

**FACTS & FINDINGS**

**CONDITIONAL USE AND CLASS 3 SITE PLAN REVIEW  
CASE NO. CU-SPR19-04**

**October 28, 2019**

**PROCEDURAL FINDINGS**

On June 5, 2019, Erik Scholtes of ESDE Building & Construction LLC, on behalf of applicant Kelly Bence of KSB Holdings, filed an application for a Conditional Use and Class 3 Site Plan Review to establish occupancy for a recreational marijuana production facility within 10,500 square feet of an existing building for a property approximately 1.61 acres in size, zoned IC (Industrial Commercial) and located within the Portland Fairgrounds Overlay zone.

Notice of public hearing was sent by mail pursuant to Salem Revised Code (SRC) requirements on September 24, 2019.

On August 30, 2019, the Hearings Officer issued a decision approving the consolidated Conditional Use and Class 3 Site Plan Review applications with two conditions of approval as recommended in the staff report.

On October 14, 2019, the City Council conducted a hearing to receive evidence and testimony regarding the proposal.

On October 14, 2019, the City Council conducted deliberations and voted to affirm the decision of the Hearings Officer, approving the consolidated application subject to conditions of approval in the August 30, 2019 decision.

**SUBSTANTIVE FINDINGS**

**1. Salem Area Comprehensive Plan (SACP) designation**

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Industrial Commercial." The subject property is within the Urban Growth Boundary and the Urban Service Area.

**2. Zoning and Surrounding Land Uses**

The subject property is zoned IC (Industrial Commercial) and within the Portland/Fairgrounds Road Overlay Zone. The zoning of surrounding properties is as follows:

North: IC (Industrial Commercial);

East: Across Portland Road NE - CR (Retail Commercial);

South: IC (Industrial Commercial);

West: Across Railroad Right of Way - IG (General Industrial);

### 3. Site Analysis

The subject property consists of a rectangular lot, approximately 100 feet wide and 562 feet deep, on the west side of Portland Road NE. The subject property has street frontage on Portland Road NE, which is developed with paved travel lanes and a sidewalk. The properties to the north and south are designated "Industrial Commercial" on the Comprehensive Plan Map. On the east side of Portland Road the Comprehensive Plan Map designates properties as "Commercial".

The footprint of the existing buildings cover approximately 21,175 square feet of the site. The area in front of the easternmost building between the Portland Road right-of-way is developed with a paved parking area and a 2,800 square foot landscaped area. A paved private vehicle driveway is located to the south of the easternmost building to provide access to the westernmost building from Portland Road NE. The remaining area in between the buildings is partially paved and is used for loading.

### 4. Neighborhood and Citizen Comments

The subject property is located within the Northgate Neighborhood Association. Notice was provided to Northgate Neighborhood Association and surrounding property owners within 250 feet of the subject property. No comments were received from Northgate Neighborhood Association or surrounding residents.

### 5. City Department and Public Agency Comments

The Salem Building and Safety Division reviewed the proposal and commented that an occupancy change will be required at time of building permit application.

The Salem Fire Department reviewed the proposal and indicated that they will have comments on items including fire department access, water supply, and occupant process at time of building permit plan review.

The Public Works Department reviewed the proposal and provided a memo which is included as **Attachment D**.

The Salem-Keizer School District provided the following comments: "The subject property is directly adjacent to a property occupied by the Salem-Keizer Public Schools Career Technical Education Center School. Marijuana retail sales and medical marijuana dispensing would be prohibited under ORS Chapter 475B adjacent to a school. The school district objects to the siting of this facility adjacent to a school."

**Finding:** The proposed change of use is for a recreational marijuana production facility. No retail sales are proposed. Marijuana businesses require licensing from the Oregon Liquor Control Commission (OLCC), who is the responsible agency for regulating marijuana businesses for compliance with state law, including

regulations pertaining to the proximity of a marijuana retail sales facilities adjacent to schools. Staff recommendations focus on mitigating the impact of the potential use on surrounding properties and ensuring implementation of OLCC requirements where they may overlap with conditional use approval criteria. The proposed marijuana production facility will be located entirely indoors and includes no retail sales. The facility will install a commercial grade carbon filtration system to mitigate odor impacts, and the interior tenant improvements will have a net neutral impact on the building and site as described in the applicant's written statement.

