



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

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MEMORANDUM

Date: January 23, 2018
To: Cannabis Dispensary Administrative Appeals Panel
From: Albert Lopez, Planning Director
RE: **Appeals of Medical Cannabis Dispensary Permits February 2nd, 2018**

Background

On September 12, 2017, the Alameda County Board of Supervisors approved an ordinance amending Chapter 6.108 of the Ordinance Code, which regulates medical cannabis dispensaries in the Unincorporated Area of the County.

The Ordinance allowed for the approval of up to two (2) Permits for medical cannabis dispensaries in the East County subject to a competitive Request for Proposals (RFP) process. The purpose of the cannabis RFP is to allow for the dispensing of medical cannabis in appropriate locations to help ensure that medical cannabis will be available to patients in need of it while preserving the character, health and safety of the surrounding area.

The RFP was the first of two steps in allowing new dispensaries, to be followed by the standard Conditional Use Permit (CUP) process where site specific impacts can be identified and mitigated. The CUP process includes a public hearing where community concerns can be aired, and adjacent property owners are notified in advance.

RFP applications were due November 13th, 2017, and five (5) total applications were received. In order to conduct the selection process required by the ordinance, a County Selection Committee (CSC) was formed and convened by the CDA Director to review, score and rank the applications. The CSC consisted of the Planning Director, the Director of Environmental Health, and a Commander from the Sheriff's Office. At the completion of the final scoring, the CSC provided their results to the CDA Director, who reviewed and affirmed their conclusions; letters of Notice of Intention to Grant a Permit were mailed on December 15, 2017.

The published RFP required a scoring and ranking, clearly stating that an application with a high weighted total will be deemed of higher quality than an application with a lesser-weighted total. Also, the RFP clearly explained that a site visit and oral interview were an optional 2nd stage of the final evaluation process, thereby allowing the CSC to complete the evaluation process based solely on what was submitted in the applications. After the first stage of scoring and ranking was complete, it was the consensus of the CSC that a site visit and interview would not be necessary. As required by the RFP, successful proposals would be selected based on their responses to a set scoring criteria, including security plan, site

suitability, operating plan, mitigations of potential impacts, environmental considerations and community benefits. The complete results are below:

Rank	Applicant	Average Score	Total Score
1	3220 Andrade/Garden of Eden	373.92	1,121.75
2	Larry Gosselin	330	990
3	DPH Enterprises/Elemental Wellness	327.58	982.75
4	Have a Heart CC	312.42	937.25
5	The Royal Herb	180.15	540.45

Appeals to an Administrative Panel

The RFP process described above included an appeals provision (excerpted on last page of this memo) whereby an appellant may appeal the results of the CSC. The role of the assembled administrative panel is to convene a public session where they can hear directly from the appellant about their appeal, with the panel's decision on the appeal to be issued by the CDA Director within 10 days. As the public session is scheduled for February 2nd, a decision is expected by close of business February 13th, accounting for weekends and County holidays. Staff recommends the panel select a chairperson, and that the forum be similar to other quasi-judicial boards and commissions of the County, and that a decision be made in the public session. Staff will take minutes of the panel, and relay the results of the panel to the CDA Director.

CDA/Planning received three appeals, one from an unsuccessful applicant, and two from adjacent property owners appealing the approval of dispensaries near them. A full description of each appeal is described below, with Planning staff's response to the claims of the appeal following in italics.

(1) Appeal by The Royal Herb/Leslie Flannery PLN2017-224

The appeal letter submitted on January 3, 2018 by Leslie Flannery makes a number of assertions, many of them not related to the RFP scoring process itself. Insofar as the appeal letter relates to specific grievances with the overall RFP and scoring process, those items are described in some detail in the following narrative.

The appeal raises a question about the RFP deadlines.

In preparation for this memorandum, staff consulted the principal staff charged with administering the RFP, and they maintain that all applications were given the same due dates with respect to the Exhibit B (background info) as well as the main Exhibit A proposal, that no exceptions was given to any of the applicants. One date was changed as a result of the Application Information Sessions, in an addendum clearly allowing all the applicants five additional days to submit their Exhibit B material. No applications were received after the stated deadlines.

The Royal Herb also states that it is ready to open a dispensary within 30 days of the permit award, as opposed to the successful applications that require new construction and other site improvements that could take 6-12 months to complete. The appellant asked for a temporary operating permit to conduct business while the other dispensaries are not yet in business..

The RFP did not award points for readiness, and there is no provision in the ordinance for temporary cannabis dispensary permits. It should also be noted that the cannabis ordinance for dispensaries does not allow any two dispensaries to be closer than 5 miles to each other, meaning that unless the ordinance is changed to allow it, a possible dispensary run by Ms. Flannery could not operate at the same time as another nearby dispensary.

The appeal letter also describes negotiations with a property owner (Gosselin) Ms. Flannery and asserts that he (or County staff) should have let her know that Gosselin himself was applying for a permit. Ms. Flannery states the process was unfair to her, asserting that a Gosselin was a “friend” of the County applying for a dispensary permit, and that she should have been informed that Gosselin was applying before risking her application fee.

