

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: EMMANUEL URSU, CONTRACT PLANNER
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: APPEAL OF PLANNING COMMISSION DECISION TO APPROVE
A CONDITIONAL USE PERMIT FOR BKIND LLC, A CANNABIS
RETAIL AND DELIVERY BUSINESS IN AN EXISTING BUILDING
LOCATED AT 1128 SONOMA AVE, SANTA ROSA, CA;
ASSESSOR'S PARCEL NUMBER 014-121-002; FILE NO. CUP18-
079.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning Commission that the Council, by resolution, deny the appeal and approve a Conditional Use Permit for cannabis retail (dispensary) and delivery for medical and adult use at 1128 Sonoma Ave.

EXECUTIVE SUMMARY

BKind Dispensary (Project) proposes to operate a cannabis retail and delivery business for medical and adult use (State license Type 10) in an existing 2,314 square foot building. Minor exterior improvements are proposed including security lighting, a side yard fence, parking lot striping and business signs. Interior tenant improvements include upgrades to the bathrooms for ADA compliance and minor changes to interior wall partitions. The building has a history of medical uses, including most recently for cosmetic surgery.

On November 29, 2018, the Planning Commission approved a Conditional Use Permit for the Project and, to ensure compatibility with the abutting residential uses, imposed project-specific conditions of approval limiting the hours of retail operation Sunday through Thursday between 9 a.m. and 7 p.m. with delivery service allowed 9 a.m. to 9 p.m. seven days a week. In addition, to mitigate potential light and noise impacts on the adjacent multi-family property to the west, the Planning Commission imposed a condition of approval requiring that a fence or wall be installed along segments of the west property line in front of the parking spaces facing the adjacent residences. The applicant supports the reduction in hours of retail operation and screening along the west property line. Public comments were provided to the Planning Commission, both

in support and in opposition to the Project. Opponents cited the project's incompatibility with the nearby Santa Rosa French-American Charter School located approximately 685 feet east of the Project site along Sonoma Ave and incompatibility with the adjacent residences. Supporters noted the lack of cannabis dispensaries in the area and the economic and medical benefits of locating a dispensary in East Santa Rosa proximate to neighborhoods and to other neighborhood serving uses including medical offices.

Appeal of the Planning Commission approval of the Project was filed on December 10, 2019 by the Santa Rosa City School District. (Attachment 4). In sum, the grounds for the appeal are that the proposed dispensary is too close to the Santa Rosa French-American Charter School and the effects of the proposed dispensary location will likely include:

- *“Exposure of minors to cannabis;*
- *Public safety concerns, including but not limited to crime and noise;*
- *Motorist under the influence of marijuana will frequent the dispensary and be on roads near the School where children congregate creating a potentially unsafe situation; and*
- *Overall negative impacts of a cannabis facility in such close proximity to the School and surrounding residential and public city park areas.”*

BACKGROUND

On December 19, 2017, the City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and operational requirements for commercial cannabis related businesses, identifying the permit compliance path for both medical and adult cannabis uses. The ordinance allows the City to direct these land uses to appropriate areas of the City, and also establishes a public review process for permits and locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. The ordinance specifically addresses cannabis retail and delivery business, requiring a Major Conditional Use Permit in the Office Commercial (CO) Zoning Districts.

1. Project Description

The Project is in the northeast quadrant of Santa Rosa on a 0.27-acre site in the Office Commercial (CO) zoning district. Operations are proposed in an existing one-story, 2,314 square foot, rectangular building constructed in 1962 that will be modified to accommodate the proposed dispensary and delivery operations. Floor area will be allocated as follows: retail 634 square feet; storage 421 square feet; offices 228 square feet; processing 255 square feet; delivery operations 178 square feet; and utility room, restroom, and hallways make up the balance of the space. Nine on-site parking spaces will be provided including one handicap accessible space in the existing parking lot located at the rear of the building. Access to the parking lot is provided via a private lane that also provides access to the adjacent multi-family property to the east and to approximately six single-family properties south of the project site.

