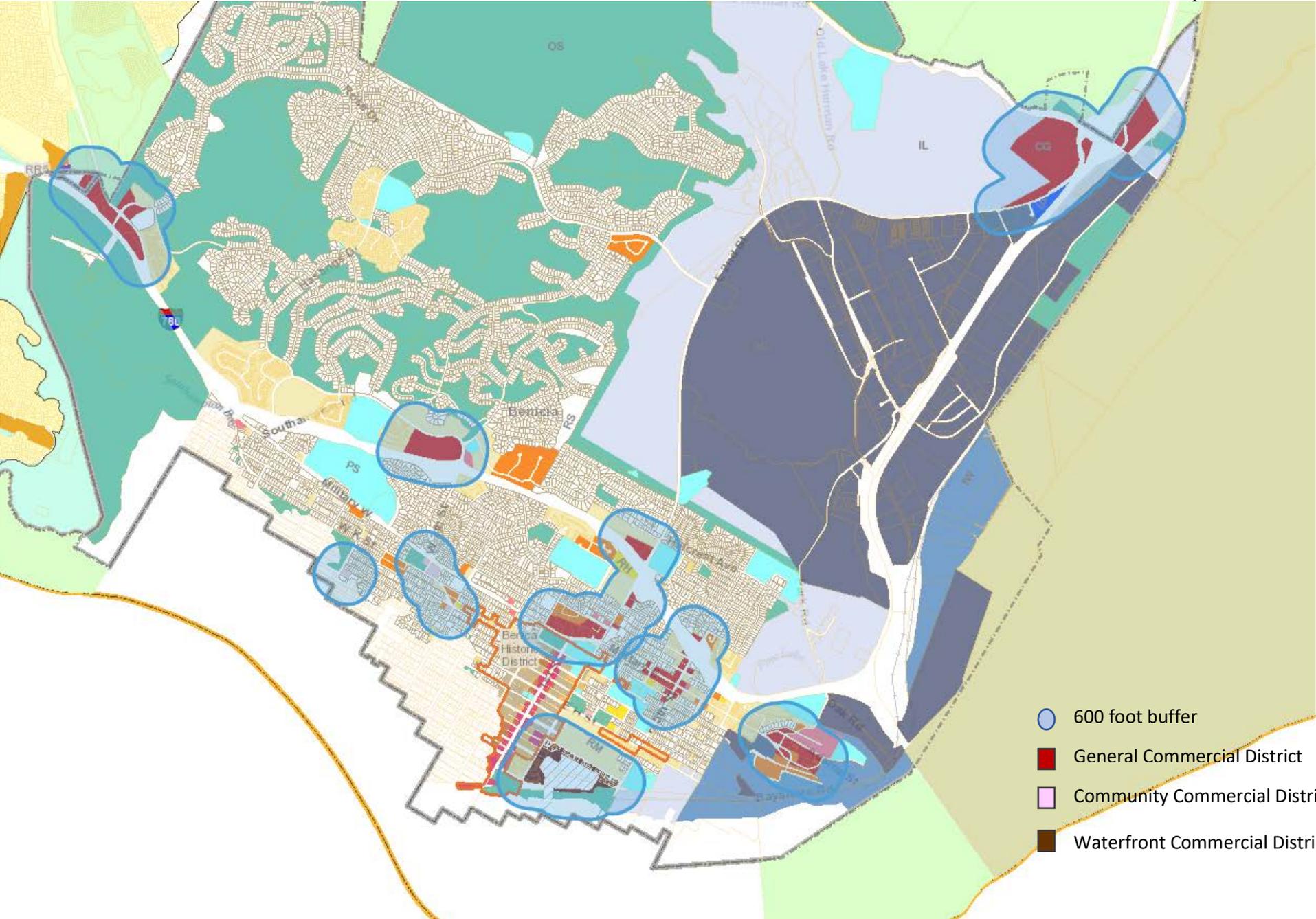
Mr. Giuliani informed that the first cannabis business in the city, Mar-Bay Gardens, should be up and running by mid-September.

