



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: FEBRUARY 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. MACURSA 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 (FBMC).

Subsequently, 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 953-2019 on November 21, 2019.

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

On March 9, 2017, the Fort Bragg City Council adopted Ordinance 928-2017, which amended Title 18 of the Inland Land Use Development Code (ILUDC) 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 952-2019 to amend Article 2, 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 industry continues to take shape under the new legal framework. It is possible that if/when the federal government declassifies cannabis from being a Schedule 1 narcotic, that there may be additional changes or requirements as well.

To date, the City of Fort Bragg has received four applications for cannabis businesses and issued three permits (two retail dispensaries and 1 manufacturer) and one was denied. Through the processing of these applications, City staff have become aware of ways that the process can be more efficient and less complicated. We have also identified areas that require more clarity in order to codify the Council's direction.

ANALYSIS:

Chapter 9.28 Drug Paraphernalia is not consistent with new laws

This code (see ATTACHMENT 1) is very specific to the sale of drug paraphernalia, most of which is inappropriate because the majority addresses the sale of products that can be used to cultivate or ingest cannabis products. While there are a few provisions for things like "miniature cocaine spoons and cocaine vials" to which this code might apply, staff are not aware of any stores actively displaying or selling these items specifically for drug use. In the past, staff have tried to code enforce on the display of "water pipes," "bongs," or other devices that appear to be for cannabis use. However, past legal counsel informed staff that as long as the owner claims the devices are for a use other than drugs, it is not possible to enforce this.

Additionally, staff consulted the "Getting it Right from the Start Project" from the Public Health Institute in Oakland, California. This non-profit works (for free) with Cities and Counties "to develop and share models for safer cannabis policy and provide guidance on policies that can reduce harm, protect against youth and problem cannabis use, and promote social equity. Their response to the question of how this chapter can be amended was:

"After reading this I can understand the original intention. However, given the proliferation of online retailers selling the items this legislation bans, today it does not necessarily accomplish the intended goal. I would also point out that there are unintended consequences associated with driving people, especially youth, to the online marketplace for these very items; they are exposed to far more influential marketing and more dangerous items available through online retailers (i.e., unregulated cannabinoid-containing products, kratom, etc.)."

The state has amended their Drug Paraphernalia Code on which the City of Fort Bragg Code is based.

Possible Options:

1. Do nothing and leave as is.
2. Update the existing drug paraphernalia code for consistency with the state code (See Attachment 2).
3. Repeal this Code and rely on state law.
4. Repeal this code and adopt a more proactive code that is comprehensive in addressing youth drug, alcohol, and tobacco use and alcohol, drug, and tobacco abuse.

- Ban the marketing of tobacco, alcohol, cannabis, or paraphernalia to children.
- Ban the display of drug and tobacco paraphernalia along the public right of way.
- Recommend that businesses selling drugs, tobacco, or alcohol provide notices outside their businesses.
- Adopt an ordinance that encourages businesses to adopt practices that support public health.

Revise Chapter 9.30 Cannabis Businesses

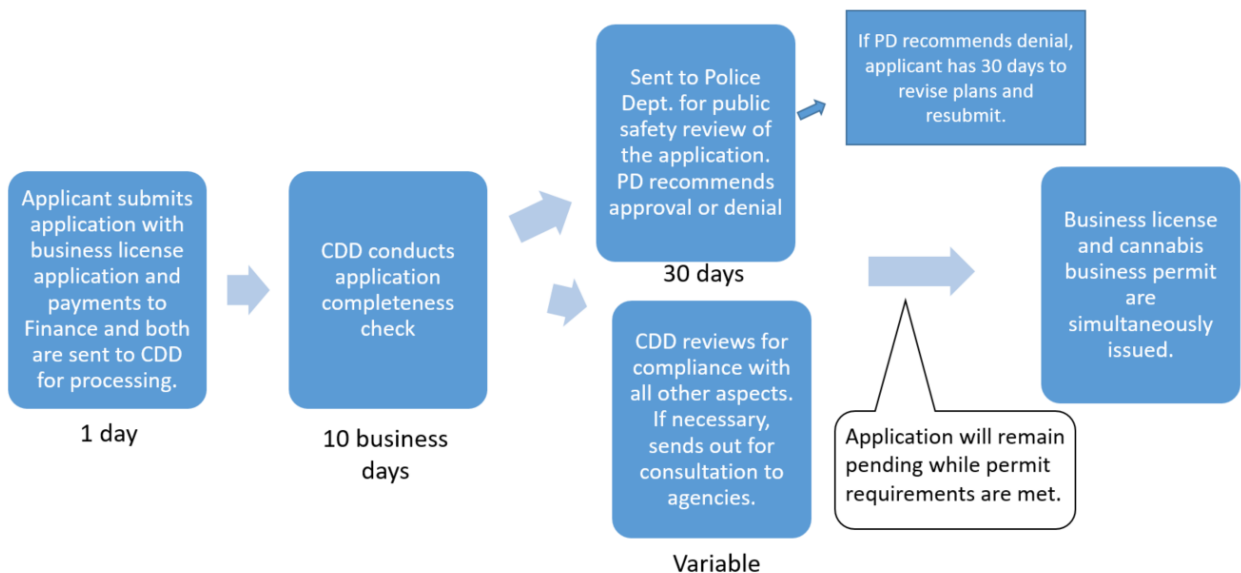
While this is a relatively new section of the code, there are two main reasons to revise this section:

- 1) Update the definitions to be more comprehensive and detailed.

