AUSTIN LEGAL GROUP
LAWYERS
3990 OLD TOWN AVE, STE A-101
SAN DIEGO, CA 92110
LICENSED IN
CALIFORNIA, ARIZONA & HAWAII
TELEPHONE
(619) 924-9600
FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

August 30, 2021

VIA EMAIL

City Council
City of Fort Bragg
363 N. Main St.
Fort Bragg, CA 95437

RE: September 1, 2021 City Council Meeting Agenda Item #1A
Minor Use Permit 1-21 for Cannabis Retail at 144 N. Franklin St.

Dear City Council:

Austin Legal Group represents the applicant, Brandy Moulton ("Applicant"), with respect to her application for a minor use permit ("MUP") to operate a cannabis retail store at 144 N. Franklin Street ("Project"). The purpose of this letter is to: (1) highlight the necessity of invalidating the Planning Commission's June 23, 2021 hearing; (2) address the arbitrary and capricious nature of the Planning Commission's decision to deny the Project; and (3) demonstrate this Project's compliance with the Inland General Plan, Central Business District, Inland Land Use and Development Code, and Municipal Code.

The Applicant has exhausted numerous resources attempting to obtain a MUP for its proposed cannabis business by strictly following all City laws, regulations, and procedures, but continues to be met with consistent restraint and improper behavior from the Planning Commission. As demonstrated within the Staff Report and this letter, each of the required findings can be made to approve this Project. Accordingly, Applicant respectfully requests City Council follow the recommendations of City Staff and the Community Development Director ("Director") and approve this Project.

BACKGROUND

A. CITY OF FORT BRAGG'S ADOPTION OF ORDINANCE NO. 952-2019

On August 28, 2019, the Planning Commission considered amendments to the Inland Land Use and Development Code ("ILUDC") and the Fort Bragg Municipal Code ("FBMC") to allow cannabis retail operations in certain zones, including the Central Business District ("CBD"). The amendments also proposed accessory uses to cannabis retail operations, including manufacturing, distribution, cultivation, and/or processing activities. At that time, Planning Commission agreed to eliminate proposed buffer restrictions, in part, to avoid disqualifying a majority of the CBD area. On November 12, 2019, City Council approved the amendments which were encompassed within City Ordinance No. 952-2019. On December 12, 2019, Ordinance No. 952-2019 became effective.

B. APPLICANT'S FIRST MINOR USE PERMIT APPLICATION MUP 4-20.

In September 2020, Applicant submitted a MUP application for cannabis retail with accessory uses of non-volatile manufacturing, distribution, nursery, and processing to be located within the CBD at 144 N. Franklin Street ("MUP 4-20"). Being the first cannabis retail MUP application which proposed accessory uses, the CDC scheduled the MUP application for a Planning Commission hearing.

On December 9, 2020, the Planning Commission denied MUP 4-20 stating that the proposed accessory uses and operations did not fit the ILUDC's definition of "accessory." Applicant appealed the Planning Commission denial to City Council. Both Commissioner Michelle Roberts and Commissioner Jeremy Logan submitted writings to City Council regarding the denial of MUP 4-20. On January 25, 2021, the City Council was unable to reach "3-0" majority decision required.[1] Consequently, the decision for MUP 4-20 was defaulted to the Planning Commission's December 9, 2020 denial decision.

C. APPLICANT'S SECOND MINOR USE PERMIT APPLICATION MUP 1-21.

Based on the Planning Commission's opposition of MUP 4-20's proposed accessory uses, Applicant submitted a new MUP application for a standalone cannabis retail operation on February 11, 2021. On February 12, 2021, Applicant posted the required Notice of Pending Permit on the front window of the proposed building. On or around May 3, 2021, the City distributed the required Notice of Pending Action and Applicant posted the Notice at the Project site. The Notice of Pending Action notified the public, including nearby neighbors, that the Project would be considered administratively unless a public hearing was requested. Shortly thereafter, neighbors to the Project requested a public hearing.

The City then mistakenly set the public hearing for the Planning Commission instead of the CDC. This led to noticing deadline issues of no fault to the Applicant. The noticing issue was soon remedied and the Notice of Public Hearing for the CDC hearing was re-scheduled for a later date, re-distributed, and posted at the Project site. On May 18, 2021, the CDC conducted the public hearing and determined that all of the required findings for this Project could be made and approved the Project. On May 19, 2021, the CDC distributed the Notice of Final Action to the Applicant and interested parties providing that his decision could be appealed to the Planning Commission.

