



AGENCY: City Council
MEETING DATE: December 11, 2017
DEPARTMENT: Community Development
PRESENTED BY: S. Perkins
EMAIL ADDRESS: sperkins@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT AND PUBLIC SAFETY COMMITTEE RECOMMENDATIONS REGARDING POLICY APPROACHES TO ADDRESS CANNABIS BUSINESSES IN FORT BRAGG IN RESPONSE TO UPCOMING STATE PERMITTING OF CANNABIS BUSINESSES AND PROVIDE DIRECTION TO STAFF

ISSUE:

The State of California has passed two pieces of legislation since the City's cultivation and dispensary ordinances became effective (2009 and 2005, respectively)— the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016). The State Bureau of Cannabis Control Proposed Text of Regulations was published on November 16, 2017. Each State law places various levels of regulatory responsibility on local jurisdictions.

On June 26, 2017, the Public Safety Committee met to discuss future regulation of cannabis uses in the City of Fort Bragg and made various recommendations to Council. The newly-released State regulations will help inform the development of local regulations. This report describes the new State laws, existing City ordinances relating to retail cannabis uses, the City's responsibilities and options for regulating future cannabis uses, and the recommendations made by the Public Safety Committee. A report focused on cultivation will follow at a later Council meeting.

REGULATORY FRAMEWORK:

State Law: California voters passed Proposition 215 (the Compassionate Use Act) in 1996, which exempts patients with physician's prescriptions and their caregivers from laws prohibiting the use, possession and cultivation of cannabis. In 2003, the State legislature enacted the Medical Marijuana Program Act that allows patients and caregivers to collectively or cooperatively cultivate cannabis. These two pieces of legislation preserved the ability for local governments to independently regulate (or prohibit) medical cannabis uses. In response to the two State laws, the City of Fort Bragg enacted Municipal Code Chapters 9.30 and 9.32 regulating medical cannabis cultivation and dispensaries within the City. The next section of this report discusses local regulations at greater length.

The State legislature subsequently passed the Medical Cannabis Regulation and Safety Act (MMRSA), which became effective January 1, 2016. MMRSA created a comprehensive State licensing framework for medical cannabis cultivation, manufacture, transportation, storage, distribution and sale. Subsequent Assembly and Senate Bills (AB 243, AB 266, and SB 643) created health and safety standards for quality control, including labeling and track-and-trace requirements. MMRSA requires operators to obtain both State and local permits for medical cannabis businesses. Localities retained their ability to independently regulate or prohibit medical cannabis uses. Following the State's passing of MMRSA, the City of Fort Bragg adopted Municipal Code Chapter 9.33 regulating cannabis manufacturing.

California voters passed Proposition 64 in 2016, legalizing the use, cultivation and sale of recreational cannabis for citizens over 21 years of age. The Adult Use of Marijuana Act (AUMA)

made it legal in California to use and cultivate cannabis (up to six plants) for personal, non-medical use. Similar to MMRSA, AUMA seeks to establish State standards and licensing for cultivation, manufacture, transportation, storage, distribution and sale of cannabis effective January 1, 2018. The State's new "Proposed Text of Regulations" for implementation of AUMA were released November 16, 2017. While AUMA preserves the ability for localities to independently regulate or prohibit recreational cannabis uses, there are some significant differences that impact local jurisdictions. For example, AUMA prohibits cities from banning indoor cultivation for personal use of up to six plants.

The Proposed Text of Regulations allows the State to begin issuing temporary licenses on January 1, 2018, as the State Bureau of Cannabis Control continues crafting final regulations. The temporary regulations prohibit the State from issuing a license if a local jurisdiction does not yet have an ordinance in place that allows the use. This provides local jurisdictions time to review the newly-released regulations and complete their local ordinances. The City Council should continue developing commercial cannabis regulations to explicitly define and regulate these uses at a local level as the State completes the formal licensing regulations.

