



AGENCY: City Council
MEETING DATE: September 27, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of Urgency Ordinance No. 972-2021 Placing a 45-Day Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area

ISSUE:

On January 25, 2021, the City Council conducted a public hearing and considered the appeal of the Planning Commission's denial of Minor Use Permit 4-20 (MUP 4-20) on the proposed Sunshine Holistic Cannabis Microbusiness at 144 N. Franklin Street. Because a majority of the Councilmembers presiding over the appeal were unable to reach consensus, the Council failed to take action to either uphold the Planning Commission's denial of MUP 4-20 or to overturn the denial and approve MUP 4-20 as requested by the appeal.

On September 1, 2021, the City Council conducted a public hearing and considered the appeal of the Planning Commission's denial of MUP 1-21 on the proposed Sunshine Holistic Cannabis Dispensary at 144 N. Franklin Street. Similar to the January hearing, the City Council failed to take action on the matter because a majority consensus was not reached and the Planning Commission denial of the MUP stood.

During the Administrative, Planning Commission, and the City Council public hearings, Commissioners, Councilmembers and members of the public raised issues regarding residential uses near the proposed cannabis businesses. The Planning Commission found that the proposed cannabis dispensary for MUP 1-21 was incompatible with the mixed-use neighborhood and therefore was not compatible with the existing or future land uses. Two Councilmembers made similar comments during the deliberations on the appeal on September 1, 2021.

During the appeal proceedings and other discussions about cannabis regulation in the City, Councilmembers raised the issue of whether a maximum number of cannabis dispensaries should be revisited. The concern appears to stem from public comments on whether an overconcentration of cannabis dispensaries could result from the lack of regulation on the number allowed in the Central Business District (CBD) or the lack of regulation on proximity to other cannabis dispensaries.

Additionally, the proximity to a potential "youth center" at the City Hall Gymnasium at 213 East Laurel Street was raised during the September 1, 2021 proceedings. As the dispensary regulations are currently written, this is an unaddressed issue. The Planning Commission's recommendation on August 28, 2019 to the City Council on the ordinance allowing and regulating cannabis dispensaries struck any reference to sensitive uses such as schools, day care centers, or youth centers. There was an indication that the minor use permit

process would provide a case-by-case evaluation of a dispensary's proximity to a youth center, although youth center was not defined. Instead of removing a buffer, this action resulted in the ordinance adopted by the City Council defaulting to the state requirement for a 600-foot buffer between schools, day care centers, or youth centers, as measured from parcel line to parcel line.

The concerns with residential uses in close proximity to cannabis uses, concerns with possible future overconcentration of cannabis dispensaries, and the lack of a definition for "youth center" to clearly establish when the 600-foot buffer would apply raises considerations for protecting the public health, safety, and welfare. Staff is recommending that the City Council consider initiating a review of the City's existing Cannabis Business Regulations and allowable land uses to ensure consistency with the intent of City Council and public health, safety and welfare.

To protect the public health, safety, and welfare, while a review is conducted and potential revisions made to the City's existing cannabis ordinance, staff is recommending that the City Council issue a 45-day moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning District.

ANALYSIS:

Urgency Ordinances

Under [California Government Code Section 65858](#), a city or county may adopt an interim ordinance to temporarily prohibit certain land uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the City Council and/or Planning Commission is considering or studying. The temporary prohibition or moratorium provides municipalities time to study the impact of certain activities and develop appropriate regulations, if deemed necessary.

An urgency ordinance can be passed without advance notice to the public and is effective immediately for up to 45-days but must be approved by a four-fifths vote of the legislative body. The urgency ordinance may be extended for a total period of two years as set forth in the IMPLEMENTATION/TIMEFRAMES section of this report. Any extension of the moratorium must also be approved by a four-fifths vote of City Council.

Current Application for Cannabis Dispensary in the CBD

The City has received a completed application for a cannabis dispensary located at 362 N. Franklin Street, also known as the "old Sears building." This location is across the street from the City Hall Gymnasium at 213 East Laurel Street. Whether or not the City Hall Gymnasium is a "youth center" has not been determined but a review of the rented use of that facility in 2019 indicates that 79% of the rental use was for youth-oriented activities. If you look at the whole facility including City Hall, the youth-oriented activities account for only an estimated 19% of the activities in the building.

A review of the August 28, 2019 Planning Commission meeting indicates that the intention in eliminating the reference to "sensitive uses" and more specifically the "youth center" was to eliminate the 600-foot buffer requirement and instead rely on the case-by-case review of

each minor use permit application. While a use permit is arguably the most effective way to determine if uses are incompatible, it may lead to a more expensive and lengthy process for the applicant as demonstrated in the Sunshine Holistic appeals. Defining the buffer that the City Council would like to apply, further defining “youth center,” and more specifically the City Hall Gymnasium, would make it more predictable for potential permit applicants. This is potentially more “business friendly” than the more unpredictable case-by-case approach, especially since a Minor Use Permit does not get a hearing unless requested and thus may slip through the public process. The ability to inform an applicant prior to a public hearing that the proposed business will not be allowed is certainly preferred by staff and the applicant.

