



# City of Santa Barbara California

## PLANNING COMMISSION STAFF HEARING OFFICER REPORT

**REPORT DATE:** March 29, 2018  
**AGENDA DATE:** April 5, 2018  
**PROJECT ADDRESS:** 118 N. Milpas Street- Canopy Club, Inc., a non-profit corporation (MST2015-00319)  
**TO:** Planning Commission  
**FROM:** Susan Reardon, Staff Hearing Officer  
 Beatriz Gularte, Senior Planner

### **I. PURPOSE OF HEARING**

To consider the appeal of Mr. Pete Dal Bello of the Staff Hearing Officer's decision not to revoke the Storefront Collective Dispensary Permit for Canopy Club, Inc. located at 118 N. Milpas Street (Attachment A, Appellant Letter).

### **II. ISSUE ON APPEAL**

On December 20, 2017, the sole issue brought before the Staff Hearing Officer (SHO) was whether or not to revoke the Storefront Collective Dispensary Permit for Canopy Club, Inc. (located on 118 N. Milpas Street) for violating Santa Barbara Municipal Code ("SBMC") section 30.185.250.M.2. That particular Municipal Code section requires City approval prior to any change in the ownership or control of a Storefront Collective Dispensary Permit. See Attachments B, SHO Resolution No. 075-17 and C, SHO Minutes.

At the time of the SHO hearing on the revocation request, Ryan Howe had been the *only* management member and corporate officer of Canopy Club that met the prerequisite of being approved by the Staff Hearing Officer, and subsequently approved by the City Council. Therefore, any change or addition of a management member of Canopy Club, Inc. would require City approval beforehand.

A request for the revocation of the Canopy Club, Inc., was brought forth by Assistant City Attorney Tava Ostrenger. Ms. Ostrenger contended that the filing of Statements of Information with the California Secretary of State's Office by Mr. Howe's attorney, Joseph Allen, constituted a violation of SBMC §30.185.250.M.2, because the filings contained the names of new management members that did not receive prior approval from the City. According to Ms. Ostrenger, the filings with the Secretary of State established an evidentiary basis that an attempt to transfer the Storefront Collective Dispensary Permit occurred. Ms. Ostrenger, as the charging officer, requested that the permit be revoked as mandated under SBMC §30.185.250.M.4. See Attachment D, Memorandum from Tava Ostrenger with Exhibits and Attachment E, Brief from Peter L. Candy with Exhibits.

### **III. STANDARD OF REVIEW ON APPEAL**

The only issue determined by the Staff Hearing Officer at the hearing and subject to review before this Planning Commission is whether or not Canopy Club, Inc. violated section 30.185.250.M.2 of the Municipal Code. As a generally applicable rule, new issues cannot be raised on appeal because it is a distinct disadvantage of the other party, as the other party can often identify evidence that could have been gathered and introduced to rebut the issue in the hearing, establishing the likelihood of prejudice. *Alfaro v. Community Housing Imp. System & Planning Ass'n, Inc.* (2009) 171 Cal.App.4th 1356, 1396.

Mr. Peter Dal Bello's appeal letter to the Commission raises many issues that are not germane to the decision that is being appealed; whether an actual transfer or attempt to transfer the approved Permit occurred. Moreover, the issue of whether the Storefront Collective Dispensary should operate at this location was previously decided by the City Council on May 10, 2016 when the City Council conditionally approved and issued the Permit. That decision is not before the Planning Commission on this appeal.

The Staff Hearing Officer's decision is to be reviewed by the Planning Commission for an abuse of discretion, meaning the decision will not be reversed unless there was plain error made by the Staff Hearing Officer. Under that standard of review, there is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the lower hearing's decision or, alternatively stated, if that decision falls within the permissible range of options set by the applicable legal criteria. *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 957. Accordingly, an abuse of discretion occurs if, in light of considering all of the relevant circumstances or evidence, the decision exceeds the bounds of reason and results in a miscarriage of justice. *Heron Bay Homeowners Association v. City of San Leandro* (2018) 19 Cal.App.5th 376, 386 [227 Cal.Rptr.3d 885, 893], *reh'g denied* (Feb. 8, 2018).

### **IV. BASIS FOR STAFF HEARING OFFICER'S DECISION ON CANOPY CLUB PERMIT**

No clear and convincing evidence was presented at the hearing that established that it was more probable than not that an attempt to transfer the Storefront Collective Dispensary Permit occurred. The evidence presented by Ms. Ostrenger that a transfer was attempted or occurred were the Statements of Information that were filed by Mr. Howe's attorney, Joseph Allen.

However, that evidence was refuted by Mr. Howe's testimony in which he stated that he was not aware nor did he ever request that Mr. Allen file the Statements of Information. Moreover, Mr. Allen provided a sworn declaration that supported Mr. Howe's testimony that he was not given a directive to file the Statements of Information. Mr. Howe also testified that he was aware of the process required to request new Management Members.

The Staff Hearing Officer also took into account that there was no specific intent to transfer the Storefront Collective Dispensary Permit to new management members because Mr. Howe filed an amendment to the approved Operations Plan to incorporate new Management Members prior to the request for revocation by the City Attorney's Office. This demonstrates that Mr. Howe was informed of the requirement to request City approval for changes in Management Members, and that the two Statements of Information that were filed months apart indicated confusion in Mr. Allen's office. The Staff Hearing Officer also noted that Mr. Allen has been recently suspended by the California State Bar and at the time of the December 20, 2017 hearing was ineligible to

practice law. Finally, the action of filing of Statements of Information by itself do not constitute nor establish an attempt to transfer ownership of the Storefront Dispensary Permit. There needed to be additional evidence in conjunction with the filings to indicate an attempt to transfer the permit.

V. **CONCLUSION**

While the Planning Commission generally has authority to uphold, modify, or reverse the decision of the SHO on appeal, this is not the case in this situation. The language found in SBMC 30.185.250.M (formerly §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 30.185.250.M, if an attempted transfer is found “the permit shall be deemed revoked.”

Therefore, based on this limiting language, if the Planning Commission finds that there was not an attempt to transfer ownership or control of the dispensary or permit in violation SBMC § 30.185.250.M, it must uphold the SHO’s decision to not revoke the Permit (deny the appeal). If the Commission finds that there was an abuse of discretion by the SHO and the filings of the two Statements of Information constituted an attempt to transfer ownership and control of the dispensary, it may alternatively reverse or modify the decision of the SHO (uphold the appeal).

In reaching its decision, the Planning Commission should consider Mr. Dal Bello’s appeal, the evidence presented at the December 20, 2017 SHO hearing, and the Staff Hearing Officer’s decision contained in the Resolution 075-17, dated January 19, 2018. Attachment H includes a chronology of events for Planning Commission reference.

**Attachments:**

- A. Appeal Letter from Pete Dal Bello dated January 25, 2018
- B. SHO Resolution No. 075-17 dated January 19, 2018
- C. SHO Minutes dated December 20, 2017
- D. City Attorney’s Hearing Brief with Exhibits dated December 15, 2017
- E. Applicant’s Attorney Brief with Exhibits dated December 18, 2017
- F. Public Correspondence for SHO Hearing of December 20, 2017
- G. Video of SHO Hearing on Revocation held December 20, 2017 - [Staff Hearing Officer \(SHO\) - Dec 20th, 2017](#)
- H. 118 N. Milpas Street Chronology