

RESOLUTION NO. 18-117, SERIES 2018

RESOLUTION APPROVING A CANNABIS RETAILER SITE LOCATED AT 946 OLIVE DRIVE AND MAKING CERTAIN FINDINGS IN SUPPORT THEREOF

WHEREAS, the City Council adopted Ordinance No. 2514 to establish and impose reasonable zoning regulations on cannabis retailers desiring to locate in the City, as set forth in Davis Municipal Code section 40.26B.080; and

WHEREAS, proposed cannabis retailers are required to obtain a conditional use permit, subject to the recommendation of the Planning Commission and final approval of the City Council; and

WHEREAS, section 40.26B.080(c)(2) limits cannabis retailers to a total of no more than four (4) in the city for the first eighteen months following the effective date of Ordinance No. 2514, which was amended by the City Council on May 29, 2018 to authorize a total of five (5) cannabis retailers; and

WHEREAS, the City received numerous applications for proposed cannabis retailers during the initial application period, and the Planning Commission considered all eligible applications and provided recommendation to Council following duly noticed public hearings on February 28, 2018 and March 28, 2018; and

WHEREAS, the City Council, at duly noticed public hearings held on May 1, 2018 and May 29, 2018, considered all eligible applications, all oral and written evidence in support or opposition thereto, and the Planning Commission and staff recommendations regarding proposed cannabis retailers; and

WHEREAS, the City Council hereby finds pursuant to Davis Municipal Code section 40.30.080 that the proposed cannabis retailer use to be located at 946 Olive Drive, Davis, California 95616 ("Site"), as set forth in Planning Application No. 17-70 submitted by business applicant Kind Farma ("Applicant"), conforms to the requirements and intent of Chapter 40.26B regarding commercial cannabis uses and the City General Plan, and further that, under the circumstances of the particular case, the use will not constitute a nuisance or be detrimental to the public welfare of the community.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis does hereby resolve as follows:

SECTION 1. Recitals. The City Council hereby adopts the above recitals as true and correct findings of the City Council and incorporates them into this Resolution by this reference.

SECTION 2. Findings. In support of issuing a conditional use permit for the proposed cannabis retailer use to be located at 946 Olive Drive, Davis, California 95616, as set forth in Planning Application No. 17-70, the City Council hereby makes the following additional findings, pursuant

to the requirements of Davis Municipal Code (“DMC”) section 40.30.080 and DMC section 40.26B.080(e):

1. **Conformance.** That the use conforms to the City of Davis General Plan and Zoning, in that the use is conditionally permitted consistent with zoning and general plan requirements, and appropriate conditions to address potential concerns and impacts have been made part of the approval.
2. **Public Welfare.** That the proposed use will not constitute a nuisance or be detrimental to the public welfare of the community, in that the use will be consistent with existing and permitted uses; all conditions and requirements deemed necessary and in the public interest have been or will be met and have been imposed as a condition of approval to address potential safety concerns raised by the use, to the City Council’s satisfaction.
3. **Compatibility.** That the nature, intensity and condition of the proposed use is compatible with existing and adjacent uses and structures and appropriate for the site, in that the project will comply with all necessary safety requirements and regulatory measures, it meets all applicable development standards, and appropriate conditions have been made part of the approval.
4. **Environmental.** The proposed project is categorically exempt from further environmental review pursuant to CEQA sections 15301 and 15303 as the proposal involves operation, repair, maintenance, leasing and licensing of existing facilities, and involves the conversion of a small structure not exceeding 2,500 square feet where retail cannabis dispensing is a conditionally permitted use.
5. **Conditional Use Permit.** The proposed use at the Site is subject to additional findings and considerations set forth in DMC section 40.30.080. The City Council has considered all relevant evidence regarding the Site and the Applicant’s proposed use, and finds that Applicant’s proposed cannabis retailer use at the Site satisfies those considerations, as follows:
 - a. Pursuant to DMC section 40.26B.080(e)(1), the City Council has considered the type of proposed use by the Applicant. The proposed cannabis retailer will provide sales of medical and adult-use cannabis and cannabis products, and retail delivery-services. The City Council finds that these goods and services will provide unique, currently unavailable, and varied goods and services to the community by the Applicant’s use at the proposed location.
 - b. Pursuant to DMC section 40.26B.080(e)(2), the City Council has considered all evidence and testimony relevant to the Applicant’s proposed use, and determines that the proposed use will not be detrimental to the health, safety and welfare of the community. The project is subject to approval of a conditional use permit, including conditions of approval incorporated into the project, and subject to local and state regulatory standards, licenses and permits, to ensure that the use will not be detrimental to the health, safety and welfare of the community. Applicant’s failure to abide by those conditions of approval may result in permit revocation.

