

RECEIVED

AUG 09 2021

CITY OF FORT BRAGG
CITY CLERK

AUSTIN LEGAL GROUP

LAWYERS

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SAN DIEGO, CA 92110

LICENSED IN

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TELEPHONE

(619) 924-9600

FACSIMILE

(619) 881-0045

August 9, 2021

Writer's Email:

gaustin@austinlegalgroup.com

June Lemos
City Clerk
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437

VIA EMAIL ONLY

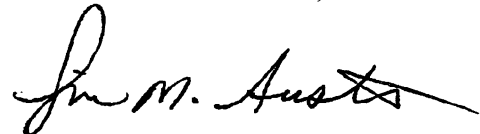
**RE: Brandy Mouton's Appeal of Planning Commission's Decision to Deny MUP 1-21
Cannabis Retail Project at 144 N. Franklin St.**

Dear City Clerk:

Austin Legal Group represents the applicant, Brandy Moulton ("Applicant"), with respect to her application for a minor use permit to operate a cannabis retail store at 144 N. Franklin Street ("MUP 1-21" or "Project").

At the City's request, the Applicant is providing, for a second time, her appeal of the June 23, 2021 Planning Commission decision to deny MUP 1-21 which was previously filed with the City Clerk on July 6, 2021 ("Appeal"). Applicant's acquiescence to provide the City with this courteous copy of the Appeal does not act as a waiver to any applicable local or State statutory or regulatory time processing requirements. In other words, the effective appeal date of the June 23, 2021 Planning Commission denial decision is July 6, 2021. The date of this letter cannot and should not be used for any time processing requirements applicable to this Project's required review process.

Sincerely,
AUSTIN LEGAL GROUP, APC



Gina M. Austin, Esq.

Enclosure: Sunshine Holistic July 6, 2021 Appeal

RECEIVED

JUL 06 2021

CITY OF FORT BRAGG
CITY CLERK

FOR CITY USE ONLY:

File # 387-21/E

Date Filed: 7.6.2021

Received by: Jemos

APPEAL OF PLANNING COMMISSION DECISION

APPELLANT(S): Sunshine Holistic (Brandy Moulton)

MAILING ADDRESS: 18601 N Hwy 1 #166

CITY: Fort Bragg STATE & ZIP CODE: CA 95437

TELEPHONE #: 707-223-1129 FAX #: _____

Describe the action being appealed and state the reasons for the appeal.
(You may attach a letter or other exhibits to describe or justify this appeal.)

Appeal of the Planning Commission's action on June 23, 2021 regarding
Item 6B - Minor Use Permit No. 1-21.

Please see letter attached for appeal reasons.

APPELLANT(S) SIGNATURE: [Signature]

DATE: 7.6.21

DATE: _____

FOR CITY USE ONLY:

Fee Paid \$1,000.00 \$1,000.00 (#110-0000-3998)

Receipt # 00437799

Date: 7.6.2021

Notice of Public Hearing:

Mailed () Date: 7.23.2021

Published () Date: 7.29.2021

Posted () Date: 7.23.2021

CITY COUNCIL ACTION:

9.1.2021 @ 6 PM

DATE: _____

Approve: _____

Deny: _____

Table: _____ Until _____

Receive & File: _____



City Clerk
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437

RE: Sunshine Holistic’s Appeal of the June 23, 2021 Planning Commission’s Decision to Uphold Appellant’s Appeal and Deny Minor Use Permit Application No. 1-21 (“MUP 1-21”)

Dear City Council,

I, Brandy Moulton, as the Chief Executive Officer and owner of Sunshine Holistic, appeal the Planning Commission’s June 23, 2021 decision to uphold the appeal submitted by Gene Mertle and Jay Koski (“Appellant”) and deny MUP 1-21.

