

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER 9.33
(CANNABIS MANUFACTURING) TO
TITLE 9 (PUBLIC PEACE, SAFETY AND
MORALS) OF THE FORT BRAGG
MUNICIPAL CODE**

ORDINANCE NO. 927-2016

WHEREAS, the City of Fort Bragg ("City") does not currently allow cannabis manufacturing within City limits; and

WHEREAS, the State of California has adopted Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, jointly referred to as the Medical Marijuana Regulation and Safety Act (MMRSA); and

WHEREAS, the State of California will not issue licenses under MMRSA until January 2018; and

WHEREAS, local governments may choose to adopt new ordinances to permit or license local cannabis businesses in preparation for state licensing; and

WHEREAS, on May 9, 2016, City Council of the City of Fort Bragg ("City Council") sought to establish rules and regulation by which cannabis manufacturing may be permitted; and

WHEREAS, through multiple public meetings, the Public Safety Committee, Fort Bragg Police Department and City staff have received input from citizens and discussed various options for permitting cannabis manufacturing, and

WHEREAS, a new set of regulations has been prepared for cannabis manufacturing that would allow cannabis manufacturing uses to operate in the Light Industrial and Heavy Industrial zoning districts with an approved Use Permit; and

WHEREAS, on September 12, 2016, City Council reviewed a draft cannabis manufacturing ordinance; and

WHEREAS, City Council has determined that Chapter 9.33 Cannabis Manufacturing Ordinance should be added to the Municipal Code, and that such changes will not possibly have a significant effect on the environment.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this resolution.
2. Adding Chapter 9.33 to the Municipal Code in the manner described will ensure that cannabis manufacturing uses are effectively regulated so that they will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

3. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 9 – PUBLIC PEACE, SAFETY AND MORALS

Chapter 9.33 entitled **CANNABIS MANUFACTURING** is hereby added as follows:

CHAPTER 9.33: CANNABIS MANUFACTURING

Section

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§ 9.33.010 PURPOSE AND INTENT.

It is the purpose and intent of this ordinance to regulate Cannabis Manufacturing in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City.

§ 9.33.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words or phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources: Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5); Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 through 11362.83); and Medical Marijuana Regulation and Safety Act of 2015 (enacted by Assembly Bill (AB) 243, AB 266 and Senate Bill 643).

APPLICANT. A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a cannabis manufacturing use.

CHIEF OF POLICE. The Chief of Police of the City of Fort Bragg or the authorized representatives thereof.

CHURCH. A structure or leased portion of a structure which is used primarily for religious worship and related religious activities.

CONTROLLED SUBSTANCES. A drug, substance, or immediate precursor which is listed in any schedule in Cal. Health and Safety Code §§ 11054, 11055, 11056, 11057, or 11058.

DRUG PARAPHERNALIA. Shall have the same definition as Cal. Health and Safety Code § 11364.5, and as may be amended.

CANNABIS. Shall have the same definition as defined by State law.

CANNABIS MANUFACTURING. A process where cannabis is transformed into a product (such as food, medicine, oil, clothing, textile, etc.), and the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly.

PERMITTEE. The person to whom a cannabis manufacturing permit is issued.

PERSON WITH AN IDENTIFICATION CARD. Shall have the same definition as Cal. Health and Safety Code § 11362.7, and as may be amended.

PRIMARY CAREGIVER. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 and 11362.7, and as may be amended.

QUALIFIED PATIENT. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 and 11362.7, and as may be amended.

SCHOOL. An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

§ 9.33.030 PERMIT REQUIRED.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a cannabis manufacturing use unless the person first obtains and continues to maintain in full force and effect a cannabis manufacturing permit from the City as herein required.

§ 9.33.040 APPLICATIONS.

A. All applications for cannabis manufacturing permits shall be filed with the Chief of Police. The application shall be made under penalty of perjury.

B. Any application for a cannabis manufacturing permit shall include the following information:

1. The full name, present address, and telephone number of the applicant;
 2. The address to which notice of action on the application and all other notices are to be mailed;
 3. Previous addresses for the past five years immediately prior to the present address of the applicant;
 4. Written proof that the applicant is over 21 years of age;
 5. Photographs for identification purposes (photographs shall be taken by the Police Department);
 6. The cannabis business history of the applicant, including whether the person, in previously operating in any city, county, or state under permit, has had a permit revoked or suspended and, if so, the reason therefor;
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7. The name or names of the person or persons having the management or supervision of applicant's business;

8. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of the offense(s), and the sentence(s) received therefor;

9. The names of all employees, independent contractors, and other persons who will work at the cannabis manufacturing use;

10. A security plan ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry;

11. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the cannabis manufacturing use and the purpose and security of each room or area of operation;

12. A diagram illustrating the use and coverage of security cameras, security lighting, and necessary access restrictions;

13. Security measures ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry;

14. Detailed operating procedures, which shall include the following:

- a. Proposed hours of operation;
- b. How the business will comply with applicable State regulations;
- c. Product safety and quality assurances;
- d. Record keeping procedures;
- e. Product recall procedures;

f. A solid waste disposal plan, with certification that waste transport entities and disposal facilities have agreed to haul and receive solid waste produced by the cannabis manufacturing use.

g. Product supply chain information (cultivation, testing, transportation, packaging and labeling);

h. An odor prevention plan, illustrating how the use will be consistent with §17.30.080(J) and/or §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; and

i. Other information as required by the Chief of Police as necessary to ensure the project's compliance with local, state and federal regulations.