On May 26, 2021, Gene Mertle, Jay Koski, James Matson, Carrie Hull, Patricia Bell, Sarah Macy, and Jean Cain (collectively referred to as "Neighbor Appellants") timely appealed the CDC's approval decision. The City subsequently distributed the Notice of Public Hearing for the June 23, 2021 Planning Commission hearing and Applicant posted it at the Project site.[2]

On June 23, 2021, the Neighbor Appellants appeal was heard by Planning Commission. The Planning Commission denied this Project on two grounds: (1) insufficient evidence to prove that the Applicant complied with the City's noticing requirements; and (2) proposed Project is incompatible with the surrounding uses within the CBD. The Planning Commission then held three separate meetings thereafter in order to finalize the drafting of this denial resolution (July 14, 2021, July 21, 2021, and August 5, 2021). Applicant filed a timely appeal of the Planning Commission's decision to the City Council. Applicant's City Council hearing was set for August 9, 2021, which was then continued to September 1, 2021.

[1]At this meeting, Councilmember Morsell-Haye recused herself, and the City had a vacant City councilmember position.
[2] See Exhibit "A" Applicant's and Jennifer Brown's Notice Affidavits.

DISCUSSION

A. PLANNING COMMISSION HAS VIOLATED APPLICANT'S RIGHT TO A FAIR AND NEUTRAL DECISION-MAKING BODY AND ITS DECISION SHOULD BE INVALIDATED.

The Planning Commission's review of this Project was riddled with unlawful procedure and behavior. This included multiple conflicts of interest, bias, failure to disclose documents, an inability to follow public hearing regulations, and an inability to promote the City's tools of civility. Due to the Planning Commission's failure to lawfully conduct a fair and neutral decision-making process, the City Council must disregard the Planning Commission's June 23 deliberations and decision as they were conducted unlawfully and hold no merit.

1. Conflicts Of Interest Exist Amongst The Planning Commission, And The Planning Commission Failed To Lawfully Handle Such Conflicts.

Commissioner Jeremy Logan and Commissioner Michelle Roberts have a conflict of interest with respect to this Project. Both have demonstrated an unacceptable probability of bias against the Applicant which required disclosure of such conflict and subsequent recusal at the June 23, 2021 Planning Commission hearing. **Failing to recuse themselves stripped the Applicant's right to a fair and neutral project review process**.

Planning commissioners often act in quasi-judicial capacities similar to judges.[3] When performing a quasi-judicial act, procedural due process principles apply.[4] Procedural due process requires impartial and non-involved reviewers.[5] The participation of a biased-decision maker is enough to invalidate a decision.[6] When proving that a decision-maker is biased, proof of actual bias is not required; only a showing of an unacceptable probability of actual bias.[7] An unacceptable probability of actual bias exists when city decision-makers actively advocate for or against a project before them, including the drafting and sharing of opposition points to other city decision-makers.[8]

(a) *An Unacceptable Probability Of Actual Bias Exists On Behalf Of Commissioner Roberts*.

Commissioner Roberts' son, Jacob Patterson, represents the Neighbor Appellants in their opposition to MUP 1-21. This in itself demonstrates an unacceptable probability of bias.[9] Notwithstanding this, on August 5, 2021, Commissioner Roberts admitted to a "potential" conflict of interest on the basis that she receives income from her tenant (son Jacob Patterson) who represents the Neighbor Appellants in the MUP 1-21 matter.[10]**This conflict of interest was NEVER disclosed by Commissioner Roberts at the several other MUP 1-21 Planning Commission hearings**. Instead,

[3]*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973.
[4]*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482.
[5]*Id.* at 483.
[6]*Petrovich* at 973.
[7]*Id*.
[8]*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963.
[9]Section 170.1(a)(5) of the California Code of Civil Procedure requires the disqualification of a judge if the judge's child is a lawyer in a proceeding before the judge. Although Commissioner Roberts is not a "judge" for purposes of Section 170.1, she sat in a very similar capacity, presenting the very same harms, Section 170.1 seeks to prevent.
[10] See August 5, 2021 City of Fort Bragg Planning Commission Meeting Recording re: Item 21-411.

