

**COUNTY OF EL DORADO  
PLANNING AND BUILDING DEPARTMENT  
PLANNING COMMISSION  
STAFF REPORT**



**Agenda of:** September 22, 2022

**Staff:** Aaron Mount

**COMMERCIAL CANNABIS USE PERMIT**

**FILE NUMBER:** CCUP19-0005/Medical Marijuana Caregivers Association

**APPLICANT:** Matthew Vaughn/Medical Marijuana Caregivers Association

**PROPERTY OWNER:** Claude Malcolm

**REQUEST:** Commercial Cannabis Use Permit for a retail storefront for the sale of cannabis goods for medicinal and adult-use recreational in an existing building.

**LOCATION:** At the northeast side of Alhambra Drive, approximately 800 feet south of the intersection with Cameron Park Drive, in the Cameron Park Community Region, Supervisorial District 2 (Exhibits A, B, C).

**APN:** 083-420-002 (Exhibit D)

**ACREAGE:** 1,002 square feet

**GENERAL PLAN:** Commercial (C) (Exhibit F)

**ZONING:** Commercial, General-Design Review-Community (CM-DC) (Exhibit G)

**ENVIRONMENTAL DOCUMENT:** Statutorily Exempt pursuant to Section 15270(a) of the CEQA Guidelines (CEQA does not apply to projects which a public agency rejects or disapproves).

**RECOMMENDATION:** Staff recommends the Planning Commission take the following actions:

1. Deny Commercial Cannabis Use Permit CUP19-0005, based on the Findings as presented.

### **EXECUTIVE SUMMARY**

The applicant seeks a Commercial Cannabis Use Permit for a storefront cannabis retail sales business in an existing commercial development consisting of a lower floor in an existing commercial complex. The existing cannabis retail sales business occupies approximately 1,000 square feet within a building that is 7,559 square feet in total size.

Section 130.41.100(4)(G) of the Zoning Ordinance is a mandatory and specific policy which requires a background check and recommendation on the Commercial Cannabis Use Permit by the Sheriff's Office. Exhibit H is a letter dated December 1, 2021, from the Sheriff's office that determined that the applicant does not meet the minimum requirements for the background portion of the application process. The letter further states that the Sheriff's Office does not recommend further processing of the application. The County has determined that information in the background check makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21. The recommendation of denial is due to the inconsistency with this policy. Also on today's agenda is a closed session pursuant to Government Code 54956.7. This closed session allows the Planning Commission to discuss specific information related to the license application with the Applicant and his attorney. This closed session may be utilized during the Planning Commission's consideration of this item.

The proposed project includes a Commercial Cannabis Use Permit (CCUP) to conduct continued retail sales of cannabis products in an existing building. Operation of a commercial cannabis retail storefront is an "Allowed Use" with approval of a CCUP. This commercial cannabis retail storefront has been operating as a Medical cannabis retail dispensary. Approval of a CCUP would thus allow the existing medical use retail operations to continue under the County's legal commercial cannabis program and add adult-use recreational cannabis to its operations and denial would mean that the business would have to cease all sales of commercial cannabis and the State would be notified that local approval was denied and no commercial cannabis operations would be allowed to continue regardless of use. The current operation only allows medical commercial cannabis sales for those patients that have a current medical recommendation.

With the exception of a non-storefront retail facility providing only delivery service, no more than seven cannabis retail storefront facilities that are open to the public shall be permitted at any one time. One additional cannabis retail storefront facility may be permitted in the Meyers Community Center (MAP-1) zoning district for a total of eight potential cannabis retail storefront facilities in the County. The County is currently processing a total of eight applications for retail storefronts including this application.

The Zoning Ordinance states the following about processing Commercial Cannabis Use Permits, “A Commercial Cannabis Use Permit shall be subject to Article 5 of Title 130 of the County Code (Application Forms, Submittal Process, and Fees), unless provided otherwise herein. It shall be treated as a Conditional Use Permit under Section 130.52.021 (Conditional Use Permits), subject to the public hearing procedures and recommendation from the Planning and Building Director and decision by the Planning Commission.”

In addition to a discretionary Commercial Cannabis Use Permit, a person may only conduct a commercial cannabis activity if the person obtains a Commercial Cannabis Annual Operating Permit. When a Commercial Cannabis Use Permit is first issued, the Building and Planning Department shall also issue a Commercial Cannabis Annual Operating Permit, subject to annual renewals. A Commercial Cannabis Annual Operating Permit is valid for one year from the date of issuance and may be renewed after staff-level review with public notice as provided for in Chapter 130.50 (Application Filing and Processing) of this Title.

All Commercial Cannabis Annual Operating Permits shall require the applicant's participation in a County-run monitoring program. The monitoring program shall be funded by applicants and will be used to conduct site visits and inspections of all commercial cannabis activities and verify compliance, including but not limited to all requirements of County Code and any site specific permit conditions and State regulations, including the State track-and-trace requirements.

## **BACKGROUND / HISTORY**

The project parcel is located within the Cameron Park Community Region. The business, Medical Marijuana Caregivers Association (MMCA), as a commercial cannabis retail storefront has operated at the current site since 2005.

### **State Background History:**

The State of California has been regulating cannabis since 1996 with the passage of Proposition 215 the "Compassionate Use Act," the first medical cannabis regulation in the United States. In 2003, Senate Bill 420, developed the medical marijuana identification cards. The next significant change in regulation came twelve years later in 2015.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, was signed by the Governor on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also establishes a dual licensing scheme under which anyone engages in commercial cannabis activity must first obtain a local permit, and then a state license. The state law defers to local land use authority and local jurisdiction may ban cannabis uses altogether or further limit the allowances under state law.

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Adult Use of Marijuana Act ("AUMA"). AUMA would allow local jurisdictions to decide whether to allow nonmedical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations. The proposed Ordinance only pertains to medical cannabis, consistent with current state law under MCRSA.

On June 27, 2017, the Governor signed into law, Senate Bill (SB) 94, which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provision of the AUMA, and created a signal regulatory scheme for both medical and no-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retain the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Provisions Code Section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction.

Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provision of any local ordinance or regulation. The MAUCRSA required that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018.

### State Law and Licensing Requirements

Legislation under the Medical Cannabis Regulation and Safety Act (MCRSA) protects local control via dual licensing: all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban. Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency. The types of permits allowed under the MCRSA including commercial cultivation,

retail storefronts (dispensaries), manufacturing, testing labs, transporters, and distributors. Delivery services may occur if permitted by the local agency (or if the local jurisdiction does not explicitly prohibit delivery services) and must be associated to a storefront or non-storefront retail location.

#### El Dorado County Cannabis Ordinances

On July 17, 2018, the El Dorado County Board of Supervisors placed five ballot measures on the ballot for the November 2018 election, which enabled voters to decide whether to allow different aspects of commercial cannabis and its taxation. The ballot measures named Measure N (taxation, permitting and enforcement of commercial cannabis), Measure P (commercial outdoor and mixed-light cultivation of cannabis for medicinal use), Measure Q (commercial outdoor and mixed-light cultivation of cannabis for recreational adult use), Measure R (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for medicinal use), and Measure S (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use). In November 2018, the voters of El Dorado County passed the ballot measures creating a commercial cannabis program in the County that was developed after numerous meetings with stakeholders. These efforts resulted in draft ordinances that sought to balance the desire for a commercial cannabis program with concerns raised in the community about impacts to communities from such a program.

A critical piece of this program was the involvement of the Sheriff's Office in reviewing the criminal history of applicants and making recommendations on applications based on that criminal history. This process is now codified in County Code section 130.41.100(4)(G). Consistent with state and federal law, the Sheriff's Office sought to obtain approval from the California Department of Justice and the Federal Bureau of Investigation to utilize Live Scan criminal history access for this licensing purpose. The Sheriff's Office initiated that process in December 2019, however, has experienced significant delays in the approvals due to COVID and changes in the form of resolution the FBI is now requesting for such approvals. Up until February 19, 2021, the Sheriff's Office anticipated receipt of the approval, however, was informed on that date that a new application would be required. The County has acted swiftly to pursue a new resolution, but recognizes that this change in circumstance would take six months or longer.

In light of the anticipated delay with a new application for Live Scan access for this licensing purpose, the El Dorado County Planning and Building Department, Sheriff's Office, and County Counsel's Office collaborated to implement a procedure that complies with section 130.41.100(4)(G) and allows applications to continue in the permitting process. Generally, section 130.41.100(4)(G) will be implemented through an interim process until the Sheriff's Office receives the approvals necessary to utilize Live Scan.

### Existing Commercial Cannabis Retail Storefronts:

Previous to adoption of the current Commercial Cannabis Ordinance Chapter 130.41, medical cannabis distribution facilities were prohibited in the County with the limited exception of any existing medical cannabis distribution facilities that satisfied all of the requirements of Ordinance 4999 (initially section 17.14.250 and most recently codified in section 130.14.250(2)(D) of the El Dorado County Code). Ordinance 4999 did not authorize existing dispensaries, but merely stated that the County would “shall not enforce the provisions of this ordinance code with respect to medical marijuana distribution facilities existing as of the effective date of this ordinance and, within 60 days of the effective date of this ordinance, submitting documentation to the County Planning Division demonstrating all of the following: (1) location within a commercial zone district; (2) continuous operation for a period of at least six months prior to October 30, 2011; and (3) compliance with state law, including, but not limited to, the Medical Marijuana Program Act.”

On May 13, 2014 (Legistar item #13-1174) the Board took action to interpret Ordinance 4999 to apply to an “operation” that may have moved from one facility location to another and thus finding that the following medical cannabis distribution facilities (retail storefronts) were substantially consistent with Ordinance 4999 (previously section 17.14.250.D and then section 130.14.250(2)(D)) of the El Dorado County Code and thus enforcement of the ban in that section would not occur:

Pure Life Cannabis Collective: APN 054-391-18, 537 Pleasant Valley Rd., Diamond Springs

Foothill Health and Wellness: APN 109-420-18, 3830 Dividend Dr., Ste. A, Shingle Springs

Highlands Health and Wellness: APN 109-040-71, 4020 Durock Rd., Shingle Springs

All Natural Inc.: APN 090-440-23, 4151 South Shingle Rd., Ste. 2, Shingle Springs

Medical Marijuana Caregivers Association (MMCA): APNs 083-420-01 to 14, 3031 Alhambra Dr., Cameron Park

The Board’s motion prevented the County from enforcing against these five retail storefronts while Ordinance 4999 remained in effect. Before enactment of the County’s commercial cannabis ordinances, the County provided a limited letter of authorization at the request of the above applicants informing the state of the prohibition against enforcement under Ordinance 4999 and thus allowing the applicants to obtain a temporary license with the state. The letter ended with quoting Section 130.14.250(2)(D) which provides, “[n]othing in this section or in the County’s authorization under the Business and Professions Code Section 26055(g) of these limited distribution facilities shall provide those distribution facilities with the ability to continue operating and the County may, at a future date, ban all commercial cannabis distribution facilities at which time any state license would be subject to revocation under Business and Professions Code Section 26200(c).”

As part of the ballot measures, Ordinance 4999 was repealed and the ban on medical dispensaries was removed. The ballot measures did not provide for the legalization or automatic permitting of the dispensaries that had existed under Ordinance 4999. Instead, it addressed the existing dispensaries in Section 130.41.300(7)(D), which provides: “Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018 and continuation within a zone inconsistent with those authorized under this Section may be permitted for those retail facilities as part of the Commercial Cannabis Use Permit as a legal non-conforming use under Article 6, Chapter 130.61 (Nonconforming Uses, Structures, and Lots).”

