

Martinez, Ruben

From: Anouche Najarian
Sent: Sunday, August 08, 2021 11:25 AM
To: PublicComment-AutoResponse
Subject: proposed zoning code change

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Good Day City Council and City Leadership,

My family and I have resided in CD 4 for more than 4 decades. In recent years, we have been led by Councilmember Masuda.

I have been following the cannabis ordinance change closely and look forward to the successful passing of this ordinance on Monday.

EDTECH discussion was on point and very thorough as was the staff recommendation.

Please vote yes on the city council and EDTECH recommendation to allow two additional cannabis retailers to exist and result in additional tax revenues and more jobs.

Sincerely

Anouche Najarian

Pasadena CA 91107

08/09/2021
Item 12

DOUGLAS SMURR
DSMURR@GRSM.COM
DIAL: (916) 830-6532

RECEIVED

2021 AUG -9 AM 9:49

CITY CLERK
CITY OF PASADENA

GORDON & REES
SCULLY MANSUKHANI
YOUR  PARTNER™

ATTORNEYS AT LAW
3 PARKCENTER DRIVE, SUITE 200
SACRAMENTO, CA 95825
WWW.GRSM.COM

VIA EMAIL

August 9, 2021

Mayor Victor M. Gordo
Vice-Mayor Andy Wilson
Honorable City Councilmembers Hampton, Kennedy, Madison, Masuda, Rivas, and Williams
City Council of the City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91109

RE: Harvest of Pasadena's Objection to Proposed Amendments to Cannabis Regulations
City Council Agenda Item 12
August 9, 2021 City Council Hearing
Proposed Amendment Would Violate State Law and Invalidate the Voters' Intent

Dear Mayor, Vice-Mayor and Councilmembers:

The clear intent of the voters passing Measure CC in June of 2018 was not only to repeal Pasadena's ban on commercial cannabis, but also, to establish cannabis regulations that would prevent overconcentration of cannabis retailers in any area of the city. Harvest opposes the proposed amendment to the City's Cannabis Regulations that would allow up to three cannabis retailers per district and decrease the distance between cannabis retailers from 1,000 feet to only 450 feet for four reasons.

First, the proposed amendments would violate California Department of Cannabis Control Regulation Section 15019 (the prior Bureau Cannabis Regulation Section 5019) by creating an excessive concentration in city council district three. The current proposal would create an unlawful excessive concentration of cannabis retailers in city district three by permitting three retailers to locate in district three. (see, Exhibit 1, attached hereto)

Second, the proposed amendments would undo the intent of the voters. To effectuate the voters' intent, the City Council enacted two provisions to the Pasadena Municipal Code ("PMC"). First, the City Council enacted PMC Section 17.50.066(D)(3) that specifies that only one cannabis retailer may operate within a city council district at any one time. Second, PMC Section 17.50.066(D)(5)(a) was added to prohibit a cannabis retailer being located within 1,000 feet of another cannabis retailer.

**08/09/2021
Item 12**

Third, the City Council could retain PMC Sections 1750.066(D)(3) and 1750.006(D)(5)(a) as they currently exist, and simply adopt the state guidelines standards to apply to all other city cannabis regulations. This simple change would create numerous compliant locations for cannabis retailers throughout council districts one, two, and five. (see, Exhibit 2, attached hereto), while not violating California Department of Cannabis Control Regulation Section 15019, and while upholding and respecting the intent of the voters when they approved Measure CC.

Lastly, Harvest hereby incorporates as though fully set forth herein, its letters dated November 22, 2019; April 19, 2021; and July 15, 2021 (true and correct copies of which are attached hereto marked respectively as Exhibits 3, 4, and 5).

