

ATTACHMENT J
CORRESPONDENCE RECEIVED FOR THE OCTOBER 30, 2019 BZA HEARING



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October 29, 2019

Michael W. Shonafelt
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VIA EMAIL AND HAND DELIVERY

Luis Rocha
Board of Zoning Appeals
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
lrocha@cityofpasadena.net

Re: Revocation of Conditional Use Permit #5530

Dear Mr. Rocha,

This office represents Pasadena Lots-70, LLC ("Applicant") regarding the above-referenced conditional use permit (#5535; PLN 2010-00384) ("CUP"). This letter presents our legal grounds for the appeal of the Hearing Officer's July 17, 2019, revocation of the CUP. This matter is set as item 2.A. on the October 30, 2019, agenda.

1. INTRODUCTION AND SUMMARY OF GROUNDS FOR APPEAL.

The City of Pasadena ("City") approved the CUP on March 6, 2013. Since that time the Applicant has been availing itself of the rights granted by that entitlement, namely, allowing private group events at the former Ambassador College Campus. Its use of the CUP right has matured into a constitutionally protected, vested right. (See, e.g., *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526 [8 Cal.Rptr.2d 385]; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 343-344 [156 Cal.Rptr. 1].)

The Hearing Officer's July 17, 2019, revocation rests on only one of the six possible grounds for revoking a vested CUP right: the "changed circumstances" ground. (PMC, § 17.78.090(a).) That finding cannot properly be made, because the foreseeability of purportedly "changed" conditions was a matter of record at the time the City granted the CUP. Nor do any of the changed circumstances conflict with the terms of the CUP or the Applicant's ability to comply with the CUP conditions of approval. Specifically:

(a) The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues: The Hearing Officer's main basis for terminating the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, thereby concentrating the uses into the Fowler Garden. This argument reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the allotment of events from occurring on only one site. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting

that manner of use or placing venue-specific caps; it did not do so. This ground is insufficient to support a termination of the Applicant's vested CUP rights.

(b) The Hearing Officer's Compatible Use Argument Is not Supported by the Record: The Hearing Officer concluded that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. The City approved that residential project on April 12, 2007, some six years before it approved the CUP. The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden. It cannot therefore invoke this ground as a basis for revoking the CUP right.

(c) The Hearing Officer's Assertion about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support: The third ground for the Hearing Officer's revocation was based on a finding that the lack of kitchen and/or restroom amenities from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on how the Applicant may avail itself of amenities for its events. There is no restriction on the use of ported kitchen or bathroom amenities, nor does the CUP prohibit use of such amenities on alternative adjacent facilities. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows. Nor does the Hearing Officer's references to changes in the Applicant's use of parking amenities sufficient to revoke the CUP. If the Applicant seeks to avail itself of only one of many alternative parking resources, it is free to do so without facing the penalty of a revocation of its CUP right, as long as it remains in compliance with the CUP conditions.

(d) The Hearing Officer's Reference to Purported Failures to Provide Monthly Reports Is Improper in this Proceeding: As noted in the Applicant's July 16, 2019, letter to the Hearing Officer, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. Staff's passing attempt to undermine this showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

2. DISCUSSION.

In determining whether to revoke a CUP right, the City is bound, not only by the provisions of the City of Pasadena Municipal Code ("PMC"), but also state law. As the staff report notes, PMC section 17.78.090 governs the revocation of CUPs. That ordinance sets forth limited criteria for revocation of CUPs. The Hearing Officer invoked only one of those criteria, which allows the City to revoke a CUP if

[c]ircumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

(PMC, § 17.78.090(a).) As demonstrated in this letter, the City cannot properly invoke section 17.78.090(a) and must allow the Applicant to continue to avail itself of the rights of the CUP.

Administrative decisions -- such as this -- must rest on findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) As the courts repeatedly have concluded, substantial evidence "means more than a mere scintilla; it means 'such relevant evidence as a reasonable man might accept as adequate to support a conclusion'" The term "substantial evidence" cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." (*Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 762 [181 Cal.Rptr. 324] quoting *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 392-393 [88 Cal.Rptr. 551].) To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].)

Importantly, the standard of review for terminating CUP rights is a heightened one because it deals with vested rights. In such cases, ***no deference is to be paid to the public agency's findings.*** (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 89 [133 Cal.Rptr.2d 234].) As one court observed:

If [an administrative] decision does not substantially affect a fundamental vested right, the trial court considers only whether the findings are supported by substantial evidence in light of the whole record." [Citation.] If, however, "an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. [Citation.]

