



AGENCY: City Council
MEETING DATE: January 23, 2016
DEPARTMENT: CDD
PRESENTED BY: S. Perkins

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT REGARDING ORDINANCE AMENDMENTS FOR CANNABIS RETAIL USES AND PROVIDE DIRECTION TO STAFF

ISSUE:

The voters of California passed Proposition 64, or the Adult Use of Marijuana Act (AUMA) to legalize the nonmedical use of cannabis and the personal cultivation of up to six cannabis plants. The State will not be issuing licenses under the Act until late 2017; however, cities that wish to regulate or prohibit retail cannabis uses should have policies in place prior to State licensing, otherwise the new State regulations will trump local control. This report focuses on cannabis retail uses in the City of Fort Bragg with respect to the new legislation.

RECOMMENDED ACTION:

Receive report and provide direction to staff regarding potential legislation regulating cannabis retail uses.

ALTERNATIVE ACTION(S):

Take no action.

ANALYSIS:

There are two new pieces of State-level legislation affecting the California cannabis industry—the Medical Marijuana Regulation and Safety Act (MMRSA) and AUMA (Adult Use of Marijuana Act). MMRSA specifically regulates medical cannabis, whereas AUMA regulates personal or recreational use of cannabis. The following summarizes recent State and local legislation regarding cannabis.

Recent Legislative History

1. MMRSA (Medical Marijuana Regulation and Safety Act)

The State of California enacted the Medical Marijuana Regulation and Safety Act (MMRSA) in late 2015, and the State will institute a regulatory and licensing system for the cultivation, transportation, third party certification, manufacture and distribution of medical marijuana. MMRSA is comprised of State legislative bills AB 243, AB 266 and SB 646. The State is drafting regulations to implement MMRSA and will not issue licenses under the Act until January 2018. The State encourages local jurisdictions to develop local regulations concerning the various components of the medical marijuana supply chain in advance of State permitting in the event that local jurisdictions prefer local control of the various activities (cultivation, manufacture, distribution, testing and sales) regulated through MMRSA.

2. Prop 64 (Adult Use of Marijuana Act)

The last General Election saw the passage of Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA legalizes the nonmedical use of cannabis by persons 21 years of age and over, and legalizes the personal indoor cultivation of up to six cannabis plants. AUMA will create a State regulatory and licensing system governing the commercial cultivation, testing and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products.

3. Distinctions between MMRSA and AUMA

MMRSA establishes dual licensing of medical cannabis businesses, requiring both local approval and a State license in order for a business to operate legally. Specifically, MMRSA requires applicants to provide the relevant State licensing entity with documentation proving their compliance with local ordinances and regulations.

AUMA does not require an applicant to provide evidence of local permission prior to being issued a State license. Instead, AUMA prohibits State licensing entities from approving licenses for activities that would violate local ordinances. Thus, State licensing officials bear the onus of evaluating local regulatory compliance.

Under this system, AUMA allows a nonmedical cannabis business licensed by the State to operate within a city's limits unless the city's municipal code prohibits the use. Cities that wish to regulate or prohibit nonmedical cannabis businesses will need to do so before the State begins issuing licenses, either by enacting a nonmedical cannabis ordinance/regulation or by amending an existing medical cannabis ordinance/regulation to include nonmedical cannabis within its scope.

While the City may issue permits for medical cannabis businesses to operate prior to State licensing under MMRSA, it is important to note that nonmedical cannabis businesses may not legally operate until they obtain State licenses under AUMA. The League of California Cities anticipates that the State will issue nonmedical cannabis business permits under AUMA at the beginning of 2018.

4. Cannabis Manufacturing in City Limits

In 2016, City Council discussed cannabis manufacturing in the City of Fort Bragg in light of the recently-enacted MMRSA. Culminating with the adoption of Municipal Code Chapter 9.33 *Cannabis Manufacturing*, Council determined that cannabis manufacturing businesses may operate in the Light Industrial and Heavy Industrial zoning districts with the approval of a Use Permit. Chapter 9.33 became effective December 14, 2016.

In addition to the adoption of Chapter 9.33, the Planning Commission recently adopted a resolution recommending that Council update the Inland Land Use and Development Code (ILUDC) to allow cannabis manufacturing in the Heavy Industrial and Light Industrial zoning districts with an approved Use Permit. The ILUDC Amendment would establish, regulate and define cannabis manufacturing by modifying Article 2 (Zoning Districts & Allowable Land Uses), Article 4 (Standards for Specific Land Uses), and Article 10 (Definitions).