Commissioner Roberts sat and heard all items related to MUP 1-21 in direct violation of the City's conflict of interest regulations.

The City of Fort Bragg adopted certain sections of the Fair Political Practices Commission ("FPPC") Regulations to govern its local conflict of interest concerns, including Cal. Code Regs., tit. 2, § 18730. Section 18730(b)(9) provides that no City employee shall participate in the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect on the City employee, or on an immediate family member.

Mr. Patterson has actively advocated for denial of MUP 1-21 before the Planning Commission, including before his mother, Commissioner Roberts. **Commissioner Roberts and Mr. Patterson live in the same household and Commissioner Roberts receives money from Mr. Patterson to live in this shared household**. Commissioner Roberts and Mr. Patterson have consistently expressed the same arguments against this Project. To illustrate, in mid-July, both found it necessary to clarify to the City that their "insufficient notice" argument applies to all City notices, and not just the Notice of Pending Permit.[11] It would be naïve to presume that Commissioner Roberts does not have an unacceptable probability of bias against the Applicant when her son is representing the opposition.

Moreover, Commissioner Roberts actively advocated for the denial of Applicant's previous MUP 4-20 application in both written and oral public comment to the City Council in her official capacity.[12] **This was gravely inappropriate**. Commissioner Roberts' letter to the Councilmembers provided thorough detail as to why denial was the "only course of action" and discouraged staff from recommending that City Council approve MUP 4-20. Commissioner Roberts attempted to disguise her letter for "background and informational" purposes, but the true intent of the letter is evident.

(b) An Unacceptable Probability Of Actual Bias Exists On Behalf Of Commissioner Logan.

Like Commissioner Roberts, Commissioner Logan actively advocated for the denial of Applicant's previous MUP 4-20 application to the City Council in his official capacity.[13] Commissioner Logan wrote an email to the Councilmember a day before the MUP 4-20 City Council hearing. Despite Logan highlighting the irregularity of his communication, he provided his own speculations as to the Applicant's proposed operations and his reasons for denial.

Based on (1) Commissioner Roberts extremely close familial tie to the representative of the Neighbor Appellants, and (2) Commissioner Roberts' and Logan's affirmative steps to oppose the Applicants' projects, an unacceptable probability of bias exists and the Planning Commission's June 23, 2021 decision should be invalidated.

2. Commissioner Roberts Failed To Comply With Her Duties Under The California Public Records Act ("CPRA").

Due to bias concerns, Applicant submitted a public records request with the City on Thursday, July 29, 2021 for all written communication received or sent by Commissioner Roberts with respect to MUP 1-21 ("PRR"). The City's response to the PRR included two documents: (1) a July 11, 2021 email from Commissioner Roberts to City Staff regarding the drafting of MUP 1-21 denial findings; and (2) a

[11] See Exhibit "B" Patterson's July 24 email to the City re: notices; See July 14, 2021 Planning Commission special meeting video.
[12] See Exhibit "C" Commissioner Roberts public comment letter for January 25, 2021 City Council hearing.
[13] See Exhibit "D" Commissioner Logan's January 24, 2021 email to City Council.

July 21, 2021 email from Commissioner Roberts to City Staff regarding this same topic. The City then deemed its response complete and closed the PRR.

The CPRA provides that "access to information regarding the conduct of the people's business is a fundamental and necessary right of every person in the state."[14] When such information is requested, the City has a duty to promptly provide the documents unless one of the CPRA's narrow exceptions applies.[15] There is a clear and obvious presumption for favoring disclosure of public records.

The City's response to the PRR request is at best disingenuous, dishonest at worst. Whether the City's inadequate response to the PRR is disingenuous or dishonest, it is violative of the CPRA. First, Commissioner Roberts has sent and/or received several more written communications regarding MUP 1-21 that the City omitted in response to the PRR. Second, the Planning Commission has held a number of meetings regarding MUP 1-21 and none of these documents were included in response to the PRR. Third, Commissioner Roberts has expressly mentioned communications with the City Attorney regarding her conflict of interest. This is yet another example in which Applicant has been prejudiced by the Planning Commission.

