



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: MARCH 23, 2021
TO: COMMUNITY DEVELOPMENT COMMITTEE
FROM: HEATHER GUREWITZ
**AGENDA ITEM TITLE: RECEIVE REPORT AND MAKE RECOMMENDATION TO
PLANNING COMMISSION ON THE UPDATES AND
ADOPTION OF ORDINANCES RELATED TO CANNABIS**

BACKGROUND AND OVERVIEW:

In 2016, the California voters approved the Adult Use of Marijuana Act (AUMA). In 2017, the California State Legislature passed Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which merged AUMA with the Medical Marijuana Act. The state initially adopted emergency regulations in 2017 and has since updated them several times, and created a new agency, Bureau of Cannabis Control. MAUCRSA also established the authority of local jurisdictions to regulate cannabis activity.

In 1982, the Fort Bragg City Council passed Ordinance 575, §1 to prohibit the display and sale of drug paraphernalia which is currently in the City of Fort Bragg Municipal Code.

The Fort Bragg City Council passed Ordinance number 880, § 2, on January 26, 2009, which established Chapter 9.32 Medical Marijuana Cultivation in the City's Municipal Code. This was removed from the Municipal Code by Ordinance 9253-19 on November 21, 2019.

On November 23, 2016, the Fort Bragg City Council adopted Ordinance 927-16, which established Chapter 9.33 Cannabis Manufacturing of the City's Municipal Code.

On March 9, 2017, the Fort Bragg City Council adopted Ordinance 928-17, which amended Title 18 the Inland Land Use Development Code Chapter 18.24 Industrial Zoning Districts and 18.42 Standards for specific land uses and chapter 18.100 definitions of the Fort Bragg Municipal Code, to include and define cannabis manufacturing.

On November 21, 2019, the City of Fort Bragg adopted Ordinance 925 to amend Article 2 of the ILUDC, Article 4, and Article 10 of the ILUDC to make provisions for cannabis retail and Ordinance 953-19 repealing Chapter 9.32 and 9.33 and replacing with updated version of 9.30 Cannabis Businesses.

Because the framework for legal cannabis cultivation is very new in the State of California and the City of Fort Bragg, it is expected that there are going to be changes made as the legal framework continues to take shape. It is possible that if/when the federal government declassifies cannabis from being a Schedule One narcotic, there may be additional changes or requirements as well.

To date, the City of Fort Bragg has received five applications for cannabis businesses and issued three permits (two retail dispensaries and one manufacturer). Two applications are incomplete/pending. Processing these applications has helped identify areas of the code that require more clarity in order to facilitate a fair, streamlined, and transparent process.

At the last Community Development Committee meeting, committee member reviewed potential updates to the code and suggested changes and prioritization for sections of the code. The table below shows the changes made to incorporate the recommendations of the committee:

Community Development Committee Direction	Changes Made
Okay with recommended changes to 9.30 – READY for COUNCIL	Removed cannabis microbusiness definition, no other changes made, included for reference purposes.
Remove the suggested code language providing regulation of residential/non-commercial cultivation	Removed section from 9.32. Code (still says outdoor is illegal in the City and does not specify commercial or personal).
Move 9.28 to Public Safety Committee (work with Police Chief)	Section 9.28 went to public safety committee on March 17, 2021.
Prioritize editing and completing Commercial Cultivation and Microbusiness	Updated 9.32, Title 18 Chapter 2 Land Use Tables, and Specific Standards in Chapter 4, and updated definitions in Chapter 10 to incorporate direction.
No cultivation of mature plants in CBD	Added new section 18.42.055 and updated text in 18.42.057
Only small cultivation of non-mature for sale on site in CBD	Included provision for 500 ft ² of nursery cultivation as accessory use.

