

EMERALD LAW GROUP

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December 1, 2023

Mendocino County Board of Supervisors
Attn: Clerk of the Board
501 Low Gap Rd
Ukiah, CA95482
COBsupport@mendocinocounty.gov

RE: Mendocino County Board of Supervisors,
Regular Meeting, December 5, 2023, item
4(g)

Dear Custodian of Records,

Please be advised we represent the appellant in the above referenced agenda number. Enclosed please find additional materials, consisting of emails which were obtained through a Public Records Request, that we are submitting for your consideration with respect to the Appeal by Kure Wellness, on December 5, 2023.

Please be sure the attached documents are circulated to all board members, and if possible, uploaded along with all documents that we've previously submitted.

Thank you kindly for your assistance with this matter.

Sincerely,



Kali Perkins

On Mon, Dec 9, 2019 at 11:19 AM Lauren Mendelsohn <lauren@omarfigueroa.com> wrote:

Good morning Vandy,

I hope this message finds you well. I am reaching out to you regarding a client of mine, Kure Wellness, who has an existing cannabis dispensary in Mendocino County and would like to be able to operate a drive-thru at their Lake Mendocino Drive location in accordance with Section 5025 of the Bureau of Cannabis Control (BCC) regulations. I have copied that section below for your reference, with the critical portion highlighted.

Specifically, that section says that drive-thru cannabis retail facilities are allowed by the State if, prior to June 1, 2018, the licensee/applicant "received a license or permit from the local jurisdiction for a premises including a drive-in or drive-through window which was disclosed on the local application" or "submitted an application to the local jurisdiction for a license or permit which, at the time of submission of the application, included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises, and after June 1, 2018, the local jurisdiction approves the premises with a drive-in or drive-through window."

In this case, Kure Wellness has been operating a cannabis dispensary prior to 2018, as indicated by the attached Medical Cannabis Activity Form (dated 5-17-16), and submitted an application for a microbusiness permit in 2017 which was approved on or soon after May 25, 2018 (see attached Staff Report). The diagram that was submitted for the microbusiness permit indicated that there is an "Existing Drive," which in the past has been used by customers to pick up plants and other items. My client also checked every box on the 2016 form indicating the intent to apply for all cannabis rights at the property (including drive-thru).

Russ of Kure Wellness informed me that you've spoken with him about this before, and that you verbally told him that Mendocino County is OK with Kure Wellness continuing the use of the drive-thru. However, my client needs some evidence of this to show to the BCC. Are you able to confirm in writing that Mendocino County approves of a drive-thru at Kure Wellness, which was disclosed on their local application?

Let me know if you have any questions or would like to discuss this further.

Thank you.

~ ~ ~ ~

§ 5025. Premises.

- (a) Each license shall have a designated licensed premises, with a distinct street address and suite number if applicable, for the licensee's commercial cannabis activity. Each licensed premises shall be subject to inspection by the Bureau.
- (b) The Bureau may allow a licensee to conduct both adult-use and medicinal commercial cannabis activity on the same licensed premises if all of the following criteria are met:
 - (1) The licensee holds both an A-designation and an M-designation on the license for the identical type of commercial cannabis activity; and
 - (2) The licensee only conducts one type of commercial cannabis activity on the licensed premises.
- (c) Licensed retailers and licensed microbusinesses authorized to engage in retail sales shall only serve customers who are within the licensed premises, or at a delivery address that meets the requirements of this division.
 - (1) The sale and delivery of cannabis goods shall not occur through a pass-out window or a slide-out tray to the exterior of the licensed premises.

(2) Licensed retailers or licensed microbusinesses authorized to engage in retail sales shall not operate as or with a drive-in or drive-through at which cannabis goods are sold to persons within or about a motor vehicle.

(3) No cannabis goods shall be sold and/or delivered by any means or method to any person within a motor vehicle.

(d) Alcoholic beverages as defined in Business and Professions Code section 23004 shall not be stored or consumed on a licensed premises.

(e) Any licensed premises that is adjacent to another premises engaging in manufacturing or cultivation shall be separated from those premises by walls, and any doors leading to the cultivation or manufacturing premises shall remain closed.

(f) Cannabis shall not be dispersed in the air throughout the premises or throughout a portion of the premises by an oil diffuser or any other vaporizing device that is intended to disperse the vapor throughout the premises or throughout a portion of the premises. This section shall not be interpreted to prohibit cannabis consumption on the premises of a licensed retailer or licensed microbusiness authorized to engage in retail sales that is conducted in accordance with Business and Professions Code section 26200(g).

(g) Notwithstanding subsection (c) of this section, an applicant or licensee may have a drive-in or drive-through window only if, prior to June 1, 2018:

(1) The licensee or applicant received a license or permit from the local jurisdiction for a premises including a drive-in or drive-through window which was disclosed on the local application; or

(2) The licensee or applicant has submitted an application to the local jurisdiction for a license or permit which, at the time of submission of the application, included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises, and after June 1, 2018, the local jurisdiction approves the premises with a drive-in or drive-through window.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26001, 26012 and 26053, Business and Professions Code.



