



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: June 29, 2016
TO: Public Safety Committee
FROM: Scott Perkins, Associate Planner
AGENDA ITEM TITLE: **Receive Report and Make Recommendation to City Council
Regarding Commercial Cannabis Manufacturing Ordinance**

ISSUE:

The State of California is instituting a new regulatory and licensing system known as the Medical Marijuana Regulation and Safety Act (MMRSA). MMRSA is comprised of State legislative bills known as AB 243, AB 266 and SB 643. As a result of MMRSA, both the Public Safety Committee and City Council have discussed the regulation of commercial cannabis businesses in the City of Fort Bragg, as follows:

Public Safety Committee (December 9, 2015): Received detailed report on the State's passing of MMRSA.

Public Safety Committee (April 13, 2016): Directed staff to a) keep existing cultivation and dispensary ordinances as they stand; b) take a "wait-and-see" approach to cannabis transport and delivery as the State crafts legislation; and c) develop recommendations for modifying the Municipal Code so that City Council can deliberate whether and how to permit commercial cannabis manufacturing in Fort Bragg.

City Council (May 9, 2016): Directed staff to craft a draft ordinance to address commercial cannabis manufacturing within City Limits.

Since the May 9, 2016 City Council meeting, staff has researched commercial cannabis manufacturing (CCM) operations, explored existing ordinances in Colorado, Washington and California, and discussed potential impacts of CCM operations in Fort Bragg with other agencies and departments. Staff has also met with representatives from Root One Botanicals, a local entrepreneur seeking to establish a CCM business in Fort Bragg, to discuss the parameters of their proposed project in light of a new ordinance.

A new CCM ordinance should encourage new business opportunities in the City while offsetting any negative impacts the business could present to the community. This report details the options available for regulating various aspects of CCM operations, and identifies specific policy

questions for the Committee to consider. Staff recommends that the Committee review the various options for regulating CCM operations and make a recommendation to staff. The Committee's recommendation will form the basis for authoring a draft ordinance for City Council review.

SUMMARY:

The City of Fort Bragg presently implements Municipal Code Chapter 9.30 and 9.32 for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, respectively. These two existing ordinances are effective at regulating dispensaries and cultivation, and Council has directed staff not to make changes to either ordinance at this time. If Council approves a new ordinance specific to CCM, it would reside in the Municipal Code alongside the existing dispensary and cultivation ordinances. Additionally, it would also need to be added to the Land Use and Development Code in the Allowable Land Use Table of Chapter 2.

Some policies in the existing dispensary and cultivation ordinances could be replicated in a new CCM ordinance. For example, existing policies relating to application requirements and background checks for dispensaries and cultivation may be sufficient for CCM regulations. Additionally, numerous policies in the Municipal Code, and particularly the Inland Land Use and Development Code, apply to development citywide. These policies relate to noise, odor, solid waste and utilities. The discussion of the policy issues below takes into account these existing regulations, as well as those found in staff's research of Colorado, Washington and other California ordinances. In addition to the following narrative, Attachment 4: Commercial Cannabis Manufacturing Policy Issues Table truncates the discussion and highlights the various policy issues, options for regulation, and staff's recommendation.

Staff seeks direction from the Public Safety Committee on the following policy questions relating to a new CCM ordinance:

Zoning and Permitting

Policy Question: In which zoning districts should Commercial Cannabis Manufacturing be permitted, and what permits should be required?

Commercial cannabis manufacturing operations utilize processes consistent with other light manufacturing uses. As the ordinance presently stands, manufacturing uses are permitted in the following locations:

Manufacturing Use	Light Industrial (IL) Zoning District	Heavy Industrial (IH) Zoning District
Manufacturing/processing – Light (breweries, food and beverage, etc.)	Permitted	Permitted
Manufacturing/processing – Medium (milling, stone-cutting, etc.)	Not Permitted	Permitted
Manufacturing/processing – Heavy (chemical products, glass making, etc.)	Not Permitted	Permitted with Use Permit

Manufacturing uses are not permitted in other zoning districts. Since CCM is most similar to other manufacturing uses, CCM businesses should be limited to the IL and IH districts where these compatible uses are presently permitted (with differing levels of review). For reference, dispensaries may be permitted in either the IH or IL districts with a Use Permit; although, there are no dispensaries within City Limits at this time. Previous discussions, at both Committee and

Council meetings, touched on the location where CCM could be permitted, and the general consensus was that CCM should be limited to industrial districts.

All manufacturing uses may be permitted in the IH district, while only light manufacturing uses may be permitted in the IL district. Per RootOne Botanicals' presentation to City Council and industry literature, CCM operations utilize supercritical fluid extraction, a manufacturing process otherwise used in food and beverage (decaffeination) and cosmetic (oils, scents) production. The process uses carbon dioxide modified by alcohol. The ILUDC presently classifies food and beverage manufacturing as a light manufacturing use, whereas cosmetic manufacturing is classified as a heavy manufacturing use.