- c. Pursuant to DMC section 40.26B.080(e)(3), the City Council finds that the proposed use would enhance the economic viability of the area in which it is proposed to be located because it will provide new goods and services not currently available to the surrounding area and will bring retail activity to the proposed location.
- d. Pursuant to DMC section 40.26B.080(e)(4), the City Council finds that the Applicant has adequately addressed potential community benefits of the use to offset potential adverse impacts. In addition to providing payment of 1% of gross receipts to the City's Community Benefit Fund to mitigate potential impacts of the use at the Site, the Applicant voluntarily offered, and City accepted, Applicant will donate 4% of net profits from medical cannabis sales annually to the City's Community Benefit Fund. The City Council has determined that these community benefits adequately offset any potential adverse impacts of the proposed use.
- e. Pursuant to DMC section 40.26B.080(e)(5), the City Council has considered all evidence and testimony pertaining to Applicant's proposed use, including Planning Commission recommendation and particularly the extent of support or opposition to the proposed use and location from members of the community.
- f. Pursuant to DMC section 40.26B.080(e)(6), the City Council further finds that, based on other proposed locations considered concurrently with the Site, there will be only one other cannabis retailer located within one thousand feet of the Site at the time of this Resolution, which protects against an overconcentration of the type of proposed use and further protects the public health and safety.
- g. Pursuant to DMC section 40.26B.080(e)(7), and consistent with the above findings, the City Council further finds that the proposed use would will not lead to a further overconcentration of that particular type of premises in the area.
- h. Pursuant to DMC section 40.26B.080(e)(8), the City Council has considered Applicant's application, including relevant background and history of the Applicant. Based on the information provided, the City Council has determined that there are not prior problems or complaints pertaining to Applicant's operation of other businesses or cannabis operations on premises giving rise to public health, safety and welfare concerns.
- i. Pursuant to DMC section 40.26B.080(e)(9), the City Council is not aware of a history or high prevalence of police or crime-related problems in the area of the Site giving rise to specific safety concerns.
- j. Pursuant to DMC section 40.26B.080(e)(10), the City Council finds that the proposed use would enhance recreational or entertainment opportunities in the area. The proposed project is located in the Commercial-Services district, in proximity to other commercial recreational and entertainment uses. The project will thus remain consistent with surrounding uses while bringing new customers and opportunities to the area

- k. Pursuant to DMC section 40.26B.080(e)(11) the City Council further finds that the proposed use will not be located within the Mixed-Use District giving rise to concerns regarding compatibility with proximate residential uses.

In light of the above findings regarding the proposed use and location, the City Council therefore finds that issuance of the conditional use conforms to the requirements and intent of Chapter 40.26B regarding commercial cannabis uses and the City's General Plan, and that any conditions and requirements stipulated in Applicant's conditional use permit have been or will be met, and that the use will not constitute a nuisance or be detrimental to the public welfare of the community. These findings are further established and incorporated into the project approval, attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. Approval. In accordance with the City Council's findings stated in Section 2 and Exhibit A of this Resolution, the City Council hereby approves and directs issuance of Conditional Use Permit No. 6-17 to Applicant for the proposed cannabis retailer use at the Site, located at 946 Olive Drive, Davis, California 95616, as set forth in the attached Exhibit A. Approval and issuance of the conditional use permit is expressly conditioned on Applicant's continued compliance with all of the findings and conditions of approval specified in Applicant's conditional use permit, Article 40.26B of the Davis Zoning Code, Chapter 21 of the Davis Municipal Code, and all other applicable local and state laws and regulations pertaining to commercial cannabis retailers. Nothing in this Resolution shall be deemed to waive City's right to revoke Applicant's conditional use permit in the event Applicant violates any of the aforementioned conditions.


