

**From:** [Jacob Patterson](#)  
**To:** [cdd](#); [Gurewitz, Heather](#)  
**Cc:** [O'Neal, Chantell](#); [Smith, John](#); [Spaur, David](#); [sarah.mccormick](#); [marie@mariejonesconsulting.com](#)  
**Subject:** Comments on the Draft Initial Study & Negative declaration for the proposed ordinances revising commercial cannabis regulations  
**Date:** Friday, March 18, 2022 12:19:30 PM

---

City of Fort Bragg Team,

Please accept these comments and objections to the draft Initial Study & Negative Declaration (IS/ND) prepared by the City and apparently then prematurely circulated for public review. I object to the process by which the City is attempting to manage the environmental review process for the City-initiated changes to its commercial cannabis regulations. The City issued a Notice of Availability (NOA) and circulated a draft IS/ND for public and responsible agency review purporting to analyze the project, which is the City's intended adoption of related ordinances updating the City's commercial cannabis regulations in Title 9 and Title 18 of the City's Municipal Code. (note that the NOA incorrectly refers to the CEQA document as both an IS/ND and an IS/MND.) However, this project has not been fully defined yet because there still aren't any proposed ordinances for anyone to review. There was a draft ordinance that was included in the agenda packet for the continued public hearing before the Planning Commission on March 9, 2022 purporting to be the draft ordinance for the portion of the project associated with updates to Title 18 but that was not actually the case, which was stated by the City's project consultant during that hearing. The actual proposed ordinance for the updates to Title 18 is yet to be made available for the public to review, although I believe the City indicated it would likely be included in the agenda materials for the special meeting of the Planning Commission scheduled for March 23, 2022.

Please note that the staff materials for the March 9, 2022 Planning Commission meeting included numerous issues and displayed serious problems concerning the CEQA review, which further undermines the credibility of the environmental analysis in the current draft IS/ND. Chief among these issues was staff's reference to a now expired statutory exemption from CEQA review that would have applied to this project had the ordinances been adopted prior to July 1, 2021. That statutory exemption has expired by its explicit terms and a condition of relying on that exemption was that any local land use regulations needed to require future discretionary reviews and site-specific CEQA analysis for each project application. The future discretionary reviews condition of the now-expired statutory exemption is not an aspect that still applies to the CEQA review for the current project but which appears to be improperly incorporated into the proposed analysis in the draft IS/ND now being circulated for review and comment. That should be addressed and likely requires substantial and significant revisions to the CEQA document for this pending project.

The actual draft of the proposed ordinance is not yet available for public or responsible agency review. As such, it is impossible for any member of the public or any responsible agency to evaluate the adequacy of the draft IS/ND because the necessary information, the actual ordinance or ordinances, have not been prepared even though the official review period for the draft IS/ND is scheduled to come to a close today based on the NOA. What we have now, and what is purportedly analyzed in the draft IS/ND, are merely staff assumptions and interpretations about what the ordinances might contain but that is inadequate and substantively and procedurally defective. CEQA requires something more and I respectfully request that the City prepare a new IS/ND (or other appropriate CEQA document, which is likely to be a Mitigated Negative declaration or even an Environmental Impact Report) based

on the actual proposed ordinances and make the ordinances and the CEQA document available at the same time for public and responsible agency review.

That said, even if the ordinances had been made available, if they reflected the prior majority direction of the City Council, the existing IS/ND currently circulating for public review is inadequate and defective as written, at least in my opinion. I would (and do) object to the draft IS/ND on that basis as well, which I have partially addressed in prior written and oral public comments for the Planning Commission public hearing meetings that have already occurred. For example, the IS/ND provides a false and misleading description of the baseline conditions and of the scope of the changes in the (non-existent) proposed ordinances. These errors and omissions include but are not limited to a lack of maximum buildout analysis due to the new cultivation uses being added to the use tables in Title 18. Staff incorrectly asserts that because future discretionary reviews will include CEQA analysis for individual projects, that we do not need to analyze the impacts of the ordinances themselves. That is inconsistent with CEQA requirements and appears to be based on a misunderstanding between what is improper speculation about unknown future events and what level of current review is necessary for a change to the land use regulations. Further, staff asserts that the required cannabis business licenses are "discretionary" and would trigger CEQA review for those uses that are or may be proposed to be permitted by right under the new regulations. The cannabis business licenses do not appear to meet the criteria to be considered discretionary rather than ministerial based on the City's existing code or even based on the summary of proposed amendments that were presented in a working draft at the first meeting of the public hearing before the Planning Commission. There are no discretionary findings (or any findings at all) that are required in order to issue the cannabis business licenses. Just because the City can deny some cannabis business license applications if the applicant doesn't meet some pre-determined objective criteria does not make those licenses discretionary. On the contrary, they appear to be ministerial permits based on a review checklist. The City officials' determinations about whether or not the permit criteria are met are similar in nature to the issuance criteria involved in other ministerial permits like building permits, which are only issued if the application materials satisfy the applicable building code requirements.

The main (but not only) substantive issues that are lacking in the existing draft IS/ND appear to include the following: a lack of water supply analysis due to the new cannabis cultivation uses and transportation and greenhouse gas emissions analysis due to the new distribution activities that would be permitted by right. In my opinion, it is not improper speculation to evaluate the projected water use of newly-permitted commercial cannabis cultivation uses based on the addition of those uses to the existing use tables where they were not permitted before. The same sort of buildout analysis that applies to projects to rezone particular property apply to adding new uses to existing use tables. In my opinion, what is required and what is lacking in the current draft is taking the known area of each relevant zoning district where such uses are proposed to be permitted or conditionally permitted and calculating the projected impacts from now allowing those uses using a maximum buildout analysis of the projected water of these cultivation activities. Similarly, the new distribution uses that will be permitted for the cannabis retail uses including a delivery component need to be analyzed based on the existing areas zoned for each district where it is now proposed to be permitted by right rather than what is currently a discretionary review requiring a minor use permit. of course, without any actual proposed ordinances and with shifting majority direction concerning where such uses are going to be permitted and which level of future review will apply in a particular zoning district factoring in potential exclusion and/or buffer zones, we cannot effectively analyze anything. In that respect, I submit these comments and objections for the City team to

consider not just the adequacy of the existing draft IS/ND but as they further develop the actual proposed ordinances and revise or re-write the appropriate CEQA documents and circulate it for public review and comment again once the proposed ordinances are actually ready and available to the public and responsible agencies.

Thank you for your consideration of these important issues,

Jacob Patterson

**From:** [Jacob Patterson](#)  
**To:** [Peters, Sarah](#); [Lemos, June](#); [cdd](#)  
**Subject:** Fwd: Planning Commission Hearing on Cannabis 3/23/2022  
**Date:** Monday, March 21, 2022 9:29:49 AM

---

City of Fort Bragg Staff & Planning Commission,

Please treat this as a public comment and objection for this agenda item. As I recall, no one made a motion to formally continue the public hearing at the previous meeting and I believe the PC merely decided to continue the discussion or continue the deliberations with no mention of the hearing itself being continued. Since this week wasn't noticed in the paper as a public hearing and no motion to continue the prior public hearing beyond the March 9th meeting occurred so far as I can recall, and this is the first meeting when the public actually has the proposed draft ordinance to consider, albeit with some drafting issues like an incorrect title and inapplicable CEQA exemption mentioned in the recitals, I object to this meeting being described as a public hearing or allegedly satisfying the procedural requirements of Government Code section 65854.

In fact, I think it can only be considered an Planning Commission discussion item about the draft ordinances with no possible action since the action would need to happen at a properly-noticed public hearing. "Properly-noticed" public hearings can happen by formally continuing the initial public hearing at a meeting (or series of meetings) where the first one had full notice but that doesn't appear to have been the process this time.

Please schedule the public hearing for a future Planning Commission meeting and be sure to provide the full notice for that meeting as was (prematurely) done for the February 23, 2022 Planning Commission meeting where there was proper notice but the hearing didn't actually include a draft ordinance that they were purportedly reviewing and making a recommendation about.

Regards,

--Jacob

----- Forwarded message -----

**From:** City of Fort Bragg, CA <[CityofFortBragg@public.govdelivery.com](mailto:CityofFortBragg@public.govdelivery.com)>  
**Date:** Mon, Mar 21, 2022, 8:50 AM  
**Subject:** Planning Commission Hearing on Cannabis 3/23/2022  
**To:** <[jacob.patterson.esq@gmail.com](mailto:jacob.patterson.esq@gmail.com)>

## **Planning Commission Hearing on Cannabis 3/23/2022**

Post Date: 03/21/2022 8:30 AM

# **Planning Commission Discusses Cannabis on March 23**

The Planning Commission's public hearing on cannabis regulations will continue on Wednesday night, March 23, 2022 at 6PM at Town Hall. To read the staff report and agenda materials, please click the following link and scroll to Item 6B: [Planning Commission Agenda 3/23/2022](#).



