



AGENCY: City Council
MEETING DATE: March 28, 2022
DEPARTMENT: Community Development
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Planning Commission Resolution Recommending Adoption of Ordinance 979-2022 Amending Sections 18.22.30, 18.24.30, 18.42.055, 18.42.057, 18.42.059 and 18.100.020 of Title 18 (Inland Land Use and Development Code) of the Fort Bragg Municipal Code

ISSUE:

The Planning Commission and City Council have held many meetings over the past year to discuss and provide direction regarding new regulations for cannabis cultivation and retail cannabis sales. The Planning Commission and City Council have from time to time provided different recommendations to staff regarding specific aspects of the proposed ordinance especially as it relates to allowable locations for retail sale of cannabis and whether the use should be by right or require a Minor Use Permit. Additionally, permit requests for retail cannabis sales have resulted in hearings with significant public input and concern.

On March 9, 2022, the Planning Commission met and provided direction to staff to prepare a final draft of the ordinance, Inland Land Use and Development Code (ILUDC) amendments and to prepare a resolution from the Planning Commission transmitting its recommendations regarding the proposed ordinance to City Council.

On March 23, 2022, the Planning Commission met and adopted Planning Commission Resolution PC05-2022, recommending adoption of Ordinance 979-2022. This staff report summarizes the Planning Commission's recommendations and the rationale for those recommendations. (See Attachment 1 for Resolution PC05-2022, and Attachment 2 for Draft Ordinance 979-2022).

A Negative Declaration was prepared for the proposed ordinance and circulated for public review and is attached as Attachment 3.

ANALYSIS:

The proposed ILUDC amendment would establish land use regulations for commercial cannabis cultivation (cannabis cultivation) and includes modifications to existing regulations for retail cannabis regulations. As recommended by the Planning Commission, Chapters 18.22, 18.42, and 18.100 of the ILUDC have been revised for City Council's consideration as follows:

Chapter 18.22.30 and 18.24.30 – 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 (if appealed) to develop 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. (See Attachment 4, pages 1 & 2)
2. Set a limitation on the number of cannabis businesses by resolution not to exceed 3 total in the Central Business District.
3. In Table 2-10 for industrial zoning districts, modified “Cannabis Retail – Delivery” to become “Cannabis Accessory – Retail, Retail-Delivery.” Regulations and definitions for this accessory use are included in Chapters 4 and 10.

Chapter 18.42.055 – Cannabis Cultivation

4. Inserted appropriate section heading and text regarding applicability, definitions and standards so that the ordinance form matches the rest of the ILUDC. (See Attachment 4, top of pages 4, 5 & 6)
5. Set various operation requirements for commercial cannabis cultivation, including deleting the need for a log of visitors which would not be allowed in non-retail areas, as this creates an internal conflict in the ordinance. One cannot require logging of something which is not permitted. (Attachment 4, middle of page 4)
6. Defined accessory cannabis uses for commercial cultivation to include Cannabis Retail Delivery and Cannabis Retail. (Attachment 4, bottom of page 4)

Chapter 18.42.057 – Cannabis Retail

7. Set various operation requirements for Cannabis Retail, including adding regulations regarding odor, hours, screening, etc. (Attachment 4, middle of page 5)
8. 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. (Attachment 4, middle of page 2)
9. Defined standards for cannabis accessory uses and require a MUP for the addition of such uses to an existing cannabis business. (Attachment 4, bottom of page 5).

Chapter 18.100 - Definitions

10. Defined multiple terms for Cannabis regulations. New definitions include Cannabis Accessory Use and Craft Cannabis Manufacturing.

The Planning Commission is aware that City Council is seeking a more permissive ordinance than the one that they are recommending for adoption. Discussion was robust at the meeting and the Planning Commission was in near unanimous agreement with regard to their recommendation.

The Planning Commission provided the following concession for the City Council's consideration. The Planning Commission would be willing to forgo the request for a limit on the number of Minor Use Permits, if the City Council agrees with the limitation on location of new Retail Cannabis uses to west of Franklin Street.

