

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

DENYING APPEAL AND APPROVING USE PERMIT APPLICATION  
NO. PLN20-0160, SUBJECT TO MODIFIED CONDITIONS OF  
APPROVAL, TO ALLOW THE OPERATION OF A CANNABIS  
RETAIL DISPENSARY AT 2416 LINCOLN AVENUE

WHEREAS, on April 8, 2020, Burch Greene on behalf of Alameda NUG Shop submitted an application requesting a Use Permit to allow the operation of a Cannabis Retail Dispensary and Design Review for building and site alterations at 2416 Lincoln Avenue; and

WHEREAS, on July 13, 2020, the application was deemed complete; and

WHEREAS, the subject property is designated as Community Commercial in the General Plan; and

WHEREAS, the subject property is located within the C-C-T (Community Commercial, Theater Combining) 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, on August 17, 2020, the Planning Board held a duly noticed public hearing to review the application, and adopted Resolution PB-20-19 approving a Use Permit to allow the operation of a cannabis retail dispensary at 2416 Lincoln Avenue, subject to findings and conditions of approval. The Planning Board directed the applicant to submit revised drawings for Design Review approval consistent with AMC Section 30-37.3, which was considered by the Planning Board at a public hearing on October 12, 2020; and

WHEREAS, on August 27, 2020, Enrico Meier (Appellant) filed a timely appeal of the Planning Board's decision (Appeal); and

WHEREAS, after giving due notice to the Appellant, the applicant, all interested parties, and the public, the Appeal was considered by the City Council at a public hearing on October 20, 2020; and

WHEREAS, the Appellant, the applicant, supporters of the application, those opposed to the application and interested neutral parties were given the opportunity to participate in the public hearing; and

WHEREAS, the City Council held a de novo public hearing on the Use Permit application at which time the City Council considered the entirety of the record, including all submitted materials and public comments regarding the application and the Appeal, and made findings to approve Use Permit PLN20-0160 as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that this Resolution complies with the California Environmental Quality Act (CEQA), as denying the Appeal and approving Use Permit Application No. PLN20-0160 is exempt from 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 City Council, having conducted a de novo hearing and independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of Use Permit Application No. PLN20-0160, the Planning Board's decision, and the Appeal, hereby denies the Appeal and approves Use Permit PLN20-0160, subject to the findings for approval and modified conditions of approval in this Resolution; and

BE IT FURTHER RESOLVED, that in support of the City Council's decision to approve Use Permit PLN20-0160 for a cannabis retail dispensary at 2416 Lincoln Avenue, the City Council makes the following Use Permit Findings:

- 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 and site improvements will reduce the size of the building, and the project will be operationally harmonious to the surrounding commercial district properties. The proposed work requires Design Review approval, but any changes to the exterior of the building will be finished with materials matching the existing main structure. 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 will improve the currently unpaved rear of the property to provide five new off-street parking spaces for the business. Additionally, the project site is located within the Park Street commercial district, which 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, which all have stops within a quarter mile walking distance. The project conditions of approval require installation of two bicycle racks to increase availability in the Park 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, as conditioned, the proposed use will be served by adequate transportation and service facilities, including pedestrian, bicycle, and transit facilities, in addition to newly constructed off-street parking.

**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. 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. 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 Park 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.

BE IT FURTHER RESOLVED, that the City Council of the City of Alameda hereby approves Use Permit PLN20-0160 for a cannabis retail dispensary at 2416 Lincoln Avenue, subject to the following conditions:

**1. Approved Uses:** This Conditional Use Permit (PLN20-0160) 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 9:00 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 July 7, 2020, drawn by Burch Greene, 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 Downtown Alameda Business Association and approved by the Planning Division. Opaque window screenings shall be limited to the windows on the storefront doors and shall not be used for storefront windows. 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 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. **Off-Street Parking:** Use of off-street parking spaces shall be limited to only customers of the cannabis retail dispensary. Employees shall be informed to not use the off-street parking unless visiting the business as a customer.
8. **Driveway Marking and Signage:** Plans for the building permit shall include details of signage and curb markings at the driveway on Lincoln Avenue to alert pedestrians and motorists of crossing traffic, subject to the approval of the City Engineer and Planning Director. Any approved signage and curb markings shall be installed prior to issuance of Certificate of Occupancy.
9. **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.
10. **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.
11. **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.

12. **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.
13. **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.
14. **Indemnification.** To the maximum extent permitted by law, the applicant (or its successor in interest) shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, its City Council, City Planning Board, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all claims, actions, or proceedings against Indemnitees to attack, set aside, void or annul an approval by Indemnitees relating to this project. This indemnification shall include, but is not limited to, all damages, losses, and expenses (including, without limitation, legal costs and attorney's fees) that may be awarded to the prevailing party arising out of or in connection with an approval by the Indemnitees relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate in the defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding and the applicant (or its successor in interest) shall reimburse the City for its reasonable legal costs and attorneys' fees.

BE IT FURTHER RESOLVED, that the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting of the City Council assembled on the 20<sup>th</sup> day of October 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 21<sup>st</sup> day of October 2020.

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Lara Weisiger, City  
Clerk City of Alameda

Approved as to  
Form:

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Yibin Shen, City Attorney  
City of Alameda

NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision plus extensions authorized by California Code of Civil Procedure Section 1094.6.

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.