



**CITY OF EUREKA**  
DEVELOPMENT SERVICES DEPARTMENT  
Rob Holmlund, AICP, Director

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## NOTICE OF PUBLIC HEARING

### EUREKA CITY PLANNING COMMISSION

**NOTICE IS HEREBY GIVEN** that the Eureka City Planning Commission will hold a public hearing on Monday, September 10, 2018, at 5:30 p.m., or as soon thereafter as the matter can be heard, in the Council Chamber, Eureka City Hall, 531 “K” Street, Eureka, California, to consider the following application:

**Project Title:** *Heart of the Emerald Cannabis Retail Facility Conditional Use Permit*

**Project Applicant:** Heart of the Emerald, LLC

**Case No:** C-18-0008

**Project Location:** 109 5<sup>th</sup> Street (AKA 103 5<sup>th</sup> Street); APN 001-071-006

**Zoning and General Plan Designations:** Service Commercial (CS)/Highway Service Commercial (HSC)

**Project Description:** The applicant is seeking a Conditional Use Permit (CUP) for a cannabis “retail” facility, which is listed as a *conditional use* in the subject zoning district. If this CUP is granted, the use of cannabis “retail” would apply to the entire parcel. Eureka Zoning Code Section 155.078 lists cannabis retail facilities subject to the provisions of Chapter 158 in the CS Zone. A Commercial Cannabis License (MCL-18-0041) is being processed separately.

All interested persons are invited to comment on the project either in person at the scheduled public hearing, or in writing. Written comments on the project may be submitted at the hearing, or prior to the hearing by mailing or delivering them to the Development Services Department, 531 K Street, Eureka, CA 95501. Accommodations for handicapped access to City meetings must be requested of the City Clerk, 441-4175, five working days in advance of the meeting. If you challenge the nature of the proposed action in court, you may be limited to raising only those issues that you or someone else raised at the public hearing described in this notice or written correspondence delivered to the public entity conducting the hearing at or prior to the public hearing. The project file is available for review at the Community Development Division of the Development Services Department, Third Floor, City Hall. If you have questions regarding the project or this notice, please contact Swan Asbury, Assistant Planner, *phone:* (707) 268-1830; *fax:* (707) 441-4202; *e-mail:* sasbury@ci.eureka.ca.gov



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**EUREKA CITY PLANNING COMMISSION**

**STAFF REPORT**

**September 10, 2018**

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**Background:** Per EMC §158.022, only those commercial cannabis retail facilities invited by the City Council may submit an application for a commercial cannabis license. The City implements this limitation through the following process:

1. Release a Request for Qualifications (RFQ) or a Request for Proposals (RFP) for commercial cannabis retail facilities.
2. A committee appointed by the City Manager shall review and evaluate all responsive proposals to determine which respondent(s) best meet the City's criteria for a retail facility.
3. The committee shall review, evaluate, and rank each proposal based on the criteria outlined in the RFQ/RFP. The committee may conduct interviews with all or some of the proposers as needed.
4. The Development Services Director shall present the committee's ranked recommendations to Council. Through the Development Services Director, the committee shall recommend to Council any number of proposals for approval, including zero.
5. Based on the ranked recommendations of the committee, the City Council shall invite any number of proposals to submit commercial cannabis licenses and all associated required permits. Council may invite fewer proposals than those recommended by the panel, including zero.

The above process was implemented in 2015 and the City Council approved one cannabis retail business (EcoCann) at 306 F Street. Then, In September of 2017, the City Council directed staff to issue a Request for Proposals (RFP) for up to two cannabis retail facilities and on November 13th the City

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released an RFP. The City Manager approved a Cannabis Retail Facilities Selection Committee to review and rank the proposals. In early February, the City received 20 proposals, which were reviewed, evaluated, scored, and ranked by the Committee. Following the evaluation, the Committee recommended that the City Council invite two cannabis retail businesses to begin the Conditional Use Permit process for the first half of 2018. The two cannabis retail businesses were the Humboldt Patient Resource Center and MOCA Humboldt. Both are currently in the Commercial Cannabis License process.

When inviting the two cannabis retail businesses to begin the Use Permit process for the first half of 2018, City Council gave direction to amend the code to remove the limit on the number of retail cannabis facility use permits that can be issued in a six month period, but to retain the six-month-RFP-process.