11) COMMUNICATION FROM COMMISSIONERS

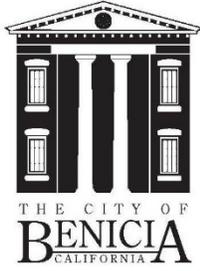
None.

12) ADJOURNMENT

Chair Birdseye adjourned the meeting at 8:22 P.M.



600 Foot Buffer Applied to General Commercial (CG), Community Commercial (CC) and Waterfront Commercial (CW) Properties



**AGENDA ITEM
CITY COUNCIL MEETING DATE – SEPTEMBER 3, 2018
BUSINESS ITEMS**

TO : City Council

FROM : City Manager

SUBJECT : **TWO-STEP REQUEST FOR CLIMATE EMERGENCY RESOLUTION**

EXECUTIVE SUMMARY:

Mayor Patterson submitted a two-step process request for Council’s consideration of adopting the Climate Emergency Resolution (Attachment 1). Cities are adopting this resolution to mobilize cities to end city-wide greenhouse gas emissions. A draft City of Benicia Climate Emergency Resolution is included as Attachment 2.

RECOMMENDATION:

Discuss the request and provide direction to staff.

BUDGET INFORMATION:

There is no budget impact for determining whether or not to place this topic on a future agenda for Council discussion.

BACKGROUND:

City Council members may request items be placed on future agendas according to the process described in the “Council Rules of Procedure”, in Section II:

B. TWO-STEP PROCESS.

City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form (Attachment 1) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendization of Step 1 and for Step 2. Once Step 1 is agendized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time sensitive.

Please see attached two-step process request included as Attachment 1.

General Plan	N/A
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Strategic Plan	N/A
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CEQA Analysis	N/A
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ATTACHMENT(S):

1. Two Step Request, Mayor Patterson
2. Draft City of Benicia Climate Emergency Resolution

For more information contact: City Manager Lorie Tinfow

Phone: 707.746.4200

E-mail: ltinfow@ci.benicia.ca.us

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM

Requested by: **Mayor Patterson** _____

Desired Initial Council Meeting Date: **July 16, 2019** _____

Desired Date for Second Step or Policy Calendar Review: **ASAP 2019**

Deadline for Action, if any: _____

Problem/Issue/Idea Name: **Climate Emergency Resolution**

Description of Problem/Issue/Idea: Climate Warming

Cities are adopting the Climate Emergency Resolution to mobilize cities to end city-wide green house gas emissions.

Attached is a draft City of Benicia Climate Emergency Resolutsion based on the City of Santa Cruz and a link to the Richmond as an example of a “refinery town” adopting the resolution. Other cities are included with the links below.

The city councils have committed to emergency climate mobilisation and to being an advocate for the cause, which is promoted by [The Climate Mobilization](https://tinyurl.com/yyp6fbo7) (<https://tinyurl.com/yyp6fbo7>). Click on the link for the latest updates on cities adopting the resolution.

[City of Richmond](https://tinyurl.com/y6vwsp2v) (<https://tinyurl.com/y6vwsp2v>) “*The City of Richmond calls for an emergency mobilization effort to end citywide greenhouse gas emissions, educate residents about climate change, and work to advocate for a mass mobilization at the local, state, national, and global levels.*”

Richmond City Climate Emergency Resolution passed unanimously; Document archived on www.ci.richmond.ca.us (PDF) (<https://tinyurl.com/y6vwsp2v>)

[City of Berkeley](https://climatesafety.info/richmondcalifornia/#berkeley) (<https://climatesafety.info/richmondcalifornia/#berkeley>),

[Montgomery County](https://climateemergencydeclaration.org/montgomerycouncilresolution/) in Maryland (<https://climateemergencydeclaration.org/montgomerycouncilresolution/>),

[Hoboken City Council](https://www.theclimatemobilization.org/blog/2018/4/25/hoboken-resolves-to-mobilize) in New Jersey (<https://www.theclimatemobilization.org/blog/2018/4/25/hoboken-resolves-to-mobilize>),

