



**AGENCY:** City Council  
**MEETING DATE:** January 8, 2018  
**DEPARTMENT:** Community Development  
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## AGENDA ITEM SUMMARY

**TITLE:**

**RECEIVE REPORT AND PUBLIC SAFETY COMMITTEE RECOMMENDATIONS REGARDING POLICY APPROACHES TO ADDRESS CANNABIS CULTIVATION IN FORT BRAGG AND PROVIDE DIRECTION TO STAFF**

**ISSUE:**

The State of California has passed two pieces of legislation since the City's cultivation and dispensary ordinances became effective (2009 and 2005, respectively): the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016). The State Bureau of Cannabis Control Proposed Text of Regulations was published on November 16, 2017. Each State law places various levels of regulatory responsibility on local jurisdictions.

On June 26, 2017, the Public Safety Committee met to discuss future regulation of cannabis uses in the City of Fort Bragg and made various recommendations to Council. The newly-released State regulations will help inform the development of local regulations. This report describes the new State laws, existing City ordinances relating to cannabis cultivation, the City's responsibilities and options for regulating future cannabis cultivation, and the recommendations made by the Public Safety Committee.

**REGULATORY FRAMEWORK:**

California voters passed Proposition 64 in 2016, legalizing the use, cultivation and sale of recreational cannabis for citizens over 21 years of age. The Adult Use of Marijuana Act (AUMA) made it legal in California to use and cultivate cannabis (up to six plants) for personal, non-medical use. The AUMA seeks to establish State standards and licensing for cultivation, manufacture, transportation, storage, distribution and sale of cannabis effective January 1, 2018. The State's new "Proposed Text of Regulations" for implementation of AUMA was released November 16, 2017. While AUMA preserves the ability for localities to independently regulate or prohibit recreational cannabis uses, there are some significant differences that impact local jurisdictions. For example, AUMA prohibits cities from banning indoor cultivation for personal use of up to six plants.

The Proposed Text of Regulations allows the State to begin issuing temporary licenses on January 1, 2018, as the State Bureau of Cannabis Control continues crafting final regulations. The temporary regulations prohibit the State from issuing a license if a local jurisdiction does not yet have an ordinance in place that allows the use. This provides local jurisdictions time to review the newly-released regulations and complete their local ordinances. The City Council should continue developing cannabis cultivation regulations to explicitly define and regulate these uses at a local level as the State completes the formal licensing regulations.

**City of Fort Bragg Cultivation Ordinance:**

The City's existing ordinance for medical marijuana cultivation, adopted in 2009, allows for indoor cultivation of medical marijuana for personal use within residences of qualified patients. For

personal medical cultivation that requires more than fifty square feet, the applicant must obtain a Minor Use Permit and demonstrate that there is more than one qualified patient living in the residence and an inspection by the building inspector is required to address fire safety issues.

The existing cultivation standards prohibit outdoor cultivation, cultivation for recreational purposes, and cultivation of cannabis for sale.

Staff and the Public Safety Committee recommend Council develop one local regulatory scheme to regulate both recreational and medical cannabis cultivation since their impacts are very similar and one unified set of regulations will be easier to implement for law enforcement and the Community Development Department. However, staff can also draft two separate ordinances, if desired.

### **PERSONAL CULTIVATION:**

**Local Responsibility:** AUMA allows local governments to “reasonably regulate” but not prohibit personal indoor cultivation of up to six marijuana plants within a private residence by a person older than 21 years of age for recreational purposes. This includes cultivation within a greenhouse or other structure on the same parcel, so long as it is not visible from a public space (public spaces include streets, sidewalks and alleys). Local governments may regulate or prohibit personal outdoor cultivation. The following are examples of what “reasonable regulations” a jurisdiction may enact on the personal indoor cultivation of six plants:

1. *Require a residential cultivation permit with an appropriate fee (fee must be directly associated with actual costs to process the permit);*
2. *Prohibit personal cultivation from drawing more electrical power than the structure is designed to withstand;*
3. *Presenting a health hazard, such as mold accumulation; and*
4. *Using more water than is reasonably required to cultivate six plants.*

### **Regulatory Options:**

1. *Should the City allow outdoor personal cultivation?*

AUMA does not allow cities to prohibit indoor cultivation for personal use of six plants or less, but it does allow cities to regulate or prohibit outdoor cultivation. The Public Safety Committee recommends the Council prohibit outdoor cultivation for personal use. Due to limits on parcel sizes and population densities, it would be difficult to limit the impacts of outdoor cultivation in residential neighborhoods on surrounding property owners and land uses.

