

Jomsky, Mark

From: Sheri <sherisicka@gmail.com>
Sent: Monday, December 16, 2019 2:40 PM
To: Jomsky, Mark
Subject: Conditional Use Permit #6757: Request to allow retail sales of cannabis at 169 West Colorado

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Mark,

We shouldn't even have to be writing a letter to **prevent** a cannabis store from opening up near our homes, our schools and our family friendly hangouts.

I do not support allowing marijuana to be sold at the gateway to Old Pasadena.

I also do not agree dispensaries should be in Old Pasadena where kids and teens can be unsupervised and enjoy independence. Pasadena must remain accessible, neighborly, have a strong sense of place, have a strong community spirit, family-oriented and interactive. Allowing dispensaries in Old Pasadena along Colorado Blvd. is completely against this narrative

Let's think of the kids and just say NO!

Thank you,
Sheri

Sheri Sicka
216 Annandale Rd
Pasadena, CA 91105

Sent from my iPhone

Dear Pasadena City Council, Mr. Mermell and Mr. Jomsky —

12/16/19

I am a Pasadena homeowner residing with my family in District 7 and I am writing to express my strong opposition to the granting of a CUP to allow retail sales of cannabis at 169 West Colorado.

Colorado in Old Town is Pasadena's flagship street. The proposed location for the marijuana dispensary is the western gateway to that flagship street. It is a street that is very attractive to young people, and parents feel comfortable to let their teens roam freely in an area that is perceived as safe. Notably, one of the restrictions contained in Measure CC was that any dispensary would be at least 600 feet away from a "youth-oriented facility." All of Colorado in Old Town is youth-oriented. Additionally, businesses that cater to youth and are in fact "youth-oriented facilities" are within 600 feet of the proposed location. (Paper Source [40 ft.], Urban Outfitters [150 ft.], Zara [200 ft.] and Starbucks [450 ft.] are all less than 600 feet away. The Apple Store is 700 feet away. [All distances measured via Google maps.]

Further the proposed location is also highly emblematic of the image of the City. The world-famous Rose Parade travels right by that corner. That corner is also the first bit of Pasadena's famous Old Town that people coming into the City from the West will see.

First impressions are powerful and enduring. Do we want the first impression of Pasadena's premier street to be pot? With armed guards standing at the ready? And with the stench of marijuana wafting over all and sundry?

Beverly Hills would never allow pot to be sold at the entry to Rodeo Drive. (In fact Beverly Hills has passed an ordinance that there will be no pot sold within the city at all.) At a minimum Pasadena should now act to protect a highly visible location on its premier street.

Further, it is also not clear that this project is exempt from CEQA review. Recently (8/9/19), the California Supreme Court unanimously held that an ordinance regulating the location and operation of marijuana dispensaries was capable of causing indirect physical changes to the city environment and thus subject to environmental review. (*Union of Medical Marijuana Patients Inc. v. City of San Diego* (2019) 7 Cal.5th 1171.)

A heightened risk of crime necessitating highly visible armed guards, parking concerns in an area where parking is already a challenge, increased vehicular and foot traffic, potential lines spilling into the street of drug-seeking individuals and odor concerns are just a few of the changes to the city environment that can be anticipated. Consequently, CEQA review certainly seems appropriate.

Thank you in advance for your attention to this matter.

Respectfully, Jessica Gutierrez

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2019 DEC 16 PM 2:37
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CITY OF PASADENA



RECEIVED

2019 DEC 16 PM 2: 37

CITY CLERK
CITY OF PASADENA

The Honorable Terry Tornek, Mayor and
Members of the City Council
City of Pasadena
100 N. Garfield Avenue
Pasadena, CA 91101

Re: APPEAL OF CONDITIONAL USE PERMIT NO. 6757 FOR APPROVAL OF A COMMERCIAL CANNABIS RETAILER AT 169 WEST COLORADO BOULEVARD SUBMITTED BY HARVEST OF PASADENA, LLC (PLN2019-00337)

Dear Mayor Tornek and Members of the City Council:

SweetFlower Pasadena, LLC ("Sweet Flower") appeals Conditional Use Permit No. 6757 on the basis that the original CUP application by Harvest of Pasadena, LLC ("Harvest") was incomplete, that the current CUP application has multiple deficiencies, and that the location itself is non-compliant as it is too close to a "library," which is clearly identified in the Pasadena Municipal Code as a sensitive receptor.

I. Equal application of Laws, Rules and Regulations to all Applicants require that the City of Pasadena require strict compliance with ALL requirements of the Conditional Use Permit: Cannabis Retailer application

The City Council has already provided exemplary guidance as to the need for equal application of laws, rules and regulations, and a strict standard of compliance.