3. 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 initial public hearing. Despite multiple instructions provided by City Attorney Keith Collins and City staff, the Planning Commission engaged in considerations outside its scope of review including, but not limited to:

- Repeatedly considering information provided within the previous minor use permit application MUP 4-20;
- Requesting and discussing crime statistics for unrelated cannabis dispensaries;
- Inquiring about the City's process on receiving cannabis tax money in light of the status of federal legalization;
- Inquiring about the Planning Commission's authority to inspect cannabis businesses employee lists; and
- Inquiring about the Planning Commission's authority to deny MUP 1-21 based on the required background check process.

The Planning Commission's improper discussions stole valuable consideration time from the Applicant and her Project review opportunity. Pursuant to the limited scope of planning permit appeals, City Council should disregard any discussion or claims that relate to the above matters.

In light of the foregoing, it is clear the Planning Commission failed to provide Applicant with a fair and neutral review process. Accordingly, Applicant respectfully requests City Council to invalidate the Planning Commission's decision and conduct this September 1st hearing without any deference to the Planning Commission's deliberations or recommendations.

[14]Gov. Code § 6250.
[15]Gov. Code § 6253.

B. THE PLANNING COMMISSION'S DECISION TO DENY THE PROJECT WAS ARBITRARY AND CAPRICIOUS.

Assuming arguendo that City Council decides that the Planning Commission lawfully participated as a fair and neutral decision-making body, the Planning Commission's decision to deny the Project shall hold no weight as the decision was based on mere neighbor speculations with no supporting evidence.

1. Applicant Complied With All Noticing Requirements.

If a public hearing is requested for a MUP application, the City requires the Applicant to post three separate notices during the project review phase:

(1) Notice of Pending Permit: Posting is required after the application is submitted with the City;

(2) Notice of Pending Action: Posting is required before the application is administratively approved by the City; and

(3) Notices of Public Hearing: Posting is required before a public hearing is held on the application.[16]

As thoroughly detailed in the Background section of this letter, Applicant complied with the City's posting requirements.[17]Nevertheless, the Planning Commission held that the Project should be denied based on "insufficient evidence" that the City's noticing requirements were complied with. This was based on (1) unsupported assertions made by Commissioner Roberts son, Jacob Patterson, and last minute representative of the Neighbor Appellants; and (2) the Planning Commissioner's unwillingness to believe City Staff's and Applicant's testimony that all noticing requirements were complied with.

The Planning Commission's reliance on Jacob Patterson's unsupported assertions for its "insufficient notice" decision was both arbitrary and capricious. Accordingly, the City Council should disregard this meritless finding.

2. Notwithstanding The Above, Any Noticing Errors For This Project Are Not Proper Grounds for Denial.

Applicant complied with all noticing requirements. **Again, assuming arguendo that Applicant did not post any required notices, such failure could NOT serve as grounds for Project denial**. The City's regulations do not speak to the effect of a non-posted notice and the analysis therefore turns to California case law.

California courts have held that parties who seek to invalidate a decision based on a noting error must show prejudice. A court will not overturn a local agency decision based on a noticing error unless the complaining party suffers substantial injury from the noticing error and a different result would have been probable had the noticing error not occurred. In *Towers v. County of San Joaquin*, the complaining party was aware of the at-issue project proceedings, made substantial comment regarding the project, and followed the matter until it was continued indefinitely at the third planning commission hearing.

[16] ILUDC section 18.71.060(E)(2).
[17] See Exhibit "A" Applicant's and Jennifer Brown's Notice Affidavits.

Additionally, notice for that project's hearing was published through other means which provided adequate notice and met the minimum requirements of due process. Thus, the *Towers* Court rejected the petitioner's request to vacate the local agency's decision based on his "failure to provide notice" claim.[18]

Here, the Neighbor Appellants have not suffered ANY injury from this Project's noticing components. Contrarily, Neighbor Appellants have been FULLY ENGAGED in the MUP 1-21 review process. The Neighbor Appellants have actively submitted written comments, oral comments, and been present (virtually or in-person) at the applicable hearings and obtained their desired result at the Planning Commission hearing. Moreover, all required notices were properly mailed, posted by the City, and published within the local newspaper, Advocate News.

Based on (1) the Applicant's compliance with the City's noticing requirements, and (2) the Neighbor Appellant's continued knowledge and participation during the MUP 1-21 approval process, the City Council should disregard this red herring noticing claim.

