



AGENCY: City of Fort Bragg
MEETING DATE: May 3, 2021
DEPARTMENT: Community Development
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Recommend Edits to Ordinance to Update Municipal Code 9.30 Cannabis Businesses

ISSUE:

Now that the City has implemented the existing Municipal Code 9.30 regulating Cannabis Businesses, staff has found some code updates that will streamline and improve the process. Members of the public have also requested that Council review the regulations around criminal background checks.

ANALYSIS:

Reasons to Updates Code

While this is a relatively new section of the code, there are two main reasons to revise this section:

1. Update the definitions to be more comprehensive. The recommended updates to the definitions are intended to be more comprehensive and better support the allowable uses in the Inland Land Use and Development Code (ILUDC). (See redline version in Attachment 1.)
2. Update the process for City of Fort Bragg Cannabis Business Licenses to streamline the process for applicants and maximize the efficiency of staff time.

The current process is set up under the Police Department. The Community Development Department (CDD) has been assisting the Police Department with the collection of the application and processing, however, Police Department and CDD staff feel that it will be more efficient and effective if the applications are managed through CDD. There will be a required public safety review conducted by the Police Chief for all cannabis business permits, and a license will not be issued without approval from the Police Chief. The Police Department will still have authority to revoke and conduct hearings on a Cannabis Business Permit (CBP). However, CDD will be responsible for receiving, tracking, and managing the applications. This will also allow CDD to process any use permits required concurrently for a streamlined process.

Criminal Background Check

Currently, Municipal Code 9.30.100 states:

The grounds for rejection of a cannabis business permit application shall be 1 or more of the following: ...

D. The applicant, his or her agent, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of cannabis related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere.

This policy is stricter than the requirements for the State of California and members of the public have requested that Council review the policy. Staff has no recommendations on whether this should be changed and is seeking direction from Council.

For reference purposes, the following comparable sections from the State of California, the County of Mendocino, the City of Ukiah, and the City of Willits are below:

The State of California provisions in the California Code of Regulations Uniform Business and Professional Code Chapter 10 Section 26057 states:

(4) The applicant, owner, or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review....

In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(C) A felony conviction involving fraud, deceit, or embezzlement.

(D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(E) A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 (commencing with Section 480) of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered

substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

Additionally Section 26059 states:

An applicant shall not be denied a state license if the denial is based solely on any of the following:

- (a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
- (b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction.

The Mendocino County Code of Ordinances Title 10A Agriculture Chapter 10A.17.090.M includes the following:

- (1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.
- (3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.
- (4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.
- (5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.

(6) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code.

(7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.

The City of Ukiah's Municipal Code Division 6 Chapter 8 §5708, says:

A. Criminal History: Any applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall not have been convicted of any of the felony offenses enumerated in Business and Professions Code section 26057(b)(4), or of a felony or misdemeanor involving moral turpitude, or on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant or any manager has been convicted of a felony, if the person convicted has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar Federal statute or State law where the expungement was granted. In addition, notwithstanding the above, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of cannabis or cannabinoid preparations, is not considered related to the qualifications, functions, or duties of a permittee, and shall not be the sole ground for denial of an application.

The City of Willits code text is the same as the City of Fort Bragg's Code with the exception that they name "the Compassionate Use Act" and the Fort Bragg Code names "Prop 215."

It is at the discretion of the Council to determine if they would like to update this code section.

RECOMMENDED ACTION:

Accept recommended changes to Chapter 9.30 and provide direction on the treatment of criminal history.

ALTERNATIVE ACTION(S):

Keep Chapter 9.30 as is or provide different recommendations.

FISCAL IMPACT:

The updated changes to process will not have significant fiscal impact.

GREENHOUSE GAS EMISSIONS IMPACT:

This item will have no impact on GHGs.

CONSISTENCY:

The recommended changes to Chapter 9.30 do not conflict with any section of the City of Fort Bragg Inland General Plan and are specifically consistent with:

Land Use Goal LU-4: Promote the economic vitality of the City's existing commercial areas.

Circulation Policy CD-2: Adaptive Reuse: Facilitate the adaptive reuse of existing older buildings in the Central Business District.

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

IMPLEMENTATION/TIMEFRAMES:

After a final draft is approved by Council, the ordinance will take effect 30 days after adoption.

ATTACHMENTS:

1. Recommended updates to Chapter 9.30

NOTIFICATION:

1. Cannabis Notify Me subscriber list