

PLANNING COMMISSION RESOLUTION NO. _____
CONDITIONAL USE PERMIT NO. 2243740
RANCHO BERNARDO CANNABIS OUTLET - PROJECT NO. 625766

WHEREAS, BERNARDO CENTER SHOPS, LLC, Owner, and WILL SENN, Permittee, filed an application with the City of San Diego for a permit to operate a 6,453-square-foot cannabis outlet in an existing 11,930-square-foot commercial building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 2243740), on portions of a 0.63-acre site;

WHEREAS, the project site is located at 16375 Bernardo Center Drive in the CC-2-3 zone of the Rancho Bernardo Community Plan;

WHEREAS, the project site is legally described as: A portion of Lot 75 of Bernardo Heights, Unit No. 3, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9573, filed in the Office of the County Recorder of San Diego County, February 25, 1980;

WHEREAS, on January 25, 2023, the Hearing Officer of the City of San Diego approved Conditional Use Permit No. 2243740 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on February 7, 2023, two project appeals were filed, one by the Rancho Bernardo Community Planning Board and one by Robert Brienza, and

WHEREAS, on April 6, 2023, the Planning Commission of the City of San Diego considered the appeal and Conditional Use Permit No. 2243740 pursuant to the Land Development Code of the City of San Diego, NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2243740:

A. CONDITIONAL USE PERMIT FINDINGS [SDMC Section 126.0305]

1. Findings for all Conditional Use Permits:

a. The proposed development will not adversely affect the applicable land use plan.

The project is a request for a Conditional Use Permit (CUP) to allow the operation of a Cannabis Outlet within a 6,453-square-foot tenant space in a 11,930-square-foot building in an existing commercial center at 16375 Bernardo Center Drive within the Rancho Bernardo Community Plan (RBCP).

The RBCP designates the site Specialized Commercial. This designation provides for such uses as automobile agencies, furniture stores, commercial recreation facilities, financial institutions, offices, clinics, and similar establishments. The RBCP also contains the following goals, objectives, and policies related to the project:

Commercial Objective 1: To accommodate commercial retail and office uses that serve the community, as well as provide an employment base for area residents.

Commercial Objective 5: To encourage commercial facilities to be designed so as to reduce the potential for criminal activity.

As a retail establishment specialized in the sale of cannabis, a cannabis outlet fits the Specialized Commercial designation. The use would serve the needs of residents that want to purchase recreational cannabis and will also provide jobs to area residents. City and state requirements for security systems, guards, and secured facilities will ensure that the potential for criminal activity is minimized, and conditions of the permit will ensure prompt resolution of litter and graffiti if it occurs onsite.

The City's General Plan Land Use and Community Planning Element designates the site Commercial Employment, Retail, & Services. The proposed project will promote the policies of the General Plan because Cannabis Outlets supply jobs and encourage and facilitate commerce within the San Diego region.

Therefore, the project will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes interior improvements to an existing tenant space, including entry/exit areas, waiting areas, a cannabis retail sales floor, and employee and storage areas. Construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through plan review and building inspections completed by the City's building inspectors.

A Cannabis Outlet in the CC-2-3 zone is allowed with a CUP at this location and consistent with the goals and policies of the RBCP. The proposed development will not be detrimental to the public's health, safety, and welfare because the discretionary permit controlling the development and continued use of this site

contains specific regulatory conditions of approval. These conditions are specifically intended to reduce, mitigate, or prevent all adverse impacts to the public and community at large.

Pursuant to SDMC section 141.0504, Cannabis Outlets are limited to no more than four per Council District (CD), and 36 city-wide, within commercial and industrial zones to minimize the impact on the City and residential neighborhoods. There is currently one approved outlet in District 5. The project will be the second Cannabis Outlet CUP to approved within District 5, and the 28th within the City.

Cannabis Outlets require compliance with the separation requirements of SDMC section 141.0504(a). The project was deemed complete on February 4, 2019 and is subject to the regulations in effect at that time. At that time, SDMC 141.0504(a) read as follows:

(a): Cannabis outlets shall maintain the following minimum separation between uses, as measured between property lines, in accordance with Section 113.0225:

(1): 1,000 feet from resource and population-based city parks, other cannabis outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

141.0504(a)(2): 100 feet from a residential zone.

During project review, staff identified three potential conflicts with the separation requirements. They were evaluated and determined not to conflict with the ordinance.

Hope United Methodist Church, 16550 Bernardo Heights Parkway: This church is approximately 910 feet north of the proposed cannabis outlet when measured property line to property line. However, there is a six-foot wall between the proposed cannabis outlet and the existing church, which qualifies as such a barrier.

When using the provisions of SDMC 113.0225(c), distance is measured as the most direct route around the barrier in a manner that establishes direct access. A direct public route to the church from the proposed cannabis outlet would be north along the shopping center's pedestrian walkway, then west to the public sidewalk along Bernardo Center Drive, and north to the church, resulting in a distance of approximately 1,200 feet. Therefore, the proposed project meets the minimum separation requirements applicable to the project.

