Court of Appeal, Fourth Appellate District, Division One
Kevin J. Lane, Clerk/Executive Officer
Electronically RECEIVED on 8/3/2021 at 5:46:35 PM

Court of Appeal, Fourth Appellate District, Division One
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 8/3/2021 by Jose Rodriguez, Deputy Clerk

Fourth Civil Number D079215

In the Court of Appeal of the State of California

FOURTH APPELLATE DISTRICT
DIVISION ONE

UL CHULA TWO LLC,

Plaintiff and Appellant,

v.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Defendants and Respondents,

MARCH AND ASH CHULA VISTA, INC.;

TD ENTERPRISES LLC; and DOES 23 through 50,

Real Parties In Interest.

From the Superior Court of the State of California
For the County of San Diego County
Case Number 37-2020-00041554-CU-WM-CTL
[Related to Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]
The Honorable Richard E.L. Strauss;
Dept. C-75; Tel. #: (619) 450–7075

APPELLANT'S APPENDIX OF EXHIBITS

[VOLUME 1 OF 3; PAGES 1-462]

LEWIS BRISBOIS BISGAARD & SMITH LLP
*Lann G. McIntyre, SBN 106067
lann.mcintyre@lewisbrisbois.com
Gary K. Brucker, Jr., SBN 238644
gary.brucker@lewisbrisbois.com
Anastasiya Menshikova, SBN 312392
anastasiya.menshikova@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Plaintiff and Appellant
UL CHULA TWO LLC

CHRONOLOGICAL INDEX

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
1.	Petition for Writ of Mandamus (Code Civ. Proc. §§ 1085, 1094.5, 1094.6); and Complaint for Declaratory and Injunctive Relief	11/13/20	1	6-262
2.	Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision	01/19/21	1	263-462
3.	Ex Parte Application By Petitioner UL Chula Two LLC for Temporary Restraining Order or, in the Alternative, for an Order Advancing the Hearing on Motion for Preliminary Injunction	02/01/21	2	464-691
4.	Minute Order Granting the Temporary Restraining Order	02/04/21	2	692-693
5.	Amended Order Granting Petitioner's Ex Parte Application for Temporary Restraining Order or, in the Alternative, for an Order Advancing the Hearing on Motion for Preliminary Injunction	02/11/21	2	694-696
6.	Excerpts from Certified Administrative Record (AR00001 – AR00309)	03/09/21	3	698-821
7.	Minute Order on Preliminary Injunction	03/26/21	3	822-823

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
8.	Declaration of Nathan Shaman in Support of Petitioner/Plaintiff's Motion for Writ of Mandate	04/02/21	3	824-828
9.	Petitioner's Motion for Writ of Mandate	04/02/21	3	829-1088
10.	Minute Order Denying Petitioner's Motion for Writ of Mandate	05/21/21	3	1089-1093
11.	Reporter's Transcript for Hearing on Petitioner's Motion for Writ of Mandate	05/21/21	3	1094-1109
12.	Judgment	06/17/21	3	1110-1120
13.	Notice of Appeal	07/06/21	3	1121-1124
14.	Register of Actions	07/30/21	3	1125-1130

ALPHABETICAL INDEX

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
5.	Amended Order Granting Petitioner's Ex Parte Application for Temporary Restraining Order or, in the Alternative, for an Order Advancing the Hearing on Motion for Preliminary Injunction	02/11/21	2	694-696
8.	Declaration of Nathan Shaman in Support of Petitioner/Plaintiff's Motion for Writ of Mandate	04/02/21	3	824-828
3.	Ex Parte Application By Petitioner UL Chula Two LLC for Temporary Restraining Order or, in the Alternative, for an Order Advancing the Hearing on Motion for Preliminary Injunction	02/01/21	2	464-691
6.	Excerpts from Certified Administrative Record (AR00001 – AR00309)	03/09/21	3	698-821
12.	Judgment	06/17/21	3	1110-1120
10.	Minute Order Denying Petitioner's Motion for Writ of Mandate	05/21/21	3	1089-1093
4.	Minute Order Granting the Temporary Restraining Order	02/04/21	2	692-693
7.	Minute Order on Preliminary Injunction	03/26/21	3	822-823

