AGENCY:	**City Council**
MEETING DATE:	**June 24, 2019**
DEPARTMENT:	**Public Works**
PRESENTED BY:	**Scott Perkins**
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AGENDA ITEM SUMMARY

TITLE:
Receive Report and Provide Direction to Staff Regarding the Possible Introduction of a Commercial Cannabis Cultivation Ordinance

ISSUE:

State Policy
Since the passage of the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016), the State of California, through its Bureau of Cannabis Control, has been developing the laws, regulations and licensing requirements for cannabis businesses. On January 16, 2019, the California Office of Administrative Law (OAL) approved the Bureau of Cannabis Control's revised cannabis regulations.

Council Direction
The City Council adopted a Cannabis Manufacturing ordinance in early 2017, and has since directed staff to develop an ordinance to permit other cannabis businesses in the City (excluding commercial cultivators). On June 26, 2019, the Planning Commission will review a draft ordinance regulating cannabis retail businesses, distributors and testing facilities, and will make a recommendation to Council on an ordinance to adopt. The Council has yet to determine whether or not to permit commercial cannabis cultivation in the City.

On January 8, 2018, the City Council provided direction on a host of cannabis business types, including cultivation. Council discussed the potential impacts of cultivation on city infrastructure, specifically water resources, and directed staff to research the feasibility of permitting commercial cannabis cultivators in the industrial zoning districts north of Pudding Creek. Council identified this location as potentially suitable for cultivation uses since it provides industrially-zoned parcels large enough to accommodate these activities. In order to determine the ultimate impact of a cultivation operation on the north end of town, staff utilized the City's water model to analyze the water supply and water delivery considerations for development north of Pudding Creek. This report explains the outcome of this analysis so that Council can direct staff to either develop a cannabis cultivation ordinance or continue prohibiting the activity in the City.

RootOne Botanicals Application
RootOne Botanicals (R1B) is a local enterprise that holds a Use Permit for a cannabis manufacturing business in town. Presently, R1B has a building permit application in review with the Building Department, and intends to begin operating in the coming months. R1B submitted an application to the City to amend the zoning code to allow commercial cultivation. A copy of the R1B request is included as **Attachment 1**. As stated in the request, R1B proposes to construct and operate a commercial cannabis business north of Pudding Creek that includes cultivation, manufacturing and distribution activities. The request also includes an amendment to the maximum allowable floor area ratio in the industrial zoning districts, which is discussed later in this report.

ANALYSIS:

Presently, the City does not allow commercial cannabis cultivation. In order to permit cannabis cultivation, the City Council would have to direct staff to revise the Municipal Code and Zoning Code to allow the land use and provide standards for their approval (i.e. require a Use Permit and prescribe standards for Use Permit approval). If Council gives direction for staff to develop an ordinance allowing and regulating cannabis cultivation, staff would begin this process. Revision of the Municipal Code and Zoning Code requires: 1) CEQA evaluation of the amendment; 2) Planning Commission review and recommendation to City Council; 3) Review and introduction of the ordinance by City Council; 4) Adoption of the ordinance by City Council; and 4) An effective date 30 days after adoption of the ordinance. The following analysis is provided for Council to determine if allowing commercial cultivation in the City is feasible and desirable.

Water

There is currently no water or sewer service provided north of Airport Road. Depending on the location and nature of future development, upgrades to or extensions of the water and sewer system may be required to establish new businesses north of Pudding Creek.

City ordinances allow the use of groundwater (wells) for agricultural and industrial uses:

> 14.04.127 WELLS FOR NONDOMESTIC USE. Wells for landscaping, irrigation or industrial purposes shall be allowed on any City lot. Such well shall meet the City's backflow preventive standards and shall be used for no other purpose but supporting the irrigation system or industrial use.

The existing policy would permit commercial cannabis cultivators to use groundwater (wells) for irrigation and industrial purposes. The policy was developed to avoid using costly, treated City water for purposes where it is not necessary. Wells are permitted and regulated through the Mendocino County Department of Environmental Health, with City opportunity to review applications and comment. City policy, however, does not currently allow groundwater to be used for offices, restrooms and other domestic needs—the City instead requires connection to municipal water for these domestic activities. In order to establish future cannabis businesses (or any new use), a connection to the City's municipal water supply would be required for the business's domestic needs. Based on the discussion below and use of the water model, the City has the water supply necessary to serve future connections; however, the sizing of existing infrastructure around and north of Pudding Creek makes it complicated to achieve the pressure required for "fire flow" for future land uses.

