



CITY OF OAKLAND
Office of the City Administrator

SPECIAL ACTIVITY PERMITS

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FINDINGS AND RECOMMENDATION OF HEARING OFFICER ON APPLICATION OF JOSHUA CHASE INC. FOR A CONDITIONAL PERMIT TO OPERATE A CANNABIS DISPENSARY AT 3238 LAKESHORE AVENUE, OAKLAND, CA 94610

A public hearing on the above application was held on October 5, 2020 via Zoom. Presented below are the findings and recommendation of the Hearing Officer:

FINDINGS

1. Joshua Chase Inc. (Joshua Chase) filed a cannabis dispensary permit application in February 2020 in response to the Office of the City Administrator's Request for Permit Applications (RFPA) that sought applicants to operate eight new dispensary permits.
2. Joshua Chase submitted a scored dispensary permit application. City staff reviewed and scored its application and determined Joshua Chase qualified as an equity-owned business as defined by OMC 5.80 and ranked in the top four of all scored applications.
3. City staff then informed Joshua Chase that he was eligible to proceed to RFPA Phase Three: Site Identification, in which applicants have up to one-hundred and twenty (120) days to identify a location for their cannabis dispensary that complies with the location restrictions under OMC 5.80.
4. Within the Phase Three 120-day period, Joshua Chase provided the Special Activity Permits Division in the Office of the City Administrator with a letter of intent to lease 3238 Lakeshore Avenue for operation of a cannabis dispensary.
5. A mapping of this addresses revealed no sensitive uses as defined by OMC 5.80 within 600 feet path of travel.
6. Due to COVID-19 Shelter in Place Restrictions prohibiting in-person gatherings, a public hearing on this matter was scheduled via Zoom on October 5, 2020.

7. Notice of the public hearing was timely provided to neighboring property owners within 300 feet, the applicant, and posted on the premises.
8. Prior to the public hearing, Mr. Chase provided the Special Activity Permits Division with letters of support for his proposed dispensary, mostly from other cannabis operators, but notably a letter from the Lakeshore Avenue Business Improvement Board expressing openness to a dispensary.
9. In advance of the hearing the Special Activity Permits Division also received approximately thirty emails. Although some emails expressed support for the dispensary on behalf of other cannabis operators as well as nearby residents, businesses, and property owners, the majority of emails opposed the proposed dispensary.
10. At the public hearing Mr. Chase provided an overview of his proposed dispensary, including his background as a cannabis operator, his plans for local hiring, and security measures.
11. The location of the proposed dispensary was most recently occupied by a CVS pharmacy.
12. Approximately sixty-eight attendees logged into the zoom public hearing and twenty-two attendees spoke during public comment. Public speakers were roughly split between those in opposition to the proposal and those in support.
 - a. Those in opposition to the proposal asserted that a dispensary would not be appropriate due to families living nearby or visiting the area, its anticipated reduction of available parking, its incompatibility with the aesthetics of neighboring businesses, and its anticipated increase in crime.
 - b. Those in support stressed that allowing a regulated dispensary would be beneficial to the neighborhood by: decreasing patronage of unregulated cannabis businesses, allowing neighbors with access to a dispensary within walking distance, providing the City with tax revenue, improving the current vacant storefront, and bringing to the neighborhood a respected existing operator by allowing Mr. Chase the ability to operate.
13. After public comment, the hearing officer asked Mr. Chase if he would be willing to provide discounts to customers who visited the dispensary without using a car and he confirmed that he would be willing to provide this incentive.
14. After the public hearing, in response to concerns about lack of parking in the area the hearing officer asked Mr. Chase if there was any documentation that 3238 Lakeshore was part of a parking benefit district, which Mr. Chase subsequently provided. Mr. Chase also clarified that he could offer up to a ten percent discount to customers that do not drive and rewards program incentives for local customers as determined by their zip code.

DISCUSSION

The purpose of the hearing was to determine if the property at 3238 Lakeshore Avenue is a suitable location to operate a cannabis dispensary. 3238 Lakeshore Avenue is situated in a commercial zone and no sensitive uses as defined by the City's dispensary ordinance, OMC

5.80, are within 600 feet path of travel. Nevertheless, the discussion below addresses the principal concerns expressed by those in opposition to the dispensary: neighborhood character, parking, and crime.

