



AGENCY:	City Council
MEETING DATE:	October 24, 2016
DEPARTMENT:	CDD
PRESENTED BY:	M. Jones

AGENDA ITEM SUMMARY REPORT

TITLE:

RECEIVE REPORT AND PROVIDE DIRECTION TO STAFF REGARDING PROPOSED AMENDMENTS TO ARTICLE 2 AND ARTICLE 10 OF THE FORT BRAGG MUNICIPAL CODE TITLE 18, INLAND LAND USE AND DEVELOPMENT CODE (ILUDC)

ISSUE:

Every few years, the City updates the Inland Land Use and Development Code (ILUDC) to fix identified problems and to ensure that the ILUDC implements the policy goals of the City Council. On the morning and evening of June 16, 2016, the Community Development Department held two Zoning Code Update Workshops where community members were invited to contribute their ordinance update ideas and concerns. Additionally, the Council's Community Development Committee reviewed the ILUDC's "use tables" to identify uses that could potentially be allowed to provide more flexibility with regard to permitted and conditionally permitted uses within zoning districts. On October 11th City Council reviewed and provided direction to staff about most of the proposed amendments to Article 2 and Article 10 of the ILUDC. During that meeting the Council directed staff to return to council with additional information about the following undecided topics for the ILUDC update:

1. Pros and Cons of allowing Condominium Conversions in the high density zoning districts for projects converting more than 3 units.
2. Revise the required findings for the Use Permit and Minor Use Permit in the Central Business District to allow for more flexibility for non-pedestrian oriented uses.
3. Rework the definition of Emergency Shelter and rename the definition as Homeless Shelter
4. Rework Service Animal definition

Additionally, City Council directed staff to come back with a brief discussion of the pros and cons of a vacancy tax, in order to decide if Staff should create a detailed analysis of this approach for City Council consideration.

RECOMMENDED ACTION:

Provide direction to staff regarding proposed amendments to Article 2 and Article 10 of Fort Bragg Municipal Code, Title 18, Inland Land Use and Development Code (ILUDC).

ALTERNATIVE ACTION(S):

1. No action. Under this alternative, no further actions would be taken to update the ILUDC.
2. Continue action on the matter and request additional information and/or analysis by staff.

ANALYSIS:

1. Condominium Conversions

Issue: Should the City allow Condominium Conversions in the high density zoning districts for conversion projects of more than 3 units?

A condominium conversion is the process of converting multiple-unit rental property held in a single ownership to a form in which the units may be individually sold. All condominium conversions are

subject to the Subdivision Map Act (see Gov. Code, § 66424). They are processed like any other subdivision. The conversion of an existing structure to condominiums is exempt from CEQA (per 15301k).

Condominium conversion arise when the conditions in the real estate market make selling condominiums significantly more profitable than renting or leasing individual units and when there is demographic/market demand for this type of affordable home ownership option. Some pros and cons for condo conversion include:

- Condos are typically purchased by couples, looking for an affordable housing option, or by retired folks, looking to downsize.
- Conversion provides an opportunity for landlords to sell their properties for substantial gains.
- Condos provide an affordable home ownership option for a first time home and one's last home.
- Conversion displaces existing tenants who do not want or cannot afford to buy units in the converted building.
- Each conversion reduces the amount of available rental housing, resulting over time in an upward pressure on area rents.

Under California law, a "condominium" is "an estate in real property that consists of an undivided interest in common in a portion of real property coupled with a separate interest in a space called a unit." (Civ. Code, § 1351, subd. (f).) A condominium is created by following the process required by Civil Code section 1352. It states that a condominium is created when:

- i. A declaration of conditions, covenants and restrictions is recorded;
- ii. A subdivision or parcel map for condominium purposes is recorded;
- iii. A condominium plan is recorded; and
- iv. A unit is conveyed.