Approval of a CCUP would thus allow the existing medical use retail operations to continue under the County’s legal commercial cannabis program and adult-use recreational cannabis to its operations and denial would mean that the business would have to cease all sales of commercial cannabis and the State would be notified that local approval was denied and no commercial cannabis operations would be allowed to continue regardless of use. A decision by the Planning Commission to deny CUP19-0005 is appealable to the Board of Supervisors as detailed in Section 130.52.090 of the El Dorado County Code.

## **EXISTING CONDITIONS**

The project site consists of an existing commercial development and is located within the Cameron Park Community Region. The site is relatively flat, and is located at an elevation of approximately 1,300 feet above mean sea level. The project parcel is fully developed with two office/retail buildings and associated parking and landscaping. The majority of the neighboring properties are similarly zoned and designated as Commercial-General and is adjacent to the Cameron Airpark airport (Exhibit C). The surrounding area has been mostly fully developed and is adjacent to residential uses to the west.

## **PROJECT DESCRIPTION**

The proposed project includes a request for a Commercial Cannabis Use Permit for a retail sale storefront facility open to the public for the sale of commercial cannabis. The retail facility located on a parcel that contains two existing retail/office buildings. The existing cannabis retail sales business is in the lower floor of a building which is 7,559 square feet in size. Hours of operation for retail sale are limited to commencing at 8:00 a.m. and ending at 8:00 p.m. During operation there are approximately two employees that consist of security guard and sales floor employees. The retail facility will provide security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. The site currently operates as a retail storefront facility for sale of cannabis for medicinal use only. Operation of an existing legal

commercial cannabis retail storefront is an allowed use in the CG zone district with the issuance of a CCUP. Furthermore, no signs are being proposed as part of this project.

## **STAFF ANALYSIS**

**General Plan Consistency:** 2.3 The project is inconsistent with General Plan Policy 2.2.5.21. General Plan Policy 2.2.5.21 requires that development projects be located and designed in a manner that avoids incompatibility with adjoining land uses. Findings for denial are detailed in the Findings section.

**Zoning Ordinance Consistency:** Staff has determined that the proposed project is inconsistent with Title 130 of the County Ordinance Code (Zoning Ordinance). Findings for denial are detailed in the Findings section.

## **AGENCY COMMENTS:**

The project was distributed to all applicable local and state agencies for review and comment. Comments were received from the El Dorado County Sheriff's Office as detailed in Exhibit H. The County's Department of Transportation (DOT) did not require a traffic study and or other study as traffic generated by this proposed project would be less than significant.

## **PUBLIC OUTREACH:**

No formal public outreach was conducted by the County, and a public outreach plan was not required for this project pursuant to the County Zoning Ordinance. However, the project was duly noticed for a Planning Commission public hearing with a public notification range of 1,000 feet and a legal advertisement was published in applicable local newspapers. In addition, project notification was also posted on the Planning Services Planning Commission webpage. No physical sign posting is required for a Commercial Cannabis Use Permit.

## **ENVIRONMENTAL REVIEW:**

Commercial Cannabis Use Permit (CCUP) CCUP19-0005 has been found to be Statutorily Exempt from the requirements of CEQA pursuant to Section 15270(a) of the CEQA Guidelines stating that CEQA does not apply to projects which a public agency rejects or disapproves. In this case the project is inconsistent with the Zoning Ordinance and General Plan, thus necessitating the recommendation for denial.

Filing of a Notice of Exemption is required in accordance with CEQA Guidelines Section 15062 to initiate a 35-day statute of limitations on legal challenges to the County's decision that the project is exempt from CEQA. The applicant shall submit a \$50.00 recording fee to Planning Services in order for the County Recorder to file the Notice of Exemption.



## SUPPORT INFORMATION

### Attachments to Staff Report:

Findings for Denial

Exhibit A.....	Vicinity Map
Exhibit B.....	Location Map
Exhibit C.....	Aerial Map
Exhibit D.....	Assessor's Parcel Map
Exhibit E.....	General Plan Designation Map
Exhibit F.....	Zone District Map
Exhibit G.....	Site Plan/Floor Plans
Exhibit H.....	Letter from EDSO Date December 1, 2021
Exhibit I.....	Security Plan