



STAFF REPORT
7/14/2021

TO: Honorable Mayor and City Council Members

FROM: Gabriel Perez, Assistant Development Services Director

SUBJECT: Continuance of Appeal of Planning Commission's Revocation of Conditional Use Permit (CUP 312) that allowed a 3,250 sq. ft. Retail Cannabis Microbusiness on 20,000 square feet of land located at 84-161 Avenue 48 for "The Coachella Lighthouse, LLC". City- Initiated Revocation.

STAFF RECOMMENDATION:

Staff recommends that the City Council continue the public hearing for Appeal of Planning Commission's Revocation of Conditional Use Permit (CUP 312) to the October 13, 2021 City Council Meeting.

BACKGROUND:

This item was continued from the May 26, 2021, March 10, 2021, January 27, 2021, December 9, 2020, October 14, 2020, September 9, 2020, July 7, 2020 and May 13, 2020 City Council meetings, pursuant to an executed Memorandum Of Understanding agreement (MOU) between the City of Coachella and Glenroy Coachella, LLC. The MOU allows for the interim curing of the CUP violations outlined in this staff report, in exchange for periodic payments of lost Transient Occupancy Tax (TOT) for the hotel resort, and subject to adherence by the developer to a performance schedule that would secure new financing and reactivation of construction activities. The MOU is in effect through April 30, 2022.

On February 27, 2019, the Planning Commission approved Conditional Use Permit No. 312 (CUP 312). Pursuant to Condition No. 3 of CUP 312, the Development Services Director conducted a 12-month review of CUP 312 and determined that the permittee failed to comply with the Conditions of Approval of CUP 312.

On April 15, 2020, the Planning Commission conducted a duly noticed public hearing to determine whether it should revoke CUP 312 for the appellant's failure to comply with the Conditions of Approval. After the closure of the public hearing, the Planning Commission adopted Resolution No. PC2020-03 revoking CUP 312, finding that one or more Conditions of Approval of CUP 312 were violated. Following the Planning Commission's Revocation, The Coachella Lighthouse, LLC filed an appeal to the City Council pursuant to Sections 17.74.040 and 17.74.050(B)(2) of the Coachella Municipal Code ("CMC").

UPDATE:

The City received a creditor notice that the Glenroy Resort developer filed for Chapter 11 Bankruptcy protection under the federal courts, and there are court hearings and trustee activities are ongoing. Additionally, and notwithstanding the violation of certain deal points, the developer has continued to pay the City a “Payment of In Lieu Transient Occupancy Taxes” as part of the Memorandum of Understanding, dated May 13, 2020 and the first amendment thereto date October 8, 2020 between the City and Glenroy Coachella, LLC. The remainder of this staff report discusses the findings for revocation of CUP 312.

REQUIRED FINDINGS

The Planning Commission’s revocation was based on Sections 17.84.070 and 17.74.050(B)(1) of the Coachella Municipal Code. Pursuant to Section 17.84.070 of the Coachella Municipal Code, the Planning Commission may consider a conditional use permit for revocation if the applicant or permittee or owner, its agent, employee, or any person connected or associated with the applicant or permittee:

- (1) Has knowingly made false statements in the applicant's application or in any reports or other supporting documents furnished by the applicant or permittee;
- (2) Has failed to maintain a valid state license;
- (3) Has failed to comply with any applicable provision of the Coachella Municipal Code, including, but not limited to, this chapter, the city's building, zoning, health, and public safety regulations;
- (4) Has failed to comply with any condition imposed on the conditional use permit; or
- (5) Has allowed the existence of or created a public nuisance in violation of the Coachella Municipal Code.

In addition, pursuant to Section 17.74.050(B)(1) of the Coachella Municipal Code, the Planning Commission may consider a conditional use permit for revocation if one or more conditions are not complied with. According to Section 17.70.080 of the CMC, the hearing on an appeal from a Planning Commission decision is a de novo hearing, based upon the evidence and testimony introduced at any previous hearing or hearings and the subsequent record, findings, and recommendations or determinations. Before granting an appeal, in whole or in part, the City Council must find an error or abuse of discretion in the original determination and make any findings required to support any new or revised determination of the matter.

DISCUSSION/ANALYSIS

The written appeal application submitted by the appellant argues with some detail how the Commission erred in its decision to revoke CUP 312 and that the Commission’s action was an abuse of discretion. The City Council is being asked to overturn the decision of the Planning Commission.

Staff contends that there was no error or abuse of discretion in the Planning Commission’s decision. One or more Conditions of Approval of CUP 312 have been violated. The following chart describes the Conditions of Approval of CUP 312 that were in violation at the time of the April 15, 2020 revocation hearing, and continue to be in violation:

CONDITIONS OF APPROVAL OF CUP 312	VIOLATION OF CUP 312
Condition No. 2(a) of CUP 312 states: “Approval of Conditional Use Permit No. 312 is contingent upon City Council approval of the attendant Second Amendment to the Glenroy Resort Development Agreement, or a separate Development Agreement, granting an entitlement for a retail cannabis microbusiness and subject to compliance with the following performance schedule... The first phase of the Glenroy Resort Hotel shall be completed and open for business within 90 days of January 1, 2019.”	According to a review of City records and inspections of the property by City staff, as of April 7, 2021, the first phase of the Glenroy Resort Hotel is not complete or open for business.
Condition No. 2(b) of CUP 312 states: “Approval of Conditional Use Permit No. 312 is contingent upon City Council approval of the attendant Second Amendment to the Glenroy Resort Development Agreement, or a separate Development Agreement, granting an entitlement for a retail cannabis microbusiness and subject to compliance with the following performance schedule... The perimeter landscaping and fencing improvements for the retail cannabis microbusiness shall be completed within 60 days of the effective date of Conditional Use Permit No. 312.”	According to inspections of the property by City staff, as of April 7, 2021, the perimeter landscaping and fencing improvements for the retail cannabis microbusiness have not been completed. Landscaping was installed but the perimeter fencing in front of the dispensary is missing.