Cities have broad police power authority to enact restrictions on condominium conversions or to allow them through a Use Permit process. The often expressed public purpose for regulating condominium conversions is the preservation of rental housing. The City of Fort Bragg ordinance limits the number of conversions to 3 units for any given project. As a practical matter this makes conversions unlikely. Conversions are unlikely because there are not many three unit projects which could be converted and because of the considerable legal costs to take a three unit rental property through the conversion process. The City has not processed a single condominium conversion in the past ten years. The City did approve a five unit condominium on Whipple Street in 2006, which was later rented out by the property owner, and is now for sale as the real estate market has recovered.

A formal condominium conversion ordinance seems unnecessary for the City of Fort Bragg, as staff has not entertained any inquiries over the past ten years from property owners looking to convert their multi-family rental properties. However, should council want to establish a condominium conversion ordinance, such ordinances typically limit the total number of units that may be converted each year, rather than the number of units in a project. Alternatively, the definition qualifier that limits the number of units to be converted could be removed from the use table of the ILUDC. Or the 3 unit limitation can be left as it. Staff has no recommendation.

2. Findings for a Use Permit and Minor Use Permit in the Central Business District

Issue: how best to provide flexibility in zoning approvals in the Central Business District without eroding the pedestrian oriented qualities of the downtown core, which are essential for retail success.

The revised use tables allow many new uses in the CBD with a Minor Use Permit or a Use Permit. The ILUDC currently includes the following finding for approval of a use within this district:

C. Findings for Use Permit or Minor Use Permit approval. The approval of a Use Permit or Minor Use Permit for a project within a commercial district shall require that the Review Authority first make the following findings for the zoning district applicable to the site, in addition to the findings required by Section 18.71.060 (Use Permit and Minor Use Permit).

3. CBD (Central Business District) district. The use complements the intense pedestrian and regionally oriented shopping areas of the CBD, and will not detract physically from the basically pedestrian nature of the CBD.

Staff recommends the following rewording for the required finding to allow for more flexibility in the approval of non-pedestrian friendly uses in the downtown and to facilitate the filling of empty storefronts.

3. CBD (Central Business District) district. The use complements the local, regional and tourist serving retail, office and services functions of CBD, and will not detract from this basic purpose of the CBD. Uses proposed for the pedestrian orientated retail shopping areas of the CDB (the 100 block of E and W Laurel Street, the 300 block of Franklin Street, the 100 and 200 block of E Redwood Street, and the 300 block of Main Street) should avoid detracting from the pedestrian oriented nature of this core area.

Additionally the ILUDC includes the following language limiting the location of non-pedestrian uses to upper floors, see below:

B. Limitation on the location of allowable land uses. Each land use shall be located as follows.

1. The ground floor of each non-residential structure shall be limited to the uses allowed on the ground floor by Section 18.22.020, Table 2-6, to enhance the pedestrian orientation of downtown streets. Examples of the pedestrian-oriented uses allowed by Table 2-6 include walk-in uses such as restaurants, retail stores, health/fitness facilities, personal services, community service organizations, and similar uses. The Review Authority may modify the Table 2-6 limitations on ground floor uses when existing structures are re-occupied by different tenants or uses, or when this requirement is determined by the Review Authority to be infeasible because of excessive storefront vacancies.
2. Ground floor, street fronting business/service offices may be approved if the Review Authority first determines that the use will not impair the pedestrian character of the street, provided that:
 - a. Parcels on the block occupied by office uses that are not pedestrian oriented constitute less than 50 percent of the block frontage;
 - b. The remainder of the block is characterized primarily by retail and/or restaurant uses; and
 - c. The facade design of the structure that accommodates the office contributes to the visual interest of the street and conspicuously expresses the nature of the use.