## **FINDINGS ADDRESING APPLICABLE SALEM REVISED CODE APPROVAL CRITERIA FOR THE CONDITIONAL USE PERMIT**

### **6. Analysis of Conditional Use Criteria**

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

#### Criterion 1:

The proposed use is allowed as a conditional use in the zone.

**Finding:** SRC Chapter 551, Table 551-1 provides that Marijuana Production is allowed in the IC (Industrial Commercial) zone with a conditional use permit.

#### Criterion 2:

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

**Finding:** Several potential impacts on the immediate neighborhood could be generated by the proposal, including increased parking demand, odor, waste disposal, and criminal activity due to the high value of the end product and prevalent use of cash in marijuana business transactions. The marijuana production process described in the applicant's operating plan does not describe use of heavy machinery or other indications that noise impacts would result. No comments from residents or the Northgate Neighborhood Association have been received regarding this proposal. One comment was received from the Salem-Keizer School District that has been addressed in Section 5 of this report. As stated previously, no retail sales of marijuana will occur on site. No additional impacts have been raised as a concern by residents in the vicinity.

State law requires facilities for the commercial production of recreational marijuana to obtain a license from the Oregon Liquor Control Commission (OLCC) and meet specific standards for site security, record keeping, waste disposal, inventory control, access control, and other operational requirements which address potential site impacts at a greater level of detail than the land use process for granting a conditional use. Therefore, the following recommendations presented in the findings of this report focus on mitigating the impact of the potential use on surrounding properties and ensuring implementation of OLCC requirements where they may overlap with conditional use approval criteria.

Marijuana production facilities in general industrial and exclusive farm use zones are subject to special use standards which reflect concern for visual and odor impacts. These standards, which mandate that marijuana production in these zones take place indoors, with an air filtration system to mitigate odors, also provide the basis for conditions to minimize these potential impacts in the IC (Industrial Commercial) zone. The applicant's written statement indicates that all marijuana production activities would be conducted indoors, and carbon filters are in place to prevent odors from spreading beyond the premises. The following conditions apply to ensure that these visual and odor control protocols are implemented by the present applicant and any subsequent operator of the proposed conditional use:

**Condition 1:** Marijuana production shall be conducted indoors.

**Condition 2:** The marijuana production facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

City Council finds that the proposal meets this criterion as conditioned.

Criterion 3:

The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

**Finding:** The subject property has been developed as an industrial building with some retail sales for several decades and is surrounded by several industrial and commercial developments. The proposed recreational marijuana production facility would be located within the existing building located on the eastern portion of the development site. The proposal will not significantly change the appearance of the property or significantly increase traffic.

## **7. Analysis of Class 3 Site Plan Review Approval Criteria**

SRC 220.005(f)(3) establishes the following approval criteria for a Class 3 Site Plan Review:

Criterion 1:

The application meets all applicable standards of the UDC.

**Finding:** The proposed development includes a change of use for a recreational marijuana production facility. The proposed development complies with all applicable development standards of the Salem Revised Code.

**Development Standards – IC Zone:**

*SRC 551.005(a) - Uses:*

The permitted, special, conditional and prohibited uses in the IC zone are set forth in Table 551-1.

**Finding:** The proposed development includes establishing a recreational marijuana production facility. A recreational marijuana production facility use is classified as an Agriculture use and is allowed in the IC zone per SRC 551.005, Table 551-1 as a Conditional Use. Findings for the Conditional Use are included in Section 6 of this report.

*SRC 551.010(a) – Lot Standards:*

In the IC zone, no minimum lot area, width, or depth is required and a minimum street frontage of 16 feet is required.

**Finding:** The subject property has approximately 100 feet of frontage on Portland Road NE and complies with the applicable lot standards of the IC zone.

*SRC 551.010(b) – Setbacks:*

*Abutting Street*

**West:** Adjacent to the west is Portland Road NE. A minimum 5-foot setback is required for buildings and a minimum 6- to 10-foot setback is required for vehicle use areas.

*Interior Front, Side and Rear*

**North:** Abutting to the north is land zoned IC (Industrial Commercial). There is no minimum setback required for buildings abutting an IC zone, and there is a minimum setback of 5 feet required for vehicle use areas abutting an IC zone.

**South:** Abutting to the south is land zoned IC (Industrial Commercial). There is no minimum setback required for buildings abutting an IC zone, and there is a minimum setback of 5 feet required for vehicle use areas abutting an IC zone.

