



CITY OF EUREKA
DEVELOPMENT SERVICES DEPARTMENT
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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 the 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: Papa & Barkley Cannabis Retail Conditional Use Permit

Project Applicant: Papa & Barkley **Case No:** CUP-19-0001

Project Location: 524 5th Street (001-146-004)

Zoning Designation: Downtown Commercial (DT)/Downtown Commercial (DC)

Project Description: The applicant is seeking a Conditional Use Permit for a cannabis “retail facility, off-site and/or on-site” use, which includes the consumption of edibles and topicals, which is a *conditional use* in the subject zoning district. If this Conditional Use Permit is granted, the use would cover the entire building, subject to any conditions.

For more information, see this website:

http://www.ci.eureka.ca.gov/depts/development_services/public_hearing_notices.asp or contact Lisa Savage, Project Manager (Development Services Department) at 707-441-4186.

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 Lisa Savage, Project Manager phone: (707) 441-4186; e-mail: lsavage@ci.eureka.ca.gov.



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EUREKA CITY PLANNING COMMISSION

STAFF REPORT

September 9, 2019

Project Title: Papa & Barkley Cannabis Retail Conditional Use Permit

Project Applicant: Papa & Barkley

Case No.: CUP-19-0001

Project Location: 524 5th Street

APN: 001-146-004



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

Project Description: The applicant is seeking a Conditional Use Permit for a cannabis “retail facility, off-site and/or on-site” use, which includes the consumption of edibles and topicals, which is a *conditional use* in the subject zoning district. If this Conditional Use Permit is granted, the use would cover the entire building, subject to any conditions.

Overview of Use Permits in the Context of this Application: This Conditional Use Permit (CUP) is to permit a “retail facility, off-site and/or on-site” at this location 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 case, a specific business is applying for a Conditional Use Permit for the use of Cannabis Retail to include on-site and off-site retail uses. While this staff report references a specific business (Papa & Barkley) for the sake of analysis, the permit, if approved, will apply to the entire 1144 sqft parcel for the current applicant and any future businesses seeking to engage in the same use on the site (Cannabis Retail) 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 building.

Per ECM § 158.004, an Off-Site Retail Facility is “a physical retail establishment where cannabis or cannabis products are offered for retail sale and delivery to customers in sealed and packaged containers and not intended for consumption at the facility. An off-site retailer may be closed to the public, and the retailer may conduct sales exclusively by delivery.” An On-Site Retail Facility is “a physical retail establishment where cannabis or cannabis products are offered for sale to customers for consumption at the location where they are purchased and in conformance with State of California regulations for consumption. Customers may not leave the facility with cannabis or cannabis products unless they are in originally sealed and unopened packaging or have been transferred by the retailer for repackaging in a container that is compliant with all applicable state law and regulation.” According to State laws, neither alcohol nor tobacco can be sold or consumed at a site at which cannabis is sold or consumed.

Note that the project applicant (Papa & Barkley) received a Minor Use Permit (MUP-18-0004) on July 19, 2018 to operate a non-volatile cannabis manufacturing facility, less than 5,000 sq. ft. at this location. The applicant holds a current cannabis license for this use and intends to continue operating a non-volatile manufacturing facility in conjunction with a cannabis retail license (if this use permit is approved).

Staff Contact Person: Lisa Savage, Project Manager; Development Services Department; 531 K Street, Eureka, CA 95501; Phone: (707) 441-4186, Email: lsavage@ci.eureka.ca.gov.

Staff Recommendation:

1. Hold a Public Hearing; and
2. Adopt a Planning Commission Resolution approving, with conditions, use permit CUP-19-0001 to allow a Cannabis “Retail facility, off-site and/or on-site” consumption of topicals and edibles.

Suggested Motion:

“I move the Planning Commission adopt a Resolution approving, with conditions, the use permit to allow a cannabis retail facility, off-site and/or on-site at 524 5th 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 existing facilities. It qualifies for this exemption because the project involves only internal modifications to the existing building such as partition walls, doors, and an approved HVAC odor control system.

Use Permit

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

Finding 1	<p>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> <p><u>General Plan:</u> The Downtown Commercial (DC) land use designation provides for a mix of retail, restaurants, lodging, entertainment, cultural, visitor services, offices, and upper floor residential uses. The land use designation is applied to the bulk of the City’s Core Area, which serves as the traditional business and cultural center for the City. The area included in the Downtown Commercial land use is intended to have a highly intense urban form, retain and enhance Eureka’s identity and historic character, and promote a vibrant pedestrian environment. Cannabis retail facilities with off-site and/or on-site consumption are visitor-serving retail uses, and were found to be consistent with the underlying DC land use when the Zoning Code was adopted. Therefore, the proposed use implements the adopted land use 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 (DT) zone and therefore implements the adopted zoning. Per EMC § 155.208.020 (B)(1), the purposes of the Downtown (DT) zone “...maintains, promotes, enhances and builds upon Eureka’s Downtown as a vibrant center for residents, businesses, the arts, local/regional visitors, and out-of-town tourists....” 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	<p>The site is suitable for the size, design, and operating characteristics of the proposed use.</p> <p>The site consists of a flag shaped lot that is approximately 22 feet wide at the north property line and eight feet wide at the south property line. The west property line is approximately 50 feet in length and the east property line is approximately 85 feet in length. A portion of the structure is located on an adjacent property and an easement has been granted to allow the building and use to cross the property line. The property is developed from property line to property line, and is located in the Parking Assessment District and the Pedestrian Focused Frontage area. The use does not have a parking requirement because a change from an existing non-residential use to a different non-residential use within an existing building is exempt from on-site parking requirements (155.324.020 (C)(6)). Loading and unloading will happen in the parking lot behind the building through an easement granted to the site. The site has adequate water, sewer, gas, and electric utilities to meet the needs to the proposed retail use. The building was designed as a commercial facility, and in the past housed a shop selling coats, later a tattoo parlor, and currently houses a non-volatile cannabis manufacturing facility. The fronting street (5th Street) includes parallel parking spaces on both sides of the street for the entire block. Under the proposed use, customers would enter the building from 5th Street, and either: 1. purchase packaged cannabis</p>

