



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: June 26, 2017
TO: Public Safety Committee
FROM: Scott Perkins, Associate Planner
AGENDA ITEM TITLE: **Receive Report and Make Recommendation to City Council
Regarding Commercial Cannabis Uses**

ISSUE:

The State of California is instituting a new regulatory and licensing system known as the Adult Use of Marijuana Act (AUMA). The Act is comprised of draft State legislative bill AB 64. As a result of AUMA, both the Public Safety Committee and City Council have discussed the regulation of commercial cannabis businesses in the City of Fort Bragg.

Staff has researched commercial cannabis uses, explored existing ordinances in Colorado, Washington and California, and discussed potential impacts of cannabis uses in Fort Bragg with other agencies and departments. Staff has also met informally with members of the community to receive feedback on how the industry presently operates and how it could operate under various regulation scenarios.

A revised ordinance addressing retail cannabis sales could allow the City to permit new cannabis businesses in the City and offset negative impacts the businesses could present to the community. This report details some options for regulating various cannabis business uses, and identifies specific policy questions for the Committee to consider for a recommendation to City Council. Staff recommends that the Committee review the various options for regulating cannabis uses to formulate recommendations that staff will use to draft an ordinance for City Council's consideration.

SUMMARY:

The City of Fort Bragg presently implements Municipal Code Chapter 9.30, 9.32 and 9.33 for Medical Marijuana Dispensaries, Medical Marijuana Cultivation and Cannabis Manufacturing, respectively. The existing cultivation and dispensary ordinances apply only to medical marijuana, and Council has directed staff to make changes to the Municipal Code to address the changing State law allowing recreational and personal use of cannabis. If Council approves a revised ordinance, it would reside in the Municipal Code and replace the existing medical marijuana ordinances. Additionally, changes to the Land Use and Development Code would

also be necessary to amend the Allowable Land Use Table of Chapter 2, and potentially add specific use regulations to Chapter 4.

Some policies in the existing dispensary, cultivation and manufacturing ordinances could be included in the ordinances for recreational cannabis. For example, existing policies relating to application requirements and background checks may be sufficient for recreational uses. 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. The report is broken into three portions: retail cannabis uses, personal cultivation and commercial cultivation uses.

Staff seeks direction from the Public Safety Committee on the following policy questions relating to cannabis regulations:

RETAIL CANNABIS

PERMITTED USES: Which types of retail cannabis uses should the City allow?

AUMA allows for both storefront retailers and non-storefront retailers. Both types would have "brick and mortar" facilities, but non-storefront retailers would not have direct physical access for the public.

- Non-storefront retailers would operate by storing cannabis for sale at a physical address and delivering the product directly to customers.
- For storefront retailers, AUMA permits a local jurisdiction to allow the ingestion of cannabis on the premises of a retailer so long as access to the area is restricted to persons 21 years of age and older, the consumption is not visible from a public place or nonage-restricted area, and the sale or consumption of alcohol or tobacco is not allowed.

Presently, Chapter 9.30 allows medical dispensaries (retail) in the City's industrial districts only. Neither Non-storefront retailers of medical marijuana and the consumption of cannabis on the site of dispensaries is permitted within Fort Bragg. Before considering specific policies for each business type, the Committee should determine which types of cannabis business uses the City should allow. Based on comments from the Public safety Committee, staff recommends allowing both kinds of retail use, with specific regulations for each to minimize impacts on neighboring businesses (discussed further in this report). This recommendation includes regulating retail uses with onsite consumption separately from other retail uses.

Retail Type	Current Allowance under Medical Regulations	Staff Recommendation	Committee Direction
Storefront	Permitted (with special regulations and permitting)	Permit (with special regulations and permitting)	
Nonstorefront	Not permitted	Permit (with special regulations and permitting)	
Storefront with onsite consumption	Not permitted	Permit (with special regulations and	

		permitting)	
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ZONING AND PERMITTING: In which zoning districts should retail cannabis uses be permitted, and what permits should be required?