Sincerely,

GORDON REES
SCULLY MANSUKHANI, LLP


Douglas Smurr

Exhibit 1

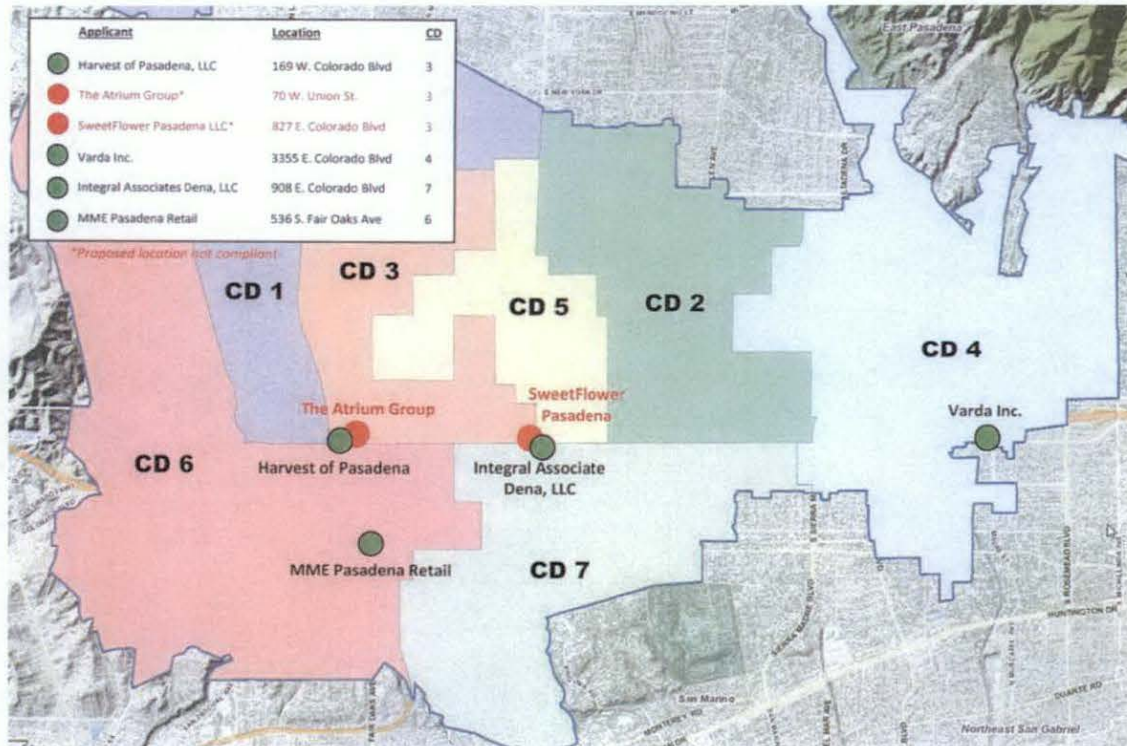


Exhibit 2

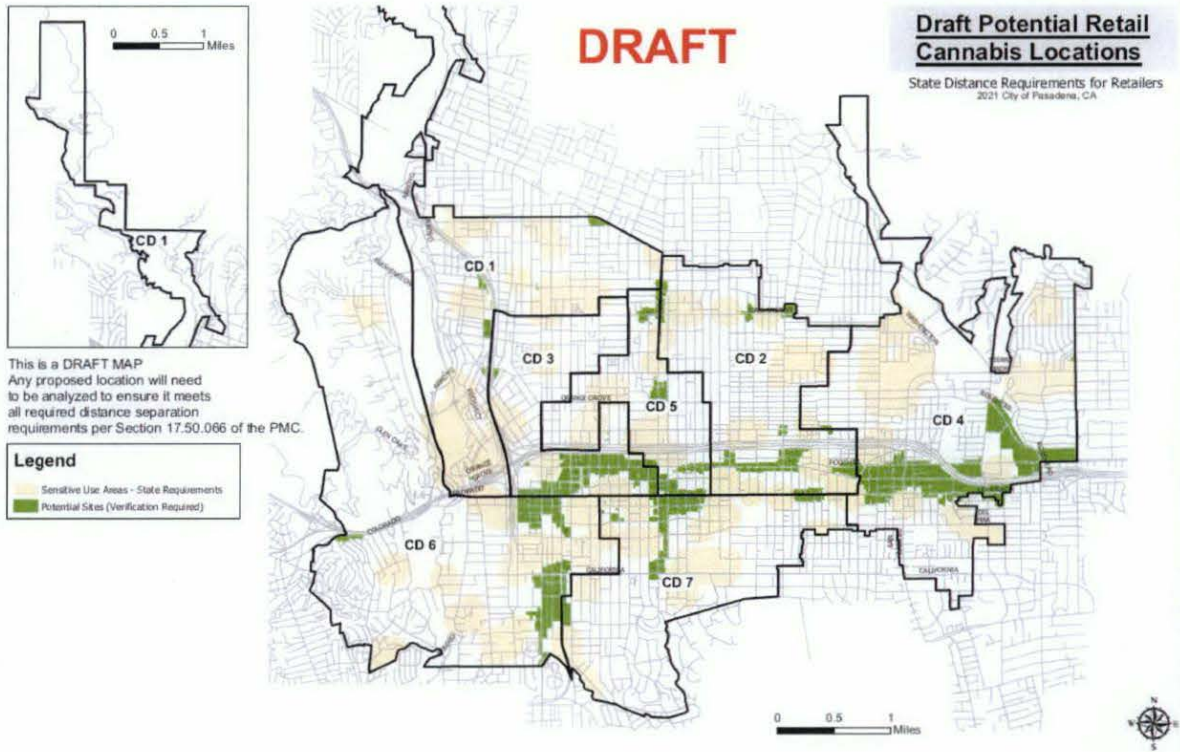


Exhibit 3

November 22, 2019

VIA ELECTRONIC MAIL

City Council
City of Pasadena
100 N. Garfield Avenue
Room S249
Pasadena, CA 91109

Re: City Council Agenda Item 14
Proposed Zoning Amendments to Cannabis Regulations
City Council Hearing on November 25, 2019

Dear Mayor Tornek and Honorable Councilmembers:

This letter is jointly-authored and signed by Harvest and Integral, the two applicants for cannabis retail permits who are furthest along the path towards obtaining entitlements to operate. We have each secured a location that complies with the City's existing cannabis regulations and are in the process of obtaining all required approvals and entitlements to operate under the City's current regulations. Throughout the application process, Harvest and Integral have relied in good faith on the City's rules and regulations (and Staff's interpretations thereof) and have committed the substantial resources necessary to comply with the City's requirements.

On November 25, 2019, the City Council will review proposed amendments to the City's regulations that would allow up to three dispensaries per Council District, contrary to the clearly-established will of the voters in passing Measures CC and DD. The practical effect of the amendment would be to allow up to three dispensaries in Old Town Pasadena, an over-concentration that the voters could not possibly have anticipated or intended.

We understand that these amendments are being offered in response to recent criticism of the City's cannabis permit process, pending litigation, and a ballot initiative, each of which may interfere with the City's efforts to make its present regulatory scheme work. We remain committed to working with the City to resolve these challenges in a constructive manner.

However, the proposed amendments seem to be aimed at helping two applicants get the locations they want in the short-term, rather than looking at the broader, long-term interests of the City. On November 13, 2019, therefore, the Planning Commission overwhelmingly rejected these proposed amendments by a vote of 7-1 as contrary to the will of the voters as expressed in Measures CC and DD. Excepting the proposed technical amendment to Section 17.50.066 D(5)(b), which it approved, the Planning Commission recommended no changes to the existing ordinance other than clean-up amendments.

We believe the City *could* amend its present ordinance to resolve outstanding issues and to allow all six applicants to operate within Pasadena. However, ***the current proposal does not solve these problems consistent with the voters' vision.*** We support the City taking the time to study this issue and to find a solution that will best serve the community.

The Proposed Alteration of the Cap on Dispensaries Per Council District and Reduction of 1,000 Foot Separation Requirement Will Lead to Over-Concentration

In adopting Measures CC and DD, the residents of Pasadena and the City Council established a strong, clear, and consistent public policy against the concentration of dispensaries in any one district. This public policy was implemented through the adoption of the cap of one dispensary per Council District, alongside the establishment of a 1,000-foot separation requirement between dispensaries. As the Planning Commission determined, allowing up to three cannabis dispensaries per Council District and reducing that distance is contrary to the will of the voters as expressed in Measures CC and DD and the expressed policy of the City Council. We oppose changing the current cap of one dispensary per Council District and reducing the 1,000-foot separation requirement.

As a practical matter, the proposed amendment would result in three cannabis dispensaries locating in Council District 3, which would mean that ***50% of all cannabis dispensaries in the City would be located in Council District 3.*** This over-concentration is not in line with Measures CC and DD and risks resulting in three dispensaries in the time-honored and carefully planned Old Town Pasadena.

The drastic step of allowing three dispensaries in a Council District is not necessary in order to allow all six of the highest-rated applicants to operate within the City. At present, there are no dispensaries proposing to locate in Council Districts 1, 2, and 5. We believe the potential for dispensaries in those Council Districts must be thoroughly evaluated before the Council even considers an alternative resulting in over-concentration.