Prohibiting outdoor cultivation of six plants or fewer excludes the City from eligibility of some State-funded grants; however, it is anticipated that these grants would be in the neighborhood of \$2 per citizen within the jurisdiction, or approximately \$15,000 for the City of Fort Bragg. If the Council wishes to pursue allowing and regulating outdoor cultivation for personal use, staff will include draft regulations in the next discussion on cannabis uses.

2. *Should the City require a permit for personal cultivation?*

The City could require a personal cultivation permit to ensure that any personal indoor cultivation meets existing building and/or fire codes. There are two potential cultivation permit scenarios. In situations where the cultivation activity includes electrical, plumbing or construction changes, a traditional building permit would be required and would be processed in the typical fashion. However, the City could require an additional “cultivation permit” and fees for such a permit would be derived from the staff time required to review the applications, potentially inspect properties and issue personal cultivation permits. Permit review could require the assistance of the Mendocino County Building Department and Fort Bragg Fire Department. Personal cultivation permit fees

would likely need to cover these additional City and County costs. If Council directs staff to require personal cultivation permits, any indoor cultivation occurring without a cultivation permit would be a code violation, and staff would pursue code enforcement on the property, which may include fines. Additionally, permitting would lead to the development of a roster of individuals with permits to grow cannabis, helping law enforcement understand the location of these activities. The Public Safety Committee recommends the Council require a permit for personal cultivation.

The Council should be cognizant of the fact that the City does not have staff dedicated to cannabis uses, as some larger jurisdictions have established. A permit for personal indoor cultivation of six plants or fewer would likely result in an uptick in code enforcement for situations where residents grow cannabis in small quantities without a permit—even if only one plant. Council should weigh the utility of a personal cultivation permit against committing what could be a nontrivial amount of staff time to reviewing, inspecting, issuing and enforcing personal indoor cultivation permits.

*3. Should the City allow the personal indoor cultivation of more than six plants?*

AUMA does not allow cities to prohibit indoor cultivation for personal use of six plants or less, but cities may limit the quantity of personal cultivation beyond six plants. The City's current medical cultivation ordinance limits medical cultivation to a maximum of 100 square feet per residence with Minor Use Permit approval and compliance with various operating standards for fire safety and to retain living space for residential uses. The Council could elect to allow personal indoor cultivation beyond six plants. The Public Safety Committee discussed the option of allowing more than six plants for medicinal purposes with a doctor's prescription.

## **COMMERCIAL CULTIVATION**

**Regulatory Framework:** The new State laws provide regulations for the licensing of cannabis cultivation businesses. Cities have the authority to allow or prohibit commercial cultivation. The City Council should consider if commercial cultivation is a use that should be allowable in the City, and if so, how to regulate these future uses.

*1. Indoor and Outdoor*

The Public Safety Committee discussed the potential to permit commercial cannabis cultivation, and recommends the Council prohibit outdoor commercial cultivation and consider regulations to allow indoor commercial cultivation. The Committee arrived at this recommendation because outdoor cultivation has a greater potential to impact neighboring uses due to odors, and few City parcels are of adequate size to support outdoor commercial cultivation. The Committee sought more information on the potential impacts and operating characteristics of commercial indoor cultivation to determine if the use should be allowed in the City. This report will consider regulations that would allow commercial indoor cultivation, but assumes outdoor cultivation would be prohibited.