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 within Santa Rosa are also proposed during the same hours that the dispensary operates. The Conditional Use Permit approved by the Planning Commission limits the retail hours from 9 a.m. to 7 p.m. Sunday through Thursday. The applicant has agreed to this condition.

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 are limited to lighting, security-monitoring equipment (cameras) and restriping the parking lot to accommodate handicap parking. Minor tenant improvements are proposed inside the building including enlarging bathrooms to meet current code standards and reconfiguration of interior walls. No off-site improvements are required. Staff recommends, and the Conditional Use Permit approved by the Planning Commission, includes a condition of approval, requiring a fence or wall be installed along portions of the west property line to screen the adjacent residences from the dispensary parking lot. Approval of the fence and exterior lighting will be subject to administrative design review. The applicant has agreed to this condition.

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 (Medical, insurance and mental health services)

South: Single-family residential

East: Multi-family residential

West: Multi-family residential

Multi-family residential uses are located on the adjacent properties to the west and east of the Project site and single-family residences are located behind the site to the south. Medical, insurance and mental health services are located on the north side of Sonoma Ave, across the street from the Project site.

There are no other cannabis related uses near the Project.

3. Existing Land Use – Project Site

A low-lying, single-story office building with a history of medical uses occupies the site. The building is currently used for cosmetic surgery and doctors' offices. According to the applicant, the medical office typically closes at 5 p.m. and occasionally has clients on-site until 6 p.m.

4. Project History

- On April 18, 2018, the Conditional Use Permit application was submitted to Planning and Economic Development.
- On May 9, 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 18, 2018
- On July 26, 2018 the application was deemed complete.
- On November 29, 2018 the Planning Commission approved the subject Conditional Use Permit.
- On December 10, 2018 an appeal of the Planning Commission action was filed by the Santa Rosa City School District.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

1. Santa Rosa General Plan 2035

The site is designated Office on the General Plan Land Use Diagram. This classification is intended to accommodate administrative, financial, business, professional, medical, and public offices. (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 Office 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 Office Commercial zoning district allows other uses with operational patterns similar to the operational patterns (i.e. traffic, parking, hours of operation) of cannabis retail and delivery, including pharmacies, restaurants (including those serving alcohol), and neighborhood centers.

Medical and adult use cannabis retail and delivery are consistent with the General Plan goals and policies of the Office 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 Office Commercial (CO) zoning district, which is consistent with the Office General Plan land use designation. Surrounding zoning districts include:

North: Office Commercial

South: Single Family Residential (R-1-6)

East: Multi-Family Residential (R-318)

West: Office Commercial

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

“CO (Office Commercial) district. The CO zoning district is applied to areas appropriate for administrative, business, financial, medical, professional, and public office uses, together with similar and related compatible uses. Residential uses may also be accommodated as part of mixed use projects. The CO zoning district is consistent with and implements the Office land use classification of the General Plan.”

Cannabis retail (dispensary) and delivery is an allowed use in the CO 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

Under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), no state license will be granted to any commercial cannabis business that is "located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius." including a zero setback. ([Business & Professions Code 26054\(b\), emphasis added.](#)) Under state law, these distances are measured by the shortest distance between the parcel containing the school/youth center and the parcel containing the cannabis business. ([Health and Safety Code Section 11362.768.](#))

The City’s cannabis ordinance specifically invokes Business and Professions Code section 26054(b) to assert its right to establish different setback requirements than set forth in the state law. (Ordinance, section 20-46.040(B).) The city’s ordinance requires that cannabis retail uses shall be set back at least 600 feet from any K-12 school as defined by Health and Safety Code section

11362.768. (Ordinance, section 20-46.080(D)(2).) The distance between the cannabis retail business and a school shall be measured in a straight line from the boundary line of the property on which the cannabis retail is located to the closest boundary line of the property on which a school is located (Ordinance, §20-46.080(D)(3). Outdoor cultivation for personal use is prohibited on parcels located adjacent to school property. (Ordinance, section 20-46.030(C)(3.) No additional setback from a school is required.