In Sweet Flower's October 7th appeal to the City Council of the Planning Commission's decision on Sweet Flower's original CUP application, council members clearly stated the need for fairness, equal application of rules and strict compliance with the application rules.

Council member Gordo provided clear direction on the importance of holding all applicants to the same strict standard:

"All of the other applicants should be on notice that we are going to apply that very same, strict standard. And, if some of the issues that have been raised today around the other applications have any truth to them, then we have to apply that very same, strict, standard.

On the issue of complete vs. correct I am not sure I am quite there. **If anyone, knowingly, submitted an incomplete document, that should be given some weight.**

If we are going to proceed with that strict standard... **with future appeals we are going to have to apply that strict standard, and not just look to see if the box was checked, but if the document that was submitted itself complied with the check next to that box. And if it didn't, it's the same as not having done it."**

Also in Sweet Flower's appeal, Council member McAustin stated:

"If you haven't made the actual submission of one of the required documents, that's just a fundamental flaw."

12/16/2019
Item 14



Council member Masuda concurred, and also stated:

“The application says must be “Prepared by a Licensed Surveyor” ... **if it’s not, it’s going to get kicked back.**”

Council member Hampton stated:

“On what I’ve heard today, **no one has a complete application.**”

(Emphasis added).

II. **Harvest’s application was not complete at the relevant time, the application remains incomplete today and contains multiple material deficiencies.**

a. Harvest’s Radius Map was Not Prepared by a Licensed Surveyor

As set forth previously, the Department of Planning and Community Development staff found that a Conditional Use Permit: Cannabis Retailer application submitted by Harvest was “complete” with a radius map certification, despite the fact that neither the certification nor the radius map itself were properly prepared by a licensed surveyor.

The certification reads as follows:

“The surveyor listed below **performed measurements** of the subject site in relation to the sensitive uses in accordance with **land use information provided in the enclosed Sensitive Use Study prepared by Radius Maps, JN 19184, dated June 11, 2019. With respect to business licenses and sensitive land use determinations, we defer to said study.** Utilizing scaled, high-resolution ortho-imagery, we have measured the radius rings (500’, 600’ and 1,000’) from the corners of the subject parcel. **We have reviewed the location of structures and other land use areas identified and concur with the results of the Sensitive Use Study.** We hereby certify that the distances as represented in the Sensitive Use Study are accurate both in radius and identification. We further certify that the distances to the nearest cannabis facilities, from addresses stated within the Sensitive Use Study, are accurate.”

(Emphasis added.) (A copy of the Harvest of Pasadena, LLC Map is attached).

As has been well stated now, however, the requirement is **NOT** that the Licensed Surveyor merely “**performs measurements**” of the subject site.

As the Planning Department and Community staff stated:

“As indicated on the Conditional Use Permit submittal checklist (p. 1, (Location Map)), the radius map must be **prepared by a licensed surveyor.** The addresses and identification of uses can be prepared by a mapping service company.”

(Emphasis added.) (City of Pasadena website; Bd. of Zoning Appeals Staff Rpt., August 7, 2019, p. 6.)





Further, in a June 27, 2019 letter from Guille Nunez, Management Analyst IV, Department of Planning and Community Development informing me, Tim Dodd of SweetFlower, that our application was incomplete, Ms. Nunez advised that the determination that our application was deemed incomplete as based on:

“LOCATION MAP – Identification of the applicable distance requirements as outlined in Section 17.50.066 D (5) ‘Location Requirements’ of the Pasadena Municipal Code prepared by a licensed surveyor as indicated in the Cannabis Retailer application.”

However, neither was Harvest’s.

Nowhere on Harvest’s map or certification does it state that the map or any part of it was prepared by a licensed surveyor.

In the case of Harvest, the surveyor merely reviewed a map **prepared by others**, yet this alone was accepted by Staff as sufficient to satisfy the “prepared by a Licensed Surveyor” requirement.

To paraphrase Council Members McAustin, Masuda and Gordo, Harvest’s radius map, in not being prepared by a Licensed Surveyor, is “fundamentally flawed,” “the same as not having been done,” and “should be kicked back.”

As of today, Sweet Flower is the only applicant to have since submitted a Radius Map actually prepared by a licensed surveyor.

b. Harvest’s CUP application did not contain a Master Application Form

The application submitted by Harvest was deemed complete, notwithstanding the fact that among other things, it did not contain a signed Master Application form.

