



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: December 10, 2019

Subject: Selection of Invitees for Land Use Permit Applications for Specified Limited Commercial Cannabis Uses

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### **RECOMMENDATION(S):**

SELECT up to four cannabis retail storefront proposals and up to seven commercial cannabis cultivation proposals to invite to apply for a land use permit.

### **FISCAL IMPACT:**

Department of Conservation and Development (DCD) staff costs for administering the selection process are included in DCD's budget and paid for out of the fees required of those who submitted proposals. The cost of reviewing future applications will be paid by applicants. Upon issuance of a land use permit and after establishment of the selected commercial cannabis businesses, the County will begin generating tax revenue in accordance with the County's Cannabis Business Tax Ordinance approved by County voters on November 6, 2018.

### **BACKGROUND:**

On November 19, 2019 the Board held a public meeting on the selection of proposals for

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/10/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

### **VOTE OF SUPERVISORS**

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 10, 2019

Contact: Ruben  
Hernandez, 925-674-7785

David Twa, County Administrator and Clerk of the Board of  
Supervisors

By: , Deputy

cc:

certain commercial cannabis uses in accordance with Section 88-28.404 of the County Code. The Department of Conservation and Development provided the Board with a presentation on the scoring and ranking of the

## BACKGROUND: (CONT'D)

proposals, conducted by the interdepartmental Cannabis Proposal Review Panel, and the Board accepted public comment. The staff report and attachments from the November 19 meeting may be accessed here: [November 19, 2019 Cannabis RFP Report](#) .

During the Board's discussion on this matter, the Board requested that staff provide additional information on the transferability of commercial cannabis land use permits, whether the Royal Craft proposal in the Knightsen area should be scored as a standalone proposal for cannabis manufacturing in an agricultural zone, the existing medical-only dispensary in El Sobrante, and the locations of existing or proposed cannabis storefront retailers in neighboring jurisdictions. Maps identifying the location of existing and proposed cannabis storefront retailers in neighboring jurisdictions are attached. Staff's response to the Board's other informational requests are provided below.

### Transferability of Permits

Ordinance Code Chapter 88-28 does not address the transferability of cannabis land use permits or changes in ownership of cannabis businesses. To address these issues, Chapter 88-28 would have to be amended. Staff proposes amending Chapter 88-28 to provide as follows:

1. A cannabis permit is not transferable or assignable to another permittee and is issued to and covers only the permittee identified on the permit with respect to the premises identified on the permit.
2. A cannabis permit terminates if a change in ownership results in one or more new persons owning a total of 20% or more of the commercial cannabis activity.
3. Any change to the information provided to the Department of Conservation and Development in an application for a cannabis permit must be reported to the department within 14 days after the change occurs.

Chapter 88-28 and state law define “person” as any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

Under the proposed amendment to Chapter 88-28, a new cannabis permit would be required if, for example, an individual who owned 50% of a cannabis business transferred half of his or her ownership interest in the business to one new person. In this case, the new person would own 25% of the business. A new permit would also be required if, for example, a person who owned 50% of a business transferred one-fifth of his or her interest to one new person and another one-fifth to another new person. In this case, two new persons would own a total of 20% of the business. A new permit would also be required if, for example, an individual who owned 100% of a corporation transferred his or her entire ownership interest to one new individual. In this case, even though the corporation is the same corporation, a new person would own more than 20% of the corporation, so a new permit would be required.

A new cannabis permit would not be required if, for example, a person who owned 50% of a business transferred one-fourth of his or her ownership interest to one new person. In

this case, the new person would own 12.5% of the business. A new permit also would not be required if, for example, a person who owned 50% of a business transferred all of his or her ownership interest to a person who already owns the other 50% of the business, because there would be no transfer to a “new” person.

If a cannabis permit terminates because a change in ownership results in one or more new persons owning a total of 20% or more of the business, the business may not operate until a new permit is obtained.

### **Follow-Up for Royal Craft in Knightsen (File #MJ19-0055)**

At the November 19 meeting, Jasun C. Molinelli, general counsel for Royal Craft in Knightsen, provided public comment regarding the proposal submitted by Royal Craft on June 27, 2019. Prior to the meeting, Mr. Molinelli also provided the Board members with a letter dated November 18, 2019. Royal Craft was one of the applicants to submit a proposal for a vertically integrated commercial cannabis business that included commercial cultivation and manufacturing. The proposal was for a property located at 11 Pastor Lane in the Knightsen area.

According to the Commercial Cultivation scoring and ranking chart presented to the Board on November 19, 2019, the proposal for Royal Craft scored lower than 70% of the minimum required in the RFP for three separate scoring categories; location (130 pts. out of 200); business and operating plan (110 pts. out of 200) and sustainability (50 pts. out of 100). The proposal also had an overall score of 860 points which is less than the minimum of 80% (880 pts.) required to be invited to apply for a land use permit. The proposal failed, in part, because it proposed outdoor commercial cultivation within one mile of the urban limit line and because it proposed the exclusive use of well water for cultivation. Neither of these key attributes is permissible under existing County code.

