



CITY OF OAKLAND
Economic and Workforce Development

SPECIAL ACTIVITY PERMITS

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FINDINGS AND RECOMMENDATION OF HEARING OFFICER ON APPLICATION OF CABANA CONCEPTS LLC DBA URBANA OAKLAND (1) TO TRANSFER THE DISPENSARY PERMIT FOR MAGNOLIA WELLNESS TO CABANA CONCEPTS LLC, (2) OBTAIN A CONDITIONAL PERMIT TO OPERATE A CANNABIS DISPENSARY AT 415 WEST GRAND AVENUE, OAKLAND, CA 94612, AND (3) ADD A CANNABIS ONSITE CONSUMPTION PERMIT FOR THE PROPOSED 414 WEST GRAND LOCATION

A public hearing on the above application was held on June 9, 2022 via Zoom. Presented below are the findings and recommendation of the Hearing Officer:

FINDINGS

A. LEGISLATIVE HISTORY AND BACKGROUND ON MAGNOLIA WELLNESS

1. Since 2004 the City of Oakland has regulated the retail sale of cannabis under Ordinance Number 12585, codified Oakland Municipal Code (OMC) 5.80. Initially OMC 5.80 authorized the sale of medical cannabis to patients and primary caregivers through four dispensaries licensed by the City Administrator. In 2011 the Oakland City Council amended OMC 5.80 to increase the total number of dispensary permits issued by the City Administrator to eight.
2. In 2012, the City of Oakland selected Magnolia Wellness (Magnolia) as one of four new groups to operate a dispensary.
3. The City Administrator selected Magnolia and three other operators via a Request for Permit Application (RFPA) process that consisted of two phases that analyzed applicants' business plans, proof capitalization, community benefits plans, labor and employment practices and product safety.
4. Ultimately, Magnolia ranked sixth in the RFPA process, but after two higher ranking applicants declined to move forward (under the shadow of threats from the Department of Justice to prosecute medical cannabis providers at that time) Magnolia was awarded a permit to operate a dispensary at 161 Adeline Street in West Oakland.

5. After holding a public hearing, on July 31, 2013 the City of Oakland issued Magnolia a dispensary permit that included the following conditions:
 - a. Dispensary must remain 40% local owned and operated. Local owned means 40% of the Dispensary not for profit entity board is comprised of Oakland residents and reflective of the City of Oakland.
 - b. Dispensary must maintain a staff comprised of at least 80% Oakland residents, and hire from Oakland training, employment development centers.
 - c. Dispensary must purchase at least 50% of their products, equipment, materials from Oakland businesses and hire only local firms for construction.
 - d. Magnolia will fund in its first five year[s] of operation seven program areas as identified in its MCD application process. Areas may include, but not limited to:
 - i. Oakland Beautiful
 - ii. Cleanup and Graffiti abatement
 - iii. Project Hunger
 - iv. Parks and Recreation Facilities
 - v. Healthy Oakland
 - vi. Oakland Police Activities League (PAL)
 - vii. City Slicker Farms
 - viii. First Place for Youth
 - ix. Habitat for Humanity
6. Magnolia operated a dispensary at 161 Adeline from 2013 to approximately 2020.
7. Around 2020-2021 Magnolia ceased operating and became embroiled in litigation, culminating in a Court ordered receivership.
8. In June 2022 Honorable Delbert Gee, Alameda County Superior Court Judge entered an Order authorizing the sale of Magnolia's dispensary license to Cabana Concepts, LLC, a California limited liability company.
9. In parallel, Cabana Concepts LLC (initially U 3 Oakland LLC) doing business as Urbana Oakland submitted an application seeking the City of Oakland's approval to transfer Magnolia's license to Urbana Oakland, operate a dispensary at 415 West Grand, the currently vacant former location of Luka's Taproom and Lounge, and add an onsite consumption permit at this location.
10. Cabana Concepts LLC is 100 percent controlled by Martin Higgins as the LLC Manager and Mr. Higgins is an Oakland resident.

B. PUBLIC HEARING FOR 415 WEST GRAND AVENUE

11. A mapping by the Planning and Building Department revealed no schools, youth centers or other cannabis dispensaries as defined by OMC 5.80 within 600 feet path of travel of 415 West Grand.
12. Due to COVID-19 Shelter in Place Restrictions prohibiting in-person gatherings, a public hearing on this matter was scheduled via Zoom on June 9, 2022.
13. Notice of the public hearing was timely provided to neighboring property owners within 300 feet, the applicant, and posted on the premises.
14. Prior to the public hearing, the Special Activity Permits Division received approximately four emails in opposition to the proposed dispensary. The emails objected to the dispensary due to potential increase in crime in the area and the presence of children at nearby apartments and YMCA facility.
15. At the public hearing Marty (Martin) Higgins and Steve Sukman presented on behalf of the dispensary. They emphasized their experience operating three dispensaries in San Francisco. They spoke regarding their experience in hospitality ventures, their charity work, and their track record of safety. With respect to safety, Mr. Sukman outlined their strategy of having highly paid and trained security guards that are trained in de-escalation and walk their neighborhood. Mr. Higgins also highlighted their experience operating cannabis consumption lounges in San Francisco.
16. Furthermore, Mr. Higgins described Urbana's community beautification plan, which included a commitment to participating in Oakland's Adopt a Spot program, providing paid employees to volunteer in upkeeping public spaces near the dispensary, and allowing local artists to compose a mural outside the dispensary.
17. Additionally, Mr. Higgins described Urbana's anti-drugged driving plan for those utilizing the onsite consumption lounge, which included training staff to monitor over consumption, prohibiting alcohol consumption, and confirming guests have a plan for safe travel after utilizing the lounge.
18. Three public speakers spoke in opposition to the proposal. Speakers expressed concerns about the dispensary attracting crime and questioned why the City of Oakland was allowing another dispensary when there are other cannabis dispensaries in downtown already. Specifically one speaker asked, "what is the end game?" with respect to authorizing more dispensaries.
19. One public speaker, who stated they were both a neighbor and someone who has worked with Mr. Higgins and Mr. Sukman, spoke in support of the dispensary
20. Following the public speakers, Mr. Higgins and Mr. Sukman offered additional information regarding their operations experience.
21. Following the hearing the Special Activity Permits Division contacted the City of San Francisco's Office of Cannabis, which confirmed they have had no public safety issues with Urbana's dispensaries in San Francisco.

