



**AGENCY:** City Council  
**MEETING DATE:** September 1, 2021  
**DEPARTMENT:** Community Development  
**PRESENTED BY:** H. Gurewitz  
**EMAIL ADDRESS:** hgurewitz@fortbragg.com

## AGENDA ITEM SUMMARY

### **TITLE:**

Receive Report, Conduct Public Hearing, and Consider Upholding or Denying the Appeal of the Planning Commission's Decision to Deny Minor Use Permit Application 1-21 for a Cannabis Dispensary at 144 N. Franklin Street

### **ISSUE:**

The Community Development Department (CDD) received an application for a Minor Use Permit (Attachment 1) from Sunshine Holistic filed by Brandy Moulton on February 11, 2021 requesting a Minor Use Permit (MUP) to operate a Cannabis Dispensary at 144 N. Franklin St.

CDD reviewed the application and determined that the project was approvable. The application was deemed complete on March 24, 2021. A public hearing with the Fort Bragg Planning Commission was scheduled. Due to an issue with noticing, the hearing was canceled. Based on Council reiterating direction that they want minor use permits to be reviewed by staff, the application was sent to the acting Director for decision. A Notice of Pending Action was properly noticed and an administrative public hearing was requested and held on May 18, 2021. After the hearing, the application was approved by the acting Community Development Director (Attachment 2) 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.

A timely appeal of the decision was received on May 26, 2021 from Gene & Dianna Mertle, Jay Koski, Jean Cain, Sarah Macy, Carrie Hull, James Matson, and Patricia Bell. (Attachment 3).

The Planning Commission held a public hearing for the appeal on June 23, 2021. The Commission overturned the administrative decision, denied the application, and referred the matter to staff to draft a resolution.

The Planning Commission held a meeting on July 14, 2021. At that meeting a motion was passed that City staff modify the Resolution to include only the two findings that the Planning Commission made during the meeting on June 23, 2021 and strike everything that was not part of the specific findings made during that meeting. On July 21, 2021, the Planning Commission met again, but did not vote on the final resolution. On August 6, 2021, the Planning Commission met again and adopted the Resolution (Attachment 5) upholding the appeal and denying the project.

On July 6, 2021, the City of Fort Bragg received a timely appeal of the Planning Commission decision from applicant Brandy Moulton, CEO of Sunshine Holistic (Attachment 6). A hearing was scheduled for August 9, 2021 with the Fort Bragg City Council. At the meeting, City Council opened the public hearing and continued it to a date certain, September 1, 2021. An additional appeal was submitted by Brandy Moulton on August 9, 2021, amending the initial appeal to include the adoption of the Planning Commission's resolution.

Notice of this hearing was posted at the property and duly noticed as required by the Inland Land Use and Development Code (ILUDC) Section 18.92.

**ANALYSIS:**

The Planning Commission upheld the appeal and denied the application for MUP 1-21 for two reasons as stated in the resolution:

1. There was not sufficient evidence that the required noticing for the Minor Use Permit and the Minor Use Permit Administrative Hearing, and the Minor Use Permit Appeal were properly posted at the property.
2. The proposed use is not compatible with the existing and future land uses.

**Finding #1 - Noticing**

The City's Planning Application requires a declaration of posting with a dated signature. The declaration states:

*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 I or my authorized representative 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: (Describe location where notice is posted).*

When the applicant filed the Minor Use Permit (MUP) application, they reused and edited a prior application, but did not update the signatures or the dates.

Planning Commission communicated that the signature, which was dated November 17, 2019 did not provide sufficient evidence that the notice was posted in February of 2021, when the application was received because the 2019 signature page was for the previously denied permit application and not for the current submittal. This concern was raised after members of the appellant team indicated that they did not see the notice posted and staff could not validate its posting. There remains no evidence of whether sufficient noticing for the MUP or the MUP administrative hearing was posted on-site or not.

After the meeting, staff reviewed the application materials again. When Sunshine Holistic filed the first application, there was no Cannabis Business Permit (CBP) Application. However, when they filed the second application, the new application was required. The applicant submitted a CBP Application at the same time as the MUP application. The CBP has the same declaration of posting as the MUP. The declaration on the CBP was signed and dated February 17, 2021 (Attachment 6).

A public hearing was originally scheduled with the Planning Commission on April 28, 2021. However, the public hearing notices were sent a day late and did not meet the requirements of 18.96.020(B)(2). When this was brought to the attention of staff by members of the public, the hearing was cancelled.

An administrative public hearing was held on this project on May 18, 2021 prior to the Director's approval. No concerns regarding public noticing of the administrative hearing were raised prior to or at the May 18th administrative hearing.

On or before June 13, 2021, a notice should have been posted on the property for the appeal hearing with the Planning Commission. Staff did not inform Ms. Moulton of this requirement nor did staff post the notice. The Planning Commission meeting on June 23, 2021 is the only meeting held where it is certain that no notice was posted at the property.

In her letter of appeal, Brandy Moulton and Jennifer Brown provided signed statements that the notice was properly posted for the initial hearing(s). Notice of this hearing, originally scheduled for August 9<sup>th</sup> and continued to September 1<sup>st</sup>, was posted at the property on July 23, 2021.

