



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: October 5, 2021
TO: Christine Daniel, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations At Title 9 Of The Emeryville Municipal Code To Allow Cannabis Manufacturing With A Minor Conditional Use Permit (CEQA Status: Not A “Project” Under Public Resources Code Section 21065, And Common Sense Exemption At CEQA Guidelines Section 15061(b)(3))

RECOMMENDATION

The Planning Commission and staff recommend that the City Council introduce and approve the first reading of the above-entitled ordinance to amend the Planning Regulations to allow Cannabis Manufacturing uses with a minor conditional use permit.

BACKGROUND

Conditional Use Permit Requirement. On April 4, 2017, the City Council adopted Ordinance No. 17-002, amended the Planning Regulations to create two cannabis use types: Cannabis Sales (a Commercial Retail use type), and Cannabis Manufacturing (an Industrial Manufacturing use type). Cannabis Sales includes businesses selling cannabis or cannabis products for off-site or on-site consumption (i.e. “retail/dispensaries” or “storefront retail”). Cannabis Manufacturing includes manufacturing, testing, distribution, transport, delivery, and research and development. This ordinance required both Cannabis Sales and Cannabis Manufacturing uses to obtain a major conditional use permit from the Planning Commission.

Ordinance No. 17-002 allows Cannabis Manufacturing 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. On September 15, 2020, the City Council adopted Ordinance No. 20-021 adding Mixed Use with Residential (MUR) and Mixed Use with Residential South (MURS) to the zoning districts in which Cannabis Manufacturing is allowed with a conditional use permit.

Existing Use Permits for Cannabis Manufacturing. To date, the Planning Commission has issued four Conditional Use Permits for Cannabis Manufacturing uses, as follows:

Case Number	Name	Address	Description	Date Approved
UP17-002	VersaGenix Cannabis Manufacturing and Delivery Facility	1320 67th St.	Cannabis manufacturing and delivery facility in an existing building. The 1,046 square foot facility will formulate and manufacture cannabis-derived health supplements, cosmetics and other similar products.	12/20/2017
UP17-003	6613 Hollis Cannabis Manufacturing and Delivery Incubator Facility	6613 Hollis St.	A 4,043 square foot incubator space for a variety of cannabis manufacturing and delivery services.	1/25/2018
UP17-004	Kikoko Cannabis Manufacturing and Delivery Facility	1265 67th St.	Cannabis manufacturing and delivery facility in an existing building. The 7,750 square foot facility will primarily manufacture cannabis infused teas and other similar products.	12/20/2017
UP20-001	VersaGenix Cannabis Manufacturing and Distribution Facility II	1295 67th St.	Cannabis manufacturing and distribution facility in an existing building. The 6,719 square foot facility will formulate and manufacture cannabis-derived health supplements, cosmetics and other similar products.	2/27/2020

Issues raised at the public hearings on these applications included odors, security, deliveries, hours of operation, pedestrian impacts, and traffic. Conditions of approval specific to the Cannabis Manufacturing operations of these use permits, as recommended by staff, generally included the following:

- **Permitted Uses.** This conditional use permit authorizes the following commercial cannabis activity (and related uses) at the property: the possession, manufacturing (without volatile solvents), distribution, processing, storing, labeling, assembly of cannabis products, and delivery to end users only.
- **Prohibited Uses.** The following commercial cannabis activities (and related uses) are not allowed at the property: cloning, planting or cultivation of cannabis plants, manufacturing with volatile solvents, or direct dispensing or retail sales to the public.
- **Future Sub-Tenants.** Subject to state law and state regulations, the applicant may sub-lease the facility to other tenants engaging in cannabis commercial activity consistent with this conditional use permit, provided that each subtenant obtains an Operator's Permit from the Emeryville Police Department pursuant to Chapter 28 of Title 5 of the Emeryville Municipal Code, applicable state license/permits, and a Business License from the City of Emeryville, prior to commencing operations.