14. Authorization for the City, its agents and employees to seek verification of the information contained within the application; and

15. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

C. If the applicant has completed the application improperly, or if the application is incomplete, the Chief of Police shall, within ten (10) days of receipt of the original application, notify the applicant of the fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or more to submit a complete application.

D. The fact that an applicant possesses other types of state or City permits or licenses does not necessarily exempt the applicant from the requirement of obtaining a cannabis manufacturing permit.

§ 9.33.050 TIME LIMIT FOR FILING APPLICATION FOR PERMIT.

All persons who possess an outstanding business license heretofore issued for cannabis manufacturing must apply for and obtain a cannabis manufacturing permit within 90 days of the effective date of this ordinance. Continued operation of a cannabis manufacturing use without a permit more than 90 days after the effective date of this ordinance shall constitute a violation of this chapter.

§ 9.33.060 TERM OF PERMITS AND RENEWALS.

Cannabis manufacturing permits issued under this chapter shall expire one year following their issuance. Cannabis manufacturing permits may be renewed by the Chief of Police for additional one-year periods upon application by the permittee, unless the permit is suspended or revoked subject to § 9.33.180. Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in § 9.33.070. When made less than 45 days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. The Chief of Police may deny an application for renewal based on any of the grounds referenced in §§ 9.33.090 and 9.33.180. An applicant aggrieved by the Chief of Police's decision to deny a renewal of a cannabis manufacturing permit may appeal pursuant to § 9.33.100.

§ 9.33.070 FEES.

Every application for a cannabis manufacturing permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee is in addition to fingerprinting, photographing, and background check costs and shall be in addition to any other permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time.

§ 9.33.080 INVESTIGATION AND ACTION ON APPLICATION.

After the making and filing of the application for the cannabis manufacturing permit and the payment of the fees, the Chief of Police shall conduct a background check of the applicant and all employees and conduct an investigation of the application. After the background checks and investigation are complete, the Chief of Police shall either formally accept or reject the application in accordance with the provisions of this chapter.

§ 9.33.090 GROUNDS FOR REJECTION OF CANNABIS MANUFACTURING PERMIT APPLICATION.

The grounds for rejection of a cannabis manufacturing permit application shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;

B. The applicant has violated any local or state law, statute, rule, or regulation respecting a cannabis business;

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit;

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere;

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;

F. The applicant is under 21 years of age;

G. The cannabis manufacturing use does not comply with Title 18 (Land Use and Development Code); and/or

H. The required application or renewal fees have not been paid.

(Ord. 850, passed 6-13-2005)

§ 9.33.100 APPEAL FROM CHIEF OF POLICE DECISION TO REJECT APPLICATION.

The Chief of Police shall cause a written notice of his or her decision to reject a cannabis manufacturing permit application to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested, to the address provided by the applicant for sending of notices. An applicant aggrieved by the Chief of Police's decision to reject an application may appeal the decision in accordance with the procedures described in Chapter 1.08. If an appeal is not taken within such time, the Chief of Police's decision shall be final.

(Ord. 900, § 11, passed 12-12-2011)

§ 9.33.110 PROCESSING OF CANNABIS MANUFACTURING PERMIT.

If an application is not rejected by the Chief of Police, it shall be forwarded to the Community Development Department for processing using the same permit process and requirements for a Use Permit as defined in Title 17 (Coastal Land Use and Development Code) and Title 18 (Land Use and Development Code).

§ 9.33.120 OPERATING REQUIREMENTS.

A cannabis manufacturing use shall meet the following operating requirements for the duration of the use.

A. The design, location, size and operating characteristics of the cannabis manufacturing use shall comply with the findings and conditions of the Use Permit.

B. A cannabis manufacturing use shall maintain a current register of the names of all employees currently employed by the use.

C. The building entrance to a cannabis manufacturing use shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

D. No cannabis or cannabis product shall be smoked, ingested, or otherwise consumed on the project site. The term "project site" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a cannabis manufacturing use shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the cannabis manufacturing use is prohibited.

E. No marijuana shall be grown or cultivated on the premises of the cannabis manufacturing use.

F. No cannabis manufacturing use shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cannabis manufacturing use.

G. No cannabis manufacturing use shall conduct or engage in the commercial sale of any product, goods or service. The term "commercial sale" does not include the provision of cannabis on terms and conditions consistent with this chapter and applicable law.

H. No accessory uses shall be permitted in conjunction with a cannabis manufacturing use.

I. No cannabis manufacturing use shall sell or display any drug paraphernalia or any implement that may be used to administer cannabis.

J. A cannabis manufacturing use shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of employees and visitors from criminal activity, including theft and unauthorized entry.