The ordinance also precludes cannabis retail facilities from advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a school Ordinance, § 20-46.080(F).

The ordinance does not require any buffers between non-retail cannabis businesses and schools or other youth-oriented facilities.

Santa Rosa French-American Charter School, located at 1350 Sonoma Ave, is the closest school to the Project site and is located on a parcel approximately 685 feet to the east of the proposed dispensary parcel. As such, the project is consistent with the state and local regulations in terms of setbacks to a K-12 school.

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

BKind 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) requires 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, carbon filtration through a dedicated exhaust fan and negatively pressuring odor sources is the proposed method to control odors emitted from the facility. 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 Warner Mechanical Engineering, Inc. letter dated April 17, 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 Office Commercial zoning district. Interior operations are not anticipated to generate excessive noise. However, the frequency and duration of vehicular, pedestrian and bicycle traffic and associated noise will be greater with a retail business on the site (cannabis or otherwise) that operates seven days a week between 9 a.m. and 9 p.m. than with an office use which typically operates Monday through Friday between 8 a.m. and 5 p.m. To ensure compatibility with the residential uses immediately adjacent to three sides of the Project site, staff recommends the retail hours of operation Sunday through Thursday be limited to the hours between 9 a.m. and 7 p.m. Delivery service would be allowed between 9 a.m. and 9 p.m. seven days a week. The applicant supports this staff recommendation.

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 ensure 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

BKind 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.
- Delivery vehicles will also be equipped with LoJack for theft recovery, dash-mounted video cameras, and vehicle alarm system.
- 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

After the parking lot is restriped to comply with ADA requirements, there will be nine parking spaces for the 2,314 square foot facility. One space is required for every 250 square feet of cannabis retail use resulting in a parking requirement of nine spaces (per Zoning Code Table 3-4). 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 Office Commercial (CO) 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 Office Commercial Zoning District, which implements the Office 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 Office, which is applied to areas that are intended office 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 Office 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 residential uses on three sides; however, with the conditions of approval limiting hours of the retail operation Sunday through Thursday between the hours of 9 a.m. and 7 p.m. and with compliance with all operational standards of Zoning Code Chapter 20-46, the design, location, size and operating characteristics of the Project will be compatible with existing and future land uses in the vicinity.

The plans have been reviewed by City staff and the Project has been conditioned appropriately; 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 conditions of approval restricting the hours of retail operations and requiring a fence along portions of the west property line; 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 residential uses to the west, south and east. 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

Other than lighting, the applicant proposes no exterior modifications to the existing structure and design review is not required.

5. Historic Preservation Review Standards

Not applicable.

6. Public Comments

Neighbors and parents of students at the Santa Rosa French-American Charter School provided input on the proposed Project at a Neighborhood Meeting held on May 9, 2018 and in written and verbal communication. Neighbors and parents raised the following concerns:

- Proximity to the Santa Rosa French-American Charter School,
- Public safety, and
- Incompatibility with surrounding residential uses.

Parents, school officials and school district members have voiced opposition to the project and its proximity to the Santa Rosa French-American Charter School. Parents noted that while the Santa Rosa French-American Charter School is located slightly more than 600 feet from the proposed dispensary, the City should require a 1,000-foot setback from schools. Parents voiced concern that motorists under the influence of marijuana will frequent the dispensary and be on the roads near the school where children congregate creating a potentially unsafe situation. Parents also expressed concern that minors will be exposed to cannabis.

Parents have stated that the additional requested separation to 1,000 feet will reduce the likelihood of negative impacts on schoolchildren and the City should exercise its land use discretion and place the welfare of children ahead of the recreational needs of cannabis users by requiring a larger separation between schools and cannabis dispensaries.