The current definitions are sparse and it would be helpful in order to support the Council's wishes to expressly define all the types of cannabis businesses to establish the legal grounds that will support the areas in the ILUDC where they will be allowed. (see redline version in ATTACHMENT 3)

- 2) Update the process for City of Fort Bragg Cannabis Business Licenses to streamline the process for applicants and maximize the efficiency of staff time.

The current process is set up under the Police Department. Community Development Department (CDD) has been assisting the Police Department with the collection of the application and the processing, however, Police Department staff and CDD staff feel that it will be more efficient and effective if the applications are managed through CDD. There will be a required public safety review conducted by the Police Chief for all cannabis business permits, and a license will not be issued without approval from the Police Chief. However, CDD will be responsible for receiving, tracking, and managing the applications. This will also allow CDD to process any use permits required concurrently.



See ATTACHMENT 3 for possible updates to Chapter 9.30.

Add Chapter 9.32 Cannabis Cultivation

Adding a code for Cannabis cultivation that addresses both non-commercial and commercial cannabis cultivation can serve to protect public health & safety, property values, and commercial business interests. The existing code was recently interpreted by the Planning Commission to mean that cannabis cultivation is not an allowable land use. City Council by failing to take action on the appeal of that decision, made that decision final. If Council wishes to allow cultivation, code updates are necessary to make it permissible.

The Council may wish to consider an ordinance that:

- Has minimal provisions for non-commercial cannabis cultivation as allowed under California State Law;
- Encourages practices that reduce the impacts on electricity, water, and wastewater;
- Expressly allows commercial cultivation in the City of Fort Bragg;
- Defines the difference between commercial and non-commercial cannabis cultivation;
- Requires that the property owners give permission to tenants wishing to cultivate on their property.¹

Chapter 9.32 will provide definitions for cannabis activities that will make it easier for applicants and City staff to evaluate an application. It also brings the definitions in line with the state definition. For example:

The current definition for commercial cannabis cultivation is as follows:

The planting, growing or harvesting of cannabis plants...

The state definition for cannabis cultivation is:

The planting, growing, harvesting, drying, curing, grading, or trimming of cannabis plants, or any part thereof.

This is an important clarification, as there have been questions as to what constitutes cultivation and what activities fall into the categories of cultivation, processing, and manufacturing.

By adopting the state's definitions for all three of these, it streamlines the transferability of the project scope for analysis by local zoning without creating additional work for the applicant.

See ATTACHMENT 4 for possible Chapter 9.32.

Possible Actions:

1. Continue with no Chapter 9.32 which means that non-commercial cannabis is unregulated by the City and commercial cultivation is not allowable.

¹ Indoor cultivation can be extremely detrimental to the interior of a residence. In the event of long-term cultivation, it can result in indelible odors and impacts that are significantly heavier than normal residential use. The City is working hard to increase housing stock and preserve the condition of existing housing and may wish to consider this as a method of protecting existing housing stock.

2. Adopt an ordinance that allows both non-commercial and commercial cannabis with the following as potential issues to consider for cultivation:
 - a. Size and types of cultivations
 - b. Water usage requirements
 - c. Energy conservation and environmental recommendations

Amend Article 2 of the ILUDC

In addition to establishing the grounds for cannabis cultivation in the City, it is necessary to establish the land use and zoning requirements as well. The ILUDC currently has the following provision for cannabis cultivation in 18.42.057(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.”

While this can be read to indicate that cannabis cultivation should be allowable as an accessory use, the recent decision by the Planning Commission determined that cultivation was not an allowable use under this provision.

Taking no action would mean that the current interpretation of the code will apply to any future requests that include cultivation. If the council would like to allow cannabis cultivation as either a primary or accessory use, then the land use tables should be updated to allow the uses where appropriate.

See ATTACHMENT 5 for possible updates to ILUDC Article 2 Land Use Tables.

Per the recommendations provided by the California Department of Food and Agriculture Memo from December 19, 2019, all cannabis cultivation projects shall be evaluated for California Environmental Quality Act (CEQA). Because each project will individually be evaluated for CEQA and because the General Plan does allow for expansion of commercial and industrial activity the adoption of these ordinances does not require their own CEQA analysis. Each project will be individually evaluated for CEQA to determine whether it is exempt, requires a negative declaration, a mitigated negative declaration, or an environmental impact report. It is the responsibility of the project applicant to cover the cost of any CEQA document preparation, which shall be completed prior to the public hearing for the project.

