

**RESOLUTION NO. 2023-xx**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA  
APPROVING A CONDITIONAL USE PERMIT (CUP-22-0008) ALLOWING CANNABIS  
RETAIL AT 29 5<sup>TH</sup> STREET (APN 001-072-008)**

WHEREAS, Humboldt Highness, LLC, is requesting approval to allow a Cannabis Retail use in a portion of an existing 1,578-sf commercial building (325-square feet (sf) for retail sales, and 160-sf for storage), at 29 5<sup>th</sup> Street (APN 001-072-008); and

WHEREAS, the subject property is zoned Downtown West (DW) with a Downtown Commercial (DC) land use designation; and

WHEREAS, pursuant to Eureka Municipal Code (EMC) 158.308.C, Cannabis Retail requires a Conditional Use Permit (CUP) in the DW zone district, and an application for a CUP (CUP-22-0008) was submitted on October 31, 2022; and

WHEREAS, the applicant also intends to operate a General Cannabis use, including mechanical extraction, edible production, processing, and distribution in other portions of the building, which is a principally permitted use; and

WHEREAS, the Planning Commission of the City of Eureka did hold a duly noticed public hearing at City Hall in the City of Eureka on January 9, 2023, at 5:30 p.m. in person and via Zoom in the Council Chamber; and

WHEREAS, the Planning Commission of the City of Eureka has reviewed the subject application in accordance with Eureka Municipal Code Chapter 155 and 158, and after due consideration of all testimony, evidence, and reports offered at the public hearing, does hereby find and determine the following facts:

1. The proposed Cannabis Retail use is consistent with the General Plan and Zoning Code adopted by the City Council.
2. The site is suitable for the size, design and operating characteristics of a Cannabis Retail use.
3. The proposed use will be compatible with existing and planned land uses in the building and the vicinity of the property.
4. The proposed use will not be detrimental to the public health, safety, or welfare.
5. The proposed Cannabis Retail use is properly located within the City and adequately served by existing services and infrastructure.
6. Action on the Use Permit is a discretionary and subject to environmental review in accordance with the California Environmental Quality Act (CEQA); however, the

proposed project is categorically exempt from the provisions of CEQA per §15301, Existing Facilities, Class I of the CEQA Guidelines, which exempts the operation, permitting, leasing, or minor alteration of existing private structures involving negligible or no expansion of the existing or former use. The project qualifies for the Existing Facilities exemption because the proposed Retail Cannabis use will be within an existing commercial structure and no expansions or external modifications are proposed.

WHEREAS, in the opinion of the Planning Commission of the City of Eureka, the proposed application should be approved subject to the following conditions:

1. City and State Cannabis Licensing. Prior to operation of the proposed Cannabis Retail use at the subject property, any applicable City of Eureka Cannabis Retail License and State of California Cannabis License shall be acquired, and the facility must pass a pre-operational inspection to the satisfaction of the City's Cannabis Licensing Program Manager. If Cannabis Retail operations commence before licensure and inspection, the use permit may be suspended by the Director of Development Services - Planning, and forwarded to the Planning Commission for revocation at a public hearing. All necessary licenses shall be maintained during operation of the Cannabis Retail use.
2. Business License. A Business License shall be obtained prior to commencement of the Cannabis Retail use, to the satisfaction of the City of Eureka Finance.
3. Odor Control. The property owner, and/or any cannabis retail operator at the subject property, shall install, operate, and maintain odor control measures which shall be reviewed and approved by Development Services – Building prior to commencement of the Cannabis Retail use. The odor control measures shall be effective at controlling cannabis odors such that no cannabis odors are detectable beyond the walls of the facility.
4. Security System. The property owner, and/or any cannabis retail operator at the subject property, shall install, operate, and maintain a security system which shall cover the interior and exterior of the existing building, and its design shall be reviewed and approved to the satisfaction of the City's Cannabis Licensing Program Manager, and the Eureka Police Department, prior to commencement of cannabis retail operation. The security system(s) shall be designed as a means of deterring and discouraging criminal activity at the property for as long as any business is engaged in the proposed use.
5. Allowed Location for Retail Cannabis Activities. The cannabis retail use shall be limited to the designated 325-square-foot retail and 160-square foot storage portion of the subject property. Should expansion to other portions of the property be desired, the applicant shall apply to Development Services – Planning to modify the use permit.
6. Building Permit. Prior to commencement of any demolition, remodeling, or construction, or installation of signage, the applicant shall obtain all required Building and Fire permits to the satisfaction of Development Services -Building, and Humboldt Bay Fire. A requirement of any necessary building permits shall be to have the sewer lateral

and water service inspected, and repaired if needed, to the satisfaction of Public Works - Engineering.