There are ±56 acres zoned IH (±23 acres inland) and ±48 acres zoned IL (±43 acres inland) in the City. Allowing CCM uses in both IH and IL would allow for more flexibility in CCM operations without impacting other industrial uses in either district.

Use Permits provide a process for reviewing uses and activities that may be appropriate in the applicable zoning district, but whose actual effects on a site and neighboring uses cannot be determined before being proposed for a specific site. As CCM uses have the potential to pose security risks, create odors and noise, and utilize controlled materials a Use Permit requirement is appropriate. Requiring CCM uses to obtain a Use Permit would allow the Planning Commission to determine the suitability of the CCM on a particular property, and place special conditions on any approval to ensure the continued compatibility of the CCM use with surrounding uses.

Recommendation: Staff recommends revising Table 2-10 of ILUDC Section 18.24.030, adding a Commercial Cannabis Manufacturing use, and allowing the new use in both the IL and IH zoning districts with an approved Use Permit.

CCM involves extraction processes and the use of a controlled substance, similar to food and beverage manufacturing and breweries, which are also allowed in the IL district. Since the processes also mimic those used in toiletry and cosmetic manufacturing (uses that are only permitted in the IH district), requiring a Use Permit would allow for public input on CCM projects and allow for conditional approvals. A Use Permit (as opposed to a Minor Use Permit) would trigger review by the Planning Commission and require a public hearing on the application.

Proximity to Sensitive Uses

Policy Question: Should Commercial Cannabis Manufacturing uses be prohibited within certain distances of sensitive uses (churches, schools, hospitals, etc.)?

A CCM ordinance could restrict the distance of a CCM business from sensitive uses. Ordinances typically protect sensitive uses from potentially harmful businesses or projects, by restricting either through adjacency or by a buffer. An ordinance could address this issue to varying degrees as follows:

1. *No restriction.* Including no restrictions on CCM operations and their proximity to sensitive uses would maximize the number of parcels available for such businesses. Conversely, this could allow CCM businesses to operate very near or adjacent to drug rehab facilities, day cares, schools and other sensitive uses, which may not be desirable.
2. *Adjacency restriction.* Some jurisdictions prohibit CCM operations when adjacent to a sensitive use. This would alleviate concerns of compatibility with neighboring uses while marginally decreasing the number of parcels available for CCM businesses. The impacts to

non-adjacent but nearby sensitive uses could still be mitigated through the Use Permit process.

3. *Buffer restriction.* For more protection to sensitive uses from CCM projects, an ordinance could prohibit these operations within a specified distance of sensitive uses. This approach could limit the potential properties where CCM uses could be approved, but could also reduce the potential for conflict between incompatible land uses.
4. *Buffer review.* A final option that could protect sensitive uses from CCM projects would be to include a review of sensitive uses within an established buffer as part of the Use Permit process. To approve any Use Permit, the Planning Commission must make five required findings and the third finding required by Section 18.71.060(F)(3) is as follows:

...The Review Authority shall approve a Use Permit or Minor Use Permit only after first finding...

...the design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity.

The buffer review process would modify this finding for CCM businesses to include compatibility with sensitive uses within a specified buffer distance.

Recommendation:	In a Commercial Cannabis Manufacturing ordinance, include as a Use Permit finding that the design, location, size, and operating characteristics of the proposed activity are compatible with any church, school, park, day care, hospital, non-profit organization or residential use within 200 feet of the proposed use. The information would be used by the review authority (the Planning Commission) to determine the suitability of the project's proximity to these uses, and place conditions of approval on the Use Permit to mitigate impacts.
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Regardless of the selected approach, the review authority could deny Use Permits for proposed CCM operations that are inconsistent with the surrounding neighborhood, or modify projects via special conditions of approval to mitigate potential impacts.

Use Restrictions

Policy Question:	Should accessory uses or services be permissible for a Commercial Cannabis Manufacturing business?
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ILUDC Table 2-10 of Section 18.24.030 permits specific retail sales and services uses accessory to a primary industrial use with the approval of a Minor Use Permit. However, the City may not want to allow CCM businesses to sell product even with a minor Use Permit. Many municipalities have sought to prohibit uses accessory to CCM industrial uses. Fort Bragg's dispensary ordinance similarly prohibits dispensaries from engaging in the commercial sale of any product, good or service other than medical marijuana.