Retail cannabis uses could be considered just as a type of retail use, and be subject to the ILUDC regulations as other retail uses. If this approach is taken the Committee could leave specific use regulations for retail cannabis up to the state. This is the least restrictive option, and staff does not recommend this approach as it eliminates local control. However, if the Committee, prefers this approach the following definitions would be used to regulate the three retail cannabis types:

Storefront Retail = General Retail—allowed in all CBD, CG and CH (up to 10,000 sq. ft.) without a Use Permit

Nonstorefront Retail = Storage – Warehouse—allowed in IL and IH without a Use Permit

Storefront with onsite consumption = Bar and Tavern—allowed in CBD (with Use Permit) and CG and CH (with Minor Use Permit)

Staff recommends separately defining and regulating the three types of retail cannabis businesses. This section of the report addresses Staff's recommendations for the zoning districts and permitting requirements to establish retail cannabis uses. The following are information of the various permitting options.

Use Permit: Provides a process for reviewing uses and activities that may be appropriate in an applicable zoning district, but whose effects on a site and surroundings cannot be determined before being proposed for a specific site. Use Permits are approved or disapproved by the Planning Commission, and their determination can be based on specific regulations for the applicable use enumerated in the ILUDC.

Minor Use Permit: The purpose and process is generally the same as a Use Permit; however, Minor Use Permits are approved or disapproved by the Community Development Director. The Director's determination can be based on specific regulations for the applicable use enumerated in the ILUDC. Either the Director or a member of the public may elevate Minor Use Permits to a Use Permit, with the Planning Commission then acting on the application.

Permitted Use: A use that may be established in a zoning district without a planning permit. Business licenses and building permits (if necessary) are still required.

Unpermitted Use: A use that may not be established regardless of permitting in a zoning district.

Storefront Retail

Retail cannabis uses with customer traffic is consistent with the definitions and purposes of the General Commercial (CG), Highway Commercial (CH) and Central Business District (CBD). It is not consistent with the Neighborhood Commercial (CN) and Office Commercial (CO) definitions and purposes. The most similar existing use in the ILUDC is "general retail" (i.e. liquor store).

If the Committee seeks to encourage storefront retail cannabis uses, staff recommends allowing them in multiple zoning districts, with some limitations and use permit requirements. Presently, no medical dispensaries are located in the City limits, likely due in part to the limited availability of property in the industrial zoning districts. Additionally, businesses attempting to establish cannabis manufacturing uses based on the recent adoption of the Cannabis Manufacturing Ordinance are reporting difficulty in locating suitable and available property in

the industrial districts. Limiting storefront retail cannabis uses to one zoning district or only the industrial zoning districts may have a similar effect in recruiting new business to the City.

The following table displays the options for permitting storefront retail cannabis options, as well as staff's recommendation:

Storefront Retail		
Zoning District	Staff Recommendation	Committee Direction
CN	-	
CO	-	
CBD	Use Permit, second floor only	
CG	Use Permit	
CH	Use Permit	
IL	-	
IH	-	

Nonstorefront Retail

Retail cannabis businesses that do not include a storefront is similar to a warehouse with a delivery service. Similar warehouse and distribution uses are presently allowed only in the industrial zoning districts.

As previously discussed, there is a limited quantity of property available in the industrial zoning districts. The Committee could decide to allow these uses in commercial zoning districts; however, this would be a stretch to consider the use consistent with the definitions and purposes of these districts. Additionally, this use has the potential to displace existing industrial businesses because of its ability to pay a premium for space. As the City has a critical shortage of this type of space and our economy needs other types of industrial uses to be successful, staff recommends that non-storefront retail not be allowed within the City of Fort Bragg.

