



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Community Development

SUBJECT: Second Reading of an Ordinance Adding Chapter 5.36 of the Capitola Municipal Code Pertaining to Cannabis Retail Licenses and Amending Chapter 17.24 of the Regional Commercial Zoning District Pertaining to Conditional Land Uses to Authorize Commercial Retail Cannabis Uses in the Regional Commercial Zoning District

RECOMMENDED ACTION: Adopt an Ordinance adding Chapter 5.36 “Retail Cannabis Licenses” and amending Municipal Code Chapter 17.24 to authorize retail cannabis as a conditionally permitted use in the Regional Commercial zone.

BACKGROUND/DISCUSSION: On June 28, 2018, the City Council adopted the first reading of the cannabis retail establishment ordinance with modifications to the ordinance as recommended by Planning Commission. The modifications included establishing a maximum limit of two cannabis retail establishments, increasing the maximum sign area to 20 square feet, and incorporating regulations to prevent advertising to youth. The City Council discussed but decided against adding a 100-foot residential buffer.

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Community Development Director

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

7/19/2018

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF CAPITOLA
AMENDING CAPITOLA MUNICIPAL CODE BY ADDING CHAPTER 5.36 “RETAIL
CANNABIS LICENSES” AND AMENDING CHAPTER 17.24 “COMMERCIAL AND
INDUSTRIAL ZONING DISTRICTS” AT SECTION 17.24.020 TO AUTHORIZE RETAIL
CANNABIS SALES IN THE C-R – REGIONAL COMMERCIAL ZONING DISTRICT**

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

Section 1: Chapter 5.36 “RETAIL CANNABIS LICENSES” of the Capitola Municipal Code is hereby added to read as follows:

“Chapter 5.36

RETAIL CANNABIS LICENSES

Sections:

5.36.010 Purpose

5.36.020 Definitions

5.36.030 Cannabis Retail Business – License Required

5.36.010 Purpose

Proposition 64, approved by the voters of California in November 2016, legalized the adult recreational use of cannabis. This chapter is designed to regulate the sale of cannabis based upon the new state law.

The city has determined to initially limit the number of cannabis retail outlets allowed to ensure that this use will not create unforeseen impacts. To provide a process that limits the number of retail establishments without tying those establishments to specific properties, this chapter creates a licensing structure for cannabis retail businesses.

5.36.020 Definitions

For purposes of this chapter, the following definitions shall apply:

- A. “Adult use” shall refer to non-medicinal or non-medical use of cannabis by persons 21 years of age or older in conformance with the Medical and Adult-Use Cannabis Regulation and Safety Act and the provisions of state law regarding cannabis use and sale.
- B. “Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate cannabis for medicinal purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 et seq.
- C. “Commercial cannabis activity” includes the cultivation, manufacturing, processing, packaging, distribution, and sale of cannabis and cannabis products.
- D. “Cultivate” or “cultivation” is the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof in any location.

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- E. “Medicinal cannabis” is defined in strict accordance with California Health and Safety Code sections 11362.5 et seq.
- F. “Processing” is defined as any method used to prepare cannabis or its byproducts for commercial sale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.
- G. “Primary caregiver” is defined in strict accordance with California Health and Safety Code section 11362.5 et seq.
- H. “Cannabis Retail Establishment” means a retail store in which cannabis or cannabis products are sold for Adult Use and/or Medicinal Use.

