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ALUC-22-09 (Benicia City Mixed Use-Infill & Cannabis Ordinances)

Determine that Application No. ALUC-22-09, (Benicia City Mixed Use-Infill & Cannabis Ordinances), located within the Travis Air Force Base (AFB) Compatibility Zone D and E, is consistent with the Travis AFB Land Use Compatibility Plan (LUCP) (City of Benicia).

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RECOMMENDATION:

Determine that Application No. ALUC 22-09 (Benicia City Mixed Use-Infill & Cannabis Ordinances), located within the Travis Air Force Base (AFB) Compatibility Zone D and E, is consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

DISCUSSION:

Background

Section 21676 (d) of the State Aeronautics Act requires Airport Land Use Commission (ALUC) review of any zoning ordinance change within an Airport Influence Area. The City of Benicia has referred an application to amend Title 17 (Zoning) of the Benicia Municipal Code including the code sections regulating Mixed-Use – Infill Zones and Commercial Cannabis Uses. Following ALUC consistency finding, the proposed amendments will be heard by City Council.

A majority of the City is located within Zone D and small portion lies within Zone E of the Travis AFB Land Use Compatibility Plan. The project does not address residential densities, height restrictions or other hazards to flight. The compatibility zones do not restrict residential densities or uses. Based on review, staff recommends the ALUC find that the proposed ordinances comply with the requirements of these zones to protect flight, meet guidance criteria of the California Airport Land Use Planning Handbook, and are consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

Project Description

The City of Benicia application consists of the following:

- Zoning Text amendments to the Mixed Use – Infill (MU-I) zones include changes to organization, clarifying definitions such as shopping center, story and area of disturbance, changes to streetscape development standards, off-street parking and loading regulations and application processing procedures. Rezoning of property is not proposed. The City of Benicia Planning Commission Resolution and proposed text amendments are included in Attachment B.
- Amendments to City's code section regulating cannabis uses to provide further clarification to the terms and definitions, consistent with current State Law, and permitting procedures such as requiring conditional use permits for storefront retail cannabis. The City of Benicia proposed text amendments are included in Attachment C.

AIRPORT PLANNING CONTEXT & ANALYSIS

Zoning code amendments must undergo review by the ALUC for consistency with the applicable LUCPs (State Aeronautics Act section 21676). The proposed amendments would apply City wide, which is located in Compatibility Zones D and E of the Travis AFB LUCP (see Figure 1, Attachment E). In general, Compatibility Zones D and E criteria require review of structural heights of objects and/or hazards related to bird attraction, electrical inference, glare and other flight hazards.

The California Department of Transportation (Caltrans) Division of Aeronautics has published the California Airport Land Use Planning Handbook (Caltrans Handbook) as a guide for Airport Land Use Commissions (ALUCs) in the preparation and implementation of Land Use Compatibility Planning and Procedure Documents. Section 6.4.2 of the Caltrans Handbook establishes the guidance appropriate for reviewing zoning ordinances and building regulations. This section references Table 5A of the Caltrans Handbook which presents the consistency requirements for “Zoning or Other Policy Documents.”

Staff evaluated the City’s project using the Zone Compatibility criteria for Zone D and E of the Travis AFB LUCP, and the zoning consistency test criteria contained in the California Airport Land Use Planning Handbook. Staff analysis of the project based on this evaluation is summarized in Attachment A.

Analysis Finding

Based on review, staff finds that the proposed ordinances comply with the requirements of the zones to protect flight, meet guidance criteria of the California Airport Land Use Planning Handbook, and are consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

Attachments

[Attachment A: Airport Compatibility Zones and Airport Land Use Planning Guidance criteria](#)

[Attachment B: City of Benicia Planning Commission Resolution and Draft Mixed Use – Infill Ordinance](#)

[Attachment C: City of Benicia Draft Cannabis Ordinance](#)

[Attachment D: City of Benicia Application](#)

[Attachment E: City of Benicia and Compatibility Zones](#)

Attachment F: Resolution (To Be Distributed by Separate Cover)

Travis AFB Land Use Compatibility Zone Criteria

Zone D & E Criteria	Consistent	Not Consistent	Comment
All proposed wind turbines must meet line-of-sight criteria in Policy 3.4.4	X		No wind turbines proposed
All new or expanded commercial-scale solar facilities must conduct an [Solar Glare Hazard Analysis Tool (SGHAT)] glint and glare study for ALUC review	X		No commercial solar facilities proposed
All new or expanded meteorological towers > 200 feet AGL, whether temporary or permanent, require ALUC review	X		No meteorological towers proposed
For areas outside of the Bird Strike Hazard Zone but within the Outer Perimeter, any new or expanded land use involving discretionary review that has the potential to attract the movement of wildlife that could cause bird strikes are required to prepare a WHA.	X		Not within Outer Perimeter
No hazards to flight, including physical (e.g., tall objects), visual, and electronic forms of interference with the safety of aircraft operations, and land uses that may attract birds to increase in the area shall be permitted.”	X		The proposed ordinances will not create any of the listed hazards.
Buyer awareness measure in place which states, “a notice regarding aircraft operational impacts on the property shall be attached to the property deed.”	X		The proposed ordinances will not require deed notices
Additional Zone D criteria			
For areas within the Bird Strike Hazard Zone, reviewing agencies shall prepare a [wildlife hazard analysis (WHA)] for discretionary projects that have the potential to attract wildlife that could cause bird strikes. Based on the findings of the WHA, all reasonably feasible mitigation measures must be incorporated into the planned land use.	X		Not within Bird Strike Hazard zone

California Airport Land Use Planning Handbook Criteria

California Airport Land Use Planning Handbook Criteria	Consistent	Not Consistent	Comment
Intensity Limitations on Nonresidential Uses	X		No intensity limits on new uses in Compatibility Zone D or E; Development of large assembly uses are not anticipated
Identification of Prohibited Uses	X		The proposed ordinances do not have potential for visual or electromagnetic interference or to attract wildlife hazardous to aircraft.
Open Land Requirements	X		Not required for Compatibility Zones D or E
Infill Development	X		Not anticipated to induce infill development
Height Limitations and Other Hazards to Flight	X		The proposed ordinances do not increase building height or introduce hazards to flight.
Buyer Awareness Measures	X		The ordinances do not affect buyer awareness measures
Non-conforming Uses and Reconstruction	X		No new incompatible uses, or reconstruction of incompatible uses are included in ordinances

RESOLUTION NO. 22- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING BENICIA MUNICIPAL CODE SECTIONS 17.08 (ORGANIZATION, APPLICABILITY, AND INTERPRETATION), 17.12 (DEFINITIONS), 17.26 (MIXED USE DISTRICTS), AND 17.74 (OFF-STREET PARKING AND LOADING REGULATIONS)

WHEREAS, regulations for the Mixed Use-Infill and Mixed Use-Limited districts were adopted in January 2022 and properties around the intersection of Military East and East Fifth were rezoned to these districts; and

WHEREAS, these districts were specifically designed for application around the intersection of Military East and East Fifth where parcel sizes are relatively small, many parcels are accessible via an alley, and there is not consolidated ownership; and

WHEREAS, the mixed use districts were designed to promote a walkable, attractive, mixed-use area with a mix of neighborhood serving uses and housing types for people of varying incomes and ages; and

WHEREAS, the City may find the goals, density, building form, and allowed uses outlined in the Mixed Use-Infill (MU-I) district desirable in other areas of the City; and

WHEREAS, the City may consider rezoning existing shopping centers from General Commercial (CG) to Mixed Use-Infill (MU-I) to meet the Regional Housing Needs Assessment (RHNA); and

WHEREAS, the proposed action would amend the Benicia Municipal Code Chapters 17.08 (Organization, Applicability, and Interpretation), 17.12 (Definitions), 17.26 (Mixed Use Districts), and 17.74 (Off-Street Parking and Loading Regulations) to clarify how the goals of the Mixed Use-Infill district would apply in connection with a partial or full redevelopment of a shopping center, to clarify the applicability of streetscape improvement requirements in Mixed Use-Infill and Mixed Use-Limited when only minor modifications are proposed to existing structures and land uses, and to clarify when a land use application can be considered withdrawn; and

WHEREAS, there are no shopping centers currently zoned MU-I and further Council action would be necessary to rezone additional property to MU-I. The only regulatory change applicable to properties currently zoned MU-I is a clarification of when streetscape improvements are required for minor modifications to existing structures and land uses; and

WHEREAS, all property owners within the Mixed Use-Infill and Mixed Use-Limited districts have been sent notice of the proposed zoning amendments and notice has been published in the Benicia Herald and at City Hall; and

WHEREAS, the Planning Commission, at a regular meeting on October 13, 2022, conducted a public hearing, accepted public comment and reviewed the proposed zoning text amendments.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Benicia does hereby find that the proposed text amendments are consistent with the purposes of Title 17 and with the General Plan and following goals, policies, and objectives:

- Community Development and Sustainability, Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life. *These amendments further Goal 2.5 because it broadens the potential applicability of MU-I zoning in a way that could encourage new, desirable development that is compatible with the existing community.*
- Community Development and Sustainability, Goal 2.13: Support the economic viability of existing commercial centers. *MU-I zoning was conceived of as a way to diversify allowed land uses and increase overall development potential on existing commercial sites. The proposed revisions would ensure that the majority of existing commercial floor area remains in our commercial centers, while also allowing a greater diversity of uses on the site. This could drive future investment into our commercial centers that should help them remain viable.*

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia does hereby recommend that the City Council find this project to be categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15305, and 15332 which apply to existing facilities, minor alterations to land use limitations, and infill development, respectively.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia does hereby recommend that the City Council adopt the zoning text amendments attached hereto as Exhibit A and incorporated herein by reference.

On motion of Commissioner , seconded by Commissioner , the above Resolution is introduced and passed by the Planning Commission of the City of Benicia at a regular meeting of the Commission held on the 13th day of October 2022 and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Kari Birdseye, Chair

Date

EXHIBIT A

SECTION 1. Chapter 17.08 (Organization, Applicability, and Interpretation) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to add a new Section 17.08.080 (Applications deemed withdrawn) to read as follows:

17.08.080 Applications deemed withdrawn

The community development director may deem an application withdrawn if the applicant has been notified in writing that more information is needed to process the application and there is no submittal of new or revised information to complete the application for a period of 180 days, unless the community development director determines there is good reason to grant a further extension to provide the needed information.

SECTION 2. Section 17.12.030 (Definitions) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to add the following definitions in alphabetical order as follows:

"Area of disturbance" means the portion of a project site where development, as defined in this chapter, occurs.

"Shopping center" means an integrated shopping complex comprised of five or more retail stores occupying a developed area of at least two acres. A shopping center may be located on a single parcel or multiple adjacent parcels.

"Story" means the habitable portion of a building included between the upper surface of any floor and the upper surface of the floor next above. If the finished floor level directly above the ceiling of a basement or other habitable below-grade space is less than 6 feet above existing grade at any point, such below-grade space is not considered a story. Structured parking and other non-habitable structures or components of buildings are not considered stories and are not included in or subject to building story limitations.

SECTION 3. Section 17.26.020 (Mixed use infill (MU-I) district) of Chapter 17.26 (Mixed Use Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Land Use Regulations.

1. Allowed Uses and Permits Required. Table 17.26-1 establishes allowed land uses and permits required in the MU-I district. If a land use identified in Chapter 17.16 BMC is not listed in Table 17.26-1, the use is not permitted in the MU-I district.

Table 17.26-1: MU-I Allowed Uses and Permits Required

Land Use	Permit
Residential Uses	

Land Use	Permit
Family Day Care, Large	L1
Family Day Care, Small	P
Group Residential	L2
Work/Live Quarters	L2
Multifamily Residential	L2
Residential Care, Limited	L2
Supportive Housing	L2
Transitional Housing	L2
Public and Semipublic Uses	
Adult Day Health Care	U
Clubs and Lodges	L2
Convalescent Facilities	L2
Cultural Institutions	P
Day Care Center	U
Emergency Shelter	L4
Government Offices	L2
Parks and Recreation Facilities	P
Public Safety Facilities	U
Religious Assembly	U
Residential Care, General	U
Schools, Public or Private	U
Utilities, Minor	P
Commercial Uses [1]	
Animal Sales and Services	
Animal Grooming	P
Animal Hospitals	L3
<u>Animals – Retail Sales</u>	<u>L8</u>
Artists' Studios	P
Banks and Savings and Loans	P
Commercial Filming	U
Commercial Recreation and Entertainment	U
Communication Facilities	U

Land Use	Permit
Conference and Meeting Facilities	U
Eating and Drinking Establishments	P
With Wine and Beer Service	P
With Full Alcoholic Beverage Service	L5
With Outdoor Entertainment	U
With Take-Out Service	L6
Formula Business	P
Food and Beverage Sales	P
Laboratories	L2
Maintenance and Repair Services	U
Nurseries	U
Offices, Business and Professional	L2
Outdoor Entertainment	U
Personal Improvement Services	P
Personal Services	P
Research and Development Services	L2
Retail Sales	P
Secondhand Appliances/Clothing	P
<u>Vehicle/Equipment Sales and Services</u>	
<u>Service Stations</u>	<u>L7</u>
Visitor Accommodations	
Bed and Breakfast Inns	L2
Hotels and Motels	L2
Temporary Uses	
Christmas Tree Sales	P
Commercial Filming, Limited	P
Religious Assembly	U
Retail Sales, Outdoor	U

Key: P = Permitted; U = Use Permit; L = Limited (See Notes)

Notes:

[1] See BMC 17.26.020(A)(2)(d) for additional permit requirements that apply to commercial uses greater than 3,000 square feet on certain properties fronting Military East and/or East Fifth Street.

L1: Permit requirements for large family day care homes in the mixed use districts are the same as in the residential districts. See BMC 17.24.020(E).

L2: A use permit is required when the use occupies ground floor space facing the street in locations shown in Figure 17.24-1. In all other locations, the use is permitted ("P"). See BMC 17.26.020(A)(2) ~~and (3)~~. For residential use limitations in existing shopping centers, see BMC 17.26.020(A)(3).

L3: Permit requirements for animal boarding and animal hospitals are the same as in the CG district. See BMC 17.28.020, Note L15.

L4: See BMC 17.70.390.

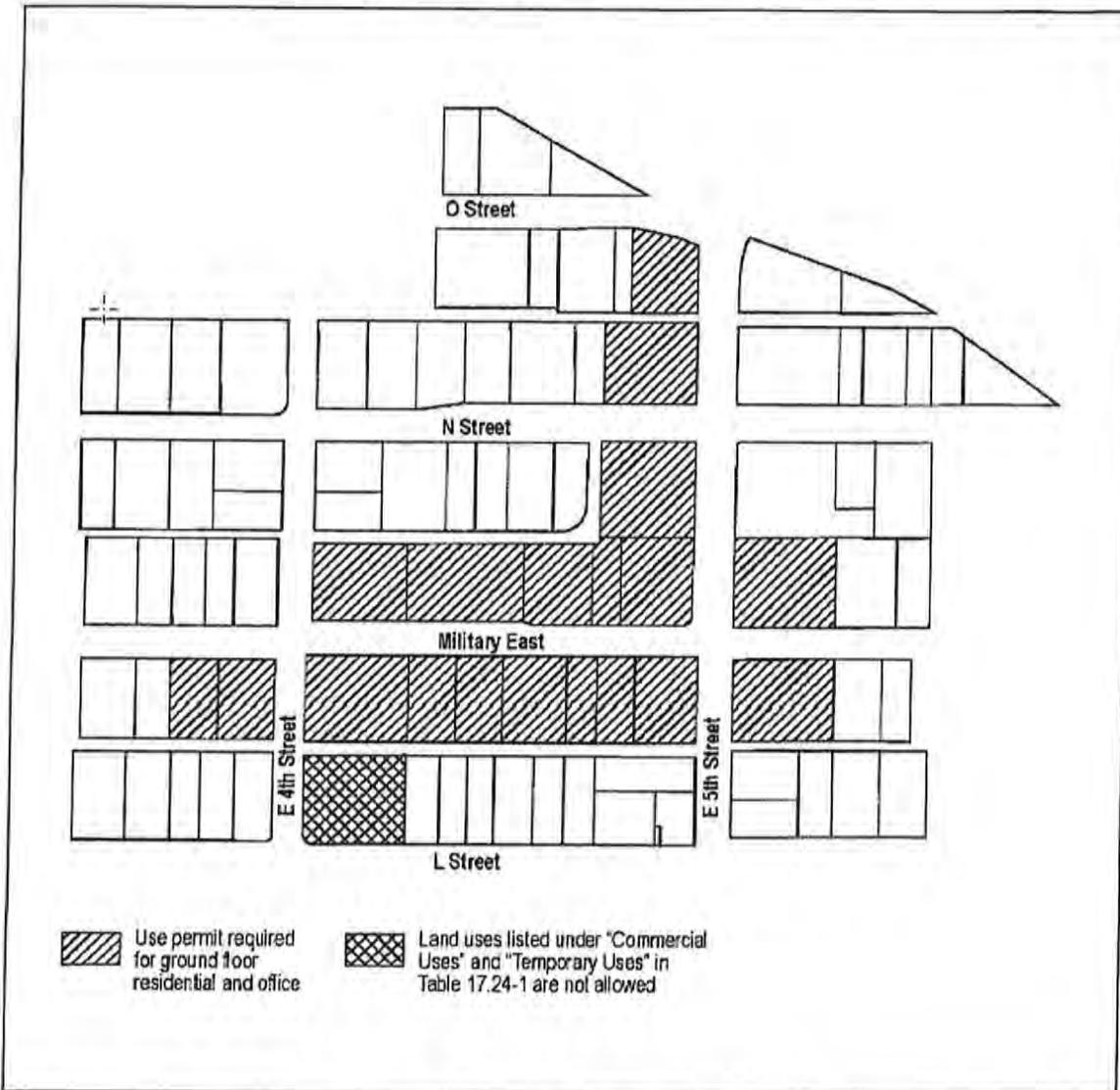
L5 A bar or tavern which is not part of a larger restaurant and operates between 9:00 p.m. and 7:00 a.m. requires a use permit. All other eating and drinking establishments with full alcoholic beverage service are permitted ("P").

L6: Only limited take-out service, as defined in Chapter 17.16 BMC, is allowed. Drive-up take-out service is not allowed.

L7: Only service stations existing in a shopping center as of December 31, 2022 are allowed. A use permit shall be required to replace or make a major alteration to an existing service station. For the purposes of this section, "major alteration" means the construction or alteration of 2,500 square feet or more of new floor area and/or any change of use or alteration that would increase the number of parking spaces by 10 percent or more than the total number required prior to the alteration.

L8: Permitted use ("P") only in a shopping center. Not allowed in all other locations.

Figure 17.26-1: MU-I District Allowed Use Limitations



2. Use Limitations - Military East and/or East Fifth Street.

a. ~~2~~ Residential-Only Projects.

i. ~~a~~ A use permit is required for ground floor residential uses facing Military East and/or East Fifth Street in locations shown in Figure 17.26-1. Off-street parking located within a garage or other facility on the ground floor as accessory to the residential use shall be considered part of the residential use for the purposes of this section.

ii. ~~b~~ The planning commission may approve the use permit if the planning commission makes the use permit findings in BMC 17.104.060 and also finds that:

~~(a).~~ ~~i.~~ No less than 50 percent of the linear building frontage on parcels requiring a use permit as shown in Figure 17.26-1 contain ground-floor commercial uses; and

~~(b).~~ ~~ii.~~ The project complies with BMC 17.26.040(G) (Primary Entrance Design) and (H) (Blank Walls).

~~iii.~~ ~~e.~~ The front yard area between the sidewalk and the street-facing building wall must contain at least two trees per 50 linear feet of parcel street frontage. Tree species must provide minimum 20-foot canopy per tree at maturity.

