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Refer To File #: 503561-0001

VIA EMAIL

October 3, 2019

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

Re: SweetFlower Pasadena, LLC – Appeal from Decision of Board of Zoning
Appeals That Conditional Use Permit: Cannabis Retailer is Incomplete

Dear Mayor Tornek and Members of the City Council:

We continue to represent SweetFlower Pasadena, LLC (“SweetFlower”) with regard to all matters pertaining to SweetFlower’s application for a Conditional Use Permit: Cannabis Retailer filed on June 12, 2019 (“Application”) and subsequent supplements to the Application and/or revised applications. The purpose of this letter is to supplement the appeal filed by SweetFlower with the City Council challenging the split decision of the Board of Zoning Appeals that the Application is incomplete (PLN2019-00386 Appeal of Planning Director Decision).

By letter of June 27, 2019 from Ms. Guille Nunez, Management Analyst IV, Planning and Community Development Department (“Determination Letter”), SweetFlower was advised that the location map filed with the Application does not comply with the requirements of Pasadena Municipal Code Section 17.50.066 D 5 because it was not “prepared by a licensed surveyor as indicated in the Cannabis Retailer Application,” thereby rendering the Application incomplete.

The determination that the Application is incomplete is arbitrary, capricious, not grounded in the law, a deprivation of due process and therefore unlawful for the following reasons (unless otherwise indicated, all references to “Chapter” and “Section” are to chapters and sections of the Pasadena Municipal Code):

- I. The Conditional Use Permit: Cannabis Retailer application requirement that location maps be prepared by a licensed surveyor is *ultra vires* and cannot apply to the Application because the Planning and Community Development Department had no legal authority to impose such a requirement.**

Promulgation of cannabis conditional use permit regulations is vested solely in the City Manager unless such authority is delegated, which has not occurred.

The Conditional Use Permit: Cannabis Retailer application package was provided to SweetFlower and other prospective applicants at a June 12, 2019 cannabis conditional use permit workshop conducted by the Department of Planning and Community Development (“Planning Department”). The “Submittal Checklist for Conditional Use Permit: Cannabis Retailer Application,” which was included with the application packet, requires applicants to submit a location map “prepared by a licensed surveyor.”

The requirement that a licensed surveyor prepare the location map was imposed by the Planning Department along with additional requirements, as indicated in the checklist footer. These requirements were provided to prospective applicants for the first time at the workshop. The requirements were not uploaded to the City’s Marijuana Regulations web page prior to the time at which submission of Conditional Use Permit: Cannabis Retailer applications was opened. As discussed below, the Planning Department had no authority to impose these requirements, including the requirement that location maps be prepared by a licensed surveyor.

Chapter 5.78 vests exclusive authority to impose requirements for commercial cannabis permits in the City Manager. Section 5.78.070 provides, “The City Manager shall promulgate the procedures to govern the application process and manner in which the decision will ultimately be made regarding the issuance of any commercial cannabis permit . . .” The City Manager’s authority applies to cannabis conditional use permit regulations because “commercial cannabis permit” is defined in Section 5.78.050 M to mean, “a regulatory permit issued by the City of Pasadena pursuant to this chapter to a commercial cannabis business.” Further, Section 5.78.010 includes among the purposes of Chapter 5.78 the provision of “sensible regulations on the use of the land.”

Consistent with the authority vested in the City Manager by Section 5.78.070 to promulgate cannabis conditional use permit regulations, the City Manager promulgated Conditional Use Permit: Cannabis Retailer Rules and Regulations Pursuant to Section 5.78.190 on June 20, 2019, a full eight (8) days following opening of the application process and submission of the Application. Section 1 of the regulations states that “the following rules and regulations apply to the **processing of land use entitlements required for commercial cannabis businesses pursuant to Section 5.78 of the Pasadena Municipal Code.**” (Emphasis added.) A copy of the cannabis conditional use permit rules and regulations promulgated by the City Manager is attached at Exhibit “A.”

Inclusion of the conditional use permit land use regulations set forth in the Conditional Use Permit: Cannabis Retailer Rules and Regulations promulgated by the City Manager was clearly within the scope of his authority under Section 5.78. Crucially, Chapter 5.78 contains no mention of any authority of the Planning Director to impose cannabis land use permit requirements such as the requirement that location maps be

prepared by a licensed surveyor. Well settled principles of statutory interpretation dictate that the City Manager has **exclusive** authority to impose cannabis conditional use permit requirements. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal. 3d 1379, 1391, fn. 13 [the expression of certain things in a statute necessarily involves exclusion of other things not expressed].) (A complete legal opinion on the subject of the City's Manager's authority to promulgate cannabis retailer land use regulations governing conditional use permits is attached at Exhibit "B.") The language of Section 5.78.070 is clear and unambiguous. Unless delegated by the City Manager, the authority to promulgate land use regulations governing cannabis conditional use permits is vested solely in the City Manager. As discussed below, no such delegation had occurred when the Application was filed and none has occurred since.

Inasmuch as the cannabis conditional use permit rules and regulations that may require location maps be prepared by a licensed surveyor were not legally promulgated by the City Manager until June 20, 2019, such regulations are *ultra vires* with respect to applications filed prior to June 20, 2019 and, therefore, cannot apply to the Application, which was submitted on June 12, 2019. Thus, the only conditional use permit regulations that apply to the Application are those found in the Pasadena Municipal Code including, but not limited to, Section 17.50.066 D 5, which sets forth the requirements for location maps. The Application was fully compliant with all such regulations (the only regulations that can be lawfully imposed as of the date the Application was filed). Accordingly, the City must find that the Application was complete.

Alternatively, the City must afford SweetFlower the opportunity to supplement the Application with a location map that complies with later promulgated rules and regulations, if any, in accordance with Section 17.60.040 G which provides that, "Whenever an applicant desires/needs to file revised materials, the materials shall be submitted at least 10 days before a public hearing on the application.

To deny SweetFlower the opportunity to supplement the Application with a map that complies with the cannabis use permit rules and regulations promulgated by the City Manager eight (8) days after submittal of an application that was completely compliant with the rules and regulations then in effect is an arbitrary and capricious retroactive application of rules and regulations not lawfully in effect at the time the City began accepting Conditional Use Permit: Cannabis Retailer applications and a fundamental deprivation of due process.

This utter failure of the City to abide by the requirements of its own Municipal Code and to ignore the fundamental due process rights of SweetFlower is particularly egregious in view of the City's rules that afford only the first complete Conditional Use Permit: Cannabis Retailer application in each City Council district to proceed to the second step of the approval process. The result of the City's unlawful imposition of an *ultra vires* regulation is that SweetFlower went from first to being viewed by the City staff as last in the order of applicants for City Council District 3.

II. The Director of Planning and Community Development prejudiced the SweetFlower appeal by giving the Board of Zoning Appeals completely erroneous legal advice.

Notwithstanding the sole and exclusive authority vested in the City Manager to promulgate cannabis land use regulations, including conditional use permit requirements, the Director of the Planning Department (“Planning Director”) gave the Board of Zoning Appeals completely contrary legal advice. The Planning Director’s erroneous advice struck at the heart of SweetFlower’s primary issue in the appeal, clearly prejudicing the outcome of the Board of Zoning Appeals consideration of the appeal.

In a Staff Report addressed to the Board of Zoning Appeals dated August 7, 2019, The Planning Director advised the Board that he, not the City Manager, possessed the authority to promulgate cannabis conditional use permit rules and regulations, as follows:

“The [Planning] Director decision that the first and second applications submitted by the appellant are incomplete is supported by Section 17.60.040 (*Application Preparation and Filing*) of the Pasadena Municipal Code. Pursuant to Section 17.60.040 D: *The Director shall establish in writing the submittal requirements for permit applications required by this Zoning Code. All Applications shall include the following submittal materials identified by the Director . . . the Director has the discretion to require ‘any additional materials identified by the Director.’*”

(Bd. of Zoning Appeals Staff Rpt., August 7, 2019, pp. 7, 8.)

After the hearing was closed and prior to the Board members voting on SweetFlower’s appeal, the Planning Director advised the Board:

“There was [sic] a couple of different points regarding who could promulgate rules [regarding cannabis land use regulations]. Section 5.78 – so with respect to the entire cannabis regulations, they are spread across three different sections of the municipal code: Title 5, Title 8 and Title 17. With respect to promulgation of rules, that is very narrow and very specific to the initial screening application process and then the cannabis permit process. We’re not talking about the cannabis permits. **Section 5.78 has nothing to do with planning. It has nothing to do with conditional use permits.**”

(Emphasis added.) (A copy of the Court Reporter’s Transcript, Bd. of Zoning Appeals hearing, August 7, 2019, pp. 79-80, is attached at Exhibit “C.”)

It is incomprehensible how, in the face of cannabis land use regulations promulgated by the City Manager on June 20, 2019, that the Planning Director could advise the Board of Zoning Appeals on August 7, 2019 that he had such authority. The Planning

Director's advice is made even more perplexing by the position of the City Attorney on the subject – her position stands in stark contrast to the Planning Director's representation. In a Letter of July 12, 2019 from the City Attorney to Christopher Sutton (posted on the city's Marijuana Regulations webpage), Ms. Bagneris stated:

“Atrium’s application was put on hold pursuant to the authority provided to the City Manager in PMC section 5.78.190 to promulgate regulations, standards . . . [etc.]. **On June 20, 2019, the City Manager published on the City’s Marijuana Regulations webpage Rules and Regulations for Retail Cannabis CUP . . .**”

(Emphasis added.) (A copy of the City Attorney's July 12, 2019 letter is attached at Exhibit “D.”)

Further, while the City Manager may have delegated his authority to promulgate regulations regarding the initial screening and scoring of cannabis business applications at the beginning of the cannabis retailer process, that fact did not extend to the conditional use permit process. That point was made clear in a letter of June 28, 2019 from Ms. Bagneris to Damian Martin (posted on the City's Marijuana Regulations webpage) which states, in pertinent part, as follows:

“Your argument that the Director of Planning and Community Development (“Director”) existence, appointment and authority all stem from the Zoning Code ignores the language throughout Chapter 5.78 that the City Manager may delegate his duties therein. **That delegation to the Director does not convert responsibilities under Chapter 5.78 to responsibilities under the Zoning Code.**”

(Emphasis added.) (A copy of the City Attorney's June 28, 2019 letter is attached at Exhibit “E.”)

At the Board of Zoning Appeals hearing on the SweetFlower appeal, the utterly incorrect advice proffered by the Planning Director, which was very obviously relied on by a majority of the Board, struck at the heart of the appeal. No conclusion can be reached other than the erroneous advice given by the Director of Planning was prejudicial to SweetFlower and a major factor in the outcome.

III. By the standards articulated by the Planning Department staff on June 12, 2019, the Application was complete when originally submitted.

At the June 12, 2019 meeting of prospective Conditional Use Permit: Cannabis Retailer applicants discussed above, the Planning Department staff members were asked a number of questions regarding the standard by which applications would be considered “complete.” In its response, the staff placed no more emphasis on the purported requirement that the location map to accompany the applications be prepared by a licensed surveyor than any other document to be provided with the application.

No less than three (3) standards for determination of a “complete” application were provided by the staff at the meeting – first, a “complete with no gaps” standard was provided. After further questions were raised by the prospective applicants, the staff expressed a “substantially complete” standard. After yet another round of question regarding the standard by which “completeness” would be judged, the staff stated that the applications would be deemed complete if they were “completed in good faith.” At no time at the meeting or prior to submission of the Application did the Department of Planning and Community Development staff advise SweetFlower that solely by reason of the submission of a location map prepared by a professional other than a licensed surveyor would the staff deem the entire application incomplete.

In reliance on the Planning Department staff advice, SweetFlower, in good faith, submitted the Application which included a location map that, as discussed above, was completely compliant with Section 17.60.040 D and the standards expressed by the staff for a determination of “completeness.” SweetFlower’s confidence that the location map submitted with the Application was compliant was buttressed on June 13, 2019, the day following submission of the Application, when the Planning Department emailed a sample location map for Conditional Use Permit: Cannabis Retailer applications to applicants and prospective applicants that nowhere indicated it was to be prepared by a licensed surveyor. A copy of the sample location map emailed to the applicants and prospective applicants is attached hereto at Exhibit “F.”

The nebulous “complete” standards established by the Planning Department staff and the sample location map emailed to applicants and prospective applicants firmly implied that any technical infirmities with an application, including the location map, could be corrected without a requirement that a new application be submitted that would jeopardize an applicant’s priority in each City Council district for further processing. In fact, as discussed above, Section 17.60.040 G provides that conditional use permit applications may be supplemented after they have been submitted. SweetFlower properly and reasonably relied on the staff’s advice regarding the standards for a determination of application “completeness” with the assurance provided by Section 17.60.040 G that any location map technical issues could be resolved after submission of the Application following the “completeness” determination.

IV. The Board of Zoning Appeals and Planning Department staff have failed to consistently apply the location map “prepared by licensed surveyor” standard when determining that Conditional Use Permit: Cannabis Retailer applications are complete.

The City’s process was not the model of clarity as a full day following opening of the Conditional Use Permit: Cannabis Retailer application process, and after SweetFlower’s submission of the Application, the Planning Department and Community staff responded to a prospective applicant inquiry regarding the purported requirement that the location map submitted with an application be prepared by a licensed surveyor:

“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.)

The email response of the staff stood in stark contrast to the sample location map the staff posted on the City’s website which, as discussed above, nowhere indicated that such maps be prepared by a licensed surveyor. The subsequent June 27, 2019 determination by the staff that the Application was incomplete on account of the location map not having been prepared by a licensed surveyor also stood in contrast to the staff’s earlier advice that applicants make a “good faith” effort at compiling a complete application.

The confusion regarding the standards for preparation of location maps was heightened by the June 27, 2019 letter from Guille Nunez, Management Analyst IV, Department of Planning and Community Development informing Tim Dodd of SweetFlower that the Application was incomplete. In the letter, Ms. Nunez advised that the determination that the 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.”*

(Emphasis included in original text.) (A copy of the June 27, 2019 Planning and Community Development Department letter is attached at Exhibit “G.”)

As discussed above, nowhere in Section 17.50.066 D 5 is there a requirement that location maps be prepared by a licensed surveyor or that certain applications, such as the Cannabis Retailer application referred to in the June 27, 2019 letter, may require that such maps be prepared by a licensed surveyor.

