



AGENDA MEMO - PLANNING

PLANNING COMMISSION MEETING DATE: SEPTEMBER 11, 2018

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPLICANT/OWNER: MMOF RE FREMONT, LLC

** STAFF RECOMMENDATION(S) **

CASE NUMBER	RECOMMENDATION	REQUIRED FOR APPROVAL
SUP-74065	Staff recommends APPROVAL, subject to conditions:	

** NOTIFICATION **

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 32

NOTICES MAILED 1029

PROTESTS 0

APPROVALS 2

**** CONDITIONS ****

SUP-74065 CONDITIONS

Planning

1. The applicant shall coordinate with the City Surveyor and other city staff to determine the most appropriate mapping action necessary to consolidate the underlying lot lines. The mapping action shall be completed and recorded prior to the issuance of any building permits.
2. Conformance to all Minimum Requirements under LVMC Title 19.12 for a Marijuana Dispensary use.
3. An air filtration system to be designed by a Nevada licensed engineer shall be provided prior to the issuance of a certificate of occupancy.
4. There shall be no on premise consumption (the use, smoking, ingestion or consumption of any marijuana, edible marijuana or marijuana infused product) on the licensed premises.
5. All development shall be in conformance with the site plan and floor plan date stamped 07/26/18, except as amended by conditions herein. Any modification of the premises of a medical marijuana establishment shall be filed 60 days in advance of any proposed construction. A full and complete copy of all architectural and building plans shall be filed with the Director for a review of compliance with Title 6.95 and Title 19. The Director shall review the plans and approve any modifications in compliance with this chapter prior to the commencing of any construction of modifications.
6. This approval shall be void eighteen months from the date of final approval, unless exercised pursuant upon the issuance of a business license. An Extension of Time may be filed for consideration by the City of Las Vegas.
7. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.

**Conditions Page Two
September 11, 2018 - Planning Commission Meeting**

8. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit, as well as submitted as part of any business license application.
9. The presence of minors on the premises of a marijuana establishment is prohibited unless the minor is a qualified patient on the premises of a dispensary and is accompanied by his or her parent or legal guardian.
10. Approval of this Special Use Permit does not constitute approval of a Marijuana Dispensary license.
11. This business shall operate in conformance to Chapter 6 of the City of Las Vegas Municipal Code.
12. A Marijuana Dispensary Facility shall obtain all required approvals from the State of Nevada to operate such a facility prior to the Special Use Permit being exercised pursuant to LVMC 19.16.110.
13. Conformance to all regulations pertaining to Marijuana Establishment found within Nevada Revised Statute 453A and 453D, and Nevada Administrative Code NAC 453A and 453D.
14. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

Staff Report Page One
September 11, 2018 - Planning Commission Meeting

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request to expand an existing Marijuana Dispensary use from 1,960 square feet to 3,896 square feet at 823 South 3rd Street.

ISSUES

- The Marijuana Dispensary use is permitted within the C-2 (General Commercial) zoning district with the approval of a Special Use Permit.
- On October 29, 2014, the City Council approved Special Use Permit (SUP-55282) to allow a 1,960 square-foot Medical Marijuana Dispensary use at the subject site.
- On June 21, 2017, the City Council approved Review of Condition (ROC-70571) to allow a Dual Use Marijuana Dispensary.
- Per Title 19.16.110, a Major Amendment is required when a reduction or expansion of the use allowed by the Special Use Permit represents more than fifty percent of the square footage of the original approval.
- The applicant now requests to expand the use by 1,936 square feet. Staff supports the request.

ANALYSIS

The Marijuana Dispensary use is defined as "An establishment which acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials. This use includes a "medical marijuana dispensary," as defined in NRS 453A.115 and a "retail marijuana store" as defined in NRS 453D.030." Per the submitted justification letter and floor plan, the proposed use meets the definition outlined above.

The Minimum Special Use Permit Requirements for this use include:

* 1. Pursuant to its general authority to regulate the cultivation, production, dispensing, and sale of marijuana, the City Council declares that the public health, safety and general welfare of the City are best promoted and protected by generally requiring a minimum separation between a marijuana dispensary and certain other uses that should be protected from the impacts associated with a marijuana dispensary. Therefore, except as otherwise provided below, no marijuana dispensary may be located within 1000 feet of any school, or within 300 feet of any of the following uses:

Staff Report Page Two
September 11, 2018 - Planning Commission Meeting

- a. City park;
- b. Church/house of worship;
- c. Individual care - family home, individual care - group home, or individual care center (in each case licensed for the care of children);
- d. Community recreational facility (public); or
- e. Any use whose primary function is to provide recreational opportunities to minors. Such uses include without limitation commercial recreation/amusement (indoor or outdoor); library, art gallery or museum (public); teen dance center; and martial arts studio that provides instruction to minors.

