

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: ADAM ROSS, INTERIM SENIOR PLANNER
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
SUBJECT: APPEAL OF PLANNING COMMISSION DECISION
APPROVING A CONDITIONAL USE PERMIT FOR
ALTERNATIVES EAST, A CANNABIS RETAIL DISPENSARY
WITH DELIVERY LOCATED AT 2300 BETHARDS DRIVE, SUITE
A; ASSESSOR'S PARCEL NUMBER 147-061-015; FILE NO.
CUP19-117

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning and Economic Development Department and the Planning Commission that Council, by resolution, deny the appeal and approve the Conditional Use Permit for Alternatives East, a cannabis retail facility providing both medical and adult use products, with delivery, at 2300 Bethards Drive, Suite A.

EXECUTIVE SUMMARY

Alternatives East (Project) is a proposal to operate an approximately 2,249-square foot Cannabis Retail facility, providing both medical and adult use products, with delivery service from an existing commercial building. No onsite consumption area is proposed. The Project site is located in Santa Rosa's southeast quadrant, at 2300 Bethards Drive, and the facility will be operated entirely from Suite A. The Planning Commission approved a Conditional Use Permit and the Council is being asked to act on an appeal of the Planning Commission's action.



On February 25, 2021, the Planning Commission continued the item to a date certain of March 25, 2021, to allow members of the Public to review the Agenda packet. The continuance by the Planning Commission, as recommended by Staff, was due to a deficiency in Public Noticing for the Project where only one onsite sign was installed instead of two, as well as Public Correspondence that was sent as Late Correspondence to the Commission.

On March 25, 2021, the Planning Commission held a duly noticed public hearing where the Commission reviewed the Conditional Use Permit (CUP19-117) and received a presentation from Staff, a presentation from the applicant team, heard public comments, and made findings for the approval of the Conditional Use Permit. On April 5, 2021, an appeal to the Commission's decision was filed by Elizabeth S. Hutton on behalf of Protect Our Neighborhoods.

Staff is recommending the Council deny the appeal and approve the Conditional Use Permit for the Project based on the Planning Commission's March 25 approval, the Project's compliance with Zoning Code requirements for all cannabis related businesses (Code section 20-46) as well as operational requirements specifically for cannabis retail establishments (Code section 20-46.080), and consistency with the General Plan policies associated with Land Use and Livability, Transportation, and Economic Vitality.

BACKGROUND

1. Surrounding Land Uses

North: Retail & Business Services; currently occupied by commercial/office uses.

South: Office; currently occupied by commercial/office uses.

East: Office and Medium Density Residential (8-18 units per acre); currently occupied with commercial/office uses and multifamily residential.

West: Retail & Busing Services, also identified as a Neighborhood Center; currently occupied by a gas station and commercial/retail center.

2. Existing Land Use – Project Site

The site is currently developed with a multi-tenant commercial building.

3. Project History

On January 22, 2020, a Neighborhood Meeting was held to introduce the Project to neighbors.

On December 5, 2019, an application was submitted requesting the approval of a Conditional Use Permit for a dispensary, providing delivery service and an onsite consumption area.

On January 20, 2021, the scope of the Project was changed to eliminate the onsite consumption area, leaving only the retail store with delivery service.

On February 25, 2021, a public hearing was scheduled for the Project, at which time the Planning Commission continued the item to a date certain of March 25, 2021, at the recommendation of City Staff.

On March 25, 2021, a public hearing was held for the Project, at which time 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, and made the Findings for the Conditional Use Permit and approved the Resolution granting the CUP for the Project.

On April 5, 2021, an appeal was filed by Elizabeth S. Hutton on behalf of Protect Our Neighborhoods with the City Clerk's Office.

4. General Plan

The Project site is designated Office on the [General Plan Land Use Diagram](#). This land use is intended for administrative, financial, business, professional, medical and public offices.

The project implements several goals and policies throughout the [General Plan](#), examples of which are shown below:

- It provides a new use in the area, Cannabis Retail, that will satisfy the needs of people in nearby neighborhoods (Land Use and Livability);
- It maintains an adequate supply of employment centers throughout the City to ensure continued economic vitality (Land Use and Livability);
- It places a new retail use within walking and cycling distance of residential

uses, therefore reducing the traffic volumes in residential neighborhoods (Transportation); and

- It places a new retail use along the City's regional/arterial corridors (Economic Vitality).

5. Other Applicable Plans

Not applicable.

6. Zoning

The Project site is within the Commercial Office (CO) zoning district, which is consistent with the General Plan land use designation. Surrounding properties are with the following zoning districts:

North: General Commercial

South: Commercial Office

East: Commercial Office, R-3-18 (multifamily residential), and a residential Planned Development

West: General Commercial

Applicable sections of the Zoning Code include:

[Chapter 20-46](#) provides regulations for all cannabis-related uses. Section 20-46.050 provides general operating requirements. As conditioned, the proposed dispensary shall remain in compliance with these regulations at all times, including maintaining a security system with surveillance videos in compliance with State and local regulations and containing cannabis odors within the building.

Section 20-46.080 provides regulations specific to dispensaries and delivery service. The Project Narrative, attached, reflects the applicant's clear understanding of the regulations. To summarize:

- Delivery service will be conducted from vehicles owned and insured by Alternatives East. Delivery service will be available only while the dispensary is open, between 9:00 a.m. and 9:00 p.m., seven days a week.
- The site is not within an area of overconcentration and is not within 600 feet of a school.
- There is no onsite consumption proposed as part of the Project.

[Chapter 20-36](#) provides parking requirements. According the City's Geographical Information System (GIS), the existing structure is 17,990 square feet. Cannabis

Retail facilities are required to provide one space for every 250 square feet, as are most commercial office uses. Assuming full occupancy of the 17,990-square foot building, 72 parking spaces are required. The site plan includes 63 parking spaces, a deficit of nine.

Pursuant to Zoning Code Section 20-36.040(C), when a building's use changes to a new use, without enlarging the space in which the use is located, there shall be no additional parking required for the new use, except that the new use shall comply with current ADA standards for parking, provided that any deficiency in parking is no more than ten spaces, or a 25 percent overall reduction from standard parking requirements, whichever is greater.

The Project has been found in compliance with the Zoning Code.

7. Design Guidelines

There are no exterior changes proposed to the existing structure.

8. Neighborhood Comments

There has been a lot of correspondence received from neighbors, both opposed to and in favor of the Project. Copies of written comments, including petitions, are attached to this report. To summarize the primary concerns:

- The Project, as originally proposed, included an onsite consumption area. The Project scope was revised to eliminate the consumption area. The revised scope is a Cannabis Retail facility with delivery service.
- Proximity of the dispensary to nearby schools. The closest school, Yulupa Elementary, is over 1,800 feet from the Project site, which exceeds the required 600 feet.
- Concerns about traffic impacts. A trip generation estimate was prepared by W-Trans, dated March 9, 2021, attached, finding that there will be fewer than 50 trips during both AM and PM peak hours. Because the proposed project would be expected to generate fewer than 50 new peak hour trips over existing conditions, an operational analysis is typically not required under the City's *Standard Guidance for the Preparation of Traffic Impact Analysis*. The City Traffic Engineer reviewed the report and did not request any further analysis.
- Increased crime rates associated with the new business. The project will include security services and will comply with all City requirements for cannabis businesses as set forth in Zoning Code Section [20-46](#).

9. Public Improvements/On-Site Improvements

Should the project exceed \$200,000 in construction costs, it will be required to repair all damaged sidewalks and driveway aprons surrounding the site. If the project does not exceed \$200,000 in construction costs, the repairs within the public right-of-way are not required, although it is strongly recommended. For further clarification, please refer to the Exhibit A, attached to the Resolution.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

1. Appeal Statement, Staff Response 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 and Planning Commission responses follow each item.

- 1) *The Resolution adopted by the Planning Commission on March 25, 2021, (“The Resolution”) is not supported by the record in regard to public communications and comments.*

Staff Response:

On February 23, 2021, Staff provided two documents to the Planning Commission as Late Correspondence items. The first item was all prior public comments received up to April 20, 2020. The second item was public comments received after the Public Hearing Notice for the February 25, 2021, Planning Commission meeting was sent out. On February 24, 2021, Planning Staff conducted a site visit after receiving messages from interested parties claiming that the placement of the onsite sign did not comply with Zoning Code Section [20-66.020\(C\)\(3\)](#), which requires one sign per street frontage. Upon the visit, staff

determined that there was a deficiency in that only one sign was installed on the property. One sign was placed on the Bethards Avenue frontage while there should also have been one placed on the Yulupa Avenue frontage. With this information confirmed, the Planning Commission, at the recommendation of Staff, continued the item to a date certain of March 25, 2021, to allow the item to be renoticed in accordance with Zoning Code Section [20-66](#).

On March 17, and March 18, 2021, additional Public Correspondence was provided to Planning Commission for their review, prior to the March 25, 2021, public hearing. On March 25, 2021, 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. During the public comments, a member of the public asked about the consideration of the neighborhood petition opposing the project. At that time, Commissioner Duggan asked Staff if the Petition was included in the Agenda Packet and if so, where it was located. Staff was unable to locate the petition at that time but did find the petition dated received by the City on October 21, 2020, soon after the March 25, 2021, Planning Commission meeting. The petition was provided to the Planning Commission on March 31, 2021, for their records. While the petition does include signatures of neighbors and members of the public opposed to the Project and other cannabis businesses in Sonoma County, the information in the petition does not include additional information that was not already presented to the Planning Commission on March 25, 2021.

- 2) *The Resolution adopted by the Planning Commission on March 25, 2021, (“The Resolution”) is not supported by the record in regard to its reliance in items C, D, and F on the Trip Generation estimate of W-Trans dated January 20, 2021, or W-Trans estimates of any other date. At Applicant’s behest, W-Trans has issued multiple and differing opinions on various dates, rendering none of them credible. There is no Trip Generation estimate dated January 20, 2021, in the record.*

Staff Response:

A Trip Generation Memorandum (Memo) by W-Trans was provided by the applicant dated March 9, 2021. The Memo was reviewed and accepted by the City’s Traffic Engineering Division. Additionally, W-Trans has provided a response to the appeal dated May 12, 2021, which is included as an attachment for the Council’s review and consideration along with the Applicant’s response to the appeal.

- 3) *The Resolution Adopted by the Planning Commission on March 25, 2021, (“The Resolution”) in Section F that the Project is exempt from CEQA Guidelines Section 15303 is not supported by the Record.*

Staff Response:

The use, transport, storage and disposal of hazardous materials is regulated by

the United States Environmental Protection Agency (EPA) and California EPA (Cal/EPA) plus six boards, departments and offices: Air Resources Board, Department of Pesticide Regulation, Department of Toxic Substances Control (DTSC), Office of Environmental Health Hazard Assessment (OEHHA), State Water Resources Control Board, and the Department of Public Health Center for Environmental Health (DPHCEH).

A hazardous material is any substance that, because of its quantity, concentration, or physical or chemical properties, may pose a hazard to human health and the environment. Under California Code of Regulations (CCR) Title 22, the term “hazardous substance” refers to both hazardous materials and hazardous wastes. Both are classified according to four properties: (1) toxicity, (2) ignitability, (3) corrosiveness, and (4) reactivity (CCR Title 22, Chapter 11, and Article 3). A hazardous material is defined in CCR Title 22 as: [a] substance or combination of substances that, because of its quantity, concentration, or physical, chemical or infectious characteristics, may either (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed (CCR Title 22 Section 66260.10). Hazardous materials in various forms can cause death, serious injury, long-lasting health effects, and damage to buildings, homes, and other property. Hazards to human health and the environment can occur during production, storage, transportation, use, or disposal of hazardous materials.

While the operation of cannabis product manufacturing can involve volatile processes that include the use and storage of highly flammable materials, there is no evidence to support a claim that cannabis (in the forms sold in dispensaries) is a hazardous substance. Cannabis is an agricultural product. As such, the class 3 exemption is appropriate under CEQA Guidelines section 15303 and no exceptions to the exemption apply. Additional information can be found in the Applicant’s response to the appeal filed by Elizabeth S. Hutton on behalf of Protect Our Neighborhoods.

- 4) *The Resolution adopted by the Planning Commission on March 25, 2021, (“The Resolution”) in Section E that the granting of the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare of the neighborhood is not supported by the record.*

Staff Response:

The subject property is within the CO (Commercial Office) zoning district with the Office General Plan Land Use Designation, which allows cannabis retail as an allowed use subject to Conditional Use Permit Approval identified in Table 2-6 in Zoning Code Section [20-23.030](#). The use is subject to compliance with Zoning Code Section [20-46](#) requirements for all cannabis related business as well as

operational requirements specifically for cannabis retail establishments in Zoning Code Section [20-46.080](#), including 600-foot setbacks from K-12 schools and other cannabis retail facilities, and consistency with the General Plan Goals and Policies. The item was reviewed extensively by City Staff and conditioned accordingly to ensure the use complies with all building and Zoning Code standards. The project was reviewed by the Planning Commission on March 25, 2021, and the Commission affirmatively made each of the Findings required for approval for a Conditional Use Permit (Zoning Code [20-52.050\(F\)\(1-6\)](#)), and approved the CUP. Additional information can be found in the Applicant's response to the appeal filed by Elizabeth S. Hutton on behalf of Protect Our Neighborhoods.