In yet another confusing attempt at clarifying the standards for Conditional Use Permit: Cannabis Retailer application location maps, the Planning Director insisted in his Staff Report to the Board of Zoning Appeals on the SweetFlower appeal that location maps must be “**prepared by**” a licensed surveyor. (Staff Rpt., Bd. of Zoning Appeals, p. 5.)

Further, At the Board of Zoning Appeals hearing, the Planning Director advised the Board as follows:

“We also knew that the only way - - or the best way to get one [an accurate location map] was its going to be **prepared by** a licensed surveyor . . . So the idea of ‘reviewed by’ is less than ‘**prepared by,**’ and that was really what the staff was after. Staff said, ‘This is an important concept. We would like to make sure that these things [location maps] are ‘**prepared by.**’ **That was a standard we set up. We didn’t accept a**

lesser standard. So again, I'm not saying that the maps are wrong. I'm saying that **the standard we set up was 'prepared by.'** . . . What it really means, in this case we believe that - - the ones - - and - - if you saw the chart that was up on the screen. We believe the ones [location maps that we said have 'Yes,' are those that are **'prepared by,'** and it could be a letter saying, 'This is what we did. This is how we did it.'"

(Emphasis added.) (A copy of the Court Reporter's Transcript, Bd. of Zoning Appeals hearing, August 7, 2019, pp. 87-89, is attached at Exhibit "H.")

The only way to interpret the Planning Director's statement that a letter from a licensed surveyor may say, "This is what we did. This is how we did it," in a manner consistent with his statement that the standard for location maps is that they must be **prepared by** a licensed surveyor is that such a letter must explain that the location map was, in fact, **prepared by** a licensed surveyor with a further explanation of how the map was prepared.

The repeated assertions found in the Planning Director's Staff Report and by the Planning Director at the hearing that Conditional Use Permit: Cannabis Retailer application location maps must be *prepared by a licensed surveyor* and his rejection of a "reviewed by" standard leaves no room for acceptance of any map that falls short of that standard. However, rather than clarify the "prepared by" location map standard, his explanation coupled with the map displayed by the Planning Department staff to the Board of Zoning Appeals as a model of compliance served only to confuse matters even further.

The map presented to the Board of Zoning appeals as a model of compliance is the map submitted by Integral Associates Dena, LLC dba "Essence" ("Integral"). However, the Integral map fails in three glaring respects to meet the **prepared by** licensed surveyor standard established by the Planning Department staff, with strict adherence to the standard insisted upon by the Planning Director, as follows:

1. The Radius Map, which the Planning Department staff advised **must be prepared** by a licensed surveyor, as discussed above, and is the critical map that illustrates the 600 and 1,000 foot radius boundaries around the proposed cannabis retailer location, includes the stamp of a licensed surveyor, but no attestation at all. There is no certification that the radius map was prepared by a licensed surveyor. In fact, as discussed below, the map appears to be nothing more than a map prepared by others.
2. The so-called "Land Use Radius Map" appended to the Radius Map also includes the stamp of a licensed surveyor; however, the language that accompanies the surveyor's stamp merely states that it is a "zoning boundary exhibit." There is no certification that the Land use Radius Map was prepared by a licensed surveyor.
3. The Land Use Radius Map reveals at least one critical measurement from the boundary line of the proposed location of a cannabis retail store to the boundary

of the land use zone of a residential area. The boundary of the land use zone is in the middle of Mentor Avenue. The measurement does not extend to the boundary line of the real property that contains the residential use. The boundaries of sensitive use zones is irrelevant, as Section 17.50.066 D 5 a, b, d and e require that measurements be taken from property boundary line to property boundary line. (A complete legal opinion on the subject of the failure of the Integral Land Use Radius Map to comply with Section 17.70.066 D 5 is attached at Exhibit "I.")

To further underscore the failure of the above discussed Integral map advertised as a model of compliance with the **prepared by** licensed surveyor standard, the certification prepared by the mapping company that actually prepared the map reads as follows:

"Quality Mapping Service has conducted a research investigation and review to identify all the sensitive receptors that surround the property located at 908 E. Colorado Blvd., Pasadena, CA within 600' and any other cannabis facilities within 1,000.' The procedures and process of this **review** have been **conducted to the best of our ability** and is reflected in the **Land Use Map** provided utilizing **various online resources such as the Los Angeles County Tax Assessor, Google and Google Earth . . .** As it relates to **identifying any existing residential zone** within 600' from the nearest property line of each of the effected [sic] parcels – **it is too close for our offices to determine from Lot 6 (NE Corner) to RM-48**. Please seek the services of a licensed Civil Engineer/Surveyor."

(Emphasis added.) (A copy of the Integral map certification prepared by Quality Mapping service, dated June 11, 2019 is attached at Exhibit "J.")

Conspicuously, the certification prepared by Quality Mapping Service was not shared with the Board of Zoning Appeals. Clearly, the "Land Use Map" provided to Quality Mapping Service relates to the "Land Use Radius Map" discussed above. Nowhere in the certification is there a statement that the "Land Use Map" provided or the Radius Map discussed above were prepared by a licensed surveyor. In fact, the certification of this "model" map, indicates that the services of a licensed surveyor should be sought to ascertain distances between the proposed cannabis retailer and residential zones. Again, measurements are to be taken from property line to property line per Section 17.50.066 D 5 a, b, d and e, not to or from the boundaries of residential zones (or any other zone).

At the conclusion of the Board of Appeals hearing, Chair Williams articulated the inconsistency between the strict "prepared by" standard insisted upon by the Planning Director and the confusion created by the Planning Department staff's application of the standard to Conditional Use Permit: Cannabis Retailer land use map submissions. The following dialogue between Chair Williams and Board member Olivas ensued:

Board Member Olivas – "If I may, I have the Kimley-Horn map [the location map submitted by Harvest of Pasadena, LLC] in front of me. And

the letter states clearly that the survey listed below has - - The surveyor listed below has performed the measurements for the map,” as opposed to the one that was prepared for SweetFlower, which is ‘reviewed’ by the surveyor.”

Chair Williams – **“Performed is not prepared . . . they’ve performed the measurements, but they didn’t prepare the map . . . there are so many different interpretations of this, because the map was actually prepared by Radius Maps.”**

Board Member Olivas – “Yeah.”

Chair Williams – **“but then the surveyor performed the calculations based on another person’s map.”**

(Emphasis added.) (A copy of the Court Reporter’s Transcript, Bd. of Zoning Appeals hearing, August 7, 2019, pp. 98-99, is attached at Exhibit “K.”)

Conspicuously, the Planning Director said nothing about the clear and unambiguous fact pointed out by the Chair of the Board of Zoning Appeals – that despite the standard that **location maps must be prepared by a licensed surveyor**, such maps submitted with Conditional Use Permit: Cannabis Retailer applications that have been deemed complete by the Planning Department staff fall far short of the standard. As Chair Williams correctly stated regarding the Harvest of Pasadena, LLC location map to which she and Board Member Olivas were referring and which apparently has been deemed correct, the licensed surveyor who certified the so-called “model” map merely relied on a map prepared by someone else.

The inconsistency of application of the **“prepared by”** standard does not end with the Integral “model” location map presented to the Board of Zoning Appeals or the Harvest of Pasadena location map referred to by Chair Williams and Board Member Olivas. Prior to the Board of Zoning Appeals hearing, the Planning Department and staff determined that other Conditional Use Permit: Cannabis Retailer applications were complete despite the clear fact that location maps submitted with the applications were and are not prepared by a licensed surveyor. By way of example, the certification for the map submitted by The Atrium Group, LLC (“Atrium”), whose application was deemed complete, reads as follows:

“EZR Surveying LLC has conducted a **research investigation and review** to identify all the sensitive receptors that surround the property at 70 W. Union St., Pasadena, CA. **This review** has been **conducted to the best of our ability** and is reflected in the 600’ and 1,000’ Land Use Map provided, using the following methods: A physical inspection of each parcel of land within a 600 foot radius of the site to identify the specific land uses [and] **Internet research using various databases, such as Google Earth.**”

(Emphasis added.) (A copy of the Atrium Radius Map Certification Statement, dated June 13, 2019 is attached at Exhibit “L.”)

Nowhere in the certification is there a statement that the location map was “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 of Pasadena, LLC (“Harvest”) was complete with a location map certification that was not 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 map certification prepared by Kimley Horn, dated June 12, 2019, is attached at Exhibit “M.”)

Again, nowhere does the certification state that the location map was prepared by a licensed surveyor. In this case, the surveyor merely checked the work done by others.

In summary, our review of all of the other location maps submitted with Conditional Use Permit: Cannabis Retailer applications deemed “complete” by the Planning Department staff reveals that none of the certifications attest to the maps having been **prepared by** a licensed surveyor. In one manner or another, the licensed surveyors in each case relied on maps that were prepared by someone other than a licensed surveyor.

V. The only Conditional Use Permit: Cannabis Retailer application location map actually prepared by a licensed surveyor was submitted by SweetFlower.

Out of an abundance of caution, and without prejudice to SweetFlower’s contention that the location map submitted with its June 12, 2019 Conditional Use Permit: Cannabis Retailer application is fully compliant with the rules and regulations governing location maps in effect at that date, SweetFlower commissioned preparation of a location map that was actually **prepared by** a licensed surveyor and submitted it to the Department of Planning and Community Development on August 7, 2019. A copy of the new

location map with the certification attesting that it was prepared by a licensed surveyor is attached at Exhibit “N.”

As discussed above, SweetFlower is entitled to have the new location map substituted for the location map originally submitted with the June 12, 2019 application in accordance with Section 17.60.040 G, as discussed above. If, however, it is determined that the new location map cannot be substituted for the original location map, submission of the application with the new location map on August 7, 2019 will result in SweetFlower again placed in first position among all applicants in City Council District 3 as the application is the first that is fully compliant with all of the rules and regulations imposed by the City including, but not limited to, the requirement that location maps be **prepared by** a licensed surveyor.

VI. Conditional Use Permit: Cannabis Retailer application omissions by other applicants render their submissions incomplete.

Other than the SweetFlower application, every Conditional Use Permit: Cannabis Retailer application for a location within City Council District 3 and one within an adjoining City Council district that is sufficiently close to District 3 to render the SweetFlower location ineligible (because it would violate the cannabis retailer separation requirement) deemed complete by the Department of Planning and Community Development staff suffers from one or more glaring omission that render the applications incomplete (in addition to not having a location map prepared by a licensed surveyor), as follows:

1. The map accompanying the application filed by **Integral** measures the distance from the proposed Integral retail location to the edge of the residential zoning boundary line rather than the edge of the property line of a residential use in a clear violation of Section 17.60.040 D 5, which requires that such measurements be to the nearest property line of the affected parcel. A correct measurement reveals that the residential use is within 600 feet of the proposed Integral retail location.
2. The application submitted by **Harvest** was deemed complete notwithstanding the fact that among other things, it did not contain a signed Master Application form. For some inexplicable reason, **Harvest** was permitted to augment its June 12 application with a Master Application form that is signed and dated July 16, 2019. The Harvest application could not be deemed complete as submitted because until its 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.
3. The required landowner consent required by the Conditional Use Permit: Cannabis Retailer 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 City’s requirements, the landowner consent is signed by the master lessor, not the owner of the property.

4. Neither **Atrium** nor **Integral** included the required landowner authorization with the applications they submitted, yet their applications were deemed complete.

It is incomprehensible that the Harvest, Integral and Atrium applications were deemed complete in light of the glaring omissions in their application packages noted above. It is particularly prejudicial that Harvest was 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 with a new location map.

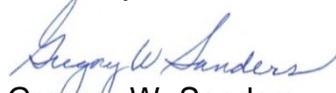
VII. Conclusion

In view of the foregoing, it is incumbent upon the City Council to correct the numerous glaring errors of commission and omission by the Department of Planning and Community Development staff that have plagued the Conditional Use Permit: Cannabis Retailer application process to the detriment of SweetFlower and determine one or more of the following:

- A. SweetFlower's original June 12, 2019 application complied with the rules and regulations respecting Conditional Use Permit: Cannabis Retailer application standards in effect at that time, including the standard of good faith compliance for location maps.
- B. SweetFlower be permitted to supplement its June 12, 2019 application (already submitted as part of subsequent submissions) with a location map prepared by a licensed surveyor but in all other respects compliant with the requirements of Section 17.60.040 G without prejudice to SweetFlower's position as the first applicant to file a complete application within City Council District 3.
- C. The location maps filed by all applicants with Conditional Use Permit: Cannabis Retailer applications discussed above are not compliant with the requirement imposed by the Department of Planning and Community Development because they were not "prepared by a licensed surveyor." SweetFlower's application deemed the only compliant
- D. The Conditional Use Permit: Cannabis Retailer applications filed by the applicants discussed above are incomplete because they do not comply with the submission requirements imposed by the Department of Planning and Community Development.

Thank you for your attention to this matter. We will summarize the contents of this letter for you at the SweetFlower appeal hearing and respond to any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Gregory W. Sanders". The signature is written in a cursive style with a large initial 'G'.

Gregory W. Sanders
Nossaman LLP

GWS:jg

EXHIBIT A

City of Pasadena

In addition to those already present on the City's Marijuana Regulations webpage, the following rules and regulations are promulgated pursuant to Section 5.78.190 of the "Commercial Cannabis Activity Ordinance" as of June 20, 2019.

CONDITIONAL USE PERMIT: CANNABIS RETAILER

RULES AND REGULATIONS

- I. **Applicability.** The following rules and regulations apply to the processing of land use entitlements required for commercial cannabis businesses pursuant to Section 5.78 of the Pasadena Municipal Code.
 - A. Only the top-ranking applicants notified pursuant to PMC Section 5.78.080. can submit an application for a Conditional Use Permit: Cannabis Retailer to the Planning and Community Development Department.
- II. **Conditional Use Permit Application Acceptance.**
 - A. Only the first COMPLETE application submitted within a council district will be processed.
 - i. Subsequent additional complete applications received within the same council district will be held in the order received; an application is not considered received until it is complete.
 - ii. Where an application is on hold, the time for obtaining a permit pursuant to Section 5.78.080 (H) is concurrently tolled as to that application.
 - iii. Upon issuance of a commercial cannabis permit, no other applications within that same council district will be processed.
 - iv. Should the first complete commercial cannabis CUP applicant fail to secure a CUP, the next complete application in the queue will be processed.
 - B. Upon receiving notification of a complete application, applicants will be required to submit hardcopies of electronically submitted materials and pay all applicable fees.
- III. **Contents of Conditional Use Permit for Cannabis Use (CUP).**
 - A. City staff will undertake a review for completeness to determine whether all of the submittal requirements listed in the Conditional Use Permit: Cannabis Retailer application have been provided.