(*Goat Hill Tavern v. City of Costa Mesa, supra*, 6 Cal.App.4th at pp. 1525-1526; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd., supra*, 24 Cal.3d at pp. 343-344.)

In this case, the Hearing Officer's decision to revoke the CUP under PMC section 17.78.090(a) is devoid of substantial evidence and cannot withstand the heightened scrutiny applicable to administrative decisions to terminate constitutionally vested CUP rights. The Hearing Officer's decision rests on three substantive grounds. Each ground is devoid of legal support, as demonstrated below.

A. The CUP Entitles the Applicant to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues:

The Hearing Officer's primary contention for termination of the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrace Villa, and Italian Garden) are no longer available for event use, leaving only the Fowler Garden open for the events contemplated by the CUP. The Hearing Officer asserts that the CUP's originally findings -- which supported up to 32 events a year, with a maximum of 300 guests on four locations -- are no longer tenable for only one event location.

The Hearing Officer's finding reads restrictions into the CUP that are not there. Nothing in the original CUP prohibited the maximum allotment of events from occurring on only one site. Nor did the City impose venue-specific caps on the number of maximum attendees. The Applicant always was -- and still is -- entitled by the CUP to hold its events wherever it deems appropriate as long as its use is consistent with its grant under the CUP. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned

an appropriate condition of approval prohibiting that manner of use or otherwise imposing venue-specific caps; it did not do so. Use of Fowler Garden as the situs of the CUP's annual allotment of events is not precluded by the CUP, and the City has no legal basis to read that prohibition into the CUP or to purport to base a termination of the CUP rights on that ground.

If concentration of the uses granted by the CUP remains a major concern for the City, other measures exist -- short of revoking the Applicant's constitutionally protected CUP rights -- that can adequately address that concern. Specifically, an amendment can be crafted to reduce the maximum events and/or attendee caps at the Fowler Garden. The Applicant is willing to work with staff to determine a mutually acceptable maximum event/guest cap.

B. The Hearing Officer's Compatible Use Ground Is Unsupported by Substantial Evidence.

The Hearing Officer's decision also rested on a finding that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. On that basis, the Hearing Officers concluded that findings three, four and six no longer can be made. The "adjacent" residential uses to which the Hearing Officer refers are part of the City Ventures Grove project. Notably, the City approved that project on April 12, 2007, some six years before it approved the CUP.

The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden, and it made an express finding that

[t]he hours of operation, noise level, maximum number of attendees permitted, and parking have been conditioned to be compatible with the surrounding existing *and proposed* residential uses.

(See CUP Staff Report, Findings (Mar. 6, 2013), at p. 13, emphasis added.) Indeed, the CUP uses were disclosed to the purchasers of the residential units that ostensibly now oppose the CUP. The Second Amendment to the Ambassador West Declaration of Covenants, Conditions and Restrictions (Oct. 31, 2013) ("CC&Rs") amends section 2.4 of the original Master HOA CC&Rs to expressly prohibit the HOA from "limiting or abridging" the commercial uses allowed by the CUP for the Fowler Garden. (CC&Rs, § 8, p. 4.) That provision goes on to state that the HOA shall not "interfere with or challenge, whether by legal challenge or otherwise the operation and/or use by the respective owner of the Merritt Mansion, Terrance Villa or Fowler Garden" (*Ibid.*) \

The revocation findings also generally reference "148 multi-family residences that have been constructed on the Ambassador College Campus, in and around areas originally approved for events." (Board of Zoning Appeals Staff Report (Oct. 30, 2019) ("Board Staff Report"), p. 6.) Aside from conceding that "a majority of these uses were contemplated when the CUP was approved," this finding also overlooks that the General Plan policy the Hearing Officer invokes addresses only "adjoining" incompatible uses. (See Board Staff Report, at p. 9, finding 3 [invoking Policy 25.7 of the Land Use Element of the City of Pasadena General Plan.]) As noted above, the "adjoining" residential uses were approved well before the CUP was issued, and the City knew all about those adjoining uses at that time. That is why it crafted conditions of approval designed to mitigate potential impacts to those residential uses. (See, e.g., Board

Staff Report, Attachment E (Staff Report for Approval of CUP #5535] Conditions of Approval.)
The City cannot now invoke impacts to residential uses as a ground for revoking the CUP.

