

STAFF REPORT

Date: September 11, 2019

To: Mayor and City Council

Thru: Sabra Newby, City Manager

Subject: **D.5. Staff Report (For Possible Action): Discussion and potential approval of a privileged retail marijuana store license for Mitchell Donald Britten, Cheyenne Medical, LLC., doing business as (dba), Thrive Cannabis Marketplace, 7300 South Virginia Street, Suite B, Reno, Nevada.**

From: Michael Chaump, Business Relations Manager

Summary: This privileged business license application is for a proposed retail marijuana store to be located in the former Butcher Boy site located at 7300 South Virginia Street, Suite B, Reno, Nevada. The application was submitted prior to Council approval of a moratorium on applications for new retail marijuana stores.

The property is zoned Mixed Use/South Virginia Transit Corridor (MU/SVTC). The MU/SVTC zoning district allows for the establishment of a retail marijuana store, subject to certain locational requirements.

Council approval of a privileged business license is also required for retail marijuana stores. This is a discretionary action subject to the approval considerations outlined in RMC sec. 5.05.008(j) and described below. A review of policy and compatibility considerations is included under the discussion section, including an evaluation of potentially sensitive uses in the area, adopted policies related to the use and location, and public safety considerations in the area.

This review identified a potentially incompatible use (The Empowerment Center, a licensed residential substance abuse treatment facility) located on the adjoining property.

The privileged business license summary is attached as Exhibit A. Staff recommends Council consider the information provided herein to approve or deny the privileged business license for a retail marijuana store.

Background: RMC sec. 5.05.008(k) states that privileged business license applications for gaming, liquor, medical marijuana establishments, marijuana establishments, pawnbroker, secondhand merchandise, and escort services must be approved by Council. Applications must

also meet the initial requirements set forth by Reno City Council in RMC Titles 4 and 5.

On June 12, 2019, Council approved a Pending Moratorium on the acceptance of retail marijuana store privileged business license applications. On July 24, 2019, Council approved a Final Moratorium on the acceptance of retail marijuana store privileged business license applications. This application was submitted prior to approval of either moratorium and may be acted upon. A zoning verification letter for the proposed marijuana establishment was issued on March 7, 2019 (Exhibit B). The privilege license application was received March 8, 2019.

Discussion: NRS sec. 453D.210 and RMC Ch. 5.22 prohibit marijuana retail stores adjacent to residentially zoned property, within 1,000 feet of a school, within 300 feet of a community facility, or within 2,500 feet of another retail marijuana store. The zoning verification letter provided by the City confirms consistency with the minimum spacing requirements based on the information provided by the applicant from a State of Nevada licensed surveyor (Exhibit C). Marijuana retail stores located in conforming zoning districts and outside the prohibited areas may be established subject to issuance of a privileged business license.

The City reserves all rights to revoke any privileged business license, amend the existing zoning verification letter, or issue a cease and desist letter in the event the Marijuana Establishment does not comply with RMC or any provision of NRS.

A review of policy and compatibility considerations for the privileged business license identified a sensitive use adjacent to the business location that could be impacted by issuance of the proposed privileged business license. Potentially sensitive uses include residential zoning, schools, day care facilities, community facilities, houses of worship and treatment facilities for substance abuse or mental illness.

The Empowerment Center is a residential substance abuse treatment center adjoining the proposed marijuana establishment (to the south). The facility has been in operation for 14 years and provides treatment services for the community. Twenty-four clients reside at The Empowerment Center and the use (Group Home) is classified as a residential use, but the establishment is not zoned residential and such zoning is not required. RMC and NRS do not establish any zoning or distance requirements between, nor prohibit colocation of, such facilities and retail marijuana stores.

Nevertheless, the Empowerment Center claims that operation of a retail marijuana store immediately adjacent to a residential substance abuse treatment center would adversely affect the welfare of its clients and the community at large. The Empowerment Center submitted a letter in opposition to this business license application (Exhibit D). Staff also received a letter from a concerned citizen in opposition to issuing a business license to establish a marijuana establishment next to The Empowerment Center (Exhibit E).

The nearest residentially zoned property is located approximately 1,090 feet to the west, across South Virginia Street and I-580. The nearest residential use not separated by the freeway is located approximately 1,750 feet to the south across Longley Lane. No other potentially sensitive uses were identified in the area.

There are no adopted policies in addition to the provision in NRS and RMC addressing marijuana establishments in this area.