- B. City staff will inform all applicants whether their applications are complete, or identify missing submittals. A determination of completeness does not include a substantive review and evaluation of the materials.

V. Review Authority

- A. The review authority for 'Conditional Use Permit: Cannabis Retailer' is the Planning Commission.

VI. Appeals.

- A. The Conditional Use Permit: Cannabis Retailer is appealable pursuant to the appeals process as specified in the Pasadena Zoning Code.

EXHIBIT B



TO: Tim Dodd
Mike Thomson
**PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT**

FROM: Greg W. Sanders
Artin N. Shaverdian
Crescent Cheng

DATE: August 22, 2019

RE: City Manager’s Exclusive Authority to Promulgate Conditional Use Permit
Application Requirements For Cannabis Retailers
503561-0001

1. INTRODUCTION.

The Pasadena Municipal Code vests sole authority in the City Manager to impose application requirements for commercial cannabis permits, including conditional use permits (“CUP”) for cannabis retailers. Well established California precedent dictates that the City Manager’s authority to establish requirements for commercial cannabis permits pursuant to Chapter 5.78 has displaced the Director of Planning and Community Development’s authority to impose submittal requirements for cannabis retailer land use permit applications under Section 17.060.40(D), because chapter 5.78 was enacted later in time and is the more specific ordinance. Therefore, any application requirements for a CUP for a cannabis retailer purportedly imposed by the Director of Planning and Community Development, as opposed to the City Manager, are *ultra vires* and invalid.

2. LEGAL BACKGROUND.

A. Pasadena Municipal Code Provisions.

(i) Measure CC (2018).

Ballot Measure CC was enacted by voter initiative on June 5, 2018 to allow a limited number of commercial cannabis businesses to operate in Pasadena.

(a) Chapter 5.78.

Measure CC added Chapter 5.78 to Title 5, Business Licenses and Regulations, of the Pasadena Municipal Code. The purposes of Chapter 5.78 include:

To provide access to adult-use cannabis for persons over the age of 21 as authorized by the Control, Regulate and Tax Adult Use of Marijuana Act passed by California voters in 2016 (now the MAUCRSA), **while imposing sensible regulations on the use of land to protect the city's residents, neighborhoods, and businesses from disproportionately negative secondary impacts that generally arise from such uses.**

(Pasadena Municipal Code, § 5.78.010 [emphasis added].)

Section 5.78.070, “Application Procedure,” provides that “The City Manager shall promulgate the procedures to govern the application process and manner in which the decision will ultimately be made regarding the issuance of **any** commercial cannabis permit . . .” (Emphasis added.) “Commercial cannabis permit” is defined in Section 5.78.050 M as “a regulatory permit issued by the City of Pasadena pursuant to this chapter to a commercial cannabis business.” Section 5.78.080 F provides that “applicants . . . shall apply to the planning and community development department to obtain any required land use approvals for the permittee’s location.”

Section 5.78.190, Promulgation of regulations, standards, and other legal duties, provides that “In addition to any regulations adopted by the city council, the city manager or his/her designee is authorized to administratively establish any additional rules, regulations and standards governing the issuance, denial or renewal of commercial cannabis permits, the ongoing operation of commercial cannabis businesses and the city's oversight of the businesses, or concerning any other subject determined to be necessary to carry out the purposes of this chapter.” (Pasadena Municipal Code, § 5.78.190 A.) Regulations promulgated by the City Manager become effective when they are published on the city's website. (*Id.* § 5.78.190 B, C.)

(b) Chapter 17.50.066.

Measure CC also added Chapter 17.50.066 to Title 17 of the Pasadena Municipal Code (the Zoning Code). Chapter 17.50.066 D 2 provides that cannabis retailers must obtain a use permit. Subsection D 5 requires that cannabis retailers must be located away from sensitive uses. Cannabis retailers must be at least 1,000 feet from other dispensaries, and 600 feet from a residentially zoned property, church, school, or library.

(ii) Section 17.060.40 (2009).

Section 17.60, Et. Seq. of the Zoning Code contains application filing and processing requirements for land use permits. Section 17.60.040 D provides that “the Director [of Planning and Community Development] shall establish in writing the submittal requirements for permit applications required by this Zoning Code. All applications shall include the following submittal materials, as well as any additional materials identified by the Director.” Section 17.60.040 F provides that the filing date of an application is the date that it is deemed complete by the Director of Planning and Community Development. Section 17.60.040 was enacted in 2009. (Ord. 7160 § 52 (2009).)

B. The “Prepared By a Licensed Surveyor” Requirement.

Applications were provided with a CUP Cannabis Retailer application packet (“Submittal Requirements”) at the June 12, 2019 application workshop. (David Reyes, Planning and Community Development Department Staff Report (Aug. 7, 2019) p. 5 (“Staff Report”).) The document titled “Submittal Checklist for Conditional Use Permit: Cannabis Retailer Application” requires applicants to submit a location map “prepared by a licensed surveyor.” (Submittal Requirements, p. 1.)

The Submittal Requirements were prepared by the Planning and Community Development Department (“Department”), as indicated by the document’s footer. The Submittal Requirements were provided for the first time at the workshop, and thus were not uploaded to the City’s Marijuana Regulations web page prior to the workshop. (*Ibid.*)

On June 13, 2019, Department staff member Guille Nunez sent an email to applicants advising that “[a]s indicated on the Conditional Use Permit Application submittal checklist (page 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.” (Staff Report, Attachment B.)

C. Cannabis Retailer Rules and Regulations

On June 20, 2019, the City Manager promulgated Conditional Use Permit: Cannabis Retailer Rules and Regulations, “pursuant to Section 5.78.190.” Section I of the regulations provides that “[t]he following rules and regulations apply to the processing of land use entitlements required for commercial cannabis businesses pursuant to Section 5.78 of the Pasadena Municipal Code.” The regulations do not specify materials to be submitted as part of a CUP application, but provide that “City staff will undertake a review for completeness to determine whether all of the submittal requirements listed in the Conditional Use Permit: Cannabis Retailer application have been provided.”

3. ANALYSIS.

The rules of statutory interpretation apply to municipal ordinances. (*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 186 Cal.App.3d 814, 826, fn. 7; see *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109, 114.) Thus, Courts will look to the language of the ordinance to give effect to the legislative intent. (*Chaffee, supra*, 134 Cal.App.4th at p. 114 [interpreting municipal ordinance].) If the language is clear, the inquiry ends there. (*Ibid.*) If the language is ambiguous, courts will look to extrinsic evidence of legislative intent, such as legislative history and public policy. (*Ibid.*) A court will give great weight” to a City’s interpretation of its own ordinance, unless it is clearly erroneous. (*Terminal Plaza Corp., supra*, 186 Cal.App.3d at p. 826.)

California courts have held that “it is well-established that a statute enacted later in time controls over an earlier-enacted statute, and it is equally well established that a specific statute prevails over a statute that is more general.” (*Cross v. Superior Court* (2017) 11 Cal.App.5th 305, 321.) The analysis below demonstrates the application of these principles to the City’s commercial cannabis regulations.

A. Under Chapter 5.78, Only the City Manager Has Authority to Establish Application Requirements for Commercial Cannabis Permits.

Section 5.78.070 vests exclusive authority to impose requirements for commercial cannabis permits in the City Manager. Sections 5.78.070 and 5.78.190 authorize the City Manager to establish application requirements for “commercial cannabis permits.” (Pasadena Municipal Code, § 5.79.070 [“The city manager shall promulgate the procedures to govern the application process and the manner in which the decision will ultimately be made regarding the issuance of any commercial cannabis permit,” § 5.78.190 A [“in addition to any regulations adopted by the city council, the city manager or his/her designee is authorized to

administratively establish any additional rules, regulations and standards governing the issuance, denial or renewal of commercial cannabis permits”].) The City Manager’s authority applies to CUPs for cannabis retailers, because section 5.78.050 M defines a “commercial cannabis permit” broadly to mean “a regulatory permit issued by the City of Pasadena pursuant to this chapter to a commercial cannabis business.” (Pasadena Municipal Code, § 5.78.050(M).)

Chapter 5.78’s application to CUPs is further evidenced by the City Manager’s reliance on section 5.78.190 to promulgate the CUP Cannabis Retailer Rules and Regulations on June 20, 2019; section 5.78.080 F, which governs applications for land use approvals and provides that they should be submitted to the Planning and Community Development Department; and section 5.78.010, which includes among the purposes of Chapter 5.78 “sensible regulations on the use of land.” As further evidence of promulgation of the CUP Cannabis Retailer Rules and Regulations by the City Manager, and not the Director of Planning and Community Development, in a letter of July 12, 2019 from the City Attorney to Mr. Christopher Sutton (posted on the City’s Marijuana Regulations webpage), the City Attorney explained that, “On June 20, 2019, the **City Manager** published on the City’s Marijuana Regulations webpage Rules and Regulations for Retail Cannabis CUPs.” (Emphasis added.)

Further, in a letter of June 28, 2019 (after the aforementioned posting of June 20, 2019) from the City Attorney to Mr. Damian A. Martin (posted on the City’s Marijuana Regulations webpage), the City Attorney advised the addressee that the City Manager had delegated “certain of his responsibilities regarding cannabis retailer permits to the Director of Planning and Community Development.” The City Attorney further advised, “That delegation to the Director **does not convert responsibilities under Chapter 5.78 to responsibilities under the Zoning Code.**” Crucially, neither Chapter 5.78 nor any other document or letter published by the City contain any mention of any authority of the Director of Planning and Community Development to impose CUP requirements. To the contrary, the City’s written communications state that no such authority has been delegated. Therefore, well-settled principles of statutory interpretation dictate that the City Manager has **exclusive** authority to impose conditional use permit requirements for land use approvals (unless and until such authority has been delegated). (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13 [the expression of certain things in a statute necessarily involves exclusion of other things not expressed].)

As the “prepared by a licensed surveyor” requirement was not imposed by the City Manager, it is *ultra vires* under section 5.78.190. Even if the City Manager had somehow delegated authority to the Department or its Director, the requirement was not published on the City’s website, which is a necessary prerequisite to such a requirement becoming effective. (See Pasadena Municipal Code, § 5.78.190 B, C.) We note that the City Manager referred to the Submittal Requirements on June 20, 2019, by providing in the regulations he promulgated that “City staff will undertake a review for completeness to determine whether all of the submittal requirements listed in the Conditional Use Permit: Cannabis Retailer application have been provided.” However, as discussed above, the Submittal Requirements were promulgated by the Director of Planning and Community Development, not the City Manager, making them *ultra vires*. Even if the regulations promulgated by the City Manager’s June 20, 2019 had explicitly set forth the Submittal Requirements, the determination that SweetFlower’s June 12, 2019 application was incomplete was *ultra vires* because the Submittal Requirements would not have become effective until June 20, 2019. Changing the rules after the City opened the application

process amounts to a deprivation of due process. Since there is no certain way to determine how changing the rules may have skewed the outcome of the cannabis retailer permit application process, due process dictates that the City process the first complete application in each council district submitted after the City Manager promulgated the CUP Cannabis Retailer Rules and Regulations on June 20, 2019.

B. Chapter 5.78 Prevails Over Section 17.060.40.

The Director of Planning and Community Development argued before the Board of Zoning Appeals that the Director had authority to impose the “prepared by” requirement pursuant to section 17.060.40. Therefore, there is a facial conflict between section 17.060.40 and 5.78.190, which vests sole authority to impose CUP submittal requirements in the City Manager, as demonstrated above. Under California law, Chapter 5.78 prevails over any conflicting interpretation of section 17.060.40.

(i) Chapter 5.78 Controls Over Section 17.060.40 Because It Was Enacted Later.

Chapter 5.78 was enacted in 2018, nine years after section 17.060.40. Therefore, the sole authority of the City Manager to establish requirements for commercial cannabis permits under Chapter 5.78.070 establishes an exception to the general rule that Director of Planning and Community Development has authority to impose application requirements set forth in 17.060.40(D). (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 946, 960–961 [finding that more specific and later-enacted healthcare statute properly construed as a limited exception to general rule of patient confidentiality set forth in earlier-enacted statute]; *Cross v. Superior Court* (2017) 11 Cal.App.5th 305, 321.) Therefore, with respect to cannabis retailer CUPs, the Director does not have authority to promulgate application requirements.

(ii) Chapter 5.78 Controls over Section 17.060.40 Because Specific Provisions Control over General Provisions.

The California Supreme Court has explained that specific provisions control over general provisions. “It is well settled ... that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.” (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571; *Hirsch v. City of Mountain View* (1976) 64 Cal. App. 3d 425, 431-432 [specific definition of “subdivision map” in municipal ordinance controlled over ordinance’s general statement of purpose]; see Code Civ. Proc., § 1859 [“when a general and particular provision are inconsistent, the latter is paramount to the former”]; Civ. Code, § 3534 [“particular expressions qualify those which are general”].) A statute is more specific if it governs a particular subset of issues encompassed within a more general statute covering the same subject. (*State Dept. of Public Health v. Superior Court, supra*, 60 Cal.4th at 961 [finding that statute applicable to only half of health care facilities covered by statute that was more general was the more specific provision].)

In *Ticor Title Insurance Co. v. Rancho Santa Fe Association*, the court applied this principle to interpret conflicting provisions in a homeowner association’s (“Association”)

covenant. (*Ticor Title Ins. Co. v. Rancho Santa Fe Ass'n* (1986) 177 Cal.App.3d 726, 730.) The covenant gave the Association broad authority to adopt “any” regulations to maintain the health, safety and general welfare of people residing on the property. (*Id.* at p. 731.) However, the covenant also set forth a specific procedure for modifying any of the Association’s restrictions, which required the Board of Directors and the Association to act in concert. (*Id.* at p. 732.) As such, the Board of Directors was not authorized to increase the association’s setback requirements alone. (*Id.* at p. 733.)

