

REPORT TO THE PLANNING COMMISSION



DATE: January 9, 2018

TITLE: Conditional Use Permit No. 14-14. Consideration of a Conditional Use Permit to operate a marijuana dispensary with incidental cultivation (up to 99 mature plants) located in an existing 6,800 SF one-story commercial building located at 66321 Pierson Blvd within the Community Retail & Services (Retail) zone of the Vortex Specific Plan (APN 641-041-044, -045). Applicant: Allen Cooper, Desert Hot Springs Wellness Services, Inc.

Prepared by: Benjamin Torres, Associate Planner

Reviewed by: Daniel Porras, Community Development Director

RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) Planning Commission discussion and questions to Staff; and
- 9) Consider a motion that the Planning Commission approve Conditional Use Permit No. 14-14 to operate a marijuana dispensary with incidental cultivation within an existing commercial building located at 66321 Pierson Boulevard within the Community Retail & Services (Retail) zone of the Vortex Specific Plan. APN 641-041-044, -045.

DISCUSSION

BACKGROUND

On November 24, 2014, the City received an application for a Conditional Use Permit to allow a medical marijuana dispensary to operate in an existing retail commercial building at 12285A Palm Drive. The application was received within the time requirement established by the City Council when it determined that three dispensaries would be allowed. The Council also established criteria for scoring and ranking applications for the three dispensaries, including the potential for limited cultivation operations of up to 99 mature plants.

Upon receipt of the points application, it was reviewed by the City Manager, Police Chief, and Community Development Director and scored by the City Attorney. The City Attorney also conducted an analysis and reviewed the application for consistency with the medical marijuana dispensary guidelines established by the City



Council. The top three applications were given clearance to move forward. On September 15, 2015, the City Council allowed additional applications, including the present request, to proceed through the entitlement process.

On November 8, 2017, the applicant resubmitted the application for a different site, at 66321 Pierson Boulevard. The site is located within the Community Retail and Services (Retail) zone of the Vortex Specific Plan, with an underlying Land Use designation of C-G (General Commercial) and therefore eligible for use as marijuana dispensary, subject to approval of a Conditional Use Permit.

SITE CONDITIONS

Existing Zoning/General Plan Land Use:	Community Retail & Services (Retail)/General Commercial (C-G)
Existing Use:	Vacant Commercial Structure
Total Existing Building Area:	6,800 SF
Assessor's Parcel Number:	641-041-044, -045

The project site contains an existing freestanding 6,800 SF commercial building with associated site improvements and a parking lot. The property is within the Vortex Specific Plan, surrounding properties for the project site consist of:

<u>Direction</u>	<u>Jurisdiction</u>	<u>Zoning & General Plan Designations</u>	<u>Current Land Use</u>
North	City	Community Retail & Services (Retail) & C-G (Commercial)	Commercial
West	City	Community Retail & Services (Retail) & C-G (Commercial)	Commercial
South	City	High Density Residential (HDR) & C-G (Commercial)	Residential
East	City	Community Retail & Services (Retail) & C-G (Commercial)	Commercial/Residential

The CUP project site is directly surrounded by commercial & residential zoning designations and developed land in all directions. The existing structure is currently vacant and will be remodeled into a marijuana dispensary.

CUP ANALYSIS

General Plan and Zoning Consistency

The project site is located within the C-G land use designation of the City General Plan and within the Retail zoning designation of the Vortex Specific Plan. In accordance with Section 17.180.040, marijuana dispensaries with ancillary limited cultivation may be allowed within any commercial land use district, subject to approval of a Conditional Use Permit.

Project Analysis

The Applicant proposes to operate a medical/recreation marijuana dispensary with ancillary cultivation. Interior tenant improvements to the building will be required to convert the existing building into a dispensary. Exterior changes are limited to some landscape improvements, removal of the existing chain-link fence, and screening of the rooftop equipment, subject to the Conditions of Approval. The dispensary portion open to the public will consist of a 248 SF Reception Waiting Room, where the customers will initially enter the establishment. Security doors will secure the 400 SF Dispensary area that is accessed by the public through the waiting room. The rest of the structure will be utilized for office uses, a 2,304 SF Future Grow

Area/Open Space, and other support uses. Customers will primarily enter the project site through Pierson Boulevard and exit onto Acoma Avenue.

Zoning Conformance

No changes to the building's overall size or form are proposed, with the exception of screening rooftop equipment and removing the chain link fence to conform to the zoning code. Currently, the front setback is approximately 5 feet, the project site is subject to a ten-foot front setback, which the existing building does not comply with. This condition is considered pre-existing non-conforming ("grand-fathered") and not subject to abatement at this time (DHS Municipal Code Section 17.124.020 – Nonconforming structures). The project site meets all other setback requirements, in addition to building height and maximum lot coverage development standards.

Circulation and Parking

The project meets the required parking standards for the uses proposed. The following parking calculation uses parking standards from the Vortex Specific Plan:

<u>Use</u>	<u>Area (Sq. Ft.)</u>	<u>Ratio</u>	<u>Number of Spaces</u>
General Office	603	3.5 per 1,000 square feet	3
General Retail	6,197	3 per 1,000 square feet	19
Total Spaces Required			22
Total Spaces Provided			36

Ingress to the project site will be accessed from two access points on Pierson Boulevard and Acoma Avenue. Egress to the project site will exit from two access points on Acoma Avenue

Elevations, Colors and Materials

The existing building is approximately 18 feet tall, and is designed with a primarily light green stucco exterior. The building frontage on Pierson Blvd. has three dimensional forms and has two white brick wall architectural features. The west elevation primarily consists of a green stucco exterior and a small portion of white brick. The east elevation has a light green stucco exterior with a few windows. The south elevation has a loading area, with a roll up door and a large white roof top air-conditioning unit. Staff have added a condition of approval requiring the roof top unit to be screened.

Landscaping

Existing landscaping on the project site consists of four (4) California Fan Palms ranging in size from 3 feet to 24 feet, in addition to existing boulders, and pebble stone groundcover. The project is proposing to add four (4) new 3' California Fam Palms (see Exhibit No. 5 for proposed locations). The project is currently fenced with chain-link topped with razor wire, this material is prohibited in accordance with Section 17.40.110 of the DHSMC. Staff have added a condition of approval requiring the removal of the chain-link fencing.

Lighting

Exterior lighting will illuminate all exterior doors, signs, walkways, entrances, and parking area, subject to the Conditions of Approval. Lighting will be oriented downwards and shielded within the property to contain illumination within the project boundary. The projects photometric plan (See Exhibit No. 4) shows that there will be sufficient lighting for the proposed marijuana dispensary.

Security

Security measures have been considered and incorporated into the project design. Security cameras will be located on all exterior doors, perimeter fencing, and entry gates. A detailed, comprehensive security plan will be reviewed by the City Manager during the Regulatory Permit phase. This will include specific locations and areas of coverage by security cameras; location

of audible interior and exterior alarms; location of exterior lighting; fencing; background checks; name and contact information of security company monitoring the site and any additional information required by the City.

Phasing Plan

The applicant proposes to open and operate in two (2) phases. The first phase will consist of the retail portion of the dispensary and the second phase will be the grow area portion.

Hours of Operation

The proposed hours of operation are from 8 a.m. to 10 p.m., the City's ordinance presently allows dispensary facilities to operate within these timeframes.

AGENCY & PUBLIC REVIEW

Public Agency Review

The proposed project was routed to all relevant public agencies and departments for review.

Public Hearing Notice

The project was noticed to neighboring owners within a 300-foot radius of the project site (on December 14, 2017) and was advertised in the Desert Star on Friday, December 15, 2017 per state noticing requirements. No public comments have been received as of this writing.

ENVIRONMENTAL ANALYSIS

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), this project is Categorically Exempt from environmental review pursuant to Section No. 15301, Class No. 1 (Existing Facilities), of the California Environmental Quality Act.

FISCAL IMPACT/PROJECTED EMPLOYMENT

The proposed marijuana dispensary will be required to contribute ten (10) percent of its proceeds, which will be used to fund general municipal services. In addition, the applicant is estimating that proposed dispensary will employ 14 employees.

RECOMMENDATION

Staff recommends that the Planning Commission approve Conditional Use Permit No. 14-14, subject to the Conditions of Approval and including the following findings:

1. *That the proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Zoning Ordinance.*

The application is for a marijuana dispensary, including limited incidental cultivation (no more than 99 mature plants), which is identified in Section 17.180.040 of the City of Desert Hot Springs Zoning Ordinance as permitted within any commercial zone which includes the C-G/ General Commercial zone), subject to approval of a Conditional Use Permit. The project is proposed to be located within an existing commercial building that complies with applicable provisions of the Zoning Ordinance. Conditions of Approval have been prepared and are recommended to assure the proposed use will comply with applicable Zoning Ordinance provisions. Staff recommends this finding.

2. *That the proposed use would not impair the integrity and character of the land use district in which it is to be located.*

Section 17.12.010.B.2 of the Desert Hot Springs Zoning Ordinance identifies the underlying C-G (General Commercial) zoning district to, "include a wide variety of smaller commercial centers at nodes with development such as small scale convenience commercial centers that provide a limited range of convenience commercial services,

smaller grocery and convenience stores, service stations, and other limited retail operations; and also along major commercial corridors, with shops including specialty retail shops, a broad range of clothing and apparel, jewelry stores and a variety of personal service businesses.” The proposed marijuana dispensary, including limited incidental cultivation, qualifies as both a “limited retail operation” and a “personal service business”, and will occupy an existing commercial building similar to other retail buildings in the area. The proposed uses will serve customers in a manner similar to other retail and recreational uses and will not introduce any activities that would impair the integrity or character of the land use district in which it is to be located. Staff recommends this finding.

