



AGENCY: City Council
MEETING DATE: October 15, 2019
DEPARTMENT: Public Works
PRESENTED BY: S. Perkins
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AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing, Receive Planning Commission Recommendation, Consider Adoption of City Council Resolution Adopting a Negative Declaration for Inland Land Use and Development Code Amendment 1-19, and Consider Introducing by Title Only and Waiving the First Reading of Ordinance 952-2019 Amending Article 2 (Zoning Districts and Allowable Land Uses), Article 4 (Standards for Specific Land Uses), and Article 10 (Definitions) of Title 18 (Inland Land Use and Development Code) of the Fort Bragg Municipal Code Relating to Cannabis Regulations

ISSUE:

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.

The City of Fort Bragg adopted Ordinance 928-2017 in early 2017 regulating cannabis manufacturing uses following passage of the AUMA. Ordinance 928-2017 was applied and paid for by an applicant seeking to establish a cannabis manufacturing business in the City. Subsequently, the City has not updated its retail (dispensary) or cultivation ordinances, which were adopted prior to recreational legalization in California. On February 12, 2018, the City Council provided direction to staff to revise the City's dispensary regulations. At the time of Council direction, state policy had not settled whether or not cannabis businesses may hold multiple license types to participate at multiple points of the supply chain. The state's policy framework has shifted to allow more flexibility in license types, per the newly-approved Bureau of Cannabis Control's cannabis regulations. The state also made other minor changes to their regulations for the Council to consider—specifically the allowance of cannabis businesses near schools and other sensitive uses with local approval.

At numerous Council and Council Committee meetings, staff received direction to draft an amendment to the Municipal Code to permit and regulate cannabis businesses. At their August 28, 2019 meeting, the Planning Commission reviewed a draft ordinance amendment that would provide the framework to permit cannabis businesses, and provided a recommendation to Council to adopt the ordinance. This report discusses the amendment to the Inland Land Use and Development Code (ILUDC), and covers the zoning requirements and permitting. A separate report discusses a companion amendment to Chapter 9.30 of the Municipal Code, which covers application requirements, application processing, and other cannabis business policies.

ANALYSIS:

This amendment to the Municipal Code involves changes to Title 18, the Inland Land Use and Development Code (ILUDC). Proposed Sections 18.42.057 and 18.42.059 would apply to retail cannabis businesses (dispensaries) and delivery-only cannabis retail businesses (respectively), and changes are proposed to the land use tables of ILUDC Article 2 to specify where retail cannabis businesses are allowable with discretionary permits. The land use tables in Article 2 would also be amended to remove cannabis manufacturing as a use type. Instead, cannabis manufacturing uses will be regulated under the existing policies for manufacturing/processing use types. Changes are proposed to the definitions in Article 10, and the specific use regulations for cannabis manufacturing in Article 4 would be rescinded. A table summarizing the proposed amendments is below:

| Ordinance Amendments for Cannabis Businesses | |
|---|--|
| Code Section | Proposed Change(s) |
| Chapter 18.22 | <ul style="list-style-type: none">▪ Revise Commercial Land Use Table 2-6 to include Cannabis Retail as a land use, and indicate its allowance in the CBD, CG and CH districts with Minor Use Permit approval and subject to the Specific Use Regulations in Chapter 18.42.057 and Chapter 9.30.▪ Revise Commercial Land Use Table 2-6 to include Cannabis Retail – Delivery Only as a land use, and indicate its allowance in CG and CH districts with Minor Use Permit approval and subject to the Specific Use Regulations in Chapter 18.42.059 and Chapter 9.30. |
| Chapter 18.24 | <ul style="list-style-type: none">▪ Revise Industrial Land Use Table 2-10 to remove Manufacturing/Processing – Cannabis as a land use type.▪ Revise Industrial Land Use Table 2-10 to include Cannabis Retail – Delivery Only as a land use, and indicate its allowance in IH and IL districts with Minor Use Permit approval, subject to the Specific Use Regulations in Chapter 18.42.059 and Chapter 9.30, and add a footnote indicating the use is only allowable as accessory to an approved cannabis business engaged in manufacturing, distribution and/or processing. |
| Chapter 18.42 | <ul style="list-style-type: none">▪ Add Section 18.42.057 – Cannabis Retail to provide Specific Use Regulations for retail cannabis uses.▪ Add Section 18.42.059 – Cannabis Retail – Delivery Only to provide Specific Use Regulations for delivery only retail cannabis uses.▪ Rescind Section 18.42.055 – Cannabis, Manufacturing. |

