



Agenda Report

December 16, 2019

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: QUASI-JUDICIAL ACTION - APPEAL OF PLANNING COMMISSION DECISION ON CONDITIONAL USE PERMIT #6757 FOR APPROVAL OF A COMMERCIAL CANNABIS RETAILER AT 169 WEST COLORADO BOULEVARD SUBMITTED BY HARVEST OF PASADENA, LLC (PLN2019-00337)

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) in accordance with and State CEQA Guidelines §15301, Class 1, Existing Facilities, and §15303, Class 3, New Construction or Conversion of Small Structures; no exceptions to the exemptions apply; and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances; and
2. Uphold the Planning Commission's decision approving Harvest of Pasadena, LLC "Conditional Use Permit: Cannabis Retailer" application subject to the Findings contained in Attachment A and the Conditions of Approval contained in Attachment B.

EXECUTIVE SUMMARY:

On June 12, 2019, Harvest of Pasadena, LLC, 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 an existing commercial building located at 169 West Colorado Boulevard. On October 9, 2019, the Planning Commission held a noticed public hearing and approved Harvest of Pasadena's Conditional Use Permit application #6757. Harvest 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. Harvest was also one of three applicants to submit a CUP application for a proposed location in Council

District 3. Due to location restrictions in the cannabis ordinance (Section 17.50.066 D of the Zoning Code), only the first complete application can be processed per council district.

Approval of Harvest's CUP is being appealed by two parties: SweetFlower Pasadena, LLC and The Atrium Group, LLC. The appellants are among the six top-scoring cannabis retailer applicants and both appellants submitted CUP applications for proposed locations in Council District 3. The applications are not being processed because Harvest submitted the first complete CUP for Council District 3. Approval of CUP #6757 means that additional retail locations will not be permitted within Council District 3.

On October 18, 2019 and October 21, 2019, the appellants, SweetFlower Pasadena, LLC and The Atrium Group, LLC, submitted separate *Request for Appeal* applications of the Planning Commission's October 9, 2019 decision to approve CUP #6757 and the determination that the proposed action is exempt from environmental review. In their appeal applications, the appellants cite that the proposed location, 169 West Colorado Boulevard, is in violation of the location requirements of the Pasadena Municipal Code Section 17.50.066 D5, that the CUP application submitted by Harvest of Pasadena was not complete, that the Planning Commission's decision was erroneous and based on regulations not lawfully promulgated and that the proposed location is not consistent with the General Plan and Old Pasadena Specific Plan because the property is considered a 'gateway'.

Staff recommends that the City Council uphold the Planning Commission's October 9, 2019 decision to approve Conditional Use Permit: Cannabis Retailer application #6757.

PROJECT DESCRIPTION:

The applicant, Harvest of Pasadena LLC, submitted an application to allow for adult-retail and medicinal sales of commercial cannabis products with ancillary delivery services within an existing commercial building located at 169 West Colorado Boulevard. The site is located at the northeast corner of Colorado Boulevard and Pasadena Avenue. The single-user building is on a corner property located at the west end of the Old Pasadena sub-district in the Central District. The directly abutting uses include a privately-owned parking lot to the north, across Christensen Alley, and retail uses to the east. Various restaurant, retail and commercial uses are located to the south, across West Colorado Boulevard. Minor façade work and an interior tenant improvement are proposed. Harvest of Pasadena proposes to occupy the entire 5,386 square foot building of which approximately 4,296 square feet will be the dedicated sales floor area and 1,062 square feet will be utilized for storage and employee-only access areas. Delivery services via one delivery vehicle are proposed in conjunction with the retail sales and the vehicle will be parked off-site. The proposed hours of operation are from 8:00 a.m. to 9:00 p.m. Monday through Sunday.

Adjacent Uses:

North – Privately-owned parking lot
South – General Commercial
East – General Commercial
West – Vacant, Highway

Adjacent Zoning:

North – CD-1, AD-1 (Central District Specific Plan 1, Alcohol Density Overlay District 1)
South – CD-1, AD-1 (Central District Specific Plan 1, Alcohol Density Overlay District 1)
East – CD-1, AD-1 (Central District Specific Plan 1, Alcohol Density Overlay District 1)
West – PS (Public and Semi Public)

BACKGROUND:

Planning Commission Hearing on CUP:

On October 9, 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 made the necessary findings of fact to approve *Conditional Use Permit: Cannabis Retailer* application #6757 with conditions of approval (see Attachment C, CUP#6757 Planning Commission Decision Letter). The Planning Commission clarified and modified some of the original conditions recommended by staff.

