ATTACHMENT E

APPEAL FROM INTEGRAL ASSOCIATES DENA, LLC AND HARVEST OF PASADENA
JAUNARY 24, 2022

APPEAL APPLICATION

GENERAL INFORMATION: (Please print) Date: **January 24, 2022**

Appellant: Integral Associates Dena, LLC & Harvest of Pasadena, LLC
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Applicant (if different from appellant): SweetFlower Pasadena, LLC

APPEAL APPLICATION

Application: CUP #6921 Date of Decision January 12, 2022 Appeal Deadline January 24, 2022

Property Address: 827 E. Colorado Blvd., Pasadena, CA

I hereby appeal the decision of the: Planning Commission

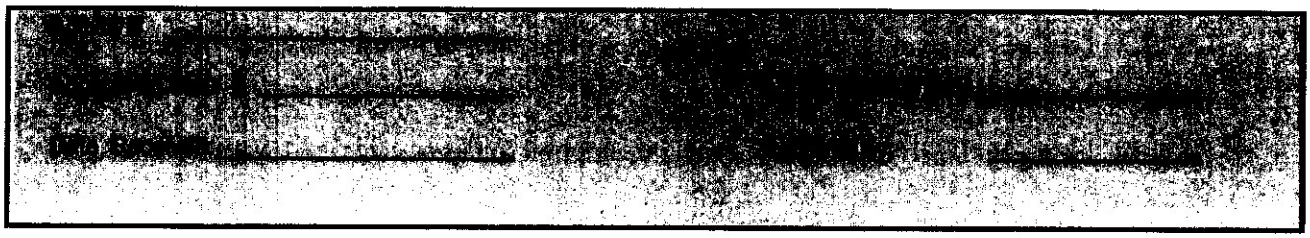
The decision maker failed to comply with the provisions of the zoning ordinance in the following manner:

Please see attached.

If necessary, please attach additional sheets

Applicant's Signature

January 24, 2022
Date of Application



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BASIS FOR APPEAL OF CUP#6921

1. **CEQA**: The Planning Commission violated CEQA by approving the two categorical exemptions for the CUP application. In particular, 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*, 7 Cal. 5th 1171, 1191-92 (2019). Based upon the Supreme Court's decision, it is obvious that allowing up to three cannabis dispensaries in a Council District and in closer proximity to one another than 1,000 feet inevitably creates significant environmental impacts, including increased traffic from customers driving to new dispensaries, noise, and changed patterns of urban development in the City. The City therefore must conduct a thorough environmental impact report on the possible significant environment impacts before making such a substantive, fundamental change.

Moreover, even if the Supreme Court decision did not apply, and/or the potentially significant environmental impacts could be mitigated, the existing facilities and conversion of small structures exemptions approved by the Planning Commission do not apply as a matter of law. In particular, categorical exemptions are not statutory in nature but are enumerated in the CEQA Guidelines to identify classes or categories of projects that ordinarily have no significant effect on the environment. *See* Cal. Pub. Res. Code § 21084(a); CEQA Guidelines, Cal. Code Regs. tit. 14, §§ 15300–15333. A categorical exemption (numbered class 1) was created for "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's

determination." CEQA Guidelines, Cal. Code Regs. tit. 14, § 15301. "The key consideration is whether the project involves negligible or no expansion ***of an existing use.***" CEQA Guidelines, Cal. Code Regs. tit. 14, § 15301 (emphasis added).

