

PLANNING COMMISSION RESOLUTION NO. 2730

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM DESERT, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR A MANUFACTURING CANNABIS BUSINESS LOCATED AT 73-818 DINAH SHORE DRIVE; AND ADOPTING A NOTICE OF EXEMPTION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
CASE NO: CUP 17-0033**

WHEREAS, the City Council of the City of Palm Desert adopted Ordinance No. 1329, allowing commercial cannabis businesses, including cannabis cultivation and manufacturing, within the City; and

WHEREAS, Ordinance No. 1329 established comprehensive regulations for commercial cannabis businesses, including standards for business operations, and permit requirements; and

WHEREAS, the applicant has submitted a Conditional Use Permit (CUP) and Cannabis Regulatory Permit to operate a retail cannabis business, and provided all required information including a business plan, security plan, neighborhood and community outreach plans, and background information, in accordance with the City's commercial cannabis business requirements; and

WHEREAS, the location of the cannabis manufacturing business is located in the City's "Service Industrial" zoning district and, meets the City's separation and distance requirements, is permitted subject to the approval of a CUP and Cannabis Regulatory Permit; and

WHEREAS, the applicant has demonstrated compliance with the City's 1000-square-foot separation requirements from schools, daycares, and youth centers; and

WHEREAS, nuisance issues, including, but not limited to, odor and security, are mitigated in accordance with the City's cannabis regulations, and the project is conditioned to respond to any issues immediately or be subject to revocation of said cannabis regulatory permit; and

WHEREAS, the project complies with the goals and policies contained in the City's General Plan that promote a diverse, growing, and resilient local economy; and

WHEREAS, pursuant to section 21067 of the Public Resources Code, Section 15367 of the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.); and the City of Palm Desert's ("City's") Local CEQA Guidelines, the City is the lead agency for the proposed project; and

WHEREAS, as the lead agency, the City has reviewed the proposed project and determined that, as the business is locating in an existing developed building and site, that the project is exempt under Section 15301, Class 1 "existing facilities" of the CEQA and that the Planning Commission can adopt a Notice of Exemption of environmental review; and

PLANNING COMMISSION RESOLUTION NO. 2730

WHEREAS, as contained herein, the City has endeavored in good faith to set forth the basis for its decision on the proposed retail cannabis business; and

WHEREAS, all of the findings and conclusions made by the City pursuant to this Resolution are based upon the oral and written evidence before it as a whole; and

WHEREAS, at the said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, the Planning Commission did make the following findings to justify the approval of said request:

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF PALM DESERT, CALIFORNIA, AS FOLLOWS:

SECTION 1. Recitals. The Planning Commission of the City of Palm Desert hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

SECTION 2. Compliance with the CEQA. As the approving authority for the project, the Planning Commission has reviewed and considered the information contained in the application and administrative record on file with the City and available for review at 73-510 Fred Waring Drive, Palm Desert, California. The Planning Commission finds that a Notice of Exemption can be adopted in compliance with the CEQA guidelines (Public Resources Code § 21000 et seq.).

SECTION 3. Findings on Conditional Use Permit. In approving this project, the Planning Commission makes the following findings in accordance with PDMC Section 25.72.050:

1. That the proposed location of the conditional use is in accordance with the objectives of this title and the purpose of the district in which the site is located.

The purpose of the Service Industrial zoning district is to allow the development of traditional business parks that allow for manufacturing, distribution, research and development, and service of products. The proposal to establish a cannabis manufacturing facility at this location complies with the City's goals and the objectives of the zoning designation, and the City's "Commercial Cannabis Business and Personal Cultivation" and the "Commercial Cannabis Business Regulatory Permit" ordinances by providing a detailed business plan, security plan, odor control plan, neighborhood and community outreach plans, and background check information. The conditional allowance of this use at this site complies with the objectives and purpose of the Service Industrial zoning district and exceeds the minimum separation requirements established in cannabis ordinances.

PLANNING COMMISSION RESOLUTION NO. 2730

2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

Voters of the State of California did in November 2016, vote and approve Proposition 64 – the Control, Regulate and Tax Adult-Use of Marijuana Act (AUMA), to allow the adult use of cannabis subject to local ordinances. The City of Palm Desert, in response to the voter-approved law, established a committee to evaluate cannabis business potential in the City and found that cannabis businesses are compatible with other general retail uses subject to conditions to mitigate nuisances, such as odor and security. As designed, and as conditioned, the establishment of a cannabis manufacturing facility at this location will not be detrimental to the public health, safety, or welfare, as the use is designed to include on-site security personnel, video surveillance, a UV filtration, negative air pressure, and charcoal air filters, to mitigate security and odor nuisance concerns.

