

**CITY OF PALM DESERT
PLANNING COMMISSION
STAFF REPORT**

MEETING DATE: May 21, 2024

PREPARED BY: Carlos Flores, AICP, Principal Planner

REQUEST: CONSIDER REVOCATION OF CONDITIONAL USE PERMIT 2017-0033 FOR THE OPERATION OF A CANNABIS BUSINESS AT 73818 DINAH SHORE DRIVE

RECOMMENDATION:

Adopt Resolution No. 2870 entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM DESERT, CALIFORNIA, REVOKING, IN ITS ENTIRETY, CONDITIONAL USE PERMIT NO. 17-0033 FOR THE OPERATING OF A CANNABIS BUSINESS ON THE PROPERTY LOCATED AT 73818 DINAH SHORE DRIVE"

BACKGROUND/ANALYSIS:

On July 17, 2018, the City of Palm Desert Planning Commission (Commission) adopted Planning Commission Resolution No. 2730 (Reso 2730), which approved Conditional Use Permit 17-0033 (CUP 17-0033) to allow for the operation of a Cannabis Business at 73818 Dinah Shore Drive (APN: 694080007), conditioned upon a total of 25 conditions of approval that needed to be adhered to. The approval also approved both a use and floor plan as presented on the application's statement of operations and site plan.

Department of Cannabis Control Licensing

The State of California Department of Cannabis Control (DCC) is the state licensing and regulatory agency for cannabis businesses. All cannabis operators must obtain a state license after receiving local approvals to operate. In 2023, Thinc Cubed ("Permittee") received the following licenses:

- On January 24, 2023, DCC issued a Commercial Distributor license to the Permittee (License No. C11-0001786-LIC), which allows an operator to move both cannabis and cannabis products between cultivation, manufacturing, or distribution premises, move finished cannabis goods to retail premises, provide storage services to other licensees, and arrange for the testing of cannabis goods.
- On March 8, 2023, DCC issued a Manufacturer Type 7 license to the Permittee (License No. CDPH-10004878), which allows for the use of volatile solvents for extraction or post-extraction processing of cannabis extras, as well as the use of non-volatile solvents and mechanical methods for extraction. A Manufacturer Type 7 license also allows for the infusion, packaging, and labeling of cannabis product.

Project Description:

On November 28, 2023, an explosion and fire damaged the building at 73818 Dinah Shore Drive. This incident caused significant damage to the building's structure and rendered both occupation and operation of the building impossible. The cause of the explosion is still under investigation. The applicant recently submitted building plans for review. However, on January 24, 2024, the Permittee's Commercial Distributor license expired, without renewal from DCC, and on March 8, 2024, the Permittee's Manufacturer Type 7 license expired, without renewal from DCC.

The Permittee did not submit applications to DCC to renew either of these licenses. On May 2, 2024, the City's Department of Development Services was informed by DCC that both of Permittee's licenses had fully expired; meaning they can no longer renew the existing license and must submit a new application to DCC.

Analysis

Pursuant to Palm Desert Municipal Code (PDMC) 25.72.050(J), the Planning Commission is the designated decision-making body authorized to modify, suspend, or revoke a Conditional Use Permit. This decision must be made upon receiving satisfactory evidence and making the finding that the permittee, its agent(s), employee(s), or any person connected or associated with the permittee has committed any one of the following:

- 1) has failed to comply with any applicable provisions of the PDMC, including, but not limited to, the City's building, zoning, and health regulations; or
- 2) has failed to comply with any condition imposed by the Conditional Use Permit; or
- 3) has allowed the existence of or created a public nuisance in violation of the Palm Desert Municipal Code

The findings of fact supporting revocation based on objective substantial information of the record are provided under Section 3 of the attached draft Resolution and are restated below:

Finding 1: The Permittee has failed to comply with the PDMC, including but not limited to the City's building, zoning, and health regulations

Findings of Fact:

- A. Thinc Cubed (Permittee) has not paid required cannabis taxes to the City of Palm Desert since October 2023 (PDMC 3.50.030; PDMC 3.50.040)
- B. The Permittee has not maintained the required state licenses for operation of the cannabis business, as required under PDMC 5.101.030(A). DCC has confirmed that the Permittee's Commercial Distributor license and Manufacturer Type 7 license have both expired. The licenses have both expired for more than sixty (60) days.
- C. Every permittee who surrenders, abandons, or quits the permitted premises after a certificate of occupancy is issued, or who closes the permitted premises for a period exceeding sixty (60) consecutive calendar days after a certificate of occupancy is issued, shall, within sixty (60) calendar days after closing, surrendering, quitting, or abandoning the permitted premises, surrender the permit to the City Manager (PDMC 5.101.100). The DCC issued licenses were not renewed 61 days after the expiration. Additionally, the Permittee has not operated at the building since November 28, 2023 and there have been no construction permits issued to repair the building.

