



AGENDA SUMMARY EUREKA CITY COUNCIL

TITLE: Cannabis Text and Local Coastal Program Amendments

DEPARTMENT: Development Services

PREPARED BY: Rob Dumouchel, Associate Planner

PRESENTED FOR: Action Information only Discussion

RECOMMENDATION

1. Hold a public hearing; and
2. Waive reading, read by title only, and introduce Bill No. 958-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 15 Chapters 155 and 158 pertaining to cannabis; and
3. Waive reading, read by title only, and introduce Bill No. 959-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 10, Chapter 5 pertaining to cannabis.

FISCAL IMPACT

No Fiscal Impact Included in Budget Additional Appropriation

COUNCIL GOALS/STRATEGIC VISION

Update Municipal Code

DISCUSSION

The City is proposing to amend Chapters 155 and 158 of the Eureka Municipal Code, and Title 10, Chapter 5 of the Local Coastal Program, which currently regulate cannabis in Eureka. The proposed amendments are drafted based on direction from City Council on August 7, 2018. The proposed amendments would: allow on-site consumption of cannabis and cannabis products in appropriately-licensed retail facilities and remove an existing EMC restriction on cannabis signage. Since the proposed amendments are included in the Implementation Plan of the Local Coastal Program, in addition to an amendment to the text of the Municipal Code, an amendment to the LCP is also required.

Environmental: Amending the text of the Eureka Municipal Code is a “project” for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines section 15061, there is a general rule that CEQA applies only to

projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Pursuant to Section 21080.9 and 21080.5 and Division 20, Chapter 6 of the Public Resources Code, the Coastal Commission's review and development process for LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by the California Environmental Quality Act (CEQA). Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments. Based on the Public Resources Code Sections cited above, the City of Eureka exempts from CEQA the proposed amendments to the cannabis text.

From a CEQA perspective, the new use (on-site consumption of cannabis) is effectively identical to other currently existing uses such as coffee shops and bars. The proposed new uses will not generate any CEQA impacts (i.e. traffic, noise, visual impacts, etc) beyond those that existing uses (e.g. bars) currently generate. Signs are already allowed in the zones where cannabis facilities are allowed, and would be subject to the same criteria and regulations as other signs found in the same zone districts.

Because the text amendment only allows retail uses in areas that already allow for retail and allows signs in areas that already allow signs, adopting the Text Amendment would not have a significant effect on the environment.

Applicable Regulations

Text Amendment: In order to amend the text of the Eureka Municipal Code, a finding must be made that the proposed amendment is consistent with the objectives of the zoning regulations as prescribed in § 155.002 and Sec. 10-5.102 of the Eureka Municipal Code. The zoning regulations are adopted to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare:

Objectives of Chapter 155 and Chapter 5.

There are eleven objectives specified for Title 10 Chapter 5, and Title 15 Chapter 155 of the Eureka Municipal Code, ZONING REGULATIONS:

- (a)/i. To provide a precise guide for the physical development of the city in such manner as to achieve progressively the arrangement of land uses depicted in the general plan adopted by the Council;
- (b)/ii. To foster a harmonious, convenient, workable relationship among land uses;
- (c)/iii. To promote the stability of existing land uses that conform with the general plan and to protect them from inharmonious influences and harmful intrusions;

- (d)/iv. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the city as a whole
- (e)/v. To prevent excessive population densities and overcrowding of the land with structures;
- (f)/vi. To promote a safe, effective traffic circulation system;
- (g)/vii. To foster the provision of adequate off-street parking and off-street truck loading facilities;
- (h)/viii. To facilitate the appropriate location of community facilities and institutions;
- (i)/ix. To promote commercial and industrial activities in order to strengthen the City's tax base;
- (j)/x. To protect and enhance real property values; and
- (k)/xi. To safeguard and enhance the appearance of the city.