5.36.030 Cannabis Retail Business – License Required

- A. It is unlawful for any person conducting, operating, owning, or in control of any premises to sell cannabis or cannabis product, whether medical (medicinal) or adult use (recreational) within the City of Capitola unless such person holds a valid Retail Cannabis License, except as outlined below in this subsection A.
 - 1. Single License. A Retail Cannabis License may be issued to a single business owner/operator for a single location.
 - 2. Maximum Licenses. No more than two Retail Cannabis Licenses shall be issued by the City of Capitola at any given time.
 - 3. Notice of Availability. When the number of active Retail Cannabis Licenses falls below the maximum number of licenses established herein, the city shall place an advertisement in at least one local newspaper of general circulation and post on the city’s website an announcement that the city will be accepting applications for Retail Cannabis Licenses. The notice shall include the location on the city’s website for the application and submittal requirements, application deadlines, and contact information for questions.
 - 4. Retail Cannabis License – Application Preparation and Filing.
 - (a) Application Contents. All license applications shall be filed on an official City Retail Cannabis License Application form available through the Police Department. The Retail Cannabis License Application shall specify all submittal requirements including documentation, plans, and materials.
 - (b) A complete application and the associated fees, including a Cannabis Retail License application fee, shall be filed with the City’s Police Department.
 - 5. Competitive, Merit-Based License Review. Retail Cannabis Licenses shall be subject to a competitive, merit-based review. The City may consider all of the following in the review of an application:
 - (a) The proposed location of the Retail Cannabis License establishment is not identified as an area of increased or high crime activity by the Chief of Police;
 - (b) Civil and Criminal background verification of business owner/operator with preference for applicant that has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;
 - (c) Applicant’s experience in retail sales and legal cannabis sales;

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- (d) Applicant's residency and local enterprise within the region;
 - (e) For those applicants that have operated other retail cannabis establishments, the numbers of calls for police, crimes, or arrest associated with the applicant's other location(s) shall be considered; and
 - (f) The site plan, operations plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems. These features may include, but are not limited to:
 - 1. security on-site;
 - 2. procedure for allowing entry;
 - 3. best practices to minimize risk of selling cannabis products to underage individuals
 - 4. surveillance and control of the premises, the perimeter, and surrounding properties;
 - 5. reduction of opportunities for congregating and obstructing public ways and neighboring property;
 - 6. illumination of exterior areas; and
 - 7. visibility of public entryway from the street.
6. Selection Process. All complete applications received prior to the application deadline shall be reviewed by a panel of no fewer than three non-conflicted individuals as selected by the city manager. The panel shall review the applications, considering factors of importance to the community including those listed within subsection B.5. The application determined to best meet the requirements of this section and community's needs shall be selected as a potential Retail Cannabis License holder.
7. Issuance of License. The issuance of a final cannabis retail license shall be contingent upon the following:
- (a) Applicant must have been identified as a potential Retail Cannabis License holder pursuant to subsection B.6;
 - (b) Approval of a Conditional Use Permit by Planning Commission within six months of selection as a potential Retail Cannabis License holder; and
 - (c) Appropriate State License(s) for retail sales of cannabis within six months of selection as a potential Retail Cannabis License holder.
 - (d) Effective Date. The Cannabis Retail License shall be issued upon receipt of a Conditional Use License and State License(s).
 - (e) Expiration. If the business owner/operator is unable to obtain either of the requirements outlined in this subsection B.7(a)-(b) within six months from the selection date, the selection will expire immediately and a Retail Cannabis License will be made available and publicly noticed. The six months shall commence six months from the date of official selection on the same day of the month.
8. Requirements of License. A Retail Cannabis License shall include specific operational and safety requirements established by the Chief of Police.

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9. License Transfer to New Owner.
- (a) License Transfer to New Owner. No Licensee shall transfer ownership or control of a retail cannabis establishment to another person or entity unless and until the transferee obtains an amendment to the license from the Chief of Police stating that the transferee is now the licensee. Such an amendment may be obtained only if the transferee files all required application materials in accordance with all provision of this Chapter, pays all applicable fees, pass the background check, and independently meets the requirements of the cannabis retail license, as determined by the Chief of Police. A license shall not be transferred to an owner that has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
 - (b) Changes in ownership of a licensee's business structure or a substantial change in the ownership of a licensee's business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the City Manager or his/her designee through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for license revocation.
 - (c) A licensee may change the form of business entity without applying to the City Manager or his/her designee for a transfer of license, provided that either:
 1. The membership of the new business entity is substantially similar to the original license holder business entity (at least 51% of the membership is identical), or
 2. If the original licensee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and to comply with Section 5.36.030.A, provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City retail cannabis license application) of the original retail cannabis licensed entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the license holder is required to notify the Chief of Police in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for license revocation.
 - (d) No retail cannabis license may be transferred when the Chief of Police has notified the licensee that the license has been or may be suspended or revoked.
 - (e) Any attempt to transfer a retail cannabis license either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the license.
10. License Transfer to New Location. A cannabis retailer license does not run with the property. Licensees may change locations contingent upon obtaining a letter