Neighborhood Character

Several speakers at the hearing and members of the public who emailed prior to the hearing argued that a dispensary would be inconsistent with the family-oriented character of the neighborhood. Although 3238 Lakeshore Avenue is indeed located near Mixed Housing Type Residential (RM) zones, 3238 Lakeshore Avenue is in a commercial zone and dispensaries are permitted in any commercial or industrial zone under OMC 5.80.020(D). Furthermore, a dispensary at this location would be one of the first near Lake Merritt and thus realize the intent of City Council's 2016 amendments to the City of Oakland's dispensary ordinance, which removed a buffer requirement between dispensaries and residential zones in order to more equitably locate dispensaries across Oakland and not unduly concentrate dispensaries in downtown, West Oakland and East Oakland.¹

Parking

Numerous speakers and commenters highlighted the existing traffic congestion in the area and cautioned that adding a dispensary would further reduce parking availability in the area. Under the City of Oakland's Planning Code, there is no requirement to provide additional parking upon a change of activity within an existing facility (OMC 17.116.020(B)). Furthermore, requiring additional parking has been found to promote additional car travel,² which would run counter to the City of Oakland's Equitable Climate Action Plan and the Oakland Planning Code.

Also, while traffic congestion may exist in the area already, the proposed dispensary would replace a former pharmacy that already had parking spaces attributed to its use. The property is part of the special assessment parking district that financed the adjacent parking structure next to the adjacent parking lot. Thus, the commercial space has already been allocated parking spaces. The commercial space is also well served by transit and frequented by bicyclists and pedestrians, all of whom do not require parking.

Nevertheless, the dispensary applicant has offered to incentivize customers to travel to the dispensary through non-automotive means by providing up to a ten percent discount on its products for those customers who show proof that they did not drive and a rewards program incentives for local customers as determined by their zip code.

Crime

Data from the City of Oakland's existing permitted dispensaries suggest that claims of increased crime due to the introduction of a dispensary are not well founded. For example, a 2016 City of Oakland analysis found that calls for service to the Oakland Police Department went down an average of 2.5% within 500 feet of City of Oakland licensed dispensaries the year after the dispensary opened compared to the year prior; in one

¹ Prior to the 2016 amendment, the City of Oakland required dispensaries be at least 1,000 feet from a residential zone. This resulted in the City's initial dispensaries disproportionately situating in downtown, West and East Oakland, and zero dispensaries locating in North Oakland, Lake Merritt, or above the 580 freeway.

² See Shoup, Donald, The High Cost of Free Parking, (2005).

instance calls for service dropped by almost 30 percent.³ This data is not surprising, given the security protocols in place at licensed dispensaries as well as the additional eyes on the street generated by these establishments.

It is true that burglars targeted cannabis businesses in the summer of 2020 during the civil unrest that followed the murder of George Floyd. However, these burglaries were a result of burglars taking advantage of an unprecedented wave in calls for service citywide, and cannabis businesses were far from the only target of burglars. Case in point: only one City of Oakland permitted dispensary had been burglarized between 2004-2020, whereas virtually all permitted dispensaries were burglarized in the last week of May and first week of June 2020.⁴

Ultimately, dispensary applicants must undergo a security inspection by the Oakland Police Department and comply with any security recommendations, including providing onsite licensed security, cameras, and preventative measures to discourage burglaries.

Conclusion

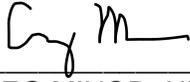
In addition to being consistent with the commercial zoning, City Council directives for dispensaries, and City parking requirements, providing legal access to cannabis at 3238 Lakeshore Avenue is consistent with City of Oakland voters, as demonstrated by the more than 77 percent of Oakland voters who approved Proposition 64, the Adult Use of Marijuana Act of 2016. Nonetheless, to ensure that the dispensary operations do not negatively impact neighbors, it is important that the dispensary take steps to address the concerns expressed by neighbors and stay in regular communication with neighbors to address issues that may arise in the future. Based on substantial evidence, the City finds the proposed dispensary use at 3238 Lakeshore Avenue is consistent with the Oakland Municipal Code and meets all of the criteria to operate at the proposed location with implementation of the below conditions set forth in the Recommendation.

RECOMMENDATION

For the reasons stated above, the hearing officer recommends that the City Administrator conditionally approve Joshua Chase Inc. to operate a cannabis dispensary at 3238 Lakeshore Avenue. Final approval shall be contingent upon approvals of the building, fire, revenue and police departments, and the final dispensary permit conditioned upon Joshua Chase Inc. attending Neighborhood Crime Prevention Council (NCPD) meetings on a quarterly basis and providing up to ten percent discounts or rewards programs for customers that travel to the dispensary in modes other than their personal vehicle or show that they are local customers as determined by their zip code. This conditional permit shall be evaluated by the City Administrator, in coordination with the City's Department of Transportation, on an annual basis, whereby additional conditions may be added, at the City Administrator's discretion, to address any perceived impacts of the dispensary.

³ City of Oakland Amendments to Medical Cannabis Ordinances Supplemental Report, April 26, 2016 Finance and Public Safety Committee, pp.2-3.

⁴ Notably, Mr. Chase's other dispensary, Have a Heart on Broadway and 7th Street, was not burglarized during this time period.



GREG MINOR, HEARING OFFICER

January 27, 2021

DATE

cc via email:

City Administrator Edward Reiskin

Councilmember Bas

Captain Bassett, OPD

Officer Romero, OPD

CAO File