City of Fort Bragg Ordinances: The City currently has the three Municipal Code Chapters regulating cannabis as follows:

1. Chapter 9.30. Medical Marijuana Dispensaries

In 2005 (and later amended in 2011), the City Council adopted Chapter 9.30 defining and regulating medical marijuana dispensaries in the City. The ordinance requires that all medical marijuana dispensaries possess an approved Use Permit in order to operate, and prescribes the application, operating and safety requirements for these uses. Applications for medical marijuana dispensaries begin with the Police Department, where the Chief of Police conducts a background check of the applicant and all employees. Provided the Chief clears the application, it is then forwarded to the Community Development Department for further review and ultimately sent to the Planning Commission for a public hearing. The Inland Land Use and Development Code (ILUDC) allows medical marijuana dispensaries in the industrial zoning districts.

To date, the City has not received a complete application for a medical marijuana dispensary. Anecdotally, staff believes that the established regional dispensaries are located outside of the City limits because the City's ordinance is more restrictive and/or complicated than Mendocino County's regulations for dispensaries.

2. Chapter 9.32. Medical Marijuana Cultivation

The City's existing ordinance on medical marijuana cultivation, adopted in 2009, allows for indoor cultivation of medical marijuana for personal use within residences of qualified patients. For personal medical cultivation areas that are less than fifty square feet, a Minor Use Permit is required, and will only be granted provided the applicant meets the myriad standards listed in Chapter 9.32. For personal medical cultivation that requires more than fifty square feet, the applicant must demonstrate that there is more than one qualified patient living in the residence and an inspection by the building inspector is required, in addition to obtaining the Minor Use Permit.

The existing cultivation standards prohibit outdoor cultivation, cultivation for recreational purposes, and cultivation of cannabis for sale.

3. Chapter 9.33. Cannabis Manufacturing

The City Council adopted Chapter 9.33 regulating cannabis manufacturing uses on November 14, 2016. The ordinance permits cannabis manufacturing uses in industrial zoning districts outside of the Coastal Zone with an approved Use Permit. Similar to the dispensary and cultivation ordinances, the manufacturing ordinance requires Police Department review and approval of all

applications. In addition to Chapter 9.33, the City adopted ILUDC Section 18.42.055 establishing standards for cannabis manufacturing.

The manufacturing ordinance permits cannabis businesses “as defined by state law,” meaning that cannabis manufacturing for both medical and recreational use would be allowable. The existing dispensary and cultivation ordinances specifically restrict the uses for medical purposes only.

Staff and the Public Safety Committee recommend one local regulatory scheme to regulate both recreational and medical cannabis since their impacts are very similar and one unified set of regulations will create less confusion. However, the Council may direct staff to draft two separate ordinances.

RETAIL (STOREFRONT):

Local Responsibility: If the City wishes to permit retail cannabis uses, the City Council should develop a regulatory structure to ensure new uses are consistent with their surrounding communities and their impacts are mitigated. Alternatively, if the City wishes to prohibit retail cannabis uses, an ordinance specifically prohibiting the activity is necessary to ensure that the State will not issue licenses for retail cannabis uses in the City limits. The Public Safety Committee recommends creating an ordinance permitting retail cannabis uses.

Location:

1. Zoning Districts and Permits

Medical dispensaries, as presently regulated, are only permitted in the industrial zoning districts with an approved Use Permit. If the Council elects to allow recreational retail cannabis businesses, it should determine the appropriate zoning districts for these uses and permit requirements. Retail cannabis use 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 Council seeks to encourage storefront retail cannabis uses, staff and the Public Safety Committee recommend 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 failing to recruit new business to the City. The Public Safety Committee recommends allowing retail cannabis businesses in the CBD, CG and CH districts with an approved Use Permit (the remainder of this report assumes that a Use Permit would be required for any policy approach selected by Council).

The Committee discussed allowing these uses only on the second and third floors in the CBD to limit the visibility of retail cannabis businesses. In discussions with the Building Department, staff has confirmed that establishing a new retail business above the first floor would require Americans with Disability Act (ADA) compliance. If these uses are limited to second or third floors in the CBD, the cost and practicality of upgrading existing buildings for ADA compliance may result in no retail cannabis businesses in the CBD.

