

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: KRISTINAE TOOMIANS, SENIOR PLANNER
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: APPEAL OF CANNABIS POLICY SUBCOMMITTEE DECISION
TO SELECT GREEN QI, LLC TO MOVE FORWARD IN THE
CONDITIONAL USE PERMIT ENTITLEMENT PROCESS FOR A
PROPOSED COMMERCIAL CANNABIS ADULT USE RETAIL
FACILITY, LOCATED AT 925 PINER RD; ASSESSOR'S PARCEL
NUMBERS 015-680-024; FILE NO. CUP18-056.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

The City Council's Cannabis Policy Subcommittee recommends that Council, by resolution, deny the appeal and affirm the Cannabis Policy Subcommittee's decision to select Green Qi, LLC (Applicant A) to move forward in the Conditional Use Permit Process for a proposed commercial cannabis adult use retail facility, located at 925 Piner Road.

EXECUTIVE SUMMARY

The City's Cannabis Retail Application Period for dispensaries and microbusinesses with retail closed on April 20, 2018. Applications deemed complete within the prescribed time period were also evaluated for potential overconcentration. If a proposed location is within 600 feet of another proposed or existing retail location, then the project(s) entered a competitive merit point based review process. Planning staff identified a total of 21 applications, representing 7 areas of overconcentration, for this track.

One of the areas of overconcentration included two proposed cannabis retail facilities on Piner Road. The applicants include Green Qi, LLC (Applicant A), located at 925 Piner Road, and Bear Flag Supply, Inc. (Applicant B), located at 950 Piner Road.

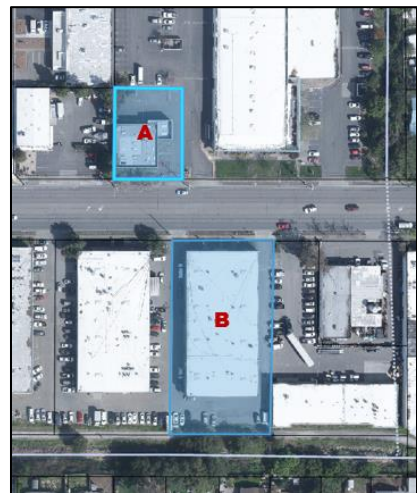


Figure 1: Applicant A - Green Qi, LLC;
Applicant B - Bear Flag Supply, Inc

PINER RD CANNABIS CONCENTRATION APPEAL

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A City Planning staff review team independently reviewed and scored the applications individually against four criteria that were identified in the *City's Cannabis Use Application Retail Use Requirements* (published on www.srcity.org/cannabis), resulting in a staff recommendation to select the application with the highest-ranked average score. Points were awarded based on the quality and extent that an application addressed the merit criteria. Staff findings and applicant proposals were presented to the City Council's Cannabis Policy Subcommittee, who then selected which applications move forward with the Conditional Use Permit review process. Reviewers awarded Green Qi, LLC 88 average points, and Bear Flag Supply, Inc. 79.5 average points. A total of 100 points could be awarded for all criteria.



Figure 2: Consequence of choosing Green Qi, LLC is voiding Bear Flag Supply, Inc.

On October 25, 2018, staff recommended that the highest scoring applicant, Green Qi, LLC (Applicant A), move forward. After hearing presentations from staff, the applicants, and the public, the Cannabis Policy Subcommittee, by motion, selected Green Qi, LLC to move forward in the Conditional Use Permit entitlement process, voiding Bear Flag Supply, Inc. (Applicant B).

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. Per City Code section 20-46.080(D)(1), the Planning and Economic Development Department can: “establish evaluation criteria and selection procedures as necessary to avoid overconcentration of Cannabis Retail uses where competing applications are submitted within a 600-foot radius of each other.”

On March 15, 2018, pursuant to Section 20-46.080 of the City's Comprehensive Cannabis Ordinance, the Planning and Economic Development Department published the *Cannabis Use Application Retail Use Requirements*, which established a point based evaluation criteria process and selection procedures to avoid an overconcentration of Cannabis Retail uses, should competing applications be submitted within a 600-foot radius of each other. The evaluation process required that the applications be evaluated on four criteria. Points were awarded based on how effectively each application responded to or met the requirements for each criterion. The City's Cannabis Subcommittee, comprised of three appointed City Council members, reviewed all applicants in this category and selected, at a public meeting, which applications could move forward in the Conditional Use Permit process, based on their ranking.

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From April 9, 2018 to April 20, 2018, the City's Planning and Economic Development Department accepted Conditional Use Permit applications for proposed commercial cannabis adult use retail facilities. Planning staff reviewed the applications to ensure that applicants submitted all the required checklist items.

On May 31, 2018, Planning staff issued incompleteness letters to Green Qi, LLC and Bear Flag Supply, Inc. The applicants were allotted 21 calendar days to respond to any items deemed missing, incomplete, or insufficient.