Finding 2: The Permittee has failed to comply with multiple conditions of approval imposed by CUP 17-0033.

Findings of Fact:

The Permittee has violated three (3) conditions of approval of CUP 17-033 per Reso 2730. This includes Conditions of Approval numbers 6, 10, and 15. The following is a list of the conditions of approval, and how the Permittee has failed to comply:

- A. **Condition No. 6:** The cannabis manufacturing use of this property shall not commence until the applicant can provide the City’s Department of Community Development with proof of a license issued by the State Bureau of Cannabis Control. Continued use of the property for cannabis purposes is subject to the applicant maintaining a valid license from the State Bureau and demonstrating ongoing compliance with the City’s cannabis regulatory permit.

Violation 1: The Permittee has not maintained the required state licenses for operation of the cannabis business, as required under PDMC 5.101.030(A). DCC has confirmed that the Permittee’s Commercial Distributor license and Manufacturer Type 7 license have both expired and are no longer eligible to be renewed.

Violation 2: The Permittee has not paid required cannabis taxes to the City of Palm Desert for November 2023 (PDMC § 3.50.030).

Violation 3: The Permittee reported activity in February of 2024 in the Marijuana Enforcement Tracking Reporting Compliance (Metrc) track and trace software, which is a third-party vendor used by DCC, however the business was not in operation at this location.

- B. **Condition No. 10:** The applicant shall comply with all applicable provisions of the PDMC Section 5.101 (Commercial Cannabis Regulatory Permits), 8.38 (Personal Use of Cannabis), and 25.34.120 (Commercial Cannabis Business and Personal Cultivation).

Per PDMC 5.101.100, every permittee who surrenders, abandons, or quits the permitted premises after a certificate of occupancy is issued, or who closes the permitted premises for a period exceeding sixty (60) consecutive calendar days after a certificate of occupancy is used, shall, within sixty (60) calendar days after closing, surrendering, quitting, or abandoning the permitted premises, surrender the permit to the City Manager. The DCC issued licenses (License No. C11-0001786-LIC and License No. CDPH-10004878) were not renewed 61 days after the expiration. Additionally, the Permittee has not operated at the building since November 28, 2023 but is reporting activity.

- C. **Condition No. 15:** Operation of the cannabis business outside of these approvals and conditions shall constitute a violation of the PDMC and shall be enforced pursuant to the provisions in the PDMC. Ongoing violations which are not remedied within a timeframe

established by the Community Development Director may result in revocation of the CUP and Cannabis Regulatory Permit.

The Permittee, having expired DCC issued licenses and not paying the City's cannabis taxes, violates the PDMC and the conditions of approval listed out in Reso 2730. CUP 17-0033 approval requires continued compliance with the conditions of approval from Reso 2730, including maintaining active DCC licenses.

Finding 3: The Permittee has allowed the existence of or created a public nuisance in violation of the Palm Desert Municipal Code.

Findings of Fact:

- A. The November 28, 2023 explosion and fire at 73818 Dinah Shore Drive led to significant damage to the building, that has yet to be repaired and cannot be occupied. However, the Permittee has reported manufacturing activity in February 2024 under the license assigned to this property which has been referred to DCC for investigation. As a result, we deem it a public nuisance, as it poses a risk to the life, health, and safety of the public in accordance with the PDMC.

Environment Assessment/Environmental Review:

The City of Palm Desert, in its capacity as the Lead Agency for this project and pursuant to the California Environmental Quality Act (CEQA), finds and determines that the action is categorically exempt from the provisions of CEQA, per State CEQA Guidelines, Section 15321 – Enforcement Actions by Regulatory Agencies.

This exemption covers actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered, or adopted by the regulatory agency. This action includes the adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective. The action is the revocation of a Conditional Use Permit (entitlement/permit) as a response to the Permittee's violation of Local and State rules and regulations.

Public Input:

Public Notification

Public noticing was conducted for this Planning Commission meeting per the requirements of PDMC Section 25.60.060 and Government Code Sections 65090 to 65094. A public hearing notice was published a minimum of ten (10) days before the hearing date on Friday, May 10, 2024, in The Desert Sun newspaper. Notices were mailed to all property owners within 300 feet of the project site.

Additionally, in accordance with the requirements of PDMC 25.72.050(K) notice was provided via hand delivery and certified mail to the Permittee. This meeting, as required, is occurring within forty (40) days of the City learning of the violation on May 2, 2024.

Findings of Approval:

Findings of Approval for this report can be found in the draft Resolution attached to this report.

LEGAL REVIEW:

This staff report was reviewed by the City Attorney's office.

ATTACHMENTS:

1. Draft Resolution No. 2870
2. PC Resolution No. 2730
3. DCC Email Regarding Expiration
4. Public Hearing Notice
5. Revocation Notice