7. Encroachment Permits. Any work required in, over, or under either the City of Eureka or Caltrans rights-of-way shall require issuance of an encroachment permit to the satisfaction of City of Eureka Public Works and Caltrans.
8. Pedestrian Focused Frontage Façade Improvements. Prior to any exterior modifications to the building façade facing 5th Street, except paint, but including the addition of any signage, the owner or operator shall obtain Design Review approval by the Design Review Committee in accordance with EMC 155.412.040. Unless otherwise exempted by EMC 155.340.030, prior to any signs being placed or erected onsite, the owner or operator shall also obtain a City of Eureka Sign Permit approved by Development Services – Planning, and, if required, a building permit from Development Services – Building.
9. Entrance Notices. For the duration of operation of a Cannabis Retail use at the subject property, each entrance of the subject property shall be clearly and legibly posted with a notice indicating persons under the age of 21 are precluded from entering the premises, except for qualified patients, unless accompanied by a parent or legal guardian.
10. Fencing. All existing fencing shall be brought into compliance with EMC 155.320 (Fences and Walls). The existing fence at the south property line adjacent to 5<sup>th</sup> Street (front) shall be removed prior to commencement of operations, and following issuance of an encroachment permit by Caltrans, if required (see Condition 7).
11. Hazardous Materials. Cannabis Retail use operations shall comply with all applicable Health and Safety Code and California Fire Code requirements related to the storage, use and handling of hazardous materials and the generation of hazardous waste. If the business handles hazardous materials at any one time, in a quantity equal to, or greater than: a total weight of 500 pounds, a total volume of 55 gallons, or 200 cubic feet of gas at standard temperature and pressure, the business shall report these activities to the Humboldt County Environmental Health Division which administers the Hazardous Materials Program as the County’s Certified Unified Program Agencies via the California Environmental Reporting System (CERS) and a Hazardous Materials Business Plan (HMBP) shall be completed and submitted via CERS. HMBP information shall be updated in CERS within 30 days of beginning storage of chemicals, or operation. Cannabis uses shall maintain compliance with all HMBP requirements and inspections.
12. Inadvertent Archeological Discovery Protocol. In the event any ground disturbing activity occurs, the City’s standard protocol for inadvertent archeological discovery (cultural or historical artifacts) shall be followed:
  - a. If archaeological resources are encountered during construction activities, all onsite work shall cease in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist will be retained to evaluate and assess

the significance of the discovery, and develop and implement an avoidance or mitigation plan, as appropriate. For discoveries known or likely to be associated with native American heritage (prehistoric sites and select historic period sites), the Tribal Historic Preservation Officers for the Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe are to be contacted immediately to evaluate the discovery and, in consultation with the project proponent, City of Eureka, and consulting archaeologist, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. Historic archaeological discoveries may include 19th century building foundations; structure remains; or concentrations of artifacts made of glass, ceramic, metal or other materials found in buried pits, old wells or privies.

- b. If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified paleontologist can assess the nature and importance of the find and, if necessary, develop appropriate treatment measures in conformance with Society of Vertebrate Paleontology standards, and in consultation with the City of Eureka.
  - c. In the event of discovery or recognition of any human remains during construction activities, the landowner or person responsible for excavation would be required to comply with the State Health and Safety Code Section 7050.5. Construction activities within 100 feet of the find shall cease until the Humboldt County Coroner has been contacted at 707-445-7242 to determine that no investigation of the cause of death is required. If the remains are determined to be, or potentially be, Native American, the landowner or person responsible for excavation would be required to comply with Public Resources Code Section 5097.98. In part, PRC Section 5097.98 requires that the Native American Heritage Commission (NAHC) shall be contacted within 24 hours if it is determined that the remains are Native American. The NAHC would then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the landowner or the person responsible for the excavation work for the appropriate means of treating the human remains and any associated grave goods within 48 hours of being granted access to the site. Additional provisions of Public Resources Code Section 5097.98 shall be complied with as may be required.
13. Indemnification and Hold Harmless. Any cannabis retail licensee operating at the subject property shall indemnify and hold harmless the City and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cannabis facility, and

for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise from cannabis activities

NOW THEREFORE, BE IT RESOLVED the Planning Commission of the City of Eureka does hereby approve the application, subject to the conditions listed above.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Eureka in the County of Humboldt, State of California, on the 9<sup>th</sup> day of January, 2023, by the following vote:

AYES: COMMISSIONER  
NOES: COMMISSIONER  
ABSENT: COMMISSIONER  
ABSTAIN: COMMISSIONER

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Meredith Maier, Chair, Planning Commission

*Attest:*

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Kristen M. Goetz, Executive Secretary