

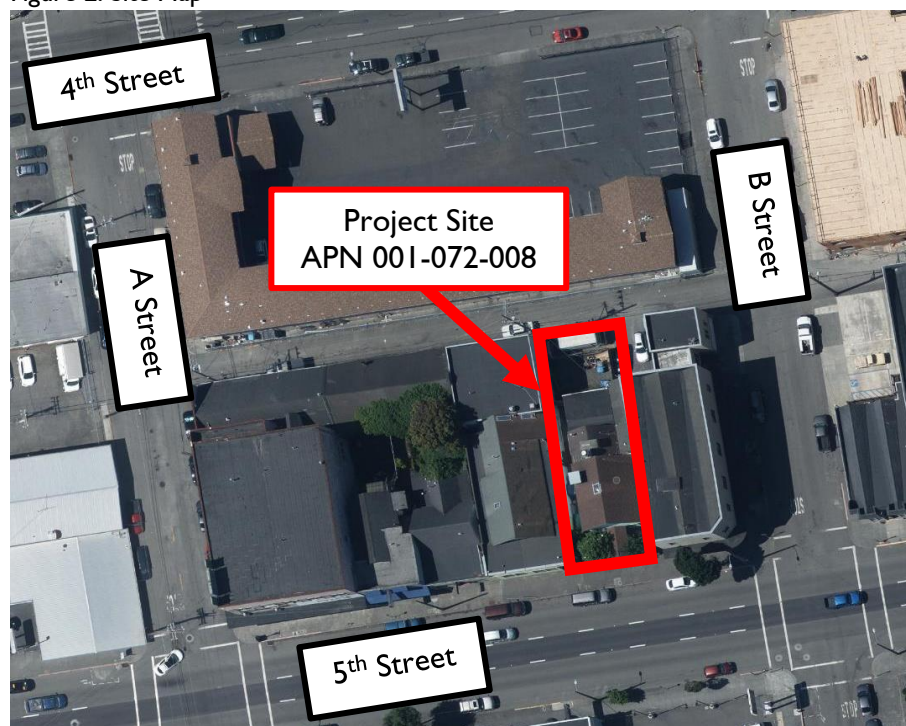
PLANNING COMMISSION
STAFF REPORT
January 9, 2023

Title:	Humboldt Highness Cannabis Retail Facility
Project:	Conditional Use Permit CUP-22-0008
Location:	29 5 th Street
APN:	001-072-008
Applicant:	Humboldt Highness, LLC
Property Owner:	Humboldt Highness, LLC
Purpose/Use:	Cannabis Retail Facility
Application Date:	10/31/2022
General Plan:	DC – Downtown Commercial
Zoning:	DW – Downtown West
CEQA:	Exempt under §15301, Class I Existing Facilities
Staff Contact:	Millisa Smith, Assistant Planner
Recommendation:	Hold a Public Hearing; and Adopt a Resolution to find the project is exempt from CEQA under §15301, Class I Existing Facilities and approve with conditions
Motion:	<i>"I move the Planning Commission adopt a Resolution determining the project is exempt from CEQA and conditionally approving the Humboldt Highness Cannabis Retail Facility at 29 5th Street, APN 001-072-008."</i>

Figure 1: Location Map



Figure 2: Site Map



PROJECT SUMMARY

The applicant, Humboldt Highness, LLC, is requesting approval to use the front 485 square-foot portion of an existing, commercial building as a cannabis retail facility. The remainder of the building will be used for principally permitted cannabis uses. The hours of operation for the retail portion will be 8 a.m. to 8 p.m., seven days a week, with a maximum of five employees.