#### Finding #2 - Incompatibility with Neighborhood

The Planning Commission concluded that *the design, location, size, and operating characteristics of the proposed activity are NOT compatible with the existing and future land uses in the vicinity because testimony presented by appellants provided compelling evidence that the proposed project would be incompatible with the mixed-use neighborhood which consists of commercial properties as well as heavily populated residential properties.*

There is no definition in the ILUDC for a "mixed-use neighborhood," only the term "mixed use project" which has no relevance to this discussion as it refers to multiple uses on one single parcel. However, the Inland General Plan, page 2-10, Commercial Land states:

*"The goals and policies in this section ensure that the Central Business District remains the historic, civic, cultural, and commercial core of the community. There are also policies encouraging mixed use and infill development to strengthen the other commercial areas of the City."*

Inland General Plan's Land Use Element Policy LU-3.2 states, *"Mixed Uses: Support mixed use development (i.e., a combination of residential and commercial uses) in the Central Business District that does not conflict with the primary retail function of this area."*

Policy LU 3.2 and the above paragraph about the Central Business District (CBD), both indicate that the General Plan prioritizes commercial activity in the Central Business District.

Additionally, ILUDC Section 18.22.020(C) states:

*"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.”*

The City of Fort Bragg has both single-family and multi-family residences throughout downtown and in the other commercial districts in the City; there are at least 44 in the Central Business District (see Attachment 7). In the past year, the Planning Commission has authorized two (2) additional use permits for converting existing commercial spaces to residential units. These land use entitlements ensure these structures remain occupied and also meet housing goals. Prioritizing residential uses in commercial zones could create an economic burden on the CBD by limiting opportunities to only businesses that are “compatible” with residential properties. Arguably, Policy LU 3.2 intends to protect economic activity in the commercial district by stating that retail is the primary function of the area.

Staff has historically used the primary function of a district (and goals for future uses/functions) to measure compatibility of proposed uses. This interpretation was supported by a previous decision by the Planning Commission and upheld by the City Council in 2018, with the approval of Use Permit 1-18, to allow a bar with music at 338 N. Franklin St. despite the objection of the neighbors whose homes were across the alley from the proposed location.

Furthermore, the appellants of the administrative decision speculated that a cannabis dispensary would draw more crime and cause more harm on the neighborhood. Staff has taken this concern seriously. Prior to the Planning Commission meeting, staff checked with the police department and reviewed crime statistics for the two existing dispensaries before and after the dispensary opened. In both cases there was no increase in crime related or unrelated to the dispensary.

Additional concerns were expressed that the dispensary would be a target for robberies and that perpetrators fleeing the crime scene would pose a danger to residents. This concern was also taken seriously. Staff checked with the Police Department and obtained the following information:

- There are three bars in the Central Business District which only accept cash. There have been no robberies at any of these locations over the last ten years (length of time requested).
- Over the last ten years a book store, a cinema, an antique store, a bank, and a pharmacy have been robbed.

Based on this information, it is not reasonable to assume that a dispensary would be more likely to be robbed than any other retail establishment. Additionally, there are several logistical reasons why a secure dispensary located in downtown Fort Bragg would be a poor target for cannabis theft.

In developing Municipal Code Chapter 9.30 Cannabis Businesses and Inland Land Use and Development Code Section 18.42.057, Specific Land Use Standards for Cannabis Businesses, the City Council has provided more stringent requirements for a cannabis dispensary than any other downtown business that are also heavily regulated by the state.

The dispensary would have a lower impact in both noise and traffic than a restaurant which is a historic and allowable use. It would also have a lower impact than the bar that was approved in 2018 despite similar neighboring concerns. It is a retail store selling a controlled substance with adequate measures in place, which is compatible with other retail or commercial uses in the area.

The staff report from June 23, 2021 (Attachment 4) provides a detailed analysis of the project including consistency with the Inland General Plan and the ILUDC.

**RECOMMENDED ACTION:**

Reopen the public hearing (that was continued on August 9), receive the staff report, take public comment, and consider the appeal of the Planning Commission's decision which overturned the administrative decision and denied the Minor Use Permit Application MUP 1-21 for a cannabis dispensary at 144 N. Franklin St.

**ALTERNATIVE ACTION(S):**

Continue the hearing to a later date.

**FISCAL IMPACT:**

N/A

**GREENHOUSE GAS EMISSIONS IMPACT:**

N/A

**CONSISTENCY:**

See Attachment 4 for the June 23, 2021, staff report which contains the full consistency analysis. The proposed project is consistent with the Inland General Plan and the Inland Land Use and Development Code.

**IMPLEMENTATION/TIMEFRAMES:**

The approval or denial of this permit will be effective immediately.

**ATTACHMENTS:**

1. Application for Minor Use Permit MUP 1-21
2. Notice of Final Action
3. Appeal to Planning Commission
4. Staff Report to Planning Commission Appeal Hearing on June 23, 2021
5. Planning Commission Resolution PC 09-2021
6. Sunshine Holistic Appeal(s) to City Council
7. Map of CBD with Residential Properties
8. City Council Resolution Upholding Planning Commission Decision
9. City Council Resolution Overturning Planning Commission Decision

**NOTIFICATION:**

1. Brandy Moulton, Applicant/Appellant
2. Jacob Patterson, Representative of Appellants of the administrative decision

3. Gene and Diane Mertle, Bruce Koski, and the Appellants of the Administrative Decision