Raising the cap to three dispensaries per Council District while also reducing the separation requirement also raises serious CEQA issues. City Staff has taken the position that its proposed amendments are exempt from CEQA under CEQA Guidelines Section 15061(b)(3), the common-sense exemption, and Section 15301, the existing facilities exemption. However, a recent California Supreme Court case determined that an amendment to zoning regulations that could impact the location of cannabis facilities may constitute a "project" and require CEQA review. *See Union of Medical Marijuana Patients, Inc. v. City of San Diego* (August 19, 2019), Docket No. S238563. Any alteration of the City's policies which would allow up to three cannabis dispensaries in a Council District and in closer proximity to one another than 1,000 feet would inevitably create significant environmental impacts, including increased traffic from customers driving to new dispensaries and changed patterns of urban development in the City. The City must, therefore, conduct a thorough analysis of the possible impacts prior to making any final decisions on an amendment which would result in such a substantive, fundamental change.

The City Should Not Alter Buffer Zones Until It Has Fully Analyzed the Zoning Impacts

In order for the City to retain the cap of one dispensary per Council District and the 1,000 - foot separation requirement, while allowing a total of six dispensaries to operate, the City would

potentially need to adopt a number of minor amendments to the current buffer requirements. *We have no objection to the proposed amendments to Section 17.50.066 D(5)(a)-(b)*, clarifying that the sensitive receptor buffer should be calculated from the cannabis retail parcel to existing residential zones or sensitive uses. Toward that end, you will find a redline document proposing changes to Section 17.50.066 which we believe would be appropriate to carry out both the technical amendment approved by the Planning Commission and the will of the voters. These amendments, just by themselves, however, may not be sufficient to achieve six dispensaries due to the difficulty in finding desirable locations in Districts with no proposed dispensaries.

There are several alternatives Staff could study to open up more locations for dispensaries by simply reducing the 600-foot separation requirement. A change in the distance requirement between dispensaries and some sensitive receptors from 600 feet to 500 feet may, by itself, resolve the present shortage of desirable locations. Staff originally recommended 300-feet, which may be an option as well. This cannot be known until an analysis is undertaken to study the possible impacts of any proposed amendment.

The City also could also revise its list of sensitive receptors to create more potential locations. As just one example of a possible amendment, State law does not designate churches as sensitive receptors, and removing churches from the City's buffer requirements might allow additional locations in other Council Districts.

Before proceeding with any amendment, City Staff should identify and analyze all reasonable amendments to the 600-foot buffer requirements and determine the number of compliant locations which would result in Council District 1, 2, and 5. At minimum, Staff should conduct an analysis to determine which, if any, changes to existing buffer requirements, would have the greatest effect without adversely impacting the sensitive uses in question.

When originally implementing Measures CC and DD, the City did not fully evaluate the impact of the proposed buffer zones to determine whether six compliant locations existed under the location restrictions. *We are concerned the exact same problem may arise with the proposed and other new amendments to the buffer requirements.*

Therefore, before proceeding with any amendment to the buffer zones, we recommend and request that Staff fully analyze and determine the number of compliant locations in each Council District and the impacts of the proposed changes on those locations.

Thank you for your time and careful consideration of this matter.

Sincerely,

Richard A. McDonald, Esq.

Of Counsel, Carlson & Nicholas, LLP
Attorneys for Integral Associates Dena, LLC

Ben Kimbro

Director of Public Affairs
Harvest of Pasadena

Cc (via email):

Steven Mermell, City Manager
Michele Beal Bagneris, City Attorney
Theresa E. Fuentes, Assistant City Attorney
Ted Reynolds, Assistant City Attorney
David Reyes, Director of Planning and Community Development
Jennifer Paige, Deputy Planning Director
Guille Nunez, Management Analyst

Exhibit 4

CARLSON & NICHOLAS, LLP
Attorneys at Law

www.carlsonnicholas.com

Scott Carlson, Partner
Frank Nicholas, Partner
Richard McDonald, Of Counsel

301 E. Colorado Boulevard
Suite No. 320 Pasadena,
California 91101
(626) 356-4801

Scott@carlsonnicholas.com
Frank@carlsonnicholas.com
RMcDonald@carlsonnicholas.com

VIA E-MAIL

April 15, 2021

Mayor Victor M. Gordo
Vice-Mayor Andy Wilson
Hon. City Councilmembers Hampton, Kennedy, Madison, Masuda, Rivas, and Williams
City Council of and for the City of Pasadena
100 North Garfield Avenue
Pasadena, California 91109

Re: Proposed Zoning Code Amendments to Cannabis Businesses Regulations.

Dear Mayor and Honorable Members of the City Council:

Your April 19, 2021 Agenda includes proposed amendments to the City's existing Cannabis Businesses Regulations that modify the distance separation requirements approved by the voters in Section 17.50.066 of the Zoning Code. The proposed amendments would change the current distance separation requirements from (a) one dispensary per City Council District and no less than 1,000 feet apart from another dispensary to (b) three dispensaries per City Council District and only 450 feet apart. This amendment would drastically change the distance separation rules and requirements upon which cannabis licensees relied in good faith when making the decision to participate in the City's rigorous selection process, to invest in locations that meet the existing regulations' criteria, and to participate in the community land-use

process. To change the rules now to allow competitors within 450 feet of these secured locations is unfair, subject to legal challenge, and contrary to the intent of Measure CC which was designed to avoid concentration by requiring dispensaries to be spread throughout the City.

Letter to City Council
City of Pasadena
April 15, 2021

The proposed amendments are, therefore, opposed by Harvest of Pasadena, LLC, Integral Associates Dena, LLC, and MME Pasadena Retail, Inc., with the latter entity writing separately to voice its opposition to the proposed amendments. All of us have secured a location that complies with the City's existing cannabis regulations and have relied in good-faith on the City's rules and regulations (and Staff's interpretations thereof) while committing substantial resources to comply with them. All of us believe that the proposed amendments are at best unnecessary, and at worst a serious breach of the public's trust when the voters approved Measure CC and DD. Harvest and Integral oppose the proposed amendments for the following seven reasons.

First, this is the second time this proposal is being made. The first was on November 25, 2019, when the City Council unanimously expressed serious concerns and opposition, as well as requested additional analyses evaluating "the impacts on the City and the cannabis market" after three cannabis retailers were "operational." *See*, Exhibit A. Prior to that, on November 13, 2019, the Planning Commission voted 6 — 1 that there be "no change" to the existing regulations at all. *See*, Exhibit B. Nothing has changed since then. No additional analyses have been done, no additional options have been considered, and no evaluation of the impacts has been conducted as requested. Three cannabis retailers also have not become operational. To consider this amendment without any compelling reason or evidence that the amendment is necessary is unjustified, unwarranted, unnecessary and at best premature.