The basis for the Planning Commission’s decision to uphold the Appellant’s appeal and deny MUP 1-21 is unclear, vague, and ambiguous. **Accordingly, Sunshine Holistic is appealing the Planning Commission’s June 23, 2021 decision to deny MUP 1-21 in its entirety.**

The Planning Commission did not articulate the specific reasons for granting the appeal and the record is devoid of facts to support its decision. In light of the arbitrary and capricious nature of the Planning Commission’s decision, I am left to guess at the basis for their decision based upon comments made during the hearing. In doing so, I can specify the following reasons for my appeal:

1. An unsupported assertion was made by Jacob Patterson that the “Notice of Pending Permit” for MUP 1-21 was not properly posted. Contrary to this assertion, the Notice of Pending Permit was posted on February 12, 2021.

Please see the signed declarations attached to this letter attesting to this posting. Please also see the February 17, 2021 signed Declaration of Posting that was part of the staff materials provided to the Planning Commission.

Even if the notice was defective, pursuant to the Fort Bragg Municipal Code, this is not a basis for granting the appeal.

2. Appellant arbitrarily objected to the design, location, size, and operating characteristics of the proposed project. No evidence was provided to support this assertion. The Zoning Ordinance specifically allows for cannabis retail stores in the Central Business District (“CBD”) with a minor use permit. The General Plan provides that the CBD supports mixed uses of retail stores and residences, *so long as the mixed-use does not conflict with the primary retail function of the CBD*. It would be counter-intuitive for the City to pass Ord. 952-2019 to allow for cannabis retail in the CBD while simultaneously finding the use incompatible with the neighboring land uses.
3. The Planning Commission arbitrarily held that our operating plan was not sufficient enough to ensure that the business would not endanger the public welfare. No evidence was provided or used to support this assertion about our project.

Contrarily, our submitted MUP 1-21 application (which was part of the staff materials provided to the Planning Commission) includes several security measures we intend to incorporate at our proposed facility. We are also subject to several operational restrictions at both the local and State level which ensures that commercial cannabis businesses are not detrimental to the public welfare.

4. The Planning Commission improperly considered issues outside the scope of its jurisdiction. Fort Bragg Municipal Code section 18.92.030(C) provides that an appeal shall be limited to issues raised at or before the May 18, 2021 administrative hearing.

The Planning Commission engaged in and provoked unwarranted considerations including, but not limited to:

- a. Repeatedly considering information provided within the previous minor use permit application MUP 4-20;
- b. Requesting and discussing crime statistics for unrelated cannabis retail operations;
- c. Inquiring about the City's process on receiving cannabis tax money in light of the status of federal legalization;
- d. Inquiring about the Planning Commission's authority to inspect cannabis businesses employee lists; and
- e. Inquiring about the Planning Commission's authority to deny MUP 1-21 based on the required background check process despite the City Attorney's repeated statements that such considerations were outside the scope of the Planning Commission's review.

These unwarranted comments, considerations, and requests should be disregarded because the Planning Commission lacked jurisdiction to consider those issues.

5. All of the evidence in the record supports the necessary required findings for MUP 1-21.

Appellant cannot simply make assertions that are contrary to, and unsupported by, the evidence in the record, and the Planning Commission cannot overturn the Community Development Director's project approval based on these unsupported assertions.

Supplemental information to further support our appeal bases shall be submitted closer to the City Council hearing date as is expressly permitted by the City.

Thank you,

Brandy Moulton
CEO of Sunshine Holistic

CITY OF FORT BRAGG
416 North Franklin Street
Fort Bragg, CA 95437
Tel: (707) 961-2827
Fax: (707) 961-2802
http://city.fortbragg.com



Case No(s)	_____
Date Filed	_____
Fee	_____
Receipt No.	_____
Received by	_____

Office Use Only - August 2016

CANNABIS BUSINESS PERMIT APPLICATION FORM

Please complete this application thoroughly and accurately as possible using the application checklist. Incomplete applications cannot be processed until they are complete. This application will be processed along with a City Business License and will remain pending until all required licenses and permits are approved. Public hearing expenses are borne by the applicant, owner, or agent.

