

**CITY OF ANTIOCH
PLANNING COMMISSION**

**Regular Meeting
6:30 p.m.**

**June 5, 2019
City Council Chambers**

Vice Chair Schneiderman called the meeting to order at 6:30 P.M. on Wednesday, June 5, 2019 in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 P.M. on Wednesday, June 12, 2019.

ROLL CALL

Present: Commissioners Parsons, Soliz, Martin and Vice Chair Schneiderman
Absent: Commissioners Motts, Zacharatos and Chair Turnage
Staff: Senior Civil Engineer, Ken Warren
Planning Manager, Alexis Morris
Associate Planner, Zoe Merideth
City Attorney, Thomas Smith
Lieutenant, Desmond Bittner
Minutes Clerk, Kitty Eiden

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. **Approval of Minutes:** **None**

NEW PUBLIC HEARING

2. **UP-18-13 – Delta Dispensary Cannabis Dispensary** – Delta Dispensary is requesting a Use Permit for a cannabis dispensary with delivery. The project site is located at 2101 West Tenth Street. This project has been found to be Categorically Exempt from the requirements of the California Environmental Quality Act (APN 074-051-005).

Associate Planner Merideth presented the staff report dated May 31, 2019 recommending the Planning Commission approve the Use Permit (UP-18-13) for cannabis dispensary with delivery.

Rick, Dustin and Richard Hoke, Richards Construction and Business Park, gave a PowerPoint presentation of their project and discussed the medicinal benefits of cannabis use. They thanked the Planning Commission for consideration of their application and staff for their hard work, and recommendation.

Commissioner Martin thanked the applicant for providing the Commission with a floor plan of the project.

In response to Commissioner Martin, Mr. Hoke stated his family would be running the business, and they would be selling salves, lotions and cannabis.

Commissioner Soliz questioned if the applicant had any idea of what their ongoing benefit would be for Antioch and noted that this was an issue because the City was looking for ways to mitigate any potential impacts to police services. He expressed concern regarding the location of this business due to its close proximity to the Babe Ruth fields where children congregate and suggested the applicant mitigate that issue or relocate to a more appropriate location.

Commissioner Parsons commented that she looked at the separation issue and if you drew a circle around the project area, it would be within 600-feet of the sports fields; however, by means of travel it was not within the separation area. She stated she did not believe this project would impact children.

Vice Chair Schneiderman asked if Mr. Hoke had an advisor or consultant and if hours of operation would conflict with when children would be present at adjacent religious facilities.

Mr. Hoke responded that his consultant, Jason Teramoto, was present this evening. He reported that he has had conversations with the church and they had come to an agreement on how they would work around their service times.

Vice Chair Schneiderman opened the public hearing.

Fredric Webster, Attorney representing Masjid AbuBakr Muslim Community Center, stated their facility was 100-150-feet from this proposed operation and they were opposed to the opening of this cannabis dispensary. He reported they had approximately 400 members and he presented letters of objection to the Planning Commission signed by approximately 325 people. He noted section 9-5.3845 of the Antioch Municipal Code stated that a cannabis business shall be located no closer than 600-feet from a private/public school serving students Kindergarten through High School. He noted that they run a school in the context of teaching religion and therefore feel that they fall within that exception that there should be no close cannabis dispensary near them. He referenced the City's rules regarding tobacco and alcohol use permits, noting that they indicated that no use permit shall be issued within 500-feet of any school, park, recreational center, child care center or similar use. He commented that their Community Center was a similar use. He stated they were objecting to the issuance of any permits

with respect to this facility based on the fact that they had a community of 350-400 which included children that were present on a consistent basis. He noted they were also concerned about odors, traffic generation, and the hours of operation conflicting with their facility. In summary, he noted this application was not in conformance with the tenor and aspects with what the City wanted with respect to a cannabis dispensary being isolated away from members of the community and families. He reported that many members of the Community Center were present this evening because they did not want this business near their facility. He clarified that the Islamic religion did not support the use of alcohol or cigarettes and families would be able to witness this use next door to their Community Center.

In response to Vice Chair Schneiderman, Mr. Webster confirmed that the Muslim Community Center was gated; however, he noted that they participated in the surrounding area.

Commissioner Parsons stated that she had visited mosques and observed that they were not allowed to disseminate to the exterior of the facility. She questioned if it was the proximity or the use of the business that was objectionable. She explained that the business was prohibited from having any odor.

Mr. Webster explained that once the business was permitted, it was a difficult issue to marginalize and eliminate. He noted that it would be a taking without compensation which would be difficult and expensive for members of the Mosque should they wish to proceed in that direction. He clarified that the objection was the business being within 100-125 feet of their facility. He commented that the members of their community would have exposure to the dispensary and their customers as they arrived and left their facility. He questioned if vaping products would be subject to the Tobacco Use Ordinance. Additionally, he questioned what would prevent customers from consuming products outside of the business.

