

Agenda Item # _____
For Council Meeting of: February 26, 2019

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 City Council's Cannabis Policy Subcommittee recommends that Council, by resolution, deny the appeal of Phentopia (Applicant B) and affirm the Cannabis Policy Subcommittee's decision to select Highway Retail Outlet (Applicant A) to move forward in the Conditional Use Permit Process for a proposed commercial cannabis adult use retail facility, located at 470 Sebastopol 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 at opposing corners of Sebastopol Road and Dutton Avenue. The



Figure 1: Applicant A – Highway Retail Outlet;
Applicant B - Phentopia

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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. A total of 100 points could be awarded for all criteria.

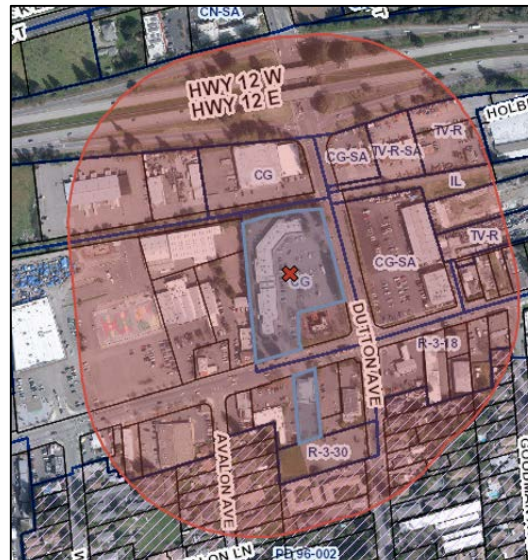


Figure 2: Consequence of choosing Highway Retail Outlet is voiding Phenotopia.

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).

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.

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.

1. PROJECT DESCRIPTION

A City review team independently evaluated both competitive applications proposed on Sebastopol Road and Dutton Ave 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.

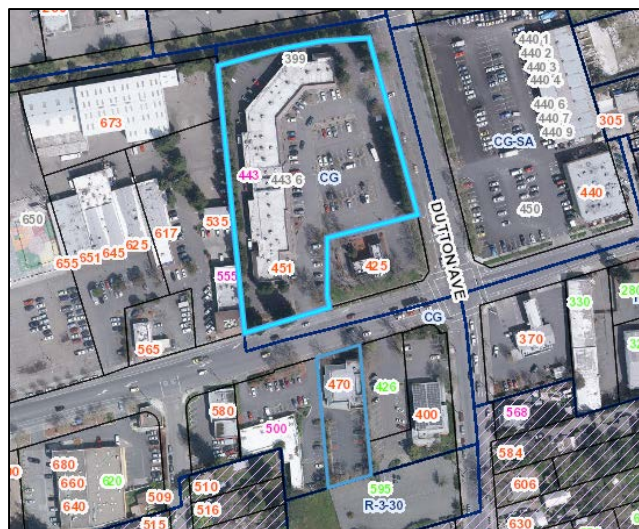


Figure 3: Phenotopia to the north; Highway Retail Outlet to the south

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The three independent reviewers unanimously awarded Applicant B (Phenotopia) 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*.

Cannabis Retail Merit Based Review Criteria	A			
	Highway Retail Outlet CUP18-078 470 Sebastopol Road			
STAFF REVIEWER	REVIEWER 1	REVIEWER 2	REVIEWER 3	AVG
Local & State Compliance (20 points)	12	10	15	12.3
Site Management (20 points)	17	17	20	18
Neighborhood Compatibility (30 points)	14.5	17	19	16.8
Neighborhood Enhancement (30 points)	14.5	18	22.5	18.3
TOTAL SCORE (Out of 100)	58	62	76.5	65.4

Cannabis Retail Merit Based Review Criteria	B			
	Phenotopia CUP18-057 443 Dutton Avenue			
STAFF REVIEWER	REVIEWER 1	REVIEWER 2	REVIEWER 3	AVG
Local & State Compliance (20 points)	16	20	20	18.7
Site Management (20 points)	17	20	20	19
Neighborhood Compatibility (30 points)	23	29	29	27
Neighborhood Enhancement (30 points)	24	29	30	27.7
TOTAL SCORE (Out of 100)	80	98	99	92.4

2. Surrounding Land Uses

Highway Retail Outlet (Applicant A) – 470 Sebastopol Road

The proposed cannabis retail facility at 470 Sebastopol Road is surrounded on all four sides by commercial uses.

Phenotopia (Applicant B) – 443 Dutton Avenue

The proposed cannabis retail facility at 443 Dutton Avenue is also surrounded on all four sides by commercial uses.

3. Existing Land Use – Project Site

Highway Retail Outlet (Applicant A) – 470 Sebastopol Road

The proposed cannabis retail facility at 470 Sebastopol Road is located on the south side of Sebastopol Road, west of Dutton Avenue, in a predominantly commercial/retail area. The General Plan Land Use designation for the subject parcel is Retail Business Services, and the zoning is Commercial General (CG). The applicant proposes to occupy 2,777-square-feet of the front half of an existing vacant building.

Phenotopia (Applicant B) – 443 Dutton Avenue

The proposed cannabis retail facility at 443 Dutton Avenue is located near the northwest corner of Sebastopol Road and Dutton Ave, in a predominantly commercial/retail area. The General Plan Land Use designation for the subject parcel is Retail/Medium Residential, and the zoning is Commercial General (CG). The applicant proposes to occupy a 2,172-square-foot, corner suite of the Dutton Plaza shopping center.

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) **Merit Based Score.** *In this case, Appellant is the superior applicant, as evidenced by, among other things, Planning staff awarding it significantly more points than Highway 420. Specifically, staff conducted a detailed review of the application materials provided by both applicants that were subject to the hearing. Highway 420's application materials were described as lacking in a number of areas and only received a score of 65.4 out of 100 – the fourth lowest score of all applicants that were subject to the merit-based review process for retailers in the City of Santa Rosa. (See Merit Based Review Scoresheet attached hereto). Alternatively, Appellant's application scored 92.4 out of 100, more than any other cannabis retail application subject to the*

merit-based review process in the City of Santa Rosa.

As can be seen in the Merit Based Review Scoresheet, Planning staff ranked Appellant higher in every single evaluation area. For reference, the scores from each evaluation area are provided below:

	Appellant (Phenotopia)	Highway 420
Local and State Compliance	18.7	12.3
Site Management	19	18
Neighborhood Compatibility	27	16.8
Neighborhood Enhancement	27.7	18.3
Total	92.4	65.4

In this case, Appellant is not only the superior applicant, but Appellant's application materials show the fact that Appellant has the team, time, and resources to engage with the community, carry out exceptional operational plans, and commit to operating a consistently compliant business. Appellant's team is made up of professionals with extensive experience in the cannabis industry who understand what it takes to not only run a business, but also to comply with both local and state regulations. The time and effort that Appellant put into its pre-application work and application materials themselves is indicative of the time and effort Appellant will devote to running its retail facility, if permitted.

Staff Response:

Planning staff recommended that Phenotopia (Applicant B) move forward because the application achieved the highest average score. However, 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.

- 2) ***Highway 420's History of Non-Compliant Operations.*** *The applicant selected by the Subcommittee, Highway 420, has made and continues to make significant misrepresentations regarding its operating history. At the Subcommittee hearing, Highway 420 referenced the fact that it operated a cannabis delivery business in the City of Santa Rosa for a couple years but was non-operational this year. Additionally, letters were submitted to the City in support of Highway 420's application. However, many of the letters were not only lacking legible names or identification information for those writing the letters, but they also reference the fact that Highway 420 likely is and has been operating a cannabis delivery business without a state license and therefore in violation of the law.*

For example, in a letter dated 8-27-18 from Matt (last name illegible), Matt wrote "I have been a patient of Highway 420 for the past 2 years. They have always been reliable, professional, and generous in their business. Please

allow them to continue to practice in Santa Rosa." Similarly, Malcom Beltran wrote "I've been a patient of Highway 420 Collective for almost 2 years. By far the quickest most reliable service I've dealt with in a long time. They are friendly and very low key about their deliveries. [...] Highway 420 deserves to open a storefront and expand their already amazing collective for others to enjoy as well."

Erik B. also wrote "Every service needs to be like Highway 420. [...] Always has the best selection of products for their patients. Would love to see them grow as a company and what's to come for future Highway 420 patients." Additionally, a person with the initials E.W. (name illegible) wrote "I use their products for medicinal purposes and have developed great relationships with their staff. Having to find an alternative solution to my medicinal needs would be a great physical, mental, and emotional tax to me."

The language within these letters indicates that Highway 420 has been and continues to operate its delivery service. A search of the Bureau of Cannabis Control 's licensed non-storefront delivery only retail database and the licensed retailer database yields no results for Highway 420 and therefore, it appears that Highway 420 has been operating without a State license and in violation of State law.

The notion that Highway 420 has been operating without a state license is also supported by an article published by the Sonoma County Gazette earlier this month. (Article attached hereto for reference). Within the article, the Gazette provides a list of store front dispensaries and delivery services that those seeking cannabis can contact and either visit or order cannabis products from. Prior to listing the operators, the article states that "all dispensaries have verified their information." Within the delivery services list, Highway 420 is listed as an active delivery service. Specifically, the article lists the following information for Highway 420:

Highway 420 -Santa Rosa

707-971-1811

highway420meds@gmail.com

Mon - Thur, 10am - 8pm

Fri, 10am-9pm, Sat, 10am - 3pm

Not-for-profit organization. All proceeds go back into the collective funding research and development. We offer expert consultation.

All of our meds come with a 100% no questions asked money back guarantee.

The article in question was published on November 5, 2018, which means

that, per the article, Highway 420 confirmed with the Sonoma County Gazette that it was offering delivery services at the time the article was published. Thus, Highway 420 was and perhaps is currently operating without a local permit or state license.

Illegal operation of a non-storefront retail facility should be considered by the Council when determining whether or not the City should allow an Applicant to move forward in the permitting process. If Highway 420 is willing to operate an illegal commercial cannabis business while engaged in the permit process, who knows what conduct will occur on site if a permit is actually granted to it.

Similarly, Highway 420's page on WeedMaps (See Screenshots Below from November 14, 2018 at 2:52 pm) also indicates that unlicensed operations have occurred this year. Per WeedMaps, Highway 420 Santa Rosa was open for business on November 14, 2018 from 1:00 pm to 8:00 pm and Highway 420 Novato was open from 11:00 am to 11:00 pm. The screenshots below, support the fact that Highway 420 was open as recently as the beginning of this month, and was "still delivering to all returning patients" as noted in its Highway 420 – Novato posting.

WeedMaps was recently in the news for continuing to advertise unlicensed dispensaries and delivery services, so the fact that Highway 420 was able to advertise on the website without a license is not shocking.

Similarly, on November 14 and 15, 2018, screenshots were taken of Highway 420's then existing WeedMaps comment page. There were multiple comments from customers that were posted in 2018. As the screenshots below and attached show, customers were posting reviews about Highway 420's delivery service in 2018 as if they had just received orders. If that is in fact true, Highway 420 was delivering to individuals in 2018 without a State license to do so and therefore operating in violation of State and local law.

After November 15th, it appears that Highway 420's WeedMaps page was removed. However, upon further examination, it actually looks like Highway 420's page was simply renamed "Ranchers Reserve". As the screenshots below from November 25th show, the "Ranchers Reserve" page includes all of Highway 420's contact information, Highway 420's social media page information and Highway420's WeedMaps web address. Additionally, while the page claims that the delivery service is closed, the comments page is full of recent comments about Highway 420's recent deliveries. It appears Highway 420 changed the name on its WeedMaps page in an effort to conceal its identity and thus, contrary to Highway 420's application materials, has operated in 2018 in violation of State law. See below for screen shots of the updated web page and some of the recent comments (as recent as approximately eighteen days ago). Additional comments are attached hereto.

The detailed cannabis use permit application process implemented by the City of Santa Rosa shows that the City is serious about only granting permits to operators that will uphold the goals of the City, City regulations, and State

law. Highway 420's apparent operation of an illegal non-storefront retail business shows that it cannot be trusted to operate in compliance with either local or State law. Currently, the City of Santa Rosa does not allow for a delivery-only retail business model, and is only permitting retail storefronts with delivery. Highway 420 is therefore apparently operating an unpermitted and un-permittable business. Moreover, as noted, Section 26038 of the California Business and Professions Code states that operation of an unlicensed commercial cannabis business is not only a crime in the State of California but could also subject the operators of Highway 420 to civil liability. Such an applicant should not be promoted over another applicant that proposes to operate legally, does not have a history of operating illegally, and has a team that is dedicated to compliant operations.

Staff Response:

Planning staff reviewed and scored the applications against the City's Cannabis Use Application Retail Use Requirements. The information presented by the appellant was not included as part of staffs' review. While Planning staff awarded the appellant a higher score, the Cannabis Policy Subcommittee ultimately decided to select the appellant's competitor, Highway Retail Outlet (now, Highway 420), based on presentations from staff, both applicants, and the public.

- 3) ***Criminal Background Considerations.*** *The criminal backgrounds of Highway 420's owners may make it possible for the State to deny its State license application. Appellant's Owners have no such criminal convictions.*

Staff Response:

When the City's review team evaluated each competitive application, points were awarded based on the quality and extent that an application addressed the merit criteria. City staff's review was limited by what each applicant presented in their application.

- 4) ***Specious Late Submission Letter from Highway 420.*** *Counsel for Highway 420 submitted a letter to the Subcommittee the evening before the Subcommittee was scheduled to hear the matter at issue. Within the letter, Counsel made a number of material misrepresentations about Appellant's application, which Appellant did not have enough time to address before or at the hearing. While Appellant reserves the right to discuss all aspects of Counsel's letter at the hearing on this appeal, a few of the claims within the letter are addressed below.*

Appellant's Local Ownership and Retail Experience

Counsel for Highway 420 claimed that Appellant's team is not local and has no North Bay retail experience. However, Appellant's team members have significant ties to the Santa Rosa area and have many years of medical cannabis storefront operational management experience that they are

looking forward to implementing at the City of Santa Rosa location. Contrary to Highway 420's assertion, the Appellant's team members are locals. First and foremost, although Padraic Fahey, Founder and CEO of Phenotopia was raised in Napa County, he is a longtime resident of the City of Santa Rosa. Padraic currently lives in the City of Santa Rosa with his wife and children and has lived in the City for over ten years. Padraic's children attend school in Santa Rosa and Padraic is a coach for his children's local sports teams. Therefore, to say that Padraic is not a "local" is patently untrue. Additionally, Padraic has worked in the cannabis industry for the last twenty years and has maintained strong familial and business ties through Northern California counties like Sonoma, Mendocino, and Humboldt as well as Southern California.

Similarly, Lizette De Arkos, Appellant's designated Community Liaison, grew up in the Roseland community. She was a key figure in Appellant's pre-application community canvassing effort. Lizette is a community organizer dedicated to accelerating communities through the promotion of socially and environmentally-conscious businesses. Lizette's experience in the cannabis industry began when she developed the first market ready HempCrete Kit, which brought innovative building material to the masses. Lizette has been certified by the County of Sonoma bilingual in Spanish and has been recognized by La Prensa Sonoma for her commitment to promoting health in the Latino community. Due to her ties to the community, ability to translate Spanish to English, and her experience as a community organizer, Lizette is an asset to Appellant's team.

Johnny Nolen, Project Manager and one of the individuals that will be leading Appellant's staff if Appellant's project is chosen to move forward, is a Santa Rosa resident and has fourteen (14) years of leadership experience in the cannabis industry under his belt. Most recently, Johnny served as Vice President of Operations of the SPARC and Peace in Medicine family of companies, managing, among other things, all retail operations for two of the Bay Area's most successful cannabis dispensaries. Armed with analytics-based insights, he has fearlessly taken cannabis companies from struggling businesses to successful cash-positive enterprises. As a strategist at 421 Group, Johnny has elaborated on his experience by fine tuning his ability to create deliberate cycles of planning, refine operational techniques to ensure business growth, and implement strategic human relations, recruiting and professional development policies in cannabis businesses.

As a member of Appellant's team, Johnny will work with the retail facility to ensure its success in the industry while maintaining an employee-positive workspace and delivering extraordinary customer service. If Appellant is

granted a permit, Johnny will be brought on as Appellant's founding Chief Operations Officer. However, because Appellant has not started operating (as it does not have the requisite local authorization or state license to do so) it has not hired any employees.

Appellant works with a number of firms for public affairs, legal and compliance purposes. One of those firms is 421 Group, a boutique consultancy serving innovative cannabis organizations in California. 421 Group's Principal and President, Craig Litwin, was born in Santa Rosa and currently lives in Sonoma County. As a top signature-gatherer for Proposition 215, Craig went on to become a Sebastopol councilman and mayor, co-authoring one of the nation 's first dispensary ordinances. Craig's ability to understand, interpret, and implement local regulations makes him a strong advisor to those operating in the ever-changing cannabis space. While Craig will not be on site, he will continue to advise Appellant and work with Appellant to ensure compliant, community based, sustainable operations. Both Lizette De Arkos and Johnny Nolen currently work at 421 Group and have worked with Appellant in their consultant capacity up to this point. However, as previously noted, if Appellant is granted a permit to operate, it will hire employees and both Lizette and Johnny will continue to work with Appellant in the roles previously described.

Although Highway 420's Counsel made many misleading claims in her letter, she failed to mention the fact that Mr. Miranda is not a resident of Santa Rosa or Sonoma County. Rather it appears he has lived in Marin County for many years. Additionally, Mr. Garcia only recently moved to the Santa Rosa area after living in North Carolina for the majority of his life. If local ownership is in fact an important part of the permitting analysis, it is clear that Appellant's team is much more local than Highway 420's.

Counsel also failed to discuss the fact that her client is a company made up of two individuals that have been involved in the cannabis industry for, at most, a combined three years. Nor did Counsel elaborate on the fact that, unlike Appellant's team, none of Highway 420's team members have experience operating a storefront dispensary. While both applicants have collective model experience, only Appellant's team members have experience working with successful cannabis businesses in the regulated market and in the storefront retail space.

Appellant's local team with an aggregate of over 35 years of experience in the cannabis industry is the more qualified applicant and should have been selected by the Subcommittee.

Appellant's Facility Has Ample Parking

Contrary to Counsel's misleading letter, Appellant's proposed facility has more than adequate parking. Unfortunately, rather than providing any actual proof of parking issues, Highway 420's Counsel instead chose to twist the information provided in Appellant's application and attach photos of only a portion of the parking lot located at 443 Dutton Avenue in order to support her deceptive claim that there will not be enough parking available at Appellant's location if it is permitted to operate a cannabis retail facility there.

Appellant's application states the following:

"The Dutton Plaza parking lot has two-way entrances/exits on both Dutton Avenue and Sebastopol Road. There are 136 customer spaces, including 6 ADA-accessible spots, serving 18 retail stores in the plaza. An additional 17 dedicated employee spaces are located in the rear of the building, along with multiple parallel parking spots along the back of the retail units. Because of the substantial employee and customer parking and the low-volume nature of some of the tenant businesses, the parking lot is more than sufficient."

At no point did Appellant misrepresent the number of parking spaces available in the Dutton Plaza parking lot or state that it was the only business that would be utilizing the Dutton Plaza lot. Rather, Appellant provided the Subcommittee with an accurate reporting of the parking areas surrounding its proposed location, which is, according to Planning staff and the Planning Code, appropriate for the proposed use. As with other strip mall locations, parking at Appellant's proposed location is aggregated under the City's land use zoning principals - which is a factor that was considered by Planning staff when evaluating and scoring the application. Thus, Highway 420's claim that Appellant's application was misleading when it came to parking is and was baseless. Below please find an aerial view of the Dutton Plaza's parking area, which shows that there is ample parking available for Appellant's customers.

Appellant's Community Benefits Plan is Superior

Contrary to Highway 420's assertion, Appellant proactively developed a sustainability plan and a community benefits plan and taken steps to ensure the plans are successful. When it comes to community involvement and benefits, as Appellant stated in its application, it will be working with local organizations such as Community Action Partnership of Sonoma (CAPS) and other groups that support Appellant's mission of supporting educational opportunities and economic mobility for underprivileged youth and their families.