Current City of Fort Bragg (Medical) Cannabis Retail Policy

1. Medical Marijuana Dispensary Definition

The following definition, located in FBMC Chapter Section 9.30.020, applies to medical cannabis dispensaries:

MEDICAL MARIJUANA DISPENSARY or DISPENSARY. Any facility or location where medical marijuana is made available to and/or distributed by or to two (2) or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with Cal. Health and Safety Code §§ 11362.5 et seq. A MEDICAL MARIJUANA DISPENSARY shall not include the following uses, as long as the location of the uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Cal. Health and Safety Code Chapter 1 of Division 2, a health care facility licensed pursuant to Cal. Health and Safety Code Chapter 2 of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Cal. Health and Safety Code Chapter 3.01 of Division 2, a residential care facility for the elderly licensed pursuant to Cal. Health and Safety Code Chapter 3.2 of Division 2, a residential hospice, or a home health agency licensed pursuant to Cal. Health and Safety Code Chapter 8 of Division 2, as long as any such use complies strictly with applicable law, including, but not limited to, Cal. Health and Safety Code §§ 11362.5 et seq.

The City has no legislation addressing nonmedical cannabis retail uses at this time.

2. Allowable Dispensary Locations

At present, the ILUDC permits medical cannabis dispensaries in only the Light Industrial and Heavy Industrial zoning districts with an approved Use Permit. Dispensaries are not permitted in the commercial or residential zoning districts.

	CN	CO	CBD	CG	CH	IL	IH
Medical Marijuana Dispensary	Not Permitted	Use Permit	Use Permit				

3. Permitting Requirements

FBMC Chapter 9.30 includes application requirements and standards for the City’s review of medical cannabis dispensary Use Permit applications. The following list highlights some of the requirements specific to dispensary applications:

- a. Application
 - a. Cannabis business history of applicant
 - b. Names of staff
 - c. Diagram of premises
- b. Chief of Police Review
 - a. Background checks
- c. Use Permit
 - a. Applicant to maintain records of clients
 - b. No cannabis cultivation, cannabis use, or accessory retail/service permitted on premises
 - c. Maximum signage: four square feet

What Proposition 64 (AUMA) means for nonmedical cannabis retail in Fort Bragg

AUMA prohibits State licensing authorities from issuing a license to a commercial nonmedical cannabis business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. If Council chooses to regulate the location and/or operating characteristics of nonmedical cannabis retail uses, the City must adopt business or land use policies prohibiting or regulating commercial nonmedical cannabis businesses prior to the date the

State begins issuing licenses, which the League of California Cities anticipates will be in early 2018. If Council wishes to prohibit nonmedical cannabis retail uses in the City, Council should adopt express prohibitions in the zoning code. Absent local regulatory action, the State can issue commercial recreational cannabis licenses in accordance with State requirements only.

If a city bans commercial retail sales of cannabis or cannabis products, it is ineligible to receive State grant monies funded through the new State excise taxes on cannabis that take effect on January 1, 2018 (Revenue and Taxation Code 34019(e)(3)(D)).

Possible options for Council consideration

AUMA does not require a local jurisdiction to enact a regulatory scheme or ban by a certain date. However, if the City wishes to ban or regulate nonmedical cannabis businesses before they may legally operate within the city, the regulations or ban will need to take effect before the State begins issuing nonmedical cannabis business licenses. Options for regulation include:

1. **Prohibition of retail cannabis uses:** If Council elects to prohibit retail cannabis uses throughout the City, an amendment to the Municipal Code will be required prior to State licensing, which is expected to be early 2018.
2. **Define, establish, and regulate retail cannabis uses:** Similar to Council’s recent adoption of policies regulating cannabis manufacturing (Chapter 9.33), the City could allow retail cannabis uses in specified zoning districts. The Council should consider requiring a Use Permit to establish new retail cannabis businesses to determine if the use is appropriate and compatible with surrounding land uses, and could enact special standards and requirements for future retail cannabis uses, similar to the standards established for cannabis manufacturing.
3. **Modify existing medical dispensary requirements to incorporate nonmedical cannabis retail uses:** As described above, the City currently allows medical cannabis dispensaries in the industrial zoning districts with an approved Use Permit and subject to specific use standards. The Council could expand the policies applicable to medical marijuana dispensaries to include nonmedical cannabis retail uses, and possibly expand its application to additional zoning districts.
4. **Consider retail cannabis uses equivalent to *General Retail* or equivalent existing retail use:** The City presently allows *General Retail* businesses of varying sizes as depicted below:

	CN	CO	CBD	CG	CH
Bar/Tavern	Not Permitted	Not Permitted	Use Permit	Minor Use Permit	Minor Use Permit
General retail – less than 5,000 sf	Permitted	Not Permitted	Permitted	Permitted	Permitted

The City could consider retail cannabis uses to be equivalent to *General Retail* uses, and apply the City’s existing land use standards to future retail cannabis businesses. Retail cannabis uses will still be subject to State licensing under AUMA in this scenario.

