

## HERCULES PLANNING COMMISSION

### RESOLUTION NO. 24-XX

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES APPROVING CONDITIONAL USE PERMIT #24-02 ALLOWING CITY OF EMBER TO ADD THE SALE OF BEER, WINE AND LIQUOR TO THE EXISTING LEGAL NONCONFORMING SMOKE SHOP BUSINESS WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT AT 1511 SYCAMORE AVENUE, SUITE N, HERCULES, CALIFORNIA.**

**WHEREAS**, the Planning Commission of the City of Hercules has considered the submittal requirements for Conditional Use Permit No. 24-02 filed by City of Ember, in accordance with the Hercules Zoning Ordinance; and

**WHEREAS**, 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 existing private 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; and

**WHEREAS**, pursuant to City records, the City of Ember business predated the adoption of Hercules Municipal Code Section 5-6.111 – Regulation of Smoke Shops and Tobacco Stores, in 2018. Hercules Municipal Code 5-6.111(a) requires smoke shops and tobacco stores to obtain a conditional use permit (CUP) unless they predate the adoption of the ordinance; thus, becoming a Legal Nonconforming Use. The City of Ember has been designated as a legal nonconforming use due to predating the adoption of the ordinance; and,

**WHEREAS**, Hercules Municipal Code Section 5-6.111 includes five (5) criteria that regulate the operation of Smoke Shops and Tobacco Stores in Hercules, as follows:

- 1) 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.

- a) 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.
- 2) 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.
  - a) 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.

- 3) 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.
  - a) There are no smoke shops or tobacco stores within 500 feet of the subject property.
- 4) 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) A condition of approval has been added to reiterate this criterion.
- 5) 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) A condition of approval has been added to reiterate this criterion.

**WHEREAS**, based on the facts and evidence set forth in the entire record for this proceeding, including but not limited to the staff report prepared for this project, the Planning Commission finds, after due study, deliberation, and public hearing, that the following circumstances exist with regard to the Conditional Use Permit application, so long as conditions of approval are met:

- 1) The proposed use is consistent with the Hercules General Plan. The subject property has a Land Use designation of Community Commercial (CC), which is intended to accommodate commercial development including retail, office, and service uses that serve residents and employees within the City. The proposed use is consistent with the following General Plan Policies:
  - a) 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.
  - b) 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.
- 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. The City of Hercules Land Use and Zoning Map designates the subject property as Community Commercial (CC). 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 a range of currently unavailable retail items.

- 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.
- 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.
- a) 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 cashier 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.

- 4) There is adequate access, traffic, public utility, and public service capacity for the proposed use and surrounding existing and anticipated uses.
  - a) The commercial buildings within the shopping center have existing access to utilities and services needed 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 (2) driveways along Sycamore Avenue provide ingress and egress for the commercial center.
- 5) There are no potential, significant adverse environmental impacts that could not be feasibly mitigated and monitored.
  - a) The proposed business is Categorically Exempt 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.

**WHEREAS**, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work at or visit this development.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Hercules finds that the above recitals are true and correct and are incorporated herein as findings.

**AND BE IT FURTHER RESOLVED** that the Planning Commission of the City of Hercules hereby determines that the project is Categorically Exempt from CEQA per Section 15301 and hereby approves Conditional Use Permit #24-02 allowing City of Ember to sell alcohol after receiving the appropriate ABC License at 1511 Sycamore Avenue, Suite N, subject to the following Conditions of Approval:

1. Applicant understands that 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.

2. The City of Ember 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.
3. Prior to the issuance of any additional tenant improvement permits, the Rodeo–Hercules Fire District, the Hercules Planning and Building Divisions, and the Contra Costa County Health Department shall review and approve all required building plans to confirm that applicable code requirements have been met.
4. The use permit is subject to revocation by the Planning Commission, as outlined in Sections 13-50.400 and 13-50.500 of the Municipal Code, if it has been determined that the applicant or successor(s) failed to abide by any conditions set forth in these Conditions of Approval or applicable laws of the City of Hercules.
5. Applicant agrees as a condition of approval to indemnify the City, its agents, officers, and employees and to defend at applicant’s own expense against and from any claim, action, or proceeding brought within the time period provided for in Section 66499.37 of the Government Code to attack, set aside, void, or annul the approval of this resolution. City shall promptly notify applicant of such claim, action, or proceeding of which City receives notice, and City will fully cooperate with applicant in the defense therefor. Applicant shall reimburse the City for any court costs and attorney’s fees which the City may be required to pay as a result of any such action. City may, in its sole discretion, participate in the defense of any such claim, action, or proceeding, but such participation shall not relieve Applicant of the obligations of this condition.

**PASSED AND ADOPTED** by the Planning Commission of the City of Hercules on this 2nd day of December 2024, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Robert Schaufenbil, Chair

ATTEST:

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Timothy Rood, AICP  
Community Development Director