

Agenda Report

March 14, 2022

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: **QUASI-JUDICIAL ACTION - APPEAL OF PLANNING COMMISSION DECISION ON CONDITIONAL USE PERMIT #6921 FOR APPROVAL OF A COMMERCIAL CANNABIS RETAILER AT 827 EAST COLORADO BOULEVARD SUBMITTED BY INTEGRAL ASSOCIATES DENA. LLC AND HARVEST OF PASADENA, LLC AND (ZENT2021-00109)**

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed Conditional Use Permit: Cannabis Retailer application is exempt from environmental review pursuant to 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. This exemption applies to the operation and permitting of uses in existing structures where there is negligible or no expansion of use; and,
2. Uphold the Planning Commission's decision approving Sweetflower Pasadena, LLC "Conditional Use Permit: Cannabis Retailer" application (CUP #6921) subject to the Findings contained in Attachment A and the Conditions of Approval contained in Attachment B.

BACKGROUND:

Sweetflower of Pasadena, 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. Sweetflower was also one of three applicants to submit a CUP application for a proposed location in Council District 3.

On August 8, 2019, Sweetflower submitted a Conditional Use Permit: Cannabis Retailer (CUP) application for adult-retail and medicinal sales of commercial cannabis products with ancillary delivery services within an existing commercial building located at 827 East Colorado Boulevard. Although their CUP application was complete, it could not be processed at that time because Sweetflower's proposed location is located within Council District 3 and, at the time the City had already received and was processing a complete CUP application for another cannabis retailer, Harvest of Pasadena, in Council District 3 at 169 West Colorado Boulevard.

In November 2021, the City Council adopted an ordinance amending Section 17.50.066 of the Zoning Code to allow for up to three cannabis retailers within each Council District and reducing the distance required between cannabis retailers from 1,000 feet to 450 feet. This amendment thus allowed the City to process Sweetflower's August 8, 2019 CUP application.

On January 12, 2022, the Planning Commission held a public hearing regarding the requested Conditional Use Permit. 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 #6921 with conditions of approval (see Attachment D).

Following the hearing, on January 24, 2022, Integral Associates Dena LLC and Harvest of Pasadena LLC submitted an appeal of the Planning Commission's decision and the determination that the proposed action is exempt from environmental review. (Attachment E). The appellants are among the six top-scoring cannabis retailer applicants. Harvest of Pasadena, is located at 169 W. Colorado Boulevard and is completing tenant improvements prior to opening. Integral Associates Dena, LLC is doing business as 'Essence' and is currently operating at 908 E. Colorado Boulevard.

The appellants cite that the Planning Commission's decision violated CEQA and the required findings for the CUP cannot be made. An analysis of the appellant's statements is contained further in this report. Staff recommends that the City Council uphold the Planning Commission's January 12, 2022 decision to approve Conditional Use Permit: Cannabis Retailer application #6921.

PROJECT DESCRIPTION:

The applicant, Sweetflower 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 827 East Colorado Boulevard on the north side of East Colorado Boulevard, between North Hudson and South Lake Avenues. The single-story, non-historic commercial building was constructed in 1923 and has been utilized for various retail and restaurant uses. The building has been substantially altered through the years.

The 3,200 square foot building contains two units, one of which is currently occupied by a Subway restaurant. Sweetflower proposes to occupy the remaining vacant 1,414 square foot unit. Four of the seven on-site parking spaces at the rear of the site will be utilized by Sweetflower.

The floor plan identifies that the dedicated sales floor area and point-of-sales will encompass 359 square feet. The remaining square footage, approximately 1,045 square feet, is allocated to storage, receiving, offices and employee-only access areas. The proposed hours of operation are from 8:00 a.m. to 10:00 p.m. Monday through Sunday.