- Cannabis Consumption. Consumption, including smoking, inhaling, and ingesting, of cannabis is prohibited on the property, in the public right of way abutting the property or within a 600-foot radius of the property.
- Hours of Pick Up and Deliveries. Pick-ups and deliveries to the property shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m. The Police Chief may further impose conditions on pick-ups and deliveries through an Operator's Permit.
- Business Conducted within Building. All allowed commercial cannabis activity shall be conducted inside the building located on the property. No commercial cannabis activity shall be visible from the exterior of the building or from the public right of way abutting the property.
- Odor Control. All odors shall be contained on the property. If the City receives any odor complaints, the applicant or sub-tenant shall work with the Building Official to immediately abate any nuisance related to odor. Unresolved or repeated violations related to odor may be basis for suspension or revocation of the Operator's Permit or denial of Operator's Permit renewal.

The Planning Commission unanimously approved all four of these conditional use permits, with no modifications to these staff-recommended conditions of approval. Staff has not received any complaints about any of these facilities since their approval by the Commission.

Council Direction. On June 1, 2021, the City Council held a study session to discuss obstacles to expansion of the cannabis industry in Emeryville. Staff outlined various factors that may be limiting the growth of the industry and potential measures to help address these limitations. The Council indicated that they did not want to entertain any additional retail dispensaries at this time, but directed staff to proceed with an amendment of the Planning Regulations to allow Cannabis Manufacturing with a minor conditional use permit instead of a major conditional use permit.

Planning Commission Recommendation. The proposed zoning text amendment was considered by the Planning Commission at a public hearing on August 26, 2021. There were no speakers at the public hearing. Following the public hearing, the Commission voted unanimously to recommend that the City Council approve the proposed zoning text amendment.

DISCUSSION

Existing Regulations. Cannabis Manufacturing currently requires a major conditional use permit under the Planning Regulations for two reasons:

1. Section 9-5.2205 states: “It is unlawful to engage in ... Cannabis Manufacturing ... without first obtaining a major conditional use permit from the Planning Commission ...”; and
2. Cannabis Manufacturing is listed as a “use of special concern” in Section 9-2.701, and Section 9-7.503(a)(2) stipulates that uses of special concern are not eligible for minor conditional use permits.

Proposed Amendment. The proposed amendment would change the type of conditional use permit required for Cannabis Manufacturing from a major conditional use permit to a minor conditional use permit. This would allow Cannabis Manufacturing to be approved by staff, thereby saving the applicant the time and expense of a Planning Commission public hearing and approval. The current fee for a minor conditional use permits is \$575 and they are typically approved within two to four weeks. A major conditional use permit, on the other hand, is charged on a cost recovery basis with a minimum deposit of \$3,000 and typically takes two to three months to approve.

In order to allow Cannabis Manufacturing with a minor conditional use permit, Sections 9-5.2205 and 9-7.503(a)(2) will need to be modified, and other provisions will need to be amended for consistency (including correction of a typographical error in Section 9-2.417(f)). Staff also recommends explicitly including in the Planning Regulations the conditions of approval for Cannabis Manufacturing mentioned above, so that they will always apply unless otherwise specified in approval of the conditional use permit.

Section 9-7.1303 stipulates that an amendment to the Planning Regulations may be initiated by an applicant, the City Council, or the Planning Commission on its own motion or on the recommendation of the Community Development Director. In this case, the amendment was initiated by the City Council when it directed staff to proceed with such an amendment at its meeting on June 1, 2021.

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:

- (a) The proposed amendment is consistent with the General Plan.
- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.
- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.
- (d) 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 the Planning Commission's view, these findings can be made, as detailed in the attached proposed ordinance.

ENVIRONMENTAL REVIEW

The proposed amendment is not considered a "project" under Public Resources Code Section 21065 and is not subject to CEQA. Even if it were considered a project, it would be exempt from environmental review under the "common sense exemption" at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

FISCAL IMPACT

None.

STAFF COMMUNICATION WITH THE PUBLIC

As required by the Planning Regulations, a legal advertisement was published in the Oakland Tribune. As noted above, the Planning Commission unanimously recommended adoption of the Planning Regulations amendment at its August 26, 2021, meeting.

CONCLUSION

The Planning Commission and staff 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.

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



Christine Daniel, City Manager

ATTACHMENTS

- Proposed Ordinance