Following the hearing, on Friday, October 18, 2019, SweetFlower Pasadena LLC submitted an appeal of the Planning Commission's decision to approve the Conditional Use Permit and the associated environmental determination to the City Council (Attachment D). The appellant stated that the Planning Commission's approval of the Conditional Use Permit application was erroneous and not legally grounded because the Conditional Use Permit application was not complete, the proposed location is not code compliant and the Planning Commission's decisions were based on regulations not legally promulgated.

A second appeal application was filed on Monday, October 21, 2019 from The Atrium Group LLC (Attachment E). Similar to the appeal filed by SweetFlower Pasadena, The Atrium Group LLC also submitted their appeal on the grounds that the Planning Commission's decision to approve the Conditional Use Permit was erroneous, that the application submitted by Harvest of Pasadena was not complete, that the proposed location is not code compliant and that the decisions of the Director were based on regulations not legally grounded. The Atrium Group, LLC further stated that the proposed location is inconsistent with the General Plan and with the Central District Specific Plan because the proposed location is a 'Central District Gateway'.

ANAYLSIS:

The Planning Commission's October 9, 2019 decision to approve Harvest of Pasadena's *Conditional Use Permit: Cannabis Retailer* application was based on the applicant's adherence to the applicable land use regulations contained in Section 17.50.066 of the Zoning Code (Cannabis Businesses) and the Commission's ability to make the necessary findings of fact applicable to this type of permit application contained in Section 17.60.050. At the hearing, staff presented to the Commission an analysis of Harvest's CUP application which included a recommendation of approval, proposed findings and recommended conditions of approval. The Planning Commission approved the CUP with a 5-3 vote (one of the Commissioner votes for disapproval stated the activity was a violation of Federal law, one Commissioner stated they could not make the required findings and the third did not comment on the reason for disapproval).

In their appeal applications, the appellants have raised questions on the Commission's ability to make several of the required findings and have also made statements about other areas of Harvest's CUP application which are not under the purview of the Planning Commission. The analysis that follows will identify whether each of the appellant's statements are addressed by the required findings or if the statement is not relative to the Commission's decision to approve Harvest's CUP.

Appellants' Statement #1: The Proposed Location is Not Code Compliant

The proposed location meets the requirements of the Zoning Code. The location was approved by the voters of Pasadena under Measures CC and DD in June 2018. The proposed site at 169 West Colorado Boulevard is located within the CD-1, AD-1 (Central District Specific Plan – Old Pasadena, Alcohol Density Overlay District 1) zoning district, where a cannabis retailer use is permitted subject to approval of a Conditional Use Permit. As required in this application, Harvest of Pasadena submitted information that identifies all of the land uses within 600 feet of the site. The land uses were field verified for accuracy by professional land use planners to ensure that there are no sensitive receptors within 600 feet of the proposed location. The City has determined that the information submitted by the applicant is accurate and complete and that the proposed location is compliant with the various zoning and location requirements of Section 17.050.066 D of the P.M.C. for commercial cannabis retailers. The following are the location requirements of the Zoning Code:

Section 17.050.066 D:

5. Location Requirements. Cannabis retailers shall be permitted in only the CO, CL, CG, CD, and IG zoning districts and shall be subject to the following requirements:

- a. No retailer shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retailer or cultivation site, or within 500 feet of any testing laboratory;
- b. 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;
- c. No retailer shall be established or located within a mixed-use development project containing a residential use component;
 - d. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any childcare center, in-home (family day care home), youth-oriented facility, church or faith congregation, or substance abuse center;
 - e. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any park, library, or K-12 school;
 - f. Retailers shall be required to comply with all zoning, land use, and development regulations applicable to the underlying zoning district in which they are permitted to establish and operate as set forth in the Pasadena Municipal Code.

Zoning Code Distance Separation Requirements for Cannabis Retailers:	Proposed Location at 169 W. 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	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 site
Cap of one per Council District	This is first location in CD-3

The Planning Commission considered public testimony in its determination that the proposed use and the proposed location are consistent with the Zoning Code and zoning district. Representatives for both appellants attended the October 7, 2019 public hearing and stated their reasons why the Planning Commission should not approve Harvest's CUP application. The statements made orally by the appellants at the hearing were the same reasons included in this appeal; both appellants stated that a business known as the 'Rudolf Steiner Library Book Shop', located at 110 Martin Alley (map shown in Attachment F), is within 600' of the proposed site and that such business should be considered a 'library' under Section 17.50.066 D of the cannabis ordinance which states the following:

e. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any park, library, or K-12 school.

