



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: February 6, 2019
AGENDA DATE: February 13, 2019
PROJECT ADDRESS: 118 North Milpas Street (MST2015-00319)
"The Canopy"
TO: Susan Reardon, Senior Planner, Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
Allison DeBusk, Senior Planner
Tony Boughman, Assistant Planner

I. PROJECT DESCRIPTION

The approved Medical Marijuana Storefront Collective Dispensary known as "The Canopy" proposes to amend its approved Dispensary permit. Revisions are proposed to the Operations Plan and Security Plan, which would allow serving patients age 18 and over, remove residency requirements for patients, and increase security guard coverage. Other revisions consist of removal and additions of management members, and changes to The Canopy's By-Laws, Board Resolutions, and Articles of Incorporation. The proposed changes are consistent with current State Law and City Ordinance. No physical changes are proposed for the existing 2,264 square foot commercial building or the site.

II. REQUIRED APPLICATION

The Canopy began operating July 2, 2018. It was permitted as a Medical Marijuana Storefront Collective Dispensary under Santa Barbara Municipal Code (SBMC) Section 28.80.030 and is nonconforming to the current City Ordinance. In 2017, SBMC Chapter 28.80 was amended to be consistent with the 2017 Medical and Adult Use of Cannabis Regulation and Safety Act (MAUCRSA). SBMC Chapter 28.80 was subsequently repealed as the City was no longer permitting new medical marijuana dispensaries, and was replaced by SBMC §30.185.250 in the City's new zoning ordinance to regulate the existing permitted medical marijuana dispensaries. The Canopy is governed by its approved Dispensary permit and SBMC §30.185.250. The required application for the requested revisions is an Amendment to the Medical Cannabis Dispensary permit (SBMC §30.185.250.C).

III. RECOMMENDATION

The requested revisions are improvements to operations and security, as well as being more consistent with newer City and State regulations. Therefore, staff recommends that the Staff Hearing Officer approve the project, making the findings outlined in Section VII of this report.

IV. **ZONING ORDINANCE CONSISTENCY**

Medical Cannabis Dispensaries are governed by SBMC §30.185.250. The following discussion provides an analysis of the applicant's requested revisions (Exhibits A and B) and their consistency with that SBMC §30.185.250.

The page numbers below refer to Exhibit B, The Canopy Revised Operating Plan dated December 21, 2018, which show changes from the approved Operating Plan in red text.

A. Staff supports approval of the following items as submitted by the applicant:

Page 5 (And throughout the Operating Plan) – Updates have been made adding language to comply with current state and municipal cannabis laws.

Page 7 – References to cultivation locations and testing of cannabis product have been omitted due to changes in municipal and state law, which no longer allow dispensaries to cultivate or test cannabis product.

Page 9 (And throughout the Operating Plan) – References to “Canopy members having to reside in the City of Santa Barbara only” have been omitted due to change in municipal law.

Page 11 – Change made from Canopy accepting California Issued ID's to Canopy accepting valid forms of Government Issued ID's. This is per California State Law.

Page 18 – The Membership Advisory Council has been omitted because it no longer exists.

Page 22 – The Canopy is requesting, per recommendation of the Police Department, that members use the exit door nearest the vault to exit the premises after their purchase.

Page 25 – Corrected language to be consistent with new state and municipal law.

Pages 27 & 28 – Corrected language to keep consistent with California Non Profit Law, and took out all language having to do with Cultivation, Testing, Distribution, and Membership limited to one collective per Santa Barbara Ordinance and California State Law.

Page 30 – Prohibit management members arrested for felony

Page 32 – Language has been added reflecting members registering to receive delivery.

Page 34 – Remote security camera feed to a qualified, certified, licensed security company.

Attachment 3 – The Canopy is requesting the Staff Hearing Officer approve its new Amended Corporate By-Laws, Board Resolutions, and its Consulting Agreement with Wakki, LLC.

Exhibit E – The Canopy is notifying the Staff Hearing Officer of the Delivery Service business plan and Standard Operating Procedures that have been requested by the State of California for its Medical Delivery Service.

Staff supports the inclusion of delivery procedures with included language that The Canopy will abide by all State of California proposed and emergency regulations governing delivery.

B. Staff supports approval of the following items with staff's edits and revisions as discussed below. Staff recommends that these edits and revisions be conditions of approval.

Page 10 (And within the Security Plan) – The Canopy is complying with current Santa Barbara Police Department Safety Standards by requesting one security guard remain on or within 200 feet of the premises 24 hours/7 days a week.

Staff recommends using identical language in the Operating Plan as required by the City’s new Municipal Code Section regulating commercial cannabis businesses (SBMC §9.44.240.A.9):

“Security personnel shall be on site during regular business hours, and the Police Chief may require additional security as warranted. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services and shall be subject to the prior review and approval of the Chief of Police, with such approval not to be unreasonably withheld.”

The Police Chief also recommends a permit requirement for 24-hour security guards, with two guards on site during day, and at least one guard on premises after hours. The guards should patrol on site, not patrol a 200 foot perimeter around the site. This is consistent with Police Chief requirements for the permitted commercial cannabis businesses in the City.