2. Proximity

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 State’s new Proposed Text of Regulations

prohibits retail cannabis uses “from being located within 600 feet of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued” unless “a local jurisdiction has issued a license or permit to conduct commercial cannabis activity” in such a location. This means that a retail cannabis use within 600 feet of the listed sensitive uses may only be licensed by the State if approved by the local jurisdiction. City policy could address this issue to varying degrees as follows:

- a. No restriction. Including no restrictions on retail cannabis uses and their proximity to sensitive uses. This would allow the City to issue permits to retail cannabis uses regardless of proximity to sensitive uses, thereby authorizing the State to issue licenses for businesses in these locations.
- b. 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 standard or be more or less restrictive than the State requirement.
- c. Require additional findings. The City’s recently-adopted cannabis manufacturing ordinance requires the Planning Commission to find that a cannabis manufacturing use “is compatible with the existing and future land uses in the vicinity, and, specifically, with any church, park, hospital, nonprofit organization or residential use within 200 feet of the cannabis manufacturing use, and the use will not be located within 600 feet of any school, day care center or youth center.” This finding would require the Planning Commission provide extra scrutiny for projects within 200 feet of certain uses, and prohibit these uses within 600 feet of others.

Regardless of the selected approach, the Planning Commission 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. The Public Safety Committee considered requiring additional findings to approve retail cannabis uses in close proximity to sensitive uses.

Operating Standards:

1. Accessory Uses

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 Council 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. The Public Safety Committee recommends allowing accessory uses in conjunction with cannabis retail sales.

2. Odor

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. If the Council elects to further mitigate impacts related to odor, 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.

The Public Safety Committee recommends that the Council consider including language in a retail cannabis policy that requires the applicant to demonstrate how the project would comply with the existing odor regulations, similar to the requirement for cannabis manufacturing uses.

3. Security

Security is a key issue when crafting policy that regulates businesses reliant on a highly regulated and valuable product. However, providing adequate security at different properties requires different measures. One blanket set of policies would unlikely fit every scenario. Additionally, the newly-released Proposed Text of Regulations includes numerous security requirements in order to obtain a State license. These include, but are not limited to, the following requirements:

- A digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels;
- Video storage or cameras shall be TCP capable of being accessed through the internet;
- Cameras shall be mounted in a fixed location that allows the camera to record activity occurring within 20 feet of all point of entry and exit;
- Cameras shall record continuously and at a minimum of 15 frames per second;
- A retail licensee shall hire or contract for security personnel to provide security services for the premises;
- Alarm systems shall be registered with a licensed alarm company operator;
- Locks to limited-access areas (as defined) shall be commercial-grade, nonresidential locks,

etc.

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, and the State requirements provide an assurance that certain security measures will be in place, applicants should develop a plan to satisfy the Police Department which could attach special conditions as needed. The Public Safety Committee recommends the Council consider utilizing the existing City procedure for reviewing the security plans for retail cannabis uses.

4. Ingestion

The Public Safety Committee discussed the possibility of permitting uses that allow cannabis ingestion on site, and directed staff to determine the impacts of these uses and how they may be regulated. After consultation with the Chief of Police and the City Attorney, staff has identified challenges to permitting on-site ingestion.

Smoking cannabis creates second-hand smoke which impairs those who inhale it. If an officer were called to a location that permitted on-site ingestion, there is concern about how the officer may enter the location and appropriately respond to the call without experiencing the effects of second-hand smoke. This also creates the potential for customers leaving the business in an intoxicated state, either through direct ingestion or second-hand smoke, and then driving a vehicle or otherwise acting unsafely.

Additionally, there is not yet a template for how these businesses can successfully operate in a way that does not impact surrounding land uses from odor, smoke and other unintended impacts while operating under the State licensing requirements. It may be prudent to proceed with permitting other commercial cannabis uses with predictable impacts (retail, cultivation, delivery, manufacturing, etc.), evaluate the impacts of these businesses, and then readdress on-site ingestion at a later date.

At present, based on the guidance of the Police Chief and the City Attorney, staff recommends postponing further consideration of on-site ingestion until such time as their operating

characteristics and impacts can be better understood. Should the Council decide to pursue permitting of on-site ingestion, staff will work with the Chief and City Attorney to develop standards and regulations for Council consideration.