The project is approximately 685 feet from the Santa Rosa French-American Charter School located at 1350 Sonoma Ave. Both state and local law require the 600-foot setback from K-12 schools.

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 determined that the Project meets the CUP criteria including criteria pertaining to public safety and neighborhood compatibility. In making this determination, the Commission considered whether or not 600 feet provides an adequate separation between the proposed dispensary and the existing school.

Operational standards of Zoning Code Chapter 20-46, the reduced hours of operation and the fence screening recommended by staff 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.

7. Public Improvements/On-Site Improvements

None required.

8. Appeal Statement and Council Options

Pursuant to Zoning Code Chapter 20-62, appeals of decisions made by the Planning Commission 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 Conditional Use Permit, the Council may:

- Affirm, affirm in part, or reverse the action, the determination, or decision

- that is the subject of the appeal; or
- Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
- If new or different evidence is presented on appeal, the Council may refer the matter back to the Commission for further consideration.

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) *This Project Is Only Eighty-Five (85) Feet Away From Violating The City's Own Standard.*

The City itself has prohibited dispensaries from operating within 600 feet of schools, and 85-foot difference is not meaningful.

Staff Response

The City established a quantitative standard for the minimum distance a cannabis dispensary must maintain from a school and the location of the proposed dispensary meets this quantitative standard.

The process the City took to make the determination that 600 feet was a reasonable quantitative and objective standard to assert can be described as follows:

The City's comprehensive cannabis ordinance was developed publicly over a two-year period (January 2016 through December 2017) in concert with the City Council's identifying comprehensive cannabis policy as a top priority. The issue of setbacks to sensitive land uses such as to a school, youth-oriented facility, and preschool was discussed throughout the process by staff, the public, and by the Council Cannabis Policy Subcommittee, the Planning Commission and the City Council. Examples of regulatory options, and summaries of what other jurisdictions were considering or adopting were provided throughout the process including discussion and consideration of a 1,000-foot setback to school. In the end, the ordinance as adopted included a 600-foot setback between cannabis retail and a "school", as defined by the state's Health and Safety Code Section 11362.7-11362.83, subsection 11362.768.

"School" is defined by the statute as: "School means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes."

There are no setbacks required between a cannabis retail use and a preschool or other (not K-12) education related land use (e.g. tutoring services, day care center, or college).

Each decision maker through the public policy making process participated from various perspectives. Discussions and actions balanced the community's interests in providing a legal path for commercial cannabis industries in alignment with their non-cannabis counterparts, along with interests in protecting the public's health safety and welfare. That balancing process led to the eligibility of commercial cannabis land uses in commercial and industrial zoning districts, and the consideration of cannabis retail through a conditional use permit process. The use permit process was deemed sufficient for vetting out potential compatibility issues in that it allows for staff analysis, public noticing and hearing, project specific conditioning and site by site project review and action by a seven-member council appointed Commission. In addition, the ordinance as adopted included specific operational and locational standards to proactively and deliberately address cannabis specific impacts such as security, odor, lighting and noise.

Prior to granting a Conditional Use Permit, the Planning Commission (or City Council on an Appeal) must make all six required findings listed below. Staff analysis of the Project as it relates to the required findings is contained above on pages 10 and 11.

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the City Code;
 - b. The proposed use is consistent with the General Plan and any applicable specific plan;
 - 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;
 - 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;
 - 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; and
 - f. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
- 2) *It Does Not Make Good Sense To Permit A Cannabis Business To Be Operated Within A Shorter Distance To School Than The Business Can Be Advertised (Within 1,000 Feet).*

The City's own cannabis regulations provide "[a] Cannabis Retail facility shall not advertise or market cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 through 12, playground, or youth center."

The District does not believe it makes good logical sense to permit the operation of a business, within a closer distance than the advertisement of such business.

