

AGENCY: City of Fort Bragg
MEETING DATE: May 18, 2021
PREPARED BY: H. Gurewitz
PRESENTED BY: H. Gurewitz

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Minor Use Permit (MUP) 1-21

OWNER: Brandy Moulton

APPLICANT: Brandy Moulton

AGENT: N/A

PROJECT: Retail Cannabis Dispensary

LOCATION: 144 N. Franklin St.

APN: 008-164-39

LOT SIZE: 0.37 Acres

ZONING: Central Business District (Inland)

ENVIRONMENTAL DETERMINATION: Exempt from CEQA under 15301 Class 1 Existing Facilities

SURROUNDING LAND USES:
NORTH: CBD – Grocery Store
EAST: CBD - Commercial
SOUTH: CBD - Housing
WEST: CBD - Bank

APPEALABLE PROJECT: Can be appealed to Planning Commission
 Can be appealed to City Council

RECOMMENDED ACTION

Approve Minor Use Permit 1-21 with standard conditions.

ALTERNATIVE PLANNING COMMISSION ACTIONS

Deny Minor Use Permit 1-21 and provide findings for denial.

BACKGROUND

The building located at 144 S. Franklin St. was previously used as a restaurant, candy store, and most recently a retail flooring/carpet store. In 2020, the applicant applied for a Minor Use Permit (MUP) to create a retail dispensary with accessory cultivation, manufacturing, and distribution. The project was denied because the accessory uses were determined to be not allowable and were not accessory to the primary use of retail. The decision of the Planning Commission was appealed to the City Council and the project denial was not overturned.

The City of Fort Bragg received a complete application for a Minor Use Permit and Cannabis Business Permit on March 22, 2021. The Cannabis Business Permit Application was sent for review by the Fort Bragg Police Department. They concluded that the cannabis business permit was approvable with no conditions. The Community Development Department reviewed the Minor Use Permit Application and determined that the project was approvable.

PROJECT DESCRIPTION

The proposed project is a retail cannabis dispensary with retail delivery. Proposed hours of service are 9:00 am to 9:00 pm with accessory retail delivery.

CONSISTENCY WITH PLANNING POLICIES

The project was reviewed for consistency with the General Plan. It is consistent with the following relevant General Plan Goals and Policies. It was not found to be inconsistent with any General Plan Goals, Policies or Programs.

General Plan Goal/Policy/Program	Project	Consistency?
Goal LU-3 - Ensure that the Central Business District remains the historic, civic, cultural, and commercial core of the community.	Retail sales would be consistent with the goal to support the commercial core.	Yes
Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of	This will be a pedestrian oriented retail business.	Yes

the Central Business District (CBD).		
Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts.	This is an existing building that has historically held a restaurant/candy store and retail flooring/carpet store. The building would be reused to retail cannabis.	Yes

Inland Land Use and Development Code (ILUDC) Consistency

The project was evaluated for consistency with the ILUDC. The project was found to be consistent with the Central Business District Zoning as noted in the table below:

Zoning Designation	Project	Consistency?
The CBD zoning district is applied to the core of the downtown, which is the civic, cultural, and commercial center of the City. The CBD zone is intended to accommodate retail stores, government and professional offices, theaters, and other similar and related uses in the context of pedestrian-oriented development.	This project will create a new retail store that is allowable with a minor use permit.	Yes

Additionally, the project was evaluated for consistency with the Specific Land Use Standards in 18.42.057 Cannabis Retail:

Requirements	Project	Consistency?
A. Minor Use Permit Required.	Approval of this application would fulfill this requirement.	Yes
B. The primary use of a cannabis retail use shall be to sell products directly to on-site customers. Sales may also be conducted by delivery.	There is no delivery service proposed as part of this business and no other accessory uses proposed.	Yes
C. Drive-through or walk-up window services in	No drive-through nor walk-up window services are proposed.	Yes

conjunction with cannabis retail are prohibited.		
D1. The cannabis operator shall maintain a current register of the names of all employees employed by the cannabis retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this Section and/or any project specific conditions of approval prescribed in the Minor Use Permit.	The applicant indicates in their plan that they will keep a register of all employees and shall disclose such register for inspection.	Yes
D2. The cannabis operator shall maintain patient and sales records in accordance with State law.	The applicant has indicated in their operations plan that they will have a recordkeeping plan that meets the requirements of state law, which tracks each piece of inventory from seed to sale or disposal.	Yes
D3. No person shall be permitted to enter a cannabis retail facility without government issued photo identification. Cannabis businesses shall not provide cannabis or cannabis products to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government issued photo identification card.	Applicant's plan includes requiring valid proof of identification which includes a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof. A valid identification card issued to a member of the armed forces that includes date of birth and a picture of the person. A valid passport issued by the United States or by a foreign government that clearly indicates the age or birthdate of the individual.	Yes
D4. Cannabis retail may operate between the hours of 9:00 a.m. to 9:00 p.m. up to 7	Proposed hours are 9:00 am – 9:00 pm	Yes

