



Office of the City Manager

PUBLIC HEARING
FEBRUARY 26, 2019

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Planning and Development Department
Subject: Proposed Location for the Apothecarium Cannabis Retailer

RECOMMENDATION

Conduct a public hearing to consider information pertaining to Apothecarium's proposed location at 2312 Telegraph Avenue, and upon conclusion, adopt a Resolution either to approve or to deny the proposed location.

FISCAL IMPACTS OF RECOMMENDATION

The Apothecarium is one of three cannabis businesses that was selected by City Council in 2016 to operate cannabis dispensaries. Approval of Apothecarium's proposed location would allow the business to begin operations in Berkeley in the near future. Once the business is operational, it would generate business license tax revenue. The exact amount depends upon volume of sales, but for comparison, three cannabis Retailers operating in Berkeley in 2017 generated \$1,645,012 through the City's business license tax.

Denial of the location would presumably mean that the Apothecarium would select a new location and repeat the City's Council-approved location selection process after identifying and securing a new location. Additional costs to the City would be incurred from staff time needed to evaluate the new location application and verify compliance with City regulations. If the Apothecarium could not or chose not to find another location, a new selection process would need to be initiated to choose a sixth cannabis Retailer. This would generate additional costs to the City from the staff time necessary to manage the application process and evaluate new applications.

CURRENT SITUATION AND ITS EFFECTS

In October 2018, the Apothecarium, a cannabis Retailer approved by City Council to operate a business in Berkeley, submitted an application for a new location. The new location would replace the original location approved by City Council in September 2016. The Apothecarium never opened at its originally-selected location, and that location is no longer viable.

The application for the new location, at 2312 Telegraph Avenue, is available for review at: <https://www.cityofberkeley.info/MedicalCannabis/>. Per City requirements, the application includes information designed to enable the Council and the community to consider issues related to the new location, including a revised business plan, neighborhood compatibility plan and safety and security plan. Staff reviewed the application and determined that it is complete. Staff also determined that the proposed location meets current buffer requirements from schools and other cannabis Retailers.

The proposed tenant space at 2312 Telegraph Avenue is located in the Telegraph Avenue Commercial (C-T) District and is currently occupied by Sam's Market. This location would be the third cannabis Retailer in the six-block segment of Telegraph Avenue within the C-T district. The other two cannabis Retailers are Hi-Fidelity, located at 2465 Telegraph, and Patients Care Collective, located at 2590 Telegraph Avenue. Berkeley's Cannabis Ordinance does not limit the number of cannabis Retailers within a district; however, it requires a 600-foot buffer between cannabis Retailers, and this location meets that requirement. City regulations also require that cannabis Retailers are at least 600 feet from a public or private elementary, middle or high school. The proposed location also meets this requirement. See Attachment 3 for a map of the proposed site and the adjacent area.

The applicant held a community meeting on Thursday, November 29, 2018, at the proposed location (2312 Telegraph). Notices were sent to property owners and residents within 300 feet of the proposed cannabis Retailer site, as per the approved location selection process. City staff attended the meeting and drafted meeting notes that summarize meeting attendance and questions and concerns that were expressed. Meeting notes are included as Attachment 4.

The Cannabis Commission held a meeting on January 10, 2019, to consider the proposed location. The meeting consisted of a presentation from the applicant, questions from the Commission to the applicants, public comment, and Commission discussion. The meeting was attended by approximately 40 members of the public.

The Commissioners discussed the location and the type of recommendation that would be forwarded to Council. The discussion focused on the potential impact of a new cannabis Retailer at the proposed location on the existing cannabis Retailers. Commissioners also discussed whether or not the Apothecarium would easily find another site in Berkeley if this location is denied.

The Commission was not able to reach a consensus and voted not to forward a recommendation to the Council. The results of the vote are included with the January 10th meeting minutes (Attachment 5).

BACKGROUND

On September 20, 2016, Council approved the Apothecarium as one of three new medical cannabis Dispensaries¹ to supplement the three which were in operation at that time. The Apothecarium was one of six applicants considered for the quota of three additional slots, through a competitive process. The process required applicants to include a specific location for their proposed business.

The Apothecarium was ultimately unable to secure its Council-approved location. At its October 31, 2017 meeting, the Council directed the City Manager to develop a process to allow the Apothecarium to select a new site. On January 23, 2018, the Council approved a location approval process which only applies to the Apothecarium, as the other cannabis Retailers selected were able to secure their approved sites.

