

RESOLUTION NO. PC-2018-10

CONDITIONAL USE PERMIT CUP 17-16 (LA MESA HEALTH CENTER, INC.) - REQUEST TO PERMIT A MEDICAL MARIJUANA DISPENSARY USE AT 7729 UNIVERSITY AVENUE, IN THE C-D-MU (GENERAL COMMERCIAL, URBAN DESIGN AND MIXED USE OVERLAY) ZONES

WHEREAS, the Planning Commission of the City of La Mesa did hold a duly noticed public hearing on March 21, 2018, and accepted public testimony in considering Conditional Use Permit CUP 17-16, a request to permit a medical marijuana dispensary use at 7729 University Ave, in the C-D-MU (General Commercial, Urban Design and Mixed Use Overlay) zones;

WHEREAS, medical marijuana dispensaries are permitted in the General Commercial (C) zone subject to review and approval of a Conditional Use Permit pursuant to voter-approved Measure U;

WHEREAS, the subject property is developed with a 1,144-square-foot building;

WHEREAS, the proposed medical marijuana dispensary use will occupy 1,144 square feet of leasable area; and

WHEREAS, the Planning Commission did receive and consider a staff report and public testimony on the proposal.

THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

As lead agency for the purpose of compliance with the requirements of the California Environmental Quality Act (Public Resources Code 21000-21189), CEQA, the City determines that the project is exempt from environmental review under CEQA Guidelines Sections 15301 and 15303. CEQA Guidelines Section 15301 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of private structures involving negligible or no expansion of a use beyond what existed at the time of the lead agency's determination. CEQA Guidelines Section 15303 exempts new construction or conversion of small structures including commercial structures, accessory structures, and water, electrical, gas, and other utility extensions including street improvements. None of the exceptions listed in Section 15300.2 apply.

Conditional Use Permit Findings:

1. [LMMC 24.02.060(a)]: Incompatibility with other uses in the same vicinity will not result

The project is compatible with other uses in the same vicinity. The C-D-MU General Commercial; Urban Design Overlay Zone, Mixed Use Overlay Zone classifications of the subject property are consistent with the General Plan land use designation of Mixed Use Urban. The C-D-MU zone permits a retail use medical marijuana dispensary with a Conditional Use Permit (CUP). Measure U

determined that dispensaries in the C zone would be a compatible use. The zone is intended for and permits general commercial, retail sales, and office uses. A survey of the existing uses along University Avenue includes retail businesses, offices, restaurants, and neighborhood shopping centers. The zone intent therefore encourages a range of uses that could be combined or integrated. The dispensary retail business is a compatible use with the wide range of surrounding general commercial uses identified above and therefore will not adversely affect surrounding uses or conflict with the vision established for the commercial area by the applicable land use plan. The proposed project meets the separation requirements of Measure U.

2. [LMMC 24.02.060(b)]: Issuance of such a conditional use permit would not lead to the creation of a nuisance and would not endanger the public health, safety, or order by:

Unreasonably increasing pedestrian and/or vehicular traffic in the area in which the premises are located;

The issuance of a CUP would not unreasonably increase pedestrian and / or vehicular traffic in the area. The proposed dispensary retail use is contained within an existing 1,144-square-foot tenant space with patrons limited to individuals that have a physician's recommendation. The proposed project is a retail use that is not expected to generate higher levels of vehicular or pedestrian traffic from a comparable use such as a pharmacy. The proposed retail dispensary use is similar to other commercial uses allowed in the C zone.

The proposed specific regulatory conditions of approval assure the project's compliance with applicable local, regional, and state codes and rules. These regulations, which are implemented and enforced through the permit, are intended to reduce and/or prevent all adverse impacts to the public and community at large. For example, dispensary hours of operation are between 7 a.m. to 9 p.m. Monday – Sunday. The proposed project is compliant with Measure U.

