

AGENDA

SPECIAL MEETING

**ANTIOCH CITY COUNCIL: CANNABIS STANDING COMMITTEE
MAYOR PRO TEM WILSON AND COUNCIL MEMBER TORRES-WALKER
THURSDAY, APRIL 22, 2021
2:00 P.M.**

**PURSUANT TO GOVERNOR GAVIN NEWSOM'S EXECUTIVE ORDER N-29-20,
THIS MEETING WILL BE HELD AS A TELECONFERENCE/VIRTUAL MEETING.
OBSERVERS MAY VIEW THE MEETING LIVESTREAMED VIA THE
CANNABIS STANDING COMMITTEES' WEBSITE AT:
<https://www.antiochca.gov/csc/meeting/>**

NOTICE OF OPPORTUNITY TO ADDRESS THE COMMITTEE

Members of the public wishing to provide public comment may do so in the following way:

- 1) Prior to 12:00 P.M. the day of the meeting: Written comments may be submitted electronically to the following email address: cityattorney@ci.antioch.ca.us. All comments received before 12:00 pm the day of the meeting will be provided to the Cannabis Committee at the meeting. Please indicate the agenda item and title in your email subject line.
- 2) After 12:00 P.M. the day of the meeting and during the meeting: Comments can be submitted to the Cannabis Committee verbally through the Zoom webinar. Please use the link to register and attend the webinar.
https://zoom.us/webinar/register/WN_X1UEhLX7Q-eZmdFV9D_rVw

After hearing from the public, the agenda item will be closed. Deliberations will then be limited to members of the Committee.

The City cannot guarantee that its network and/or the site will be uninterrupted. To ensure the Cannabis Standing Committee receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting.

NOTICE OF AVAILABILITY OF REPORTS

This agenda is a summary of the discussion items/actions proposed to be taken by the Committee. The Agendas, including Staff Reports will be posted onto our City's Website 24 hours before each Committee Meeting. To view the agenda information, click on the following link: <https://www.antiochca.gov/government/agendas-and-minutes/csc/>

1. ROLL CALL

2. INTRODUCTIONS

3. PUBLIC COMMENT ON UNAGENDIZED ITEMS

4. APPROVAL OF CANNABIS STANDING COMMITTEE SPECIAL MEETING MINUTES FOR JANUARY 15, 2021

A. Recommended Action: Motion To Approve The Minutes

5. PROPOSED AMENDMENT TO EXISTING BILLBOARD LEASE WITH MESA ANTIOCH, LLC

A. Public Comment

B. Discussion and Direction to Staff

6. PROPOSED CHANGES TO CANNABIS BUSINESS ORDINANCE RELATING TO LOCATION AND TYPES OF CANNABIS BUSINESSES (ANTIOCH MUNICIPAL CODE SECTIONS 9-5.203, 9-5.3801, 9-5.3845)

A. Public Comment

B. Discussion and Direction to Staff

7. ADJOURNMENT: *Committee Member will make a motion to adjourn the meeting. A second of the motion is required, and then a majority vote is required to adjourn the meeting.*

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND CALIFORNIA LAW, it is the policy of the City of Antioch to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at the number or email address below at least 72 hours prior to the meeting or when you desire to receive services. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. The City's ADA Coordinator can be reached @ Phone: (925) 779-6950, and e-mail: publicworks@ci.antioch.ca.us.

STAFF REPORT TO THE CANNABIS COMMITTEE

DATE: Special Meeting of April 22, 2021

TO: Mayor Pro Tem Wilson and Councilmember Torres-Walker

SUBMITTED BY: Ruthann G. Ziegler, Special Counsel

APPROVED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Proposed Amendment to First Amended and Restated Lease Agreement with Mesa Antioch LLC (Billboard Lease)

RECOMMENDED ACTION

It is recommended that the Cannabis Committee review the proposed changes to the existing billboard lease between the City and Mesa Antioch, LLC, and provide direction to staff either to prepare further modifications or to present the matter to the City Council for review and possible action.

Mesa Antioch has requested two changes to the existing lease:

1. The lease's existing prohibition on promoting the sale or use of medical or commercial marijuana be deleted.
2. The term of the lease be extended for an additional period. Without the extension, the current lease will expire in May 2048.

In response to item 1 above, City staff has proposed two conditions: in addition to the revenue the City already receives under the lease, the City would receive a portion of the gross revenue from marijuana-related advertising and that the billboard be allowed to advertise only Antioch-based cannabis businesses.

As to the second requested change, staff recommends the City not extend the lease term at this time but consider a possible extension in the future.

FISCAL IMPACT

The proposed action should have a positive fiscal impact on the City. The exact amount is not clear.

DISCUSSION

The original lease with Mesa Antioch LLC (“Mesa”) was approved by the Council on June 24, 2014 and executed on September 4, 2014. Subsequently, on May 8, 2018, the City adopted certain amendments to the 2014 lease resulting in the existing First Amended and Restated Lease Agreement. The proposed amendments, if adopted, would result in a Second Amended and Restated Lease Agreement.

1. Advertising of marijuana/cannabis

The lease includes Exhibit C, entitled “Advertising Criteria”, which details eight restrictions on the billboard, including that the billboard “may not display any message that: ...promotes the sale or use of tobacco products, alcoholic beverages, or medical and/or commercial marijuana, whether directly or indirectly...” The proposed amendment would remove commercial and medical marijuana from the eighth restriction, so it reads as follows: “may not display any message that: ...promotes the sale or use of tobacco products, or alcoholic beverages, ~~or medical and or commercial marijuana~~, whether directly or indirectly...”

The City would also add a ninth restriction to prohibit advertising that: “promotes the sale or use of medical and/or commercial cannabis and cannabis products, whether directly or indirectly, **unless** directly relating to a commercial cannabis business validly existing within the City of Antioch.”

Schedule 1 of the Lease sets for the payments by Mesa to the City. To give the City additional revenue from cannabis advertising, Schedule 1 would be modified to add the redlined language below:

Percentage Rent:

After the first year of the Operations Phase and in each Lease Year thereafter, the City will receive 25% of the Gross Revenue generated by the Billboard, to the extent that 25% of the Gross Revenue exceeds the Monthly Rent payable for the applicable Lease Year (“Percentage Rent”). **For advertisements relating to medical and commercial cannabis or cannabis products, the City will receive 30% of the Gross Revenue thereof each year (“Cannabis Rent”).** Any Percentage Rent **and any Cannabis Rent** payable to the City must be paid on or before the 45th day after the end of the applicable Lease Year.

Mesa’s representative has estimated that cannabis-related advertising could increase gross revenue by \$3,000 per month.

2. Increasing lease term

The existing lease is for a thirty-year term. Mesa has asked that term to be increased. Since the billboard was erected, Highway 4 has been widened and landscaped; it is now categorized by Caltrans as a “landscaped freeway.” State law does not allow a billboard within 1,000 feet of a landscaped freeway. (Business & Professions Code §5440(a).) Although Caltrans has the authority to force the removal of a non-conforming billboard,

according to Mesa's representative, Caltrans has not done so since it would have to reimburse the billboard owner for lost revenue.

The advantage to the City in granting a longer lease is that, under current law, no replacement billboard could be located on that site. The disadvantage to the City is authorizing a use for a significant period of time.

Staff recommends the lease term not be extended at this time since the City will have the option of extending the term in the future.

ATTACHMENTS:

None

STAFF REPORT TO THE CANNABIS COMMITTEE

DATE: Special Meeting of April 22, 2021

TO: Mayor Pro Tem Wilson and Councilmember Torres-Walker

SUBMITTED BY: Ruthann G. Ziegler, Special Counsel

APPROVED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Proposed Amendments to the Cannabis Business Ordinance (AMC §§ 9-5.203, 9-5.3801, 9-5.3845)

RECOMMENDED ACTION

It is recommended that the Cannabis Committee review the attached proposed ordinance and provide direction to staff for further modifications or to begin environmental review, with the goal of presenting the draft ordinance to the Planning Commission for review and ultimately to the City Council for review and possible adoption.

The proposed amendment to Antioch Municipal Code §9-5.203 would add the definition of “sensitive use”, which is the basis for locational restrictions included in §9-5.3845. The proposed amendment to Antioch Municipal Code §9-5.3801 would divide the existing Cannabis Business (CB) district into distinct geographical areas within the City. The proposed amendment to Antioch Municipal Code §9-5.3845 would specify which types of cannabis businesses would be allowed in each separate Cannabis Business district.

Attached as Exhibit A is a redlined version showing the difference between the existing ordinance and the proposed ordinance.

STRATEGIC PURPOSE

Adoption of the proposed ordinance addresses the City Council’s goals of allowing commercial cannabis operations consistent with public health, welfare, and safety.

FISCAL IMPACT

The proposed action will not have a negative effect on the City budget and may generate increased revenue by providing more options for different types of cannabis businesses.