Commissioner Parsons explained that the business was prohibited from allowing the use of cannabis outside and if there was cannabis use outside of the business, they would be in violation of their Use Permit, and could be shut down. She encouraged Mr. Webster to wait to see if violations occurred and if so, voice objections at that time.

Mr. Webster stated that he felt it was too optimistic to believe that violations would not occur.

Commissioner Parsons stated that there were laws that prohibited violations and currently cannabis dispensaries were allowed in this area. She noted that the children who attended her church would not be wandering into the dispensary area and she would not allow her great grandchildren to wander beyond a barrier. She stated that she believed the two uses could work cooperatively.

Mr. Webster stated he believed Commissioner Parsons was being very optimistic and noted that not all parents were as vigilant with respect to their children. Additionally, he questioned why Community Center attendees would suddenly have to be vigilant, when this business would be changing their lives in violation of the intent and purpose of the City Ordinance. He stated he understood that it was an area designated for cannabis dispensaries; however, they were asking for compliance with the separation requirement and that it be located at least 600-feet from a Community Center where families congregated.

Commissioner Parsons stated that the cannabis business had the right to be at this location and the Community Center had control over their attendees.

Mr. Webster reiterated that he did not believe the cannabis business had the right to be located within 600-feet of where families participate in religious activities. He stated the City was now asking them to change their lifestyle so that they did not go near a business that was 125-feet away and in violation of the Antioch Municipal Code.

Commissioner Parsons stated that she understood Mr. Webster's concerns; however, she believed his argument was with the City Council who set parameters that did not include religious facilities. She stated Council provided the rules that the Planning Commission were guided by and they were not allowed to deny the Use Permit based on this location.

Mr. Webster stated if the Commission would not issue a permit for a smoke shop within 500- yards of a Child Care Center or similar use, how could they now say they were authorized to approve a cannabis dispensary within 125-feet of the Community Center.

Commissioner Parsons reiterated that the Planning Commission was authorized to recommend to the City Council that they approve this cannabis use under the rules that were given.

Amer Abusafieh, Walnut Creek resident, stated he stood in opposition to the dispensary noting the location being within 100-feet of the Muslim Community Center was unacceptable. He noted approximately 100 children played in the yard in celebration of Ramadan. He stated it was within the Planning Commission's purview to accept or reject this use permit. He announced that they would have 20-times more people at the next meeting, on this issue, to stand in opposition.

Tangir Choudhary, Brentwood resident, stated that they did not just stay indoors at the Community Center because they came there to socialize and the children came to learn. He noted the children were allowed to play in the parking lot and he was concerned that they could witness someone from the dispensary, partaking in the item they just purchased and leaving the area intoxicated.

Richard Azhammour, Antioch resident, stated that if they had a Cannabis use next door to their Mosque, they would have to change their ways and place cameras on the property to prove when violations occurred. He questioned if Mr. Hoke discussed their project with the Mosque. He reiterated that children used the outdoor area for play and the fence was shared with the Cannabis Dispensary property. He questioned what the policy was for dispensary patrons using their products outside on the property.

Commissioner Parsons reiterated that Council had not included churches in their parameters and the next step would be for the Mosque to voice their concerns to the City Council.

City Attorney Smith mentioned that during public comment a brief response was acceptable; however, they wanted to allow speakers to provide their comments without engaging in extensive dialogue.

Armando Cableron, Antioch resident, discussed his criminal history and noted that he was reformed which he attributed to the Muslim Community Center. He noted placing this business next to a place of worship was unacceptable because of potential crimes that it may bring. He further noted that in the past he had witnessed criminal activity occurring at cannabis clubs. He stated he was opposed to having this business 100-feet from the Community Center.

Mohammad Musazay, Antioch resident, stated he was speaking in opposition to the Use Permit. He noted that it was a very active Community Center and his child was present most of the time.

Vice Chair Schneiderman questioned if the Community Center was a school.

Mr. Musazay responded that his child attended the Community Center during the summer time.

Sammy Natshah provided written comment explaining that he believed the dispensary was too close to the Muslim Community Center.

Omar Alsugire, Antioch resident, stated it was his understanding that there were two dispensaries next to the Mosque and economically he did not know how this dispensary would help the community. He suggested the space be utilized as a supermarket.

Jason Teramoto, Lead Consultant for the Hoke family, discussed his professional history. In responding to previous comments, he clarified the dispensary would be a family operated business and products would include vaping, flowers, edibles, and tinctures. He noted the public benefit was included in the Development Agreement and the framework for it had been established. He provided a diagram of the 600-foot radius and noted that the Babe Ruth field was outside the 600-foot radius and the path to get there was prohibitive. He stated they have had an open door policy to address complaints since the application was filed and he had just found out about the Community Center's grievances

on June 3, 2019. He reported that he made an attempt to introduce himself to them today. He commented that at no point during the process did they receive any concerns from the Community Center and they would be happy to discuss any mitigating factors to address their concerns. He commented that they would be providing public information on drug diversion and rehabilitation programs. He mentioned that he was included in one of the drafting groups for Proposition 64.

Vice Chair Schneiderman closed the public hearing.

In response to Commissioner Parsons, Lieutenant Bittner reported that the security plan was reviewed by Captain Morefield and determined to be adequate for the site.

Vice Chair Schneiderman questioned if a wall placed between the Community Center and the Cannabis Dispensary would mitigate the potential impacts.

Lieutenant Bittner stated that he was not familiar enough with site to comment.

Commissioner Parsons suggested that the applicant discuss the use of landscaping material to block the view between the uses with members of the Mosque.

In response to Commissioner Martin, City Attorney Smith clarified that Mosques and religious institutions were not included in the protected uses that would be within the 600-foot separation requirement. Planning Manager Morris responded that as conditioned they could make the findings to approve the Use Permit and determine that it was consistent with the Antioch Municipal Code. City Attorney Smith reported that this use was legal and the applicant was required to have a security plan. Senior Planner Morris stated this application would not be the approval of the sale of illegal drugs and the security plan was subject to an annual audit. She noted any illegal activities would be subject to law enforcement. She confirmed that this hearing was properly noticed.

Commissioner Soliz stated rules were set forth by Council to assure that these businesses did not locate in close proximity to children; however, this project was 280-feet from the Babe Ruth fields and within 150-feet from the Mosque, and Victory Outreach Church. He noted that even though the Ordinance as written may not specifically say to keep it away from these uses, that was where it was going. He explained that cannabis dispensaries remained illegal under Federal law, which superseded State law. He stated he believed there were major issues that needed to be addressed in this proposal and building a wall or planting landscaping would not mitigate the fact that it was located in close proximity to where children congregate. He stated he believed there were probably better places for this facility. He voiced his support for having this item go to the City Attorney's office for further clarification, as to whether the sports fields qualified as a park and whether the congregations of people at the Mosque and Victory Outreach were a violation of the Ordinance. He stated if it went forward to Council, they would not take the time to review the outstanding issues and valid points were raised that warranted further discussion. He reiterated that he was very concerned with the business being in close proximity to children and that the applicant had not addressed the economic benefit to the

City. He questioned if Council had provided the parameters with regards to which taxation rate would apply to these businesses. He commented that a Development Agreement was not included in the proposal.

Planning Manager Morris clarified that the Planning Commission this evening was making a recommendation and regardless of the outcome of the vote, this item would go to Council.

City Attorney Smith clarified that the ordinance applied to city-owned parks; therefore, the Babe Ruth Sports fields would not be included.

Vice Chair Schneiderman reported that she had driven by the property and witnessed children playing in the parking lot. She noted that she would support mitigation to satisfy the speakers concerns with regards to the children at the adjacent Mosque and church.

Commissioner Parsons stated that Council should review the parameters defined of the Ordinance because child care centers within churches and mosques were not defined.

In response to Commissioner Parsons, Planning Manager Morris explained that the Planning Commission was being asked to make a recommendation to the City Council on the Use Permit application which was the land use entitlement to allow the operation of a cannabis dispensary at this location. She noted in order for the City Council to approve the project, they would have to make the findings that were no negative impacts of this project on the City and that it was consistent with the City's codes and requirements.

A motion was made by Commissioner Soliz to deny the Use Permit (UP-18-13) for the cannabis dispensary with delivery. The motioned died for the lack of a second.

RESOLUTION NO. 2019-17

On motion by Commissioner Martin, seconded by Commissioner Parsons, the Planning Commission recommended the City Council approve the Use Permit (UP-18-13) for cannabis dispensary with delivery. The motion carried the following vote:

AYES:	Schneiderman, Parsons, Martin
NOES:	Soliz
ABSTAIN:	None
ABSENT:	Motts, Zacharatos, Turnage

Commissioner Martin stated he made the previous motion with the understanding that the applicant followed the requirements. He suggested Council revisit whether there should be other exceptions within the overlay district. He questioned whether a second formal recommendation could be made to the Council.

City Attorney Smith responded that Commissioner Martin's concern regarding the overlay district would likely be taken up by Council; however, if he wanted to make a separate recommendation, he asks that it be condensed so specific concerns were noted.

On motion by Commissioner Martin, seconded by Commissioner Parsons, the Planning Commission recommended the City Council review all of the restrictions that may need to be reconsidered in the cannabis overlay district and not just those currently listed. The motion carried the following vote:

AYES: **Schneiderman, Parsons, Martin and Soliz**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Motts, Zacharatos, Turnage**

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

None.

ADJOURNMENT

On motion by Commissioner Martin, seconded by Commissioner Parsons, the Planning Commission adjourned the meeting. The motion carried the following vote:

AYES: **Schneiderman, Parsons, Martin and Soliz**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Motts, Zacharatos, Turnage**

The meeting was adjourned at 7:49 P.M. to the next regularly scheduled meeting on June 19, 2019 at 6:30 P.M.

Respectfully submitted:
KITTY EIDEN, Minutes Clerk