C. The Hearing Officer's Conclusions about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support.

The third substantive ground cited by the Hearing Officer for the termination of the CUP is that use of kitchen and/or restroom amenities brought on-site or from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on use of on-site kitchen or bathroom amenities, nor does it prohibit use of such amenities on adjacent facilities. Nor does the reference to the change in the Applicant's use of parking amenities support a finding of denial. The Applicant is entitled to draw from any one of its allowed parking resources to meet its parking demands, as long as the Applicant does not violate the conditions of approval and terms of the CUP. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows.

D. The Hearing Officer's Reference to Purported Failures to Provide Monthly Reports to the Zoning Administrator Is Misplaced in this Proceeding.

As noted in the Applicant's July 16, 2019, letter to the Hearing Officer, the Applicant has been in strict compliance with the conditions of approval for the CUP since its issuance. The staff's passing attempt to undermine this showing by invoking a purported failure to comply with a condition of approval requiring monthly reporting to the Zoning Administrator is not proper. (See Board Staff Report at p. 7.) The proper procedure for enforcing a failure to comply with a condition of approval for a CUP is an enforcement action under section 17.78.090(c). This is a revocation action, proceeding on only one criterion for revocation -- section 17.78.090(a) for purportedly "changed" circumstances.

3. CONCLUSION

For the foregoing reasons, among others, the Hearing Officer's decision to revoke the CUP is unsupported by law and/or evidence. Nor can the City meet the stringent standard for revocation of a vested CUP right. In fact, upholding the Hearing Officer's decision to revoke the CUP under the grounds presented in that decision could give rise to a viable action for regulatory taking. We respectfully request that the Board of Zoning Appeals overturn the Hearing Officer's decision to revoke the CUP.

Representatives of the Applicant will be on hand at the October 30, 2019, hearing to answer any questions.

Very truly yours,



Michael W. Shonafelt

MWS

cc: David Reyes, Director, City of Pasadena Department of Planning and Community Development (davidreyes@cityofpasadena.net)
Michele Beal Bagneris, Esq., City Attorney (mbagneris@ci.pasadena.ca.us)
Joe Oftelie, Vice President of Development, City Ventures, LLC. (joe@cityventures.com)

Petition in Support of Revocation of CUP #5535



We the undersigned support revocation of CUP #5535 that allows group events at various locations within the Ambassador College campus area. We live adjacent or in close proximity to these locations, including in particular Fowler Gardens. When such events were held previously under this CUP, residents experienced problems including noise, litter, foot traffic, vehicle traffic and parking, and other disturbances. The situation has changed dramatically since the CUP was originally granted. These locations no longer have ready access to restrooms, kitchen facilities, or parking. Moreover, there are now, or soon will be, approximately 250 or more new residents living around the campus who would be directly impacted by any future group events, including all the problems experienced previously, but exacerbated by the absence of facilities previously available. We appreciate the City of Pasadena for recognizing these dramatic changes and therefore revoking the CUP.

Signature	Printed Name	Address
	Vincent A. Covelli	102 S. Orange Grove Blvd #105

Pasadena, CA 91105

Petition in Support of Revocation of CUP #5535

We the undersigned support revocation of CUP #5535, which allows commercial and group events at various locations throughout the Ambassador College campus area. We live adjacent and in very close proximity to these locations, including in particular Fowler Gardens. When events were and are held, we experienced severe noise, litter, foot traffic, vehicle traffic and parking problems, amongst other unpleasant disturbances. The situation also has changed dramatically since the CUP was originally granted. These locations no longer have ready access to restrooms, kitchen facilities, or parking. Moreover, there are now, or soon will be, approximately 250 or more new residents living around the campus who would be directly impacted by any future group events, including all the problems experienced previously, but exacerbated by the absence of facilities previously available. We appreciate the City of Pasadena for recognizing these dramatic changes and therefore recommending the revocation of the CUP.

Signature	Printed Name	Address
	Emily Cooper	168 S Orange Grove Apt #112
	Ryan Cooper	" "
	Joan Augustiny	172 S. Orange Grove #221
	Suzanne Goldstein	180 S. Orange Grove Blvd #241
	Lynne Thomas	180 S. Orange Grove Blvd #141
	Sara Ghayouri	168 S. Orange Grove Blvd. #212
	Brian Gordon	168 S Orange Grove Apt #212
	Cate Cohen	164 S. Orange Grove Blvd #201
	Tessa G. L. W.	180 S. Orange Grove #202
	C. David Cohen	164 S ORANGE GROVE BLVD PAS #1701
	Kerin Cantwell	164 S. Orange Grove Blvd. #102 Pas 91105
	Kirstin McAtchey	172 S. Orange Grove Blvd #222 91105
	Josh Cuevas	176 S Orange Grove Blvd #132 91105
	Br. Hong Cuevas	" "
	THOMAS MANN	180 S ORANGE GROVE BLVD
	KITHALEEN MANN	" " " "
	Jennifer Toay	164 S Orange Grove #164
	Dan Anderson	172 S Orange Grove #222