Increasing the incidence of disruptive conduct in the area in which the premises are located;

The issuance of a CUP would not unreasonably increase the incidence of disruptive conduct in the area because the proposed project is compliant with Measure U. Proposed project conditions include provisions for security measures to be implemented, including, but not limited to, operable cameras; fire and burglar alarm systems monitored by an alarm company licensed by the State of California; evidence that a California State Licensed Security Guard contracted by the business at all times the facility is open; and a 24-hour, fixed-camera video surveillance system. The surveillance system is required to cover every interior area and room, and adjacent perimeter areas, within a minimum of 50 feet. Twenty-four hour surveillance system access is required by the La Mesa Police Department or other City authorized department.

In addition, conditions of the permit would require that the applicant for the permit proactively address and cure any legitimate loitering complaints, noise complaints, odor complaints, non-compliance issue with the CUP, or non-compliance with other applicable state or local regulations. Failure to operate the business in conformance to the conditions of approval could result in possible suspension or revocation of the permit. It is not anticipated that within such a controlled and conditioned environment, disruptive conduct would occur.

Unreasonably increasing the level of noise in the area in which the premises are located

The issuance of a CUP would not unreasonably increase the level of noise in the area. No increase in noise level is expected from this retail use compared to other commercial uses allowed in the C zone. The proposed medical marijuana dispensary use is an indoor retail use comparable to a pharmacy with the expectation that noise generated by consumer activity should not be significantly different from a use that is more familiar to the general public.

In addition, the project complies with Measure U. Further, a condition of the permit would require the applicant to proactively address and cure any legitimate noise complaint. Failure to do so could result in possible suspension or revocation of the permit.

3. [LMMC 24.02.060(c)]: The use is consistent with the General Plan

The General Plan land use designation of the subject property is "Mixed Use Urban" and is consistent with the General Commercial (C) zone, Urban Design Overlay and Mixed Use Overlay Zones. With a Conditional Use Permit, conditions to regulate the project will promote the goals and objectives of the General Plan. The proposed dispensary fits into the existing community as described in this report and is determined to be compatible with the surrounding commercial establishments.

Support for project consistency is taken from Goal LU-3 on page LD-37 of the General Plan (GP) addressing "Revitalized commercial and industrial districts," and LU-5 for a "Strong local and Regional economy." The proposed use meets the goals and the objectives of the GP by providing improvements within the public right-of-way, enhancing the area for pedestrian circulation, and creating jobs. The project promotes economic growth and employment consistent with Land Use Policy as described throughout the General Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF LA MESA AS FOLLOWS:

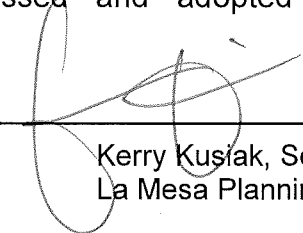
1. The foregoing findings of fact and determinations are true and hereby made a part hereof.

2. The Planning Commission approves Conditional Use Permit CUP 17-16 subject to the conditions on Exhibit A and as shown on the plans dated stamped March 8, 2018.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of La Mesa, California, held the 21st day of March 2018, by the following vote, to wit:

AYES: Chair Newland, Commissioners Alvey, Hottel, Kanavel, Podeswik, Tetlow, and Torpey.
NOES: None
ABSENT: None
ABSTAIN: None

I, Kerry Kusiak, Secretary, do hereby certify the foregoing to be a true and exact copy of **Resolution PC-2018-10**, duly passed and adopted by the Planning Commission.



Kerry Kusiak, Secretary
La Mesa Planning Commission

Resolution PC-2018-10
Conditional Use Permit CUP 17-16
Conditions of Approval

CONDITIONAL USE PERMIT CUP 17-16 (LA MESA HEALTH CENTER, INC.) - REQUEST TO PERMIT A MEDICAL MARIJUANA DISPENSARY USE AT 7729 UNIVERSITY AVENUE IN THE C-D-MU (GENERAL COMMERCIAL, URBAN DESIGN AND MIXED USE OVERLAY) ZONES

Planning Department Conditions:

1. The Owner(s) shall waive any claims of liability against the City and indemnify, hold harmless and defend the City and City's employees regarding any component of the City's approval, and shall execute an indemnity agreement in substantially the form as provided by the Community Development Department prior to building permit issuance, initiating use in reliance of this permit, recordation of the final map and/or recordation of the final parcel map, as applicable, and the Community Development Director is hereby authorized to execute the same. This agreement shall be executed by the applicant, notarized, and then signed by the Community Development Director before obtaining any other permit.
2. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
3. Construction plans shall be in substantial conformity to approved plans and may not be physically changed or increased in size without prior approval and/or amending the existing Conditional Use Permit.
4. Site landscaping shall be consistent with City landscape standards and the State of California Model Water Efficient Landscape Ordinance (WELO).
5. Approval of Conditional Use Permit CUP 17-16 for a medical marijuana dispensary is for retail sales purposes of medical marijuana only, subject to all applicable State laws and regulations.
6. Conditional Use Permit CUP 17-16 shall expire no later than five (5) years from the date of issuance.
7. The consumption of food is prohibited on the premises. The sale or consumption of any alcohol or tobacco products is prohibited on premises.
8. Logos visible to the public are prohibited.

9. Performance entertainment as defined by LMMC Section 24.01.100 is prohibited.
10. The applicant shall not use the subject property or any component of the business as a mobile dispensary.
11. The sale of recreational marijuana is prohibited in accordance with the City of La Mesa Municipal Code, Chapter 24.23.
12. Delivery of marijuana is prohibited with exceptions pursuant to Subsection 10.39.030 of the La Mesa Municipal Code and shall not apply to (i) primary caregivers delivering medical marijuana to qualified patients, (ii) qualified patients transporting marijuana for personal use only, (iii) duly licensed delivery services delivering medical marijuana to qualified patients, or (iv) duly licensed delivery services related to duly licensed medical marijuana facilities pursuant to Measure "U" (Ordinance No.2017-2857).
13. Prior to occupancy, the applicant shall obtain a State license to operate the proposed medical marijuana facility. Revocation of a permittee's State license shall result in immediate revocation of the permittee's City of La Mesa permit, CUP 17-16.
14. Consultations by medical professionals shall not be a permitted at the dispensary.
15. Lighting shall be provided to illuminate the interior of the dispensary, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
16. Lighting shall remain illuminated at all times between sunset and sunrise with sufficient intensity to illuminate every portion of the premises including but not limited to parking, any accessory uses, and adjoining sidewalks.
17. The applicant shall provide a photometric analysis at building permit review showing the illumination of the exterior of the site, façade, and surrounding area including the parking lot.
18. Security shall be provided at the dispensary which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the premises during business hours.
19. Signs shall be posted on the outside of the dispensary and shall only contain the name of the business, limited to two colors.

20. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the dispensary in character size at least two inches in height.
21. The dispensary shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
22. The use of Vending Machine which allows access to medical marijuana except by a responsible person is prohibited. A vending machine is any device which allows access to medical marijuana without a human intermediary.
23. The approved Conditional Use Permit (CUP 17-16) shall be subject to medical marijuana maintenance reports, CUP inspection reports, and annual Police background checks for all employees.
24. Payment for the Maintenance Report shall be submitted to the City no later than 60 days in advance of the required annual Maintenance Report due date. The annual Maintenance Report due date is the anniversary date of the effective date of the Conditional Use Permit.
25. Pursuant to the La Mesa Municipal Code (LMMC) Section 24.02.060, Conditional Use Permit 17-16 may be revoked or suspended by the Planning Commission if it determines that the permit was obtained through fraudulent representatives or the use was subsequently changed in operation contrary to representations or conditions applied pursuant to Measure U, LMMC Section 24.23. The permit may also be revoked due to legitimate loitering complaints, noise complaints, and smell complaints, or non-compliance with the Conditional Use Permit, or non-compliance with other applicable state or local regulations. The Conditional Use Permit may be revoked or suspended due to failure to enact a correction ordered by the City, as well as non-compliance with the regulations of Measure U or failure to comply with any State law, regulation or code. The licensee shall have a reasonable opportunity and time to cure the complaint or possible non-compliance before being subject to revocation or suspension. If the use should create a nuisance to surrounding properties, staff shall schedule a public hearing before the Planning Commission to evaluate the operations of the business. If the Planning Commission finds that the operation is creating a nuisance, the Commission may then impose additional restrictions on the business.
26. The site shall be alarmed with a centrally monitored fire and burglar alarm system that is monitored by an alarm company licensed by the State of California (Business & Professions Code 7590 et.seq.).
27. At all times the medical marijuana facility is open, the facility shall provide at least one security guard who is licensed by the State of California, possesses a valid

