



AGENCY:	City Council
MEETING DATE:	July 25, 2016
DEPARTMENT:	CDD
PRESENTED BY:	S. Perkins

AGENDA ITEM SUMMARY REPORT

TITLE:

RECEIVE RECOMMENDATION FROM PUBLIC SAFETY COMMITTEE AND PROVIDE DIRECTION TO STAFF REGARDING CANNABIS MANUFACTURING ORDINANCE

ISSUE:

The State of California has adopted the Medical Marijuana Regulation and Safety Act (MMRSA) and is now instituting a new regulatory and licensing system to regulate the cultivation, transportation, third party certification, manufacture and distribution of Medical Marijuana. The Act is comprised of three State legislative bills known as AB 243, AB 266 and SB 643. While the State is still drafting regulations to implement the Act and will not issue licenses under the Act until January 2018, many communities have started to review and develop local regulations regarding the various components of the Medical Marijuana supply chain. As a result of MMRSA, both the Public Safety Committee and City Council have discussed the regulation of cannabis businesses in the City of Fort Bragg and provided direction to staff, as follows:

Public Safety Committee (December 9, 2015): Received detailed report on MMRSA.

Public Safety Committee (April 13, 2016): Recommended that the City a) retain its current cultivation and dispensary ordinances as they stand; b) take a "wait-and-see" approach to developing new regulations for cannabis transport and delivery as the State crafts legislation; and c) develop recommendations for modifying the Municipal Code and the Land Use and Development Code so that City Council can deliberate on whether and how to permit cannabis manufacturing in Fort Bragg.

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

Public Safety Committee (June 29, 2016): Reviewed a spectrum of policy options for the regulation of cannabis manufacturing, and provided recommendations to City Council for the development of a cannabis manufacturing ordinance which would provide for Medical Marijuana manufacturing while offsetting negative impacts the business could present to the community.

This report details the Public Safety Committee's recommendations for regulating various aspects of cannabis manufacturing businesses for City Council's consideration.

RECOMMENDED ACTION:

Provide direction to staff regarding components of a draft ordinance allowing cannabis manufacturing businesses in the Light and Heavy Industrial Zoning Districts with an approved Use Permit, and subject to additional standards identified by City Council.

ALTERNATIVE ACTION(S):

1. No action. Under this alternative, no further actions would be taken to address cannabis manufacturing uses and the use would continue to be prohibited in Fort Bragg, until it is allowed under the regulations adopted to implement MMRSA at the State level.
2. Provide alternative and/or more specific direction regarding regulations addressing cannabis manufacturing uses.
3. Request additional information and/or analysis by staff.

ANALYSIS:

The City of Fort Bragg presently implements Municipal Code Chapter 9.30 and 9.32 for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, respectively. If Council approves a new ordinance specific to cannabis manufacturing, it would reside in the Municipal Code alongside the existing dispensary and cultivation ordinances. Additionally, the use 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 cannabis manufacturing ordinance. For example, existing policies relating to application requirements and background checks for dispensaries and cultivation may be sufficient for cannabis manufacturing regulations. Additionally, numerous policies in the Municipal Code address noise, odor, solid waste and utilities, and apply to development citywide. The Public Safety Committee's recommendations described below take into account these existing regulations, as well as those found in staff's research of Colorado, Washington and other California ordinances. Attachment 1: June 29, 2016 Public Safety Committee Staff Report describes in detail the wide spectrum of policy options the Committee considered prior to making their recommendations. Attachment 2: Cannabis Manufacturing Policy Matrix truncates the discussion and highlights the various policy issues, options for regulation, and the Committee's recommendation.

Staff seeks Council's direction on the following policy recommendations of the Public Safety Committee prior to authoring a draft cannabis manufacturing ordinance and bringing it forward for City Council's consideration:

Definitions

Policy Question: How should a cannabis manufacturing ordinance handle the potential for future legalization of cannabis for recreational uses?

This November, California voters will consider Proposition 64 and vote whether or not to legalize recreational use of marijuana. Fort Bragg's legislation on the topic of cannabis should account for future changes to state law. Addressing cannabis manufacturing for medical uses only, may require that the ordinance be amended following changes to state law.

1. If Council intends for an ordinance to only allow cannabis manufacturing for medical uses, then the ordinance should refer only to Medical Marijuana.
2. However if Council wants the ordinance to apply to both medical uses and potential legal recreational uses, the ordinance should consider both medical and recreational uses (if they become legal).

The Public Safety Committee discussed each approach, and recommends providing flexibility in the ordinance to accommodate future recreational uses of cannabis, and therefore recommends that the ordinance apply generically to Cannabis Manufacturing, rather than to Medical Marijuana Manufacturing.