3. That the proposed conditional use will comply with each of the applicable provisions of this title, except for approved variances or adjustments.

The proposed use complies with the development and use standards of the Service Industrial zoning district, and the requirements listed in the City's comprehensive cannabis regulation. No adjustments of variances are proposed for this use.

4. That the proposed conditional use complies with the goals, objectives, and policies of the City's General Plan.

The proposed retail cannabis use complies with goals and objectives of the City's General Plan, including Goals listed in Chapter 3 of the Land Use and Community Character chapter, including Goals: 5.1, 5.3, 8.1, and Chapter 10 Goal 1.1. In providing a manufacturing space for the manufacturing of cannabis, the applicant is complying with the goals and objectives of the City's General Plan.

SECTION 5. Approval. The Planning Commission hereby approves the applied CUP and Cannabis Regulatory Permit applications for the project.

SECTION 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the City's office at 73-510 Fred Waring Drive, Palm Desert, CA 92260.

SECTION 7. Notice of Exemption. The Planning Commission approves the Project and directs Staff to file a Notice of Determination with the County of Riverside and the State Clearinghouse within five (5) working days of any Project approval.

PLANNING COMMISSION RESOLUTION NO. 2730


PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Palm Desert, California, at its regular meeting held on the 17th day of July 2018, by the following vote, to wit:

AYES: DE LUNA, GREGORY, HOLT, and PRADETTO

NOES: NONE

ABSENT: GREENWOOD

ABSTAIN: NONE



JOSEPH PRADETTO, CHAIRMAN

ATTEST:



RYAN STENDELL,
PLANNING COMMISSION SECRETARY

PLANNING COMMISSION RESOLUTION NO. 2730

**CONDITIONS OF APPROVAL
CASE NO. CUP 17-0033**

DEPARTMENT OF COMMUNITY DEVELOPMENT:

1. The development of the property shall conform substantially with exhibits on file with the Department of Community Development, as modified by the following conditions.
2. The applicant agrees that in the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any of the procedures leading to the adoption of these project approvals for the retail use, or the project approvals themselves, the applicant and City each shall have the right, in their sole discretion, to elect whether or not to defend such action. The applicant, at its sole expense shall defend, indemnify, and hold harmless the City (including its agents, officers, and employees) from any such action, claim, or proceeding with counsel chosen by the City, subject to applicant's approval of counsel, which shall not be unreasonably denied, and at the applicant's sole expense. If the City is aware of such an action or proceeding, it shall promptly notify the applicant and cooperate in the defense. The applicant, upon such notification, shall deposit sufficient funds in the judgment of City's Finance Director to cover the expense of defending such action without any offset or claim against said deposit to assure that the City expends no City funds. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending the said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under the applicable law. As part of the cooperation in defending an action, City and the applicant shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Applicant and City shall each have sole discretion to terminate its defense at any time. The City shall not settle any third party litigation of project approvals without applicant's consent, which consent shall not be unreasonably withheld, conditioned or delayed unless applicant materially breaches this indemnification requirement.
3. In accepting this CUP and operating a business pursuant thereto, the applicant acknowledges that the regulation of the production, distribution, sale, and use of cannabis remains in flux due to the relative novelty of these uses and conflicts with federal law. Applicant agrees that the applicant remains at risk and subject to all changes in federal, state, and Palm Desert regulations, including the possibility of the discontinuance of such uses or the imposition of additional requirements that render continuing operations infeasible, and does not gain a vested right to continue to operate in any particular manner, in any particular place, or at all.
4. The cannabis manufacturing use is limited to this location and the use described herein shall be subject to the restrictions and limitations set forth herein which are in addition to the approved use standards listed in the PDMC, and state statutes now in force, or which hereafter may be in force.

PLANNING COMMISSION RESOLUTION NO. 2730

5. Prior to issuance of a building permit for improvements and use contemplated by this approval, the applicant shall first obtain permits and/or clearance from the following agencies:

Coachella Valley Water District (CVWD)
Burrtec Waste Management
Fire Department

Evidence of said permit or clearance from the above agencies shall be presented to the Department of Building & Safety at the time of issuance of a building permit for the use contemplated herewith.

