



AGENCY: City Council
MEETING DATE: February 25, 2019
DEPARTMENT: Public Works
PRESENTED BY: Scott Perkins
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Direction on Possible Ordinance Amendments Regulating Cannabis Businesses

ISSUE:

Since the passage of the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016), the State of California, through its Bureau of Cannabis Control, has been developing the laws, regulations and licensing requirements for cannabis businesses. On January 16, 2019, the California Office of Administrative Law (OAL) approved the Bureau of Cannabis Control's revised cannabis regulations.

The City of Fort Bragg adopted Ordinance 928-2017 in early 2017 regulating cannabis manufacturing uses following passage of the AUMA. Ordinance 928-2017 was applied and paid for by an applicant seeking to establish a cannabis manufacturing business in the City. Subsequently, the City has not updated its retail (dispensary) or cultivation ordinances, which were adopted prior to recreational legalization in California. On February 12, 2018, the City Council provided direction to staff to revise the City's dispensary regulations. At the time of Council direction, state policy had not settled whether or not cannabis businesses may hold multiple license types to participate at multiple points of the supply chain. The state's policy framework has shifted to allow more flexibility in license types, per the newly-approved Bureau of Cannabis Control's cannabis regulations. The state also made other minor changes to their regulations for the Council to consider—specifically the allowance of cannabis businesses near schools and other sensitive uses with local approval.

Previous Council direction for a revised dispensary ordinance, explained in further detail below, prohibits businesses from operating under multiple state license types (i.e. cannabis manufacturing uses are not permitted where Council directed staff to allow dispensary uses). Conversations with entrepreneurs seeking to establish dispensaries in the City have expressed concern to staff over these limitations. This is an opportunity for the Council to consider the shifts in state policy and provide updated direction for a new dispensary ordinance.

Additionally, the City's existing cannabis manufacturing ordinance does not specifically address state license types that are commonly associated with manufacturing uses, such as testing, packaging, warehousing and distribution. The Council may consider revising the manufacturing ordinance to address these other uses.

ANALYSIS:

For clarity purposes, the following represents the general meaning of the various cannabis businesses and license types discussed in this report:

Cannabis Dispensary/Retail: A storefront or delivery service that provides cannabis and cannabis products for sale directly to customers.

Cannabis Manufacturing: A cannabis business that manipulates, alters or creates cannabis products. For example, an extraction facility that removes cannabis concentrates from marijuana plants, or a business that blends cannabis products created by other facilities into new products.

Cannabis Distributor: A cannabis business that processes, packages, labels, stores, or transports cannabis products, but does not alter the cannabis product. For example, pre-rolling joints using cannabis from a licensed cultivator, placing extract created by a licensed manufacturer into a cartridge, or transporting cannabis from a licensed manufacturer to a licensed retailer.

Cannabis Laboratory: A cannabis business that offers or performs tests of cannabis and cannabis products and is accredited and registered with the California Department of Public Health.

The table below summarizes the existing status of cannabis regulations in the City:

Cannabis Business Type	Current Policy Status	Council Direction on Updated Ordinance
Dispensary	Adopted prior to statewide legalization of recreation cannabis use, medical marijuana dispensaries are currently allowable with a Use Permit in the industrial zoning districts. Recreational sales not permitted.	Allow dispensaries in the General Commercial and Highway Visitor Commercial zoning districts of the ILUDC with a Use Permit, and subject to similar standards as the manufacturing ordinance. Limit quantity of dispensaries to maximum of four businesses. Do not allow cannabis manufacturing uses in conjunction with dispensaries.
Manufacturing	Cannabis manufacturing is an allowable use in the industrial zoning districts of the ILUDC. Accessory uses (i.e. retail, distribution) not permitted.	None at present.
Cultivation	Adopted prior to statewide legalization of recreational cannabis use, limited indoor medical marijuana cultivation by qualified patients or primary caregivers is allowable on parcels with residences. Recreational cultivation not permitted.	Consider development of a commercial cannabis cultivation ordinance following analysis by Public Works of water availability and impacts (analysis currently underway).
Distribution	Not presently permitted.	None at present.
Laboratory/Testing	Not presently permitted.	None at present.

