

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN UNCODIFIED URGENCY
ORDINANCE ESTABLISHING A 45-DAY
MORATORIUM ON APPROVAL OF
APPLICATIONS AND PERMITS FOR
CANNABIS DISPENSARIES IN THE
INLAND ZONING AREA**

**URGENCY ORDINANCE
ORDINANCE NO. 981-2022**

WHEREAS, Government Code section 65858 allows a city to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public safety, health and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, the City of Fort Bragg (“City”) previously adopted ordinances governing cannabis businesses, including dispensaries and manufacturing; and

WHEREAS, on November 8, 2016, the electorate of the State of California approved Proposition 64 (“Prop 64”) which enacted the Adult Use of Marijuana Act (“AUMA”), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allows local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, on June 27, 2017, the Governor approved Senate Bill 94 which combined the regulatory schemes for Medical Marijuana Regulation and Safety Act (“MMRSA”) and AUMA into a single, comprehensive regulatory scheme known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, on February 25, 2019, the City Council of the City of Fort Bragg (“City Council”) sought to establish rules and regulations by which cannabis businesses may be permitted by considering an ordinance regulating retail, laboratory testing, manufacturing, and distribution cannabis businesses and accessory uses; and

WHEREAS, through multiple public meetings, the Public Safety Committee, Fort Bragg Police Department, and City staff have received input from citizens and discussed various options for permitting cannabis businesses; and

WHEREAS, on November 21, 2019, the City Council of the City of Fort Bragg (“City Council”) adopted Ordinance 953-2019 which established rules and regulations by which cannabis dispensary businesses may be permitted; and

WHEREAS, on January 25, 2021, the City Council conducted a public hearing and considered the appeal of the Fort Bragg Planning Commission denial of Minor Use Permit 4-20 (MUP 4-20) on the proposed Sunshine Holistic Microbusiness at 144 N. Franklin Street. City Council failed to take action by a majority vote, which resulted in upholding the Planning Commission’s determination that growing, manufacturing, processing of cannabis is not a permitted use in the Central Business District and that uses (growing, manufacturing, processing of cannabis) are not accessory/subordinate to the primary use of retail; and

WHEREAS, on September 1, 2021, the City Council conducted a public hearing and considered the appeal of the Fort Bragg Planning Commission denial on Minor Use Permit 1-21 (MUP 1-21) on the proposed Sunshine Holistic Cannabis Dispensary at 144 N. Franklin Street. City Council failed to take action by a majority vote, which resulted in upholding the Planning Commission’s determination that the proposed use was not compatible with the existing and future land uses of that neighborhood and that there was not sufficient evidence that the required noticing of the Minor Use Permit, the Minor Use Permit Administrative Hearing, and the Minor Use Permit Appeal were properly posted at the property; and

WHEREAS, during the appeals of both the Sunshine Holistic Minor Use Permit applications, the City Council, the Planning Commission and members of the public raised concerns about the impact of residential uses located in or near the Central Business District (CBD) where cannabis dispensaries are allowed with an approved Minor Use Permit; concerns over the number of dispensaries allowed in the CBD and whether a maximum number should be set to avoid overconcentration of cannabis dispensaries; and the proximity of cannabis dispensaries to facilities that could be defined as a “youth center” including the City Hall gymnasium located at 213 East Laurel Street; and

WHEREAS, Chapter 9.30 Cannabis Businesses of the Municipal Code does not define “youth center” nor does the Fort Bragg Inland Land and Use Development Code define “youth center” or address it; therefore, California State law requires a 600-foot separation between youth centers and cannabis storefronts unless the local jurisdiction specifies a different distance; and

WHEREAS, the City has not established a separation requirement between cannabis businesses and youth centers and has received a completed application for a cannabis dispensary located at 362 N. Franklin Street which is directly across the street from the City Hall gymnasium located at 213 East Laurel Street and within the 600-foot buffer required by California State law; and

WHEREAS, City staff have determined that seventy-nine percent (79%) of the total hours the City Hall gymnasium located at 213 East Laurel Street was rented for activities associated with youth activities but only nineteen percent (19%) of hours for City Hall including the gymnasium are associated with youth activities. A determination by the City Council that the City

hall gymnasium is a “youth center” will impact the City’s ability to permit cannabis dispensary businesses in the Central Business District and uses may be in conflict with a contemplated general plan, specific plan or zoning proposal that the City Council is considering related to cannabis businesses; and

WHEREAS, on September 27, 2021, the City Council adopted Urgency Ordinance 972-2021 to impose a moratorium for 45 days, in order to study whether it would be appropriate to amend how the City regulates cannabis dispensaries; and

WHEREAS, on November 8, 2021, the City Council adopted Urgency Ordinance 975-2021 to extend the moratorium for four months to amend Title 18 Inland Land Use and Development Code to revise land use regulations for cannabis businesses.

