



Agenda Report

MEETING DATE: Tuesday, June 1, 2021

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DIRECTOR MERRIAM
ASSOCIATE PLANNER IVAN CARMONA

SUBJECT: APPEAL OF THE CANNABIS SELECTION COMMITTEE'S DENIAL OF
PRE-APPLICATION #1284 FOR THE ESTABLISHMENT OF A
CANNABIS RETAIL FACILITY IN THE CITY OF WATSONVILLE

RECOMMENDATION:

Staff Recommends that the Planning Commission uphold the Cannabis Selection Committee's denial of Pre-Application #1284 for the establishment of a cannabis retail facility in the City of Watsonville, based on the attached Findings and Resolution.

BASIC PROJECT DATA

APPLICATION NO.: 1284

APPEAL DESCRIPTION: An appeal of the Cannabis Selection Committee's denial of Pre-Application #1284 for Greater Goods Marketplace LLC to establish a cannabis retail facility.

APPLICANT: Colin Disheroon, 416 Semple Avenue, Aptos, CA. 95003

CANNABIS COMPANY: Greater Goods Marketplace LLC. dba Hang Ten

BACKGROUND

On June 9, 2020, Watsonville City Council adopted amendments to WMC Chapters 14-16 (District regulations) and 14-53 (Cannabis Facilities) regarding the cultivation, manufacture, distribution, testing, delivery and retail sales of cannabis products. The amended Ordinance limited cannabis facilities to the following:

- (6) cultivation,
- (15) manufacturing,
- (No Limit) testing,
- (7) non-storefront retail (only those with valid cultivation and/or manufacturing permittees),
- (3) storefront retail,
- (2) distribution (stand-alone) and
- (3) processing.

The following are the number of available cannabis licenses for the 2020 Cannabis Pre-Application Process in the City of Watsonville:

- 2 Cultivation Permits
- 9 Manufacturing Permits
- 2 Distribution Permits
- 3 Processing Permits
- 3 Retail Dispensary Permits
- 7 Non-storefront Retail Delivery Permit for cultivators/manufacturers/processors
- Unlimited Testing

On September 15, 2020, the City of Watsonville Community Development Department opened its cannabis pre-application process for 30-days, closing on October 15, 2020. All applicants were required to submit a complete pre-application, which was outlined in the Cannabis Use Permit Pre-Application Procedure Guidelines (Attachment 1) and the Cannabis Facility Pre-Application (Attachment 2). The Pre-Application procedure does not require the applicant to provide a physical site, as the Pre-Application process is intended to review prospective cannabis businesses regarding qualifications of owners, business plan, labor and employment plan, neighborhood plan, and community benefits.

Pre-Application Proposal

On October 15, 2020, applicant, Colin Disheroon, on behalf of Greater Goods Marketplace LLC dba Hang Ten, submitted a pre-application packet to explore establishment of a cannabis retail, distribution, and manufacturing facility in the City of Watsonville.

PROCESS

Cannabis Pre-application

Pursuant to [Watsonville Municipal Code \(WMC\) Section 14-53.108](#), all proposed cannabis facilities are required to submit a Cannabis Pre-Application packet. The Cannabis Pre-Application procedure is administered in four phases.

Phase One

The Phase One application period was open between September 15th and October 15th, 2020. During phase one, prospective applicants were required to submit a Cannabis Use Permit Pre-Application Packet. Applicants were required to submit the signed Cannabis Use Permit Pre-Application form and all evaluation criteria found in the Cannabis Use Permit Pre-Application Procedure Guidelines.

Phase Two

Phase Two was the Pre-Application Evaluation and First Ranking. This phase scored each pre-application with a maximum score of 1,000 points based on the following evaluation criteria:

- Section 1. Business Plan (200 Points)
- Section 2. Labor and Employment Plan (200 Points)
- Section 3. Neighborhood Plan (200 Points)
- Section 4. Community Benefits Plan (200 Points)

- Section 5. Owner Qualifications (200 Points)

During Phase Two, each applicant was evaluated and ranked based on the documents provided in the Cannabis Pre-Application Packet. Each applicant received a notice from the City informing them of their evaluation and first ranking. The notice for Greater Goods Marketplace LLC is found in Attachment 3. Accompanying the notice is the evaluation report prepared by HDL, the City's cannabis consultant (Attachment 4).

Greater Goods Marketplace LLC ranked #1 of 21 applicants in Phase Two, and received the following scores:

- Cannabis Retail – Score 99.30%
- Cannabis Manufacturing – Score 97.50%
- Cannabis Distribution – Score 97.50%

The notice dated December 21, 2020 informed all applicants of their scores and whether they would advance toward Phase Three. The notice also provided information regarding interview details, dates, and the possibility of having a remote interview.

Prior to commencing Phase Three, HDL, the City's cannabis consultant, advised City staff to conduct Phase Three interviews in person. Due to the sensitive nature of establishing cannabis facilities, HDL and staff determined that interviews should be conducted in person rather than remotely with Covid-19 precautions in place. A new notice dated January 15, 2021 (Attachment 5) was sent to all applicants advancing to Phase Three. The notice informed all applicants of the Phase Three interview changed to in person rather than remotely.

Phase Three

Phase Three was the interview and second ranking for applicants selected to advance in the process. During Phase Three, applicants were interviewed by the City's Cannabis Selection Committee consisting of the following representatives: Police Chief, Fire Chief, Community Development Director, City Manager, and an independent third-party cannabis consultant, HDL. The Cannabis Selection Committee evaluated and interviewed three more applicants than the number of Cannabis Use Permits available for each permit type. Attachment 6 shows the applicants who advanced to Phase Three.

In order to ensure safety for staff and applicants, the interview room was equipped with Plexiglas dividers and seating was set at least 6 feet apart for those that wished to maintain distances required per County Health Officer Orders. In addition, staff cleaned off all surfaces between interviews. Hand sanitizer was readily available, and windows were opened to allow fresh air as well to supplement the City's climate control system.

Phase Three interviews were based on the same evaluation criteria as Phase Two with a maximum of 1,500 points:

- Business Plan (450 Points)
- Labor and Employment Plan (450 Points)
- Community Benefits (300 Points)
- Qualifications of Owners (300 Points)

During Phase Three interviews, the Cannabis Selection Committee scored and tabulated the combined scores for all applicants for Phase Two and Phase Three. Phase Three used the Applicant Interview Scoring Rubric to score each applicant. The scoring rubric used three categories for scoring. Table 1 provides the Applicant Interview Scoring Rubric.

Table 1. Applicant Interview Scoring Rubric

RATING	DEFINITION OF CRITERIA	POINT RANGE
Exceptional 90-100%	The response has exceptional merit and reflects an excellent approach which should clearly result in the superior attainment of all requirements and objectives of the City. The response includes numerous strengths and no weaknesses or deficiencies. As a result, the response provides significant advantages and no disadvantages. The response is clear and precise, fully supported, and demonstrates a complete understanding of all requirements (State & Local law).	1,350-1,500
Good 80-90%	The response demonstrates a sound approach which is expected to exceed all requirements and objectives of the City. The response includes multiple strengths, only a few minor weaknesses, and no deficiencies. As a result, the response provides advantages, and few disadvantages. The response is clear and precise, supported, and demonstrates a clear understanding of the requirements (State & Local law).	1,200 – 1,350
Acceptable 70-80%	The response demonstrates an approach which is capable of meeting all requirements and objectives of the City. The approach has both strengths and weaknesses but still no deficiencies. The response is clear and precise, supported, and demonstrates a clear understanding of the requirements (State & Local law).	1,050 – 1,200

For Phase Three, Greater Goods Marketplace LLC. was awarded 1,327 points, bringing their score to 88.47%. In order to advance to Phase Four, the Cannabis Selection Committee tabulated and combined the scores from Phase Two and Phase Three. Those applicants with the highest combined scores would advance toward Phase Four and have an opportunity to submit for a formal Cannabis Conditional Use Permit.

The total combined score for Greater Goods Marketplace LLC. was 2,320 points out of 2,500 points. This brought Greater Goods Marketplace LLC overall score to 92.80%. The total combined scores for all applicants for Phase Two and Phase Three are provided in Attachment 7. Overall, Greater Goods Marketplace LLC ranked 4th for a cannabis retail license, and ranked 1st for distribution and manufacturing licenses.

Because there are only 3 retail cannabis permits available, Greater Goods Marketplace LLC did not score high enough to be invited to apply for a Cannabis Use Permit for retail sales.

APPEAL PROCESS

WMC Chapter 14-53.503 (Appeals) directs that any decision regarding or pertaining to the regulatory permit process outlined in the Cannabis Facilities Ordinance, or any action taken by the Zoning Administrator, may be appealed per Section 14-10.1100 (Appeals).

Per WMC Chapter 14-10.1100, all appeals shall be made in writing and shall state the nature of the application and describe the specific grounds upon which the decision of the official or body is considered to be in error, and shall be accompanied by the filing fee as set by resolution of the Council.

Such appeals, to be effective, shall be received by the Secretary to the Commission or by the City Clerk pursuant to Section 14-10.1101 no later than 14 days following the date of the action from which such appeal is being taken.

The Planning Commission, at the conclusion of the hearing pursuant to Part 6 of Chapter 14-10, may sustain, modify, or overrule the action of the City official and/or body. The decision of the Planning Commission shall be final unless an appeal to the City Council is filed pursuant to Section 14-10.1101. Unless otherwise determined by the Commission, the hearing shall not be “de novo” but shall be limited to the issues identified in the notice of appeal.

If appealed to the City Council, the City Council, at the conclusion of the hearing pursuant to Part 7 of Chapter 14-10, may sustain, modify or overrule the action of the Planning Commission. The decision of the Council on such appeal shall be final.

In order for an official action to be overturned by an appeal, the acting body must find that the action taken by the official or advisory body was taken erroneously and was inconsistent with the intent of the Watsonville Municipal Code.

Appeal Letter

On March 2, 2021, Colin Disheroon, on behalf of Greater Goods Marketplace LLC dba Hang Ten, submitted an appeal letter (Attachment 8) to the Community Development Department. The letter requested appeal of the Cannabis Selection Committee’s denial of Greater Goods Marketplace LLC to continue in the application process.

DISCUSSION:

In the appeal letter, Colin Disheroon provided two points in which he questioned the validity of the scoring and interview process, as outlined below, with staff response.

1. Mr. Disheroon stated that the materials provided for Phase Two and Phase Three did not differ. In order to better understand the interview scoring, Mr. Disheroon requested additional information as to how the Phase Three Interview was scored.

Staff Response:

The Cannabis Selection Committee did not keep notes of each interview, but took the time to discuss and force-rank each group after their interview. Because only 3 retail cannabis licenses were available, staff understood how competitive and potentially contentious this process would be. Once all interviews were completed, the Cannabis Selection Committee made their final determination and scoring of all applicants. This was a deliberative decision-making process amongst the Committee, and was not taken lightly.

While Mr. Disheroon may wish a better understanding of the Committee's process, his statement does not indicate the Committee erred, nor is there evidence suggesting the Committee's decision was made in error.

2. Mr. Disheroon expressed concern that the limitation on the number of applicants allowed in the interview and the requirement for an in-person interview impacted their preparation and performance.

Staff Response:

Each applicant team invited to the Interview was limited to three representatives attending the in-person meeting. The in-person interviews were conducted in City Hall Conference Rooms A and B at 250 Main Street. The large conference room was set up with several tables pushed together, with plexiglass screens between each of the 3 seats, which were separated by at least 6 feet to ensure compliance with Covid-19 guidance. In addition to the City's climate control system, the windows were left open to let in additional fresh air. The tables were wiped down between each interview.

A proctor was placed in the corner of the room to monitor the applicants during the interview, and the Committee members joined through Zoom. All applicants were given the option of using the plexiglass dividers and maintaining social distance and keeping their masks on. However, all applicants chose to sit together in a separate part of the room, and some kept their masks on while others removed their masks.

A lap-top was provided for the three representatives to communicate with the Selection Committee. The committee members consisted of the following: Community Development Director Suzi Merriam, Assistant Police Chief Thomas Sims, Finance Director Cindy Czerwin, Fire Department Rep. Kirt Vojvoda, City Manager Office Designee Elizabeth Padilla, HDL proctor David McPherson and proctor Ivan Carmona.

All cannabis applicants went through the same in-person interview process, without issue. Mr. Disheroon does not state in his appeal letter how this process led to the Cannabis Selection Committee making an erroneous decision in the scoring of his application. The in-person interview and limit on the number of applicants in attendance did not impact the Cannabis Selection Committee's ranking of applicants, and did not cause the Committee's decision to be made in error.

CONCLUSION

The Cannabis Pre-Application process was fair, transparent, and competitive. Each applicant was provided the same opportunity, environment, and conditions. With only 3 retail cannabis permits available, the City was prepared for a very competitive Pre-Application process, and was very careful in ensuring that the process was thoughtful and deliberate. The Cannabis Selection Committee was responsible for determining the most qualified candidates to invite to apply for Conditional Use Permits to open up retail facilities in the City, and this decision was not made in error.

ACTION

1. Public Hearing - Accept public testimony
2. Deny Appeal - Adoption of Resolution

ATTACHMENTS

1. Cannabis Use Permit Pre-Application Guidelines and Evaluation Criteria
2. Cannabis Facility Pre-Application Form
3. Greater Goods Marketplace LLC 1st Notice and Ranking Dated December 21, 2020
4. HDL Evaluation Report 1st Score and Ranking
5. Greater Goods Marketplace LLC 2nd Notice Dated January 15, 2021
6. Phase Three Scoring and 2nd Ranking
7. Phase Four total combined scores and Final Ranking
8. Greater Goods Marketplace LLC Appeal Letter dated March 2, 2021