Non-storefront Retail		
Zoning District	Staff Recommendation	Committee Direction
CN	-	
CO	-	
CBD	-	
CG	-	
CH	-	
IL	-	
IH	-	

Storefront with Onsite Consumption

The AUMA trailer bill (AB 64) permits the ingestion of cannabis on the premise of a retail cannabis use with the following language:

- (d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of marijuana or marijuana products on the premises of a retailer or microbusiness licensed under this division if all of the following apply:

- (1) Access to the area where marijuana consumption is allowed is restricted to persons 21 years of age and older.
- (2) Marijuana consumption is not visible from any public place or nonage-restricted area.
- (3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

If the Committee recommends allowing these use types, staff suggests the City regulate them separately from storefront retail cannabis uses, as opposed to considering the onsite consumption accessory to a retail use. The current use in the ILUDC most similar to this type of retail cannabis use would be a “bar or tavern”, where alcohol is purchased for consumption onsite. Bar and tavern uses are presently allowed in the CG and CH districts with a Minor Use Permit and in the CBD with a Use Permit. Staff recommends allowing retail cannabis uses with onsite consumption in the same zoning districts, but require a Use Permit since this is a new business type with presently unknown neighborhood impacts. Additionally staff recommends specific use type regulations for this use to minimize impacts on neighboring uses. It is important to note that AB 64 has not yet been passed, and while its current draft allows for consumption of cannabis in the premise of a retail use, it may still change as the process continues.

These types of uses are not consistent with the purposes and definitions of the industrial districts, and staff recommends excluding them from these locations.

Storefront with Onsite Consumption		
Zoning District	Staff Recommendation	Committee Direction
CN	-	
CO	-	
CBD	Use Permit	
CG	Use Permit	
CH	Use Permit	
IL	-	
IH	-	

Storefront Retail with Delivery

The Committee should also consider how to regulate delivery services as part of storefront retail uses. This use is most similar to a restaurant with a delivery element—where customer traffic is present at the brick and mortar location and deliveries leave from the facility. Staff recommends the Committee consider this an accessory use and that it be allowed where storefront retail is permitted, subject to Use Permit approval.

PROXIMITY TO SENSITIVE USES: Should retail cannabis uses be prohibited within certain distances of sensitive uses (churches, schools, hospitals, etc.)?

Retail cannabis policies could restrict the distance of a cannabis use from sensitive uses. Ordinances typically protect sensitive uses from potentially harmful businesses or projects by restricting either through adjacency or by a buffer. The Adult Use of Marijuana Act prohibits retail cannabis uses “from being located within 600 feet of schools and other areas where children congregate.” City policy could address this issue to varying degrees as follows:

1. *No restriction.* Including no restrictions on retail cannabis uses and their proximity to sensitive uses. This would not replace the State requirement of 600 feet, but if the State were to one day amend the requirement, the change would apply to Fort Bragg.

2. *Buffer restriction.* For more protection to sensitive uses from retail cannabis uses, a policy could prohibit these businesses within a specified distance of sensitive uses. This could reiterate the State requirement or be more restrictive than the State requirement.

Regardless of the selected approach the review authority could deny Use Permits for proposed retail cannabis uses that are inconsistent with the surrounding neighborhood, or modify projects via special conditions of approval to mitigate potential impacts. Staff recommends that the regulations addressing proximity to sensitive uses apply to storefront retail and uses with onsite consumption.

USE RESTRICTIONS: Should accessory uses or services be permissible for retail cannabis uses?

Storefront Retail

For non-cannabis businesses in Fort Bragg, there are few restrictions regarding what a business can sell. For example, most “general retail” businesses can sell a variety of wares that may not be related. Limiting accessory uses in cannabis retail businesses would reduce the revenue streams available to these businesses.

The Committee could limit what other types of merchandise or services cannabis retail businesses could provide. The current medical dispensary ordinance prohibits accessory uses. If accessory uses are permitted, only accessory uses that are also permitted in the applicable zoning district could be allowed. For example, if retail cannabis uses are permitted in the CG district, the only accessory uses permitted in that location would be other uses allowed in the CG district.

Staff recommends that accessory uses be allowed.

Non-storefront Retail

For non-storefront retail uses (i.e. delivery services), it seems unlikely that accessory uses would be appropriate (particularly if they are only permitted in the industrial zoning districts. Staff recommends that non-storefront retail not be permitted, so accessory uses would also not be permitted.