This location approval process consisted of two Rounds:

Round 1: Application

The applicant submitted a completed application form and information about the proposed location of the business. The applicant also submitted a Business Plan, Neighborhood Compatibility Plan and a Safety and Security Plan. City staff reviewed the application for completeness and to determine that the Principals meet the City's eligibility requirements.

Round 2: Selection

The applicant held a community meeting to address questions and comments from property owners and residents in the area of the proposed Retailer. After that, the Cannabis Commission considered the application and voted to not make a recommendation to the Council. The Council will make the final decision regarding the location at a Council meeting.

See Attachment 6 for a complete description of the process as approved by Council in Resolution 68,298-N.S.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The recommendation follows the selection process approved by the City Council on January 23, 2018.

¹ California voters approved recreational (adult use) cannabis in 2016 (Propositions 64). The State has developed a regulatory framework for the medicinal and adult use cannabis industry. Under this framework, cannabis businesses which sell to the public are now known as Retailers, rather than Dispensaries.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 981-7410
Elizabeth Greene, Senior Planner, Planning and Development Department, 981-7484

Attachments:

1. Resolution approving 2312 Telegraph Avenue location
2. Resolution denying 2312 Telegraph Avenue location
3. Map of Berkeley showing proposed Apothecarium location, schools, and existing cannabis Retailers
4. Staff notes from the November 28, 2018 community meeting
5. Draft minutes from the January 10, 2019 Cannabis Commission meeting
6. Resolution 68,298-N.S., Dispensary Replacement Location Selection Process
7. Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

ADOPTING A NEW LOCATION FOR THE APOTHECARIUM DISPENSARY AT
2312 TELEGRAPH AVENUE

WHEREAS, on July 1, 2014, the City Council adopted a Ranking and Allocation Process to select a limited number of new dispensaries per BMC Chapter 12.27; and

WHEREAS, as part of the process, applicants were ranked based on numerous mandatory criteria, including background checks of principals, proof of landlord approval, a competency test, proposed location, business plan, neighborhood compatibility, and safety and security plans; and

WHEREAS, the applicants were also ranked based on bonus criteria, such as community benefits, labor and employment standards and qualifications of the principals; and

WHEREAS, each applicant held a public hearing in the area proposed for its dispensary and was evaluated by the Medical Cannabis Commission; and

WHEREAS, on September 20, 2016 the Council selected the Apothecarium as one of the three new dispensaries; and

WHEREAS, the Apothecarium cannot locate at the Council-approved site due to a misunderstanding between the dispensary operators and the landlord, despite presenting adequate proof of landlord approval multiple times during the selection process; and

WHEREAS, on January 23, 2018, the Council adopted an abbreviated approval process to focus on approval of a new location for the Apothecarium would allow the dispensary to begin operations in a timely manner; and

WHEREAS, on October 24, 2018, the Apothecarium submitted an application for a new location at 2312 Telegraph Avenue; and

WHEREAS, City staff reviewed the application and determined that it was complete and met the 600-foot buffer requirement from schools and other cannabis Retailers; and

WHEREAS, on November 29, 2018, the applicant held a community meeting at 2312 Telegraph Avenue to provide information about the application to neighbors of the proposed site and answer questions; and

WHEREAS, on January 10, 2019, the Cannabis Commission held a meeting to consider the 2312 Telegraph Avenue location and take public comment; and

WHEREAS, the Cannabis Commission could not reach a consensus and voted to not make a recommendation to the City Council regarding the use of the site by the Apothecarium; and

WHEREAS, on February 26, 2019, the Council held a Public Hearing to consider information pertaining to the Apothecarium's proposed 2312 Telegraph Avenue location and to take public comment.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a new location for the Apothecarium, at 2312 Telegraph Avenue, is hereby adopted.

RESOLUTION NO. ##,###-N.S.

