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503-588-6173*

REVISED DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO.: CU19-07

APPLICATION NO. : 19-120574-ZO

NOTICE OF DECISION DATE: January 9, 2020

SUMMARY: A proposal to add a cannabis concentrate processing operation to an existing marijuana production facility.

REQUEST: A conditional use application to add a cannabis concentrate processing operation, classified as a heavy manufacturing use, to an existing marijuana production facility. The subject property is zoned IG (General Industrial), and located at 4055 Turner Road SE (Marion County Assessor map and tax lot 082W07B / 02100).

APPLICANT: Randy Hudnall

LOCATION: 4055 Turner Rd SE

CRITERIA: Salem Revised Code (SRC) Chapter 240.005(d).

FINDINGS: The findings are in the attached Decision dated January 9, 2020

DECISION: The **Hearings Officer APPROVED** Conditional Use Case No. CU19-07 subject to the following conditions of approval:

Condition 1: The cannabis concentrate processing shall be performed as described in the applicant’s written statement included as **Attachment C**.

Condition 2: Provide an updated waste management and disposal plan, in accordance with SRC 74.210.

Condition 3: The cannabis processing facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

The rights granted by the attached decision must be exercised, or an extension granted, by January 9, 2021 or this approval shall be null and void.

Application Deemed Complete:	November 12, 2019
Public Hearing Date:	December 4, 2019
Notice of Decision Mailing Date:	January 9, 2020
Decision Effective Date:	January 25, 2020
State Mandate Date:	<u>March 11, 2020</u>

Case Manager: Brandon Pike, bpike@cityofsalem.net, 503-540-2326

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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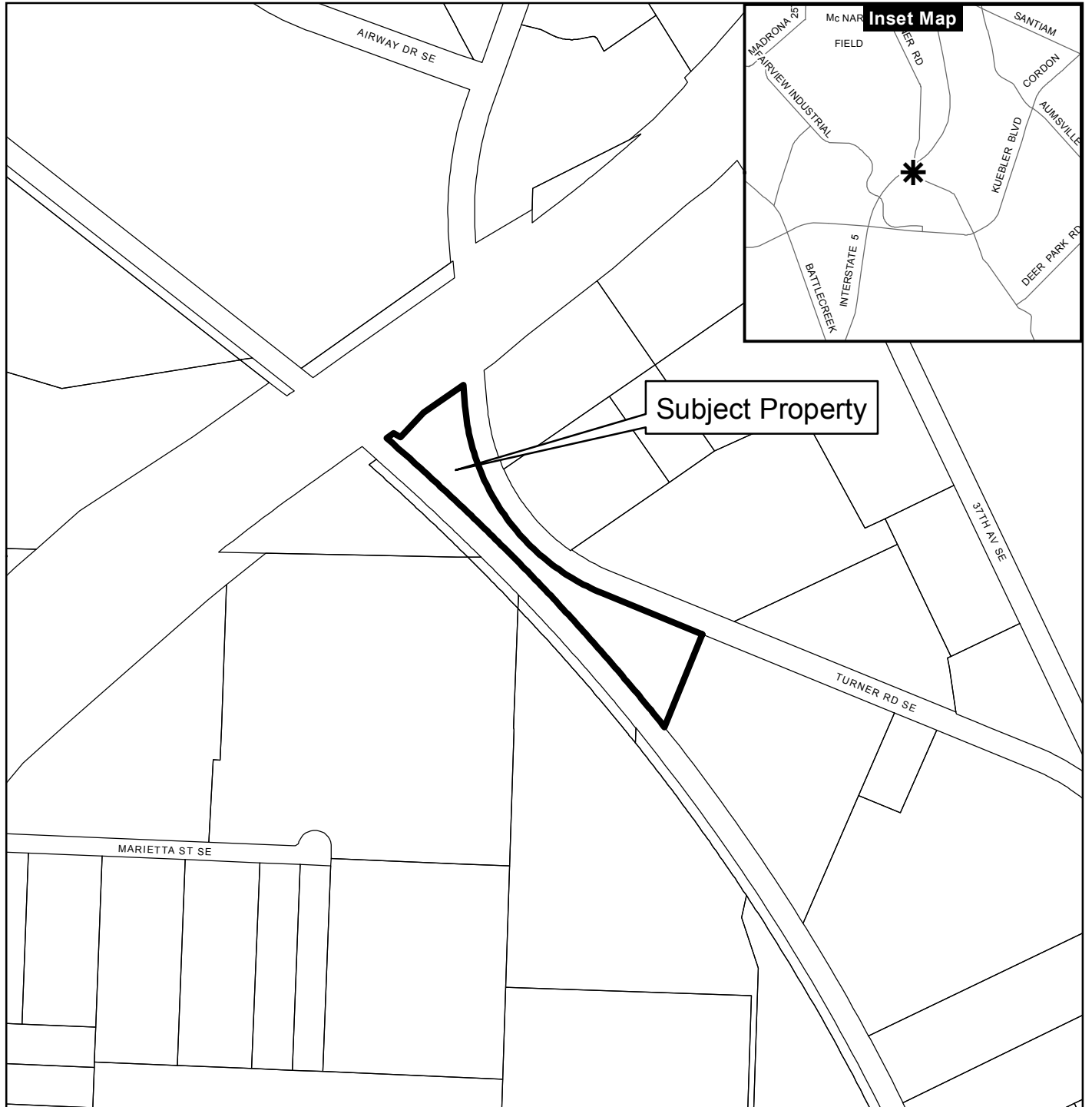


