

November 19, 2019

**ADMINISTRATIVE INTERPRETATION
DECISION AND FINDINGS
PLNZAD2019-01020**



REQUEST:

Intrepid Alchemy, LLC. has requested an administrative interpretation to make the following three determinations regarding industrial hemp processing. The subject parcel has an address of 510 W 900 South. This interpretation relates to the specific structure address at **approximately 864 S 500 West** located on the subject parcel. The subject property is zoned CG (General Commercial).

1. Can industrial hemp processing as regulated in Utah State Code §4-41 be considered one of the following uses that are permitted in the CG zoning district: Commercial Food Preparation, Industrial Assembly, Laboratory Testing, or Wholesale Distribution as defined and regulated in the Salt Lake City Zoning Ordinance?
2. Can industrial hemp processing as regulated in Utah State Code §4-41 be considered a Light Manufacturing use as defined and regulated in the Salt Lake City Zoning Ordinance?
3. Are there existing light manufacturing uses on the site that are recognized by Salt Lake City as legal nonconforming uses?

DECISION:

The Zoning Administrator finds that the proposed use of industrial hemp processing cannot be considered as Commercial Food Preparation, Industrial Assembly, Laboratory Testing, or Wholesale Distribution as defined and regulated in section 21A.62 of the Salt Lake City Zoning Ordinance.

The Zoning Administrator finds that industrial hemp processing is most similar to Light Manufacturing as defined in section 21A.62 of the Salt Lake City Zoning Ordinance. Light Manufacturing is not allowed in the CG zoning district.

An application for a Determination of Noncontributing Status will need to be submitted to determine if there is an existing legal nonconforming light manufacturing use on the subject property. Specifically, if the city recognizes any existing legal nonconforming light manufacturing uses in the subject structure at 864 S 500 West.

PROPOSED OPERATIONS/USES:

As detailed in the submitted application materials, Intrepid Alchemy, LLC. wishes to utilize the subject property to process industrial hemp. These interpretations are in relation to the cultivation and processing of Industrial Hemp as defined by Utah State Code. This document shall have no effect on the legality of cultivating or processing medical grade cannabis, which is regulated by State Code §4-41a.

The following definitions are taken from Utah State Code §4-41-102 related to industrial hemp:

- (1) *"Cannabinoid product" means a chemical compound extracted from a hemp product that:*
 - (a) *is processed into a medicinal dosage form; and*
 - (b) *contains less than 0.3% tetrahydrocannabinol by dry weight.*

- (2) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.
- (3) "Industrial hemp certificate" means a certificate that the department issues to a higher education institution to grow or cultivate industrial hemp under Subsection 4-41-103(1).
- (4) "Industrial hemp license" means a license that the department issues to a person for the purpose of growing, cultivating, processing, or marketing industrial hemp or an industrial hemp product.
- (5) "Industrial hemp product" means a product derived from, or made by, processing industrial hemp plants or industrial hemp parts.

The proposed use as described by the applicant is for industrial hemp processing that will include extracting and distilling certain cannabinoids and other products that are laboratory tested in-house for quality (and third-party tested as appropriate), packaged into wholesale containers, and then distributed to various third-party food and supplement formulators and processors, cosmeceutical formulators and processors, medical and nutraceutical formulators and processors, and wholesale/retail resellers of the same. Applicant anticipates some incidental industrial assembly related to the processing of industrial hemp that is not directly related to food processing.

The processing component of the proposed facility would be entirely enclosed within the insulated, steel-frame buildings, and may involve freezing, air drying, curing, pressing, extracting, or heating the industrial hemp and converting it into various forms, including tablets, capsules, concentrated oils, sublingual and topical preparations, or a gelatinous cube or lozenge. These products are regulated by the Utah Department of Agriculture and Food. The processing operations would also involve the packaging of the end products for the final consumer.

The proposed Industrial Hemp Processing Facility is not currently defined in chapter 21A.62 of the Zoning Ordinance. The applicant has requested that the City determine if the proposed hemp processing use can be considered one of the following uses as defined by Section 21A.62 of the Salt Lake City Ordinance:

Commercial Food Preparation: A facility in which food is processed or otherwise prepared, primarily for off-site consumption and/or sales. Facilities may be shared among various food processors, producers, or preparers. Uses may include but are not limited to: commissary kitchen and catering.

Industrial Assembly: An industrial use engaged in the fabrication of finished or partially finished products from component parts produced off site. Assembly use shall not entail metal stamping, food processing, chemical processing or painting other than painting that is accessory to the assembly use.

Laboratory Testing: A use engaged in determining the physical qualities of construction, medical or manufactured materials. This use does not include research laboratories engaged in scientific experimentation.

Wholesale Distribution: A business that maintains an inventory of materials, supplies and goods related to one or more industries and sells bulk quantities of materials, supplies and goods from its inventory to companies within the industry. A wholesale distributor is not a retail goods establishment.

Findings: The proposed use of Industrial Hemp Processing as described by the applicant includes some aspects that could fall under the definitions of Commercial Food Preparation, Industrial Assembly, Laboratory Testing and Wholesale Distribution, however, none of these uses accurately define the primary activity of the proposed use which is processing.

The processing component of the proposed industrial hemp facility goes beyond the Commercial Food Preparation definition of preparing food because the proposed use includes processing industrial hemp and converting it into various forms that include cosmeceutical and topical preparations.

Industrial Assembly is defined as fabrication of finished or partially finished components produced off site. The primary activity associated with the proposed use is on site processing, and the definition of industrial assembly excludes processing.

The proposed industrial hemp processing facility includes extracting and distilling certain cannabinoids and other products that are laboratory tested in-house for quality, and third-party tested as appropriate. The Laboratory Testing associated with the proposed use is accessory to the main use as described by the applicant which is processing.

The information submitted with the application describes the hemp processing operations would also involve the packaging of the end products for the final consumer. The definition of Wholesale Distribution is a business that maintains an inventory of materials and supplies goods to one or more industries. Although the proposed use does include some wholesale distribution, wholesale distribution associated with the proposed use is accessory to the main use of a processing facility.

The applicant has requested that the City determine if the proposed hemp processing use can be considered a *Light Manufacturing* use as defined by Section 21A.62 of the Salt Lake City Ordinance:

Light Manufacturing: *The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place or where such processes are housed entirely within a building. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas. The term "light manufacturing" shall include uses such as electronic equipment production and printing plants. The term "light manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.*

Findings: The Salt Lake City Zoning Administrator finds that industrial hemp processing facility is similar to a Light Manufacturing use as defined by Section 21A.62 of the Salt Lake City Zoning Ordinance. As stated in the application materials, the processing will be entirely enclosed within a building. Light Manufacturing is not listed in table 21A.33.030, the table of permitted and conditional uses for commercial districts, where the CG district is located. Any use specifically listed without a "P" or a "C"

designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district.

The materials submitted by the applicant describe the subject property has been continuously used for Light Manufacturing uses. In 1995, the subject property was rezoned from M-2 (Intermediate Industrial) to the current CG (General Commercial) zoning. Chapter 21A.38 of the Salt Lake City Zoning Ordinance regulates the continued existence of legal nonconforming uses.

21A.38.040.E. Determination of Nonconforming Use Status:

- 1. Burden of Owner to Establish Legality of Nonconforming Use: The burden of establishing that any nonconforming use lawfully exists under the provisions of this title shall, in all cases, be the owner's burden and not the City's. Building permits, business licenses and similar documentation may be considered as evidence establishing the legality of use.*
- 2. Determination of Nonconforming Status: The Zoning Administrator shall determine the nonconforming use status of properties based upon the evidence submitted and information available pursuant to the provisions of this chapter.*

21A.38.040.F. Abandonment of Nonconforming Use:

- 1. Termination of Nonconforming Use: A nonconforming use of land or of a structure that is abandoned shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or site must conform with the regulations for the district in which it is located.*
 - a. Presumption of Abandonment: Abandonment may be presumed to have occurred if:*
 - (1) A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;*
 - (2) The use has been discontinued for a minimum of one year; or*
 - (3) The primary structure associated with the nonconforming use remains vacant for a period of one year.*

Findings: In order to determine status of any nonconforming uses on the subject property, specifically, if the city recognizes any existing legal nonconforming light manufacturing uses in the subject structure at 864 S 500 West, the applicant will need to submit an application for a Determination of Nonconforming Use Status in accordance with the requirements above. The application for determination of a nonconforming use may be accessed here - <http://www.slcdocs.com/Planning/Applications/DNU.pdf>

ANALYSIS OF STANDARDS FOR USE INTERPRETATIONS:

The following standards shall govern the zoning administrator, and the appeals hearing officer on appeals from the zoning administrator, in issuing use interpretations:

A. Any use defined in chapter 21A.62 of this title, shall be interpreted as defined;

Finding: The proposed Industrial Hemp Processing Facility is not currently defined in chapter 21A.62 of the Zoning Ordinance.

B. Any use specifically listed without a "P" or "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district;

Finding: The proposed Industrial Processing Facility is not currently identified as a use in the Zoning Ordinance. This interpretation determined that the proposed use is similar to a Light Manufacturing use which is not listed as a permitted or conditional use in the CG zone.

C. No use interpretation shall allow a proposed use in a district unless evidence is presented demonstrating that the proposed use will comply with the development standards established for that particular district;

Finding: The Zoning Administrator has determined that the proposed use is similar to Light Manufacturing as defined in 21A.62 of the zoning ordinance. Light manufacturing is not allowed in the CG zoning district and therefore, the proposed use does not comply with the development standards established for the CG zone.

D. No use interpretation shall allow any use in a particular district unless such use is substantially similar to the uses allowed in that district and is more similar to such uses than to uses allowed in a less restrictive district;

Finding: As stated in the Finding above, the Zoning Administrator finds that the proposed use is similar to a Light Manufacturing use. Light Manufacturing is not allowed in the CG zoning district.

E. If the proposed use is most similar to a conditional use authorized in the district in which it is proposed to be located, any use interpretation allowing such use shall require that it may be approved only as a conditional use pursuant to chapter 21A.54 of this title; and

Finding: As stated in the Findings above, the Zoning Administrator finds that the proposed use is similar to Light Manufacturing, which is not allowed in the CG zoning district.

F. No use interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of that zoning district.

Finding: The purpose of the CG zoning district is as follows:

“The purpose of the CG General Commercial District is to provide an environment for a variety of commercial uses, some of which involve the outdoor display/storage of merchandise or materials. This district provides economic development opportunities through a mix of land uses, including retail sales and services, entertainment, office, residential, heavy commercial and low intensities of manufacturing and warehouse uses. This district is appropriate in locations where supported by applicable master plans and along major arterials. Safe, convenient and inviting connections that provide access to businesses from public sidewalks, bike paths and streets are necessary. Access should follow a hierarchy that places the pedestrian

first, bicycle second and automobile third. The standards are intended to create a safe and aesthetically pleasing commercial environment for all users.”

The Zoning Administrator finds that the proposed use is similar to a Light Manufacturing use which is not an allowed use in the CG zone, therefore, it has been determined through adoption of CG zone land use table that the proposed use is not consistent with the purpose statement of the CG zoning district.

If you have any questions regarding this interpretation, please contact Amy Thompson at (801) 535-7281 or by email at amy.thompson@slcgov.com.

APPEAL PROCESS:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within **ten (10) days of the administrative decision**. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcdocs.com/Planning/Applications/Appeal.pdf> along with information about the applicable fee. Appeals may be filed in person or by mail at:

In Person: Salt Lake City Corp Planning Counter 451 S State Street, Room 215 Salt Lake City, UT	US Mail: Salt Lake City Corp Planning Counter PO Box 145471 Salt Lake City, UT 84114-5417
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Dated this 19th day of November, 2019 in Salt Lake City, Utah.