	Requesting additional direction on size from committee.
Maintain consistency with accessory use definition for non-retail activities in CBD/Commercial (microbusiness concept)	Kept “serve the property language” and enhanced the definition of 18.42.057E to provide more detail around accessory use. No standalone microbusiness option at this time (see analysis below).
Allow Full Commercial Cultivation in Industrial Zones but require own source of water and or holding tanks for Stage 1 water emergencies and possibly require solar to offset the demand on the grid for larger cultivations	Included language in both 9.32 and 18.42.055 for review.
Include a 1% tax on cannabis cultivation	Spoke with Finance and will collaborate on developing an appropriate ordinance.
Maybe allow cultivation in other (not CBD) commercial zones	Analyzed locations in the inland commercial general and highway/visitor districts with information for CDC to make a decision.

ANALYSIS:

Allowing Commercial Cannabis Cultivation

If the Council wishes to allow commercial cannabis cultivation in the industrial zone, the following steps would need to be taken:

#1 Adopt Chapter 9.32 Cannabis Cultivation

The purpose of this code is to codify the legal grounds for Commercial Cannabis Cultivation in the City. The current draft incorporates the changes requested by CDC:

- No requirements or language for non-commercial cultivation;
- Encourages practices that reduce the impacts on electricity, water, and wastewater;
- Allows for commercial cultivation in the City of Fort Bragg; and
- Clarifies the difference between commercial and non-commercial cannabis cultivation.

#2 Adopt new land use table to include cannabis cultivation in Industrial Zones

The land use tables provide the legal guidance on where it is allowable to conduct specific activities. Per direction of the CDC, cultivation would only be allowable in the Industrial Zones. The new land use table for Industrial would be amended to show the following under the Agricultural, Resource, and Open Spaces Uses, but it can also be moved to manufacturing as the activity allowed is more akin to light manufacturing:

TABLE 2-10 Allowed Land Uses and Permit Requirements for Industrial Zoning Districts	P	Permitted use, Zoning Clearance required	
	MUP	Minor Use Permit required (see § 18.71.060)	
	UP	Use Permit required (see § 18.71.060)	
	S	Permit requirement set by Specific Use Regulations	
	—	Use not allowed	
LAND USE (1)	PERMIT REQUIRED BY DISTRICT		Specific Use Regulations
	IL	IH	

AGRICULTURAL, RESOURCE AND OPEN SPACE USES

Indoor & Mixed Light Cannabis Cultivation up to 500 ft ²	P(3)	P(3)	18.42.055
Indoor & Mixed Light Cannabis Cultivation between 500 and 5,000 ft ²	MUP	MUP	18.42.055
Indoor & Mixed Light Cannabis Cultivation over 5,000 ft ²	UP	UP	18.42.055

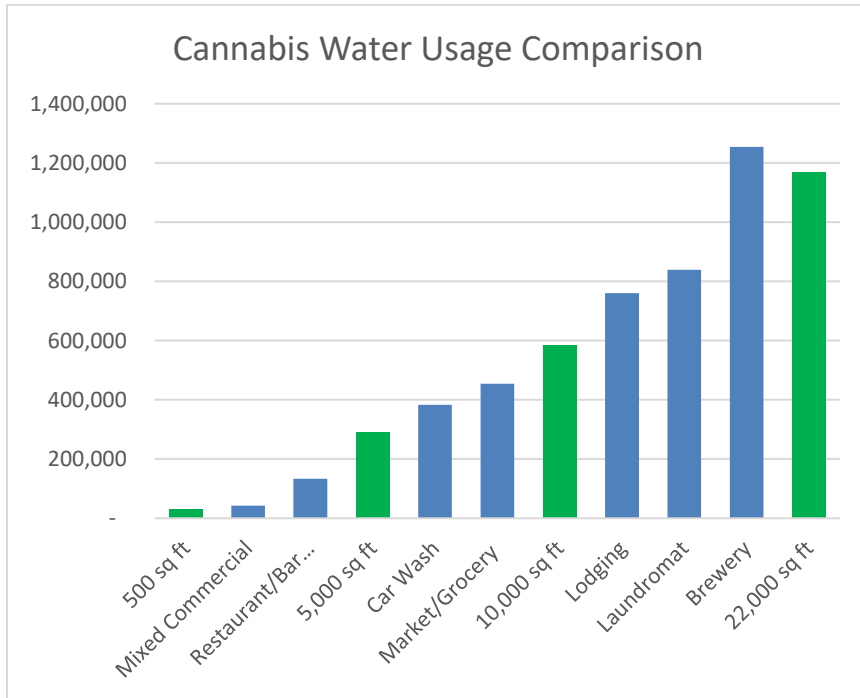
Notes:

(3) Permissible only with an approved cannabis business license from the City of Fort Bragg.