Additionally, Appellant foresees the need to hire ten employees for the location at issue. Appellant is committed to focusing its hiring effort on the Roseland area, bilingual candidates, and candidates who have been negatively impacted by the "war on drugs". Unlike Highway 420, Appellant's business and community benefit plans are not short sighted. Rather, before

Highway 420 was even in the picture as a competitive applicant, Appellant put in the work to get to know those in the area around its proposed location, set up neighborhood meetings and provided written materials in both in English and Spanish, and began donating to local charities (See Attached Email Correspondence from Dr. Susan Cooper, Executive Director of Community Action Partnership - Sonoma County dated April 24, 2018).

Conversely, Highway 420's entire community benefits plan hinges on the creation of a vague vocational program that the team at Highway 420 is completely unqualified to run. Highway 420's lackluster approach to its community benefits plan is not only reflected in its application preparation as a whole but also in the scores it received from Planning staff. Without a proper plan, ideas are bound to fail. Appellant has not only thoughtfully considered how its project will benefit the community but has already taken steps to ensure its business is not only a good fit for the neighborhood but will also aid the community in its efforts to prosper. Through its local hiring focus, work with its bilingual Community Liaison, and dedication to supporting local charities, Appellant has shown that it is the superior applicant.

Staff Response:

The City's review team noted that both applicant teams demonstrated significant experience operating a cannabis retail business in the North Bay. The scores for Criteria 2—Site Management reflect that both applicants demonstrated exceptional qualification and experience.

Criteria 4(ii) of the City's *Cannabis Use Application Retail Use Requirements*, asks each applicant to demonstrate, "integration of project through attractive façade, setbacks, quality of materials and colors, landscaping, safe circulation and location of driveways, and ease of parking." The City's review team noted that the appellant provided adequate discussion and their narrative demonstrated safe circulation, location of driveways, and ease of parking. While the appellant's competitor provided vague descriptions, garnering a lower score, the Cannabis Policy Subcommittee appreciated that Highway Retail Outlet (Applicant A) would not be part of an existing shopping center, and would only need to coordinate with one other tenant for parking and access.

- 5) **Location.** *Appellant's local retail cluster location will help promote the other businesses within the Dutton Plaza shopping center by increasing their visibility to members of the community that may otherwise not visit the shopping center. Thus, if Appellant is granted a permit to operate, it will create more business opportunities for the other businesses in the Plaza. Not only does Appellant's proposed location meet the location requirements set forth in the Zoning Code, but Planning staff also noted that Appellant provided evidence of compliance with and implementation of General Plan Policies in its application. Per Planning staffs merit-based review report, Highway 420 did not identify any General Plan policies within its application or show how its*

facility and business will further the City's planning goals. While Appellant's location within the Dutton Plaza was wielded as a weapon against Appellant at the Subcommittee hearing, such a characterization was not only inaccurate, but also in direct contradiction to Planning's findings. This is especially true considering the fact that the City of Santa Rosa and other localities around it, such as Cotati, Sonoma County, and Sebastopol, have either allowed retailers located in strip mall locations to move forward in the permitting process or granted permits to such operators.

Staff Response:

While Planning staff awarded the appellant a higher score, the Cannabis Policy Subcommittee ultimately decided to select the appellant's competitor, Highway Retail Outlet (now, Highway 420), based on presentations from staff, both applicants, and the public.

- 6) ***Subcommittee Vote Was Not Based on Merits.*** *At the conclusion of the hearing, the Subcommittee did not vote based on the merits of the applications or information provided by the applicants. This is evidenced by the fact that when a vote was discussed at the Subcommittee meeting, the vote was split three ways (for Appellant, against Appellant, and undecided). Given its split, the Subcommittee wanted to send the decision directly to the City Council for a final determination. However, the Subcommittee was informed by staff that such an action was not permitted. As a result, in anticipation of an appeal, two votes were changed in an effort to promote political efficiency and conclude the hearing quickly. Thus, the vote rendered was not based on the notion of fundamental fairness or the application materials and their merits.*

Given the extensive and thorough application process that the City created, a vote based on the merits of each applicant should occur. Therefore, the full Council should review the application process and ultimately reverse the Subcommittee's decision.

Staff Response:

While Planning staff awarded the appellant a higher score, the Cannabis Policy Subcommittee ultimately decided to select the appellant's competitor, Highway Retail Outlet (now, Highway 420), based on presentations from staff, both applicants, and the public.

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

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