SECTION 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Davis on this 19th day of June, 2018, by the following vote:

AYES: Arnold, Frerichs, Lee, Davis

NOES: None

ABSENT: Swanson (recuse)



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A

**Finding and Conditions of Approval
PA #17-70, Conditional Use Permit #6-17**

**946 Olive Drive, Davis, CA
Proposed Cannabis Business: Kind Farma**

Findings for Approval

1. **Conformance.** That the use conforms to the City of Davis General Plan and Zoning, in that the use is conditionally permitted consistent with zoning and general plan requirements, and appropriate conditions to address potential concerns and impacts have been made part of the approval.
2. **Public Welfare.** That the proposed use will not constitute a nuisance or be detrimental to the public welfare of the community, in that the use will be consistent with existing and permitted uses; all conditions and requirements deemed necessary and in the public interest have been or will be met and have been imposed as a condition of approval to address potential safety concerns raised by the use, to the City Council's satisfaction.
3. **Compatibility.** That the nature, intensity and condition of the proposed use is compatible with existing and adjacent uses and structures and appropriate for the site, in that the project will comply with all necessary safety requirements and regulatory measures, it meets all applicable development standards, and appropriate conditions have been made part of the approval.
4. **Environmental.** The proposed project is categorically exempt from further environmental review pursuant to CEQA sections 15301 and 15303 as the proposal involves operation, repair, maintenance, leasing and licensing of existing facilities, and involves the conversion of a small structure not exceeding 2,500 square feet where retail cannabis dispensing is a conditionally permitted use.
5. **Conditional Use Permit.** The proposed use at the Site is subject to additional findings and considerations set forth in DMC section 40.30.080. The City Council has considered all relevant evidence regarding the Site and the Applicant's proposed use, and finds that Applicant's proposed cannabis retailer use at the Site satisfies those considerations, as follows:
 - a. Pursuant to DMC section 40.26B.080(e)(1), the City Council has considered the type of proposed use by the Applicant. The proposed cannabis retailer will provide sales of medical and adult-use cannabis and cannabis products, and retail delivery-services. The City Council finds that these goods and services will provide unique, currently unavailable, and varied goods and services to the community by the Applicant's use at the proposed location.
 - b. Pursuant to DMC section 40.26B.080(e)(2), the City Council has considered all evidence and testimony relevant to the Applicant's proposed use, and determines that the proposed use will not be detrimental to the health, safety and welfare of the community. The project

is subject to approval of a conditional use permit, including conditions of approval incorporated into the project, and subject to local and state regulatory standards, licenses and permits, to ensure that the use will not be detrimental to the health, safety and welfare of the community. Applicant's failure to abide by those conditions of approval may result in permit revocation.

- c. Pursuant to DMC section 40.26B.080(e)(3), the City Council finds that the proposed use would enhance the economic viability of the area in which it is proposed to be located because it will provide new goods and services not currently available to the surrounding area and will bring retail activity to the proposed location.
- d. Pursuant to DMC section 40.26B.080(e)(4), the City Council finds that the Applicant has adequately addressed potential community benefits of the use to offset potential adverse impacts. In addition to providing payment of 1% of gross receipts to the City's Community Benefit Fund to mitigate potential impacts of the use at the Site, the Applicant voluntarily offered, and City accepted, Applicant will donate 4% of net profits from medical cannabis sales annually to the City's Community Benefit Fund. The City Council has determined that these community benefits adequately offset any potential adverse impacts of the proposed use.
- e. Pursuant to DMC section 40.26B.080(e)(5), the City Council has considered all evidence and testimony pertaining to Applicant's proposed use, including Planning Commission recommendation and particularly the extent of support or opposition to the proposed use and location from members of the community.
- f. Pursuant to DMC section 40.26B.080(e)(6), the City Council further finds that, based on other proposed locations considered concurrently with the Site, there will be only one other cannabis retailer located within one thousand feet of the Site at the time of this Resolution, which protects against an overconcentration of the type of proposed use and further protects the public health and safety.
- g. Pursuant to DMC section 40.26B.080(e)(7), and consistent with the above findings, the City Council further finds that the proposed use would will not lead to a further overconcentration of that particular type of premises in the area.
- h. Pursuant to DMC section 40.26B.080(e)(8), the City Council has considered Applicant's application, including relevant background and history of the Applicant. Based on the information provided, the City Council has determined that there are not prior problems or complaints pertaining to Applicant's operation of other businesses or cannabis operations on premises giving rise to public health, safety and welfare concerns.
- i. Pursuant to DMC section 40.26B.080(e)(9), the City Council is not aware of a history or high prevalence of police or crime-related problems in the area of the Site giving rise to specific safety concerns.

- j. Pursuant to DMC section 40.26B.080(e)(10), the City Council finds that the proposed use would enhance recreational or entertainment opportunities in the area. The proposed project is located in the Commercial-Services district, in proximity to other commercial recreational and entertainment uses. The project will thus remain consistent with surrounding uses while bringing new customers and opportunities to the area
- k. Pursuant to DMC section 40.26B.080(e)(11) the City Council further finds that the proposed use will not be located within the Mixed-Use District giving rise to concerns regarding compatibility with proximate residential uses.
- l. Pursuant to DMC section 40.30.080, and in light of the above findings regarding the proposed use and location, the City Council therefore finds that issuance of the conditional use conforms to the requirements and intent of Chapter 40.26B regarding commercial cannabis uses and the City's General Plan, and that any conditions and requirements stipulated in Applicant's conditional use permit have been or will be met, and that the use will not constitute a nuisance or be detrimental to the public welfare of the community.

Conditions of Approval

General Conditions

- 1. Approval.** Planning Application 17-70, submitted by Timothy Schimmel for the proposed cannabis business "Kind Farma" and corresponding Conditional Use Permit 6-17, is approved to permit retail sales of medical and adult-use cannabis and cannabis products, and retail delivery-services, in a building size not to exceed 2,500 square feet of space located at 946 Olive Drive, Davis California, 95616.
- 2. Regulatory Permit.** The approval of the Conditional Use Permit shall be contingent upon the applicant submitting a Retail Cannabis Business Permit application and all of the materials and documentation required by Davis Municipal Code Chapter 21 to the Police Chief for review and approval. Applicants shall obtain and maintain at all times a valid retail cannabis business permit prior to occupancy of the building and continuing at all times that the business is in operation, including payment of all required fees for application review. The Retail Cannabis Business Permit shall be timely renewed and maintained in accordance with the applicable procedures set forth in Davis Municipal Code Chapter 21 as a condition of continuing the retailer use under the approved conditional use permit.
- 3. Other Permits and Licenses.** The applicant shall obtain all other permits and licenses required by the City for the use, including a City business license and any other City permits required for retail cannabis uses prior to occupancy of the building and operation of the business, and shall pay all required fees in the amount currently established as applicable, or in the amount to be adopted by City Council. All cannabis businesses must, prior to establishing and operating any such cannabis business, obtain and maintain at all times a valid license issued by the State, as may be applicable, and any other applicable local or regulatory licenses.

4. Community Benefit. The applicant has voluntarily proposed to provide certain community benefits to the City to serve as mitigation of potential adverse impacts of the use, and to further ensure that positive community contributions outweigh any potential adverse health and safety impacts of a cannabis retailer use at the proposed site. In order to ensure the Applicant follows through with the proposed project as considered, accepted, and approved by City Council, the Applicant shall enter into an agreement with the City for the following, as set forth in Applicant's project proposal:

- A. Periodic payment of 1% of total gross receipts to the City for deposit in the City's Community Benefit Fund, in lieu of waiting for an impact study of primary and secondary impacts of cannabis retailers locating in the City, consistent with City Council Resolution No. 17-161.
- B. In addition to the Community Benefit payment, the applicant has voluntarily offered to provide, and the City will accept Applicant will donate 4% of net profits from medical cannabis sales annually to the City's Community Benefit Fund incorporated into an agreement, and subject to Applicant's preparation of an annual report to the City demonstrating compliance with this condition.

5. Public Improvements.

- A. Applicant shall provide striping for a dedicated bike lane located between the property and the bike path connecting the greenbelt on the south and east side of Olive Drive.
- B. The public street parking located on Olive Drive along the west side of the building will be changed by the City to 30 minute parking zone. Applicant shall contribute \$500 for the signs, paint, and City staff time.
- C. The applicant shall contribute their fair share of transportation improvements in the vicinity of the project based on results from the traffic study showing percentage of trips on the corridor due to this business. Improvements will be based on results from the Richard's Boulevard/Olive Drive Circulation Improvements Feasibility Study. In lieu of their fair share contribution, Applicant may enter into an agreement with the City to pay \$25,000 toward improvements identified in the study. Applicant may pay this amount in a lump sum or based on a payment schedule satisfactory to the City, until the full amount has been satisfied. Payment of lump sum or initial payment shall occur on or before the sixth month of operation of the business.

6. Parking. The project shall provide the number of on-site parking spaces consistent with requirements of Section 40.25 of the Davis Municipal Code, based on gross square footage of retail use, in a conforming configuration and location, consistent with City standards. The surfacing of the parking area shall meet the requirements of Section 40.25.100.

7. Bicycle Parking. The project shall provide bicycle parking, consistent with the requirements of Section 40.25A.040 of the Davis Municipal Code. The location of the racks and locking mechanism details shall be subject to review and approval by the Community Development

and Sustainability and Public Works Departments prior to issuance of permits. Bicycle parking shall be installed prior to occupancy.

8. **Signage.** A Minor Improvement shall be required for new signage consistent with the Citywide Sign Design Guidelines or an approved sign program, subject to Community Development & Sustainability Department approval and shall be consistent with the sign requirements in Zoning Ordinance Section 40.26.020. Signage not consistent with the Sign Design Guidelines shall require a Design Review application subject to approval by the Community Development & Sustainability Department.
9. **Education.** The cannabis retailer shall provide information or disclaimers to all customers regarding the effects of cannabis consumption and legal consequences of consumption or possession under federal law, in a form approved by the City.
10. **Substantial Conformance.** The use shall be implemented in substantial conformance to the Conditional Use Permit as approved by the Community Development and Sustainability Department, except as modified herein. Prior to issuance of a Certificate of Occupancy, all conditions of approval and required improvements shall be completed to the satisfaction of the city. Substantial changes in the use or a significant increase in the intensity or size shall require approval of a new use permit.
11. **Building Permits.** The applicant shall obtain all necessary and appropriate permits for the project prior to occupancy, including but not limited to building and encroachment permits, and pay all required fees.
12. **Permit Expiration.** The approval period for Conditional Use Permit shall become null and void and subject to revocation proceedings after a period of 18 months, if substantial construction in good faith has not commenced subsequent to such approval. For purposes of this condition, “substantial construction in good faith” expressly includes obtaining all necessary permits for operation of the business as required by these conditions of approval, including but not limited to obtaining a valid Retail Cannabis Business Permit and all applicable state license(s) necessary to operate the cannabis business. The Community Development Department may extend the expiration date for one or more periods not exceeding a total of 18 additional months, upon a showing that the circumstances and conditions upon which the approval was based have not changed. A written request for a time extension shall be accompanied by any outstanding application materials, required exhibits and plans, and applicable fees and must be submitted at least thirty days prior to permit expiration.
13. **Runs with the Land.** The terms and conditions of approval of the conditional use permit shall run with the land, and shall be binding upon and be to the benefit of the heirs, legal representatives, successors, and assignees of the property owner. Where a conditional use has abandoned the site or has ceased activity for a period of six (6) months, expressly including due to the failure to obtain or maintain other necessary regulatory licenses and permits to operate the business, the approved conditional use permit may be subject to revocation for non-use. Under these circumstances, and if such non-use results in revocation

of the conditional use, a new application for a conditional use permit must be processed per the requirements of the City's then-existing zoning ordinance.

- 14. Applicant's Responsibility to Inform.** The applicant shall be responsible for informing all subcontractors, consultants engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein in the City of Davis Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City.
- 15. Conflicts.** When exhibits and/or written conditions of approval are in conflict, the written conditions shall prevail.
- 16. Indemnification.** The applicant shall defend, indemnify, and hold harmless the City of Davis, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City of Davis concerning this approval, including but not limited to any approval of condition of approval of the Planning Commission or City Council. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees and agents in the defense of the matter.
- 17. Other Applicable Requirements.** The project approval is subject to all applicable requirements of the Federal, State, City of Davis and any other affected governmental agencies. Approval of this request shall not waive compliance with all sections of the Municipal Code, all other applicable Federal, State and City Ordinances, and applicable Community or Specific Plans or Design Guidelines in effect at the time of building permit issuance. The duty of inquiry as to such requirements shall be upon the applicant.
- 18. Compliance with Conditions.** Prior to any use of the project site, all Conditions of Approval shall be completed to the satisfaction of the Community Development and Sustainability Department Director. In the event that any of the conditions of this permit are not satisfied, the Community Development and Sustainability Director may request a public hearing be set before the Planning Commission to determine whether the Conditional Use Permit should be revoked. Additionally, upon showing of a compelling public necessity demonstrated at a noticed public hearing, the City of Davis, acting through the appropriate entity, may add, amend, or delete conditions of this permit.

Prior to Issuance of Permits or Occupancy

- 19. Building and Fire Requirements.** Applicant shall comply with all applicable Building and Fire requirements to the satisfaction of the Building Official and the Fire Marshall.

Ongoing

- 20. Trash Maintenance.** The site shall be kept free of trash or debris at all times.