



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

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NOTICE OF PUBLIC HEARING
DIRECTOR OF DEVELOPMENT SERVICES

NOTICE IS HEREBY GIVEN that the Director of Development Services will decide whether to approve, conditionally approve, or disapprove the minor use permit application below on **July 24, 2019**. The Director's decision will occur after considering all written comments received during the public comment period. A public hearing will be held at 2:30pm on Wednesday, July 24, 2019 in Room 207 of Eureka City Hall (531 K Street).

Project Title: *California Packaging Company Manufacturing Minor Use Permit*

Project Applicant: California Packaging Company; Chris Johnson

Case No: MUP-19-0003

Project Location: 238 W Grant Street; APN 004-012-009

Zoning: CS-AR (Service Commercial)

Project Summary: The applicant is seeking a Minor Use Permit (MUP) for cannabis "manufacturing, non-volatile, less than 5,000 sq. ft.," which is listed as a minor conditional use in the subject zoning district. If this MUP is granted, the use of "non-volatile" cannabis manufacturing would apply to the entire parcel. Eureka Zoning Code Section 155.078 lists cannabis manufacturing facilities, non-volatile, 5,000 square feet or less of floor area, subject to the provisions of Chapter 158 in the CS Zone. A Commercial Cannabis License is being processed separately. For more information, contact Rob Dumouchel (Development Services Department) at 707-441-4164 or see this website: http://www.ci.eureka.ca.gov/depts/development_services/public_hearing_notices.asp.

How to Comment: 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 Rob Dumouchel (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 Rob Dumouchel, Associate Planner, phone: (707) 441-4164; e-mail: rdumouchel@ci.eureka.ca.gov



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DIRECTOR OF DEVELOPMENT SERVICES

STAFF REPORT

July 24, 2019

Project Title: *California Packaging Company Manufacturing Minor Use Permit*

Project Applicant: California Packaging Company; Chris Johnson **Case No.:** MUP-19-0003

Project Location: 238 W Grant **APN:** 004-012-009

Zoning and General Plan Designations: Service Commercial (CS) and General Commercial (GC)

Proposed Use: Cannabis manufacturing, non-volatile, 5,000 square feet or less manufacturing floor area

Project Description: The applicant is seeking a Minor Use Permit (MUP) for cannabis “manufacturing, non-volatile, less than 5,000 sq. ft.,” which is listed as a minor conditional use in the subject zoning district. If this MUP is granted, the use of “non-volatile” cannabis manufacturing would apply to the entire parcel. Eureka Zoning Code Section 155.078 lists cannabis manufacturing facilities, non-volatile, 5,000 square feet or less of floor area, subject to the provisions of Chapter 158 in the CS Zone. A Commercial Cannabis License is being processed separately.

Staff Recommendation:

1. Hold a Public Hearing; and
2. Adopt a Resolution of the Director of Development Services approving with conditions a minor use permit allowing non-volatile cannabis manufacturing with a manufacturing floor area of 5,000 sq. ft. or less at 238 W Grant Street (APN 004-012-009).

Staff Contact Person: Rob Dumouchel, Associate Planner; City of Eureka, Development Services Department; 531 “K” Street, Eureka, CA 95501; (707) 441-4164, Email: rdumouchel@ci.eureka.ca.gov

Environmental: A minor use permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA). This project qualifies for a Class 1 exemption (Section 15301) from CEQA because the proposed use will result in the conversion of a portion of an existing structure into a non-volatile cannabis manufacturing facility. The Class 1 exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of the existing or former use.

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Background: This minor use permit proposes to allow a non-volatile manufacturing facility on a parcel within the CS (Service Commercial) zone district. The parcel already hosts a principally permitted cannabis distribution facility, which is equipped to package cannabis products for distribution.

The project, located at 238 W Grant Street, is one block east of Broadway on the corner of Grant and Summer Streets. The parcel is in an area that transitions between service commercial uses along Broadway to a multi-family zoned area. Nearby uses include homes, apartments, and two automotive repair shops.



The subject parcel contains one existing structure which is a mixed use building with commercial uses on the ground floor and two residential units above. The applicant has already secured a license for cannabis distribution at this location and is cleared to operate. Currently, operations are very limited due to changes in State cannabis regulations which impacted the methods used by the business to conduct their operations. However, the business is in good standing with the City, the business has implemented all required conditions of approved City permits, and the business's operation methods fall well within City requirements. A conditional use permit for cultivation at this location was denied by the Planning Commission in 2017 (C-17-0006). The applicant has been invited to apply for a cannabis retail license by the City Council and is eligible to submit an application in January 2020.

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Cannabis manufacturing facilities process and produce cannabis-related products that are either sold wholesale to other licensed cannabis businesses or sold to individuals via licensed retail facilities. The non-volatile manufacturing process **may not** use volatile solvents (e.g. butane, propane). One form of non-volatile manufacturing is the conversion of raw cannabis plant matter into oils or concentrates via mechanical processes such as: presses that crush cannabis plant matter, centrifuges and other similar machinery that spin raw cannabis, grinders that pulverize raw cannabis, and other similar mechanical processes. Non-volatile manufacturing can also include some chemical processes (such as ethanol) to create plant extracts. Such chemical processes may not include butane, propane, or other similar volatile solvents. Non-volatile manufacturing may also include the production of edible and topical products utilizing concentrated cannabis oils obtained from other facilities. For example, a non-volatile manufacturing facility could purchase cannabis concentrates from another manufacturing facility and then use those concentrates to create cannabis-infused hand lotion. Unless the applicant successfully acquires a commercial cannabis retail license, all products leaving the building will be shipped in bulk as wholesale to other licensed locations. The non-volatile cannabis manufacturing use is similar to other uses, including breweries, distilleries, niche-food manufacturers, and other businesses that use raw products to create new, value-added products.

At this time the applicant is only proposing to use a manufacturing permit to fill vape cartridges with inputs sourced from other businesses. No extraction would take place on site, however, under this use permit, extraction would be allowed unless restricted by a condition of approval.

Use Permit

Eureka Municipal Code §158.021 (A) provides that “manufacturing, non-volatile, 5,000 square feet or less of manufacturing floor area” is a minor conditional use in the CS (Service Commercial) zone district.

Applicable Regulations:

In order to give the district use regulations flexibility, in certain zone districts conditional uses may be permitted subject to the granting of a use permit. Because of their unusual characteristics, conditional uses require special consideration so they are located properly with respect to objectives of the Zoning Regulations and with respect to their effects, or potential effects, on surrounding properties. In order to achieve these purposes, the Director is empowered to act on applications for minor uses and to impose reasonable conditions, provided the Director can make the following findings pursuant to Eureka Municipal Code § 155.285:

- (a) That the proposed location of the conditional use is in accord with the objectives of this chapter and the purposes and intent of the district in which the site is located.*
- (b) 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.*
- (c) That the proposed conditional use will comply with each of the applicable provisions of this chapter.*

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(d) That the proposed conditional use, if located in the coastal zone, is consistent with the certified local coastal program.

1. Objectives and Purposes

In Eureka Municipal Code § 155.002 the zoning regulations are adopted pursuant to the City Charter to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare. More specifically, the regulations are adopted in order to achieve the following objectives, which are analyzed below:

- 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.** The subject parcel’s land use designation is General Commercial (GC). General Commercial calls for a *“broad variety and scale of retail, office, restaurants, lodging, entertainment, outdoor sales, large product retail sales, storage, warehousing, wholesale, and residential uses.”* This use permit would allow for a new use, non-volatile cannabis manufacturing, which includes includes warehousing and wholesaling of bulk products which are produced on-site. The existing building also has two residential units which will remain.
- 2) To foster a harmonious, convenient, workable relationship among land uses.** The relationship between the proposed facility and the neighboring uses will be harmonious, convenient, and workable through the application of conditions such as those related to safety and security, odor control, and limitations on manufacturing processes; the use will be quiet, will not generate excessive odors, and will not disturb neighboring sites.
- 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.** The proposed use of non-volatile manufacturing would supplement existing operations at the facility. This use permit, if approved with the proposed conditions, would protect the on-site residential units, and the surrounding properties from inharmonious influences and harmful intrusions through conditions of approval related to odor control as well as odor control requirements within the Eureka Municipal Code.
- 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.** The development of a non-volatile cannabis manufacturing facility will support the permitted cannabis distribution facility in the building. Having an actively used commercial building with an active commercial tenant inside benefits the City by creating jobs and increasing appropriate uses in the immediate neighborhood.
- 5) To prevent excessive population densities and overcrowding of the land with structures.** The parcel is built out and the project does not include construction of new structures, nor does the project include new residences. The granting of this minor use permit would not result in increased population densities, and would not cause an overcrowding of land with structures.
- 6) To promote a safe, effective traffic circulation system.** The proposed manufacturing facility is located one block off of Broadway and the facility can be accessed from either Summer or West Grant Streets. It is not expected that the manufacturing facility will create any impediments to a safe and effective traffic circulation system.

