



NOTICE OF PUBLIC HEARING

EUREKA CITY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that that the proposed development described below will be heard by the City of Eureka Planning Commission to approve, conditionally approve, or disapprove a conditional use permit application at a public hearing held at 5:30 p.m. on Monday, September 9, 2019 in the Council Chambers of Eureka City Hall (531 K Street) or as soon thereafter as the matter can be heard.

Project Title: Cannabis Retail Conditional Use Permit

Project Applicant: Humboldt Trim Company

Case No: CUP-19-0006

Project Location: 230 4th Street (001-103-009)

Zoning and General Plan Designations: Downtown West (DW)/ Downtown Commercial (DC)

Project Description: The applicant is seeking a Conditional Use Permit (CUP) for a cannabis “retail facility, off-site and/or on-site consumption” use which is listed as a conditional use in the subject zoning district. If this use permit is granted, retail sales and off-site and or on-site consumption would be allowed on the entire parcel, subject to any added conditions. Eureka Zoning Code Section 155.078 lists cannabis retail facilities subject to the provisions of Chapter 158 in the DW Zone. Commercial Cannabis Licenses for non-volatile manufacturing and distribution are in process for this location. For more information, see this website:

http://www.ci.eureka.ca.gov/depts/development_services/public_hearing_notices.asp or contact Swan Asbury (Development Services Department) at 707-268-1830.

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, Third Floor, 531 K Street, Eureka, CA. Accommodations for handicapped access to City meetings must be requested of the City Clerk, 441-4175, five working days in advance of the meeting. Appeals to the City Council of the action of the Director on the project may be made within 10 calendar days of the action by filing a written Notice of Appeal, along with filing fees as set by the City Council, with the City Clerk. The City’s final action is appealable to the California Coastal Commission. 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 Development Services Department, Third Floor, City Hall. If you have questions regarding the project or this notice, please contact Swan Asbury, Associate Planner phone: (707) 268-1830; fax: (707) 441-4202; e-mail: sasbury@ci.eureka.ca.gov



CITY OF EUREKA
DEVELOPMENT SERVICES DEPARTMENT

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EUREKA CITY PLANNING COMMISSION

STAFF REPORT

September 9, 2019

Project Title: Cannabis Retail Conditional Use Permit

Project Applicant: Humboldt Trim Company **Case No.:** CUP-19-0006

Project Location: 230 4th Street **APN:** 001-103-009

Zoning and General Plan Designations: Downtown West (DW)/ Downtown Commercial (DC)

Overview of Use Permits in the Context of this Application: This Conditional Use Permit is not for any specific business. Instead, this CUP is to permit retail sales and on-site cannabis consumption on this parcel as a “use.” For instance, “office” is a conditional use in Old Town (“Waterfront Commercial” (CW) zone district). There are several multi-story buildings in Old Town that contain offices on the upper floors. Instead of permitting each individual business as a single “office use” the entire building (or parcel) can receive a use permit allowing the “office” use throughout the entire building. Accordingly, if an accountant moved out of a leasable space in the building and an engineer moved in, the engineer would not have to get a new Use Permit to occupy the same space that had been occupied by the accountant. Likewise, with a Use Permit that applies to the entire building, an architect could operate under the same Use Permit as the data analyst firm that works across the hall. Conditions can be applied to the “office use” for the entire building, such as restricting the “office use” from occurring on the first floor but allowing the “office use” to occur on all of the upper floors.

In this specific case, a specific business is applying for a Conditional Use Permit for the use of “Retail Facility, Off-Site and/or On-site Cannabis Consumption.” While this staff report references that specific business (Humboldt Trim Company) for the sake of analysis, the permit, if approved, will apply to the entire parcel for the current applicant and all future businesses seeking to engage in the same use (“Retail Facility, Off-Site and/or On-site Cannabis Consumption”) unless conditions are adopted by the Planning Commission to limit an element of the business’s operations or to limit the use to a specific portion of the parcel.