~~b.~~ ~~3.~~ Ground Floor Office.

~~i.~~ ~~a.~~ Except as provided in subsection (A)(3)(b) of this section, use permit approval by the planning commission is required for ground floor office uses facing the street in locations shown in Figure 17.26-1.

~~ii.~~ ~~b.~~ A use permit is not required to establish a new office use in an existing tenant space that was previously occupied by an office use as of February 17, 2022. In such a case, the office use is not considered a nonconforming use under Chapter 17.98 BMC. A new office use may be established in the existing tenant space at any time, subject to the applicant supplying documentation of the prior office use, without the need to obtain a use permit. An “existing tenant space” means a tenant space that occupies the same building, location and floor area as existed on February 17, 2022.

~~c.~~ ~~4.~~ East L and Fourth Street Corner Property. On the parcel on the corner of East L and East Fourth Street shown in Figure 17.26-1, all land uses listed under the “Commercial Uses” and “Temporary Use” headings in Table 17.24-1 are not allowed.

~~d.~~ ~~5.~~ Large Commercial Uses. Proposed commercial uses with a single tenant occupying a space greater than 3,000 square feet require a use permit.

3. Residential Use Limitations - Shopping Centers Existing on December 31, 2022.
Residential development within a shopping center shall not reduce commercial gross floor area to less than 75 percent of the commercial gross floor area that existed as of December 31, 2022.

B. Development Standards.

1. General. Table 17.26-2 identifies development standards in the MU-I district.

Table 17.26-2: Development Standards – MU-I District

Standard	
Development Intensity	
Minimum site area per unit	1,000 sq. ft.
Maximum floor area ratio (FAR)	Residential: 2.0 [1] Commercial: 1.2

Standard

Maximum lot coverage	75%
Maximum Building Height	
Feet	40 ft. [2]
Stories	3 stories
Yards [3]	
Maximum Front Yard	
Commercial and mixed use projects fronting Military East or East Fifth Street [6]	10 feet from required new sidewalk for a minimum of 50 percent of the parcel's linear street frontage, except that in no case shall this standard require a building to project across a property line into the right-of-way. See Figure 17.26-2.
Residential-only projects	No maximum
Minimum Front and Street Side Yard	
Commercial and mixed use projects	0 ft. from back of required new sidewalk or from property line, whichever is greater.
Residential-only projects	Main building wall: 15 ft. from back of required new sidewalk or 0 ft. from property line, whichever is greater. Entry features: May extend up to 10 feet into required yard, provided they do not project across the property line. See Figure 17.26-3. [4]
Minimum Interior Side and Rear Yard	None, unless required by BMC 17.26.020(C)(4)
Minimum Total Open Space	
Private	None required
Shared	100 sq. ft. per unit [5]
Parking	
Number of spaces	As required by BMC 17.74.030
Design	See Chapter 17.74 BMC

Notes:

[1] Mixed use with at least two-thirds residential floor area may have a floor area of up to 2.0 FAR. All other projects shall be limited to 1.2 FAR.

[2] See BMC 17.70.180 for building features that may project above the permitted building height. Roof decks must comply with BMC 17.26.040(F) (Roof Decks).

[3] See BMC 17.70.150 for allowed projections into required yards.

[4] Includes covered and uncovered porches, terraces, platforms, decks, patios, stairs, and other similar features. Projections into yards allowed in BMC 17.70.150(B) do not also apply.

[5] Shared open space not required for units with private open space. See BMC 17.26.040(D).
 Shared open space may be located within required yards.

[6] There is no maximum front setback in all other locations.

Figure 17.26-2: MU-I Development Standards for Commercial and Mixed Use Residential Projects



Figure 17.26-3: MU-I Development Standards for Residential Projects



2. **Projects Incorporating Community Benefits.** Projects participating in the city's voluntary community benefits program, set forth in BMC 17.70.430, may be entitled to greater site area per unit, lot coverage, and height standards than those in Table 17.26-2.

3. **Building Massing.**

a. **All Buildings.** All buildings in the MU-I district must incorporate at least one of the following features:

- i. Upper floor modulation of at least four feet in depth (either recess or projection) for at least 30 percent of the front facade length. See Figure 17.26-4; or
- ii. A vertical facade break for all floors with a minimum depth of six feet for a minimum of 15 percent of the front facade length. Nonrecessed building walls shall not exceed a width of 50 feet. See Figure 17.26-5.

b. **Buildings Exceeding Three Stories.** In addition to features required for all building in subsection (B)(3)(a) of this section, buildings exceeding three stories in the MU-I district must incorporate at least one of the following additional features:

- i. A fourth story recessed stepback facing the primary street of at least four feet for the entire facade length. See Figure 17.26-6. Recessed area may be used as a balcony, terrace, or other usable open space.
- ii. A fourth story recessed stepback facing the primary street of at least 10 feet for a minimum of 35 percent of the facade length. See Figure 17.26-7. Recessed area may be used as a balcony, terrace, or other usable open space.
- iii. Other comparable method, as determined by the review authority through the use permit or development agreement process, to break down the massing of large building facades and complement the surrounding context.

c. **Building Width on Shopping Center Sites Existing on December 31, 2022.** On the site of an existing shopping center, the width of a newly constructed building measured parallel to the adjacent street frontage shall not exceed 300 feet.

Figure 17.26-4: Upper Floor Modulation

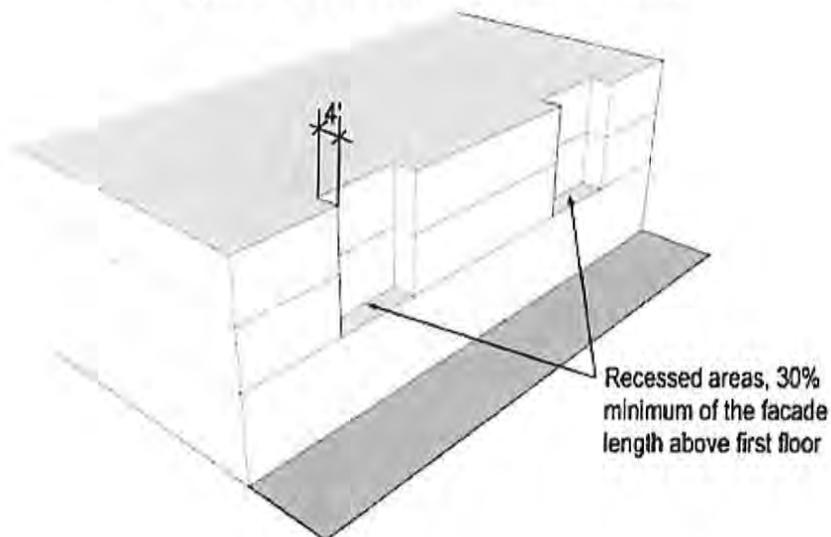


Figure 17.26-5: Vertical Facade Break

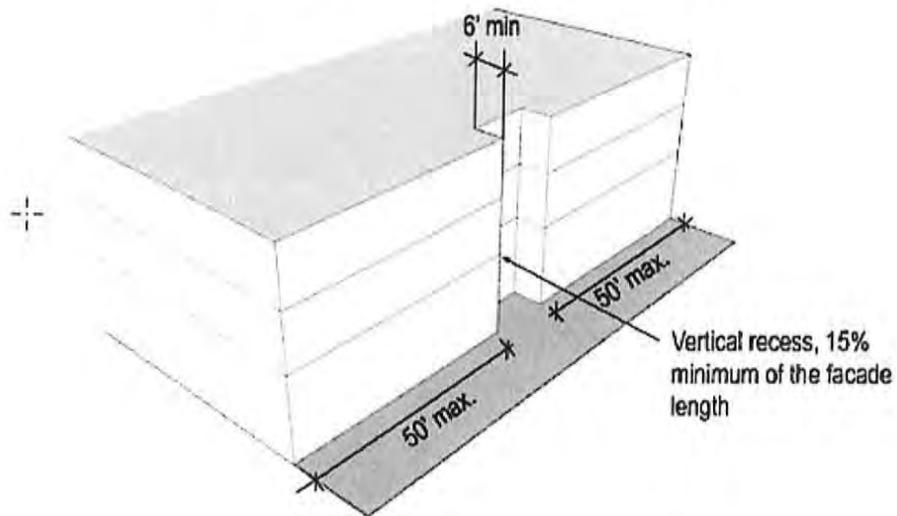
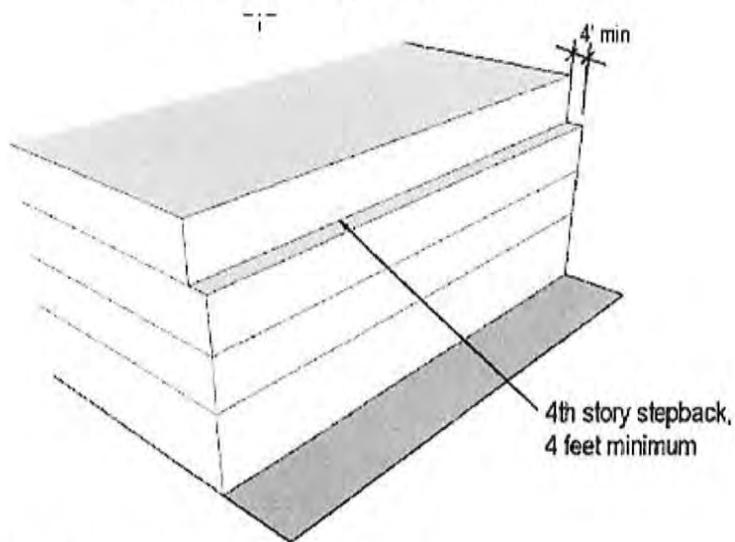
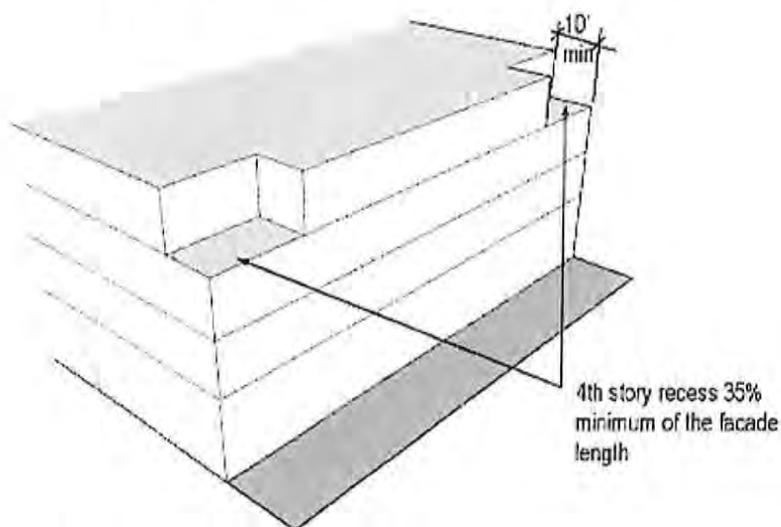


Figure 17.26-6: Upper Story Stepback



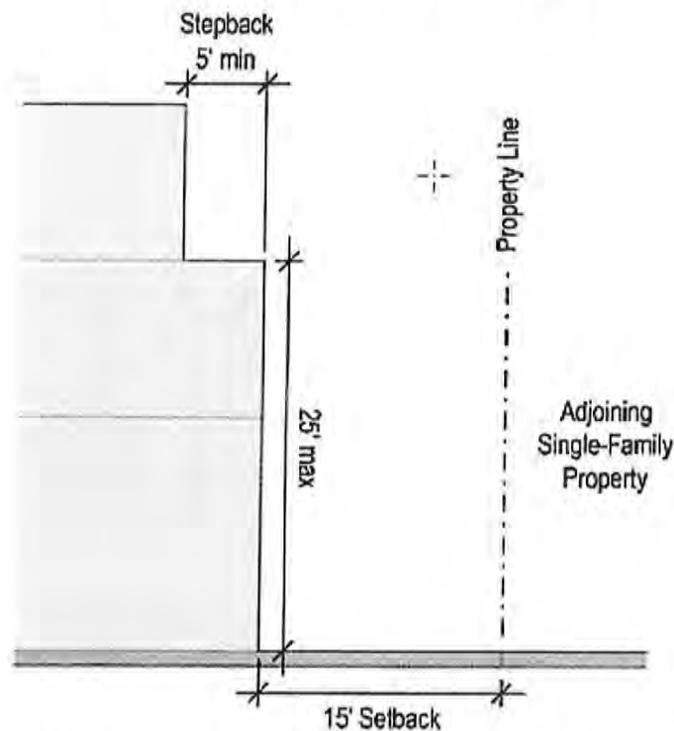
Note: Figure does not show additional building massing standards required for all buildings

Figure 17.26-7: Four Story Wall Limitation

Note: Figure does not show additional building massing standards required for all buildings

4. Residential Transitions. The following standards apply to new development projects adjoining a parcel outside of the MU-I district with an existing single-family use:

- a. Wall or Fence. A sight-obscuring wall or fence six feet high shall be provided along the adjoining residential property line. A sight-obscuring fence must have an opacity of at least 85 percent. Bushes, vines, and other vegetation may be incorporated into the design of a required fence.
- b. Yard. Buildings shall be located a minimum of 15 feet from the adjoining single-family residential property line.
- c. Building Stepback. Buildings adjoining a single-family residential property line shall be no taller than two stories or 25 feet at the required 15-foot setback line. If proposed, third stories shall be stepped back a minimum of five feet from the setback line (i.e., 20 feet from the adjoining property line). Recessed area may not be used as a balcony, terrace, or other usable open space. See Figure 17.26-8.

Figure 17.26-8: Residential Transitions

5. Additional Standards. Development in the MU-I district must also comply with standards in BMC 17.26.040 (Additional standards for all mixed use districts). (Ord. 22-03 § 3).

SECTION 4. Subsection C (Sidewalks and Street Trees) of Section 17.26.040 (Additional standards for all mixed use districts) of Chapter 17.26 (Mixed Use Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Sidewalks and Street Trees.

1. Public sidewalks abutting a development parcel shall have a minimum sidewalk width (curb to back of walk) of at least 12 feet as measured from back of curb. The sidewalk shall contain at least one irrigated curbside street tree for every 30 linear feet of sidewalk.

a. Nonresidential Ground Floor Uses. The following standards apply to development with nonresidential ground floor uses facing the street, as shown in Figure 17.26-11:

i. If right-of-way conditions require buildings to be set back from the street by more than 12 feet, the sidewalk shall be extended to the building.

ii. Curbside sidewalk tree wells shall be four feet in width by eight feet in length minimum, six feet by 12 feet maximum, with a corresponding zone of pervious paving aligned with and extending between tree wells.

iii. A minimum clear width of eight feet shall be provided between tree wells and the building frontage.

b. Residential Ground Floor Uses. The following standards apply to development with residential ground floor uses facing the street, as shown in Figure 17.26-12:

- i. If right-of-way conditions require buildings to be set back from back of sidewalk by more than 15 feet, required frontage landscaping shall be expanded to fill the excess area.
- ii. Curbside sidewalk tree wells shall be six feet in width by six feet or more in length, with a corresponding zone of pervious paving aligned with and extending between tree wells.
- iii. Tree wells shall include additional low-growing ornamental planting to enhance residential frontages.

2. If the existing public right-of-way area between the curb and the property line is insufficient to meet the minimum standard above, extension of the sidewalk onto the property, with corresponding public access easement, shall be provided.

3. Applicability – Shopping Centers.

a. For development on a site with a shopping center existing on December 31, 2022, streetscape improvements required by this section shall be installed along the property frontage that abuts:

i. The area of disturbance; and

ii. Shopping center property adjacent to the area of disturbance to the property line or nearest driveway providing vehicle access to the property, See Figure 17.26-13

b. In cases where the primary building frontage of new development faces an internal private street, the streetscape improvements required by the section also apply to the internal private street frontage.

4. Applicability – All Other Developed Properties.

a. Permitted residential development existing on December 31, 2022 may increase floor area by a total of 20% without constructing streetscape improvements required by this section, so long as the number of residential units does not increase.

b. Permitted commercial development existing on December 31, 2022 may increase floor area by a total of 2,500 square-feet or 10%, whichever is less, without constructing streetscape improvements required by this section. This includes accessory structures and outdoor space utilized for commercial purposes.

Figure 17.26-13: Shopping Center Streetscape Improvement Requirement

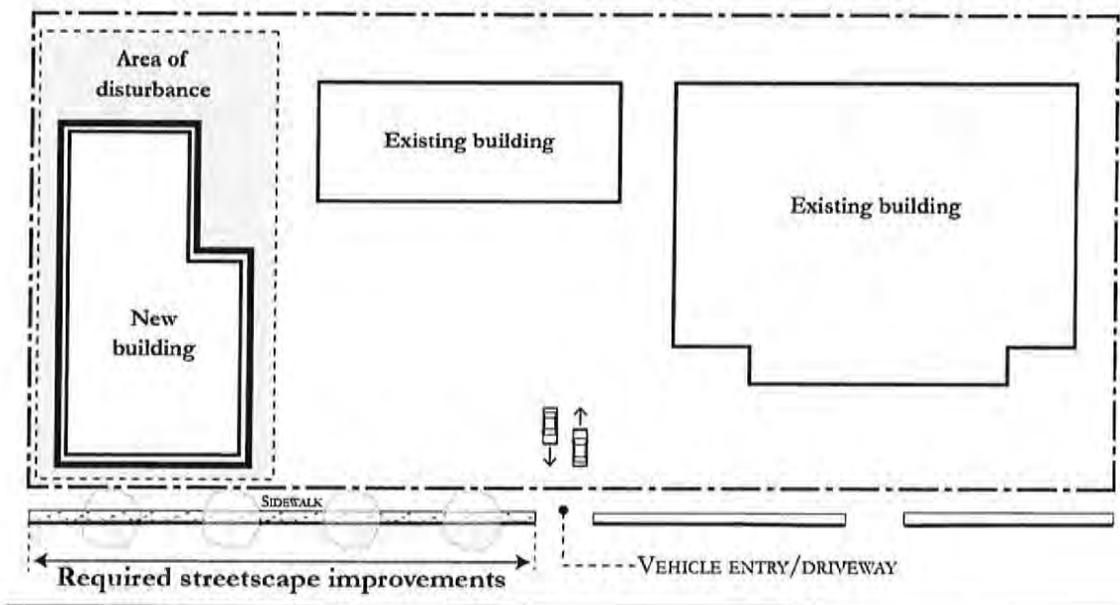
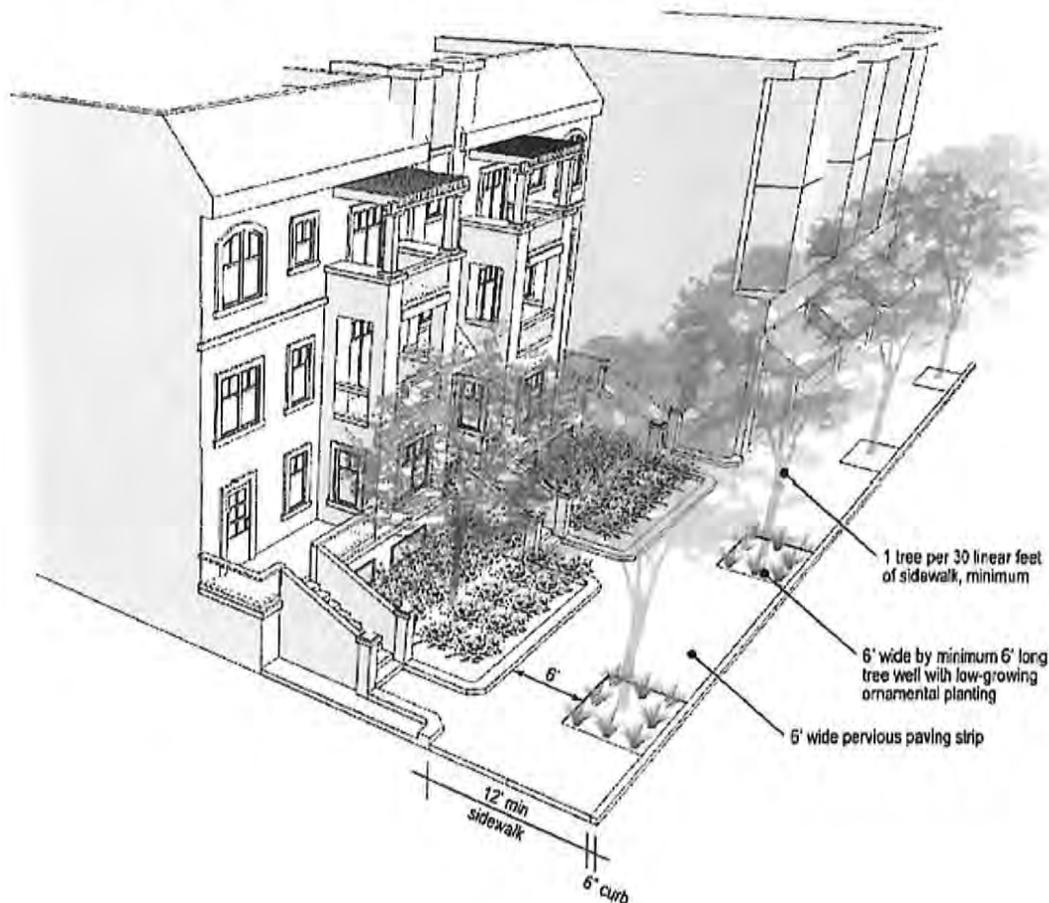


Figure 17.26-11: Streetscape Standards – Nonresidential Ground Floor Uses



Figure 17.26-12: Streetscape Standards – Residential Ground Floor Uses



SECTION 5. Subsection D (Mixed Use Districts) of Section 17.74.130 (Parking access from street) of Chapter 17.74 (Off-street Parking and Loading) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

D. Mixed Use Districts. The following requirements apply in the MU-I and MU-L districts:

1. Parking Placement and Alley Access.

- a. Surface parking spaces may not be located between a building and a front or street side lot line. Parking must be located to the rear or side of buildings.
- b. For lots served by an existing paved alley, vehicle access to parking must be from the alley. The review authority may allow exceptions to this requirement where:
 - i. Use of the alley is shared with one or more existing single-family residential homes; and

- ii. The alley dimensions and other existing physical site conditions (e.g., building location) conflict with city standards for alley width, sight distance, emergency vehicle access or other objective standards.
- c. If an applicant paves and improves the alley consistent with city standards, parking access may be provided from the alley.

