

Martinez, Ruben

From: Richard McDonald
Sent: Friday, August 06, 2021 11:37 AM
To: PublicComment-AutoResponse
Cc: Jomsky, Mark; Aaron Allan; Douglas Smurr; Charles Berwanger; Tony Fong
Subject: August 9 City Council Hearing - Item #12 - Proposed Amendments to the City's Cannabis Business Regulations
Attachments: Letter to City Council for April 19, 2021 Hearing on Proposed Amendments to Cannabis Regulations.pdf; Legal Cannabis Operators - Letter to City Council re Proposed Cannabis Regulation Amendments.pdf; HARVEST LETTER July 15, 2021 Signed(59744142.1).pdf; MME - Letter to City Council - 7-14-21.pdf

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Please provide this email and attachments to the Mayor and City Council for Monday's meeting. Thank you.

Dear Mayor and Honorable Councilmembers:

Integral Associates Dena, LLC, dba Essence, joins in any letters submitted by Harvest, Varda, Medmen and the neighborhoods in opposition to the proposed code amendments set-forth in Item 12 of the Agenda for your August 9, 2021 meeting. We further repeat and incorporate by reference herein the two letters we submitted in November 2019 and April 2020 on the proposed amendments, which are attached for your convenience. The additional objections set-forth in our May 27 and July 15 emails to the EdTech Committee are incorporated herein by reference as well, as is our joinder in the objections set-forth in the letters submitted by Harvest and MedMen for the July 15 EdTech meeting, which also are attached for your convenience.

In short, Integral's position on any such amendments remains the same. The City Council can amend the ordinance "to fine tune the regulations" to better implement the "purpose of chapter". That does not mean a whole sale revision that is contrary to what residents were told when they approved it. Specifically, residents were told that the City was taking a more cautious approach than the State by proposing distance separation requirements to protect neighborhoods. Entirely jettisoning those protections now is thus contrary to the purpose of the ordinance. The City Council must keep the one per district and/or 1,000 foot separation requirement to avoid the very over-concentration it said was necessary to protect residential neighborhoods.

In addition, as the July 15 EdTech meeting, two of you said the boundaries for City Council districts are "figments of our imagination" and "going to be changed anyway". If that is true, then what happened to all of the legal requirements for balancing populations and protecting communities of interest that the current Redistricting Task Force is working under? Why was the City asked to provide guidance to that Task Force on July 19 if it does not matter because the lines are imaginary? And, if those lines are illusory, why not simply go back to at-large elections? The conclusion is obvious. City Council District boundaries matter, legally, politically, culturally, and economically. To say otherwise is intellectually dishonest.

We also note again that neither staff nor SweetFlower has tried to find a location in District 1, 2 or 5 that would require more limited code amendment(s). To the contrary, staff presented a map to the EdTech Committee that showed adopting some of the State's requirements creates potential sites in Districts 1, 2, and 5,

08/09/2021

Item 12

thus allowing the one per district and/or 1, 0000 foot local requirements to remain while other more limited code amendments would work. Staff's analysis thus proved that there is no reason to eliminate those two local requirements, which were expressly represented to the residents as safeguards against over-concentration.

By continuing to insist on these amendments despite the overwhelming evidence to the contrary simply proves that this entire exercise has been to come up with a single result, i.e., let SweetFlower have the location it wants. This entire discussion has been driven by the desire to appease one applicant, which has been the only proponent of the proposed amendments. Such an approach is not now, nor ever been, in the best interest of the City.

Last, anything you do now will simply create more litigation against the City and, other than appeasing SweetFlower, there is no need or rush to do that. The wiser course of action is to wait until all of the current litigation is resolved, see what the lay of the land looks like then, and decide if you need to do anything. We hope you exercise such wisdom.