While the Committee reviewed the 20 proposals received in February, the Committee was comfortable recommending an additional eight cannabis retail businesses (of the 20 that applied) to begin the Conditional Use Permit process for the second half of 2018.

The additional eight cannabis retail businesses are:

- 1. The Heart of the Emerald at 109 5<sup>th</sup> Street**
- 2. Heirloom Organics at 627 Summer Street**
3. S.T.I.L. at 2940 Broadway
4. Native Humboldt Farms at 514 W. 14<sup>th</sup> Street
5. Zen Healing at 26 W. 4<sup>th</sup> Street
6. 132 W. 4<sup>th</sup> Street LLC at 132 W. 4<sup>th</sup> Street
- 7. Humboldt's Premium at 1131 Broadway**
- 8. Proper Wellness Center at 423 F Street**

The bolded businesses listed above will be presented to the Planning Commission at the September 10<sup>th</sup> meeting. The focus of this staff report is **The Heart of the Emerald, located at 109 5th Street.**

The site at 109 5th Street consists of one legal parcel with two existing structures. The site is in the CS Zone district in a neighborhood that generally consists of light industrial and service commercial uses. All of the neighboring parcels within a 300 foot radius are also within the CS Zone district. The subject property is well served by water, wastewater, gas, power, and other utilities. The existing building contains several off-street parking spaces. The property currently contains a business that conducts cannabis distribution out of the upstairs portion of the property. The downstairs portion of the property is the focus of this application, and will contain a Humboldt cultural center with the retail facility located in the mezzanine of the downstairs portion.

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Note that all cannabis applications are reviewed and approved/denied by the Humboldt Bay Fire Department and the City of Eureka Building Department in relation to Fire and Building Codes. Likewise, the Eureka Police Department has review and approval authority for Safety and Security Standards. The applicant's plans for this site are currently in review by the Fire Department, Police Department, and Building Department.

**Staff Contact Person:** Swan Asbury, Assistant Planner; City of Eureka, Community Development Department; 531 "K" Street, Eureka, CA 95501-1165; phone: (707)268-1830, fax: (707) 441-4202, email: [sasbury@ci.eureka.ca.gov](mailto:sasbury@ci.eureka.ca.gov)

**Staff Recommendation:**

1. Hold a Public Hearing; and
2. Adopt a Planning Commission Resolution 2018-12 approving a use permit allowing a Cannabis Retail Facility at 109 5<sup>th</sup> Street.

**Environmental:** The conditional use permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA); however, the project qualifies for a Class 1 exemption (Section 15301) from CEQA which exempts the conversion and minor alteration of existing structures.

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**Required Consistency Findings:** §155.285 of the Eureka Municipal Code requires that consistency findings must be made between the proposed conditional use with conditions and the following prior to the Planning Commission approving a conditional use permit:

**Consistent with:**

1. Overall objectives of the Zoning Code (EMC §155.002)
2. Purposes of the CS District (EMC §155.075)
3. Special Purposes of the CS District (EMC §155.076)
4. No detrimental effect to public health, safety, welfare, or to properties in the vicinity (EMC §155.285)
5. Development Standards of the Zone (EMC §155.285)
6. Local Coastal Program (EMC §155.285)

**Project Analysis:**

**1. Overall objectives of the Zoning Code (EMC §155.002):** (Findings in bold)

Objective 1	To provide a precise guide for the physical development of the City in such a manner as to achieve progressively the arrangement of land uses depicted in the general plan adopted by the Council;
	<b>The proposed use implements the adopted land use map and is consistent with the goals and policies of the General Plan. The proposed use is also consistent with the City’s Zoning regulations. Per EMC § 155.076, the purposes of the CS Zone District include “...to permit additional development in mixed commercial areas containing both retail stores and commercial services...” and “...to allow a wider choice of location for certain industrial uses that do not have an adverse impact on commercial services.” The proposed site is in a mixed commercial area that contains both retail and commercial services. Retail is consistent with other businesses in the immediate area.</b>
Objective 2	To foster a harmonious, convenient, workable relationship among land uses;
	<b>The proposed retail facility will be located in an existing commercial structure on 5th Street. The site and building are accessed via 5th Street through a man-trap door and a door off the parking lot via the alley and should provide minimal disruption during periods of loading and unloading. Through the application of the suggested conditions and through the enforcement of other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not be able to allow cannabis plants to be seen from outside the facility. The proposed retail facility will not divide an established community, and granting the conditional use permit will foster a harmonious, convenient, workable relationship with the surrounding properties and zone districts by</b>

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	<b>providing a retail facility that local residents, as well as visitors, can patronize.</b>
Objective 3	To promote the stability of existing land uses that conform with the general plan and to protect them from inharmonious influences and harmful intrusions;
	<b>The proposed use is considered appropriate for the area; it is listed as a <i>conditional use</i> in this zoning district. The CS zone is consistent with the HSC (Highway Service Commercial) land use. Downtown is currently developed with many commercial uses, and this building has existed on the site for many years with various uses. The proposed use conforms to the General Plan and is typical of the uses that occur in the CS zone district. Through the application of the suggested conditions and through the enforcement of other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not be able to allow cannabis plants to be seen from outside the facility. The proposed retail facility will be patronized by visitors and area residents. There is no indication that the retail facility will introduce harmful influences into the area.</b>
Objective 4	To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the City as a whole;
	<b>The development of a cannabis retail facility in the existing commercial structure would be a benefit to the City as a whole. Businesses have occupied the site in the past, but turn-over at the site has been high and frequent. The location is convenient for many types of uses. The proposed use is consistent with the purposes of the CS district and will generate jobs, while drawing visitors and patrons to the Downtown area, which is a benefit to the City as a whole.</b>
Objective 5	To prevent excessive population densities and overcrowding of the land with structures;
	<b>The proposed project is a retail facility, does not include the development of housing units, and will be located in an existing commercial structure; therefore the granting of the conditional use permit will not result in increased population densities, and will not cause an overcrowding of land with structures.</b>
Objective 6	To promote a safe, effective traffic circulation system;
	<b>The cannabis retail facility is proposed in an existing structure that has an adjacent parking lot in the rear of the facility. The existing parking lot will be sufficient for the use, particularly in conjunction with street parking. In addition, the site is located in the parking assessment district.</b>
Objective 7	To foster the provision of adequate off-street parking and off-street truck loading facilities;
	<b>See discussions above regarding parking and circulation. The existing building has parking lot in the rear with a back door for discrete loading and</b>

	<b>unloading. In addition, the site is location in the parking assessment district.</b>
Objective 8	To facilitate the appropriate location of community facilities and institutions;
	<b>The property has been available for lease multiple times in the past several years. If there was a need and funding for a public community facility/institution at the site, then it would have been leased for such a purpose when the opportunity presented itself. No community facilities or institutions have been proposed for the site.</b>
Objective 9	To promote commercial and industrial activities in order to strengthen the city's tax base;
	<b>Granting the conditional use permit will facilitate the development of a cannabis retail facility, which is the only type of cannabis business that generates sales tax. The facility would contribute to the City's tax base. In addition, a new cannabis retail facility is likely to draw out-of-area visitors and local residents to the Downtown area, which may strengthen the city's tax base through sales tax and transient occupancy tax income from neighboring businesses.</b>
Objective 10	To protect and enhance real property values;
	<b>The proposed retail facility will be in an existing commercial structure and will be similar in nature to other nearby businesses. Property values should be enhanced by the existence of the retail facility, insuring that the property will not be vacant; it is unlikely that the project will have an adverse impact on property values on adjoining properties. Through the application of the suggested conditions and through the enforcement of other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not be able to allow cannabis plants to be seen from outside the facility.</b>
Objective 11	To safeguard and enhance the appearance of the City.
	<b>Exterior changes to the building will require Design Review approval. The Eureka Municipal Code currently does not allow signs to be installed for any cannabis-related businesses. The conditions of approval also address the visual appearance of the exterior of the facility. Through the application of the suggested conditions and through the enforcement of other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not allow cannabis plants to be seen from outside the facility.</b>