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- 7) **To foster the provision of adequate off-street parking and off-street truck loading facilities.** This site requires a minimum of seven off-street parking spaces. Five off-street spaces, including one ADA space, are provided on the north side of the building. Two additional spaces are located inside the facility. These interior spaces, per the proposed conditions of approval for this project, may not be encroached upon by other commercial activities.
- 8) **To facilitate the appropriate location of community facilities and institutions.** The use of the site has never been occupied as a public community facility or community institution and the building was built as a mixed use building for commercial and residential uses.
- 9) **To promote commercial and industrial activities in order to strengthen the city's tax base.** Manufacturing and wholesaling of products does not directly generate sales tax. However, the proposed facility would support a small number of jobs which would add to the City's base economy. Skilled employees will have more disposable income to spend on taxable goods in Eureka.
- 10) **To protect and enhance real property values.** The proposed non-volatile manufacturing facility may result in increased real property value for the subject parcel. While it is unlikely the project will enhance the values of any neighboring parcels, with the conditions of approval and standards set in the Eureka Municipal Code, the project should not have an adverse impact on property values of adjoining properties.
- 11) **To safeguard and enhance the appearance of the City.** This use permit application was filed and deemed complete under what is now the "old" version of the inland zoning code where the site was located within an architectural review combining district and any exterior modifications required Design Review approval before the Use permit can be approved (plans can be reviewed by the Design Review Committee, Planning Commission, or City Council). The building was reviewed by the Design Review Committee in 2013 and 2017 for the current configuration. In the future, under the code adopted in June 2019, existing buildings in the Service Commercial zone district are exempt from design standards and would not be required to go to Design Review unless the floor area of the building were to be expanded by 30% or more, or entirely rebuilt.

Pursuant to Eureka Municipal Code § 155.075, in addition to the objectives prescribed in § 155.002, the Commercial Districts are included in the zoning regulations to achieve the following purposes:

- 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.** The proposed facility complements a wholesale cannabis distribution operation which is already licensed and cleared to operate at the subject location. The facility, if approved in a future application, will also include a retail storefront and retail delivery operation.
- 2) **To provide opportunities for retail stores, offices, service establishments, amusement establishments, and wholesale businesses to concentrate for the convenience of the public and in mutually beneficial relationship to each other.** The intent of the applicant is to integrate retail into their operations at this location. The applicant was granted an invite by the City Council to apply for retail use permits in May 2019, the applicant may submit an application starting in January 2020.

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- 3) **To provide space for community facilities and institutions that appropriately may be located in commercial areas.** The use of the site has never been occupied as a public community facility or community institution and the building was built as a mixed use building for commercial and residential uses.
- 4) **To provide adequate space to meet the needs of modern commercial development, including off-street parking and truck loading areas.** The facility is already built and includes parking and truck loading areas. The parcel is built out and no modifications to the footprint of the building are anticipated at this time.
- 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.** No expansion in the size of the building, or additional buildings, is proposed.
- 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.** The proposed facility, operated under the conditions imposed by the use permit and within the context of the Eureka Municipal Code, will not negatively impact neighboring commercial properties with noise, odor, dust, dirt, smoke, vibration, heat, glare, or heavy truck traffic.
- 7) **To protect commercial properties from fire, explosion, noxious fumes, and other hazards.** As a non-volatile manufacturing facility, the proposed use will not generate unusual risk of fire, explosion, noxious fumes, or other hazards. Additionally, the Eureka Municipal Code has strict regulations which do not allow cannabis odors to be detectable outside of the subject parcel.