Department of Consumer Affairs “security guard card,” and has a valid City of La Mesa Business License.

28. Twenty-four hour, fixed-camera video surveillance shall be required and digital storage in the cloud or other off-site method of recordings shall be available for 90 days after recording. Further, that recording shall be of a sufficient quality to provide identification of any individual being recorded. The surveillance shall cover every interior area and room and adjacent perimeter areas within a minimum of 50 feet. The City of La Mesa Police Department or other City authorized department shall have 24-hour remote access to the surveillance system.
29. No consumption of any cannabis product shall be allowed on any of the facility’s premises.
30. The applicant shall conform to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and as it may be amended, to track, test, seal and label, at a minimum, all products.
31. All cannabis products that can be ingested by eating or drinking shall have a warning label or sign advising them of the potential hazard associated with over-consumption.
32. The applicant (licensee) shall keep accurate records of commercial cannabis activity.
33. The applicant shall maintain all records related to commercial cannabis activity for a minimum of seven years.
34. The City or its designee shall have access to the medical marijuana facility for inspection of the facility, the employees, and records (HIPPA compliance rules apply) during any normal business hours or at any other reasonable time. The applicant shall provide and deliver records to the City upon request.
35. City staff shall be allowed access to the premises in accordance with State law.
36. The medical marijuana dispensary shall maintain a current register of the names of all employees currently employed by the dispensary and shall disclose such registration for any City officer or authorized official for purposes of determining compliance with local and state medical marijuana employment requirements.
37. The medical marijuana dispensary permit holder shall acquire a Board of Equalization (BOE) seller’s permit or application for BOE seller’s permit for the commercial medical marijuana activity in which they engage pursuant to the Business and Professions Code. The applicant shall provide a Copy of the Board

of Equalization Seller's Permit to the City consistent with the Business and Professionals Code.

38. The medical marijuana dispensary licensee shall have a reasonable period of time, which shall not exceed 14 calendar days, to cure a legitimate complaint unless the complaint would result in an immediate danger to the public and shall be cured immediately as determined by local law enforcement or other appropriate authority.
39. Disposal of any unused or unwanted medical marijuana shall be in conformance with applicable State laws and shall not be disposed of, as or with, routine garbage.
40. All employees shall undergo a background check and any person who has been convicted of a felony shall not be employed by or operate, manage, control or own the dispensary facility or premise.
41. All employees of the medical marijuana dispensary shall have clearly visible photo identification badges that are to be worn at all times when they are on the premises of the facility.
42. Electricity in the medical marijuana dispensary shall be grid connected and compliant with current code. The use of generators other than for emergency security back-up is prohibited.
43. Any volatile substances as well as any hazardous materials stored or used on premises shall be disclosed in advance to the City and stored or fastened in a secure manner or as required by City code. Volatile solvents shall be prohibited.
44. The medical marijuana dispensary shall not transfer ownership or control of the business to another person or entity unless and until the transferee first obtains an approval from the City of La Mesa, and the appropriate City of La Mesa fees are paid.
45. The medical marijuana dispensary shall not be physically changed or increased in size (e.g., floor area or buildings utilized) without prior approval and/or amending Conditional Use Permit 17-16.
46. All staff of the medical marijuana dispensary shall receive appropriate training for their intended duties as required by State and local law.
47. All activities associated with the business shall be conducted indoors.
48. Any new rooftop mechanical equipment shall be screened from view from the street and adjacent properties.