In his comments provided at the November 19<sup>th</sup> meeting, Mr. Molinelli indicated that the intent of Royal Craft's proposal was that it be considered as a proposal for commercial cultivation and manufacturing or for either commercial cultivation or manufacturing in an agricultural zone. Mr. Molinelli also expressed discontent with the scoring for Royal Craft and believed that the score should have been higher based on various additional considerations. Mr. Molinelli argued that it was clear in Royal Craft's letter of intent and in the proposal for Royal Craft that the submittal was for commercial cultivation and/or manufacturing in an agricultural zone.

If the intent of Royal Craft was to be considered for one of the commercial cultivation permits and one of the manufacturing permits separately, two separate letters of intent and two separate proposals (and separate filing fees) should have been submitted. Only one proposal for a vertically integrated cultivation with manufacturing was received from Royal Craft and that proposal was reviewed and scored by the interdepartmental Cannabis Proposal Review Panel where it received a failing overall score and failing scores in individual categories as discussed above.

However, to provide this proposal with every reasonable consideration, the Cannabis Proposal Review Panel met on December 4, 2019 to consider Royal Craft as a proposal for manufacturing in an agricultural zone. There was no need for Panel to review the proposal as a standalone cultivation proposal because the use proposed is inconsistent with code as discussed above.

After reviewing Royal Craft's proposal for standalone manufacturing in an agricultural zone, the Panel rescored the proposal for this more limited use. A summary sheet is attached which shows the scoring. The Panel continued to assign a failing score in one category. Royal Craft's proposal received a score of 100 out of 200 points in the Business and Operating Plan category. According to the RFP, any proposal that scored less than 70% in any of the individual RFP categories would not be eligible to apply for an LUP. Royal Craft scored 100 or only 50% of the maximum score for the Business and Operating Plan category, making it ineligible to apply.

In reviewing Royal Craft's proposal for manufacturing only, the Business and Operating Plan failed to provide specific financial information as required by the RFP. Additionally, the Panel deducted points from Royal Craft's Business and Operating Plan due to the lack of information in the proposal for operation of the manufacturing business as a standalone operation. The panel was unable to effectively evaluate the business and operating portion of the proposal as a standalone manufacturing proposal since it was intertwined with the cultivation operation. The Panel also had additional concerns with the proposal, including a general lack of details for a manufacturing-only operation.

Therefore, based on Royal Craft's proposal receiving a score less than 70% for its Business and Operating Plan, even when reviewed for manufacturing only, the proposal does not satisfy the RFP criteria for receiving an invitation to apply for a land use permit.

### **Existing Medical-only Dispensary in El Sobrante**

On November 19, the status of the existing medical-only dispensary in El Sobrante known as One Plant was briefly discussed. One Plant submitted a proposal (County File #MJ19-0038) to expand the current non-conforming, medical-only, dispensary to allow adult use (recreational) sales of cannabis at the existing facility. The proposal for One Plant scored 960 points, which was second to last in the Review Panel's rankings.

In the November 19 report to the Board, mention was made of what appeared to be an unpermitted expansion of the One Plant facility located at 3823 San Pablo Dam Road in El Sobrante. Staff was asked for additional information.

Staff reviewed photographic evidence found in current and past online street views of the facility, and the photos show an expansion (see attachment). The Business Plan in One Plant's proposal states the facility "...received a complete remodel just 6 months ago".

Upon review of County building and planning records for the subject property, staff could find neither any permits or approvals for a tenant improvement at the site nor a request for a land use permit to allow the expansion of a legal nonconforming use for the dispensary. Under section 82-8.006 of the Zoning Code, any expansion of a nonconforming use requires approval of a Land Use Permit. Likewise, any expansion of a commercial use would also require a building permit and approval from the Fire District.

### **Next Steps**

Upon selection of the invitees for land use permit applications, in accordance with the Board-approved RFP, the invitees will have 90 days to submit their land use permit applications (the recommended specific deadline is Monday, March 9, 2020 at 4 p.m.).

In accordance with the RFP, the invitees are required to submit land use permit applications that are consistent with their corresponding proposal. In accordance with County Code, only applications submitted by a "qualified applicant" will be accepted. According to Section 82-6.002 of the code, a "qualified applicant" is any person having a freehold interest in land, a possessory interest entitling him to exclusive possession, or a contractual interest which may become a freehold or exclusive possessory interest and is specifically enforceable.

In order to keep the Board up to date, staff proposes to provide the Board with a report on the receipt of land use permit applications invited by the Board following the recommended March 9, 2020 deadline for submission. Staff proposes to provide the Board with a second follow-up report by the end of next year (2020). Within that second report, staff would provide the Board with a general status update on all commercial cannabis activities, as well as provide the Board with recommendations on what approach to use to fill the commercial cultivation and manufacturing in agricultural zone slots not filled through the current RFP process. In the meantime, no additional proposals for these types of uses would be accepted.