Likewise, sections 5.78.070 and 5.78.190, which apply specifically to commercial cannabis permits including CUPs, is the more specific statute. Section 17.06.040 applies to all land use permits; section 5.78.190 applies to a subset of those permits. As the more specific provisions, section 5.78.190 is an exception to the Director of Planning and Community Development’s general power to impose requirements for land use permits. Therefore, no submittal requirements may be established outside of the procedure set forth in section 5.78.070 and 5.78.190, which require promulgation by the City Manager and publication on the City’s website. Submittal requirements established by the Director of Planning and Community Development, or by the Department, were *ultra vires*.

4. CONCLUSION.

Section 5.78.070 vests sole authority in the City Manager to establish application requirements for commercial cannabis permits, including CUPs for cannabis retailers. Well-established California precedent dictates that the City Manager’s authority to promulgate requirements for commercial cannabis permits pursuant to Section 5.78.070 displaced the Director of Planning and Community Development’s authority under Section 17.06.040, because Section 5.78.070 specifically applies to any commercial cannabis permits including cannabis retailer conditional use permits, as discussed above, and was enacted later in time. Therefore, any application requirements for a conditional use permit for a cannabis retailer purportedly imposed by the Director of Planning and Community Development, and not the City Manager, are *ultra vires*.

This conclusion results in the invalidation of numerous Submittal Requirements, including that location maps be “prepared by a licensed surveyor,” as this requirement was neither required by the Pasadena Municipal Code nor promulgated by the City Manager.

GWS/jg

EXHIBIT C

REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF PASADENA, CALIFORNIA

Certified Copy

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE PLN2019-00386
APPEAL OF PLANNING DIRECTOR DECISION

Date and Time: Wednesday, August 7, 2019
6:30 p.m. - 8:31 p.m.

Location: 100 North Garfield Avenue
Council Chambers
Room S249
Pasadena, California

Reporter: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 16327

1 application, the applicant would have the opportunity
2 to submit additional information, and that opportunity
3 was never provided to SweetFlower.

4 CHAIR WILLIAMS: Okay. Thank you.

5 MR. SANDERS: Thank you.

6 CHAIR WILLIAMS: Okay. So do we have any
7 follow-up comments from staff, or should we go
8 directly to discussion?

9 MR. REYES: I'd love to, if I could --

10 CHAIR WILLIAMS: Yeah.

11 MR. REYES: -- with respect to the
12 appellant's issues, because I think that's what we
13 should focus on, is whether or not the application was
14 complete.

15 There was a couple of different points
16 regarding who could promulgate rules.

17 Section 5.78 -- so with respect to the entire
18 cannabis regulations, they're spread across three
19 different sections of the municipal code: Title 5,
20 Title 8, and Title 17.

21 With respect to the promulgation of rules,
22 that is very narrow and very specific to the initial
23 screening application process and then the cannabis
24 permit process. We're not talking about cannabis
25 permits.

1 Section 5.78 has nothing to do with planning.
2 It has nothing to do with the municipal code. It has
3 nothing to do with conditional use permits.

4 Section 17 -- Title 17 of the city's code is
5 our zoning code. Section 17.60, as talked about in
6 the staff report, as shown by Guille, that gives the
7 director the authority to add requirements specific to
8 conditional use permits. Section 5.78 is not that.

9 In fact, in terms of the process, Guille
10 identified several chevrons. There's been three steps
11 that we've talked about: This initial screening, who
12 are the best of the best?

13 And you know what? The six people that are
14 out there, they're the best of the best. I'd love to
15 give applications and permits to all six of them.
16 That's not the situation we're in.

17 So that first step identified who the top six
18 candidates were.

19 The second step that we're talking about now
20 is the conditional use permit application process.

21 The last step of this process actually
22 involves what's called a "cannabis permit," completely
23 separate and different from anything we've talked
24 about yet.

25 That is the city manager's sole purview, to

EXHIBIT D



OFFICE OF THE CITY ATTORNEY / CITY PROSECUTOR
CIVIL DIVISION

July 12, 2019
by US Mail and email

Mr. Christopher Sutton, Esq.
32123 Lindero Canyon Road
Suite 210
Westlake Village, CA 91361

Re: The Atrium Group LLC's Request for Appeal of Cannabis CUP Hold

Dear Mr. Sutton:

The City is in receipt of your Request for Appeal of the hold placed on the retail cannabis conditional use permit application submitted by The Atrium Group, LLC ("Atrium"). As previously stated, the application contains all required items, but since it is the second complete application for Council District 3, it will not be processed at this time as only one cannabis retailer may operate within a Council District at any one time.

Your request for appeal will not be processed because there is no right to appeal this matter. Atrium's application was put on hold pursuant to the authority provided to the City Manager in PMC Section 5.78.190 to promulgate regulations, standards, and other legal duties applicable to commercial cannabis permits. On June 20, 2019, the City Manager published on the City's Marijuana Regulations webpage Rules and Regulations for Retail Cannabis CUP, a copy of which is attached. Rule II.A states: "Only the first COMPLETE application submitted within a council district will be processed." (Emphasis in original.) On June 27, 2019, Rule VII was added, and states: "For purposes of establishing compliance with Section 17.050.066 D, the City shall consider the locations identified in all complete and code compliant applications in the order received." You praise this orderly conduct of permit processing in your July 8, 2019 letter, a copy of which is attached.

Accordingly, for the reasons stated above, your request for appeal will not be processed.

Sincerely,

Michele Beal Bagneris
City Attorney

Attachments
0000156636C031

City of Pasadena

In addition to those already present on the City's Marijuana Regulations webpage, the following rules and regulations are promulgated pursuant to Section 5.78.190 of the "Commercial Cannabis Activity Ordinance" as of June 20, 2019.

CONDITIONAL USE PERMIT: CANNABIS RETAILER

RULES AND REGULATIONS

- I. **Applicability.** The following rules and regulations apply to the processing of land use entitlements required for commercial cannabis businesses pursuant to Section 5.78 of the Pasadena Municipal Code.
 - A. Only the top-ranking applicants notified pursuant to PMC Section 5.78.080. can submit an application for a Conditional Use Permit: Cannabis Retailer to the Planning and Community Development Department.
- II. **Conditional Use Permit Application Acceptance.**
 - A. Only the first COMPLETE application submitted within a council district will be processed.
 - i. Subsequent additional complete applications received within the same council district will be held in the order received; an application is not considered received until it is complete.
 - ii. Where an application is on hold, the time for obtaining a permit pursuant to Section 5.78.080 (H) is concurrently tolled as to that application.
 - iii. Upon issuance of a commercial cannabis permit, no other applications within that same council district will be processed.
 - iv. Should the first complete commercial cannabis CUP applicant fail to secure a CUP, the next complete application in the queue will be processed.
 - B. Upon receiving notification of a complete application, applicants will be required to submit hardcopies of electronically submitted materials and pay all applicable fees.
- III. **Contents of Conditional Use Permit for Cannabis Use (CUP).**
 - A. City staff will undertake a review for completeness to determine whether all of the submittal requirements listed in the Conditional Use Permit: Cannabis Retailer application have been provided.

- B. City staff will inform all applicants whether their applications are complete, or identify missing submittals. A determination of completeness does not include a substantive review and evaluation of the materials.

V. Review Authority

- A. The review authority for 'Conditional Use Permit: Cannabis Retailer' is the Planning Commission.

VI. Appeals.

- A. The Conditional Use Permit: Cannabis Retailer is appealable pursuant to the appeals process as specified in the Pasadena Zoning Code.

City of Pasadena

The rules and regulations promulgated pursuant to Section 5.78.190 of the "Commercial Cannabis Activity Ordinance" are hereby amended as follows as of June 27, 2019:

CONDITIONAL USE PERMIT: CANNABIS RETAILER

RULES AND REGULATIONS

- VII.** For purposes of establishing compliance with Section 17.050.066 D, the City shall consider the locations identified in all complete and code compliant applications in the order received.
- VIII.** An application with a proposed location that is not code compliant will not be processed and will remain on hold until withdrawn by the applicant or able to proceed because the location becomes code compliant. Applications that do not have a code compliant location will not be considered when determining the allowed locations for other applications as established in section 17.050.066 D.
- IX.** The City will process only one application per applicant at a time. Multiple applications by the same applicant will not be considered.

LAW OFFICE OF
CHRISTOPHER SUTTON
586 LA LOMA ROAD
PASADENA, CALIFORNIA 91105-2443
TELEPHONE (626) 683-2500 • FACSIMILE (626) 405-9843
email: christophersutton.law@gmail.com

Monday, July 8, 2019
Hand Delivered and sent by Email

Ms. Michele Beal Bagneris
City Attorney, City of Pasadena, City Hall
100 N. Garfield Avenue, Room N210
Pasadena, California 91101

Re: Commercial Cannabis Permit Applications and CUP's - Completeness and Review

Dear Ms. Bagneris,

I represent The Atrium Group ("Atrium") in matters related to their pursuit of a *Conditional Use Permit: Cannabis Retailer* ("CUP Application") from the City of Pasadena. On July 2, 2019, my client received a letter from the Assistant City Manager, Julie A. Gutierrez, concerning previous correspondence that Atrium had sent the City on June 28 and July 1, respectively. It is unclear under what legal authority, if any, Ms. Gutierrez is acting to issue "interpretations" of the zoning code. The Pasadena Zoning Code only allows for the Zoning Administrator to render such interpretations of the Zoning Code. Nevertheless, as Ms. Gutierrez's conclusions are based on incorrect assertions of fact and contain misstatements of law, I would like to respond to the salient points of her letter. Her "findings" should be withdrawn and replaced with a finding from the proper legal authority (Zoning Administrator) which, if unfavorable, will be appealed.

In addition, I would also like to share our assessment of the City's determination that the CUP Application submitted by Harvest of Pasadena, LLC ("Harvest") for review on June 12, 2019 is "complete." The City has so far refused my client's repeated written requests to produce a hard copy of Harvest's CUP application under the California Public Records Act and Article One Section 3(b) of the California Constitution. Therefore, this letter is based on a 30 minute visual inspection of that application on July 3, 2019, at the Permit Center under the watchful eyes of Guille Nunez. Even this cursory review shows that the Harvest application is not complete and should have been rejected by City staff. In any event, Harvest's CUP application must now fail at the processing level and be set aside because the application contains at least 30 deficiencies under the Code, as set forth below,

PART A – RULE VII AND THE PRIORITY OF CANNABIS PERMIT APPLICATIONS

Section 17.50.066(D) of the Pasadena Zoning Code contains a number of provisions that restrict where a cannabis retail business may be located. However, this Section contemplated only two circumstances where the City would be forced to prioritize the interests of one applicant over another. Section 17.50.066(D)(3)(b) provides that only one cannabis retail business may operate in a City Council District at any time. In addition, Section 17.50.066(D)(5)(a) proscribes any cannabis retailer being located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retailer. Therefore, it is understandable that the City saw a need to clearly establish rules that would allow each permit candidate a fair and

equal opportunity to establish a priority position in the event that a rival applicant were to seek out a location that is either within the same Council District or within a radius of 1,000 feet.

Accordingly, on June 12, 2019, the Department of Planning unveiled its process for receiving CUP Applications for review. As you may know, a shared computer drive was set up for every applicant, and the time was recorded upon the submission of each CUP Application. The time stamp would be changed to reflect any subsequent revisions that a candidate might provide the City at a later time. This method allowed the City to establish an initial ordering of applicants in circumstances where two or more might be in the same Council District or within 1,000 feet of one another. However, this process alone was insufficient.

First, some permit candidates may have submitted an application package that did not contain all of the required elements. It would have been manifestly unfair if the rules allowed some applicants to obtain an earlier filing time stamp by virtue of taking shortcuts in the preparation of their CUP Application, such as by not including a Written Consent from the property owner, or by not demonstrating how the proposed use would comply with the Code's requirements for commercial cannabis businesses. Second, it would also be unfair for an applicant to be told that their CUP Application is relegated to second or third position in a Council District if the CUP Application that is given priority does not fully comply with the Municipal Code, because, for example, it is too near a school or a substance abuse center.

Addressing these potential problems, on June 28, 2019, the City Manager established several new regulations governing the issuance and denial of commercial cannabis permits in the exercise of his considerable powers under Section 5.78.190 of the Pasadena Municipal Code. As part of this rulemaking, Regulation No. VII set the standard that the City will use in reviewing all CUP applications:

"VII. For purposes of establishing compliance with Section 17.050.066(D) [sic], the City shall consider the locations identified in all complete and code compliant applications in the order received."

We were happy to see this new rule, as it assured all applicants that the City would fairly evaluate their permit applications. Given the exceptional effort and expense that Atrium and other applicants have undertaken in order to participate in Pasadena's permitting process, it was good to receive confirmation that the City will only allow an applicant who is the first to file a complete and code-compliant application to have priority over other applicants who seek to reside in the same Council District or within a radius of 1,000 feet.

While this new rule was commendable, and an important part of the application process, it appears that the City is not following this new regulation. In the City's June 27, 2019 letter, Atrium was told that its CUP Application in Council District No. 3 would not be processed because the City had determined that Harvest had established a senior priority based on the rules. For the reasons set forth below, we do not agree.

PART B – THE CITY ERRED IN FINDING THE HARVEST APPLICATION TO BE COMPLETE

The submittal requirements for the CUP Application were summarized in an 8-page document that the City Planning and Development Department distributed to all six applicants during the June 12, 2019 workshop meeting (the "Submittal Checklist"). The Submittal Checklist was subsequently revised to include a sample radius map. The rules required that the Submittal Checklist be included with the CUP Application.

On June 20, 2019, the City Manager published six new regulations on the City's cannabis website. These regulations included Rule III, which provided in Subpart A that City staff would review each application for completeness by determining whether all of the items listed in the Submittal Checklist have been provided. Subpart B of Rule III further provided that City staff would only conduct an extrinsic review of each application, and not conduct a substantive review of the merits of the materials that were submitted. Therefore, while it is possible that an application could be "deemed complete" while containing numerous inaccuracies and material errors, the City could nevertheless be expected to withhold its approval if a high-level examination finds the application to be missing one or more of the required items from the Submittal Checklist.

