



Agenda Report

January 27, 2020

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

**SUBJECT: APPEAL OF PLANNING COMMISSION'S DECISION ON
CONDITIONAL USE PERMIT: CANNABIS RETAILER APPLICATION
#6759 FOR A PROPOSED CANNABIS RETAILER AT 908 EAST
COLORADO BOULEVARD BY INTEGRAL ASSOCIATES DENA, LLC**

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a determination that an Environmental Impact Report (EIR) was certified for the Colorado at Lake Project; that corresponding CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program were adopted for the Colorado at Lake Project; and that there are no substantial changes to the project, changed circumstances, or new information of substantial importance that would trigger further environmental review as documented in an Addendum to the Colorado at Lake Project EIR that addresses the subject Conditional Use Permit. Find also that the proposed project is exempt from environmental review pursuant the California Environmental Quality Act (CEQA) (Public Resources Code §21080(b)(9)) and the State Guidelines for the Implementation of CEQA (California Code of Regulations, Title 14, Chapter 3, §15301, Class 1, Existing Facilities) and §15303, Class 3, New Construction or Conversion of Small Structures), and that there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances.
2. Adopt the required Findings in Attachment A to approve Conditional Use Permit #6759 with Conditions of Approval in Attachment B;

EXECUTIVE SUMMARY:

Integral Associates Dena, LLC is one of the six top-scoring applicants for the commercial cannabis retailer category that were selected to move forward with submittal of a CUP for their proposed dispensary. On June 27, 2019, Integral, submitted a *Conditional Use Permit: Cannabis Retailer* (CUP) application to allow for adult-retail and medicinal sales of commercial cannabis products with ancillary delivery services

within a tenant space in an existing commercial building located at 908 East Colorado Boulevard. On October 23, 2019, the Planning Commission disapproved Conditional Use Permit #6759 via a 4-3 vote. The primary reason articulated for disapproval was that some of the commissioners felt that the proposed location did not comply with Municipal Code Section 17.50.066 D.5.b as it pertains to the 600 foot buffer required between the proposed cannabis retail location to residential zones. Section 17.50.066 D5.b states:

"No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone;"

Disapproval of CUP #6759 is being appealed by the applicant, Integral Associates Dena, LLC. In their October 29, 2019 appeal application (Attachment C), Integral indicated that of the four commissioners that opposed their CUP application, one voted because cannabis is not permitted under Federal law; one because of legislative concerns about cannabis being in an alcohol overlay zone and two misapplied the distance requirements of Section 17.50.066 by applying it to residential uses rather than a residential zone. The appellant claims that the Planning Commission therefore failed to rely on substantial evidence in making its findings and failed to properly apply the Municipal Code.

PROJECT DESCRIPTION:

The applicant, Integral Associates Dena, LLC, submitted an application to allow for retail sales of commercial cannabis at 908 East Colorado Boulevard. The multiple-tenant building is a historic building, constructed in 1926, where renovation of the historic storefront was recently completed. A financial institution is located in the property to the east, Hotel Constance is located to the west, a parking garage is located to the south and various retail, restaurant and commercial uses are located to the north, across West Colorado Boulevard. Integral Associates Dena proposes to occupy a portion of the currently vacant building, utilizing a new tenant space measuring approximately 3,500 square feet. Roof patio dining for the adjacent hotel is located directly above the proposed commercial cannabis retailer. The site shares a 445 stall multi-story parking garage with the adjacent hotel and bank uses. Minor façade work and an interior tenant improvement are proposed. The proposed floor plan for the 3,500 square foot unit identifies that the dedicated sales floor area and point-of-sales will encompass approximately 3,141 square feet with the remaining square footage dedicated for storage and employee-only access areas. The proposed hours of operation are from 7:00 a.m. to 10:00 p.m. Monday through Sunday. Integral has secured twenty-six parking stalls within the shared parking garage which is located directly south of the proposed site. Delivery services via one delivery vehicle are proposed in conjunction with the retail sales and the vehicle is proposed to be parked within a designated parking stall in the shared parking garage.