It is important to remember that the public safety concerns are addressed through the Cannabis Business Permit and that the permit will not be issued unless the business meets all the requirements of Chapter 9.30. Cannabis Cultivation is similar in intensity to other permissible industrial uses in both Industrial Light and Heavy:

- Fish processing
- Light Manufacturing which is defined as “a facility accommodating manufacturing process involving and/or producing: apparel; food and beverage products; electronic; optical; and instrumentation products; ice; jewelry; and musical instruments. Light manufacturing also includes other establishments engaged in the assembly fabrication, and conversion of already processed raw materials into products, where the operation characteristics of the manufacturing process and the materials used are unlikely to cause significant impacts on surrounding land uses or the community....” Examples in the definition include:
 - Brewery
 - Candy, sugar, confectionary products manufacturing
 - Fruit and vegetable canning, preserving, and related processing
 - Grain mill products and by-products
 - Meat, poultry, and seafood canning, curing, byproduct processing
 - Coffee roasting
 - Dairy product manufacturing
 - Soft drink production

A concern with cannabis cultivation is water usage and the City’s available water resources. After consulting with industry experts and other jurisdictions, efficient indoor cultivations with water recycling use approximately 50 gallons of water for every 500 ft² of cultivation per day. Compared to other water users, a 500 ft² cultivation uses a small amount of water, as can be seen in the comparison table below. Because a Cannabis Business Permit should address any potential public safety concerns, and the use is consistent with the industrial zone, and the water usage is minimal, it is reasonable to allow a 500 ft² cultivation without a land use permit in the industrial light and heavy.



#3 Adopt Section 18.42.055 Cannabis Cultivation

This section reiterates many of the requirements already stated in both 9.30 and 9.32. However, this section provides additional land use specific requirements such as permit requirements based on size and can include water provisions, buffer zones, or other specific requirements that the Committee may wish to include.

#4 Update Article 10 Definitions

The City of Fort Bragg needs to codify its own definitions that are specific to the City’s needs. For example, the state calculates permit size based on the size of the mature canopy. This means that a business that has a license for a 500 ft² cultivation, could actually have 5,000 ft² under cultivation. This is problematic for local use because the major concern for size is water usage, therefore, the more important number at the local level is the total size, not the mature canopy.

There was additional discussion as to whether the city wishes to use the state definition of cannabis cultivation, which includes the drying, curing, grading or trimming of cannabis.

Given that cultivation (except very small nursery) is only allowed in industrial zone, there is not significant reason to change it because all activities are allowable in the industrial zone and in fact, several of these particular uses are currently permitted by right under light manufacturing.

Analysis of the “Cannabis Microbusiness” Use

On February 23rd 2021, the committee clarified their direction on the microbusiness activities. After a complete analysis, staff recommend that the council does not need to add “Cannabis Microbusiness” as a separate use based on the following reasons:

- In the Industrial Zone, all elements of the microbusiness are already permissible (retail delivery only) by right or with a conditional use permit and therefore it is not necessary
- The committee provided the direction that cultivation of flowering plants in the CBD should not be permissible and any non-retail uses in the CBD should be accessory to retail as the primary use to support retail sale onsite. Therefore, the ILUDC Section 18.42.057 with recommended updates should be sufficient
- The only zones where there was any lack of clarity were the Commercial Highway and the Commercial General. Staff analyzed these zones to determine whether the use of a “Cannabis Microbusiness” would meet the goals of these zones. Through the analysis below, it does not appear that a cannabis microbusiness would be consistent with the land use.