Page 19 – The Canopy is requesting that its security guards possess and carry a valid state Department of Consumer Affairs “Security Guard Card” at-all-times.

Staff supports the applicant’s request that each security guard used shall possess a valid state Department of Consumer Affairs “Security Guard Card” at all times because it is consistent with SBMC §30.185.250.F.3.c.

Page 20 – Per the Bureau of Cannabis Control, The Canopy will sell cannabis and cannabis-related products ONLY to qualified patients or primary caregivers who are eighteen (18) plus years of age and who hold a current valid physician’s approval or recommendation and valid Government Issued ID in compliance with state and municipal guidelines. This requested amendment would change access into the Canopy Dispensary from 21 years of age to 18 years of age. Changing this provision would also be consistent with the rules of the other Santa Barbara Medical Cannabis Dispensary as well as all other medical cannabis dispensaries in the State of California.

Staff supports the change to 18 and over, and suggests that the Operating Plan mirror the language of the MAUCRSA, wherein “Customer” means a natural person 18 years of age or older who possesses a physician’s recommendation.” Additionally, SBMC §30.185.250.H. provides that patients need only be 18 years of age or older. Staff supports adding the following language from the MAUCRSA: “(1) Allow on the premises any person 18 years of age or older who possesses a valid government-issued identification card and either a valid physician’s recommendation or a valid county-issued identification card under Section 11362.712 of the Health and Safety Code. (2) Sell cannabis, cannabis products, and cannabis accessories to a person 18 years of age or older who possesses a valid government-issued identification card and either a valid physician’s recommendation or a valid county-issued identification card under Section 11362.712 of the Health and Safety Code.”

Page 22 – The Canopy is requesting that the Staff Hearing Officer discontinue the daily member/customer cap at 150 members, which Council made part of the Dispensary permit conditions. As this was a condition imposed by the City Council in Resolution No. 16-064, it requires Council approval and the Staff Hearing Officer may not take an action on this.

Page 32 – Management Changes are being requested to remove Clay Becker as a Manager for cause, and to add five new managers/directors in various roles to help manage and govern the Company: Wendy Hewett/Manager, Adam Hewett/General Manager, Mukesh Patel/Delivery and Floor Manager, Nicholas Sinclair von Wiesenberger/Inventory Manager, and Aaron Schulman/Director.

Staff recommends a condition of approval that the Police Department confirm the five proposed Management Members have not been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance prior to their inclusion as approved Management Members.

Page 36 – Canopy will add a Metal Detector per Santa Barbara Police Department compliance requirements.

Staff supports this added security feature with the Police Department recommendation for a walk-through detector incorporated into the front door.

C. Staff does not support approval of the following item and recommends that this proposed change by the applicant be denied.

Page 19 – Since security companies are difficult to rely on, The Canopy also requests it have the flexibility to hire various companies and/or individuals that fit the required criteria of a state licensed security guard.

Staff does not support the proposed flexibility in hiring guards because it is inconsistent with SBMC §30.185.250.F.3.c, which requires: “All security guards used by dispensaries shall be licensed and employed by a security company retained by the Storefront Dispensary...” The Canopy is thereby required to use guards licensed and employed by a security company retained by the Storefront Dispensary.

V. CRITERIA FOR REVIEW OF DISPENSARY APPLICATIONS

The Staff Hearing Officer shall consider the following criteria in determining whether to grant or deny a Medical Marijuana Storefront Dispensary permit (SBMC §30.185.250.G.2):

- a. That the Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996, the SB 420 Statutes, and MAUCRSA, for providing medical marijuana to qualified patients and primary caregivers and the provisions of this section and with the municipal code, including the application submittal and operating requirements herein.
- b. That the proposed location of the Storefront Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.
- c. For those applicants who have operated other Storefront Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicants former location.
- d. That issuance of a Dispensary permit for the Dispensary size requested is appropriate to meet the needs of community for access to medical marijuana.

e. That issuance of the Dispensary permit would serve the needs of City residents within a proximity to this location.

f. That the Storefront Dispensary is likely to have no potentially adverse affect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

VI. ENVIRONMENTAL REVIEW

Staff has determined that the project qualifies for a Categorical Exemption from further environmental review under Section 15301(a) (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines. The project involves operational and organizational changes for the existing Dispensary, and no physical changes are proposed for the existing commercial building or the site.

VII. FINDINGS

The Staff Hearing Officer finds the following:

With the inclusion of staff's recommendations, as outlined in Section IV.B of the Staff Report, the Amendment to the Medical Cannabis Dispensary permit to allow the requested changes complies with the criteria for issuance of SBMC §30.185.250.G.2. Staff's recommendations shall be incorporated into an updated Operating Plan that shall be submitted to City staff for acceptance prior to initiating any of the proposed changes.

Exhibits:

- A. Applicant's Letter dated December 21, 2018
- B. The Canopy Revised Operating Plan dated December 21, 2018