[Click here for more information](#)

### SUBSCRIBER SERVICES:

[Manage Subscriptions](#) | [Unsubscribe All](#) | [Help](#)

---

This email was sent to [jacob.patterson.esq@gmail.com](mailto:jacob.patterson.esq@gmail.com) using govDelivery Communications Cloud on behalf of: City of Fort Bragg, CA · 416 North Franklin Street Fort Bragg, CA 95437



**From:** [Jacob Patterson](#)  
**To:** [cdd; Peters, Sarah](#)  
**Cc:** [marie@mariejonesconsulting.com](mailto:marie@mariejonesconsulting.com)  
**Subject:** Fwd: New draft ordinance for cannabis updates  
**Date:** Monday, March 21, 2022 10:06:06 AM

---

Sarah,

In case I don't have time to write a more formal public comment, please include this email chain as a public comment for the Planning Commission's consideration of Item 6B on their March 23rd agenda. My suggested revised changes to the draft ordinance are to:

1. Correct the title of the ordinance.
2. Revise the final recital concerning CEQA and include an accurate description of the CEQA process, which is not trying to rely on a now expired statutory exemption that is conditioned on site-specific environmental review due to future discretionary permits.
3. Correct the type in the exclusion zone replacing "Redwood Avenue" with "Franklin Street".
4. Consider limiting the exclusion zone to south of Bush Street to allow potential dispensaries on both sides of Franklin Street in the industrial zone.
5. Consider adding a rebuttable presumption that all cannabis retail proposed west of the centerline of Franklin Street is compatible with the existing and future land uses in the vicinity of the proposed project, even sensitive uses.
6. Consider separating the three commercial zones listed under accessory cannabis uses rather than combining the CBD with GC zoning district. I am not sure why there are more potentially-permitted accessory uses in HVC along Main Street than there would be for GC zoning along Franklin Street.
7. Consider a minor revision to the definitions, although this is the least important of my recommendations since it is just me believing that substantive provisions about which uses are permitted don't belong in a definition of a term and should only be in the substantive operative provisions of the ILUDC. The detailed description of which accessory uses are potentially permitted in which zoning districts is a great substantive tool but I don't think it belongs within the definition for this term in the Title 18, Article 10. The definition should just be the definition and the description of the particular accessory uses for different zoning districts belongs in section 18.42.057. I think the actual definition in section 18.100.020 should just read "Cannabis Accessory Use. A use that is customarily incidental related and clearly subordinate to the primary use on the same parcel and which does not alter the primary use, nor serve property other than the parcel where the primary use is located" although that is redundant from the general definition of accessory use without the additional detail about which accessory uses apply to which zoning district.

I think the first three changes are necessary and the rest are optional but recommended to strengthen the overall regulatory scheme and balance the competing policy interests that have been discussed during public meetings up to this point.

Regards,

--Jacob

----- Forwarded message -----

From: **Jacob Patterson** <[jacob.patterson.esq@gmail.com](mailto:jacob.patterson.esq@gmail.com)>  
Date: Sun, Mar 20, 2022 at 11:55 AM  
Subject: New draft ordinance for cannabis updates  
To: <[marie@mariejonesconsulting.com](mailto:marie@mariejonesconsulting.com)>  
Cc: Gurewitz, Heather <[hgurewitz@fortbragg.com](mailto:hgurewitz@fortbragg.com)>, O'Neal, Chantell <[coneal@fortbragg.com](mailto:coneal@fortbragg.com)>, McCormick, Sarah <[SMcCormick@fortbragg.com](mailto:SMcCormick@fortbragg.com)>

City Staff & Marie,

I am looking through the agenda materials for Wednesday's meeting and there are still some drafting concerns in the draft ordinance that is included in the packet for the meeting. I will send in formal written and additional oral comments for the meeting so don't treat this as such, rather it is intended as me sharing a couple of big items that stuck out at me for your pre-meeting review. (I will only offer oral public comments if Jeremy offers a public comment opportunity, which he should, although I think there is a potential noticing issue based on the language of their motion last time and now this new ordinance only coming forward after the public comment period).

My three big concerns are:

- 1) The ordinance title is incorrect and talks about Chapter 9.20 not Title 18.
- 2) The final recital (aka "whereas") cites an inapplicable statutory exemption from further environmental review under CEQA because it expired last summer. That recital should be deleted or replaced with accurate CEQA language that is in-line with what the City is doing or will be doing for this project.
- 3) The new language for the exclusion zone incorrectly references Redwood Avenue instead of Franklin Street. I think it should be revised to read "Located east of the centerline of **Franklin Street**, except if proposed for industrially-zoned property north of Bush Street."