2. Driveways.

- a. Except where allowed by paragraph (c) below, no more than one driveway may serve any parcel less than 150 feet wide and no more than two driveways may serve any parcel exceeding 150 feet in width.
- b. The number of driveways allowed for a corner parcel is calculated using either the front or the side dimension of the parcel, whichever is larger. (Ord. 22-03 § 13; Ord. 87-4 N.S., 1987).
- c. New development on a shopping center site that existed on December 31, 2022 may not increase the number of driveways providing vehicle access to the property; in addition, such development shall not be required to reduce the number of driveways, as established by BMC 17.74.130.D.2.a.

SECTION 6. Section 17.74.220 (Podium parking) of Chapter 17.74 (Off-street Parking and Loading) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Landscaping Strip. Podium parking adjacent to a street must include a landscaped planter between the street and podium at least four feet wide with a planting height and vegetative cover sufficient to fully screen the podium edge and ventilation openings from view. At maturity, plantings must comprise a minimum of 75 percent of the total landscape planter.

B. Residential-Only Projects. The following standards apply to podium parking included in a building that contains only residential uses, including residential-only buildings on a property that contains other buildings with non-residential uses.

1. The maximum height of a parking podium adjacent to the street is five feet from finished grade.
2. Units above a street-facing podium must feature entries with stoops and stairs providing direct access to the adjacent sidewalk.

C. Mixed Use and Commercial Projects. The podium parking entry shall be recessed a minimum of four feet from the street-facing building facade. This requirement applies to podium parking entries facing a private street or internal drive aisle that functions as the front building line as defined in BMC 17.12. This requirement does not apply to podium parking entries facing service or loading areas.

SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of

this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. This project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15305, and 15332 which apply to existing facilities, minor alterations to land use limitations, and infill development, respectively. The bulk of the proposed zoning amendments apply only to sites meeting the definition of a shopping center and there are currently no shopping center sites zoned for mixed use development in Benicia, therefore the shopping center-oriented text amendments have no potential to impact the environment at this time. The proposed text amendment does clarify when streetscape improvements apply for developed properties in the Mixed Use-Infill and Mixed Use-Limited zones, but it limits the need for those improvements in comparison to what would currently be required. The proposed text amendments do not have the potential to result in environmental impacts.

SECTION 9. This Ordinance shall take effect thirty (30) days from its passage by the City Council.

SECTION 10. The City Clerk is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).

17.84.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

"Applicant" means a person who is required to file an application for a cannabis business under this chapter, including an individual owner, managing partner, officer of a corporation, or any other ~~dispensary~~ operator, management member, employee, or agent of a cannabis business.

"Cannabis" shall have the meaning ~~as defined set forth~~ in Business and Professions Code Section [26001](#) ~~(fe) and as it currently exists or may hereinafter be subsequently amended.~~

"Cannabis business" shall include:

1. Any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity takes place.
2. Any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license under Business and Professions Code Section [26000](#) and following, as it currently exists or may hereinafter be amended, including but not limited to cannabis cultivation, cannabis distribution, cannabis manufacturing, cannabis testing and cannabis retail sales, and the operation of a cannabis microbusiness.

"Cannabis product" shall have the same meaning as defined in Health and Safety Code Section [11018.1](#) as it currently exists or may hereinafter be amended.

"Canopy" means all areas occupied by any portion of a cannabis plant, encompassing all vertical planes (i.e., stacking of plants), whether contiguous or noncontiguous on any one site. The canopy shall be measured by taking the longest length and widest width of existing plants (including all gaps, walkways, and open areas between plants) and multiplying the longest length by the longest width to get the area of the cannabis canopy. Each level of a stacked cultivation will be calculated as a separate canopy.

"Childcare center" means a licensed day care facility that provides nonmedical care to children under 18 years of age on a less than 24-hour basis, and includes infant centers, nursery schools, preschools, extended day care facilities, large family day care homes, and school age child care centers.

"Commercial cannabis activity" shall include the cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, shall have the same meaning as defined in Business and Professions Code Section 26001(l), as it currently exists or may hereinafter be amended.

"Decision-Making Body" means the entity designated in Section 17.84.060D to make a determination related to a use permit for commercial cannabis business.

"Delivery" means the commercial transfer of cannabis or cannabis products to a customer or patient. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer shall have the same meaning as defined in Business and Professions Code Section 26001(p), as it currently exists or may hereinafter be amended.

"Distribution" means the procurement, storage, sale, and transport of cannabis and cannabis products between licensees shall have the same meaning as defined in Business and Professions Code Section 26001(s), as it currently exists or may hereinafter be amended.

"Drug paraphernalia" shall have the meaning set forth in California Health and Safety Code Section 11014.5, and as it currently exists or may hereinafter be subsequently amended.

"Edible cannabis product" means cannabis that is intended to be used, in whole or in part, for human consumption as defined in Business and Professions Code Section 26001(v), as it currently exists or may hereinafter be amended.

"Identification card" shall have the meaning set forth in California Health and Safety Code Section 11362.7(g) as it currently exists or may hereinafter be amended. 11362.712, and as it currently exists or may hereinafter be amended from time to time.

"Learning center" means a facility that provides appointment- or classroom-based tutoring, test preparation, drivers' education, instruction in science, technology, engineering, arts and math (STEAM), and similar instruction for school-aged youth, and state-licensed adult day programs for individuals with developmental or physical disabilities.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product shall have the same meaning as defined in Business and Professions Code Section 26001(ai), as it currently exists or may hereinafter be amended.

"Medicinal cannabis" or "medicinal cannabis product" shall have the meaning set forth in California Business and Professions Code Section 26001(aji), as it currently exists or may hereinafter be amended which includes cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at California Health and Safety Code Section 11362.5, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Operator" means any person responsible for management of the cannabis business, any person listed on the cannabis business's articles of incorporation, any person owning an interest in the cannabis business, and any person that supervises another employee of the cannabis business.

"Owner" shall have that meaning set forth in Business and Professions Code Section [26001](#) ~~(and)~~ and as it currently exists or may hereinafter be amended.

"Permittee" means any person issued a use permit for cannabis under this chapter.

"Physician" means a licensed medical doctor, including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

"Property" means the designated structure or structures and land specified in the use permit for cannabis application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted. As utilized herein the term "property" shall also include "location".

"Public park" means an area of land, owned by a public agency, including the city and any other local, state and/or federal entities, that provides outdoor recreation facilities and programming or provides open space recreational opportunities.

"Qualified registration list" means the list established through a competitive process to determine the best applicants for use permits for storefront retail cannabis businesses ~~that have retail components, including microbusinesses.~~

"School" means any public or private school providing instruction in kindergarten or any of grades one through to 12, consistent with curriculum content standards adopted by the California State Board of Education, inclusive, but does not include any private school in which education is primarily conducted in private homes.

"State cannabis laws" means and includes California Health and Safety Code Sections [11362.1](#) through [11362.45](#), [11362.5](#) (Compassionate Use Act of 1996) and [11362.7](#) to [11362.83](#) (Medical Marijuana Program); California Business and Professions Code Sections [26000](#), et seq. (Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA")); all state laws enacted or amended pursuant to SB-94, Chapter 27, Statutes of 2017; the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section [147.5](#); California Revenue and Taxation Code Sections [31020](#) and [34010](#) through [34021.5](#); California Fish and Game Code Section [12029](#); California Water Code Section [13276](#); all state regulations adopted pursuant to MAUCRSA; any license issued pursuant to MAUCRSA; and all other applicable laws of the state of California regulating cannabis or cannabis products, as all these laws currently exist or may hereinafter be amended.

~~"Testing laboratory" means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products, shall have the same meaning as defined in Business and Professions Code Section 26001(aw), as it currently exists or may hereinafter be amended.~~

~~"Youth center" shall have that the same meaning as defined set forth in Section 11353.1 of the Health and Safety Code, as it currently exists or that section may hereinafter be amended.~~

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17.84.050 Cannabis businesses – General provisions.

A. Cannabis Businesses Allowed.

1. Only those types of cannabis businesses set forth in this section shall be allowed within the city. Any and all cannabis businesses, activities, nonprofits, associations, enterprises, collectives, cooperatives or dispensaries not expressly described herein are expressly prohibited.

- a. Cannabis storefront retailer ("storefront retailer").
- b. Cannabis manufacturing operation ("manufacturer").
- c. Cannabis testing laboratory ("testing labs").
- d. Cannabis distributor ("distributor").
- e. Cannabis cultivation operation ("cultivator").
- f. Cannabis microbusiness ("microbusiness").
- g. Cannabis delivery-only operations ("delivery").

2. No more than one cannabis storefront retailer is permitted in the city.

3. An owner or operator of a cannabis business may own or operate more than one cannabis business within the city.

4. An owner or operator of a cannabis business may own or operate more than one cannabis business on a property or location, subject to compliance with the independent standards and requirements of each cannabis business type.

45. All retail commercial cannabis operations, or stages thereof, shall occur within a single in a fully enclosed permanent structure.

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C. Transfer of and Amendments to Use Permits for Cannabis Businesses.

1. Transfer of Permit – Site Specific. A permittee shall not operate a cannabis business under the authority of a use permit for a commercial cannabis activity business at any place property or location other than the address of the cannabis business stated in the application for the permit. All permits issued by the city pursuant to this chapter shall be nontransferable to a different location.

2. Modification of an Existing Permitted Commercial Cannabis Business. A permittee may seek a use permit amendment to modify the permitted cannabis business (e.g., change from manufacturing to microbusiness) or add an additional cannabis business on the same property or location, within the same floor area, and under the same ownership as an existing permitted cannabis business. Such modified additional cannabis business shall comply with the applicable standards of this chapter and may be approved or denied pursuant to the provisions of section 17.84.060. An existing permitted commercial cannabis business shall not be modified to authorize retail operations as an additional cannabis business on the same location or property; nor shall any existing permitted commercial cannabis business be modified to authorize a storefront retail cannabis business on the same property or location.

3. Transfer of a Permitted Commercial Cannabis Activity Business. A permittee shall not transfer ownership or control of a cannabis business or attempt to transfer a use permit for a commercial cannabis activity business to another person, owner or operator unless and until the transferee obtains a duly issued public safety license and a use permit confirming adherence to all established requirements of this chapter and any applicable conditions of approval an amendment to the permit from the planning commission to the permitting requirements of this chapter stating that the transferee is now the permittee. Such a use permit amendment may be obtained only if the transferee files an application with the community development department in accordance with all provisions of this chapter accompanied by the required transfer review application fee.

34. Request for Amendment or Transfer with a Revocation or Suspension Pending. No use permit for a commercial cannabis activity business may be amended or transferred (and no permission for a transfer may be issued) when the community development department has notified the permittee in writing that the permit has been or may be suspended or revoked for noncompliance with this chapter and a notice of such suspension or revocation has been provided.

45. Transfer or Amendment without Permission. Any attempt to transfer a use permit for commercial cannabis activity business either directly or indirectly in violation of this chapter is declared void, and the permit shall be deemed revoked.

17.84.060 Use permit for commercial cannabis activities – Requirements.

A. Except as set forth in this chapter, use permits for commercial cannabis activities shall be processed in accordance with Chapter 17.104 BMC (Use Permits and Variances). The city council shall establish any necessary use permit procedures, by resolution, specific to commercial cannabis activities.

B. Use Permits for Retail. Because only one storefront cannabis retailer is permitted, an application period for this business shall be established to allow the selection of the best applicants. The competitive process for selection of the best applicants to be placed on the qualified registration list shall be established by resolution of the city council.

C. Use permit for applications for cannabis retailers shall include a statement as to whether the use will include delivery of cannabis and cannabis products to locations outside the cannabis retail facility. If delivery services will be provided, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this chapter and state law.

D. ~~The planning commission~~ community development director shall review and approve or deny all complete use permit applications for commercial cannabis activities or amendments to or transfer of use permits by utilizing the criteria for approval or denial set forth in this chapter and by separate resolution of the city council, except in the following instances where the use shall be reviewed and approved or denied by the planning commission:

1. A use permit for a storefront retail commercial cannabis business.
2. A use permit for any commercial cannabis business that also requires approval of a use permit for hazardous materials pursuant to section 17.70.260.
3. A use permit or amendment to use permit that the community development director refers to the planning commission pursuant to section 17.104.020.

The ~~planning commission~~ decision-making body shall only approve as many use permits for cannabis applications as permitted by BMC 17.84.050(A). After reviewing an application, the ~~planning commission~~ decision-making body shall determine whether to ~~issue~~ approve the use permit for commercial cannabis activities with conditions, or to deny the use permit for commercial cannabis activities.

E. Imposition of Permit Fees. Every application for a use permit for commercial cannabis activities shall be accompanied by an application fee (in an amount established by resolution of the city council) ~~at an amount calculated to recover the city's full cost of reviewing and issuing said permit and the filing of a complete required application pursuant to this chapter.~~ The application fee shall be in addition to any other fees or costs, such as business license fees,

permit fees, fingerprinting, photographing or background check, as may be imposed by the city or other governmental agencies. (Ord. 19-11 § 2; Ord. 19-09 § 1; Ord. 18-03 § 1).

17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.

A. Criteria for Issuance. In addition to the findings required by Chapter 17.104 BMC, the ~~decision-making body~~ planning commission, or the city council on appeal, shall make all of the following findings in determining whether to grant, modify, or deny a use permit for any cannabis business:

1. As related to a storefront retail cannabis business only, ~~the~~ cannabis business applicant has been placed on the cannabis qualified registration list.
2. The use permit for cannabis application is complete and the applicant has submitted all information and materials required.
3. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to a school.
4. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to another permitted cannabis business.
5. The design of the storefront or structure within which the cannabis business will operate is architecturally compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.
6. As related to a storefront retail cannabis business only, ~~the~~ proposed size of the cannabis business is appropriate to meet the needs of the local Benicia community for access to cannabis and that the size complies with all requirements of the city's zoning regulations.
7. The location is not prohibited under the provisions of this chapter or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the city's zoning regulations will be accomplished.
8. The cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.

9. The cannabis business is not likely to violate any provision of the BMC or conditions imposed by a city-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.

10. The applicant has not made a false statement of material fact or omitted a material fact in the application for a use permit for a commercial cannabis business, as known at the time of determination on the application.

11. The cannabis business's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.

B. Supplemental Findings – Cannabis Manufacturing Operation. In addition to the findings required for the approval of a use permit for a commercial cannabis business as set forth in subsection (A) of this section, the ~~planning commission, or the city council on appeal decision-making body~~ shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for a commercial cannabis business for a manufacturer:

1. The manufacturing operation, as proposed, may utilize nonvolatile or volatile solvents for purposes of extracting cannabinoids. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the Benicia Municipal Code (BMC) including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

2. The manufacturing operation includes adequate quality control measures to ensure any cannabis product manufactured at the site meets industry standards.

3. The manufacturing operation does not pose a significant threat to the public or to neighboring uses from explosion or from the release of harmful gases, liquids, odors or substances.

C. Supplemental Findings – Cannabis Testing Laboratory. In addition to the findings required for the approval of a use permit for a commercial cannabis business as set forth in subsection (A) of this section, the ~~planning commission, or the city council on appeal decision-making body~~ shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for a commercial cannabis business for a testing lab:

1. The owners, permittees, operators, and employees of the testing lab will not be associated with any other form of commercial cannabis activity.

2. The testing lab is accredited by an appropriate accrediting agency as approved by the state and further described in California Code of Regulations, Title 16, Section 5702 and as it may be amended.

3. The testing lab operating plan demonstrates proper protocols and procedures for statistically valid sampling methods and accurate certification of cannabis and cannabis products for potency, purity, pesticide residual levels, mold, and other contaminants according to the uniform testing standards as identified by the California Department of Cannabis Control, adopted industry standards

D. Criteria for Denial. The ~~planning commission decision-making body~~ shall deny an application for a use permit for a commercial cannabis business if ~~that meets~~ any one of the following criteria are met:

1. Any supervisor, employee, or person having a 10 percent or more financial interest in the cannabis business has been convicted of a felony or a drug-related misdemeanor reclassified by California Penal Code Section 1170.18 (Proposition 47) within the past 10 years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

2. Any person who is listed on the application or is an owner or operator, is a licensed physician making patient recommendations for medical cannabis pursuant to Health and Safety Code Section 11362.7;

3. Any person who is listed on the application or is an owner or operator is less than 21 years of age;

4. The proposed cannabis business does not comply with the provisions of this chapter or state cannabis laws; and

5. ~~The planning commission decision-making body~~ is unable to make a required finding contained in this chapter.

E. ~~Planning Commission Determination.~~ If the ~~planning commission decision-making body~~ denies the application, ~~the planning commission shall specify in writing the reasons for the denial of the application shall be specified in writing and the applicant shall be notified, and notify the applicant that the decision shall will become final unless the applicant seeks an appeal pursuant to BMC 17.84.080.~~

17.84.080 Appeal from ~~planning commission of~~ determination.

An applicant or any interested party who disagrees with the ~~planning commission's decision-making body's~~ decision to ~~issue~~ approve, approve with conditions, or to deny, suspend, or revoke a use permit for a commercial cannabis activity business may appeal the ~~planning~~

~~commission's decision to the city council~~ in accordance with the appeal provisions of Chapter 1.44 BMC.

17.84.090 Suspension and revocation ~~by planning commission.~~

A. Authority to Suspend or Revoke a Use Permit for Cannabis. Any permit issued under the terms of this chapter may be suspended or revoked by the ~~planning commission decision-making body that issued the permit~~ under the provisions of BMC 17.128.060.

B. In addition to the required findings set forth in BMC 17.128.060(D), a use permit for a commercial cannabis ~~activity business~~ may be ~~suspended or~~ revoked if it appears to the ~~planning commission decision-making body~~ that the cannabis business has violated any of the requirements of this chapter, the cannabis business is being operated in a manner which violates the operational requirements or security plan required by the zoning code, the cannabis business is being operated in a manner which constitutes a nuisance, the cannabis business has ceased to operate for 30 days or more, or the cannabis business is being operated in a manner which conflicts with or violates state cannabis law.

C. Any use permit for a commercial cannabis ~~activity business~~ revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the permittee to any uses authorized by the use permit.

D. Revocation, expiration or nullification of a cannabis public safety license pursuant to BMC 9.60.060 and 9.60.070 shall automatically terminate the use permit for a commercial cannabis ~~activity business~~ issued to the licensee and shall terminate the ability of the licensee to operate a cannabis business without initiation of revocation proceedings by the ~~planning commission decision-making body~~. Suspension of a cannabis public safety license pursuant to BMC 9.60.070 shall automatically result in suspension of the associated use permit for the commercial cannabis business unless and until the public safety license has been re-instated.

17.84.100 Cannabis businesses – Conditions of operation.

A. All Cannabis Businesses. All cannabis businesses shall be operated, maintained, and managed on a day-to-day basis in compliance with the following operational conditions and requirements:

1. State Licensing. A cannabis business shall at all times maintain a state cannabis license for the permitted commercial cannabis business at all times, and shall comply with all applicable state licensing requirements, regulations, conditions, and standards. The failure to maintain a state license, revocation of a state cannabis license, or lapse in renewal of a state cannabis license shall be the basis for immediate termination of the

right to operate a cannabis business under a city use permit for commercial cannabis business.

2. Cannabis Public Safety License. A cannabis business shall maintain a cannabis public safety license, issued under Chapter 9.60 BMC, at all times. ~~The~~ Failure to maintain a cannabis public safety license, revocation of a cannabis public safety license, or lapse in renewal of a cannabis public safety license shall be the basis for immediate termination of the right to operate a cannabis business under a use permit for commercial cannabis business.

3. Employees. It shall be unlawful for the applicant, owner, operator, or any other person effectively in charge of any cannabis business to employ any person who is not at least 21 years of age.

4. Minors. Persons under the age of 21 years shall not be allowed on the premises of a storefront retail cannabis business, unless they are a qualified patient or a person with ~~an~~ government-issued photo identification card as those phrases are defined by Health and Safety Code Sections 11362.79(c) and (f). Persons under the age of 18 years shall not be allowed on the premises of a storefront retail cannabis business unless they are accompanied by a parent or guardian at all times. The entrance to cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the property or location ~~premises~~ unless they are a qualified patient and they are in the presence of their parent or guardian.

5. Every cannabis business shall display, at all times during its regular business hours, the use permit for the cannabis business and cannabis public safety license issued for such cannabis business in a conspicuous place so that the same may be readily seen by all persons entering the cannabis business.

6. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the ~~premises~~ property or location of the cannabis business, that sells alcoholic beverages, or otherwise allow alcoholic beverages to be possessed, distributed, or consumed on the ~~premises~~ property or location.

7. No cannabis business shall be a retailer of tobacco products.

8. A cannabis business shall be considered a commercial or industrial use, as the case may be, relative to the city's parking requirements in Chapter 17.74 BMC in an amount most similar to the uses contained in the parking requirements as determined by the community development director.

9. Smoking, ingesting, or consuming cannabis on the premises property or location of a cannabis business shall be prohibited. A notice prohibiting smoking, ingesting and

consuming cannabis shall be clearly and legibly posted in the cannabis business and shall not obstruct the entrance or windows. No cannabis-related paraphernalia shall be present on a cannabis business property or location, except as may otherwise be permitted to be sold as related to commercial cannabis distribution businesses.

10. Operation of a cannabis business shall not result in illegal redistribution or sale of cannabis obtained, or the use or distribution in any manner which violates state cannabis law or this chapter.

11. Odors. All cannabis businesses shall be sited and/or operated in a manner that prevents cannabis odors from being detected from other locations, including from adjacent properties and from adjacent public rights-of-way off-site. All structures utilized for ~~indoor-commercial cannabis businesses cultivation~~ shall be equipped and/or maintained with sufficient ventilation controls (e.g., carbon scrubbers) to eliminate nuisance odor emissions from being detected ~~off-site~~ from other locations, adjacent properties and from adjacent public rights-of-way.

12. Site Plan.

a. The site plan shall include a lobby waiting area at the entrance to the cannabis business used to receive and screen customers (if applicable), employees, patrons, and guests of the cannabis business and a separate and secure designated area for dispensing cannabis (if applicable) and conducting other operations of the cannabis business.

b. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from adjacent public rights-of-way streets, sidewalks or site driveways

c. Commercial cannabis businesses shall provide a secure indoor loading area to ensure that loading activities are not visible from adjacent public rights-of-way, and to ensure that product transfers occur in a secure environment.

13. Cannabis businesses shall not be enlarged in size (i.e., increased floor area) without the ~~planning commission decision-making body's~~ prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

14. Security. The cannabis business shall at all times comply with all elements of its security plan, submitted as a part of its cannabis public safety license application pursuant to BMC [9.60.040](#).

15. Signage. The cannabis business shall comply with all applicable provisions of BMC Title [18](#).

16. Additional Conditions. The ~~planning commission decision-making body~~ may impose additional conditions which it deems necessary to ensure that operation of the cannabis business will be in accordance with the standards and regulations provided in the zoning code, the standards set forth by separate resolution of the city council, and applicable state and local laws.

B. Supplemental Conditions – Storefront Retailers.

4. In addition to the conditions of operation set forth in subsection (A) of this section, a cannabis storefront retail operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

~~12.~~ Storefront ~~R~~etailers shall not sell drug paraphernalia and implements that may be used to smoke, ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5.

~~23.~~ Storefront ~~R~~etailers shall not be enlarged in size (i.e., increased floor area) without the planning commission's prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

~~34.~~ Storefront ~~R~~etailers that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide a valid official government-issued photo identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

~~45.~~ Hours of Operation. Storefront ~~R~~etailers may only operate during the hours between 10:00 a.m. through 8:00 p.m. The planning commission may further restrict a retailer's days and hours of operation as a condition of a use permit for cannabis. A retailer shall post its approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.

~~56.~~ Storefront ~~R~~etailers shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

~~67.~~ State Seller's Permit. Storefront ~~R~~etailers shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

78. A cannabis storefront retail operation that delivers cannabis and/or cannabis products shall also be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (F)(1) through (7) of this section.

C. Supplemental Conditions – Manufacturers. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis manufacturing operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Manufacturers shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to the members of the general public.
2. Manufacturers may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.
3. Standard of Equipment. Manufacturing, processing and analytical testing devices used by manufacturers must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city's building official and fire code official.
4. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.
5. Edible Product Manufacturing. Manufacturers that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permit holders shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

D. Supplemental Conditions – Cultivators. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis cultivation operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Cultivators shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to members of the general public.
2. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

3. Size of cultivation business canopy. The cultivation of cannabis for commercial purposes shall be limited to the total canopy size per property permitted by state law including without limitation California Business and Profession Code Section 26061, as it currently exists or may hereinafter be amended.

~~3. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.~~

4. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

5. Screening. Cannabis plants shall not be easily visible from ~~off-site other locations,~~ including adjacent property and the public right-of-way.

6. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.050.

E. Supplemental Conditions – Microbusinesses.

1. Retail sales. A microbusiness that engages in retail sales of cannabis and/or cannabis products shall sell cannabis and/or cannabis products to customers exclusively through delivery. The premises of a microbusiness shall not be open to the public.

2. Delivery. If the microbusiness delivers cannabis and/or cannabis products, the microbusiness shall be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (F)(1) through (7) of this section.

32. Paraphernalia. Microbusinesses shall not sell drug paraphernalia and implements that may be used to smoke, ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section 11364.5, including for commercial distribution businesses.

43. Authorized individuals only. Microbusinesses that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid government-issued official photo identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

54. Hours of Operation. The ~~planning commission decision-making body~~ may restrict a microbusiness's days and hours of operation as a condition of a use permit for cannabis. Microbusinesses shall post their approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title 18.

65. No on-site physician. Microbusinesses shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

76. State Seller's Permit. Microbusinesses shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

87. Extraction processes. Microbusinesses may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

98. Standard of Equipment. Manufacturing, processing and analytical testing devices used by microbusinesses must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city's building code official and fire code official.

109. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.

1140. Edible Product Manufacturing. Microbusinesses that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permittees shall comply with Health and Safety Code Section 13700 et seq. and county health permit requirements.

1244. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

~~12. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.~~

1342. Size of cultivation business canopy. The cultivation of cannabis for commercial purposes shall be limited to the total canopy size per property permitted by state law

including without limitation California Business and Profession Code Section 26061 as it currently exists or may hereinafter be amended.

~~1413.~~ Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

~~1514.~~ Screening. Cannabis plants shall not be easily visible from ~~off site adjacent properties and public right-of-way.~~

~~1615.~~ Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC 8.28.050.

* * *

G. Maintenance, Access to, and Inspection of Records.

1. Every cannabis business shall maintain on site, at the property designated for the operation of the cannabis business, all records of the cannabis business.
2. Financial Records. The cannabis business shall maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements (including any in-kind contributions), and any and all reasonable compensation for services provided by the cannabis business, as well as records of all operational expenditures and costs incurred by the cannabis business in accordance with generally accepted accounting practices and standards typically applicable to business records.
3. Record Retention Period. The records required in this subsection shall be maintained by the cannabis business for a period of five years and shall be made available to the city within 24 hours of written request, subject to the authority set forth in subsection (G)(4) of this section.
4. A duly designated city police department or finance department representative may enter and shall be allowed to inspect the premises of every cannabis business as well as the financial and membership records of the cannabis business required by this chapter at any time during the cannabis business's designated business hours, or at any appropriate time to ensure compliance and enforcement of the provisions of this chapter. It shall be unlawful for any owner, operator, or any other person having any responsibility over the operation of the cannabis business to refuse to allow, impede, obstruct or interfere with an inspection of the cannabis business or the required records thereof.

17.84.110 Business license tax liability.

An operator of a cannabis business shall be required to apply for and obtain a business tax certificate pursuant to Chapter 5.04 BMC as a prerequisite to obtaining a use permit for commercial cannabis business pursuant to the terms of this chapter. Cannabis businesses shall be subject to sales tax, excise tax and other applicable taxes in a manner required by state law.

17.84.120 Annual review of cannabis businesses.

The community development department is hereby authorized, at the discretion of the community development director, to conduct an annual review of the operation of each permitted use permit for a commercial cannabis ~~activity~~ business within the city for full compliance with the operational, recordkeeping, nuisance and other requirements of this chapter. A fee in an amount established by resolution of the city council shall be collected in order to reimburse the city for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any cannabis business which, upon completion of an annual review, is found not to be in compliance with the requirements of this chapter or which is operating in a manner which constitutes a public nuisance. Staff may, based upon its annual review of the operation of a cannabis business, ~~place on a planning commission meeting agenda a proposal to suspend or revoke a use permit for cannabis~~ seek suspension or revocation of the use permit as provided in section 17.84.090.

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Solano County Airport Land Use Commission

675 Texas Street Suite 5500
Fairfield, California 94533
Tel 707.784.6765 / Fax 707.784.4805
SolanoALUC@SolanoCounty.com

LAND USE COMPATIBILITY DETERMINATION: APPLICATION FORM

TO BE COMPLETED BY STAFF		
APPLICATION NUMBER:	FILING FEE:	
DATE FILED:	RECEIPT NUMBER:	
JURISDICTION:	RECEIVED BY:	
PROJECT APN(S):		
TO BE COMPLETED BY THE APPLICANT		
I. GENERAL INFORMATION		
NAME OF AGENCY: City of Benicia	DATE:	10/17/2022
ADDRESS: 250 East L Street, Benicia, CA		
E-MAIL ADDRESS: EGorman@ci.benicia.ca.us	DAYTIME PHONE: 707-746-4276	FAX:
NAME OF PROPERTY OWNER: N/A - Citywide Ordinance		DATE: 10/17/2022
ADDRESS: N/A - Citywide Ordinance		DAYTIME PHONE:
NAME OF DOCUMENT PREPARER: Evan Gorman, Associate Planner		DATE:
ADDRESS: 250 East L Street, Benicia, CA	DAYTIME PHONE: 707-746-4276	FAX:
NAME OF PROJECT: Benicia amendments to Title 17: Zoning Code		
PROJECT LOCATION: Citywide Ordinance		
STREET ADDRESS: N/A - Citywide Ordinance		

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

TO BE COMPLETED BY THE APPLICANT

II. DESCRIPTION OF PROJECT

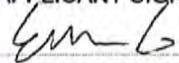
The proposed project would amend Title 17 (Zoning) of the Benicia Municipal Code (BMC) including the code sections regulating Mixed Use Zones in the City and Commercial Cannabis Uses.

The Mixed Use – Infill (MU-I) zoning regulations allow commercial, mixed use, and residential development in a form that promotes a safe and vibrant pedestrian environment and is compatible with the aesthetic of Benicia. Targeted revisions to Mixed Use – Infill and associated chapters are proposed to make it more appropriate for existing shopping center sites. Revisions to Mixed Use – Infill and Mixed Use – Limited are proposed to clarify applicability of streetscape improvements. Revisions to the Organization, Applicability, and Interpretation Section is proposed to clarify when applications can be considered withdrawn. No rezoning is proposed at this time.

Targeted revisions to the City's code section regulating Cannabis uses are also being proposed at this time to better conform to State Law, provide further clarification, and change the process for applicants looking to transfer their Cannabis Use Permit.

Following the ALUC, these code sections will go to Benicia's City Council.

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

TO BE COMPLETED BY THE APPLICANT	
II. DESCRIPTION OF PROJECT (CONT'D)	
POTENTIAL PROJECT EMISSIONS: (i.e. smoke, steam, glare, radio, signals): None.	
PROJECT AIRPORT LAND USE COMPATIBILITY PLAN: Travis Airport Land Use Compatibility Plan	COMPATIBILITY ZONE: E and D
PERCENTAGE OF LAND COVERAGE: N/A	MAXIMUM PERSONS PER ACRE: N/A
THE FOLLOWING INFORMATION MUST BE SUBMITTED AS A MINIMUM REQUIREMENT:	
<input checked="" type="checkbox"/> JURISDICTION REFERRAL LETTER: <input type="checkbox"/> ENVIRONMENTAL DOCUMENTATION: <input type="checkbox"/> LOCATION MAP: <input type="checkbox"/> ASSESSOR'S PARCEL MAP, with subject property marked in red: <input type="checkbox"/> SITE PLAN, drawn to scale and fully dimensioned including topographical information, and 8 1/2 x 11 inch reduction(s): <input type="checkbox"/> ELEVATIONS, if located in APZ, clear zones and A,B,C compatibility zones or over 200' in height, plus 8 1/2 x 11 inch reduction(s) : <input type="checkbox"/> WIND TURBINE STUDY, including cumulative impact studies. Such studies shall include an analysis of (1) the individual effects of the proposed project, and (2) as required by law, an analysis of the cumulative effects of the proposed project considered in connection with the effects of past projects, the effects of other current projects and proposed projects, and the effects of probable future projects, including (i) the probable build out for wind energy development of the remaining vacant parcels within the wind resource areas described in the Solano County General Plan and (ii) any probable replacement of existing turbines or meteorological towers with structures having different dimensions.	
<input checked="" type="checkbox"/> SUPPLEMENTAL INFORMATION: Draft Ordinance <input checked="" type="checkbox"/> FEES: \$200 <input type="checkbox"/> ELECTRONIC COPIES OF ALL APPLICATION MATERIALS ON A CD:	
APPLICANT SIGNATURE: X 	DATE: 10.17.2022
DOES THE PROJECT PROPOSE THE DEMOLITION OR ALTERATION OF ANY EXISTING STRUCTURES ON THE PROJECT SITE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, describe below:	

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.



250 East L Street • Benicia, CA 94510 • (707) 746-4320

Community Development Department Planning Division

October 17, 2022

Nedzlene Ferrario
Solano County Department of Resource Management
Planning Services Division
675 Texas Street, Suite 5500
Fairfield, CA 94533-6341

RE: Referral of Municipal Code Text Amendments to Airport Land Use Commission

Dear Ms. Ferrario,

Enclosed please find two applications to the Airport Land Use Commission, requesting the Commission's review of proposed Text Amendments within the City of Benicia for compatibility with the Travis Air Force Land Use Compatibility Plan (ALUCP). The proposed Text Amendments would include adoption of the 2022 Building Code, and amendments to Title 17 (zoning) addressing Mixed Use Zones and Cannabis Uses. The ordinances would be effective City-wide. A majority of the City is in Zone D of the Travis ALUCP, but a portion of the city appears to also be in Zone E.

The proposed projects include the following:

- Application #1: Proposed amendments to Title 15, adopting the 2022 Building Code along with locally focused amendments.
- Application #2: Proposed amendments to Title 17, including the code sections regulating mixed-use districts and cannabis uses.

The City of Benicia hopes that you will review the enclosed application and documentation to advise us of the application's completeness and any comments you may have.

Thank you for your assistance and consideration.

Respectfully,

Evan Gorman
Associate Planner

17.84.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

“Applicant” means a person who is required to file an application for a cannabis business under this chapter, including an individual owner, managing partner, officer of a corporation, or any other ~~dispensary~~ operator, management member, employee, or agent of a cannabis business.

“Cannabis” shall have the meaning ~~as defined set forth~~ in Business and Professions Code Section [26001](#) ~~(fe) and as it currently exists or may hereinafter be subsequently~~ amended.

“Cannabis business” shall include:

1. Any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity takes place.
2. Any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license under Business and Professions Code Section [26000](#) and following, as it currently exists or may hereinafter be amended, including but not limited to cannabis cultivation, cannabis distribution, cannabis manufacturing, cannabis testing and cannabis retail sales, and the operation of a cannabis microbusiness.

“Cannabis product” shall have the same meaning as defined in Health and Safety Code Section [11018.1](#) as it currently exists or may hereinafter be amended.

“Canopy” means all areas occupied by any portion of a cannabis plant, encompassing all vertical planes (i.e., stacking of plants), whether contiguous or noncontiguous on any one site. The canopy shall be measured by taking the longest length and widest width of existing plants (including all gaps, walkways, and open areas between plants) and multiplying the longest length by the longest width to get the area of the cannabis canopy. Each level of a stacked cultivation will be calculated as a separate canopy.

“Childcare center” means a licensed day care facility that provides nonmedical care to children under 18 years of age on a less than 24-hour basis, and includes infant centers, nursery schools, preschools, extended day care facilities, large family day care homes, and school age child care centers.