DENYING A NEW LOCATION FOR THE APOTHECARIUM DISPENSARY AT
2312 TELEGRAPH AVENUE

WHEREAS, on July 1, 2014, the City Council adopted a Ranking and Allocation Process to select a limited number of new dispensaries per BMC Chapter 12.27; and

WHEREAS, as part of the process, applicants were ranked based on numerous mandatory criteria, including background checks of principals, proof of landlord approval, a competency test, proposed location, business plan, neighborhood compatibility, and safety and security plans; and

WHEREAS, the applicants were also ranked based on bonus criteria, such as community benefits, labor and employment standards and qualifications of the principals; and

WHEREAS, each applicant held a public hearing in the area proposed for its dispensary and was evaluated by the Medical Cannabis Commission; and

WHEREAS, on September 20, 2016 the Council selected the Apothecarium as one of the three new dispensaries; and

WHEREAS, the Apothecarium cannot locate at the Council-approved site due to a misunderstanding between the dispensary operators and the landlord, despite presenting adequate proof of landlord approval multiple times during the selection process; and

WHEREAS, on January 23, 2018, the Council adopted an abbreviated approval process to focus on approval of a new location for the Apothecarium would allow the dispensary to begin operations in a timely manner; and

WHEREAS, on October 24, 2018, the Apothecarium submitted an application for a new location at 2312 Telegraph Avenue; and

WHEREAS, City staff reviewed the application and determined that it was complete and met the 600-foot buffer requirement from schools and other cannabis Retailers; and

WHEREAS, on November 29, 2018, the applicant held a community meeting at 2312 Telegraph Avenue to provide information about the application to neighbors of the proposed site and answer questions; and










WHEREAS, on January 10, 2019, the Cannabis Commission held a meeting to consider the 2312 Telegraph Avenue location and take public comment; and