APPLICANT

Name: Sunshine Holistic / Brandy Moulton
Mailing Address: _____
City: Fort Bragg State: CA Zip Code: 95437 Email: _____

PROPERTY OWNER

Name: Lyndia Pyrott
Mailing Address: _____
City: Fort Bragg State: CA Zip Code: 95437 Email: _____

AGENT

Name: same as applicant.
Mailing Address: _____ Phone: _____
City: _____ State: _____ Zip Code: _____ Email: _____

STREET ADDRESS OF PROJECT 144 N Franklin St Fort Bragg (CA 95437)

ASSESSOR'S PARCEL NUMBER(S) 0081643900

PROPERTY SIZE _____ Square Feet or 0.35 Acres

TOTAL SQUARE FOOTAGE OF ALL STRUCTURES AND BUILDINGS TO BE USED BY THE APPLICANT: 5600 Square Feet

PROPOSED HOURS OF OPERATION: 9am 9pm

PROJECT DESCRIPTION

Briefly describe project as shown on proposed plans retail cannabis dispensary.

TYPE OF CANNABIS BUSINESS ACTIVITIES TO BE CONDUCTED AT THE PROJECT ADDRESS (Check all applicable boxes and indicate square footage of activity)

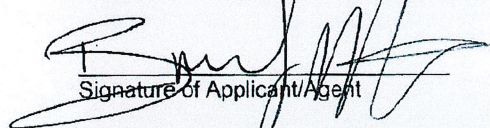
Type of Activity	CA State License Type/ Number	License Dates valid (MM/DD/YY – MM/DD/YY)	Total Sq. Footage for Use
PROCESSING			
MANUFACTURING Level 1 or 2 (circle)			
WHOLESALE/ DISTRIBUTION			
RETAIL	✓		1560 sq feet
RETAIL – DELIVERY ONLY			

Attach a copy of all current/pending licenses specific to the project site to this application.

If required to register for California Cannabis Track-and-Trace System, have you done so? Yes No

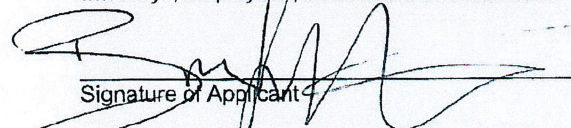
CERTIFICATION

I hereby certify, under penalty of perjury that all the information contained in this application is true and correct. I understand that failure to provide requested information or misstatements submitted in support of the application shall be grounds for either refusing to accept the application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the City.


 _____ 2-17-21 _____
 Signature of Applicant/Agent Date *Lynelia Pyatt* Signature of Property Owner _____
 _____ 2/18/21 _____
 Date Date

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

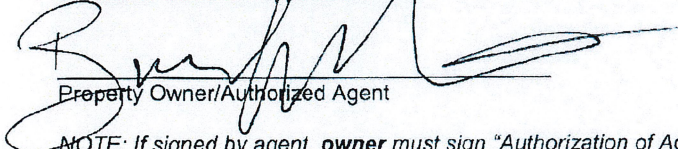
As part of this application, the applicant agrees to defend, indemnify, release and hold harmless the City of Fort Bragg, its agents, officers, attorneys, employees, boards and commissions, as more particularly set forth in Fort Bragg Municipal Code Chapters 17.70.060 and 18.70.060 from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attach, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. The indemnification shall include, but not be limited to, damages, costs, expenses, attorneys fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive [or active], but not sole, negligence on the part of the City, its agents, officers, attorneys, employees, boards and commissions.



 Signature of Applicant _____ 2-17-21 _____
 Date Date

SITE VIEW AND INVESTIGATION AUTHORIZATION

I hereby grant permission for City staff and hearing bodies to enter upon and site view the premises for which this application is made in order to obtain information necessary for the preparation of required reports and render its decision. Additionally, I grant permission for City staff and hearing bodies to seek verification of the information contained within the application.

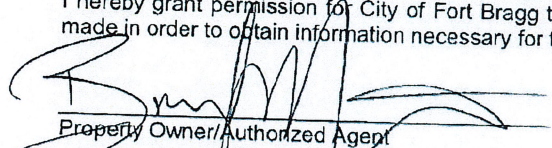


 Property Owner/Authorized Agent _____ 2-17-21 _____
 Date Date

NOTE: If signed by agent, owner must sign "Authorization of Agent" below.