Adjacent Uses:

North: Multiple-Story Office Building
South: Multiple-Story Office Building, Bank
East: Print and Mailing Center, vacant retail building
West: Fast-Food Restaurant, Print Shop, Music Shop

Adjacent Zoning:

North: CD-5 (Central District 5 – Lake Avenue)
South: CD-5, AD-2 (Central District 5 – Lake Avenue, Alcohol Density Overlay District 2)
East: PD-10, AD-2 (Planned Development 10 – Colorado/Lake, Alcohol Density Overlay District 2)
West: CD-5, CD-4 (Central District 5 – Lake Avenue, Central District 4 – Pasadena Playhouse)

ANALYSIS OF APPELLANTS STATEMENTS:

The Planning Commission's January 12, 2022 decision to approve Sweetflower 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 Sweetflower's CUP application which included a recommendation of approval, proposed findings and recommended conditions of approval. The Planning Commission unanimously approved the CUP. See Attachment C for the complete Planning Commission staff report.

Appellants' Statement #1: CEQA Compliance

1. *The 2021 Cannabis Zoning Code Amendment is a Project and required CEQA Review*

The appellants' appeal includes statements challenging various aspects of CEQA compliance. First, the CEQA exemption approved for the Zoning Code Amendment that

was approved in November 202. The appellants claim that the code amendment constituted a 'project' and is not exempt from CEQA review. The amendment increased the number of cannabis retailers allowed per Council District from one to three and reduced the distance required between retailers from 1,000 feet to 450 feet. The overall maximum number of cannabis retailers remained unchanged (a maximum of six cannabis retailers can be permitted).

The appellants cite a Supreme Court Decision (*Union of Medical Marijuana Patients, Inc. v City of San Diego*, 7 Cal. 5th 1171, 1191-1192 [2019]) where the Court found that the City of San Diego's zoning code amendment constituted a 'project' and was subject to CEQA review. However, the key difference and reason why this court decision is not applicable to the City of Pasadena's cannabis amendment, is that prior to San Diego's amendment, cannabis dispensaries were not legal in San Diego. Their amendment allowed up to 36 cannabis dispensaries in the City, with up to four per Council District. San Diego's Ordinance therefore amended the City's zoning regulations to permit the establishment of a sizable number of retail businesses of an entirely new type. The court found that establishment of these new types of businesses is capable of causing indirect physical changes in the environment thus warranting its consideration as a project. The City Pasadena's 2021 cannabis amendment, on the other hand, did not establish a new type of business and did not increase the cap on the total number of cannabis retailers that can be permitted citywide (the cap remains at six citywide).

2. The Planning Commission Erred in the CEQA Determination for CUP #6921

The appeal states that even if the aforementioned Supreme Court decision does not apply to the cannabis code amendment, they believe that the two exemptions approved by the Planning Commission for existing structures (Class 1) and conversion of small structures (Class 3) do not apply to Sweetflower's CUP. The appellants state that these categorical exemptions do not apply because cannabis retail sales is not an "existing use" and thus should only apply to a project that involves negligible or no expansion of an "existing use". Citing various Supreme Court decisions, the appellants' further state that "allowing up to three cannabis dispensaries in a Council District and in closer proximity to one another than 1,000 feet inevitably creates significant environmental impacts, including increased traffic from customers driving to new dispensaries, increased noise, and changed patterns of urban development in the City.

Retail sales of cannabis is considered a retail use. While it is subject to some of the same standards as other general retail uses in the City (i.e., parking, noise, etc.), it does require approval of a Conditional Use Permit and a Cannabis Permit, is subject to strict location requirements for adherence to distances to sensitive uses, and the use is regulated by both the City and State (similar to establishments selling alcohol).

The property does consist of an *existing facility* (a single-story commercial building) that was constructed in 1923 and which has been used for various commercial uses including retail sales, restaurants and service uses. There are no expansions proposed

to accommodate for the proposed cannabis retail use; proposed alterations include an interior tenant improvement and exterior alterations are minor. The previous use of the property was a fast food restaurant known as 'Foodie Cube' which offered to-go Japanese bento box meals. Prior uses of the property include a dry cleaner, retail sales of sewing machines, and other retail uses. Because the property is an existing facility, with only negligible improvements proposed, and it has been previously used for various retail uses in the past, it qualifies for both the Class 1 and Class 3 categorical exemptions.