CONDITIONS OF APPROVAL OF CUP 312	VIOLATION OF CUP 312
<p>Condition No. 2(c) of CUP 312 states: “Approval of Conditional Use Permit No. 312 is contingent upon City Council approval of the attendant Second Amendment to the Glenroy Resort Development Agreement, or a separate Development Agreement, granting an entitlement for a retail cannabis microbusiness and subject to compliance with the following performance schedule... The improvements required under Condition #5 of CUP 312 for additional glazing on the façade of the retail cannabis microbusiness shall be completed within 60 days of the effective date of Conditional Use Permit No. 312.”</p>	<p>According to inspections of the property by City staff, as of April 7, 2021, additional glazing on the façade of the retail cannabis microbusiness was not completed.</p>
<p>Condition No. 5 of CUP 312 states: “The applicant or successor in interest shall comply with all conditions of approval imposed upon Architectural Review No. 17-07. The front façade of the business shall incorporate additional glazing on the front façade, subject to review by the Development Services Director.”</p>	<p>According to inspections of the property by City staff, as of April 7, 2021, the front façade of the business did not incorporate additional glazing.</p>
<p>Condition No. 6 of CUP 312 states: “A comprehensive sign program for the Glenroy Resort project must be reviewed and approved by the Planning Commission prior to the issuance of any sign permits for the retail cannabis microbusiness. The front façade of the retail cannabis microbusiness may have one identification sign and one secondary ‘logo sign’ placed on the front façade.”</p>	<p>According to a review of City records by City staff, as of April 7, 2021 a sign program for the Glenroy Resort project was not yet reviewed or approved by the Planning Commission.</p>
<p>Condition No. 14 of CUP 312 states: “The owner shall install a conforming trash enclosure for solid waste and recyclables within 250 feet of the proposed cannabis retail microbusiness.”</p>	<p>According to inspections of the property by City staff, as of April 7, 2021, no conforming trash enclosure for solid waste and recyclables has been installed within 250 feet of the cannabis retail microbusiness.</p>
<p>Condition No. 15 of CUP 312 states: “The owner shall install a minimum of five bicycle racks in front of the retail cannabis</p>	<p>According to inspections of the property by City staff, as of April 7, 2021, there were no bicycle racks in front of the retail cannabis</p>

CONDITIONS OF APPROVAL OF CUP 312	VIOLATION OF CUP 312
microbusiness, or adjacent to the parking lot serving the proposed business.”	microbusiness or adjacent to the parking lot serving the business.
Condition No. 16 of CUP 312 states: “The fencing along Avenue 48 may consist of a decorative wrought iron fence with a maximum height of five feet. The parking lot security gates shall consist of low barrier, non-automated gates to remain open during all hours of business operation. All entry gates must be reviewed and approved by the Fire Marshal’s Office and the Building Official.”	According to inspections of the property by City staff, as of April 7, 2021, there is no fencing installed in front of the business and no fencing along the front portion of the adjoining parking lot serving the business.

Pursuant to Condition No. 3 of CUP 312, the Development Services Director conducted a 12-month review of CUP 312. As part of this review, on March 9, 2020, the Development Services Director mailed a letter to Quonset Partners LLC, care of Joseph Rubin, requesting written status of compliance with the Conditions of Approval. Quonset Partners LLC failed to respond to the letter. The Development Services Director concluded his review and determined that the project failed to comply with the Conditions of Approval of CUP 312.

On March 24, 2020, the City issued a letter to all interested parties, Coachella Lighthouse, LLC, Quonset Partners LLC, and Inception RE Credit Holds, LLC, demanding compliance with the Conditions of Approval by April 14, 2020, which they failed to meet. Staff conducted a site visit of The Lighthouse property and the adjoining parking area to the west on April 8, 2020. Staff observed the lack of compliance with several of the Conditions of Approval, as noted above.

However, numerous Conditions of Approval of CUP 312 that were being violated at the time of the Planning Commission’s April 15, 2020 revocation hearing have not been cured and are currently being violated. Sections 17.84.070 and 17.74.050(B)(1) of the Coachella Municipal Code authorize revocation of a conditional use permit for *any* violation of a conditional of approval. So each violation of the Conditions of Approval is an independent basis to revoke CUP 312. Thus, the Planning Commission neither erred nor abused its discretion when it determined that “one or more” Conditions of Approval of CUP 312 were violated. In addition, subsequent correction of a violation does not necessarily warrant granting of the appeal. The appeal should only be granted if *all* violations of the Conditions of Approval of CUP 312 have been cured. Again, revocation remains appropriate if “one or more” Conditions of Approval of CUP 312 were violated.

Due to the noncompliance described above, as authorized by Section 17.84.070(D) and Section 17.74.050(B)(1) of the Coachella Municipal Code, revocation of CUP 312 is determined the appropriate City response.

RECOMMENDATIONS:

Based on the facts noted in this staff report, City staff continues to make affirmative findings for the revocation of CUP 312. However, in light of recent events related to the developer's Chapter 11 court hearings, and compliance with the City's MOU, staff is recommending a continuance to September 22, 2021.