Per ECM § 158.004, the use of “On-site Cannabis Consumption” may consist of the use of cannabis topicals, cannabis edibles, cannabis vaping, and cannabis smoking. According to State laws, neither alcohol nor tobacco can be sold or consumed at a site at which cannabis is sold or consumed. Per City regulations and policies, facilities approved to engage in the use of On-site Cannabis Consumption must comply with the multiple requirements, each of which could be enhanced or expanded upon through conditions adopted by the Planning Commission through a Conditional Use Permit. For a copy of the City’s required policies for on-site consumption of cannabis, see Attachment 2.

Project Description: The applicant is seeking a Conditional Use Permit (CUP) for a cannabis “retail facility, off-site and/or on-site consumption” use which is listed as a conditional use in the subject zoning district. If this use permit is granted, retail sales and off-site and or on-site consumption would be allowed on the entire parcel, subject to any added conditions. Eureka Zoning Code Section 155.078 lists cannabis retail facilities subject to the provisions of Chapter 158 in the DW Zone. In addition, Commercial Cannabis Licenses for non-volatile manufacturing and distribution are in process for this location.

Staff Contact Person: Swan Asbury, Associate Planner; Development Services Department; 531 K Street, Eureka, CA 95501; Phone: (707) 268-1830, Email: sasbury@ci.eureka.ca.gov.

Staff Recommendation:

1. Hold a Public Hearing; and
2. Adopt a Planning Commission Resolution approving, with conditions, a use permit C-19-0006 allowing cannabis retail with off-site and/or on-site consumption of cannabis at 230 4th Street (APN 001-103-009).

Suggested Motion:

“I move the Planning Commission adopt a Resolution approving, with conditions, a use permit C-19-0006 allowing cannabis retail with off-site and/or on-site consumption of cannabis at 230 4th Street (APN 001-103-009).”

Environmental: The consideration of a conditional 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 an existing structure into a cannabis retail facility with no expansion of the structure. 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 existing or former use.

Background: Prospective cannabis retail facilities must participate in a request for proposal (RFP) process in order to be invited by the City Council to apply for the use permit required to open a cannabis retail facility. An RFP was issued January 28, 2019, for cannabis retail facilities; the RFP closed March 15, 2019, and 18 proposals covering 19 separate locations were received. The City Council invited all RFP respondents to apply for use permits in two phases. Phase 1 opened in June 2019, and Phase 2 will open in January, 2020. Humboldt Trim Company, located at 230 4th Street, was invited in Phase 1 to apply for a cannabis retail use permit. Humboldt Trim Company is also applying for non-volatile manufacturing and distribution licenses.

Humboldt Trim Company is requesting a use permit for cannabis retail to include sales for on-site and off-site consumption. Approval of this use permit would allow a licensed cannabis business at this location to perform deliveries and would also allow licensees to host on-site consumption via edibles, topicals, and smokable cannabis and cannabis products. Cannabis retail is not new to the City, but on-site consumption of cannabis in retail facilities is new. Staff has created a policy document for on-site consumption operations (Attachment 2). The conditions of this use permit will further guide how on-site consumption can be implemented at this specific location.

The subject parcel is located on 4th Street, along the main commercial corridor of Downtown Eureka. The site has been vacant and was previously a pawn shop.

Use Permit

To approve a Use Permit, the Planning Commission must make the following five findings (§155.412.110):