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of referral from the City's Chief of Police, a Conditional Use Permit for the new location, and approval from the state licensing agency for the new location.

11. Annual Renewal and Review of Retail Cannabis License.
 - (a) Annual Renewal. All Retail Cannabis Licenses shall be renewed annually.
 - (b) Annual Review of Retail Cannabis License. The staff of the community development department and the police department are hereby authorized to conduct an annual review of the operation of each Retail Cannabis Establishment within the city for full compliance with the requirements of the Retail Cannabis License.
 - (c) Upon verification of renewal of the state license and findings of compliance with the requirements of the Retail Cannabis License, and upon submission of required Annual Cannabis License fee, the police department may issue the annual renewal.
 - (d) Annual Cannabis Retail License Review Fee. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time involved in the annual review process.

12. Promulgation of Regulations, Standards and Other Legal Duties.
 - (a) In addition to any regulations adopted by the City Council, the City Manager, Chief of Police or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of retail cannabis license, the ongoing operation of a retail cannabis businesses and the City 's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.
 - (b) Regulations shall be published on the City 's website.
 - (c) Regulations promulgated by the City Manager or Chief of Police shall become effective upon date of publication. Retail cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager, Chief of Police or his/her designee.
 - (d) Regulations shall include advertising restrictions that specify require printing, publishing, advertising, or dissemination in any way or by any means of communication, or causing to be printed, published, advertised, or disseminated in any way or by any means of communication, other than by way of a dedicated business Internet website accessible through an age gate portal, any notice of advertisement that includes the following information: pricing of cannabis, details regarding specific cannabis products, or cannabis photography or graphics related to the cannabis plant or cannabis products.

13. Suspension and Revocation of license.

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- (a) Authority to suspend or revoke a Retail Cannabis License.
1. Any Retail Cannabis License issued under the terms of this Section may be suspended or revoked by the Chief of Police if the retail cannabis establishment is being operated in a manner not in compliance with the requirements of the Retail Cannabis License, the operational plan, the security plan, or state law, or if the cannabis establishment becomes a public nuisance.
 2. Written Notice. Except as otherwise provided in this Section, a license shall be revoked or suspended by the Chief of Police under the authority of this Section in a written notice. Such revocation or suspension notice shall state the specific reasons for the proposed suspension or revocation. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such license. Notice may be given either by personal delivery to the licensee, or by certified U.S. mail in a sealed envelope, addressed to the business owner/operator to be notified at their address as it appears in their application for a Retail Cannabis License.
14. Appeal of decision. An applicant or interested party aggrieved by any decision to approve, suspend, modify, or revoke a license under this Chapter may appeal such decision to the City Council by filing a written appeal in accordance with the requirements of Chapter 2.52 (Appeals to City Council). If an appeal is not submitted within ten working days following the review authorities' decision, the decision shall be final.

Except as expressly authorized herein, all commercial cannabis activity is prohibited in all areas of the City.”

Section 2: Retail Cannabis in the C-R Zoning District. Section 17.24.020 of the Capitola Municipal Code is hereby amended to read as follows:

“17.24.020 Land Use Regulations

- A. Permitted Land Uses.** Table 17.24-1 identifies land uses permitted in the commercial and industrial zoning districts.