“Commercial cannabis activity” shall include the cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

~~“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. shall have the same meaning as defined in Business and Professions Code Section 26001(l), as it currently exists or may hereinafter be amended.~~

~~“Decision-Making Body” means the entity designated in Section 17.84.060D to make a determination related to a use permit for commercial cannabis business.~~

~~“Delivery” means the commercial transfer of cannabis or cannabis products to a customer or patient. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer shall have the same meaning as defined in Business and Professions Code Section 26001(p), as it currently exists or may hereinafter be amended.~~

~~“Distribution” means the procurement, storage, sale, and transport of cannabis and cannabis products between licensees shall have the same meaning as defined in Business and Professions Code Section 26001(s), as it currently exists or may hereinafter be amended.~~

~~“Drug paraphernalia” shall have the meaning set forth in California Health and Safety Code Section [11014.5](#), and as it currently exists or may hereinafter be subsequently amended.~~

~~“Edible cannabis product” means cannabis that is intended to be used, in whole or in part, for human consumption as defined in Business and Professions Code Section 26001(v), as it currently exists or may hereinafter be amended.~~

~~“Identification card” shall have the meaning set forth in California Health and Safety Code Section [11362.7\(g\)](#) as it currently exists or may herein after be amended.[11362.712](#), and as it currently exists or may hereinafter be amended from time to time.~~

~~“Learning center” means a facility that provides appointment- or classroom-based tutoring, test preparation, drivers’ education, instruction in science, technology, engineering, arts and math (STEAM), and similar instruction for school-aged youth, and state-licensed adult day programs for individuals with developmental or physical disabilities.~~

~~“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product shall have the same meaning as defined in Business and Professions Code Section 26001(ai), as it currently exists or may hereinafter be amended.~~

~~“Medicinal cannabis” or “medicinal cannabis product” shall have the meaning set forth in California Business and Professions Code Section [26001\(aji\)](#), as it currently exists or may hereinafter be amended which includes cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at California Health and Safety Code Section [11362.5](#), by a medicinal cannabis patient in California who possesses a physician’s recommendation.~~

“Operator” means any person responsible for management of the cannabis business, any person listed on the cannabis business’s articles of incorporation, any person owning an interest in the cannabis business, and any person that supervises another employee of the cannabis business.

“Owner” shall have that meaning set forth in Business and Professions Code Section [26001](#)(~~and~~) ~~and as it currently exists or may hereinafter be amended.~~

“Permittee” means any person issued a use permit for cannabis under this chapter.

“Physician” means a licensed medical doctor, including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

“Property” means the designated structure or structures and land specified in the use permit for cannabis application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted. As utilized herein the term “property” shall also include “location”.

“Public park” means an area of land, owned by a public agency, including the city and any other local, state and/or federal entities, that provides outdoor recreation facilities and programming or provides open space recreational opportunities.

“Qualified registration list” means the list established through a competitive process to determine the best applicants for use permits for storefront retail cannabis businesses ~~that have retail components, including microbusinesses.~~

“School” means any public or private school providing instruction in kindergarten or any of grades one ~~to~~ through 12, consistent with curriculum content standards adopted by the California State Board of Education, inclusive, but does not include any private school in which education is primarily conducted in private homes.

“State cannabis laws” means and includes California Health and Safety Code Sections [11362.1](#) through [11362.45](#), [11362.5](#) (Compassionate Use Act of [1996](#)) and [11362.7](#) to [11362.83](#) (Medical Marijuana Program); California Business and Professions Code Sections [26000](#), et seq. (Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”)); all state laws enacted or amended pursuant to SB-94, Chapter 27, Statutes of 2017; the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section [147.5](#); California Revenue and Taxation Code Sections [31020](#) and [34010](#) through [34021.5](#); California Fish and Game Code Section [12029](#); California Water Code Section [13276](#); all state regulations adopted pursuant to MAUCRSA; any license issued pursuant to MAUCRSA; and all other applicable laws of the state of California regulating cannabis or cannabis products, as all these laws currently exist or may hereinafter be amended.

~~“Testing laboratory” means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products shall have the same meaning as defined in Business and Professions Code Section 26001(aw), as it currently exists or may hereinafter be amended.~~

~~“Youth center” shall have that the same meaning as defined set forth in Section 11353.1 of the Health and Safety Code, as it currently exists or that section may hereinafter be amended.~~

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17.84.050 Cannabis businesses – General provisions.

A. Cannabis Businesses Allowed.

1. Only those types of cannabis businesses set forth in this section shall be allowed within the city. Any and all cannabis businesses, activities, nonprofits, associations, enterprises, collectives, cooperatives or dispensaries not expressly described herein are expressly prohibited.

a. Cannabis storefront retailer (“storefront retailer”).

b. Cannabis manufacturing operation (“manufacturer”).

c. Cannabis testing laboratory (“testing labs”).

d. Cannabis distributor (“distributor”).

e. Cannabis cultivation operation (“cultivator”).

f. Cannabis microbusiness (“microbusiness”).

g. Cannabis delivery-only operations (“delivery”).

2. No more than one cannabis storefront retailer is permitted in the city.

3. An owner or operator of a cannabis business may own or operate more than one cannabis business within the city.

4. An owner or operator of a cannabis business may own or operate more than one cannabis business on a property or location, subject to compliance with the independent standards and requirements of each cannabis business type.

45. All retail commercial cannabis operations, or stages thereof, shall occur within a single in a fully enclosed permanent structure.

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C. Transfer of and Amendments to Use Permits for Cannabis Businesses.

1. Transfer of Permit – Site Specific. A permittee shall not operate a cannabis business under the authority of a use permit for a commercial cannabis ~~activity~~ business at any ~~place, property or location~~ other than the address of the cannabis business stated in the application for the permit. All permits issued by the city pursuant to this chapter shall be nontransferable to a different location.

2. Modification of an Existing Permitted Commercial Cannabis Business. A permittee may seek a use permit amendment to modify the permitted cannabis business (e.g., change from manufacturing to microbusiness) or add an additional cannabis business on the same property or location, within the same floor area, and under the same ownership as an existing permitted cannabis business. Such modified additional cannabis business shall comply with the applicable standards of this chapter and may be approved or denied pursuant to the provisions of section 17.84.060. An existing permitted commercial cannabis business shall not be modified to authorize retail operations as an additional cannabis business on the same location or property; nor shall any existing permitted commercial cannabis business be modified to authorize a storefront retail cannabis business on the same property or location.

3. Transfer of a Permitted Commercial Cannabis Activity Business. A permittee shall not transfer ownership or control of a cannabis business or attempt to transfer a use permit for a commercial cannabis ~~activity~~ business to another person, ~~owner or operator~~ unless and until the transferee obtains a duly issued public safety license and a use permit confirming adherence to all established requirements of this chapter and any applicable conditions of approval ~~an amendment to the permit from the planning commission to the permitting requirements of this chapter stating that the transferee is now the permittee~~. Such a ~~use permit amendment~~ may be obtained only if the transferee files an application with the community development department in accordance with all provisions of this chapter accompanied by the required transfer review application fee.

4. Request for Amendment or Transfer with a Revocation or Suspension Pending. No use permit for a commercial cannabis ~~activity~~ business may be ~~amended or~~ transferred (and no permission for a transfer may be issued) when the community development department has notified the permittee in writing that the permit has been or may be suspended or revoked for noncompliance with this chapter ~~and a notice of such suspension or revocation has been provided~~.

5. Transfer or Amendment without Permission. Any attempt to transfer a use permit for commercial cannabis ~~activity~~ business either directly or indirectly in violation of this chapter is declared void, and the permit shall be deemed revoked.

17.84.060 Use permit for commercial cannabis activities – Requirements.

A. Except as set forth in this chapter, use permits for commercial cannabis activities shall be processed in accordance with Chapter [17.104](#) BMC (Use Permits and Variances). The city council shall establish any necessary use permit procedures, by resolution, specific to commercial cannabis activities.

B. Use Permits for Retail. Because only one storefront cannabis retailer is permitted, an application period for this business shall be established to allow the selection of the best applicants. The competitive process for selection of the best applicants to be placed on the qualified registration list shall be established by resolution of the city council.

C. Use permit for applications for cannabis retailers shall include a statement as to whether the use will include delivery of cannabis and cannabis products to locations outside the cannabis retail facility. If delivery services will be provided, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this chapter and state law.

D. The ~~planning commission~~ community development director shall review and approve or deny all complete use permit applications for commercial cannabis activities or amendments to or transfer of use permits by utilizing the criteria for approval or denial set forth in this chapter and by separate resolution of the city council, except in the following instances where the use shall be reviewed and approved or denied by the planning commission:

1. A use permit for a storefront retail commercial cannabis business.

2. A use permit for any commercial cannabis business that also requires approval of a use permit for hazardous materials pursuant to section 17.70.260.

3. A use permit or amendment to use permit that the community development director refers to the planning commission pursuant to section 17.104.020.

The ~~planning commission~~ decision-making body shall only approve as many use permits for cannabis applications as permitted by BMC [17.84.050](#)(A). After reviewing an application, the ~~planning commission~~ decision-making body shall determine whether to ~~issue~~ approve the use permit for commercial cannabis activities with conditions, or to deny the use permit for commercial cannabis activities.

E. Imposition of Permit Fees. Every application for a use permit for commercial cannabis activities shall be accompanied by an application fee (in an amount established by resolution of the city council) ~~at an amount calculated to recover the city's full cost of reviewing and issuing said permit and the filing of a complete required application pursuant to this chapter.~~ The application fee shall be in addition to any other fees or costs, such as business license fees,

permit fees, fingerprinting, photographing or background check, as may be imposed by the city or other governmental agencies. (Ord. 19-11 § 2; Ord. 19-09 § 1; Ord. 18-03 § 1).

17.84.070 Criteria to review, issuance and/or denial of use permit for commercial cannabis activities.

A. Criteria for Issuance. In addition to the findings required by Chapter [17.104](#) BMC, the ~~decision-making body/planning commission, or the city council on appeal,~~ shall make all of the following findings in determining whether to grant, modify, or deny a use permit for any cannabis business:

1. ~~As related to a storefront retail cannabis business only,~~ The cannabis business applicant has been placed on the cannabis qualified registration list.
2. The use permit for cannabis application is complete and the applicant has submitted all information and materials required.
3. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to a school.
4. The proposed location of the cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons due to the cannabis business's proposed proximity to another permitted cannabis business.
5. The design of the storefront or structure within which the cannabis business will operate is architecturally compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.
6. ~~As related to a storefront retail cannabis business only,~~ The proposed size of the cannabis business is appropriate to meet the needs of the local Benicia community for access to cannabis and that the size complies with all requirements of the city's zoning regulations.
7. The location is not prohibited under the provisions of this chapter or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the city's zoning regulations will be accomplished.
8. The cannabis business is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.

9. The cannabis business is not likely to violate any provision of the BMC or conditions imposed by a city-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.

10. The applicant has not made a false statement of material fact or omitted a material fact in the application for a use permit for a commercial cannabis business, as known at the time of determination on the application.

11. The cannabis business's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.

B. Supplemental Findings – Cannabis Manufacturing Operation. In addition to the findings required for the approval of a use permit for a commercial cannabis business as set forth in subsection (A) of this section, the ~~planning commission, or the city council on appeal decision-making body~~ shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for a commercial cannabis business for a manufacturer:

1. The manufacturing operation, as proposed, may utilize nonvolatile or volatile solvents for purposes of extracting cannabinoids. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the Benicia Municipal Code (BMC) including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

2. The manufacturing operation includes adequate quality control measures to ensure any cannabis product manufactured at the site meets industry standards.

3. The manufacturing operation does not pose a significant threat to the public or to neighboring uses from explosion or from the release of harmful gases, liquids, odors or substances.

C. Supplemental Findings – Cannabis Testing Laboratory. In addition to the findings required for the approval of a use permit for a commercial cannabis business as set forth in subsection (A) of this section, the ~~planning commission, or the city council on appeal decision-making body~~ shall consider the following supplemental findings in determining whether to grant, modify, or deny a use permit for a commercial cannabis business for a testing lab:

1. The owners, permittees, operators, and employees of the testing lab will not be associated with any other form of commercial cannabis activity.

2. The testing lab is accredited by an appropriate accrediting agency as approved by the state and further described in California Code of Regulations, Title 16, Section 5702 and as it may be amended.

3. The testing lab operating plan demonstrates proper protocols and procedures for statistically valid sampling methods and accurate certification of cannabis and cannabis products for potency, purity, pesticide residual levels, mold, and other contaminants according to the uniform testing standards as identified by the California Department of Cannabis Control. ~~adopted industry standards~~

D. ~~Criteria for Denial. The planning commission decision-making body shall deny an application for a use permit for a commercial cannabis business if ~~that meets~~ any one of the following criteria are met:~~

1. Any supervisor, employee, or person having a 10 percent or more financial interest in the cannabis business has been convicted of a felony or a drug-related misdemeanor reclassified by California Penal Code Section [1170.18](#) (Proposition [47](#)) within the past 10 years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;
2. Any person who is listed on the application or is an owner or operator, is a licensed physician making patient recommendations for medical cannabis pursuant to Health and Safety Code Section [11362.7](#);
3. Any person who is listed on the application or is an owner or operator is less than 21 years of age;
4. The proposed cannabis business does not comply with the provisions of this chapter or state cannabis laws; and
5. ~~The planning commission decision-making body is unable to make a required finding contained in this chapter.~~

~~E. Planning Commission Determination. If the planning commission decision-making body denies the application, ~~the planning commission shall specify in writing the~~ the reasons for the denial of the application shall be specified in writing and the applicant shall be notified, and notify the applicant that the decision shall will become final unless the applicant seeks an appeal pursuant to BMC [17.84.080](#).~~

17.84.080 Appeal from ~~planning commission~~ of determination.

An applicant or any interested party who disagrees with the ~~planning commission's decision-making body's~~ decision to ~~issue~~ approve, ~~issue~~ approve with conditions, or to deny, suspend, or revoke a use permit for a commercial cannabis ~~activity~~ business may appeal the ~~planning~~

~~commission's decision to the city council~~ in accordance with the appeal provisions of Chapter [1.44](#) BMC.

17.84.090 Suspension and revocation by ~~planning commission~~.

A. Authority to Suspend or Revoke a Use Permit for Cannabis. Any permit issued under the terms of this chapter may be suspended or revoked by the ~~planning commission decision-making body~~ that issued the permit under the provisions of BMC [17.128.060](#).

B. In addition to the required findings set forth in BMC [17.128.060](#)(D), a use permit for a commercial cannabis ~~activity business~~ may be suspended or revoked if it appears to the ~~planning commission decision-making body~~ that the cannabis business has violated any of the requirements of this chapter, the cannabis business is being operated in a manner which violates the operational requirements or security plan required by the zoning code, the cannabis business is being operated in a manner which constitutes a nuisance, the cannabis business has ceased to operate for 30 days or more, or the cannabis business is being operated in a manner which conflicts with or violates state cannabis law.

C. Any use permit for a commercial cannabis ~~activity business~~ revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the permittee to any uses authorized by the use permit.

D. Revocation, expiration or nullification of a cannabis public safety license pursuant to BMC [9.60.060](#) and [9.60.070](#) shall automatically terminate the use permit for a commercial cannabis ~~activity business~~ issued to the licensee and shall terminate the ability of the licensee to operate a cannabis business without initiation of revocation proceedings by the ~~planning commission decision-making body~~. Suspension of a cannabis public safety license pursuant to BMC [9.60.070](#) shall automatically result in suspension of the associated use permit for the commercial cannabis business unless and until the public safety license has been re-instated.

17.84.100 Cannabis businesses – Conditions of operation.

A. All Cannabis Businesses. All cannabis businesses shall be operated, maintained, and managed on a day-to-day basis in compliance with the following operational conditions and requirements:

1. State Licensing. A cannabis business shall at all times maintain a state cannabis license for the permitted commercial cannabis business at all times, and shall comply with all applicable state licensing requirements, regulations, conditions, and standards. The failure to maintain a state license, revocation of a state cannabis license, or lapse in renewal of a state cannabis license shall be the basis for immediate termination of the

right to operate a cannabis business under a city use permit for commercial cannabis business.

2. Cannabis Public Safety License. A cannabis business shall maintain a cannabis public safety license, issued under Chapter [9.60](#) BMC, at all times. ~~The f~~ Failure to maintain a cannabis public safety license, revocation of a cannabis public safety license, or lapse in renewal of a cannabis public safety license shall be the basis for immediate termination of the right to operate a cannabis business under a use permit for commercial cannabis business.

3. Employees. It shall be unlawful for the applicant, owner, operator, or any other person effectively in charge of any cannabis business to employ any person who is not at least 21 years of age.

4. Minors. Persons under the age of 21 years shall not be allowed on the premises of a storefront retail cannabis business, unless they are a qualified patient or a person with ~~an~~ a government-issued photo identification card as those phrases are defined by Health and Safety Code Sections [11362.79](#)(c) and (f). Persons under the age of 18 years shall not be allowed on the premises of a storefront retail cannabis business unless they are accompanied by a parent or guardian at all times. The entrance to cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the ~~property or location~~ premises unless they are a qualified patient and they are in the presence of their parent or guardian.

5. Every cannabis business shall display, at all times during its regular business hours, the use permit for the cannabis business and cannabis public safety license issued for such cannabis business in a conspicuous place so that the same may be readily seen by all persons entering the cannabis business.

6. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the ~~premises~~ property or location of the cannabis business, that sells alcoholic beverages, or otherwise allow alcoholic beverages to be possessed, distributed, or consumed on the ~~premises~~ property or location.

7. No cannabis business shall be a retailer of tobacco products.

8. A cannabis business shall be considered a commercial or industrial use, as the case may be, relative to the city's parking requirements in Chapter [17.74](#) BMC in an amount most similar to the uses contained in the parking requirements as determined by the community development director.

9. Smoking, ingesting, or consuming cannabis on the ~~premises~~ property or location of a cannabis business shall be prohibited. A notice prohibiting smoking, ingesting and

consuming cannabis shall be clearly and legibly posted in the cannabis business and shall not obstruct the entrance or windows. No cannabis-related paraphernalia shall be present on a cannabis business property or location, except as may otherwise be permitted to be sold as related to commercial cannabis distribution businesses.

10. Operation of a cannabis business shall not result in illegal redistribution or sale of cannabis obtained, or the use or distribution in any manner which violates state cannabis law or this chapter.

11. Odors. All cannabis businesses shall be sited and/or operated in a manner that prevents cannabis odors from being detected from other locations, including from adjacent properties and from adjacent public rights-of-way off site. All structures utilized for ~~indoor commercial cannabis businesses cultivation~~ shall be equipped and/or maintained with sufficient ventilation controls (e.g., carbon scrubbers) to eliminate nuisance odor emissions from being detected off site from other locations, adjacent properties and from adjacent public rights-of-way.

12. Site Plan.

a. The site plan shall include a lobby waiting area at the entrance to the cannabis business used to receive and screen customers (if applicable), employees, patrons, and guests of the cannabis business and a separate and secure designated area for dispensing cannabis (if applicable) and conducting other operations of the cannabis business.

b. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from adjacent public rights-of-way streets, sidewalks or site driveways

c. Commercial cannabis businesses shall provide a secure indoor loading area to ensure that loading activities are not visible from adjacent public rights-of-way, and to ensure that product transfers occur in a secure environment.

13. Cannabis businesses shall not be enlarged in size (i.e., increased floor area) without the ~~planning commission decision-making body's~~ prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

14. Security. The cannabis business shall at all times comply with all elements of its security plan, submitted as a part of its cannabis public safety license application pursuant to BMC [9.60.040](#).

