



CITY OF CARSON

Legislation Text

File #: 2018-862, Version: 1

Report to Mayor and City Council

Tuesday, November 20, 2018

Special Orders of the Day

SUBJECT:

PUBLIC HEARING CONSIDERING INTRODUCTION OF ORDINANCE 18-1826 APPROVING DEVELOPMENT AGREEMENT NO. 17-2018 BY AND BETWEEN THE CITY OF CARSON AND FOCAL STRATEGIC INVESTMENTS, LLC, FOR A PROPOSED COMMERCIAL CANNABIS OPERATION CENTER LOCATED AT 17505 S. MAIN STREET IN THE CITY OF CARSON (APN 7339003900) AND;

INTRODUCTION OF ORDINANCE NO. 18-1825 FOR ZONING TEXT AMENDMENT NO. 29-2018 TO EXPRESSLY PERMIT COMMERCIAL CANNABIS USES WITHIN INDUSTRIAL ZONES SUBJECT TO APPROVAL OF A DEVELOPMENT AGREEMENT; AND, APPROVAL OF RESOLUTION CERTIFYING ASSOCIATED MITIGATED NEGATIVE DECLARATION (CITY COUNCIL)

I. SUMMARY

On October 30, 2018, the Planning Commission recommended denial of this request with a 4-5 vote, Exhibit No. 1. Focal Strategic Investments, LLC ("Applicant" / "Developer") is requesting approval of a Development Agreement ("DA") by and between the City of Carson and Applicant, a Zoning Text Amendment ("ZTA"), and an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Exhibit Nos. 2, 3, 4.) The proposed development is the construction of two one-story buildings totaling approximately 13,557 sq. ft. on a 0.66-acre vacant lot. The two buildings will be used for commercial cannabis operations including cultivation, manufacturing, and storage of residual materials from cannabis cultivation. The term of the DA is twenty years.

Public benefits include cannabis tax revenues to the City of 18% of proceeds and \$25.00 per square foot for space utilized as cultivation area (generating a very rough estimate of perhaps \$1,000,000 or more in annual revenue to the City), payment of \$27,114 in development impact fees to the City, participation in a community facilities district to provide funding for public safety services and infrastructure, social justice hiring and a commitment to local hiring.

II. RECOMMENDATION

Staff recommends Council DISCUSS and then CONSIDER whether to take the following actions (in the following order):

1. OPEN the public hearing, TAKE public testimony, and CLOSE the public hearing; and
2. APPROVAL OF RESOLUTION NO. 18-162, CERTIFYING AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM, FOR THE FOCAL STRATEGIC INVESTMENTS, LLC PROJECT, FOR WHICH AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; and
3. INTRODUCE FOR FIRST READING, BY TITLE ONLY AND WITH FURTHER READING WAIVED, ORDINANCE NO. 18-1825, ZONING TEXT AMENDMENT NO. 29-2018, TO EXPRESSLY PERMIT COMMERCIAL CANNABIS USES WITHIN INDUSTRIAL ZONES SUBJECT TO APPROVAL OF A DEVELOPMENT AGREEMENT; and
4. INTRODUCE FOR FIRST READING, BY TITLE ONLY AND WITH FURTHER READING WAIVED, UNCODIFIED ORDINANCE NO. 18-1826, APPROVING DEVELOPMENT AGREEMENT NO. 17-2018 BY AND BETWEEN THE CITY OF CARSON AND FOCAL STRATEGIC INVESTMENTS, LLC, FOR A PROPOSED COMMERCIAL CANNABIS OPERATION CENTER LOCATED AT 17505 S. MAIN STREET IN THE CITY OF CARSON (APN 7339003900); and

OR

5. DENY the request by not taking action on the item.

III. ALTERNATIVES

Take no action and/or provide further direction to City staff.**IV. BACKGROUND**

A. Project Site and Surrounding Land Uses

The proposed project involves the development of an undeveloped parcel located at 17505 S. Main Street in the City of Carson (APN 7339003900). The project is located in a highly urbanized area surrounded by a mixture of land uses including commercial, warehouse, light industrial, automotive, and manufacturing uses. The project site is bordered to the east by Main Street and commercial uses, a three-story hotel (Carson Plaza Hotel) and West Albertoni Street to the south, nursery uses (Centeno's Nursery and Landscaping) and the SR-91 to the north.

B. Background and Analysis

The City's Commercial Cannabis Operation Permit Regulatory Program as contained in Chapter 15 of Article VI of the Carson Municipal Code authorizes no more than four (4)

commercial cannabis centers (“Permits”).

A commercial cannabis center may include indoor cultivation, mixed-light cultivation, manufacturing, testing and/or (wholesale) distribution. Applications for Permits were accepted by the City and subject to an initial review for adherence to local and state requirements. City’s cannabis consultant reviewed the applications. Five Permit applications were eligible to be sent to the Cannabis Permit Committee (“CPC”) for review based on specified criteria (“Merit List”).

The CPC convened on August 2 and 13, 2018 and recommended that two applicants be issued a Permit. At the September 4, 2018 City Council meeting, a resolution to approve the CPC’s recommendations based on Merit List criteria was provided for consideration.

The City Council upon receipt of CPC recommendations made a final determination and issued two Cannabis Operation Permits (Resolution No. 18-128) based on Merit List factors including one to Focal Strategic Investments, LLC (Focal), Exhibit No. 5.

The Carson voters by a margin of almost 2:1 at the November 6, 2016 General Municipal Election approved taxes on commercial cannabis activities.

At the September 4, 2018 City Council meeting, Resolution 18-130 was approved to set the interest rate on unpaid cannabis taxes at 5%, to set commercial cannabis operation tax rates at 18% of proceeds and at \$25 per square foot of cultivation, with the intention of securing a total of four million dollars or more over a three year period from individual commercial cannabis centers (four centers maximum), Exhibit No. 6.

C. Planning Commission Action

On October 30, 2018, the Planning Commission held a public hearing to consider the said project. The Planning Commission recommended denial of the project to the City Council with a 5-4 vote.

D. Proposed Project

The proposed project would involve the construction of two, one-story buildings totaling 13,357 square feet that would be 20 feet tall up to the top of the parapet. The building to the east of the project site immediately fronting South Main Street is approximately 7,600 square feet and includes a cultivation area, small lobby area, and storage area. The building on the west site of the project site is approximately 5,757 square feet and would include a cultivation area, manufacturing area for manufacturing of cannabis products, and a storage area.

Operation of the proposed project would include cannabis cultivation, harvesting, drying, extraction, packaging, and production of cannabis products. These products would be distributed to licensed facilities and dispensaries eligible to receive such products, in compliance with State of California and the City of Carson laws and regulations.

It is anticipated that proposed project would include approximately 29 employees (grower,

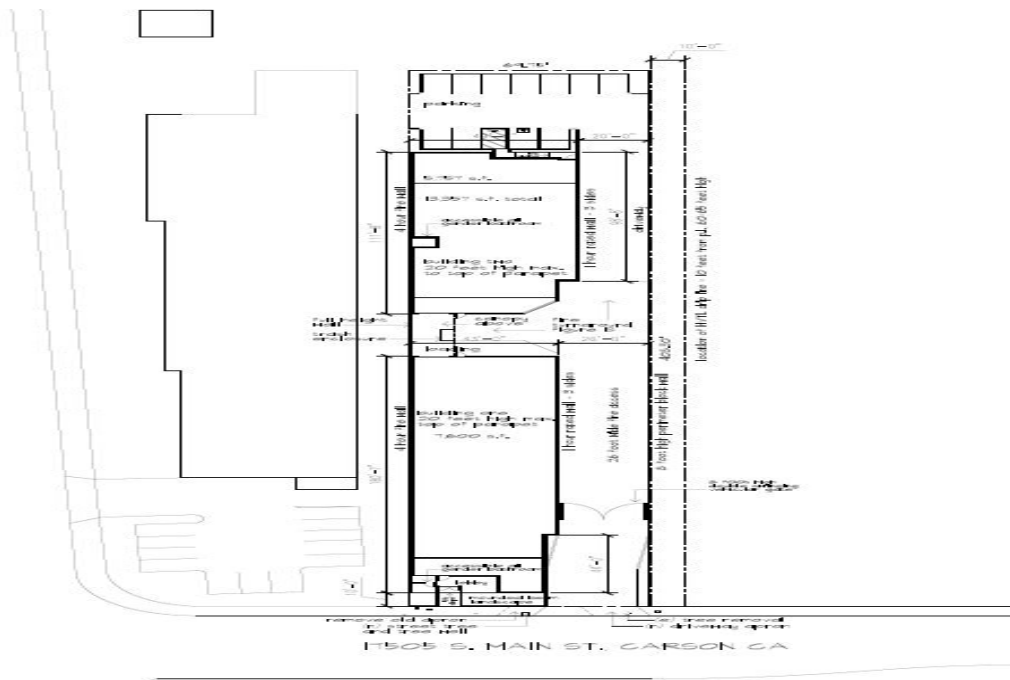
cultivation employees, extraction managers, sales associates, technical and support staff). With the exception of security personnel who will present at the facility 24/7, other employees including master growers, employees at the proposed project engaged in cultivation, manufacturing operations, and administration would typically be at the facility from 9 am to 5 pm, Monday through Sunday.

The proposed project could include the following uses:

- Cultivation - involves growing, harvesting, drying, curing, trimming, inspecting and packaging.
- Manufacturing Operations - involves the extraction of tetrahydrocannabinol (THC) from the cannabis plant to produce cannabis oils, waxes, and edibles. Activities associated with manufacturing operations include extraction, post-processing, infusing, inspecting, packaging and labeling.

Access to the project site would be from one driveway (ingress and egress) accessible from South Main Street. The driveway would extend the length of the two buildings from east to west providing access to surface parking for the proposed project located on the east end of the property. Eleven parking spaces would be provided, including one handicapped accessible space. Pedestrian access into the proposed project would be from the lobby area fronting South Main Street. A loading area for deliveries and trash would be located between the two buildings that would be covered by a canopy. An eight-foot double swinging gate near the driveway entrance would limit access to the parking areas and loading areas. Deliveries and pickup of products would be scheduled whenever possible before or after normal hours. Trash would be placed in trash bins secured with a lock placed inside in secured, locked storage areas within the buildings. Any rejected cannabis would be destroyed by grinding the cannabis and mixing with compost.

The development is anticipated to occur over 12 months, and construction is scheduled to begin in first quarter 2021.



Conceptual Site Plan

E. Discretionary Approvals

The proposed project is subject to City of Carson Ordinance No. 17-1637 (Chapter 15 of Article VI of the Carson Municipal Code), which contains conditions necessary for a Commercial Cannabis Operation Permit, that include requirements for hours of operation, an odor control plan, a detailed security plan, and a fire safety plan.

In compliance with the City's Municipal Code, the Applicant will seek City approvals which include the following:

- Development Agreement (DA) - between the City of Carson and Focal Strategies, LLC - subject of this request;
- Zoning Text Amendment (ZTA) to expressly allow commercial cannabis within Industrial zones (zoning code presently silent) - subject of this request
- Variance (VAR) - to permit reduced parking and front yard setback - administrative review and approval pursuant to the Development Agreement
- Mitigated Negative Declaration - subject of this request; and
- Site Plan & Design Review (DOR) - administrative review and approval pursuant to the Development Agreement (to permit final layout and design of the development)

F. Development Agreement

State Law allows cities to enter into DAs with private parties. A DA is a legal, binding contract between a city and any person or entity having a legal or equitable interest in a property. The agreement must clearly outline conditions, terms, restrictions and requirements.

The DA includes three basic deal points: the term or length of the Agreement, the fees the developer has to pay to the City, and community wide benefits. Once a DA is approved by the City Council, the rules of development for that property cannot change even if the zoning code or other development codes are changed.

Under the Development Agreement Statute, cities have a right to enter agreements with private parties to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development.

The Statute authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

Development Agreements are often used in large, complex projects and in projects that have a long lead time, multiple phases, or a long development period, in order to give the developer certainty in regards to the entitlements and other governmental actions. There may also be a “business deal” component to a DA, where a city may agree to undertake certain actions to help a project in return for other considerations from a developer, sometimes financial.

G. Development Agreement Deal Points

The most important parts of DAs are the financial and non-financial deal points that are agreed upon between the City and the Applicant. (Exhibit No. 3.) There are no established rules or policies when negotiating these deal points as each proposal is unique and should be considered on its own merits.

The following provides a brief discussion of each of the deal points:

- 1) Term: 20 years
- 2) Fees:
 - a. Taxes and Fees: Manufacturing: 18% of proceeds; Cultivation: 18% of proceeds plus \$25.00 per square foot for space utilized as cultivation area; Distribution: 18% of proceeds; and, Testing: 18% of proceeds. The revenues generated for the City are estimated roughly at perhaps \$1,000,000 or more annually.
 - b. Development Impact Fees: Developer will pay \$27,114 in Development Impact Fees, to mitigate Project impacts on the City's infrastructure, including but not limited to, any or all of the following: Traffic and circulation (roads, sidewalks, and signals); Public Safety (Fire and Sheriff's stations); Parks and open space (park land/improvements and trails and bikeways); Library; Noise (sound walls); Flood

control and stormwater.

- c. CFDs: Developer shall join one or more community facilities districts (“CFDs”) to fund public safety services and infrastructure necessary to serve the Project. Developer shall cooperate and pay for the formation of such CFDs and shall agree to annex into such CFDs when requested by City. The CFDs will levy a special tax on the Site property.
- 3) Public Benefits:
- a. Social Justice Programs: Developer and commercial cannabis operations at the Site shall promote equitable business ownership and employment opportunities at the Site in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impact of the war on drugs on those communities. To these ends, Developer and commercial cannabis operations at the Site shall engage in proactive efforts to hire partners and employees from marginalized communities and/or rehabilitated persons; seek to establish commercial cannabis operations that are diverse and inclusive; and, seek the hiring of otherwise qualified employees who have been arrested for or convicted of minor cannabis-related crimes that would not be considered crimes following the passage of the Adult Use of Marijuana Act (Proposition 64).
 - b. Local Hiring: Developer covenants that with respect to the construction, operation and maintenance of the Project and Site, Developer shall cause all solicitations, for full-time, part-time, new or replacement employment relating to the construction, operation and maintenance of the Project and Site, to be advertised in such a manner as to target local City residents, and Developer shall make other reasonable efforts at local employment outreach as City shall approve. Developer shall also notify City of jobs available at the Project and Site such that City may inform City residents of job availability at the Project and Site. Developer shall include in each lease or sale of any portion of the Site, as the case may be, this Local Hiring Program as a guideline for any subtenant, lessee, owner of any portion of the Site, or by any applicant licensed on any portion of the Site

In exchange for these benefits to City and the other public benefits described in the DA, the Developer shall have a vested right to develop the Project on the site in accordance with and to the full extent permitted by the Development Agreement which shall exclusively control the development of the Project.

H. General Plan & Zoning Consistency

According to the City’s General Plan, Land Use Plan, the project site is designated as Light Industrial, which permits manufacturing, research and development, wholesaling, warehousing and a limited amount of supportive retail and services.

Proposition 64 established a presumption that state licensed commercial cannabis operations are allowed unless otherwise expressly prohibited. The subject property is currently zoned Manufacturing, Light (ML-D) which is silent on commercial cannabis uses. Carson Ordinance No. 17-1637 allows for the issuance of commercial cannabis operation permits in industrial zones. A ZTA is provided for consideration to expressly allow cannabis uses within industrial zones subject to an approved DA. (Exhibit No. 1.)

I. Environmental Review

The proposed Project is subject to the provisions of the California Environmental Quality Act (CEQA). An Initial Study, Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program were prepared for the project and are provided for consideration and approval.

The MND is based on the finding that, by implementing the identified mitigation measures, the project's potentially significant environmental effects will be reduced to levels that are less than significant. The reasons to support such a finding are documented by an Initial Study prepared by the City. (Exhibit No. 2.)

J. Public Notice

Public notice was published in Our Weekly newspaper on October 18, 2018. Notices were mailed to property owners and occupants within 500 feet on November 8, 2018. The agenda was posted at City Hall 72 hours prior to the City Council meeting.

V. FISCAL IMPACT

Cannabis tax revenue to the City from the Focal Strategic Investments, LLC commercial cannabis center will be based on an 18% proceeds tax as well as a \$25.00 tax per square foot for space utilized as cultivation area. The revenues generated for the City are estimated roughly at perhaps \$1,000,000 or more annually. Developer has agreed to pay \$27,114 in development impact fees to the City. Developer has agreed to join a CFD to fund public safety services and infrastructure.

VI. EXHIBITS

1. Planning Commission Minutes, October 30, 2018
2. Ordinance No. 18-1825, Zoning Text Amendment No. 29-2018
3. Resolution No. 18-162, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
<http://ci.carson.ca.us/content/files/pdfs/planning/cannabis/FocalMND.pdf>
4. Ordinance No. 18-1826, Development Agreement No. 17-2018
5. Resolution No. 18-128, Cannabis Operation Permits
6. Resolution No. 18-130, Cannabis Tax

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