BACKGROUND

The applicant is requesting approval of a conditional use permit (CUP) to operate a 325-square foot (sf) Cannabis Retail use and a 160-sf Cannabis Retail storage space in the front portion of the vacant, approximately 1,578-sf commercial building, most recently utilized as a restaurant (Bless My Soul Café). The remaining 1,093-sf portion of the building would be used for General Cannabis uses, which are principally permitted in the Downtown West (DW) zone. General Cannabis uses cannot involve chemical cannabis extraction or retail, but do include mechanical extraction, edible production, processing, and distribution. This CUP is only applicable to the proposed Cannabis Retail use, and would allow the applicant and any future operators, upon securing necessary City and State cannabis licenses, to conduct retail sales of cannabis products in the front portion of the building, and storage for products intended for retail sale in the adjacent storage room (Figure 4). Two separate City-approved cannabis licenses will be required, one for Cannabis Retail, and one for the General Cannabis Use. Since this CUP is only for Cannabis Retail the applicant is conditioned to obtain a City Cannabis Retail License and a State of California Cannabis License; prior to operating General Cannabis uses a separate City Cannabis license will be required, securing of which is not a condition of the CUP.

The applicant will either lease the space to a small farm or collective of farms as one tenant to operate the entire commercial cannabis

Figure 3: Proposed security fencing

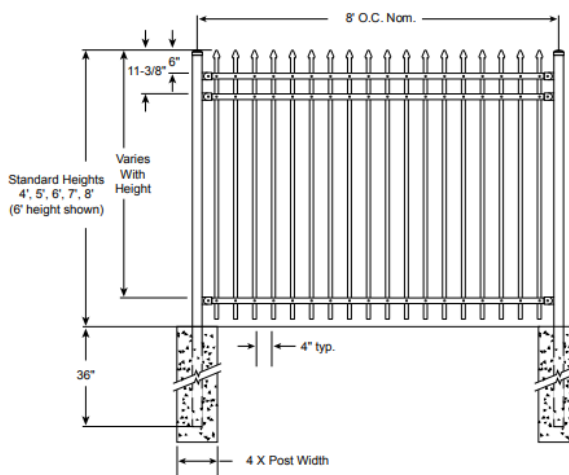
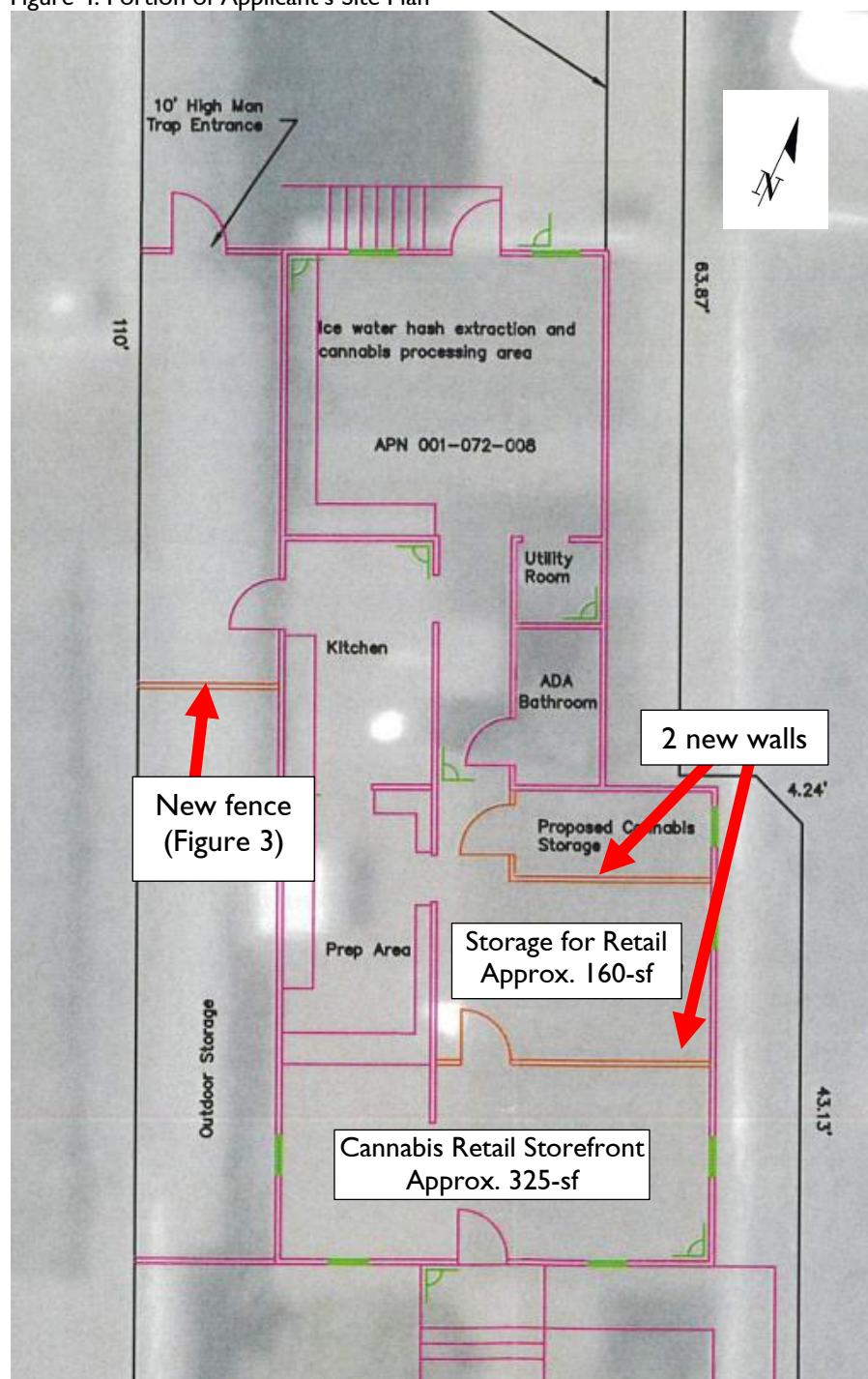