During the January 12, 2022 public hearing, the appellants' legal counsel further eluded that the City normally conducts traffic, noise and other technical studies even when a project qualifies for a Class 1 or Class 3 categorical exemption. That claim is not correct. The City typically conducts such technical studies when a project qualifies for a Class 32 categorical exemption, which relates to in-fill development projects.

Appellants' Statement #2: Findings

1. *Findings 4 and 5 cannot be made because no environmental review of likely traffic, noise and other environmental impacts was conducted.*

CUP findings 4 and 5 state:

- The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.
- The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

2. *Finding 3 cannot be made because it is not consistent with General Plan Policy 3.1.*

CUP finding 3 states:

- The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.

Specifically, the appellants cite General Plan Policy 3.1 which states "Avoid the concentration of uses and facilities in any neighborhood or district where their intensities, operations and/or traffic could adversely impact the character, safety, health and quality of life".

Staff and the Planning Commission both found that all of the required CUP findings can be made. See Attachment A for the full analysis of the findings. The project qualifies for both the Class 1 and Class 3 categorical exemptions, and as such, technical studies to

determine traffic, noise and other environmental impacts are not required per CEQA. This is a retail use in an existing tenant space that has been used for retail and other commercial activities. The only site improvements are limited to minor tenant improvements.

The findings also reference several General Plan policies that the project is consistent with. Excluding the use would be in direct conflict with this General Plan policy that encourages diversification of land uses. Consistent with Section 17.50.066, the proposed sale of cannabis is considered a 'retail' use that is allowed in the CD-5 with the approval of the Conditional Use Permit, City Cannabis Permit and State license. There is nothing in the location requirements that precludes use of the proposed site for a retail cannabis use.

3. *There is an inconsistency between the General Plan and the current Central District Specific Plan (CDSP) in that the General Plan has changed all of the zoning districts in the Central District but the CDSP has not been updated.*

The City of Pasadena's General Plan was last updated in 2015. The changes to the zoning districts as part of the Central District Specific Plan update are currently proposed and have not yet been adopted. However, there is nothing in the current or proposed Central District Specific Plan that would preclude the proposed retail sales of cannabis. The project would establish a 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. Sweetflower's proposed location at 827 East Colorado Boulevard, is within the CD-5 (Central District – Lake Avenue) zoning district. Retail sales are allowed and are proposed to continue to be allowed.

ENVIRONMENTAL ANALYSIS:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Public Resources Code §21080(b)(9) and 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 3,207 square-foot retail building. Physical changes 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 1923) and consistent with the uses allowed in the site's CD-5 (Central District – Lake Avenue). 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 is within the Central District and 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 district. The project site is not included on any hazardous waste lists compiled pursuant to Government Code Section 65962.5. The project site 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.

CONCLUSION:

The retail sale 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 at the proposed location.

The application submitted by Sweetflower 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. 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 #6921 subject to the findings contained in Attachment A and conditions of approval in Attachment B.

FISCAL IMPACT:

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

Respectfully submitted,



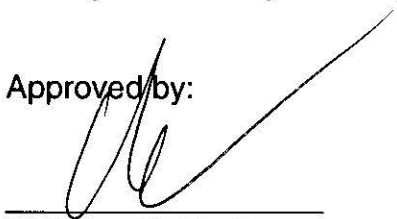
DAVID M. REYES
Director of Planning and Community
Development

Prepared by:



Guille Nunez
Management Analyst IV

Approved by:



Nicholas G. Rodriguez
Assistant City Manager

Attachments: (4)

- Attachment A- Findings for CUP #6921
- Attachment B- Conditions of Approval for CUP #6921
- Attachment C- CUP #6921 Planning Commission Staff Report dated January 12, 2022
- Attachment D- CUP#6921 Planning Commission Decision Letter dated January 13, 2022
- Attachment E- Appeal from Integral Associates Dena, LLC and Harvest of Pasadena, January 24, 2022