Additionally, the following special purposes of the CS (Service Commercial) district are found in Eureka Municipal Code § 155.076 (D):

- 1) **To provide appropriately located areas for commercial uses having features that are incompatible with the purposes of the other commercial districts.** The proposed facility is not appropriate for other commercial districts which is why it is not allowed in the CC, CN, or CW zone districts. Certain non-volatile manufacturing activities (i.e. extraction via heat or alcohol) are not compatible with city center pedestrian retail areas, residential neighborhoods, or waterfront commercial areas. The subject parcel does border a residential area and conditions of approval have been included to make sure any impacts of the use are minimized.
- 2) **To permit additional development in mixed commercial areas containing both retail stores and commercial services.** The non-volatile manufacturing use allows for a more vertically integrated business which can manufacture, distribute, and store cannabis products. Additionally the applicant intends to file for a retail use permit as well in or after January 2020.
- 3) **To allow a wider choice of location for certain industrial uses that do not have an adverse impact on commercial services.** The non-volatile manufacturing facility, as conditioned, is compatible with surrounding commercial uses. The proposed facility will not produce excessive noise, light, or noxious odors, and all manufacturing work will be conducted within the existing structure.

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Based on the discussion herein, Staff has determined a finding can be made that the project, with conditions, is in accord with the objectives and purposes of the zoning regulations, commercial districts, and the CS zone district.

2. Public health, safety, or welfare

Because the non-volatile manufacturing facility is proposed to be located on a parcel which is located in close proximity to residential uses, staff believes that it is appropriate to limit the methods of non-volatile manufacturing allowed at the site so as to minimize potential impacts to neighboring parcels. The applicant is not intending to extract cannabis oils at this facility, staff recommends that extraction (which can happen via methods including those using heat, pressure, water, alcohol, and other solvents) not be allowed on the site.

The non-volatile manufacturing facility, if operated within the conditions proposed in the attached Director of Development Services Resolution, will operate without creating a detrimental effect to public health, safety, and welfare or to the properties in the vicinity. Through the application of the conditions and the enforcement of other existing City regulations, the facility will not be permitted to allow cannabis odors to be detectable outside the exterior walls of the facility or cannabis plants to be seen from outside the facility (except for brief periods of loading/unloading). Rigorous safety and security measures are also required and increase or decrease with the level of risk associated with the amount of cannabis materials located on site. Security levels are determined in the commercial cannabis licensing process and are confirmed during random site inspections of operational cannabis businesses. Because of requirements for security cameras at cannabis facilities, the presence of a cannabis facility in this area will increase the level of surveillance potentially benefitting neighboring businesses and residences.

3. Use complies with applicable provisions

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. Therefore, the proposed project does comply with the applicable provisions of the code.

4. Local Coastal Program (EMC §155.285)

The subject parcel is not located within the Coastal Zone.

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. For any ground disturbing activities, the Blue Lake and Wiyot Tribal Historic Preservation Officers (THPO), requested conditions be included relating to inadvertent discovery of paleontological, cultural, historical artifacts or resources, or human remains.

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Support Material:

Attachment 1 Director of Development Services Resolution page 8

DIRECTOR OF DEVELOPMENT SERVICES RESOLUTION NO. 2019-__

A RESOLUTION OF THE DIRECTOR OF DEVELOPMENT SERVICES OF THE CITY OF EUREKA APPROVING THE MINOR USE PERMIT (MUP-19-0003) TO ALLOW A NON-VOLATILE CANNABIS MANUFACTURING FACILITY AT 238 W GRANT STREET; APN 004-012-009

WHEREAS, the applicant is planning to operate a non-volatile Cannabis manufacturing facility; and

WHEREAS, the property at 238 W Grant Street is zoned Service Commercial (CS) and has a land use designation of General Commercial (GC); and

WHEREAS, non-volatile cannabis manufacturing uses with 5,000 sf or less of manufacturing area are conditionally permitted in the CS district and require a Minor Use Permit; and

WHEREAS, the Eureka Municipal Code §155.285 prescribes the findings required to be made by the Director of Development Services prior to granting a minor use permit.

NOW THEREFORE, BE IT RESOLVED by the Director of Development Services of the City of Eureka that the project, as conditioned below and described in the Staff Report, is approved and the decision was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not 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 application. The findings of fact listed below “bridge the analytical gap” between the raw evidence in the record and the Director’s decision:

1. The Minor 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 from CEQA which exempts the conversion and minor alteration of existing structures.
2. The proposed non-volatile cannabis manufacturing facility with 5,000 sf or less of manufacturing area and its proposed location are in accord with the objectives of Chapter 155 (Zoning) of the Eureka Municipal Code and the purposes of the CS District in which the site is located.
3. 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.
4. The proposed facility, as conditioned, conforms to all required development standards as contained in the Eureka Municipal Code.
5. The project is not located within the Coastal Zone.