The regulatory phrase "existing use" thus refers to operations that have begun and are ongoing. For example, in *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 326 (2010), the Supreme Court summarized cases holding that "the continued operation of an existing facility without significant expansion of use ... [is] exempt from CEQA review under CEQA Guidelines section 15301." This description demonstrates the importance of having continuing operations—that is, operations that already are impacting the environment. Where a facility has not been completed and is not operational, there is no existing use creating impacts. *See also County of Amador v. El Dorado County Water Agency*, 76 Cal. App. 4th 931, 971 (1999) (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 small structures exemption is no different and is set-forth in CEQA Guidelines § 15303 as follows:

> Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:
>
> > (a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.
> > (b) A duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.
> > (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

> (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.
> (e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
> (f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

CEQA Guidelines, Cal. Code Regs. tit. 14, § 15303 (emphasis added). Where there is "any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." *Fairbank v. City of Mill Valley*, 75 Cal. App. 4th 1243, 1252 (1999) (if the previous version of the Class 3 exemption that existed at the time of the administrative and trial court proceedings still applied, the Court of Appeal "would almost certainly have to reverse the trial court's decision on the Guidelines section 15303(c) exemption;" the project was exempt under the current version of the statute). The small facilities exemption applies as a matter of law only where the proposed facility is similar to the apartments and duplexes permitted under subdivision (b) and the small commercial structures permitted under subdivision (c) of CEQA Guidelines § 15303. *See Centinela Hosp. Ass'n v. City of Inglewood*, 225 Cal. App. 3d 1586, 1600 (1990), *declined to follow on other grounds, Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal. 4th 1086, 1132-33 (2015). The Planning Commission completely failed to analyze the traffic, noise, air quality and other impacts of that use, as well as the cumulative impacts of it being so close to another cannabis retailer (i.e., within 457 feet per the staff report).

And, Section 15300.2 expressly states, "All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." The Planning Commission did not analyze the impact of over concentrating such land-uses at major commercial intersection, and thus violated this Section as well.

When a legitimate question is raised about the possible environmental impacts of a proposed activity – *i.e.*, a "fair argument" – the public agency has "the burden to elucidate the facts that justified its invocation of CEQA's commonsense exemption." *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Comm'n*, 41 Cal. 4th 372, 387 (2007). Whether a particular activity qualifies for the exemption presents an issue of fact. *Id.* at 386. In short, the public

agency invoking the exemption has the burden of demonstrating it applies by proving there is no possibility the activity may have a significant effect on the environment. *Id.* Allowing up to three cannabis dispensaries in a Council District and in closer proximity to one another than 1,000 feet inevitably creates significant environmental impacts, including increased traffic from customers driving to new dispensaries, increased noise, and changed patterns of urban development in the City. As the Supreme Court held in *Union of Medical Marijuana Patients, Inc., supra*, that is fair argument prohibiting the use of the categorical exemption, particularly given its proximity to the same type of use and the cumulative impacts of such an overconcentration.

2. **Findings:** The Planning Commission failed to rely on substantial evidence and connect it to its findings for the CUP. In particular, because there has been no environmental review of the likely traffic, noise and other environmental impacts, Finding Nos. 4 and 5 – and the proposed language in both – completely failed to discuss the health, safety and general welfare facts necessary to support each finding. Similarly, Finding Nos. 3 cannot be made because General Plan Policy 3.1 expressly states: "Avoid the concentration of uses and facilities in any neighborhood or district where their intensities, operations, and/or traffic could adversely impact the character, safety, health, and quality of life." Last, there is an inconsistency between the General Plan and the current Central District Specific Plan ("CDSP"). Specifically, the General Plan has changed all of the zoning districts in the Central District but the CDSP has not been updated. As such, the current CDSP is void as a matter of law. *Napa Citizens for Honest Gov't v. Napa Cnty. Bd. of Supervisors*, 91 Cal. App. 4th 342, 380-381, 386-87 (2001) (specific land use plan was invalid as being inconsistent with the general use plan). *See, e.g., Beck Dev. Co. v. So. Pacific Transp. Co.*, 44 Cal. App. 4th 1160, 1196 (1996) ("A specific plan must be consistent with the city's general plan"); Cal. Gov't Code § 65454 ("No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan."). The impact of that means that the provision in Zoning Code § 17.50.066.D.5 that "[c]annabis retailers shall be permitted in only the CO, CL, CG, CD, and IG zoning districts" is a nullity and cannot be relied upon in the legally required findings until the specific plan is brought into conformity with the General Plan.