This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., January 24, 2020. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.








The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 320, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

Vicinity Map 4055 Turner Road SE



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks


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Statement of proposal and approval conditions

AS CALLED OUT IN
CONDITION 1

This conditional use permit is being requested to allow for the use of an OLCC processing license with only a "concentrates" endorsement. The concentrates endorsement allows us to remove the kief(crystals) from the vegetive material so it can be sold seperately. We will use two ways to capture the kief from the plant. One method is by making ice water hash which is derived from the canabis product by agitating the canabis flower in ice cold water and filtering that water to remove the vegetive material from the kief(crystals). The second method uses a drum similiar to a small clothes dryer and tumbles the flower in a fine screen to remove the kief from the canabis. Neither methods use any chemicals other than water, only a screen and filters to capture the desired kief. Once the kief is collected we would use a small heated press to squeeze the kief into hash or rosin. Either of these two products can be sold as is or used with other processes or put on other canabis products for enhancement of their effects.

The processes described above do not require any chemicals or extreme heat, the highest temperature we would use is 100 degrees celcius, boiling point of water, to fuse the product into hash or rosin. The equipment we would use if portable and sits on a counter similiar to a large kitchen appliance.

The reasonable likely adverse impacts of this use on the immediate neighborhood can be minimized through the use of conditions such as only operating during normal working hours and insuring that all by-products such as dirty water are disposed of properly. Our process would filter the water to remove any vegetive material down to 80 microns before it is discarded.

The proposed use will be reasonably compatible with and have less impact on the liveability or appropriate development of the surrounding property due to the fact that the only by-product is water that, all though it is safe to drink as is we would still insure that it is filtered before being sent down the sewage drain system to insure no clogs or contamination occurs.

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A CONDITIONAL USE APPLICATION TO ADD A CANNABIS CONCENTRATE PROCESSING OPERATION, CLASSIFIED AS A HEAVY MANUFACTURING USE, TO AN EXISTING MARIJUANA PRODUCTION FACILITY. THE SUBJECT PROPERTY IS ZONED IG (GENERAL INDUSTRIAL) AND LOCATED AT 4055 TURNER ROAD SE (MARION COUNTY ASSESSOR MAP AND TAX LOT NUMBER: 082W07B / 02100).

} CU19-07
} FINDINGS OF FACT, CONCLUSIONS, AND DECISION

DATE AND PLACE OF HEARING:

December 4, 2019, Salem City Council Chambers, Room 240, Civic Center, 555 Liberty Street SE, Salem, Oregon.

APPEARANCES:

Staff: Brandon Pike, Planner I

Neighborhood Association: None

Proponents: Randy Hudnall, Applicant

Opponents: None

Neutral: Steve Ward, Neighbor

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on December 4, 2019, the request for a conditional use application to add a cannabis concentrate processing operation, classified as a heavy manufacturing use, to an existing marijuana production facility for property located at 4055 Turner Road SE.

During the hearing, Brandon Pike requested the Staff Report be entered into the Record, and the Hearings Officer granted the request.

Also, during the hearing, a letter dated December 3, 2019, from Kailean Kneeland, Administrative Services Director for the Oregon State Police, was presented and entered into record. The concerns mentioned in that letter will be discussed later in this decision.

Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

The Staff Report, and Staff presentation stated, observed, noted and alleged the following:

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Industrial." The subject property is within the Urban Growth Boundary but outside the Urban Service Area. Public Works determined that an Urban Growth Preliminary Declaration is not required to determine public facilities required to fully serve the development in conformance with the City's adopted Master Plans and Area Facility Plans.

2. Zoning of Surrounding Land Uses

The subject property is zoned IG (General Industrial). The proposed extraction use is classified as a Heavy Manufacturing use and requires Conditional Use approval in the IG Zone.

The zoning of surrounding properties is as follows:

Northeast: Across Turner Road SE, IG (General Industrial)

Northwest: Across Interstate 5, IP (Industrial Park) and PS (Public Service)

Southeast: IG (General Industrial)

Southwest: Across railroad, IG (General Industrial) and IC (Industrial Commercial)

3. Site Analysis

The subject property is approximately 2.94 acres in size and is developed with two existing buildings and a vehicle use area. The existing buildings contain a

marijuana production facility. The proposed cannabis concentrate processing facility, classified as a heavy manufacturing use, would take place alongside the existing production facility. The property is bounded by Turner Road SE to the northeast, Interstate 5 to the northwest, railroad right-of-way to the southwest, and IG-zoned property to the southeast.

4. Neighborhood and Citizen Comments

The subject property is located within the Southeast Mill Creek Association (SEMCA). Notice of the application was sent pursuant to Salem Revised Code (SRC) requirements on November 14, 2019, including to SEMCA. The applicant submitted a September 27, 2019 email from Cory Poole, chair of SEMCA, indicating the neighborhood association board voted in favor of approving the conditional use permit. As of the date of the staff report, no comments were received during the comment period from the neighborhood association, or from surrounding property owners or tenants.

At the hearing, Steve Ward, who owns property to the South of the site, testified that while he had never smelled offensive odors from the current operation, he would prefer that any approval include a condition that the operators must eliminate odors that might impact neighboring property, as opposed to merely “minimizing” those odors. Mr. Ward asked the Hearings Officer to define “minimize” for purposes of SRC. 240.005(d)(2).

5. City Department and Public Agency Comments

The Building and Safety Division reviewed the proposal and identified no issues.

The Fire Department reviewed the proposal and commented that the process shall comply with the Oregon Fire Code. Per the Building and Safety Division, there are no requirements of the Oregon Structural Specialty Code to submit plans for a change of use/change of occupancy at this time. To ensure compliance with the Oregon Fire Code, the applicant is advised to contact Sean Mansfield with the Fire Department, at 503-589-2137 or smansfield@cityofsalem.net.

The Public Works Department reviewed the proposal and provided comments from Environmental Services, which is included as Attachment D in the staff report.

The Oregon State Police commented by letter dated December 3, 2019, expressing concern that odor from the proposed use would impact employees at the Oregon State Police Headquarters at 3565 Trelstad Avenue SE.

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.

The Hearings Officer notes extraction of concentrates from industrial cannabis and raw materials obtained from agricultural or forestry production is classified as a heavy manufacturing use pursuant to SRC Chapter 400. SRC Chapter 554, Table 554-1 provides that Heavy Manufacturing uses are allowed in the IG (General Industrial) zone with a conditional use permit.

The Hearings Officer finds that the proposal meets this criterion.

Criterion 2:

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

The Hearings Officer notes the applicant is proposing a cannabis concentrate extraction and processing facility within existing buildings with a gross floor area of approximately 3,263 square feet.

The Hearings Officer notes that heavy manufacturing uses require a conditional use permit in order to evaluate the impact of a use on surrounding uses in the immediate area. The Hearings Officer agrees with the staff report that potential impacts from heavy manufacturing uses include noise, vibration, dust, smoke, fumes or noxious odors.

The Hearings Officer notes that the applicant's statement in the staff report describes the characteristics of the proposed use. The proposed heavy manufacturing use would involve extracting concentrates from the cannabis plant. The concentrates would be produced through two methods. The first would involve agitating the cannabis flower in cold water and filtering the water to separate the plant material from the kief, or trichomes of the cannabis plant. The second method would involve mechanically separating the trichomes from the cannabis plant by tumbling the plant material in a small machine, filtering the trichomes using a fine screen. Once the trichomes

are extracted from the plant, the applicant would use a small heated press to compress the trichomes into the finished product, a hash or rosin. The process would take place within the existing buildings at the subject property. The applicant states that the reasonably likely adverse impacts of the proposed use on the immediate neighborhood could be minimized through the imposition of conditions, such as ensuring that all waste by products are disposed of properly.

