



City of Santa Barbara California

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CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 015-17

3617 STATE STREET

APPEAL OF REVOCATION OF STOREFRONT COLLECTIVE DISPENSARY PERMIT

SEPTEMBER 7, 2017

APPEAL OF THE DECISION OF THE STAFF HEARING OFFICER TO REVOKE THE STOREFRONT COLLECTIVE DISPENSARY PERMIT ISSUED TO SANTA BARBARA PATIENTS COLLECTIVE AND HEALING CENTER, 3617 STATE STREET, APN 051-051-005, C-P/SD-2 RESTRICTED COMMERCIAL/SPECIAL DISTRICT 2 (“UPPER STATE STREET AREA”) ZONES, GENERAL PLAN DESIGNATION: COMMERCIAL/MEDIUM HIGH RESIDENTIAL (MST2014-00438)

On June 15, 2017, the City’s Staff Hearing Officer revoked a Medical Marijuana Storefront Collective Dispensary Permit at 3617 State Street. Dispensary management members identified in the approved permit application are Joseph Allen, Matt Armor, and Greg McGee. On June 26, 2017, Luis Esparza, attorney for Matt Armor and Greg McGee, filed an appeal of the Staff Hearing Officer’s revocation of the permit. A public hearing will be held for the Planning Commission to hear the appeal. The project includes interior improvements to the existing tenant space at 3617 State Street in Ontare Plaza. A building permit has not been issued, nor has the dispensary begun operating.

The discretionary application required for this project is a Storefront Collective Dispensary Permit (SBMC § 28.80.030).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301(a), Existing Facilities.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor or in opposition of the application thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, August 31, 2017.
2. Site Plans
3. Correspondence received in opposition to, or with concerns of, the project:
 - a. Gordon and Jordan Brewer, and Judy Williams, Santa Barbara, CA.

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Denied the appeal, and upheld the decision of the Staff Hearing Officer, as outlined in the Staff Report dated August 31, 2017, making the following findings and determinations:
 - A. While the Planning Commission generally has authority to uphold, modify, or reverse the decision of the Staff Hearing Officer on appeal, this is not the case in this situation. The language found in SBMC Section 28.80.130.D limits the action that the Planning Commission may take if it finds

that a transfer or attempt to transfer a storefront dispensary permit occurred (either directly or indirectly). Pursuant to Section 28.80.130.D, if an attempted transfer is found “the permit shall be deemed revoked.” Therefore, based on this limiting language, if the Planning Commission determines that there was an attempt to transfer ownership or control of the dispensary or permit in violation SBMC § 28.80.130.B, the permit must be revoked.

II. The Planning Commission found that the Staff Hearing Officer did not commit an error in reaching her decision to revoke the permit, nor did the Staff Hearing Officer abuse her discretion in reaching her conclusions. Therefore, the Planning Commission upheld the decision of the Staff Hearing Office and adopted the following findings of fact and conclusions of law as its own:

A. FINDINGS OF FACT

1. On September 4, 2014, Joseph Allen submitted a Master Application and a Medical Marijuana Storefront Collective Dispensary Permit Application (the Application) for a Storefront Collective Dispensary Permit to be located at 3617 State Street (Exhibit 1 to City Attorney Brief).
2. On April 15, 2015, the Staff Hearing Officer issued a Storefront Collective Dispensary Permit subject to conditions. (Bates stamp 000210 - 000219).
3. On June 4, 2015, the Planning Commission issued a Storefront Collective Dispensary Permit subject to conditions. (Bates stamp 0002295 – 000300).
4. Presented to the Planning Commission as part of the application materials for the June 4, 2015, Staff Hearing Officer permit suspension hearing was a Medical Marijuana Storefront Collective Dispensary Permit Application (Revised, Corrected and Expanded Final – April 25). (Bates Stamp 000222 – 000252).
5. The application materials presented to the Planning Commission indicates Joseph Allen, Matt Armor, and Greg McGee Jr. are the Management Members of SBPCHC (Bates stamp 000231).
6. The Application indicates that the SBPCHC is an unincorporated non-profit association (Bates stamp 000232).
7. The Application includes statements, signed under penalty of perjury, by Matt Armor, Greg McGee, and Joseph Allen that they have personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000049-000051).
8. Statements included in the Application indicate that SBPCHC will implement the requirements of SBMC Chapter 28.80.

9. To the extent that Joseph Allen, Matt Armor, or Greg McGee are individually identified within the Application, they are identified as the applicant, Management Member, Emergency Contact, and Agent for Service of Process (Bates stamp 000002, 000009, 000010, and 000011).
10. The Application filed on September 4, 2014, states “*SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.*” (Bates stamp 000024).
11. I find that the signed statements, under the penalty of perjury, by Matt Armor, Greg McGee, and Joseph Allen that they have personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000049-000051) and the statement in the Application that “*SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.*” (Bates stamp 000024) when taken together indicate that the Management Members of SBPCHC were aware of the process required for a transfer of ownership or control of the Storefront Collective Dispensary Permit.
12. On December 14, 2015, Articles of Incorporation for Santa Barbara Patients Collective and Healing Center, Inc. (the Corporation) were filed with the California Secretary of State. The mailing address of the Corporation is indicated as 3617 State Street. The Articles of Incorporation are signed by Joseph D. Allen.
13. Joseph D. Allen wrote a letter dated March 23, 2016, to Tony Boughman, the City planner who is processing the Dispensary Permit, identifying Eric Anderson and Mary Bock as his authorized agents. In this letter, Mr. Allen disavows any other agents who might have acted on his behalf in the past (Bates stamp 000310).
14. On March 29, 2016, Mary Bock filed a Statement of Information for the Corporation with the California Secretary of State identifying Joseph Allen as Chief Executive Officer and Chief Financial Officer and Eric Anderson as Secretary of the Corporation. The mailing address of the Corporation is indicated as 3617 State Street (Bates stamp 000312).

15. On April 4, 2016, a revised Application was submitted in conjunction with the plans submitted for a building permit responding to Planning Commission Resolution 009-15 [Bates stamp 000482 (for purposes of identified submittal date) and 000314-000351]. This revised Application, not only responded to previous plan check comments, but also changed the name of the dispensary from SBPCHC to Apothecary of Santa Barbara, Inc.; indicated that Apothecary of Santa Barbara has incorporated as a Non-Profit Mutual Benefit Corporation; and, removed Matt Armor and Greg McGee as Management Members and replaced them with Eric Anderson and Lorenzo Diaz (Bates stamp 000315, 000330, and 000329).
16. On April 6, 2016, Joseph Allen sent an email to Tony Boughman to confirm that Mr. Boughman received the revised project plans and amended Operations Plan and to advise Mr. Boughman to be very careful not to give or receive information about the project to anyone other than himself, Eric Anderson, or Mary Bock (Bates stamp 000353).
17. Joseph Allen wrote a letter dated April 6, 2016 to Matt Armor, Greg McGee Jr., and Patrick Fourmy voluntarily resigning from SBPCHC as an Associate of the Collective and as Agent for Service of Process (Bates stamp 000355).
18. On April 14, 2016, Joseph Allen sent an email to Tony Boughman to remind Mr. Boughman to only deal with him, Mary Bock, and Eric Anderson and telling Mr. Boughman that Matt Armor is not his agent anymore (Bates stamp 000357).
19. On July 19, 2016, Tava Ostrenger, Assistant City Attorney, issued a *Notice of Hearing and Intent to Suspend or Revoke Application* given Joseph Allen's change in collective entities, attempt to remove Matt Armor and Greg McGee as permittees and management members, the addition of Eric Anderson as a management member, and the addition of a grow site (Bates stamp 000369-000370).
20. On December 21, 2016, Matt Armor and Greg McGee signed a notarized affidavit stating that they are still management members of SBPCHC and that all further communications regarding the permit for SBPCHC be directed to either Matt Armor or Greg McGee (Bates stamp 000466-000467).
21. On page 1 and 2 of Fernando Velez Jr. letter dated May 25, 2017, Mr. Velez indicates Joseph Allen concedes that he submitted the amendments (additional grow location, change in the management members, and change in the entities) to the permit application without prior approval by the Staff Hearing Officer.
22. Santa Barbara Municipal Code (SBMC) §28.80.130. A states: *A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community*

Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.

23. SBMC §28.80.130.D states: *Any attempt to transfer a Storefront Collective Dispensary permit either directly or indirectly in violation of this Chapter is declared void, and the permit shall be deemed revoked.*