DISCUSSION

A. Transfer of Dispensary Permit to Urbana Oakland

OMC 5.02.070 outlines the City of Oakland's restrictions around the transfer of business permits:

No permit in this Chapter required shall be transferable, nor apply to any premises other than those originally specified as the location of the thing permitted, except upon written permission of the City Administrator, or other official originally granting such permit, granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit (OMC 5.02.070).

Here the City issued the initial dispensary permit to Magnolia in 2013 after holding a hearing and conditioning the dispensary permit upon 40 percent of its board being Oakland residents, 80 percent of its staff consisting of Oakland residents, 50 percent Oakland product commitments, and philanthropic commitments. Similarly, Cabana Concepts, LLC has undergone a public hearing and expressed local ownership and philanthropic commitments. The City can thus issue a dispensary permit to Cabana Concepts, LLC in the same manner that the City issued Magnolia the original dispensary permit.

B. Relocation to 415 West Grand

OMC 5.80.020(D)(1) allows dispensaries in any commercial or industrial zone provided there is a 600-foot buffer via path of travel from schools, youth centers, or another dispensary. 415 West Grand is more than 600 feet via path of travel from a school, youth center, or another dispensary. Furthermore, 415 West Grand is located in a commercial zone, specifically the CBD-P Central Business District Pedestrian Retail Commercial Zone, whose intent "is to create, maintain, and enhance areas of the Central Business District for ground-level, pedestrian-oriented, active storefront uses" (OMC 17.58.10(B)). Allowing Urbana to open a dispensary in a vacant ground floor location will further the intent of CBD-P zones by facilitating an active pedestrian-oriented storefront use.

Additionally, adding an additional dispensary fulfills the intent of the 77 percent of Oakland voters who approved Proposition 64, the Adult Use of Marijuana Act of 2016, by providing legal access to cannabis. Likewise, approving another dispensary furthers the intent of the Oakland City Council, who amended OMC 5.80 in 2016 to eliminate the City of Oakland's previous cap on the number of dispensary permits and authorize up to eight additional dispensary permits per year. Consequently, approving a dispensary at 415 West Grand aligns with the "end game" established by the City Council and Oakland voters of providing the public with increased access to regulated cannabis.

With respect to public safety concerns, cannabis businesses have been targeted by burglars and robbers in recent years. However, prior to recent burglaries of retail establishments, the operation of dispensaries in Oakland had reduced crime in their surrounding area.¹ 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.

¹ City of Oakland Amendments to Medical Cannabis Ordinances Supplemental Report, April 26, 2016 Finance and Public Safety Committee, pp.2-3.

In this particular case, Cabana Concepts, LLC has experience operating three dispensaries in San Francisco, leaving them well aware of the security challenges involved with a dispensary. Moreover, the City and County of San Francisco's Office of Cannabis affirmed that the operators of Cabana Concepts, LLC have not had any public safety issues in San Francisco.

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, security guards, and other preventative measures to discourage burglaries

C. Onsite Consumption Permit

OMC 5.80.25 authorizes the City of Oakland to issue an onsite consumption permit to existing dispensaries in good standing following a public hearing and based taking into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public.

Cabana Concepts, LLC is not an existing dispensary, so it is not yet eligible for an onsite consumption permit. Nevertheless, Cabana Concepts, LLC has experience managing multiple onsite consumption spaces in San Francisco so they should be well equipped to operate an onsite consumption lounge after a few months of operating a dispensary at the 415 W. Grand location, which is situated in the downtown and rich in public transit and ride-share options.

RECOMMENDATION

For the reasons stated above, the hearing officer recommends that the City Administrator:

1. Approve the transfer of the dispensary permit from Magnolia Wellness to Cabana Concepts, LLC, conditioned upon Cabana Concepts complying with the same or equivalent permit conditions that applied to Magnolia Wellness.
2. Conditionally approve Cabana Concepts, LLC to operate a cannabis dispensary at 415 West Grand. The issuance of the dispensary permit shall be contingent upon approvals of the planning, building, fire, finance, and police departments.
3. Conditionally approve the issuance of an onsite consumption permit to Cabana Concepts, LLC at 415 West Grand. The issuance of the onsite consumption permit shall only take place after at least 90 days of compliant dispensary operations, which shall be verified by the Special Activity Permits Division.



GREG MINOR, HEARING OFFICER

7.14.22

DATE