K. A cannabis manufacturing use shall provide the Chief of Police with the name, phone number, and email of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the cannabis manufacturing use.

L. A cannabis manufacturing use shall meet all the operating criteria for the manufacturing of cannabis as is required pursuant to state law.

§ 9.33.130 MINORS.

A. It shall be unlawful for any permittee, operator, or other person in charge of any cannabis manufacturing use to employ any person who is not at least 21 years of age.

B. Persons under the age of 21 shall not be allowed on the premises of a cannabis manufacturing use unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

§ 9.33.140 DISPLAY OF PERMIT.

Every cannabis manufacturing use shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for cannabis manufacturing in a conspicuous place so that the same may be readily seen by all persons entering the cannabis manufacturing use.

§ 9.33.150 REGISTRATION OF NEW EMPLOYEES.

A. As a further condition of approval of every cannabis manufacturing permit issued pursuant to this chapter, every owner or operator shall register every employee with the Police Department within five business days of the commencement of the employee's period of employment at the cannabis manufacturing use, in order to provide necessary information to conduct background checks.

B. Each employee shall be required to provide two recent color passport-quality photographs and, at the discretion of the Chief of Police, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification.

C. Failure to register each new employee within five days of the commencement of employment or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit.

§ 9.33.160 TRANSFER OF PERMITS.

A. A permittee shall not operate a cannabis manufacturing use under the authority of a cannabis manufacturing permit at any place other than the address of the cannabis manufacturing use stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a cannabis manufacturing use or transfer a cannabis manufacturing permit to another person unless and until the transferee obtains an amendment to the permit from the Chief of Police stating that the transferee is now the permittee. The amendment may be obtained only if the transferee files an application with the Chief of Police in accordance with § 9.33.040, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Chief of Police determines in accordance with § 9.33.090 that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the Chief of Police has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

§ 9.33.170 SUSPENSION AND REVOCATION — NOTICE.

A. Any permit issued under the terms of this chapter may be suspended or revoked by the Chief of Police when it appears to him or her that the permittee has committed any one or more of the acts or omissions constituting the grounds for suspension or revocation under this chapter.

B. No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the Chief of Police. Written notice of the time and place of the hearing shall be served upon the person to whom the permit was granted at least five days prior to the date set for the hearing. The

notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the permittee at the address provided by the permittee for sending of notices.

§ 9.33.180 SUSPENSION AND REVOCATION — GROUNDS.

It shall be a ground for suspension or revocation of a permit if any permittee or person, his or her agent, or employee:

A. Does any act which violates any of the grounds set forth in § 9.33.090, which sets forth the grounds for rejection of an application for a permit for the cannabis manufacturing use;

B. Violates any other provision of this chapter or any local or state law, statute, rule, or regulation relating to his or her permitted activity;

C. Conducts the permitted business in a manner contrary to the peace, health, or safety of the public;

D. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic-control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business;

E. Violates any provision of Title 15 of this code; or

F. Violates or fails to comply with the terms and conditions of the Use Permit.

§ 9.33.190 SUSPENSION AND REVOCATION — APPEALS.

Any permittee aggrieved by the decision of the Chief of Police in suspending or revoking a permit may, within 10 calendar days, appeal the decision in accordance with the procedures described in Chapter 1.08. If a decision of the Chief of Police to suspend or revoke a permit is not appealed within ten (10) calendar days, the decision of the Chief of Police shall be final.

§ 9.33.200 SUSPENSION OR REVOCATION WITHOUT HEARING.

If any person holding a permit or acting under the authority of the permit under this article is convicted of a misdemeanor in any court for the violation of any law which relates to his or her permit, the Chief of Police shall revoke the permit forthwith without any further action thereof, other than giving notice of revocation to the permittee. If a permit is summarily revoked pursuant to the provisions of this section, a permittee may, within ten (10) calendar days, appeal the revocation in accordance with the procedures described in Chapter 1.08. During the pendency of the appeal, the permit shall be deemed suspended. If the appeal is not taken within ten (10) days, the decision of the Chief of Police shall be final.

§ 9.33.210 SEPARATE OFFENSE FOR EACH DAY.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

§ 9.33.220 PUBLIC NUISANCE.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to Chapter 6.12 of the Fort Bragg Municipal Code.

§ 9.33.230 CRIMINAL PENALTIES.

Any person who violates, causes, or permits another person to violate any provision of this chapter commits a misdemeanor.

§ 9.33.240 CIVIL INJUNCTION.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

§ 9.33.250 ADMINISTRATIVE REMEDIES.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by City ordinance.

§ 9.33.270 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the ordinance. The City Council of the City hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one (1) or more sections, subsections, sentences, clauses, or phrases may be held invalid or unconstitutional.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember _____ at a regular meeting of the City Council of the City of Fort Bragg held on October 24, 2016, and adopted at a regular meeting of the City of Fort Bragg held on November 14, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**Dave Turner,
Mayor**

ATTEST:

**June Lemos
City Clerk**

PUBLISH: October 27, 2016 and November 23, 2016 (by summary).
EFFECTIVE DATE: December 14, 2016.