15. Signage. The cannabis business shall comply with all applicable provisions of BMC Title [18](#).

16. Additional Conditions. The ~~planning commission decision-making body~~ may impose additional conditions which it deems necessary to ensure that operation of the cannabis business will be in accordance with the standards and regulations provided in the zoning code, the standards set forth by separate resolution of the city council, and applicable state and local laws.

B. Supplemental Conditions – Storefront Retailers.

~~1.~~ In addition to the conditions of operation set forth in subsection (A) of this section, a cannabis storefront retail operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

~~12.~~ Storefront ~~R~~etailers shall not sell drug paraphernalia and implements that may be used to smoke, ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section [11364.5](#).

~~23.~~ Storefront ~~R~~etailers shall not be enlarged in size (i.e., increased floor area) without the planning commission's prior review and approval and an approved amendment to the existing use permit for cannabis applied for and issued pursuant to the requirements of this chapter.

~~34.~~ Storefront ~~R~~etailers that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide a valid official government-issued photo identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

~~45.~~ Hours of Operation. Storefront ~~R~~etailers may only operate during the hours between 10:00 a.m. through 8:00 p.m. The planning commission may further restrict a retailer's days and hours of operation as a condition of a use permit for cannabis. A retailer shall post its approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title [18](#).

~~56.~~ Storefront ~~R~~etailers shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

~~67.~~ State Seller's Permit. Storefront ~~R~~etailers shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

78. A cannabis storefront retail operation that delivers cannabis and/or cannabis products shall also be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (F)(1) through (7) of this section.

C. Supplemental Conditions – Manufacturers. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis manufacturing operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Manufacturers shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to the members of the general public.
2. Manufacturers may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.
3. Standard of Equipment. Manufacturing, processing and analytical testing devices used by manufacturers must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city's building official and fire code official.
4. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.
5. Edible Product Manufacturing. Manufacturers that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permit holders shall comply with Health and Safety Code Section [13700](#) et seq. and county health permit requirements.

D. Supplemental Conditions – Cultivators. In addition to each of the conditions of operation set forth in subsection (A) of this section, a cannabis cultivation operation shall be operated, maintained, and managed in compliance with the following supplemental conditions:

1. Cultivators shall not engage in on-site retail sales of cannabis or cannabis products and shall not be open to members of the general public.
2. Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

3. Size of cultivation business canopy. The cultivation of cannabis for commercial purposes shall be limited to the total canopy size per property permitted by state law including without limitation California Business and Profession Code Section 26061, as it currently exists or may hereinafter be amended.

~~3. The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.~~

4. Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

5. Screening. Cannabis plants shall not be easily visible from ~~off site other locations,~~ including adjacent property and the public right-of-way.

6. Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC [8.28.050](#).

E. Supplemental Conditions – Microbusinesses.

1. Retail sales. A microbusiness that engages in retail sales of cannabis and/or cannabis products shall sell cannabis and/or cannabis products to customers exclusively through delivery. The premises of a microbusiness shall not be open to the public.

2. Delivery. If the microbusiness delivers cannabis and/or cannabis products, the microbusiness shall be operated, maintained, and managed in compliance with the supplemental conditions set forth in subsections (F)(1) through (7) of this section.

~~3.~~ Paraphernalia. Microbusinesses shall not sell drug paraphernalia and implements that may be used to smoke, ingest or consume cannabis except where such sales and operations comply with Health and Safety Code Section [11364.5](#), including for commercial distribution businesses.

~~4.~~ Authorized individuals only. Microbusinesses that sell medicinal cannabis or medicinal cannabis products shall only sell, deliver, or give away medicinal cannabis or medicinal cannabis products to individuals authorized to receive medicinal cannabis or medicinal cannabis products in accordance with state cannabis laws. Retailers of medicinal cannabis or medicinal cannabis products shall require such persons receiving medicinal cannabis or medicinal cannabis products to provide valid government-issued official photo identification, such as a Department of Motor Vehicles driver's license or state identification card, each time he or she seeks to purchase medicinal cannabis or medicinal cannabis products.

~~54.~~ Hours of Operation. The ~~planning commission decision-making body~~ may restrict a microbusiness's days and hours of operation as a condition of a use permit for cannabis. Microbusinesses shall post their approved days and hours of operation on a sign located on the street frontage of the cannabis business in a manner consistent with the city's sign regulations set forth in BMC Title [18](#).

~~65.~~ No on-site physician. Microbusinesses shall not have a physician on site to evaluate patients and/or provide recommendations for the use of medical cannabis.

~~76.~~ State Seller's Permit. Microbusinesses shall, at all times during operation, maintain a valid seller's permit required pursuant to California Revenue and Taxation Code Division 2, Part 1 (commencing with Section 6001).

~~87.~~ Extraction processes. Microbusinesses may use extraction processes that employ nonvolatile or volatile solvents. Extractions using a volatile solvent, including butane, must be conducted in a professional, closed-loop extraction system. All extraction processes used shall comply with the BMC including the fire and life safety code and with state cannabis laws and be recognized as safe pursuant to the Federal Food, Drug, and Cosmetic Act.

~~98.~~ Standard of Equipment. Manufacturing, processing and analytical testing devices used by microbusinesses must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the city's building code official and fire code official.

~~109.~~ Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible cannabis products shall be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the property where that individual participates in the production of edible cannabis products.

~~1140.~~ Edible Product Manufacturing. Microbusinesses that sell or manufacture edible cannabis products shall obtain a county health permit to sell and/or manufacture cannabis products. Permittees shall comply with Health and Safety Code Section [13700](#) et seq. and county health permit requirements.

~~1244.~~ Outdoor Commercial Cultivation Prohibited. The cultivation of cannabis for commercial purposes may only be done within a fully enclosed space.

~~12.~~ ~~The cultivation of cannabis for commercial purposes shall be limited to 22,000 square feet of total canopy size per property.~~

~~1342.~~ Size of cultivation business canopy. The cultivation of cannabis for commercial purposes shall be limited to the total canopy size per property permitted by state law

including without limitation California Business and Profession Code Section 26061 as it currently exists or may hereinafter be amended.

~~1413.~~ Pesticides. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

~~1514.~~ Screening. Cannabis plants shall not be easily visible from ~~off-site adjacent properties and public right-of-way.~~

~~1615.~~ Operational Permit. The cultivation of cannabis may not be conducted without an indoor growing operational permit issued pursuant to BMC [8.28.050](#).

* * *

G. Maintenance, Access to, and Inspection of Records.

1. Every cannabis business shall maintain on site, at the property designated for the operation of the cannabis business, all records of the cannabis business.

2. Financial Records. The cannabis business shall maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements (including any in-kind contributions), and any and all reasonable compensation for services provided by the cannabis business, as well as records of all operational expenditures and costs incurred by the cannabis business in accordance with generally accepted accounting practices and standards typically applicable to business records.

3. Record Retention Period. The records required in this subsection shall be maintained by the cannabis business for a period of five years and shall be made available to the city within 24 hours of written request, subject to the authority set forth in subsection (G)(4) of this section.

4. A duly designated city police department or finance department representative may enter and shall be allowed to inspect the premises of every cannabis business as well as the financial and membership records of the cannabis business required by this chapter at any time during the cannabis business's designated business hours, or at any appropriate time to ensure compliance and enforcement of the provisions of this chapter. It shall be unlawful for any owner, operator, or any other person having any responsibility over the operation of the cannabis business to refuse to allow, impede, obstruct or interfere with an inspection of the cannabis business or the required records thereof.

17.84.110 Business license tax liability.

An operator of a cannabis business shall be required to apply for and obtain a business tax certificate pursuant to Chapter [5.04](#) BMC as a prerequisite to obtaining a use permit for commercial cannabis business pursuant to the terms of this chapter. Cannabis businesses shall be subject to sales tax, excise tax and other applicable taxes in a manner required by state law.

17.84.120 Annual review of cannabis businesses.

The community development department is hereby authorized, at the discretion of the community development director, to conduct an annual review of the operation of each permitted use permit for a commercial cannabis activity business within the city for full compliance with the operational, recordkeeping, nuisance and other requirements of this chapter. A fee in an amount established by resolution of the city council shall be collected in order to reimburse the city for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any cannabis business which, upon completion of an annual review, is found not to be in compliance with the requirements of this chapter or which is operating in a manner which constitutes a public nuisance. Staff may, based upon its annual review of the operation of a cannabis business, ~~place on a planning commission meeting agenda a proposal to suspend or revoke a use permit for cannabis~~ seek suspension or revocation of the use permit as provided in section 17.84.090.

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RESOLUTION NO. 22- (PC)**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING BENICIA MUNICIPAL CODE SECTIONS 17.08 (ORGANIZATION, APPLICABILITY, AND INTERPRETATION), 17.12 (DEFINITIONS), 17.26 (MIXED USE DISTRICTS), AND 17.74 (OFF-STREET PARKING AND LOADING REGULATIONS)**

WHEREAS, regulations for the Mixed Use-Infill and Mixed Use-Limited districts were adopted in January 2022 and properties around the intersection of Military East and East Fifth were rezoned to these districts; and

WHEREAS, these districts were specifically designed for application around the intersection of Military East and East Fifth where parcel sizes are relatively small, many parcels are accessible via an alley, and there is not consolidated ownership; and

WHEREAS, the mixed use districts were designed to promote a walkable, attractive, mixed-use area with a mix of neighborhood serving uses and housing types for people of varying incomes and ages; and

WHEREAS, the City may find the goals, density, building form, and allowed uses outlined in the Mixed Use-Infill (MU-I) district desirable in other areas of the City; and

WHEREAS, the City may consider rezoning existing shopping centers from General Commercial (CG) to Mixed Use-Infill (MU-I) to meet the Regional Housing Needs Assessment (RHNA); and

WHEREAS, the proposed action would amend the Benicia Municipal Code Chapters 17.08 (Organization, Applicability, and Interpretation), 17.12 (Definitions), 17.26 (Mixed Use Districts), and 17.74 (Off-Street Parking and Loading Regulations) to clarify how the goals of the Mixed Use-Infill district would apply in connection with a partial or full redevelopment of a shopping center, to clarify the applicability of streetscape improvement requirements in Mixed Use-Infill and Mixed Use-Limited when only minor modifications are proposed to existing structures and land uses, and to clarify when a land use application can be considered withdrawn; and

WHEREAS, there are no shopping centers currently zoned MU-I and further Council action would be necessary to rezone additional property to MU-I. The only regulatory change applicable to properties currently zoned MU-I is a clarification of when streetscape improvements are required for minor modifications to existing structures and land uses; and

WHEREAS, all property owners within the Mixed Use-Infill and Mixed Use-Limited districts have been sent notice of the proposed zoning amendments and notice has been published in the Benicia Herald and at City Hall; and

WHEREAS, the Planning Commission, at a regular meeting on October 13, 2022, conducted a public hearing, accepted public comment and reviewed the proposed zoning text amendments.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Benicia does hereby find that the proposed text amendments are consistent with the purposes of Title 17 and with the General Plan and following goals, policies, and objectives:

- Community Development and Sustainability, Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life. *These amendments further Goal 2.5 because it broadens the potential applicability of MU-I zoning in a way that could encourage new, desirable development that is compatible with the existing community.*
- Community Development and Sustainability, Goal 2.13: Support the economic viability of existing commercial centers. *MU-I zoning was conceived of as a way to diversify allowed land uses and increase overall development potential on existing commercial sites. The proposed revisions would ensure that the majority of existing commercial floor area remains in our commercial centers, while also allowing a greater diversity of uses on the site. This could drive future investment into our commercial centers that should help them remain viable.*

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia does hereby recommend that the City Council find this project to be categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15305, and 15332 which apply to existing facilities, minor alterations to land use limitations, and infill development, respectively.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia does hereby recommend that the City Council adopt the zoning text amendments attached hereto as Exhibit A and incorporated herein by reference.

On motion of Commissioner , seconded by Commissioner , the above Resolution is introduced and passed by the Planning Commission of the City of Benicia at a regular meeting of the Commission held on the 13th day of October 2022 and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Kari Birdseye, Chair

Date

EXHIBIT A

SECTION 1. Chapter 17.08 (Organization, Applicability, and Interpretation) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to add a new Section 17.08.080 (Applications deemed withdrawn) to read as follows:

17.08.080 Applications deemed withdrawn

The community development director may deem an application withdrawn if the applicant has been notified in writing that more information is needed to process the application and there is no submittal of new or revised information to complete the application for a period of 180 days, unless the community development director determines there is good reason to grant a further extension to provide the needed information.

SECTION 2. Section 17.12.030 (Definitions) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to add the following definitions in alphabetical order as follows:

"Area of disturbance" means the portion of a project site where development, as defined in this chapter, occurs.

"Shopping center" means an integrated shopping complex comprised of five or more retail stores occupying a developed area of at least two acres. A shopping center may be located on a single parcel or multiple adjacent parcels.

"Story" means the habitable portion of a building included between the upper surface of any floor and the upper surface of the floor next above. If the finished floor level directly above the ceiling of a basement or other habitable below-grade space is less than 6 feet above existing grade at any point, such below-grade space is not considered a story. Structured parking and other non-habitable structures or components of buildings are not considered stories and are not included in or subject to building story limitations.

SECTION 3. Section 17.26.020 (Mixed use infill (MU-I) district) of Chapter 17.26 (Mixed Use Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Land Use Regulations.

1. Allowed Uses and Permits Required. Table 17.26-1 establishes allowed land uses and permits required in the MU-I district. If a land use identified in Chapter 17.16 BMC is not listed in Table 17.26-1, the use is not permitted in the MU-I district.

Table 17.26-1: MU-I Allowed Uses and Permits Required

Land Use	Permit
Residential Uses	

Land Use	Permit
Family Day Care, Large	L1
Family Day Care, Small	P
Group Residential	L2
Work/Live Quarters	L2
Multifamily Residential	L2
Residential Care, Limited	L2
Supportive Housing	L2
Transitional Housing	L2
Public and Semipublic Uses	
Adult Day Health Care	U
Clubs and Lodges	L2
Convalescent Facilities	L2
Cultural Institutions	P
Day Care Center	U
Emergency Shelter	L4
Government Offices	L2
Parks and Recreation Facilities	P
Public Safety Facilities	U
Religious Assembly	U
Residential Care, General	U
Schools, Public or Private	U
Utilities, Minor	P
Commercial Uses [1]	
Animal Sales and Services	
Animal Grooming	P
Animal Hospitals	L3
<u>Animals – Retail Sales</u>	<u>L8</u>
Artists' Studios	P
Banks and Savings and Loans	P
Commercial Filming	U
Commercial Recreation and Entertainment	U
Communication Facilities	U

Land Use	Permit
Conference and Meeting Facilities	U
Eating and Drinking Establishments	P
With Wine and Beer Service	P
With Full Alcoholic Beverage Service	L5
With Outdoor Entertainment	U
With Take-Out Service	L6
Formula Business	P
Food and Beverage Sales	P
Laboratories	L2
Maintenance and Repair Services	U
Nurseries	U
Offices, Business and Professional	L2
Outdoor Entertainment	U
Personal Improvement Services	P
Personal Services	P
Research and Development Services	L2
Retail Sales	P
Secondhand Appliances/Clothing	P
<u>Vehicle/Equipment Sales and Services</u>	
<u>Service Stations</u>	<u>L7</u>
Visitor Accommodations	
Bed and Breakfast Inns	L2
Hotels and Motels	L2
Temporary Uses	
Christmas Tree Sales	P
Commercial Filming, Limited	P
Religious Assembly	U
Retail Sales, Outdoor	U

Key: P = Permitted; U = Use Permit; L = Limited (See Notes)

Notes:

[1] See BMC 17.26.020(A)(2)(d) for additional permit requirements that apply to commercial uses greater than 3,000 square feet on certain properties fronting Military East and/or East Fifth Street.

L1: Permit requirements for large family day care homes in the mixed use districts are the same as in the residential districts. See BMC 17.24.020(E).

L2: A use permit is required when the use occupies ground floor space facing the street in locations shown in Figure 17.24-1. In all other locations, the use is permitted (“P”). See BMC 17.26.020(A)(2) ~~and (3)~~. For residential use limitations in existing shopping centers, see BMC 17.26.020(A)(3).

L3: Permit requirements for animal boarding and animal hospitals are the same as in the CG district. See BMC 17.28.020, Note L15.

L4: See BMC 17.70.390.

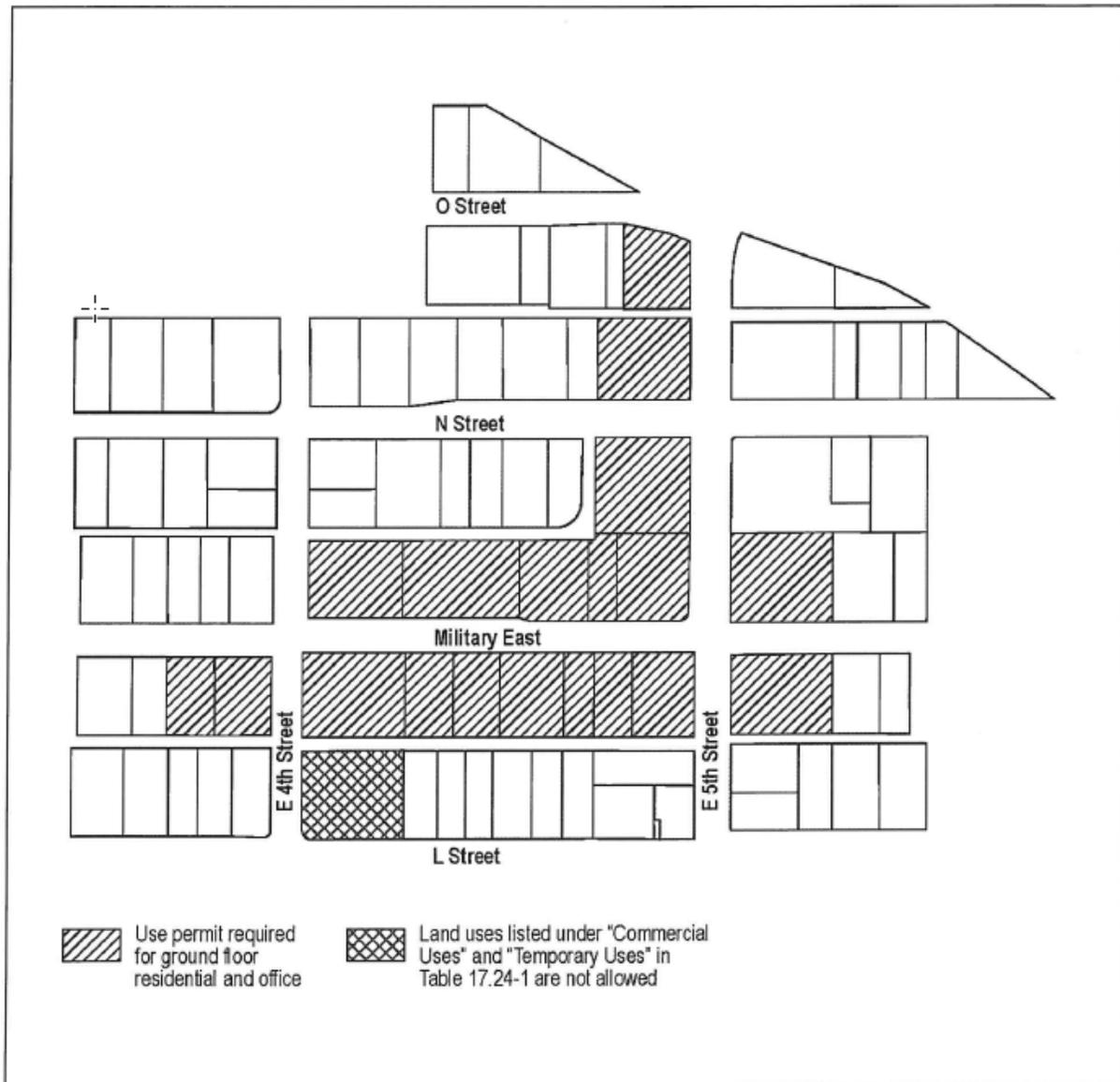
L5 A bar or tavern which is not part of a larger restaurant and operates between 9:00 p.m. and 7:00 a.m. requires a use permit. All other eating and drinking establishments with full alcoholic beverage service are permitted (“P”).