DISCUSSION

The proposed ordinance has three parts: (1) by modifying the existing Cannabis Business district, it would add new areas within the City where cannabis businesses are allowed (2) it specifies which types of businesses would be allowed in each area and (3) it adds a definition of “sensitive use” consistent with the language in the existing ordinance. Each is discussed below:

1. Cannabis Business (CB) district

Existing §9.5-3801 designates a single type of cannabis business district, identified as CB. This has sometimes been referred to as the “green zone”. The City’s ordinance allows all types of cannabis business to be located within the CB district.

The proposed ordinance identifies five categories of CB districts, each covering a different geographical area within the City. They are:

CB 1 The area designated as the Cannabis Business Overlay District prior to April 22, 2021.

CB 1 allows the broadest range of cannabis businesses.

CB 2 Northwest Downtown/Marina - the area bounded by 4th St., BNSF rail line, and L St.

CB 2 allows most types of cannabis businesses, excluding retail.

CB 3 Somersville District - the area bounded by Buchanan Rd., Delta Fair Blvd., and Fairview Dr.

CB 3 allows only retail cannabis businesses, plus Type 11 distribution.

CB 4 Slatten Ranch Business Park - the area bounded by Wicklow Way, Laurel Road, Empire Ave., and Highway 4

CB 4 allows most types of cannabis businesses, excluding retail.

CB 5 Slatten Ranch/Empire Center - the area bounded by Lone Tree Way, Wicklow Way, Empire Ave., and Highway 4

CB 5 allows only retail cannabis businesses, plus Type 11 distribution.

2. Designating different types of cannabis business and buffers for different CB districts

Existing §9-5.3845 establishes a 600 foot buffer from four categories of uses:

(1) Any private or public school serving students grade kindergarten through high school;

(2) Any public park owned or operated by the City;

(3) Any property occupied by a residential land use or with a residential or general plan land use designation or zoning designation; and

(4) A child care center, as defined by this municipal code.

State law does not require any buffer as to residential uses. While state law references a 600 foot buffer for the three other uses referenced above, state law allows a City to reduce that 600 foot buffer. Several neighboring jurisdictions have also reduced that 600 foot buffer and at least one does not include any buffer as to residential uses.

The definition proposed to be added to §9-5.203 incorporates the four categories of uses specified above. It also clarifies that the reference to residential uses only in the City of Antioch.

Existing §9-5.3845 does not limit which types of cannabis businesses can be in which location. City staff has evaluated the various areas and developed the following recommendations for each of the five areas, including types of cannabis businesses and buffers.

CB 1 The area designated as the Cannabis Business Overlay District prior to April 22, 2021.

This area is the current “green zone.” It would retain the existing 600 foot buffer, subject to the modification discussed below.

Permitted cannabis businesses within CB 1 are any type of existing cannabis license, excluding retail-no storefront (Type 9) and distribution-transport only (Type 13). The latter two are excluded since they are unlikely to generate much foot traffic or spin-off business for the neighboring commercial areas.

CB 2 Northwest Downtown/Marina

This area historically had medium/heavy industrial uses. Many of the existing buildings are industrial in nature and could be suitable for large-scale indoor cultivation and manufacturing. Because of the historic industrial nature of this area and the comparatively few residential uses, it is recommended to reduce the buffer to 200 feet.

Furthermore, to encourage retail in other CB districts, retail cannabis businesses (e.g., Types 10 and 12) would not be allowed in this area. Similar to CB 1, Type 9 and Type 13 would not be allowed in this area.

CB 3 Somersville District

This area would be restricted to retail and allow only Type 10 (retail with storefront), Type 11 (distribution), and Type 12 (microbusiness) licenses. While the ordinance is currently drafted to retain the 600 foot buffer, the Committee may wish to consider whether to reduce this to 200 feet.

CB 4 Slatten Ranch Business Park

This area could attract large-scale manufacturing, distribution, and cultivation. To encourage those uses and help focus retail in areas where the City want to encourage foot traffic and spin-off business, retail would not be allowed in this area.

Staff recommends reducing the buffer to 200 feet and clarifying that the buffer applies only to residential uses within the City of Antioch.

CB 5 Slatten Ranch/Empire Center

This smaller portion of the Slatten Ranch area is in proximity to existing stores. Therefore, staff recommends allowing only retail in this area and reducing the buffer to 200 feet.

Below are charts, included in the proposed ordinance, which show the types of uses and buffers recommended for each of the five CB districts.