days per week unless the review authority imposes more restrictive hours due to the particular circumstances of the application. The basis for any restriction on hours shall be specified in the permit. Cannabis retail uses shall only be permitted to engage in delivery services during hours that the storefront is open to the public, unless the review authority permits delivery outside these hours.		
E. Accessory Uses...	No accessory uses are planned	Yes

The ILUDC Section 18.42.057 also states that, “In addition to the operating requirements set forth in Chapter 9.30, this Section provides location and operating requirements for cannabis retail.” Staff analyzed the project to determine if it was consistent with Municipal Code 9.30 Cannabis Business.

Section 9.30.130 provides both operating requirements and grounds for rejection of a Cannabis Business Permit.

The project was evaluated to determine if it met the operating requirements in 9.30.100:

Code Section	Project	Consistent?
A. The design, location, size and operating characteristics of the cannabis business shall comply with the findings and conditions of any applicable discretionary permit obtained for its operation.	The proposed plan is consistent with the requirements for a cannabis dispensary. There were no additional special conditions for this application.	Yes.
B. A cannabis business use shall maintain a current register of the names of all employees currently employed by the use.	The applicant indicates in their plan that they will keep a register of all employees.	Yes

<p>C. The building entrance to a cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.</p>	<p>The applicant indicates in their plan that they will post the required notice.</p>	<p>Yes</p>
<p>D. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cannabis business use.</p>	<p>The business does not have a license from the ABC and has not expressed any intention of selling alcoholic beverages.</p>	<p>Yes</p>
<p>E. A cannabis business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of employees and visitors from criminal activity, including theft and unauthorized entry.</p>	<p>The security plan was reviewed by the Fort Bragg Police Department and the project was recommended for approval.</p>	<p>Yes</p>
<p>F. A cannabis business shall provide the Chief of Police and Fire Chief with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there is an emergency or there are operating problems associated with the</p>	<p>The business owner has provided their contact information to resolve any concerns with the business.</p>	<p>Yes</p>

<p>cannabis business. The cannabis business management shall make every good faith effort to encourage residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police or Planning Department.</p>		
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The project was evaluated to determine if it met any grounds for **rejection** described in Section 9.30.100:

Municipal Code Rejection	Project	Rejection
<p>The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;</p>	<p>Location is allowable.</p>	<p>No</p>
<p>The applicant has violated any local or state law, statute, rule, or regulation respecting a cannabis business;</p>	<p>Not to our knowledge.</p>	<p>No</p>
<p>The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit;</p>	<p>There is no material evidence to suggest this.</p>	<p>No</p>
<p>the applicant, his or her agent, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of cannabis related offenses for which the</p>	<p>No convictions were found on the applicant's background check.</p>	<p>No</p>

conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere.		
The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;	We have received no written reports of such and there are no convictions of such.	No
The applicant is under 21 years of age;	The applicant is over 21.	No
The cannabis business does not comply with Title 18 (Inland Land Use and Development Code).	The project is in the CBD and this is allowable with a minor use permit.	No
The required application or renewal fees have not been paid.	All fees have been paid.	No

In order to approve the project, the finding must be made that, “The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle access... and public services... and utilities... to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.”

The applicant’s plan addressed the following aspects of the business that related to this finding:

Potential Impact	Applicant’s plan
Security	Applicant has provided a security plan to prevent theft and to discourage loitering, crime, and illegal or nuisance activities. These include surveillance cameras, an alarm system, access controls, and inventory controls.
Storage and Waste	Applicant has provided a plan for the removal of waste and a plan to store all cannabis products and any cannabis waste in a secured area with commercial-grade non-residential locks and not visible to the public.

Odor Control	The applicant's plan states that, "Sunshine Holistic shall incorporate and maintain adequate odor control measures such that the odors of cannabis cannot be detected from outside of the structure in which the business operates... This will include staff training procedures and engineering controls, which may include carbon filtration or other methods of air cleaning...All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.
Lighting	The applicant's plan identifies that exterior lighting will be provided for security purposes but will use best practices and technologies for reducing glare, light pollution, and light trespass onto adjacent properties.
Noise	The applicant's plan states that, "The use of air conditioning and ventilation equipment shall comply with the noise regulations of the City of Fort Bragg."
Parking	The plan indicates that the project has six dedicated parking spaces including one ADA space.