The identity of the applicants was not known until the applications were received. Neither the ordinance nor the RFP required disclosure of the identity of the applicants to the other applicants.

The appeal letter concludes by asking for a refund of the application fees (\$12,000) based on the grievances described above.

There is no allowance to refund applications fees in the cannabis dispensary ordinance. Fees were paid by all applicants that elected to participate in the RFP process. Significant staff resources were used to administer the RFP including preparation for the current appeals panel hearing.

Recommendation

The panel should review the material provided by the applicant as well as their original proposal and determine whether the appellant has stated adequate grounds for reversing the decision of the CDA Director to deny the permit application.

Note: The following two appeals submitted by adjacent property owners are appealing the grant of a permit to an applicant proposing a site within 1000 feet of their property. The appeals process in the County ordinance is limited to the following actions taken by the County:

1. Finding that an application is incomplete;
2. Determination that an application does not comply with the requirements of Section 6.108.100;
3. Establishment or modification of operating conditions;
4. Denial of a permit; or
5. Suspension or revocation of a permit.

The granting of a permit is expressly not one of the appealable actions. Nevertheless, the appeals were received prior to the appeal deadline and a discussion of the merits of the appeals is provided below for the panel's consideration.

(2) Appeal by the City of Livermore – Granting of permit to Larry Gosselin, 7699 Altamont Pass Rd. PLN2017-227

The City of Livermore submitted an appeal letter on January 2, 2018 in which they make several claims as to why the subject permit should not be granted.

The City states that the manner in which the subject permit was approved is not consistent with certain East County Area Plan (ECAP) policies which encourage a cooperative approach to land use planning (ECAP policy 3), especially if plans or projects have a sub-regional impact (ECAP policy 4). The City states that the County should have coordinated with them more closely because this project falls within the City's Urban Growth Boundary as well as their Sphere of Influence.

Staff has coordinated with the City of Livermore during the ordinance formation process, and the City did submit a comment letter on April 25th of 2017 with several suggestions on how to improve the draft cannabis dispensary ordinance. Some changes were made to the ordinance in response to that letter. Future notice and coordination will occur if and when the subject permittee submits a Conditional Use Permit (CUP) application, at which point the project in its entirety is open for public review and comment, including a public hearing/appeals process. The City is encouraged to participate in that process where concerns listed such as traffic, aesthetics and environmental impacts can be addressed through the CEQA process.

The appeal letter states that the dispensary use is not consistent with the City's General Plan or Municipal code, and claims that due to the proximity to the City, and the Urban Growth Boundary/ Sphere of Influence, that a dispensary conflicts with City land use policy.

The County recognizes that the City boundary is very near the proposed dispensary, but ultimately the site is within the County's jurisdiction and subject to the County's ordinances. If there are specific aspects of the project of concern to the City, the City is encouraged to become involved during the CUP process.

The appeal letter also claims that the dispensary violates the County's own ordinance due to its proximity to Club Moto, a facility for off road motorcycle recreation, where both adults and minors may be present.

The ordinance prohibits a dispensary from being within 1,000 feet of a "recreation center." The CDA Director considered this issue prior to awarding the permit and concluded that the Club Moto business does not fall into this category.

The appeal letter states the County should have completed a complete California Environmental Quality Act (CEQA) review for the Gosselin permit, to assess site specific impacts such as biology, utilities, traffic and public services. The City states that the approval of this permit constitutes a "project" for CEQA purposes and that environmental impacts should have been considered prior to approving the operator permit.

Staff considered this issue and determined that, because the dispensary permit alone does not authorize the permittee to open a dispensary at the proposed site, the County has not approved or committed to the project in a manner that would trigger CEQA review. The RFP selection was the first step to qualify to apply for a CUP, a discretionary land use permit. The required subsequent CUP is a project, and CEQA review will be completed at that time. The City is encouraged to become involved during the CUP process which will include an environmental review.

Finally, the appeal letter expresses concerns with the proximity of the dispensary to the City, and potential for community character impacts, stating that negative associations to the project will be attributed to the City.

The proximity to the City and the specific location at a major freeway interchange were viewed as positive elements of the project, and contributed to its high scoring. If there are specific aspects of the project of concern to the City, they are encouraged to become involved during the CUP process which will include an environmental review.

Staff appreciates the concern of the City that more coordination should take place, and that what happens near the Livermore city limit does impact them, be it positive or negative. Staff believes the County has rightly exercised its jurisdiction in this case and adequately included the City in the early formation of the cannabis dispensary ordinance. The County is committed to having a full and transparent process if the permittee moves forward with applying for a CUP, including public hearings and environmental review.

Recommendation

The panel should review the material provided by the City of Livermore and determine whether the appellant has submitted a valid appeal. If the appeal is considered valid, the panel should determine whether the appellant has stated adequate grounds to reconsider the decision of the CDA Director to approve the permit application.