#1 Analysis of Appropriateness for Cannabis Microbusiness in General Commercial

The definition for General Commercial is as follows:

CG (General Commercial) zoning district. The CG zoning district is applied to areas of the City that are appropriate for less compact and intensive commercial uses than those accommodated within the CBD zone. Allowable land uses are typically more auto-oriented than pedestrian-oriented, and may include automotive and service-related uses, a wide range of retail stores, including those selling large products (appliances, home furnishings, building materials, etc.). The maximum allowable residential density within the CG district for the residential component of a mixed use project is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CG zoning district implements and is consistent with the CG land use designation of the General Plan.

The following map of the General Commercial zone (below) shows the geographic location of the zone. The General Commercial borders the northern and southern end of the Central Business District. The northern section borders the industrial area. This zone has a number of historic residential properties and neighborhoods interspersed with commercial activity. There may be a few locations, such as 220 E. Bush or 546 S. Main that might be potential locations for a cannabis microbusiness. However, the proximity to residential would make a project in these locations questionable.



#2 Analysis of Appropriateness for Cannabis Microbusiness in Highway Commercial

The Highway Commercial Zone is defined as follows:

CH (Highway Commercial) zoning district. The CH zoning district is applied to sites along Highway 1 and arterials at the entry points to the community. Allowable land uses include lodging, restaurants, and retail stores. The maximum allowable residential density within the CH district for the residential component of a mixed use project is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CH zoning district implements and is consistent with the CH land use designation of the General Plan.

The map below shows the geographic coverage of the Highway/Visitor Commercial. The Majority of the sites covered by this code already have a B&B, hotel/motel, or other visitor serving activity. However, there are some potential sites that may be attractive to someone who wants to start a microbusiness, such as 120 E Bush Street or 110 Manzanita. While there may be a few possible sites, in general, the industrial nature of the activity is not consistent with the intended use of this district either.



For the few sites that might be appropriate for industrial activity, a potential applicant could apply for a re-zone of that parcel to make it industrial. If successful, they would then be able to conduct all of the microbusiness activities as allowable in the Industrial Zone. This is a more reasonable option than creating a use that would allow industrial activity in commercial zones.

Update to Cannabis Accessory Use Definitions

The Committee expressed a desire to allow certain accessory uses on site as long as they conform with the code’s existing definition of accessory uses. In order to allow this the following changes should be considered.

#1 Update Chapter 18 Title 2 Land Use tables

In order to clarify and specify that accessory nursery (up to 500 ft²), processing, or manufacturing are allowable accessory uses, Chapter 18.22.020 Table 2-6 should be updated to reflect the following:

TABLE 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts	P Permitted use, Zoning Clearance required Minor Use Permit required (see MUP§ 18.71.060) UP Use Permit required (see § 18.71.060) Permit requirement set by Specific Use S Regulations — Use not allowed					
	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
LAND USE (1)	CN	CO	CBD	CG	CH	
AGRICULTURAL, RESOURCE AND OPEN SPACE USES						
Crop production, horticulture, orchard, vineyard	P	P	P	P	P	
Indoor Cannabis Nursery			MUP(3)	MUP(3)	MUP(3)	18.42.057
INDUSTRY, MANUFACTURING AND PROCESSING, WHOLESALING						
Laboratory - Analytical and testing	—	P	—	P	—	
Artisan/craft product manufacturing with retail sales	—	P(2)	P(2)	P(2)	P(2)	
Brewery/restaurant	—	—	UP	—	—	
Printing and publishing	—	—	P	P	—	
Research and development (R&D)	—	—	—	UP	—	
Recycling - Small facility	P	P	P	P	P	18.42.150
Recycling - Large facility	—	—	—	UP	—	18.42.150
Cannabis - Wholesale Distribution				MUP(3)		18.42.057
Cannabis - Manufacturing Level (<u>non volatile</u>)			MUP(3)	MUP(3)	MUP(3)	18.42.057
Cannabis - Processing			MUP (3)	MUP (3)	MUP (3)	18.42.057

(3) May be allowable only as an accessory use to a cannabis retail for retail sales on site. The retail must make up the primary use of the site in comparison with the combination of all other uses and are subject to section 18.42.057.