On June 27, 2018, Planning staff issued completeness letters to Green Qi, LLC and Bear Flag Supply, Inc.

On October 25, 2018, staff recommended that Green Qi, LLC (Applicant A) move forward because they achieved the highest average score. After hearing presentations from staff, applicants, and the public, the Cannabis Policy Subcommittee, by motion, selected Green Qi, LLC to move forward in the Conditional Use Permit entitlement process, voiding the application by Bear Flag Supply, Inc. (Applicant B).

On November 5, 2018, Jerred Kiloh and Amos Flint, representing Bear Flag Supply, Inc. filed an appeal of the Cannabis Policy Subcommittee's decision based on four grounds for appeal. The appeal questions the validity of the merit-based review process.

1. PROJECT DESCRIPTION

A City review team independently evaluated both competitive applications proposed on Piner Road against four criteria that were identified in the *City's Cannabis Use Application Retail Use Requirements*. Points were awarded based on the quality and extent that an application addressed the merit criteria. Vague discussions and general lack of detail in the narrative tended to receive lower scores. Reviewers were looking for a thorough and thoughtful discussion that addressed each and every Merit Based Review Criterion.

After each application was reviewed and scored, individually, staff compared the average scores to determine which application responded best to the merit-based review criteria, resulting in a staff recommendation to select the application with the highest-ranked average score. The three independent reviewers unanimously awarded Applicant A (Green Qi, LLC) with more points, based on how thoroughly the application addressed the Merit Based Review Criteria, pursuant to the City's *Cannabis Use Application Retail Use Requirements*.

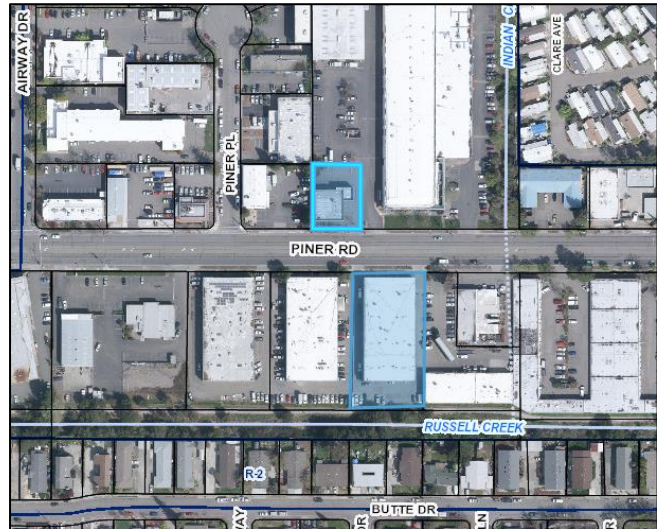


Figure 3: Green Qi, LLC to the north; Bear Flag Supply, Inc. to the south

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Cannabis Retail Merit Based Review Criteria	A			
	Green Qi, LLC CUP18-056 925 Piner Road			
STAFF REVIEWER	REVIEWER 1	REVIEWER 2	REVIEWER 3	AVG
Local & State Compliance (20 points)	15	15	15	15
Site Management (20 points)	16	19	18	17.7
Neighborhood Compatibility (30 points)	25	27	27.5	26.5
Neighborhood Enhancement (30 points)	27.5	29	30	28.8
TOTAL SCORE (Out of 100)	83.5	90	90.5	88

Cannabis Retail Merit Based Review Criteria	B			
	Bear Flag Supply, Inc. CUP18-054 950 Piner Road			
STAFF REVIEWER	REVIEWER 1	REVIEWER 2	REVIEWER 3	AVG
Local & State Compliance (20 points)	12	19	17	16
Site Management (20 points)	18	17	18	17.7
Neighborhood Compatibility (30 points)	22	21	28.5	23.8
Neighborhood Enhancement (30 points)	22	21	23	22
TOTAL SCORE (Out of 100)	74	78	86.5	79.5

2. Surrounding Land Uses

Green Qi, LLC (Applicant A) - 925 Piner Road

The proposed cannabis retail facility at 925 Piner Road is surrounded on all four sides by light industrial uses.

Bear Flag Supply, Inc. (Applicant B) - 950 Piner Road

The proposed cannabis retail facility at 950 Piner Road is surrounded on three sides by light industrial uses, with an existing single-family residential neighborhood located south of Russel Creek, which borders the southern property line.

3. Existing Land Use – Project Site

Green Qi, LLC (Applicant A) - 925 Piner Road

The proposed cannabis retail facility at 925 Piner Road is located on the north side of Piner Road in a predominantly industrialized area. The General Plan Land Use designation for the subject parcel and adjacent parcels is Light Industry, and the zoning is Light Industrial (IL). The applicant proposes to occupy the entirety of an existing vacant building.