3. Project Is Compatible With The Existing And Future Surrounding Uses Of The Central Business District.

Despite contrary evidence within the record, the Planning Commission held this Project incompatible with its surrounding uses. This finding is carelessly founded upon (a) unsupported assertions and mere speculations made by Neighbor Appellants; and (b) vague discussions and conclusory statements made by the Planning Commissioners. Nothing in the record demonstrates this Project's incompatibility with its existing and future surrounding uses of the CBD.

Neighbor Appellants' claims of incompatibility are based on mere NIMBY ("Not in My Backyard") opposition, speculation, and opposition to cannabis in general. In summary, the Neighbor Appellants' speculated that this Project would increase crime rates (with no evidence to support this), ruin the property values and integrity of the neighborhood (with no evidence to support this), and provided mere distaste towards cannabis and the proximity of cannabis operations in general. No factual or substantive testimony was provided to support the Project's incompatibility with its surrounding uses. This was further highlighted during the Planning Commission's deliberations, when Commissioner Roberts deemed the Project incompatible based on Neighbor Appellants' testimony and the proximity of nearby residences. Staff asked and recommended Commissioner Roberts to specify the reasons as to why she came to this finding. She did not.

The novelty of the commercial cannabis industry can create apprehension amongst some community members. However, both the State and local government have created laws and regulations, including locational requirements, to ensure the safety of the public health and welfare. To illustrate, the City of Fort Bragg only allows cannabis retail storefronts to operate within three zones: General Commercial, Heavy Commercial, and the Central Business District.[19]This greatly limits where a cannabis store can locate within the City.

Applicant is compliantly proposing a cannabis retail store within the CBD. The City established the CBD to ensure it remained the commercial core of the community.[20] It is intended to accommodate a number of pedestrian-oriented development, including retail stores.[21]**Although the CBD allows the mixed-use of retail and limited residential uses, the mixed-use must not conflict with the *primary***

[18]*Towers v. Cty. of San Joaquin* (2018) 2018 Cal. App. Unpub. LEXIS 791.
[19]Table 2-6 of ILUDC Section 18.22.030.
[20] City of Fort Bragg Inland General Plan Element 2 – Land Use PDF p. 13.
[21] ILUDC section 18.22.020(C).

retail function of the CBD.[22]Moreover, when a MUP or Use Permit application is being reviewed by the City for the CBD, the City must find that the new use complements the local, regional, and tourist-serving retail function of the CBD.[23]As a new cannabis retail storefront, this Project directly aligns and furthers the goals and policies of the CBD.

Contrarily, residential uses do not align with the CBD and are extremely limited. Prior to 2017, single residential units were **NOT** permitted within the CBD.[24]Now, single residential units are only permitted if (1) the single residential unit is an existing structure; (2) the single residential unit looks like a single residential unit; and (3) a Use Permit is issued to the owner.[25] The purpose of this ILUDC amendment was to provide a legal pathway for illegally non-conforming buildings which appeared and operated like single residential units in the CBD.[26] Accordingly, existing single residential units within the CBD are non-conforming and cannot be expanded upon or re-built. No new single residential units are permitted within the CBD. Single residential units do not support the ultimate goals and policies of the CBD. **Allowing non-conforming uses to prevent uses which will support and bolster the CBD is nonsensical**.

Applicant worked diligently to select a compliant location and has worked closely with City Staff to ensure its consistency with City laws and regulations. This property has a long history of retail use and does not border any of the City's residential zones. There are two buildings located on Applicant's proposed property. Applicant intends to use the building closest to N. Franklin Street; not the building closest to the residential properties. The building's entrance will face N. Franklin and will be equipped with and operated under several security measures. Nothing within the record suggests that this Project cannot co-exist with its neighboring land uses.

It would be counter-intuitive for the City to pass Ordinance No. 952-2019 and allow for cannabis retail in the CBD while simultaneously finding the use incompatible with the neighboring land uses of the CBD. Based on the lack of evidence to support the Planning Commission's finding, and this Project's clear compatibility with the CBD, City Council should disregard this basis for denial as it has no merit.

C. ALL OF THE REQUIRED MUP FINDINGS CAN BE MADE FOR THIS PROJECT.

The Staff Report provides significant detail and analyses as to how this Project meets each of the required cannabis retail MUP findings. This section provides an overview of this Project's compliance with the required findings.