DA) ~~Mona Georgeopoulos~~ Megan Waller 176 S. Orange Grove Blvd #232
~~Georgeopoulos~~ ~~Georgeopoulos~~ 162 S. Orange Grove #111

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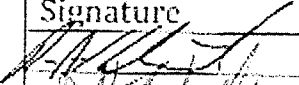
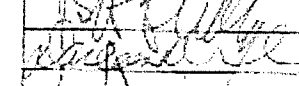
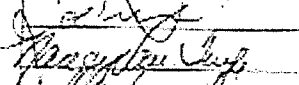
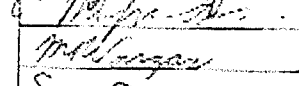
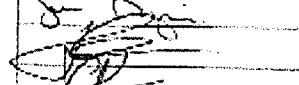



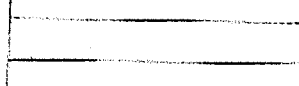
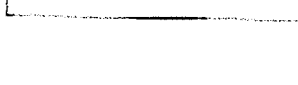
The situation also has changed dramatically since the CUP was originally granted. These locations no longer have ready access to restrooms, kitchen facilities, or parking. Moreover, there are now, or soon will be, approximately 250 or more new residents living around the campus who would be directly impacted by any future group events, including all the problems experienced previously, but exacerbated by the absence of facilities previously available. We appreciate the City of Pasadena for recognizing these dramatic changes and therefore recommending the revocation of the CUP.

Signature/Printed Name/Address

Justin Moore Joy Wren 248 S. Orange Grove #102
Joy Bass  244 S. ORANGE GROVE #202

Petition in Support of Revocation of CUP #5535

We the undersigned support revocation of CUP #5535, which allows commercial and group events at various locations throughout the Ambassador College campus area. We live adjacent and in very close proximity to these locations, including in particular Fowler Gardens. When events were and are held, we experienced severe noise, litter, foot traffic, vehicle traffic and parking problems, amongst other unpleasant disturbances. The situation also has changed dramatically since the CUP was originally granted. These locations no longer have ready access to restrooms, kitchen facilities, or parking. Moreover, there are now, or soon will be, approximately 250 or more new residents living around the campus who would be directly impacted by any future group events, including all the problems experienced previously, but exacerbated by the absence of facilities previously available. We appreciate the City of Pasadena for recognizing these dramatic changes and therefore recommending the revocation of the CUP.

Signature	Printed Name	Address
	RICHARD KLANT	196 S. ORANGE GROVE #303
	FREWELESE	200 S. ORANGE GROVE #307
	DOREEN KLANT	196 S. ORANGE GROVE #303
	JOE LOPEZ	280 S. Orange Grove Blvd #206 Pasadena
	NANCY VAN WYKE	192 S. Orange Grove Blvd #302 91105
	P. H. Puentes	363 W. Del Mar Blvd. #201 91105
	MERCEDES VARGAS	112 S. ORANGE GROVE BLVD #310, PASADENA, CA 91105
	Susan Ngon	102 S. Orange Grove Blvd. #210 Pasadena CA 91105
	TOM FEITZMAN	200 S. Orange Grove Blvd #107 Pasadena, CA 91105
	Christa Peiterna	200 S. Orange Grove Blvd. #107 Pasadena 91105

Petition in Support of Revocation of CUP #5535

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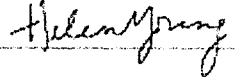
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Signature Printed Name Address

Aaron W. Young



Helen L. Young



196 S Orange Grove Blvd, #304, Pasadena, CA 91105

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Signature Printed Name Address

Don McIntyre
196 S. Orange Grove
#103
Pasadena 91105

Nancy McIntyre
196 S. Orange Grove
#103
Pasadena 91105

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Signature	Printed Name	Address
<i>David Scott Warden</i>	DAVID SCOTT WARDEN	196 S Orange Ave #207 Pasadena

