

CITYOF ALAMEDA PLANNING BOARD
DRAFT RESOLUTION

APPROVING USE PERMIT APPLICATION PLN20-0157 TO ALLOW THE OPERATION OF A CANNABIS RETAIL DISPENSARY WITH OFF-SITE DELIVERY SERVICE AT 1616 WEBSTER STREET

WHEREAS, on April 14, 2020, John Ngu on behalf of Alameda Patients Group submitted an application for a Use Permit to allow the operation of a Cannabis Retail Dispensary with off-site delivery service at 1616 Webster Street; and

WHEREAS, on May 12, 2020, the application was deemed complete; and

WHEREAS, the project site is designated as Community Commercial in the General Plan; and

WHEREAS, the project site is located within the C-C, Community Commercial Zoning District, and pursuant to Section 30-10.1(g) of the Alameda Municipal Code (AMC), Cannabis Retail is conditionally permitted in the C-C Community Commercial Zone; and

WHEREAS, the Planning Board held a duly noticed public hearing on June 22, 2020 and reviewed the application for a use permit, PLN20-0157, and all applicable material including public comments.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board makes the following findings in support of the Use Permit approval:

- 1. The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.**

The location of the proposed use is compatible with other land uses in the general neighborhood area, and the proposed operations are harmonious with the community and surrounding development. The proposed land use is a retail use, similar to a pharmacy. Customers visit the business to purchase a product or conduct business. The Cannabis Retail dispensary operations will be conducted entirely within the existing building. Exterior alterations are limited to new signage and window screening which will be operationally harmonious to the surrounding commercial district properties. Both the City's Cannabis Business Ordinance (AMC Section 6-59.1 *et seq.*) and conditions of approval of this permit require the applicant to provide a security plan for review and approval by the Chief of Police, which includes a full-time private security guard to maintain existing conditions in the public right of way adjacent to the business.

- 2. The proposed use will be served by adequate transportation and service facilities including pedestrian, bicycle, and transit facilities.**

The project site is located on Webster Street, which is an urban commercial main street that is fully developed and does not require additional transportation or service facilities on-site. The site is served by AC Transit bus routes 20, 51A, 96, and O. The project conditions of approval require installation of two bicycle racks to increase availability in the Webster Street business district and membership with the Alameda Transportation Management to provide all full-time and part-time employees with one AC Transit EasyPass. Therefore, the proposed use will be served by adequate transportation and service facilities, including pedestrian, bicycle, and transit facilities.

3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy.

The proposed use with all conditions will not adversely affect property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy. The project, through the conditions of approval of this use permit and the Cannabis Business Operator's Permit, will implement a series of Good Neighbor Policies and a security plan to address any potential impacts or nuisances to the surrounding neighborhood. These policies address potential outdoor nuisances including safe exterior lighting; odor control; on-site noticing for patrons to deter smoking, cannabis consumption in public spaces, and littering; and at least one security guard to enforce these policies. Inside the building, the applicant is also required to install odor control, filtration, and ventilation system(s) to control odors, humidity, and mold so that odor generated inside the property is not detected outside the property. Violations of the conditions herein or of the general conditions in AMC Section 6-59.10 are grounds for the City to take enforcement action, including the issuance of administrative citations, and to revoke or modify this use permit.

4. The proposed use relates favorably to the General Plan.

The project relates favorably to General Plan Policy 2.5.a, which calls for providing enough retail business and services to provide Alameda residents with a full range of services; General Plan Policy 2.5.i which calls for supporting, encouraging, and fostering new retail development to serve the West End of Alameda. The project conditions of approval require funding for two new bicycle racks and membership with the Alameda Transportation Management Association, which relates favorably to Implementing Policy 2.5.s, which calls for improving public transit service and transit facilities in retail areas. The funding for bicycle racks will provide new transit facilities within the Webster Street business district and membership in the Alameda Transportation Management Association will result in the distribution of an ACTransit EasyPass to each employee and increase demand for public transit in the Webster Street business district; and

BE IT FURTHER RESOLVED, that the Planning Board finds this project exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15301 (existing facilities) – operation, permitting or leasing of existing private structures involving negligible or no expansion

of use beyond that which exists, each as a separate and independent basis; and

BE IT FURTHER RESOLVED, that the Planning Board hereby approves Use Permit PLN20-0157 for a cannabis retail dispensary with off-site delivery service, subject to the following conditions:

1. **Approved Uses:** This Conditional Use Permit (PLN20-0157) approves the sale, delivery, or provision of cannabis or cannabis products to customers at the project site, subject to all other applicable regulatory permits, building permits, and licenses. This use permit expressly prohibits onsite consumption of cannabis or cannabis products whether purchased onsite or otherwise.
2. **Hours of Operation:** Business hours shall be limited to between 7:00 AM and 9:00 PM. Deliveries shall not be accepted between the hours of 10:00 PM and 7:00 AM.
3. **Compliance with Plans:** Any modification of this site shall be in substantial compliance with the plans submitted April 14, 2020, drawn by Joseph Olazaba, on file in the City of Alameda Planning, Building, and Transportation Department, except as modified by the conditions listed in this resolution.
4. **Window Screening:** Plans submitted for the Operator's Permit and building permits must show how public facing windows will be screened to obscure view of any display, storage, transfer, or sales activity of cannabis or cannabis products from the public rights-of-way, developed in consultation with the West Alameda Business Association and approved by the Planning Division. Prior to issuance of a Certificate of Occupancy, the applicant shall install the approved method of screening. Any changes to the interior affecting the visibility of product from the public right-of-way shall be submitted for review and approval by the Planning, Building and Transportation Director.
5. **Bicycle Racks:** Prior to issuance of building permits, the applicant shall pay an amount equivalent to the cost to purchase and install two (2) inverted-U style bike racks into the City's bike rack fund. Prior to issuance of Certificate of Occupancy the applicant shall provide two (2) long-term interior bike storage spaces to the satisfaction of the City's Transportation Coordinator.
6. **Alameda Transportation Management Association Membership:** The applicant shall join the Alameda Transportation Management Association (ATMA) that will provide one AC Transit EasyPass or equivalent pass to each full-time and part-time employee of the business. Proof of ATMA membership shall be provided prior to building permit final (Certificate of Occupancy).
7. **Compliance with All Applicable Laws:** Applicant must comply with all applicable laws (as amended), including without limitation, the AMC provisions applicable to the project (including but not limited to AMC Sections 6-59 and 30-10) generally or the use or operation of the project site in particular (commercial cannabis activity), any implementing regulations adopted by the City (as amended), and State law and regulations governing cannabis (as amended), all of which is incorporated by this reference. And, specifically, the applicant must comply with the following:

- a. **Cannabis Business Operator's Permit (Operator's Permit):** The applicant/operator must obtain and maintain an Operator's Permit that is in compliance with AMC Section 6-59.10 et seq.
 - b. **Security/Lighting Plan:** The security plan shall include a lighting plan that ensures adequate lighting for exterior areas outside the premises to the satisfaction of the City, and shall show compliance with applicable law, including subsections (c) (Outdoor Lighting) and (f) (Glare or Heat) of AMC Section 30-5.16 (Performance Standards for New Buildings and Uses) to the satisfaction of the Planning, Building and Transportation Director.
 - c. **Security Guard:** The security plan shall include a list of duties to be carried out by a minimum of one uniformed security guard that will comply with AMC Section 6-59.10(q)(3), in addition to the following requirements:
 - i. Monitor, deter, and report instances of double parking by business patrons directly in front of the business' street frontage.
 - ii. Enforce or address litter cleanup in front of the business' street frontage.
 - d. **Business License.** Obtain a Business License and timely pay all applicable fees required by the Alameda Finance Department.
8. **Posted Notices:** The applicant shall post, provide adequate lighting for, and maintain at all times notices on the premises that provide the following information:
- a. Direct patrons to not litter or block driveways.
 - b. Direct patrons to not block driveways or double park.
 - c. Advise patrons of the prohibition on loitering.
 - d. Advise patrons that smoking or consumption of cannabis or cannabis products is prohibited in public places.
 - e. "No Smoking" signs in compliance with applicable law, including AMC Section 24-11.
9. **Vesting:** This use permit shall terminate one (1) year from the date of its granting, unless actual construction or alteration, or actual commencement of the authorized activities, has begun under all required, valid permits or approvals within such period, including without limitation the granting of a regulatory permit pursuant to Article XVI (Cannabis Businesses) of Chapter VI (Business, Occupations, and Industries) of the Alameda Municipal Code (AMC), hereafter referred to as the Cannabis Business Operator's Permit. Pursuant to AMC Section 30-10.1(l), the applicant may seek a one-time one (1) year extension to the use permit for good cause by filing a written request to the Planning Director along with applicable filing fees but may only do so no earlier than sixty (60) days prior to expiration of the initial one (1) year term.
10. **Compliance with Conditions:** Failure to comply with any conditions stated herein may result in issuance of a citation and/or modification, suspension, or revocation of the Use Permit.

11. **Revocation:** This Use Permit may be modified or revoked by the Planning Board, pursuant to applicable law, including AMC Section 30-21.3d, should the Planning Board determine that: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in violation of the conditions of the Use Permit.
12. **Indemnification:** To the maximum extent permitted by law, the applicant, or its successors in interest, shall, to the furthest extent permitted by law, indemnify, defend at its own expense (with counsel acceptable to the City), and hold harmless the City of Alameda, the Alameda City Council, the Alameda City Planning Board and its respective agents, officers, employees, and volunteers (collectively called "City") from and against any and all liabilities, losses (direct or indirect), damages, claims, expenses, actions, or proceedings (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") of every nature arising out of or in connection with the applicant's work under this use permit, its failure to comply with any of the obligations contained in this use permit, or any approval by the City of Alameda, the Planning, Building and Transportation Department, City Planning Board, or City Council related to this use permit. The applicant hereby agrees to waive rights of subrogation which any insurer of the business may acquire from the business by virtue of payment of any loss in connection with this use permit, and the applicant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The City shall promptly notify the applicant of said Action and the City shall cooperate in such defense. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

NOTICE. The conditions of project approval set forth herein include certain fees and other exactions. Pursuant to Government Code section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and exactions. The applicant is hereby further notified that the 90-day appeal period, in which the applicant may protest these fees and other exactions, pursuant to Government Code section 66020(a) has begun. If the applicant fails to file a protest within this 90-day period complying with all requirements of section 66020, the applicant will be legally barred from later challenging such fees or exactions.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision, by filing with the Planning, Building, and Transportation Department a written notice of appeal stating the basis of appeal and paying the required fees.

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