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
13.	Notice of Appeal	07/06/21	3	1121-1124
1.	Petition for Writ of Mandamus (Code Civ. Proc. §§ 1085, 1094.5, 1094.6); and Complaint for Declaratory and Injunctive Relief	11/13/20	1	6-262
2.	Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision	01/19/21	1	263-462
9.	Petitioner's Motion for Writ of Mandate	04/02/21	3	829-1088
14.	Register of Actions	07/30/21	3	1125-1130
11.	Reporter's Transcript for Hearing on Petitioner's Motion for Writ of Mandate	05/21/21	3	1094-1109

4817-6536-6771.1

EXHIBIT 1

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
11/13/2020 at [illegible] PM
Clerk of the Superior Court
By Mary David, Deputy Clerk

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: lann.mcintyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC, Petitioner/Plaintiff, vs. CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20, Respondents/Defendants DOES 21 through 50, Real Parties In Interest	Case No. 37-2020-00041554-CU-[illegible] **PETITION FOR WRIT OF MANDAMUS (CODE CIV. PROC, §§ 1085, 1094.5, 1094.6); AND COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF** Judge: Dept. Action Filed: Trial Date: None Set

Petitioner and plaintiff UL Chula Two LLC ("Petitioner" or "ULC2") petitions the Court for a writ of mandate under Code of Civil Procedure §§ 1085, 1094.5, and 1095.6, directed to defendants and respondents City of Chula Vista and the Chula Vista City Manager (collectively, "Respondent" or "City"), and by this verified petition and complaint alleges as follows:

INTRODUCTION

1. Petitioner applied to the City for a retail storefront cannabis business license on or about January 18, 2019. On August 27, 2019, following a protracted background check and interview process, Petitioner scored 900.3—the highest of any retail storefront applicant in the City's first district. Only the two highest scoring applicants in each of the City's districts advance to the next stage of the licensing process. Petitioner fully expected to advance to the next stage.

2. On May 6, 2020, however, the City issued a notice of decision denying Petitioner's application. The City did so on the basis of an alleged civil zoning violation by one of Petitioner's principals that took place in the City of San Diego over eight years earlier, which the City cited as disqualifying unlawful "commercial cannabis activity." The City's decision was as baffling as it was arbitrary, capricious, and contrary to law.

3. Preliminarily, and in an effort to be thoroughly transparent, Petitioner disclosed to the City along with its application the existence of a stipulated judgment against one of its principals, Willie Senn, in *City of San Diego v. The Holistic Café, Inc.* (*Holistic Café*), San Diego Superior Court, Case No. 37-2012-00087648-CU-MC-CTL. This stipulated judgment settled an alleged civil zoning violation without any admission of wrongdoing. Had this been *per se* disqualifying, the City should have notified Petitioner at that time, rather than 15 months later.

4. More importantly, the alleged civil zoning violations in *Holistic Café* do not constitute unlawful "commercial cannabis activity" as a matter of law, and the City's decision to treat it as such was plain error. The ruling also constituted an abuse of discretion in that the City did not exercise any discretion. Indeed, based upon the City's responses to Public Records Act requests and other information known to Petitioner, it appears that the City uniformly (and improperly) treated civil zoning violations that involved otherwise lawful, medicinal cannabis activity as *per se* disqualifying unlawful "commercial cannabis activity."

5. Based upon these and other errors, including due process violations that took place during the City's flawed internal appellate process, Petitioner now seeks relief in the form of an order: (1) compelling the City to set aside its decision and to permit Petitioner to proceed to Phase Two of the license application process; and (2) enjoining the City from issuing any storefront retail cannabis licenses in the City pending the Court's ruling on this Petition.

JURISDICTION, VENUE, AND PARTIES

6. Petitioner ULC2 is, and at all times herein mentioned was, a limited liability company duly organized and existing under the laws of the State of California, qualified to business in California, with its principal place of business in the City of Chula Vista.

7. Respondent City of Chula Vista is, and all times mentioned was, a charter city incorporated under the laws of the State of California located in the County of San Diego.

8. Respondent Chula Vista City Manager is the executive officer of the City of Chula Vista and is appointed by the City of Chula Vista City Council.

9. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure §§ 1094.5, 1094.6, and 1085.

10. Venue is proper before the Court because the City is a public entity located in this judicial district, and the business licenses will be issued for commercial activity in the county.