Turning to Harvest's CUP Application, a cursory review has revealed that the following items are missing from the Harvest CUP Application or are facially incomplete:

1. Taxpayer Protection Act Disclosure Form

The Submittal Checklist requires each CUP Application to include a Taxpayer Protection Act Disclosure Form that must include all company officers. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law. Despite the City's clear directions to include company officers in its Taxpayer Protection Act Disclosure Form, Harvest failed to name persons holding management responsibilities that were previously included in its screening application.

Far from low-level personnel, Harvest failed to disclose President Steve Gutterman, Chief Operating Officer John Cochran, and Chief Marketing Officer Kevin George. The TPA does not disclose Board of Director members Mark Neal Barnard, Elroy Sailor or Frank Bedu-Addo. The TPA also fails to disclose the revenue interest claimed by Harvest, Health & Recreation, Inc. which we have repeatedly advised the city of. In addition, Harvest's lease agreement for its retail premises was executed by an individual named "Joe Sai." Mr. Sai held himself out publicly as a "manager" of Harvest with the authority to sign a lease agreement worth approximately \$100M over a term of ten years. Despite the apparent authority he is allowed to wield, Mr. Sai was not named in the company's Taxpayer Protection Act Disclosure Form. Based on any one of these omissions, Harvest's application should have been found by the City to be incomplete.

2. Ownership Consent

The Submittal Checklist requires each applicant to provide an Owner Consent authorizing a representative to act in their stead in signing a property lease. Clarifying this requirement, on June 12, 2019, the City Manager's designee, Guille Nuñez, told all applicants that an Owner Consent would only be required if the lease agreement was signed by a property owner's representative and not directly by the landowner. This Code obligation and the accompanying instructions were neither confusing nor mired in ambiguity. Since Harvest's lease was not signed by the landowner, but by a representative, an Owner Consent was clearly required. The form that was submitted appears to falsely present a lessor as the property owner. No owner consent appears to be present in the application. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or any understanding of the law. Based solely on this omission, Harvest's application should have been found to be incomplete.

3. Live Scan Authorization

The Submittal Checklist obliges each applicant to submit a Live Scan Authorization for each person listed as an owner, manager, supervisor, employee, or volunteer. On June 13, 2019, Ms. Nuñez explained that only the form needed to be filled out and included with the CUP Application; fingerprints were not necessary at this time. These instructions are clearly written, and all applicants had ample opportunity to ask further questions if they had any questions as to this requirement. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law.

A review of the Harvest CUP Application shows that only a single Live Scan Authorization was provided to the City— and this was for the company's sole owner and manager, Steve White. However, Harvest was required to provide Live Scan Authorizations for Jason Vedadi (a/k/a "Touraj J. Vedadi") and Leo Jaschke, both of whom were named in Harvest's Taxpayer Protection Act Disclosure Form. Either one of these omissions should have resulted in Harvest's application being found to be incomplete.

Moreover, Harvest should have submitted additional Live Scan Authorizations for each member of its management team. At a minimum, this should have included President Steve Gutterman, Chief Operating Officer John Cochran, Chief Marketing Officer Kevin George, and manager Joe Sai. Any one of these omissions should have been sufficient grounds for the City to conclude that Harvest's application was incomplete.

4. Site Plan

The Submittal Checklist requires each applicant to provide a fully dimensioned Site Plan for their project. The Submittal Checklist calls out specific elements that every Site Plan must contain. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law. Despite the clear language

of the Submittal Checklist, Harvest failed to ensure that its Site Plan contained: (a) Harvest's name, (b) Harvest's its business address, (c) Harvest's phone number, and (d) the location of abutting properties and their uses. Any one of these omissions should have been sufficient for the City to find that Harvest's application was incomplete.

5. Floor Plan

In addition to the Floor Plan, the Submittal Checklist requires applicants to include in their CUP Application a fully dimensioned Floor Plan showing the interior space of their project. The Submittal Checklist calls out specific elements that each Floor Plan must contain. The information needed to determine whether this requirement had been met is readily discernable by City staff without analysis or understanding of the law. Despite the clear language of the Submittal Checklist, Harvest failed to ensure that its Floor Plan included the square footage of separate rooms. Since this requirement was incontrovertibly a requirement of the Floor Plan, this omission alone should have been sufficient for the City to find that Harvest's application was incomplete.

6. Demonstrated Code Compliance

The Submittal Checklist incorporated a mandatory supplement where every CUP Application must demonstrate how the applicant would comply with specific requirements set forth in Sections 5.78, 8.10 and 17.50.066 of the Pasadena Municipal Code. Incorporated by reference, these Sections contain detailed and specific regulations uniquely tailored to commercial cannabis businesses. In determining whether a CUP Application satisfied this requirement, City staff did not need to analyze textual content or even have an understanding of the law. Instead, City staff only had to determine whether a minimal attempt had been made to satisfy the requirement by looking for key words and section headings, such as "Track & Trace," "Waste Management," "Employee Education," and "Record Keeping."

In its application, Harvest chose only to respond to 2 out of 16 Sections of the Municipal Code that were required. While Harvest did address Section 5.78.160 (Security) and Section 8.11.060 (Odor Management), the company did not make any effort to demonstrate how it would comply with the following provisions of the Pasadena Municipal Code:

- (a) Section 5.78.150: Records and Record keeping.
- (b) Section 5.78.170: Consumption; Cannabis out of sight; Reporting and Tracking of Sales; State Licensed Facilities; Emergency Contact; Signage and Notices; Minors; Display Licenses; Background Check; Loitering.
- (c) Section 5.78.210: Inspection and Enforcement.
- (d) Section 8.11.040: Retail Cannabis Facilities Licensing; Health Protection Operating Criteria; Permanently constructed structure; State permitted items; Must be packaged and labeled; Alcohol and Tobacco Prohibited; Permanent Food Facility; Giveaways Prohibited; On-Site Consumption Prohibited; Temperature Requirements;

Cannabis Sourcing Requirements.

- (e) Section 8.11.050: Required In-Store Safety Information.
- (f) Section 8.11.070: Waste Management Plan.
- (g) Section 8.11.080: Record Keeping.
- (h) Section 8.11.090: Track & Trace.
- (i) Section 8.11.100: Employee Health.
- (j) Section 8.11.110: Cannabis Facility Training Program.
- (k) Section 8.11.120: Responsible Cannabis Retailing Education Required.
- (l) Section 8.11.130: Inspection.
- (m) Section 8.11.140: Cannabis and Cannabis Product Quality Assurance.
- (n) Section 17.50.066(D): Commercial Cannabis Permit Required; Use Permit Required; Limitation on Number of Retailers; Maximum Square Feet; Location Requirements; Operating Requirements; Hours of Operation; Delivery Services; Conditions of Approval; Discontinuance of Use.

The requirement to demonstrate compliance with these Code Sections goes to the heart of an applicant's fitness to receive a cannabis business permit from Pasadena. This provision was clearly written and did not require City staff to delve into the merits of Harvest's CUP Application, but only to decide whether the company made an honest effort, however slight, to demonstrate how it would comply with these City cannabis regulations. Harvest's failure to demonstrate how it will dispose of cannabis waste, comply with California Track & Trace requirements or properly educate employees about their responsibilities when interacting with customers or handling cannabis products should have precluded a finding that their CUP Application is complete. In reviewing a CUP Application that ignores 87.5% of the Municipal Code Requirements that the instructions advised that each applicant "*must demonstrate*," the City had no choice but to find Harvest's application to be incomplete.

**PART C – THE CITY ERRED IN FINDING THE HARVEST APPLICATION
TO COMPLY WITH THE CODE**

In addition to requiring a finding that a CUP Application is complete, Regulation No. VII also calls for the City to decide if a CUP Application is code compliant before considering whether to grant a commercial cannabis permit. As a corollary of this regulation, a later-filed CUP Application must be given priority over an earlier-filed one that does not comply with the Pasadena Municipal Code. As you are aware from our letter and email sent to the City on June 28 and July 1, respectively, we believe that the 169 W. Colorado Boulevard location selected by Harvest is does not comply

with the Municipal Code, as the site is within 600 feet of the Rudolph Steiner Library.

In the City's reply letter of July 2, 2019 Assistant City Manager, Julie A. Gutierrez (whose legal authority to issue such a finding is not explained), attempts to creatively rewrite the City's Municipal Code. While the Rudolf Steiner Library is closely affiliated with the Anthroposophical Society in America and has been at the location for 26 years, the organization established a separate non-profit corporation with a separate board of directors to directly oversee the operation of the library. We have previously provided you with a detailed record establishing the authenticity of the library and its lending program.

In her July 2nd letter, Ms. Gutierrez wrote that the 600-foot separation requirement does not apply to "bookstores or private businesses or Anthroposophical Societies that operate 'libraries' as a component of their overall operations." I'm not certain you are aware that the Central branch of the Pasadena public library regularly conducts book sales on the East Patio to raise funds for its continued operations.¹ The fact that books may be sold at the library does not diminish its the stature the slightest, nor should such sales similarly affect the standing of the Rudolf Steiner Library. Beyond this attempt to denigrate the Rudolf Steiner Library, Ms. Gutierrez' letter also draws a number of incorrect conclusions about the intended meaning of the phrase "any library" in the City's cannabis ordinance, each of which will be explained below.

1. Measure CC

When the Pasadena City Council adopted Resolution No. 9635 on February 26, 2018, it approved the submission of a draft ordinance containing the following wording:

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

This same wording was put before Pasadena voters at a Special Municipal Election held on June 5, 2018:

"Shall an ordinance be adopted to allow a limited number of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations, and to repeal the City of Pasadena's current ban on commercial cannabis businesses, provided that: (1) the ordinance shall not take effect unless voters approve a Cannabis Business Tax, and (2) the City Council retains authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities?
[YES / NO]

This measure would allow a limited number of commercial cannabis businesses to operate within the City of Pasadena. A maximum of 6 retailers, 4 cultivators, and 4 testing laboratories would be allowed to operate in the City at one time. All three types would only

¹ See <https://www.friendsppl.org/monthly-book-sale/>

be allowed to operate within specific zoning districts. In addition to the respective zoning regulations, retailers could not be located within 1000 feet of any other cannabis retailer or cultivation site, within 500 feet of any testing laboratory, or within 600 feet of any residential zone, *or within 600 feet of any park, K-12 school, church, childcare center, substance abuse center, or library.* [Emphasis added].

Notably, in Measure CC, the City Council retained the authority to amend the existing ordinance and adopt future ordinances with respect to commercial cannabis activities. The record shows that the specific wording at issue in Section 17.050.066(D)(e) was never amended to expressly state what Ms. Gutierrez now argues should be implied—that the sensitive use category of “libraries” be construed to mean substantially less than what the plain meaning of the phrase “any library” would otherwise convey. The word “any” cannot be written out of the code section.

Because the City chose not to narrowly define the term “library” when drafting the ordinance, and then subsequently failed to amend to ordinance at any time thereafter, it may not alter the rules of a competitive permitting process by doing so now. Because the wording of the cannabis ordinance has been ratified by the voters, it reflects the will of the residents of Pasadena to protect libraries of all kinds—both public and private—using the common, everyday meaning of the phrase “any library.” A City employee cannot override what the voters adopted into law.

2. Practice in Other Jurisdictions

We take notice that when other California cities have sought to limit a cannabis sensitive use to only include *public* libraries, they have done so using plain language in their cannabis laws to accomplish this result. For example, Section 105.01 of the Los Angeles Municipal Code contains a specific definition of the term “Public Library.” “Any library” is not the same as “Public Library.”

3. Section 17.80.010

It is not lost on us that in Ms. Gutierrez’ letter of July 2, 2019, she selectively quotes a passage from Section 17.80.010 that she suggests will deliver a relevant and contextually-appropriate meaning for the term “library.” However, had Ms. Gutierrez fairly reproduced the entire text of Section 17.80.010, it would have been abundantly clear that the *ad hoc* method of interpreting words that she champions is not appropriate for simple words that enjoy a clearly-understood and universal meaning:

“This Chapter provides definitions of terms and phrases used in this Zoning Code that are technical or specialized or that may not reflect common usage.”

The Section goes on to provide a series of highly-specialized definitions, such as “Architectural Projection,” “Encroachment Plane,” and “Pedestrian Orientation.” With the benefit of this context, the term “library” is not a technical term nor is it specialized. Rather, the word “library” is a commonly understood term that, when coupled with the adjective “any,” is unmistakable in its intent and meaning and embraces libraries big and small, specialized and general, and for our

purpose, both public and private. Ms. Gutierrez fails to discuss the meaning of "any" in the Code.

4. Burden of Proof

As the City recently drafted the cannabis ordinance, it had every opportunity to shape the wording of the law to deny any private library the protections afforded their public kin. Moreover, the customary rule of interpreting an ambiguity is to prefer common usage over unusual or specialized meanings, especially if the interpretation goes against the party who was responsible for drafting the original phrasing.

5. The Cannabis Application Rules

The City has never drawn a distinction between public and private libraries. In the Commercial Cannabis Application Workshop held on November 13, 2018, prospective applicants were told that any retail location must be "600 ft. from sensitive uses, including K-12 schools, libraries, parks, substance abuse centers, etc." No one from the City has ever suggested that this definition did not apply to private libraries. Indeed, as the existence of the Rudolf Steiner Library was likely well-known to both City staff and cannabis permit applicants alike, it would have been inexcusable for the City to stand by while applicants who were struggling to accommodate the City's severe zoning restrictions passed over eligible retail properties in the mistaken belief that the nearby presence of the Rudolf Steiner library would have been disqualifying.

6. Harvest Acknowledged the Steiner Library as a Sensitive Use

The licensed surveyor retained by Harvest identified the Rudolf Steiner Library as a Sensitive Use that was within 600 feet of the proposed 169 W. Colorado Boulevard location of Harvest. This was noted this on the Location Map that was included with Harvest's CUP Application. The Rudolf Steiner Library was also acknowledged as a Sensitive Use lying within a radius of 600 feet in the Location Affidavit that was certified by Harvest's licensed surveyor. Based on the foregoing, it appears that Harvest itself was fully aware of the presence of the Rudolf Steiner Library and that, in the opinion of its licensed surveyor, its proposed business location would likely violate the 600 foot minimum setback prescribed in Code Section 17.050.066(D)(5)(e).