Figure 4: Portion of Applicant's Site Plan



facility, or operate the entire cannabis facility themselves. Any future lease holder or owner would be held to any conditions and limitations set forth in this CUP.

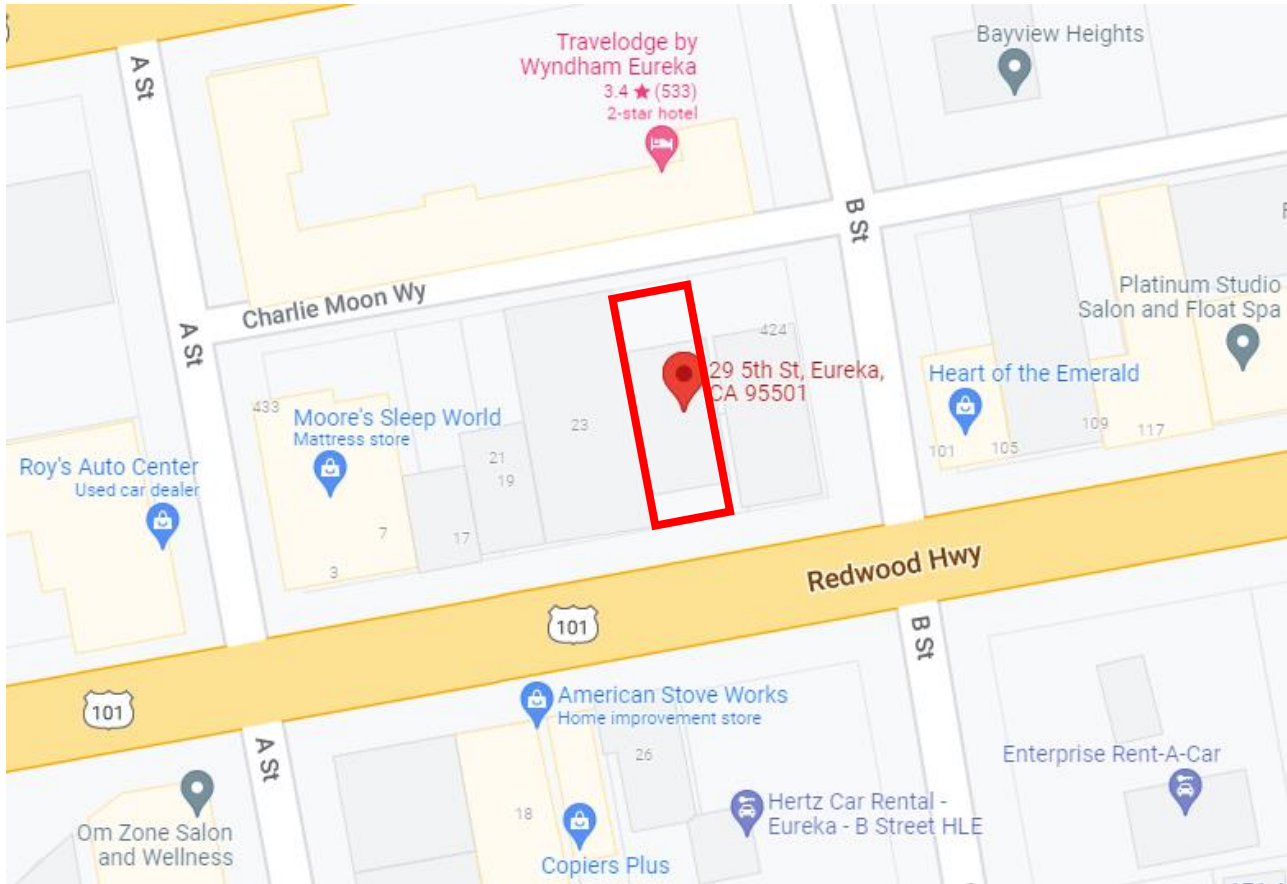
Proposed improvements to support the Cannabis Retail use include new interior walls to create the retail storefront and storage areas. Additionally, a new cannabis storage area will be created for the General Cannabis use, and a new 6-foot tall security fence will be constructed between the building and western property line (Figures 3 and 4). Eight security cameras and one exhaust fan and filter for odor control will be installed. No changes to the existing building footprint or height are proposed.