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please notify my law office by a collect call to [\(707\) 829-0215](tel:7078290215) and delete and destroy all copies in your computer and/or network. Thank you for your anticipated cooperation.

On Tue, Dec 17, 2019 at 12:41 PM Lauren Mendelsohn <lauren@omarfigueroa.com> wrote:
I will reach out to my client and try to get you answers to these questions ASAP.

Thank you.

Please note that I will be out of the office on vacation from December 18 through December 26, and responses during this time may be delayed.



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On Tue, Dec 17, 2019 at 12:21 PM Vandy Vandewater <vandewaters@mendocinocounty.org> wrote:
Hi Lauren,

Julia was curious, before we discuss with the Director, what improvements would need to occur for the driveway to be operational? Is there already a window? Would a window need to be installed? Does the drive-thru road need to be improved?

If you have time to answer these questions before I discuss with Brent, that would get much appreciated.

Please let me know if you need any clarification.

Best,

Vandy

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>>> Lauren Mendelsohn <lauren@omarfigueroa.com> 12/17/2019 11:01 AM >>>
Good morning Vandy,

I hope you're doing well. I wanted to check in to see if you were able to speak with your Chief Planner about this. Please let me know if you need any further information from me.

Thank you.

Please note that I will be out of the office on vacation from December 18 through December 26.



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On Tue, Dec 17, 2019 at 1:45 PM Lauren Mendelsohn <lauren@omarfigueroa.com> wrote:
Hi Vandy,

The driveway is theoretically operational in its current state; however, my client would ideally like to make some modifications so that it looks more professional. For example, there is a window already, but my client would like to install a new one. The drive-thru road is not paved, but it is functional. My client is willing to make whatever improvements are needed in order for the county to sign off on this, and to comply with other conditions specific to the use of the drive-thru as the county sees fit.

Let me know if you need any additional information.

P.S. - My client also wanted to let you know that there is no "dab bar" indoors at their south Ukiah location (1480 South State Street). I can send you the revised floor plans if necessary.

Please note that I will be out of the office on vacation from December 18 through December 26.



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On Mon, Dec 30, 2019 at 8:10 AM Vandy Vandewater <vandewaters@mendocinocounty.org> wrote:
Good morning Lauren,

Thank you for the wishes, I did have a nice holiday. I hope yours went well too! I did get a chance to talk to the Director and he determined that the County Code should really spell out the allowance of a drive-thru for the Department to permit such a use. For this reason, we cannot at this time allow Kure Wellness to operate the drive-thru window portion of their business. We would recommend that you speak with Kure Wellness' Supervisor as most of our changes to the Zoning Code are direction from the Board of Supervisors.

If you should have any additional follow-up question, please let me know. Additionally be advised that we are open until noon tomorrow, and closed on Wednesday.

Best,

Vandy

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>>> Lauren Mendelsohn <lauren@omarfigueroa.com> 12/27/2019 11:47 AM >>>
Hi Vandy,

I hope you had a nice holiday. I just wanted to check in to see if you discussed this matter with the PBS Director. Let me know if you need any additional information.

Best,
Lauren



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Vandy Vandewater - Re: Grandfathering of Drive-Thru Dispensary

From: Vandy Vandewater
To: lauren@omarfigueroa.com
Date: 1/6/2020 9:43 AM
Subject: Re: Grandfathering of Drive-Thru Dispensary
Bc: Julia Acker
Attachments: BL 110-15 Approved.pdf

Hi Lauren,

Unfortunately, the "continue operation" clause would not apply to this situation. In reviewing the original business license that allowed Kure Wellness to apply as a cannabis retail location, under the "continued operation" clause, the application does not make any mention or indication of "drive-thru services". Furthermore, non-cannabis business licenses do not require the submittal of a site plan, thus there are no plans that would indicate the existence of a "drive-thru" operation occurring with the proposed business. This indication would have needed to be on the original written application to be considered as part of the "continued operation". If drive-thru services were occurring prior to the adoption of the cannabis facilities regulations, it would have been done so in violation of the zoning code. This is because retail businesses with drive-thrus are regulated by the zoning code under section 20.180.020(A), thus we would have needed to know of the drive-thru aspects of the business to appropriately approve the business license as compliant with the zoning code, which did not occur. I have attached that license for your review.

In reviewing the site plan provided for the Cannabis Facilities Business License, there remains no indication that a drive-thru service exists or would have been provided. The "existing driveway" that is demarcated on the site plan does not inherently indicate the driveway has a "drive-thru" function, nor does the written application make any statement regarding "drive-thru" services. Thus neither business license application sufficiently demonstrates any evidence that drive-thru operations have occurred on the subject parcel.

I apologize if I had made verbal assurances regarding the drive-thru aspects of the business, however, at this time, the determination of the Director remains the same.

Best,

Vandy

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>>> Lauren Mendelsohn <lauren@omarfigueroa.com> 12/31/2019 12:04 PM >>>

Hi Vandy,

Just curious -- when that determination was made, was Section 20.243.080 ("Continued Operation") of the County Code taken into consideration? That section says:

All medical cannabis retailers/dispensaries operating with an approved business license prior to the effective date of these regulations, are eligible to continue operations without obtaining any additional permit which may be required by this Chapter, but shall comply with the requirements listed in sections 20.243.040 and 20.243.050, except for paragraph (C) of section 20.243.050, and any requirements of State law.