PART D – CONCLUSION

The record shows that Harvest submitted a CUP Application that objectively, on its face, is lacking specific elements that were required by the Pasadena Municipal Code of all applicants and that were plainly stated in the rules. Without regard to the sufficiency of any content provided by Harvest in its application, City staff were both qualified and capable of determining that the Harvest submittal was missing substantial information in violation of the filing instructions.

To summarize, we count: 4 missing disclosures in Harvest's Taxpayer Protection Act Disclosure Form, 1 missing Ownership Consent, 6 missing Live Scan Authorizations, 4 missing elements that were required in the Site Plan, 1 missing element in the Floor Plan, and 14 omissions in

demonstrating how Harvest would comply with specific City Code requirements — a total of 30 deficiencies in meeting the compulsory elements of the CUP Application — any one of which should compel a finding that the Harvest application was incomplete. Taken together, we cannot fathom how the City could have possibly found that the Harvest application is complete and ready to file, given obvious nature of these many oversights, coupled with their sheer number.

In addition to not being complete, we also believe that the City erred in placing Harvest's CUP Application in a superior position to Atrium's when it does not comply with the library separation requirement arising under Pasadena Municipal Code Section 17.050.066(D)(5)(e). Ms. Gutierrez' July 2nd letter attempts an awkward sleight of hand by incorporating an obscure reference to a definition contained in the Code's Revenue and Finance Title that was adopted as part of an ordinance levying a special tax to help underwrite the considerable expenses intended solely for financing a high-quality public library system. That tax revenue could not be used for another purpose, so the use of this financial definition of library funding is not honest or appropriate.

It is therefore not surprising that the definition of "library" contained in Section 4.109.120 only makes reference to the City's own network of libraries. This is hardly a credible showing that the framers of the City's cannabis ordinance intended to limit the plain meaning of the phrase "**any** library" to only "public libraries." Nowhere do we find any support for this view in the enabling ordinance and/or Resolution No. 9635, or in the accompanying City Council minutes and staff reports, or in the rules and regulations that were provided to prospective cannabis retail applicants, or in Measure CC that was put before Pasadena residents on June 5, 2018. Moreover, "**any** library" this is the same understanding that all of the retail cannabis applicants had, including Harvest, and Harvest's own licensed surveyor.

Despite authoring the cannabis ordinance and having the ability to amend the law and exercise the extraordinary powers granted the City Manager under Pasadena Municipal Code Section 5.78.190 to make changes, at no time did the City ever take any action to narrow the definition of the phrase "**any** library" in any manner other than how the term is commonly understood and accepted. As a result, we believe the City is wrong in its proposed makeover of the term "library" by neglecting and omitting the modifying word "any." Because the front door to the Rudolf Steiner Library is only 470 feet from the site where Harvest proposes to operate its cannabis business, its CUP Application cannot be found by the City to be in compliance with the Municipal Code.

The wording of Regulation VII is crystal clear that the order of applications is to be determined not merely by "completeness," but also by "compliance." Sadly, the City has committed multiple errors that have resulted in Atrium not being scheduled for an appointment to formally submit its CUP Application. The City appears to be willing to look past at least thirty (30) missing elements in a Harvest application that it deems to be "complete."

The City further strayed from the very rules it authored when it found Harvest's application to be compliant with the location requirements of the Municipal Code. As it is about to reap a windfall from these legion of City errors, Harvest has been richly rewarded by being selected as the sole cannabis retailer having the right to operate in the most famous and commercially attractive

Ms. Michele Beal Bagneris
City Attorney, City of Pasadena, City Hall

Monday, July 8, 20198
page 11 of 11

district in Pasadena. Harvest is in its current position only because it quickly filed a defective CUP application that should have been rejected as incomplete.

Despite the City's previous errors, Harvest's CUP application must now fail and be rejected at the detail processing level.

As participants, it appears increasingly likely to us that Harvest has received special treatment in the form of *ex parte* site approval (in violation of the rules) and continues to receive special preferential treatment by City staff. Therefore, ask you to investigate the possibility that City staff decisions regarding Harvest have become corrupted by outside influences.

After considering our many concerns, we ask the City to acknowledge the many mistakes and lapses we have identified and promptly take corrective actions. At a minimum, this means placing Atrium into its rightful place as the sole applicant in Council District No. 3 who has filed a CUP Application that is both complete and fully compliant with the strictures of the Pasadena Municipal Code.

Sincerely,

Christopher Sutton
Legal Counsel, The Atrium Group, LLC

cc: Mr. Dean Bornstein, Chief Executive Officer, The Atrium Group, LLC
Ms. Julie A. Gutierrez, Assistant City Manager
Mr. Steven Mermell, City Manager
Ms. Guille Nuñez, Management Analyst IV
Mr. David Reyes, Director of Planning & Community Development

Sincerely,



Christopher Sutton

EXHIBIT E



OFFICE OF THE CITY ATTORNEY/CITY PROSECUTOR
CIVIL DIVISION

June 28, 2019

Mr. Damian A. Martin
WOW Health and Wellness, LLC
215 N. Central Avenue
Glendale, CA 91203

Re: Continued Request for Appeal of Commercial Cannabis Screening Application

Dear Mr. Martin:

The City Attorney's Office is in receipt of your recent correspondence regarding WOW Health and Wellness, LLC's ("WOW") request to appeal the City's determinations made during its commercial cannabis screening application process. As set forth in the City's response dated June 20, 2019, the City Attorney's Office concurs in the conclusion provided by the City Manager that there is no appeal right to the screening application process. Nothing set forth in your subsequent email dated June 26, 2019 changes the analysis and conclusion set forth by the City Manager.

The City has steadfastly stated that there was no appeal right to the screening application process. As the City Manager indicated, the City's Marijuana Regulations page on the City's website clearly states: "The final application scores for commercial applicants is linked below. Application scores and rankings are final and there is no appeal process." That statement has been on the webpage since at least June 5, 2019 and is located directly above the link to the document titled "Cannabis Application Results – Retailers." A screenshot of the portion of the City's Marijuana Regulations webpage where that language is set forth is attached hereto for your reference. This process was established pursuant to the authority granted to the City Manager to develop the relevant administrative procedures and post them on the City's website, see Pasadena Municipal Code ("PMC") Sections 5.78.070 and 5.78.190.

The City Manager correctly stated that the cannabis screening process is wholly contained within Chapter 5.78 of the PMC. Your argument that the Director of Planning and Community Development ("Director") "existence, appointment, and authority all stem from the Zoning Code" ignores the language throughout Chapter 5.78 that the City Manager may delegate his duties therein. That delegation to the Director does not convert responsibilities under Chapter 5.78 to responsibilities under the Zoning Code. Further, pursuant to PMC Title 2 (Administration and Personnel), the City Manager

specifically has the authority to supervise and control each city department (with the exception of the City Attorney's Office and the City Clerk's Office) pursuant to PMC Section 2.40.030 (City manager – Charter functions, powers and duties), including the ability to delegate his duties as necessary. In administering the cannabis business permitting process, the Director is acting as the City Manager's designee as set forth in Chapter 5.78, and is not taking any action pursuant to the Zoning Code. Accordingly, as the City Manager's letter correctly indicated, any administrative procedure to review the Director's decisions under the Zoning Code is inapplicable here.

The City is moving through the cannabis permitting process without regard to politics or arguments irrelevant to its process and review criteria, so there is no need for a response to your further "political perspective" arguments.

The procedure promulgated and published on the City's Marijuana Regulations page is the controlling procedure. As stated before, WOW may not appeal the results of the screening process, and, therefore, the City will not be taking any action on your request.

Sincerely,

A handwritten signature in cursive script that reads "Michele Beal Bagneris". The signature is written in black ink and is positioned above the printed name and title.

Michele Beal Bagneris
City Attorney/City Prosecutor

Attachment: screenshot of portion of City Marijuana Regulations Page

cc: Steve Mermell, City Manager

0000156452C031

APPLICATION SELECTION RESULTS FOR RETAILER PERMITS

JUNE 5, 2019 – The City of Pasadena has completed the review and scoring of applications received for commercial cannabis retailer permits. The following are the six top-scoring applicants:

	Applicant Name	Points Possible	Points Awarded	Score
1	Integral Associates Dena, LLC	1,575	1,492	94.73%
2	Tony Fong	1,575	1,473	93.52%
3	The Atrium Group, LLC	1,575	1,468	93.21%
4	Harvest of Pasadena, LLC	1,575	1,467	93.14%
5	SweetFlower Pasadena, LLC	1,575	1,465	93.02%
6	MME Pasadena Retail, LLC	1,575	1,459	92.63%

"We would like to recognize and congratulate the six top-scoring applicants who completed a very comprehensive process," states City Manager Steve Mermell. Mr. Mermell added that future retail dispensaries will have appropriate design review and conditions to guard against impacts on surrounding uses and added, "I was pleased with the high-level of sophistication, experience and expertise demonstrated by the top-scoring applicants and look forward to a positive relationship between future permitted dispensaries and our community."

Applications for all three categories of commercial cannabis permits—retailers, testing laboratories and cultivators—were accepted from January 1, 2019 until January 31, 2019. Of the 128 applications received, 122 applications were for the 'Retailer' category. Applications were thoroughly reviewed by Hinderliter, de Llamas and Associates (HdL), an independent municipal consulting group offering cannabis consulting services. Applications were scored by HdL according to the City of Pasadena Commercial Cannabis Permit Application Review Criteria, which consist of four primary categories with a total of 28 specific sub-criteria. Linked below is a complete list of all retail applicants and their scores, which will be maintained by the City for a period of 12 months and may be used to identify potential future operators.

The City's adopted marijuana regulations allow up to a maximum of six retail operators. The next steps for the top-scoring retail applicants are to submit a Conditional Use Permit (CUP) application and supplemental commercial cannabis information, including verification of a lease or ownership location that complies with the required distance separation requirements of the City's commercial cannabis ordinance, a security plan and community benefits plan. The CUP applications will be evaluated and reviewed by the Planning Commission. The City continues to proactively deter unpermitted dispensaries through a multi-departmental enforcement effort comprised of the City Attorney/City Prosecutor Office, the Pasadena Police Department, Code Compliance and the California Department of Tax and Fee Administration. To date, the City has closed over 20 dispensaries, 11 in the last year.

We anticipate concluding the review, scoring and identification of the top-scoring applicants for the categories of 'Testing Laboratories' and 'Cultivators' within the next few weeks. The City is actively working on placing all public information-related documents related to each application on the City website within the coming weeks.

The final application scores for commercial applicants is linked below. Application scores and rankings are final and there is no appeal process.

 **Cannabis Application Results – Retailers**

EXHIBIT F



CONDITIONAL USE PERMIT: CANNABIS RETAILER

SAMPLE MAP

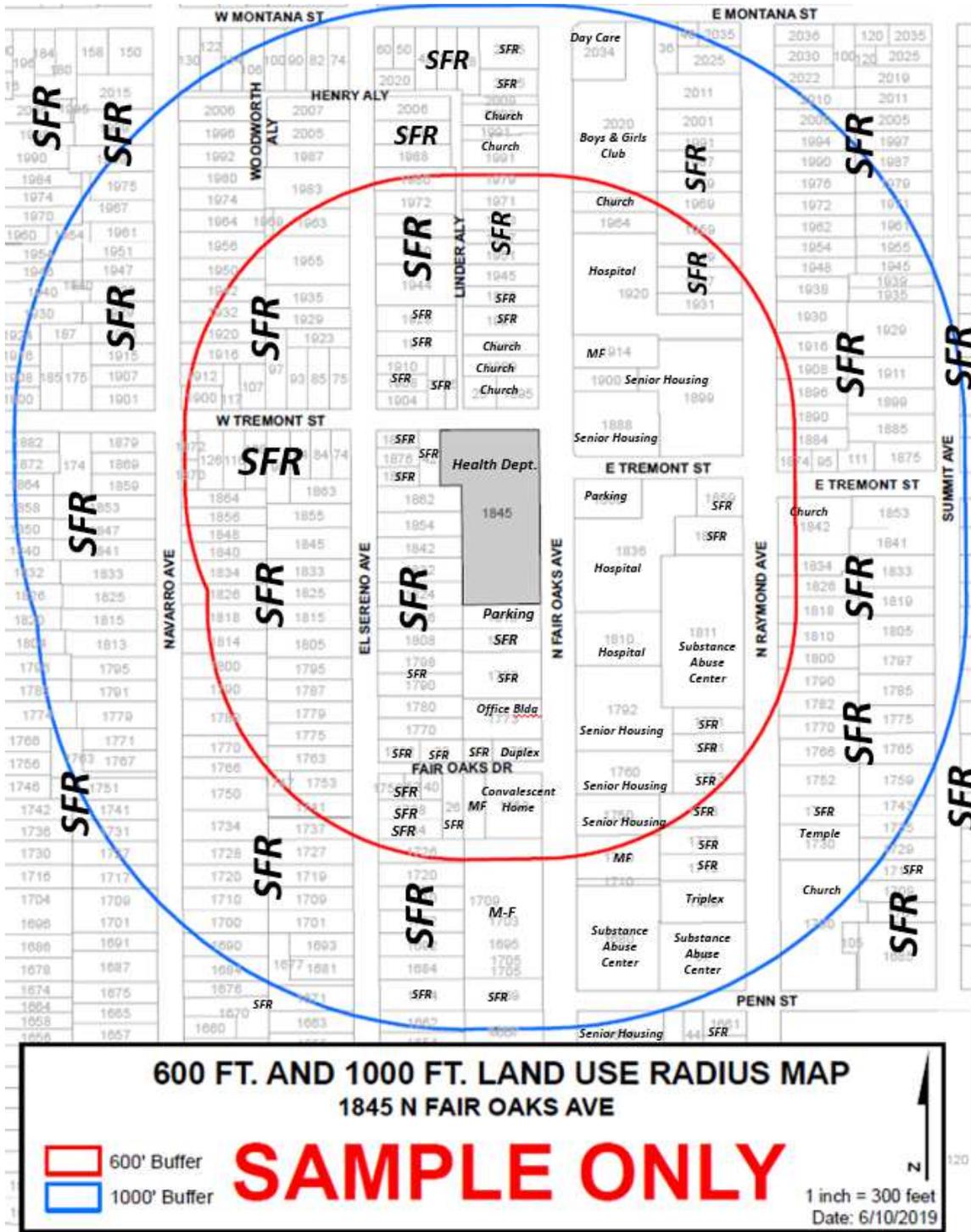


EXHIBIT G



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

June 27, 2019

Tim Dodd
10000 Culver Boulevard
Culver City, CA 90232

(Sent via email only: tim@sweetflower.com)

Re: Conditional Use Permit: Cannabis Retailer for SweetFlower Pasadena, LLC
827 East Colorado Boulevard
Council District 3

Dear Mr. Dodd:

On June 12, 2019 at 5:34 p.m., your *Conditional Use Permit: Cannabis Retailer* application to allow the retail sales of Cannabis at the above referenced address was received for processing. Based upon the application and plans received, the application is deemed **incomplete**. The following is a list of required information not included in your application:

1. *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.*

As stated in the Rules and Regulations for *Conditional Use Permit: Cannabis Retailer* applications:

I. Conditional Use Permit Application Acceptance.

- A. Only the first COMPLETE application submitted within a council district will be processed.
 - i. Subsequent additional complete applications received within the same council district will be held in the order received; an application is not considered received until it is complete.
 - ii. Where an application is on hold, the time for obtaining a permit pursuant to Section 5.78.080 (H) is concurrently tolled as to that application.
 - iii. Upon issuance of a commercial cannabis permit, no other applications within that same council district will be processed.
 - iv. Should the first complete commercial cannabis CUP applicant fail to secure a CUP, the next complete application in the queue will be processed.