3. *That the subject site is physically suitable for the type and intensity of land use being proposed.*

The site is developed as a commercial building with parking, landscape and other features and amenities appropriate to the development. The proposed marijuana dispensary is physically organized similar to other retail establishments. While the site development does not currently comply with required 10 ft. front setback, no expansion of the building is proposed. Further, the existing site is similar to older commercial buildings in the downtown area and considered pre-existing non-conforming with regard to front setbacks. On this basis, the site is physically suitable for the type and intensity of the proposed dispensary. Staff recommends this finding.

4. *That the proposed use is compatible with the land uses presently on the subject property.*

The site is developed with a one-story commercial building and paved areas. The proposed marijuana dispensary, including limited incidental cultivation, is a retail use and can be considered similar to other retail establishments allowed in the C-G (General Commercial) zone, such as retail stores and personal services (e.g., dry cleaners), grocery stores, or food products. The existing commercial building was developed to accommodate a wide variety of retail / office commercial uses. The proposed dispensary does not appear to be outside the range of activities typical for a commercial building, and is proposed to entirely occupy the commercial building. Staff recommends this finding.

5. *That the proposed use would be compatible with existing and future land uses within the general area in which the proposed use is to be located.*

Existing and future land uses within the general area of the proposed marijuana dispensary are retail / commercial and residential. Lands immediately surrounding the site are zoned for commercial uses, with the area south of the project site zoned for residential uses. Nearby properties are either vacant or developed with retail commercial / office businesses and residential structures. The applicant proposes to entirely occupy the existing building, and the proposed use is not directly accessed from surrounding land uses. No exterior modifications to the building are proposed, except for security measures, rooftop equipment screening, and removal of the existing chain-link fence; signage will comply with the zoning code. All activities will be contained within the existing building, and the operation will appear as a retail use consistent with the intent of the C-G General Commercial Zone. Consequently, the proposed dispensary, including limited incidental cultivation, is expected to be compatible with existing and future development in the surrounding general area. Staff recommends this finding.

6. *That there are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.*

The subject site is currently developed with water, sanitation, public utilities, and has access to all necessary services to ensure that the proposed uses will not be detrimental to public health and safety. Staff recommends this finding.

7. That there will be adequate provisions for public access to serve the site.

The subject site is already developed with vehicular and pedestrian access, both from public rights-of-way as well as within and throughout the site. The site has thirty-six (36) parking spaces to meet the parking demands of the proposed uses, in addition to sidewalks, and other provisions. The proposed project will not create any additional demand for access than will be provided by the associated parking and drive aisle, subject to the recommended Conditions of Approval. Staff recommends this finding.

8. That there will not be an adverse effect upon desirable neighborhood characteristics.

Desirable neighborhood characteristics include existing low density commercial development, long-range views from business of surrounding mountains, and the future availability of local goods and services in the downtown commercial core. While the proposed marijuana dispensary will fully occupy the commercial building on-site, there appear to be substantial additional available square footage for other businesses along Pierson Boulevard. The proposal's location and orientation on Pierson Boulevard and Acoma Avenue as well as the limitations on the operation (hours, age restrictions, etc.) is expected to result in no adverse effect on the surrounding area neighborhoods; the existing building has a maximum height below the C-G zone maximum of 35 feet and is anticipated to have no effect on long-range views from surrounding areas. Staff recommends this finding.

9. That the proposed use is necessary and essential to the community.

The proposed marijuana dispensary, including limited incidental cultivation, can be considered necessary and essential to the community to the extent that it is supported by customers that cause it to succeed as a local retail business. Further, the proposed use must also operate under City regulations and conditions of approval so that only the necessary and essential elements of the business – as determined by the City – are expressed over the life of the business. Staff recommends this finding.

10. That the proposed use is consistent with applicable goals and policies of the General Plan.

Staff has identified the following General Plan goals and policies applicable to the application and provides responses to each.

Administration

Goal: Comprehensive and integrated administration and implementation of all elements of the Desert Hot Springs General Plan through consistent and effective policies and programs.

The City has adopted a Zoning Ordinance & the Vortex Specific Plan to implement the General Plan and provide for review and approval of individual development projects. The proposed project will be subject to all requirements of this Conditional Use Permit, as prescribed by the Zoning ordinance, the Vortex Specific Plan, and the proposed Conditions of Approval.

Policy 7: The City shall encourage in-fill development within already urbanized areas of

the corporate boundaries of the City, and expansion of new development shall be logically phased and, as appropriate, guided by the development of existing and new Specific Plans.

The proposed project will be located on a developed property within a developed commercial area located in a retail zone of the Vortex Specific Plan. All public improvements are in place.

Policy 8: City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of property located at least within 300 feet of development proposal sites.

The project was noticed to neighboring owners within 300 feet of the project (on December 14, 2017), and in the Desert Star Weekly on December 15, 2017, per state noticing requirements. No comments have been received at the time of this writing and the Planning Commission will open the public hearing and take public comments and/or testimony on the dais and prior to any action.

Community Design

Goal 2: Variety of community design, architecture and landscaping compatible with the City's desert setting and surrounding development.

The proposed uses will be in one existing building with associated building/site improvements, including lighting and internal tenant improvements. These improvements will adhere to applicable development standards and guidelines. The existing buildings exterior and onsite improvements will be designed with materials, colors, and other design elements that are compatible with the City's desert setting and surrounding commercial development.

Policy 1: Private and public sector development projects shall equally apply City community design standards, thereby protecting the community's scenic viewsheds, providing community cohesion and enhancing the image of Desert Hot Springs as a resort residential community.

The site is currently developed with an existing commercial building that conforms to existing buildings in the vicinity. All onsite improvements currently exist on the Project site.

Policy 9: Signs shall be limited to the minimum size, scale and number needed to provide functional identification and exposure necessary to convey messages, while minimizing impacts on traffic safety, streetscape and scenic viewsheds.

All exterior signs shall be subject to approval under the Desert Hot Springs Zoning Code. The city's sign regulations do not permit signs to exceed the height of building eave lines which will result in no impacts on scenic viewsheds. Signage will be reviewed under a separate permit.

Policy 10: Lighting shall be limited to the minimum height, number and intensity of fixtures needed to provide security and identification in residential, commercial and industrial development, taking every reasonable measure to preserve the community's night skies.

All exterior lighting shall comply with Section 17.40.170 (Outdoor Lighting) to assure that only the minimum level of lighting necessary to provide the needed security and safety is installed. All proposed exterior lighting shall be reviewed by staff for conformance to the applicable standards. Therefore, the proposed marijuana dispensary establishment is taking reasonable steps to preserve the night skies.

Economic Development:

Goal 1: A broadly based, healthy and balanced economy that provides a full range of economic and employment opportunities.

The proposed marijuana dispensary will help to provide opportunities for new employment and provide additional tax revenues to the City. In addition, the marijuana dispensary will be required to pay the City a monthly tax of 10 percent of its proceeds according to Section 3.34 (Marijuana Tax) of the DHSMC.

Goal 2: Continued growth, which assures the maintenance of revenue, base adequate to support present and future public services and facilities needs.

The establishment of a marijuana dispensary will provide additional revenues to the City to support present and future public needs.

Policy 11: Make every effort to expedite the processing of development proposals, which address the economic development goals of the community and take the initiative to incubate new programs and projects.

The application for a Conditional Use Permit is required by the Desert Hot Springs zoning code to assure compatibility with surrounding land uses and to develop project-specific conditions to assure successful operation in concert with the City's development goals. The application was received on November 24, 2014. The revised application was received on November 8, 2017 and deemed complete on November 22, 2017; since then the application has been processed expeditiously.

Fire and Police Protection

Goal: A high level of police and fire protection and service.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations. The project is not expected to have much demand for fire and police services due to the fact that it is a small retail establishment.

Policy 1: All new and improved developments shall be reviewed for their impact on safety and the provision of police and fire protection services.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

Policy 2

Enforce fire standards and regulations in the course of reviewing building plans and conducting building inspections.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under building codes and regulations. Staff recommends this finding.

11. That there will not be significant harmful effects upon environmental quality and natural resources.

The proposed marijuana dispensary, including limited incidental cultivation, will occupy an existing commercial building, located within an established retail commercial area, and operated in accordance with the City's regulations and Conditions of Approval. Consequently, no significant adverse or harmful effects on the environment or on any natural resources are anticipated. Staff recommends this finding.

12. That the negative impacts of the proposed use are mitigated and/or a mitigated negative declaration may be filed.

The proposed project will be operated in accordance with all applicable regulations and Conditions of Approval. A review of the proposed project has identified no negative impacts, subject to the implementation of specific Conditions of Approval. Staff recommends this finding.

13. That the proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

The proposed project has been reviewed by City departments and other public agencies for any potential detrimental effects on public interests, health, safety, convenience or welfare of the City. Any potential concerns have been addressed by recommended Conditions of Approval, and no unresolved concerns remain. Staff recommends this finding.

EXHIBITS

- Exhibit No. 1 – Draft Conditions of Approval
- Exhibit No. 2 – Site Photographs
- Exhibit No. 3 – Site Plan/Floor Plan
- Exhibit No. 4 – Photometric Plan
- Exhibit No. 5 – Landscape Plan
- Exhibit No. 6 – Security Plan