The subject property is an approximately 4,093-sf interior lot located on the north side of 5th Street (Highway 101 north), between A and B

Streets (Figure 2), and is surrounded by a mix of commercial service, retail, and residential uses. Directly to the west, are two vacant commercial buildings, a martial arts studio, and a mattress sales business. Directly to the east is another vacant commercial building with second floor residential, and further west, across B Street, is another cannabis retail business. To the north, across the alley, is commercial lodging, and to the south, across 5th Street, are several commercial businesses, including two rental car companies, wood stove sales and service, and a printing shop (Figure 5). Public access to the building is via 5th Street, and additional access is via the alley in the rear of the subject property. There are two off-street parking spaces in the rear of the

property for employees, but no off-street parking spaces are required for a change from one non-residential use to another non-residential use within an existing building. Existing Class II bike lanes are located south of the site on both 6th and 7th Streets, and the Eureka Transit System, Redwood Transit System and Southern Humboldt Intercity bus routes are within a short walking distance from the site.

Figure 5: Google aerial view identifying surrounding businesses



ANALYSIS

To approve a Use Permit, the Planning Commission must make all of the following findings:

1. The proposed use is consistent with the General Plan, Zoning Code, and any applicable specific plan or area plan adopted by the City Council.
2. The site is suitable for the size, design, and operating characteristics of the proposed use.
3. The proposed use will be compatible with existing and planned land uses in the vicinity of the property.
4. The proposed use will not be detrimental to the public health, safety, and welfare.

5. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

I. Plan and Code Consistency

General Plan

The Downtown Commercial (DC) land use designation provides for a mix of retail, restaurants, lodging, entertainment, cultural, visitor services, offices, and upper floor residential uses. Applied to the bulk of the Core Area, which serves as the traditional business and cultural center for the City. Intended to have a high intensity urban form, retain and enhance Eureka's identity and historic character, and promote a vibrant pedestrian environment. Residential and office uses are primarily allowed only on upper floors and non-street-facing portions of buildings, and only as provided by the applied zoning district. The maximum Floor Area Ratio is 6.0.

The proposed Cannabis Retail use actively contributes to the mix of uses desired in the DC land use designation, with surrounding buildings occupied by a martial arts studio, mattress sales, fire stove service and sales, rental car companies, commercial lodging and second-story residential uses (Figure 5). The proposed retail use will occupy a vacant storefront located in close proximity to other currently vacant storefronts and structures, and serve both locals and visitors, consistent with the intent of the Downtown Commercial land use designation. Occupation of the subject building will help revitalize this portion of the city and encourage development in surrounding vacant buildings. The building was constructed pre-1900 for residential purposes, and utilizing the structure for a Cannabis Retail use will allow for adaptive reuse of an existing vacant building, both contributing to a high intensity urban form and maintaining Eureka's identity and historic character. As a small shop, rather than a big-box retailer, served by wide sidewalks, the proposed use will enhance the pedestrian-friendly environment. The subject property contains an existing one-story commercial building and utilizing the structure for a commercial use avoids residences and offices on the street level consistent with the goals of the DC land use designation. By allowing the proposed use to be centrally located in the Core Area, its customers can also become visitors and/or shoppers of the surrounding businesses, which can help revitalize the area and support the City's Core Area as a regional center.

Review of the 2040 General Plan found no goals or policies which are in conflict with the proposed use, and also found the proposed use is consistent with the following relevant policies:

LU-1.3 (Beneficial Development) Support development that affords benefits to all segments of the community that: [...] d. Reuses and expands upon underutilized or dilapidated buildings; and [...]

LU-1.9 (Existing Buildings and Sites) Support economic investment in and incentives for improvements to existing buildings and sites including facade improvements, new paint and signage, retrofitting, adaptive reuse, and upgraded landscaping and paving.

The existing building where the Cannabis Retail use is proposed was constructed pre-1900 as a dwelling unit, and has evolved over time to meet the needs of the community. Vacant since 2019, the structure's most recent use was as a restaurant, with the previous occupants installing a commercial kitchen in 2001. The proposed Cannabis Retail use will

allow for the adaptive reuse of an underutilized building, and the principally permitted General Cannabis use will utilize the commercial kitchen for small batch cannabis edible production. A Cannabis Retail use on the subject property supports development, economic investment, and reuse of an underutilized existing building consistent with Policies LU-1.3 and LU-1.9.

Figure 6: Google street view from 5th Street (looking North)



Policy LU-1.19 (Pedestrian-oriented Design) In the downtown, commercial core, mixed use, and neighborhood commercial areas, promote the creation of a strong and appealing pedestrian environment by requiring the use of transparent commercial storefronts (i.e., windows and doors) and continuous and compatible building facades, while prohibiting the creation of blank walls and discontinuity in building facades.

An existing fence located at the south (front) property line, adjacent to 5th Street, is not compliant with Eureka Municipal Code (EMC) 155.320 (Fences and Walls) because solid fences located between a building and the street are prohibited in the mixed-use zone districts (Figure 6). This fence does not promote a strong or appealing pedestrian environment and thus a condition has been added requiring its removal, and requiring all future fencing comply with the EMC.

Additionally, the subject property is located on a designated Pedestrian-focused Frontage (PFF) per EMC 155.208.040. The façades of buildings facing PFFs are subject to special land use regulations and development standards to maintain and enhance an active and engaging pedestrian environment. PFFs have ground floor storefront transparency standards requiring the area of the facade between three and seven feet above the sidewalk be at least 65% transparent. Although the 5th Street building façade has an existing transparency of approximately 43%, this is a continuing nonconforming site feature which will not be made more nonconforming by the proposed use. Additionally,

the existing design of the 5th Street façade is pedestrian-scaled and friendly with an ADA ramp, hand railings, stairs, columns, and a large glass door providing transparent views to the building's interior (Figure 7). Any exterior modifications to a building façade which faces a PFF require Design Review in accordance with EMC 155.412.040. Although no changes are currently proposed, a condition has been included requiring any future proposed alterations to the 5th Street façade receive Design Review approval.

As conditioned, the proposed use is consistent with Policy LU-1.19.

Figure 7: Front Elevation



Policy LU-2.1 (Core Area Uses and Activities) Support the following uses and activities within the Core Area: (1): Craftsman shops where items such as baked goods, glass, pottery, small furniture, clocks, and other specialized items are made and sold onsite.