Inexplicably, Harvest was permitted to augment its June 12 application with a Master Application form that is signed and dated July 16, 2019, **despite one not being present at all in its original application.**

The Harvest application could not be deemed complete as submitted because, until its **later** submission of the signed July 16, 2019 application, there were no valid and binding attestations, declarations, and representations made under the previously submitted unsigned and incomplete application.

c. Harvest’s CUP application still does not contain the required landowner consent

The Conditional Use Permit: Cannabis Retailer application submitted by Harvest still does not contain the required consent by actual landowner to the filing of the CUP.

The application submitted by Harvest was not signed by the landowner of the real property at the location proposed for Harvest’s retail location. Contrary to the City’s requirements, Harvest’s purported “landowner” consent is only signed by the master lessor, who is merely the lessee of the property, and not the owner of the property.





The purported landowner consent, signed only by the lessee of the property, purporting to be the owner of the property, is obviously wrong on its face, without needing to be aware of any facts or circumstances. In one part of the form, the lessee states, *under penalty of perjury, that he is the actual land owner*. In the very next paragraph, *he then purports to make himself his own agent for the purposes of consenting to the CUP*.

This is obviously inconsistent and wrong on its face, but yet this obvious and glaring inconsistency was somehow overlooked, and Staff deemed Harvest's CUP complete.

Had Staff checked, they would have seen, **on the immediately preceding page** of Harvest's CUP application, that the actual landowner is **Peschke Realty Trust**, and not **Nathan Kadisha**, who signed the purported landowner consent, holding himself out as landowner in an attempt to complete Harvest's CUP application, despite not being the actual landowner.

As Sweet Flower asked in our appeal, *"How is a landowner consent NOT signed by the landowner complete?"*

This remains the question today – *"How is a landowner consent NOT signed by the landowner sufficient for a CUP?"*

d. Harvest's CUP application does not contain a master lease

The CUP application package clearly requires that the application contains the lease. Harvest, on the other hand, produced only the sublease for the property, and not the full lease – which in this case would be both the sub-lease AND the master lease.

There is no master lease, and therefore, in addition to the CUP application being materially deficient, there is no proof that the landowner is aware of or has consented to the specific use of the location as a cannabis retail location.

It is incomprehensible that Harvest's CUP applications was deemed complete and sufficient in light of the glaring omissions in their application packages noted above.

Further, it is particularly prejudicial that Harvest was apparently permitted to supplement its application with a Master Application form more than a month after its Conditional Use Permit: Cannabis Retailer application was filed, while SweetFlower was denied the same opportunity to supplement its application at all.

III. Harvest's Location is too close to a properly licensed Library

Pasadena Municipal Code Section 17.50.066.D.5(e) states

"No retailer shall be established or located within 600 feet, measured from the nearest property line of each of the affected parcels, of any park, library, or K-12 school".

(emphasis added)





The Rudolf Steiner Library and Bookshop is within 600' of Harvest's location, using the clear measurement methodology in the ordinance. Harvest's own sensitive use map, despite being prepared incorrectly, even itself confirms the presence of the Library as a sensitive receptor within 600'.

The Rudolf Steiner Library is licensed and permitted as a "library" by the City of Pasadena, and has, with the City of Pasadena's knowledge and assumed blessing, operated as a Library (loaning out books, receiving books, doing various other "library"-type things) at that location since 1991.

City staff, however, claims to limit the interpretation of the term in the ordinance "ANY LIBRARY" to mean only those libraries that are in the Pasadena Library System (i.e., public libraries). The City Staff defends this "interpretation" by relying on the definition of "library" in the section of the Code dealing with the taxation and fees of the Pasadena Library System.

The reliance on this provision for the definition of a "library" is obviously misplaced. That section is designed to provide a special taxation regime for the Pasadena Library System; of course then the definition for purposes of that section is limited to the Pasadena Library System. The scope of the provision here, to ensure that licensed cannabis businesses are not located in close proximity to sensitive locations including parks, K-12 schools and libraries, is clearly broader. If the intent of this provision were to be limited to only Pasadena public libraries, it surely would have been written as such. It was not, and should be interpreted simply and naturally as written -- to include any licensed and permitted "library" conducting activities expected of a library.

Put simply, "Any Library" means "Any Library."

The Rudolf Steiner Library is a library.

Harvest's own map says so.

Sweet Flower conducted an extensive search for locations beginning in June 2018. In all cases, we noted the existence of potential sensitive receptors. When the ordinances were issued, we updated our search to consider these ACTUAL properly licensed and permitted sensitive receptors in accordance with the clear language of the Code.

All other applicants, including Harvest, had the opportunity to do the same, and had they done so, they would have noted that the proposed Harvest location is non-compliant.