Recommendation: Include generic language, such as cannabis manufacturing, and language that permits the use of cannabis in the manufacturing process as permitted by the State of California.

Zoning and Permitting

Policy Question: In which zoning districts should cannabis manufacturing be permitted, and what permits should be required?

Commercial cannabis manufacturing operations utilize manufacturing processes consistent with other light manufacturing uses. As the ordinance presently stands, manufacturing uses are permitted only in the Light Industrial and Heavy Industrial zoning district. Since cannabis manufacturing is most similar to other manufacturing uses, cannabis manufacturing 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 cannabis manufacturing uses could be permitted, and the general consensus was that cannabis manufacturing should be limited to industrial districts.

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 cannabis manufacturing uses have the potential to pose security risks, create odors and noise, and utilize controlled materials, a Use Permit requirement is appropriate. Requiring cannabis manufacturing uses to obtain a Use Permit would allow the Planning Commission (or the City Council on appeal) to determine the suitability of the cannabis manufacturing use on a particular property, and place special conditions on any approval to ensure the continued compatibility of the cannabis manufacturing use with existing and potential surrounding land uses.

A cannabis manufacturing ordinance could also limit the maximum number of permits available, allowing the City to review the effectiveness of the ordinance and its impacts to the community. Should the ordinance be effective and the impacts minimal, City Council could increase the quantity of permits available by resolution.

Recommendation: Table 2-10 of ILUDC Section 18.24.030 should be revised, adding a cannabis manufacturing use, and allowing the new use in both the IL and IH zoning districts with an approved Use Permit.

Proximity to Sensitive Uses

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

Under Health and Safety Code section 11362.768, a medical marijuana cooperative, collective, dispensary, operation, establishment or provider who possesses, cultivates, or distributes medical marijuana shall not be located within a 600-foot radius of a school (defined as K-12, public or private). Cities and counties can further restrict the location of such land uses if they so choose. Subject to this mandatory minimum buffer zone for schools, a cannabis manufacturing ordinance could restrict the distance a cannabis manufacturing business may operate from a variety of

sensitive uses. Ordinances typically protect sensitive uses from potentially harmful businesses or projects by restricting either by adjacency or with a buffer.

In addition to any new policy restricting the distance cannabis manufacturing uses may operate from sensitive land uses, the Planning Commission must also make five required findings to approve any Use Permit. 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 Public Safety Committee discussed various options to protect sensitive land uses from cannabis manufacturing operations. While the Planning Commission must already make the finding quoted above, identifying sensitive uses within a prescribed distance from the proposed project would equip the Commission with the ability to determine the potential for negative impacts on the sensitive uses. Once these proximities are determined, the Commission could place conditions of approval applicable to a specific project to mitigate impacts to the identified sensitive uses. The Public Safety Committee felt that this level of review would be appropriate for any sensitive use within 200 feet of the facility. However, as noted above, State law mandates a 600-foot minimum distance between any medical marijuana use and a school. Furthermore, if it passes, Proposition 64 will impose an identical 600-foot minimum distance between any recreational marijuana business and a school.

Recommendation: Include as a Use Permit finding for approval for cannabis manufacturing uses that the design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity, and, specifically, with any church, 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 sensitive uses, and place conditions of approval on the Use Permit to mitigate impacts. Further, prohibit any cannabis manufacturing use from locating within 600 feet of any K-12 school.

Use Restrictions

Policy Question: Should accessory uses or services be permissible for cannabis manufacturing uses?

MMRSA limits the vertical integration of medical marijuana businesses with certain specified exceptions. A holder of a Type 10A dispensary license (the owner has less than three retail sites) may apply for and obtain a manufacturing license. A holder of a Type 10A dispensary license may have a manufacturing license and a cultivation license or any combination of cultivation licenses if the cultivation area is no more than four acres in total canopy size statewide.

Cities, of course, can impose further restrictions and regulations on the integration of marijuana businesses and accessory uses. 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 cannabis manufacturing operations to sell product even with a Minor Use Permit. Many municipalities have sought to prohibit uses accessory to cannabis manufacturing uses. Fort Bragg's dispensary ordinance similarly prohibits dispensaries

from engaging in the commercial sale of any product, goods or service other than medical marijuana.

Allowing uses accessory to cannabis manufacturing operations could greatly increase the trips to and from such businesses by customers. This increase in activity could complicate security issues. Additionally, MMRSA prohibits cannabis manufacturing businesses from selling cannabis at the retail level.

Recommendation: A cannabis manufacturing ordinance should prohibit accessory retail or service uses in association with the primary industrial use.

Exterior Restrictions

Policy Question: Should a cannabis manufacturing ordinance restrict outdoor displays or signage?