Site Characteristics:

The subject property is located on the south side of Colorado Boulevard between Mentor Avenue and Lake Avenue. The project site consists of an existing 19,916 square foot building which has been recently restored but was primarily vacant and underutilized in recent years. The site is comprised of one parcel totaling 21,970 square feet (0.504-acre) and is currently improved with one 19,916 multiple-tenant retail building and portions a four-level above grade parking garage. Vehicular access to the site is provided through adjacent driveways via Mentor Avenue and Lake Avenue.

BACKGROUND:

Public Hearing on CUP:

On October 23, 2019, the Planning Commission held a public hearing regarding the requested Conditional Use Permit: Cannabis Retailer application. After carefully considering information from the applicant and public testimony on the proposed application, the Planning Commission voted to disapprove *Conditional Use Permit: Cannabis Retailer* application #6759. Based on the Commission's discussion, the primary reason for disapproval involved variations in the interpretation of Section 17.50.066 D.5.b and how it should be applied. Section 17.50.066 D.5.b states:

"No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone;"

The Commission agreed with staff on where the 'starting point' should be measured from for this distance requirement: the starting point would be the property lines of the proposed cannabis retailer location. But some members of the Commission were not in agreement with where the 'ending point' should be measured as it relates to residential zones. The various interpretations discussed at the public hearing included measuring from the property lines of the proposed cannabis retailer location to:

Interpretation 1: The property lines of the nearest residentially zoned parcel.

Interpretation 2: The nearest residential zone boundary line.

Interpretation 3: The residentially zoned portion of the split zoned parcel which is partly residential and partly commercial.

Interpretation 4: The commercially zoned portion of property lines of split zoned parcels which are partly residential and partly commercial.

ANALYSIS:

The regulations adopted by the voters do not address split zoned parcels nor do they require a minimum distance between a residential use. Rather, they require

dispensaries to be at least 600-feet from a residential zone. The distinction in how this code requirement is implemented and applied is important because of a particular parcel that is split zoned and developed with a condominium building located at 120 South Mentor which is located within the vicinity of the proposed location. The condominium property is split zoned with the southernmost portion being within the RM-48 zone and the northernmost portion of the property zoned as CD-5 AD-2.

Importantly, there are many parcels in the City that are split zoned and the PMC provides guidance on how to apply zoning regulations to split zoned parcels. PMC Section 17.40.055 A. 2: Development on lots divided by district boundaries, Application of Standards, states in pertinent part:

On a lot or site that is divided by a zoning district..., the regulations applicable to each district shall be applied to the area within each district. [Emphasis added]

In this regard, from a zoning perspective, each zone is treated separately and the standards of each zoning district apply independently to each part of the lot within the prescribed zoning district. Therefore, a lot that is zoned both commercial and residential is neither commercially nor residentially zoned, but split zoned and the zoning regulations of each zone must be respected and applied as indicated.

The PMC also provides that zone boundaries extend to the centerline of a street. According to PMC Section 17.20.020 B.4: Interpretation of zoning district boundaries,

District boundaries shown as lying within right-of-way lines of freeways, streets, alleys, railroads, or other identifiable boundary lines shall be construed to follow the centerline of such right-of-way or boundary lines.

The adopted cannabis regulations are imperfect as they require that “No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone.” This language could be interpreted to require dispensaries to be located 600-feet from any residential zone boundary (wherever the boundary falls) or it could be interpreted to require dispensaries to be located 600-feet from the closest residentially zoned parcel. Both are plausible, although staff has applied the former interpretation to cannabis CUP applications submitted by all 6 of the top scoring applicants. Contrarily, given the language of the adopted regulations and related PMC requirements, a reasonable person would not interpret the distance to be measured to the commercial portion of a parcel that is split zoned, because the code explicitly states that individual zone boundaries of a split zoned parcel shall each be respected. In this regard, a third potentially plausible interpretation would be to require dispensaries to be at least 600-feet from the residentially zoned portion of a mixed use parcel.