11. Petitioner does not know the true names and capacities of the respondents named as DOES 1 through 20 and, therefore, sues them by fictitious names. Petitioner is informed and believes DOES 1 through 20 are in some way responsible for the events described in this Petition or impacted by them. Petitioner is informed and believes there are or may be real parties in interest to the extent any applicant for a cannabis business license has been issued a license. Their identities are not known at this time and, therefore, they are sued by fictitious names DOES 21-50. Petitioner will seek leave to amend this Petition when the true names and capacities of these respondents and real parties in interest have been ascertained.

12. At all times mentioned, each respondent was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

At all times mentioned, each real party in interest was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

GENERAL ALLEGATIONS

Prop 215, Prop 64, And The City's Regulatory Scheme

13. In 1996, the citizens of the state of California passed Proposition 215, which decriminalized possession and cultivation of cannabis for medicinal purposes if prescribed by a licensed physician. Proposition 215 was followed by Senate Bill 420 in 2003, which among other things, authorized the California Attorney General's Office to issue guidelines related to the distribution of medicinal cannabis through nonprofit cooperatives.

14. In 2016, California voters passed Proposition 64, which legalized commercial cannabis activity and adult recreational cannabis use in California. Proposition 64 gave each locality in California the discretion to either allow or prohibit commercial cannabis activities within their local jurisdictions. Proposition 64 was followed by Senate Bill 94 in 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which set forth the State of California's regulatory and licensing system for the cultivation, manufacturing, delivery, and sale of medicinal and adult use cannabis.

15. On March 6, 2018, the City adopted Ordinance No. 3418, which added Chapter 5.19 to the Chula Vista Municipal Code ("CVMC"), in order to permit, license, and regulate Commercial Cannabis Activities within the City. (CVMC § 5.19.010.) Much of the language found in the CVMC is borrowed from the text of MAUCRSA. Thereafter, the City sought to tax commercial cannabis activity through Measure Q, which the City's voters approved on November 6, 2018. A true and correct copy of the City's Ordinance No. 3418 is attached as **Exhibit A**.

16. The City's stated purpose in permitting, licensing, and fully regulating commercial cannabis activities is as follows:

> The City has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. Unregulated businesses remain a source of danger and disruption for City residents and businesses. In response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated Commercial

Cannabis Activity, the City now desires to permit, license, and fully regulate Commercial Cannabis Activities within the City. (CVMC, § 5.19.010.)

17. Pursuant to CVMC Chapter 5.19, any person who desires to engage in lawful commercial cannabis activity or to operate a commercial cannabis business within the City's jurisdiction must have a valid "State License" and a valid "City License." (CVMC, § 5.19.030.) A State License is a license "issued by the state of California, or one of its departments or divisions, under State Laws to engage in Commercial Cannabis Activity[,]" and a City License is "the regulatory license issued by the City pursuant to [Chapter 5.19] to a Commercial Cannabis Business[.]" (CVMC, § 5.19.020.)

18. The City established a two-phase licensing application process for City Licenses. (CVMC, § 5.19.050.) Phase One involved a set of minimally qualifying criteria, a criminal background check, and a merit-based scoring system. (CVMC, § 5.19.050, subd. (A)(7).)

19. The City also enacted the City of Chula Vista Cannabis Regulations ("Regs"), which were intended to "clarify and facilitate implementation of CVMC Chapter 5.19," including the application periods and submittals, limits on license applications, and individuals that must be identified on an application. (Regs, § 0501, subds. (A)-(D).) It also describes the experience and liquid assets requirements for applicants, the requirements for a business plan, operating plan, and fingerprinting, and a background check. (Regs., § 0501, subds. (E)-(I).) A true and correct copy of the Regs, amended and effective as of November 19, 2019, is attached as **Exhibit B**.

20. The City's application process was necessary because of the large number of applicants but limited number of licenses available. The process was also necessary to ensure that each applicant to whom a license was eventually issued was the most qualified to assist the City in its "effort to mitigate the negative impacts bought by unregulated Commercial Cannabis Activity." (CVMC, § 5.19.010.)

21. Petitioner is informed and believes that 136 applications were submitted, 84 of which were for storefront retailer City Licenses. Only 8 storefront retailer licenses were available (two per each of the City's four districts). (CVMC, § 5.19.040, subd. (A) [no more than 12 retailer licenses and only 8 for storefront retailers].)