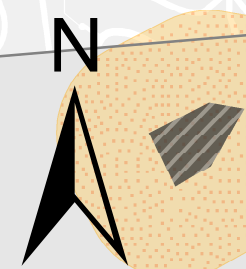
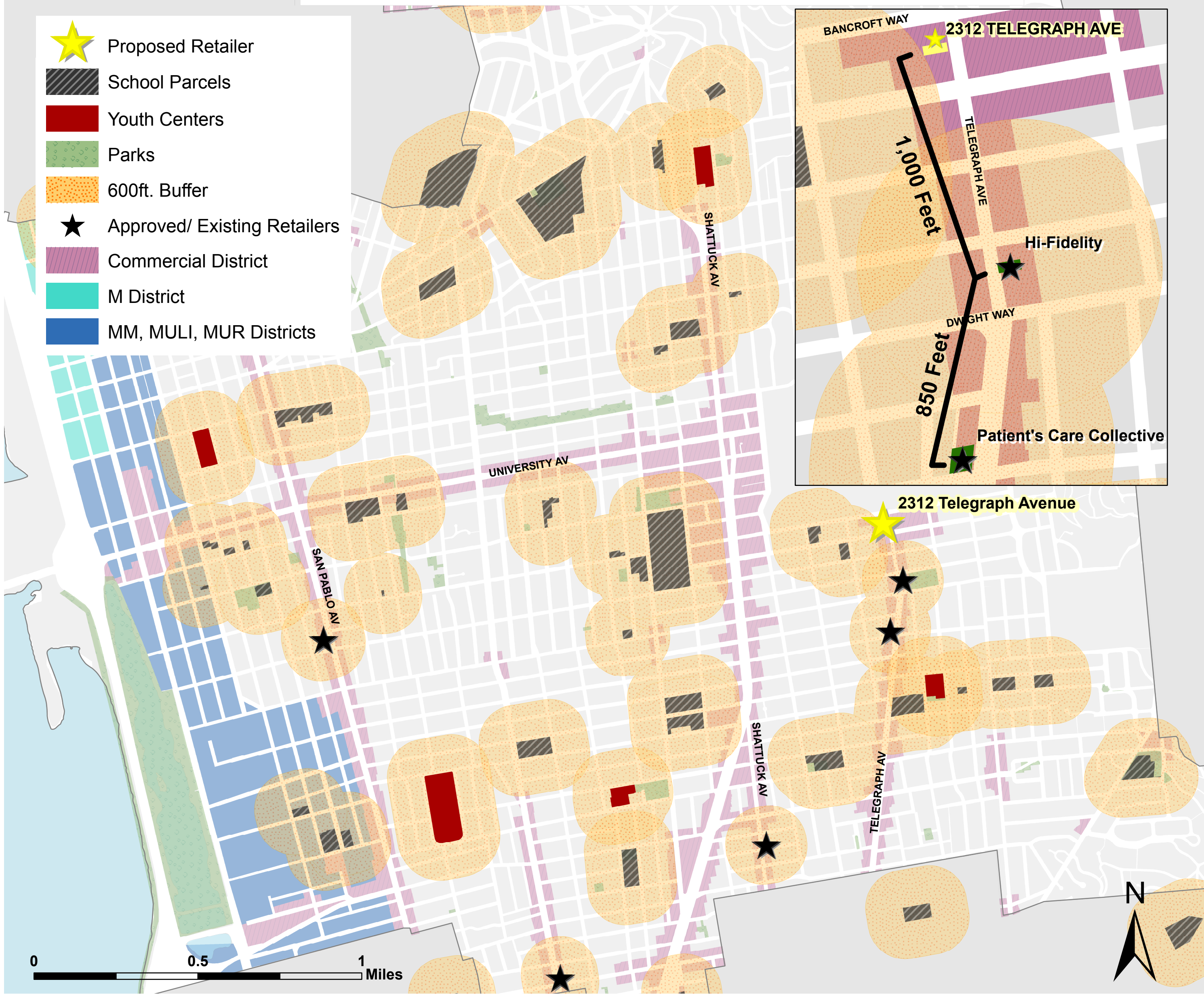
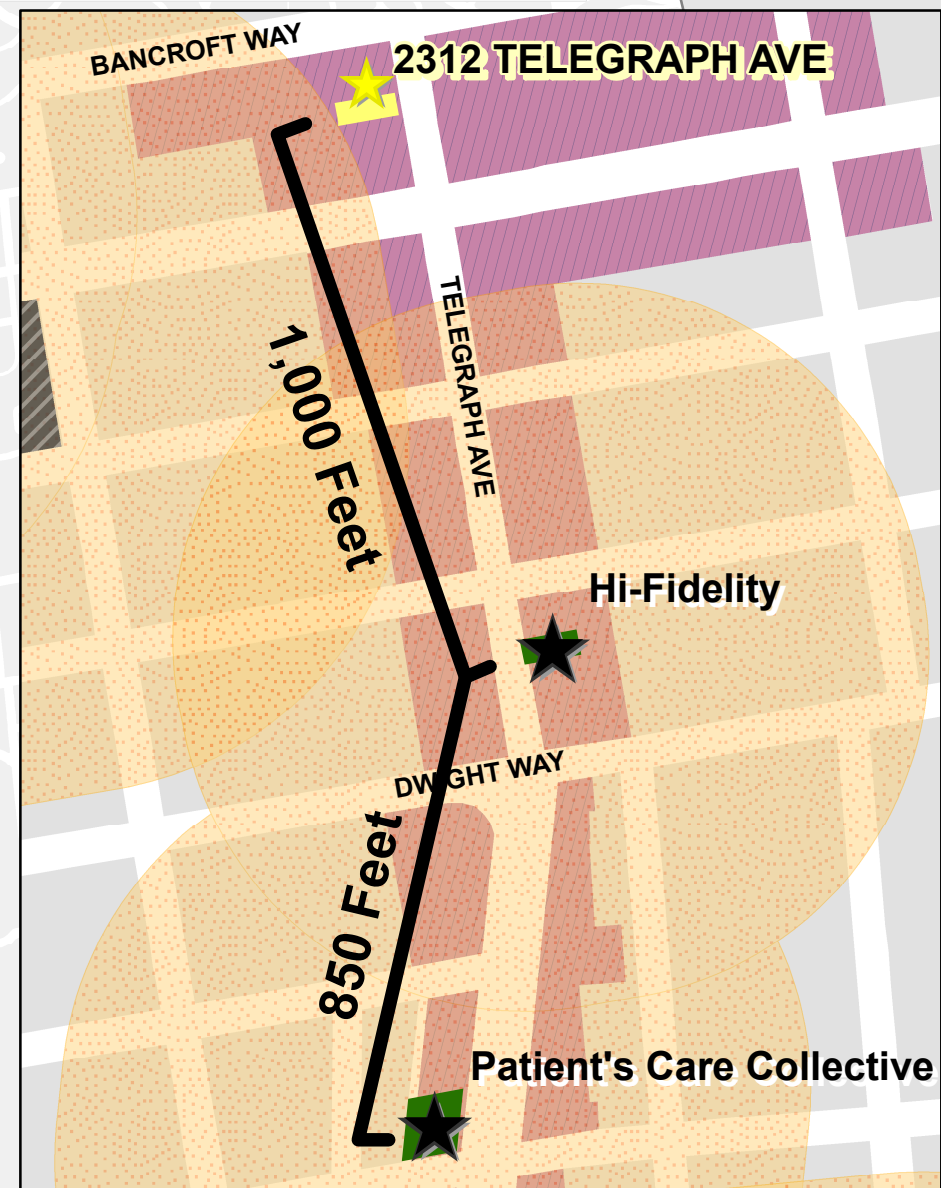
WHEREAS, the Cannabis Commission could not reach a consensus and voted to not make a recommendation to the City Council regarding the use of the site by the Apothecarium; and

