



City of Stockton

Legislation Text

File #: 20-7416, Version: 1

COMMISSION USE PERMIT TO ESTABLISH A RETAIL STOREFRONT CANNABIS BUSINESS, ADMINISTRATIVE USE PERMIT TO ESTABLISH A RETAIL NON-STOREFRONT (DELIVERY ONLY) CANNABIS BUSINESS, AND A WAIVER OF CANNABIS BUSINESS LOCATION REQUIREMENTS - ALL CONCERNING A 3,600 SQUARE FOOT COMMERCIAL SPACE AT 7840 WEST LANE, SUITE F (APPLICATION NO. P20-0673)

RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution to:

1. Deny a Commission Use Permit to allow the establishment of a proposed retail storefront cannabis business, in accordance with the findings and subject to the conditions herein;
2. Deny an Administrative Use Permit to allow a retail non-storefront (delivery only) cannabis business, in accordance with the findings and subject to the conditions herein; and
3. Deny a Waiver to reduce the location requirement to separate commercial cannabis businesses from at least 600 feet to approximately 320 feet of a religious facility.

SUMMARY

The applicant, Julian Michalowski (Coastal Retail Lompoc, LLC), submitted a Commission Use Permit (CUP), Administrative Use Permit (AUP), and Waiver application to establish a 3,600-square foot retail storefront cannabis business and a retail non-storefront (delivery only) cannabis business in a Commercial General (CG) zoned parcel, located at 7840 West Lane, Suite F. The site is currently a multi-tenant commercial building with various retail and restaurant businesses occupying neighboring suites (Attachment A - Location Map).

This applicant participated in the 2020 Commercial Cannabis Lottery program and was awarded the opportunity to apply for a Retail Storefront as a general pool applicant. The lottery program controls certain cannabis business expansion by allowing two (2) Retail Storefront permits to apply annually. The expansion of Non-storefront Retail (delivery only) use is not limited and therefore not granted through the Commercial Cannabis Lottery program, there are no permit limits for Non-storefront Retail (delivery only). The Stockton Police Department has reviewed the application, including preliminary security plan, and did not raise any concerns beyond what is included in this staff report regarding the project.

Necessary action to approve or deny the project is in three parts: approval of the CUP, AUP, and location waiver (each with required findings).

The proposed project does not meet the following Commission Use Permit/Administrative Use

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Permit findings of fact:

Finding 1 - The proposed project does not meet the Development Code standards based on not meeting the location requirements.

Finding 5 - The proposed project endangers the public health of underage population in the vicinity due to the adult nature of the land-use.

Finding 6 - The operating characteristics of the proposed use would not be compatible with the existing religious facilities in the vicinity to the adult-use nature of the land-use type.

Stockton Municipal Code (SMC) Section 16.168.050(A) requires that all findings (seven in total) must be made to approve the proposed CUP and AUP, and therefore, staff does not recommend approval of the proposed project.

Further, SMC Section 16.80.195 contains location requirements for both Retail Storefront and Non-storefront retail uses; which are the same. One of the location requirements for these land-uses is to maintain a 600-foot separation from a religious facility, among other sensitive uses, that is not being met by the proposed location. The proposed business location site is approximately 320 feet from three religious facilities, all located at 7743 West Lane. The applicant is requesting a waiver to reduce the location requirement relating to the separation of cannabis businesses from a religious facility. Per SMC Section 16.80.195, location waivers may be waived or reduced as provided in SMC Chapter 16.176; all waiver findings (six in total) must be made to approve the proposed waiver.

The proposed project does not meet the following requirements to support a Waiver from location requirement findings:

Finding 1 - The proposed project causes undue hardship to religious facilities located within 600' of the proposed project.

Finding 3 - The proposed project endangers the public health of underage population in the vicinity due to the adult nature of the land-use.

Finding 4 - The proposed project does not meet the intent of the Development Code standards based on not meeting the location requirements.

Finding 5 - The proposed project does not meet the Development Code standards based on not meeting the location requirements.