[Los Angeles City Council](https://mynewsla.com/business/2018/04/27/1-a-city-council-forwards-plan-for-climate-emergency-mobilization-department/) (<https://mynewsla.com/business/2018/04/27/1-a-city-council-forwards-plan-for-climate-emergency-mobilization-department/>)

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on _____
- Schedule for Policy Calendar Review on _____
- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____

RESOLUTION NO. 19-

RESOLUTION ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY AND REQUESTING REGIONAL COLLABORATION ON AN IMMEDIATE MOBILIZATION EFFORT TO RESTORE A SAFE CLIMATE

WHEREAS, in April 2016, world leaders from 175 countries recognized the threat of climate change and the urgent need to combat it by signing the Paris Agreement, agreeing to keep warming “well below 2°C above pre-industrial levels” and to “pursue efforts to limit the temperature increase to 1.5°C”; and

WHEREAS, more than 40 mayors in the greater San Francisco Bay Area have committed to adopt, honor, and uphold the Paris Agreement, noting, “We will intensify efforts to meet each of our cities’ current climate goals, push for new action to meet the 1.5 degrees Celsius target, and work together to create a 21st century clean energy economy . . . The world cannot wait—and neither will we”; and,

WHEREAS, according to the National Centers for Environmental Information, in 2017 “the U.S. was impacted by 16 separate billion-dollar disaster events, tying 2011 for the record number of billion-dollar disasters for an entire calendar year,” with a cumulative cost of \$309.5 billion, shattering the previous U.S. annual record cost of \$219.2 billion in 2005 due to hurricanes; and,

WHEREAS, severe rainfall in February 2017 across northern and central California resulted in at least five deaths and an estimated \$1.5 billion in damage, including to the Oroville Dam spillway, causing a multi-day evacuation of 188,000 residents, and to the city of San Jose, flooding neighborhoods and forcing 14,000 residents out of their homes; and,

WHEREAS, the October 2017 Northern California wildfires caused more than \$9.4 billion in damage, destroying over 8,900 structures, displacing many people, killing 44, and injuring another 192; and,

WHEREAS, climate change-fueled droughts, famines, and diseases have already killed millions of people in the global southern hemisphere, and displaced millions more; and,

WHEREAS, indigenous and low-income communities and communities of color in the United States and abroad have suffered the gravest consequences of global warming; and,

WHEREAS, the death and destruction already wrought by global warming of approximately 1°C demonstrate that the Earth is already too hot for safety and justice for the world’s most vulnerable people; and

WHEREAS, according to the latest climate projections, humanity is on to warm the Earth at sustained average of 1.5°C above pre-industrial levels as soon as 2026; and

WHEREAS, it is projected that sustained warming of 1.5°C could cause a long-term, “continuous thaw” of the Arctic permafrost, which could turn the tundra from a net carbon sink into a source in the 2020s; and,

WHEREAS, it is estimated that the Greenland Ice Sheet is likely to completely collapse at 1.6°C of sustained warming, which NASA scientists have concluded would lead to 23 feet of sea-level rise, billions of climate refugees, and a “global-scale catastrophe”; and,

WHEREAS, tipping points such as those stated above must be avoided, as they will have feedback effects causing further and increasingly uncontrollable climate change and costs; and,

WHEREAS, according to the Ecological Footprint, it is estimated that humanity currently uses the equivalent of 1.7 Earths per year in resource consumption and waste disposal; and,

WHEREAS, it is estimated that if the world consumed as the average American consumes, humanity would need the equivalent of 4.97 Earths per year in resource consumption and waste disposal; and,

WHEREAS, climate change is driving species extinction rates today 1,000 times higher than the natural rate, with a predicted 65 percent decline in vertebrate populations by 2020 and up to 37 percent of all plant and animal species by 2050; and,

WHEREAS, it is an act of unspeakable injustice and cruelty to knowingly subject our fellow humans now and in the future to societal disintegration, food and clean water shortages, economic collapse, and early death on an increasingly uninhabitable planet; and,