WHEREAS, on February 26, 2019, the Council held a Public Hearing to consider information pertaining to the Apothecarium's proposed 2312 Telegraph Avenue location and to take public comment.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a new location for the Apothecarium, at 2312 Telegraph Avenue, is hereby denied.

Existing and Proposed Cannabis Retailer Locations

-  Proposed Retailer
-  School Parcels
-  Youth Centers
-  Parks
-  600ft. Buffer
-  Approved/ Existing Retailers
-  Commercial District
-  M District
-  MM, MULI, MUR Districts



The Apothecarium Community Meeting

Meeting Time and Date: November 29, 2018, 6:12 PM- 7:30 PM

Meeting Location: Sam's Market, 2312 Telegraph Avenue, Berkeley, CA 94704

Proposed Dispensary Location: 2312 Telegraph Avenue

Applicant team members present: 4 = Elliott Dobris, Scott Hawkins, Arion Luce, Bianca Blesching.

Public present: Approximately 20-25

Any MCC members present? No

Any Councilmembers or representatives present? No

Public Comment

The main points are listed below:

- Concerns that a third dispensary on Telegraph Avenue will cause economic harm to the two existing dispensaries on Telegraph
- Concerns that clustering dispensaries will not provide adequate cannabis access throughout Berkeley.
- Concerns that a dispensary so close to the University will have adverse effects on students
- Concerns that this location primarily serves users on foot and that parking will be an issue for customers who need to drive
- Concerns that having this meeting in late November made it challenging for students to attend and provide input
- Questions about why this location was selected rather than Gilman Corridor, Shattuck Avenue, University Avenue, 4th Street, or North Berkeley
- Questions regarding why Apothecarium was allowed to relocate after issues with securing their first location on Shattuck
- Questions regarding cannabis use on site
- Statements of support for Amoeba and High Fidelity
- Statements that this location is already sufficiently served by the two existing dispensaries on Telegraph Avenue

**DRAFT MINUTES OF THE CANNABIS COMMISSION MEETING
JANUARY 10, 2019
(Partial)**

D. Consideration and possible recommendation to City Council of new location for cannabis Retailer (The Apothecarium) at 2312 Telegraph Avenue.

Representatives from the Apothecarium gave a presentation regarding the benefits of its business. The Commission asked questions regarding parking for the site, whether the business would sell medicinal and adult-use cannabis, the timeline for opening this location if it is approved, and why this location was selected.

Public Comment: Eighteen comments. Several comments raised concern over the concentration of cannabis Retailers on Telegraph, the impact on neighboring cannabis Retailers, potential difficulties accessing the location, UC Berkeley's concern about additional cannabis Retailers near the campus, and how other neighborhoods in Berkeley could benefit from a dispersal of these storefronts. Other comments were made in support of the Apothecarium, based on the atmosphere of their other locations, their offerings and services, and participation in cannabis research.

The Commission expressed support for a sixth dispensary in Berkeley, and discussed how this location could impact the potential of the two existing Retailers on Telegraph to succeed, the need for Retailers in other parts of Berkeley, the difficulty to find an appropriate cannabis Retail location in Berkeley, and the Council's possible preference for larger buffers around middle schools and high schools.

Motion/second to recommend approval of the location at 2312 Telegraph (Cooper/Brewster). The motion did not pass 2-2-2-0. (Ayes: Cooper, Brewster. Noes: Jones, Rice. Abstain: Cable, Pappas. Absent: None.)

Motion/second to make no recommendation to the City Council regarding the location at 2312 Telegraph (Rice/Jones). The motion carried 4-1-1-0. (Ayes: Rice, Jones, Cable, Pappas. Noes: Cooper. Abstain: Brewster. Absent: None.)