Kure Wellness had an approved business license prior to when that Section was adopted, and their plans included the drive-thru at that time. The drive-thru has been used by customers in the past. Therefore, this should fall under the "Continued Operation" clause, and Kure should be able to continue using this under a specific exception without having to amend to the Zoning Code (which is time-consuming and not a guaranteed success).

My client is willing to work with the county to ensure that the drive-thru operates safely and does not create a negative impact on the surrounding area. He has invested a significant amount of time and money into this concept, and relied both on the "continued operation" provision and your verbal reassurance that he could continue using the drive-thru. I ask that you reconsider "grandfathering" in this use pursuant to §20.243.080.

I look forward to continuing this dialogue with you after the new year.

Thank you.



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From: "Vandy Vandewater" <vandewaters@mendocinocounty.org>
To: lauren@omarfigueroa.com
CC: "Julia Acker" <ackerj@mendocinocounty.org>
Date: 5/8/2020 11:49:52 AM
Subject: Kure Wellness Drive-Thru Use During COVID-19 Determination 5.8.2020
Attachments: .pdf
.jpeg
(1).jpeg
(1).pdf

Hi Lauren,

Thank you for providing the information, and additional information as requested. As there has already been a determination regarding the Kure Wellness drive-thru, the State's suspension of the drive-thru regulations does not supersede the County's determination. Cannabis businesses must be compliant with both State and Local jurisdictions at all times. However, given the current health situation, the County will allow Kure Wellness to operate a drive-thru only during this COVID-19 crisis. To remain compliant with the County, Kure Wellness must CC myself (vandewaters@mendocinocounty.org) and the general PBS email (pbs@mendocinocounty.org) when requesting any future extensions to the drive-thru regs suspension, as well as forward the response from the BCC if those emails are not included. At present, the suspension to drive-thru regulations is set to expire on June 5, 2020.

Please be advised that the "drive-thru" is not a grandfathered component of Kure Wellness' continued operations, nor does the County seek out enforcement on specific businesses. As discussed in our January 6 email (attached below), the existence of a drive-thru and drive-thru services was not disclosed on the application. Neither the written portion nor site plan for Kure Wellness displays any information that would reasonably inform myself as a reviewer of the application that a "drive-thru" exists and is operated.

The poles that prevented drive-thru services appear to have been present April 2016 (attached Google Street View screenshots) and Kure Wellness has had a business license since April 2015. Thus, there is only a year period between the approved business license and the screenshot. It seems unlikely that the drive-thru was operated in this period considering the overgrown vegetation and old cooling unit covering the drive-thru window. Eastside Calpella Road Google Street View imagery (attached) is from 2012 and also shows the poles.

Enforcement is done on a case by case basis and can only be conducted when the County is informed of non-compliance. I was informed of Kure Wellness' non-compliance and went out to the location to perform enforcement actions. The manager on duty at Kure Wellness informed me of Revolution Emporium and thus I visited that establishment after Kure Wellness. There have been a variety of cases in which I become aware of non-compliance by a cannabis business and have had to visit for enforcement, despite other cannabis businesses potentially engaging in the same non-compliant activities. I am sure Kure Wellness is not aware of many of these instances. Again, I only enforce regulations when I am made aware of a case of non-compliance.

With that said, once the COVID-19 crisis and emergency regulations have been lifted, the drive-thru operation must cease immediately. The County's previous determination of January 6 remains in effect. If the State regulations change in the future allowing drive-thrus regardless of specific application materials, Kure Wellness is more than welcome to recommend ordinance revisions to the Department and/or Board of Supervisors.

Additionally, regarding claims that the County will revoke the business license at the State, this is only partially true. Per Condition #17 of the Kure Wellness Microbusiness Administrative Permit (AP_2017-0109; attached), the driveway approaches off both public roads need to be improved. Direction from the Board of Supervisors provided leniency regarding the time in which conditions need to be completed when the program was initially opened. Normally, these conditions would need to be completed before the business license is issued. Kure Wellness has had almost two years to complete this condition. I made a visit earlier this year and informed the manager on duty that this condition must be met

by the next renewal or the County will have to take action. This was part of a County-wide compliance check with all the permitted cannabis facilities in the County. As Kure Wellness has already renewed for 2020, I have requested the Tax Collector place the business on the local violation list for 2021 renewals. This means Kure Wellness must be compliant with, or be in progress to be compliant with Condition #17 before renewals next year. If this does not occur, the Tax Collector will inform the State that Kure Wellness is not longer compliant with its local jurisdiction. What the State does with that information is up to them, but as noted above, cannabis businesses must be compliant with both State and Local jurisdictions to operate.

Again, Kure Wellness may operate the drive-thru until such time as the COVID-19 crisis is considered over in the State of California, or until the BCC no longer provides exemption from the drive-thru regulations for health purposes, whichever occurs first.

Please let me know if you should have any questions.

Best,

Vandy

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