Proposed Ordinance

Similar to the Moratorium on Formula Businesses in the Inland Zoning Area, the proposed ordinance would place a hold on the approval of any cannabis dispensary in the Inland Zoning Area. This would allow staff and the City Council to study and consider updates to the existing Cannabis Business Regulations to:

- resolve potential conflicts with residential uses;
- define what constitutes a “youth center” and if a buffer of more or less than 600 feet is appropriate for Fort Bragg;
- clarify cannabis microbusinesses;
- resolve concerns about overconcentration of cannabis dispensaries in the CBD (a limit on the number allowed or a required buffer between dispensaries); and
- consider whether cannabis dispensaries should be limited in where they are allowed in the CBD or any other district where allowed.

Although not included in Cannabis Business Regulations, the City Council could also revisit whether or not to propose a tax on cannabis businesses to the City’s voters.

In researching this potential Council action, it became apparent that a number of California cities have passed cannabis ordinances allowing businesses and then revisited those ordinances to refine the regulations after more information is gained on the actual impacts or lack of impacts from cannabis businesses.

POSSIBLE ACTION(S):

1. City Council, upon four-fifths vote, may waive the reading and adopt by title only an Urgency Ordinance of the City of Fort Bragg placing a temporary moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning Area.
2. Do not adopt an Urgency Ordinance of the City of Fort Bragg placing a temporary moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning Area.
3. Provide staff a proposed definition of “youth center” and/or in the alternative, provide staff direction on an alternative to the 600-foot buffer required by state law.
4. Provide staff alternative direction.

FISCAL IMPACT:

The impact of the 45-day temporary moratorium on cannabis dispensaries to the City's revenue is likely minimal.

GREENHOUSE GAS EMISSIONS IMPACT:

N/A

CONSISTENCY:

The City's current Inland General Plan provides support for regulating cannabis businesses. The current purpose statement from Element 6 of the Inland General Plan:

A. Purpose

The Community Design Element establishes goals, policies, and programs to preserve and enhance Fort Bragg's authentic, small town character. The community is defined in part by its isolated location on the magnificent coastline of Mendocino County. Its sense of place derives from its heritage as a regional center for the timber and fishing industries. As the economy evolves to a more tourism and service-based economy, the community has acknowledged the importance of maintaining the historic identity of downtown and the integrity of the residential neighborhoods, while enhancing views and access to the coastline and planning for continued growth and development.

The Community Design Element is concerned primarily with the visual quality of the City, or what residents and visitors see. The City's appearance is essential to the quality of life in Fort Bragg. Visual quality and amenities go hand-in-hand with long-term economic development strategies, and strengthen the stability and desirability of the community. To be attractive to residents, visitors, and businesses, the City must be concerned about its appearance, physical character, and livability. Existing residential real estate values and the desirability of businesses that depend on tourism are closely tied to the visual character of the community.

Policies and Goals from the City's General Plan include:

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

Policy LU-3.2 Mixed Uses: Support mixed use development (i.e., a combination of residential and commercial uses) in the Central Business District that does not conflict with the primary retail function of this area.

Policy LU-3.4 Encourage Infill Development: Encourage infill development of vacant and underdeveloped land in the Central Business District and adjacent commercial areas before amending the Inland General Plan and rezoning to obtain additional commercial land elsewhere.

Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more

complete utilization of buildings in the Central Business District and other commercial districts.

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.*

Goal C-5 *Regard the quality of life in Fort Bragg and maintaining community identity as more important than accommodating through-traffic.*

Policy C-5.1 Community Priorities for Transportation Improvements: *Place a higher priority on maintaining a sense of place and enhancing the attractiveness of the Central Business District than on efficient traffic flow and movement.*

Policy CD-2.1 Adaptive Reuse: *Facilitate the adaptive reuse of existing older buildings in the Central Business District.*

Policy CD-2.2 Pedestrian Activity: *Encourage increased pedestrian movement and activity in the Central Business District.*

Policy CD-2.3 Economic Vitality: *Continue to support the economic diversity and vitality of downtown businesses.*

Policy CD-2.5 Strengthen the Distinctive Identity of the Central Business District: *Strengthen the distinctive identity and unique sense of place of the Central Business District.*

Policy CD-6.1 Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

IMPLEMENTATION/TIMEFRAMES:

An urgency ordinance may remain in effect for only 45 days, unless it is extended by another four-fifths vote. Ten days prior to the expiration of the urgency ordinance or any extension, City Council will need to issue a written report describing the measure taken to alleviate the condition that led to the adoption. After notice and a hearing, a local government can extend the ordinance for either ten months and 15 days, with the option to extend it once more for an additional one-year, or once for 22 months and 15 days. Either option equates to an extension of up to two years and requires the four-fifths vote. The legislative body may rescind the urgency ordinance prior to its stated termination.

ATTACHMENTS:

1. Proposed Ordinance

NOTIFICATION:

1. Economic Development Planning, **Notify Me subscriber list**
2. Cannabis Legislation, **Notify Me subscriber list**

3. Hrant Ekmekjian
4. Danny Schultz
5. Brandy Moulton
6. Brittany Biesterfeld
7. Chelsea Haskins