

Sophie Hahn
Councilmember District 5

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: July 10, 2018

Item Number: 19

Item Description: Ordinance Allowing Currently Permitted Non-Cannabis Nurseries in Specified Areas to Become Commercial Cannabis Retail Nurseries

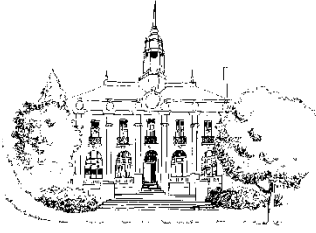
Submitted by: Councilmember Sophie Hahn

I strongly support the goal of this Item; namely, to allow one or more currently operating nurseries in the area delineated by the Item to engage in Cannabis Nursery activities. However, due to a number of concerns with the drafting and scope of what was included in this Item, I propose to refer it to the Agenda Committee to allow time for an amended version to come before Council.

A few of my concerns are:

1. There are a series of "Definitions" in the proposed Item that (1) are very technical and (2) except for "Cultivation" and "Cultivate," aren't used anywhere else in the proposed BMC amendment (new Chapter 12.22). It would reduce confusion to avoid defining terms not used in the proposed amendment.
2. The proposed new Chapter refers to "currently permitted nurseries," but the BMC does not have a permitting category of "Nurseries." In the BMC, "nursery" is only mentioned once, under the definition of Retail Products Store, which includes a subcategory of "Garden Supply Stores, Nurseries." Nurseries are thus likely licensed as Retail Product Stores, which would mean they can sell and do a lot of things beyond growing plants and selling them and garden supplies. This may interact in unintended ways with the proposed amendments, or trigger the need for amendments to other areas of the BMC.
3. There are a number of broad exemptions as well as additional businesses the item proposes to allow for Cannabis Nurseries, which have potentially large implications, including, in combination, exempting such nurseries from the six hundred-foot exclusion area around cannabis retailers while simultaneously allowing them to "include testing, processing, manufacturing and food preparation, if permitted by future state law." The implications of these combined exemptions may be broader than intended.

To allow for more time to address these and other potential clarifications to the Item, I propose referring it to the Agenda Committee, and offer to work with the authors, if possible given the Brown Act, on possible amendments.



Kriss Worthington

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ACTION CALENDAR

July 24, 2018

(Continued from July 10, 2018)

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kriss Worthington, Cheryl Davila, and Kate Harrison
Subject: Ordinance Allowing Currently Permitted Non-Cannabis Nurseries in Specified Areas to Become Commercial Cannabis Retail Nurseries

RECOMMENDATION:

That the Council adopt an ordinance amending nursery zoning policies to allow medical and/or adult-use cannabis cultivation in the area bounded by University Avenue, San Pablo Avenue, Dwight Way, and Sixth Street specifically for currently permitted nursery-only cultivation sites, subject to compliance with state regulations.

BACKGROUND:

Small nursery businesses that have operated in Berkeley for many years should not be excluded from participating in the growing adult-use cannabis industry. By easing legal barriers for currently permitted non-cannabis nurseries to operate as hybrid nurseries, the City of Berkeley would achieve certain other community-oriented goals. The first of these goals is to prioritize the interests of small, locally-owned businesses. If the operation of these hybrid nurseries is authorized in the near future, it would provide legacy nursery businesses with an opportunity to conduct such operations within the cannabis industry.

Previously existing non-cannabis nurseries are conducive to the general operations required for commercial cannabis cultivation. Allowing non-cannabis nurseries to extend their commercial licenses in order to include the sale of cannabis-related agricultural products would allow for the creation of unique hybrid nursery businesses. Hybrid nurseries would be required to cultivate and sell cannabis in separate, distinct areas, compliant with State regulations. Amoeba Music and Hi-Fidelity are successful examples of separate facilities serving related purposes while operating on the same property.

In 2016, California passed Proposition 64, which legalized cannabis for use by adults 21 years or older. Chapter 1 of the Proposition defines a cannabis nursery as “a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana,” and a Type 4—Cultivation license as one specifically designed for cannabis nurseries. The State has introduced specific cultivation plans for nursery licenses, easing local businesses into commercial retail.

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

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Attachments:

1. Proposed Equitable Cannabis Cultivation Standards for Currently Permitted Nurseries Ordinance (Chapter 12.22) amending Berkeley Municipal Code

**ORDINANCE NO. ##### -N.S.
ADDING ORDINANCE NO. ##### -N.S. TO THE BERKELEY MUNICIPAL CODE
UNDER CHAPTER 12: "MEDICAL CANNABIS CULTIVATION BUSINESSES AND
FACILITIES II":**

BE IT ORDAINED by the Council of the City of Berkeley as follows:

That Berkeley Municipal Code Section 12.22 be added and read as follows:

**Chapter 12.22
EQUITABLE CANNABIS CULTIVATION STANDARDS FOR CURRENTLY PERMITTED
NURSERIES**

Section 12.22.010 Purpose

The purpose of this Chapter is to create an equitable framework for currently permitted nurseries adding the cultivation of cannabis consistent with state regulations on cannabis nurseries.

Section 12.22.020 Definitions

- A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9-tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol, cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater than .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.
- B. "Batch" means a specific quantity of cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture or is from the same crop grown in the same location and harvested in the same manner and at the same time.
- C. "Cannabis" shall have the same meaning as the definition of "Marijuana" provided in California Health and Safety Code Section [11018](#) at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section [11018](#), "marijuana means all parts of the

plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

- D. "Cannabis By-Products" means delta-8-THC and cannabitol when present in amounts greater than .2% of a product's dry weight.
- E. "Compound(s)" means any or all of the following chemicals, as the context requires:
 - a. "THC" or "Δ9-THC" means Δ^9 -tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
 - b. "THCA" or "Δ9-THCA" means the acid form of THC.
 - c. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol.
 - d. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.
 - e. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.
- F. "Concentrate" means any oil or butter into which any Compound has been infused or otherwise dissolved.
- G. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof.
- H. "Cultivate" and "Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

Section 12.22.030 Cannabis Cultivation by Existing Nurseries

- A. Notwithstanding anything to the contrary in this Chapter, cultivation of medical and/or adult use cannabis shall be permitted as a matter of right with a Zoning

Certificate in the area bounded by University Avenue, San Pablo Avenue, Dwight Way, and Sixth Street, subject to the following limitations:

1. Such locations shall be limited to nurseries that hold a valid permit
 2. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet, except that separate spaces used by different licensees may be aggregated on the same location.
 3. The total area used for cannabis cultivation shall not exceed 45,000 square feet.
 4. Cultivation businesses shall engage in retail cannabis cultivation solely as a nursery (production of clones, seeds, immature plants, etc.).
 5. All cannabis uses must comply with state regulations.
- B. Existing nurseries seeking to cultivate cannabis under this section shall not count toward the limit on the number of cannabis retailers, and they shall not be subject to the six hundred-foot exclusion area around cannabis retailers.
- C. Such locations shall comply with security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within six hundred feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation, if permitted by future state law.