Water: Supply

City staff has worked to fine tune and improve the water supply model developed in 2014 by engineers Lawrence and Associates. The results of the water model were discussed in depth with the Planning Commission and City Council over the last month. In summary, using data from 1973 through the drought of 2015, and with consideration of the City's existing water source capabilities and water storage infrastructure, the model indicates that the City can manage total community growth of approximately 74.8% while maintaining 5 million gallons (MG) in storage, as long as conservation methods similar to those during the drought of 2015 are implemented. If we use the demand from 2018 as a representation of non-conservation demand, the accommodated total growth drops to 56.5%.

Future commercial cannabis cultivation uses in the City would likely rely on groundwater for irrigation purposes, and utilize treated City water for domestic uses (bathrooms, offices, etc.). Under this scenario, the quantity of City water required for cultivation activities would be relatively low and

comparable to other low-impact land uses in the City. Provided commercial cultivators have access to groundwater, and given the outcomes of the City's water model predictions, there would be adequate water supply to serve future commercial cultivation uses. If the City Council directs staff to develop an ordinance to allow commercial cultivation in the City, the Council could consider requiring future cultivation businesses to use only non-City water sources for irrigation activities (as allowed by Municipal Code Section 14.04.127 above), limiting the overall impact these uses would have on City water supply.

Water: Delivery

As required by Municipal Code Section 14.04.127 above, any future commercial cultivation project would need to connect to the City's municipal water system for domestic uses. The complexity and cost of the connection would depend on the proposed location of the project—projects north of Airport Road would have to extend the water system to reach the property being developed. In addition to simply connecting to the system, improvements to the existing infrastructure would be required to meet water pressure requirements for fire flows. The size of the existing water mains and the lack of a "loop" system on the north end of town limits the pressure in the water distribution system north of Pudding Creek. Tapping into or extending the water main that presently terminates at Airport Road to serve future land uses further north would fail to meet the minimum pressures required for fire suppression.

Existing water pressure drops from about 1,250 gallons per minute (gpm), measured at the hydrant just north of Pudding Creek, to about 630 gpm at the last fire hydrant, just north of Airport Road. In order to provide future land uses with adequate fire suppression, flows should generally be at least 1,500 gpm. Future commercial cultivation businesses north of Pudding Creek would have to consider the following approaches to meet the fire flow pressure requirements, in addition to extending the water line to their proposed project.

1. *Upgrade and Expand Infrastructure*

The existing infrastructure delivering water to the north end of town is shown in **Attachment 2**, and ends at Airport Road. In order to achieve water pressure of 1,500 gpm to meet fire flow requirements for new development, the following improvements are necessary for the water delivery system:

- Relocate the existing 10-inch main currently on the Pudding Creek Dam to the Pudding Creek Bridge on Main Street, at an estimated cost of $1,500,000. Caltrans is including permitting and environmental review for the water line's relocation as part of their future bridge-widening project, but funding for the relocation has yet to be identified.
- Upsize the existing 6-inch water main from the Pudding Creek bridge to the Beachcomber Hotel's southern boundary to a 10-inch water line (±1,500 feet at an estimated cost of $500,000).
- Upsize the existing 8-inch water main from the Beachcomber Hotel's southern boundary to Caltrans yard north boundary to a 10-inch water line (±1,700 feet at an estimated cost of $550,000). This improvement would depend on specific needs for development.
- Extend a new 8-inch water main beyond the existing line's termination to a future proposed development. The estimated cost to extend the main to the north end of the City Limits is $750,000.
- Looping the water system will probably be necessary to fully achieve recommended flows and to eliminate chlorine residuals at the end of the line. This would involve extending the existing 8-inch water main that terminates in Glass Beach Drive across the Pudding Creek

Trestle and along the Haul Road to tie back into the main located in Main Street, in the vicinity of the proposed Avalon Hotel (1201 N Main).

Expanding and extending water lines in the Main Street right-of-way would require environmental review and permitting. Required permits would include a Coastal Development Permit, since the Coastal Zone boundary is the east side of the Main Street right-of-way. Very rough estimates of the costs to upgrade the existing facilities is approximately $2.5 million (this does not include the cost of looping the system).The results of environmental studies and the mitigation required for any unknown impacts could greatly alter this estimate.

Increasing the size of the existing water lines and extending the main to the parcel of future development should provide adequate pressure to fight fires; however, having a “dead end” line is not preferable, as water in the system can lose the required levels of chlorine that keep the water potable if not circulated through a loop. Constructing a parallel water line down the Haul Road to create a loop would be the best scenario for water delivery on the north end of town. Costs for development of this type of system would be substantial.

The full extent of system improvements and extensions would depend on the ultimate location of a proposed cannabis cultivation facility.

2. *Provide Onsite Water for Fire Suppression*

A second approach for future development to achieve the water pressure necessary for fire suppression is to provide onsite storage tanks to gravity-feed water in the event of a fire. It would be incumbent on the applicant to design a water storage system that could be dedicated for fire suppression and supplies adequate pressure. Not all development sites could necessarily accommodate a fire suppression system of this nature.

