

RESOLUTION NO. RES-2019-180

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA DENYING AN APPEAL AND APPROVING A CONDITIONAL USE PERMIT FOR FOX DEN INC. TO OPERATE A MEDICINAL AND ADULT USE CANNABIS RETAIL (DISPENSARY) AND DELIVERY BUSINESS, WITHIN AN EXISTING BUILDING LOCATED AT 4036 MONTGOMERY DRIVE; ASSESSOR'S PARCEL NO. 013-284-012; FILE NO. CUP18-076

WHEREAS, an application was submitted requesting the approval of a Conditional Use permit for Fox Den Inc., a 1,773 square foot medical and adult use cannabis retail and delivery business comprised of a lobby (288 square feet), retail (918 square feet), and office, utility rooms, hallways and restrooms (567 square feet), with daily operating hours from 9 a.m. to 9 p.m., for the property located at 4036-B Montgomery Drive, also identified as Sonoma County Assessor's Parcel Number 013-284-012; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the application at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, the Planning Commission considered the application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, written comments, and other materials presented at the public hearing, made certain findings and approved with conditions a Conditional Use Permit for the proposed cannabis retail dispensary and delivery; and

WHEREAS, an appeal of the Planning Commission's action was filed by Kiwi Preschool and Childcare (Appellant), seeking review by the Council pursuant to City Code Chapter 20-62; and

WHEREAS, the City Council held a public hearing on April 9, 2019 to consider the appeal and after consideration of the appeal and the reports, documents, testimony, and other materials presented, the City Council continued the hearing on the appeal to allow the applicant to prepare a response to concerns about parking and on-site circulation issues; and

WHEREAS, on August 1, 2019 the applicant submitted revisions to the Project that include a reduction in the size of the dispensary to 1,500 square feet including a 295-square foot lobby, 789-square foot retail sales area, and office, storage and restrooms comprising the balance of the space; change in the direction of the one-way drive-aisle circulation in the parking lot; an increase in the parking garage floor area; and the provision of four off-site employee parking spaces.

NOW, THEREFORE, BE IT RESOLVED, that after consideration of the appeal and the reports, documents, testimony, and other materials presented, and pursuant to City Code 20-52.050 (Conditional Use Permit), and 20-62.030 (Processing of Appeals), the Council of the City of Santa Rosa denies the appeal, affirms the decision of the Planning Commission approving the Conditional Use Permit for Fox Den, Inc. to operate a medicinal and adult use cannabis retail

(dispensary) and delivery business, within an existing building located at 4036 Montgomery Drive, and makes the following findings and determinations:

- A. The proposed cannabis retail dispensary and delivery business is allowed in the Neighborhood Commercial (CN) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code. Zoning Code Table 2-6 lists allowable uses within the Neighborhood Commercial Zoning District, which implements the Retail and Business Services General Plan land use designation, and allows cannabis retail and delivery with the approval of a major Conditional Use Permit; and
- B. The proposed cannabis dispensary and delivery facility is consistent with the General Plan land use designation of Retail and Business Services, which is applied to areas that are intended retail, restaurant and commercial service uses. On December 19, 2017, the Council adopted Ordinance No. ORD-2017-025 finding cannabis retail (dispensaries) and delivery uses appropriate in areas designated as Retail and Business Services on the land use diagram; and
- C. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity. The site is surrounded by commercial uses and while a pre-school is located behind the proposed dispensary to the south, there are no setback requirements to preschools and the Project is oriented to the north and away from the pre-school and there are no doors, windows or other openings on the south wall of the dispensary. Therefore, the design, location, size and operating characteristics of the Project will be compatible with existing and future land uses in the vicinity; and
- D. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints in that the Project plans demonstrate compliance with all operational standards as specified in Zoning Code Chapter 20-46, the subject site is within a fully developed area zoned for office uses, the proposed changes to the existing on-site vehicular circulation will enhance public safety for motorist exiting the site by increasing the line-of-sight from 70 feet to 250 feet, the addition of mirrors at the rear corners of the Trail House building will enhance the safety of on-site circulation, the provision of four off-site employee parking spaces and the inclusion of a delivery service will lessen the demand for on-site parking; and
- E. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located. With the proposed odor control measures; the proposed operational procedures including site and building security, storage and waste handling, inventory tracking, and age/medical restrictions; and compliance with all applicable state and local regulations, and the circulation and parking improvements proposed, the proposed Project is consistent with surrounding land uses, including the abutting pre-school use to the south and the Trail House business. On-site security

personnel will monitor the parking lot to prevent loitering, consumption of cannabis or other nuisance activities; and

- F. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and is exempt from review pursuant to the following categorical exemptions:

The 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.

The 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.

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:

- Traffic - According to the April 17, 2018 Focused Traffic Study and the August 1, 2019 update prepared by W-Trans, the project will have a less-than-significant impact on traffic in that it will generate between two fewer and 13 more trips during the a.m. peak and between 27 and 32 more trips during the p.m. peak than warehouse use.
- Biology. The Project site is covered by an existing building and parking lot and has no habitat value. No trees or other vegetation will be removed from the site as a part of the Project;
- Noise - The proposed Project will operate within an existing building, which will not result in excessive noise on the exterior of the building and will operate within hours established for Retail Cannabis in Zoning Code Section 20-46.080(4);
- Air Quality/Odor - The letter addressed to the City of Santa Rosa, dated April 13, 2018, from TEP Engineering, Inc. discusses in detail the design of the carbon filtration system that will be installed, pursuant to Zoning Code Section 20-46, at the Project site; and
- Water – There are no changes in impervious surfaces or stormwater 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.).

BE IT FURTHER RESOLVED that Major Conditional Use Permit is approved subject to each of the following conditions:

1. Compliance with the latest adopted ordinances, resolutions, policies, and fees adopted by the Council at the time of building permit review and approval. All fees must be paid prior to issuance of a building permit.
2. Compliance with all conditions of approval identified in Planning Commission Resolution No. 11935, adopted on January 24, 2019, approving a Conditional Use Permit for a cannabis retail dispensary and delivery for medicinal and adult use, except the date of the plans referenced in condition of approval #2 shall be August 2, 2019.
3. As presented and volunteered by the applicant, the applicant agrees as a condition of project approval to secure and maintain six off-site parking spaces for employees, or subject to approval by the Director, the allowance of equivalent measures.

BE IT FURTHER RESOLVED that the Council finds and determines this entitlement would not be granted but for the applicability and validity of each and every one of the above conditions and that if any one or more of the above said conditions are invalid, this entitlement would not have been granted without requiring other valid conditions for achieving the purposes and intent of such approval.

IN COUNCIL DULY PASSED this 3rd day of December, 2019.

AYES: (5) Mayor Schwedhelm, Vice Mayor Fleming, Council Members Olivares, Sawyer, Tibbetts

NOES: (1) Council Member Rogers

ABSENT: (0)

ABSTAIN: (0)

ATTEST: \_\_\_\_\_  
Acting City Clerk

APPROVED: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney