



CITY OF OAKLAND
Economic and Workforce Development Department

SPECIAL ACTIVITY PERMITS

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FINDINGS AND RECOMMENDATION OF HEARING OFFICER ON APPLICATION OF OHANA GROWERS FOR A CONDITIONAL PERMIT TO OPERATE A CANNABIS DISPENSARY AT 3838 GRAND AVENUE, OAKLAND, CA 94610

A public hearing on the above application was held on October 24, 2022 via Zoom. Presented below are the findings and recommendation of the Hearing Officer:

FINDINGS

1. Ohana Growers (Ohana) submitted a dispensary permit application in 2017 in response to the Office of the City Administrator's Request for Permit Applications (RFPA) that sought applicants to operate eight new dispensary permits.
 - a. The eight available dispensary permits were selected via two separate processes; four dispensary applicants were selected after a panel of City staff scored their applications and the remaining four applicants were selected via a public drawing reserved for equity cannabis applicants as defined by Oakland Municipal Code (OMC) Chapter 5.80.
 - b. Once selected, the eight dispensary applicants were then permitted to proceed to the final phase of the RFPA process: Site Identification.
2. Ohana submitted an application via the competitive scored process and ultimately received the fifth highest score, placing them as first runner up.
 - a. Ohana scored highly because they committed to 90 to 100 percent of its employees being Oakland residents, over 50 percent of its employees being formerly incarcerated Oakland residents, providing three years of free rent to five equity businesses, and purchasing more than fifty percent of its cannabis products from Oakland equity businesses.
3. Meanwhile, Root Sixty-Four, owned by Ron Leggett, the City of Oakland's first Native-American verified equity applicant, scored in the top four of dispensary

applicants reviewed by City staff and was allowed to proceed to the site identification phase of the 2017 RFP process.

4. After exploring different partnerships and dispensary locations during 2018-2021, Mr. Leggett informed the Special Activity Permits Division in September 2022 that Root Sixty- Four was forfeiting its selection by the City's 2017 RFP process in order for Mr. Leggett to partner with Ohana who then would have an opportunity to move forward with the site selection process.
5. Subsequently, Ohana identified 3838 Grand Avenue as the site for their proposed dispensary.
6. A mapping of this address revealed no sensitive uses as defined by OMC Chapter 5.80 within 600 feet path of travel.
7. Due to COVID-19 limitations on in-person gatherings, a public hearing on this matter was scheduled via Zoom on October 24, 2022.
8. Notice of the public hearing was timely provided to neighboring property owners within 300 feet, the applicant, and posted on the premises.
9. Prior to the public hearing, the Special Activity Permits Division received approximately a dozen emails all in opposition to the proposed dispensary.
 - a. The basis of opposition included: proximity to nearby preschools, incompatibility with nearby residential uses, perceived increase in traffic and crime, and exceeding Planning Code (OMC Title 17) restrictions on retail square footage.
10. At the public hearing Nasser Azimi, Ron Leggett and Rob Fong presented on behalf of Ohana.
 - a. Mr. Azimi shared Ohana's experience operating dispensaries in Emeryville and Sacramento and strategies to minimize the cash and product stored onsite. Additionally, Mr. Azimi described Ohana's desire to work with neighbors, such as limiting evening operations to 7 or 8pm initially.
 - b. Mr. Leggett spoke regarding Ohana's commitments to incubate equity businesses, provide equity businesses with shelf space and hire formerly incarcerated Oakland residents.
 - c. Mr. Fong mentioned Ohana's Community Foundation and commitment to sponsor quarterly neighborhood clean-up events.
 - d. Finally, Mr. Azimi described Ohana's security plan, including remote monitoring camera systems, design measures, and onsite security.
11. Seventeen speakers spoke in opposition and two spoke in support of the proposal.
 - a. Those in opposition expressed concerns regarding the dispensary operating as late as 10pm, insufficient parking for customers, increased crime, proximity to schools, the hiring of formerly incarcerated people, proximity to a nearby medical facility, proximity to residential uses, and that security measures would not be attractive. Speakers summarized their objections

noting that 3838 Grand Avenue was “not the right place” for a dispensary and that it “will attract the wrong element.”

- b. Those in support noted that any store can be the source of crime and that there were class and racial undertones to the opposition. One supporter noted that they live nearby with a nine-month old child and yet they would love to have a dispensary nearby and to see a use that brings in foot traffic and more color in the neighborhood.
12. Following the public hearing the hearing officer conducted a site visit with Oakland Police Department staff to assess the security concerns raised during the hearing.
 - a. The site visit revealed that the existing structure at 3838 Grand Avenue offers an above-average building for a dispensary from a public safety perspective. Specifically, the building consists of reinforced concrete blocks and bricks. Additionally, the front of the building includes trees and windows that do not extend down to the sidewalk, both of which will discourage forcible entry by vehicle, which has occurred at dispensaries lacking said features.
 - b. The building composition and existing design thus already limit the ability of criminals to burglarize a store at 3838 Grand Avenue.
 13. Additionally, following the public hearing the hearing officer reached out to staff with the cities of Emeryville and Sacramento to verify Ohana’s operational impact in those jurisdictions. The Emeryville Police Department noted that Ohana has been responsive and cooperative with law enforcement and the City of Sacramento reported no unique public safety impact from the operation of Ohana’s Sacramento dispensary.
 14. Finally, after the public hearing the hearing officer requested mapping to measure the distance between 3838 Grand Avenue and two preschools identified during the public hearing, Little People Preschool at 470 Boulevard Way and Wildwood Children’s School at 8 Wildwood Avenue. The mapping revealed the preschools are 570 and 510 feet away from 3838 Grand Avenue via path of travel, respectively. A site visit also revealed the location of a liquor store at 3900 Grand Avenue, which is located even closer to both preschools.

APPLICABLE LAW

- **California Business and Professions Code 26054(b):** A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, daycare center, or youth center that is in existence at the time the license is issued, unless the department or a local jurisdiction specifies a different radius.
- **California Business and Professions Code 26200(a)(1):** This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements.
- **California Health and Safety Code 11362.768(b):** No medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medicinal cannabis pursuant to this article shall be located within a 600-foot radius of a school.... (h) For the purposes of this

section, "school" means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

- **California Code of Regulations Title Four Section 15403:** Hours of Operation. A licensed retailer shall sell and deliver cannabis goods only between the hours of 6:00 a.m. Pacific Time and 10:00 p.m. Pacific Time.
- **Oakland Municipal Code (OMC) Section 5.80.020(D)(1):** Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), another dispensary or youth center, unless the school or youth center moved into the area after the dispensary was issued a permit under this Chapter. The distance between facilities shall be measured via path of travel from the closest door of one (1) facility to the closest door of the other facility unless otherwise prescribed by state law. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
- **OMC Section 5.80.010 (T):** "Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.
- **OMC Section 5.80.020(E):** Applications for dispensaries shall be subject to a public hearing with public notice of the hearing in accordance with [Section 5.02.050](#).... The City Administrator shall be the investigating official referred to in [Section 5.02.030](#) to whom the application shall be referred.
- **OMC Section 5.02.060:** The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant has not complied with the provisions of this Code which directly pertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto... In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider all pertinent facts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises.

DISCUSSION

The purpose of the hearing was to determine if the property at 3838 Grand Avenue is a suitable location to operate a cannabis dispensary. 3838 Grand Avenue is situated in a commercial zone and no sensitive uses as defined by the City's dispensary ordinance, OMC Chapter 5.80, are within 600 feet path of travel. Nevertheless, the discussion below analyzes the concerns expressed before and during the public hearing.

A. Location Concerns

Several individuals expressed concerns regarding the siting of a dispensary at 3838 Grand Avenue due to its proximity to residential uses, two preschools, and a medical facility. Additionally, one public speaker questioned whether 3838 Grand exceeded planning code restrictions on the square footage of retail.

State law defers to local jurisdictions in the siting of dispensaries (see California Business and Professions Code Sections 26054(b) and 26200). In turn, OMC Section 5.80.020(D) allows dispensaries to situate in any commercial or industrial zone provided there is at least a six-hundred foot buffer via path of travel between a dispensary and a school providing instruction from kindergarten through twelfth grade, youth center, or another dispensary. Furthermore, OMC Section 5.80 authorizes the City Administrator to waive these buffer requirements if the City Administrator determines that a waiver will not impact the peace, order, and welfare of the public.