Staff recommends the second approach described above. After a review of other regulatory approaches in small cities located in Washington and Colorado, staff recommends the following general policy approach for the regulation of retail recreational cannabis:

Regulatory Issue	Current Medical Dispensary Policy	Recommendation	Alternatives
Zoning District	IH and IL	CBD, second floor only	Throughout CBD and/or in other commercial zoning districts
Permit Required	Use Permit	Use Permit	No discretionary permit or Minor Use Permit
Quantity of Permits	No limitations	Limit the quantity of permits available, either with a maximum number or prescribe distances retail cannabis uses must operate from one another	Provide no limitation on permits
Hours of Operation	8:00 a.m. to 6:00 p.m.	10:00 a.m. to 9:00 p.m.	Other hours as Council sees fit
Exterior Signage	1 sign per use not to exceed 4 square feet	Restrict signage to a minimal amount	Require compliance with current sign ordinance, or allow no signage
Security Requirements	Submission of "security arrangements for the safety of persons and to protect the premises from criminal activity"	Submission of a security plan to be reviewed and approved by the Police Chief	Require specific security measures (cameras, alarms, etc.), or leave security to the proprietor (no requirement)
Accessory Uses	No cannabis use or cultivation permitted on premises, and may not engage in commercial sale of any product, good or service other than cannabis	Retail sale of other goods permissible, services such as spa treatments or noncannabis food service prohibited	Allow no accessory commercial uses, or place no restriction on accessory uses
Odor Control	City's universal odor policy: "No obnoxious odor or fumes shall be emitted that are perceptible without instruments by a reasonable person at the property line of the site"	Use existing City odor policy	Require odor control plan

Council may also consider revising the existing medical dispensary regulations to be consistent with policies for future nonmedical retail cannabis uses. For example, if Council wishes to allow nonmedical retail cannabis uses in commercial districts, it may be appropriate to also allow medical dispensaries in commercial districts.

It is important to note that there is not yet any indication of what the State will require of retail cannabis uses in order to obtain a State license. As an example, if the State prohibits the sale of accessory merchandise in retail cannabis facilities, a City ordinance permitting the activity would not be valid. Additionally, Mendocino County is presently crafting policy on cultivation, but has yet to indicate how retail cannabis may be regulated in the unincorporated portions of the County. It is possible that if the City's retail cannabis policy is more permissive than the County's policies, the City may see a disproportionate increase in new retail cannabis businesses. Conversely, if the City's policies are more restrictive than the County's policies, the City may experience a dearth of new retail cannabis businesses.

Finally, the Council has yet to consider local regulation of the other aspects of recreational cannabis legalization, including cultivation, transportation, testing. The City presently regulates medical marijuana cultivation, but does not address cultivation for personal, recreational or commercial use. The AUMA allows local governments to "reasonably regulate" but not prohibit personal indoor cultivation of up to six marijuana plants within a private residence. AUMA permits local governments to regulate or prohibit personal outdoor cultivation and all commercial cultivation.

Staff will prepare an analysis of cannabis cultivation, transportation and/or testing at Council's direction.

FISCAL IMPACT:

Preparation of an ordinance to regulate cannabis retail uses will require efforts by both City staff and the City Attorney. Whether Council decides to allow or prohibit retail cannabis uses, an ordinance update will be necessary in advance of State AUMA licensing if the City seeks to regulate the industry in any way. To date, the City Attorney has not been involved in staff discussions about cannabis retail uses, pending direction from the entire Council. If an ordinance is passed allowing cannabis retail uses, the Council will need to establish appropriate fees to offset costs associated with the permitting process and any subsequent inspections or enforcement activities. Additionally, Council will need to determine if and how the City will tax cannabis retail uses differently from general retail uses. If permitted, cannabis retail uses may create new jobs.

CONSISTENCY:

Review and identify the consistency of the proposed recommendation with relevant adopted plans, policies and strategies. A consistency analysis should be completed for proposed regulations, City projects, infrastructure investments and new fees.

IMPLEMENTATION/TIMEFRAMES:

Depending on workload and staffing constraints in the Community Development Department, it may take a few months for an ordinance to be drafted and reviewed by the City Attorney's office. Then, depending on the direction of the Council, it would either be brought forward to the full Council for consideration or to the Public Safety Committee for additional vetting and a recommendation prior to consideration by the Council.

ATTACHMENTS:

None

NOTIFICATION:

1. Notify Me list: Cannabis Legislation

City Clerk's Office Use Only

Agency Action	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Approved as Amended
Resolution No.:	_____	Ordinance No.:	_____
Moved by:	_____	Seconded by:	_____
Vote:	_____		
<input type="checkbox"/> Deferred/Continued to meeting of:	_____		
<input type="checkbox"/> Referred to:	_____		