Staff Response

The applicant is aware of the restrictions on advertising signs within 1,000 feet of a school and they indicated that they will not rely on on-site signage as they have other means of advertising their business.

3) *Requiring a 1,000 Foot Setback Would Yield Better Results*

The School District believes that using a 1,000 foot setback requirement would yield better results for students and the community. However, we respect the City's right to enact its own ordinances, and we do not purport to change the City's ordinance through this appeal procedure. Nevertheless, we feel that an 85-foot difference in this case is too small to protect the children attending the school. There are surely other places in the City where this business could operate successfully.

Staff Response

The City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and operational requirements for commercial cannabis related businesses. The ordinance specifically addresses locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. The project will also be subject to strict State licensing and inspection requirements.

Planning staff consulted with the City's Police Department. They had no objections to the proposed project so long as the operator employs best practices with regard to security measures.

4) *Similar To Sonoma County (And Other Local Agencies), Federal Law Enhances Criminal Penalties For Marijuana Use Within 1,000 Feet Of Schools.*

Staff Response

The Project does not include on-site consumption of cannabis or products

containing cannabis.

Federal law does not require cannabis businesses to be located 1,000 feet from schools (as it is illegal under Federal law to dispense cannabis in any location). Rather, Federal law imposes enhanced criminal penalties on persons choosing to conduct federally illegal activities proximate to certain youth-oriented uses.

FISCAL IMPACT

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

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.
 - Traffic - According to the April 23, 2018 Trip Generation Study prepared by W-Trans, the project will have a less-than-significant impact on traffic in that it will generate two more trips during the a.m. peak and seven more trips during the p.m. peak than the existing medical office use;
 - 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 more restrictive hours than those established for Retail Cannabis in Zoning Code Section 20-46.080(4). As a condition of approval, the retail hours of the Project are restricted Sunday through Thursday from 9 a.m. to 7 p.m. and on Friday and Saturday, the retail hours are 9 a.m. to 9 p.m. Delivery hours would be

consistent with the hours of operation allowed by the Zoning Code which are 9 a.m. to 9 p.m. seven days a week;

- Air Quality/Odor - In a letter addressed to the City of Santa Rosa, dated April 17, 2018, Jeff Warner of Warner Mechanical 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

On November 29, 2018, a Conditional Use Permit for the Project was considered by the Planning Commission. At the meeting, members of the Planning Commission discussed the proximity of the proposed use to the adjacent residences to the west, south and east of the project site and to the Santa Rosa French-American School. Following the public hearing, the Planning Commission voted (6-1) to approve the Conditional Use Permit for the Project.

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 a notice in a newspaper of general circulation; mailed notice to surrounding property owners within 400-feet; electronic notice to parties that 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.

ISSUES

Neighbors and parents of school-age children remain concerned with potential noise and crime associated with a dispensary in the proposed location given its location adjacent to residences and near the Santa Rosa French-American Charter School. This is discussed in the Public Comments Section of this Report.

ATTACHMENTS

- Attachment 1: Disclosure Form
- Attachment 2: Location Map
- Attachment 3: Neighborhood Context Map
- Attachment 4: Appeal Letter
- Attachment 5: Distance to Schools Exhibit
- Attachment 6: Project Narrative and attachments, October 1, 2018

BKIND CANNABIS DISPENSARY APPEAL

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- Attachment 7: Project Plans, prepared by Brokaw Design, April 20, 2018
- Attachment 8: Trip Generation Study prepared by W-Trans, April 23, 2018
- Attachment 9: Odor Control Plan, prepared by Warner Mechanical Engineering, Inc., April 17, 2018
- Attachment 10: City Council Ordinance ORD-2017-025
- Attachment 11: Zoning Code Chapter 20-46
- Attachment 12: Noise Ordinance (City Code Chapter 17-16)
- Attachment 13: Public Correspondence

Resolution 1: Conditional Use Permit

Draft Resolution: Denying the appeal and approving the Major Conditional Use Permit

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