



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 1, 2020

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **An Ordinance Of The City Council Of The City Of Emeryville Amending Article 2 Of Chapter 3 And Article 22 Of Chapter 5 Of The Planning Regulations At Title 9 Of The Emeryville Municipal Code To Allow Cannabis Manufacturing Businesses In Additional Zoning Districts And To Allow Reduced Distances Between Cannabis Sales Activities And Parks, Greenways And Other Sensitive Uses (CEQA Status: Exempt Pursuant To State CEQA Guidelines Sections 15332 And 15061(b)(3))**

### RECOMMENDATION

Staff and the Planning Commission recommend that the City Council adopt the first reading of the attached ordinance amending Article 2 of Chapter 3 and Article 22 of Chapter 5 of the Planning Regulations at Title 9 of the Emeryville Municipal Code to allow cannabis manufacturing businesses in additional zoning districts and to allow reduced distances between cannabis sales activities and parks, greenways and other sensitive uses.

### BACKGROUND

On April 4, 2017, the City Council adopted regulations to allow retail Cannabis Sales and Cannabis Manufacturing facilities in certain areas of the city. A new Article 22 of Chapter 5, entitled "Cannabis Related Activities", was added to the Planning Regulations that permitted cannabis manufacturing and retail store-front businesses for both medicinal and adult use, with a conditional use permit. Under these regulations, retail Cannabis Sales are allowed with a conditional use permit in the Mixed Use with Residential (MUR), Mixed Use with Residential South (MURS), and Mixed Use with Non-Residential (MUN) zoning districts, and may not be located within 250 feet of any public park (including greenways), religious institution, elementary or secondary school, or day care facility. Cannabis Manufacturing is allowed with a conditional use permit in the Mixed Use with Non-Residential (MUN), Office Technology/Doyle Hollis North (OT/OH), Office Technology (OT), Light Industrial (INL), and Heavy Industrial (INH) zoning districts. There are no distance requirements for Cannabis Manufacturing.

Also on April 4, 2017, the City Council adopted an ordinance entitled "Cannabis", codified as Chapter 28 of Title 5 (Public Welfare) of the Municipal Code, which established a process for the Police Department to issue an "Operator's Permit" to a cannabis business. On April 7, 2020, the City Council adopted Ordinance No. 20-004,

making minor modifications to Chapter 28 of Title 5 of the Emeryville Municipal Code to make local regulation consistent with state law.

On September 5, 2017, the City Council issued a Request for Qualifications (RFQ) to select a cannabis business qualified to obtain an Operator's Permit for a storefront dispensary. On November 21, 2017, the Council selected two businesses out of seven applicants as deemed qualified to hold an Operator's Permit. The two selected businesses included East Bay Therapeutics (EBT, now called "Ohana") and Rochambeau, Inc. (now called "MedMen"). Conditional use permits for these retail Cannabis Sales facilities were approved by the Planning Commission in early 2018. In addition, the Planning Commission has now approved four conditional use permits for Cannabis Manufacturing. These facilities are all located in the northern part of the city, along Hollis and 67th Streets.

## **DISCUSSION**

To facilitate the further growth of the cannabis industry in Emeryville, it is now proposed to modify the Planning Regulations to add flexibility to the distance requirements for retail Cannabis Sales uses, and to expand the range of zoning districts in which Cannabis Manufacturing uses may be located. At the April 7, 2020 City Council meeting, the Council directed staff to prepare an ordinance to amend the Planning Regulations to:

1. Allow the distance requirement for retail Cannabis Sales from parks, greenways, and other sensitive uses to be reduced or waived with a conditional use permit, including a finding that the reduced distance will not compromise the public health, safety, or welfare.
2. Expand the range of zoning districts in which Cannabis Manufacturing uses may be located with a conditional use permit to include the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zoning districts.

## **Distance Requirements for Retail Cannabis Sales**

The proposal to modify distance requirements for retail Cannabis Sales stems from Ohana's desire to move across the street from its current location on Peladeau Street into the space currently occupied by the Broken Rack Sports Bar and Billiards.

At a Planning Commission study session held on January 23, 2020, five of the six Commissioners present felt that amendment to the Planning Regulations was appropriate to facilitate more locations in the City for cannabis businesses. On June 25, 2020, the Planning Commission held a public hearing on the proposed amendments and voted unanimously (with one Commissioner absent) to recommend that the City Council adopt them.

## **Zoning Districts In Which Cannabis Manufacturing Is Allowed**

As noted above, Cannabis Manufacturing businesses are currently permitted with a conditional use permit in the Mixed Use with Non-Residential (MUN), Office/Technology Doyle Hollis North (OT/DH), Office/Technology (OT), Light Industrial (INL), and Heavy Industrial (INH) districts. Staff has been routinely receiving inquiries from businesses interested in establishing Cannabis Manufacturing in the City's Mixed Use with Residential (MUR) and Mixed Use with Residential South (MURS) zones, where currently retail Cannabis Sales businesses are permitted but Cannabis Manufacturing is prohibited.