It should be noted that a Minor Use Permit (MUP) provides the City with an important enforcement tool, which is the ability to require conformance with use standards found in section 18.42.057 and the ability to revoke the MUP if the facility does not comply with the standards and any special conditions unique to a specific property. It is more difficult to enforce use standards without requiring issuance of an MUP, as the only enforcement avenue would be code enforcement and the courts.

Please review Attachment 2 for a review of the proposed amendments in conformance with the Inland General Plan and ILUDC.

RECOMMENDED ACTION:

Direct staff to publish a Notice of Public Hearing for Introduction of Ordinance 979-2022 Amending Sections 18.22.30, 18.24.30, 18.42.055, 18.42.057, 18.42.059 and 18.100.020 of Title 18 (Inland Land Use and Development Code) of the Fort Bragg Municipal Code.

ALTERNATIVE ACTION(S):

Provide additional direction to staff regarding additional modifications to the proposed ordinance.

FISCAL IMPACT:

The proposed amendment will not have a significant impact on the City's budget as the cost to process Minor Use Permits is paid for by the applicant per the fee structure for Minor Use Permits. Additionally, as no special taxes are proposed for these businesses, the City may experience only a modest increase in sales taxes and TOT (via cannabis related increases in tourism) if the businesses are successful.

GREENHOUSE GAS EMISSIONS IMPACT:

The use of electricity for cultivation of cannabis both for commercial and retail cannabis uses has the potential to result in significant Green House Gas (GHG) emissions. However, the ordinance requires the purchase of 100% renewable electricity and/or onsite photovoltaics to meet all power needs for cultivation, the potential GHG impact is significantly reduced. Retail cannabis businesses that also engage in on-site cultivation will have a minor impact on GHG emissions because the ordinance provides for 100 SF maximum of on-site cultivation without requiring PV of 100% renewable energy.

CONSISTENCY:

The following provides a consistency analysis between the proposed ILUDC amendment and the General Plan and ILUDC.

GENERAL PLAN ANALYSIS

The proposed ordinance will allow Commercial Cannabis Cultivation in Inland industrial zoning districts. The Inland General Plan (IGP), defines the purpose of these zoning district as follows

Heavy Industrial (IH) This designation is intended for a range of heavy industrial uses including manufacturing, assembly and processing, and the storage and distribution of raw materials,

aggregate plants, and related heavy industrial uses which are generally incompatible with and require locations removed from residential and visitor serving uses.

Light Industrial (IL) This designation is intended for a variety of commercial, manufacturing, wholesale and distribution, and industrial uses which do not generate a significant amount of on-site customer traffic or high levels of noise, dust, odors, or other potential off-site nuisance characteristics. Manufacturing uses are permitted provided they occur within an enclosed structure. Other uses permitted in this designation include offices ancillary to permitted uses, agricultural product sales and services, construction yards, and automobile repair shops.

Cannabis Cultivation can be found to be consistent with these definitions, as crop production and cannabis manufacturing are already allowable uses in these districts. While Cannabis Cultivation is not spelled out in the General Plan purpose definitions for this zoning districts, it can be inferred by the uses that are allowed.

Likewise, the ILUDC provides the following purposes for the General Commercial, Central Business District and Highway Commercial zoning districts; respectively:

Central Business District (CBD) This designation applies to the core of the downtown which is the civic, cultural, and commercial center of the community. Uses and site development patterns in the Central Business District are typically pedestrian-oriented. This designation is intended to accommodate government and professional offices, retail stores, theaters, and other similar uses. Residential uses on upper floors or on the ground floor at the rear of buildings are encouraged at a density of up to 40 units per net acre.

General Commercial (CG) The General Commercial designation is intended for a less compact and intensive type of development than found in the Central Business District. Typical land uses in this designation depend more on vehicular than pedestrian access and include automotive and service-related outlets, retail sales, hardware, paint or carpeting sales, offices, apparel stores, and food stores. Shopping centers are allowed with approval of a conditional use permit. Residential uses are permitted above the ground floor or on the ground floor at the rear of buildings at a maximum density of up to 24 units per acre. Highway Visitor

Commercial (CH) This land use designation applies to land uses serving residents and visitors on sites which are located along Highway One and arterials at the entry points to the community. Typical uses allowed in this designation include motels and other lodging enterprises, restaurants, and retail outlets. Residential uses are permitted above the ground floor or on the ground floor at the rear of buildings at a maximum density of up to 24 units per acre.