22. The City's application process allowed for a maximum of 1000 points. The Regulations provided for a total maximum of 500 points, as follows:

a. Experience/Qualifications of the business owner/team (150 points)
b. Liquid Assets (50 points)
c. Business Plan (150 points)
d. Operating Plan (150 points)

(Regs., § 0501, subd. (N)(1).) The highest initially scored applications proceeded to an additional interview process to further assess each scored category. The City also awarded up to 500 additional points based on an interview. Petitioner's total score was 900.3 points.

Petitioner's Application

23. Petitioner applied for a retail storefront license in District 1 within the timeframe required by the City. Petitioner expended a great deal of time and resources in preparing its application and followed every requirement in CVMC Chapter 5.19 and in the Regs. Petitioner caused $2,683 to be paid for Application ID 57074.

24. As required by the application and CVMC 5.19.050(A)(1)(j), ULC2's principals, including, Willie Senn, signed an Affirmation and Consent affirming that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." A true and correct copy of the Affirmation and Consent submitted to the City is attached hereto as **Exhibit C**.

25. By letter dated January 18, 2019, the Law Offices of Nathan Shaman, counsel for ULC2, advised the City of a stipulated judgment involving Mr. Senn that was dated December 14, 2012, in *Holistic Café, supra*. A true and correct copy of the letter submitted to the City is attached hereto as **Exhibit D**. The complaint in *Holistic Café* alleged various civil zoning violations in the City of San Diego. The parties stipulated and agreed they "wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulated Judgment. ***Neither this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint.***" (Exhibit D, p. 2, lines 19-23, emphasis provided.)

26. On June 10, 2019, the City notified Petitioner that it had successfully completed Phases 1A and 1B. Upon payment of even more fees, Petitioner was to proceed to Phase 1C: the interview. A true and correct copy of the City's letter is attached hereto as **Exhibit E**. An interview was set for July 17, 2019. Petitioner successfully completed the interview process.

The Denial and Appeal

27. On May 6, 2020, the City rejected Petitioner's Application. A true and correct copy of the Notice of Decision regarding the Application (the "Notice of Decisions") is attached hereto as **Exhibit F**. The City cited two sections of CVMC 5.19.050 as the basis for its decision:

a. First, the City cited CVMC § 5.19.050(A)(5)(f), stating Mr. Senn "has been adversely sanctioned or penalized by the City, or any other city . . . for a material violation of state or local laws or regulations related to Commercial Cannabis Activity . . . ." It went on to claim that "The City of San Diego sanctioned William [*sic*] Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity."

b. Second, the City cited CMVC § 5.19.050(A)(5)(g), stating Mr. Senn has "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other Jurisdiction . . . ." It went on to claim that "William [*sic*] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012."

To be clear, the cursory Notice of Decision did not mention *Holistic Café* or any of the particular facts or evidence that the City relied upon in reaching its conclusions in the Notice of Decision.

28. The Notice of Decision was signed by Chief of Police Roxanna Kennedy and gave Petitioner until May 21, 2020 to appeal the decision. The City's application procedure specifically allows for an appeals process, including a requirement for a hearing. (CVMC, § 5.19.050, subd. (A)(6); Regs, § 0501, subd. (P)(2)(b).) The hearing was to be "conducted in an expeditious and orderly manner as determined by the City Manager." (Regs, § 0501, subd. (P)(2)(c).)[1]

[1] Even if the City's application procedure had not specifically provided for an appeals process that required a hearing after denial of an application, a "fair and impartial hearing" so that an applicant can "present the merits of her application to the licensing tribunal" is nonetheless required by law. (footnote continued)

29. On May 21, 2020, Petitioner filed a Consolidated Request to Appeal with the City of Chula Vista and paid filing fees of $3,217. A true and correct copy of the Consolidated Request to Appeal is attached hereto as **Exhibit G**.[2]

30. On May 26, 2020, the City sent notice of a hearing on June 10, 2020. A true and correct copy of the May 26, 2020 hearing notice is attached hereto as **Exhibit H**. The notice was served 15 days prior to the scheduled hearing, even though the City's regulations required that Petitioner be given 20 days' notice. (Regs. § 0501(P)(2)(a).) It stated that testimony and evidence could be presented, but that the hearing is not conducted under rules of procedure and evidence, and therefore evidence is admissible if it is relevant and of the kind that a reasonable person would rely on in making decisions. Further, the notice provided that irrelevant and unduly repetitious evidence will be excluded, citing Regs. § 0501(P)(2)(c). In addition, the notice required evidence intended to be presented at the hearing must be disclosed to the City Manager five days before the hearing. On May 28, 2020, the City sent an amended notice that the hearing would take place remotely by WebEx.