Second, this proposal was made in 2019 as "a byproduct of litigation" that was threatened by one of the six finalists, i.e., SweetFlower Pasadena, LLC ("SweetFlower"). Specifically, after the City Council denied its appeal, SweetFlower threatened to challenge the City in court over its "deemed incomplete" determination of Sweet Flower's application for a conditional use permit ("CUP"). To avoid that, staff recommended the proposed amendments, which were specifically written to benefit SweetFlower and only SweetFlower. After the City Council rejected the proposed amendments, SweetFlower filed its lawsuit against the City. *See*, LASC Case No. 20STCP00038. However, on March 10, 2021, Judgment was entered against SweetFlower and in favor of the City. As such, there is no new risk of litigation; although, there is a substantial risk should the proposed amendments be adopted. While SweetFlower may appeal the Judgment, as it has announced it intends to do, the odds of a reversal are very low

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given the breadth and scope of the trial court's ruling.' The proposed amendments are thus no longer justified, warranted, or needed to avoid litigation with SweetFlower.

Third, given the Judgment against SweetFlower, Atrium is firmly in second place for the next store in District 3. The proposed 450 feet buffer, however, only benefits SweetFlower because Atrium is approximately 350 feet from Harvest's location. Why favor SweetFlower, which the Court ruled against because it did not follow the proper procedures, over Atrium which did? SweetFlower's threat of litigation has been removed and the goal of avoiding its lawsuit, which motivated the 2019 proposal, is no longer relevant, nor serves any purpose.

Fourth, the proposed amendments would result in three cannabis dispensaries in Council District 3, which means that ***50% of all cannabis dispensaries in the City would be located in Council District 3***. This over-concentration is contrary to the representations the City Council and City Attorney made to the voters when presenting Measures CC and DD. *See*, Exhibits C and D. Allowing three dispensaries in the time-honored and carefully planned Old Town Pasadena would be the exact opposite of what was represented about taking a "cautious approach" so that the City's neighborhoods are well-protected. In adopting Measures CC and DD, the residents of Pasadena and the City Council established a strong, clear, and consistent public policy against the concentration of dispensaries in any one district. This public policy was implemented through the adoption of the cap of one dispensary per Council District, alongside the establishment of a 1,000-foot separation requirement between dispensaries. As the Planning Commission determined, allowing up to three cannabis dispensaries per Council District and reducing that distance is contrary to and frustrates the will of the voters as expressed in Measures CC and DD and the expressed policy of the City Council. The very

1. The Judgment also undermines SweetFlower's other actions as it shows it is not a "beneficially interested" party entitled to seek a writ of mandate. Cal. Civ. Proc. Code § 1086. The beneficial interest requirement applies to administrative mandamus proceedings and eliminates SweetFlower's standing. *Rialto Citizens for Responsible Growth v. City of Rialto*, 208 Cal. App. 4th 899, 913 (2012).

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purposes of the initiative process, exemplified by voter adoption of Measures CC and DD and the planning process would be undermined by adoption of the proposed amendments.

Fifth, the drastic step of allowing three dispensaries in a Council District is not necessary in order to allow all six of the highest-rated applicants to operate within the City. At present, there are no dispensaries trying to locate in Council Districts 1, 2, and 5. We believe the potential for dispensaries in those Council Districts must be thoroughly evaluated before the Council considers any amendments that result in over-concentration.² Until an analysis is undertaken to study the possible impacts of the proposed amendments, their adoption would be destructive of the voters' will as expressed in their approval of Measures CC and DD.

Sixth, the proposed amendments raise serious CEQA issues. Specifically, a recent California Supreme Court case determined that any amendment to zoning regulations that could impact the location of cannabis facilities may constitute a "project" and require CEQA review. *See Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal. 5th 1171. A summary of the case is attached for your review. *See*, Exhibit E. The common sense and existing facilities exemptions suggested by staff also do not apply as a matter of law. "The key consideration is whether the project involves negligible or no expansion of an existing use." (Guidelines, § 15301). The regulatory phrase "existing use" refers to operations that have begun and are ongoing. Where a facility has not been completed and is not operational, there is no existing use triggering the exemption. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 971 (change from a utility-owned, non-consumptive hydroelectric project to one that includes massive consumptive use removes the project from the scope of the existing facilities exemption). The commonsense exemption is no different. The public

2. For example, State law does not designate churches as sensitive receptors, and removing churches from the City's buffer requirements may allow additional locations in other Council Districts. Similarly, allowing mixed-use locations where many other retailers are allowed would open more locations within Districts 1, 2, and 5.

Letter to City Council
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agency has "the burden to elucidate the facts that justifies its invocation of CEQA's commonsense exemption" by proving there is no possibility the activity may have a significant effect on the environment. *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 387.³

Seventh, and finally, the proposed amendments would perpetrate an injustice upon these opposing parties by jeopardizing the very substantial financial and economic investments they made in reliance on the City's commitment -- embodied in the voters' adoption of Measures CC and DD -- to limit the number of dispensaries to one for each Council District. One legal doctrine that provides protection to these opposing parties and their financial and economic investments is the doctrine of equitable estoppel, which applies to public agencies such as the City.

The purpose of the doctrine is to prevent an "injustice which would result from a failure to uphold an estoppel...." *HPT IH G — 2 Properties Trust v. City of Anaheim* (2015) 243 Cal.App.4th 188 ("*HPT*").⁴ Applied here, the City of Pasadena was well aware that Opposing parties each invested up to several million dollars in participating in the City promulgated

3. Allowing up to three cannabis dispensaries in a Council District and in closer proximity than 1,000-feet inevitably creates a potential for significant environmental impacts, including increased traffic from customers driving to dispensaries, noise, and changed patterns of urban development in the City. The City must conduct a thorough environmental impact report on the potential significant environment impacts before making such a substantive, fundamental change.

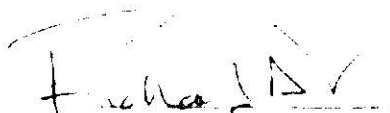
4. *HPT* is instructive on the protection the courts provide parties who act in reliance on public agency representations and actions. There, *HPT* obtained a conditional use permit from the City of Anaheim for the construction of a resort hotel. As a condition to the permit, the City required the hotel to be downsized to accommodate an overpass to be constructed by the City. The City agreed to provide a parking structure to accommodate the hotel's parking needs arising from the reduced size of the hotel footprint due to the overpass. After *HPT* incurred substantial expense in reliance on the permit and the City's commitment to construct the parking structure, the City refused to abide by its commitment. The Court determined that the City was estopped —barred or precluded — from refusing to perform its promise. In so doing, the Court emphasized that "equitable estoppel is founded on concepts of equity and fair dealing." *HPT* at 201.