1. This Project Is Consistent With The Inland General Plan, The ILUDC, And The Municipal Code.

This Project is proposed at 144 N. Franklin Street located within the City's commercial zone - CBD. The CBD is the City's downtown commercial core. Specifically, N. Franklin Street houses several neighboring and compatible retail businesses such as eateries, retail clothing shops, gift shops, bars, theatres, and more.

Moreover, section 18.22.030(C)(3) requires that new uses within the CBD complement the local, regional, and tourist-serving retail function of the CBD. Applicant's proposed use directly aligns with this

[22] City of Fort Bragg Inland General Plan Element 2 – Land Use PDF p. 14
[23] ILUDC section 18.22.030(C)(3).
[24]See 2014 adopted version of ILUDC – Chapter 18.
[25] Table 2-6 of ILUDC Section 18.22.030.
[26] March 22, 2017 Planning Commission Meeting Details - Attachment 2 - ILUDC Revisions Comment SP24.

objective of the CBD. The property is the ideal size for a cannabis retail storefront and provides plenty of parking for its proposed customers. As discussed above, residential uses within the CBD are greatly restricted and do not support the CBD's goals or policies.

Applicant's selected property clearly encompasses and promotes the policies and goals of the CBD and is compatible with its surrounding uses making it the ideal location for a cannabis retail space.

2. This Project Will Not Be Detrimental To The Public Health, Safety, And General Welfare Or To Its Surrounding Community.

Cannabis facilities are subject to several locational restrictions, operational restrictions, and safety requirements, including, but not limited to: strict zoning requirements; 24-hour security surveillance system; limited secured access areas; security guard; alarm systems; interior and exterior lighting; strict inventory tracking; and commercial grade lock requirements. These referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety, and general welfare of persons residing or working within the surrounding area.

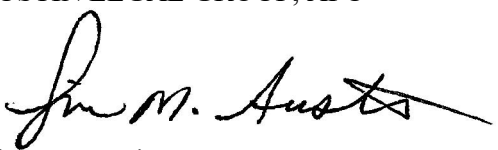
Moreover, Applicant is an experienced commercial cannabis owner and operator of two cannabis businesses: (1) a cannabis cultivation operation in Mendocino County and (2) a cannabis retail delivery business in the City of Sacramento. Applicant has never received any warnings or violations from local or State regulators for either of her locations. Applicant is also licensed with the Bureau of Security and Investigative Services as a Private Security Employer making her an expert in best security practices. Applicant prides herself on operating facilities that are lawfully compliant while seamlessly integrating her business within the local communities she operates within.

CONCLUSION

The Applicant has faced several unwarranted obstacles throughout the City's Project review process. Specifically, the Planning Commission has committed a number of procedural and decision-making errors that require the invalidation of its June 23, 2021 Planning Commission decision.

As demonstrated above, the Project is consistent with the Inland General Plan and is fully compliant with the ILUDC and FBMC. The Project's compliance with all laws and regulations, along with the City-mandated conditions for several security measures, ensures this Project will not be detrimental to the public health, safety, and welfare. In light of this, the Applicant respectfully the City Council to follow the CDC's and Staff's recommendation and approve this Project.

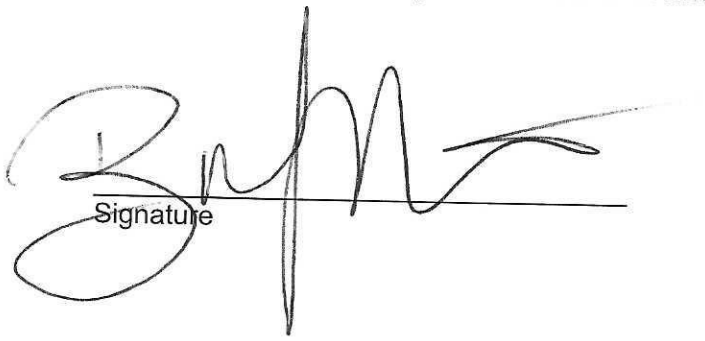
Sincerely,
AUSTIN LEGAL GROUP, APC



Gina M. Austin, Esq.