IV. Conclusion

Harvest's CUP application must be denied on the basis that the original CUP application by Harvest was incomplete, that the current CUP application has multiple deficiencies, and that the location itself is non-compliant, being too close to a "library," which is clearly identified in the Pasadena Municipal Code as a sensitive receptor.

Thank you for your attention to this matter.

We will summarize the contents of this letter for you at the appeal hearing this evening and respond to any questions you may have.

Sincerely,

Timothy Dodd, CEO

Sweet Flower Pasadena, LLC



Jomsky, Mark

From: Brent Riggs <riggsappeal@charter.net>
Sent: Monday, December 16, 2019 1:19 PM
To: Jomsky, Mark
Subject: Conditional Use Permit #6757: Request to allow retail sales of cannabis at 169 West Colorado

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Dear Mr. Jomsky,

I do not support allowing marijuana to be sold at the gateway to Old Pasadena.

I also do not agree dispensaries should be in Old Pasadena where kids and teens can be unsupervised and enjoy independence. Pasadena must remain accessible, neighborly, have a strong sense of place, have a strong community spirit, family-oriented and interactive. Allowing dispensaries in Old Pasadena along Colorado Blvd. is completely against this narrative.

*Brent Riggs
71 San Miguel Road
Pasadena, CA 91105-1140
626-449-6355*

Jomsky, Mark

From: Jeff Bird <jeffreyrbird@gmail.com>
Sent: Monday, December 16, 2019 2:02 PM
To: Jomsky, Mark
Cc: Masuda, Gene; Sullivan, Noreen
Subject: Conditional Use Permit #6757: Request to allow retail sales of cannabis at 169 West Colorado

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Greetings Mr Jomsky and Mr Masuda,

I wanted to formally express my disapproval of the CUP #6757 allowing retail sales of Cannabis at 169 W Colorado Blvd.

I feel that any cannabis sales should be a greater distance from any K-12 education site in town. My son is a prospective student at Maranatha High School and I would appreciate the City Council protecting our students safety and well being at all costs in this matter.

Please pass the most stringent of protections to ensure that our local students are not targeted by these businesses or their clientele.

Thank you for your efforts,
Jeff Bird
District 4 resident

Jomsky, Mark

From: martin117a@gmail.com
Sent: Monday, December 16, 2019 12:31 PM
To: Victor Gordo; Tyrone Hampton; McAustin, Margaret; John J. Kennedy; Gene Masuda; Andy Wilson; Madison, Steve
Cc: Jomsky, Mark; Mermell, Steve; Bagneris, Michele; Reyes, David; Paige, Jennifer
Subject: response to false statement by Harvest
Attachments: 420373084-Harvest-NOH-1-10-19 (1).pdf

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Dear Councilmember Gordo:

Venable LLP's letter dated November 4, 2019 on behalf of "Harvest of Pasadena " to you in response to your October 28, 2019 questions regarding Harvest's business practices contains a false statement regarding my public comment that same evening as follows:

"Contrary to Mr. Truitt's claims, there has been no license revocation or suspension for Harvest of Ohio." (Statement by Jordan E. A. Ferguson, Venable LLP associate)

This claim by Mr. Ferguson is demonstrably false. I made no such claim.

I accurately stated that the State of Ohio had issued a "Notice of Intent to Revoke Provisional License" to Harvest and supplied a copy of that document during my remarks (attached is another copy).

Reproduced below is a transcript (I read a written statement) of the relevant portion of my public comment on October 28, 2019 regarding Harvest's business practices and the fact that the State of Ohio is "seeking to revoke" a Harvest cannabis license:

"Finally, Harvest has been under investigation in both Ohio and Pennsylvania for misrepresenting itself in applications to obtain permits to grow or sell marijuana.

The Ohio Board of Pharmacy is seeking to revoke a cannabis license Harvest obtained by falsely claiming it was majority-owned by an African-American woman.

You have that State of Ohio document before you.

The Pennsylvania Department of Health investigated Harvest and its Pennsylvania subsidiaries to determine if the companies also misrepresented themselves in that state to win permits to sell marijuana. Two months ago, Harvest surrendered two Pennsylvania licenses that the state had alleged they obtained by trickery.

Harvest has employed the same type of trickery here in Pasadena. However, unlike in Ohio and Pennsylvania, Harvest has been caught early in the process."

As you can see, I never made the claim that Harvest's fight with the State of Ohio has yet reached a conclusion. It should be noted that Harvest sued the State of Ohio to suppress the public release of the document I have attached.

In conclusion, Mr. Ferguson's statement, made in defense of "Harvest of Pasadena" is demonstrably false.