RESOLUTION NO. 68,298-N.S.

ADOPTING AN APPROVAL PROCESS FOR A NEW LOCATION FOR THE
APOTHECARIUM DISPENSARY

WHEREAS, on July 1, 2014, the City Council adopted a Ranking and Allocation Process to select a limited number of new dispensaries per BMC Chapter 12.27; and

WHEREAS, as part of the process, applicants were ranked based on numerous mandatory criteria, including background checks of principals, proof of landlord approval, a competency test, proposed location, business plan, neighborhood compatibility, and safety and security plans; and

WHEREAS, the applicants were also ranked based on bonus criteria, such as community benefits, labor and employment standards and qualifications of the principals; and

WHEREAS, each applicant held a public hearing in the area proposed for its dispensary and was evaluated by the Medical Cannabis Commission; and

WHEREAS, on September 20, 2016 the Council selected the Apothecarium as one of the three new dispensaries; and

WHEREAS, the Apothecarium cannot locate at the Council-approved site due to a misunderstanding between the dispensary operators and the landlord, despite presenting adequate proof of landlord approval multiple times during the selection process; and

WHEREAS, the principals of the Apothecarium have not changed; and

WHEREAS, the Apothecarium previously met all of the requirements of the City and was highly ranked in the selection process; and

WHEREAS, this unusual and unanticipated situation is preventing the establishment of a sixth dispensary in Berkeley as approved by Council; and

WHEREAS, on October 31, 2017 the Council directed staff to develop a process for the relocation of the Apothecarium; and

WHEREAS, developing an abbreviated approval process to focus on approval of a new location for the Apothecarium would allow the dispensary to begin operations in a timely manner.

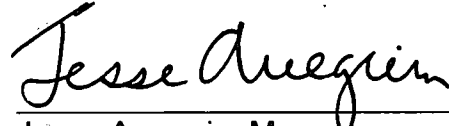
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that an abbreviated approval process to select a new location for the Apothecarium, attached hereto as Exhibit A, is hereby adopted.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

EXHIBIT A

DISPENSARY REPLACEMENT LOCATION SELECTION PROCESS

INTRODUCTION

This process is based on the Ranking and Allocation Process approved by the Council to implement Berkeley Municipal Code Chapter 12.27. This abbreviated process has been developed to select a new location for a specific Applicant (the Apothecarium) that was previously approved by Council. Only criteria addressing the location will be considered in this process, as the applicant was evaluated in the previous Ranking and Selection process.

PUBLIC INFORMATION

Applications and associated materials in the possession of the City are public records. While certain information will likely be exempt from disclosure, other information will not be, and some information will necessarily be made public as part of the ranking process. In complying with the Public Records Act, the City will make reasonable efforts to keep sensitive information from being disclosed, but cannot guaranty that information an applicant may want to be kept confidential will not be disclosed. The City will make reasonable efforts to notify applicants whenever requests for disclosure of their information are received. The City shall not in any way be liable for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act, and applicants assume the risk of such disclosure by submitting their applications.

DESCRIPTION OF PROCESS

The location selection process shall consist of a single application and a public review process, described below:

Round 1: Application

The Applicant will submit the following information:

1. Completed Application form
2. Proposed Location(s) of business
3. Business Plan
4. Neighborhood Compatibility Plan
5. Safety and Security Plan

City staff will review the information to determine if it is complete. Any new principals that were not considered under the previous application will need to submit information to verify that they meet the eligibility requirement of BMC Section 12.23.030.

Round 2: Selection

Once staff determines the application is complete, the Applicant shall conduct a community meeting in the area proposed for its dispensary. This meeting must be held within 45 days of receiving notice from staff that the application is complete. If no location in the immediate area is available, the Applicant shall use a community facility that is as near as reasonably possible. Notice of the community meeting shall be on a form approved by the City and shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings. Within 5 days after notice of the community meeting is mailed, the Applicant shall provide to the City a copy of the notice of the community meeting, a list of addresses to which it was sent, and an affidavit of mailing. Failure to hold a community meeting within 45 days will disqualify the Applicant from further consideration and will allow other entities to be considered for the sixth dispensary location.

The Cannabis Commission shall consider the application either before or after the community meeting. The Commission may make a recommendation to the City Council.