Discussion and Analysis: Per direction from the City Council, issued during the August 7, 2018 regular meeting, staff has drafted proposed amendments to Eureka Municipal Code Chapter 158 and Title 10, Chapter 5 to do the following: 1. Allow on-site consumption of cannabis and cannabis products; 2. Remove cannabis specific sign restrictions.

On-site consumption of cannabis and cannabis products is allowed by the State of California in licensed retail facilities. At the present time the City of Eureka only allows for off-site consumption of cannabis and cannabis products. The proposed changes to the Eureka Municipal Code will conditionally allow on-site consumption in certain zone districts. While this amendment will allow on-site consumption, the existing request for proposal process and the conditional use permit process for cannabis retail facilities will remain in place, allowing for control of what type(s) of on-site consumption, if any, are appropriate for each individual location.

At the present time the City of Eureka does not allow signs for cannabis businesses. The amendment would remove the restriction set in Eureka Municipal Code § 158.024 (E)/10-5.3010 (E) and instead allow advertising signs subject to the sign regulations in Eureka Municipal Code § 155.155 et seq. and §10-5.1701.

Because the text amendment only permits retail uses with on-site consumption in areas that already allow for retail uses, requires conformance with Chapter 97 (Smoking) for facilities that allow smoking, and allows signs in areas that already allow signs, adopting

the Text Amendment would clearly be consistent with the purposes and objectives of the zoning regulations to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare.

Coastal Zone Background: The Local Coastal Program (LCP) is the foundational policy document for areas of the City located in the coastal zone. It establishes farsighted policy that forms the basis for and defines the framework by which the City's physical and economic resources in the coastal zone are to be developed, managed and utilized. The Local Coastal Program is divided into two components: the first component is the *Land Use Plan (LUP)*, which is the General Plan specific to land in the coastal zone. It outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the Land Use Plan map. The second component of the Local Coastal Program is the *Implementation Plan (IP)*, which includes zoning regulations and the zoning map for land in the coastal zone, as well as specific coastal zone ordinances necessary to implement the policies of the Land Use Plan. When the City Council amends the Local Coastal Program, the amendment must be submitted to the California Coastal Commission for approval. If the Commission can find that the amendment is in accord with the Coastal Act, they then approve or "certify" the amendment. Even though the City Council approves and adopts an amendment to the LCP, it does not become effective or enforceable until it is certified by the Coastal Commission.

Prior to the Eureka Municipal Code being renumbered in 1997, the inland portion of the zoning code included Articles 1 through 28 in Title 10, Chapter 5. After the renumbering, the inland portion of the zoning code became known as "Chapter 155." When the coastal portion of the zoning code, which was contained in Title 10, Chapter 5, Article 29, was renumbered, it became "Chapter 156." And, as far as the City was concerned at that time, Chapters 155 and 156 were the "zoning code" and the law of the City of Eureka. However, when the renumbering occurred, Chapter 156 should have been sent to the Coastal Commission for certification.

Then, in 2013, Community Development Staff and the Coastal Commission discovered that, for reasons unknown to either agency, Chapter 156 was never sent to the Coastal Commission and therefore was never certified. This meant that even though the coastal law in the City was "Chapter 156," the coastal law for the State of California (Coastal Commission) was the last version of the Municipal Code that had been certified by the Coastal Commission, which was Title 10, Chapter 5, and Article 29. Since then City Staff has been using "the Old Code" as the law in the coastal portion of the City. Although the City has continued to make some amendments to Chapter 156 since the Municipal Code was renumbered, none of those amendments have been certified by the Coastal Commission.

Because the General Plan Update (GPU) process currently underway includes updating the LUP, and completion of the GPU will necessitate amendments to the zoning code, it was decided to continue to use "the old code" and resolve numbering and amendment issues at the end of the General Plan and Zoning Code update process.

In this instance, in order to make changes to the coastal zoning code, Staff is proposing to amend both Chapters 155 and 158 and the Old Code. That way, the law as the City knows it, and the law as the Coastal Commission knows it, will both be updated.