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 cannabis manufacturing ordinance could adopt similar requirements as the City's dispensary and cultivation ordinances. Conversely, the Council could recommend allowing exterior signage that portrays a cannabis-based activity.

The Public Safety Committee agreed that outdoor displays and signage showing evidence of a cannabis business could create an attractive nuisance and possibly jeopardize the security of the business. The Committee recommends prohibiting explicit cannabis signage to help reduce impacts on the surrounding neighborhood.

There is evolving case law regarding constitutional limits on the regulation of signage based on its content. Once direction is received from the Council, our attorneys can advise whether proposed restrictions are likely to withstand judicial scrutiny.

Recommendation: Prohibit cannabis manufacturers from displaying logos, art or signage that implies a cannabis-based activity.

Odor

Policy Question: How should a 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, 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 ordinance would require City staff to identify sensitive users within 200 feet of the business and the Planning Commission could use this information to apply project- and site-specific odor standards during the Use Permit review process. For example, a cannabis manufacturing 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. The Public Safety Committee recommended that the ordinance reference existing odor requirements from other City ordinances.

Recommendation: The cannabis manufacturing ordinance should reference odor regulations as they apply to all uses (Section 18.30.080(J)), and replicate the odor requirements of the marijuana cultivation ordinance.

Applicants for cannabis manufacturing Use Permits should submit an odor control plan, which may include an odor absorbing ventilation and exhaust system as part of their application so that Staff can determine if the business will comply with odor control requirements.

Security

Policy Question: What measures should a cannabis manufacturing ordinance include to ensure adequate security is provided for these industrial uses?

Security is a key policy issue for cannabis manufacturing; however, good security measures will be different for different properties. One blanket set of policies would not fit every scenario. Most cannabis manufacturing ordinances place the burden of proving adequate security on the applicant, subject to review 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 cannabis manufacturing ordinances utilize similar scenarios for the review of cannabis manufacturing applications. The following are some 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.

The Public Safety Committee felt that effective security measures are inherently site-specific, and applicants must develop a plan to satisfy the Police Department, which could attach special conditions as needed.

Recommendation: A cannabis manufacturing ordinance should include application requirements that address the following:

- Project consistency 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 submissions would be reviewed to the satisfaction of the Police Department. No Use Permit application for cannabis manufacturing would be approved without approval of the security plans by the Police Department.

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

Policy Question: What should a 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 neurologically or medicinally active? What happens if raw cannabis is spoiled or of unacceptable quality? Would it be returned to the cultivator, or destroyed by other means? How 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 cannabis manufacturing 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 cannabis manufacturing ordinance, the above policies would continue to apply to all City projects, including cannabis manufacturing facilities. Similar City regulations are in place regarding solid waste. In order for the review authority to ensure that the operational logistics of a cannabis manufacturing facility comply with the various state and local regulations, some jurisdictions have required cannabis manufacturing to include these details in the Use Permit application.

Through the Use Permit review process, these details 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 submission requirements for a cannabis manufacturing use should include detailed information on the business's operation, specifically:

1. Security procedures (see security discussion above)
2. Detailed operating procedures, 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 produced by the cannabis manufacturing
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 as necessary to ensure the project's compliance with local, state and federal regulations.

Infrastructure (water and sewer)

Policy Question: How should a cannabis manufacturing ordinance address water and sewer usage and impacts?

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 cannabis manufacturing ordinance could create additional performance standards for a cannabis manufacturing facility's water and sewage usage and impacts. The Public Safety Committee indicated that the Use Permit review process would be more flexible and specific to address water and sewer concerns.

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

FISCAL IMPACT:

Preparation of an ordinance to regulate medical marijuana manufacturing will require continued efforts by both City staff and the City Attorney. If an ordinance is passed allowing cannabis manufacturing, the City Council would need to establish appropriate fees to offset costs associated with the permitting process and any subsequent inspections or enforcement activities. If permitted, cannabis manufacturing would create new jobs. As a point of reference, RootOne Botanicals' business plan anticipates hiring more than 20 employees once running at full capacity.

IMPLEMENTATION/TIMEFRAMES:

Once the City Council provides final direction regarding the policy directives of the ordinance, staff will draft the ordinance. The draft ordinance will be brought back to City Council in one- to two-months for additional review and direction. The ordinance will then be brought back for a first and second reading prior to adoption. If everything proceeds smoothly, the ordinance would be adopted in late 2016 or early 2017.

ATTACHMENTS:

1. June 29, 2016 Public Safety Committee Staff Report
2. Cannabis Manufacturing Policy Matrix

NOTIFICATION:

Root One Botanicals, Jon McColley

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____