B. CONCLUSIONS OF LAW

1. Joseph Allen was the Applicant for SBPCHC as defined in SBMC § 28.80.020. Joseph Allen signed the Master Application as the applicant and provided information to the City while acting as the applicant.
2. SBPCHC, an unincorporated association, is the permittee as defined in SBMC § 28.80.020. The legislative program for Storefront Collective Dispensary Permits pursuant to Chapter 28.80 of the Santa Barbara Municipal Code only anticipates one permit for each dispensary. To consider each Management Member as having their own permit, independent of SBPCHC would necessarily violate the one dispensary per area rule specified in SBMC § 28.80.050.E.
3. Joseph Allen's status as applicant on the application for the Medical Marijuana Storefront Collective Dispensary Permit does not make him a permittee independent of SBPCHC.
4. The definition of Permittee found in SBMC § 28.80.020.F anticipates the issuance of a single Storefront Collective Dispensary Permit that authorizes each of the Management Members identified to the City by an Applicant to operate the Storefront Collective Dispensary as agents or officers of the Storefront Collective Dispensary.
5. The application presented to the Planning Commission on June 4, 2015, identifies SBPCHC as the unincorporated association that would operate the Storefront Collective Dispensary and fulfill the requirements of SBMC Chapter 28.80. (Bates stamp 000232).
6. SBPCHC stated that it would not transfer ownership of the Storefront Collective without complying with the provisions of SBMC § 28.80.130.B. The application originally submitted on September 4, 2014, and the application presented to the Planning Commission on June 4, 2015, stated, "*SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.*" (Bates stamp 000024 and 000247).
7. The application submitted on September 4, 2014, included statements, signed under the penalty of perjury, by Joseph Allen, Matt Armor, and Greg McGee that they have personal

knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000051).

8. The April 4, 2016, submittal of a revised Operations Plan dated March 29, 2016, made changes to the approved Operations Plan, including the change in entities, grow locations, and Management Members without complying with the provisions of SBMC § 28.80.130.B. This submittal was presented as changes to the Operations Plan required pursuant to Planning Commission Resolution No. 009-15 (Bates stamp 314). These changes were not presented as an application for an amendment of the Permit pursuant to SBMC § 28.80.130.B.
9. Taken together, the letter from Joseph Allen to Tony Boughman dated March 23, 2016, the April 6, 2016, email from Joseph Allen to Tony Boughman, and the April 14, 2016, email from Joseph Allen to Mary Bock (copied to Tony Boughman) constitute an attempt to transfer ownership or control of the Storefront Collective Dispensary in violation of SBMC § 28.80.130. The letter and the emails instruct City staff to ignore or marginalize Management Members Matt Armor and Greg McGee identified in the application presented to the Planning Commission.
10. Despite his acknowledgement of the manner of transferring control of the Storefront Collective Dispensary Permit in the original application submitted on September 4, 2014, and the application presented to the Planning Commission on June 4, 2015, Joseph Allen represented the changes that would ultimately be submitted on April 4, 2016, as part of “other changes and corrections” (Bates stamp 000315) and represented them as “very minor changes to the Operating Agreement” (000310) in response to plan check corrections issued by City staff instead of filing an application with the Community Development Department in accordance with all provisions of Chapter 28.80 and the required transfer review application fee.
11. Joseph Allen’s April 6, 2016, resignation from the SBPCHC as an Associate of the Collective and as Agent of Process represents a change to the approved Operations Plan without the required review and approval of the Staff Hearing Officer.
12. Matt Armor and Greg McGee, in signing the notarized statement in December 2016, that they are the Management Members and directing all future correspondence regarding the Storefront Collective Dispensary Permit to them, represents a change in control of the SBPCHC from Joseph Allen, Matt Armor, and Greg McGee to Matt Armor and Greg McGee without the required review and approval of the Staff Hearing Officer (Bates stamp 000466).

C. DECISION

The letters and emails from Joseph Allen, a Management Member of SBPCHC, to City staff instructing City staff to not work with or provide information to other Management Members of SBPCHC constituted an attempt to transfer control of the SBPCHC Storefront Collective Dispensary Permit. The incorporation of Santa Barbara Patient's Collective and Health Center, Inc. with different Management Members, and the presentation of the renamed corporate entity, Apothecary of Santa Barbara, Inc., as part of a revised submittal responding to Planning Commission Resolution No. 009-15 constituted an attempt to transfer the Storefront Collective Dispensary Permit to another person or entity in violation of SBMC § 28.80.130. The affidavit dated December 21, 2016, identifying Matt Armor and Greg McGee as controlling members of SBPCHC with the omission of Joseph Allen represents an attempt to transfer control of the Storefront Collective Dispensary Permit in violation of SBMC § 28.80.130.

Therefore, pursuant to SBMC § 28.80.130.D, the Planning Commission deems the Storefront Collective Dispensary Permit issued to SBPCHC revoked based upon the foregoing Findings of Fact and Conclusions of Law. This decision may be appealed to the City Council within 10 calendar days of the date of this decision pursuant to SBMC § 1.30.050

This motion was passed and adopted on the 7th day of September, 2017 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT/RECUSED: 1 (Jordan)

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.

Kathleen Goo, Commission Secretary

Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.