As indicated in the map below, all three interpretations discussed above result in a code compliant location; however the provisions in the code do not provide for a scenario where a dispensary would be measured to the commercially zoned portion of a split zoned lot.



Interpretation 1: The property lines of the nearest residentially zoned parcel.

Interpretation 2: The nearest residential zone boundary line.

Interpretation 3: The residentially zoned portion of the split zoned parcel which is partly residential and partly commercial.

Interpretation 4: The commercially zoned portion of property lines of split zoned parcels: NOT CONSISTENT WITH ADOPTED REGULATIONS

Staff's interpretation that this code requirement should be measured to the boundary of the nearest residential zone is based upon several factors. First, *staff drafted the regulations that were ultimately approved by the voters in June 2018* and conducted extensive research and outreach leading to voter approval. This level of involvement lends to a reliance on staff for clarification on these code requirements. Details of staff's involvement in the drafting of the regulations date back to two years prior to the passage of Measures CC and DD. Staff presented reports on the topic of cannabis regulations to the Economic Development and Technology Committee ("Ed-Tech") on October 19, 2016, and again on August 23, 2017, when Ed-Tech directed Staff to present the matter to the Planning Commission. In early 2017, prior to the voters' approval of Measures CC and DD regulating commercial cannabis in Pasadena, staff conducted three community outreach events to get input from residents and businesses on the prospect of allowing commercial cannabis businesses and how they should be regulated. Staff also facilitated a Planning Commission study session on the issue on May 24, 2017, and the matter was again presented to the Planning Commission at its September 27, 2017 hearing, which resulted in a recommendation that the City Council adopt amendments to the Pasadena Municipal Code related to personal outdoor cultivation and cannabis deliveries. Ultimately, staff made three cannabis-related presentations to the City Council between November 2017 to February 2018, when the initiative was placed on the ballot.

Based on staff's role in drafting the regulations, staff has determined that the words "*measured from the nearest property lines of each of the affected parcels*" applies only to the property lines of the proposed cannabis retail location, not to property lines within a residential zone and that the measurement should be from the property lines of the proposed cannabis location to the nearest residential zone. Previous reports

and presentations by the City are consistent with this determination because they refer to this distance being measured to residential districts (i.e. 'residential zones') and not to residential property lines. For example, on February 26, 2018, at the direction of the City Council, staff prepared the draft commercial cannabis regulations and presented them for the Council's consideration as an initiative to place on the ballot before the voters. In page 3 of staff's report (Attachment D), staff summarized the proposed location restrictions and stated that applicants for a retailer license:

"Can't be located within 300 feet of any residential zone."

It is common practice for staff to refer back to previous agenda reports when the intent of a regulation is questioned or if a requirement is ambiguous. Referring back to the language in the February 26, 2018 agenda report is necessary and useful because staff prepared both the report and the draft regulations that were presented that evening. These regulations included the language in Section 17.50.066 D.5.b and such language was ultimately placed by the City Council on the ballot for the June 5, 2018 Special Election. The voters approved the City's initiative (Measure CC) at the June 5, 2018 Special Election. Although one can argue that the language in the regulations is ambiguous, when referring back to the report when staff presented the regulations, it is clear that the intent of the requirement is for a 600 foot buffer from the proposed cannabis retailer location to residential zones, and not to residential property lines. Staff's reasoning for protecting residential 'zones' rather than residential property lines is because residential uses are allowed all throughout the City in various non-residential zones, such as mixed-use projects in the Central District as well as multiple-family housing in the CO and CL zones, and it would be impracticable to require a 600 foot buffer to residential uses in non-residential zones as this would result in an ordinance so restrictive that it would be infeasible to find a code compliant location. To protect residential uses in non-residential zones, staff proposed a separate requirement that cannabis operators shall not be located within the same parcel as a mixed-use project if it contains a residential use component. This regulation was also included in Measure CC and prevents a cannabis operator from locating in a non-residential zone within a property that contains a residential use. The cannabis use can, however, locate in any adjacent code-compliant property because there is no required buffer to residential uses in non-residential zones.