I added the north of Bush Street exclusion from the exclusion zone in case a cannabis business wants to operate a one-stop shop in the industrial property on the east side of N. Franklin, perhaps even using a micro business state license type and business model. I doubt anyone thinks that the occupants of the cemetery are a sensitive use next to which a cannabis retail operation shouldn't be located. The only residential zoning or uses that are next to commercially zoned property where a dispensary might be located are exclusively south of Bush Street. However, that might not be necessary since it looks like the proposed use table mechanisms to deal with vertically-integrated cannabis businesses in the industrial zones is to treat potential retail in the industrial zones as accessory to the primary industrial uses (e.g., the primary use is the cultivation, processing, manufacturing, or distribution use and retail would be potentially permitted only as an accessory use rather than the use table entry, which is about cannabis retail being a primary use). That approach is arguably more consistent with the Inland General Plan, which has a policy that discourages storefront retail in the industrial zones (at least that's how I interpret it). My concern is that Section 18.42.057 probably applies to any sort of cannabis retail use, whether primary or accessory, and I don't think anyone is calling for an exclusion or buffer zone within the industrial zoning districts north of Bush Street so limiting that exclusion area east of the centerline of Franklin Street to only south of Bush Street makes sense.

I also want to suggest an additional provision for Section 18.42.057, subdivision 3. I suspect part of why some councilmembers wanted to switch cannabis retail from an MUP to permitted

by right in their earlier discussions is because they are worried that any time a residential use is near a proposed dispensary that the neighbors might come in and convince the Planning Commission that the uses are incompatible and that particular use permit finding won't be made again (e.g., what happened for the former Floor Store location). I recommend pairing the thoughtful and much-appreciated compromise solution of the exclusion zone with an explicit rebuttable presumption that a cannabis retail use proposed west of the centerline of Franklin Street is presumed to be compatible with the nearby uses (but I would use the precise language of the required finding in the provision creating the presumption.) That strengthens this compromise solution because it creates a clear, bright-line rule excluding all dispensaries east of the Franklin Street but it also creates a rebuttable presumption that staff and the Planning Commission would use to help evaluate particular applications. If an applicant wants to be successful, they can have some assurance that, unless their project involves some really weird circumstances or proposed uses, there is a strong presumption that the cannabis retail is considered compatible with nearby uses when proposed west of Franklin Street, even sensitive uses like single-family residential homes, and that required finding that tripped up a particular controversial application would be easy to make. I think pairing a presumption of compatibility for areas west of Franklin with the explicit exclusion zone east of Franklin allows the City Council to keep the public notice, public hearings, and, most importantly, the ability to impose special conditions as part of the approval process, that result from the current MUP process and removes the concerns that led to some councilmembers to preliminarily direct that cannabis retail should be converted to a by-right use.

Finally, I want to suggest adding "potentially" immediately before "permissible" in Section 18.42.057, subdivision 4.a. to read "**Accessory Uses**. The following uses are **potentially** permissible as accessory uses to Cannabis Retail. More than one accessory use is permissible however the combined accessory uses shall not exceed the total square footage of the primary use." I like this provision but I think it is important to remember that desired accessory uses are not automatically permitted and that they are only conditionally permitted/permissible depending on the particular facts and circumstances of an application. The subtle distinction between conditionally permitted and permitted-by-right and varying interpretations of what that means is precisely what caused the conflicts for the prior MUP application reviews. By adding the word "potentially" to this provision, we highlight that difference and it should help avoid situations where staff, some of whom might be relatively inexperienced with planning, treat these accessory uses as being permitted rather than only potentially permitted or conditionally permitted only when the required subjective findings have been made by the proper review authority.

I also think combining CBD and GC into the same category doesn't make any sense and isn't part of the prior direction from either the City Council or Planning Commission. GC direction was more in line with what we want to permit in HVC not the CBD so if any zoning districts are combined, it should be HVC and GC not CBD and GC. I would have each be their own category for three different subdivisions in this provision of the ordinance. On a related note, I would also flesh out "On-Site Distribution" to explicitly reference that that is not really a distribution land use but merely refers to internal distribution between the otherwise permitted uses on the site. (I know Heather said the City Attorney asked that this be included but I think she is either misinterpreting that advice or he is wrong and is apparently confused about the differences between state cannabis license types and local land uses.) That is already done via the Title 18, Article 10 definition but users (including applicants) don't always read cross-referenced definitions and it might help to list that aspect of the definition in the operative provisions, not just the definitions located elsewhere.



Thanks,

--Jacob