*2. Location*

The Council should identify the appropriate zoning districts for commercial cannabis cultivation uses. The most similar use that presently exists in the ILUDC is "crop production, horticulture, orchard, vineyard." This use is presently permitted in all residential, commercial and industrial zoning districts without requiring a Use Permit. Since cannabis cultivation is a newly legal use, its impacts on adjacent properties are as yet undetermined, and the scale of future operations is unknown, staff recommends requiring a Use Permit for the use, should the Council decide to allow it.

When reviewing the purposes and definitions of the various City zoning districts, staff recommends that the use would be most consistent with the following districts, based on the excerpts highlighted:

- a. General Commercial (CG): "...applied to areas of the City that are appropriate for less compact and intensive commercial uses..."
- b. Light Industrial (IL): "...applied to areas of the City that are appropriate for a variety of commercial, manufacturing, wholesale and distribution...that do not generate significant customer traffic...uses must be entirely within enclosed structures..."
- c. Heavy Industrial (IH): "...applied to areas of the City that are appropriate for...the storage and distribution of raw materials...and require locations removed from residential and visitor serving uses..."

While these zoning districts may be suitable for the use based on their defined purposes, the Council should consider the balance of uses in each district and how allowing a new business type could affect existing businesses. For example, there is a limited amount of property in the City zoned Light or Heavy Industrial. The industrial zoning districts are the only places in the City (and in some cases the entire Mendocino Coast) where warehousing, distribution, vehicle repair and manufacturing uses are permitted. Introducing a new business type into the limited land area of the industrial districts could have an unintended impact of displacing existing businesses and services that have limited real estate where they are allowed.

The Council could consider various options for the permitting of commercial cannabis cultivation uses:

- a. Allow in CG, IL and IH with a Use Permit. This is a permissive approach that would allow the use in the greatest number of locations around town.
- b. Allow in CG, IL and IH with a Use Permit, but limit the maximum number of permits available. This would allow the use in the greatest number of locations, but would limit the amount of businesses that could be displaced by the new uses.
- c. Allow in IL and IH with a Use Permit. This approach limits the use to the northern end of town, essentially along Franklin Street north of the railroad tracks, and the portion of town north of Airport Road and east of Main Street.
- d. Allow in IL with a Use Permit. This limits the uses to essentially the parcels north of Airport Road and east of Main Street.
- e. Allow in IL and IH with a Use Permit, but restrict to properties that meet a minimum parcel size (i.e. one acre). This approach restricts the uses to essentially the larger parcels north of Airport Road and east of Main Street. These parcels are less likely to support the types of small-scale industrial uses that could be displaced with the arrival of a new industry type.

### 3. *Water/sewer/well*

The Public Safety Committee requested additional information on the impacts of cannabis cultivation uses on the City's water supply. Staff researched the question and found that the amount of water used is highly dependent on the process employed. Where water is expensive and limited, cultivators develop processes that are more efficient. In situations where water is inexpensive and plentiful, less efficient processes are utilized. **Attachment 1** compares cannabis cultivation water usage to other commercial businesses. For an inefficient operation, a 500-plant cultivation site could use approximately as much water as a 45 seat restaurant. An efficient operation could cultivate as many as 1000 plants for the same amount of water. Staff's research is an amalgamation of numerous sources and case studies of water usage for cannabis cultivation, but it should be noted that the industry is rapidly changing and new techniques frequently improve the efficiency of water usage for these operations. It is very possible for a cultivator to use more or less water than predicted in **Attachment 1**.

The parcels north of Airport Road are not served with City water or sewer connections. Per Section 14.04.127 of the Municipal Code, “wells for landscaping, irrigation or industrial purposes shall be allowed on any City lot. Such well shall meet the City’s backflow preventive standards and shall be used for no other purpose but supporting the irrigation system or industrial use.” This provision would likely allow commercial cultivation uses to utilize well water for the industrial process. However, these uses likely require restrooms, break rooms, or other limited water uses that are beyond what the Municipal Code allows for well use. If the City were to allow commercial cultivation uses north of Airport Road, Council will need to consider if the City should require water connections for the non-irrigation needs of these uses. Encouraging the use of water wells for these businesses would offset the impact on City water supplies.