TABLE A		
Overlay District	License Types Permitted	Permit Requirement
CB 1	1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 5, 5A, 5B, 6, 7, 8, 10, 11, 12	City Council Use Permit
CB 2	1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 6, 8, 11	City Council Use Permit
CB 3	10, 11, 12	City Council Use Permit
CB 4	1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 6, 7, 8, 11	City Council Use Permit
CB 5	10, 11, 12	City Council Use Permit

TABLE B		
Overlay District	Between Retail Uses	From Sensitive Party
CB 1	600'	600'
CB 2	600"	200'
CB 3	600'	600'
CB 4	600'	200'
CB 5	600'	200'

3. Other proposed changes

a. Type 7 license

A Type 7 license allows manufacturing with volatile solvents. The proposed ordinance would specify that, in those areas where a Type 7 license is allowed, the business cannot be in a multi-tenant building.

b. Buffer

The proposed ordinance recognizes that certain natural buffers (such as such as large roadways and railroad tracks) may exist. The proposed ordinance allows the City to reduce the specified buffer where these natural buffers exist.

c. Otherwise prohibited uses

(distribution- transport only). The proposed ordinance allows the Council to approve such uses upon a finding of “unique circumstances.”

d. New types of licenses

State law allows certain state agencies to authorize additional types of cannabis licenses. Under this provision, various state agencies have authorized at least five new types of licenses. Since the state may continue to authorize new types of licenses, the proposed ordinance gives the Zoning Administrator discretion to include such license types within the proposed CB districts, or to exclude them.

e. Type 14 license- temporary events

A Type 14 license allows the license holder to conduct a temporary cannabis event such as a fair, expo, etc. Because of the unique, short-term nature of these events, the proposed ordinance grants the Zoning Administrator the authority to grant a temporary administrative use permit allowing a Type 14 license if all of the specified conditions are met. The conditions are:

- The Zoning Administrator holds a noticed hearing.
- The Zoning Administrator determines, based on the public hearing, that the proposed temporary use pursuant to the Type 14 license substantially complies with the intent of this section and the City’s rules and regulations.
- The City Manager and the Chief of Police concur that a temporary administrative use permit should be issued.
- The applicant for the license pays all fees and charges due to the City.
- The applicant provides evidence, satisfactory to the City Attorney, of any insurance, by certificate and endorsement, or bonds required of the applicant.
- The applicant complies with any and all other conditions imposed by the Zoning Administrator.

The draft ordinance is attached as Exhibit A. A chart showing the types of cannabis licenses is attached as Exhibit B.

ATTACHMENTS

- A. Proposed Ordinance
- B. Chart of types of licenses

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING SECTIONS 203, 3801, AND 3845 OF CHAPTER 5 OF TITLE 9 OF THE
ANTIOCH MUNICIPAL CODE ADDING THE DEFINITION OF SENSITIVE USE AND
MODIFYING THE CANNABIS BUSINESS OVERLAY DISTRICT BY
SPECIFYING THE LOCATION OF DIFFERENT TYPES OF CANNABIS BUSINESSES**

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

Beginning in 2018, the City Council has adopted several ordinances relating to cannabis businesses within the City. One or more of these ordinances established a Cannabis Business (CB) district and imposed locational restrictions on cannabis businesses within the City.

SECTION 2:

The City has further evaluated both existing and potential sites for different types of cannabis businesses within the City. The City is adopting this ordinance to further refine and enhance potential locations for cannabis businesses while meeting the interests of City residents and existing businesses.

SECTION 3:

Section 9-5.203 is modified to add the following definition:

SENSITIVE USE: Any private or public school serving students in grades kindergarten through high school, any public park owned or operated by the City; any property occupied by a city residential land use or designated by the City as residential in the City's general plan or zoning ordinance, or a child care center, as defined by this municipal code.

SECTION 4:

Section 9-5.3801 is modified as follows:

§ 9-5.3801 SUMMARY OF ZONING DISTRICTS. [no change except as indicated below]

CB Cannabis Business Overlay District

CB 1 The area designated as the Cannabis Business Overlay District prior to April 22, 2021.

CB 1 allows the broadest range of cannabis businesses.

CB 2 Northwest Downtown/Marina- the area bounded by 4th St., BNSF rail line, and L St.

CB 2 allows most types of cannabis businesses, excluding retail.

CB 3 Somersville District - the area bounded by Buchanan Rd., Delta Fair Blvd., and Fairview Dr.

CB 3 allows only retail cannabis businesses, plus Type 11 distribution.