WHEREAS, common sense and morality indicate that humanity must seek to draw down the excess carbon from the atmosphere in order to restore a safe level of greenhouse gas concentrations and global average temperatures; and,

WHEREAS, corrective and preventive action requires mobilization on a scale not seen since World War II; and,

WHEREAS, justice requires that those that have contributed the most to this global climate and ecological cataclysm must carry a commensurate burden in reversing it; and,

WHEREAS, the Global Climate Action Summit, brought “together leaders from state and local governments, business, and citizens from around the world demonstrating how the tide has turned in the race against climate change, showcasing climate action taking place around the world, and inspiring deeper commitments from each other and from national governments,” held in San Francisco in September 2018; and,

WHEREAS, in Benicia, transportation contributes nearly half of our carbon emissions; and,

WHEREAS, Benicia is particularly vulnerable to sea-level rise, storm surge, and coastal erosion, exacerbated by extreme weather events with increased flooding and increased temperatures causing evaporation on land; and,

WHEREAS, we in Benicia can rise to the challenge of this great crisis with the active consultation, participation, and benefit of workers, businesses and residents, creating well-paying local jobs in building and installing renewable energy infrastructure, growing and supporting healthy plant-based food grown in the community and county, restoring ecosystems, and retrofitting and redesigning our current environment, electric grid, and transportation systems;

NOW BE IT THEREFORE RESOLVED, the City of Benicia declares that an existential climate emergency threatens our city, region, state, nation, civilization, humanity and the natural world and that time is of the essence.

BE IT FURTHER RESOLVED, the City of Benicia endorses a just, citywide emergency mobilization effort to reverse global warming, affirming city policy and priorities, and appropriate financial and regulatory assistance from the County of Solano and State and Federal authorities, to end citywide greenhouse gas emissions and safely draw down carbon from the atmosphere as quickly as possible.

BE IT FURTHER RESOLVED, the City of Benicia commits to promoting a walkable city that includes parking policies that promote “park once” transit and shared on demand trips to reduce vehicle miles traveled by employees and residents and to embrace a robust mobility program.

BE IT FURTHER RESOLVED, the City of Benicia commits to seeking development of housing for infill lots, repurposed lots and promote ADUs and fair renters’ policies and commit to timely processing of housing projects.

BE IT FURTHER RESOLVED, the City of Benicia commits to developing a just emergency mobilization implementation plan and updating its Climate Action Plan and goals to reflect a 100% reduction in community-wide greenhouse gas emissions, with the vision of becoming a carbon sink, by or before 2030.

BE IT FURTHER RESOLVED, the City of Benicia recommits to educating our residents about the climate emergency and working to catalyze a just emergency climate mobilization at the local, state, national, and global levels to protect our residents as well as all the people and species of the world.

BE IT FURTHER RESOLVED, the City of Benicia underscores the need for full community participation and support, and recognizes that the residents of Benicia, Sustainable Solano, Good Neighbor Steering Committee, and other community organizations will be integral to the mobilization effort.

BE IT FURTHER RESOLVED, the City of Benicia commits to keeping the considerations of vulnerable communities central to all climate emergency mobilization planning

processes and to inviting and encouraging such communities to actively participate in order to advocate directly for their needs;

BE IT FURTHER RESOLVED, the City of Benicia, in order to ensure a just transition, will consult with community, labor, environmental justice, economic justice, and racial justice organizations at every step of the climate emergency mobilization process.

BE IT FURTHER RESOLVED, the City of Benicia calls on the Solano Transportation Agency, SolTrans, and other appropriate local agencies to participate in this regional emergency just mobilization effort.

BE IT FURTHER RESOLVED, the City of Benicia calls for a regional just transition and climate emergency mobilization collaborative effort, inviting concerned residents, youth, faith, labor, business, environmental, economic, racial and social justice organizations as well as other community groups, and all elected officials in and from Solano County and nearby Counties, especially all the mayors.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the _____ day of _____, 2019 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date