Possible Actions:

- Make no changes;
- Add cannabis cultivation to the Inland Land Use Table for Industrial Zone(s);
- Add cannabis cultivation and cannabis manufacturing as allowable accessory uses in the foot notes for cannabis retail in the Land Use Tables for Commercial Zones;

- Create a new use “Cannabis Microbusiness” and add it to the ILUDC Tables for Commercial Zones;
- Create a new use “Microbusiness” in the ILUDC Tables and include cannabis under the definition in 18.42.

Amend Article 4 Standards for Specific Land Uses in the ILUDC

The sizes and types of cannabis cultivations vary greatly. A cultivation could be completely innocuous or it could have major impacts on a neighborhood. By updating 18.42, the Council has the opportunity to create guidelines that will ensure cultivations do not have major impacts and fit within the existing land uses.

It is appropriate to use this section to reiterate some of the conditions set forth in 9.30 Cannabis Businesses and to include operational and application requirements. For example, these might include:

- A prohibition on outdoor cultivation
- Requirements for employee registration and restrictions for non-public areas
- Participation in State’s Track and Trace Program
- Requirements for water and/or wastewater
- Buffer from schools or other sensitive locations

Water is one of the concerns expressed by the Council which is addressed in this section. In the case of a “change in use” for an existing structure, it is possible to compare prior water usage and potential future water uses for the site with the projected use of the project as it relates to existing allowable uses considered by the General Plan. However, in the case of new development it will be necessary to use the guidance provided in the most recent General Plan.

The City of Fort Bragg Inland General Plan from 2012 says:

In 2010, the City produced 223 million gallons (685 acre feet) of water from its three sources or about 610,000 gallons per day. Of this water, 129 million gallons were used for residential purposes and 53 million gallons for commercial/industrial use. On a daily basis the City currently produces about 50 gallons/resident and 78 gallons/1,000 SF of commercial/industrial space. Residential development within the Inland Area through 2022 is anticipated to include 63 new residential units (156 new residents) which would require 7,8000 additional gallons of water per day; and 52,000 SF of new commercial/industrial development which will require 4,000 gallons of water per day. In total all new development proposed for the inland area will result in 12,000 additional gallons of demand, a 1.9 percent increase in water demand. The City currently has sufficient water supply and storage to meet an 8% increase in water demand, and so could accommodate the additional growth in the Inland Area without developing additional water storage. If the City constructs new 45 acre foot water storage facility, the City would be able to accommodate upwards of 20% growth in water demand. New development in the City will be required to pay its fair share of new water system improvements.

This study gives us a methodology that can be used to vet for consistency with the General Plan.

In addition to Cannabis Cultivation, it seems reasonable to consider adding a land use type that addresses cannabis microbusinesses.

Possible actions:

- Do nothing and keep the code as is;
- Update the cannabis retail definition to be more explicit in allowing other uses and defining how to treat them in regards to “accessory use” (See ATTACHMENT 7);
- Create a new defined land use in 18.42 for Cannabis Microbusiness that will be added to the Land Use table(s) in Article 2; or
- Create a new defined land use in 18.42 for Microbusiness that will include cannabis but covers a broader scope and adds microbusiness to the Land Use Table(s) in Article 2.

See ATTACHMENT 6 and ATTACHMENT 7 for possible updates to ILUDC Article 4.

Amend Article 10 Glossary

In order to provide clarity and important distinctions between types of cannabis businesses and allowable activities, it is necessary to modify the definitions in the Inland Land Use Development Code.

See ATTACHMENT 8 for possible updates to ILUDC Article 10.

SUMMARY OF POSSIBLE ACTIONS:

Provide feedback, direction, and recommended edits for further review by legal counsel and then City Council for:

- Chapter 9.28 Drug Paraphernalia
- Chapter 9.30 Cannabis Businesses
- DRAFT Chapter 9.32 Cannabis Cultivation

Provide recommendations, edits, and possible amendments to the Inland Land Use Development Code Title 18 to be reviewed by legal counsel, then by Planning Commission, and final approval by City Council:

- Article 2 Land Use Tables (2-6 and 2-10) to include Cultivation and Microbusiness
- Article 4 Standards for Specific Land Uses for Cultivation and Microbusiness
- Article 10 Glossary to add Definitions specific to cannabis business activities

ATTACHMENT

1. Chapter 9.28 Drug Paraphernalia
2. California State Code for Drug Paraphernalia
3. Draft updates to Municipal Code Chapter 9.30 Cannabis Businesses

4. Draft updates to Municipal Code Chapter 9.32 [Reserved]
5. Draft updates to ILUDC Title 18 Article 2 Zoning Districts and Allowable Land Uses
6. Draft updates to ILUDC Title 18 Article 4 Standards for Specific Land Uses
7. Draft updates to ILUDC 18.42.057 Cannabis Retail
8. Draft updates to ILUDC Title 18 Article 10