After the community meeting, the application shall be presented to the City Council. The Council will make the final selection on the location. Notice of the Council's public meeting shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings.

DESCRIPTION OF EVALUATION CRITERIA

- **Application.** The Applicant will be required to submit an application on a form provided by the City. The application shall be signed by the Principals under penalty of perjury that they have personal knowledge of the information stated in the application and that it is true. The application shall include such information as the City may require that demonstrates compliance with applicable provisions of Chapter 12.27, as well as the following:
 - The name of a single point of contact for the Applicant, who shall be a Principal.
 - All information required by Section 12.27.040.
 - A description of the Dispensary and its proposed location(s), including the address of any proposed facility with proof of ownership, lease, and or letter of owner's guarantee to lease.
 - The names of all Principals. All Principals need to include proof of patient/caregiver status. Principals that were not included in the previous application will also need to provide proof of Live Scan submittal to the Berkeley Police Department.
- **Proposed Location(s).** The application must include the address and a detailed description of the proposed location(s). Plans for alteration of the proposed site and buildings must be included. This section should also describe all confronting and abutting uses, transit access and accessibility, and nearby sensitive uses, such as schools. The Dispensary must be located in a commercial (C-) district and must not be within a 600-foot radius of schools or other legally operating Dispensaries. If more than one location is considered, information must be provided about each potential location, including a Neighborhood Compatibility Plan and a Safety and Security Plan.
- **Business Plan.** With as much detail as possible, the Business Plan should describe:
 - Description of day-to-day operations.
 - How the MCD will conform to local and state law. See BMC Chapters 12.26 and 12.27, Resolution No. 66,711-N.S., and California's Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA).
 - How medical cannabis will be tracked and monitored to prevent diversion.
 - A schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion.
 The Business Plan should include:
 - A **budget** for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation costs. The budget must demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds.
 - **Proof of capitalization**, in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets.

- A **pro forma** for at least three years of operation.
- **Neighborhood Compatibility Plan.** For each proposed location, the application should address how the dispensary, including its exterior areas and surrounding public areas, will be managed, so as to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community. Further, a site plan (accurate, dimensioned and at a minimum scale of 1/16") should be included for each potential location. If changes are proposed to the site, the site plan should reflect these changes.
- **Safety and Security Plan.** For each proposed location, the application should include:
 - A detailed **safety plan.** This plan should describe the fire prevention, suppression, HVAC and alarm systems the facility will have in place. **It should include an assessment of the facility's fire safety by a qualified fire prevention and suppression consultant.** An appropriate plan will have considered all possible fire, hazardous material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation.
 - A detailed **security plan.** This plan should include a description and detailed schematic of the overall facility security. It should have details on operational security, including but not limited to general security policies for the facility, employee specific policies, training, sample written policies, transactional security, visitor security, 3rd party contractor security, and delivery security. In particular, applications should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel to be employed. **The security plan shall also include an assessment of site security by a qualified security consultant.** Security plans will not be made public.
 - A **floor plan** showing existing conditions. If changes are proposed as part of the project, then a proposed floor plan should also be submitted. The floor plan(s) should be accurate, dimensioned and at a minimum scale of 1/8".

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**COUNCIL CONSIDERATION OF CANNABIS RETAILER LOCATION AT
2312 TELEGRAPH AVENUE**

NOTICE IS HEREBY GIVEN that the City Council of the City of Berkeley will conduct a public hearing regarding the following proposed action:

1. Adopt a resolution either approving or denying the use of 2312 Telegraph for a storefront cannabis retailer by The Apothecarium Berkeley.

A map of the proposed location and its location in relation to K-12 schools and other cannabis Retailers is available online:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Medical_Cannabis/2018-01-10_CC_Dist%20at%20mtg_Staff_Apothecarium%20vicinity%20map.pdf

The hearing will be held on **TUESDAY, FEBRUARY 26, 2019 at 6:00 p.m.** in the BUSD Board Room, 1231 Addison Street, Berkeley. A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **February 14, 2019**.

For further information, please contact:

- Timothy Burroughs, Director, Planning and Development Department, (510) 981-7437
- Elizabeth Greene, Senior Planner, (510) 981-7484.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Noticing per Berkeley Municipal Code Section 23B.32.020

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 14, 2019.

Mark Numainville, City Clerk