Letter to City Council
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dispensary permit process with an understanding that their investments would ultimately be protected from additional dispensary permittees within their district. Such investments include, but are not limited to, the acquisition of property interests for dispensary use, the provision of social equity benefits to the City, the design and in several instances actual construction and completion of a dispensary, and other such expenses, all incurred in reliance on Measures CC and DD's limitation of dispensaries to one per council district and 1,000 feet apart. The elements of estoppel apply to preclude the City from changing the rules now.

In conclusion, we are opposed to the proposed amendments. We urge the City Council to reject these unnecessary changes to the cannabis regulations under which we have been selected and intend to operate successfully for the benefit of the people of the City of Pasadena. Any future changes to the ordinance should be the result of extensive consideration of the impacts environmental, economic, and land use and after full implementation of the existing ordinance

Thank you for your time and careful consideration of this matter.



Richard A. McDonald, Esq.
Of Counsel, Carlson & Nicholas, LLP
Attorneys for Integral Associates Dena, LLC



Charles V. Berwanger, Esq.
Gordon & Rees
Attorneys for Harvest of Pasadena, LLC

Cc (via email):

Steven Mermen, City Manager
Michele Beal Bagneris, City Attorney
Theresa E. Fuentes, Assistant City Attorney
David Reyes, Director of Planning and Community Development
Jennifer Paige, Deputy Planning Director
Guille Nunez, Management Analyst

EXHIBIT A

Amend the FY 2020 Operating Budget and authorize the appropriation of General Fund fund balance in the amount of \$5.0 million and transfer said funds to the General Liability Fund. (Budget Amendment No. 2020-19)

City Manager Mermell and Matt Hawkesworth, Director of Finance, provided a PowerPoint presentation on the item, and jointly, responded to questions.

Councilmember Madison requested a copy of the City's Budget in Brief memo for fiscal year 2020.

Councilmember Gordo requested an update on the hiring of an additional Park Safety Specialist, as well as the top down review of the Police Department that staff was undertaking to determine if additional positions could be achieved with existing resources.

Following discussion, it was moved by Councilmember Wilson, seconded by Vice Mayor Hampton, to approve the staff recommendation. (Motion unanimously carried) (Absent: Councilmember McAustin)

PUBLIC HEARING

PUBLIC HEARING: PROPOSED ZONING CODE AMENDMENTS TO THE CITY'S CANNABIS REGULATIONS

Recommendation: It is recommended that the City Council:

- (1) Find that the actions proposed in the agenda report are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), Common Sense Exemption; and 15301 (Existing Facilities); there are no features that distinguish this action from others in the exempt class, and there are no unique circumstances; and
- (2) Direct the City Attorney's Office to prepare an ordinance to amend the Zoning Code to adopt the proposed City cannabis regulations with the findings as contained in attachment A of the agenda report.

The City Clerk reported that the public hearing notice was published in the Pasadena Star News on November 15, 2019; and that 1 letter in favor of the staff recommendation, 41 letters in opposition to the staff recommendation, and 1 letter providing comment was received by the City Clerk's Office, which were distributed to the City Council, posted online, and made part of the public hearing record.

City Manager Mermell and David Reyes, Director of Planning, jointly presented a PowerPoint presentation on the item, and responded to questions. Michele Beal Bagneris, City Attorney/City

Prosecutor, responded to questions related to the language in Measure CC, pending litigation related to the City's cannabis ordinance, the City's cannabis permitting process, and pending public records request. Jennifer Paige, Deputy Director of Planning, responded to questions related to the proposed amendment to the Zoning Code regulations for cannabis retailers, and signage regulations.

Councilmember Kennedy expressed serious reservations with staffs proposed revisions to the Zoning Code that would allow up to 3 cannabis operators in any one Council District.

Councilmember Masuda stated his strong preference to maintain the current regulation of only one cannabis retail operator per Council District, as written in Measure CC.

Councilmember Wilson stated his concern that the proposed changes would result in an overconcentration of cannabis operators, noting the importance of the distance requirements between such uses within the City. He also expressed concerns with the possibility of a resurgent number of illegal cannabis operators returning to the City.

Councilmember Madison stated his opposition to a proposed cannabis retail store at the "gateway" to Old Pasadena; and spoke in support of City staff whose integrity was questioned by applicants and/or their representatives during this process.

Councilmember Gordo expressed concerns with the City's retail cannabis permitting process; the proposed recommendations that are being recommended to resolve pending litigation; and unforeseen impacts that may develop by amending the City's Zoning Code to allow additional cannabis operators. He stated that the only reason to amend the City's Zoning Code related to retail cannabis should be to meet the will of the voters, in a responsible manner. He spoke on the importance of the separation requirements, which he believes contributed greatly to the adoption of Measure CC; and asked staff to confirm that language in the Zoning Code clearly states that no retailer shall be established or located within 600 feet, measured from the nearest parcel/property lines of the closest affected residential parcel. Mr. Gordo stated that if staff is going to amend the Zoning Code, then staff must ensure that residents are provided with a clear map that displays current and future cannabis retailers that may be permitted.

C In response to Councilmember Gordo concern that staff is proposing the staff recommendation due to litigation, Michele Beal Bagneris, City Attorney/City Prosecutor, respond that staff recommendation is a byproduct of litigation, and that legislative action is distinct from the litigation.

The following individuals spoke in opposition to the staff recommendation and/or provided comments on various aspects of the staff recommendation:

Megan Foker, Livable Pasadena
Armando Herman, residence not stated
Valerie Leiva, Pasadena resident
Tami McGovern, Pasadena resident
Jane Laudeman, Pasadena resident
Richard A. McDonald, Pasadena resident
Wayne from Encino, residence not stated
Kelley Fitzgerald Holmes, Pasadena resident
Rosemarie Goulden, Pasadena resident
Jessica Gutierrez, Pasadena resident
Erika Foy, representing Protect Pasadena Kids
Mike Greenspan, residence not stated
Jason Lyon, Pasadena resident

C The following individuals spoke in favor of the staff recommendation and/or provided comments on various aspects of the staff recommendation:

Timothy Dodd, Sweet Flower
McGara Bautista, Sweet Flower
Patty Kasparian, Pasadena resident
Ashley Browder, with Margolin & Lawrence
Chris Berman, The Atrium Group

Councilmember Wilson spoke on the need for additional analysis, and stated his preference to wait until the approved retail cannabis operators begin operating in order to better evaluate the impacts of retail cannabis. He suggested that the City Council and staff could revisit this discussion in the future once the approved cannabis retail shops are operating.