Finding 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.
	<p><u>General Plan</u>: The proposed use of cannabis “Retail facility, off-site and/or on-site consumption” is a conditionally permitted use in the Downtown West (DW) zone. This use was found to be consistent with the underlying land use designation (Downtown Commercial), as established by the adopted Eureka 2040 General Plan, when the Zoning Code was adopted. Therefore, the proposed use implements the adopted land use map and is consistent with the goals and policies of the General Plan. A review of the General Plan confirms that the proposed permit, with conditions, would not conflict with any General Plan policies.</p> <p><u>Zoning Code</u>: The proposed use is listed as a Conditionally Permitted use in the Downtown West (DW) zone and therefore implements the adopted zoning map. Per EMC § 155.076, the purposes of the Downtown West (DW) zone is to serve 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 proposed use meets all pertinent development standards contained in the zoning code as verified by staff. Examples of development standards include setbacks, building height, landscaping requirements, etc.</p> <p><u>Other Plans</u>: There are no additional plans applicable to the project.</p>
Finding 2	The site is suitable for the size, design, and operating characteristics of the proposed use.
	<p>The site consists of an approximately 12,800 square foot parcel with an existing building that has an approximately 5,000 square foot footprint. The building was designed as a retail facility. While commercial uses in the Downtown West zone district do not require on-site parking spaces, the site does contain eight off-street parking spaces. Under the proposed use, customers would enter the building, purchase packaged or unpacked cannabis products, and then either consume the cannabis on-premises or take their purchases off-site. The site and the building are of sufficient size and design to accommodate the proposed use, but not so large that the proposed use would be grossly out of scale with the neighborhood. Accordingly, the site is suitable for the proposed use of “retail facility, off-site and/or on-site consumption.”</p>
Finding 3	The proposed use will be compatible with existing and planned land uses in the vicinity of the property.
	<p>The site is in the Downtown West Zone district in a neighborhood that generally consists of retail uses. Across D Street, the zone changes to the Downtown Zone. Within a 300-foot radius of the site, the area surrounding the proposed use contains a mixture of uses, including General Retail - Indoor (furniture and audio store), Offices, and Multifamily Residential.</p>

	The proposed use of retail is similar to existing nearby uses. The uses are similar in that customers arrive on site, purchase a good or service, and depart the site typically within a limited amount of time. Through the application of the suggested conditions and through the enforcement of other existing City policies (see Attachment 2), 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. Also, through the recommended conditions, the site will be required to implement a number of on-site consumption safety policies intended to prevent overconsumption and driving while intoxicated. For these reasons, the proposed use is compatible with the existing and proposed land uses in the vicinity.
Finding 4	The proposed use will not be detrimental to the public health, safety, and welfare.
	The proposed use does not involve hazardous or explosive materials, nor does it create dangerous noise or vibration. While the act of cannabis consumption can create certain personal health risks, these risks are taken willingly by the individual who chooses to consume a cannabis or cannabis product. Also, the required City policies regarding on-site cannabis consumption (see Attachment 2), are intended to mitigate for and lessen the dangers of second-hand smoke inhalation through robust indoor ventilation systems. Odor control systems will meet all applicable standards and conditions set by the Eureka Cannabis Review Panel. Finally, the project was referred to various City departments and local utility companies for comment. The proposed use at this site was reviewed and approved by the Humboldt Bay Fire Department, the City of Eureka Building Department, and the Eureka Police Department, each of which has review and approval authority for specific Safety and Security Standards. Comments received did not indicate that the proposed use would pose a risk to public wellbeing.
Finding 5	The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.
	As verified by Engineering and Public Works Department staff, the site is an already developed urban location and is fully served by water, sewer, power, telecommunications, and transportation infrastructure. No additional infrastructure is required for the proposed use.

Agency and Departmental Comments: Referrals were sent to several Tribes, 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), and Wiyot THPO agreed that 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.

Applicant’s Proposed Project:

The applicant is in the application phase of the following types of commercial cannabis uses at the site:

Cannabis Retail Conditional Use Permit

Project Number: CUP-19-0006

- Non-volatile cannabis manufacturing
- Cannabis distribution and transport

The applicant intends on having a 560 square foot dispensary, with an adjacent 1,000 square foot consumption lounge. If this Conditional Use Permit is approved, the applicant's proposed consumption lounge would fall within the parameters established by this Use Permit (with required conditions). Under the CUP conditions and findings, the applicant could also expand their proposed area to any portion of the building (including the entire building), as could future businesses.

