

RESOLUTION NO. 17-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

GRANTING THE APPROVAL OF A DISCRETIONARY USE PERMIT TO ALLOW A MEDICAL/ADULT RECREATIONAL CANNABIS FACILITY LOCATED AT 310 AMADOR (APN# 011-315-017) IN THE MIXED USE (MX) ZONING DISTRICT.

WHEREAS, Performance Property Management, or Assigns C/O Larry Scholink , property owner and, Higher Level of Care/Cypress Manufacturing, dba Higher Level, applicant, have applied for a Discretionary Use Permit to allow:

- A. The establishment of a Medical/Adult Recreation Cannabis facility.

WHEREAS, the proposed project requires discretionary use permit approval, and it is the responsibility of the Planning Commission in the Seaside Municipal Code to have considered and weighed the merits of the application and public input in relation to the policies, standards and intent of the Seaside General Plan and Seaside Municipal Code in making a recommendation on the proposed cannabis facility to the City Council; and

WHEREAS, the Seaside Planning Commission considered oral comments and written information concerning the proposed amendment at three duly noticed special public meetings held on December 4, 2017, December 5, 2017, and December 20, 2017; and

WHEREAS, the Seaside Planning Commission acted to declare the application as being a qualified applicant on December 20, 2017 and made a recommendation that the City Council consider the application for the issuance a cannabis facility; and

WHEREAS, the Seaside Municipal Code requires the approval of a discretionary use permit by the City Council for a Medical/Adult Recreation Cannabis facility, and it is the responsibility of the City Council to have considered and weighed the merits of the application and public input in relation to the policies, standards and intent of the Seaside General Plan and Seaside Municipal Code in review of the application; and

WHEREAS, the Seaside City Council considered oral comments and written information concerning the proposed amendment at a duly noticed special public meeting held on December 28, 2017; and

WHEREAS, the project is a Categorically Exempt, Class 1, Section 15301 meeting the following conditions:

- a) The proposed development will consist of converting an existing commercial building into a retail medical/adult recreation cannabis facility which will not change the intensity of the project site or the City's infrastructure off-site in order to accommodate the proposed use. It can be seen with certainty that the proposed use will not create any significant environmental impact on the community and neighboring properties.

NOW, THEREFORE, BE IT RESOLVED, that the City Council adopts the following findings for the Medical/Adult Recreation Cannabis facility Discretionary Use Permit

- 1) The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Zoning Ordinance and the Municipal Code.

Evidence: This project is located within the Mixed use Zoning District in which a Medical/Adult Recreation Cannabis facility may be established with use permit approval.

Evidence: The applicant will provide sufficient security measures to both deter and prevent unauthorized entrance into the facility, eliminate any unauthorized loitering inside and outside of the facility, and minimize excessive calls for service by the City's public safety resources.

Evidence: There are no existing retail cannabis facilities operating within 1,000 feet of the project site.

Evidence: Higher Level scored full points for location of business, which will serve as a catalyst project for the City of Seaside within the West Broadway Urban Village Specific Plan.

Evidence: Higher Level scored well for business plan points by demonstrating revenue and capitalization, achievable within the City of Seaside based on the project location being located within an established retail area and the project location having access from the City's entrances on Fremont Boulevard to the north and south and the entrance on Broadway Avenue to the east.

Evidence: Higher Level scored full points for local enterprise and community benefits, which fosters economic and community development within the City of Seaside and provides financial contributions to local non-profit community organizations within the City of Seaside.

Evidence: Higher Level scored full points for neighborhood compatibility with commitments to exemplary security and façade improvement upgrades, which promotes neighborhood unity and land use compatibility/vitality within the City of Seaside.

Evidence: Higher Level scored full points for safety and security, which helps to provide public safety within the City of Seaside by not creating any type of nuisance which would be detrimental to the overall general health, safety and welfare of the community and/or cause a financial burden on public safety resources for unnecessary calls for service .

- 2) The proposed use is consistent with the General Plan and any applicable specific plan.

Seaside General Plan Conformance

Evidence: Per the General Plan Land Use Element, the site is designated as Mixed use (MX) West Broadway Urban Village Specific Plan. The following Goals and Policies would apply:

Land Use Element Goal LU-1: Promote a mixture of land uses and a balance of jobs and housing to support a community in which people can live, work, and play.

Evidence: The project site will be contained within an existing commercial building which has demonstrated that it can contain the necessary capacity to operate a cannabis dispensary without overburdening existing roadways and City infrastructure,

Land Use Element Policy LU-1.1: The proposed use would serve to implement and diversify the land uses within the West Broadway Urban Village Specific Plan and improve the City's job housing balance.

Evidence: The project would occupy a vacant tenant space, increase pedestrian activity, have the potential for increased pass by trips for adjoining businesses, and will employ Seaside residents.

Land Use Element Policy LU-1.2: The proposed use will serve to provide additional jobs to improve the City's job housing balance.

Evidence: The project will employ Seaside residents.

Land Use Element Goal LU-1.3: Encourage regional commercial and visitor-serving commercial development that will enhance the identity of Seaside and attract visitors to the community.

Evidence: The project would occupy a vacant tenant space, increase pedestrian activity, and complete a commercial façade upgrade.

Land Use Element Goal LU-2: Revitalize existing commercial areas.

Evidence: The cannabis facility will serve to establish a regional commodity within the City of Seaside that will provide a substantial investment within the community that will serve to improve the character of the West Broadway Specific Plan area and attract customers both from the Monterey Bay area and tourism.

Element Policy –LU-2.1: The proposed project will serve to revitalize an existing commercial area of the community that is targeted as a specific plan area to provide new jobs and services as the downtown core of the community.

Evidence: The proposed use will serve to fill a vacant commercial site and remove a blighted condition through the extended vacancy of the site since it was constructed.

- 3) The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and planned future land uses in the vicinity.

Evidence: The proposed Medical/Adult Recreation Cannabis facility will meet the needs of the community consistent within the West Broadway Urban Village Specific Plan design goals and improve the overall business character with the infusion of new façade treatments and monetary investment in the infrastructure of the site.

- 4) The site is physically suitable for the type, density and intensity of discretionary use being proposed, including access, utilities, and the absence of physical constraints.

Evidence: The project site is served by existing water, wastewater, and electrical infrastructure and facilities with adequate capacity to serve the proposed project. The proposed conversion of a retail commercial building to a Medical/Adult Recreation Cannabis facility with interior changes and exterior façade changes conforms to Land Discretionary use Element of the Seaside General Plan.

- 5) Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone district in which the property is located.

Evidence: The proposed Medical/Adult Recreation Cannabis facility will provide for a community facility that is safe and attractive for a Cannabis dispensary use.

Evidence: The proposed conversion of a commercial retail building to a Medical/Adult Recreation Cannabis facility would not be detrimental to the public health, safety and general welfare of the people of the City and surrounding neighborhood. The proposed use is located on an in-fill site and would help maintain a compact city form consistent with the scale and character of the surrounding commercial neighborhood.

BE IT FURTHER RESOLVED, that the City Council approves the Discretionary Use Permit Application for “Higher Level” subject to the following conditions:

Project Specific

Planning:

1. Except as modified by required conditions of approval, the permittee shall have the right to operate a Medical/Adult Recreation Retail Cannabis Facility substantially in accordance with the project material stamped “Received by the City of Seaside- December 1, 2017” and subject to the floor plan and exterior façade being modified to comply with the general Cannabis and conditions listed. The aerial site plan is provided as Exhibit “A”.

Cannabis

1. Cannabis may not be inhaled, smoked, eaten, ingested, or otherwise consumed within the Business, on the Property, in the parking areas of the Property, or in those areas restricted under the provisions of Health and Safety Code §11362.79.

2. All storage, display, sales or other distribution of cannabis shall occur only within an enclosed area of a medical cannabis business and shall not be visible from the exterior of the business. Delivery shall be as approved by the Seaside Police Department.
3. The cannabis facility shall have an odor-absorbing ventilation and exhaust system to ensure that odor generated inside the premises is not detected outside the premises.
4. A sign shall be posted in a conspicuous location inside the property advising that use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery.
5. No person, other than a patient, caregiver, licensee, employee, or a contractor shall be in the medical cannabis dispensary room.
6. Medical/Adult Cannabis Dispensary hours of operation shall be as regulated by State and City law.
7. Adults 21 and over can buy cannabis at retail dispensaries with an "A" adult use license as of Jan 1, 2018 as regulated by State Law.
8. No Cannabis Dispensary, Management Employee or employee shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the property.

Testing, Packaging, Labeling

9. All cannabis product labels shall also include the following information, prominently displayed and in a clear and legible font: For packages containing only dried flower, the net weight of medical cannabis in the package; A warning if nuts or other known allergens are discretionary used; List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total; Clear indication, in bold type, that the product contains medical cannabis; Identification of the source and date of cultivation and manufacture.
10. Only generic food names may be used to describe edible medical cannabis products. Businesses should refer to State and local law to determine what activities are permitted or prohibited for licensed dispensaries in the City of Seaside. Failure to comply may result in penalties, suspension or revocation of the dispensary business license.

Transportation

11. All cannabis-infused products must be hand packaged, sealed and labeled, and the products stored in closed containers that are labeled. All medical cannabis in a usable form for medicinal use must be packaged and stored in closed containers that are labeled.

12. Each container used to transport or deliver cannabis must be labeled as regulated by State law. The label shall be shown to any law enforcement officer who requests to see the label.

Community Relations

13. Each Cannabis Business shall designate a Community Relations Liaison, who shall be at least twenty-one (21) years of age; and shall provide the Liaison's name to the City Manager. The Liaison shall receive all complaints received by the City Manager regarding the Medical/Adult Cannabis Dispensary, and make good faith attempts to promptly resolve all complaints.

Inspections

14. State and Local representatives (Health, Fire and Building inspectors) may enter and inspect the Property of each Cannabis Business between the hours of nine (9) am and eight (8) pm or during normal business hours.
15. Licensing authorities and State and Local agencies may, at any time, inspect shipments and request documentation for current inventory.
16. Every Cannabis Business shall implement sufficient security measures, as approved by the Seaside Police Department to both deter and prevent unauthorized entrance into areas containing cannabis or cannabis products and theft of cannabis or cannabis products. These security measures, as appropriate, shall include, but not be limited to, the following: (a) Preventing individuals from remaining on the premises if they are not engaging in activity expressly related to the operations of the business; (b) Establishing limited access areas accessible only to authorized personnel; (c) Storing all finished cannabis and cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss.
17. Each Cannabis Business shall install and maintain a fully operational digital video surveillance and camera recording system that monitors no less than the front and rear of the Property, all points of ingress and egress at the business, all points of sale within the business, all areas within the business where medical cannabis products are displayed for sale, and all limited access areas within the facility as approved by the Seaside Police Department.
18. The video and surveillance system shall, at a minimum, meet the following requirements: (a) Capture a full view of the public right-of-ways and any parking lot under the control of the medical cannabis business; (b) Record and maintain video 24/7 for a minimum of ninety (90) days, or as otherwise determined by the Seaside Police Department.
19. The cannabis business shall install and use a safe for storage of any processed cannabis and cash on the property when the business is closed to the public. The safe shall be incorporated into the building as a secure receptacle.
20. The cannabis business shall install and discretionary use a fire and burglar alarm system that is monitored by a company that is staffed twenty-four hours (24) a day, seven (7) days a week.

The security plan submitted to the City shall identify the company monitoring the alarm, including contact information. Changes in the security plan shall be approved by the Seaside Police Department prior to implementation.

21. A cannabis business engaged in retail sales shall retain and maintain a security guard or patrol, licensed by the State of California, generally located at an indoor guard station, to an extent sufficient to ensure safety and approved by the Seaside Police Department.
22. No dried cannabis shall be stored at the property in structures that are not completely enclosed, in an unlocked vault or safe, or in any other unsecured storage structure.
23. Windows and roof hatches at the Cannabis Business shall be secured so as to prevent unauthorized entry.