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Signature	Printed Name	Address
	C. Duplass	102 S. Orange Grove #101
	S. Postman	363 W. San Marino Blvd #101
	WA WEFEC	563 W. San Marino Blvd #101
	S. W. W. W.	367 W. San Marino Blvd #101
	Deborah Bawi	100 S. Orange Grove #102
	Robert Pollack	100 S. Orange Grove #101
	John Klensaf	367 W. San Marino Blvd 103
	N. J. Grant	192 S. Orange Grove #202
	Ficus M. Kartm	110 S. Orange Grove #103
	WALTER YOKA	196 S. ORANGE GROVE #104 Pasadena
	Andrea Yoka	196 S. Orange Grove #104 Pasadena
	Terdi Lim	116 S. orange grove #105 Pasadena

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Signature	Printed Name	Address
<i>[Handwritten Signature]</i>	Tom Fagan	200 S. Orange Grove Blvd. Unit 206, Pasadena 91105
<i>[Handwritten Signature]</i>	AJ GRANSTON	192 S ORANGE GROVE #202 Pasadena
<i>[Handwritten Signature]</i>	Sylvia Finstrom	192 S. Orange Grove #202 Pasadena
<i>[Handwritten Signature]</i>	FLEWELLER	300 S Orange Grove #307 Pasadena
<i>[Handwritten Signature]</i>	Fleweller	200 S. Orange Grove #207 Pasadena 91105
<i>[Handwritten Signature]</i>	Miss Salgado	1145 S. Orange Grove #114 Pasadena 91105
<i>[Handwritten Signature]</i>	Martha Mantua	200 S. Orange Grove #106 Pasadena 91105
<i>[Handwritten Signature]</i>	Cecelia Grace	200 S. Orange Grove #207 Pasadena 91105
<i>[Handwritten Signature]</i>	Michael Grace	200 S. Orange Grove Blvd #207 Pasadena, CA 91105
<i>[Handwritten Signature]</i>	Dorey Smith	200 S Orange Grove Blvd #206 Pasadena 91105
<i>[Handwritten Signature]</i>	Lisa Smith	200 S Orange Grove Blvd #206 Pasadena CA 91105
<i>[Handwritten Signature]</i>	Dorey Smith	367 W. Del Mar Blvd #106 Pasadena 91105
<i>[Handwritten Signature]</i>	JPH Portman	363 W. Del Mar Blvd #101 Pasadena 91105



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

MICHAEL W. SHONAFELT
Michael.Shonafelt@ndlf.com

File No.:
2470.105

July 16, 2019

VIA EMAIL AND HAND DELIVERY

Hearing Officer
c/o Carrie Banks
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
cbanks@cityofpasadena.net

Re: Revocation of Conditional Use Permit #5530

Dear Ms. Banks,

This office represents Pasadena Lots-70, LLC ("PL-70") regarding the above-referenced conditional use permit (#5535; PLN 2010-00384) ("CUP"). Revocation of the CUP is set for a hearing before the Hearing Officer on July 17, 2019, and is item D on the agenda.

The City of Pasadena ("City") approved the CUP on March 6, 2013. Since that time, PL-70, the CUP applicant, has been availing itself of the rights granted by that entitlement, namely, allowing private group events at various locations located at the former Ambassador College Campus. Since the date of the issuance of the CUP, PL-70 and has been in strict compliance with all CUP conditions of approval.

In determining whether to revoke a CUP right, the City is bound, not only by the provisions of the City of Pasadena Municipal Code ("PMC"), but also state law. As the staff report notes, PMC section 17.78.090 governs the revocation of CUPs. That ordinance sets forth limited criteria for revocation of CUPs. Staff invoke one of those criteria, which allows the City to revoke a CUP if

[c]ircumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

(PMC, § 17.78.090(a).) As demonstrated in this letter, the City cannot properly invoke section 17.78.090(a) and must allow PL-70 to continue to avail itself of the rights of the CUP.

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Administrative decisions -- such as this -- must rest on findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) As the courts repeatedly have concluded, substantial evidence “means more than a mere scintilla; it means ‘such relevant evidence as a reasonable man might accept as adequate to support a conclusion’” The term “substantial evidence” “cannot be deemed synonymous with ‘any’ evidence. It must be reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of the essentials which the law requires in a particular case.” (*Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 762 [181 Cal.Rptr. 324] quoting *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 392-393 [88 Cal.Rptr. 551].) To support a denial, the agency “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].)