	<p>products, and then take them away to consume the cannabis off-premise, or 2. Purchase cannabis product (topicals and edibles only) and consume on-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 cannabis “retail facility, off-site and/or on-site.”</p>
Finding 3	<p>The proposed use will be compatible with existing and planned land uses in the vicinity of the property.</p>
	<p>The site is in the Downtown Zone district in a neighborhood that generally consists of general retail and office uses. All of the neighboring parcels within a 300-foot radius are also within the Downtown Zone district. Within a 300-foot radius of the site, the area surrounding the proposed use contains a mixture of uses, including General Retail - Indoor, General Services, Restaurants and Cafes, Multifamily Residential (second story only), and Off-Site Cannabis Retail (517 5th Street).</p> <p>The proposed use of off-site cannabis 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 enforcement of other existing City policies, 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. For these reasons, the proposed use is compatible with the existing and proposed land uses in the vicinity.</p>
Finding 4	<p>The proposed use will not be detrimental to the public health, safety, and welfare.</p>
	<p>The proposed use does not involve hazardous or explosive materials, nor does it create dangerous noise or vibration. Through the application of the recommended conditions and through enforcement of other existing City policies, 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. For these reasons, the proposed use will not pose a risk to public health, safety, or welfare. While the act of cannabis consumption can create certain personal health risks, these risks are taken willingly by the individual who chooses to consume cannabis or cannabis product. Finally, the project was referred to various City departments and local utility companies for comment. Any proposed cannabis retail use at this site will be reviewed and approved for safety and security by the Humboldt Bay Fire Department, the City of Eureka Building Department, and the Eureka Police Department, through the City’s cannabis licensing review process. Comments received did not indicate that the proposed use would pose a risk to public well-being.</p>
Finding 5	<p>The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.</p>
	<p>The site is 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.</p>

Agency and Department 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 responded/commented:

1. **Tribal:** The Blue Lake Tribal Historic Preservation Officer (THPO), and Wiyot THPO agreed that there are no concerns regarding the project.
2. **Public Works Department:** No comment.
3. **PG&E:** If any existing gas and electric facilities are within current or proposed development areas, PG&E must be contacted prior to commencing any work.

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

Applicant's Proposed Project:

The applicant currently holds all necessary City approved licenses and permits (including a Minor Use Permit) to conduct the following types of commercial cannabis uses at the site:

- Non-volatile cannabis manufacturing (approved, licensed, and operational)

The applicant is requesting a Conditional Use Permit in order to be allowed to conduct on-site and off-site cannabis retail. Under this CUP conditions and findings, any portion of the building (including the entire building), could be used for cannabis retail, on-site consumption of topicals and edibles, or for off-site consumption and delivery.

Support Material:

Attachment 1: Planning Commission Resolution

Attachment 2: On-site Cannabis Consumption Policy

Attachment 3: Director Resolution approving non-volatile manufacturing use

PLANNING COMMISSION RESOLUTION NO. 19-__
A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA
APPROVING, WITH CONDITIONS, A USE PERMIT TO ALLOW
CANNABIS RETAIL OFF-SITE AND ON-SITE CONSUMPTION AT 524 5TH STREET

WHEREAS: the property owner is proposing, and has submitted an application to operate a cannabis retail facility with off-site sales to include dispensary-style retail and delivery of cannabis and cannabis products, and on-site sales to include consumption of topical and edible cannabis products; and

WHEREAS: the building at 524 5th Street, APN 001-146-004, is zoned Downtown (DT) and has a land use designation of Downtown Commercial (DC); and

WHEREAS: Cannabis “Retail facility, off-site and/or on-site” consumption is conditionally permitted in the DT zone 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; and

WHEREAS: the Planning Commission of the City of Eureka did hold a duly noticed public hearing at City Hall in the City of Eureka on September 9, 2019, at 5:30 p.m. in the Council Chamber; and

WHEREAS: the Planning Commission of the City of Eureka has reviewed the subject application in accordance with Eureka Municipal Code Chapter 155, and after due consideration of all testimony, evidence, and reports offered at the public hearing, does hereby find and determine the following facts:

- 1.** The proposed use must meet 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.
- 2.** All conditions of approval associated with the active Use Permit (MUP-18-0004) remain in effect unless specifically modified by the Planning Commission. Any new conditions of approval placed upon this application (CUP-19-0001) will be considered additive to the existing conditions of approval.
- 3.** 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. It qualifies for this exemption because the project involves only internal modifications to the existing building such as partition walls, doors, and an approved HVAC odor control system.

WHEREAS, in the opinion of the Planning Commission of the City of Eureka, the proposed application should be approved subject to the following conditions:

A: Prior to operation of the retail facility, any outstanding cannabis facility building permits must be finalized to the satisfaction of the Chief Building Official.

B: The operation will comply with all requirements contained in the On-site Cannabis Consumption Policy dated May 12, 2019, or as may be amended from time to time.

C: 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:

- i.** 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.
- ii.** 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.
- iii.** 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.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Eureka that the cannabis retail facility with on-site consumption of topicals and edibles, and off-site retail and delivery, is approved subject to the above conditions. The violation of any term or requirement of this conditional approval may result in the revocation of the permit.

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

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

Jeff Ragan, Chair, Planning Commission

Attest:

Lane Millar, Interim Director of Development Services