The Hearings Officer notes that both the State Police and Mr. Ward expressed concerns about noxious odors and the impacts on adjacent tenants and neighboring uses. The State Police states that the roof mounted HVAC at their Headquarters consistently bring outside odors into the building that aren't noticeable at ground level (the Hearings Officer notes that the December 3, 2019 letter from Kailean Kneeland does not expressly state that odors that have caused issues at the OSP Headquarters are from the current operation at the applicant's site). Mr. Ward stated that he had never smelled anything but was concerned that the condition did not require elimination of all odor from the operations, as opposed to minimizing the odors. Mr. Ward specifically asked the Hearings Officer to define "minimize" as the word is used for purposes of SRC 240.005(d)(2).

The Hearings Officer notes that SRC Chapter 111 contains the definition of terms as they are used in the SRC. The Hearings Officer notes that "minimize" is not defined in SRC Chapter 111. SRC 111.001 contains the following introductory explanatory language:

"Unless the context otherwise specifically requires, terms used in the UDC shall have the meanings set forth in this chapter; provided, however:

(a) Where chapter specific definitions are included in another chapter of the UDC, those definitions are the controlling definitions; and

(b) Where a term is not defined within the UDC, the term shall have its ordinary accepted meaning within the context in which it is used. Webster's Third New Int'l Dictionary (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings".

The Hearings Officer notes that the ordinary accepted meaning of "minimize" is "reduce". The Hearings Officer notes that the Webster's Third New Int'l Dictionary defines "minimize" as:

1. To reduce to the smallest possible number, degree, or extent;
2. To estimate in the least possible terms, number, or property.

In the context of SRC 240.005(d)(20), the Hearings Officer sees the criterion as requiring that the reasonably likely adverse impacts from a conditional use are reduced to the smallest possible number, degree or extent.

This leaves the Hearings Officer with the conclusion that it may not be possible to completely eliminate odors from the proposed operation. Assuming doors open and accidents happen, some emission of odors is possible. The Hearings Officer notes the requests to modify the condition to eliminate odors and declines to modify the condition.

The Hearings Officer notes the applicant's explanation that no additional odors will be generated by the proposed operation, but that the current operation generates odors, which are addressed through a filtration system. Mr. Ward noted in his testimony that he has received no complaints and has not noticed any objectionable odors from the site. The Hearings Officer is persuaded by this and that the current filtration system is currently minimizing the likely adverse impacts caused by odors emitted by the grow operation. The Hearings Officer is persuaded that it is unlikely the proposed operation will generate any additional odors, but it is reasonably likely the same odors will continue to be generated.

Accordingly, the Hearings Officer is also persuaded that a condition to use an air filtration system as is currently being used will minimize the odor impacts upon neighboring properties.

The Hearings Officer finds that the development, as proposed and with the imposed conditions of approval below, minimizes reasonable likely adverse impacts of the use on the adjacent tenants and neighboring uses.

Condition 1: The cannabis concentrate processing shall be performed as described in the applicant's written statement included as **Attachment C** of the staff report.

Condition 2: Provide an updated waste management and disposal plan, in accordance with SRC 74.210.

Condition 3: The cannabis processing facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

Criterion 3:

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

The Hearings Officer notes the proposed cannabis concentrate processing facilities would be confined to existing buildings within an

industrial zone. The subject property is surrounded by industrial-zoned properties and uses. The property has adequate loading space for delivery of raw materials and adequate storage space within the building. The applicant submitted a site plan which was used for a previous land use application at the subject property. The plan labels a new concrete walkway and a new fence, though those were already approved and installed under the previous land use application (application no. 16-106831-RP). No alterations to the exterior of the building are proposed with this conditional use application.

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

DECISION

The Hearings Officer **APPROVES** the request for a conditional use application to add a cannabis concentrate processing operation, classified as a heavy manufacturing use, to an existing marijuana production facility for property located at 4055 Turner Road SE subject to the following conditions of approval:

Condition 1: The cannabis concentrate processing shall be performed as described in the applicant's written statement included as Attachment C of the staff report.

Condition 2: Provide an updated waste management and disposal plan, in accordance with SRC 74.210.

Condition 3: The cannabis processing facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

DATED: January 9, 2020



James K. Brewer, Hearings Officer