Even though these are listed as uses, the footnote and the reference to the Standards for Specific Land Uses clarify that they are not eligible for stand-alone operations and they are only allowable as accessory uses.

It is important to note that the size listed is the maximum. However, in the example of a 1,000 ft² commercial building, a nursery could not be 500 ft². The site plan would need to show that retail is the primary use. In the case of a retail dispensary selling nursery plants and possibly conducting other accessory uses, the retail space would have to take up a bare minimum of 510 ft². Thus, any other use would have to take up less than 490 ft². The committee may wish to provide direction on size and specifics around accessory uses.

#2 Update 18.42.057 to specify details on accessory uses.

The current Accessory Use Definition in Cannabis Retail says:

E. Accessory uses. As defined in Article 10, accessory uses are customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use. Uses accessory to cannabis retail facilities may be allowable pursuant to the permitting requirements in Article 2. Accessory uses may include activities that require multiple State cannabis licenses, including, but not limited to, manufacturing, distribution, cultivation and/or processing. In no instance shall cannabis manufacturing using volatile solvents be allowable as uses accessory to cannabis retail uses.

The following update was developed to convey the guidance provided by CDC at the last meeting. Highlighted sections are the portions of the code that require additional input:

E. Accessory uses. As defined in Article 10, a use customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use nor serve property other than the parcel where the primary use is located.

1. In the **Central Business District and Highway Visitor Commercial Zones**, the following may be allowed as accessory uses to retail:
 - a. A cultivation of immature plants no larger than 500 ft² for retail sale on site
 - b. Processing of cannabis for retail sale on site
 - c. Non-volatile manufacturing of cannabis for retail sale on site
 - d. Retail delivery
 - e. Accessory office
2. In the **General Commercial Zone** the following may be allowed as accessory uses to retail:
 - a. A cultivation of immature plants no larger than 1,000 ft²
 - b. Processing of cannabis for **(retail and wholesale?)** sale on site
 - c. Non-volatile manufacturing of cannabis for **(retail and wholesale?)** sale on site
 - d. Retail delivery
 - e. Office space

3. The following are NOT allowed as accessory uses to cannabis retail in the commercial zone:
 - a. Cultivation of mature or flowering plants other than specified in D.5 of this section.
 - b. Cannabis manufacturing using volatile substances
 - c. Wholesale, warehousing, and distribution of cannabis
4. Cannabis Nursery. A cannabis nursery up to 500 ft² may be an allowable accessory and shall meet the following criteria:
 - a. Cultivation must follow all guidelines in 9.32 Cannabis Cultivation
 - b. The nursery must be in a fully secured and enclosed structure and not visible from the public right of way
 - c. All plants grown must be sold on site prior to development of “buds” or flowers.
 - d. Plants that are not sold shall be disposed of following the business’ cannabis waste plan.

POSSIBLE ACTIONS:

- Review, make changes, and recommend updates to Chapter 9.30 to City Council.
- Review, make changes, and recommend the addition of Chapter 9.32 Cannabis Cultivation to City Council.
- Review, make changes, and recommend updates to Land Use Tables in ILUDC Sections 18.22.020 and 18.24.020 to Planning Commission
- Review, make changes, and recommend adding Section 18.42.055 Cannabis Cultivation Specific Land Use Standards to Planning Commission
- Review, make changes, and recommend updates to Section 18.42.057 Cannabis Retail to Planning Commission
- Review, make changes, and recommend updates to Section 18.100.020 Definitions of Specialized Terms and Phrases to Planning Commission

ATTACHMENT

1. Draft updates to Municipal Code Chapter 9.30
2. Draft Municipal Code Chapter 9.32
3. Draft updates to Inland Land Use Development Code Section 18.22.020 and 18.24.020 Land Use Tables
4. Draft of Inland Land Use Development Code Chapter 18.42.055
5. Draft updates to Inland Land Use Development Code Chapter 18.42.057
6. Draft updates to Municipal Code Title 18 Article 10
7. Staff Power Point Presentation