If you wish to pursue a *Conditional Use Permit: Cannabis Retailer* you are required to provide the incomplete information and re-submit the items via the same on-line share folder used for your initial submittal. Further evaluation of this application will not occur at this time.

Your standing on the City's list of complete applications will be determined by the date/time stamp of any new submittal.

If you have any questions, please contact Guille Nunez at (626) 744-7634 or gnunez@cityofpasadena.net .

Sincerely,



Guille Nunez,
Management Analyst IV

EXHIBIT H

REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF PASADENA, CALIFORNIA

Certified Copy

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE PLN2019-00386
APPEAL OF PLANNING DIRECTOR DECISION

Date and Time: Wednesday, August 7, 2019
6:30 p.m. - 8:31 p.m.

Location: 100 North Garfield Avenue
Council Chambers
Room S249
Pasadena, California

Reporter: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 16327

1 Can you describe how staff viewed the
2 distinction between a surveyor reviewing versus
3 preparing?

4 MR. REYES: Absolutely.

5 So -- so one of the things that -- and
6 anybody who has a license in this room that's
7 professionally licensed in some form or fashion,
8 whether you're an attorney, whether you're an
9 architect, that license, that carries great weight.

10 And there's -- with great sort of -- I don't
11 want to jump into "Spider-Man," but the idea of great
12 responsibility and what your stamp means and what your
13 signature means.

14 There's a different level of responsibility
15 and liability that comes with "prepared by."

16 This is a process -- you know, when we sat
17 down as staff to -- to go through what the voters
18 approved as regulations and say, "What's the
19 application? What do we need?" trust me, we never
20 thought we'd be talking about "prepared by a licensed
21 surveyor."

22 But what we knew was we knew how important
23 the distance separation requirements were. We also
24 knew that the only way -- or the best way to get one
25 was it's going to be prepared by a licensed surveyor.

1 And so when you -- when someone reviews it --
2 and first of all, staff is not suggesting that any of
3 the maps that have been submitted to us are right or
4 wrong, and that's important. We've not done that yet.

5 We -- we've been working on this. We're
6 going to bring to the planning commission -- when
7 we -- when we talk about our CUPs, we're doing a peer
8 review to verify that.

9 They have -- the completeness concept is,
10 "Did you submit the information that was required by
11 the application to reasonably determine and process
12 that application?"

13 So the idea of "reviewed by" is less than
14 "prepared by," and that was really what staff was
15 after.

16 Staff said, "This is an important concept.
17 We would like to make sure that these things are
18 'prepared by.'"

19 That was a standard that we set up. We
20 didn't set up a lesser standard. So we didn't accept
21 a lesser standard.

22 So, again, I'm not saying that the maps are
23 wrong. I'm saying that the standard that we set up
24 was "prepared by."

25 And it doesn't mean that you have to go out

1 there and physically measure. What it really means,
2 in this case, we believe that the -- the ones --
3 and -- and you saw the chart that was up on the
4 screen.

5 We believe the ones that we said have "Yes,"
6 those are "prepared by," and it could be a letter
7 saying, "This is what we did. This is how we did it."

8 It doesn't mean that someone went out there
9 and physically measured and took their slide rule,
10 whatever they take, and -- that's not what it means.

11 So -- but the -- the concept here that we're
12 talking about is that the expectation was we decided
13 that it should be "prepared by."

14 And people can challenge whether or not we
15 should have done that, but that's not at issue here.
16 What is at issue is, "Did you follow the application
17 procedures?"

18 And it wasn't meant to trip anybody up. It
19 was not. It was meant to do exactly what we're trying
20 do, which is we would like to ensure that these things
21 are correct. Distance is important.

22 We know -- we showed you an example where
23 two feet makes all the difference in the world.

24 CHAIR WILLIAMS: And was that your second
25 question?

EXHIBIT I

THE LEW FIRM APC

433 North Camden Drive - Suite 600, Beverly Hills, CA 90210 / O: (310) 279-5145 F: (310) 300-1819 E: info@thelewfirm.com

Timothy Dodd
Sweet Flower Pasadena, LLC
10000 Culver Blvd.
Culver City 90232
Email: tim@malibugreen.com

October 1, 2019

Re: Opinion Letter / Conformity of Cannabis Retail Location / 908 E. Colorado Blvd., Pasadena CA

Dear Timothy:

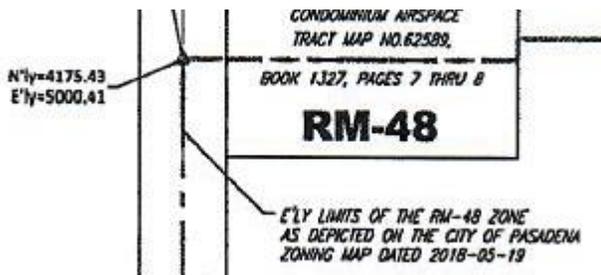
You requested that the Lew Firm opine on whether the location at which Integral Associates (“IA”) has applied (the “IA Application”) to operate a cannabis retail storefront, at 908 E Colorado Blvd, Pasadena (the “Site”) complies with the City of Pasadena’s applicable regulations and ordinances, specifically, whether the Site is within 600 feet of a residential zone.

Conclusion: Based upon the screenings and search reports and the references made available to us by the searching organizations, we are of the opinion that the Site is non-conforming due to the proximity of a residential zone.

Analysis: The city cannabis ordinance states “No retailer shall be established or located within 600 feet, measured from the *nearest property lines* of each of the *affected parcels*, of any existing *residential zone*.” [Pasadena Municipal Code § 17.50.066 (D)(5)(b)]. The relevant questions therefore are (1) what is an “affected parcel”, and (2) what are the property lines of that parcel?

We are of the opinion that “affected parcel” means any parcel that is zoned residential. In this opinion, we focus on the nearest residential-zoned property southeast of the Site (the “Residential Property”).

With respect to the Residential Property, IA did not measure from the correct position – the nearest property line of the affected parcel, but instead to the northwest corner of the boundary line for RM-48, which does not coincide with a property line. See the following portion of the surveyor map that IA filed with their cannabis application (the “Map”):



The question then becomes; where is the correct boundary line that IA should have measured to, instead of the RM-48 boundary?

The cannabis ordinance states in relevant part that the measurement will not be made to the boundary of a residential zone but, rather, to the “nearest *property lines* of each *affected parcels*, of any residential zones.” The ordinance was clearly intended to protect the affected residential property parcels contained within an existing residential zone, otherwise there would be no need to measure to a property line. In this case, the northwest corner of the portion of the RM-48 that begins just south of Green Street bisects a condominium project and single parcel of land where some of the individual units themselves are outside of the RM-48 and some are included in the RM-48. Since all condo properties are constructed, however, on the same single parcel, half of which is in the RM-48, the other half not, the boundary lines should have been drawn to the northwest corner of the that single affected parcel.

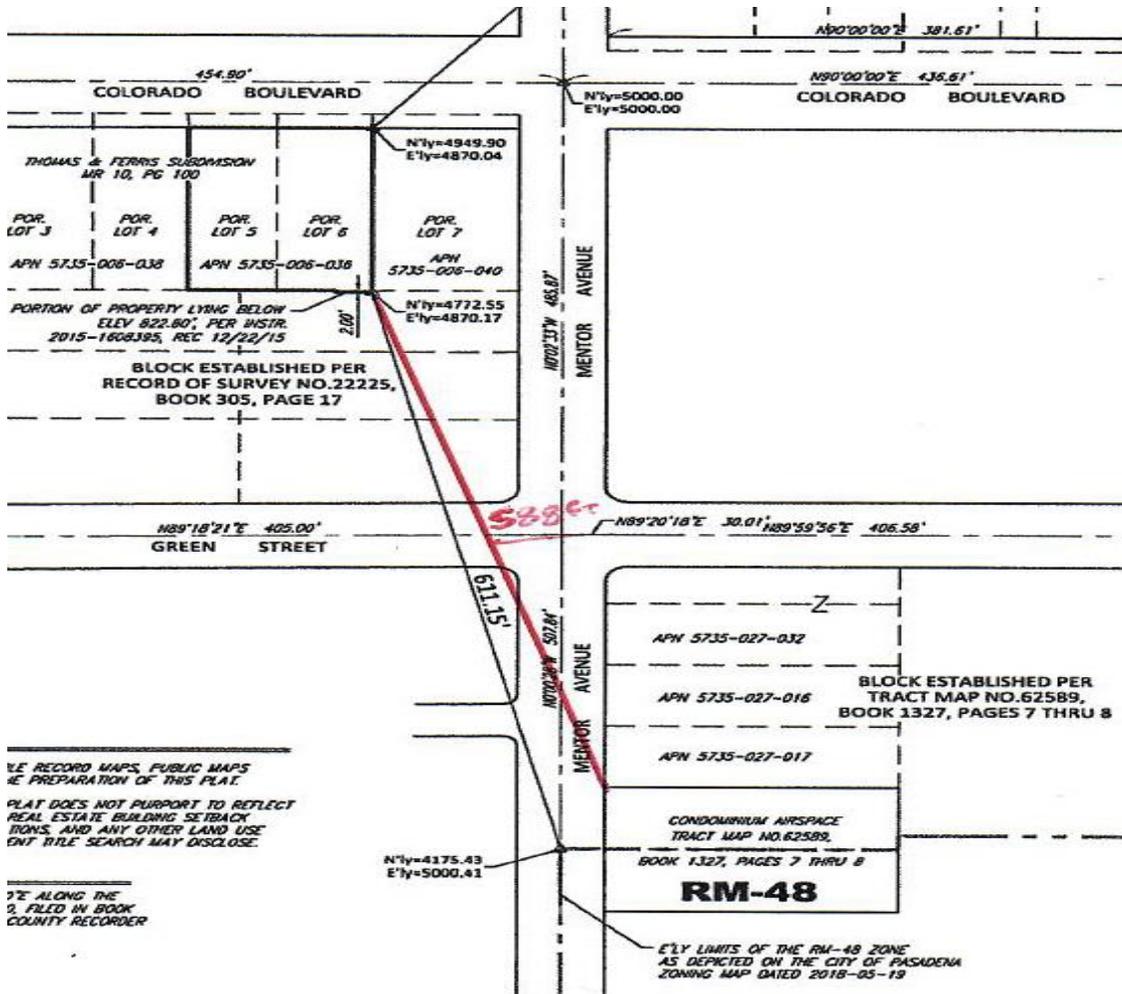
In addition, a condominium property contains ownership of an individual unit where each homeowner owns not only their individual unit space, but also an undivided share in the ownership of common areas in a common homeowner’s association (HOA).

Legal Descriptions for Condominiums reference a single specific “Unit No.” and a fraction representing the interest in the Common Area. There is also reference to a specific Lot that is the same lot number as numerous other individual units.

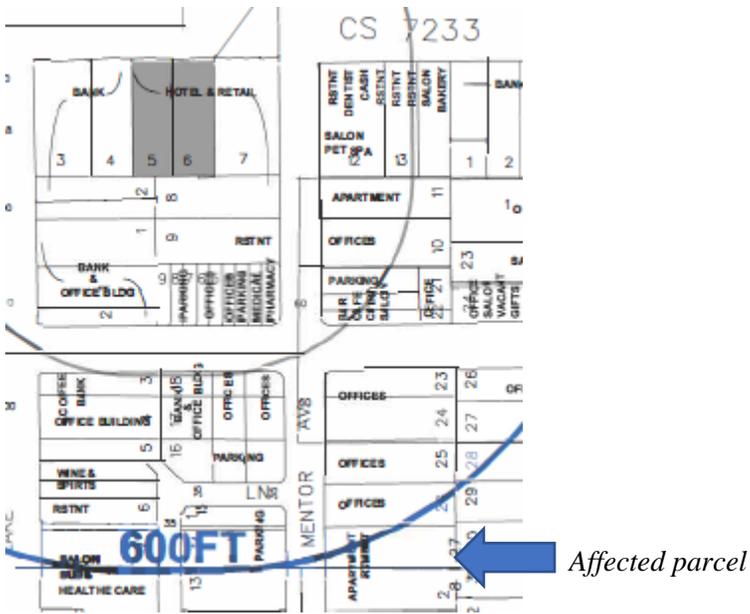
In this case, each of the condominium unit’s legal description contain the following language:
“TR=62589 LOT 1 CONDO UNIT ___ (AIRSPACE AND 1/29 INT IN COMMON AREA).”

Thus, every condo property in this project includes an undivided share of common elements some of which are contained in RM-48. Thus, it would follow to reason that every condo property at this location is partially within RM-48.

Either way, pursuant to the regulations set forth by the city for commercial cannabis activity, the boundary line should have been drawn to the northwest property line of the affected parcel and not to the boundary line for RM-48. Below, see the correct line drawn in RED depicting the nearest property lines of each of the affected parcels:



Finally, the affected parcel boundary line is within 600 feet, as can be seen by the radius map below used by IA in their application (see relevant portion of the radius map below).

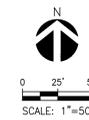
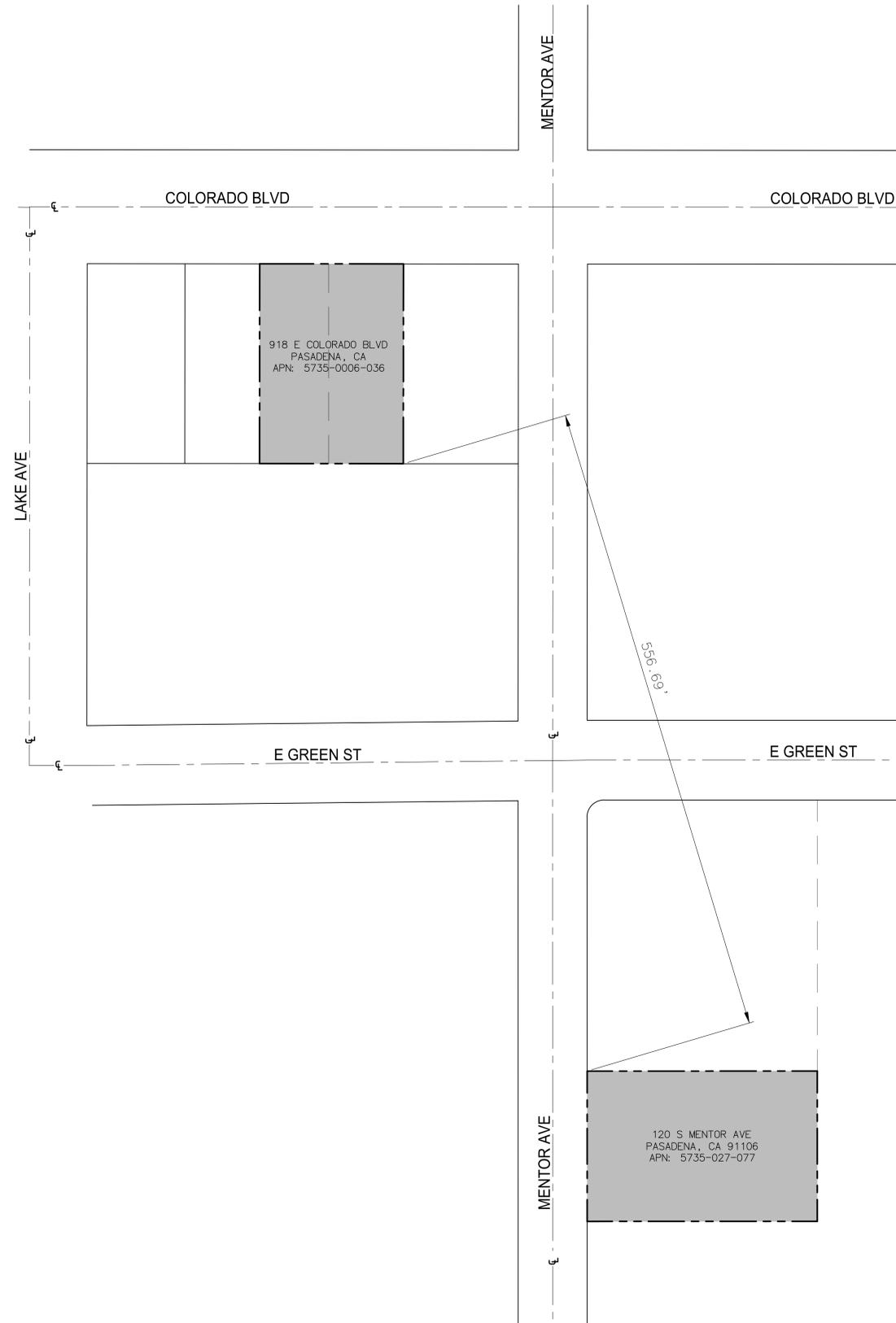


Conclusion: The nearest property line of an affected parcel is within 600 feet of the Site, making the retailer non-compliant with the applicable cannabis code, and thus **non-conforming**.

Sincerely,

Charles Lew
Charles Lew

PROPERTY DISTANCE EXHIBIT




 CHRISTOPHER JONES, LS 8193
 CHRIS.JONES@KJFF.COM
 09/17/2019


NO.	DATE	REVISIONS
6		
5		
4		
3		
2		
1		

PROJECT #	1900626
DATE PREPARED	09/17/2019
DRAWN BY	FC
CHECKED BY	CJ

918 E. COLORADO BLVD
 PREPARED FOR:
MS. TERRI GILLES
 SWEET FLOWER
 10000 CULVER BOULEVARD
 CULVER CITY, CA 90232



EXHIBIT J



Quality Mapping Service has conducted a research investigation and review to identify all the sensitive receptors that surround the property located at 908 E. COLORADO BLVD, PASADENA, CA within 600' & any other Cannabis facilities within 1000'.

The procedures and process of this review have been conducted to the best of our ability and is reflected in the 600' & 1000' Land Use Map provided, utilizing the following methods:

- Research utilizing various online resources such as the Los Angeles County Tax Assessor, Google and Google Earth

As it relates to identifying specific land uses such as Park, Library, K-12 school, child-care center, in-home daycare, youth oriented facility, church or faith congregation, substance abuse treatment center, **NONE WERE EVIDENT.**

As it relates to identifying any existing residential zone within 600' from the nearest property line of each of the affected parcels, it is too close for our offices to determine from Lot 6 (NE corner) to RM-48. Please seek the services of a licensed Civil Engineer/ Surveyor.

As it relates to identifying Cannabis uses such as Retailer or Microbusiness Commercial Cannabis Activity having on-site retail sites, **NONE WERE EVIDENT.**

We hereby certify that the above information and Land Use Map being provided for this investigation is correct and true to the best of our knowledge and ability.

June 11, 2019
Date

Peter Elias
Peter Elias

EXHIBT K

REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF PASADENA, CALIFORNIA

Certified Copy

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE PLN2019-00386
APPEAL OF PLANNING DIRECTOR DECISION

Date and Time: Wednesday, August 7, 2019
6:30 p.m. - 8:31 p.m.

Location: 100 North Garfield Avenue
Council Chambers
Room S249
Pasadena, California

Reporter: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 16327

1 Now, is your concern even that maybe the
2 first one was compliant, or are you debating over
3 whether the second or third one was compliant?

4 CHAIR WILLIAMS: So I'm not debating whether
5 any of them were compliant, because in my comparison
6 to the other maps, it doesn't look to me like they
7 were compliant.

8 So I don't know what made this one
9 noncompliant and didn't make some of the other -- so
10 the one that was submitted on Kimley-Horn wasn't
11 "prepared"; it was "reviewed" by a surveyor.

12 So why wasn't that one deemed "incomplete"?

13 So that's the -- and I know we're not here to
14 look at the other applications, but if this one was
15 incomplete, I don't have enough information to decide
16 that the other ones weren't incomplete as well.

17 MEMBER OLIVAS: Chair --

18 CHAIR WILLIAMS: And that was information
19 that I -- that I did request.

20 MEMBER OLIVAS: If I may, I have the
21 Kimley-Horn map in front of me.

22 And the letter states clearly that the survey
23 listed below has -- "The surveyor listed below has
24 performed the measurements for the map," as opposed to
25 on the one that was prepared for SweetFlower, which is

1 "reviewed" by the surveyor.

2 So there's a distinct difference in --

3 CHAIR WILLIAMS: Yes, but --

4 MEMBER OLIVAS: -- (inaudible).

5 CHAIR WILLIAMS: -- "performed" is not
6 "prepared." So...

7 MEMBER OLIVAS: If they --

8 CHAIR WILLIAMS: So that's a --

9 MEMBER OLIVAS: -- if they've performed the
10 measurements --

11 CHAIR WILLIAMS: But they've performed the
12 measurements, but they didn't prepare the map.

13 So this -- so that's where I just -- there
14 are so many different interpretations of this, because
15 the map was actually prepared by Radius Maps.

16 MR. REYES: It's "Mapping."

17 MEMBER OLIVAS: Yeah --

18 CHAIR WILLIAMS: -- but then the surveyor
19 performed the calculations based on another person's
20 map. So --

21 MEMBER OLIVAS: I see --

22 CHAIR WILLIAMS: -- that's --

23 MEMBER OLIVAS: -- I see this as a --

24 CHAIR WILLIAMS: -- what's confusing.

25 MEMBER OLIVAS: -- professional certification

EXHIBIT L

RADIUS MAP CERTIFICATION STATEMENT
CITY OF PASADENA

EZR Surveying LLC has conducted a **research investigation and review** to identify all the sensitive receptors that surround the property located at 70 W UNION ST, PASADENA, CA.

This review has been **conducted to the best of our ability** and is reflected in the 600' & 1000' Land Use Map provided, utilizing the following methods:

- A physical inspection of each parcel of land within a 600 foot radius of the site to identify the specific land uses
- **Internet research using various databases, such as Google Earth**

Cannabis retailers shall be permitted in only the CO, CL, CG, CD and IG zoning districts and shall be subject to the following requirements:

- A. No retailer shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retailer or cultivation site, or within 500 feet of any testing laboratory; **NONE WERE EVIDENT**
- B. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone; **NONE WERE EVIDENT**
- C. No retailer shall be established or located within a mixed-use development project containing a residential use component; **NONE WERE EVIDENT**
- D. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any childcare center, in-home (family of day care home), youth-oriented facility, church or faith congregation, or substance abuse center; **NONE WERE EVIDENT**
- E. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any park, library, or K-12 school; **NONE WERE EVIDENT**
- F. Retailers shall be required to comply with all zoning, land use and development regulations applicable to the underlying zoning district in which they are permitted to establish and operate as set forth in the Pasadena Municipal Code. **NONE WERE EVIDENT**

We hereby certify that the above information and Land Use Map being provided for this investigation is correct and true to the best of our knowledge and ability

6/13/2019
Date


Ethan Z. Remington, P.L.S.



EXHIBIT M

Kimley»»Horn

June 12, 2019

Attn: City of Pasadena, Licensing

City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91101

■
Suite 2050
660 South Figueroa
Los Angeles, California
90017

Re: Distance Certification Letter for proposed cannabis site located at 169 W. Colorado Blvd., Pasadena, CA 91105. APN 5713-004-016

The surveyor listed below has performed measurements of the subject site in relation to 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 determination, we defer to said study.

Utilizing scaled, high-resolution ortho-imagery, we have measured the radius rings (500', 600' & 1,000') from all corners of the subject parcel. We have reviewed the location of structures and the 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.



Michael J. Knapton, PLS No. 8012
Registered California Professional Land Surveyor



Attachments: Sensitive Use Study

EXHIBIT N

SENSITIVE USE NOTES:

CHURCHES – SCHOOL – PARKS – DAYCARE
 NO CHURCHES, PARKS, IN HOME CARE OR DAYCARE
 FACILITIES WERE LOCATED WITHIN 600 FEET OF THE
 SUBJECT SITE.

S1 FUTURE ACADEMY, PRIVATE SCHOOL – GRADES 6-12
 35 N. LAKE AVE., PASADENA CA 91101
 CALIFORNIA DEPT. OF EDUCATION AFFIDAVIT #237938

ONE YOUTH-ORIENTED BUSINESS WAS LOCATED WITHIN
 600 FEET OF THE SUBJECT SITE.

S2 TEST PREP GURIUS
 1147 E. COLORADO BOULEVARD, #900 PASADENA CA
 91101

LIBRARIES – SUBSTANCE ABUSE FACILITIES
 NO LIBRARIES OR SUBSTANCE ABUSE FACILITIES WERE
 FOUND WITHIN 600 FEET OF THE SUBJECT SITE.

RESIDENTIAL ZONES WITH 600 FEET OF THE SITE:

NO RESIDENTIAL ZONES WERE FOUND WITHIN 600 FEET OF
 THE SUBJECT SITE.

THE FOLLOWING RESIDENTIAL PROPERTIES WERE FOUND WITH
 600 FEET OF THE SUBJECT SITE:

FOUNTAIN GLEN AT PASADENA, SENIOR APARTMENTS
 775 UNION STREET, PASADENA CA 91101

FRADO ON LAKE AVENUE – CONDOMINIUMS
 840 GREEN STREET, PASADENA CA 91101

CURRENT CANNABIS LICENSE LOCATIONS:

NO CURRENTLY LICENSED DISPENSARIES OR CULTIVATION
 SITES WERE LOCATED WITHIN 1000 FEET OF THE SUBJECT
 SITE. NO TESTING LABORATORIES WERE LOCATED WITH 500
 FEET OF THE SUBJECT SITE.

THE NEAREST CANNABIS FACILITIES ARE LOCATED AT:

TESTING:
 ENCORE LABS, 715 VINEYD AVENUE, PASADENA CA 91107
 APPROX. 2 MILES

EDUCATION AND SUPPORT:
 CANNABIS CAREGIVERS: 52 N. MENTOR AVENUE, PASADENA
 CA 91106

DISPENSARY:
 UNDEFEATED 25- 1136 E. GREEN STREET, PASADENA CA
 91106

SURVEYOR'S STATEMENT

I HEREBY STATE THAT I AM A LICENSED
 PROFESSIONAL LAND SURVEYOR OF AND IN THE
 STATE OF CALIFORNIA (CA LICENSE LS 8771) AND
 THAT I HAVE CONDUCTED A VISUAL INSPECTION OF THE
 SITES CITY OF PASADENA REQUIREMENTS PER
 SECTION 17.50.066 D OF THE MUNICIPAL CODE FOR
 A LAND USE MAP.

*Land Use
 Radius Map*
 for
 827 E. Colorado Boulevard
 Pasadena CA, 91101
 APN 5723-030-028
 August 2, 2019



M & M & Co.
 26074 Avenue Hall, Suite 12
 Santa Clarita, CA 91355
 (818) 891-9100
 Gregory M. Amoroso, L.S. 8771