TABLE 17.24-1: PERMITTED LAND USES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

Key	Zoning District	
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P Permitted Use A Administrative Permit required M Minor Use Permit required C Conditional Use Permit required – Use not allowed	C-C	C-R	I	Additional Requirements
Residential Uses				
Single-Family Dwellings	-	-	-	
Multi-Family Dwellings	C	C [9]	-	
Residential Mixed Use	C	C [7]	-	Section 17.24.040
Public and Quasi-Public Uses				
Colleges and Trade Schools	C	C	C	
Community Assembly	C	C	-	
Cultural Institutions	C	C	-	
Day Care Centers	C	C	-	
Emergency Shelters	-	-	P	Section 17.96.030
Government Offices	See 17.24.020.C		C	
Medical Offices and Clinics	See 17.24.020.C		-	
Public Safety Facilities	C	C	C	
Commercial Uses				
Alcoholic Beverage Sales	C	C	C	
Banks	P [2]	P [2]	-	
Financial Institutions	P [2]	P [2]	-	Section 17.24.020.C
Business Services	P [2]	P [2]	P	
Commercial Entertainment and Recreation	M	M	-	
Drive-Through Facilities	-	C [4]	-	
Eating and Drinking Establishments				
Bars and Lounges	C	C	C	
Mobile Food Vendors	-	A [6]/C	A [6]/C	
Restaurants and Cafes	M [2]	M [2]	C	
Take-Out Food and Beverage	M [2]	M [2]	-	
Food Preparation	M [2]	-	P	
Gas and Service Stations	C	C	-	
Liquor Stores	C	C	-	
Lodging				
Bed and Breakfast	C	-	-	

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Hotel	C	C	-	
Maintenance and Repair Services	M	C	P	
Personal Services	P [1]	P [1]	-	
Professional Offices	See 17.24.020.C		P	
Salvage and Wrecking	-	-	P	
Self-Storage	C	-	C	Section 17.96.140
Retail	P	P	-	
Retail Cannabis Establishment	-	C [10]	-	Section 17.24.020.D
Vehicle Repair	C	C	P	
Vehicle Sales and Rental	C [5]	C [5]	-	
Vehicle Sales Display Room [8]	P	P	-	
Wholesaling	-	M [3]	P	
Heavy Commercial and Industrial Uses				
Construction and Material Yards	-	-	P	
Custom Manufacturing	M	M	P	
Light Manufacturing	-	-	P	
Warehousing and Distribution	-	-	P	
Transportation, Communication, and Utility Uses				
Utilities, Major	-	C	C	
Utilities, Minor	P	P	P	
Recycling Collection Facilities	C	C	C	Section 17.96.130
Wireless Communications Facilities	See 17.104			
Other Uses				
Accessory Uses	See 17.52			
Home Occupations	A	A	-	Chapter 17.96.040
Permanent Outdoor Display	C	C	C	Section 17.96.100
Temporary Uses	See 17.76.180			
Urban Agriculture				
Home Garden	P	P	-	
Community Garden	M	M	-	
Urban Farm	C	C	-	

Notes:

[1] Combination of two or more tenant suites within a multi-tenant building or greater than 5,000 sq. ft. requires Minor Use Permit

[2] Combination of two or more tenant suites within a multi-tenant building or greater than 5,000 sq. ft. requires

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Conditional Use Permit

[3] Without stock. Storage of merchandise limited to samples only.

[4] Prohibited within 100 feet of a residential zoning district or residential use including residential properties outside the City limits.

[5] Majority of vehicles for sale must be new.

[6] Mobile food vendors in one location two times or less per year are regulated as a temporary use in accordance with Section 17.96.180 and are allowed with an Administrative Permit in accordance with Municipal Code Chapter 9.36. Mobile food vendors in one location more than two times per year require a Conditional Use Permit.

[7] Residential uses are prohibited on the first story.

[8] Maximum 5,000 square feet.

[9] Allowed only as a part of a mixed-use project integrated with commercial structures located on the same development site.