**East:** Abutting to the east is railroad right-of-way. There is no minimum setback adjacent to railroad right of way. SRC 806.035 provides that unless a greater setback is required, vehicle use areas are required to be a minimum of 5 feet from interior property line.

**Finding:** The proposed recreational marijuana production facility will be within an existing building, and the building setbacks are not changing. The parking spaces are existing and are located within an existing paved area that is adjacent to the building and which has been used for vehicle use and parking. No additional setbacks are required.

The proposal complies with all applicable setback requirements of the IC zone.

*SRC 551.010(c) - Lot Coverage, Height:*

No maximum lot coverage standard is applicable. The maximum building height is 70 feet.

**Finding:** No changes are proposed to the height or footprint of the existing building. The proposed development complies with the maximum height standard.

*SRC 551.010(d) - Landscaping:*

Required setbacks shall be landscaped, and landscaping shall conform to the standards set forth in SRC Chapter 807. Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807. Development site shall be provided.

**Finding:** The existing building setback is not changing. Perimeter landscaping abutting Portland Road NE and abutting property lines would be required for the development of new off-street parking areas; expansion of existing off-street parking areas where additional paved surface is added; alteration of existing off-street parking areas, where the existing paved surface is replaced with a new paved surface; and paving of an un-paved area. The applicant indicates the existing parking spaces are within an existing paved area. No perimeter landscaping is required.

The existing 2,800 square-foot landscaped area abutting Portland Road NE appears to contain no plant units. The applicant shall be required to plant and maintain the existing landscaped area according to Type A landscaping standards, which requires a minimum of 1 plant unit per 20 square feet of landscaped area. A total of 140 plant units are required for the 2,800 square-foot landscaped area ( $2800 / 20 = 140$ ). A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

**Off-Street Parking, Loading, and Driveways SRC 806**

*SRC 806.005 - Off-Street Parking; When Required.*

Off-street parking shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

**Finding:** The proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses require 5 parking spaces when retail sales are

involved. No retail sales will occur at this site. Therefore, no parking spaces are required and this standard is met.

### **Bicycle Parking**

#### *SRC 806.045 - General Applicability.*

Bicycle parking shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

**Finding:** The proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses require 2 bike parking spaces when retail sales are involved. No retail sales will occur at this site. Therefore, no bicycle parking spaces are required and this standard is met.

### **Off-Street Loading Areas**

#### *SRC 806.065 - General Applicability.*

Off-street loading shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

**Finding:** The proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses do require on loading spaces, therefore this standard is met.

### **Portland Fairgrounds Road Overlay**

#### *SRC 603.020 Development Standards*

Lot standards, density standards and setback standards for townhouses and/or single, two and multiple family uses are set forth in Table 603-2, Table 603-3 and Table 603-4.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility and the proposed development is limited to interior improvements. The lot, density and setback standards are not applicable.

#### *SRC 603.020(d) – Landscaping*

*Berms, mounds, raised beds and grade drops shall not be allowed as a landscaping treatment, unless a bioswale treatment system or approved landscaping exists to adequately collect water runoff and the berms, mounds, raised beds, and grade drops do not exceed a 3:1 slope.*

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility and the proposed development is limited to interior improvements. The applicant is not proposing any landscaping, therefore this standard is not applicable.

*SRC 603.020(f) - Off-Street Parking and Loading Areas.*

- 1) Planter bays or islands shall have a minimum planting area of 50 square feet.
- 2) A minimum of 1 tree per 8 parking spaces is required, of which a maximum of 25 percent may be evergreen trees. Trees shall be planted within 20 feet of the parking lot perimeter. Trees within the public street right-of-way shall not count toward the tree planting requirements.
- 3) Off-street parking may be provided no more than 800 feet from the edge of the lot, or contiguous lots, upon which the main building is located.
- 4) Employee off-street parking may be provided no more than 2,000 feet from the edge of the lot, or contiguous lots, upon which the main building is located.
- 5) Parking lot light structures shall not exceed 25 feet in height.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure. Since there is no exterior change or change to the existing parking area, these standards are not applicable.