The California Legislature has determined that the basic goals of the state for the coastal zone are:

- (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

And Section 30513 of the Coastal Act establishes the criteria for Coastal Commission action on proposed amendments to certified Implementation Plans. Section 30513 states, in applicable part:

... The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reason for the action taken.

Any proposed changes to the IP must conform with and adequately carry out all applicable policies and standards of the LUP which, either procedurally or substantively, affect or direct the location, type, density, or intensity of such uses through specified due process (e.g., designated hearing body, public hearing requirements) and/or restrictions, limitations, and performance standards imposed on such uses.

Local Coastal Program Amendment

Discussion: The Local Coastal Program (LCP) Amendment will only amend the Implementation Plan (IP) which is the zoning code portion of the LCP to include the proposed amendment.

Applicable Regulations

Local Coastal Program Amendment: The standard of review for the proposed amendment to the City of Eureka's Implementation Plan (i.e., text amendment) is whether the amendment conforms with and is adequate to carry out the certified Land Use Plan (LUP).

The zoning ordinances and zoning district map must conform with and be adequate to carry out the policies, objectives, principles, standards and plan proposals set forth in the land use plan. The scope of measures contained in the zoning ordinance and/or district maps extend to the authority granted to the City by the planning laws of California, including Government Code Section 65850-65862 and 65910-65912.

The Policy Document of the General Plan contains explicit statements of goals, policies, standards, implementation programs, and quantified objectives that constitute the formal policy of the City of Eureka for land use, development, and environmental quality. The Policy Document is divided into eight sections: Land Use and Community Design; Housing; Transportation and Circulation; Public Facilities and Services; Recreational and Cultural Resources; Natural Resources; Health and Safety; Administration & Implementation.

Retail uses, both cannabis and non-cannabis are currently allowed in multiple zone districts within the coastal zone, as are signs, and each has been thoroughly analyzed in previous ordinances. The proposed amendments are designed to align with State regulations and protect the public health safety and welfare. The proposed amendments do not conflict with the adopted Land Use Plan, and where coastal resources may be impacted, a Use Permit and Coastal Development permit process will be required. Therefore, the amendment conforms with and is adequate to carry out the certified Land Use Plan.

Planning Commission Recommendation:

The draft amendments were reviewed by the Eureka Planning Commission at a duly noticed public hearing on September 10, 2018. Three people provided testimony for the proposed amendments, zero people provided testimony against the proposed amendments. Following the close of the public hearing, the Planning Commission recommended to City Council that on-site consumption of cannabis and cannabis products be restricted to Cannabis Topicals only, as defined in the amendments (see Attachment 5). The Planning Commission also found that the Text and Local Coastal Program amendments as amended are consistent with the objectives of Title 15 Chapters 155 and 158 and Title 10 Chapter 5 of the Eureka Municipal Code.

Staff Recommendation and Suggested Motion:

1. Hold a public hearing; and

2. Waive reading, read by title only, and introduce Bill No. 958-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 15 Chapters 155 and 158 pertaining to cannabis; and
3. Waive reading, read by title only, and introduce Bill No. 959-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 10, Chapter 5 pertaining to cannabis; and

“I move that the City Council waive reading, ready by title only, and introduce Bill No. 958-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 15 Chapters 155 and 158 pertaining to cannabis; and waive reading, read by title only, and introduce Bill No. 959-C.S., approving the Text and Local Coastal Program Amendment modifying Eureka Municipal Code Title 10, Chapter 5 pertaining to cannabis.”

REVIEWED AND APPROVED BY:

- City Attorney
- City Manager
- City Clerk/Information Services
- Community Services
- Development Services
- Finance
- Fire
- Personnel
- Police
- Public Works

ATTACHMENTS:

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| Attachment 1 | Draft Ordinance Current Code strikeout |
| Attachment 2 | Draft Ordinance Current Code clean |
| Attachment 3 | Draft Ordinance Old Code strikeout |
| Attachment 4 | Draft Ordinance Old Code clean |
| Attachment 5 | Planning Commission Resolution |