Importantly, the standard of review for terminating CUP rights is a heightened one because it deals with vested rights. In such cases, *no deference is to be paid to the public agency’s findings*. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 89 [133 Cal.Rptr.2d 234].) As one court observed:

If [an administrative] decision does not substantially affect a fundamental vested right, the trial court considers only whether the findings are supported by substantial evidence in light of the whole record.” [Citation.] If, however, “an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. [Citation.]

(*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526 [8 Cal.Rptr.2d 385]; see also *Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 343-344 [156 Cal.Rptr. 1].)

In this case, staff’s recommendation to revoke the CUP under PMC section 17.78.090(a) is devoid of substantial evidence and cannot withstand the heightened scrutiny applicable to administrative decisions to terminate CUP rights. Staff cite three reasons to revoke the CUP. Each reason is devoid of legal support, as demonstrated below.

(a) The CUP Entitles PL-70 to Continue Its Events at Fowler Garden, Regardless of the Elimination of the Other Venues: Staff’s main contention for termination of the CUP is that three of the four original locations for events allowed by the CUP (Merritt Mansion, Terrance Villa, and Italian Garden) are no longer available for event use, leaving only the Fowler Garden open for the events contemplated by the CUP. Staff contend that the CUP’s originally findings -- which supported up to 32 events a year, with a maximum of 300 guests on four locations -- are no longer tenable for only one event location. The problem with the staff’s argument is that it reads restrictions into the CUP that are not there. Nothing in the original CUP

prohibited the maximum allotment of events from occurring on only one site. PL-70 always was -- and still is -- entitled by the CUP to hold its events wherever it deems appropriate as long as its use is consistent with its grant under the CUP. If the City were concerned about concentrating event and guest maximums on one site, it could have fashioned an appropriate condition of approval prohibiting that manner of use; it did not do so. Use of Fowler Garden as the situs of the CUP's annual allotment of events is not precluded by the CUP, and the City has no legal basis to read that prohibition into the CUP or to purport to base a termination of the CUP rights on that ground.

(b) Staff's Compatible Use Argument Is Baseless: Staff next concludes that allowance of event uses is inconsistent with new residential uses on the western boundary of the Fowler Garden. On that basis, staff conclude that findings three, four and six no longer can be made. The residential uses to which staff refers are part of the City Ventures Grove project. Notably, the City approved that project on April 12, 2007, some six years before it approved the CUP. The findings to approve the CUP required the City to determine compatibility, not just with existing uses, but also known *future* uses. (See, e.g. PMC, § 17.61.050.H.6.) When the City approved the CUP it was fully aware of the residential uses that would be located adjacent to the Fowler Garden, and it made an express finding that “[t]he hours of operation, noise level, maximum number of attendees permitted, and parking have been conditioned to be compatible with the surrounding existing *and proposed* residential uses.” (See CUP Staff Report, Findings (Mar. 6, 2013), at p. 13, emphasis added.) Indeed, the CUP uses were disclosed to the purchasers of the residential units. The Second Amendment to the Ambassador West Declaration of Covenants, Conditions and Restrictions (Oct. 31, 2013) (“CC&Rs”) amends section 2.4 of the original Master HOA CC&Rs to expressly prohibit the HOA from “limiting or abridging” the commercial uses allowed by the CUP for the Fowler Garden. (CC&Rs, § 8, p. 4.) That provision goes on to state that the HOA shall not “interfere with or challenge, whether by legal challenge or otherwise the operation and/or use by the respective owner of the Merritt Mansion, Terrance Villa or Fowler Garden” (*Ibid.*)

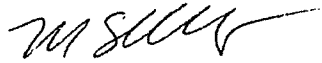
(c) Staff's Contention about Use of On-Site and Off-Site Facilities Is Devoid of Legal Support: The third ground cited by staff for recommending termination of the CUP is that use of kitchen and/or restroom amenities brought on-site or from adjacent facilities qualifies as grounds to revoke the CUP. In fact, the CUP contains no restrictions on use of on-site kitchen or bathroom amenities, nor does it prohibit use of such amenities on adjacent facilities. The City is prohibited from revoking the CUP on the basis of uses and activities that the CUP allows.

For the foregoing reasons, among others, staff's recommendation of revocation of the CUP is unsupported by law and/or evidence. Nor can the City meet the stringent standard for revocation of a vested CUP right. The City must refrain from following staff's recommendation and affirm PL-70's right to continue the uses granted by the CUP.

Hearing Officer
July 16, 2019
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Representatives of PL-70 will be on hand at the July 17, 2019, hearing to answer any questions.

Very truly yours,



Michael W. Shonafelt

MWS

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