WHEREAS, on February 17, 2022, the City circulated a draft Initial Study and Negative Declaration for proposed changes to the Municipal Code Chapter 9.30 and Title 18, the Inland Land Use and Development Code, to amend the regulations for cannabis businesses.

WHEREAS, on February 23, 2022, March 9, 2022, and March 23, 2022, the Planning Commission held public hearings on the proposed amendments to Title 18 Inland Land Use and Development Code to amend the regulations for cannabis businesses.

WHEREAS, on February 28, 2022, the City Council adopted Urgency Ordinance 976-2022 to extend the moratorium on cannabis businesses for 45 days through April 14, 2022.

WHEREAS, on March 28, 2022, the City Council received a staff report and provided direction to staff on amendments to Title 18 Inland Land Use Development Code.

WHEREAS, there are two pending applications for cannabis dispensaries in the City and one application that was approved on April 18, 2022 that is eligible for appeal through April 27, 2022 and, if not appealed will be final on April 28, 2022.

WHEREAS, the City opened a public hearing on the proposed ordinance to amend the Inland Land Use and Development Code to regulate cannabis businesses on April 11, 2022 and the hearing was continued to May 23, 2022; and

WHEREAS, approval of any cannabis dispensary in the Central Business District may conflict with the proposed amendments to the city’s zoning code.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Findings. The City Council hereby finds as follows:

1. All the recitals, facts, findings, and conclusions set forth above in this Ordinance are true and correct.
2. This ordinance is not a “project” under the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA review. CEQA defines a “project” as including an activity directly undertaken by a public agency that “may cause either a direct physical change in the

environment, or a reasonably foreseeable indirect physical change in the environment.” (Pub. Res. Code, §21065.) The proposed ordinance will not do either.

This ordinance concerns activities intended to preserve the status quo while the City considers further regulation relating to cannabis dispensaries in the Central Business District and does not constitute a “project” as defined by CEQA and will not result in a direct or reasonably foreseeable indirect physical change in the environment pending the review of overconcentration issues (Pub. Res. Code, §21065, CEQA Guidelines §§15060(c)(2)(3); 15061(b)(3); 15064(d)(3); and 15378(a).).

3. The establishment and expansion of cannabis dispensaries in the Inland Zoning Area has created a current and immediate threat to public health, safety, and welfare. Cannabis dispensaries require additional standards to protect public health and safety.
4. The City intends to adopt an ordinance to amend how the City regulates cannabis dispensaries in the Inland Zoning Area.
5. This ordinance is intended to protect the public health, safety, and welfare by prohibiting the establishment of any new cannabis dispensary use with a MUP or expansion or modification of those uses while the City enacts new land use regulations. The continued establishment, expansion, and modification of these uses during this process would defeat the City Council’s objectives in adopting new regulations governing these uses in the area.
6. This ordinance promotes the public health, safety, convenience, and welfare of the City.

Section 2: Moratorium. The City of Fort Bragg declares a moratorium on the approval of applications to establish a cannabis dispensary on any parcel, which is, in whole or in part, in the Inland Zoning Area. However, the City will continue to accept and process applications for such businesses.

Section 3: Already-approved projects. This ordinance does not apply to projects for which the City has approved entitlements as of the effective date of this ordinance.

Section 4: Inconsistencies. Any provision of the City of Fort Bragg Municipal Code thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 6: Uncodified Ordinance. This Ordinance is to be uncodified.

Section 7: Immediately Effective. This Ordinance shall become effective immediately and shall remain in effect for a period of 45 days unless extended or prematurely terminated.

Section 8: Written Report. Pursuant to Government Code Section 65858(d), ten days prior to the expiration of this Ordinance or any extension of such, the City Manager shall issue a written report on behalf of the City Council describing the measures taken to date to alleviate the condition, which led to the adoption of this Ordinance.

Section 9: Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

The foregoing Urgency Ordinance was introduced by Councilmember _____ and adopted by no less than the required 4/5 vote at a regular meeting of the City Council of the City of Fort Bragg held on April 25, 2022 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, MMC
City Clerk

PUBLISH: May 5, 2022
EFFECTIVE DATE: April 25, 2022