49. Business operations shall not commence unless all required approvals, inspections and licenses have been obtained.
50. The applicant shall maintain the premises and property in good condition and repair. Maintenance of the property and the responsibility for such maintenance shall be that of the owner of record and/or the occupant, separately or jointly, and either or both may be cited for any violation on the building site.
51. All yards and other open spaces around buildings shall be kept free of waste, litter, junk, or storage of any material. Packing boxes, lumber, litter, dirt and other debris accumulated in vestibules, doorways or the adjoining sidewalks or outside commercial buildings and visible from public or private streets shall be prohibited.
52. All approved landscaped areas shall be properly maintained by regular watering, mowing, pruning, fertilizing, clearing of weeds and debris, the removal and replacement of dead or diseased plants and trees, and the repair and replacement of irrigation systems and integrated architectural features (e.g., fountains).
53. All driveways and parking areas shall be graded, hard surfaced, and maintained in accordance with standards established by City Council resolution.
54. All fences, structures, building materials, and architectural features shall be kept in good condition, both structurally and aesthetically. Awnings and other features constructed of materials subject to weathering and deterioration shall be replaced when they are worn, tattered, excessively faded, or otherwise in poor condition. All building and exterior finishes and architectural features shall be maintained to avoid the appearance of deterioration or disrepair from excessive weathering, paint chipping or peeling, excessive cracks, broken windows or doors, or other conditions that represent lack of proper property maintenance.
55. Attractive nuisances dangerous to children, including but not limited to abandoned and broken equipment, iceboxes, refrigerators, and unprotected and/or hazardous pools, ponds and excavations are prohibited.
56. The business shall be subject to future local taxes. If a local tax is implemented, a payment schedule shall be established.
57. All points of ingress, egress and parking shall comply with ADA regulations. Additional requirements may apply based on the existing conditions and proposed improvements.
58. The site and business shall conform to the approved Conditional Use Permit and associated Exhibit "A" and approved building plans for any tenant improvements

including any changes to electrical, plumbing, or mechanical systems prior to conducting business.

59. No one under 18 years is allowed in dispensaries unless accompanied by a primary caregiver or a licensed attending physician or documented legal guardian.
60. At least two (2) employees shall be on the premises during business hours.
61. A copy of the medical marijuana dispensary Conditional Use Permit and State license shall be displayed inside the facility in a place visible to the public.
62. The dispensary shall post and maintain professional quality sign consistent with LMMC Title 15 and Chapter 24.23 facing the parking lot(s) that reads "No loitering, no littering violators subject to arrest" in English and Spanish.
63. The operation of the business shall comply with State Licensing outlined in California Business and Professions Code Division 10, as amended, and any other applicable laws or regulations.
64. The project shall comply with the development standards of the underlying zone including but not limited to parking standards and requirements, trash and recycling enclosure standards, and landscape standards.
65. The applicant shall provide proof of a bond to cover the costs of destruction of medical cannabis or medical cannabis products if necessitated by a violation of licensing requirements pursuant to applicable law.

Fire Department Conditions:

66. The dispensary shall comply with the most recent adopted California Fire Codes and Standards.
67. A site plan and floor plan shall be submitted for review, approval and permits prior to commencing work.
68. A fire inspection is required prior to a certificate of occupancy or business license being issued. The applicant shall ensure the dispensary is set up and ready for operation prior to the fire inspection.
69. The applicant shall provide a letter indicating any hazardous materials to be used or stored on site for the dispensary. This does not include normal business cleaning materials however; they must be in a limited quantity.

70. The applicant shall provide a letter detailing the security provisions for the dispensary and how the applicable Building and Fire Code requirements will be achieved for emergency ingress and egress.

Building Division Conditions:

71. The Owner/Permittee shall secure all necessary building permits in compliance with California Building Code and applicable electrical, mechanical, plumbing, and State and Federal disability access laws.