Consistency with Other City Documents on the Matter

City Attorney's Office prepares ordinances under the direction of the City Council. Although the regulations for Measure CC were preliminarily drafted by staff, the final regulations were prepared by the City Attorney's Office and approved by the City Council as Ordinance No. 7326 at the February 26, 2018 City Council meeting which placed the regulations on the ballot for the Special Election. As authors of the ordinance, the City Attorney's Office retains a strong understanding of the purpose and intent of the entirety of the City's commercial cannabis regulations. In addition to the language in the February 26, 2018 report prepared by staff, the City Attorney's Office prepared an Impartial Analysis of Measure CC (Attachment E). This analysis is

consistent with staff's report in that it also indicates that the required distance is measured to the residential district (i.e., the zone), not to residential property lines:

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE CC

Measure CC is submitted to the voters by the Pasadena City Council and would amend various provisions of the Pasadena Municipal Code to allow a limited number and types of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations.

Background

On February 26, 2018, the City Council of the City of Pasadena ("Council") approved submission of an ordinance for voter approval to amend the Pasadena Municipal Code ("PMC") to allow a limited number and types of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations.

The Measure

If passed, Measure CC would amend the PMC to allow three types of cannabis permits and a limited number of commercial cannabis businesses citywide as follows: six retailers, four cultivation sites, and four testing laboratories. The Measure includes distance separation requirements consistent with state law, as well as distance separation requirements from each of the businesses and residential districts, and between each of the businesses. The Measure establishes a process for a potential operator to apply

Further, prior to the Special Election, the City created a webpage for Ballot Measure CC to provide voters with access to all information involving the cannabis initiatives. In addition to the summary in the City Attorney's Impartial Analysis, this webpage also includes a summary of the measure and regulations. This summary is consistent with staff's report and with the impartial analysis of the City Attorney in that it also specifies that the required distance is to residential zones, not to residential property lines:

Ballot Measure CC – Commercial Cannabis Regulations

🏠 · Elections 2018 · Ballot Measure CC – Commercial Cannabis Regulations

Shall an ordinance be adopted to allow a limited number of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations, and to repeal the City of Pasadena's current ban on commercial cannabis businesses, provided that: (1) the ordinance shall not take effect unless voters approve a Cannabis Business Tax, and (2) the City Council retains authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities?

[YES / NO]

- This measure would allow a limited number of commercial cannabis businesses to operate within the City of Pasadena. A maximum of 6 retailers, 4 cultivators, and 4 testing laboratories would be allowed to operate in the City at one time. All three types would only be allowed to operate within specific zoning districts. In addition to the respective zoning regulations, retailers could not be located within 1000 feet of any other cannabis retailer or cultivation site, within 500 feet of any testing laboratory, or within 600 feet of any residential zone, or within 600 feet of any park, K-12 school, church, childcare center, substance abuse center, or library.

No arguments were submitted in opposition to any of the four measures.

Lastly, there are various other types of land use categories in the Zoning Code for which distance separations are required. For example, massage establishments, emergency shelters and sexually oriented businesses all require distance separations from residential districts. The separation requirements are intended to provide protections from operational impacts to sensitive receptors or to prevent an overconcentration, or both. Based on the consistency in how regulation 17.50.066 D.5.b of the Pasadena

Municipal Code is explained and summarized in the February 26, 2018 staff report to the City Council, in the City Attorney's Impartial Analysis of Measure CC, on the City's webpage for Measure CC and consistent with the distance requirements for other land use categories, it is staff's determination that the intent of this regulation is clear in that it is to require a 600 foot buffer between the property lines of the proposed cannabis retailer location to the boundaries of any residential zoning district.

There was no intent that the cannabis retail use be separated from a residential use. The current regulations allow cannabis retail in zones that allow both commercial and residential uses, such as the Central District. The only specific restriction is not allowing cannabis retail on a parcel that has a mixed-use development. There was no intent to separate the cannabis use from residential use. Protections were placed from a residential zone. However, the regulations could be interpreted to required distance from a residentially zoned parcel, in either case, the proposed location is compliant with the distance separation requirements.