Amy Thompson
Senior Planner

Attachment: Narrative & Map submitted by applicant

cc: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Greg Mikolash, Development Review Supervisor
Applicable Recognized Organizations
Posted to Web



Administrative Interpretation

SALT LAKE CITY PLANNING

OFFICE USE ONLY

Project #: <i>PNZAD2019-01020</i>	Received By: <i>CHRIS EARL</i>	Date Received: <i>10/29/2019</i>	Zoning: <i>CG</i>
Project Name:			

PLEASE PROVIDE THE FOLLOWING INFORMATION

Address of Subject Property: *864 South 500 West, Salt Lake City, UT 84101*

Name of Applicant: *Intrepid Alchemy, LLC* Phone: [REDACTED]

Address of Applicant: *1955 West Grove Pkwy, Suite 250, Pleasant Grove, UT 84062*

E-mail of Applicant: *Blake@intrepidbiosciences.com*
Rocky@intrepidbiosciences.com Cell/Fax: [REDACTED]

Applicant's Interest in Subject Property:

Owner Contractor Architect Other: *Tenant*

Name of Property Owner (if different from applicant): *Salt Lake City Metro, LLC*

E-mail of Property Owner: *Stacey@posilovich.com* Phone: [REDACTED]

Proposed Property Use: *Industrial hemp processing + medical cannabis pharmacy*

Please note that additional information may be required by the project planner to ensure adequate information is provided for staff analysis. All information required for staff analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

AVAILABLE CONSULTATION

Planners are available for consultation prior to submitting this application. Please call (801) 535-7700 if you have any questions regarding the requirements of this application.

WHERE TO FILE THE COMPLETE APPLICATION

Mailing Address: Planning Counter PO Box 145471 Salt Lake City, UT 84114	In Person: Planning Counter 451 South State Street, Room 215 Telephone: (801) 535-7700
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REQUIRED FEE

Filing fee of \$65, an additional \$61 per hour will be charged if research extends beyond first hour. Fees are non-refundable.

SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent: *[Signature]* OWNER Date: *10/28/19*

Updated 7/1/19

* note this authorization by owner of property is contingent upon all parties executing lease agreement

SUBMITTAL REQUIREMENTS

Staff Review

Please provide the following information (attach additional sheet/s as necessary)

- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | a. The provision(s) and section number(s) of the Zoning Ordinance for which an interpretation is sought. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | b. The facts of the specific situation giving rise to the request for an interpretation. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | c. The precise interpretation the applicant believes to be correct. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | d. When a Use Interpretation is sought: <ul style="list-style-type: none">• Please state what use classification you think is most similar to your proposed use.• Please provide a complete description of your proposed use and how you feel it will be compatible with the Zoning District. Include any documents or information that you feel would be helpful in making an interpretation. |

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

Administrative Interpretation – Submittal Requirements Information

- a. *The applicant seeks interpretation of the following provisions and section numbers of the Zoning Ordinance:*
- 21A.62; Namely the definitions of:
 - “COMMERCIAL FOOD PREPARATION: A facility in which food is processed or otherwise prepared, primarily for off-site consumption and/or sales. Facilities may be shared among various food processors, producers, or preparers. Uses may include, but are not limited to: commissary kitchen and catering.”
 - “INDUSTRIAL ASSEMBLY: An industrial use engaged in the fabrication of finished or partially finished products from component parts produced off site. Assembly use shall not entail metal stamping, food processing, chemical processing or painting other than painting that is accessory to the assembly use.”
 - “LABORATORY, TESTING: A use engaged in determining the physical qualities of construction, medical or manufactured materials. This use does not include research laboratories engaged in scientific experimentation.”
 - “LIGHT MANUFACTURING: The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place or where such processes are housed entirely within a building. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas. The term "light manufacturing" shall include uses such as electronic equipment production and printing plants. The term "light manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.”
 - “WHOLESALE DISTRIBUTION: A business that maintains an inventory of materials, supplies and goods related to one or more industries and sells bulk quantities of materials, supplies and goods from its inventory to companies within the industry. A wholesale distributor is not a retail goods establishment.”
 - 21A.33.30
 - 21A.52
 - 21A.26.070
 - 21A.28.020
 - 21A.54

b. *The facts of the specific situation giving rise to the request for an interpretation:*

- Applicant is an industrial hemp processor will extract and distill certain cannabinoids and other products that are laboratory tested in-house for quality (and third-party tested as appropriate), packaged into wholesale containers, and then distributed to various third-party food and supplement formulators and processors, cosmeceutical formulators and processors, medical and nutraceutical formulators and processors, and wholesale/retail resellers of the same. Applicant anticipates some incidental industrial assembly related to the processing of industrial hemp that is not directly related to food processing.
- The processing component at Applicant's facility would be entirely enclosed within the insulated, steel-frame buildings, and may involve freezing, air drying, curing, pressing, extracting, heating or otherwise treating the industrial hemp and converting it into various forms, including tablets, capsules, concentrated oils, lotions, balms, sublingual and topical preparations, or gelatinous cube or lozenge. These products and the processing facility are regulated by the Utah Department of Agriculture and Food. The processing operations may also involve the packaging of the end products for the final consumer.
- The proposed Industrial Hemp Processing Facility is not currently defined in chapter 21A.62 of the Zoning Ordinance.
- Applicant seeks approval of the facility located at 864 South 500 West, Salt Lake City, UT 84101, located in a General Commercial (CG) Zoning District, for its industrial hemp processing facility.
- COMMERCIAL FOOD PREPARATION; INDUSTRIAL ASSEMBLY; LABORATORY, TESTING; and WHOLESALE DISTRIBUTION are all permitted (P) uses in the current CG Zoning District.
- Recently the facility location was rezoned from a Light Manufacturing (M-1) Zoning District and the preexisting uses that conformed with M-1 uses was "grandfathered in" as conforming uses in the CG Zoning District.
- The complex where the facility is located has been continuously owned and leased by the same owner to tenants that have continually used the complex for M-1 type uses, before and after the "grandfathered in" event that otherwise could be deemed non-conforming use in the current CG Zoning District, including, but not limited to the following businesses:
 - Prime Machine that does heavy industrial machining with heavy equipment like Lathes, grinders, welders, etc.
 - Dan Green Restorations that restores classic cars.
 - Transco that sells and services mining conveyor belts. They do welding, painting, grinding, etc.
 - The previous tenant of the proposed facility location was leased by the University of Utah for fuel and coal storage, etc. that it used in connected building next door for coal mill and pilot scale reactors. These 111-ton wet wall coal fired reactors, which ran 5 million BTU's per hour on the burners produced temperatures up to 3,000 degrees Fahrenheit. They ran two cooling towers with 50 HP pumps doing research for other large industrial clients. The University still uses another facility in complex for the same use, but on a smaller scale.

- Outside of the immediate complex, but within the CG Zoning District, there are other heavy processing and industrial use businesses, including, but not limited to:
 - Mountain Cement that is immediately adjacent to the proposed facility.
 - Thornton Plastics
 - PCA Packaging
 - Rico Brands commercial food processing and preparation sold in supermarkets.
 - Western Pipe Company
 - Ameritech Coatings that is immediately adjacent to the proposed facility complex.

c. *The precise interpretation the applicant believes to be correct:*

- The Applicant believes that the proposed industrial hemp processing facility use should be a permitted use under the following permitted (P) uses in the current CG Zoning District, which include, but are not limited to: COMMERCIAL FOOD PREPARATION; INDUSTRIAL ASSEMBLY; LABORATORY, TESTING; and WHOLESALE DISTRIBUTION.
- If the current CG Zoning District uses are not adequate current use classifications for Applicant's industrial hemp processing facility, then it believes that it uses would have complied with the M-1 LIGHT MANUFACTURING non-conforming uses that continue to operate in CG Zoning District. The Applicant and the owner of the proposed facility could be unfairly harmed by not permitting such use while such non-conforming business uses continue to operate in the CG Zoning District.

d. *When a Use Interpretation is sought: (1) Please state what use classification you think is most similar to your proposed use; (2) Please provide a complete description of your proposed use and how you feel it will be compatible with the Zoning District. Include any documents or information that you feel would be helpful in making an interpretation.*

- Applicant believes it has adequately described the use classifications and Applicant's proposed uses above. Applicant is willing to provide any additional information or analysis necessary for this Administrative Interpretation.