Wastewater
The City’s wastewater system presently ends at approximately Airport Road. Unless an exemption is made by the Public Works Director due to special or unusual circumstances (14.08.050), the Municipal Code prohibits the creation of a new septic system in the City of Fort Bragg (14.16.030). As a result, projects north of the existing system would need to extend the sewer main to their property to receive wastewater services unless a septic or private sewer currently exists on the site (14.16.050). This scenario applies to potential cannabis cultivation projects, and all other future development on the north end of town. The further a project site is from the end of the existing sewer main, the greater the cost required to extend service.

Other Considerations
If Council directs staff to draft an ordinance for Planning Commission and Council review, staff seeks Council input on the following considerations.

<u>Project Design</u>
Most cities that allow commercial cultivation place restrictions on the appearance of these facilities. The Inland Land Use and Development Code (ILUDC) requires any nonresidential development projects more than 250 square feet in size to apply for a Design Review permit that is reviewed by the Planning Commission. In order to approve a Design Review permit, the Planning Commission must find that the project:

1. Provides design, massing and scale appropriate to and compatible with the site surroundings and the community;

2. Provides attractive and desirable site layout and design, including building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting signs, etc.;
3. Provides efficient and safe public access, circulation, and parking;
4. Provides appropriate open space and landscaping; and
5. Is compliant and consistent with the City's Design Guidelines.

A permissive cultivation ordinance would rely solely on the Design Review process to ensure the appropriate design of these projects. Alternatively, the Council could direct staff to incorporate additional language into a cultivation ordinance to place certain requirements on the design of these projects. Examples include:

1. Prohibition of outdoor commercial cultivation which may or may not include a prohibition on retractable roofs;
2. Require that plants not be visible from a public or private road, sidewalk, park or any common public viewing area;
3. Require exterior walls of a cultivation facility to be fully opaque, perpendicular to the ground and constructed with materials consistent with other types of industrial development (i.e. no hoop houses, glass walls, etc.); and
4. Any other design considerations Council recommends.

If a cultivation business were to move into an existing structure, a Design Review permit would not be required unless additions/improvements to the structure trigger permit review. Adding specific requirements for project design, such as the ones listed above, would be applicable to cultivators moving into existing structures. This could require improvements to the structure if it does not presently meet the design requirements required for cultivation uses.

Operating Requirements

Should cultivation businesses be made allowable in the City, the Council could consider policies regulating the operation of these uses. Examples include:

1. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife;
2. Requirements that the operation meets or exceeds minimum legal standards for drainage and runoff;
3. Require review of the operation's use of water, including the water source, irrigation plan and projected water use—limitations could be made on the maximum amount of municipal water used for the business to ensure that municipal water is only used for domestic purposes;
4. Submission of a plan to address odor and other public nuisances that may derive from the cultivation facility.

Based on trends in the cannabis industry, it is likely that cultivators would want to combine cultivation activities with other aspects of the supply chain. Staff recommends that if cultivation is allowable on the north end of town, to likewise allow cannabis manufacturing and distribution as part of a future facility, since these land uses are already allowable in the industrial districts.

Location

Previous Council direction indicated that these businesses may be best suited north of Pudding Creek and in industrial zoning districts, and requested an analysis of infrastructure to determine if these uses are appropriate. If Council chooses to allow cultivation uses in this location, staff would develop an ordinance allowing cultivation in this area with Use Permit approval. Alternatively, Council

could choose to allow cultivation in other zoning districts, or in conjunction with other cannabis businesses (i.e. accessory to retail as part of a micro-business).

Application Review

If Council directs staff to draft an ordinance to allow commercial cannabis cultivation, an ordinance could utilize the policies for other cannabis business types presently on the Planning Commission's July 10 agenda for cultivation businesses. These include policies that regulate odor, security, background checks, etc.

Floor Area Ratio

RootOne Botanicals obtained a Use Permit to construct a cannabis manufacturing facility on North Franklin Street in the Heavy Industrial (IH) zoning district. During their design and development of the site, the ILUDC requirement that the Floor Area Ratio (FAR) in the industrial zoning districts be less than 0.40 became problematic. The applicants were able to refine their project to meet the requirement, but the difficulty meeting the regulation sparked a conversation between the applicant and staff about the appropriateness of the policy.

The ILUDC defines FAR as follows:

> Floor Area Ratio. The floor area ratio (FAR) is the ratio of floor area to total lot area. FAR restrictions are used to limit the maximum floor area allowed on a site (including all structures on the site). The maximum floor area of all structures (measured from exterior wall to exterior wall) permitted on a site (excluding carports) shall be determined by multiplying the floor area ratio (FAR) by the total net area of the site (FAR x net site area = maximum allowable floor area).