[10] Requires Cannabis Retail License (Chapter 9.61) and compliance with 17.24.020.D

B. Additional Permits. In addition to permits identified in Table 17.24-1, development projects in the commercial and industrial zoning districts may also require a Design Permit pursuant to Chapter 17.120 (Design Permits). Modifications to a historic resource may require a Historic Alteration Permit pursuant to Chapter 17.84 (Historic Preservation). Development in the coastal zone may require a Coastal Permit pursuant to Chapter 17.32 (Coastal Overlay Zone) independent of and in addition to any other required permit or approval.

C. Office Uses in the C-C and C-R Zoning Districts.

- 1. New Office Uses.** In the C-C and C-R zoning districts, permits required for new office uses and conversions of non-office space to office use are shown in Table 17.24-2. Offices include professional, medical, financial institutions and governmental offices.
- 2. Existing Office Uses.** Within office building utilized exclusively for office uses as of [effective date of Zoning Ordinance], office uses may continue to occupy ground floor tenant spaces. Within such office building, a new tenant is not subject to the permit requirements in Table 17.24-2 until such time that the building is redeveloped or all office space in the ground floor level is converted to a non-office use.

TABLE 17.24-2: PERMITTED NEW OFFICE USES IN THE C-C AND C-R ZONING DISTRICTS

Key	C-C Zoning District	C-R Zoning District
P Permitted Use		
A Administrative Permit required		
M Minor Use Permit required		
C Conditional Use Permit required		
– Use not allowed		
Location and Size of Office Use		
Ground floor, less than 5,000 sq. ft.	P	-
Ground floor, 5,000 sq. ft. or more	C	-
Upper floor above a ground floor	P	P
Located within a multi-tenant site in which the office space is not located within a storefront and is setback from the front façade.	P	-

D. Retail Cannabis in the C-R Zoning District. A Retail Cannabis Establishment in the C-R zoning district must be in compliance with the following standards.

- 1. Permit Requirements.**

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- a. **Cannabis Retail License.** Prior to conditional use permit application, an applicant shall obtain a potential Retail Cannabis License from the City, as outlined in Chapter 9.61.
- b. **Conditional Use Permit.** A Retail Cannabis Establishment must obtain a Conditional Use Permit from the Planning Commission. The Retail Cannabis Establishment shall be in compliance with the following standards:
 - (1) **Distance from Schools and Churches.** Retail Cannabis Establishments are not permitted within a path of travel of 1,000 feet from any schools and churches. The path of travel shall be measured following the shortest path of travel along a public right-of-way from the property line of the proposed Retail Cannabis Establishment parcel to the church or school.
 - (2) **Distance between Retail Cannabis Establishments.** A retail cannabis establishment shall not be located within a path of travel of 500 feet of another retail cannabis establishment. Path of travel is measured from the retail establishment suite on a multitenant property or the structure for a single tenant property.
 - (3) **Independent Access.** A retail cannabis establishment shall have an independent exterior entrance that is not shared with any other business or residence.
 - (4) **Signs.** Notwithstanding other sections of the code for signs, a retail cannabis establishment shall be limited to one exterior building sign per business location to identify the business as a retail cannabis establishment in compliance with the following standards:
 - a) Sign may include only the name of business and one green cross.
 - b) Sign area maximum of 20 square feet, or one square foot per linear frontage of the business; whichever is less.
 - c) Sign may not have any reference, through symbols or language, to cannabis with the exception of one green cross.
 - d) Sign shall not be directly illuminated except during operating hours
 - e) Sign shall otherwise be subject to Planning Commission review through a Sign Permit Application in accordance with Section 17.132."

Section 3. Effective Date. This ordinance shall be in full force and effect thirty (30) days from the date of its adoption by the City Council or upon the certification of the passage of a ballot measure authorizing the establishment of a tax on retail cannabis sales by voters at the November 6, 2018, general election, whichever is later.

This ordinance was introduced on the 28th day of June, 2018, and was passed and adopted by the City Council of the City of Capitola on the 26th day of July, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN: