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STAFF REPORT CUP-21-03

Date Submitted: September 28, 2021
Agenda Date Requested: October 6, 2021
To: John Day Planning Commission
Applicant: Rocky Mountain Dispensary
Subject: CUP-21-03
Location: 743 W. Main Street. John Day, OR 97845
Map: 13S31E22DD Tax Lot 500
Zoning: General Commercial (GC)

Type of Action Requested

<input type="checkbox"/>	Resolution	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Formal Action	<input type="checkbox"/>	Report Only

1. BACKGROUND

Rocky Mountain Dispensary has applied for a conditional use permit to site a marijuana dispensary at 743 W. Main Street in John Day (Map No. 13S31E22DD Tax Lot 500).

2. APPLICABLE CRITERIA

All marijuana businesses in John Day are subject to the requirements of Ordinance No. 20-195-06, Marijuana Time, Place and Manner Regulations, as well as the Special Use Standards in Section 5-2.3.11 of the City of John Day Development Code (the Code).

Conditional Use Permits must be approved by the Planning Commission through a Type III procedure as outlined in Section 5-4.4.

3. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on September 15, 2021 and notice was posted in the Blue Mountain Eagle on September 15 as required by the Development Code.

Public comments received: No public comments were received prior to the date of staff report publication.

4. BURDEN OF PROOF

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.

5. PLANNING COMMISSION CONSIDERATIONS

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type III Legislative Amendment under section 5-4. The Planning Commission should approve the request if it conforms to the approval criteria.

6. STAFF RECOMMENDATION

Staff recommends that the Planning Commission **approve the request for conditional use permit CUP-21-03 and the findings contained in the staff report,** [with any conditions necessary to sufficiently mitigate or correct any unmet approval criteria (if applicable.)]

7. APPROVAL CRITERIA AND FINDINGS

John Day Development Code Section 5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval contains the applicable approval criteria for the conditional use permit application. The Planning Commission's evaluation of the project must focus on the relevant code criteria under Section 5-4.4.040 and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

Recreational marijuana facilities are also subject to the Time, Place and Manner regulations as codified in Section 5-2.3.100 Commercial Districts – Special Use Standards.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary. The plans, exhibits, and narrative submitted by the applicant and used in making the findings are attached to this report and include:

- Application (Exhibit A)

All of the above documents are hereby incorporated and made part of the public record.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.

A. Use Criteria

- 1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.*

Findings: The size of the property is 0.47 acres with highway access from US 26/ W. Main Street. The size, dimensions, location, topography and access are adequate for the proposed use, which will occur within an existing, lawfully established structure.

- 2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval.*

Findings: Adjacent property owners were notified of the application, and no public comments were received concerning potential negative impacts of the proposal. Staff does not anticipate the proposed use will have negative impacts on adjacent properties.

- 3. All required public facilities have adequate capacity or are to be improved to serve the proposal, consistent with City standards.*

Findings: The proposal does not include public utility hookups, and the conditional use will not impact the current use or capacity of public facilities.

- 4. A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 5-2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.*

Findings: The proposed structure is consistent with Section 5-2 subject to the standards of the City's TPM Ordinance, as codified in 5-2.3.100 Commercial Districts – Special Use Standards, below.

- B. Site Design Standards. The Site Design Review approval criteria (Section 5-4.2.060) shall be met. The Planning Official may waive the application requirements for the Site Design Review upon determining that the Conditional Use Permit application provides sufficient information to evaluate the proposal.*

Findings: The CUP application provides sufficient information to evaluate the proposal without site design review.

- C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the uses is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:*

- 1. Limiting the hours, days, place and/or manner of operation;*

Finding: The business is subject to the standards in 5-2.3.100, below.

- 2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;*

Finding: The business is subject to the standards in 5-2.3.100, below.

- 3. Requiring large setback areas, lot area, and/or lot depth or width;*

Finding: Not required unless it is recommended by the commission.

- 4. Limiting the building or structure height, size, lot coverage, and/or location on the site;*

Finding: The size, lot coverage, and location of the structure is limited to the current facility, as proposed in the application.

- 5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;*

Finding: Not required unless it is recommended by the commission. The vehicular access for the facility will remain as it was under its prior use.

- 6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved.*

Finding: Not applicable.

7. *Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;*

Finding: Not applicable.

8. *Limiting the number, size, location, height and/or lighting of signs;*

Finding: Not applicable.

9. *Limiting or setting standards for the location, design, and /or intensity of outdoor lighting;*

Finding: Subject to the standards of the TPM ordinance.

10. *Requiring berms, screening or landscaping and the establishment of standard for their installation and maintenance;*

Finding: Subject to the standards of the TPM ordinance.

11. *Requiring and designating the size, height, location and/or materials for fences;*

Finding: Not applicable.

12. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.*

Finding: Not applicable.

13. *Requiring dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 5-3.1, and Section 5-3.1.030 in particular;*

Finding: Not applicable.

14. *Establish a time table for periodic review and renewal, or expiration, of the conditional use to ensure compliance with conditions of approval; such review may be subject to approval by the Planning Official or Planning Commission through a Type II Administrative Review or Type III Quasi-Judicial process at the discretion of the decision making body.*

Finding: The City reserves the right to review the conditional use permit as needed in order to ensure compliance with conditions of approval.

15. Other Conditions of Approval

Finding: Not required unless it is recommended by the commission.

5-2.3.100 Commercial Districts – Special Use Standards

This section supplements the standards contained in Sections 5-2.3.020 through 5-2.3.090. It provides standards for the following land uses to control the scale and compatibility of those uses:

...

B. Marijuana Businesses

1. Marijuana Business General Standards.

In addition to the approval criteria for site design review and/or conditional use permit approval, and any other applicable standards in this Development Code, the applicant shall satisfy the following standards. These shall continue to be maintained throughout the life of the permit.

a. The marijuana business's state license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission and the marijuana business must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

Finding: City staff will review the OLCC licensing and ensure all state requirements are met prior to issuing a marijuana business license to operate in the city.

b. If there are any conflicting standards between state law and the standards of this Development Code, the most stringent standard shall apply.

Finding: No conflicts are known at this time.

c. An applicant for a marijuana business must obtain a City business license no later than six months after land use approval.

Finding: City shall issue a business license upon approval of the conditional use permit and verification that all code requirements are met.

d. All marijuana businesses shall conduct operations inside secure, enclosed structures. Marijuana products may not be displayed in a manner that is externally visible to the public. All doorways, windows, and other openings shall be located, covered, or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area. No drive-through, curb-side, or other external sales methods are permitted.

Finding: The proposed location is enclosed and secure. v

e. The applicant shall demonstrate how the proposed marijuana business complies with all state security system requirements applicable to the proposed marijuana business.

Finding: Staff shall verify compliance with the other requirements prior to issuing a business license.

f. Odors shall not be detectable at the property line. The applicant must demonstrate that an air filtration system or other mitigation measures will effectively control odors, to the satisfaction of the Planning Commission.

Finding: The structure is fully enclosed and has appropriate ventilation to ensure odors do not escape the building. The Planning Commission may request additional verification, if needed.

g. The structure within which the marijuana business will operate must meet applicable fire and building code requirements.

Finding: The City will request verification from the county and state Fire Marshall that the building meets applicable fire and building codes prior to the County issuing the certificate of occupancy.

h. Applicants for a specific type of marijuana business shall satisfy the additional standards applicable to that type of marijuana business set out in subsections (2) through (5) of this section.

i. Marijuana businesses must maintain adequate outdoor lighting over each exterior exit. All outdoor lighting must be fully shielded, downward casting, and must not spill over onto structures, other properties, or the night sky.

Finding: The location will be renovated to include lighting over all exits.

j. No events of any kind are permitted in any marijuana business.

Finding: Applicant was made aware of this requirement during their pre-application meeting.

3. *Additional standards for Recreational Marijuana Retailers.*

a. The premises for a marijuana retailers must not be located:

i. At the same address as another marijuana business except as permitted under state law, the time, place, and manner restrictions, and this Development Code; or

Finding: No other retailers are located at this address.

ii. *Within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors;*

Finding: No elementary, secondary or career schools are within 1,000 feet of the structure.

iii. *Within 500 feet of the premises of a medical marijuana dispensary; and/or*

Finding: No medical dispensaries are located within 500 feet.

iv. *Within 500 feet of the premises of another marijuana retailer.*

Finding: No marijuana retailers are located within 500 feet.

v. *Sales or any other transfers of marijuana to customers must occur inside the licensed premises and must be conducted only between the marijuana business and individuals 21 years of age and older.*

Finding: Applicant is aware of this requirement.

b. *“Within 1,000 feet” or “500 feet” means a straight-line measurement in a radius extending or 1,000 feet or less, or 500 feet or less (as applicable), in every direction from the closes point on the boundary line of the real property or premises (as applicable) of the applicable conflicting use identified in this section.*

c. *“Premises” shall have the meaning assigned to such term in ORS 475B.015(30).*

d. *Marijuana retailers are considered “retail” for purposes of parking requirements.*

e. *When marijuana business is both a medical marijuana dispensary and a recreational marijuana retailer, the marijuana business must adhere to the more stringent standards between the two uses.*

f. *No marijuana shall be consumed on the premises.*

Finding: Applicant is aware of these requirements.

8. PLANNING COMMISSION MOTION

After hearing the staff presentation and any public testimony, including any rebuttal, the commission will close the hearing and deliberate. The following motion is suggested:

“I move to approve CUP-21-03 based on the findings contained in the staff report [with conditions, if any].”

The staff report may be amended during the course of the hearing.

Respectfully submitted this 29th day of September, 2021,



Nicholas Green, Planning Official
City of John Day

Attachments:

Exhibit A. Application