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.
7. The premises shall be equipped with an odor absorbing ventilation and exhaust system so that odors generated inside the cannabis business is not detected outside of the business, anywhere on adjacent properties, public right-of-way, or in any exterior or interior common areas or tenant spaces. As such, the applicant shall install odor mitigation equipment in accordance with the plans on file as part of this application, and to the satisfaction of the Building Official. Should odor issues arise, the Department of Community Development may require additional odor control measures be employed. At a minimum the applicant shall install the following:
 - A. Air filtration system with odor control that prevent internal odors from being emitted externally.
 - B. Air systems that create negative air pressure between the cannabis business and the exterior.
8. Security features shall be installed within the tenant lease spaces in accordance with the plans on file as part of this application. All security features shall be installed and maintained as specified in the City's Cannabis Regulatory Permit regulations.
9. The applicant is required to have on-site security personnel during business hours. Security personnel shall be licensed with the State Bureau of Security and Investigative Services.
10. The applicant shall comply with all applicable provisions of the PDMC Sections 5.101 (*Commercial Cannabis Business Regulatory Permits*), 8.38 (*Personal Use of Cannabis*), and 25.34.120 (*Commercial Cannabis Business and Personal Cultivation*).
11. Exterior building signs are not a part of this approval. All exterior building signs shall be submitted to the Department of Community Development along with a Sign Application for staff review.

PLANNING COMMISSION RESOLUTION NO. 2730

12. From the public right-of-way, no exterior evidence, other than a building sign to identify the retail operation, of cannabis products is permitted.
13. All mechanical equipment, either roof or ground mounted, shall be screened from public view. All such equipment shall be fully screened by the roof structure, parapet wall, ground mounted walls, berming and/or landscape.
14. Any and all window and door security devices such as metal bars, gates and shutters, shall be installed within the interior of the building and screened from public view.
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.

BUILDING AND SAFETY DEPARTMENT:

16. This project shall comply with the latest adopted edition of the following codes:
 - A. 2016 California Building Code and its appendices and standards.
 - B. 2016 California Residential Code its appendices and standards.
 - C. 2016 California Plumbing Code and its appendices and standards.
 - D. 2016 California Mechanical Code and its appendices and standards.
 - E. 2016 California Electrical Code.
 - F. 2016 California Energy Code.
 - G. 2016 California Green Building Standards Code.
 - H. 2016 California Administrative Code.
 - I. 2016 California Fire Code and its appendices and standards.
17. Dispensaries are a Group B/M occupancy.
18. Access to required toilet facilities for customers shall not pass through areas designated for employee use only such as kitchens, food preparation areas, closets, storage rooms or similar spaces.
19. Submit an exit plan that labels and clearly will show compliance with all required egress features such as, but not limited to, common path of travel, the required number of exits and separation, occupant load, required width, continuity, travel distance, elevators, etc. CBC 1001.1.
20. All exits must provide an accessible path of travel to the public way. (CBC 1027.5 & 11B-206).
21. Provide an accessible path of travel to the trash enclosure. The trash enclosure is required to be accessible. Please obtain a detail from the Department of Building and Safety.
22. All contractors and subcontractors shall have a current City of Palm Desert Business License prior to permit issuance per PDMC, Title 5.

PLANNING COMMISSION RESOLUTION NO. 2730

23. All contractors and/or owner-builders must submit a valid Certificate of Workers' Compensation Insurance coverage prior to the issuance of a building permit per California Labor Code, Section 3700.
24. Address numerals shall comply with Palm Desert Ordinance No. 1265 (PDMC 15.28. Compliance with Ordinance 1265 regarding street address location, dimension, stroke of line, distance from the street, height from grade, height from the street, etc. shall be shown on all architectural building elevations in detail. Any possible obstructions, shadows, lighting, landscaping, backgrounds or other reasons that may render the building address unreadable shall be addressed during the plan review process. You may request a copy of Ordinance 1265 or Municipal Code Section 15.28 from the Department of Building and Safety counter staff.
25. Please contact the Department of Building & Safety Building at (760) 776-6420 regarding the addressing of all buildings and/or suites.