Consistent with staff's recommendation as to how regulation in Section 17.50.066 D.5.b should be applied, if the distance from the proposed location's property line is measured to the nearest boundary of a residential district, then such distance is approximately 602'. This measurement was provided by Integral's land surveyor (Attachment F) and verified by the City's contract land surveyor for accuracy.

Relative to this appeal hearing, there is no required buffer from Integral's proposed location to the portion of the condominium use at 120 South Mentor Avenue that is located within the CD-5 and RM zones; therefore, the location proposed by Integral at 908 East Colorado Boulevard is code compliant with all locations requirements in Section 17.50.066 D of the Pasadena Municipal Code, as shown in the chart that follows:

| Zoning Code Distance Separation Requirements for Cannabis Retailers: | Proposed Location at 908 E. Colorado Blvd. |
|----------------------------------------------------------------------|----------------------------------------------|
| 600 feet to k-12 schools | None exist |
| 600 feet to youth center | None exist |
| 600 feet to day care centers | None exist |
| 600 feet to large/small family daycare | None exist |
| 600 feet to churches | None exist |
| 600 feet to libraries | None exist |
| 600 feet to substance abuse centers | None exist |
| 600 feet to parks | None exist |
| 600 feet to residential zones or residentially zoned parcel | None exist |
| 1000 feet from another cannabis retailer | None exist |
| 1000 feet from a cannabis cultivator | None exist |
| 500 feet from a cannabis testing lab | None exist |
| Not allowed within mixed use projects | Not applicable- not a mixed use property |
| Cap of one per Council District | This is first location in Council District 7 |

The project also meets all other standards and operating requirements of Section 17.50.066 D5 of the Zoning Code including:

| Other Location Requirements and Operating Requirements | Proposed project |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Maximum square footage of use shall not exceed 15,000 sf | The proposed site is a 3,500 sf tenant space |
| Hours of operation limited to 7:00 a.m. and 10:00 p.m., Monday through Sunday | The proposed operating hours are 7:00 a.m. and 10:00 p.m., Monday through Sunday |
| For medicinal cannabis, the retailer shall verify the age and all necessary documentation of each customer to ensure the customer is not under the age of eighteen (18) years and that the potential customer has a valid physician's recommendation. For adult-use cannabis, the retailer shall verify the age of each customer to ensure the customer is not under the age of twenty-one (21) years. | Yes, the applicant has indicated the operations will comply with this requirement. |
| Entrances into the retailer shall be locked at all times with entry strictly controlled. A "buzz-in" electronic/mechanical entry system shall be utilized to limit access and entry to the retailer to separate it from the reception/lobby area. | Yes, the applicant has indicated they will comply with this requirement, which will be verified during the plan check, permitting and inspection process. |
| Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities. | Yes, the applicant has indicated they will comply with this requirement. |
| Retailers may have only that quantity of cannabis and cannabis products reasonably anticipated to meet the daily demand readily available for sale on-site in the retail sales area of the retail facility. | Yes, the applicant has indicated they will comply with this requirement. |
| All restroom facilities shall remain locked and under the control of management. | Yes, the applicant has indicated they will comply with this requirement. |
| A delivery service may operate only as a part of and in conjunction with a permitted retailer. | Yes, the applicant is proposing ancillary delivery service. |
| Based on the size of the proposed tenant space, the applicant is required to secure 11 parking spaces. | Yes, the applicant has secured 26 parking stalls in the adjacent parking garage. |

ENVIRONMENTAL ANALYSIS:

An addendum to the Colorado at Lake EIR (SCH No. 2009051066) (Attachment G) has been prepared for the project. This addendum concludes that there are no new or increased environmental effects, no changed circumstances, and no new information that would trigger further environmental review.