As the definition dictates, FAR considers only structures on the parcel and excludes driveways or other site improvements. Each story for multi-level buildings counts separately toward FAR. The image in **Attachment 3** gives an explanation of FAR.

With a maximum allowable FAR of 0.40 in the industrial districts, single-story structures may only occupy a maximum of 40% of the site, leaving the remaining 60% for parking, setbacks, open space, etc. A two-story structure may only occupy 20% of the site, leaving 80% available for other purposes. The first table in **Attachment 4** lists the parcels in the industrial zoning districts of the ILUDC, their approximate size, square footage of existing development, and the existing FAR on site.

All of the industrial properties north of Pudding Creek conform to the 0.40 FAR requirements, due in part to the relatively large size of the parcels. In the Franklin Street corridor of the industrial zoning district (from the train tracks to Manzanita Street), 8 of the 22 parcels have FARs greater than the maximum allowed, and 14 have FARs less than the maximum allowed. The average FAR in the North Franklin Street industrial corridor is presently 0.34. At 0.34, these parcels are developed within 85% of the maximum FAR, and it is reasonable to assume that if the maximum FAR were higher, some of these properties may have developed to a greater degree. It's also possible that development on some of these parcels would consider expansion if the FAR would allow it. Since the City has a limited number of industrially-zoned parcels, increasing the FAR would allow more efficient use of the industrial districts by allowing more development in less space.

The second table in **Attachment 5** compares Fort Bragg's industrial FAR requirements with those of other nearby jurisdictions. Of the ten jurisdictions sampled, Fort Bragg has the most restrictive FAR requirement. In fact, the majority of the industrial districts in nearby jurisdictions have no maximum limit on FAR (or lot coverage).

Increasing the maximum FAR allowance in the industrial districts is unlikely to have a dramatic consequence on physical development. FAR is intended to restrict the size of structures that can be built on a given parcel, but other constraints such as height limits, parking, solid waste storage, access, setbacks, easements and stormwater improvements already constrain the size of structures that can be built. Even if the FAR were 1.0, the other various requirements in the zoning code would make lot line-to-lot line development impossible, and an FAR of 1.0 is unlikely to be realistically achieved.

In Fort Bragg's Low Density Residential district, the maximum lot coverage[1] is 40%, but applicants can increase their lot coverage to 50% with a Minor Use Permit and submission of a drainage plan. Staff recommends a similar scenario for FAR in industrial districts, where a new maximum FAR is established more consistent with neighboring jurisdictions, and projects requesting an FAR beyond that maximum may do so with Minor Use Permit approval.

Staff is seeking direction regarding FAR requirements for industrial zoning districts, in response to the amendment request by RootOne Botanicals.

RECOMMENDED ACTION:

Staff recommends Council provide direction on the following topics:

1. Should the City develop an ordinance to allow commercial cannabis cultivation? If yes:
    a. Should use of municipal water be allowed for irrigation purposes?
    b. What policies should an ordinance include on project design?
    c. Are there restrictions to how the cultivation activity could operate?
    d. Should cultivators be subject to additional application requirements, beyond other cannabis businesses?

2. Should the ILUDC be amended to allow greater FAR in industrial zoning districts with Minor Use Permit approval?

ALTERNATIVE ACTION(S):

Council could provide direction not to allow commercial cannabis cultivation, or provide direction to allow the land use in a different manner than previously discussed (i.e., other zoning districts and/or areas of town).

FISCAL IMPACT:

Allowing cannabis cultivation could promote business growth for the City.

CONSISTENCY:

Commercial cannabis cultivation is presently not allowed in the City limits. Providing direction to develop an ordinance would create a framework for future cultivation businesses to be consistent with City code.

[1] Lot coverage is distinct from FAR in that it includes all impervious surfaces (pavement, carports, etc.) and not just buildings, and does not consider the number of stories a building has.

IMPLEMENTATION/TIMEFRAMES:

Implementation would depend on Council direction. If Council directs staff to develop an ordinance and feels comfortable that questions and concerns are adequately addressed, staff would develop an ordinance and perform CEQA review, then present the draft ordinance at a Planning Commission public hearing. The Planning Commission would work with staff to develop an ordinance that they would recommend for Council adoption.

Alternatively, Council could request more information about the topic and workshop a future ordinance prior to Planning Commission review.

ATTACHMENTS:

1. RootOne Request
2. Existing Water System
3. FAR Explained
4. Existing FAR
5. FAR Comparison

NOTIFICATION:

1. Cannabis Legislation Notify Me Subscriber List
2. Jon McColley, RootOne Botanicals