

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



Agenda of: December 9, 2021

Staff: Aaron Mount

COMMERCIAL CANNABIS USE PERMIT

FILE NUMBER: CCUP19-0002/Pure Life

APPLICANT: Kelly Chiusano and Summer Bradley

AGENT: Kelly Chiusano

PROPERTY OWNER: Odd Fellows Main Management

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 intersection of Odd Fellows Road and Pleasant Valley Road, approximately 400 feet west of the intersection with State Route 49, in the Diamond Springs Community Region, Supervisorial District 3 (Exhibits A, B, C).

APN: 054-391-018 (Exhibit D)

ACREAGE: 0.22 acre

GENERAL PLAN: Commercial (C) (Exhibit F)

ZONING: Commercial, Main Street-Design Review-Historic (CM-DH) (Exhibit G)

ENVIRONMENTAL DOCUMENT: Categorically Exempt pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines (Existing Facilities).

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

1. Find the project Exempt under Section 15301 of the CEQA Guidelines; and
2. Approve Commercial Cannabis Use Permit CUP19-0002, based on the Findings and subject to the Conditions of Approval 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 two buildings. The existing cannabis retail sales business is in the rear building which is 1,966 square feet in size. The project proposes to expand into the front building, 906 square feet, but would be occupied by offices and record keeping only. The project includes the continuation of an operating commercial cannabis delivery service consisting of one vehicle.

The proposed project includes a Commercial Cannabis Use Permit (CCUP) to conduct continued retail sales of cannabis products in an existing building with expansion of offices into the adjacent 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 this CCUP would allow for the continued sale of medicinal use cannabis and the addition of adult-use recreational commercial cannabis sales. 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.

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.

OTHER PROJECT CONSIDERATIONS

Zoning consistency: The project parcel is within the Commercial, Main Street zone district (CM).

Section 130.41.300.7.A of the Zoning Ordinance states the following, “Retail sale storefront facilities open to the public for the sale of commercial cannabis may only be permitted in the Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), Industrial Low (IL), and Meyers Community Center (MAP-1), zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100”. Further Section 130.41.300.7.D states, “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 (BCC) 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).”

The intention of Zoning Ordinance section 130.41.300.7.D was to allow the continued operation and application submittal of a CCUP for those existing retail operations that were inconsistent with the zone districts within Section 130.41.300.7.A. The project parcel being within the CM zone district would be inconsistent if newly proposed, however the site was issued a license from the BCC before July 17, 2018 and this application was received within 45 days of the availability of applications for retail sale. Therefore, the request for a CCUP at the project site is consistent with the County’s Zoning Ordinance and specifically Chapter 130.41. Section 130.41.300.7.D does not allow processing of a newly proposed commercial cannabis retail application that would be inconsistent with Section 130.41.300.7.A.

BACKGROUND / HISTORY

The project parcel is located within the Diamond Springs Community Region. The business, Pure Life, as a commercial cannabis retail storefront has operated at the current site since 2011.

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, anti 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 MAUSCRSA 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: 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.

EXISTING CONDITIONS

The project site consists of 0.22 acres and is located within the Diamond Springs Community Region. The site is relatively flat, and is located at an elevation of approximately 1,700 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-Main Street with residential uses adjacent to the north (Exhibit C). The surrounding area has been mostly fully developed.

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 exiting retail/office buildings. The existing cannabis retail sales business is in the rear building which is 1,966 square feet in size. The project proposes to expand into the front building, 906 square feet, but would be occupied by offices and record keeping only. Hours of operation for retail sale and delivery are limited to commencing at 8:00 a.m. and ending at 8:00 p.m. The project includes the continued operation of a commercial cannabis delivery service consisting of one vehicle. Delivery vehicles are regulated by the State Department of Cannabis Control and include the requirement that the vehicle contains no company marking or branding. During operation there are approximately 8 employees that consist of security guards, a manager, 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 CM zone district with the issuance of a CCUP. Furthermore, no signs are being proposed as part of this project.

STAFF ANALYSIS

General Plan Consistency: The project is consistent with all applicable General Plan policies including Policy 2.2.1.2. (Commercial Land Use Designation), Policy 2.2.5.2 (General Plan Consistency), Policy 2.2.5.21 (compatibility with adjoining land uses), Policy 5.1.2.1 (adequacy of public services and utilities), Policy 5.2.1.2 (adequate quantity and quality of water for all uses, including fire protection), Policy 5.7.1.1 (fire protection in Community Regions), Policy 6.2.3.2 (adequate access for emergencies), and Transportation Policies TC-Xa through TC-Xi. Further details are discussed in the Findings section below.

Zoning Ordinance Consistency: Staff has determined that the proposed project, as conditioned, is consistent with all applicable standards and requirements of Title 130 of the County Ordinance Code (Zoning Ordinance).

The project is consistent with all applicable policies within Chapter 130.41 Commercial Cannabis. The site contains an existing State provisionally licensed commercial cannabis retail storefront and delivery service that is good standing and the current operation has been inspected by County staff for consistency with this Chapter.

The project parcel is within the Commercial-Main Street zone district and the project has been analyzed in accordance with all applicable development standards for this zone district.

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. 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. No agencies expressed any issues or concerns regarding this project.

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) CCUP19-0002 is Categorically Exempt pursuant to Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines. Section 15301 categorically exempts the "permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." As an

example, section 15301 includes “[a]dditions to existing structures provided that the addition will not result in an increase of more than: (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or (2) 10,000 square feet if: (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and (B) The area in which the project is located is not environmentally sensitive.” Here, the Project proposes no alterations to the existing structure and the only expansion of use is to include sale of adult-use recreational cannabis and additional office space in an existing structure. While regulated separately, adult-use recreational cannabis and medicinal use cannabis involve the same types of products and the retail use involves the same type of use. No alterations to the structure are required to issue the Commercial Cannabis Use Permit. This CEQA finding is also based on the cannabis retail sales use proposed as being in compliance with the El Dorado County’s General Plan and Zoning Ordinance, including the County’s Commercial Cannabis Regulatory Program. The property is zoned, planned and developed for commercial uses. The 0.22 acre site also meets all the development standards for the Commercial Main Street zone district. The subject property is served by public water and wastewater facilities. No environmentally sensitive habitat areas are located onsite or within the immediate vicinity. The proposed exemptions are not affected by the Public Resource Code section §15300.2 limitations to categorical exemptions, including limitations related to location, cumulative impact, significant effect due to unusual circumstances, scenic highway, hazardous waste site, or historical resources as discussed in the Commercial Cannabis Use Permit findings.

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

Conditions of Approval

Exhibit A.....	Vicinity Map
Exhibit B.....	Location Map
Exhibit C.....	Aerial Map
Exhibit D.....	Assessor's Parcel Map
Exhibit E.....	USGS Topography
Exhibit F.....	General Plan Land Use Designation Map
Exhibit G.....	Zoning Designation Map
Exhibit H.....	Site Plan/Floor Plans
Exhibit I.....	Letter from EDSO Date August 30, 2021
Exhibit J.....	Building Exterior/Street View
Exhibit K.....	Security Plan

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