CB 4 Slatten Ranch Business Park - the area bounded by Wicklow Way to the south, Laurel Road, Empire Ave., and Highway 4

CB 4 allows most types of cannabis businesses, excluding retail.

CB 5 Slatten Ranch/Empire Center - the area bounded by Lone Tree Way, Wicklow Way to the north, Empire Ave., and Highway 4

CB 5 allows only retail cannabis businesses, plus Type 11 distribution.

SECTION 5:

Section 9-5.3845 is modified as follows:

§ 9-5.3845 CANNABIS BUSINESS.

A cannabis business may be established within any of the Cannabis Business (CB) Zoning Overlay Districts only under all of the following conditions:

- (A) [no change}
- (B) (no change)

(C) In addition to the standard findings for approval of a use permit, the City Council shall make the following additional finding in support of approval of a use permit for a cannabis business.

- (1) That the location and site characteristics of the proposed cannabis business are consistent with all applicable state laws and cityCity standards or guidelines, that all provisions have been made to ensure that the operation of the cannabis business will not create excessive demands for police service or other public services, and that the cannabis business will benefit the cityCity.

(D) Cannabis Businesses may be established as described in Table A.

TABLE A		
Overlay District	License Types Permitted	Permit Requirement
<u>CB 1</u>	<u>1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 5, 5A, 5B, 6, 7, 8, 10, 11, 12</u>	<u>City Council Use Permit</u>
<u>CB 2</u>	<u>1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 6, 8, 11</u>	<u>City Council Use Permit</u>
<u>CB 3</u>	<u>10, 11, 12</u>	<u>City Council Use Permit</u>

<u>CB 4</u>	<u>1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B, 4, 6, 7, 8, 11</u>	<u>City Council Use Permit</u>
<u>CB 5</u>	<u>10, 11, 12</u>	<u>City Council Use Permit</u>

(1) License type 7 is not allowed in multi-tenant buildings in CB 1 or CB 4.

(E) The separation requirements for the Cannabis Business Overlay Zoning Districts shall be as described in Table B:

TABLE B		
<u>Overlay District</u>	<u>Between Retail Uses</u>	<u>From Sensitive Party</u>
<u>CB 1</u>	<u>600'</u>	<u>600'</u>
<u>CB 2</u>	<u>600"</u>	<u>200'</u>
<u>CB 3</u>	<u>600'</u>	<u>600'¹</u>
<u>CB 4</u>	<u>600'</u>	<u>200'</u>
<u>CB 5</u>	<u>600'</u>	<u>200'</u>

(1) Notwithstanding Section 9-5.3945(E), the City shall have the discretion to decrease the 600-foot restriction without requirement for a variance when significant barriers (such as large roadways, railroad tracks, or similar buffers) exist between the proposed retail cannabis business and the existing use identified in Section 9-5.3845(D)(4).

(F) The license types described herein are intended to reflect the available licenses as of the date of this Ordinance. Since new types of license types may be developed by the state, the Zoning Administrator shall evaluate any new types of licenses and determine if there is substantial consistency with an existing license type in regard to the nature of the business. The City shall apply the above-prescribed requirements accordingly until such time that this section is revised to include the new license type.

(G) A cannabis business holding license Types 9 or 13, while not prohibited, shall require findings demonstrating unique circumstances to be approved by the City.

(H) A Type 14 license may be allowed only if the Zoning Administrator issues a temporary administrative use permit after all of the following conditions are met:

- (1) Notwithstanding §9-5.2701(B), the Zoning Administrator conducts a public hearing, complying with the notice requirements of §9-5.2701(C);
- (2) The Zoning Administrator determines, based on the public hearing, that the proposed temporary use pursuant to the Type 14 license substantially complies with the intent of this section and the City's rules and regulations;

¹ We may want to discuss whether this should be 200 or 600 feet.

- (3) The City Manager and the Chief of Police concur that a temporary administrative use permit should be issued;
- (4) The applicant for the license pays all fees and charges due to the City;
- (5) The applicant provides evidence, satisfactory to the City Attorney, of any insurance, by certificate and endorsement, or bonds required of the applicant; and
- (6) The applicant complies with any and all other conditions imposed by the Zoning Administrator.

SECTION 6: Severability.

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other person or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

SECTION 7. CEQA.

The above amendments to the City's Municipal Code are

SECTION 8:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the forgoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the ____ of ____ 2021, and passed and adopted at a regular meeting thereof, held on the ____ day of ____ 2021, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Lamar Thorpe, Mayor of the City of Antioch

ATTEST:

Elizabeth Householder
City Clerk of the City of Antioch