Given the close proximity to three religious facilities and the lack of an unusual physical barrier or unique situation where the literal application of the distance requirement is not reasonable, staff recommends denial of the waiver request.

DISCUSSION

Background

On March 5, 2019, City Council approved changes to the City's cannabis regulatory program to: (a)

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align state/local regulation; (b) allow additional businesses types; (c) establish a method to control the pace of new business openings; and (d) establish a method to address historic racial inequities.

New business types were introduced, including manufacturing, distribution, testing laboratories, delivery-only non-storefront retailers, and microbusinesses. The program also included additional cultivators and storefront retailers (dispensaries) as well as an equity program. The changes were to align local regulations with the Medical Cannabis Regulation and Safety Act and the Adult-Use of Marijuana Act of 2016 (Proposition 64). In addition to achieving regulatory consistency, the program was changed to eliminate the limit (i.e. caps) on the total number of Operator Permits regulated by the Stockton Police Department under Stockton Municipal Code (SMC) Chapter 5.100.

For certain permit types where there is concern about the potential impact on public safety, public health, or community character, a controlled expansion was established. A controlled expansion program allows the City and the existing industry to adapt to an evolving industry and gives the City ongoing flexibility to accelerate or decelerate industry expansion over time. The controlled expansion also has the benefit of allowing the City to give preference to equity applicants.

The controlled expansion is accomplished on an annual basis through a lottery process for the following business types:

- a. Two (2) storefront retailer permits
- b. Two (2) cultivation permits
- c. Two (2) volatile-manufacturing permits
- d. Two (2) microbusinesses, which include storefront retail and/or cultivation business types

The lottery includes an equity component to enable Stockton residents from disadvantaged neighborhoods to obtain cannabis business permits. Applicants for the above business types are evenly selected from 1) a general pool of applicants and 2) an equity pool of applicants. Equity pool applicants must meet certain criteria and are also eligible to be a part of the general pool. To qualify as an equity applicant, an applicant must own more than 50 percent of the business, be a resident of Stockton, and meet one of the following: be an Minority Business Enterprise (MBE)/Women Owned Business Enterprise (WBE), live in an opportunity zone, live in the Senate Bill 535 disadvantaged area, or live in a Housing and Urban Department (HUD) designated area.

Julian Michalowski, the applicant of the proposed project, is the successful general pool applicant for a storefront retailer business from the 2020 lottery. The Non-storefront Retail (delivery only) use applicability is not granted through the Commercial Cannabis Lottery program. There are no limits or “caps” to the number of applications that may be approved for the latter cannabis business type.

Present Situation

The applicant, Julian Michalowski (Coastal Retail Lompoc, LLC), requests approval to operate a 3,600-square foot retail storefront and non-storefront retail (delivery only) commercial cannabis business in a Commercial, General (CG) Zone located at 7840 West Lane, Suite F (see Attachment B - Proposed Site Plan).

This site location is within a Commercial, General zoned shopping center which includes service and restaurant uses. The site is located on the south east corner of Hammer and West Lanes.

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Commercially zoned land uses surround the site, with other commercial shopping centers to the north, east and west. A veterinary clinic and vacant lot are south of the property.

The proposed retail storefront and non-storefront retail (delivery only) propose to operate between 7:00 a.m. and 8:00 p.m. Monday through Sunday and will employ eight (8) employees.

The existing commercial shopping center meets the requirement of providing nine (9) parking stalls, one of which is designated an accessible stall. This parking ratio is consistent with the requirements for proposed cannabis businesses and, therefore, is adequate to service the business. The Police Department conducted a preliminary review of the project to ensure there were no immediate security or public safety concerns and none were found.

Staff Analysis

To permit the proposed uses, Planning Commission approval would need to be granted for a Commission Use Permit, an Administrative Use Permit, and Waiver to reduce the required separation from a religious facility from 600 feet to 320 feet. Each request and staff's analysis are provided below.

Commission Use Permit/Administrative Use Permit

When located in a CG Zone, a Commission Use Permit is required for a Cannabis Retailer Storefront and an Administrative Use Permit is required for a Non-storefront cannabis retail (delivery only). The operations of each use would be combined within a single business and within the same building area. As a result, and since the findings required to address each permit type are the same, the following analysis addresses both land use applications.