In addition, the proposed project is categorically exempt from CEQA in accordance with Public Resources Code §21080(b)(9) and State CEQA Guidelines §15301, Class 1, Existing Facilities. Section 15301 of the State CEQA Guidelines (Class 1) provides a categorical exemption for the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." Section 15303 of the State CEQA Guidelines (Class 3) categorically exempts the "...conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure." The proposed project consists of establishing and operating a retail cannabis dispensary in a

3,500-square-foot tenant space within an existing 19,916-square-foot retail building. Physical changes to the environment are limited to an interior tenant improvement and minor façade work. The proposed retail use is consistent with the former and long-time use of the building/site for retail purposes (dating to approximately 1924) and consistent with the uses allowed in the site's CD-5-AD-2 zone.

There are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. With regard to historic resources, the proposed tenant improvements would not result in a substantial adverse change in the historical significance of the Constance Hotel or the adjacent commercial storefronts. While Integral is proposing tenant improvements to this building, none of the character defining features of the historic storefronts or the Constance Hotel would be demolished or altered. The storefronts would retain their historical significance and their association with the Constance Hotel tower. The project site is not included on any hazardous waste lists compiled pursuant to Government Code Section 65962.5. The project site is not visible from and would not damage scenic resources within a state scenic highway. Finally, the proposed project would not contribute to any significant cumulative impacts that have occurred as a result of successive projects of the same type in the same place, over time. Since the project fits within the Class 1 and Class 3 categorical exemptions and none of the exceptions to the use of categorical exemptions identified in State CEQA Guidelines Section 15300.2 apply, the project is exempt from CEQA.

Finally, as set forth in the Governor's 2019 budget trailer bill, CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity." The budget trailer bill extended this exemption to July 1, 2022.

CONCLUSION:

As indicated in the October 23, 2019 report the Planning Commission (Attachment H), it is staff's conclusion that the findings necessary for approval of the Conditional Use Permit: Cannabis Retailer application to allow the operation of a commercial cannabis retail establishment at 908 East Colorado Boulevard can be made and that the project is in conformance with the purpose of the Zoning Code for properties within the CD zoning district. The project is consistent with all applicable land use regulations, including the requirements outlined in Municipal Code Section 17.50.066 D.5 pertaining to distance separation requirements to sensitive uses. Staff has applied this code requirement by requiring the distance measured from the property lines of the proposed cannabis use to a residential zone. A survey (Attachment F) was prepared by a land surveyor hired by the applicant to verify the distance of the proposed location, 908 East Colorado Boulevard, to the nearest residential zone located along Mentor Avenue south of Green Street, and that survey shows that the proposed location is in compliance with the required 600 foot buffer to residential zoned properties as well as with all other location requirements. The survey was peer-reviewed as part of the CUP application processing and was found to be accurate and consistent with best practices.

The proposed application is also consistent with all goals and policies of the General Plan through the creation of a new land use that provides for the diverse needs of Pasadena's residents in a core commercial district of the City where a variety of retail, restaurant and other service-based amenities are provided. The proposed retail use is compatible with the adjacent land uses and would not result in adverse impacts to the surrounding area.

The application submitted by Integral Associates Dena, LLC is fully compliant with the land use regulations contained in Section 17.50.066 of the Municipal Code and is in compliance with the General Plan and the Central District Specific Plan. There are no restrictions in the General Plan that prohibit the use of this property for retail sales. The sale of commercial cannabis is considered a retail use which furthers the goals and policies of the General Plan, specifically:

- *Land Use Element, Goal 2*
- *Land Use Element Policy 2.3*
- *Land Use Element Goal 25*
- *Land Use Element Policy 25.1*

In addition to the Conditional Use Permit, the applicant must receive approval of a city issued Cannabis Permit and a State license prior to operating. There are a number of additional regulations contained in Title 5 and 8 that are imposed as part of the Cannabis Permit and the applicant must maintain a valid state license at all times. Based on the fact that the proposed location meets all applicable requirements of the Zoning Code staff is recommending approval of CUP #6759 subject to the findings contained in Attachment A and conditions of approval in Attachment B.

General Plan Consistency

The Legislature has mandated that every county and city must adopt a "comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (Gov. Code, § 65300.) The general plan has been aptly described as the "constitution for all future developments" within the city or county. The City of Pasadena's General Plan was updated in 2015. The Land Use Element of the General Plan includes Goals and Policies and Land Use Diagram that broadly identifies the type and intensity of development for every parcel of land in the City.

In approving a Conditional Use Permit, the review authority must find, in part that, "*The proposed use is in conformance with the goals, policies, and objectives of the General Plan...*" Planning and Land Use Case Law provide that, "A given project need not be in perfect conformity with each and every general plan policy. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993)). Moreover, the standard for consistency identified by the State Office of Planning and Research and used by courts holds that a project is consistent with the general plan "if, considering all its aspects, it will further the

objectives and policies of the general plan and not obstruct their attainment." (*Corona, supra*, 17 Cal.App.4th at p. 994, 21 Cal. Rptr. 2d 803) quoting an advisory General Plan Guideline from the state Office of Planning and Research. The Sequoyah case cited above further indicated that in order for a project to be consistent, it must be "compatible with" the objectives, policies, general land uses and programs specified in the general plan.

In this case, the subject property is located within the Lake Avenue subdistrict of the Central District. The City's adopted Land Use Diagram designates the subject property as High-Mixed Use. This classification supports the development of multi-story buildings with a variety of compatible commercial (retail and office) and residential uses. Development is characterized by shared open spaces, landscaping, small to minimal separations between buildings, and shared driveways and parking. Sites may be exclusively commercial, but not exclusively residential. Parking shall be located below or to the rear of the street. Projects constructed at high mixed-use densities may be required to develop pedestrian-oriented streetscape amenities along their primary street frontages, consistent with the improvement concepts and plans defined by the City. The proposed project would establish a new retail use in an area identified by the General Plan for retail uses and specifically meeting the location requirements established by the voters of Pasadena. The project would either further the General Plan Goals, Policies and Objectives or would not impair their ability to be implemented.

Granting the requested Conditional Use Permit is consistent with General Plan Land Use Element Goal 2, Land Use Diversity which encourages the maintenance of existing and development of new land uses that cumulatively provide for the diverse needs of Pasadena's residents and businesses. General Plan Policy 2.3, Commercial Businesses calls for the designation of sufficient land to enable a broad range of viable commercial uses in Pasadena's Central District, Transit and Neighborhood Villages, and commercial corridors. The proposed commercial cannabis retail use will serve both local and regional needs, reducing the needs for residents to travel to adjoining communities for a retail product that was approved by the voters to allow in the City. Additionally, Policy 25.1, Diversity of Uses encourages the development of a broad range of commercial uses. The proposed commercial cannabis retailer is a new land use that was approved by the voters of the City of Pasadena offering this new product to Pasadena residents and visitors. Excluding the use is in direct conflict with this General Plan policy that encourages diversification of land uses.

Therefore, staff recommends that the City Council approve the application with the findings in Attachment A with the Conditions of Approval in Attachment B.

FISCAL IMPACT:

Retail Cannabis is subject to taxation per voter approved Measure DD. If the business is established the City would collect sales tax revenue.

NEXT STEPS:

If the City Council approves the CUP, the applicant will need to obtain a Health Permit, a Business License and a local Cannabis Retailer Permit. The applicant would also need to obtain a state license prior to establishing a dispensary at the subject location. Alternatively, the City Council may consider the following actions:

1. Approve the project with modified findings or conditions of approval;
2. Deny the project based on revised findings; or
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Respectfully submitted,



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Director of Planning and Community
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Approved by:



for STEVE MERMELL
City Manager

Attachments: (8)

- Attachment A – City Council Findings for CUP #6759
- Attachment B – Conditions of Approval for CUP #6759
- Attachment C – Appeal Submitted by Integral Associates Dena, LLC
- Attachment D – Agenda Report to the City Council dated February 26, 2018
- Attachment E – City Attorney's Impartial Analysis for Measure CC
- Attachment F – Survey Map submitted by Integral Associates Dena, LLC
- Attachment G – EIR Addendum
- Attachment H – Staff Report to the Planning Commission dated October 23, 2019