The Mayor echoed Councilmember Wilson's suggestion to move forward without amendments, which would allow the City to demonstrate to the voters that the City is on the path to permitting legal cannabis operators; and stated his opposition to the staff recommendation.

Councilmember Gordo echoed Mr. Wilson's comments and stated that for the purpose of resolving litigation, if zoning code amendments are necessary, staff should provide an analysis and return to the City Council at a future meeting with proposed amendments.

Councilmember Masuda voiced support for tabling the item, to be revisited at a future meeting.

Councilmember Gordo left the dais at 10:23 p.m.

Councilmember Madison expressed concerns with the City cannabis regulations that only allow legal cannabis operators in three of the six Council Districts.

Councilmember Kennedy spoke in favor of resolving existing litigation, but not at the expense of the number of operators that would be concentrated in Council District 3. He requested that when the discussion on the item returns to the City Council, staff provide options to judiciously resolve the litigation.

Motion:

Following discussion, it was moved by Vice Mayor Hampton, seconded by Councilmember Masuda, to close the public hearing. (Motion unanimously carried) (Absent: Councilmembers Gordo, McAustin)

Councilmember Gordo returned to the dais at 10:27 p.m.

Vice Mayor Hampton spoke on the need to move forward with a path to allow six cannabis retailers in the City, and to avoid the possibility of an increase of illegal cannabis retailers in the City.

Motion:

Following further discussion, it was moved by Councilmember Wilson, seconded by Councilmember Masuda, to table the item. (Absent: Councilmember McAustin)

Following further discussion, on order of the Mayor and consensus of the City Council, staff was asked to revisit the discussion on the City's cannabis regulations once three cannabis retailers are operational so that staff can evaluate the impacts on the City and the cannabis market.

**PUBLIC COMMENT ON
REGULAR BUSINESS ITEMS**

The following individuals spoke on multiple regular business items:

Armando Herman, residence not stated

Wayne from Encino, residence not stated

**REPORTS AND COMMENTS
FROM COUNCIL
COMMITTEES**

APPROVAL OF THE KEY BUSINESS TERMS OF AN AFFORDABLE HOUSING LOAN AGREEMENT WITH THE SALVATION ARMY AND A BUDGET AMENDMENT FOR FUNDING IN AN AMOUNT NOT-TO-EXCEED \$1,000,000 FOR

EXHIBIT B



MINUTES
PLANNING COMMISSION
Wednesday November 13, 2019
Regular Meeting at 6:30 p.m.
City Hall, Council Chambers - Room S249
100 N. Garfield Avenue, Pasadena 91101

1. **ROLL CALL** — Chair Coher called the meeting to order at 6:30 p.m.
PRESENT Commissioners Williams, Nanney, Barar, Coppess, Olivas, Lyon, Miller and Chair Coher
Excused Absent: Commissioner Wendler
Staff: Jennifer Paige, Theresa Fuentes, David Sanchez, Andre Sahakian and Patrisia De La Torre
2. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA - NONE**
3. **DIRECTORS REPORT**
Jennifer Paige welcomed Boy Scout Troop 355, who attended tonight's meeting for their Citizenship in the Community Badge.
4. **APPROVAL OF MINUTES**
 - October 9, 2019 — Commissioner Barar moved approval of the October 9, 2019 minutes. Commissioner Coppess seconded. Minutes approved 7-0. Commissioner Miller abstained.

***Chair Coher informed the Commission and the public that item 5A would be continued to a future date and that a new public notice will be issued.**

5. PUBLIC HEARINGS

A. Zoning Code Amendment — Playhouse District Parking Requirements

Staff will present analysis and recommendations for an ordinance to reduce parking requirements for restaurant and entertainment uses in the CD-4 (Pasadena Playhouse) Zoning district.

It is recommended that the Planning Commission:

- 1) Find that the Zoning Code Amendments are exempt from the California Environmental Quality Act because they qualify for Categorical Exemption pursuant to Section 15305 (Class 5 — Minor Alterations in Land Use Limitations), and there are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances;
- 2) Adopt the required findings for the Zoning Code Amendments (Attachment A); and
- 3) Recommend that the City Council approve the Zoning Code Amendments as presented to the Planning Commission.

Case Manager: Andre Sahakian

(CONTINUE TO A FUTURE DATE- ITEM WILL BE RE-NOTICED)

B. Zoning Code Amendments: Updating Regulations for Single-Room Occupancy Uses Staff presented analysis and recommendations for an ordinance to increase the maximum unit size for Single-Room Occupancy uses, and to allow the use in the CD-1 through CD-6 Zoning Districts without a conditional use permit.

It was recommended that the Planning Commission:

- 1) Find that the Zoning Code Amendments are exempt from the California Environmental Quality Act because they qualify for Categorical Exemption pursuant to Section 15305 (Class 5 — Minor Alterations in Land Use Limitations), and there are no features that

distinguish this project from others in the exempt class; therefore there are no unusual circumstances;

- 2) Adopt the required findings for the Zoning Code Amendments (Attachment A); and
- 3) Recommend that the City Council approve the Zoning Code Amendments as presented to the Planning Commission.

Case Manager: Andre Sahakian

Public Comment:

There were no public comments received.

Motion

Commissioner Miller moved approval of staffs recommendations and additionally to eliminate the minimum parking requirement. Commissioner Williams seconded. Motion approved 6-2.

C. Zoning Code Amendments: Cannabis Regulations

Staff presented analysis and recommendations for an ordinance to reduce the distance required between cannabis retailers from 1,000 feet to 450 feet, to increase the maximum permitted cannabis retailers per council district from one to three and clarify the language on distance requirements as measured to a residential zone.

It was recommended that the Planning Commission:

- 1) Find that the Zoning Code Amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15061(b)(3), the common sense exemption and 15301 "Existing Facilities" (Class 1); therefore there are no unusual circumstances;
- 2) Adopt the required findings for the Zoning Code Amendments (Attachment A); and
- 3) Recommend that the City Council approve the Zoning Code Amendments as presented to the Planning Commission.

Case Manager: Jennifer Paige, AICP

Public Comment:

Lisa Freer
Richard McDonald
Erika Foy (Protect Pasadena Kids)
Sushma Adarkar
Megan Foker (Livable Pasadena)
Steve Mulheim (Old Pasadena Management)
Jordan Ferguson (Harvest of Pasadena)
Gregoria Cardenas

Motion:

Commissioner Lyon moved that the Commission recommend that the City Council adopt staff's recommended changes to paragraph 5B. Commissioner Olivas seconded. Motion approved 5-3.