Allowing uses accessory to CCM operations could greatly increase the trips to and from such businesses by customers. This increase in activity could complicate the operation's ability to maintain the high level of security required for a CCM operation. Additionally, the Medical Marijuana Regulation and Safety Act does not allow Medical Marijuana Manufacturing businesses to provide retail sales.

Recommendation: Accessory retail or services should be prohibited for Commercial Cannabis Manufacturing businesses.

Exterior Restrictions

Policy Question: Should Commercial Cannabis Manufacturing outdoor displays or signage be limited?

Fort Bragg's dispensary ordinance currently restricts signage at the business entrance (Section 9.30.120(D)), and the City's cultivation ordinance prohibits any exterior evidence of marijuana cultivation (Section 9.32.020(C)(10)). A CCM ordinance could adopt similar requirements as the existing dispensary and cultivation ordinances. Conversely, the Committee and Council could recommend allowing exterior signage.

Recommendation: Prohibit Cannabis Manufacturing businesses from displaying any exterior evidence of a marijuana business including signage that implies a marijuana based activity. Signage that does not explicitly include visual or work references to marijuana should be allowed.

Outdoor displays and signage showing evidence of a marijuana business could create an attractive nuisance. Additionally, advertising the location of a controlled substance could jeopardize the security of the business. Prohibiting evidence of a marijuana business could prevent unnecessary impacts on the surrounding neighborhood.

Odor

Policy Question: How should the Commercial Cannabis Manufacturing ordinance regulate odor?

Many industrial manufacturing processes have the potential to create odors. The City's code 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.

A key term in this regulation is "obnoxious." Clearly, odors from bakeries, breweries, restaurants and many other businesses create odors perceptible at their property lines. For marijuana cultivation uses, Sections 9.32.020(C)(15) and 9.32.020(E)(1) set specific standards for odors:

The medical marijuana cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke traffic, vibration, or other impacts...

A public nuisance may be deemed to exist if the activity produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

The CCM ordinance could include some combination of these existing odor regulations. If the Committee elects to further mitigate impacts related to odor, more stringent requirements implemented by other jurisdictions may be worth considering. Cathedral City applies perhaps the most restrictive odor policy in place for CCM uses in California, which reads as follows:

[The applicant shall] provide a sufficient odor absorbing ventilation and exhaust system so that odor generated is not detected outside the business, anywhere on adjacent property, in any

exterior or interior common area (walkways, hallways, lobbies, etc.), or within any unit located within the same building as the cannabis business.

Prohibiting odors not only beyond the property, but also outside the business and within interior common areas, could increase the complexity and cost of new CCM facilities in order to meet these standards; however, such a strict policy would greatly diminish the potential for odor impacts to neighboring uses.

Recommendation: A Commercial Cannabis Manufacturing ordinance should reiterate the odor requirements as they apply to all uses (Section 18.30.080(J)), and replicate the requirements as they apply to cultivation uses.

Applicants for Commercial Cannabis Manufacturing Use Permits should submit an odor control plan, which may include an odor absorbing ventilation and exhaust system to demonstrate how the business will comply with the requirement.

City staff will identify sensitive users within a 200 foot buffer (if adopted as recommended) and the review authority could use this information to apply to odor standards. For example, a CCM operation adjacent to a brewery may require less odor mitigation than one very near a residence. Applying the most stringent standards for odor control may not be necessary in all development scenarios, and codifying highly restrictive measures may disqualify otherwise acceptable applications.

Security

Policy Question: What should a Commercial Cannabis Manufacturing ordinance include to ensure adequate security is provided for these industrial uses?

Security is a key issue when crafting policy that regulates businesses reliant on a controlled substance; however, providing adequate security at different properties requires different measures. One blanket set of policies would unlikely fit every scenario. It is for this reason that most existing CCM ordinances place the burden of proving adequate security on the applicant, as reviewed by the local police department.

For example, the City of Fort Bragg has the following security requirements for dispensary uses, as Sections 9.30.040 and 9.30.120, respectively:

[Applications shall include] proposed security arrangements for protection from criminal activity [with permit applications].

Dispensaries shall provide adequate security on the premises, including lighting and alarms.

Part of the City's current review process for dispensaries requires that the Police Department perform the necessary background checks and review the security plans for a proposed dispensary use. Other California, Washington and Colorado CCM ordinances utilize similar scenarios for the review of CCM applications. Here is an amalgamation of the specific security requirements used by other jurisdictions:

An applicant shall submit, as a portion of their permit application:

...a security plan addressing how the applicant intends to comply with MMRSA and other applicable policies.

...a description of how security measures are sufficient to ensure safety of employees and visitors, protect the premises from diversion and theft, and ensure that all buildings where cannabis is stored are secured sufficiently to prevent unauthorized entry.

...a diagram indicating all areas to be covered by 24-hour security cameras, all restricted access areas, all areas of ingress and egress, public areas, storage areas, and all doors and windows.

