

January 25, 2021

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, CA, 95482  
[bos@mendocinocounty.org](mailto:bos@mendocinocounty.org)

Re: Item #3b - County Cannabis Updates; Drive-Through Request from Kure Wellness

Dear Honorable Supervisors,

My office represents a number of cannabis operators in Mendocino County, including Kure Wellness, a licensed retail business with multiple locations throughout the county including one in the unincorporated area on Lake Mendocino Drive. Kure Wellness has been operating in Mendocino County for many years, and first submitted a Medical Cannabis Activity Form for a collective at this location back in 2016 before the current cannabis ordinances were even adopted. During this time they have employed local workers, paid local taxes, and contributed to other local businesses. Kure Wellness is owned and operated by Mr. Russ Green, a county resident and respected member of the community.

We come to you today with a request as you work to amend the county's cannabis ordinances. Specifically, Kure Wellness is seeking the Board's approval to conduct sales via a drive-through lane and window, in addition to serving walk-in clients. My research indicates that this would be allowable under State law and regulations, and I have prepared language to add to the County Code should such be deemed necessary.

To summarize:

- Kure Wellness fits within an exemption in §5025(g) of the Bureau of Cannabis Control's regulations which deals with when drive-through retail facilities are acceptable.
- Kure Wellness has been successfully operating in this manner during the COVID-19 crisis under temporary disaster approval from the Bureau of Cannabis Control and PBS.
- They wish to make improvements to the drive-through lane and window; however, without knowing whether the county will continue to allow them to use the lane when the pandemic emergency is over, they are hesitant to invest a significant amount of money into this given that resources are limited.
- If allowed, this would be one of the only legal cannabis drive-through facilities in the whole state, which will help draw in tourists and contribute to a sense of local pride. In light of the pandemic and wildfires, the value of a drive-through method of sales has become more apparent.

The rest of this letter includes these arguments in more detail.

While Section 5025(c) of the BCC regulations prohibits drive-through windows at cannabis retail facilities in California, there are two exceptions to this rule which are contained in Section 5025(g). That section says that drive-through windows at cannabis retail facilities are allowed by the State 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.”

(Title 16, Division 42, §5025(g) of the California Code of Regulations.)

In this case, Kure Wellness has been operating a cannabis dispensary prior to 2018, and submitted an application for a microbusiness permit in 2017 which was approved on or soon after May 25, 2018. The diagram that was submitted for the microbusiness permit indicated that there is an "Existing Drive," which in the past has been occasionally used by customers to pick up plants and other items. At that time, the Planning & Building Department was not involved in permitting dispensaries (then medical cannabis collectives), and the occasional use of the drive through lane by patients who had mobility issues or didn't feel comfortable going into the store was never brought up as being problematic or a violation of any rules.

Kure Wellness also checked every box on the 2016 Medical Cannabis Activity form indicating the intent to apply for all cannabis rights at the property, which my client interpreted as including a drive-through. At that time, Section 5025 of the BCC Regulations was not in effect; AUMA and MCRSA had not yet been combined into MAUCRSA, and only draft regulations under MCRSA had been published, so there was no state law or regulation prohibiting cannabis dispensaries from having a drive-through.

Originally, Kure Wellness was informed by a county staff member that his drive-through lane was not a problem. However, they were later told that the County Code "should really spell out the allowance of a drive-thru" for such a use to be permitted. Nothing in the County Code says that this is prohibited, though. Moreover, cannabis businesses have only been legal throughout the state for a few years and only recently did the county start giving out permits for cannabis businesses. Thus, it's not surprising that the county code does not mention a drive-through in this context, though it doesn't necessarily imply a desire to exclude this type of use. Moreover,

according to Section 20.243.080 of the Mendocino County municipal code, which was originally adopted on October 17, 2017 and is still in effect:

“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.”

The intent of this provision was to provide a pathway for legacy operators like Kure Wellness to continue serving their community with minimal disruption.

As long as the drive-through lane comports with the county’s standard rules for drive-through facilities, there does not seem to be an issue. My client is aware of the stacking and other requirements for drive-through facilities, and is in the process of working with architects and engineers to prepare plans for a modified layout to allow for these conditions to be satisfied. My client has been safely operating via a drive-through model for the past several months during COVID-19 via a temporary disaster relief authorization from the BCC and PBS, and is therefore already very familiar with how this model works.