The proposed Cannabis Retail and General Cannabis uses, operating in tandem, will allow for small-batch mechanical cannabis extracts and edibles to be made and sold on site, consistent with Policy LU 2.1.

Policy E-3.16 (A Well-Regulated Cannabis Industry) Maintain regulations for an evolving cannabis market; protect health and safety while allowing cannabis commerce that is consistent with our community vision.

Until the recent update of the City's Cannabis regulations, prospective cannabis retail facilities were limited, and had to participate in a request for proposal (RFP) process in order to be invited by the City Council to apply for a Use Permit. This process was implemented due to concerns an abundance of cannabis retail facilities could negatively impact health, safety, and the community vision in general. Now, since the potential proliferation of retail cannabis facilities has not occurred, and the need for retail cannabis facilities appears to be market driven, under the new regulations, anyone can apply for a Cannabis Retail Use Permit. The evolution of the area's cannabis market is directly

reflected in the recent update of the City's cannabis regulations, and the proposed Cannabis Retail use will allow for cannabis commerce consistent with these regulations. With the changes to the City's cannabis regulations, and the removal of a limit on the number of cannabis retail facilities, the concentration of cannabis retail facilities in the DW zone was analyzed. The City of Eureka has 10 operating cannabis retail facilities, four of which are within the DW zone district. Given the number of storefronts located in the DW zone district, having five total operating Cannabis Retail facilities will not disproportionately affect the character of the district.

The proposed use is well beyond the required 600-foot radius from any schools, with the closest school being Alder Grove Charter School approximately .4-miles away.

A condition has been added requiring the facility operator to obtain necessary cannabis retail licenses. The applicant has proposed numerous security cameras and one odor filter, and these security and odor control measures will receive additional review during the licensing process. For these reasons, the proposed use will protect health and safety while allowing increased retail cannabis commerce, consistent with the community vision and Policy E-3.16.

Zoning Code

The Cannabis Retail use is proposed in the Downtown West zoning district, which is one of the City's mixed-use zoning districts. The general purposes of the mixed-use zoning districts are to:

1. *Protect, enhance, and build upon Eureka's unique identity, historic character, and sense of community;*
2. *Promote a compact development pattern with high-intensity activity centers, infill development, adaptive reuse of existing buildings, and redevelopment of vacant lots and underutilized properties;*
3. *Encourage a mix of commercial, residential, professional office, and civic land uses;*
4. *Accommodate a broad range of commercial uses to serve the community and allow properties to quickly respond to evolving market opportunities over time;*
5. *Promote a diversity of multi-family housing choices in higher density mixed-use settings, especially on upper floors;*
6. *Provide a pedestrian-friendly environment while accommodating the needs of automobiles where appropriate;*
7. *Promote transportation alternatives, reduce the reliance on automobiles, and increase opportunities to walk, bike, or take transit to destinations;*
8. *Foster a diverse and resilient local economy, friendly to new business investment and the creation and retention of quality jobs;*

9. *Encourage growth in the City's tax base to support City services and infrastructure; and*
10. *Provide attractive and well-designed streetscapes, buildings, parking, and public spaces.*

The specific purpose of the Downtown West (DW) zoning district is as an extension of the Downtown (DT) zoning district with a broader range of allowed land uses to further encourage investment and development and to provide a transition zone from Broadway to Downtown.

The applicant will operate a new commercial cannabis retail use in the Downtown West zoning district, in addition to other General Cannabis uses. The Cannabis Retail use is proposed in a vacant building, which previously housed a restaurant and has an existing commercial kitchen which will easily allow adaptive reuse of the space for production of edibles under the General Cannabis use and the sale of the edibles through the Cannabis Retail use.