Storefront Retail with Consumption

Similar to storefront retail without consumption, these uses could be allowed to provide accessory sales and services. For example, most bars sell apparel and other limited merchandise. Any accessory uses would need to be approved as part of a Use Permit approval, to determine consistency with the zoning district, the primary use and surrounding land uses.

ODOR & SMOKE: How should the City regulate retail cannabis use odor and smoke?

Many City businesses 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 medical marijuana cultivation uses, existing Sections 9.32.020(C)(15) and 90.32.020(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.

Retail cannabis policies could include some combination of these existing odor regulations and could also address smoke. If the Committee elects to further mitigate impacts related to odor and smoke, more stringent requirements may be worth considering. More stringent requirements could increase the complexity and cost of new retail cannabis uses in order to meet these standards; however, regulations could diminish the potential for odor and smoke impacts to neighboring uses and business customers.

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

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

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

(h) An odor prevention plan, illustrating how the use will be consistent with Section 17.30.080(J). 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.

Staff recommends the Committee consider including language in retail cannabis policy that requires the applicant demonstrate how the project would comply with the existing odor regulations, similar to the requirement for cannabis manufacturing uses. Additionally staff recommends that the Committee provide direction of how to deal with smoke, which has the potential to effect customers and non-customers without their consent.

SECURITY: What should a retail cannabis policy include to ensure adequate security is provided for these 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 ordinances in other locations (California, Colorado and Washington) 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 existing 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 regulations utilize similar scenarios for the review of retail cannabis businesses.

Fort Bragg's recently-adopted cannabis manufacturing ordinance has the following requirements:

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

- (11) A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the use and the purpose and security of each room or area or 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;

Since effective security measures are inherently site-specific, applicants should develop a plan to satisfy the Police Department which could attach special conditions as needed. Staff recommends the Committee consider a similar approach for retail cannabis uses.

CANNABIS CULTIVATION - PERSONAL

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

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

The Committee should consider the following questions in regards to the regulation of the personal indoor cultivation of cannabis:

OURDOOR CULTIVATION: Should the City allow outdoor cultivation for personal use?

AUMA does not allow cities to prohibit indoor cultivation of six plants or less, but it does allow cities to regulate or prohibit outdoor cultivation. Due to limits on parcel sizes and population densities, staff recommends the Committee consider prohibiting outdoor cultivation for personal use. If the Committee wishes to pursue allowing and regulating outdoor cultivation for personal use, staff will include draft regulations in the next discussion on cannabis uses.

PERMIT: Should the City require a permit for indoor cultivation for personal use?

Requiring a permit would allow the City to ensure that personal cultivation does not exceed six plants and whether or not changes are made to the structure that require building permits. Additionally, the City could ensure that the cultivation is not occurring within accessory buildings that are visible from public spaces.

INSPECTIONS: Should a permit require periodic inspections, and who would perform the inspections?

Periodic inspections would allow the City to ensure continued compliance with the State requirements for personal indoor cultivation. It is likely that the Fire Department and Building Department would be necessary for some inspections, which could increase costs to the City and the City should consider establishing an inspection fee to cover this cost.

CANNABIS CULTIVATION – COMMERCIAL

PERMITTED USES: Should the City allow commercial cannabis cultivation?

The City presently allows cultivation only for personal medical purposes. AUMA expands State law to allow commercial cannabis cultivation; however, cities may regulate or completely prohibit state-licensed cultivation businesses. The first question the Committee should answer is whether or not to permit commercial cultivation in the City limits.

It seems unlikely that outdoor cultivation is a viable business in the City due to limits on parcel sizes and population densities. Additionally, in the past Council has consistently taken a position of not allowing outdoor cultivation. This report will focus solely on indoor commercial cultivation. If the Committee would like to explore regulations for outdoor commercial cultivation, staff will return to the Council's next discussion on cannabis uses with draft policies addressing outdoor commercial cultivation.