L6: Only limited take-out service, as defined in Chapter 17.16 BMC, is allowed. Drive-up take-out service is not allowed.

L7: Only service stations existing in a shopping center as of December 31, 2022 are allowed. A use permit shall be required to replace or make a major alteration to an existing service station. For the purposes of this section, “major alteration” means the construction or alteration of 2,500 square feet or more of new floor area and/or any change of use or alteration that would increase the number of parking spaces by 10 percent or more than the total number required prior to the alteration.

L8: Permitted use (“P”) only in a shopping center. Not allowed in all other locations.

Figure 17.26-1: MU-I District Allowed Use Limitations



2. Use Limitations - Military East and/or East Fifth Street.

a. ~~2.~~ Residential-Only Projects.

i. a. A use permit is required for ground floor residential uses facing Military East and/or East Fifth Street in locations shown in Figure 17.26-1. Off-street parking located within a garage or other facility on the ground floor as accessory to the residential use shall be considered part of the residential use for the purposes of this section.

ii. b. The planning commission may approve the use permit if the planning commission makes the use permit findings in BMC 17.104.060 and also finds that:

(a). ~~i.~~ No less than 50 percent of the linear building frontage on parcels requiring a use permit as shown in Figure 17.26-1 contain ground-floor commercial uses; and

(b). ~~ii.~~ The project complies with BMC 17.26.040(G) (Primary Entrance Design) and (H) (Blank Walls).

iii. ~~e.~~ The front yard area between the sidewalk and the street-facing building wall must contain at least two trees per 50 linear feet of parcel street frontage. Tree species must provide minimum 20-foot canopy per tree at maturity.

b. ~~3.~~ Ground Floor Office.

i. ~~a.~~ Except as provided in subsection (A)(3)(b) of this section, use permit approval by the planning commission is required for ground floor office uses facing the street in locations shown in Figure 17.26-1.

ii. ~~b.~~ A use permit is not required to establish a new office use in an existing tenant space that was previously occupied by an office use as of February 17, 2022. In such a case, the office use is not considered a nonconforming use under Chapter 17.98 BMC. A new office use may be established in the existing tenant space at any time, subject to the applicant supplying documentation of the prior office use, without the need to obtain a use permit. An “existing tenant space” means a tenant space that occupies the same building, location and floor area as existed on February 17, 2022.

c. ~~4.~~ East L and Fourth Street Corner Property. On the parcel on the corner of East L and East Fourth Street shown in Figure 17.26-1, all land uses listed under the “Commercial Uses” and “Temporary Use” headings in Table 17.24-1 are not allowed.

d. ~~5.~~ Large Commercial Uses. Proposed commercial uses with a single tenant occupying a space greater than 3,000 square feet require a use permit.

3. Residential Use Limitations - Shopping Centers Existing on December 31, 2022.

Residential development within a shopping center shall not reduce commercial gross floor area to less than 75 percent of the commercial gross floor area that existed as of December 31, 2022.

B. Development Standards.

1. General. Table 17.26-2 identifies development standards in the MU-I district.

Table 17.26-2: Development Standards – MU-I District

Standard

Development Intensity	
Minimum site area per unit	1,000 sq. ft.
Maximum floor area ratio (FAR)	Residential: 2.0 [1] Commercial: 1.2

Standard

Maximum lot coverage	75%
Maximum Building Height	
Feet	40 ft. [2]
Stories	3 stories
Yards [3]	
Maximum Front Yard	
Commercial and <u>mixed use projects fronting Military East or East Fifth Street</u> [6]	10 feet from required new sidewalk for a minimum of 50 percent of the parcel's linear street frontage, except that in no case shall this standard require a building to project across a property line into the right-of-way. See Figure 17.26-2.
Residential-only projects	No maximum
Minimum Front and Street Side Yard	
Commercial and mixed use projects	0 ft. from back of required new sidewalk or from property line, whichever is greater.
Residential-only projects	Main building wall: 15 ft. from back of required new sidewalk or 0 ft. from property line, whichever is greater. Entry features: May extend up to 10 feet into required yard, provided they do not project across the property line. See Figure 17.26-3. [4]
Minimum Interior Side and Rear Yard	None, unless required by BMC 17.26.020(C)(4)
Minimum Total Open Space	
Private	None required
Shared	100 sq. ft. per unit [5]
Parking	
Number of spaces	As required by BMC 17.74.030
Design	See Chapter 17.74 BMC

Notes:

[1] Mixed use with at least two-thirds residential floor area may have a floor area of up to 2.0 FAR. All other projects shall be limited to 1.2 FAR.

[2] See BMC 17.70.180 for building features that may project above the permitted building height. Roof decks must comply with BMC 17.26.040(F) (Roof Decks).

[3] See BMC 17.70.150 for allowed projections into required yards.

[4] Includes covered and uncovered porches, terraces, platforms, decks, patios, stairs, and other similar features. Projections into yards allowed in BMC 17.70.150(B) do not also apply.

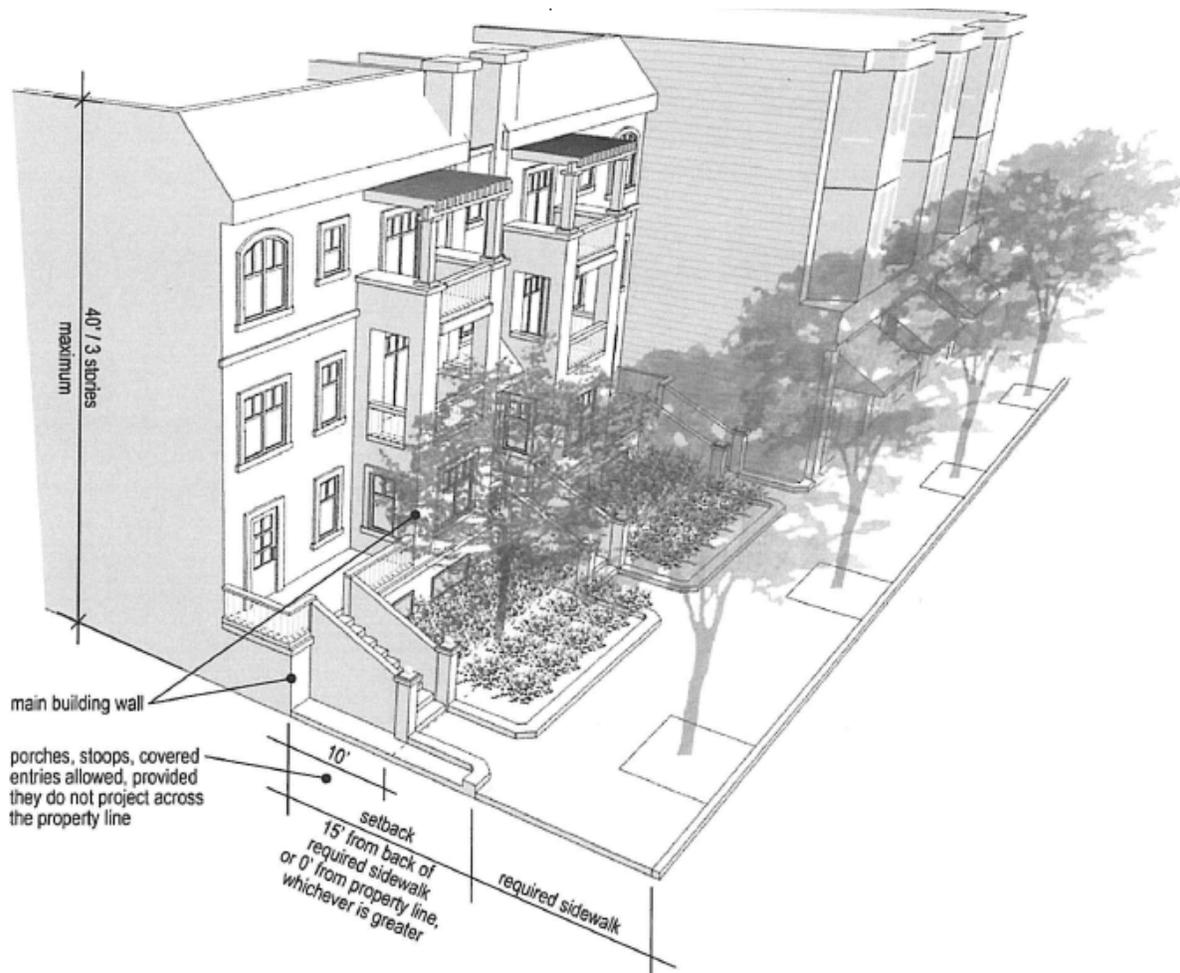
[5] Shared open space not required for units with private open space. See BMC 17.26.040(D).
Shared open space may be located within required yards.

[6] There is no maximum front setback in all other locations.

Figure 17.26-2: MU-I Development Standards for Commercial and Mixed Use Residential Projects



Figure 17.26-3: MU-I Development Standards for Residential Projects



2. Projects Incorporating Community Benefits. Projects participating in the city's voluntary community benefits program, set forth in BMC 17.70.430, may be entitled to greater site area per unit, lot coverage, and height standards than those in Table 17.26-2.

3. Building Massing.

a. All Buildings. All buildings in the MU-I district must incorporate at least one of the following features:

- i. Upper floor modulation of at least four feet in depth (either recess or projection) for at least 30 percent of the front facade length. See Figure 17.26-4; or
- ii. A vertical facade break for all floors with a minimum depth of six feet for a minimum of 15 percent of the front facade length. Nonrecessed building walls shall not exceed a width of 50 feet. See Figure 17.26-5.

b. Buildings Exceeding Three Stories. In addition to features required for all building in subsection (B)(3)(a) of this section, buildings exceeding three stories in the MU-I district must incorporate at least one of the following additional features:

- i. A fourth story recessed stepback facing the primary street of at least four feet for the entire facade length. See Figure 17.26-6. Recessed area may be used as a balcony, terrace, or other usable open space.
- ii. A fourth story recessed stepback facing the primary street of at least 10 feet for a minimum of 35 percent of the facade length. See Figure 17.26-7. Recessed area may be used as a balcony, terrace, or other usable open space.
- iii. Other comparable method, as determined by the review authority through the use permit or development agreement process, to break down the massing of large building facades and complement the surrounding context.

c. Building Width on Shopping Center Sites Existing on December 31, 2022. On the site of an existing shopping center, the width of a newly constructed building measured parallel to the adjacent street frontage shall not exceed 300 feet.

Figure 17.26-4: Upper Floor Modulation

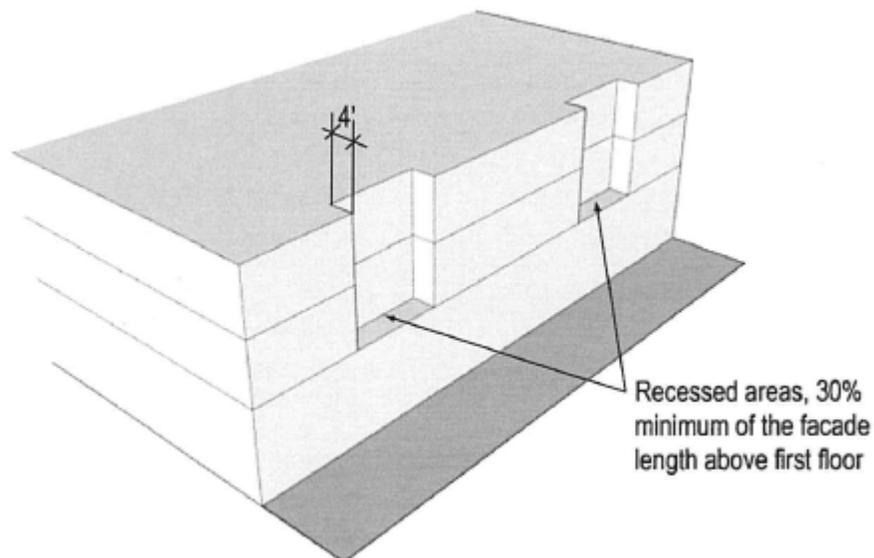


Figure 17.26-5: Vertical Facade Break

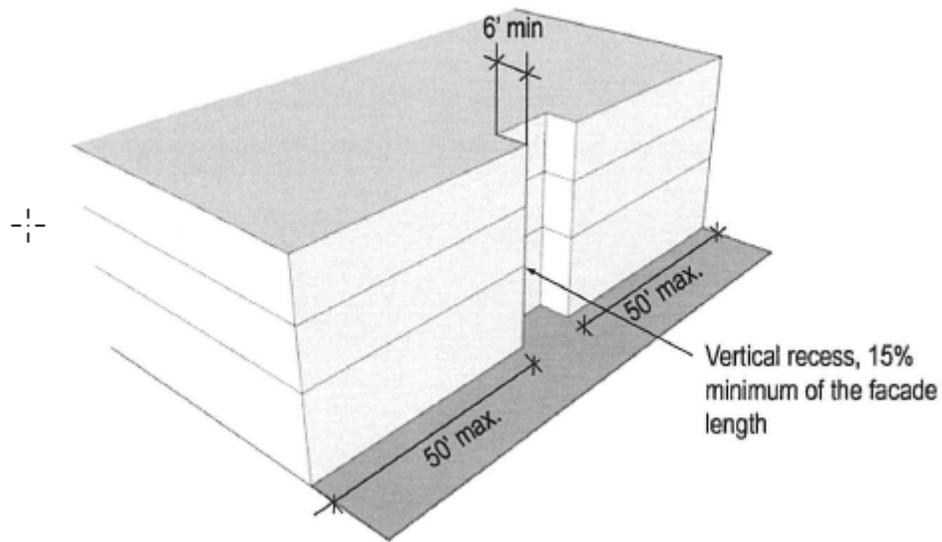
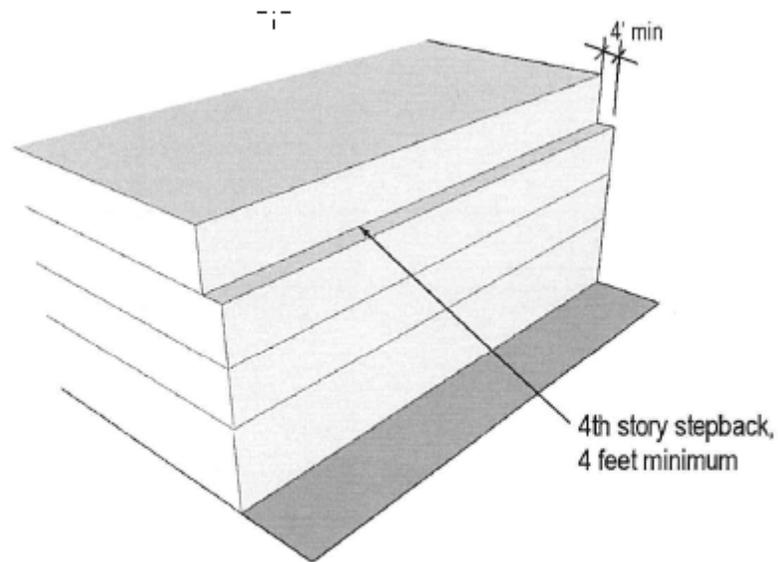
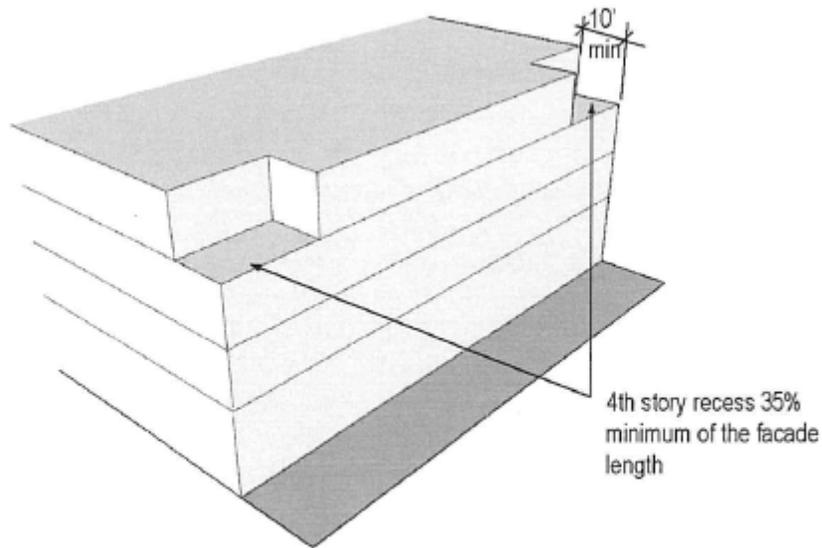


Figure 17.26-6: Upper Story Stepback

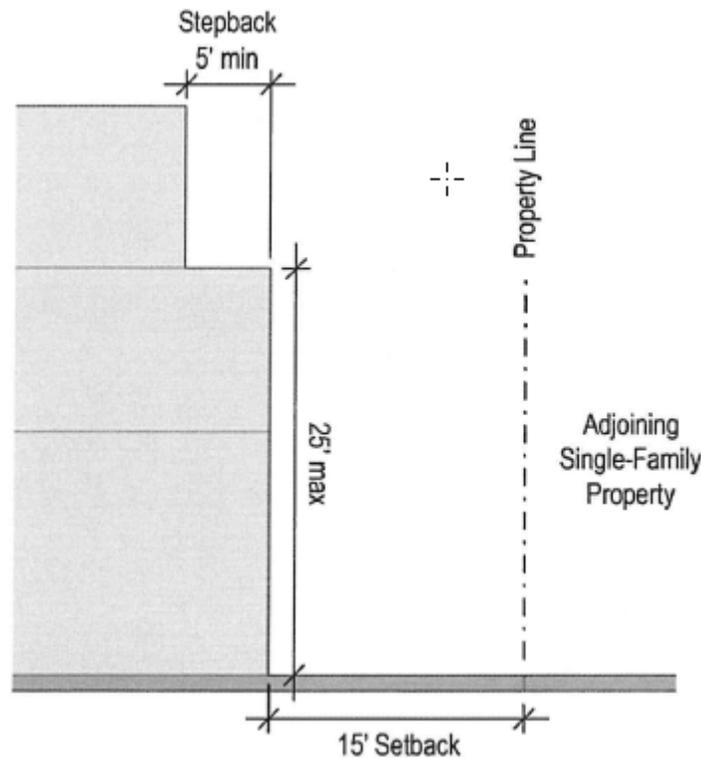


Note: Figure does not show additional building massing standards required for all buildings

Figure 17.26-7: Four Story Wall Limitation

Note: Figure does not show additional building massing standards required for all buildings

4. Residential Transitions. The following standards apply to new development projects adjoining a parcel outside of the MU-I district with an existing single-family use:
- Wall or Fence.** A sight-obscuring wall or fence six feet high shall be provided along the adjoining residential property line. A sight-obscuring fence must have an opacity of at least 85 percent. Bushes, vines, and other vegetation may be incorporated into the design of a required fence.
 - Yard.** Buildings shall be located a minimum of 15 feet from the adjoining single-family residential property line.
 - Building Stepback.** Buildings adjoining a single-family residential property line shall be no taller than two stories or 25 feet at the required 15-foot setback line. If proposed, third stories shall be stepped back a minimum of five feet from the setback line (i.e., 20 feet from the adjoining property line). Recessed area may not be used as a balcony, terrace, or other usable open space. See Figure 17.26-8.