Cannabis Distribution and Cannabis Laboratory/Testing

The State is offering a Type 11 – Distributor license type that is required for businesses engaging in cannabis storage, packaging and labeling, rolling, and/or transportation, and a Type 8 – Testing Laboratory license type for cannabis quality and safety testing. Presently, the City does not allow cannabis distribution or testing laboratories. The ordinance adopted to allow cannabis manufacturing includes in part, “18.42.055.A.B.1.b. Accessory retail and/or distribution uses other than wholesale sales shall not be permitted in conjunction with the cannabis manufacturing use.” Permitting cannabis

distributors and/or laboratories to operate would increase the potential for new businesses and jobs for the City.

The Light Industrial (IL) zoning district, per the ILUDC, is “appropriate for a variety of commercial, manufacturing, wholesale and distribution, and industrial uses that do not generate significant customer traffic or high levels of noise, dust, odors or other potential off-site nuisance characteristics.” The Heavy Industrial (IH) zoning district is “appropriate for a range of heavy industrial uses including manufacturing, assembly and processing, the storage and distribution of raw materials...and industrial uses that...require locations removed from residential and visitor serving uses.” The following table includes examples of uses allowable (either by-right or with a Use Permit) in both the IL and IH districts, and the definitions of the uses, per the ILUDC (emphasis added).

Laboratory—Analytical, testing. A facility for testing and analysis, and/or research. Examples of this use include soils and materials testing labs, medical service labs and forensic labs.

Storage—Warehouse, indoor storage. Facilities for the storage of furniture, household goods, or other commercial goods of any nature. Includes cold storage. Does not include...facilities offered for rent or lease to the general public; warehouse facilities primarily used for wholesaling and distribution (see “Wholesaling and distribution”); or terminal facilities for handling freight (see “Freight Terminal”).

Wholesaling and distribution. An establishment engaged in selling merchandise to retailers; to contractors, to industrial, commercial, institutional, farm, or professional business users; to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Examples of these establishments include: agents, merchandise or commodity brokers, and commercial merchants; assemblers, buyers and associations engaged in the cooperative marketing of farm products; merchant wholesalers; and stores primarily selling electrical plumbing, heating and air conditioning supplies and equipment. Also includes storage, processing, packaging, and shipping facilities for mail order and electronic-commerce retail establishments.

Freight Terminal. Undefined in Article 10.

The activities covered by both Type 11 – Distributor and Type 8 – Testing Laboratory appear to conform to the purposes and intents of the IL and IH zoning districts, and appear to be consistent with other land uses presently allowable in those districts.

Staff recommends amending the ILUDC to allow cannabis businesses to engage in Distributor or Testing Laboratory activities in the IL and IH zoning districts, with an approved Use Permit. Staff would amend the adopted cannabis manufacturing ordinance to encompass Distributors and Testing Laboratories, and these business types would be required to meet the operating standards currently applicable to cannabis manufacturing businesses (See **Attachment 1** for existing cannabis manufacturing policies). This amendment would potentially allow businesses in the IL or IH districts to hold a combination of state licenses for manufacturing, distribution, and/or testing, provided the applicant could meet the specific state requirements for each.

Cross-Licensed Dispensaries

Early drafts of state policy for licensing commercial cannabis activities prohibited businesses from holding multiple license types, and Council’s earlier direction for developing a dispensary ordinance relied on this understanding. Subsequent revisions to state policy allow cross-licensing of businesses and “microbusinesses,” defined as a business that engages in at least three of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail.

Presently, cannabis cultivation and distribution are not permitted uses in the City. Additionally, cannabis manufacturing uses are only allowable in industrial zoning districts, and the Council has directed staff to prepare a new ordinance that would allow cannabis retail uses in two commercial zoning districts (CG and CH) with a Use Permit. Adopting an ordinance under this direction would not allow microbusinesses, nor would it allow cross-licensing of manufacturing or distribution with retail businesses. The map included as **Attachment 2** illustrates where cannabis manufacturing is currently allowable, and where cannabis dispensaries would be allowed provided earlier Council direction is formalized into a new ordinance.

Potential business operators considering opening cannabis businesses in Fort Bragg have spoken with staff about the difficulty of competing in the marketplace with businesses that possess only one license type. Segregating cannabis manufacturing and cannabis dispensary uses through zoning could impact the success of these businesses and the City's ability to compete with other jurisdictions to recruit these businesses.

Segregating manufacturing and distribution uses from retail uses (whether the product be cannabis or something different) often makes sound planning sense. Manufacturing uses can be noisy, unattractive and could involve the use of hazardous materials and frequent traffic of heavy equipment or trucks. For most traditional manufacturing uses, separating them from more sensitive commercial or residential uses helps prevent conflicts and nuisance conditions. However, cannabis manufacturing and distribution, as defined by the state, can encompass a wide range of activities, from large industrial extraction operations reminiscent of traditional manufacturing facilities (like RootOne Botanicals' approved project on North Franklin Street), to smaller operations that engage only in packaging or labeling of cannabis products for sale. It may be appropriate to allow some activities that require a manufacturing license from the state as "accessory uses" where retail is allowed.

Consider an "artisan shop" as an example. The ILUDC allows artisan shops by-right (without the need for a Use Permit) in the CG and CH zoning districts. The ILUDC defines artisan shops as "a retail store selling art glass, ceramics, jewelry, paintings, sculpture, and other handcrafted items, where the store includes an area for the crafting of the items being sold." This is an example of a business type that manufactures, packages and sells items. Similarly, a cannabis dispensary that blends various strains of cannabis to pre-roll and package joints in the back of a store for sale in the front of a store would be considered cannabis retail, manufacturing, and distribution, and would be considered a "microbusiness" by the state. This example would not be allowable if the zoning code segregates these manufacturing and retail uses into different zoning districts.

Staff seeks direction from Council on whether or not limited cannabis manufacturing or distribution activities may be allowable where dispensaries are allowed. If they are deemed compatible, staff identified the following requirements on cannabis manufacturing or distribution activities taking place within dispensaries for the Council's consideration:

1. The manufacturing and/or distribution use shall be accessory ("incidental, related and clearly subordinate") to the retail use.
2. The floor area of the manufacturing and/or distribution use within the premise is less than the floor area for the retail use.
3. The manufacturing and/or distribution use shall be subject to Use Permit approval. Establishment of a manufacturing use in an existing dispensary shall require an amendment to the Use Permit that allowed the dispensary.

4. No cannabis dispensary shall also engage in cannabis manufacturing that requires a Type 7 state license (i.e. requires the use of volatile materials).

Staff also seeks direction on whether or not dispensaries should be allowable as accessory to manufacturing and/or distribution uses in industrial zoning districts. It is staff's recommendation to maintain the prohibition of accessory retail uses in conjunction with cannabis manufacturing and/or distribution businesses in the industrial districts. The industrial zoning districts generally allow only wholesale-type retail uses, such as farm supply stores, heavy equipment sales and rental and fuel dealers. Dispensaries, even as accessory to a manufacturing and/or distribution use, are more akin to traditional retail stores and are potentially more suitable in commercial districts.

Proximity to Sensitive Uses

Sensitive uses are land uses that are particularly susceptible to impacts like noise, odor, traffic or other commotion, such as schools, day care centers and sometimes residences. Earlier drafts of state policy regulating cannabis businesses required a 600-foot separation between cannabis businesses and sensitive uses. Revisions to state policy have further refined which sensitive uses require separation from cannabis businesses, and now allows local jurisdictions to override the requirement. The City's cannabis manufacturing regulations require a 600-foot separation from schools, day care centers and youth centers, and requires the Planning Commission make a specific finding that the business will not conflict with churches, parks, hospitals, nonprofits and residential uses within 200 feet of the business. The table below contrasts the state and city policies:

State Bureau of Cannabis Control	City's Cannabis Manufacturing Ordinance
<p>(a) A premise licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center¹ that is in existence at the time the license is issued.</p> <p>(b) Notwithstanding subsection (a) of this section, if a local jurisdiction has issued a license or permit to conduct commercial cannabis activity at a premises that is located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, the Bureau may approve the premises for licensure if the following conditions are met:</p> <p>(1) The applicant submits a copy of a valid license or permit from the local</p>	<p>1. 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</p> <p>2. The cannabis manufacturing use will not be located within 600 feet of any school, day care center, or youth center.</p>

¹ Youth centers are defined in California Health and Safety Code Section 11353.1 as "any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities." Furthermore, "primarily used to host recreational or social activities for minors" means "more than 50% of the onsite activities are oriented towards children under the age of 18. This could include, but is not limited to, martial arts studios, dance studios, gymnastics studios, indoor playgrounds, birthday party facilities, art studios, children's activity centers, tutoring centers, etc."

<p>jurisdiction with the application for licensure; and</p> <p>(2) The local jurisdiction notifies the Bureau that the applicant is in compliance with all applicable local ordinances and regulations pursuant to Business and Professions Code section 26055(g)(2)(C).</p>	
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The state's revised policies remove mention of churches, parks, hospitals, nonprofit organizations or residences from consideration, and would allow locating cannabis businesses within 600 feet of schools, day care centers or youth centers if a local jurisdiction issues a permit in such a location. Council could consider the following options for buffering sensitive uses from commercial cannabis businesses:

1. Keep the existing cannabis manufacturing requirements and apply them to dispensaries.
2. Remove mention of churches, parks, hospitals, nonprofit organizations and residences from the manufacturing ordinance requirements, consistent with state requirements, and keep the 600-foot buffer from schools, day care centers and youth centers. Apply the revised standards to dispensaries.
3. Remove any buffering requirements, and allow the Planning Commission to determine on a case-by-case basis if a proposed cannabis business is suitable given any nearby sensitive uses.

Council's direction will be incorporated into a draft ordinance regulating cannabis businesses for the Planning Commission to review.

RECOMMENDED ACTION:

Staff recommends the City Council provide direction on the following topics for inclusion in an ordinance revision allowing various cannabis businesses.

1. Consider amending the ILUDC to allow cannabis businesses engaged in Distributor or Testing Laboratory activities in the IL and IH zoning districts with an approved Use Permit, consistent with existing requirements for Cannabis Manufacturing. Staff recommends this amendment.
2. Consider allowing limited cannabis manufacturing or distribution activities where dispensaries are allowed. Staff recommends this amendment.
3. Consider allowing dispensaries in conjunction with cannabis manufacturing businesses in the industrial districts. Staff does not recommend this amendment.
4. Consider revising buffer requirements between certain sensitive uses and how they apply to different cannabis business types. Staff has no recommendation on buffer requirements, but recommends the requirements be the same for each cannabis business type.

ALTERNATIVE ACTION(S):

Direct staff to abandon revising the ILUDC to allow additional cannabis business uses or request additional analysis prior to providing direction.

FISCAL IMPACT:

Preparation of an ordinance to regulate cannabis businesses will require continued efforts by both staff and the City Attorney. If an ordinance is adopted allowing additional cannabis businesses, new businesses may open creating jobs and revenue.

CONSISTENCY:

The recommended actions would amend the ILUDC such that future cannabis businesses could only be permitted consistent with the revised ordinance.

IMPLEMENTATION/TIMEFRAMES:

Following Council direction, staff would present a revised ordinance and accompanying environmental review to the Planning Commission. The Planning Commission would recommend an ordinance for Council introduction and adoption.

ATTACHMENTS:

1. Cannabis Manufacturing Ordinance
2. District Map

NOTIFICATION:

Notify Me: Cannabis Legislation