Together, the proposed uses will occupy a vacant building, create value-added products to be sold onsite, and create jobs (estimated to be a maximum of five) contributing to Eureka as the economic hub and major employment center of the region, and contributing to the City's tax base. A concentration of occupied business facilities also helps reduce blight, which can deter vandalism and increase property values. The subject site is centrally located, served by wide sidewalks, and has access to Class II bike lanes and several bus routes, which can encourage employees and customers to walk, bike or use transit to the site. The project is conditioned to remove the solid fence between the 5th Street facing building façade and the sidewalk, which will allow the building to interact better with the sidewalk and pedestrians, and encourage an active and inviting streetscape (Figure 6 and 7). Furthermore, because the proposed use is located on a PFF, any changes to the street facing façade, including the addition of any signage, will need Design Review, and a condition has been included requiring such. For these reasons, the proposed use will enhance the appearance and economic vitality of the surrounding mixed-use neighborhood, and provide a pedestrian-friendly environment while accommodating the needs of cannabis users. Lastly, the proposed cannabis use will occupy an existing, single-story, vacant commercial structure, surrounded by buildings developed for commercial, residential, and retail uses. Therefore, the proposed Cannabis Retail use at this location will not affect existing or future housing options in the vicinity, and will contribute to a diversity of uses in this mixed-use zone.

2. Site Suitability

The project site contains an existing, single-story, vacant, 1,578-sf building located on a 4,093-sf interior parcel. The subject site previously housed a restaurant, and per the applicant, the commercial kitchen will be utilized to make cannabis edibles as part of the principally permitted General Cannabis use, which can then be sold onsite in the proposed Cannabis Retail facility. At peak operation, including both general and retail uses, the maximum number of staff will be five employees, with hours of operation being 8 a.m. to 8 p.m., seven days a week. New off-street parking is not required per EMC 155.324.020.C.6, which exempts new off-street parking requirements when the proposed use is a change from a non-residential use to another non-residential use within an existing building. However, there are two off-street parking spaces in the rear of the property for employee vehicles, and there is on-street parking to accommodate employees and customers on nearby streets. Based on the above analysis, the site and the building are of sufficient size and design to accommodate the proposed Cannabis Retail use, but not so

large the proposed use would be out of scale with the neighborhood. Therefore, the site is suitable for the proposed use.

3. Existing and Proposed Uses

The subject property is centrally located in the DW zone district, and is primarily surrounded by a mix of commercial service, commercial retail, and residential uses. Directly to the west, are two vacant commercial buildings, a martial arts studio, and a mattress sales business. Directly to the east is another vacant commercial building with second floor residential, and further west, across B Street, is another cannabis retail business. To the north, across the alley, is commercial lodging, and to the south, across 5th Street, are several commercial businesses, including two rental car companies, wood stove sales and service, and a printing shop. Bayview Heights, a 51-unit veteran affordable housing community, is located one block northeast (Figure 5). The DW zone district also contains 4 other Cannabis Retail facilities. The greater surrounding area includes restaurants, a grocery store, and more commercial lodging. The proposed Cannabis Retail use is a commercial retail use, similar to existing nearby retail sales and service uses where customers arrive onsite, purchase a good or service, and depart the site, typically within a limited amount of time. Furthermore, with vehicle rentals and commercial lodging establishments being in close proximity to the project site, this area is likely frequented by tourists and visitors, and Cannabis Retail is a visitor- and local-serving use. The project proposes to add eight security cameras as well as an odor control system including an exhaust fan and filter. The security plan and odor control system will be reviewed and improved as necessary as part of the City licensing process which requires a pre-operational inspection, and operators of the cannabis uses will be required to obtain all necessary City and State cannabis licenses. For these reasons, the proposed Cannabis Retail use is compatible with the existing and anticipated uses in the building and in the vicinity.

4. Public Health, Safety, and Welfare

Previously approved and operating cannabis retail facilities in the surrounding area have not proved to be a nuisance or negatively impacted public health, safety, or welfare. There is no indication the addition of a similar cannabis retail facility in the same zone district would be different.

As required by EMC 158.308.J.1, the subject property is located outside of the required 600-foot radius from any schools, with Alder Grove Charter School the closest, .4-miles away. A condition has been included requiring entrance notices be posted at all building entrances indicating persons under the age of 21 are precluded from entering the premises, except for qualified patients, unless accompanied by a parent or legal guardian, as required by EMC 158.308.G.