The proposed use meets this requirement, as there are no schools within 1,000 feet of the subject property, as well as there are no individual care centers licensed for more than 12 children, community recreational facilities (public) or City parks or churches/houses of worship within 300 feet of the subject property.

* 2. The distance separation referred to in Requirement 1 shall be measured with reference to the shortest distance between two property lines, one being the property line of the proposed marijuana dispensary which is closest to the existing use to which the measurement pertains, and the other being the property line of that existing use which is closest to the proposed marijuana dispensary. The distance shall be measured in a straight line without regard to intervening obstacles.

The proposed use meets this requirement; measurement is taken from the property line of Lots 13 and 14 in Block 16 of South Addition, as shown by map thereof on file in Book 1 of Plats, Page 51, in the office of the County Recorder of Clark County, Nevada.

* 3. For the purpose of Requirement 2, and for that purpose only:

- a. The “property line” of a protected use refers to the property line of a fee interest parcel that has been created by an approved and recorded parcel map or subdivision map, and does not include the property line of a leasehold parcel; and
- b. The “property line” of a marijuana dispensary refers to:
 - i. The property line of a parcel that has been created by an approved and recorded parcel map or commercial subdivision map; or
 - ii. The property line of a parcel that is located within an approved and recorded commercial subdivision and that has been created by a record of survey or legal description, if:
 - A. Using the property line of that parcel for the purpose of measuring the distance separation referred to in Requirement 1 would qualify the parcel under the distance separation requirement;
 - B. The proposed marijuana dispensary will have direct access (both ingress and egress) from a street having a minimum right-of-way width of 100 feet. The required access may be shared with a larger development but must be located within the property lines of the parcel on which the proposed marijuana dispensary will be located;

Staff Report Page Three
September 11, 2018 - Planning Commission Meeting

C. All parking spaces required by this Section 19.12.070 for the marijuana dispensary use will be located on the same parcel as the use; and

D. The owners of all parcels within the commercial subdivision, including the owner of agreement, satisfactory to the City Attorney, that provides for perpetual, reciprocal cross-access, ingress and egress throughout the commercial subdivision.

The subject site is an existing standalone parcel and did not require the creation of a separate parcel to meet the distance separation requirements. As such, condition #3 is not applicable and the site is in conformance with this requirement.

* 4. When a retail marijuana store authorized pursuant to NRS Chapter 453D (the "Chapter 453D facility") is proposed to be located within a medical marijuana dispensary that is authorized pursuant to NRS Chapter 453A (the "Chapter 453A facility"), and the Chapter 453A facility has obtained special use permit approval as of July 1, 2017, the applicable distance separation requirements under Requirement 1 for the proposed Chapter 453D facility shall be those that were in effect at the time of special use permit approval for the Chapter 453A facility. A Chapter 453D facility that has received special use permit approval, either pursuant to a new special use permit or by means of a review of conditions under an existing special use permit, shall be deemed a conforming use for purposes of this Title.

This subject location complies with all distance separation requirements

* 5. The use shall conform to, and is subject to, the provisions of LVMC Title 6, as they presently exist and may be hereafter amended.

The use is already licensed and will require continual inspections to verify it is in compliance with Title 6 requirements.

* 6. No outside storage shall be permitted, including the use of shipping containers for on-site storage.

The proposed use meets this requirement, as no outside storage including shipping containers has been denoted within the submitted site plan.

* 7. Subject to the requirements of applicable building and fire codes, public access to the building shall be from one point of entry and exit, with no other access to the interior of the building permitted.

Per the submitted floor plan, the proposed use will have one entry/exit primary public access door located off of 3rd Street. An exit only door is also shown on the submitted floor plan at the rear of the building. A condition of approval has been added to ensure this exit is only utilized by authorized staff.

Staff Report Page Four
September 11, 2018 - Planning Commission Meeting

* 8. No drive-through facilities shall be permitted in conjunction with a marijuana dispensary.

The proposed use meets this requirement, as no drive-through facilities are proposed with this location.

* 9 The Special Use Permit shall be void without further action if the uses ceases for a period exceeding 90 days.

The Department of Planning - Business Licensing division will monitor and require compliance with this requirement should the use cease.

