

Legislation Details (With Text)

File #: 19-461 **Version:** 1

Type: Public Hearings **Status:** Passed

In control: City Council

On agenda: 10/14/2019 **Final action:** 10/14/2019

Title: City Council review of the Hearings Officer's August 30, 2019 decision approving a Conditional Use Permit and Class 3 Site Plan Review for a change of use within an existing building from a medical marijuana production facility to a recreational marijuana production facility for a property approximately 1.61 acres in size, zoned IC (Industrial Commercial), within the Portland Fairgrounds Overlay zone, and located at 3625 Portland Road NE.

Ward(s): Ward 5
Councilor(s): Ausec
Neighborhood(s): Northgate Neighborhood Association
Result Area(s): Welcoming and Livable Community

Sponsors:

Indexes:

Code sections:

Attachments: 1. Vicinity Map, 2. August 30, 2019 Hearings Officer Decision, 3. Salem-Keizer School District Comments, 4. August 7, 2019 Staff Report

| Date | Ver. | Action By | Action | Result |
|------------|------|--------------|----------|--------|
| 10/14/2019 | 1 | City Council | approved | Pass |

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

City Council review of the Hearings Officer's August 30, 2019 decision approving a Conditional Use Permit and Class 3 Site Plan Review for a change of use within an existing building from a medical marijuana production facility to a recreational marijuana production facility for a property approximately 1.61 acres in size, zoned IC (Industrial Commercial), within the Portland Fairgrounds Overlay zone, and located at 3625 Portland Road NE.

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ISSUE:

Shall the City Council affirm, amend, or reverse the Hearings Officer's decision for Conditional Use and Class 3 Site Plan Review Case No. CU-SPR19-04?

RECOMMENDATION:

Staff recommends that the City Council AFFIRM the August 30, 2019 Hearings Officer's Decision.

SUMMARY:

The subject site is approximately 1.61 acres in size and located west of Portland Road NE (**Attachment 1**). The Hearings Officer approved the consolidated application for a Conditional Use and Class 3 Site Plan Review application subject to conditions of approval (**Attachment 2**). City Council moved to call-up the decision for Council review.

FACTS AND FINDINGS:

Procedural Findings

1. On June 5, 2019, an application was submitted for a Conditional Use Permit and Class 3 Site Plan Review. The applications were deemed complete on July 15, 2019.
2. On August 14, 2019, the Hearings Officer held a public hearing. On August 30, 2019, the Hearings Officer issued a decision to approve the applications subject to conditions of approval.
3. On September 9, 2019, at a regularly scheduled meeting, the City Council voted to initiate the review of the Hearings Officer's decision. A public hearing before the City Council is scheduled for October 14, 2019.
4. The 120-day State mandated deadline for final decision is November 12, 2019.

Substantive Findings

1. The applicable criteria and considerations that must be satisfied for the approval of the Conditional Use in this case are included within SRC Chapter 240 under section 240.005(d), and the Class 3 Site Plan Review within SRC Chapter 220 under section SRC 220.005(f)(3).

Findings for the proposed Conditional Use and Class 3 Site Plan Review with the applicable approval criteria are included in the August 30, 2019 decision, which is included as **Attachment 2** to this report and incorporated by reference.

2. Proximity of Schools to Marijuana Production Facilities

Comments were received from the Salem-Keizer School District (SKSD) regarding the siting of

the proposed facility adjacent to the Salem-Keizer Public Schools Career Technical Education Center School (**Attachment 3**). The comments reference ORS Chapter 475B and the regulations regarding the proximity of schools to marijuana dispensaries.

The Hearings Officer responded to the objection through the findings in the August 30, 2019 decision. In summary, the Hearings Officer found that the proposed use is a marijuana production facility that does not include retail sales. The Oregon Liquor Control Commission (OLCC) is the responsible agency for regulating marijuana businesses for compliance with state law, which includes regulations regarding the siting of marijuana businesses and their proximity to schools. ORS Chapter 475B contains regulations on the location of marijuana retailers near schools but does not include siting restrictions for marijuana production facilities.

At the time the SKSD comments were received, staff reviewed state regulations and contacted the OLCC to confirm there were no issues regarding the proposed production facility adjacent to a school. Furthermore, the use is allowed with conditional use approval in the applicable zone, and the evaluation of the site in relationship to its proximity to schools is not an approval criterion for this application.

The property contains two buildings, one which was previously used as a medical marijuana production facility and one which is currently used for marijuana production facility. Medical Marijuana production is a permitted use in the zone. There are no complaints on file with the City for this use and to staff's knowledge, the School District has not submitted any complaints about the current use.

3. Adverse Impacts

The Hearings Officer approved the applications after review of the applicable decision criteria and found that the proposal's reasonably likely adverse impacts on the immediate neighborhood can be minimized through the imposition of conditions. Two conditions were placed on CU-SPR19-04 to mitigate potential visual and odor impacts from the facility's operations. Condition 1 requires the applicant to conduct the production use indoors, and condition 2 requires the installation of an air filtration system. The marijuana production process described in the applicant's operating plan does not describe the use of heavy machinery and does not give indications of potential noise impacts. With the exception of SKSD, no concerns were raised by property owners in the vicinity or by the Neighborhood Association.

State law requires commercial recreational marijuana production facilities to obtain a license from the 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. Staff recommendations, and the Hearings Officer's decision, focus on mitigating the impact of the use on surrounding properties and ensuring the implementation of OLCC requirements, where they may overlap with conditional use approval criteria. The Hearings Officer found that the proposal, as conditioned, satisfies this approval criterion.

4. Compatibility

The subject property is developed with two buildings that have been occupied by industrial and commercial uses for several decades. The property abuts Portland Road NE to the east, the Union Pacific Railroad to the west, and is surrounded by primarily industrial and commercial uses. The proposed recreational marijuana production facility would be located entirely indoors and would occupy the rear portion of the property's easternmost building, which faces Portland Road NE. The easternmost building is currently vacant and was previously used for medical marijuana production, a use that is permitted outright in the IC zone. The westernmost building on the property was approved for warehousing and storage uses and is currently used as a medical marijuana production facility. Building permit history indicates that the property did not receive an occupancy change for the existing and previous production facilities. The request statement of the applications were corrected in the Staff Report dated August 7, 2019 to indicate that the proposal would require an occupancy change for the proposed use (**Attachment 4**).

The applicant has indicated that the interior tenant improvements associated with the change of use will have a net-neutral impact on the building and site. No exterior development is proposed. The Hearings Officer approved the applications after review of the applicable decision criteria and found that the proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of the surrounding properties. Potential adverse impacts will be mitigated through the conditions of approval as mentioned above.

Hayley Feightner
Planner I

Attachments:

1. Vicinity Map
2. August 30, 2019 Hearings Officer Decision
3. Salem-Keizer School District Comments
4. August 7, 2019 Staff Report