

## **INTRODUCTORY STATEMENT**

Appellant, Kiwi Preschool and Childcare filed a timely appeal on February 1, 2019 to the Planning Commission's approval of a conditional use permit for Fox Den Dispensary at 4036 Montgomery Drive on January 24, 2019.

Appellant filed the Appeal form, which included a list of the grounds upon which the appeal was filed, per the form's instructions. The Appellant also received confirmation from the City Clerk that additional data and evidence could subsequently be presented to the City Council, City Consultant Emmanuel Ursu and the Applicant and become part of the public record as long as any additional information was provided two weeks before the hearing date.

Appellant has not completed its investigation and the information and documents contained herein are what is presently available to the Appellant. It is anticipated that further data and evidence will supply additional facts, add meaning to known facts, and establish entirely new factual and legal contentions, all of which may lead to additions or amendments. The documents submitted today are made at the request of Mr. Emmanuel and are given without prejudice to Appellant's right to produce evidence or data of any subsequently discovered or procured facts, data or other evidence for the Council's consideration.

Additionally, to Appellant's knowledge no appeal hearing date has been set. There was discussion with Mr. Emmanuel that the hearing may occur on April 9, 2019, however to date that has not been confirmed.

## **PERTINENT FACTS**

The subject appeal concerns the conditional use permit ("CUP") that was approved on January 24, 2019 by the Planning Commission for 4036 Montgomery Dr., Suite B. Fox Den Dispensary is the Applicant for this project, and Scott and Vinny Bagala are the owners of the site. The file number is CUP-18-076 and the City Consultant is Emmanuel Ursu.

## **BASIS OF APPEAL**

The CUP was approved even though the findings necessary to approve an application were not met. Contrary to the Planning Commission's approval, the Applicant failed to demonstrate that:

- 1.) The design, location, size and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity;
- 2.) The site is physically suitable for the type, density, and intensity of the use being proposed, including access, utilities, and the absence of physical constraints; and
- 3.) Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.

## **ARGUMENTS IN SUPPORT OF APPEAL**

### **1. The Design, Location, Size and Operating Characteristics of the Proposed Activity Would NOT Be Compatible with the Existing and Future Land Uses in the Vicinity.**

The proposed activity is a medical and adult use retail cannabis dispensary. As stated in the Staff Report, prepared by City Consultant Emmanuel Ursu the Kiwi Preschool ("Kiwi") shares a property line with the proposed project (See Staff Report at Exhibit A.) The Staff Report underemphasizes the proximity of the proposed Project to the dispensary, simply concluding that the Project is consistent with the state and local regulations since the Project will not be within 600 feet of a K-12 school as defined by the Health and Safety Code Section 11362.768. It now falls on the City Council to make the determination as to whether the operation of a medical and adult use retail cannabis dispensary is compatible with the existing Kiwi preschool and daycare of which it will share a boundary line.

#### *Public Policy Supports a Setback for All Children Regardless of Age*

Although, the state law provides authority for local jurisdictions to specify a different radius, the spirit and policy behind the state law is clear. The State Legislature determined that a setback is desirable in certain situations, taking the stance that a retail dispensary is not compatible with schools and children. The Staff Report acknowledges that a 600-foot setback is required for K-12 schools.

Kiwi is a licensed daycare center, which provides after-school tutoring and care for school-aged children (Kindergarten age and older). In choosing this location, Fox Den Dispensary and owners of the property, Scott and Vinny Bagala request that the Santa Rosa City Council members disregard the welfare of society's most vulnerable.

It falls within the City Council's purview to determine whether the operation of a medical and adult use retail cannabis dispensary is compatible with the existing Kiwi preschool. On the basis that Kiwi also tutors and provides care for older children that are protected by the setback requirements and actually shares a boundary with the proposed Project the City Council should exercise its discretion and overturn the Planning Commission's approval of the CUP. (See Written Statement for the Director of Kiwi, Michele MacKinnon at Exhibit B.)

## **2. The Proposed Project and Increased Traffic Will Create an Unsafe Environment for The Children at the Site**

This site is not physically suitable for the type, density, and intensity of the use being proposed. An oversimplified traffic study was prepared by the Applicant. The traffic study acknowledged that the Project would be located on the same site as the Trail House bike shop and café, which already suffers from insufficient parking. The current "nightmare" parking situation was addressed by many during the public comments section of the public hearing in front of the Planning Commission on January 24, 2019. The current parking lot could not handle the additional traffic as contemplated by the Applicant's traffic study. It is also unclear how and by whom traffic and parking will be monitored under the proposed plan.

The anticipated trip generations in the Applicant's traffic evaluation were not based on any direct observance of the actual premises, but instead were estimated using standard rates published by the Institute of Transportation Engineers in Trip Generation Manual, 10th Edition, 2017.

Kiwi is in the process of hiring its own expert to conduct a traffic study, the results of which will be provided to the City Council once it is available prior to the appeal hearing. However, working off the numbers provided in the traffic study prepared by the Applicant, the proposed Project is estimated to result in 448 new daily trips, including 19 trips during the a.m. peak hour and 39 trips during the p.m. peak hours. Per the traffic study these trips represent the increase associated with the Proposed Project compared to the existing volumes which are estimated 41 trips per day, including six trips during the morning peak hour and seven trips during the evening peak hour. This equates to an increase of 992.68% in an already inadequate parking scenario! The traffic study submitted by the Applicant however, concluded that "it would be reasonable to conclude that the change in land use would have a less than significant impact on traffic operation." If a nearly 993% increase in daily trips is not significant, then Kiwi asks, what is?

### *Amount of Anticipated Traffic is Non-Compliant*

The amount of anticipated traffic is not in compliance with commercial land uses and permit requirements. The proposed Project site zoning is CN (Neighborhood Commercial,) "The CN zoning district is applied to areas within and adjacent to residential neighborhoods appropriate for limited retail and service centers for convenience shopping. Uses in these centers are intended to provide for the day-to-day needs of local neighborhoods and workplaces, but not to be of such scope and variety as to attract substantial traffic volumes from outside the neighborhood. New development is encouraged to include both a residential and nonresidential component as noted by Section 20-23.030 (Commercial Land Uses and Permit Requirements). The CN zoning district is consistent with and implements the Neighborhood Shopping Center land use classification of the General Plan."

Here, while CN zoning allows for Cannabis Retail, the fact that the location of the proposed Project would be the most easterly location in Santa Rosa, Kiwi believes it will attract substantial volumes of people and greater traffic than anticipated in the Applicant's traffic study or the Staff Report. As the most easterly proposed dispensary, the proposed Project will be serving the entirety of the Bennett Valley, Oakmont and Kenwood market. This is a geographic area much bigger than the immediate neighborhood. In fact, a recent use permit application filed by Herbal Holistics for a location in Oakmont was recently withdrawn on the basis of similar traffic concerns, including the concern that out-of-area vehicles would be coming to the proposed site. Based on the above, the City Council must make the only responsible determination that the site is not physically suitable for the type, density and intensity of the use being proposed.

### **3. The Proposed Project Would Be Detrimental to Kiwi's Welfare**

The City Council must deny the Applicant's CUP as not doing so would be detrimental to the public interest, health, safety, and welfare of the children at Kiwi. Kiwi does not question the Applicant's resolve and commitment to providing the required security at the proposed Project. However, even a brief internet search demonstrates that unfortunately violence and crime have been documented in association with cannabis dispensaries specifically.

Kiwi understands that the Applicant intends to comply with Zoning Code Section 20-46.050(G) which requires cannabis businesses to provide adequate security. However, the City Council is asked to exercise its discretion in determining whether a proposed location that shares a boundary line with a preschool is an appropriate location for a dispensary even if it determines that the proposed Project is otherwise compliant. The stigma associated with marijuana and the fear of increased crime may diminish the appeal of Kiwi in the eyes of prospective parents who may not wish to enroll their child in a preschool located directly behind a dispensary.

The City Council must make the welfare of society's most vulnerable its priority when evaluating Kiwi's appeal. Kiwi respectfully asks the City Council to do more than just determine whether the proposed Project is compliant, and go the extra step to make the responsible determination as to whether approving the CUP for a dispensary next to a preschool is in the best interest of the children at Kiwi. Although Santa Rosa is not alone in specifying a different radius than the 600-foot setback, this is a unique situation where the City Council is asked to evaluate

whether it is responsible to omit any setback requirement at all, and accept the Planning Commission's decision to approve a CUP in a scenario such as this where the preschool not only is in the vicinity of the proposed Project, but is right next door.

## **CONCLUSION**

Kiwi is not opposed to the legality of the cannabis industry and understands and appreciates the medical and recreational benefits of cannabis, as well as the economic benefits. This appeal is not based on a "NIMBY" argument and is instead based on the position that the findings discussed above have not been met, and therefore the City Council must arrive at the only responsible and sound conclusion and overturn the Planning Commission's approval of the Applicant's CUP. Certainly, not every geographic location proposed for a dispensary will meet the six findings for a CUP, and this one certainly does not.

# EXHIBIT A

Planning Commission Staff Report –  
January 24, 2019

CITY OF SANTA ROSA  
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT FOR PLANNING COMMISSION  
January 24, 2019

**PROJECT TITLE**

Fox Den Dispensary and Delivery

**APPLICANT**

Fox Den, Inc.

**ADDRESS/LOCATION**

4036 Montgomery Dr., Unit B

**PROPERTY OWNER**

436 Montgomery Dr., LLC

(Scott Bagala)

**ASSESSOR'S PARCEL NUMBER**

013-284-012

**FILE NUMBER**

CUP18-076

**APPLICATION DATE**

April 20, 2018

**APPLICATION COMPLETION DATE**

July 2, 2018

**REQUESTED ENTITLEMENTS**

Conditional Use Permit (CUP)

**FURTHER ACTIONS REQUIRED**

Design Review and Sign Permit

**PROJECT SITE ZONING**

CN (Neighborhood Commercial)

**GENERAL PLAN DESIGNATION**

Retail and Business Service

**PROJECT PLANNER**

Emmanuel Ursu

**RECOMMENDATION**

Approval

Agenda Item # 10.2  
For Planning Commission Meeting of: January 24, 2019

CITY OF SANTA ROSA  
PLANNING COMMISSION

TO: CHAIR CISCO AND MEMBERS OF THE COMMISSION

FROM: EMMANUEL URSU, CONSULTING PLANNER  
PLANNING AND ECONOMIC DEVELOPMENT

SUBJECT: FOX DEN DISPENSARY AND DELIVERY

AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended by the Planning and Economic Development Department that the Planning Commission, by resolution, approve a Conditional Use Permit to allow cannabis retail (dispensary) and delivery for medical and adult use.

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EXECUTIVE SUMMARY

Fox Den Dispensary (Project) proposes to operate a cannabis retail and delivery business for medical and adult use (State license Type 10) in approximately 1,773 square feet of an existing 4023 square foot building. Retail and delivery operations of the dispensary are proposed seven days a week between 9 a.m. and 9 p.m. No on-site consumption is proposed.

BACKGROUND

On December 19, 2017, the City Council enacted comprehensive regulations for cannabis (ORD-2017-025), which occurred after the State of California approved the sale of cannabis for adult use.

1. Project Description

The Project is in the northeast quadrant of Santa Rosa on a 0.44-acre site in the Neighborhood Commercial (CN) zoning district. Two existing buildings are developed on the Project site and the proposed operations will be in a 1,773 square foot portion of an existing 4023 square foot, one-story building used for warehouse and storage uses located at the rear of the property. An existing café, bar and bicycle shop, Trail House, occupies the front building on the



property and approximately 2,772 square feet of the warehouse and storage building at the rear of the site. The Proposed dispensary will be located in the western portion of the warehouse and storage building at the rear of the property. Both interior and exterior modifications are required to accommodate the proposed dispensary and delivery operations. Five of the required parking spaces area are proposed inside the building behind a roll-up door and two of the required spaces will be accommodated in the parking lot.

Floor area will be allocated as follows: lobby 288 square feet; retail 918 square feet; and office, prep, vault, hallway, and restroom make up the balance of the space (567 square feet). A total of 22 parking spaces are provided on the project site to meet the parking required for the existing uses and the proposed dispensary. Seven of the 22 spaces are required for the dispensary. Five spaces for both employees and patrons of the dispensary will be in a portion of the existing building and the remaining spaces will be in the existing parking lot. An entry and an exit driveway provide ingress and egress for the site with one-way counter-clockwise circulation through the property around the Trail House building.

#### Dispensary

In compliance with Zoning Code Section 20-46.080(f)(4), the applicant proposes the dispensary to be open to the public from 9:00 a.m. to 9:00 p.m. seven days per week. Deliveries of cannabis products are also proposed during the same hours that the dispensary operates.

A detailed description of the retail and delivery operation is included in the Project narrative provided by the applicant.

#### Cultivation and Distribution

Cannabis cultivation and distribution are not a part of the proposed application.

#### Building Modifications

Exterior modifications include replacing the existing batten and board exterior finish with stucco for the main body of the building and a wide band of weathered barn wood around the top of the walls, replacing an existing roll-up door with a wider roll-up door to provide access to five new parking spaces, adding a new entry door and three windows, new tenant sign and illuminated address sign, lighting, security-monitoring equipment (cameras) and restriping the parking lot to accommodate an additional parking space. New landscaping is also proposed adjacent to the building. Tenant improvements inside the building will create a new tenant space to separate the proposed dispensary from the storage/warehouse areas used by the Trail House and from the new parking spaces and to create the various rooms in the dispensary.

Signs for the business will be required to comply with Zoning Code Section 20-46.080(F) which prohibits cannabis retail facilities from advertising or marketing cannabis products within 1,000 feet of a day care, a school providing instruction in kindergarten or any grades 1 through 12, playground or youth center.

### State Requirements

The applicant will hold a Type 10 State license which allows retail sales and delivery of cannabis products. The Project will be required to adhere to State Bureau of Cannabis Control licensing and operating procedures in addition to operational provisions of Zoning Code Chapter 20-46.

## 2. Surrounding Land Uses

North: Commercial (Restaurant)

South: Commercial (Pre-school, service, restaurant, theatre)

East: Commercial (Service and retail)

West: Commercial (Service)

A variety of commercial uses surround the project site on all sides including commercial services, restaurants, retail shops and a pre-school. The Kiwi Pre-school is located immediately behind the proposed dispensary building and Howarth Memorial Park is located east of the Project site approximately 450 feet.

There are no other cannabis related uses near the Project.

## 3. Existing Land Use – Project Site

A low-lying, single-story warehouse building occupies the rear portion of the site where the dispensary is proposed. The easterly portion of the rear building is currently used by the Trail House business for warehouse and storage purposes. The building at the front of the property is also utilized by Trail House for retail and restaurant/café uses. The portion of the rear building proposed for the Fox Den dispensary is vacant. According to the Trail House website, its café and bar hours are Sunday through Thursday from 7 am to 11 pm and on Friday and Saturday from 7 am to 11 pm and the bike service hours are Monday through Saturday from 9:30 am to 6 pm and on Sunday from 10 am to 5 pm.

## 4. Project History

- On April 18, 2018, the Conditional Use Permit application was submitted to Planning and Economic Development.

- On June 4, 2018, a Neighborhood Meeting was held. Comments are summarized in the Public Comments section of this report.
- On May 31, 2018 the application was deemed incomplete.
- The applicant submitted supplemental information dated June 19, 2018
- On July 2, 2018 the application was deemed complete.
- On October 15, 2018 the application was revised changing the operator from Gravenstein 116, LLC (Solful) to Fox Den, INC.

### PRIOR CITY COUNCIL REVIEW

Not applicable.

### ANALYSIS

#### 1. Santa Rosa General Plan 2035

The site is designated Retail and Business Services on the General Plan Land Use Diagram. This classification is intended to accommodate retail, service, office and restaurant uses. (General Plan p. 2-12)

The following General Plan goals and policies are applicable to the Project:

#### **LAND USE AND LIVABILITY**

LUL-I-1 Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele.

#### **ECONOMIC VITALITY**

EV-A-1 Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets.

EV-A-5 Maintain diversity in the types of jobs available in Santa Rosa to lessen the impact of economic cycles.

EV-D Maintain the economic vitality of the downtown, business parks, offices and industrial areas.

The Zoning Code specifically identifies the Neighborhood Commercial zoning district as a district appropriate for cannabis retail (dispensary) and delivery. Although Cannabis uses are not explicitly addressed in the General Plan, the Neighborhood Commercial zoning district is intended for retail uses with

operational patterns similar to the operational patterns (i.e. traffic, parking, hours of operation) of cannabis retail and delivery, including restaurants, bars, medical uses, pharmacies, and neighborhood centers.

Medical and adult use cannabis retail and delivery are consistent with the General Plan goals and policies of the Retail and Business Services land use designation. Specifically, the proposed dispensary would assist in maintaining the economic viability of the area; broaden the available positions for both full- and part-time employment within the City; and provide a viable commercial service, while ensuring compatibility with the surrounding neighborhoods through proposed conditions of approval and operational and security measures.

2. Other Applicable Plans

Not applicable.

3. Zoning

The Project site is within the Neighborhood Commercial (CN) zoning district, which is consistent with the Retail and Business Services General Plan land use designation. Surrounding zoning districts include:

North: General Commercial

South: Neighborhood Commercial

East: Neighborhood Commercial

West: Neighborhood Commercial

Zoning Code Section 20-23.020(B) describes the purposes of the Neighborhood Commercial zoning district and the manner in which the district is applied as follows:

*“The CN zoning district is applied to areas within and adjacent to residential neighborhoods appropriate for limited retail and service centers for convenience shopping. Uses in these centers are intended to provide for the day-to-day needs of local neighborhoods and workplaces, but not to be of such scope and variety as to attract substantial traffic volumes from outside the neighborhood. New development is encouraged to include both a residential and nonresidential component as noted by Section [20-23.030](#) (Commercial Land Uses and Permit Requirements). The CN zoning district is consistent with and implements the Neighborhood Shopping Center land use classification of the General Plan.”*

Cannabis retail (dispensary) and delivery is an allowed use in the CN zoning district subject to discretionary approval of a conditional use permit when setback no less than 600 feet from a school and from any other cannabis retail use within and permitted by the City of Santa Rosa. "School" as defined by Health and Safety Code Section 11362.768 applies to this section of the Zoning Code.

Zoning Code Chapter 20-46 provides operational requirements for commercial cannabis facilities. The project narrative demonstrates the applicant's building improvement plan and operational plan for compliance with standards relating to requirements of the Zoning Code including security, lighting, odor control and noise.

### **Proximity to Schools**

Both City and State regulations prohibit establishment and operation of a retail cannabis dispensary within 600 feet of a K-12 school as defined by Health and Safety Code Section 11362.768. Herbert Slater Middle School, located at 3500 Sonoma Ave, is the closest school to the Project site and is located approximately 1,500 feet to the south. To determine compliance with the 600-foot separation, measurements are taken from the closest property lines, not from the closest structures. The project is consistent with the state and local regulations.

### **Concentration**

The Zoning Code limits geographic concentration of cannabis retail facilities (dispensaries) by prohibiting dispensaries within 600 feet of each other. There are no other cannabis retail facilities within 600 feet of the subject site; therefore, the Project site is not located in an "over-concentration" area.

### **Employment**

Fox Den will complete background checks on all employees pursuant to State and City regulations. The project narrative, attached to this report, details hiring procedures, including background checks for all new employees. The proposed employment procedures comply with Zoning Code Section 20-46.

### **Odor Control**

Zoning Code Section 20-46.050(H) require cannabis businesses to "incorporate and maintain adequate odor control measures such that the odors of Cannabis cannot be detected from outside of the structure in which the Business operates." To achieve compliance with Zoning Code and consistent with standard industry practices, an activated carbon inline filtration system will be installed in the exhaust systems serving spaces at risk for emitting cannabis odors.

Administrative controls will be put in place to maintain the effectiveness of the carbon filtration system. Details of the filtration system and administrative controls are provided in the TEP Engineering letter dated April 13, 2018 (attached).

### **Lighting**

As a part of the project, the applicant proposes to comply with the requirements of Zoning Code Sections 20-30.080: *Outdoor Lighting* and Section 20-46.80. According to the Project narrative, all outdoor areas of the premises will be illuminated, including all points of ingress and egress with stationary, fully shielded lights directed away from adjacent properties and from the public right-of-way. The Zoning Code requires (at Section 20-30.080) that exterior lights be shielded and cast downward to avoid light or glare spilling onto neighboring properties. A recommended condition of approval is that the applicant provide with the building permit submittal, a detailed lighting plan in compliance with the Zoning Code.

### **Noise**

Other than delivery vehicles, all operations are proposed in the fully enclosed office building located on the site in the Neighborhood Commercial zoning district. Interior operations are not anticipated to generate excessive noise.

Mechanical equipment will be required to comply with the Noise Ordinance, City Code Chapter 17-16 (attached).

### **Security Plan**

Zoning Code Section 20-46.050(G) requires cannabis businesses to provide adequate security to insure the public safety and safety of persons in the facility and to protect the business premises from theft. Cannabis business applications are required to provide a security plan that includes lighting and alarms, secure storage and waste, procedures for the safe transportation of products and currency, controlled building access and emergency access. To that end, a detailed Security Plan designed to prevent theft or diversion of any cannabis or currency, and to discourage loitering, crime, and illegal or nuisance activities is included with the Project application. Details of the plan are provided in the Project narrative which includes the following key features:

- Surveillance – Video cameras will provide 24-hour surveillance and recordings will be retained for 90 days. Cameras will be oriented to allow “clear and certain identification” of all areas of the site where cannabis is stored, sold and transferred.
- Alarm – A professionally monitored alarm system will be installed and maintained.
- Access – Commercial grade security doors will be installed at all building

entrances and internally at restricted areas. In compliance with the Zoning Code, the front entrance is visible from the street. Persons under the age of 21 will not be allowed in the facility, unless they are a qualified medical patient over the age of 18.

- Security Personnel – Security personnel will be on-site to ensure compliance with the age restrictions and to prevent nuisance activity on the site and adjacent alley.

### **Delivery Services**

Fox Den will provide delivery service within Santa Rosa and to locations within Sonoma County to the extent each local jurisdiction allows. The following procedures will apply:

- Deliveries will be made using company-owned vehicles equipped with GPS service.
- Drivers will be at least 21-years of age.
- Drivers will not carry goods or cash in excess of \$3,000 at any time.
- Customers will be required to provide valid identification and sign for all deliveries.

### **Special Events**

A request for special events is not included with the subject Project. However, if in the future, the applicant wishes to host a special event, approval of a Temporary Use Permit, per Section 20-52.040 (Temporary Use Permit) will be required.

### **Parking**

With the addition of five parking spaces inside the existing building and one outdoor parking space, there will be 22 spaces on the property, 15 of which are required for the existing Trail House business. One space is required for every 250 square feet of cannabis retail use resulting in a parking requirement of seven spaces (per Zoning Code Table 3-4) for the proposed 1,773 square foot dispensary. The project complies with the parking requirements of the Zoning Code.

### **Required Findings (as shown on the draft resolution)**

Decisions on conditional use permits are based on the six discretionary standards found in Zoning Code Section 20-.52.050(F). Applicable conditional use permit standards followed by a staff analysis of the project's compliance with the standards is as follows:

- A. The proposed cannabis retail dispensary and delivery business is allowed in the Neighborhood Commercial (CN) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code. Zoning Code Table 2-6 lists allowable uses within the Neighborhood Commercial Zoning District, which implements the Retail and Business Services General Plan land use designation, and allows cannabis retail and delivery with the approval of a major Conditional Use Permit; and
- B. The proposed cannabis dispensary and delivery facility is consistent with the General Plan land use designation of Retail and Business Services, which is applied to areas that are intended retail, restaurant and commercial service uses. On December 19, 2017, the City Council adopted Ordinance No. ORD-2017-025 finding cannabis retail (dispensaries) and delivery uses appropriate in areas designated as Retail and Business Services on the land use diagram; and
- C. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity. The site is surrounded by commercial uses and while a pre-school is located behind the proposed dispensary to the south, there are no setback requirements to preschools and the Project is oriented to the north and away from the pre-school and there are no doors, windows or other openings on the south wall of the dispensary. Therefore, the design, location, size and operating characteristics of the Project will be compatible with existing and future land uses in the vicinity; and
- D. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints in that the Project plans demonstrate compliance with all operational standards as specified in Zoning Code Chapter 20-46, and the subject site is within a fully developed area zoned for office uses; and
- E. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located. With the proposed odor control measures; the proposed operational procedures including site and building security, storage and waste handling, inventory tracking, and age/medical restrictions; and compliance with all applicable state and local regulations, the proposed Project is consistent with surrounding land uses, including the abutting pre-school use to the south. On-site security personnel will monitor



the parking lot located behind the building to prevent loitering, consumption of cannabis or other nuisance activities.

F. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA). Refer to the Environmental Review section of this report for further discussion.

4. Design Guidelines

Exterior modifications to the existing structure will require and design review approval by the City.

5. Historic Preservation Review Standards

Not applicable.

6. Public Comments

Residents and the owner/operator of the Kiwi Pre-school provided input on the proposed Project at a Neighborhood Meeting held on June 4, 2018 and in written and verbal communication. Neighbors and the pre-school owner raised the following concerns:

- Proximity to the Kiwi Pre-school and Howarth Memorial Park,
- Public safety, and
- Incompatibility with both adult and child cyclists frequenting the Trail House café, bicycle shop and bicycle-oriented events that meet at the Trail House.

The owner and operator of the Kiwi Pre-school voiced opposition to the placement of a dispensary immediately adjacent to the pre-school and the pre-school playground. While acknowledging that the pre-school does not meet the definition of a “K – 12 school,” the pre-school operator informed staff that the pre-school provides after-school tutoring and care for school-aged children and as such, the dispensary while meeting the “letter of the law” does not meet the intent of providing a buffer between cannabis dispensaries and children.

Residents and patrons of the Trail House noted that a kids cycling group routinely meets at the Trail House and stated that a dispensary at the proposed location would not be safe for groups of children on bicycles on the same property.

Public safety and neighborhood compatibility are central to decisions on conditional use permit applications. After considering the proposal, all public input, and the evidence presented in the Staff Report, including the staff analysis, the Planning Commission may use its discretion to determine whether or not the Project meets the CUP criteria including criteria pertaining to public safety and neighborhood compatibility. In making

this determination, the Commission must determine whether siting a cannabis dispensary adjacent to a pre-school that provides services to school-aged children and on a property on which groups of children on bicycles are known to congregate is consistent with the CUP criteria.

Operational standards of Zoning Code Chapter 20-46 are designed to address public safety and neighborhood compatibility and the Zoning Code includes provisions for site security, lighting, and odor control, as described above in this Staff Report and in detail in the applicant's operation plan. The Project's operation plan includes on-site security personnel that will only grant access to persons over the age of 21 years and qualified patients with a state-issued medical card over the age of 18. Prospective patrons will be screened by a security guard or lobby receptionist that scans patrons' ID or cards upon entry. In addition, there will be video surveillance of the entry and parking lot.

Zoning Code Section 20-46.080(F) prohibits cannabis retail facilities from advertising or marketing cannabis products within 1,000 feet of a day care, a school providing instruction in kindergarten or any grades 1 through 12, playground or youth center, and therefore, visual exposure to minors will be limited.

A focused traffic study was prepared for the project with W-Trans (April 17, 2018) and reviewed by the City's Engineering Department staff. The volume of traffic expected to be generated by the project is less than 50 trips during the peak hours and therefore, a full traffic study was not warranted. To address potential conflicts between vehicles entering and exiting parking stalls in the garage, a recommended condition of approval is that the first employees to arrive at the site be instructed to park in the stalls at the rear of the garage. The project traffic engineer also recommends that the first 20 feet of curb southwest of the exit driveway be painted red or signed for no parking to allow adequate sight-distance for motorists existing the project site. These recommendations are included as conditions of approval.