Police Department Conditions:

72. Site lighting, including the parking lot, shall be provided such that the property is well lit at night to prevent loitering and eliminate hiding places. Lighting should be consistent to reduce contrast between shadows and illuminated areas.
73. Building lighting shall be provided to illuminate building numbers, building accesses, and front and back areas.
74. The project shall implement and maintain CPTED (Crime Prevention Through Environmental Design) principles.
75. Landscape design and maintenance shall implement applicable CPTED principles which shall demonstrate the following:
 - a. Trees shall be at least 8 feet above the ground and bushes shall be trimmed to less than 3 feet to allow for natural surveillance of the property; and
 - b. Landscape shall not obstruct the view of any windows, doorway, security cameras and light.
76. The applicant shall submit building plans that include a description and detailed schematic of the overall facility security. The applicant shall identify with illustration and notes the proposed security measures to be implemented, including, but not limited to:
 - a. Show and note on the floor plan that a surveillance camera shall be placed at face level to capture and record every individual coming and going from the business for identification purposes.
 - b. 24-hour fixed camera video surveillance shall be available for 90 days after recording. The recording shall be of a sufficient quality to provide identification of any individual being recorded; that the surveillance covers every interior area and room and adjacent perimeter area within a minimum of 50 feet; and that the City of La Mesa Police Department or other City authorized department shall have 24 hour remote access to the surveillance system.

77. The applicant shall provide an Internet Protocol (IP) Address to the surveillance system. A complete review of the system shall occur at the Building Permit application stage.

Public Works – Engineering Conditions:

78. Site operations shall comply with City of La Mesa Municipal Code Chapter 7.18 Storm Water Management and Discharge Control Program. A completed City of La Mesa storm water management permit application shall be submitted.
79. The applicant shall install street trees with pedestrian friendly tree grates in the sidewalk and contiguous with the curb, equal to 1 tree for every 35 feet of property frontage along University Avenue. (Refer to SDRSD L4, LMSD LS1 through LS3 and WQ4.).
80. Surety (security) for improvements shall be posted with the City of La Mesa prior to improvement permit approval to guarantee the construction of all the required street frontage improvements, erosion control, landscaping and irrigation. The security shall include all onsite and offsite improvements. The amount of security shall be determined by the City Engineer based upon an estimate furnished to the City taken from approved plans submitted by the engineer of work.
81. The applicant shall remove and replace existing curb and sidewalk to the nearest joint if it is found to be cracked, broken or displaced. The city Inspector will identify the limits of removal and replacement.
82. The exact limits of pavement and sidewalks shall be approved by the City Engineer. Existing public improvements will be repaired to good condition and proper alignment, as may be required for proper tie-in.
83. Landscaping for trees, shrubs, walls, fences, cut/fill slopes or other structures at or near driveway and street intersections shall conform to the intersectional sight distance criteria as provided by the California Department of Transportation (CalTrans) Highway Design Manual. Any obstructions which exceed a height of thirty-six (36) inches shall not be permitted within a distance of five (5) feet from the property line at the street.
84. Dedication of an easement to the City of La Mesa is required for the expanded pedestrian realm access in the MUO Zone as shown on conceptual exhibits.

85. Site operations shall comply with City of La Mesa Municipal Code Chapter 7.18 Storm Water Management and Discharge Control Program. A completed City of La Mesa storm water management permit application shall be submitted.
86. The applicant shall install street trees with pedestrian friendly tree grates in the sidewalk and contiguous with the curb, equal to 1 tree for every 35 feet of property frontage along El Cajon Blvd. (Refer to SDRSD L4, LMSD LS1 through LS3 and WQ4.).
87. Surety (security) for improvements shall be posted with the City of La Mesa prior to improvement permit approval to guarantee the construction of all the required street frontage improvements, erosion control, landscaping and irrigation. The security shall include all onsite and offsite improvements. The amount of security shall be determined by the City Engineer based upon an estimate furnished to the City taken from approved plans submitted by the engineer of work.
88. The applicant shall obtain an Encroachment Permit and Traffic Control Permit prior to beginning any proposed work within the City right of way.