* 10. A marijuana dispensary shall obtain all required approvals from the State of Nevada to operate such a facility prior to the Special Use Permit being exercised pursuant to LVMC 19.16.110.

The subject property is already licensed for a Marijuana Dispensary use.

* 11. No marijuana dispensary shall be located on any property which abuts Fremont Street west of 8th Street.

This condition is not applicable, as the subject site is not located on property which abuts Fremont Street west of 8th Street.

* 12. No accessory uses are permitted in association with a marijuana dispensary unless such a use relates to providing education regarding the use of marijuana.

The applicant has not proposed any associated uses with the proposed Marijuana Dispensary use. The Department of Planning - Business Licensing division will assure all activities are educational.

On October 29, 2014, the City Council approved Special Use Permit (SUP-55282) to allow a 1,960 square-foot Medical Marijuana Dispensary use. Subsequently, on June 21, 2017, the City Council approved Review of Condition (ROC-70571) to allow a Dual Use Marijuana Dispensary. The applicant now requests to expand the use into the adjacent tenant space. With the proposed 1,936 square-foot expansion, the total square footage will be 3,896 square feet. Per Title 19.16.110, a Major Amendment is required when a reduction or expansion of the use allowed by the Special Use Permit represents more than fifty percent of the square footage of the original approval.

Staff Report Page Five
September 11, 2018 - Planning Commission Meeting

Per the submitted justification letter, the subject site provides zero parking spaces for the general public. Parking spaces are only allocated for the employees. The applicant notes that there is ample street parking available for their customers. The subject site is located within the Downtown Las Vegas Overlay - Area 1 where parking requirements are not automatically applied.

The Las Vegas Valley Water District (LVVWD) has commented that the subject parcel is currently served by LVVWD but the service does not have the required backflow prevention per NAC 445A.67195. Backflow retrofit will be required for this use. Other than the Minimum Special Use Permit Requirements found within Title 19.12, there are no other special development requirements pertaining to the site. The subject site is an existing commercial development which can accommodate the intensity of the proposed use.

The subject site complies with all minimum distance requirements as set forth by Title 19.12, and therefore the proposed expansion can be conducted in a compatible and harmonious manner with the existing surrounding land uses and future land uses as projected by the General Plan. As such, staff recommends approval of the proposed expansion subject to conditions. If denied, the existing Marijuana Dispensary use would be permitted to continue operation as is.

FINDINGS (SUP-74065)

In order to approve a Special Use Permit application, per Title 19.16.110(L) the Planning Commission and City Council must affirm the following:

1.The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.

The subject site complies with all minimum distance requirements as set forth by Title 19.12 and therefore the use can be conducted in a compatible and harmonious manner with the existing surrounding land uses and future land uses as projected by the General Plan.

2.The subject site is physically suitable for the type and intensity of land use proposed.

The subject site is physically suitable for the proposed 1,936 square-foot expansion of the existing Marijuana Dispensary use.

Staff Report Page Six
September 11, 2018 - Planning Commission Meeting

3. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.

Street access will remain off of 3rd Street, an 80-foot collector street that has adequate capacity to serve the proposed expansion.

4. Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.

The proposed Marijuana Dispensary use will be subject to regular City and County inspections for licensing and will therefore not compromise the public health, safety, and general welfare or any objective of the General Plan.

5. The use meets all of the applicable conditions per Title 19.12.

The proposed Marijuana Dispensary use meets all distance separation requirements per Title 19.12. Conditions of approval will ensure conformance with all other minimum requirements for this use.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i>	
05/21/14	City Council approved Text Amendment (TXT-52502) to amend LVMC Chapter 19.12 related to Permitted Uses and Chapter 19.18 related to Definitions and Measures to add Medical Marijuana Dispensaries, Facilities for the Production of Edible Marijuana Products or Marijuana Infused Products and Marijuana Cultivation Facilities as permissible uses by adding zoning district applicability, descriptions and definitions for these activities as they are contemplated by SB 374 of the Nevada Revised Statutes and to provide for other related matters. Ordinance No. 6321.
06/04/14	City Council approved Text Amendment (TXT-52502) to amend Las Vegas Municipal Code Title 6 to implement licensing regulations related to facilities for the production of edible marijuana products or marijuana-infused products, medical marijuana dispensaries, medical marijuana cultivation facilities, and independent testing laboratories, collectively referred to as medical marijuana establishments, in conformance with the intent of SB 374 of the 2013 session of the Nevada Legislature and to provide for other related matters. Ordinance 6324.

