



Legislation Details (With Text)

File #: 23-337 **Version:** 1 **Name:**
Type: Public Hearing Item **Status:** Passed
File created: 4/5/2023 **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency
On agenda: 4/17/2023 **Final action:** 4/17/2023

Title: SUBJECT: Appeal of the Planning Commission's Approval of Commercial Cannabis Business Permit (CCBP) #22-02R for Retail Cannabis at 1111 Motel Drive by JIVA MCE, LLC ("Jiva Life")

REPORT IN BRIEF

JIVA MCE, LLC ("Jiva Life") has appealed the Planning Commission's approval of Commercial Cannabis Business Permit #22-02R (Culture Merced Dispensary) for a retail cannabis facility at 1111 Motel Drive.

RECOMMENDATION

City Council - Adopt a motion:

- A. Granting or denying the appeal of JIVA MCE, LLC ("Jiva Life"); and,
- B. Providing direction to staff regarding findings to grant or deny appeal, with or without prejudice.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Letter of Appeal from JIVA MCE, LLC ("Jiva Life"), 2. JIVA MCE, LLC Supplemental Brief, 3. Planning Commission Meeting Minute Excerpt (November 9, 2022), 4. Planning Commission Resolution #5000 (Conditions of Approval), 5. Planning Commission Staff Report #22-840 (CCBP #22-02R), 6. Merit-Based Criteria, 7. Presentation Given during PC.pdf, 8. Ordinance #2532, 9. Presentation.pdf

Date	Ver.	Action By	Action	Result
4/17/2023	1	City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency	approved	Pass

Report Prepared by: Stephani Davis, Development Services Technician II, Development Services Department; Scott McBride, Director of Development Services.

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ALTERNATIVES

- 1. Deny appeal, affirming the approval of CCBP #22-02R and Environmental Review #22-04; or,
- 2. Deny appeal, modifying the approval of CCBP #22-02R and Environmental Review #22-04 (modifications to be specified in the motion); or,
- 3. Grant the appeal, reversing the approval of CCBP #22-02R and Environmental Review #22-04, and directing staff on how to proceed with the retail cannabis permit selection process; or,
- 4. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

City of Merced Ordinance #2532, Merced Municipal Code Section 20.44.170 (Attachment 6).

DISCUSSION

Background

In January 2022, Staff began the application process for the fifth commercial cannabis retail permit. The City received eleven (11) applications; 9 of the submitted applications succeeded to Phase 2 Merit-based review with the City’s Selection Panel consisting of the City Manager, the Police Chief, and the Director of Development Services. At the conclusion of the Selection Panel’s scoring, CCBP #22-02R (Culture Cannabis Merced), proposed at 1111 Motel Drive, received the highest rank with an average score of 95.33.

On November 9, 2022, a public hearing was held and CCBP #22-02R, with the associated Environmental Review Checklist (ERC) #22-04, was presented to and approved by the Merced Planning Commission, with a 5-2 vote. The Planning Commission minutes, resolution, and staff report are included at Attachments 3, 4, and 5.

On November 15, 2022, Jiva Life submitted a request to appeal the Planning Commission decision for approval. This appeal complies with the submission deadline of 5-business days following approval as offices were closed Friday, November 11, 2022, for Veterans Day.

On February 6, 2023, the appeal was scheduled for a public hearing. At that meeting, the City Council provided direction to continue the appeal to April 17, 2023.

Description

Commercial Cannabis Business Permit #22-02R proposes to use the location at 1111 Motel Drive to operate a cannabis retail business for both medicinal and adult use cannabis and cannabis-related products, including delivery services. This permit has been recommended for approval with conditions held in Resolution #5000 (contained in Staff Report #22-840 at Attachment #5), approved by the Planning Commission with modifications to the site plan to close access off Pine Street.

Jiva Life asserts that the City Selection Panel failed to properly score their application (CCBP #22-09R) and as a result, the Planning Commission improperly considered and approved CCBP #22-02R and ERC #22-04 (Attachment 1). Jiva Life did not submit a letter or other document to staff contesting its score until October 28, 2022, over two months after Jiva was informed of its score and rank and only 12 days prior to the Planning Commission hearing on CCBP #22-02R. In Jiva Life's letter, and in subsequent communications supporting its appeal, Jiva argues that it should have been awarded points for Criteria 5d and 5e of the Merit Based Selection Criteria for Commercial Cannabis Business Permits. Criteria 5d provides one point if the "[c]ombined prior experience of proposed owners is more than 1 year and up to 3 years with a verified Mutual Benefit Non-Profit Corporation for cannabis in compliance with California law and with proof of payment of taxes." Criteria 5e similarly provides 2 points if the combined experience is more than 3 years. The City Selection Panel did not award Jiva points for either criterion. Jiva Life claims that Dr. John Oram is a 5% owner of Jiva Life and Dr. Oram was the owner of CCSAC which was formerly a Mutual Benefit Non-Profit Corporation from 2011.

Merced Municipal Code 20.44.170(L)(1)(g)(iv) makes the City Selection Panel solely responsible for reviewing and scoring application packages during Phase 2 of the selection process. While City staff cannot speak on behalf of the City Selection Panel, staff and Counsel conducted a preliminary inquiry into Jiva Life's claims after receiving Jiva Life's initial letter contesting their score shortly before the hearing. Staff and Counsel found that there were two possible reasons the City Selection Panel did not award points to Jive Life for Criteria 5d and 5e. First, Jiva Life did not provide documentation or other information establishing Dr. Oram as an owner or officer of CCSAC for the required time period. While Jiva Life did include CCSAC's 2011 Articles of Incorporation, nothing in that document indicates that Dr. Oram had any association with CCSAC at that time. The information provided by Jiva Life only shows Mr. Oram's involvement with CCSAC as of June 15, 2017, until it converted to a General Stock Corporation on March 20, 2020. In staff and Counsel's estimation, Jiva Life had demonstrated Dr. Oram's involvement with CCSAC for, at most, just over 2.5 years. The second issue with Jiva Life's application was that CCSAC's business license was suspended between 2015 and 2020, raising questions regarding whether this entity operated in compliance with California law for the required period as stated by Criteria 5d and 5e. Even assuming Jiva Life qualified to receive one (1) point according to 5d, Jiva Life clearly did not demonstrate qualification under 5e and so their application would not have been top ranked. Ultimately, the City Selection Panel is responsible for conducting the merit-based scoring. As was communicated with Jiva Life, staff and Counsel's analysis of Jiva Life's application represents only the likely reason for Jiva Life's failure to earn points on 5d and 5e.

The City Council will hold a public hearing on April 17, 2023, for this appeal. City Council's review of this appeal shall be a de novo review pursuant to Merced Municipal Code 20.44.170L(4). As such, the Council will make its own determination, after closing the public hearing, based on what is presented to them during the hearing, and this shall be the final decision.

The City Council will need to provide direction to staff regarding Findings for approval (granting) or the denial of the appeal. A resolution to adopt the final action and findings will be presented to the City Council for adoption at a subsequent City Council meeting, but no new public hearing will be required at that time.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

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2. JIVA MCE, LLC Supplemental Brief
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6. Merit-Based Criteria
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8. Ordinance #2532
9. Presentation