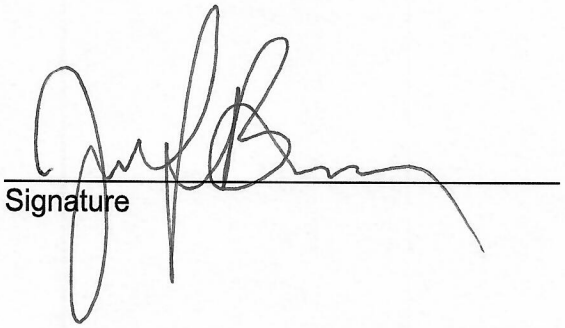
EXHIBIT A

I, Brandy Moulton, declare under penalty of perjury that all required notices for MUP 1-21 were properly posted at the project site in the west facing window next to the main entrance.



Signature

I, Jennifer Brown, declare under penalty of perjury that all required notices for MUP 1-21 were properly posted at the project site in the west facing window next to the main entrance.



Signature

EXHIBIT B

Brittany

Subject: Appeal of Planning Commission Denial of MUP 1-21

From: **Jacob Patterson** <jacob.patterson.esq@gmail.com>
Date: Sat, Jul 24, 2021, 9:51 AM
Subject: Appeal of Planning Commission Denial of MUP 1-21
To: <brandy@sovereign707.com>

Brandy,

I want to first ask if you are represented by an attorney in your appeal. If so, I can contact your attorney directly but this is the only contact I have for you in this matter. Please let me know if that is the case. If it is, you should forward this to them so they can advise you accordingly. I also recommend that you do not reply to this message and have your attorney's contact me if they want to clarify anything. I can be reached at 964-2417 or via email.

I read your appeal filed July 6, 2021 and want to clarify the noticing issue I mentioned during the public hearing since you refer to it in your appeal. I just reviewed the meeting video and I did not state what I am quoted as saying in your appeal letter. I mentioned the "notices" not the "Notice of Pending Permit", although the Planning Commission deliberations did discuss the application paperwork concerning the Declaration of Posting about the Notice of Pending Permit, which you included in your appeal. This is an important distinction because the Declaration of Posting in the City's planning permit application form packet refers to the Notice of Pending Permit not the series of public notices that applied to your proposed project. As you may recall, the City actually had noticing issues for the original public hearing that was originally scheduled to be heard by the Planning Commission, which resulted in them changing the review process to first include a staff-level administrative hearing. I believe that public notice hadn't been mailed to the neighbors in a timely manner as required by the City's code.

My oral comments about "notices" for the project referred to the series of different notices, including:

1. Notice of Pending Permit that you mentioned
2. Notice of Pending Action (the one that said people had to request a public hearing by a certain date or the permit would be administratively approved)
3. Notice of Public Hearing for the first staff-level administrative public hearing that was requested by the neighbors
4. Notice of Public Hearing for the hearing before the Planning Commission

Please see the below email I sent to Keith Collins, the City Attorney, clarifying my testimony at the hearing.

Regards,

--Jacob

EXHIBIT C

Fort Bragg City Council Meeting of Jan. 25, 2021

Comments from Michelle Roberts, Fort Bragg Planning Commissioner

Re: MUP 4 – 20

These comments are offered to provide background and information regarding the December 9, 2020, meeting of the Fort Bragg Planning Commission and its decision to deny MUP 4 – 20. Upon reading the staff report prepared for the Jan. 25th City Council and the application for appeal, I felt compelled to offer a more accurate and unbiased accounting of that meeting.

MUP 4 – 20 was escalated to the Planning Commission by City staff due to the discretionary nature of interpretation of accessory use. The December 9, 2020 staff report stated: "Minor Use Permits are typically processed at an administrative level and approved by the Director. This Minor Use Permit was escalated to the Planning Commission by the Director due to the discretionary nature of the interpretation of cannabis microbusinesses as accessory to a primary use…"

The Commission conducted a thorough meeting and public process before rendering its decision. We heard the staff report and ask clarifying questions; the applicant spoke and answered questions; we heard public comment and then thoughtfully deliberated the matter. What both the staff report and the applicant's appeal letter neglect to focus on is the key reason for the denial. At the core of the motion and decision to deny the permit was the specific language of our code in defining "Accessory uses". Article 10, §18.100.020 – Definitions of Specialized Terms and Phrases - defines it as follows: "Accessory Use. A use customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use nor serve property other than the parcel where the primary use is located."