Staff Report Page Seven

September 11, 2018 - Planning Commission Meeting

<i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i>	
09/16/14	The Downtown Design Review Committee approved the building elevations and signage for the proposed Medical Marijuana Dispensary.
10/29/14	The City Council approved Special Use Permit (SUP-55282) to allow a 1,960 square-foot Medical Marijuana Dispensary at 823 South 3 rd Street. The Planning Commission and Staff recommended denial.
05/18/16	The City Council approved Extension of Time (EOT-64125) of approved Special Use Permit (SUP-55282) to allow a 1,960 square-foot Medical Marijuana Dispensary at 823 South 3 rd Street.
06/21/17	The City Council approved Review of Condition (ROC-70571) to allow a Review of Conditions of an approved Special Use Permit (SUP-55282) to allow a Dual Use Marijuana Dispensary at 823 South 3 rd Street. Staff recommended approval.

<i>Most Recent Change of Ownership</i>	
06/26/18	A deed was recorded for a change in ownership.

<i>Related Building Permits/Business Licenses</i>	
06/09/16	Building License (#M63-00002) was issued for a Medical Marijuana Dispensary use at 823 South 3 rd Street. The license expired on 07/01/18.
07/05/16	Building License (#G64-04892) was issued for Drug Paraphernalia Sales use at 823 South 3 rd Street. The license expired on 07/01/18.
06/29/17	Building License (#P65-00132) was issued for a Retail Marijuana Store at 823 South 3 rd Street. The license expired on 07/01/18.
06/28/18	Building License (#M66-00015) was issued for a Retail Marijuana Store at 823 South 3 rd Street. The license remains active.
	Building License (#M66-00014) was issued for a Medical Marijuana Dispensary use at 823 South 3 rd Street. The license remains active.
	Building License (#G66-04171) was issued for a Marijuana Paraphernalia & Clothing Sales use at 823 South 3 rd Street. The license remains active.

<i>Pre-Application Meeting</i>	
07/18/18	Staff conducted a pre-application meeting with the applicant where the submittal requirements and deadlines were reviewed for a proposed dispensary expansion.

Staff Report Page Eight
September 11, 2018 - Planning Commission Meeting

Neighborhood Meeting
A Neighborhood meeting was not required, nor was one held.

Field Check	
08/02/18	Staff conducted a routine field check and found an active dispensary. No issues were noted.

Details of Application Request	
Site Area	
Net Acres	0.16

Surrounding Property	Existing Land Use Per Title 19.12	Planned or Special Land Use Designation	Existing Zoning District
Subject Property	Marijuana Dispensary	MXU (Mixed Use)	C-2 (General Commercial)
North	Undeveloped	MXU (Mixed Use)	C-2 (General Commercial)
South	Multi-Family Residential	MXU (Mixed Use)	C-2 (General Commercial)
East	General Retail	MXU (Mixed Use)	C-2 (General Commercial)
West	Multi-Family Residential	MXU (Mixed Use)	C-2 (General Commercial)
			R-4 (High Density Residential)

Master and Neighborhood Plan Areas	Compliance
No applicable Master Plan Area	N/A
Special Area and Overlay Districts	Compliance
LW-O (Live/Work Overlay) District	Y
DTLV-O (Downtown Las Vegas Overlay) - Civic & Business District	Y
Other Plans or Special Requirements	Compliance
Trails	N/A
Las Vegas Redevelopment Plan Area	Y
Interlocal Agreement	N/A
Project of Significant Impact (Development Impact Notification Assessment)	N/A
Project of Regional Significance	N/A

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Staff Report Page Nine
September 11, 2018 - Planning Commission Meeting

DEVELOPMENT STANDARDS

Street Name	Functional Classification of Street(s)	Governing Document	Actual Street Width (Feet)	Compliance with Street Section
3 rd Street	Collector Street	Master Plan of Streets & Highways	80	Y

Pursuant to Title 19.08 and 19.12, the following parking standards apply:

Parking Requirement - Downtown							
Use	Gross Floor Area or Number of Units	Base Parking Requirement		Provided		Compliance	
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Marijuana Dispensary	3,896 SF	1:175 SF	23				
TOTAL SPACES REQUIRED			23		0		*N
Regular and Handicap Spaces Required			22	1	0	0	*N
Loading Spaces			1		0		*N

*Projects located within the Downtown Las Vegas Overlay - Area 1 are not subject to the automatic application of parking requirements. However, the above table should be used to illustrate the requirements of an analogous project in another location in the City.