Support Material:

Attachment 1: Planning Commission Resolution

Attachment 2: On-site Cannabis Consumption Policy

PLANNING COMMISSION RESOLUTION NO. 2019-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA APPROVING, WITH CONDITIONS, THE USE PERMIT C-19-0006 TO ALLOW A CANNABIS RETAIL FACILITY, WITH OFF-SITE AND/OR ON-SITE CONSUMPTION OF CANNABIS AT 230 4TH STREET

WHEREAS: the applicant is proposing to conduct a retail cannabis use including off-site and/or on-site consumption of cannabis; and

WHEREAS: The property at 230 4th Street is zoned Downtown West (DW) and has a land use designation of Downtown Commercial (DC); and

WHEREAS: "Retail facility, off-site and/or on-site consumption" is conditionally permitted in the DW district and requires a Use Permit; and

WHEREAS: The Eureka Municipal Code §155.412.110 prescribes the findings required to be made by the Planning Commission prior to granting a Use Permit.

The following findings of fact are based on information submitted with the permit application, agency comments, available records, public comment, and staff research and analysis.

FINDING 1: The proposed use meets all applicable development standards contained in the Zoning Code, all requirements and conditions set by the Eureka Cannabis Review Panel, and the Use Permit required findings contained in §155.412.110 as described in the staff report; and

FINDING 2: Action on the 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 existing facilities.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Eureka that the project, as described in the Staff Report, is approved subject to the following conditions of approval. The violation of any term or requirement of this conditional approval may result in the revocation of the permit.

CONDITION 1: 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.

CONDITION 2: 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.

CONDITION 3: The operation will comply with all requirements contained in the On-site Cannabis Consumption Policy (Attachment 2).

CONDITION 4: 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; 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.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Eureka in the County of Humboldt, State of California, on September 9, 2019 by the following vote:

AYES: COMMISSIONER

NOES: COMMISSIONER

ABSENT: COMMISSIONER

ABSTAIN: COMMISSIONER

Jeff Ragan, Chair, Planning Commission

Attest:

Rob Holmlund, Director of Development Services



CITY OF EUREKA DEVELOPMENT SERVICES DEPARTMENT

Rob Holmlund, AICP, Director

Rob Dumouchel, Associate Planner

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DEVELOPMENT SERVICES MEMO

DATE: May 21, 2019
ISSUED BY: Rob Holmlund, Director
DEVELOPED BY: Rob Dumouchel, Associate Planner
SUBJECT: On-site Consumption of Cannabis and Cannabis Products (v1)

Background

In early 2019, City Council adopted modifications to the Eureka Municipal Code (EMC) Chapter 158 and Article 30 allowing for on-site consumption of cannabis and cannabis products at permitted and licensed cannabis retail facilities. At the date of this memo, the changes to Chapter 158 have taken effect in non-coastal areas of the City and it is anticipated that the California Coastal Commission will certify the changes to the EMC in August 2019. City Council also adopted modifications to EMC Chapter 97 to allow smoking in designated smoking rooms and designated smoking areas.

This memo sets City policies for on-site consumption within permitted and licensed spaces. On-site consumption may consist of the use of cannabis topicals, cannabis edibles, and cannabis smoking (as defined in ECM § 158.004). These policies are subject to change at the direction of the Development Services Director. These policies may be superseded by State-level regulations, Building Code regulations, and County-level Health Department regulations/requirements. If any of the following policies are included as conditions of approval in a use permit, businesses operating under that permit must continue to adhere to the condition unless removed or modified by a discretionary body with authority to modify the use permit.

General Policies

- Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age and older.
- Sale or consumption of alcohol or tobacco is not allowed on the premises.
- Licensed on-site consumption businesses must adopt/create and implement a program to educate employees and patrons on the appropriate use and suggested dosing of their products. Multiple on-site cannabis retailers may work together to create education programs and materials that can be deployed at multiple locations throughout the City. Examples of such campaigns and materials can be found at the following links:
 - <https://cannabis.ca.gov/2017/08/09/media-start-low-and-go-slow-3-steps-to-safely-consume-marijuana-edibles/>
 - <https://www.leafly.com/news/cannabis-101/cannabis-edibles-dosage-guide-chart>
 - <https://www.projectcbd.org/sites/projectcbd/files/downloads/cbd-dosing-guide.pdf>
- Licensed on-site consumption businesses must display inside the facility educational/informational materials regarding appropriate use and suggested dosing of their products.
- Licensed on-site consumption businesses must provide training to all employees regarding methods to prevent customers from over-consuming cannabis. A person may be considered intoxicated for the purposes of Penal Code 647(f) if they have consumed cannabis to the point that they 1. Are unable to exercise care for their safety or the safety of others, or 2. Interfere with, obstruct, or prevent others from using streets, sidewalks, or other public ways.
- Licensed on-site consumption businesses must develop written protocols regarding how to assist incapacitated or overly-intoxicated patrons who have consumed too much cannabis.
- Licensed on-site consumption businesses must display information inside the facility reminding patrons that driving under the influence of cannabis is illegal.
- Licensed on-site consumption businesses must display information regarding local bus services (bus schedule and map of nearby bus stops) as well as information regarding locally-available ride services (including contact information for local taxi services).