Very truly yours,

Martin Truitt



Department
of Commerce



January 10, 2019

VIA CERTIFIED MAIL

7016 1370 0001 7442 4407

Steve White
ATTN: Harvest Grows, LLC
627 S. 48th St. Suite 100
Tempe, AZ 85281

Re: Harvest Grows, LLC; MMCP-C-201706-0095

Dear Sir or Madam:

Enclosed please find a Notice of Intent to Revoke and Notice of Opportunity to request a hearing as to whether your Medical Marijuana Cultivator Level I provisional license should be revoked.

If you wish to request a hearing, your written request must be received by the Division within thirty (30) days from the date of mailing of this Notice. If no hearing is requested, a final Order revoking your Medical Marijuana Cultivator Level I provisional license may be issued after thirty days.

If you have any questions, please contact the undersigned at phone number 614-387-2593.

Sincerely,

Fatimata Diallo

Enclosure

STATE OF OHIO
DEPARTMENT OF COMMERCE
MEDICAL MARIJUANA CONTROL PROGRAM
COLUMBUS, OHIO 43215

IN THE MATTER OF PROVISIONAL LICENSEE: Harvest Grows, LLC, MMCP-C-201706-0095

**NOTICE OF INTENT TO REVOKE PROVISIONAL LICENSE
AND
NOTICE OF OPPORTUNITY FOR HEARING**

The Department of Commerce (“Department”) alleges the following:

1. Harvest Grows, LLC (“Respondent”) submitted an application (“Application”) for a Level I medical marijuana cultivator provisional license to the Department in June of 2017.
2. In Respondent’s Application, Respondent marked the box on Form 1O, “Disadvantaged Group Applicant Form,” certifying “that [its] business is owned and controlled by a U.S. citizen who is a resident of Ohio and is a member of one of the economically disadvantaged groups set forth in division (C) of section 3796.09 of the Revised Code.”
3. Respondent identified Ariane Kirkpatrick as a 51% owner on Application Form 1I, “Owners and Officers Roster Form,” as well as “President” and a “member of a disadvantaged group.”
4. Respondent identified Ms. Kirkpatrick as “President” with no direct reports on the organizational chart it provided the Department following Application Form 1J, “Organizational Chart Cover Page.”
5. Ms. Kirkpatrick is the person upon whom Respondent bases its application certification that it is owned and operated by a member of an economically disadvantaged group set out in Ohio Revised Code (“O.R.C.”) 3796.09(C).
6. Respondent’s application did not score in the top 12 of all qualifying applications, however Respondent was awarded a Level I medical marijuana cultivator provisional license on or about November 30, 2017 under the economically disadvantaged group set aside as outlined in O.R.C. 3796.09(C).
7. Respondent provided the Department with an “Operating Agreement of Harvest Grows, LLC” (“Operating Agreement”) with a listed date of November 20, 2017. The Operating Agreement names Ms. Kirkpatrick and Erika Waltz as “Members.” The Operating Agreement further names Ms. Kirkpatrick and Steve White as “Managers” and indicates that they are the only two Managers. The Operating Agreement contains a “Schedule A” which lists Ms. Kirkpatrick as a 51% owner with a “\$[0]” “Initial Capital Contribution” and Erika Waltz as 49% owner with a “\$[0]” “Initial Capital Contribution.”
8. There is no provision in the Operating Agreement which makes Ms. Kirkpatrick’s ownership irrevocable. Further, under Article 7.1 of the Operating Agreement, Managers “shall serve for a term ending at the next meeting of the Members called for the purpose of electing Managers, or until the Manager’s earlier death, resignation, or removal.”

9. Article 7.3 of the Operating Agreement requires unanimous approval by the Managers to make management decisions such as “communicate, and otherwise deal with any and all Persons having jurisdiction over or in any way affecting, any aspect of the Company’s business...,” write checks, pay company expenses, and to “Perform any and all other acts the Managers deem necessary or appropriate to the Company’s business.”
10. On or about November 21, 2017, the Managers, Ms. Kirkpatrick and Mr. White, assigned to Mr. White as Chief Executive Officer of the Company (“CEO”), in an “Action by Written Consent of the Managers of Harvest Grows LLC” (“Action”), “all powers, functions and obligations customary for a chief executive officer of a company.” This authorization included numerous non-exclusive and broad delegations of authority including but not limited to the authority to hire and terminate staff, to communicate with “members, employees, government authorities, other stakeholders, and the public,” as well as authority to “do and perform or cause to be done and performed all such acts, deeds and things, and to make, execute, and deliver, or cause to be made, executed, and delivered, all such agreements, undertakings, documents, instruments or certificates in the name of the Company and to retain such counsel, agents, and advisors, and to incur and pay such expenses, fees, and taxes as are, in the opinion of the CEO, considered necessary or advisable...” Mr. White’s authority specifically includes the power to execute a “management services agreement with an affiliate of the Company (the “Service Provider”) pursuant to which the Service Provider shall provide advisory, consulting, management and administrative support services to the Company.”
11. The Action appointed Ms. Kirkpatrick as Respondent’s Vice President and Chief Diversity Officer; it also provided her control solely over Respondent’s “construction project management.”
12. The Operating Agreement, Action, and other information provided to the Department show that Ms. Kirkpatrick does not have control over the management and/or day-to-day operations of Harvest Grows, LLC and/or that Respondent does not satisfy the requirements under R.C. 3796.09(C).
13. O.R.C. 3796.09(C) states that “[t]he department shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans. American Indians. Hispanics or Latinos, and Asians.”
14. O.R.C. 3796.09(C) states that “As used in this division, ‘owned and controlled’ means that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.”
15. Ohio Administrative Code (“O.A.C.”) 3796:2-1-03(A)(7) states that an applicant shall “[s]ubmit an application . . . that does not contain information that misleads the department, [or] misrepresents a material fact.”

16. O.A.C. 3796:5-6-01(A)(6) permits the Department, when necessary for the program's administration, implementation, and enforcement to suspend, revoke, or refuse to renew a license or registration.
17. O.A.C. 3796:5-6-01(A)(7) permits the Department, when necessary for the program's administration, implementation, and enforcement to refuse to issue a certificate of operation.
18. O.A.C. 3796:5-6-01(A)(11) permits the Department to "[e]xercise any other power or duty authorized by Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code."
19. O.A.C. 3796:5-6-02(B)(1) states that, in order to ensure the Medical Marijuana Control Program's administration, implementation or enforcement, "[f]alse or misleading statements in or involving a license or registration application" shall be cause to have a provisional license revoked, suspended, or denied.
20. O.A.C. 3796:5-6-02(B)(4) prohibits a licensee from failing to inform the Department of a material change to the proposal it put forth in its application in the subsequent implementation of said proposal.
21. O.A.C. 3796:5-6-02(B)(10) states that a licensee is prohibited from engaging in "a fraudulent or deceptive practice, transaction, representation or omission to the public, law enforcement or a representative of the department, regardless whether anyone relied on such practice, transaction, representation or omission."

Based on Paragraphs (1) through (21) above, in particular Paragraph (12), the Department intends to REVOKE Respondent's cultivator provisional license.

Pursuant to R.C. 119.07, the Department hereby provides notice that Respondent is entitled to a hearing concerning the above if a request for hearing is received by the Department within **thirty (30) days** from the date of the mailing of this Notice. The hearing request must be submitted to:

Ohio Department of Commerce
Medical Marijuana Control Program
77 S. High Street, 23rd Floor
Columbus, OH 43215
614-466-3636

Respondent is hereby notified that if the Department does not receive delivery of a request for hearing within thirty (30) days from the date of the mailing of this Notice, the Department, intends to issue an Order to REVOKE Respondent's provisional license. See O.A.C. 3796:5-6-01.

Respondent is further advised that at such hearing Respondent and the Department may appear in person, by their attorneys, or together with their attorneys, or they may present their position, arguments, or contentions in writing, and that at the hearing they may present evidence and examine witnesses appearing for or against them. Respondent is further notified that Respondent must be represented by an attorney at the hearing if Respondent is a corporation, a limited liability

company, or other "legal entity" as defined by R.C. 1705.01(D), and Respondent wishes to make legal arguments, examine witnesses, or undertake any tasks that can only be performed by an Ohio licensed attorney. If Respondent wishes to be represented by an attorney not licensed in Ohio, that attorney must be admitted *pro hac vice* pursuant to rules established by the Supreme Court of Ohio prior to the hearing date. See Gov.Bar R. XII.

State of Ohio
Department of Commerce

By: Jacqueline J. Williams
Title:
Date: January 10, 2019

Certified Mail Tracking Number - 70161370000174424407
cc: Daniel Murry Assistant Attorney General

Exhibit A – Relevant Statutes and Code Reference

ORC 3796.09 License to cultivate, process or test medical marijuana.

(C) The department shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans. American Indians. Hispanics or Latinos, and Asians. If no applications or an insufficient number of applications are submitted by such entities that meet the conditions set forth in division (B) of this section, the licenses shall be issued according to usual procedures.

As used in this division, "owned and controlled" means that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.

ORC 3796.14 Authority of department of commerce.