(3) Appeal by Shartsis Friese LLP/Sunol Ranch LLC – Granting of permit to 3220 Andrade Partners LLC/Garden of Eden, 3220 Andrade Rd, Sunol PLN2017-226

An appeal letter was received signed by an attorney representing Sunol Ranch LLC, objecting to the issuance of the permit, and the operating conditions established therein. The appellant believes the project will pose a safety concern and a disruption to the surrounding neighborhood.

Specifically, the appeal letter states the area around the project is rural and agricultural and is incompatible with a medical cannabis dispensary.

Pursuant to County ordinances, a cannabis dispensary is a conditionally permitted use in the A – Agricultural zone, and this location is within the A zone. The site under consideration is now a vacant driving range and has been out of business for several months. Adapting the building to a new use, and utilizing existing infrastructure (i.e. access roads and parking lot) were considered positive elements of the project, reflected in it receiving the highest score.

The appeal letter also states the site is near numerous residences with young children, and is incompatible with the operation of a medical cannabis dispensary.

There are no distance restrictions in the cannabis dispensary ordinance that would preclude a dispensary from operating at the proposed location. The site is not in a residential zone, and is not incompatible with the existing context.

The appeal includes concerns about traffic and loitering, suggesting the operation will have detrimental impacts on the immediate neighborhood.

The subsequent Conditional Use Permit process can control for these operational aspects that may be a concern. A CEQA review will be part of the process and will likely include a traffic analysis. Loitering is not permitted as part of the basic set of operational standards, and will be further emphasized during the CUP process. The appellant is encouraged to participate in the CUP deliberations that will include a public hearing at both the Sunol Advisory Council as well as the East County Board of Zoning Adjustments.

Finally, the appeal letter states that customers of the dispensary may use cannabis after leaving the dispensary and will drive impaired along nearby roads and freeways, leading to an increase in traffic accidents.

Driving under the influence of cannabis is illegal in California, even though cannabis is now legal for adult use. Operating conditions for new dispensaries includes language that prohibits ingestion on-site, including the parking lot, which will discourage impaired driving. The appellant is encouraged to participate in the CUP deliberations that will include a public hearing at both the Sunol Advisory Council as well as the East County Board of Zoning Adjustments.

Generally, this appeal is not opposed to cannabis dispensaries in East County, but believes other, more suitable locations may exist. There are concerns with this specific location, and the appeal letter concludes by asking that if the permit is issued, that operating conditions be modified to better address the safety and disruption concerns set forth above.

Recommendation

The panel should review the material provided by Sunol Ranch LLC and determine whether the appellant has submitted a valid appeal. If the appeal is considered valid, the panel should determine whether the appellant has stated adequate grounds to reconsider the decision of the CDA Director to approve the permit application.

Attachments:

- Appeal letters submitted
- Map of Dispensary applications received
- Copy of applications subject to appeal
- Copy of scoring sheets for applications subject to appeal
- Copy of Cannabis Dispensary RFP
- Copy of Cannabis Dispensary Ordinance 6.108 (includes standard conditions for dispensaries)

Excerpts of the Medical Cannabis Dispensary Ordinance explaining the appeals process:

6.108.130 - Appeal from administrative determinations.

A. An appeal may be filed by an applicant, permittee or the owner or occupant of property within one thousand (1,000) feet of any existing or proposed dispensary or by an applicant, permittee or owner or occupant of property within the unincorporated area of the County for any existing or proposed delivery operation.

B. Any appellant may appeal an administrative determination that is made in relation to any of the following actions:

- 1. Finding that an application is incomplete;**
- 2. Determination that an application does not comply with the requirements of Section 6.108.100;**
- 3. Establishment or modification of operating conditions;**
- 4. Denial of a permit; or**
- 5. Suspension or revocation of a permit.**

C. Any appeal shall be filed with the director within ten days after the date of the notice of any such administrative determination.

D. Within ten days after the filing of an appeal, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal.

E. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final.

6.108.140 - Administrative review of appeal.

A. Within thirty (30) days after the filing of an appeal of an administrative determination, the director shall convene a panel consisting of one or more representatives of the county administrator, community development agency, health care services agency, and the sheriff at which the appeal shall be heard in public session. The appellant and any interested parties will be allowed to address the panel regarding the appeal.

B. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the director shall give notice of the decision of the panel. C. Any appellant may file an appeal of the determination of the administrative panel within ten days after the date of the notice of the decision of the administrative panel.

6.108.150 - Hearing by the board of supervisors.

A. Within ninety (90) days after the filing of an appeal of the administrative panel's decision, the board of supervisors shall conduct a hearing of the appeal.

B. At least ten days prior to the hearing of the appeal by the board of supervisors, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal by the board of supervisors. The board of supervisors may give such additional notice of hearing as it deems appropriate in a particular case.

C. The board of supervisors may take any appropriate action upon the original administrative action that was appealed pursuant to Section 6.108.130, including granting or denying the appeal or imposing, deleting or modifying operating conditions of the permit. The decision of the board of supervisors shall be final.