PUBLIC SAFETY REVIEW AUTHORIZATION

I hereby grant permission for City of Fort Bragg to review the application and premises for which this application is made in order to obtain information necessary for the preparation of required reports and render its decision.


Property Owner/Authorized Agent

2-17-21
Date

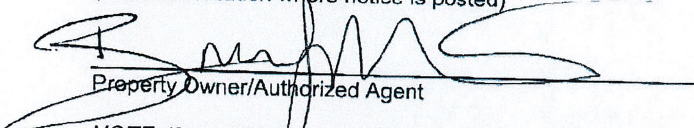
NOTE: If signed by agent, owner must sign "Authorization of Agent" below.

DECLARATION OF POSTING

At the time the application is submitted for filing, the applicant must complete and post the "Notice of Pending Permit" form at a conspicuous place, easily read by the public and as close as possible to the project site. If the applicant fails to post the completed notice form and sign the Declaration of Posting, the Community Development Department cannot process the application.

I hereby certify that my authorized representative or I posted the "Notice of Pending Permit" form in a conspicuous place, easily seen by the public and as close as possible to the project site for:

front windows
(Describe location where notice is posted)


Property Owner/Authorized Agent

2-17-21
Date

NOTE: If signed by agent, owner must sign "Authorization of Agent" below.

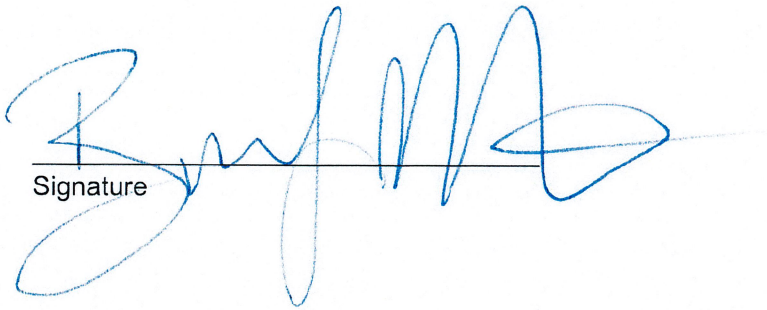
AUTHORIZATION OF AGENT

I hereby authorize Brandy Moulton to act as my representative and to bind me in all matters concerning this application.

Syndia Pyzall
Property Owner

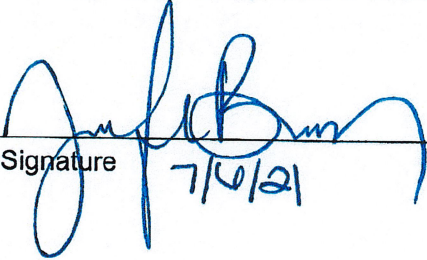
2/18/21
Date

I, Brandy Moulton, attest that the Notice of Pending Permit was posted on February 12th, 2021 in the west facing window next to the main entrance.

A handwritten signature in blue ink, appearing to be 'Brandy Moulton', written over a horizontal line. The signature is stylized and cursive.

Signature

I, Jennifer Brown, work at 144 N Franklin Street in Fort Bragg and do confirm that the Notice of Pending Permit was posted in February and remained posted for several months.


Signature _____
7/16/21

Date Printed: 07/06/2021 12:00
Receipt Date: 07/06/2021 12:00 PM
Receipt No. 00437799

City of Fort Bragg
416 N Franklin St
Fort Bragg, Ca 95437
(707) 961-2825
www.fortbragg.com

CR		1,000.00
MiscReven		
Appeal of Plan		
ning Commissio		
n 6/23/21 Item		
68		1,000.00

Total		1,000.00
Cash		0.00
Check	11	1,000.00

Change 0.00

SEA
Customer #: 017429
18601 N Highway 1
PMB 166
Fort Bragg, CA 954378759

Cashier: counter
Station: CH1298