

RESOLUTION NO. PC05-2022

RESOLUTION OF THE FORT BRAGG PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVE ORDINANCE 979-2022 AMENDING THE INLAND LAND USE AND DEVELOPMENT CODE TO REGULATE COMMERCIAL CANNABIS CULTIVATION AND AMEND REGULATIONS FOR CANNABIS RETAIL IN COMMERCIAL ZONES.

WHEREAS, the City of Fort Bragg's ("City") previously adopted ordinances governing cannabis businesses do not provide regulations for commercial cannabis cultivation; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act or MMRSA), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, testing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, testing, dispensing, and delivery within their jurisdictions. Under the MCRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans, or local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: "Exemption from the

requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution;” and

WHEREAS, on November 8, 2016, the electorate of the State of California approved Proposition 64 (“Prop 64”) which enacted the Adult Use of Marijuana Act (“AUMA”), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allows local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, on June 27, 2017, the Governor approved Senate Bill 94 which combined the regulatory schemes for MMRSA and AUMA into a single, comprehensive regulatory scheme known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, notwithstanding the CUA, MMPA, MMRSA, and MAUCRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local cannabis regulation in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013); and

WHEREAS, on February 25, 2019, the City Council of the City of Fort Bragg (“City Council”) sought to establish rules and regulations by which cannabis businesses may be permitted by considering an ordinance regulating retail, laboratory testing, manufacturing, and distribution cannabis businesses and accessory uses; and

WHEREAS, through multiple public meetings, the Public Safety Committee, Fort Bragg Police Department and City staff have received input from citizens and discussed various options for permitting cannabis businesses; and

WHEREAS, on November 21, 2019, the City Council of the City of Fort Bragg (“City Council”) adopted Ordinance 953-2019 which established rules and regulations by which cannabis businesses may be permitted; and

WHEREAS, on October 13, 2020, the City Council of the City of Fort Bragg (“City Council”) directed staff to develop regulations for commercial cannabis cultivation; and

WHEREAS, the Community Development Committee met on February 23, 2021 and March 23, 2021 to review recommended updates to the Municipal Code and Inland Land Use and Development Code to include cannabis cultivation and receive public input; and

WHEREAS, on May 3, 2021, the City Council received public input and directed staff to update the rules and regulations to streamline permitting under the Community Development Department and determined that specific regulations and requirements were necessary to allow the commercial cultivation of cannabis in the City of Fort Bragg; and

WHEREAS, on May 20, 2021, the City Council determined that additional regulations were necessary for conducting retail cannabis activities; and

WHEREAS, on September 27, 2021, the City Council placed a permitting moratorium on new cannabis businesses to provide time to amend City cannabis regulations for the Central Business District; and

WHEREAS, on October 25, 2021 and November 8, 2021, the City Council provided direction to staff regarding land use standards for retail cannabis, commercial cannabis cultivation, and cannabis microbusinesses; and

WHEREAS, on December 13, 2021, the City Council provided direction to staff on comprehensive updates to the City's cannabis regulations including Title 18 ("Inland Land Use and Development Code" of the City's Municipal Code; and determined that cannabis cultivation may impact City infrastructure and water availability; and

WHEREAS, a Negative Declaration and Initial Study was prepared and was circulated to the public on February 17, 2022.

WHEREAS, on February 28, 2022 the moratorium on cannabis businesses was renewed to allow for the completion of the aforementioned study; and

WHEREAS, on February 23, 2022, the Planning Commission held a duly noticed public hearing to make a recommendation regarding the adoption of the proposed amendments to Title 18 Inland Land Use and Development Code and continued the meeting to a date certain;

WHEREAS, on March 9, and March 23, 2022, the Planning Commission continued deliberations and made additional recommendation regarding proposed amendments to Title 18 Inland Land Use and Development Code and continued the meeting to a date certain;

WHEREAS, on March 23, 2022, the Planning Commission continued their deliberations and made the following recommendations to the City Council regarding the proposed amendments to Title 18 Inland Land Use and Development Code:

Chapter 18.22 – Use Tables

1. Require Minor Use Permit approval for cultivation and retail sales of Cannabis. The Minor Use Permit process would allow staff and/or the Planning Commission to set special conditions, ensure compliance with Chapter 18.42 use requirements, and allow the City to rescind a minor use permit if an applicant does not comply with special conditions. Sets a limitation on the number of cannabis businesses by resolution not to exceed 3 total in the Central Business District.

2. In Table 2-10 for industrial zoning districts, modified “Cannabis Retail – Delivery” to become “Cannabis Accessory – Retail, Retail-Delivery”.

Chapter 18.42.055 – Cannabis Cultivation

3. Insert appropriate section heading and text regarding applicability, definitions and standards so that the ordinance form matches the rest of the ILUDC.
4. Set various operation requirements for commercial cannabis cultivation, including deleting the requirement to log visitors which are not allowed in non-retail areas, as this creates an internal conflict in the ordinance. One cannot require logging of something which is not permitted.
5. Defined accessory cannabis uses for commercial cultivation to include Cannabis Retail Delivery and Cannabis Retail.

Chapter 18.42.057 – Cannabis Retail

6. Set various operation requirements for Cannabis Retail, including adding regulations regarding odor, hours, screening, etc.
7. Established location limitations for Cannabis Retail in order to minimize conflicts with uses that have a potential for incompatibility. Location limits include 1) Cannabis businesses cannot be located within 150 feet of a youth center, school, church and/or day care facility and 2) cannabis businesses are permitted only west of the center line of Franklin Street in all zoning districts.
8. Defined standards for cannabis accessory uses and require a MUP for the addition of such uses to an existing cannabis business.

Chapter 18.100

9. Defined multiple terms for Cannabis regulations.

WHEREAS, on March 23, 2022, the Planning Commission also established the following:

1. The proposed amendment is consistent with the General Plan and any applicable specific plan; and
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
3. The proposed amendment is internally consistent with other applicable provisions of this Development Code.

NOW, THEREFORE, the City of Fort Bragg Planning Commission, based on the entirety of the record before it, which includes without limitation, CEQA, Public Resources Code §21000, et seq. and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the Fort Bragg General Plan; the Fort Bragg Inland Land Use and Development Code; the draft ordinance, the draft code amendments; and public testimony submitted as part of the Planning Commission’s regular meetings of February 23, 2022, March 9, 2022 and March 23, 2022 and Planning Commission deliberations; the Planning Commission of the City of Fort Bragg hereby finds as follows:

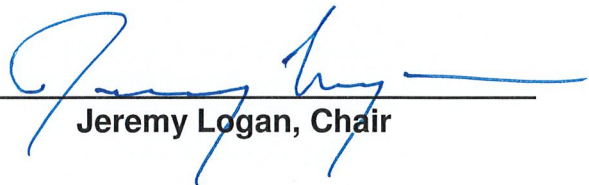
- a. The proposed amendment is consistent with the policies of the Inland General Plan.
- b. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

- c. The proposed amendment is internally consistent with other applicable provisions of this Development Code.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg Planning Commission does hereby recommend that City Council adopt Ordinance 979-2022, as modified.

The above and foregoing Resolution was introduced by Commissioner Roberts, seconded by Commissioner Rogers, and passed and adopted at a regular meeting of the Planning Commission of the City of Fort Bragg held on the 23rd day of March 2022, by the following vote:

- AYES:** Miklose, Roberts, Rogers, Logan
- NOES:** Andreis
- ABSENT:** None
- ABSTAIN:** None
- RECUSED:** None



Jeremy Logan, Chair

ATTEST:



Sarah Peters, Administrative Assistant