(A)(1) The department of commerce may do any of the following for any reason specified in rules adopted under section 3796.03 of the Revised Code:

(a) Suspend, suspend without prior hearing, revoke, or refuse to renew a license it issued under this chapter;

(b) Refuse to issue a license;

(c) Impose on a license holder a civil penalty in an amount to be determined by the department.

The department's actions under this division shall be taken in accordance with Chapter 119. of the Revised Code.

OAC 3796:2-1-02 Cultivator provisional license application.

(B) The provisional license application shall be submitted in accordance with Chapter 3796. of the Revised Code and this chapter. The application will include instructions for completion and submission. An applicant for a level I cultivator provisional license shall be prohibited from applying for a level II cultivator provisional license, and an applicant for a level II cultivator provisional license shall be prohibited from applying for a level I cultivator provisional license.

OAC 3796:2-1-03 Cultivator application review.

(A) The department, an independent contractor selected by the department, or a combination of the two shall review the submitted applications as described in this chapter and the application instructions. In order to receive consideration under paragraph (B) of this rule, an applicant shall:

(7) Submit an application with the applicable fee under rule of the Administrative Code that does not contain information that misleads the department, misrepresents a material fact, or is received after the established application submission period established under paragraph (A) of rule 3796:2-1-02 of the Administrative Code.

OAC 3796:5-6-01 Scope of enforcement and enforcement powers.

Rules set forth in this chapter establish standards for the oversight and enforcement of the cultivation, processing, and testing of medical marijuana. Division 3796:5 of the Administrative Code also establish legal standards for the denial, suspension, or revocation of licenses issued by the department under Chapter 3796. of the Revised Code. If any portion of the rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

(A) Whenever it appears to the department that a medical marijuana entity issued a provisional license or certificate of operation by the department or a person possessing an employee identification card issued by the department has engaged in, is engaged in, or is about to engage in any act or practice declared to be prohibited by Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code, or when the department believes that it is necessary for the program's administration, implementation and enforcement, the department may do the following:

- (1) Investigate activities which are, or are suspected to be, prohibited and charge an investigation assessment;
- (2) Serve all summonses, subpoenas, administrative orders, notices, or other processes concerning the enforcement of laws regulating medical marijuana and medical marijuana products;
- (3) Issue either administrative subpoenas ad testificandum or subpoenas duces tecum, or both, to compel the testimony of witnesses or the production of any books and records, in paper or electronic format, to be served by personal service or by certified mail, return receipt requested;
 - (a) If the subpoena is returned because of inability to deliver, or if no return is received within thirty days of the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within thirty days after the date of mailing, service shall be deemed to have been made. If the subpoena is returned because of inability to deliver, the department may designate a person or persons to effect either personal or residence service upon the witness.
 - (b) The person designated to effect personal or residence service under this paragraph may be the sheriff of the county in which the witness resides or may be found or may be any other duly designated person.
 - (c) The fees and mileage of the person serving the subpoena shall be the same as those allowed by the courts of common pleas in criminal cases, and shall be paid from the funds of the department.
- (4) Inspect, examine, or investigate any premises or vehicle where medical marijuana or medical marijuana products are grown, stored, cultivated, transported, processed, or tested, and any books and records in any way connected with any such activity;
- (5) Require any cultivator, processor, or testing laboratory, or other person, upon demand, to permit an inspection of premises or vehicle during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and to permit the testing of or examination of medical marijuana or medical marijuana products;
- (6) Suspend, suspend without prior hearing, revoke, or refuse to renew a license or registration issued under Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code;
- (7) Refuse to issue a provisional license or certificate of operation;
- (8) Issue a cease and desist order;
- (9) Impose a civil penalty in an amount not to exceed fifty thousand dollars for each violation, for any violation of Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code;
- (10) Place conditions on an applicant, license, licensee, or registrant; and

(11) Exercise any other power or duty authorized by Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code.

(B) A cultivator, processor, or testing laboratory whose certificate of operation has been suspended shall not sell, offer for sale, transport, or conduct any operations outside the facility related to medical marijuana. Employees of the facility may enter the premises of the facility for the necessary care and maintenance of the premises and any medical marijuana and medical marijuana products. The removal of medical marijuana from a cultivator, processor, or testing laboratory is strictly prohibited during an active suspension under this chapter.

(C) The revocation of a provisional license or certificate of operation shall immediately terminate the employee identification cards of persons employed by the licensee. A cultivator, processor, or testing laboratory whose certificate of operation has been revoked shall close the facility and prohibit anyone from entering the facility, other than employees with the department, law enforcement, or other individuals carrying out official duties related to the revocation of the certificate of operation.