5. Delivery [allow medical, prohibit recreational]

The State will issue licenses for retail cannabis delivery for businesses with or without storefronts. A storefront delivery business would be similar to a retail business, except it would provide a delivery service of its products. Non-storefront delivery businesses would not have a walk-in retail element and would only provide a delivery service.

Regardless of whether or not the delivery service would have a storefront or not, the State has explicit standards and regulations for delivery activities. These include, but are not limited to the following requirements:

- Retailer shall only deliver cannabis goods to a physical address;
- Retailer shall not deliver cannabis goods to publicly owned land or property;
- Cannabis goods may not be visible to the public;
- Delivery vehicles shall be outfitted with a dedicated GPS device for identifying the location of the vehicle, which is owned by the licensee and used for delivery only, and shall be on and active at all times during delivery such that the retailer shall be able to identify the location of all delivery vehicles and provide that information to the Bureau upon request;
- Vehicles used to deliver cannabis goods may be stopped and inspected by the Bureau at any licensed premises or during delivery;
- Drivers shall not carry cannabis goods worth in excess of \$3,000 at any time, as determined by retail price of goods carried by the delivery employee;
- Retailer shall provide a delivery request receipt for each delivery, including the name and address of the retailer, first name and employee number of the delivery employee and of the retailer who prepared the order for deliver, and the first name and customer number of the person requesting the delivery, delivery address, description of all cannabis goods requested for delivery, including weight and/or volume, total amount paid for the delivery, the date and time the delivery was made and the signature of the customer who received the delivery;
- While making deliveries, the driver shall only travel from the retailer's licensed premises to the delivery address, from one delivery address to another, or from a delivery address back to the retailer's licensed premises. A driver shall not deviate from the delivery path except as necessary for fuel, rest or repair stops, or because road conditions make the route unsafe, impossible, or impracticable.

The Public Safety Committee recommends allowing delivery for medical patients only, and only from storefront retailers. This recommendation would prohibit deliveries from a business that does not have a retail storefront, or deliveries for recreational purposes. The Council should discuss this recommendation in light of the following considerations:

- a. Regardless of the medical/recreational distinction of the cannabis or whether or not there is a storefront, all delivery uses must meet the same State requirements to operate a delivery service.
- b. In light of the State requirements, the impacts of deliveries for medical and recreational cannabis would be similar or identical.

- c. Allowing deliveries for medical purposes only would regulate medical and recreational cannabis differently. While this approach is possible, the Public Safety Committee and Staff recommend one set of standards to apply to medical and recreational cannabis uniformly for ease of implementation and since the impacts would be similar or identical.
- d. The Public Safety Committee expressed some concern about the impact of multiple cannabis storefronts on the tourism industry, as some visitors may prefer other uses in the commercial zoning districts. Allowing delivery uses for all cannabis types (medical and recreational) could reduce the impact of storefront businesses on citizens and tourists opposed to seeing them in the commercial districts.

Council should consider if retail delivery should be permitted in the City, if it should be limited to medical cannabis only, and if it should be limited to storefront businesses only.

TAXES AND FEES

City staff is developing a staff report to discuss the fiscal implications of commercial cannabis uses, and expects to present it before Council early next year.

RECOMMENDED ACTIONS:

Staff recommends Council provide direction on the regulation of commercial cannabis businesses in the City of Fort Bragg.

ENVIRONMENTAL REVIEW:

A new ordinance is subject to CEQA and an environmental document will be required.

FISCAL IMPACT:

A new ordinance has the potential to bring new businesses to the City. The fees for processing these permits will be discussed by the Council early next year.

IMPLEMENTATION/TIMEFRAMES:

Depending on Council's direction, staff will continue preparing a new ordinance and/or ordinance amendment for adoption in early 2018. The process will require CEQA review, a public hearing before the Planning Commission, and a public hearing before the City Council.

ATTACHMENTS:

None.

NOTIFICATION:

1. Notify Me – Cannabis Legislation