FISCAL IMPACT

Approval of the Project will not have an effect on the General Fund.

ENVIRONMENTAL IMPACT

The Project has been found in compliance with the California Environmental Quality Act (CEQA):

Pursuant to CEQA Guidelines Section 15301, the Project is categorically exempt because it involves minor modifications to an existing structure.

Pursuant to CEQA Guidelines Section 15303, the Project is categorically exempt because it involves the conversion of an existing structure from one use to a another where only minor modifications to the structure are made.

Pursuant to CEQA Guidelines Section 15332, the Project is categorically exempt as infill development. The use is consistent with the General Plan land use designation of Office and zoning designation of Commercial Office; it occurs on property that is less than five acres within Santa Rosa City limits; it is completely developed with no habitat for endangered, rare, or threatened species; the site is currently served by all utilities and services; and re-tenanting the space will not result in any significant effects pertaining to noise, air quality, water quality or traffic. The Trip Generation Estimate, prepared by W-Trans, dated March 9, 2021, determined that the project will result in less than 50 new vehicle trips during both AM and PM peak hours. Pursuant to the City's *Standard Guidance for the Preparation of Traffic Impact Analysis*, further analysis is not required for projects that generate less than 50 new trip peak hour vehicle trips.

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)

Pursuant to CEQA Guidelines Section 15183, the Project is exempt from further environmental review because it is consistent with the General Plan for which an Environmental Impact Report (EIR) was certified by Council in 2009. In December 2017, Council enacted comprehensive regulations for cannabis. Analysis concluded that cannabis-related uses were similar in terms of environmental impacts to other allowable uses in the Commercial Office zoning district.

No further environmental review is necessary for the Project as analysis has confirmed that there are no new environmental effects, or environmental effects of greater severity, peculiar to the parcel or the project that were not analyzed and addressed in a prior EIR.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

As stated in the Background Section found in the beginning of this Report, on March 25, 2021, the Planning Commission held a duly noticed public hearing where the Commission reviewed the Conditional Use Permit (CUP19-117) and received a presentation from Staff, a presentation from the applicant team, heard public comments, and made findings for the approval of the Conditional Use Permit. An appeal to the Commission's decision was filed by Elizabeth S. Hutton on behalf of Protect Our Neighborhoods with the City Clerk's Office on April 5, 2021.

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 notice in a newspaper of general circulation, mailed notice to surrounding property owners, electronic notice to parties that had 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. Pursuant to Government Code Section 65091, where necessary, the City has incorporated notice procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

ATTACHMENTS

- Attachment 1 – Disclosure Form
- Attachment 2 – Location Map
- Attachment 3 – Project Narrative prepared by Karen Kissler, applicant, dated March 24, 2020 (revised January 20, 2021 and February 4, 2021)
- Attachment 4 – Site Plan, provided by applicant
- Attachment 5 – Building Floor Plan and Suite A Floor Plan, prepared by Farrell Faber & Associates, and received by the City on March 25, 2021
- Attachment 6 – Building Photos, provided by applicant

ALTERNATIVES EAST APPEAL

PAGE 11 OF 11

- Attachment 7 – Odor Mitigation Feasibility study, prepared by York Engineering, LLC., dated January 20, 2021
- Attachment 8 – Trip Generation Estimate, prepared by W-Trans, dated March 9, 2021
- Attachment 9 – Delivery Regulations, provided by applicant
- Attachment 10 – Distance to Schools, provided by applicant
- Attachments 11a-f – Public Correspondence
- Attachment 12 – Neighborhood Petition received by the City on October 21, 2020
- Attachment 13 – Appeal Statement filed by Elizabeth S. Hutton on behalf of Protect our Neighborhoods, received by the City on April 5, 2021
- Attachment 14 – Appeal Response by the applicant dated May 14, 2021
- Attachment 15 – W-Trans Appeal Response dated May 12, 2021
- Attachment 16 – Planning Commission Resolution No. 12050
- Resolution denying the appeal and approving the Project

CONTACT

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