*SRC 603.020(g) - Screening.*

- 1) Trash receptacles shall be screened from adjacent Household Living uses and streets by a sight-obscuring fence, wall, or hedge.
- 2) Concertina or barbed wire fencing shall not be located within 60 feet of the street right-of-way, unless such fencing is obstructed by a building or structure.
- 3) Concertina or barbed wire fencing shall be screened from public view and adjacent property by sight-obscuring landscaping.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure. Since there is no exterior change and the applicant is not proposing a fence or change to trash receptacles this standard is not applicable.

*SRC 603.020(h) - Outdoor Storage.*

- 1) Outdoor storage areas shall not be located within required setbacks.
- 2) Outdoor storage areas shall be enclosed by a minimum 6-foot-high sight-obscuring fence, wall, hedge, or berm; provided however, items more than 6 feet in height above grade shall be screened by sight-obscuring landscaping.
- 3) Items stored within outdoor storage areas shall not exceed a maximum height of 14 feet above grade.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure. Since there is no exterior change and outdoor storage is not proposed this standard is not applicable.

*SRC 603.020(i) - Pedestrian Access.*



- 1) A pedestrian connection shall be provided from the public sidewalk to the primary building entrance.
- 2) A pedestrian connection through the parking area to the primary building entrance shall be provided when the parking area is greater than 60 feet in depth.
- 3) Within shopping centers, office complexes, and mixed-use developments, pedestrian connections shall be provided to connect the buildings. Pedestrian connections shall be the most practical, direct route.
- 4) Pedestrian connections shall be a minimum of 5 feet in width, and defined by visual contrast or tactile finish texture.
- 5) Wheel stops or extended curbs shall be provided along required pedestrian connections to prevent the encroachment of vehicles onto pedestrian connections.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure. Since there is no exterior change and no proposed changes to the vehicle use area, including existing pedestrian access to the abutting sidewalk, this standard is not applicable.

*SRC 603.020(j) - Project Enhancements.*

Development within the Portland/Fairgrounds Road Overlay Zone shall include four or more project enhancements.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure, thereby not meeting the definition of development in the zoning code. Since there is no development proposed project enhancements are not required.

*SRC 603.025 & 030 - Design Review*

Development within the Portland/Fairgrounds Road Overlay Zone requires design review pursuant to SRC 603.025 and 030.

**Finding:** The proposal includes establishing occupancy for a recreational marijuana production facility. The applicant is proposing interior remodeling that will not increase the square footage or height of the structure, or substantially alter the appearance of the structure, thereby not meeting the definition of “development” in the Salem Zoning Code. Since there is no development proposed, design review is not required.

## **Landscaping**

All required setbacks shall be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

**Finding:** The existing 2,800 square-foot landscaped area abutting Portland Road NE appears to contain no plant units. The applicant shall be required to plant and maintain the existing landscaped area according to Type A landscaping standards, which requires a minimum of 1 plant unit per 20 square feet of landscaped area. A total of 140 plant units are required for the 2,800 square-foot landscaped area ( $2800 / 20 = 140$ ). A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

### **Natural Resources**

*SRC 808 - Preservation of Trees and Vegetation:* The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance granted under SRC 808.045. No protected trees have been identified on the site plan for removal.

*SRC 809 - Wetlands:* The Salem-Keizer Local Wetland Inventory (LWI) does not show any wetland or hydric soil areas mapped on the property.

*SRC 810 - Landslide Hazards:* A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. The applicant's proposal does not disturb any portion of a mapped landslide hazard area; therefore, a geological assessment is not required.

**Finding:** The proposed development would not cause removal of protected trees or vegetation and would not occur in wetlands or landslide hazard areas.

### Criterion 2:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

**Finding:** The existing street system is adequate to serve the proposed development and the development is not proposing a building addition pursuant to 803.040(a); therefore, no right-of-way dedication or street improvements are required.

### Criterion 3:

Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

**Finding:** The driveway access onto Portland Road NE provides for safe turning movements into and out of the property.

Criterion 4:

The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

**Finding:** The Public Works Department has reviewed the applicant's preliminary plan for this site. The water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the proposed development. The applicant does not show any new connections to public infrastructure.

**CONCLUSION**

Based on the facts and findings presented herein, the proposed Conditional Use and Class 3 Site Plan Review, as conditioned, satisfy the applicable criteria contained under SRC 240(d) and SRC 220.005(f)(3).

**Condition 1:** Marijuana production shall be conducted indoors.

**Condition 2:** The marijuana production facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.