If commercial cultivation is allowable south of Airport Road, the business would be required to connect to City water and sewer; however, the business could potentially drill a well to provide water for their irrigation and industrial uses. The City could consider requiring a well for these uses to limit the impact on City water supply.

Regarding wastewater, Municipal Code Section 14.16.030 states that “it is unlawful to construct any new privy, vault, septic tank, cesspool, seepage pit, or other facility intended or used for the disposal of wastewater within the District.” An issue arises with potential cannabis cultivation uses north of Airport Road where wastewater connections are not currently in place. Per the Municipal Code, new businesses would have to extend the wastewater connection in order to develop a cultivation use on parcels on the north end of the City.

#### 4. Hybrid Facilities

The Public Safety Committee discussed prohibiting outdoor cultivation, but wanted to continue considering indoor cultivation. The cannabis cultivation industry has been utilizing hybrid greenhouse structures that the Council should consider. These buildings can have traditional architectural stylings along the exterior elevations but utilize a greenhouse-style roof. Some individuals staff has spoken with who are interested in commercial cultivation have also asked about buildings with roofs that retract or open to allow moisture and rain into the facility.

Structures with traditional elevations and greenhouse roofs help reduce energy costs for cultivators, while maintaining an exterior appearance that matches existing nearby development. Many consider these buildings more attractive than a traditional greenhouse. Structures with roofs that open may be constructed with solid walls, as well; however, it is possible for an open roof to have increased odor impacts on nearby property owners. The Council should provide direction on the type of structures that should be allowable if commercial cultivation becomes a permitted use.

#### 5. Odor

As stated in the discussion relating to odor for retail uses, the City code currently includes Section 18.30.080(J) to mitigate odor impacts:

*No obnoxious odor or fumes shall be emitted that are perceptible without instruments by a reasonable person at the property line of the site.*

The recently-adopted cannabis manufacturing ordinance includes the following requirement for applications:

*9.33.040(B) Any application for a cannabis manufacturing permit shall include the following information:*

*(14) Detailed operating procedures, which shall include the following:*

*(h) An odor prevention plan, illustrating how the use will be consistent with Section 17.30.080(J) and/or Section 18.30.080(J) . The odor prevention plan may include an odor absorbing ventilation and exhaust system or other measures to ensure the use*

*does not produce odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.*

If indoor commercial cultivation is permitted, the Public Safety Committee recommends considering including language in cultivation policy that requires the applicant demonstrate how the project would comply with the existing odor regulations, similar to the requirement for cannabis manufacturing uses and similar to the Committee's recommendation for retail uses.

#### 6. Security

Security measures are discussed under the retail cannabis use section of this staff report, and requirements for security are also included in the City's recently-adopted manufacturing ordinance. If indoor commercial cultivation is permitted, the Public Safety Committee recommends requiring applicants to develop a security plan to satisfy the Police Department which could attach special conditions as needed.

#### **TAXES AND FEES**

City staff is developing a staff report to discuss the fiscal implications of commercial cannabis uses, and expects to present it before Council early this year.

#### **RECOMMENDED ACTIONS:**

Staff recommends Council provide direction on the regulation of commercial cannabis businesses in the City of Fort Bragg.

#### **ENVIRONMENTAL REVIEW:**

A new ordinance is subject to CEQA and an environmental document will be required.

#### **FISCAL IMPACT:**

A new ordinance has the potential to bring new businesses to the City. The fees for processing these permits will be discussed by the Council early next year.

#### **IMPLEMENTATION/TIMEFRAMES:**

Depending on Council's direction, staff will continue preparing a new ordinance and/or ordinance amendment for adoption in early 2018. The process will require CEQA review, a public hearing before the Planning Commission, and a public hearing before the City Council.

#### **ATTACHMENTS:**

1. Cultivation Water Usage

#### **NOTIFICATION:**

1. Notify Me – Cannabis Legislation

## Comparison of Indoor Cannabis Cultivation Water Usage to the City's Standard Water Usage Model (as Used for Capacity Fees)

