



STAFF REPORT TO THE PLANNING COMMISSION

DATE: Regular Meeting of December 2, 2024

TO: Chair Schaufenbil and members of the Planning Commission

SUBMITTED BY: Timothy Rood, AICP, Community Development Director
Larissa Alchin, Contract Associate Planner

SUBJECT: Conditional Use Permit (CUP 24-02) for City of Ember to add the sale of beer, wine and liquor to the existing legal non-conforming smoke shop business within the Community Commercial Zoning District.

APPLICANT: Harjit Kaur of City of Ember

LOCATION: 1511 Sycamore Avenue, Suite N, Hercules, CA 94547
(APN No. 406-140-012-5)

RECOMMENDED ACTION:

That the Planning Commission:

1. Request planning staff present the staff report;
2. Open the public hearing;
3. Invite the applicant to make a presentation or statement;
4. Receive comments from the public;
5. Offer the applicant or their consultant team the opportunity to answer questions;
6. Close the public hearing;
7. Request clarification from staff or the applicant on any issues related to the project; and
8. Adopt a resolution approving Conditional Use Permit # 24-02.

PROJECT DESCRIPTION:

The City of Ember has provided a business narrative that states that they have been in operation as a smoke shop business for over 20 years. Staff has found documentation of an Administrative Design Review Permit for new signage from 2016, which confirms their operation prior to the adoption of the current code that regulates the operation of

smoke shops and tobacco stores, adopted in 2018. Due to the establishment of this use prior to the adoption of the applicable code standards, the City of Ember has been designated as a Legal Nonconforming Use.

The business owner/applicant, Harjit Kaur of City of Ember, requests Planning Commission approval of a Conditional Use Permit (CUP) to allow the sale of beer, wine, and liquor at the Creekside Shopping Center (1511 Sycamore Avenue, Suite N). The Community Commercial Zoning District (CC) requires review and approval of a conditional use permit for 'Grocery and/or Liquor' commercial uses. The property is also located within the Refugio Creek Overlay District and within the Special Flood Hazard Area Overlay District. The Overlay Districts require either an Administrative or a Conditional Use Permit for all new and expanded uses.

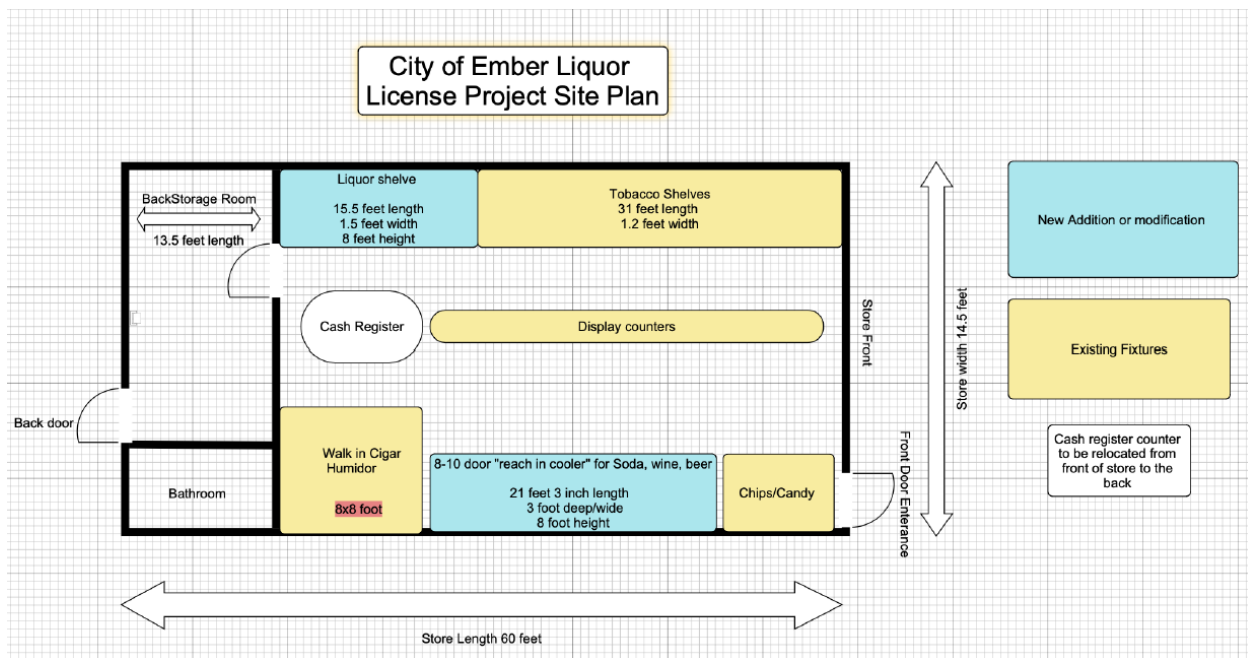
The space where City of Ember is located, at 1511 Sycamore Avenue, Suite N, is approximately 870 square feet (Figure 1). Minor tenant improvements, including new and modified fixtures, are proposed to support the sale of beer, wine, and liquor.

Figure 1: Site Plan



The business's hours of operation are Monday through Saturday from 8:00 a.m. to 8:00 p.m. and Sunday from 8:00 a.m. to 7:00 p.m. The business currently employs two (2) employees with no changes anticipated related to approval of the CUP.

Figure 2: Floor Plan



ANALYSIS:

Pursuant to Hercules Municipal Code Section 5-6.111(a), a change of the existing legal nonconforming smoke shop requires compliance with the following regulations:

- (a) *Smoke shops and tobacco stores wishing to operate within the City after the effective date of the ordinance codified in this Chapter must obtain a conditional use permit (CUP). Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this Chapter may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the legal nonconforming use may require compliance with this Chapter and a conditional use permit.*

The addition of liquor sales does change the existing operation of the smoke shop; however, its inclusion in this Conditional Use Permit application satisfies this requirement.

- (b) *Smoke shops and tobacco stores shall not be located within three hundred (300) feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.*

The leased tenant space where the City of Ember is located is within 300 feet of the Tutu School – Hercules, a dance center for children at 1581 Sycamore Avenue, Suite 5, and

Solis Martial Arts at 1511 Sycamore Avenue, Suite C, which provide classes for all ages, including children. It should be noted that the City of Ember business was in operation prior to the two (2) children-serving businesses being established. An Administrative Design Review Permit for the Tutu School was issued in 2017, and an Administrative Use Permit for Solis Martial Arts was issued in 2020.

The pre-existing location of the City of Ember business at the 1511 Sycamore Avenue, Suite N, location appears to pre-date the two (2) businesses that are within 300 feet and provide services that anticipate a gathering of children. Further, the criterion does not specifically include dance studio or martial arts as uses that must be located more than 300 feet from the City of Ember use; therefore, staff finds that this criterion is met.

(c) Smoke shops and tobacco stores shall not be located within five hundred (500) feet, measured property line to property line, from another smoke shop and tobacco store.

There are no smoke shops or tobacco stores within 500 feet of the subject property.

(d) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store or to make the purchase of tobacco products or tobacco-related products, unless that person is U.S. active duty military personnel over the age of eighteen (18) and is exempt under State law.

A condition of approval has been added to reiterate this criterion.

(e) Smoke shops and tobacco stores shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under twenty-one (21) years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under twenty-one (21) years of age. The warning signs shall include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under twenty-one (21) years of age.

A condition of approval has been added to reiterate this criterion.

The Hercules Municipal Code, Chapter 13-50, "Use Permits," defines the purpose of all types of use permits. Under the Ordinance, "conditional use permits will usually include conditions of approval, mandatory review periods, and expiration periods as required at the discretion of the Planning Commission. In granting conditional approval, the Planning Commission may impose requirements and conditions with respect to location, siting, construction, maintenance, operation, duration, and overall development as deemed reasonable and necessary for the protection of adjacent properties and the public interest."

Required Findings

Section 13-50.300 of the Municipal Code allows the Planning Commission to grant an application for a use permit only if certain findings (listed below) are made with supporting facts:

Finding #1: *The proposed use is consistent with the General Plan.*

Facts: The smoke shop with proposed alcohol sales in the commercial space is consistent with the General Plan. The project will help implement the Economic Development Element of the General Plan by providing a new revenue source and improving the local economy with additional sales tax revenue-generating activity.

The proposed use is consistent with the following General Plan Policies:

- **Land Use Element Policy 2B, pages II-12:** “Develop non-residential Land Use Categories which reduce the need for residents to leave the community by providing a variety of shopping and service opportunities.” The proposed addition of alcohol sales aims to offer a one-stop shopping opportunity to new and existing customers of the City of Ember and the Creekside Shopping Center.
- **Land Use Element Policy 3D pages II-14:** “Create a strong and successful focus or center for business and activities that would provide services, shopping opportunities which would attract employees, clients, and patrons from a regional area, while not disturbing existing residential and community oriented areas.” The proposed addition of alcohol sales will provide a shopping opportunity to customers within an existing commercial development and attract clients and patrons locally and from the regional area.

Finding #2: *The proposed location of the use conforms with the purposes of the zoning ordinance and the purposes of the district in which the site is located and will comply with the applicable provisions of the Zoning Ordinance.*

Facts: The City of Hercules Land Use and Zoning Map designates the entire Creekside Shopping Center as “Community Commercial” (CC). This land use designation is “to accommodate commercial development including retail, office, and service uses that serve residents and employees within the City.”

As part of the Creekside Shopping Center, the proposed Conditional Use Permit would help meet other specific purposes of the Commercial Districts (Municipal Code Section 13-8.100), which include:

- A. Reserve appropriately located areas for a full range of retail commercial, service commercial and professional and administrative offices consistent with the General Plan.

- i. The proposed use will enhance the variety of commercial services in the shopping center by providing customers with additional shopping options and offering retail items that are currently unavailable.
- B.** Provide an opportunity for retail stores and offices to concentrate for the convenience of the public in a mutually beneficial relationship to each other and to provide commodities and services that will meet the needs of the community and neighborhood areas they serve.
 - i. The proposed use will contribute to the concentrated services provided within Creekside Shopping Center and help meet the needs of the community and neighborhood by providing an expanded inventory.
- C.** Give favorable consideration to new retail development that would generate substantial new sales, for businesses that would provide substantial employment, high growth technical businesses (particularly bio-tech, flex office and incubator uses), health care services, restaurants and innovative mixed-use development proposals. Encourage uses that bring additional revenues (retail sales, property tax) either directly or indirectly to the City.
 - i. The proposed use will occupy existing retail space within the shopping center and will bring additional retail sales tax revenue to the city.
- D.** Create a strong and successful focus or center for business and activities that would provide services, shopping opportunities which would attract employees, clients, and patrons from a regional area, while not disturbing existing residential and community-oriented areas. Where appropriate, allow limited commercial uses in residential areas to promote access to services.
 - i. The proposed use will enhance the shopping center by offering services and shopping options that are currently unavailable. This will help ensure the continued success of an existing business and attract new customers.
 - ii. The existing business is not located within a residential area; therefore, the expanded retail opportunity will not disturb existing residential or community-oriented areas.
- E.** Encourage local and regional commercial uses that can benefit from substantial regional traffic on I-80, SR-4, and San Pablo Avenue.
 - i. This existing business, and the Creekside Shopping Center overall, is in close proximity to I-80 and SR-4. The proposed use is anticipated to primarily serve the community and neighborhoods of Hercules.

To achieve the above purposes, Chapter 8 of the Zoning Ordinance (Municipal Code Section 13-8) defines which uses are prohibited and which are allowed in Commercial Districts through City approval of either an administrative or conditional use permit (uses that are not listed in Table 13-8.1 are not allowed).

Under the Community Commercial zoning designation, “Grocery and/or Liquor” require the approval of a conditional use permit.

Finding #3: *The location, size, design, and operating characteristics of the proposed use will be compatible in design, scale, coverage, and density with existing and anticipated adjacent uses.*

Facts: The building at 1511 Sycamore Avenue was designed and built to the design requirements of the district and the building codes in force at the time of its construction. No changes are proposed to the design, scale, coverage, and density of the existing shopping center. Suite N is an 870-square-foot commercial space with a cashiering counter, shelving, refrigerator, bathroom, stockroom, and employee area. The conditional use permit does not propose any physical changes to the exterior of the existing building. Minor tenant improvements include new fixtures.

The zoning and uses surrounding Creekside Center include:

	Zoning	Land Use
North	New Town Center	Vacant land
South	Community Commercial	Lucky Shopping Center
East	Public City	City Hall
West	State (Caltrans)	Interstate 80 Freeway.

Finding #4: *There is adequate access, traffic, public utility, and public service capacity for the proposed use and surrounding existing and anticipated uses.*

Facts: The commercial buildings within the shopping center already have access to utilities and services needed by the business to operate. The project site is fully served with underground utilities, including existing water, sanitary sewer, gas, and electrical services, and no additional services are required to be provided. Vehicular and pedestrian access to the site is from Sycamore Avenue, which is a fully improved, signalized street with curbs, gutters, sidewalks, and landscaped medians. Two driveways along Sycamore Avenue provide ingress and egress for the commercial center.

A 2007 parking assessment by Carl Walker, Inc. indicated that the Creekside Center had a surplus of parking with an observed utilization rate of 38.2% of the Effective Parking Supply. The parking assessment indicated that in 2007, the center had 464 “extra” parking spaces that were not being regularly utilized. With the approval of America’s Tire project, the Creekside Center has a total supply of 709 spaces for the entire center. Based upon a conservatively increased utilization

factor of 50% of the Effective Supply, the America's Tire approval documents found that Creekside Center had 314 "extra" parking spaces, which are currently underutilized. Although there appears to be additional parking capacity, the proposed addition of alcohol sales to the existing business is not anticipated to increase the current parking demand at any one time during a typical day.

Finding #5: *There are no potential, significant adverse environmental impacts that could not be feasibly mitigated and monitored.*

Facts: The proposed business is Categorically Exempt¹ from the provisions of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301 (Class 1, Existing Facilities), which allows for minor modifications of existing public and private structures that involve negligible expansion of use, in that the proposed smoke shop and alcohol off-sale uses are similar with regard to intensity of use. The appropriate language has been added to the draft resolution to incorporate this CEQA determination.

The request to add "Grocery and/or Liquor" business to the existing smoke shop business within the CC zoning district requires discretionary review. Section 13-44.200 (3) of the Municipal Code states that the City shall notify all property owners within 300 feet of the property of the use permit hearing. Additionally, per Municipal Code Section 13-44.200, "Hearings, Appeals, and Judicial Review," applications shall be reviewed and processed consistent with the provisions of the California Government Code Section 65090 et seq.

Due to the nature of the requested use and its proximity to other uses where children might congregate, the Community Development Director determined that a larger notification radius was warranted. Therefore, pursuant to Section 13-44.200 (3.) of the Municipal Code, the City, on November 21, 2024, mailed public hearing notices to property owners and tenants within 1,000 feet of the project site.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines §15301 (Class 1 Existing facilities), which allows for the repair, maintenance, permitting, leasing, licensing, and minor alteration of an existing structure, in that the project involves additional products for sale that would result in a negligible change to the existing use. The additional products for sale will not alter the operational characteristics of the site, including, but not limited to, number of employees, volume of users, hours of operation, and parking demand, and will be comparable to the existing commercial retail use.

¹ Categorical Exemptions are those classes of projects that "the Secretary for Resources has found... do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents."

The proposed project is not subject to any of the exceptions to the use of categorical exemptions provided in §15300.2 of the CEQA Guidelines. As the project is proposing an additional retail sales use that is comparable in intensity to the existing use, the project will not result in cumulative effects, is not on a site containing unusual circumstances that would lead to a significant impact, is not on a site containing hazardous materials, is not within or visible from a State scenic highway, and does not include a historic resource. Therefore, the use of a categorical exemption pursuant to CEQA Guidelines §15301 is applicable, and no further environmental review is warranted.

RECOMMENDATION:

Staff requests that the Planning Commission consider and approve the resolution approving Conditional Use Permit 24-02 for the City of Ember to add the sale of beer, wine and liquor to the existing smoke shop business within the Community Commercial Zoning District.

ATTACHMENTS:

1. Draft Resolution
2. City of Ember Site and Floor Plan