Richard A. McDonald, Esq.
Law Office of Richard A. McDonald
Of Counsel, Carlson & Nicholas, LLP
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Pasadena, CA 91101
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From: Richard McDonald <_____>
Sent: Wednesday, July 21, 2021 4:06 PM
To: Richard McDonald _____
Subject: FW: Submittal for May 27, 2021 EDTC Special Meeting on Proposed Amendments to the City's Cannabis Business Regulations

Dear Mayor and Honorable Councilmembers:

Integral Associates Dena, LLC, dba Essence, joins in any letter submitted in opposition to the proposed code amendments set-forth in Item ___ of the Agenda for your August 2, 2021 meeting. We further repeat and incorporate by reference herein the two letters we submitted in November 2019 and April 2020 on the proposed amendments, which are attached for your convenience. The additional objections set-forth in our May 27 and July 15 emails to the EdTech Committee are incorporated herein by reference as well, as is our joinder in the objections set-forth in the letters submitted by Harvest and MedMen for the July 15 EdTech meeting, which also are attached for your convenience.

In short, Integral's position on any such amendments remains the same. The City Council can amend the ordinance "to fine tune the regulations" to better implement the "purpose of chapter". That does not mean a whole sale revision that is contrary to what residents were told when they approved it. Specifically, residents were told that the City was taking a more cautious approach than the State by proposing distance separation requirements to protect neighborhoods. Entirely jettisoning those protections now is contrary to the purpose of

the ordinance. The City Council must keep the one per district and/or 1,000 foot separation requirement to avoid the very over-concentration it said was necessary to protect residential neighborhoods.

In addition, it is the height of arrogance and dishonest to say the boundaries for City Council districts are “figments of our imagination” and “going to be changed anyway” as was stated at the July 15 EdTech meeting. What happened to all the legal requirements for balancing populations and protecting communities of interest that the current Redistricting Task Force is working under? Why was the City asked to provide guidance to that Task Force on July 19 if it does not matter because the lines are imaginary? And, if true, why not simply go back to at-large elections? The conclusion is obvious. City Council District boundaries matter, legally, politically, culturally, and economically.

Further, we note that neither staff nor SweetFlower has tried to find a location in District 1, 2 or 5 that would require a limited code amendment. To the contrary, the entire exercise has been to come up with a single result, i.e., let SweetFlower have the location it wants. This entire discussion has been driven by the desire to appease one applicant, which has been the only proponent of the proposed amendments.

Moreover, staff presented a map to the EdTech Committee that showed adopting some of the State’s requirements creates potential sites in Districts 1, 2, and 5, thus allowing the one per district or 1, 0000 foot local requirements to remain. There is no reason to eliminate those two local requirements, which were expressly represented to the residents as safeguards against over-concentration.

Last, anything you do now will simply create more litigation against the City and, other than appeasing SweetFlower, there is no need or rush to do anything.

Richard A. McDonald, Esq.
Law Office of Richard A. McDonald
Of Counsel, Carlson & Nicholas, LLP

Pasadena, CA 91101
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From: Richard McDonald · _____>
Sent: Thursday, May 27, 2021 11:38 AM
To: sarobles@cityofpasadena.net
Cc: Duyshart, Eric <eduyshart@cityofpasadena.net>; dklug@cityofpasadena.net; DavidReyes@cityofpasadena.net
Subject: Submittal for May 27, 2021 EDTC Special Meeting on Proposed Amendments to the City's Cannabis Business Regulations

Please provide this email and the attached two letters to City Councilmembers attending today’s hearing referenced above.

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

Attached are the two letters we submitted in November 2019 and April 2020 on the proposed amendments to the distance separation requirements. Our position on any such amendments remain the same, to which we would add the following.

First, we did not oppose the extension of the June 5 deadline at this past Monday's City Council meeting because we believe you need more time to study your options.

Second, we would recommend against doing anything until redistricting of the City Council districts is completed. As the Vice-Chair of the 2011 Redistricting Task Force, I believe that moving the boundaries as much as has been done in the past may resolve the problem and, if not, that you still will have the ability and time to address it.