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| Chapter 18.100 | <ul style="list-style-type: none"> ▪ Revise definition of Cannabis Dispensary to Cannabis Retail. ▪ Add definition of Cannabis Retail – Delivery Only. ▪ Rescind definition of Cannabis Manufacturing. ▪ Revise definitions of Wholesaling and Distribution, Manufacturing-Heavy, -Medium, and -Light to include industrial cannabis uses. |
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The following table summarizes the Planning Commission’s recommendation for cannabis business activities, and where they may be located as primary uses per the draft ordinance:

| Primary Use | CBD | CG | CH | CN | IL | IH | Coastal ⁵ |
|----------------------------------|------------------|------------------|------------------|----|-------------------|-------------------|----------------------|
| Retail – Storefront only | MUP ¹ | MUP ¹ | MUP ¹ | -- | -- | -- | -- |
| Retail – Delivery only | -- | MUP ¹ | MUP ¹ | -- | MUP ² | MUP ² | -- |
| Retail – Delivery and Storefront | MUP ¹ | MUP ¹ | MUP ¹ | -- | -- | -- | -- |
| Manufacturing/Processing | -- | -- | -- | -- | P/UP ³ | P/UP ³ | -- |
| Distribution | -- | -- | -- | -- | P | P | -- |
| Testing | -- | -- | -- | -- | P | P | -- |
| Cultivation ⁴ | -- | -- | -- | -- | -- | -- | -- |

P = Permitted, MUP = Minor Use Permit, UP = Use Permitted

- Notes:
1. Dispensaries may conduct manufacturing, distribution, processing or cultivation activities as long as the retail use is the primary activity at the business.
 2. Delivery-only retailers are only allowable in the industrial districts as long as a manufacturing, distribution, and/or processing use is the primary activity at the business.
 3. Manufacturing/Processing activities meeting the ILUDC definition of “Manufacturing-Light” would be permitted. Activities defined as “Manufacturing-Medium” would require a Use Permit in IL, but would be by-right in IH. Activities defined as “Manufacturing-Heavy” would be prohibited in IL, and require a Use Permit in IH.
 4. Council provided direction on July 24, 2019 for staff to develop a cannabis cultivation ordinance, which would allow cultivation as a primary use (i.e. greenhouses), and would be reviewed by the Planning Commission at an upcoming meeting.
 5. The Coastal Land Use and Development Code would need to be amended to incorporate cannabis businesses, pending Council and Planning Commission review.

In addition to the amendments proposed for the ILUDC, the Council will also consider adopting a revised Chapter 9.30, which would apply to all future cannabis businesses. Chapter 9.30 contains the procedures for applicants, including review of security plans by the Police Chief and background checks on applicants, and standard operating requirements. These standards include:

- *Submit floor plans indicating the purpose and security of each room*
- *Diagrams showing security camera coverage, lighting and access restrictions*
- *Proposed hours of operation*

- *Record keeping and recall procedures*
- *Solid waste disposal plan*
- *Product supply chain information*
- *Odor prevention plan*

Chapter 9.30 is not a part of the ILUDC, and as a result, is not part of this ILUDC amendment application. Council indicated their intent to adopt the revisions to Chapter 9.30 at the same time as the ILUDC amendment recommendation from the Planning Commission. The Planning Commission included a special condition on their recommendation that Chapter 9.30 be adopted in conjunction with the ILUDC amendment.

The following provides an explanation of the proposed ILUDC amendment and how it affects various cannabis business types.

Retail (Dispensaries)

Cannabis retail uses (dispensaries) can operate as storefront shops, delivery-only businesses, or a combination of both. The City does not presently allow cannabis retail businesses for recreational marijuana. The City Council discussed these various business types and recommended that a draft ordinance include the following:

- *Allow storefront dispensaries in the CBD, CH and CG zoning districts with a Minor Use Permit. Storefront dispensaries may have a delivery component.*
- *Allow delivery-only dispensaries in CH and CG with a Minor Use Permit, and allow deliver-only dispensaries only in conjunction with a cannabis manufacturing and/or distribution use in industrial districts.*

In addition to the location and permitting standards in Article 2, the ILUDC amendment would make changes to Article 4 to prescribe standards for dispensaries—both storefront and delivery only. The standards require applicants to outline the activities involved in the business, limits the hours they may operate (between 9 a.m. and 9 p.m.), and prohibits drive-through sales.

The State requires that cannabis businesses not be located within 600 feet of a school providing instruction for grades K-12, day care centers or youth centers. However, the State allows cannabis businesses within this buffer if a local jurisdiction issues a permit that allows it. The Planning Commission discussed this requirement, and proposes removing buffer language from the ordinance. The Planning Commission is concerned that the definition of a youth center is vague and could create confusion when issuing permits. For example, it is unclear if the gymnasium attached to City Hall would qualify as a youth center, thereby prohibiting cannabis businesses in the downtown core. Additionally, some churches offer day care or kindergarten classes that could disqualify a business. The Planning Commission's ordinance recommendation is to review cannabis businesses on a case-by-

case basis. The findings for approval for Minor Use Permits allow for the consideration of nearby land uses, and if they are inconsistent they may still be denied without having to navigate the vague language used by the State.

Council had previously discussed setting a maximum quantity of permits issued for dispensaries. The Planning Commission discussed including a maximum in the ordinance or having the Council declare a maximum by resolution, and ultimately decided not to recommend an ordinance with a maximum quantity. The Commission heard input from the public, and concluded that it is unlikely for an overwhelming quantity of dispensaries to locate in the City. The Planning Commission was also concerned that applicants could monopolize permits and exclude good competition from coming to town.