Motion•

Commissioner Coppess moved that the Commission recommend that there be no change to the existing language relating to cannabis retailers per council district and that there be no change to the existing language regarding distance between cannabis retailers. Commissioner Miller seconded. Motion approved 6-1. Commissioner Nanney abstained.

6. COMMENTS AND REPORTS FROM STAFF

Jennifer Paige informed the Commission about an upcoming training that will be presented to City Council at the December 9, 2019 meeting and will then be brought to the Planning Commission.

7. COMMENTS AND REPORTS FROM COMMITTEES

- **Design Commission** — Commissioner Coppess informed the Commission on two items heard at the November 12, 2019 meeting.
- **Board of Zoning Appeals** — Commissioner Williams informed the Commission on four items heard at the October 30, 2019 and November 6, 2019 meetings.
- **CIP** - None

8. COMMENTS AND REPORTS FROM COMMISSIONERS

Chair Coher and Jennifer Paige asked the Commission to provide feedback to staff on how correspondence from the public is relayed to the Commission.

9. ADJOURNMENT — Chair Coher adjourned the meeting at approximately 9:14 p.m.



David Sanchez, Principal Planner



Patrie La Torre, Recording Secretary

EXHIBIT C

ARGUMENT IN FAVOR OF MEASURE CC

During the past several years, the California legislature and voters have enacted various laws which decriminalize or legalize commercial cannabis activity. In 2016, 63% of the total votes cast for Prop. 64 by Pasadena voters were in favor of the measure to legalize cannabis sales. Therefore, a new regulatory and enforcement framework addressing commercial cannabis businesses in the City is needed. Previous City Council action to regulate cannabis has been blocked by the cannabis industry. Therefore a vote of the people is necessary.

In order to preserve the quality of life for Pasadena's residents, it is the City's intent to allow a very limited number of highly qualified screened operators to do business in the City, using a tightly regulated process and regulatory ordinance. The proposed regulations reflect a cautious approach designed to protect our neighborhoods and businesses from negative impacts of cannabis businesses: the number of licenses is strictly limited. There are adequate separations from sensitive uses like schools and parks, and the concentration of uses in any single area is prohibited. By these means we hope to achieve a reduction in the number of illegal dispensaries in our City, and the ability to maintain an appropriate balance of local control and compliance with state law.

Please support our effort to impose reasonable controls rather than abdicating this responsibility to those motivated by profit and personal gain rather than the public interest.

TERRY TORNEK
Mayor

ANDY WILSON
City Councilmember

TYRON HAMPTON
City Councilmember

MARGARET MCAUSTIN
City Councilmember

**NO ARGUMENT AGAINST THIS MEASURE WAS
SUBMITTED**

EXHIBIT D

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE CC

Measure CC is submitted to the voters by the Pasadena City Council and would amend various provisions of the Pasadena Municipal Code to allow a limited number and types of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations.

Background

On February 26, 2018, the City Council of the City of Pasadena ("Council") approved submission of an ordinance for voter approval to amend the Pasadena Municipal Code ("PMC") to allow a limited number and types of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations.

The Measure

If passed, Measure CC would amend the PMC to allow three types of cannabis permits and a limited number of commercial cannabis businesses citywide as follows: six retailers, four cultivation sites, and four testing laboratories. The Measure includes distance separation requirements consistent with state law, as well as distance separation requirements from each of the businesses and residential districts, and between each of the businesses. The Measure establishes a process for a potential operator to apply for such cannabis permits, as well as to apply for the necessary land use permit. The Measure also establishes health and safety permitting and operating requirements for such businesses. No currently illegally operating cannabis businesses would be grandfathered in; one legal nonconforming testing lab would be allowed to remain. The Measure would repeal the current ban on commercial cannabis businesses.

Measure CC will not take effect unless a companion tax measure (Measure DD) is adopted by the voters. No applications for commercial cannabis businesses will be accepted until the City Manager approves and promulgates administrative regulations. No further voter approval would be required for future amendments by the City Council, which may amend the ordinance that is the subject of this Measure in its usual manner, without further voter approval.

If Measure CC does not pass, the current ban on all commercial cannabis businesses would remain in place.

(Continued on next page)

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE CC (Continued)

Measure CC requires approval of a majority of voters. A "yes" vote for Measure CC will establish the ability of a limited number and types of commercial cannabis businesses to apply for necessary permits and land use approvals. A "no" vote against Measure CC will maintain the existing ban on such businesses.

The above statement is an impartial analysis. Copies of the text of the proposed ordinance is available at City Libraries and on the City's webpage at www.cityofpasadena.net/cityclerk/elections. If you have any

questions, please contact the City Clerk's Office at (626) 744-4124.

EXHIBIT E

Union of Medical Marijuana Patients v. City of San Diego

(Aug. 19, 2019) Cal.5th

In 2014, the City amended its zoning ordinance to regulate medical marijuana dispensaries' location and operation. It added dispensaries to the list of permitted uses in two of the six commercial zones and two of the four industrial zones while excluding dispensaries from open space, agricultural, and residential zones. No CEQA document was prepared for this change to the City zoning ordinance because the City found that adoption of the ordinance did not constitute a project for CEQA purposes.

UMMP brought suit, alleging that amendment of a zoning ordinance is conclusively considered a project because it is specifically listed as such in Public Resources Code (PRC) Section 21080 and meets the definition of a project under PRC Section 21065 (a discretionary activity with the potential for direct or a reasonably foreseeable indirect effect). The Court of Appeal opined that a zoning ordinance amendment was subject to the same statutory test for project-ness as activities not listed in Section 21080. As a result, the Court of Appeal held in favor of the City, finding that the ordinance was not a project because it lacked the potential to result in a physical change in the environment.

The California Supreme Court concluded that: "the various activities listed in section 21080 must satisfy the requirements of section 21065 before they are found to be a project for purposes of CEQA.... we conclude that the Court of Appeal misapplied the test for determining whether a proposed activity has the potential to cause environmental change under section 21065, which was established in *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372 (*Muzzy Ranch*), and erred in affirming the City's finding that adoption of the ordinance did not constitute a project. For that reason, we reverse [the court's decision] and remand for further proceedings."

The Supreme Court clarified that Section 21080 does not, as a matter of law, mandate that a zoning ordinance amendment will always be a CEQA project. Sections 15080 and 15065 work in harmony: 15080 offers that, by way of example, an ordinance amendment could be a project, and 15065 applies to determine whether it is.