SMC Section 16.168.050(A) requires that all seven (7) findings of fact must be made in the affirmative to grant approval. Each finding and staff's analysis are as follows:

1. Finding: The proposed use is allowed within the subject zoning district with the approval of a use permit and complies with all other applicable provisions of this Development Code and the Municipal Code, except for the location requirements;

Staff Analysis: The proposed cannabis business types (i.e. uses) are both allowed in the CG Zone. The subject uses would be located within an existing commercial building and, therefore, do not raise a question of conformance with Title 16 development standards, excluding location requirements. Adequate off-street parking spaces are provided for both the existing and proposed uses.

The project does not meet the location requirements as listed in SMC 16.80.195.A.6 which indicate a commercial cannabis retail storefront and non-storefront must be not be located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any park, K-12 school, day care center, youth center, childcare center, child care, in-home (family day care home), **religious facilities**, drug abuse, or alcohol recovery/treatment facility that is in existence at the time the land use permit is issued. The applicant has submitted a waiver request for this requirement. Staff reviewed the request and determined that it does not meet the intent or required findings for approval of such a request. The project location as it relates to the sensitive use (religious facility) is not separated in a manner of unusual

circumstance as required by Code.

2. Finding: The proposed use would maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located;

Staff Analysis: The proposed cannabis business would be situated in a shopping center with several other commercial land uses. It would be aligned with the intent of the shopping center to provide retail options to the community. It would prevent the shopping center from having a vacant unoccupied suite which would help strengthen the integrity of the surrounding area.

3. Finding: The proposed use would be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan;

Staff Analysis: The General Plan Land Use Map designates the subject site as Commercial. The Commercial designation is intended to accommodate a wide variety of commercial uses, including, but not limited to, service uses. SMC Section 16.20.020 Table 2-2 classifies the Cannabis Retail Storefront and the Non-storefront Cannabis Retail Operator Permit (Delivery Only) use within a service use category. Therefore, the proposed use is consistent with the Commercial designation.

Additionally, the project is consistent with General Plan Policy LU-4.2 which states, "Attract employment- and tax-generating businesses that support the economic diversity of the city." The proposed use furthers this policy since it would provide for a business type that generates tax revenue for the City of Stockton's general fund.

4. Finding: The subject site would be physically suitable for the type and density/intensity of use being proposed including the provision of services (e.g., sanitation and water), public access, and the absence of physical constraints (e.g., earth movement, flooding, etc.);

Staff Analysis: The proposed project was reviewed for compliance with all applicable and current Building Code guidelines and found to be in compliance given the nature of the proposed project. No expansion of the building is proposed. The proposed business is retail in nature and will be located within an existing retail commercial building that is currently receiving City services. The location has adequate access from the shopping center and does not require any exterior construction to the building.

5. Finding: The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified, if applicable, would endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, peace, or general welfare of persons residing or working in the neighborhood of the proposed use;

Staff Analysis: The proposed land-use will require the applicant to adhere to all applicable Building Code, Fire Code, and requirements established by the State of California Bureau of Cannabis Control (BCC). The BCC issues annual licenses and monitors Retail Storefronts and Non-Storefront Retail (delivery only) to ensure safety of business practices. The applicant will also be required to obtain and maintain a City of Stockton Operator's Permit that requires the business owner to develop and maintain a security and lighting plan that is reviewed annually

by the City of Stockton Police Department.

However, this project does not meet the location requirements as required by Code and is located within 600 feet of three (3) religious facilities. Although the applicant submitted a request to waive this request, staff did not deem the information provided by the applicant as appropriate to meet the intent nor required findings for a waiver from location requirements.

Religious facilities, among other uses, are deemed a sensitive use per the Stockton Municipal Code (SMC 16.80.195). The proximity of the cannabis retail storefront use to a sensitive use type could endanger the public health of the patrons of the religious facilities by making it more accessible to the underage patrons. The proposed land-use is an adult only (18 years of age and older) establishment. Per California Code of Regulations Title 16, Division 42, the Bureau of Cannabis Control restricts those who enter the premise to be 21 years of age or older, or 18 years of age (with a valid physician's recommendation for medicinal cannabis). Religious facilities have patrons under the age of 18 (eighteen) who would be the most of risk of undue exposure to the proposed business type.

