

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 HIGHWAY RETAIL OUTLET TO MOVE FORWARD
IN THE CONDITIONAL USE PERMIT ENTITLEMENT PROCESS
FOR A PROPOSED COMMERCIAL CANNABIS ADULT USE
RETAIL FACILITY, LOCATED AT 470 SEBASTOPOL ROAD;
ASSESSOR'S PARCEL NUMBERS 125-162-025; FILE NO.
CUP18-078.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

The Planning and Economic Development Department staff recommends that the Council adopt a resolution memorializing Council's March 12, 2019 decision, by a 5-1-1 vote, to grant the appeal of Phenotopia (Applicant B) and allow Phenotopia to move forward in the Conditional Use Permit Process for a proposed commercial cannabis adult use retail facility, located at 443 Dutton Avenue.

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 at opposing corners of Sebastopol Road and Dutton Avenue. The applicants included Highway Retail Outlet (Applicant A), located at 470 Sebastopol Road, and Phenotopia (Applicant B), located at 443 Dutton Avenue.

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 Highway Retail Outlet 65.4 average points, and Phenotopia 92.4 average points out of a total of 100 points.

On November 14, 2018, staff recommended that the highest scoring applicant, Phenotopia (Applicant B), move forward. After hearing presentations from staff, the applicants, and the public, the Cannabis Policy Subcommittee, by motion, selected Highway Retail Outlet to move forward in the Conditional Use Permit entitlement process, voiding Phenotopia (Applicant B). On November 26, 2018, Phenotopia filed an appeal of the Subcommittee's decision.

On March 12, 2019, after consideration of the appeal and the reports, documents, testimony, and other materials presented, and pursuant to City Code 20-62.030 (Processing of Appeals), the City Council of the City of Santa Rosa granted the appeal of Phenotopia (Applicant B), which will allow them to move forward in the Conditional Use Permit Process for a proposed cannabis adult use retail facility, located at 443 Dutton Avenue.

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.

SEBASTOPOL RD/DUTTON AVE CANNABIS CONCENTRATION APPEAL

PAGE 3 OF 4

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 Highway Retail Outlet and Phenotopia. The applicants were allotted 21 calendar days to respond to any items deemed missing, incomplete, or insufficient.

On June 27, 2018, Planning staff issued a completeness letter to Highway Retail Outlet.

On July 2, 2018, Planning staff issued a completeness letter to Phenotopia.

On November 14, 2018, staff recommended that Phenotopia (Applicant B) move forward because the application achieved the highest average score. After hearing presentations from staff, applicants, and the public, the Cannabis Policy Subcommittee, by motion, opted to select Highway Retail Outlet (Applicant A) to move forward in the Conditional Use Permit entitlement process, voiding the application by Phenotopia. (Applicant B).

On November 26, 2018, Padraic Fahey, representing Phenotopia, filed an appeal of the Cannabis Policy Subcommittee's decision based on six grounds for appeal.

On March 12, 2019, after consideration of the appeal and the reports, documents, testimony, and other materials presented, and pursuant to City Code 20-62.030 (Processing of Appeals), the City Council of the City of Santa Rosa granted the appeal of Phenotopia (Applicant B) by a 5-1-1 vote (Council Member Olivares voting No and Mayor Schwedhelm absent, which will allow Phenotopia to move forward in the Conditional Use Permit Process for a proposed cannabis adult use retail facility, located at 443 Dutton Avenue.

ANALYSIS

On March 12, 2019, after consideration of the appeal and the reports, documents, testimony, and other materials presented, and pursuant to City Code 20-62.030 (Processing of Appeals), the City Council of the City of Santa Rosa granted the appeal of Phenotopia (Applicant B), which will allow Phenotopia to move forward in the Conditional Use Permit Process for a proposed cannabis adult use retail facility, located at 443 Dutton Avenue.

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, and the Council's action granting Phenotopia's appeal of 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 November 14, 2018, staff findings and applicant proposals were presented to the City Council's Cannabis Policy Subcommittee, who then, by motion, selected Highway Retail Outlet to move forward in the Conditional Use Permit entitlement process, which would result in voiding Phenotopia's Conditional Use Permit application.

ATTACHMENTS

- Attachment 1 – Staff Report from the March 12, 2019 City Council
- Attachment 2 – Disclosure Forms
- Attachment 3 – Location Map
- Attachment 4 – Neighborhood Context Map
- Attachment 5 – Appeal Statement, dated received on November 26, 2018
- Attachment 6 – Staff Recommendation – Memo dated, November 6, 2018
- Attachment 7 – Scorecards for CUP18-078 & CUP18-057
- Attachment 8 – Application materials for CUP18-078
- Attachment 9 – Plans for CUP18-078
- Attachment 10 – Late correspondence for CUP18-078
- Attachment 11 – Application materials for CUP18-057
- Attachment 12 – Plans for CUP18-057
- Attachment 13 – Late Correspondence for CUP18-057

CONTACT

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