Kumon Math and Reading Center, 16395 Bernardo Center Drive: This business is located within the same shopping center as the proposed cannabis outlet on an adjacent parcel. Staff analyzed the operational characteristics of this use and determined that, because it does not provide full-time educational instruction, this business is not a school, but a tutoring center, which is an office use. Furthermore, it is not a minor-oriented facility use, as defined in the SDMC, because it is not a business that serves predominantly minors and which occupies more than 50 percent of the premises. Therefore, the proposed project must not be 1,000 feet away from this use.

Adjacent Residential Properties to the East and South: The project site is directly adjacent to residentially zoned properties to the east and south, which are zoned RS-1-14. [SDMC 113.0225\(c\)](#) applies to the required residential separation for this project.

Steep topography, dense landscaping, and constructed barriers (a continuous wall separating the property from the adjacent subdivision to the east, and an open space easement across the sloped landscaped area to the south, adjacent to Interstate 15) result in a path to residentially-zoned properties that is much greater than 100 feet. To access the proposed cannabis outlet from the adjacent residential area, a person would either have to:

1. Walk at least 3,000 feet via City sidewalks, going north on Bernardo Heights Parkway, then turning left on Bernardo Center Drive, and continuing south to the proposed outlet, or
2. Travel at least 1,400 feet through an open space easement area to the rear of the shopping center, through steep terrain and dense vegetation.

Therefore, the project complies with the separation regulations, which are intended to protect the public health, safety, and welfare.

The proposed cannabis outlet use is required to provide 32 parking spaces, which will be provided within the existing parking area for the commercial retail center. The project will provide public improvements, which include the reconstruction of the middle driveway adjacent to the site to meet current accessibility standards. The discretionary permit controlling the development of this site contains specific regulatory conditions of approval. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate, or prevent all adverse impacts to the public and community at large.

The proposed Cannabis Outlet is subject to specific operational and security requirements and restrictions as set forth in SDMC section 141.0504(b) through (m), which have also been incorporated as conditions in the CUP including prohibition of consultation by medical professionals on-site; prohibition of the use of specified vending machines except by a responsible person (as defined by the SDMC); provision of interior and exterior lighting, operable cameras, alarms, security guard; restriction of hours of operation to between 7:00 a.m. and 9:00 p.m. daily;

maintenance of area and adjacent public sidewalks free of litter and graffiti, and removal of graffiti within 24 hours; restriction of signage to business name, two-color signs, and alphabetic characters; and signage advertising cannabis may not be visible from the public right-of-way. Cannabis Outlets must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation. The CUP is valid for five years, however, may be revoked if the use violates the terms, conditions, lawful requirements, or provision of the permit.

Construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through plan review and building inspections completed by the City's building inspectors. Furthermore, this project has been reviewed pursuant to the California Environmental Quality Act, and the environmental analysis did not find any significant impacts to the public health and safety. Based on the above analysis, project features and conditions of approval, the proposed development will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The project is located within the CC-2-3 zone, which allows Cannabis Outlets with the approval of a Conditional Use Permit per SDMC Table 131-05B. No deviations are requested or required by this project. As outlined in Finding 2 above, the project complies with the separation requirements of the Land Development Code.

The permits for the project include various conditions and corresponding exhibits of approval relevant to achieving compliance with the SDMC relative to parking, signage, lighting, security measures, hours of operation, and site maintenance. No variance or deviations are requested as part of this application. Therefore, the proposed development will comply with the regulations of the Land Development Code.

d. The proposed use is appropriate at the proposed location.

Cannabis outlets are unique in that there are only four allowed in each of the nine City Council districts, or 36 City-wide, with an additional two allowed to remain as a result of redistricting, for a total of 38. No other retail business regulated by the City of San Diego is subject to such restrictions. The proposed project is located in District 5. At this time, District 5 has only one permitted cannabis outlet, which has not yet been constructed. Since the City's recreational cannabis regulations were first adopted in 2017, the zoning and separation requirements for cannabis outlets as applied in Council District 5 have resulted in very few locations that meet all locational criteria. This project is one of those locations. By contrast, in the five years since cannabis outlets have been allowed subject to the requirements of SDMC 141.0504, five City Council districts with different development patterns have reached the cap of four outlets per district.

The site is currently improved with a commercial retail center approved in 1992 under PCD 91-0695. The previous tenant and many existing uses have similar operational characteristics (high frequency retail sales and services). The proposed tenant space was most recently occupied by a restaurant but is currently vacant. Other existing uses in the center include a barber shop, hearing aid store, beauty salons, restaurants, offices, and a learning center. The proposed cannabis outlet use is required to provide 32 parking spaces, which will be provided within the existing parking area for the commercial retail center. The project will provide public improvements, which includes the reconstruction of the middle driveway adjacent to the site to meet current accessibility standards. Furthermore, the project is located within an established commercial area with nearby access to arterial roads (Bernardo Center Drive) and freeways (Interstate 15).

As stated in findings 2 and 3 above, the project meets all separation requirements for cannabis outlets, as well as the requirements of the applicable land uses plans and the Land Development Code. Therefore, based on the above analysis, the proposed use is appropriate at the proposed location.

The above findings are supported by the minutes, maps, and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on these findings adopted by the Planning Commission, that the appeals are denied, the January 25, 2023 decision of the Hearing Officer is affirmed, and Conditional Use Permit No. 2243740 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 2243740, a copy of which is attached hereto and made a part hereof.

Travis Cleveland
Development Project Manager
Development Services

Adopted on: April 6, 2023

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