Figure 17.26-8: Residential Transitions

5. Additional Standards. Development in the MU-I district must also comply with standards in BMC 17.26.040 (Additional standards for all mixed use districts). (Ord. 22-03 § 3).

SECTION 4. Subsection C (Sidewalks and Street Trees) of Section 17.26.040 (Additional standards for all mixed use districts) of Chapter 17.26 (Mixed Use Districts) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Sidewalks and Street Trees.

1. Public sidewalks abutting a development parcel shall have a minimum sidewalk width (curb to back of walk) of at least 12 feet as measured from back of curb. The sidewalk shall contain at least one irrigated curbside street tree for every 30 linear feet of sidewalk.

a. Nonresidential Ground Floor Uses. The following standards apply to development with nonresidential ground floor uses facing the street, as shown in Figure 17.26-11:

- i. If right-of-way conditions require buildings to be set back from the street by more than 12 feet, the sidewalk shall be extended to the building.
- ii. Curbside sidewalk tree wells shall be four feet in width by eight feet in length minimum, six feet by 12 feet maximum, with a corresponding zone of pervious paving aligned with and extending between tree wells.
- iii. A minimum clear width of eight feet shall be provided between tree wells and the building frontage.

b. Residential Ground Floor Uses. The following standards apply to development with residential ground floor uses facing the street, as shown in Figure 17.26-12:

- i. If right-of-way conditions require buildings to be set back from back of sidewalk by more than 15 feet, required frontage landscaping shall be expanded to fill the excess area.
- ii. Curbside sidewalk tree wells shall be six feet in width by six feet or more in length, with a corresponding zone of pervious paving aligned with and extending between tree wells.
- iii. Tree wells shall include additional low-growing ornamental planting to enhance residential frontages.

2. If the existing public right-of-way area between the curb and the property line is insufficient to meet the minimum standard above, extension of the sidewalk onto the property, with corresponding public access easement, shall be provided.

3. Applicability – Shopping Centers.

a. For development on a site with a shopping center existing on December 31, 2022, streetscape improvements required by this section shall be installed along the property frontage that abuts:

- i. The area of disturbance; and
- ii. Shopping center property adjacent to the area of disturbance to the property line or nearest driveway providing vehicle access to the property, See Figure 17.26-13

b. In cases where the primary building frontage of new development faces an internal private street, the streetscape improvements required by the section also apply to the internal private street frontage.

4. Applicability – All Other Developed Properties.

- a. Permitted residential development existing on December 31, 2022 may increase floor area by a total of 20% without constructing streetscape improvements required by this section, so long as the number of residential units does not increase.
- b. Permitted commercial development existing on December 31, 2022 may increase floor area by a total of 2,500 square-feet or 10%, whichever is less, without constructing streetscape improvements required by this section. This includes accessory structures and outdoor space utilized for commercial purposes.

Figure 17.26-13: Shopping Center Streetscape Improvement Requirement

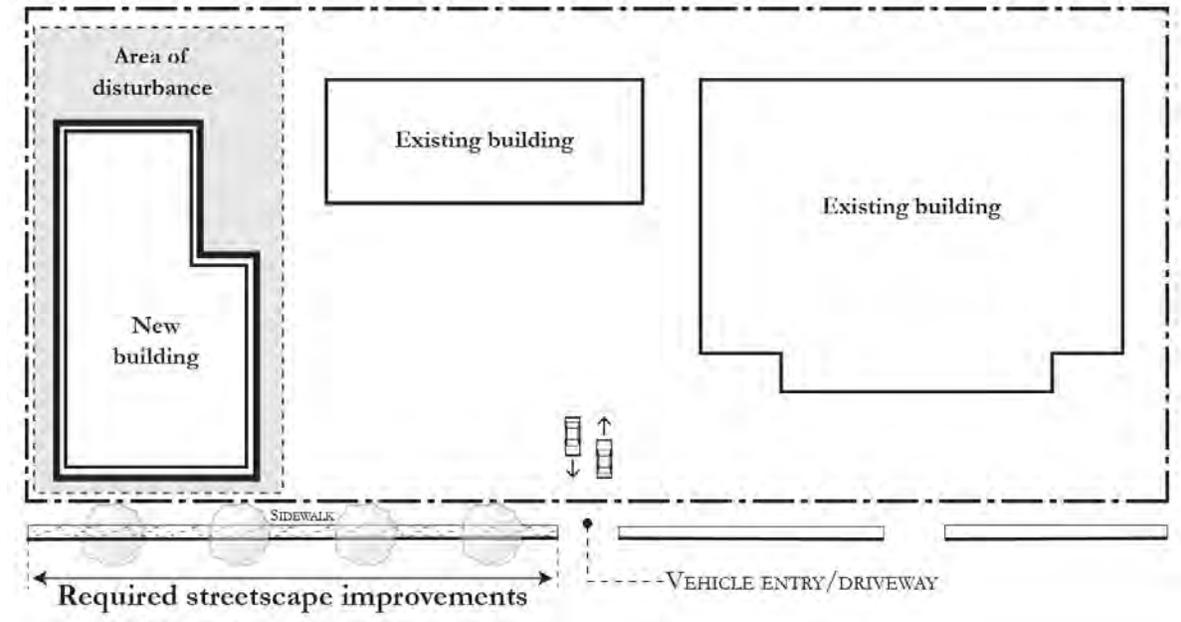


Figure 17.26-11: Streetscape Standards – Nonresidential Ground Floor Uses

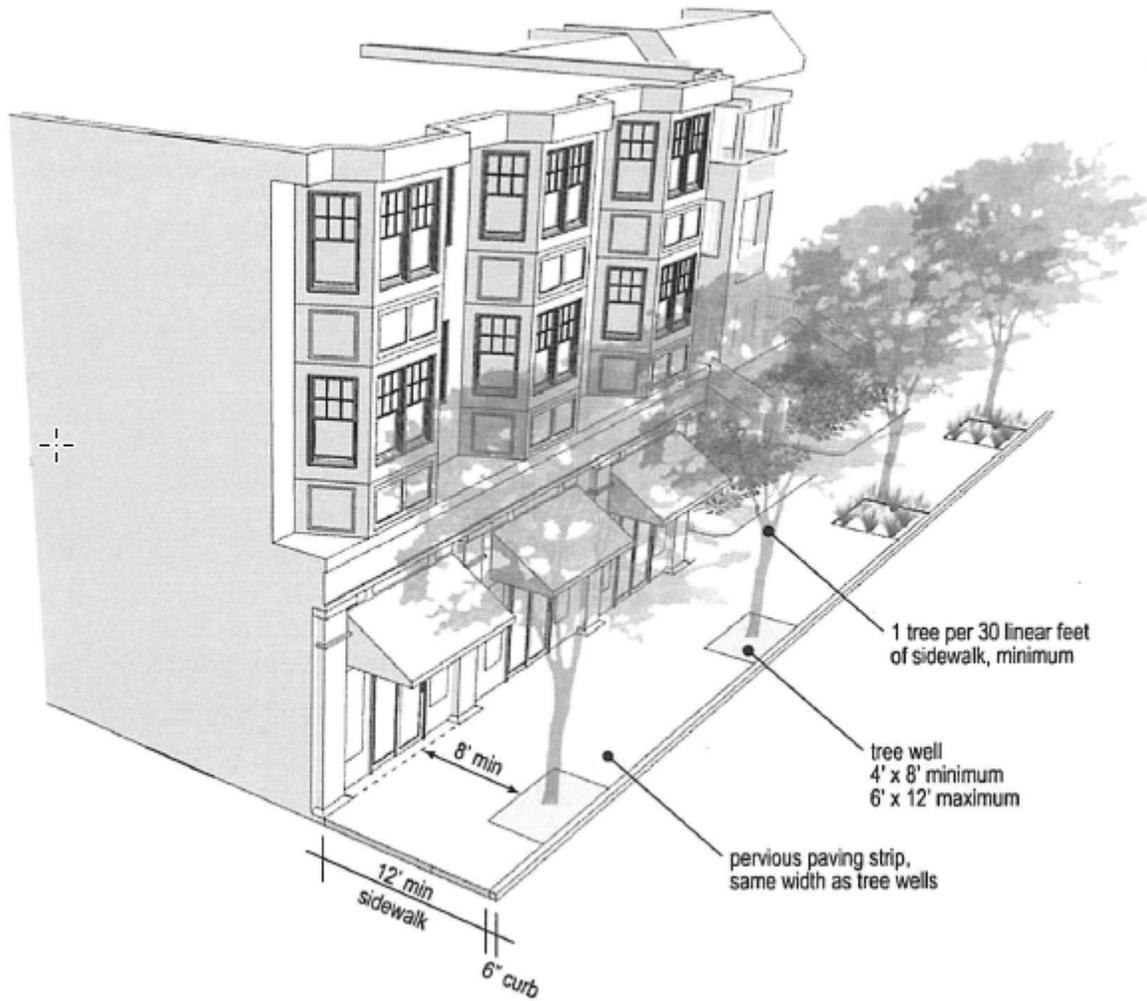
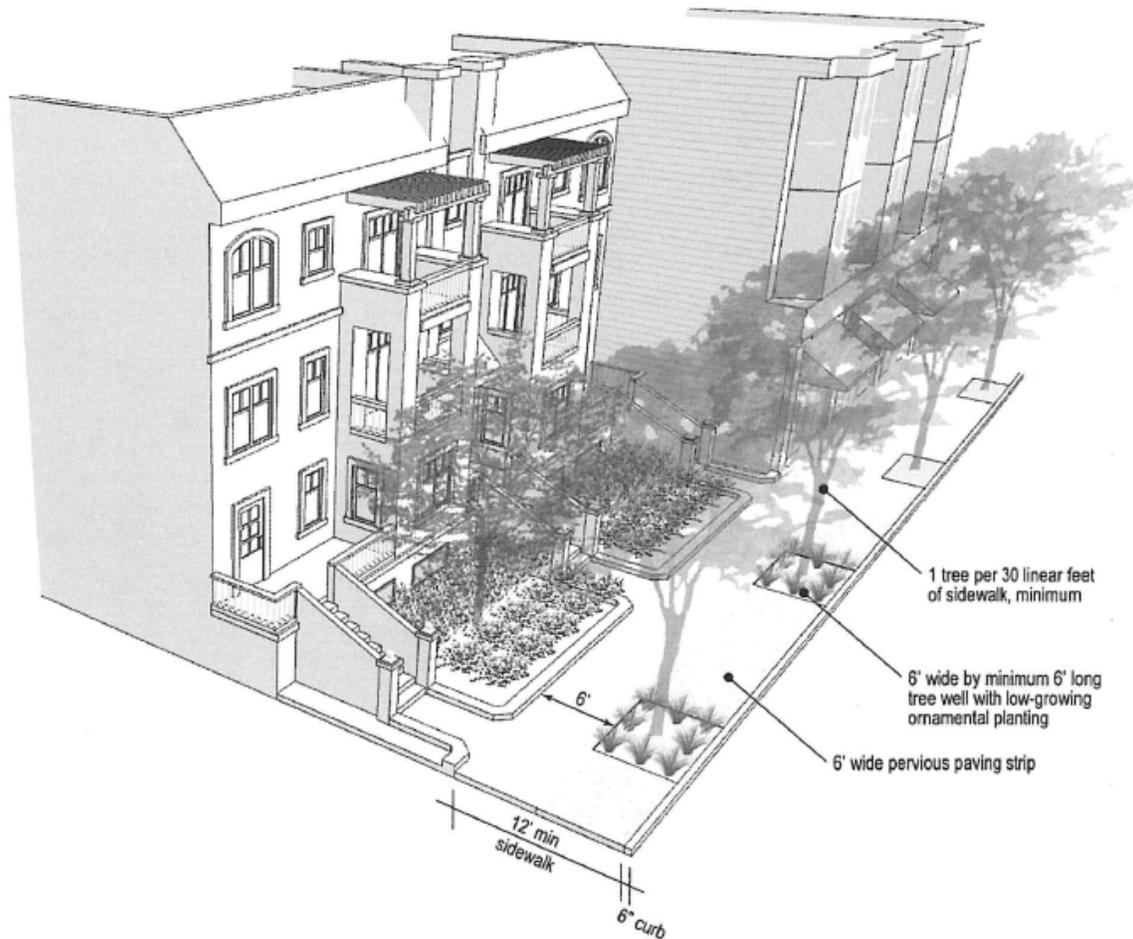


Figure 17.26-12: Streetscape Standards – Residential Ground Floor Uses



SECTION 5. Subsection D (Mixed Use Districts) of Section 17.74.130 (Parking access from street) of Chapter 17.74 (Off-street Parking and Loading) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

D. Mixed Use Districts. The following requirements apply in the MU-I and MU-L districts:

1. Parking Placement and Alley Access.

a. Surface parking spaces may not be located between a building and a front or street side lot line. Parking must be located to the rear or side of buildings.

b. For lots served by an existing paved alley, vehicle access to parking must be from the alley. The review authority may allow exceptions to this requirement where:

i. Use of the alley is shared with one or more existing single-family residential homes; and

- ii. The alley dimensions and other existing physical site conditions (e.g., building location) conflict with city standards for alley width, sight distance, emergency vehicle access or other objective standards.
 - c. If an applicant paves and improves the alley consistent with city standards, parking access may be provided from the alley.
2. Driveways.
- a. Except where allowed by paragraph (c) below, no ~~No~~ more than one driveway may serve any parcel less than 150 feet wide and no more than two driveways may serve any parcel exceeding 150 feet in width.
 - b. The number of driveways allowed for a corner parcel is calculated using either the front or the side dimension of the parcel, whichever is larger. (Ord. 22-03 § 13; Ord. 87-4 N.S., 1987).
 - c. New development on a shopping center site that existed on December 31, 2022 may not increase the number of driveways providing vehicle access to the property; in addition, such development shall not be required to reduce the number of driveways, as established by BMC 17.74.130.D.2.a.

SECTION 6. Section 17.74.220 (Podium parking) of Chapter 17.74 (Off-street Parking and Loading) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Landscaping Strip. Podium parking adjacent to a street must include a landscaped planter between the street and podium at least four feet wide with a planting height and vegetative cover sufficient to fully screen the podium edge and ventilation openings from view. At maturity, plantings must comprise a minimum of 75 percent of the total landscape planter.

B. Residential-Only Projects. The following standards apply to podium parking included in a building that contains only residential uses, including residential-only buildings on a property that contains other buildings with non-residential uses.

1. The maximum height of a parking podium adjacent to the street is five feet from finished grade.
2. Units above a street-facing podium must feature entries with stoops and stairs providing direct access to the adjacent sidewalk.

C. Mixed Use and Commercial Projects. The podium parking entry shall be recessed a minimum of four feet from the street-facing building facade. This requirement applies to podium parking entries facing a private street or internal drive aisle that functions as the front building line as defined in BMC 17.12. This requirement does not apply to podium parking entries facing service or loading areas.

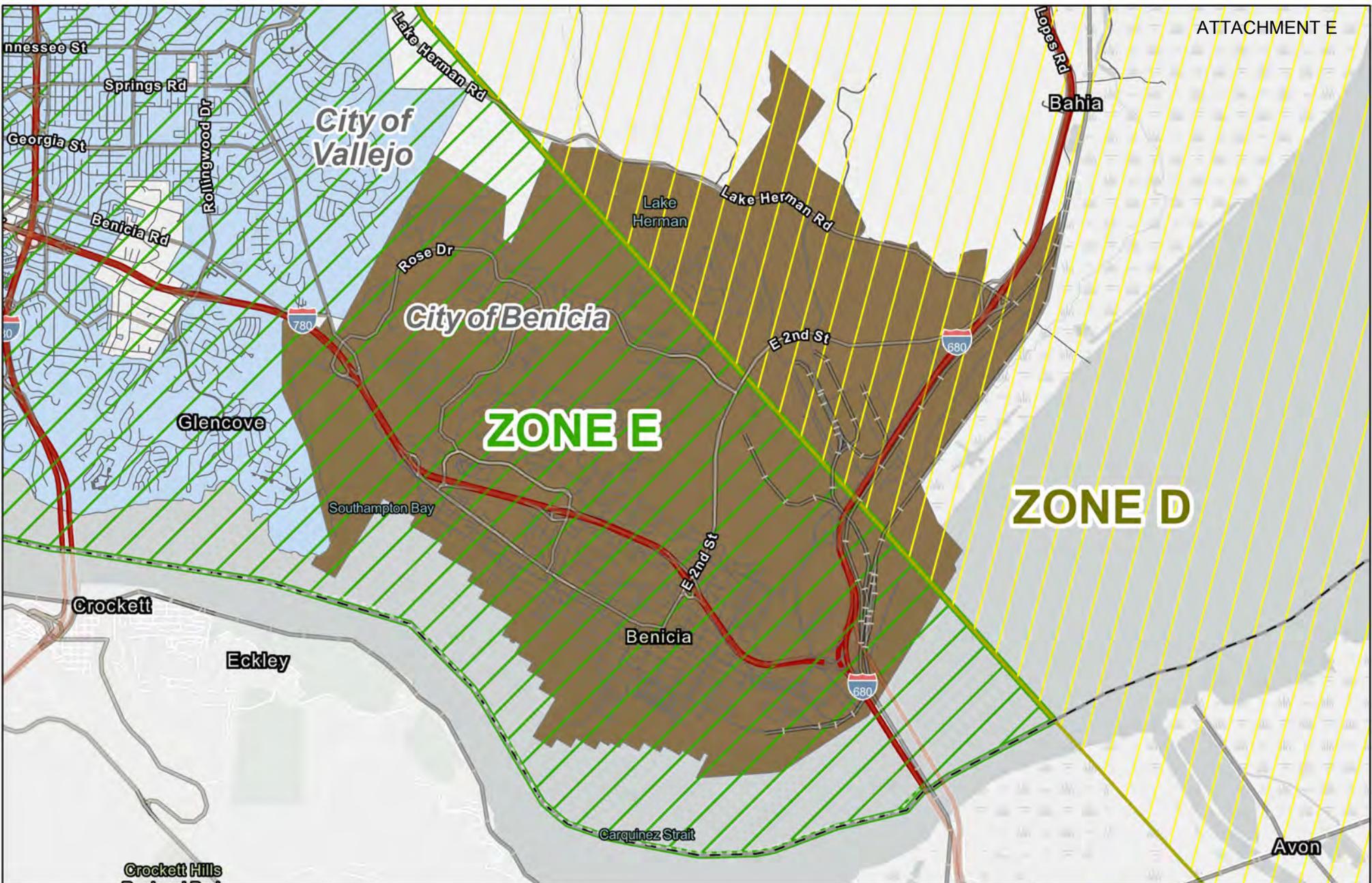
SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of

this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. This project is categorically exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15305, and 15332 which apply to existing facilities, minor alterations to land use limitations, and infill development, respectively. The bulk of the proposed zoning amendments apply only to sites meeting the definition of a shopping center and there are currently no shopping center sites zoned for mixed use development in Benicia, therefore the shopping center-oriented text amendments have no potential to impact the environment at this time. The proposed text amendment does clarify when streetscape improvements apply for developed properties in the Mixed Use-Infill and Mixed Use-Limited zones, but it limits the need for those improvements in comparison to what would currently be required. The proposed text amendments do not have the potential to result in environmental impacts.

SECTION 9. This Ordinance shall take effect thirty (30) days from its passage by the City Council.

SECTION 10. The City Clerk is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).



Travis AFB Compatibility Zones in City of Benicia

-  Zone D
-  Zone E
-  City of Benicia
-  City of Vallejo
-  Solano County Boundary



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