In their discussion, the Planning Commission reviewed correspondence from the City dated July 2, 2019 to appellant The Atrium Group (Attachment G) which explains that

pursuant to Section 17.50.010 of the Zoning Code and Section 4.109.120 of the Municipal Code, "Library" means "[t]he Pasadena library system and each of the branches thereof...". The Planning Commission concurred that the Rudolf Steiner Library Book Shop is not considered a library and Harvest's proposed location is not within 600' of a sensitive use identified in the ordinance. Harvest's proposed location is code compliant.

Appellants' Statement #2: The location is not consistent with the General Plan and applicable specific plan. The property is located at the Central District Gateway to the Old Pasadena Historic Core.

Both appellants stated that the location proposed by Harvest does not comply with the requirements of the General Plan or the Central District Specific Plan. It is staff's determination that the proposed use in conformance with goals, policies and objectives of the General Plan and the purpose of the Central District Specific Plan.

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 is 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 Old Pasadena subdistrict of the Central District. The City's adopted Land Use Diagram designates the subject property as Medium-Mixed Use. The mixed-use land use classifications are intended to afford the intermixing of housing with non-residential uses. The 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.

In their appeal application, the appellant, The Atrium Group, stated that the Planning Commission erred in finding the sale of cannabis at the proposed location consistent with the General Plan and the Central District Specific Plan because the project is located at the 'Central District Gateway' and that this is not "an inappropriate land use for a prominent access portal to the Old Town District, since Harvest's proposed cannabis store must, by law, exclude families, youths and children". The proposed location at the corner of Colorado Boulevard and Pasadena Avenue is the westernmost boundary of Old Pasadena but it is not a designated "gateway" in the General Plan. Further, neither the General Plan nor the Central District Specific Plan limit the use of properties within the vicinity of gateway areas. The General Plan defines 'gateways' as:

"...prominent points of entry to the City with high quality, distinctive architecture or engineering (consider entry points like the intersection of South Orange Grove Boulevard and West Colorado Boulevard, the Colorado Street Bridge, or North Fair Oaks at Woodbury). Other elements, including art installations, landscaping, and light elements are also encouraged."

The General Plan's definition of a gateway makes no reference to the regulation of land use for properties within gateway areas, rather the General Plan's only guidance relating to gateways focuses on the architecture, design, art, and lighting and dictates that such shall be of high quality. Policy 9.3 of the General Plan further elaborates that gateway improvements shall "incorporate works of artists as components of public improvements at the City's unique gateways". This, again, makes no reference to specific uses and land use regulations.

Goals and policies are included in the General Plan for one specific gateway location only, the West Gateway, located at the western entrance to the City from the

intersection of the 134 and 710 Freeways. The goals and policies for the West Gateway focus on improving the streetscape via landscaping improvements and the establishment of pedestrian linkages from the West Gateway to the Central District. None of those goals and policies for the West Gateway restrict the land use at the location proposed by Harvest.

The Central District Specific Plan includes a planning concept map for the various sub-districts within the Central District. Although the sub-district concept map for Old Pasadena identifies the general vicinity of Harvest's proposed location as the 'Central District Gateway', neither the map nor any of the concepts, objectives or guiding policies within the specific plan exclude, limit or in any form regulate the use of properties due to their location near the Central District Gateway. Further, the proposed use of the property for retail and medicinal sales of cannabis is consistent with the character of the Old Pasadena Historic Core Precinct as described in the Central District Specific Plan which encourages retail uses (emphasis added) within Old Pasadena.

There are no policies or goals in the General Plan, in the Central District Specific Plan nor within the Old Pasadena Sub-District that would restrict the land use of Harvest's proposed location because it is located at an entry point of Old Pasadena. Consistent with Section 17.50.066, the proposed sale of cannabis is considered a 'retail' use which is allowed in the CD zone with the approval of the Conditional Use Permit, City Cannabis Permit and State license. There is nothing in the location requirements that precludes a site that is located on a corner, or at an entry point to a commercial district.

Appellants' Statement #3: The application was not complete and the location map was not prepared by a licensed surveyor.

In their appeal submissions, both appellants raised concerns with several aspects of the cannabis program that are not under the purview of the Planning Commission, and now the City Council as part of this Conditional Use Permit application. The appellants stated that the application submitted by Harvest was not complete because it did not include a copy of the master lease, landlord consent, a map prepared by a licensed surveyor, etc. As previously indicated, the determination of CUP approval is based only upon the ability to make the required CUP findings and the applicant's adherence to the applicable land use requirements in Section 17.50.066 of the Zoning Code (Attachment H). Neither the required findings nor the applicable land use regulations assign the determination of application completeness to the Planning Commission. Rather, Section 17.60.040 F of the Zoning Code describes application completeness and also assigns responsibility for this determination to the Director:

Filing date. The filing date of an application shall be the date on which the Department receives the last submission, map, plan, or other material required as a part of that application by Subsection A., in compliance with Section 17.60.060 (Initial Application Review) and deemed complete by the Director.