For the above reason, the establishment, maintenance, or operation of the proposed land use activity would endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

6. Finding: The design, location, size, and operating characteristics of the proposed use would not be compatible with the existing and future land uses on-site and in the vicinity of the subject property.

Staff Analysis: The proposed Retail Storefront and Non-Storefront Retail (delivery only) is located in an existing commercial building and no changes have been proposed to the exterior characteristics of the project site. Although the proposed use is commercial in nature, the proximity of the proposed project to three (3) religious facilities, which are considered sensitive uses, preclude this project from compatibility with the existing land uses in the vicinity of the subject property.

7. Finding: The proposed action would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

Staff Analysis: The proposed uses would occur within a portion of an existing commercial building. Therefore, the project is categorically exempt from the CEQA, pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

Waiver

The following location requirements apply to all retail storefront and retail non-storefront (delivery only) commercial cannabis businesses:

- a. Located 300 feet or more, measured from the nearest property lines of each of the affected parcels, of any existing residential zone.
- b. Located 600 feet or more, measured from the nearest property lines of each of the affected parcels, of any park, K-12 school, day care center, or youth center, childcare center, child care,

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in-home (family day care home), **religious facilities**, drug abuse, or alcohol recovery/treatment facility that is in existence at the time the land use permit is issued.

Location requirements may be waived or reduced through approval of a Waiver (as provided in SMC Chapter 16.176). SMC Section 16.80.195 provides that, "Waivers shall only be considered for unique situations where the literal application of the distance requirement is not reasonable. Waiver determinations will be made on a case-by-case basis."

SMC 16.176.040 [Findings and decision] requires that six (6) findings of fact be made in the affirmative to grant approval of a [location] waiver. Each finding and staff's analysis are as follows:

1. Finding: The granting of the waiver shall enable the site to be utilized so that specific standards can be addressed without creating undue hardship.

Staff Analysis: The proposed use is consistent with the intent of the cannabis regulatory program to expand the cannabis industry within the City. However, the proposed project would cause potential undue hardship to the religious facilities that are located within 600' of the proposed project. SMC Chapter 16.80.195 requires a commercial cannabis business to not be located within 600' of several sensitive uses, including religious facilities. The potential undue hardship can include increased crime, exposure to an adult-use (18 years old or older) establishment to underage patrons of the religious facility, and a detriment to public health.

2. Finding: The granting of the waiver shall allow for the economic viability and use of the site.

Staff Analysis: The granting of the waiver will allow for economic viability and use of the site. The proposed uses will provide for a new business to be developed within the Commercial, General (CG) zoning district which is consistent with SMC Chapter 16.80.195 and will allow for the use of a currently vacant building suite.

3. Finding: The granting of the waiver, with conditions that are imposed, will not be detrimental to the public convenience, health, interest, safety, or general welfare of the City or injurious to the property or improvements in the zone or neighborhood in which the property is located;

Staff Analysis: The granting of the waiver will be detrimental to the public convenience, health, interest, safety, or general welfare of the City or injurious to the property or improvements in the zone or neighborhood in which the property is located due to its proximity to sensitive uses. The proposed project is located within 600 feet of three (3) religious facilities. Religious facilities, among other uses, are deemed a sensitive use per the Stockton Municipal Code (SMC 16.80.195). The proximity of the cannabis retail storefront use to a sensitive use type could endanger the public health of the patrons of the religious facilities that are underage (younger than 18 years of age). The proposed land-use is an adult only establishment. Per California Code of Regulations Title 16, Division 42. Bureau of Cannabis Control restricts those who enter the premise to be 21 years of age or older or 18 years of age (with a valid physician's recommendation for medical cannabis). Religious facilities have patrons under the age of 18 (eighteen) who would be the most at risk of undue exposure to the proximity to the business type.