Third, we would recommend against doing anything until the current four lawsuits filed against the City are over. Anything you do now may be used against the City in them and/or create more litigation against the City, so why run that risk. You lose nothing by waiting and the outcome of those cases will effect where any remaining retailers may go. Specifically, the basis for two of the existing operators is challenged in three of the four cases. If the petitioner prevails in any of them, the current landscape will change dramatically.

Fourth, as stated on page 3 of your staff report, there is a mechanism in the ordinance "to fine tune the regulations". However, that does not mean a whole sale revision that is contrary to what they voters were told would happen if they approved it. Specifically, as shown in the exhibits to the attached letters, voters were told expressly that the City was taking a cautious approach with distance separation requirements to protect neighborhoods. Changing that as proposed in November 2019 or last month is simply contrary to that express representation.

Fifth, contrary to page 1 of the staff report, the voters did not reasonably expect there to be six cannabis retailers. They expected "up to 6", which means no more than 6, under the regulations presented to them.

Sixth, we recommended before and now do so again that you direct staff to study bringing the City's separation requirements more into conformity with the State requirements. As shown on page 2 of your staff report, there is no prohibition on the proximity to churches and/or mixed-use projects under the State's regulations, which makes sense given that churches are occupied mostly, if not only, on Sunday and have declining populations, while mixed-use allows for other types of retailers such as tobacco, bars, and restaurants. Logically, it makes no sense to exclude cannabis retailers given the in-store security, safety, and consumer protection regulations.

Seventh, in addition to studying point six, we recommend studying reducing the 600 foot metric shown on page 2. According to the City Council minutes, staff originally recommended 300 feet, but the Council changed it to 600 feet without a full analysis of the impacts in doing so. Now is a good time to study those impacts for the various land-uses shown on page two of your staff report.

Eighth, we recommend studying the equity permit, although we are unclear if the plan is to increase the number of retailers beyond six and are unsure about the legality of some of the criteria. But, it should be studied for new applicants along with points six and seven.

In sum, you have time now while redistricting and litigation is completed. We recommend studying your options in much more detail so that you can make the most fully informed decision.

Thank you.

Richard A. McDonald, Esq.
Law Office of Richard A. McDonald
Of Counsel, Carlson & Nicholas, LLP

Pasadena, CA 91101

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From: Richard McDonald <
Sent: Thursday, April 15, 2021 12:10 PM
To: correspondence@cityofpasadena.net
Cc: mjomsky@cityofpasadena.net; Charles Berwanger <cberwanger@grsm.com>; smermell@cityofpasadena.net;
mbagneris@cityofpasadena.net; Fuentes, Theresa <tfuentes@cityofpasadena.net>; DavidReyes@cityofpasadena.net;
jpaige@cityofpasadena.net; gnunez@cityofpasadena.net
Subject: April 19, 2021 City Council Hearing on Proposed Amendments to the City's Cannabis Business Regulations

Please provide the attached letter to the Mayor and City Council for the above-referenced hearing on Monday, April 19. Please also let us know how public comment will be handled during the hearing. Thank you.

<<...>>

Richard A. McDonald, Esq.

Law Office of Richard A. McDonald

Of Counsel, Carlson & Nicholas, LLP

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Aaron P. Allan

July 14, 2021

VIA E-MAIL

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Economic Development and Technology
Committee
Pasadena City Council
100 North Garfield Avenue, Room S228
Pasadena CA 91109

vflores@cityofpasadena.net

Re: Proposed Zoning Code Amendments to City Cannabis Regulations Regarding
Retail Locations
SPECIAL MEETING: JULY 15, 2021

Honorable Chair Hampton and Councilmembers Madison, Wilson and Rivas:

This law firm represents MME Pasadena Retail, Inc. ("MedMen") in connection with its pending retail cannabis license and associated litigation. We write in opposition to the staff recommendation before you to amend the existing City of Pasadena ordinance which currently places location restrictions for licensed cannabis retailers and to allow the seventh-place applicant, The Brick & Rose, to proceed to obtain the necessary retail cannabis permits.

This proposed amendment is inequitable to the people of Pasadena and to all licensed and pending cannabis retailers in the City. The proposed amendment would be especially prejudicial to MedMen and to other similarly situated cannabis license applicants because it would change the rules which supplied the basis upon which applications were submitted, real estate was obtained, and conditional use permits were pursued, to now allow direct competition against approved licensees within their respective Council Districts. Most importantly, the elevation of The Brick & Rose would severely prejudice the position of MedMen in its pending litigation against the City of Pasadena and would force MedMen to seek immediate judicial relief by way of restraining order and injunction against the City in order to preserve the status quo.

The proposal to amend the existing cannabis ordinance to allow up to three retail locations in each Council District and to reduce the separation between retailers is contrary to the intent of Measure CC which promised to avoid any concentration of

retailers in one area. It is also prejudicial to the investment backed expectations of the licensed cannabis retailers who participated in the City's selection process for cannabis licenses.

Your staff recommendation fails to discuss MedMen's pending litigation against the City to reverse the City Manager's decision to disqualify MedMen from its sixth place applicant position. Instead, staff merely states that MedMen has been disqualified, which staff presumes would allow the City to elevate the seventh place applicant. This is not the case; MedMen's position remains subject to review by the courts, and the City would be unfairly and prejudicially changing the status quo by allowing another applicant to take the sixth applicant position in place of MedMen before these claims have been fully adjudicated.

Among the few voices in favor of this proposal is the very same retailer, SweetFlower Pasadena, LLC, that has not been able to secure a lease or CUP for a compliant location under the existing ordinance, and upon whose misleading allegations the City disqualified MedMen. In fact, MedMen's pending litigation against the City will resolve whether that revocation of MedMen's selection was permissible, or whether MedMen's license and CUP should instead move forward.

Any effort to change the rules at this time, including elevating the seventh-place applicant will be vigorously challenged by MedMen. The current recommendation is highly prejudicial to MedMen, and against the express representations made to us by your City Attorney that there was no intent to elevate any applicant into MedMen's position while our litigation is pending.

Each of the selected licensees, including MedMen, has expended time and considerable resources based on the rules in effect at the time of selection, and it is unfair and unlawful to change those rules at this time, especially while some licenses are still in dispute and being resolved by the judicial process.

We urge you to reject the current staff recommendation and continue with the process as originally approved by the voters and relied upon by the retail applicants.

Sincerely yours,



AARON P. ALLAN
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

APA:sa

Economic Development
and Technology Committee
July 14, 2021
Page 3

cc: Daniel L. Richards, Esq
Jeffrey V. Dunn, Esq
Sagar Parikh, Esq
Richard A. McDonald, Esq
Douglas Smurr, Esq
Artin N. Shaverdian, Esq.
Gregory W. Sanders
John J. Flynn III
Gabriela S. Perez

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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.

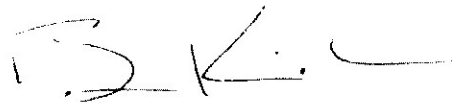
July 15, 2021

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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 black ink, appearing to read "B. Kimbro", written over a horizontal line.

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

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

Pasadena City Council
November 22, 2019
Page 4

Cc (via email):

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Michele Beal Bagneris, City Attorney
Theresa E. Fuentes, Assistant City Attorney
Ted Reynolds, Assistant City Attorney
David Reyes, Director of Planning and Community Development
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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.

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

given the breadth and scope of the trial court's ruling.¹ 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 foot 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.

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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.

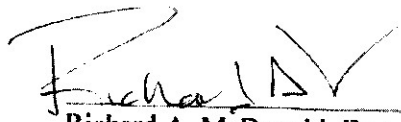
4. *HPT* is instructive on the protection the courts provide parties who act in reliance on public agency representations and actions. There, *HPT* obtained a conditional use permit from the City of Anaheim for the construction of a resort hotel. As a condition to the permit, the City required the hotel 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.


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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 Mermell, 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 staff's 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.

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

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
Pattyl 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