The Supreme Court reasoned:

Applying the foregoing test, we conclude the City erred in determining that the adoption of the Ordinance was not a project. Prior to the Ordinance, no medical marijuana dispensaries were legally permitted to operate in the City. The Ordinance therefore amended the City's zoning regulations to permit the establishment of a sizable number of retail businesses of an entirely new type. Although inconsistency with prior permissible land uses is not necessary for an activity to constitute a project (see *Muzzy Ranch, supra*, 41 Cal.4th at p. 388), establishment of these new businesses is capable of causing indirect physical changes in the environment. At a minimum, such a policy change could foreseeably result in new retail construction to accommodate the businesses. In addition, as UMMP suggests, the establishment of

new stores could cause a citywide change in patterns of vehicle traffic from the businesses' customers, employees, and suppliers. The necessary causal connection between the Ordinance and these effects is present because adoption of the Ordinance was "an essential step culminating in action [the establishment of new businesses] which may affect the environment." (*Fullerton Joint Union High School Dist. v. State Board of Education* (1982) 32 Cal.3d 779, 797 (*Fullerton*).) The theoretical effects mentioned above are sufficiently plausible to raise the possibility that the Ordinance "may cause . . . a reasonably foreseeable indirect physical change in the environment" (§ 21065), warranting its consideration as a project.

The City had rejected UMMP's claims that the new ordinance would result in indirect effects due to changes in traffic, horticulture, and concentration of dispensaries because UMMP failed to provide supporting evidence. The Supreme Court reasoned that at this early point in the CEQA process — determining whether the action is even a project - this "put the cart before the horse:"

The likely *actual* impact of an activity is not at issue in determining its status as a project. [footnote omitted] Further, at this stage of the CEQA process virtually any postulated indirect environmental effect will be "speculative" in a legal sense — that is, unsupported by evidence in the record (e.g., *People v. Murtishaw* (2011) 51 Cal.4th 574, 591 ["defendant's claim . . . is entirely speculative, for he points to nothing in the record that supports his claim"]) — because little or no factual record will have been developed. A lack of support in the record, however, does not prevent an agency from considering a possible environmental effect at this initial stage of CEQA analysis. Instead, such an effect may be rejected as speculative only if, as noted above, the postulated causal mechanism underlying its occurrence is tenuous.

The City argued that there was not was too little known about the potential impacts of the ordinance amendment to permit environmental review. The Court rejected that argument. The determination of whether an activity is a project under CEQA is separate (and preliminary to) an agency's determination of whether that project may have significant physical impacts. The Court concluded its decision as follows:

It ultimately might prove true that, in the context of the City, the actual environmental effects of the Ordinance will be minimal. It is possible, as the Court of Appeal assumed, that the City's commercial vacancy rate is sufficient to provide retail space for the new businesses without the need for expansion. (*Marijuana Patients, supra*, 4 Cal.App.5th at p. 123 [dispensaries "could simply cho[ose] to locate in available commercial space in an existing building"].) It is also possible, as UMMP suggests, that a significant number of unlicensed businesses selling medical marijuana already exist in the City and that the newly licensed businesses will simply displace them. Rather than causing increased traffic and other activity, the net effect of this substitution might be little or no additional environmental burden on the City. All of these factors can be explored in the second and, if warranted, third tiers of the CEQA

process. As to those tiers, we are in no position to offer, and do not express, an opinion on the applicability of the various exemptions or, alternatively, the appropriate level of environmental review.

Exhibit 5

CHARLES V. BERWANGER
CBERWANGER@GRSM.COM
DIRECT DIAL: (619) 230-7784

HARVEST OF PASADENA, LLC

July 15, 2021

BY EMAIL

vflores@cityofpasadena.net

Re: Economic Development and Technology Committee Special Meeting July
15, 2021 Regarding Amendment to Cannabis Regulations

Dear Chair Hampton and Councilmembers Madison, Wilson, and Rivas:

Harvest of Pasadena, LLC has received, reviewed, and hereby joins in MedMen's July 14, 2021 letter setting forth its objections and opposition to the proposed code amendment in item 1 of the agenda for today's meeting; and the email communication dated July 15, 2021 from Integral Associates Dena, LLC, dba Essence. Harvest further repeats and incorporates herein by reference its letter submitted to you dated November 22, 2019.

Harvest's objection to such amendment to increase the number of cannabis retail outlets in the various council districts is founded on the fact that the proposed amendment is inequitable to the People of Pasadena in permitting a greater number of cannabis retailers in Pasadena than permitted by Measures CC and DD. The proposed amendment if enacted would be especially inequitable to Harvest and to similarly situated cannabis license applicants because of a change in the rules which supplied the basis upon which Harvest's application was founded. Harvest in its economic analysis of an application was assured by the terms of Measures CC and DD that its substantial investment would be protected from being undermined by a change in the rules. Harvest entered into a lease and has been paying rent, incurred substantial expense in seeking a conditional use permit, incurred substantial expense in litigation to protect its conditional use permit, and incurred other such expenses all in reliance on Measures CC and DD. For Pasadena to now change the rules to allow direct competition against Harvest's permitted cannabis retail store will substantially prejudice Harvest in its ability to attain its reasonable investment backed expectations founded upon the City representing and promising that there would be but one cannabis retail store per council district. It is unfair and unlawful to change those rules at this time, given such substantial investment.

Moreover, the proposed amendments are contrary to the Voters' action in approving measures CC and DD. The Voters relied upon the limitation of the number of cannabis retail outlets within Pasadena and within the council districts in approving Measures CC and DD. For Pasadena

now to do away with such limitation will frustrate the intention of the Voters in approving Measures CC and DD to limit the number of cannabis retail stores.

The July 14, 2021 MedMen letter strongly suggests that should Pasadena adopt an amendment with the effect of expanding the permitted cannabis retail stores within the various districts that protective litigation will necessarily have to be commenced. Harvest, in order to protect its investment based expectations, will necessarily be forced to join in any judicial effort to undo such an amendment should it be adopted.

Harvest desires to continue its good relationship with Pasadena. It has no interest in having to commence a lawsuit to protect its vital interest in its substantial investment in pursuing and obtaining a conditional use permit for the opening and the operation of a cannabis retail store. However, if forced to do so by the adoption of the proposed amendment it will do so.

Very truly yours,

A handwritten signature in dark ink, appearing to read "B. Kimbro", is written over a horizontal line.

Ben Kimbro, Director of Public Affairs,
Harvest of Pasadena.