### **CONSEQUENCE OF NEGATIVE ACTION:**

If the Board does not select land use permit invitees for the limited commercial cannabis activities, no land use permits for storefront retail or commercial cultivation will be issued for the unincorporated area of the county. Failure to establish a legal and regulated cannabis market in the county unincorporated area might encourage an illicit cannabis market to flourish, and would deprive county residents of local access to tested, and properly packaged and labeled cannabis products, as well as security and restricted access to minors as provided by the legal, regulated cannabis market.

### **CLERK'S ADDENDUM**

**Speakers: Cheryll Grover, Mt. View Improvement Association; Katrina Cookman, resident of Brentwood; Jim Araby, UFCW 5; Josh Anjer, Contra Costa Labor Council; Tom Lawson, Contra Costa Building Trades; Greg Feere, Contra Costa Building Trades Council; Fernando Campos, Laborers 324; Robyn Garcia-Scott, resident of Brentwood; Shelly McMahon, resident of Brentwood; Sabrina Pacheco, Stizzy; Gloen Lovell, Iron Workers Union Local 376; Antwon Cloird; Lauren Fontein, The Artist Tree; Ben Smith, resident of Brentwood; Jenny Smith, resident of Brentwood; Terry Smith, resident of Brentwood; Cole Smith, resident of Brentwood; Julia Aralavro, resident of Brentwood; Adam Smith, resident of Brentwood; Sadie Smith, resident of Brentwood; Connie McMahon, resident of Brentwood; Daron Spears, resident of Brentwood; Robert Hoffner, resident of Brentwood; Greg Kremenliev, NORML; Brian Anderson, resident of Brentwood; Jason Milinelli, Royal Craft LLC; Mike McGuire Harley-Davidson; Laurie Light, Garden of Eden; Oleg Petrakovsky, Garden of Eden; Jay Howard, Elemental Wellness; Karen Rolon Colarusso, resident of Martinez; Mike Colarusso, resident of Martinez; Joe Lomonaco, Elemental Wellness; Stephanie Talyat, Authentic 925; Jose Pecho, Authentic 925; Rober Kao, Elemental Wellness; Karin Larraque, Elemental Wellness; David Likito, Elemental Wellness; Brady Talyat, resident of Concord; Mehommad Ahmadiel, resident of Martinez; Jason Teramoto, One Plant; Cindy Welles, resident of Clyde; Cristina Gauzia, Elemental Wellness; Kimberly Frederick, Elemental Wellness; Miia Stewart, Elemental Wellness; Tommy Le, Skybox Holdings; Shawn Wilson, Alameda County District 1; Emily Simons; Ricardo Martinez, Elemental Wellness; Jack Frank Elemental Wellness; Dennis Wygal, Brudaben Properties; Louis Ortiz, Elemental Wellness; Darren Gacicia, Garden of Eden; Matt Light, Garden of Eden; David Bowlby, Perfect Union; Brian Mitchell, Authentic 925; Thomas Krehbiel, Bento; George Miller, Embarc; Devan Julion, Elemental Wellness; Samantha Tabak, Garden of Eden; Shareef El Sissi, Garden of Eden; Christopher Bloom, Element 7; Pete Bennett; Nancy Evans.**

The following people provided written commentary (attached): Jessica Zimmerman, resident of Brentwood; James Doherty, Life Development Group; Mike McGuire, McGuire Harley-Davidson; Terrance Alan, SF Cannabis State Legalization Taskforce; Carlos Solorzano, Hispanic Chambers of Commerce of San Francisco; Martha Vaughan, Nicaraguan American Chamber of Commerce Northern California; Connie McMahon, resident of Knightsen; Katrina Cookman, resident of Knightsen.

**By unanimous vote, the Board invited the following respondents to the Request For Proposal to apply for a land use permit:**

**Retail Storefront:**

**The Artist Tree (El Sobrante) Element 7 (Bay Point) Authentic 925 (South Pacheco Boulevard) Embarc Contra Costa (North Pacheco Boulevard)**

**Commercial Cultivation:**

**Lifted Spirt Collective (Brentwood)**  
**Element 7 – Chestnut Street (Brentwood)**  
**Casa Rasta Farms (Richmond)**  
**Magic Flower Gardens, LLC**

**703 Chesley LLC (Richmond)**  
**Element 7-Willow Way (Byron)**  
**Diablo Valley Farms (Brentwood)**

**The Board DIRECTED staff to include those people who spoke at today's meeting on the particular location, and the relevant local community organizations, in the noticing process on the commercial cultivation application for permit.**

**ATTACHMENTS**

Maps

Royal Craft 2 page Summary

El Sobrante Dispensary Photos