Cannabis Retail and Cannabis Retail-Delivery can be found to be consistent with the purpose of these three zoning districts as both are retail uses, and the regulations as proposed would mitigate any potential impacts due to the nature of the products for sale.

As analyzed below, the proposed ordinance may be found to be consistent with the Inland General Plan as it does not conflict with any Policies in the Inland General Plan. In particular, the proposed ordinance is consistent with the following:

General Plan Consistency Analysis

Policy LU-1.1 Implementation of the Land Use Designations Map: Implement the Land Use Designations Map by approving development and conservation projects consistent with the land use designations and ensure consistency between the Inland General Plan and the Inland Land Use and Development Code.

CONSISTENT – commercial cannabis cultivation is less intensive than other allowed and conditionally allowable industrial uses including fish processing, agricultural processing, and light, medium, and heavy manufacturing. Only indoor commercial cannabis cultivation would be allowed which is similar to these activities and also similar to crop production which is a permitted use.

Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of the Central Business District (CBD).

CONSISTENT – the proposed ordinance would require a typical retail store front for Cannabis Retail uses in the CBD. Cannabis retail-Delivery would not be permitted in the CBD. Additionally, the maximum number of dispensaries in the Central Business District may be restricted by resolution to limit any potential inconsistencies which could result from over concentration.

Policy LU-4.3 Standards for Commercial Uses in Residential Areas: Commercial uses in and adjacent to residential areas shall not adversely affect the primarily residential character of the area.

CONSISTENT – All commercial buildings in commercial areas are allowed to have retail businesses. The proposed regulations would limit Cannabis Retail businesses to the area west of the Centerline of Franklin Street in order to limit potential conflicts with residential areas located within and close to the CBD, CG and Ch zoning districts.

Additionally, the proposed regulations would prohibit cannabis businesses within 150 feet of youth centers, churches, schools and day care facilities.

Land Use Goal LU-5 Policy LU-5.2 Industrial Land Use Standards: Require that industrial development avoid or minimize creating substantial pollution, noise, glare, dust, odor, or other significant adverse impacts.

CONSISTENT – the City’s existing codes, General Plan, and the environmental review process all protect against projects that would contribute to substantial pollution, noise, glare, dust, or other adverse impacts. Additionally, §18.42.055 Cannabis Cultivation provides protections for odor.

Policy PF-2.2 Program PF-2.2.5 Continue to encourage water conservation techniques and water conserving fixtures in all new development projects

CONSISTENT – Proposed Section 18.42.055(B)(3)(a) requires that commercial cannabis cultivations use the best available technologies for water systems and water recycling and encourages proposed projects to use alternate sources of water from the City’s potable water system.

Open Space Goal OS-7 Improve air quality

CONSISTENT –Cannabis cultivation is required to have odor control technology.

Policy S-2.5 Use of Local and Renewable Energy: Buildings and infrastructure that create and/or use locally and renewably generated energy are encouraged. Photovoltaic and wind energy systems are encouraged. The installation of solar panels or other clean energy power generation sources over parking areas is preferred

CONSISTENT – Proposed ILUDC §18.42.055(B)(3)(C) requires that electricity be exclusively provided by a renewable energy source.

Policy S-3.1 Reduce Water Use: Minimize the use of potable water in new and existing development.

CONSISTENT - Proposed ILUDC §18.42.055(B)(3)(a) requires that commercial cannabis cultivations use the best available technologies for water systems and water recycling and encourages proposed projects to use alternate sources of water from the City’s potable water system.

There are many additional Inland General Plan policies that would apply to future applications for permits. Specifically, the policies that regulate noise, odor, community design, and environmental impacts. Additionally, all future projects are discretionary as they require a Minor Use Permit and therefore would also require review under CEQA and licensing through the State’s Department of Cannabis Control.