ZONING AND PERMITTING: If the City allows indoor commercial cultivation, which zoning districts are appropriate and what permitting should be required?

If the Committee recommends allowing indoor commercial cultivation, it should identify the appropriate zoning districts for these uses. The most similar use that presently exists in the ILUDC is "crop production, horticulture, orchard, vineyard." The Committee could determine that indoor cultivation fits under this existing land use and leave all regulation up to the State; however, staff recommends separately defining and regulating indoor cultivation.

"Crop production, horticulture, orchard, vineyard" is defined in the ILUDC as follows:

Crop Production, Horticulture, Orchard, Vineyard. Commercial agricultural production field and orchard uses, including the production of the following, primarily in the soil on the site and not in containers, other than for initial propagation prior to planting in the soil on the site:

- Field crops
- Flowers and seeds
- Fruits
- Grains
- Melons
- Ornamental crops
- Tree nuts
- Trees and sod
- Vegetables
- Wine and table grapes

Also includes associated crop preparation services and harvesting activities, such as mechanical soil preparation, irrigation system construction, spraying, crop processing and retail sales in the field, not including sales sheds, which are instead defined under "Produce Stand." Does not include greenhouses which are instead defined under "Plant Nursery," and "Residential Accessory Use or Structure," or containerized crop production, which is instead defined under "Plant

Nursery.” Does not include non-commercial home gardening, which is allowed as an accessory use in all zoning districts without City approval.

This use is presently permitted in all residential, commercial and industrial zoning districts without requiring a Use Permit. Since cannabis cultivation is a newly legal use and its impacts on adjacent properties are as yet undetermined and the scale of future operations is unknown, staff recommends requiring a Use Permit for the use, should the Committee recommend permitting it.

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

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

However, commercial indoor cultivation may not be appropriate in the industrial district due to the shortage of this land use type within the City of Fort Bragg. This use has the potential to displace many existing industrial businesses, which would not have anywhere else to go. Staff does not recommend this use for the CG zone either as a large green house or warehouse type structure would be inconsistent with this district. Finally, this use is a very water and electrically intensive use. For these reasons, staff recommends that industrial cultivation prohibited in the City.

Commercial Indoor Cultivation		
Zoning District	Staff recommendation	Committee Direction
CG	-	
IL	-	
IH	-	

PROXIMITY TO SENSITIVE USES: Should commercial indoor cultivation uses be prohibited within certain distances of sensitive uses (churches, schools, hospitals, etc.)?

As stated in the discussion relating to this topic for retail uses, the State will require these commercial cultivation uses be at least 600 feet from schools and other areas where children congregate. City policy could either remain silent on the issue and rely on the State requirement or increase the buffer to a greater distance. As staff does not recommend allowing indoor commercial cultivation, staff has no recommendation on this issue.

USE RESTRICTIONS: Should accessory uses or services be permissible for retail cannabis uses?

The Committee should consider if it wishes to limit what other types of merchandise or services indoor commercial cultivation uses could provide. The City's cannabis manufacturing ordinance does not allow accessory retail in an effort to limit the amount of foot traffic in and out of facilities for security purposes. If the Committee gives direction allowing indoor commercial cultivation, allowing accessory uses or services may be dependent on the zoning districts where the use is allowed. For example, if the City permits indoor commercial cultivation in only the industrial districts, accessory uses may be inconsistent with the purposes and definitions of those districts. On the other hand, if the use is permitted in the CG district, accessory retail or service uses may be more appropriate.

Depending on the Committee's direction on the use and where it may be permitted. Staff recommends prohibiting commercial cannabis.

ODOR: How should the City regulate indoor commercial cultivation odor?

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

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

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

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

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

(h) An odor prevention plan, illustrating how the use will be consistent with Section 17.30.080(J). The odor prevention plan may include an odor absorbing ventilation and exhaust system or other measures to ensure the use does not produce odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

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

SECURITY: What should a retail cannabis policy include to ensure adequate security is provided for these uses?

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

ATTACHMENTS:

1. California League of Cities Presentation