Upon questioning, the applicant clearly stated that cannabis plants would be started on-site in the nursery then transported to other sites for cultivation. While some harvested plants would eventually be brought back to the Franklin Street location for processing, plants would also be sold to other cultivators (as is also noted again in applicant's appeal letter). Because the proposed use serves property other than the parcel where the primary use is located, the Commission determined that this does not meet the definition of accessory use per Article 10 and, therefore, we could not approve the project.

It is true that the Commission spend time discussing how to determine if a use is subordinate or incidental to a primary use in general, but those discussion were almost academic in nature since it became evident over the course of the meeting that the accessory uses which were the subject of MUP 4 – 20 clearly did not meet the definition. Since this issue of accessory use is likely to come up again in the future on other proposed projects, the Planning Commission would welcome the Council's determination on clear criteria for evaluating "accessory".

Staff and the applicant have made reference to §18.42.057(E) - Cannabis Retail, which provides examples of activities that may be accessory uses as a rationale for approving the application; however, the Commission clearly disagreed. This section also clearly states that Article 10 holds the definitive

meaning of accessory use. Since Article 10 clearly states that the use may not serve property other than the parcel where the primary use is located, the Commission appropriately followed our code and denied the permit. I would also point out that "may" indicates discretion and not an automatic approval and/or use by rights.

Please keep in mind that when there are conflicting requirements set out in our codes, we are required to apply the most restrictive code (see §18.10.040). In this case, that is Article 10 and the Planning Commission's denial was the only course of action appropriate in this case. I cannot underscore how relevant the clear language of Article 10 was to our deliberation and ultimate decision.

During the deliberations, the Commission did also discuss that growing/cultivating cannabis is not permitted in the CBD per Use Table 2-6, Commercial Zoning Districts, nor, in fact, is there a cannabis cultivation ordinance currently in our codes. Since these uses would not be permitted as stand-alone uses and the Commission could not find these uses fit the definition of accessory in this specific case, the only appropriate course of action was the denial of MUP 4 -20.

I would also like to add that I was disappointed in the staff report for Jan. 25th as I feel it glosses over the main conclusions of the Planning Commission's determinations for denial. The Planning Commission is the Review Authority in these matters. Staff have offered personal opinions, misinterpreted our codes and, I feel, misrepresented the critical points raised by the Commissioners during the December 9th meeting. My understanding of the role of staff is to present an accurate summary of the Planning Commission meeting to City Council, and neither be an advocate for the applicant nor encourage/recommend the City Council take a position in opposition to the Planning Commission's decision. In doing so, I feel staff are undermining the authority of the Planning Commission.

Respectfully submitted,
Michelle Roberts

EXHIBIT D

From:	Norvell, Bernie
To:	Lemos, June
Subject:	Fwd: 1/25/21 Item 7A
Date:	Sunday, January 24, 2021 10:43:31 AM

From: Jeremy Logan <jeremy@mycolormill.com>
Date: January 24, 2021 at 10:40:45 AM PST
Subject: 1/25/21 Item 7A

Councilmembers,

I have deliberated writing this email since Thursday after reading the agenda for this week's City Council meeting. I am aware that it is somewhat irregular for a Commissioner to weigh in on the appeal of a decision made by the Planning Commission but I also feel an obligation, not to sway your opinion, but to clarify a nuance that I feel is missing from the staff's interpretation of our decision. I have spoken with City Manager Miller about this and under her guidance I believe that rather than bringing this to public comment it is more appropriate for me to address you all individually in an email. I hope that you will watch the video of the Planning Commission meeting on December 9th, 2020 and come to your own conclusions about our findings as well.

I would like to point out the definition of Accessory Use. In this context it is clear that a use cannot be seen as accessory if it, "serves property other than the parcel where the primary use is located." The applicant has stated that plants grown in the potential new location would be used to serve other outside facilities within her business. There is no guarantee that 100% of the products that result from plants taken off site will be brought back to the site for sale. In fact because she employs 40+ people in multiple locations it is reasonable to assume that a distribution mechanism already exists for her business and the likelihood of the plants never returning to the dispensary is high.

While staff has presented the Accessory Use argument as a matter of square footage percentages, the Commission's decision was also weighed heavily by the offsite use which has the potential to greatly benefit portions of the applicants business which do not reside in the proposed dispensary location.

Thank you all for your time. I hope that this has brought a little more clarity to this very important issue.

Sincerely,
Jeremy Logan
Chair of the Fort Bragg Planning Commission