The project was reviewed by the Fort Bragg Police Department and prior to issuance of a business license, the business will be inspected by the Fire Marshal.

Additionally, ILUDC requires that the finding be made that the project comply with section 18.22.030(C)3:

"CBD (Central Business District) district. The use complements the local, regional and tourist-serving retail, office and services functions of the CBD, and will not detract from this basic purpose of the CBD. Uses proposed for the intense pedestrian-oriented retail shopping areas of the CBD, which include the 100 blocks of East and West Laurel Street, the 300 block of North Franklin Street, and the 100 and 200 blocks of Redwood Avenue, shall be limited to pedestrian-oriented uses on the street-fronting portion of the building."*

The project is a pedestrian-oriented retail dispensary and the finding can be made that it is consistent with Section 18.22.030(C)3.

DESIGN REVIEW

There are no exterior modifications for this project and therefore, no design review required. If the project is approved, the applicant will have to apply for a sign permit.

ENVIRONMENTAL DETERMINATION

This project is exempt from CEQA under section 15301 Existing Facilities because there will be no substantial changes to the structure and the use is similar to the previous use as a retail space.

SUMMARY OF FINDINGS

1) On the basis of the evidence presented, both oral and documentary, the Community Development Director finds that the following required findings regarding the Minor Use Permit are made for each of the following reasons:

- a. The proposed use is consistent with the General Plan and any applicable specific plan;

The proposed use of cannabis retail dispensary is consistent with the applicable elements of the City of Fort Bragg's Inland General Plan.

- b. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code;

This project for a cannabis retail store is allowable under the Inland Land Use Development Code Section 18.22.020 Table 2-6 with a minor use permit.

- c. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;

The proposed use is compatible with the existing and future land uses because it is a retail business located in the downtown retail area of the Central Business District.

- d. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.

There will be no changes to the design shape, or size of the building and the applicants plan addresses the operating characteristics and operating plan to ensure that the business will not endanger, jeopardize, or otherwise constitute a

hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district.

- e. The proposed use complies with any findings required by § 18.22.030 (Commercial District Land Uses and Permit Requirements).

A cannabis retail dispensary does not detract from the basic purpose of the CBD because it is a pedestrian-oriented retail store.

- f. The proposed use complies with the Specific Land Use Standards for Cannabis Retail Business in Section 18.42.057

The applicant's plan complies with the Specific Land Use Standards listed in section 18.42.057.

- g. The proposed use complies with Municipal Code Section 9.30 Cannabis Businesses.

The proposed Cannabis Retail Dispensary has been reviewed by the Fort Bragg Police Department and the Community Development Department and it has been determined that the proposed project complies with Municipal Code Section 9.30 Cannabis Businesses.

STANDARD CONDITIONS

1. This action shall become final on the 11th day following the decision unless an appeal to the Planning Commission is filed pursuant to ILUDC Chapter 18.92 - Appeals.
2. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City. Any condition directly addressing an element incorporated into the application exhibits shall be controlling and shall modify the application. All other plans, specifications, details, and information contained within application shall be specifically applicable to the project and shall be construed as if directly stated within the condition for approval. Unless expressly stated otherwise, the applicant is solely responsible for satisfying each condition prior to issuance of the building permit.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State, and Federal agencies having jurisdiction. All plans submitted with the required permit applications shall be consistent with this approval. All construction shall be consistent with all Building, Fire, and Health code considerations as well as other applicable agency codes.

5. The applicant shall secure all required building permits for the proposed project as required by the Mendocino County Building Department.
6. If any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken: 1) cease and desist from all further excavation and disturbances within 100 feet of the discovery; and 2) notify the Director of Public Works within 24 hours of the discovery. Evidence of an archaeological site may include, but is not necessarily limited to shellfish, bones, flaked and ground stone tools, stone flakes produced during tool production, historic artifacts, and historic features such as trash-filled pits and buried foundations. A professional archaeologist on the list maintained by the Northwest Information Center of the California Historical Resources Information System or Listed by the Register of Professional Archaeologists shall be consulted to determine necessary actions.
7. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare, or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more conditions.
8. Unless a condition of approval or other provision of the Inland Land Use and Development Code establishes a different time limit, any permit or approval not exercised within 24 months of approval shall expire and become void, except where an extension of time is approved in compliance with ILUDC Subsection 18.76.070 (B).

ATTACHMENTS

1. Application MUP 1-21