Staff recommends that this section be revised as follows (proposed changes in *red italics*):

B. Limitation on the location of allowable land uses. Each land use shall be located as follows.

1. The ground floor of each non-residential structure, *located in the downtown core*, shall be limited to the uses allowed on the ground floor by Section 18.22.020, Table 2-6, to enhance the pedestrian orientation of *the downtown core*

~~streets. (The downtown core is defined as the 100 block of E and W Laurel Street, the 300 block of Franklin Street, the 100 and 200 block of E Redwood Street, and the 300 block of Main Street).~~ Examples of the pedestrian-oriented uses allowed by Table 2-6 include walk-in uses such as restaurants, retail stores, health/fitness facilities, personal services, community service organizations, and similar uses. The Review Authority may relax the ~~pedestrian oriented modify the Table 2-6~~ limitation on ground floor uses when ~~existing structures are re-occupied by different tenants or uses, or when~~ this requirement is determined by the Review Authority to be infeasible because of excessive storefront vacancies.

~~2. Ground floor, street fronting business/service offices may be approved if the Review Authority first determines that the use will not impair the pedestrian character of the street, provided that:~~

~~a. Parcels on the block occupied by office uses that are not pedestrian-oriented constitute less than 50 percent of the block frontage;~~

~~b. The remainder of the block is characterized primarily by retail and/or restaurant uses; and~~

~~c. The facade design of the structure that accommodates the office contributes to the visual interest of the street and conspicuously expresses the nature of the use.~~

3. Emergency Shelter Definition

The State of California (Health and Safety Code Section 50801(e)) provides the following zoning definition of a Homeless Shelter:

- **Homeless Shelter** – housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person (or homeless family).

Staff recommends that this definition be used in the ILUDC.

4. Service Animal definition

The ADA national network provides the following zoning definition of a Service Animal:

- **Service Animal** - A service animal is any dog (or miniature horse) that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals.

Staff recommends that this definition be used in the ILUDC.

5. Vacancy Tax

Issue: The proper vehicle for the imposition of a vacancy tax would be an amendment to the Municipal Code, rather than the Land Use and Development Code. However, since this issue was identified as part of the ILUDC update and could impact the Central Business District, staff has prepared the following brief analysis of the purposes of a vacancy tax and the pros and cons of establishing one.

To understand if a vacancy tax would be an effective policy solution to the issue of empty store fronts, it is important first to understand the extent of empty storefronts and the possible causes of

empty storefronts. On October 6th staff completed an inventory of all empty storefronts in the Central Business District. Seventeen empty storefronts were identified, including three that are already leased but not yet occupied. Map 1 illustrates the parcels with vacant storefronts, along with the building condition. Staff counted 194 stores located in the downtown core, so the downtown has a vacancy rate of 8.7%, which is perhaps higher than we would like, but not unhealthy. Unfortunately many of these vacancies are located in the core on Franklin Street, which concentrates the problem in a critical area.

Staff took a good look at the empty storefronts in downtown Fort Bragg to develop a deeper understanding of the challenge:

- A number of vacant properties in the downtown have been the subject of multiple code enforcement actions for violations of the municipal code, and the property owners have been unwilling or unable to address these code violations. These properties appear to be vacant primarily due to the physical state of the properties and/or because the landlord has a poor reputation and there are plenty of other rental options. The Huber family owns a number of the most visible and worst condition vacant storefronts on Franklin Street for example. These properties have been and continue to be the effort of multiple code enforcement efforts, to little avail. See Attachment 2.
- Some properties are vacant due to their location. They are located in areas that are isolated from other stores. Destination retailers would be the only successful renters of these properties. These buildings have a history of high turn-over and vacancy as businesses have attempt to make a go of it, and then either failed or moved to a better location.
- Some storefronts are vacant because they have recently lost their tenants (to closure or relocation) and they are either actively being marketed for rent or are already released (three stores). These storefronts don't appear to have any issues in terms of location, maintenance, rental rates etc. Typically retailers don't open up new stores in the winter due to the relative lack of customers, so some of these storefronts may remain vacant until the spring. See Attachment 3.
- Some storefronts are vacant because the buildings are for sale and the property owner prefers to sell the building un-encumbered by a tenant or lease agreement.
- Some buildings are vacant and are not actively being marketed for rent. Some like the Fort Bragg bakery are being used for non-store purposes (wholesale baking for example). See attachment 3.
- Some storefronts may be vacant because the asking rent is too high and not supported by the market. This is difficult to determine, because property owners do not generally provide a rental rate and instead negotiate based on the tenant.

Some corollary questions worth asking include: 1) why have some retail stores closed and 2) why is there churning of new stores in the Fort Bragg retail market? Many stores have closed due to the fundamental shift in retail shopping towards internet-based shopping and shopping at larger discount outlets for items such as clothing, electronics, furniture, household supplies, etc. This has left the downtown with a smaller core of specialty retail, which serves the impulse buying needs of visiting tourists; and basic retail which serves local needs for harder to ship items such as appliances. Additionally, during the recession, the City's tourism market experienced a precipitous decline. The net result is that there are simply not enough retail dollars churning through our stores to create a market for more stores or in some cases to successfully sustain the stores that currently exist. More recently, since the economic recovery and the opening of the Noyo headlands Park and the Fort Bragg Coastal Trail, the tourism economy has significantly recovered. Hotel revenues are up by 17% over the past two years. Going forward, one of the best ways to reduce vacancy will

be to increase promotional spending and increase the number of tourist activities and events in Fort Bragg to attract more visitors. Additional visitation will increase retail expenditures and help fill up storefronts.

As there are many “causes” of vacancy, it is simplistic to assume that a Vacancy Tax will make this multi-faceted problem go away. It is difficult to adopt a “registration tax” as it would require a Proposition 218 process or going to the voters. A fee is most easily justified and can be used to cover costs of maintenance and security around vacant store fronts. Many cities have established vacancy fees, only one (Vancouver, Canada) has a vacancy tax. Many cities in California charge a vacancy registration fee ranging from \$75 to \$ 603 (though most seem to be in the range of \$150) (see attachment 4). Most are geared to addressing the problem of vacant residential properties and the fee is meant to raise money for maintenance in order to ensure that the properties do not become blighted.

Staff does not have a recommendation regarding establishment of a Vacancy Registration fee. If a vacancy fee is established, Municipal Code Section 6.12 Nuisances would need to be amended to include a vacancy of more than six months as a nuisance condition and a fee for this type of violation would be added to our Code Enforcement Fee schedule.

FISCAL IMPACT:

Most development projects and changes of use require permits, and fees are collected to recover the cost to process those permits. The City collects a General Plan Maintenance fee on most building permits and that revenue funds staff time associated with General Plan and LUDC updates. The City also collects revenue through sales and use taxes and business licenses fees. To the extent that revisions to the ILUDC either encourage more business activity or displace sales tax revenue generating businesses, the ILUDC update could affect overall revenues collected by the City.

IMPLEMENTATION/TIMEFRAMES:

Processing the ILUDC amendments, its associated environmental review and required public hearings will take a few months to complete. It is expected to be completed in early 2017.

The fee schedule will be updated in November of 2016. The Muni Code will be updated in the Spring.

The Coastal Land Use and Development Code (CLUDC), which regulates development within the coastal zone, will also be updated following the ILUDC update, so that the two ordinances are as similar as possible. The CLUDC is updated at less frequent intervals than the ILUDC because the process with the Coastal Commission is time-intensive and lengthy. The last update was in 2008. Staff will come back to City Council for direction this fall/winter regarding the applicability of ILUDC changes made in 2014 and 2016 to the CLUDC and will submit one Local Coastal Program Amendment to the Coastal Commission which includes all approved changes. The CLUDC update will come forward to the City Council within the next few months and will take approximately 12 months to process with the Coastal Commission.

ATTACHMENTS:

1. Attachment 1 – Vacant Storefront Building Condition
2. Attachment 2 – Vacant Storefronts Ownership
3. Attachment 3 – Vacant Storefronts Marketing Status
4. Attachment 4 – Vacancy Registration Fees

NOTIFICATIONS:

None.

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____