While the act of cannabis consumption can create certain personal health risks, these risks are taken willingly by the individual who chooses to consume cannabis or a cannabis product. The use permit will not allow for consumption of cannabis products on-site. Customers will arrive on-site, purchase products, and depart in a relatively short amount of time, with consumption of products conducted elsewhere. Odor control systems and security plans are required to meet all applicable standards and conditions set by the Eureka Cannabis Review Panel (ECRP), and will be reviewed by the ECRP upon application for required City cannabis licenses.

Referrals were sent to agencies and City departments with interest or jurisdiction over the property or the intended use of the property. Comments were received from Development

Services – Building stating 20% of construction costs must be matched with ADA-compliant improvements. Additionally, Public Works – Engineering specified once development begins, a requirement of the building permit will be to have the sewer lateral and water service inspected. Any work required to repair these items will require coordination with Caltrans for an encroachment permit, as sewer and water connections are in their right-of-way, and with the City to inspect the utilities to ensure they meet City standards. Furthermore, based on the applicant's description of the other proposed cannabis uses included in the General Cannabis use category (mechanical extraction, edible production, processing, and distribution), Public Works also indicated the subject property will require a backflow device, discharge permit and functional grease trap. A condition has been included requiring the applicant to obtain a building permit prior to conducting facility improvements to the satisfaction of both Public Works and Development Services - Building.

Minimal ground disturbance to a depth of 36-inches is anticipated for installation of new security fencing (Figure 3). If repairs to either the sewer or water line are required additional ground disturbance would occur to a maximum depth of six feet. The project was referred to local area Tribal Historic Preservation Officers (THPOs), and the THPO of the Blue Lake Rancheria recommended inadvertent archeological discovery protocol for any ground disturbance, and a condition has been included requiring such.

For the reasons listed above, the proposed Cannabis Retail use, as conditioned, will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

5. Location

The subject property is located mid-block on 5th Street (Highway 101 north), between A and B Streets (Figure 2). The building's public entrance is on 5th Street, and on-street parking is available on all surrounding streets, with two additional off-street parking spaces available to employees in the rear of the building. Existing Class II bike lanes are located south of the site on both 6th and 7th Streets, and Eureka Transit System, Redwood Transit System and Southern Humboldt Intercity bus routes are within a short walking distance from the site. The site is a developed urban parcel and is fully served by water, sewer, power, telecommunications, and transportation infrastructure. Based on the above analysis, the location is appropriate for the proposed Cannabis Retail use.

ENVIRONMENTAL ASSESSEMENT

Action on the Use Permit is discretionary and subject to environmental review in accordance with the California Environmental Quality Act (CEQA). The City of Eureka, as Lead Agency, has determined the proposed project is categorically exempt from the provisions of CEQA pursuant to §15301, Existing Facilities, Class I of the CEQA Guidelines which exempts the operation, permitting, leasing, or minor alteration of existing private structures involving negligible or no expansion of the existing or former use. The project qualifies for the Existing Facilities exemption because the proposed Cannabis Retail use will be located within an existing commercial structure and no expansions or external modifications are proposed.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners within a 300-foot radius of the site on or before December 30, 2022. In addition, the notice was posted on the City's website and bulletin boards. A public hearing notice sign was posted on the site on or before December 30, 2022.

CONCLUSION

Based on the analysis above, the proposed Cannabis Retail use, as conditioned, is consistent with the General Plan and Zoning Code. The proposed use within an existing commercial building is suitable for the site, and is compatible with existing and planned land uses in the building and in the vicinity. The use as conditioned will not be detrimental to the public health, safety, and welfare, is properly located within the City, and adequately served by existing utilities and infrastructure.

STAFF CONTACT

Millisa Smith, Assistant Planner, 531 K Street, Eureka, CA 95501; planning@eurekaca.gov; (707) 441-4160

DOCUMENTS ATTACHED

Attachment 1: Planning Commission Resolution 2023-____
Attachment 2: Applicant submitted material