Prior to processing the requested CUP, staff reviewed the materials provided and determined that the application was complete. The determination that an application is "complete" is not an appealable determination. An applicant can only appeal the determination that their own application is "incomplete". The application completeness is not related to the CUP before the City Council.

Appellants' Statement #4: The Planning Commission's decision was based on regulations not lawfully promulgated.

In addition to concerns over the Director's determination that Harvest's CUP application was complete (discussed in Statement #3), the appellants have questioned the Director's role in promulgating the *Cannabis Rules & Regulations* which relate to the processing of the CUPs. The appellants have also questioned the Director's role and authority in creating the *Conditional Use Permit: Cannabis Retailer* application, specifically its submission requirements. But none of these statements are relative to the approval of Harvest's CUP because the determination of approval is based only upon the ability to make the required findings and the applicant's adherence to the applicable land use requirements contained in Section 17.50.066 of the Zoning Code. Further, these same concerns about the Director's authority to promulgate rules, to create the CUP application and to create the application requirements have been addressed previously at other cannabis permit-related hearings involving the appellants. Specifically, appellant SweetFlower Pasadena previously appealed the Director's decision that their own CUP application was incomplete.

SweetFlower's appeal was heard at two separately noticed public hearings. The first hearing was held on August 18, 2019 before the Board of Zoning Appeals and the second hearing was held on October 7, 2019 before the City Council. Both the City Council and the Board of Zoning Appeals concurred that the actions taken by the Director relative to promulgation of cannabis rules and creation of the CUP application for the City's commercial cannabis program have been in compliance with the Pasadena Municipal Code. The CUP application and application requirements were established by the Director pursuant to PMC 17.60.040 (d). Pursuant to Section 5.78.190 (*Promulgation of regulations, standards and other legal duties.*) cannabis rules, standards and regulations are administratively established by the City Manager, or his designee, and are effective upon publication on the City's cannabis website. (Attachment I).

ENVIRONMENTAL ANALYSIS:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with State CEQA Guidelines §15301, Class 1, Existing Facilities, and §15303, Class 3, New Construction or Conversion of Small Structures. 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.” In urbanized areas, the Class 3 exemption applies to “commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.” The proposed project consists of establishing and operating a retail cannabis dispensary within an existing 5,386-square-foot retail building. Physical changes to the environment are limited to an interior tenant improvement and minor exterior alterations. The proposed retail use is consistent with the former and long-time use of the building for retail purposes (dating to approximately 1917) and consistent with the uses allowed in the site’s CD-1 zone. The proposed retail use does not involve significant amounts of hazardous substances, and the site is located in a fully urbanized area with all necessary public services and facilities in place.

There are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. The project site (169 West Colorado Boulevard) is within the Old Pasadena Historic District; however, the subject building is non-contributing to the district. The proposed tenant improvements and minor exterior alterations to the building would have no impact on the significance of the Old Pasadena Historic District. 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. Therefore, 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.

CONCLUSION:

The retail sales of cannabis was approved by the voters of Pasadena through the passage of Measures CC and DD. Measure CC contained specific regulations for the use including the requirement for a Conditional Use Permit and specific location requirements. The use is considered a retail use and is allowed in the CO, CL, CG, CD, and IG zoning districts.

The application submitted by Harvest of Pasadena 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. The location proposed by Harvest of Pasadena is located in the CD zone and is not designated as a gateway area in the General Plan. Further 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 #6757 subject to the findings contained in Attachment A and conditions of approval in Attachment B.

FISCAL IMPACT:

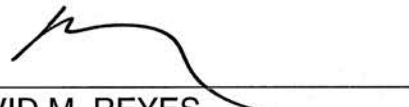
Retail Cannabis is subject to taxation per voter approved Measure DD. If the business is established the City would collect sales tax revenue.

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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Attachments: (9)

- Attachment A – Findings for CUP #6757
- Attachment B – Conditions of Approval for CUP #6757
- Attachment C – CUP #6757 Planning Commission Decision Letter dated October 10, 2019
- Attachment D – Appeal Submitted by SweetFlower Pasadena, LLC dated October 18, 2019
- Attachment E – Appeal Submitted by The Atrium Group, LLC dated October 21, 2019
- Attachment F – Map showing Proposed Site and Rudolf Steiner Bookstore
- Attachment G – Correspondence from the City of Pasadena to The Atrium Group dated July 2, 2019
- Attachment H – Section 17.50.066 of the Zoning Code
- Attachment I – Cannabis Rules and Regulations promulgated by the City Manager