

AGENCY: City of Fort Bragg
MEETING DATE: June 23, 2021
PREPARED BY: H. Gurewitz
PRESENTED BY: H. Gurewitz

AGENDA ITEM SUMMARY REPORT

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

OWNER: Lyndia Pyeatt

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 City Council

RECOMMENDED ACTION

1) Open Public Hearing, 2) Receive Staff Report, 3) Receive testimony from the applicant and public comment, 4) close public hearing, 5) Consider adopting a resolution denying the appeal of approved Minor Use Permit 1-21.

ALTERNATIVE PLANNING COMMISSION ACTIONS

1. Continue the public hearing to a later time.
2. Make findings and adopt resolution upholding the appeal.

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 affirmed.

In the December 9, 2020 Planning Commission meeting, it was expressed by member(s) of the planning commission that a dispensary at this location would be fine, but that the accessory uses were the reason for denial.

The applicant applied for a Minor Use Permit for a Dispensary with accessory delivery only and the City of Fort Bragg received a complete application for a Minor Use Permit and Cannabis Business Permit on March 22, 2021(see ATTACHMENT #1).

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. An administrative public hearing was requested and held on May 18, 2021. The application was approved by the acting Community Development Director with two special conditions:

1. Prior to commencing operation, a site visit by the Police Department and Community Development Department is required to ensure that all required operating plans and safety and security measures have been appropriately instituted.
2. The permittee is responsible for ensuring that products sold onsite are not consumed anywhere on the property or within the public right of way on Franklin St., Alder St., or the alley between Franklin St. and McPherson.

See ATTACHMENT #2 for the Notice of Final Action.

APPEAL OF ADMINISTRATIVE DECISION

The approval of MUP 1-21 was appealed on May 26, 2021 by Gene & Dianna Mertle, Jay Koski, Jean Cain, Sarah Macy, Carrie Hull, James Matson, and Patricia Bell. The reasons for the appeal and the staff responses are below. See Attachment #3 for the full letter.

Issue Raised in Appeal	Staff Analysis
1) An initial study should be done instead of a categorical exemption.	This project is an existing building and is not an intensification of use. The previous uses included a restaurant, candy store, and retail flooring/carpet store. The flooring/carpet store had three vans and truck delivering and installing carpet along the coast. The proposed business will be retail with accessory

	<p>retail delivery. There will be no onsite cultivation or processing and therefore no intensification of use compared to any of the previous uses. Based on an initial review of this project, there is no need for a complete initial study and staff finds that this project is categorically exempt under CEQA 15301 Existing Facilities.</p>
<p>2) The appellants state that a) They do not believe that a cannabis dispensary is compatible with the other adjacent uses of the post office, credit union, grocery store, and single family residential uses. b) They allege that the analysis done was zoning clearance and not sufficient for a minor use permit. c) They believe the finding that the use is compatible is invalid.</p>	<p>a) Neither California State law nor the City of Fort Bragg ILUDC require a buffer between any of the uses stated in the appeal letter and a cannabis dispensary. Buffers were discussed and considered by the City Council and Planning Commission in several meetings and the current version of the code was adopted without buffers. This indicates to staff that it was the intention and will of those bodies that they did not see a reason to separate a cannabis dispensary from those uses.</p> <p>b) The process required for zoning clearance is defined in ILUDC Section 18.71.020C. When a business license or building permit is submitted, staff confirm that the proposed activity is permitted and does not require any type of permit in the specific location using the Land Use tables. If there are specific land use standards in Chapter 4 they are provided to the applicant. The Community Development Department then signs off on the business license or building plans. There is no further analysis or review and no permit fees. Conversely, this application was processed for a Minor Use Permit which is defined in section 18.71.060 of the ILUDC. The process is much more complicated and requires that City Staff to analyze the project for consistency with the General Plan, conformance with the zoning code, and that the required findings can be made including a written proposal of how the applicant will conform with any specific land use standards. A staff report is prepared with a recommendation.</p> <p>c) This project site is located in the Central Business District and meets the code requirements listed in Section 18.22.030 Table 2-6 and the Specific Land Use Standards in Section 18.42.057. When the updates to these sections were passed in November of 2019, City Council determined that a cannabis dispensary is allowable in the CBD with a Minor Use</p>

	<p>Permit. They did not add any provisions in the code to prohibit a dispensary on the east side of Franklin St, or near any of the uses listed by the appellants. The City Council discussed, considered and rejected imposing buffers for cannabis uses. For that reason, it is staff's interpretation that Council was giving the direction that these uses were not incompatible.</p> <p>While this is staff's interpretation of the code and the decisions made by the City Council, planning commission may have a different interpretation.</p>
<p>3) Appellants of the project disagree with the City's finding that "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." They believe that the project will a) endanger and jeopardize the property and their enjoyment of their property by their tenants and other neighbors. b) traffic generated by the</p>	<p>a) In determining whether this type of business could cause blight or vagrancy, staff considered the fact that cannabis sold by a licensed dispensary is significantly higher in price than that which is available through the black market. According to the applicant, the least expensive product they sell will be a minimum of \$11. Given this price range, it is unlikely that the dispensary will attract vagrancy or transients. The product being sold will be a locally produced product sold by the cultivator, similar to a wine shop selling wine they are producing for consumption offsite.</p> <p>There are extensive safety requirements for any cannabis business required as part of the Cannabis Business Permit per Municipal Code Section 9.30.130 which would prevent any potential criminal activity on site and likely reduce existing issues with vagrancy in the alley. Additional requirements are in California Business and Professions Code 26070, 16 CCR 5400 et seq and 16 CCR 5300 et seq.</p> <p>Additionally, it is the responsibility of the store owner to ensure that products are not consumed onsite, in the parking lot, or in the public right of way around the business. Because all products must be fully packaged and cannot be consumed in the vicinity, it limits the chance that this type of business would encourage individuals congregating outside the business and creating incidents of blight or vagrancy.</p> <p>Additionally, Special Condition #2 was established which specifies that products cannot be consumed onsite or anywhere in the parking area or public right of ways near the site.</p>