The Reno Police Department reported 16 calls for service at this location from July 1, 2018 through June 30, 2019 (Exhibit F). This is not an unusually high number of calls for service.

Staff recommends Council consider the information provided in the staff report and exhibits to approve or deny the privileged retail marijuana store license application.

Financial Implications: None at this time.

Legal Implications: Legal review completed for compliance with City procedures and Nevada Law.

RMC sec. 5.22.013 provides broad authority and discretion as it relates to the approval, denial, and conditioning of business licenses for marijuana establishments. It also allows Council to deny “any application” determined to be “not in the best interest of the welfare, health, or safety of the city; or if the applicant or location of the marijuana establishment is determined by Council not to be suitable.”

RMC sec. 5.05.008(k) creates guidance for privileged business licenses generally, and requires Council approval for gaming, liquor, medical marijuana establishments, marijuana establishments, pawnbroker, secondhand merchandise, and escort service licenses. City Council may deny a license for good cause, which is defined in RMC sec. 5.05.008(j), to include but not be limited to:

- (1) The application is incomplete or contains false, misleading or fraudulent statements.
- (2) The applicant fails to satisfy any qualification or requirement imposed by this title, local, state or federal law, regulation or administrative policy pertaining to such activities.
- (3) The applicant has been subject, in any jurisdiction, to administrative action of any kind imposing fines or other discipline relating to the operation of a business licensed in the jurisdiction, or denied a license or work card, due to suitability issues.

- (4) The applicant has engaged in deceptive practices upon the public.
- (5) The applicant has, within the five years immediately preceding the date of the application, been convicted of any of the following criminal offenses, regardless of the jurisdiction of the conviction:
- a. A felony or any crime which, under the laws of this state, would amount to a felony;
 - b. Any crime of which theft, fraud or intent to defraud is an element;
 - c. Unlawfully possessing or distributing a controlled substance;
 - d. Solicitation, prostitution, or pandering; or
 - e. Any sex offense requiring the applicant to register under NRS 179D.441 to 179D.470, if the applicant has been classified by the State as a Tier 1 or below; or
- (6) A person who, within the 10 years immediately preceding the date of the application, has been convicted of any sex offense requiring the applicant to register under NRS 179D.441 to 179D.470, if the applicant has been classified by the state as a Tier 2 or Tier 3 offender.
- (7) Any cause reasonably related to furtherance of the public welfare.

Under this section, cases generally construe “good cause” as having two components: 1) the reason for denial must reasonably relate to the public welfare, and 2) the decision must be supported by substantial evidence and not be arbitrary or capricious. Substantial evidence requires more than the mere statements of interested parties and the opinions of Council Members. *City Council, Reno v. Travelers Hotel*, 100 Nev. 436 (1984). Accordingly, Council and staff should develop a substantive factual record before denying a privileged license for “good cause”.

To build such a record or otherwise assist in its decision-making, Council may continue the issuance of a license to gather more information or evidence is permissible provided the delay is reasonable in duration or purpose.

Other grounds for denial appear in the RMC Chapters governing other, specific privileged licenses. Most notably, RMC 5.07.040 provides:

No new on-premises wine and beer licenses, on-premises alcoholic beverage licenses, or cabaret licenses shall be issued authorizing the sale of any alcoholic beverage for consumption on the premises for any location or premises which the city council deems unfavorable or undesirable due to its proximity to any

schoolhouse or schoolroom used by any public or common school, or church, or its location in an area that is predominantly residential or, because of the specifics of the proposed use, either detrimental to the surrounding properties or burdensome for police monitoring purposes. . .

Any denial of a license must be consistent with Equal Protection limitations. Applicants in similar situations must be treated substantially the same. However, courts typically uphold differences that rationally support different treatment to further a governmental interest.

Recommendation: Staff recommends Council consider the information provided and [Options: a) approve or b) deny] the privileged retail marijuana store license application.

Proposed Motion: I move to [Options: a) approve or b) deny] the privilege business license.

Attachments:

- Exhibit A - Business Review Summary (PDF)
- Exhibit B - Zoning Verification_ RME19-00015 (PDF)
- Exhibit C - Survey (Cheyenne Medical, LLC Dispensary) (PDF)
- Exhibit D - The Empowerment Center (PDF)
- Exhibit E Letter - Bredemeier (PDF)
- Exhibit F - CFS - 7300 S Virginia St (PDF)
- Community Facility Buffer - 7300SouthVirginiaStreet (PDF)
- Zoning Map - 7300_SouthVirginiaStreet (PDF)