7. Public Improvements/On-Site Improvements

None required.

FISCAL IMPACT

Not applicable.

ENVIRONMENTAL IMPACT

The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA):

- The proposed project qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303 in that it involves a change of use, which will require minor exterior modifications to the structure/site.

- The proposed project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 in that it involves minor modifications to an existing facility, with no expansion of use.
- Pursuant to CEQA Guidelines Section 15332, the project qualifies for a categorical exemption as infill development as it is located on a site of less than five acres, within City limits, substantially surrounded by urban uses, with no value as habitat for endangered, rare or threatened species, adequately served by necessary utilities and public services, and the project has no foreseeable significant adverse impacts to traffic, noise, air quality or water quality:
  - Biology. The Project site is covered by an existing building and parking lot and has no habitat value. No trees or other vegetation will be removed from the site as a part of the Project.
  - Noise - The proposed Project will operate within an existing building, which will not result in excessive noise on the exterior of the building and will operate within hours established for Retail Cannabis in Zoning Code Section 20-46.080(4)
  - Air Quality/Odor - The letter addressed to the City of Santa Rosa, dated April 13, 2018, from TEP Engineering, Inc. discusses in detail the design of the carbon filtration system that will be installed, pursuant to Zoning Code Section 20-46, at the Project site; and
  - Water – There are no changes in impervious surfaces or storm water drainage proposed. In addition, the site has municipal water and wastewater service.
- No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines section 15300.2.).

#### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

#### NOTIFICATION

The project was noticed as a public hearing per the requirements of Chapter 20-66 of the City Code. Notification of this public hearing was provided by posting an on-site sign, publishing notice in a newspaper of general circulation, mailed notice to surrounding property owners, electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and bulletin board postings at City Hall and on the City website. Pursuant to Government Code Section 65091,

where necessary, the City has incorporated notice procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

### ISSUES

There are no unresolved staff issues. Residents and the owner/operator of the Kiwi pre-school remain concerned with potential safety and crime associated with a dispensary in the proposed location given its location adjacent to the Kiwi Pre-school and on the same site as the Trail House. This is discussed in the Public Comments Section of this Report.

### ATTACHMENTS

- Attachment 1: Disclosure Form
- Attachment 2: Location Map
- Attachment 3: Project Narrative and attachments
- Attachment 4: Project Plans
- Attachment 5: Focused Traffic Study
- Attachment 6: City Council Ordinance ORD-2017-025
- Attachment 7: Zoning Code Chapter 20-46
- Attachment 8: Noise Ordinance (City Code Chapter 17-16)
- Attachment 9: Public Correspondence

- Resolution 1: Conditional Use Permit

### CONTACT

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# EXHIBIT B

Statement from Michele MacKinnon,  
Director at Kiwi Preschool/Childcare

To Whom It May Concern:

Kiwi Preschool is licensed by the State of California not just as a day care, but as a preschool first. Because we are licensed by the State of California under Title 22, Division 12, Health and Welfare Agency, Department of Social Services, Community Care Licensing, our teachers are required to take Early Childhood Education units (at least 12 to start as a teacher). We have a curriculum that we go by monthly so the teachers know what they are expected to teach the children.

We may not be a K-12 school, but we are a TK school and teach to the curriculum that TK-12 schools in our area do. We are preparing some of the children for Kindergarten just as the area TK schools do.

Our fenced playground shares a boundary line with the proposed Fox Den Cannabis Dispensary. This is not enough square footage as required by the State of California to have a cannabis dispensary near a preschool, or any school. We check our fence perimeter daily to be sure our children are safe and do not pick up any garbage that may have been thrown over the fence.

We have been very fortunate these past 28 years to have our preschool be situated behind businesses and off the street. We want to keep feeling that our children are in a safe environment without worrying about what could occur if a cannabis dispensary is opened so close to our school.

Michele MacKinnon  
Director at Kiwi Preschool/Childcare  
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