<p>project, and c) potential nursery cultivation. They specifically note the site's location and the provision of public utilities including water supply.</p>	<p>While there are numerous safeguards in place, should this business become a nuisance, Municipal Code 9.30.190 provides the grounds for permit revocation.</p> <p>b) In addition to retail sales from the former Floor Store, there were numerous large delivery trucks carrying flooring and carpeting entering and exiting the alleyway to this business. The commercial traffic associated with a dispensary is expected to be less than the previous use. There are two other cannabis dispensaries in the City and two located less than 3 miles south of the dispensary. There are enough existing dispensaries where it is unlikely that this particular dispensary will create a significant increase in traffic. Also, deliveries of cannabis product will be significantly smaller than deliveries of carpet and flooring.</p> <p>c) Appellants referenced the potential that Council may decide to allow small accessory nursery cultivation for on-site retail and retail delivery only for non-commercial use. If the City Council does approve this in the future, the applicant would have to submit an application for a Minor Use Permit for an accessory nursery cultivation which would be evaluated at that time. The application, as presented, only includes onsite and delivery retail of cannabis products and the application cannot be judged on potential future applications that may be presented.</p>
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Staff believes that the proposed project meets the required findings as set forth in ILUDC 18.71.060(F) and is recommending approval of this project. If the Planning Commission disagrees, it will need to provide staff with alternative findings to this effect. For reference, the following, is the project analysis based on the Inland Land Use Development Code requirements for a Minor Use Permit as presented to the acting Community Development Director with minor updates.

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 the Central Business District (CBD).	This will be a pedestrian oriented retail business.	Yes
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

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?
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<p>A. Minor Use Permit Required.</p>	<p>Approval of this application would fulfill this requirement.</p>	<p>Yes</p>
<p>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.</p>	<p>Delivery service is proposed as part of this business and no other accessory uses proposed.</p>	<p>Yes</p>
<p>C. Drive-through or walk-up window services in conjunction with cannabis retail are prohibited.</p>	<p>No drive-through nor walk-up window services are proposed.</p>	<p>Yes</p>
<p>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.</p>	<p>The applicant indicates in their plan that they will keep a register of all employees and shall disclose such register for inspection.</p>	<p>Yes</p>
<p>D2. The cannabis operator shall maintain patient and sales records in accordance with State law.</p>	<p>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.</p>	<p>Yes</p>
<p>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,</p>	<p>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.</p>	<p>Yes</p>

<p>gift or otherwise, who does not possess a valid government issued photo identification card.</p>	<p>A valid identification card issued to a member of the armed forces that includes date of birth and a picture of the person.</p> <p>A valid passport issued by the United States or by a foreign government that clearly indicates the age or birthdate of the individual.</p>	
<p>D4. Cannabis retail may operate between the hours of 9:00 a.m. to 9:00 p.m. up to 7 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.</p>	<p>Proposed hours are 9:00 am – 9:00 pm</p>	<p>Yes</p>
<p>E. Accessory Uses.</p>	<p>No accessory uses are planned other than the delivery component</p>	<p>Yes</p>

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 to meet the requirements stated in 18.42.057.

Staff reviewed the application to ensure that it complies with Municipal Code Section 9.30.130 Operating Requirements:

Code Section	Project	Consistent?
<p>A. The design, location, size and operating characteristics of the</p>	<p>The proposed plan is consistent with the requirements for a cannabis</p>	<p>Yes.</p>

cannabis business shall comply with the findings and conditions of any applicable discretionary permit obtained for its operation.	dispensary. There were no additional special conditions for this application.	
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
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.	The applicant indicates in their plan that they will post the required notice.	Yes
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.	The business does not have a license from the ABC and has not expressed any intention of selling alcoholic beverages.	Yes
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,	The security plan was reviewed by the Fort Bragg Police Department and the project was recommended for approval.	Yes

including theft and unauthorized entry.		
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 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.	The business owner has provided their contact information to resolve any concerns with the business.	Yes

The project was evaluated to determine if it met any grounds for **rejection** delineated in Section 9.30.100:

Municipal Code Rejection	Project	Rejection
The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;	Location is allowable	No
The applicant has violated any local or state law, statute, rule, or regulation respecting a cannabis business;	Not to our knowledge	No
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;	There is no material evidence to suggest this.	No

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 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;	No convictions were found on the applicant's background check.	No
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, ILUDC 18.71.060(F)(4) requires several findings, including 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 Section 18.71.060(F)(5) 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. There are no exceptions to the exemption and there are no potential significant environmental impacts from this project.

SUMMARY OF FINDINGS

On the basis of the evidence presented, staff recommends the Planning Commission make the following required findings from ILUDC 18.71.060(F) regarding the Minor Use Permit 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 following 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.

ATTACHMENTS

1. Application MUP 1-21
2. Notice of Final Action on MUP 1-21
3. Appeal of Administrative Decision
4. Resolution Affirming Approval of MUP 1-21