An initial mapping of 3838 Grand revealed no schools providing instruction in kindergarten or grades 1-12 within 600 feet, however, a subsequent mapping did reveal two preschools less than 600 feet via path of travel from 3838 Grand Avenue. Notably, neither state nor local cannabis laws include preschools under the definition of a “school” (See California Health and Safety Code Section 11362.768(h) and OMC Section 5.80.020(d)).¹ While OMC Section 5.80.020(d) requires a buffer between a dispensary and a “youth center,” OMC Section 5.80 defines a “youth center” as “a community or recreation facility that primarily serves persons eighteen (18) years or younger.” Since neither of the nearby preschools serve as community or recreation facility, they do not appear to qualify as a “youth center” under OMC Chapter 5.80.

Even if the two nearby preschools qualify as a “youth center,” multiple factors suggest that the siting of a dispensary at 3838 Grand Avenue would not impact the peace, order or welfare of the public and thus support a waiver of the 600-hundred foot buffer between a dispensary and a “youth center.” For example, a dispensary at 3838 Grand Avenue would not be visible from either preschool as both preschools are located on streets perpendicular to Grand Avenue. Additionally, burglaries of Oakland cannabis dispensaries that have taken place during the COVID-19 pandemic have all taken place at night; thus if a dispensary at 3838 Grand Avenue is burglarized, it almost certainly will take place when the preschools are not open. Finally, both preschools are closer to an existing liquor store than they would be to a dispensary at 3838 Grand Avenue. Accordingly, it is difficult to conclude that a store selling cannabis to adults for offsite consumption more than a block away from preschools will impact the peace, order, or welfare of the public when an existing store sells alcohol to adults for offsite consumption less than half a block away from both preschools.

Similarly, public hearing speakers objected to a dispensary at 3838 Grand Avenue as it would be adjacent to One Medical, which reportedly serves people recovering from substance abuse. While perhaps there should be a buffer between a dispensary and a substance abuse recovery center, the only buffers from dispensaries identified in OMC Chapter 5.80 are schools, youth centers, and other dispensaries. Furthermore, One Medical has been able to provide its treatment services while situating across the street from a liquor store, so it stands to reason that it can continue to operate even if a dispensary is nearby.

In terms of proximity to residential uses, 3838 Grand Avenue is indeed located near a Mixed Housing Type Residential (RM) zone, however, in 2016 the City Council specifically removed a buffer requirement in OMC Chapter 5.80 between dispensaries and residential

¹ One potential rationale for distinguishing preschools from schools providing instruction in kindergarten through the twelfth grade is that preschool students are more likely to be under constant adult supervision.

zones in order to more equitably locate dispensaries across Oakland. Prior to this 2016 amendment, the City's dispensaries situated exclusively in the downtown, West Oakland and East Oakland; no dispensaries were permitted in North Oakland, by Lake Merritt, or above the 580 freeway. Thus, the fact that 3838 Grand Avenue is near residential uses and more affluent sections of Oakland reflects progress towards achieving one of City Council's goals.

Ultimately, 3838 Grand Avenue is located in a Neighborhood Center Commercial Zone, specifically the CN-3 zone, and OMC Section 5.80.020(D) allows dispensaries in any commercial or industrial zone. While CN-3 zones require a Conditional Use Permit for retail activity greater than 15,000 square feet, 3838 Grand Avenue is approximately 6,400 square feet, meaning onsite retail at the scale of 3838 Grand Avenue is permitted by right under the Planning Code (see OMC Section 17.33.030).

B. Parking Concerns

Some commenters expressed concerns that there is insufficient parking for a dispensary at 3838 Grand Avenue. 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 Section 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.

That said, if existing on street parking proves insufficient to address the parking demand of dispensary customers, the dispensary could impact the comfortable enjoyment of neighboring properties and free passage of the public street. Accordingly, unless Ohana reaches an agreement for its customers to utilize nearby parking lots, such as the parking lot adjacent to One Medical or at Safeway across the street, the hearing officer recommends monitoring the demand for parking generated by the dispensary on an annual basis for the first five (5) years by a qualified parking expert to be retained by the dispensary and approved by the City Administrator or his or her designee. The annual reports shall be presented to the City Administrator or his or her designee, who may consult with Planning Bureau and Department of Transportation staff in review of the annual report. If the annual report reveals that the dispensary operations are resulting in a negative impact on parking availability in the community, the dispensary shall provide additional off street parking or traffic demand management measures, as recommended in the annual report, to address the negative impacts.