- Licensed on-site consumption businesses must educate employees about the availability of local bus services and locally-available ride services (taxi, Uber, Lyft, other ride-sharing services, etc.) and must train employees to discourage customers from driving under the influence of cannabis.
- Licensed on-site consumption businesses must display information inside the facility reminding patrons that consumption of cannabis in California is not legal in public places such as sidewalks and parks, or inside motor vehicles.

Cannabis Smoking Policies (Indoor and Outdoor)

- Per ECM § 158.004, “cannabis smoking” is defined as “Consumption of cannabis or cannabis products in a process which uses heat or combustion to create smoke or vapor.” Accordingly, all “smoking” policies also apply to “vaping” and other similar processes.
- Businesses that allow smoking of cannabis and cannabis products must post signage about the dangers of smoking to include: Proposition 65 warning signs, “smoking is prohibited except in designated areas” signs, signage recommending that pregnant and breastfeeding women avoid cannabis consumption, and any other signs that may be required per State law – some of these signs may be available from Humboldt County Department of Health and Human Services’ Tobacco Free Humboldt program.
- Odors from the designated smoking area may not be detectable from public rights-of-way or other parcels. In cases of parcels with more than one leasable space, cannabis odors may not be detectable from other leased spaces.
- Licensed on-site consumption businesses must provide a narrative description of how smoking will be managed and how it will keep cannabis odors from being detected off-site.
- If the City receives substantiated odor complaints (confirmed by staff from Planning, Code Enforcement, or Police) related to smoking, the business must cease smoking operations until a solution can be devised that would mitigate the odor problem.
- Pursuant to the 2016 California Fire Code section 310.6: Ash Trays: “Where smoking is permitted, suitable noncombustible ash trays or match receivers shall be provided on each table and at other appropriate locations.”

Additional Indoor Cannabis Smoking Policies

- Designated smoking rooms must be located in a non-work area where employees are not required to enter while consumption is in process.
- The designated smoking room is required to have an HVAC ventilation system that meets the following requirements:
 - The ventilation system must be capable of achieving protection from particulate matter at 2.5 microns consistent with MERV 11 filtration (Minimum Efficiency Reporting Value).
 - The ventilation system must provide at least 10 Air Changes per Hour (ACH) or at least 60 cubic feet/minute of air supply per smoker.
 - Negative pressure must be maintained in the designated smoking room while the room is in use.
 - None of the air in the designated smoking room may be recirculated into other parts of the building.
 - 100% of air must be exhausted directly to the outside through filters that remove all detectable odor, smoke, and by-products of combustion.
 - The designated smoking room must be completely sealed and separated from the remainder of the premises by solid partitions, non-operable windows, or glass/glazing.
 - All doors, windows, and other openings leading to the designated smoking room must be designed such that air/smoke cannot leave the designated smoking room (such as a self-closing door with a gasket to fully seal where the door meets the stop). Airlocks are encouraged (such as a two-part window with a pass-through space between).
- An alternate HVAC system/design that deviates from one or more of the above requirements may be approved by the Chief Building Official on a case-by-case basis. Approved deviations must satisfy the intent of the above standards, which are to:
 - Prevent the escape of all detectable odors, smokes, vapors, and by-products of combustion from the designated smoking room, and
 - Reduce the potentially-harmful effects of smoke and other by-products of combustion for those people within the designated smoking area by providing thorough ventilation and air-exchange.