(D) Information obtained by the department shall be kept confidential and only disclosed to department employees, law enforcement, and persons deemed by the department to have a valid reason for access. Unauthorized disclosure shall be cause for discipline, including dismissal, if disclosure was by a department employee; and shall be grounds for disciplinary action against a cultivator, processor, or testing laboratory or any employee.

(E) Department employees will not serve as expert witnesses in private litigation. In addition, the department may move to quash any subpoena that seeks fact testimony from department employees in private litigation. The department may certify as to the status of any person as a licensee or registered employee of a licensee. Such certification shall be admissible in any court as prima-facie evidence as to the status of the person.

OAC 3796:2-1-02 Prohibited activities

(B) Any of the following shall be considered threats to public health, welfare, or safety and shall be sufficient cause for a provisional license, certificate of operation, or employee identification care of a cultivator, processor, or testing laboratory, or any combination thereof, or employee to be denied, suspended with or without a hearing, revoked, fined, have conditions placed upon such registration, or any combination of such actions necessary to ensure the program's administration, implementation and enforcement:

- (1) False or misleading statements in or involving a license or registration application;
- (2) Any civil or disciplinary action is taken, or has been taken, against any persons relating to a professional license;
- (3) Failure to continuously escort an otherwise unauthorized person within an area designated by the facility as a controlled access area, unless that person is an investigator or employee of the department, authorities from local licensing authority or any state or law enforcement agency;
- (4) Failure to promptly inform the department of any changes of address or other material information contained in the application;
- (5) Discipline, including, but not limited to, denial, suspension or revocation of a license, by any state or any territory of the United States or any foreign jurisdiction;
- (6) Failure to report to the department within fourteen days of any adverse final action taken against a license in any state or any territory of the United States or any foreign jurisdiction, any governmental agency, any law enforcement agency or any court;
- (7) Failure to respond to a written request for information by the department within ten business days, unless otherwise stated;

- (8) Failure to keep accurate records in accordance with any rules promulgated in accordance with Chapter 3796. of the Revised Code;
 - (9) Operating in a manner inconsistent with the public health, safety, and welfare standards of the local governmental authority;
 - (10) A fraudulent or deceptive practice, transaction, representation or omission to the public, law enforcement or a representative of the department, regardless whether anyone relied on such practice, transaction, representation or omission;
 - (11) A finding by the department of a substantial discrepancy in a department inspection of any records and the subject matter of any records that are required under any rules promulgated in accordance with Chapter 3796. of the Revised Code;
 - (12) Allowing medical marijuana, or medical marijuana byproduct or scrap, to be used or disposed of in a manner not consistent with Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code; or
 - (13) Failure to maintain a good business repute. For purposes of this rule and making a determination of a failure to maintain good business repute, the department shall consider if the person has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the person. These would include, but not limited to, if the person has been determined to have engaged in forgery, embezzlement, nondisclosure, incomplete disclosure, misstatement of material facts, and manipulative or deceptive practices, or if the person has established a reputation for honesty, integrity, and competence.
- (C) Whenever the department revokes or suspends a medical marijuana entity license, it shall notify the state of Ohio board of pharmacy, the state medical board of Ohio, law enforcement, and county sheriff's office whose jurisdiction includes the location of the medical marijuana entity.

Jomsky, Mark

From: Brian Nolan <brian@briannolan.com>
Sent: Monday, December 16, 2019 11:22 AM
To: Jomsky, Mark; Tornek, Terry; smermmel@cityofpasadena.net
Subject: Conditional Use Permit #6757: Request to allow retail sales of cannabis at 169 West Colorado

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Dear Pasadena City Council, Mr. Mermell and Mr. Jomsky:

As a resident and business owner who works approximately one block from the 169 West Colorado location, I want to express my dismay that this property is being proposed as a cannabis dispensary. As we all know, Old Town Pasadena is the heart of our city and its wonderful shopping and dining offerings. Moreover, that specific location is the defacto west entrance to the district, and is highly visible on the route of the Rose Parade, which is viewed by millions of people worldwide. CUP approval of the location is in my opinion inconsistent with the General Plan for the area.

It also should be considered that the site is a mere 400 feet from the hundreds of residents of the West Gate apartments and that it is on a block frequented by minors patronizing the adjacent businesses.

It has taken decades of careful and sometimes difficult decisions to revive Old Town. This is one of those moments where the Residents and the City Council needs to show backbone and not cow the lawyers representing the cannabis industry's interests.

In summary, this type of business belongs in a more appropriate location not on "main street" Pasadena.

Thank you for your consideration,

Brian Nolan
Pasadena Resident & Business Owner