**2. Purposes of the Commercial District (EMC §155.075): (Findings in bold)**

Purpose 1	To provide appropriately located areas for retail stores, offices, service establishments, amusement establishments, and wholesale businesses offering commodities and services required by residents of the City and its surrounding market area;
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	<b>The proposed project would create a retail facility, which is among the purposes of the CS district. The proposed retail facility will be patronized by area residents, and out of area visitors and clientele.</b>
Purpose 2	To provide opportunities for retail stores, offices, services establishments, amusement establishments, and wholesale businesses to concentrate for the convenience of the public and in mutually beneficial relationship to each other;
	<b>The proposed project would create a retail facility, which is among the purposes of the CS district. A concentration of occupied business facilities helps reduce blight, minimizes vandalism and can reduce crime. The approval of the conditional use permit will increase foot traffic in the area that will be beneficial for other nearby businesses.</b>
Purpose 3	To provide space for community facilities and institutions that appropriately may be located in commercial areas;
	<b>The property has been available for lease multiple times in the past several years. If there was a need and funding for a public community facility/institution at the site, then it would have been leased for such a purpose when the opportunity presented itself. No community facilities or institutions have been proposed for the site.</b>
Purpose 4	To provide adequate space to meet the needs of modern commercial development, including off-street parking and truck loading areas;
	<b>No new exterior construction is proposed. The proposed project utilizes an existing building and parking lot. The existing parking lot will be sufficient, particularly in conjunction with street parking. In addition, the site is located in the parking assessment district.</b>
Purpose 5	To minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the amount of land around them;
	<b>No expansion in the size of the building is proposed and the existing building is well served by water, wastewater, gas, power and other utilities.</b>
Purpose 6	To protect commercial properties from noise, odor, dust, dirt, smoke, vibration, heat, glare, heavy truck traffic, and other objectionable influences incidental to industrial uses; and,
	<b>The proposed retail use is not expected to generate any detectable dust, dirt, smoke, vibration, heat, or glare. Through the applications of the suggested conditions and through the enforcement of other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not allow cannabis plants to be seen from outside the facility.</b>
Purpose 7	To protect commercial properties from fire, explosion, noxious fumes, and other hazards.
	<b>The proposed retail facility will not generate an unusual risk of fire, explosion, noxious fumes, or other hazards.</b>

**3. Special Purposes of the CS District (EMC §155.076):** (Findings in bold)

Purpose 1	To provide appropriately located areas for commercial uses having features that are incompatible with the purposes of the other commercial districts;
	<b>Retail cannabis facilities are conditionally allowed in the CC (Central Commercial), CN (Neighborhood Commercial) and the CS (Service Commercial) zone districts. The CS district provides for a mix of retail, restaurants, offices, and other visitor serving uses, and encourages the location of retail stores in the Downtown part of Eureka. The adaptive reuse of the vacant building is a positive step for the neighborhood and the district, and the retail cannabis facility use is compatible with the surrounding commercial uses.</b>
Purpose 2	To permit additional development in mixed commercial areas containing both retail stores and commercial services;
	<b>The proposed cannabis retail facility provides a compatible mix with existing commercial uses within the immediate area.</b>
Purpose 3	To allow a wider choice of location for certain industrial uses that do not have an adverse impact on commercial services.
	<b>The proposed cannabis retail facility is not an industrial use, and will not produce excessive noise or light, and odors detectable outside the structure are prohibited.</b>

**4. No detrimental effect to public health, safety, welfare, or to properties in the vicinity (EMC §155.285):**

Based on the discussion above the facility will operate without creating a detrimental effect to public health, safety, and welfare or to the properties in the vicinity. Through the enforcement of the conditions of approval and other existing City regulations, the use will not be permitted to allow cannabis odors to be detectable outside of the facility and will not be able to allow cannabis plants to be seen from outside the facility. It can be found that “the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.”

**5. Development Standards of the Zoning Code (EMC §155.285)**

The development standards of the Eureka Municipal Code regulate such things as land use, building height, size, location, off-street parking, etc. The project has been reviewed by staff and found to conform to all required development standards as contained in the Eureka Municipal Code. As the project is a conditionally permitted use and is to be located in an existing structure, all development standards are met.

**6. Local Coastal Program (EMC §155.285)**

This property is not located within the Coastal Zone.

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**Agency and Departmental Comments:** Referrals were sent to several agencies and City departments with interest or jurisdiction over the property or the intended use of the property. The following Agencies/Departments commented:

1. **Tribal:** The Blue Lake Tribal Historic Preservation Officer (THPO), Bear River Band THPO, and Wiyot THPO agreed that if there is not any ground disturbance associated with the Conditional Use Permit then they do not have any concerns. Regardless, appropriate protocols for any groundbreaking work that includes inadvertent archeological discovery of cultural or historical artifacts should be followed.

No other comments were received which indicate that the proposed cannabis manufacturing facility use will be detrimental to the public health, safety, and welfare.

**Support Material:**

Attachment 1                      Planning Commission Resolution No. 2018-12.....pages 11 – 13

**PLANNING COMMISSION RESOLUTION NO. 2018-12**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA APPROVING THE CONDITIONAL USE PERMIT (C-18-0008) TO ALLOW A CANNABIS RETAIL FACILITY AT 109 5TH STREET; APN 001-071-006.

**WHEREAS**, the applicant is planning to operate a cannabis retail facility; and

**WHEREAS**, the property at 109 5th Street is zoned Service Commercial (CS), has a land use designation of Highway Service Commercial (HSC); and

**WHEREAS**, the retail use is conditionally permitted in the CS zone district; and

**WHEREAS**, the Eureka Municipal Code §155.285 prescribes the findings required to be made by the Planning Commission prior to granting a use permit.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of Eureka that the project, as conditioned below and described in the Staff Report, is approved, and the decision to approve with conditions the subject application was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not be limited to: written and oral testimony submitted at the public hearing; the staff report; site investigation(s); agency comments; project file; and, the evidence submitted with the permit application. The findings of fact listed below “bridge the analytical gap” between the raw evidence in the record and the Planning Commission’s decision.

1. The retail use is conditionally permitted in the CS zone district; therefore, the operation of a Cannabis Retail Facility requires approval of a Conditional Use Permit.
2. The project is located in the CS (Service Commercial) district, in which retail is listed as a conditionally permitted use and CS (Service Commercial) zone district is consistent with the underlying HSC (Highway Service Commercial) land use designation; therefore, the proposed use is consistent with the General Plan.
3. The project location is in accord with the objectives of Chapter 155 (Zoning) of the Eureka Municipal Code and the purposes of the district in which the site is located as documented in the staff report.
4. The project location and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity as documented in the staff report;
5. The Conditional Use Permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA); however, the project qualifies

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for a Class 1 exemption from CEQA which exempts the conversion and minor alteration of existing structures.

6. The project will comply with the applicable provisions of the Code.

**FURTHER**, approval of the Use Permit is conditioned on the following terms and requirements. The violation of any term or requirement of this conditional approval may result in the revocation of the permit.

1. All cannabis retail businesses operating at the subject property shall install odor control measures that shall be reviewed and approved by the City Building Department prior to operations. The odor control measures implemented shall be effective at controlling cannabis odors such that no cannabis odors shall be detectable outside the exterior walls of the facility.
2. All cannabis retail businesses operating at the subject property shall meet with the City of Eureka Fire Department, Building Department, and Police Department and shall implement safety, security, and other related requirements imposed by those Departments.
3. The exterior of the building, adjacent parking lot, and all other visible components of the property shall be maintained at a high level of quality.
4. All cannabis retail businesses operating at the subject property shall conduct loading and unloading of cannabis materials within the building (through the back door off the alley parking lot).
5. The property owner shall install and maintain a security system at the subject property within any buildings (present or future) that are engaged in cannabis retail. The security system(s) shall be designed as a means of deterring and discouraging criminal activity at the property for as long as any business is engaged in the proposed use.
6. Prior to commencement of any demolition, remodeling or construction, the applicant shall obtain all required Building and Fire permits to the satisfaction of the City of Eureka Building and Humboldt Bay Fire Departments.
7. In the event a building permit involving any ground disturbing activity is issued, the City's standard protocol for incidental archeological discovery (cultural or historical artifacts) shall be followed.

**PASSED, APPROVED AND ADOPTED** by the Planning Commission of the City of Eureka in the County of Humboldt, State of California, on the 10<sup>th</sup> day of September, 2018 by the following vote:

AYES: COMMISSIONER  
NOES: COMMISSIONER  
ABSENT: COMMISSIONER  
ABSTAIN: COMMISSIONER

*Heart of the Emerald Cannabis Retail Facility Conditional Use Permit*

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Jeff Ragan, Chair, Planning Commission

*Attest:*

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Rob Holmlund, Director of Development Services