4. Finding: The granting of the waiver will be consistent with the general land uses, objectives,

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policies, and programs of the General Plan, any applicable specific plan, precise road plan, or master development plan, and the intent of this Development Code.

Staff Analysis: The project site is not subject to a specific plan, precise road plan, or master development plan. However, the proposed use does not meet the intent of the Development Code in that it does not meet the location requirements in SMC 16.80.195 and is located within 600 feet of three (3) religious facilities. The California Business and Professions Code, Division 10, Chapter 20, Section 26200, allows for local jurisdictions to enforce local zoning requirements and local ordinance and permitting as it relates to commercial cannabis activity.

5. Finding: The granting of the waiver will not conflict with applicable provisions of the latest edition of the California Building Code <<http://qcode.us/codes/othercode.php?state=ca&code=calbui>> and Fire Code and other applicable Federal, State, and local laws and regulations.

Staff Analysis: The Building & Life Safety Division staff reviewed the proposed project and determined the project may feasibly comply with the referenced codes. However, the proposed use does not meet the intent of the Development Code in that it does not meet the location requirements in SMC 16.80.195 and is located within 600 feet of three (3) religious facilities. The California Business and Professions Code, Division 10, Chapter 20, Section 26200, allows for local jurisdictions to enforce local zoning requirements and local ordinance and permitting as it relates to commercial cannabis activity.

6. Finding: The granting of the waiver will be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. (Ord. 023-07 C.S. Section 120; prior code Section 16-590.040).

Staff Analysis: The granting of the waiver will be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. See CUP/AUP finding No. 7 above.

The City provided the applicant a list of all properties within 600 feet of the proposed project and the applicant provided land-use designations for each of the properties to provide neighborhood context information (Attachment C - Neighborhood Context Information). Staff has also reviewed the information to verify accuracy. This included consideration of land uses not tracked in City databases and a site visit to the surrounding area.

The subject property is located approximately 280 feet from a commercial office center (7743 West Lane) where three (3) religious facilities (Church of Christ, Christian Fellowship Church, and the Vietnamese Presbyterian Church) are located in various suites of the commercial office center. All other location requirements are met. The commercial office building in question is located across the street on the west side of West Lane.

The applicant submitted a request to waive the location requirement (Attachment D - Request to Waive Location Requirement). There is no natural barrier or unique situation that pertains to this project's location. Given these facts, and the lack of all required supportive findings, staff recommends denial of the waiver request.

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On December 17, 2020, the applicant provided supplemental information (Attachment E), which includes a business plan, a letter of support from the property owner, letters of non-opposition from the three (3) religious facilities located within 600 feet of the proposed project, exterior rendering, and an interior design rendering.

Geographic information regarding currently approved commercial cannabis businesses for Retail Storefront businesses, and Non-storefront Retail (delivery only) businesses have been provided as a reference (Attachment F - Existing Retail Storefront Businesses, Attachment G - Existing Non-storefront Retail (delivery only) Businesses). Currently there are no proximity restrictions in the Municipal Code for cannabis commercial businesses and the information is being provided as informational only.

The proposed uses would occur within a portion of an existing commercial building. Therefore, the project is categorically exempt from the CEQA, pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

PUBLIC COMMENT

Although not required by the Stockton Municipal Code, a virtual community meeting was held on October 28, 2020. All property owners within a 300-foot radius of the subject property were invited to the meeting. No staff or community members attended the meeting. The applicant recorded the presentation and made it available to community members by request.

NOTICE

A Public Hearing Notice for this item was published in The Record on January 4, 2021, and a mailed notice has been sent to all property owners within a 300-foot radius of 7840 West Lane, Suite F on January 4, 2021. As of the writing of this report, staff has not received any comment from the public on this project.

Attachment A - Location Map

Attachment B - Proposed Site Plan

Attachment C - Neighborhood Context Information

Attachment D - Waiver Request Memo

Attachment E - Applicant Supplemental Information

Attachment F - Existing Retail Storefront Businesses

Attachment G - Existing Non-storefront Retail (delivery only) Businesses

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