



Office of the City Manager

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CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services

Subject: Amending Berkeley Municipal Code (BMC) Chapter 12.70 Sections 12.70.031 and 12.70.050A.1 to align with State and Local Laws

RECOMMENDATION

Staff recommends the City Council adopt the reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 12.70 Smoking Pollution Control to incorporate two changes:

- 1) Amending BMC 12.70.030 to replace the outdated term “Dispensary” with “Cannabis Retailer” in order to align with the State’s Medicinal and Adult-Use of Cannabis Safety and Regulation Act (MAUCSRA); and
- 2) Revise BMC Chapter 12.70.050.A.1 to clarify that smoking *tobacco* is allowed at a tobacco retailer, and smoking *cannabis* is allowable at a Cannabis Retailer, subject to Council-approved BMC Sections 23.320.020.F.2, 12.21.020.U, V, and Y, and 12.22.040.F.2 allowing “Cannabis Lounges”.

FISCAL IMPACTS OF RECOMMENDATION

The updates and amendments have no additional long-term financial impact to the City.

CURRENT SITUATION AND ITS EFFECTS

In 2017 the State of California adopted MAUCSRA which established a new legal framework for cannabis cultivation, manufacturing, testing and distribution. A cannabis seller is now a “Cannabis Retailer” under MAUCSRA which allows pre-tested, pre-packaged cannabis products to be sold at retail. The proposed changes to BMC 12.70 will align the BMC with MAUCSRA.

Furthermore, BMC 12.70 “Smoking Pollution Control”, currently bans smoking in most workplaces with the exception of a Tobacco Retailer. The State of California and City of Berkeley defined smoking to include both tobacco *and* cannabis products during the adoption of BMC 12.70.020.V. However, the adopted definition of “smoking” in BMC 12.70 was not explicit to include cannabis. Therefore, the proposed amendment clarifies “smoking” to include cannabis at a Cannabis Retailer, which will enable the City

to approve Cannabis Smoking Lounges, pursuant to Council's approval of such lounges.

### BACKGROUND

In the past, the City permitted and licensed cannabis sellers known as "Dispensaries." The Dispensaries obtained cannabis directly from growers in bulk, sent samples to labs to test for contaminants, and if it passed, the cannabis product was packaged, labeled, and ready to be sold under tightly regulated circumstances. At the time, Berkeley was the only jurisdiction in California performing this degree of regulation, and in the process, developed a robust inspection program to ensure compliance with the City's unique Dispensary program.

Since the passage of MAUCSRA the State took over most of these program responsibilities and created new permit classifications. This required the City to update its cannabis program, including governing regulations, to be consistent with State law.

On January 28, 2020, Council adopted comprehensive changes to the cannabis ordinances, including 23.320.020.F.1 and 2; 12.21.020.U, V, and Y; 12.22.040.F.1 and 2 that defined and specified conditions for the operation of lounges, necessitating the changes to BMC 12.70.050.A.1 in the attached ordinance.

On November 20, 2020, in alignment with State law, Council adopted a change to BMC 12.70 to define "smoking" to include cannabis, both medical and adult. Consequently, cannabis is now subjected to the same smoking restrictions in place for tobacco. The changes in the attached ordinance in BMC Chapter 12.70.050.A.1 clarify and align this section with the changes made previously.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no known additional environmental sustainability and climate impacts associated with the recommended action.

### RATIONALE FOR RECOMMENDATION

The proposed changes in the attached ordinance will align BMC 12.70 with related changes already made at the state level and by Council.

### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify any alternative actions that are consistent with state law and Council's previous changes to the municipal code.

### CONTACT PERSON

Ron Torres, Environmental Health Division Manager, HHCS, (510) 981-5231.

Attachments:

1: Ordinance

Exhibit A: Ordinance with strike thru revisions

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.70 SMOKING POLLUTION CONTROL

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

Section 1. That Berkeley Municipal Code Subsection 12.70.031 is amended to read as follows:

**12.70.031 Smoking Medical Cannabis at Cannabis Retailers**

Notwithstanding anything to the contrary in this Chapter, the inhalation of medical cannabis through the use of an electronic smoking device inside a Cannabis Retailer and on the public right of way within 50 feet of such a Cannabis Retailer, is not prohibited by this Chapter.

Section 2. That Berkeley Municipal Code Subsection 12.70.050.A.1 is amended to read as follows:

**12.70.050 Where Smoking is not Regulated**

A. This chapter is not intended to regulate smoking in the following places and under the following conditions within the City:

1. Tobacco in retail tobacco stores and cannabis in State-permitted Storefront Cannabis Retailers within a Designated Smoking Room in compliance with the Environmental Health Division's Lounge Operating Standards and except as stated in Section 12.70.031;
2. Private residences, which may serve as a place of employment except when used as a childcare or health care facility and except as stated in Sections 12.70.035 and 12.70.037.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls a business or other establishment may declare that entire establishment as a nonsmoking establishment.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.70 SMOKING POLLUTION CONTROL

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

Section 1. That Berkeley Municipal Code Subsection 12.70.031 is amended to read as follows:

12.70.031 Smoking Medical Cannabis at Dispensaries Cannabis Retailers

Notwithstanding anything to the contrary in this Chapter, the inhalation of medical cannabis through the use of an electronic smoking device inside a dispensary Cannabis Retailer and on the public right of way within 50 feet of such a Dispensary Cannabis Retailer, by a member of that dispensary, is not prohibited by this Chapter.

Section 2. That Berkeley Municipal Code Subsection 12.70.050.A.1 is amended to read as follows:

12.70.050 Where Smoking is not Regulated

A. This chapter is not intended to regulate smoking in the following places and under the following conditions within the City:

1. Tobacco in R retail tobacco stores and cannabis in State-permitted Storefront Cannabis Retailers within a Designated Smoking Room in compliance with the Environmental Health Division's Lounge Operating Standards and except as stated in Section 12.70.031;

2. Private residences, which may serve as a place of employment except when used as a childcare or health care facility and except as stated in Sections 12.70.035 and 12.70.037.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls a business or other establishment may declare that entire establishment as a nonsmoking establishment.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Commented [DA1]: In the report these are referred to as Cannabis Lounges, and the names should match.

Where are the Lounge standards published? Are they in the BMC or published by EH? I think that should be clearer. If in the BMR, include the BMC section

Commented [BP2R2]: Agree