Accounting/Record Keeping

24. The Cannabis Business shall maintain an inventory management system. The point of sale software shall be, upon regulatory implementation of the MMRSA, compliant with the State Unique Identifier and Track and Trace Program.
25. The records of the business shall clearly track cannabis product inventory purchased and/or grown and sales and disposal thereof to clearly track revenue from sales of any medical cannabis from other paraphernalia or services offered by the Cannabis Business.
26. The records shall clearly show the source, amount, price and dates of all cannabis received or purchased, and the amount, price, dates and business, patient or caregiver for all cannabis sold.
27. Each Cannabis Business shall keep a complete set of books of account, invoices, copies of orders and sales, shipping instructions, bills of lading, weigh bills, bank statements including cancelled checks and deposit slips and all other records necessary to show fully the business transactions of such licensee.
28. Each business shall maintain an inventory record documenting the dates and amounts of cannabis sold at the Property, and the daily amounts of cannabis stored on the Property.
29. Receipts shall be maintained via a computer program or by pre-numbered receipts and discretionary used for each sale.
30. Each business shall maintain on-site proof of a valid Business License Permit issued by the City of Seaside.
31. All records kept and maintained by the licensee shall at all times protect the confidential information of the patient or caregiver. All records must be identified as confidential and any disclosure shall be limited in a manner that maintains the confidentiality of the information contained therein.

32. A Cannabis Dispensary holding a Business License Permit shall report to the City Manager each of the following within the time specified; provided that if no time is specified, such a report shall be provided within fifteen (15) days of the triggering event: (1) The transfer or change of ownership interest, business manager, or in the permit application at least thirty days before the transfer or change; (2) Sales and taxable transactions and file sales and discretionary use tax reports to the City quarterly; (3) A conviction of any disqualifying crime by any applicant of a Cannabis Business.

City Standards

33. Discretionary Use Permit approval is subject to revocation procedures contained in S.M.C.S. 17.80.060 in the event any of the conditions of this approval are violated, this discretionary permit was granted on the basis of false or misleading information, written or oral, given willingly or negligently by the applicant or property owner, and/or there has been a discontinuance of the discretionary use, or purposed for which the permit was issued, for a period of 180 days or more.
34. This Discretionary Use Permit is subject to procedures and requirements of Chapter 17.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 6 (Zoning Ordinance Administration) of Title 17 of the Municipal Code.
35. The applicant agrees as a condition and in consideration of the approval of this discretionary permit that it will defend, indemnify and hold harmless the City of Seaside or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul this approval. The applicant will reimburse the City for any court costs and attorney's fees, which the City may be required by a court to pay as a result of such action. City may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. The City shall promptly notify the applicant of any such claim, action, or proceeding, and the City shall cooperate fully in the defense thereof.
36. Any proposed future development shall comply with the requirements of the applicable City and County agencies and must be in compliance with State Law.
37. The project shall comply with the requirements and the applicable ordinances of the Monterey Peninsula Water Management District (MPWMD) and Monterey Regional Water Pollution Control Agency (MRWPCA).
38. The project shall be responsible for all applicable local and/or regional development and/or impact fees including, but not limited to, sewer, water, and traffic fees, which shall be paid prior to building permit issuance.
39. Applicant must execute and maintain a valid Development/Operating Agreement setting forth the terms and conditions under which the facility will operate which will be reviewed periodically for compliance including, but not limited to, timely payment of all fees and taxes.

40. For purposes of assuring compliance, the applicant, agents, representatives or their assignees agree not to deny or impede access to the subject property by City employees in the performance of their duties.

PASSED AND ADOPTED at the special meeting of the City Council of the City of Seaside, State of California, on the 28th of December, 2017, by the following vote:

AYES:	4	COUNCILMEMBERS:	Alexander, Campbell, Pacheco, Rubio
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	1	COUNCILMEMBERS:	Jones
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:



Ralph Rubio, Mayor

ATTEST:



Lesley Milton-Rerig, City Clerk

Resolution No. 17-98

These permits are hereby accepted upon the express terms and conditions hereof, and shall have no force or effect unless and until agreed to, in writing, by the applicant and property owner(s).

The undersigned hereby acknowledge the approved terms and conditions and agree to fully conform to, and comply with, said terms and conditions within the time frames approved by the City of Seaside City Council.



Applicant's Signature

12/29/17

Date

Property Owner's Signature (if different from above)

Date