ILUDC ANALYSIS

The proposed ordinance adds a new use to two Industrial zoning districts. In the ILUDC, the industrial zoning districts are defined as follows:

IL (Light Industrial) zoning district. The IL zoning district is applied to areas of the City that are appropriate for a variety of commercial, manufacturing, wholesale and distribution, and industrial uses that do not generate significant customer traffic or high levels of noise, dust, odors, or other potential off-site nuisance characteristics. Allowable manufacturing uses and activities must be entirely within enclosed structures. The maximum floor area ratio (FAR) is 0.40. The IL zoning district implements and is consistent with the IL land use designation of the General Plan.

IH (Heavy Industrial) zoning district. The IH zoning district is applied to areas of the City that are appropriate for a range of heavy industrial including manufacturing, assembly and processing, the storage and distribution of raw materials, aggregate plants, and related industrial uses that are generally compatible with and require locations removed from residential and visitor serving uses. The maximum floor area ratio (FAR) is 0.40. The IH zoning district implements and is consistent with the IH land use designation of the General Plan.

Commercial Cannabis Cultivation

Cannabis cultivation is consistent with other uses currently allowed in Table 2-10, Allowed Land Uses and Permit Requirements for Industrial Zoning. The following table shows the current permit requirements for some of the uses in the inland industrial zones:

Allowed Land Uses and Permit Requirements for Industrial Zoning

Land Use Type	Light Industrial Permit Requirements	Heavy Industrial Permit Requirements
Agricultural Product Processing	Conditional - Use Permit	Permitted Use
Brewery/Restaurant	Conditional - Use Permit	Conditional - Use Permit
Fish Processing	Permitted Use	Permitted Use
Manufacturing/Processing Light	Permitted Use	Permitted Use
Manufacturing/Processing Medium intensity	Conditional - Use Permit	Permitted Use

Manufacturing/Processing – Heavy	Not allowed	Conditional – Use Permit
Cannabis Cultivation	Conditional - MUP	Conditional - MUP

Indoor commercial cannabis cultivation is similar to other uses that are currently allowed uses in the industrial zoning districts. it would be compatible with other allowable uses in the industrial zoning districts because:

- Potential impacts of Commercial Cannabis Cultivation have been significantly mitigated with existing and proposed regulations for water, energy, and odor control in the Municipal Code and the Inland Land Use and Development Code.
- The proposed ordinances would only allow for indoor cultivation of cannabis in a fully enclosed and secured structure.
- Cannabis Cultivation would require a discretionary MUP and would undergo review to determine if the project would conflict with surrounding land uses.

Cannabis Retail

The existing ordinance section, §18.42.057, would be updated to address any potential use compatibility issues, with additional standards for operations (odor, hours, lighting, screening and on-site consumption) and additional requirements around location and accessory use. Taken together the proposed amendment will significantly reduce the potential for incompatibility between Cannabis Retail, Cannabis Retail-Delivery and other uses in the CBD, CG and CH zoning districts. The proposed amendments also require an MUP for both uses, which will allow staff, and if appealed, the Planning Commission, the opportunity to place additional special conditions on a specific proposed project, if warranted.

IMPLEMENTATION/TIMEFRAMES:

If the Ordinance is introduced on April 11, 2022 and adopted on April 25, 2022, it would become effective May 25, 2022. Based on Council direction regarding the contents of the ordinance, additional CEQA review may be necessary which could impact this timeframe.

ATTACHMENTS:

1. 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
2. Ordinance 979-2022 amending Sections 18.22.30, 18.24.30, 18.42.055, 18.42.057, 18.42.059 and 18.100.020 of Title 18 (Inland Land Use and Development Code) of the Fort Bragg Municipal Code
3. Negative Declaration for ILUDC Amendment 1-22 Regulating Commercial Cannabis Cultivation and Amending Existing Regulations for Cannabis Businesses in Commercial Zones
4. Track Changes of Ordinance Language

NOTIFICATION:

1. Cannabis Legislation Notify Me Subscribers
2. Fort Bragg Downtown Businesses Notify Me Subscribers