In their explanation for Section 5025, the BCC said the exception to the drive-through limitation was necessary to protect existing operators who have already invested in this type of practice:

“Proposed subsection (g) specifies that an applicant or licensee may have a drive-in or drive through window only if, prior to June 1, 2018, the licensee or applicant received local authorization for the activity or applied for a permit from the local authorizing agency. This is necessary to clarify the qualifying circumstances under which an entity may operate a drive-in or drive-through window, which only allows this activity if it was approved or in the approval process before the Bureau’s regulation. This allows licensees who already have invested in this practice to continue those operations.”

(Bureau of Cannabis Control, Initial Statement of Reasons for Medicinal and Adult-Use Cannabis, p. 65-66.<sup>1</sup>)

Kure Wellness is one of those licensees: a legacy operator who had already made plans and investments based on the belief he would be allowed to continue engaging in this type of use. Although the drive-through was not the primary way that most customers picked up their

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<sup>1</sup> Available at [https://bcc.ca.gov/law\\_regs/cannabis\\_isr.pdf](https://bcc.ca.gov/law_regs/cannabis_isr.pdf).

products before the pandemic, the customers who did appreciate having this as an option. More recently, Kure Wellness has obtained temporary emergency relief from the BCC to operate a drive-through due to the COVID crisis, and has been doing so successfully in the months since with Planning and Building Department's knowledge. Since the pandemic began, it's been quite popular, and customers will likely prefer this type of retail experience after the pandemic has subsided.

Drive-through windows are good for many reasons. They keep people isolated in their vehicles, which can be especially important at certain times, such as an infectious disease outbreak where people should practice social distancing or during fire season when the air quality is bad. (This has become all the more apparent over the past year.) They allow people who may not enjoy being in public places to access the products that they need. A drive-through window is also good for elderly customers, who make up a significant portion of cannabis users and who may have limited ability to walk from their car into a store to get their medicine. They're also helpful for people who are in a hurry, or who have a lot of passengers that need supervision.

Kure Wellness is happy to agree to reasonable limitations on when and how the drive-through could be used. Age verification will still be used for any vehicles using the drive-through lane. The purchaser in the vehicle must display a valid ID demonstrating that they are at least 21 years old. Additionally, Kure Wellness is willing to make improvements to the existing driveway and building, such as paving it and installing a new drive-through window, if they're able to continue using the drive-through after COVID-19. They are currently preparing plans for how to modify the facility to comply with the standards applicable to other drive-through facilities in Mendocino County. Kure Wellness would work with the county to ensure that a drive-through window operates safely and does not create a negative impact on the surrounding area. That being said, without knowing for sure whether this use will be allowed post-COVID, my client is hesitant to invest too much money into this given that resources are limited.

Allowing Kure Wellness to offer a safe drive-through option once the COVID pandemic has subsided would not lead to a proliferation of similar facilities in the county, since state law and the BCC's regulations limit them to a very limited set of circumstances which happen to be present here. In fact, this would be one of only a handful of legal drive-through dispensaries in the entire state of California -- it would therefore help promote tourism and become a source of local pride.

Kure Wellness has been serving the Mendocino County community for years, and has invested a significant amount of time and resources into the concept of a drive-through, relying on the "continued operation" provision in §20.243.080 of the county code and prior verbal reassurance of county staff that they could continue with this use. They have also demonstrated

over the past several months during the COVID crisis that they can operate a drive-through safely and successfully with BCC temporary emergency authorization. I therefore ask that Kure Wellness be allowed to continue this type of use on a regular basis once the emergency has ended in accordance with the Mendocino County Code, which does not prohibit this type of use, and Section 5025(g) of the BCC's regulations, which includes an applicable carveout.

Without something like a drive-through to help draw customers in, Kure Wellness' Lake Mendocino Drive location may not be able to survive as it is far from a city center, and focusing on their Ukiah and Willits locations would be a better use of my client's time. That being said, they do not want to give up yet, and are hoping that their concerns can be addressed now that the county is revisiting the cannabis ordinance.

If the Board feels that new language ought to be added to the County Code to account for this circumstance, may I suggest something like the following:

§ 20.243.055. Drive-Through Retail Facilities.

Cannabis retail facilities may not include a drive-through lane or window unless:

- a) They have received temporary permission from the Bureau of Cannabis Control or its successor agency based on a current emergency, and evidence of the permission is sent to Planning and Building Services; or
- b) They are operating in accordance with applicable State cannabis regulations pertaining to drive-through retailers, in which case all requirements applicable to other drive-through facilities in the county must be followed.

Thank you for your time and consideration of this important matter.

Sincerely,



Lauren Mendelsohn, Esq.  
Attorney for Kure Wellness  
[lauren@omarfigueroa.com](mailto:lauren@omarfigueroa.com)

CC: Russel Green  
[terminalc@gmail.com](mailto:terminalc@gmail.com)