Custom Manufacturing, Light Manufacturing, and Small Food Production (i.e. 10,000 square feet or less) are allowed with a conditional use permit in the MUR and MURS zones. All of the existing cannabis manufacturers in the City are similar in nature to Light Manufacturing, Custom Manufacturing and/or Small Food Production. Allowing Cannabis Manufacturing businesses in the MUR and MURS zones would bring additional properties into potential play, would be welcomed by the industry, and would help to bolster the City's economy in this sector. Further, as all cannabis establishments require a conditional use permit from the Planning Commission, compatibility of any particular business with the surrounding area will always be assessed on a case-by-case basis.

## **Proposed Changes to the Planning Regulations**

The proposed changes to allow cannabis manufacturing businesses in additional zoning districts and to allow reduced distances between cannabis sales activities and parks, Greenways and other sensitive uses will require amendments to Article 2 of Chapter 3 and Article 22 of Chapter 5 of the Planning Regulations at Title 9 of the Emeryville Municipal Code.

The proposed changes are denoted by ~~striketrough-type~~ for language that is deleted and double underlined type for new language.

*Amending Table 9-3.202 to Allow cannabis manufacturing use in additional zoning districts.*

**Table 9-3.202. Uses Permitted, Conditionally Permitted, and Prohibited.**

Use Classifications	Base Zones													
	RM Medium Density Residential	RMH Medium High Density Residential	RH High Density Residential	MUR Mixed Use with Residential	MURS Mixed Use with Residential South	MUN Mixed Use with Non-Residential	OT Office/Technology	OT/DH Office/Technology Doyle Hollis North Area	INL Light Industrial	INH Heavy Industrial	P Public	M Marina	PO Park/Open Space	SM Shoreline Management
Industrial														
Manufacturing														
Cannabis Manufacturing	X	X	X	<del>X</del> <u>C</u>	<del>X</del> <u>C</u>	C	C	C	C	C	X	X	X	X

*Amending Section 9-5.2207(c): Standards*

(c) Cannabis Sales shall not be located within two hundred fifty feet (250') of any school, day care facilities, religious institution or public park, unless a condition use permit is approved with a finding that the reduced distance will not compromise the public health, safety, or welfare. and Cannabis Sales shall comply with all applicable performance standards in Article 11 of this Chapter and with all applicable general conditions in Chapter 28 of Title 5.

#### **REQUIRED FINDINGS:**

In order to approve an amendment to the Planning Regulations, the City Council must be able to make the findings listed in the Amendment Procedure at Section 9-7.1305, as follows:

- The proposed amendment is consistent with the General Plan.
- The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.
- The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.
- For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations,

and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

In staff's and the Planning Commission's view, these findings can be made as the proposed amendments to the Planning Regulations to allow Cannabis Manufacturing in additional zoning districts as well as reductions in distance requirements for Cannabis Sales would be consistent with General Plan policy LU-P-26, Economic Development, of the General Plan, which states "A mix of commercial uses to stimulate the City's fiscal base from downturns in particular markets shall be maintained." Allowing Cannabis Manufacturing in additional districts (MUR and MURS) will assist in stimulating the City's fiscal base by bringing additional properties into potential play and will help to bolster the City's economy in this sector. Moreover, Custom Manufacturing, Light Manufacturing, and Small Food Production are allowed with a conditional use permit in the MUR and MURS zones. All of the existing Cannabis Manufacturing uses in the City are similar in nature to Light Manufacturing, Custom Manufacturing and/or Small Food Production.

Given the small size of the City, there is limited land available for Cannabis Sales and any reduction in the buffer from sensitive receptors will require approval from the Planning Commission, which will allow compatibility of any particular business with the surrounding area to be assessed on a case-by-case basis to ensure that the public health, safety and welfare are not compromised.

Furthermore, the proposed amendments will benefit the public by adding to the economic base of the City and allowing additional opportunities to establish cannabis retail and manufacturing businesses.

No changes to the Zoning Maps are proposed.

## **ENVIRONMENTAL REVIEW**

This amendment is exempt from environmental review under State CEQA Guidelines Section 15332, which applies to infill development projects; and under the "common sense exemption" at Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

It is important to note that Ohana has not yet submitted a formal application, but it is anticipated that this zoning code amendment will facilitate a future application from Ohana. Once there is a formal application, City staff and the Planning Commission will evaluate and act on the application accordingly, but staff anticipates that there will be no significant impacts from such future development at the Broken Rack location due to Ohana's relocation because it would be in-fill development, meeting the Class 32 exemption.

## **FISCAL IMPACT**

There are no fiscal impacts from this action.

## **STAFF COMMUNICATION WITH THE PUBLIC**

As noted above, at their June 25, 2020 meeting, the Planning Commission approved the amendments and recommended that the City Council adopt the amendments as proposed. The vote was 6-0 and Commissioner Sohane had an excused absence.

## **CONCLUSION**

Staff and the Planning Commission recommend that the City Council take the following actions:

1. Introduce the Ordinance after a motion to read by title only.
2. Take public testimony regarding the Ordinance.
3. Adopt the first reading of the Ordinance.

**PREPARED BY:** Miroo Desai, Senior Planner

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENT:**

- Proposed Ordinance