FURTHER, approval of the Minor 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.

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1. The non-volatile manufacturing facility may not conduct cannabis extraction activities to include the extraction of cannabis oils from cannabis biomass or other pre-treated cannabis products via heat, pressure, water, alcohol, or hydrocarbons such as, propane, butane, hexane, and pentane.
2. Manufacturing, or other business operations, may not conflict with required parking areas inside the building.
3. The non-volatile manufacturing facility operator will install, operate, and maintain odor control measures that will be reviewed and approved by the City Building Department prior to operations. The odor control measures implemented will be effective at controlling cannabis odors such that no cannabis odors are detectable outside the exterior walls of the facility. Additionally, no cannabis odors from commercial cannabis operations may be detectable within residential units within the building or other tenant spaces not engaged in commercial cannabis operations.
4. No cannabis plant materials may be visible from the exterior of the property. This includes cannabis plant materials that are present onsite, in any buildings at the site, or in any vehicles at the site. The only exception to this condition is during brief periods of loading and unloading.
5. The non-volatile manufacturing facility will not operate with the overhead doors open, with the exception of bringing vehicles and products in or out of the building
6. The non-volatile manufacturing facility operator, through the commercial cannabis licensing process, 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.
7. The property owner, or non-volatile manufacturing facility operator, will install, operate, and maintain a security system at the subject property which covers the interior and exterior of any buildings (present or future) which contain commercial cannabis activities. 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.
8. Prior to commencement of any demolition, remodeling or construction, the applicant will obtain all required Building and Fire permits to the satisfaction of the City of Eureka Public Works Building and Humboldt Bay Fire Departments.
9. 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:
 - a) If archaeological resources are encountered during construction activities, all onsite work shall cease in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist will be retained to evaluate and assess the significance of the discovery, and develop and implement an avoidance or mitigation plan, as appropriate. For discoveries known or likely to be associated with native American heritage (prehistoric sites and select historic period sites), the Tribal Historic Preservation Officers for the Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe are to be contacted immediately to evaluate the discovery and, in consultation with the project proponent, City of Eureka, and consulting archaeologist, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. Historic archaeological discoveries may include 19th century building foundations;

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structure remains; or concentrations of artifacts made of glass, ceramic, metal or other materials found in buried pits, old wells or privies.

- b) If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified paleontologist can assess the nature and importance of the find and, if necessary, develop appropriate treatment measures in conformance with Society of Vertebrate Paleontology standards, and in consultation with the City of Eureka.
 - c) In the event of discovery or recognition of any human remains during construction activities, the landowner or person responsible for excavation would be required to comply with the State Health and Safety Code Section 7050.5. Construction activities within 100 feet of the find shall cease until the Humboldt County Coroner has been contacted at 707-445-7242 to determine that no investigation of the cause of death is required. If the remains are determined to be, or potentially be, Native American, the landowner or person responsible for excavation would be required to comply with Public Resources Code Section 5097.98. In part, PRC Section 5097.98 requires that the Native American Heritage Commission (NAHC) shall be contacted within 24 hours if it is determined that the remains are Native American. The NAHC would then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the landowner or the person responsible for the excavation work for the appropriate means of treating the human remains and any associated grave goods within 48 hours of being granted access to the site. Additional provisions of Public Resources Code Section 5097.98 shall be complied with as may be required.
10. When the non-volatile manufacturing facility operator handles hazardous materials at any one time, in a quantity equal to, or greater than: a total weight of 500 pounds, a total volume of 55 gallons, or 200 cubic feet of gas at standard temperature and pressure, the business will report these activities via the California Environmental Reporting System (CERS) and complete a Hazardous Materials Business Plan (HMBP) submitted via CERS. HMBP information must be updated in CERS within 30 days of beginning to store chemicals, or operation. The non-volatile manufacturing facility operator will maintain and prove compliance with all HMBP requirements and inspections.

PASSED, APPROVED AND ADOPTED by the Director of Development Services of the City of Eureka in the County of Humboldt, State of California, on the 24th day of July 2019.

Rob Holmlund, AICP, Director