C. Hours of Operation

Neighbors also expressed concerns regarding late night operation of a dispensary at 3838 Grand Avenue impacting nearby residential uses. State law already prohibits cannabis retailers from operating past 10pm (See Cal. Code of Regs. Tit. Four Sec. 15403) and Ohana volunteered to limit their initial operations to 8pm to ensure compatibility with its new neighbors. The hearing officer supports this compromise but also recognizes that permanently limiting sales activity to 8pm may unnecessarily restrict consumers ability to

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

access legal cannabis without any actual conflict with neighboring land uses.³ For example, nearby Grand Piedmont Liquors is open until 9pm and Zachary's Pizza across the street is open until 8:30pm Sunday-Thursday and 9pm Fridays and Saturdays. Accordingly, the hearing officer accepts Ohana's initial concession to limit operations to 8pm but recommends revisiting this limitation on a quarterly basis.

D. Public Safety Concerns

Neighbors in opposition to the proposal raise legitimate concerns about armed burglaries of cannabis businesses that have taken place since the summer of 2020. Although prior to 2017 there was only one successful burglary of an Oakland dispensary and a 2016 calls for service analysis found that the operation of a dispensary reduced crime in their vicinity,⁴ since the civil unrest in the summer of 2020 there have been several burglaries of cannabis facilities.

On the other hand, there is nothing in the record to indicate that 3838 Grand Avenue or Ohana are uniquely unsuited to situate or operate a dispensary, respectively. For example, the site inspection of 3838 Grand revealed that the existing structure has above average security features and is less vulnerable to burglaries than existing dispensaries. Analogously, Ohana's operational experience in Emeryville and Sacramento demonstrate a successful track record of working with law enforcement. Furthermore, as part of the dispensary permit process, dispensary applicants must undergo a security inspection by the Oakland Police Department and comply with any of its security recommendations. Notably, Ohana has already committed to installing cameras and a remote monitoring system as well as providing onsite security.

While the operation of a dispensary at 3838 Grand Avenue poses the risk of attracting a burglary, the possibility of a burglary is not sufficient to deny the issuance of a dispensary permit. If the possibility of a burglary was sufficient to deny a dispensary permit at 3838 Grand Avenue, then the same logic would apply across the entire City of Oakland; this would result in an effective ban of a use that the City Council and Oakland voters have approved, as demonstrated by the more than 77 percent of Oakland voters who approved Proposition 64, the Adult Use of Marijuana Act of 2016. Moreover, denying a dispensary permit on the possibility of a burglary would also negate the benefits of a dispensary operating, including but not limited to, providing legal access to cannabis, local employment and business ownership, and local tax revenues, all of which benefit the health, safety, and general welfare of the public.

RECOMMENDATION

In addition to being consistent with the commercial zoning, City Council directives for dispensaries, and City parking requirements, providing legal access to cannabis at 3838

³ In Can Legal Weed Win?, (2002) University of California Davis Economics Professors Robin Goldstein and Daniel Sumner identify California's restrictions on late night cannabis sales as an example of overregulation that pushes consumers towards the unregulated cannabis marketplace.

⁴ City of Oakland Amendments to Medical Cannabis Ordinances Supplemental Report, April 26, 2016 Finance and Public Safety Committee, pp.2-3. This reduction in crime 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.

Grand Avenue is consistent with the will of City of Oakland voters. Nonetheless, to ensure that the dispensary operations do not negatively impact neighbors, it is important that Ohana 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 3838 Grand 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. Specifically, the hearing officer recommends that the City Administrator conditionally approve Ohana Growers (Ohana) to operate a cannabis dispensary at 3838 Grand Avenue. Final approval shall be contingent upon approvals of the building, fire, finance, and police departments and the final dispensary permit conditioned upon Ohana attending Neighborhood Crime Prevention Council (NCPC) meetings on a quarterly basis and Ohana's submittal to the City Administrator of an annual parking analysis for the first five (5) years of dispensary operation, unless Ohana proactively reserves off street parking for its customers. 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. Finally, the hearing officer recommends limiting Ohana's operations to no later than 8pm initially and revisiting this restriction on hours on a quarterly basis thereafter.



GREG MINOR, HEARING OFFICER

11.23.22

DATE