Microbusinesses

Cannabis microbusinesses are facilities that engage in a combination of retail, distribution, manufacturing and/or cultivation. Small scale activities, such as packaging, labelling, pre-rolling or blending require manufacturing and/or distribution licenses from the state. Drying or trimming cannabis to prepare the plant for resale requires a cultivation license from the state, as does providing plant starts for resale. The Council received input from the public that stressed the importance of cross-licensing for businesses to compete within the industry, as opposed to local entrepreneurs having to hire other businesses to perform these processing tasks. The proposed ordinance would:

- *Allow small-scale manufacturing, distribution and/or cultivation activities as accessory to retail uses, thereby allowing cannabis “microbusinesses.”*

The proposed ILUDC amendment includes Section 18.42.057(G), stating that “accessory uses [to cannabis dispensaries] may include activities that require multiple state cannabis licenses, including, but not limited to manufacturing, distribution, processing and/or cultivation.” This language allows cannabis manufacturing, distribution, processing and cultivation uses in conjunction with a dispensary. These other activities, however, shall be “accessory” to the retail store, which the ILUDC defines as “a use customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use.” The review authority (the Director for a Minor Use Permit, and the Commission on appeal), would review any non-retail activities of a microbusiness application to ensure they are accessory, and could condition the permit such that the accessory activities do not become the primary use of the business. Additionally, Section 18.42.057(G) prohibits the use of volatile solvents in the manufacturing activities accessory to retail uses.

Cannabis Manufacturing/Distribution/Processing/Testing

The existing ILUDC allows cannabis manufacturing in the industrial zoning districts with a Use Permit. Presently, the ILUDC prohibits “accessory uses” in conjunction with cannabis manufacturing uses, limiting the potential for manufacturers to hold distribution, processing and/or cultivation licenses from the state. After receiving more information on the industry needs, the Council and Planning Commission support an ordinance amendment that would:

- *Allow any combination of industrial-like cannabis activities in the IL and IH zoning districts.*

To implement this policy, the proposed ordinance amendment removes “cannabis manufacturing” from the land use tables. Instead, any cannabis manufacturing, distribution, processing or testing facility would be interpreted the same as other industrial use types. For example, a cannabis distribution facility may fall under the permit requirements for “Wholesaling and Distribution,” an existing land use in the code. Similarly, a cannabis manufacturing facility may be considered either light-manufacturing, medium-manufacturing or heavy-manufacturing, depending on the nature of the facility. The ILUDC amendment revises the definitions of these existing land uses to include cannabis businesses as examples of allowable activities.

Environmental Determination

The California Environmental Quality Act (CEQA) requires analysis of agency approvals for projects. Under CEQA, adoption of changes to a zoning ordinance constitutes a project, and staff has completed the required CEQA review. Staff prepared a Negative Declaration for the project and determined that the proposed amendment could not have a significant effect on the environment. The Resolution Adopting the Negative Declaration is included as **Attachment 2**.

RECOMMENDED ACTION:

1. Conduct a Public Hearing;
2. Adopt a Resolution adopting the Negative Declaration as recommended by Planning Commission Resolution PC07-2019 (**Attachment 3**); and
3. Introduce, by title only, and waive further reading of Ordinance 952-2019 amending Chapter 18.2 (Zoning Districts and Allowable Land Uses), 18.42 (Standards for Specific Land Uses) and Chapter 18.100 (Definitions) of the Fort Bragg Municipal Code as recommended by Planning Commission Resolution PC07-2019 (**Attachment 3**).

ALTERNATIVE ACTION(S):

Provide direction to staff regarding further revisions to the Municipal Code addressing cannabis businesses. Substantive changes would require further review and recommendation by the Planning Commission, and may require revisions to the CEQA analysis.

FISCAL IMPACT:

If Council adopts the ordinance amendment permitting cannabis businesses, it is likely that a limited number of new businesses would open providing local jobs. Depending on the proposed business, the use could require a Use Permit or Minor Use Permit. These permit applications have associated fees that would offset costs of processing the permit.

GREENHOUSE GAS EMISSIONS IMPACT:

The ordinance amendment would not directly have an impact on greenhouse gas emissions. Deliveries associated with the goods these businesses sell would have a marginal effect on greenhouse gas emissions.

CONSISTENCY:

Council Goal 1: Become more business and customer service friendly – The proposed amendment would allow a business type currently prohibited in the City and encourage business growth.

Council Goal 3: Foster and help sustain local businesses – The amendment would allow a business that has been historically significant to the local economy.

Inland General Plan (Land Use Element) – The proposed amendment would allow retail businesses in the commercial zoning districts and industrial businesses in the industrial zoning districts, consistent with the defined purposes of these districts.

IMPLEMENTATION/TIMEFRAMES:

If the ordinance is introduced on October 15, 2019 and adopted on October 28, 2019, it would become effective November 27, 2019.

ATTACHMENTS:

1. Ordinance 952-2019, ILUDC Amendment
2. Resolution Adopting CEQA Negative Declaration
3. Planning Commission Resolution PC07-2019
4. Public Hearing Notice

NOTIFICATION:

1. Notify Me – Cannabis Legislation