Bear Flag Supply, Inc. (Applicant B) - 950 Piner Road

The proposed cannabis retail facility at 950 Piner Road is located on the south side of Piner Road, in a predominantly industrialized area. The General Plan Land Use designation for the subject parcel and adjacent parcels to the north, east, and west is Light Industry, and the zoning is Light Industrial (IL). Russel Creek borders the south property line, separating the property from an existing single-family residential neighborhood located further south. The General Plan designation for the single-family neighborhood to the south is Medium Residential, and the zoning is R-2 - Medium Density Multi-Family Residential. The applicant proposes to occupy the front half of a multi-tenant industrial building.

ANALYSIS

Appeal Statement and Council Options

Pursuant to Zoning Code Chapter 20-62, appeals of decisions made by the Cannabis Policy Subcommittee shall be evaluated by the Council. The Council may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for appeal.

With respect to the Cannabis Policy Subcommittee, the Council may:

- Affirm, or reverse the action, the determination, or decision that is the subject of the appeal.

The appellant has provided the following four grounds for the appeal. The full appeal Statement is provided as an attachment. Staff responses follow each item.

- 1) *City Staff released confidential information to the competitor prior to the public release of that information. This information was in what the City Deputy Planning Director Hartman called a “red” folder and our competitor was allowed to view the file.*

Staff Response:

Draft scores and notes were kept in a red folder within the project folder. While Planning and Economic Development staff members have not been able to confirm whether any confidential drafts were released to the public, it would not have changed the scoring and final staff recommendation. A City review team independently evaluated both competitive applications proposed

on Piner Road. All hand-written notes from individual reviewers are being withheld as privileged and are not intended to be released to the public. Staff released the individual scores from the three anonymous reviewers.

- 2) *The Higher Path provided numerous pieces of new information and personal testimony regarding the qualifications of this applicant at the 10-25-18 meeting. The Sub Committee discounted the new information and seemed compelled to move the issue to the full City Council appeal.*

Staff Response:

Before the final selection, the City's Cannabis Subcommittee reviewed and ranked both applicants, selecting Applicant A to move forward, based on its evaluation of staff findings, as well as all submitted application materials, late correspondence, and oral presentations.

- 3) *The City of Santa Rosa staff scoring our application made false and misleading statements on the scoring sheet resulting in significant loss of points in the application evaluation. Had the application scoring included the details provided in our application, which were clearly in place and in the Sub-Committee's packet, information that evaluators said was missing, our application would have outscored the competitor.*

Staff Response:

A City review team independently evaluated both competitive applications on Piner Road against four criteria that were identified in the *City's Cannabis Use Application Retail Use Requirements*. Points were awarded based on the quality and extent that an application addressed the merit criteria. Vague discussions and general lack of detail in the narrative tended to garner a lower score. Reviewers were looking for a thorough and thoughtful discussion that addressed each and every Merit Based Review Criterion. After each application was reviewed and scored, individually, staff compared the scores to determine which application responded best to the merit-based review criteria. The Cannabis Policy Subcommittee was supplied the same information that the reviewers evaluated, in addition to any late correspondence.

- 4) *There are far too many complexities with the error and oversights made to be seriously considered in a five-minute presentation. Five minutes might be fine when application details were not overlooked or preferential treatment by City staff not shown to the competitor. However, both situations occurred here.*

Staff Response:

Before its merit review and selection process began, the Cannabis Policy Subcommittee decided to allow each applicant to make a five-minute presentation. The Subcommittee was also supplied with written application materials and late correspondence from both applicants.

FISCAL IMPACT

Approval or denial of this appeal action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

The Subcommittee's recommendation is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378. Staff intends to perform a more thorough evaluation (including CEQA review) of the application that is successful in moving through to the Conditional Use Permit process.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

On October 25, 2018, staff findings and applicant proposals were presented to the City Council's Cannabis Policy Subcommittee, who then, by motion, selected Green Qi, LLC to move forward in the Conditional Use Permit entitlement process, which would result in voiding Bear Flag Supply, Inc.'s Conditional Use Permit application.

ATTACHMENTS

Attachment 1 – Disclosure Forms
Attachment 2 – Location Map
Attachment 3 – Neighborhood Context Map
Attachment 4 – Appeal Statement, dated received on August 3, 2018
Attachment 5 – Staff Recommendation – Memo dated August 21, 2018
Attachment 6 – Scorecards for CUP18-056 & CUP18-054
Attachment 7 – Application materials for CUP18-056
Attachment 8 – Plans for CUP18-056
Attachment 9 – Late correspondence for CUP18-056
Attachment 10 – Application materials for CUP18-054
Attachment 11 – Plans for CUP18-054
Attachment 12 – Late correspondence for CUP18-054

CONTACT

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