Recommendation: A Commercial Cannabis Manufacturing ordinance should include application requirements that addresses the following:

- How the project is consistent with the requirements of MMRSA
- A security plan ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry
- A diagram illustrating the use and coverage of security cameras, security lighting, and necessary access restrictions
- A floor plan clearly illustrating the purpose and security of each room or area of operation

These submission items would be reviewed to the satisfaction of the Police Department. No Use Permit application for a CCM would be approved without approval of the security plans by the Police Department.

Since effective security measures are inherently site-specific, applicants must develop a plan to satisfy the Police Department which could attach special conditions as needed.

Manufacturing Operations (hazardous materials, solid waste, delivery, supply chain, etc.)

Policy Question: What should a Commercial Cannabis Manufacturing ordinance include to ensure safe and proper operation?

Like any new industry, there are numerous aspects of cannabis manufacturing that have yet to be fully vetted. For instance, what materials or chemicals are required for the manufacturing process? Where should spent cannabis be disposed of, and is the spent material still chemically active? What happens if raw cannabis is spoiled or of unacceptable quality? Would it be returned to the cultivator, or destroyed by other means? Will it travel from place to place through the supply chain legally?

Many of these questions may have multiple acceptable answers and may greatly depend on the size and techniques utilized by different facilities, but it is important that they are appropriately considered. Many jurisdictions have yet to address these operational details of CCM businesses, and do not currently regulate these issues beyond ordinances and policies already on record.

For example, the City of Fort Bragg has hazardous materials regulations in place. Section 18.30.080(F) states the following:

F. Hazardous materials. *As required by the Safety Element of the General Plan, an applicant for a proposed non-residential project that will involve the generation, use, transportation, and/or storage of hazardous substances shall comply with the following requirements.*

1. *The applicant shall notify the fire protection authority of all hazardous substances that are to be transported, stored, treated, or that could be accidentally released into the environment on the site.*
2. *The planning permit application for the project shall include detailed information on hazardous waste reduction, recycling, transportation, and storage, and a plan for emergency response to a release or threatened release of a hazardous material.*
3. *The site shall be provided with secondary containment facilities and a buffer zone adequate to protect public health and safety on a site with hazardous materials storage and/or processing activities, as required by the review authority.*

Regardless of whether or not additional hazardous material standards are included in a CCM ordinance, the above policies would continue to apply to all City projects, including CCM facilities. Similar regulations are present in City regarding solid waste. In order for the review authority to ensure that the operational logistics of a CCM facility comply with the various state and local regulations, some jurisdictions have required an operations plan with each CCM permit application. An operations plan could be required to include:

1. Security procedures (see security discussion above)
2. Operating procedures manual, which should include how the business will comply with MMRSA, safety and quality assurances, record keeping procedures, and product recall procedures
3. Proposed hours of operation
4. Solid waste disposal plan, with certification that waste transport entities and disposal facilities have agreed to haul and receive the solid waste by the CCM
5. Product supply chain information (cultivation, testing, transportation, packaging and labeling)
6. Odor prevention plan (see odor discussion above)
7. Other information as required by the Director

Through the Use Permit review process, the operations plan would be distributed to the various applicable review agencies (planning, public works, environmental health, air quality, building department, police and fire, etc.). Should any agency require more information to ensure the application complies with pertinent standards, they could be requested of the applicant during the review process.

Recommendation:	The application requirements for a Commercial Cannabis Manufacturing use should include the submission of an operations plan, specifically addressing hazardous materials, solid waste management, delivery and transportation methods (meeting the requirements of MMRSA), identify all other aspects of the marijuana supply chain, and other operational characteristic necessary to ensure a project's compliance with local, state and federal regulations.
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Infrastructure (water and sewer)

Policy Question:	How should a Commercial Cannabis Manufacturing ordinance address water and sewer usage and impacts?
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Through the discretionary approval process (Use Permit), Public Works would have the opportunity to review the water and sewer impacts of a proposed project and require whatever is necessary for the project to comply with the current standards. Should a project be unable to meet these requirements, the project would be denied.

Alternatively, a CCM ordinance could create additional performance standards for a CCM facility's water and sewage usage and impacts.

Recommendation: Public Works staff should continue to review the water and sewer impacts of proposed CCM businesses to identify Special Conditions that may be required to minimize impacts to the City's water and sewer systems.

ATTACHMENTS:

1. December 9, 2015 Public Safety Committee staff report on MMRSA
2. April 13, 2016 Public Safety Committee staff report on existing City policies
3. May 9, 2016 City Council staff report on commercial cannabis manufacturing
4. Commercial Cannabis Manufacturing Policy Issue Table