31. On June 5, 2020, the City emailed its evidence to Petitioner, which consisted of 16 exhibits, although under a cover letter dated May 21, 2020. This email, late in the afternoon on the Friday before the June 10, 2020 hearing (which was already on shortened notice), was the first time the City made it clear that it was relying upon *Holistic Café* as the sole and exclusive basis to deny Petitioner's Application.

32. Also on June 5, 2020, Petitioner submitted a brief on appeal arguing: (1) the rejection of its applications was impermissibly vague and violated due process in that it did not disclose any of the facts or evidence that the City relied upon in rejecting the application; (2) there were no laws related to Commercial Cannabis Activity in 2010-2012 in the City of San Diego; (3) to the extent the City's decision was related to *Holistic Café,* there is no relevant, admissible evidence that Mr. Senn engaged in unlawful commercial cannabis activity; and (4) that the City should exercise its discretion and set aside the Notice of Decision on equitable grounds. A true

(See *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 268-270.)

[2] Note, the only application at issue in this Petition is Application ID 57074.

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

and correct copy of the brief is attached hereto as **Exhibit I**.

33. A hearing was held on June 10, 2020, with the City Manager serving as the sole hearing officer, and a deputy city attorney present as an advisor to the City Manager, and a separate deputy city attorney present as counsel for the City. Testimony was given by witnesses for the City and the City's written evidence was admitted. Petitioner presented no evidence or testimony at the hearing because the City's impermissibly vague Notice of Decision prejudiced Petitioner's ability to prepare for the hearing, which itself was scheduled on less than legally sufficient notice under the Regs. Had proper notice been provided, for example, Petitioner could have presented evidence that the San Diego Superior Court entered an order modifying the stipulated judgment in *Holistic Café* on May 3, 2019 to clarify that the defendants are allowed to operate commercial cannabis businesses. In fact, Mr. Senn operates the most successful licensed cannabis storefront in the City of San Diego today. A true and correct copy of the order amending the stipulated judgment is attached hereto as **Exhibit J**.

34. The City served its "Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License" ("Final Decision") on August 26, 2020. A true and correct copy of the Final Decision is attached hereto as **Exhibit K.** The Final Decision denied Petitioner's appeal and concluded "the evidence shows the City reasonably and properly denied Appellant's application." (Exhibit K, p. 6.) The Final Decision provided notice that "Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure 1094.5 on or before the 90th day after this decision is final." The Final Decision was served by mail on August 26, 2020. (Exhibit K.)

35. On September 3, 2020, counsel for ULC2 and Mr. Senn sent a written request for the administrative record of the June 10, 2020 appeal proceedings. A true and correct copy of the request is attached hereto as **Exhibit L.** As of the filing of this Petition, the administrative record has not yet been received.

A WRIT OF MANDATE SHOULD ISSUE

36. Petitioner has exhausted every available administrative remedy and has no plain, speedy, and adequate remedy in the ordinary course of the law to compel the City to reverse its

decision and to grant Petitioner's request to proceed to Phase 2 of the application process. (CVMC, § 5.19.050, subd. (A)(6) ["The City Manager's determination regarding the Phase One Application shall be final."].)

37. Accordingly, ordinary mandamus is appropriate because Petitioner has no plain, speedy, and adequate alternative remedy, the City has a clear, present, and ministerial duty to perform; and Petitioner has a clear, present, and beneficial right to performance. (Code Civ. Proc., § 1085; *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.) The City was required by law to permit the highest scoring applicants to proceed to Phase 2 and failed to abide by the law when it rejected Petitioner's application and denied Petitioner (and Petitioner is informed and believes, all other applicants with civil zoning law violations) the opportunity to proceed to Phase 2 of the licensing process based on alleged violation of civil zoning laws as having engaged in unlawful "commercial cannabis activity."

38. Administrative mandamus is an appropriate remedy for challenging "the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal . . . ." (Code Civ. Proc., § 1094.5, subd. (a).) The Court may enter judgment for Petitioner and command the City to set aside its Final Decision if there was not a fair trial, or if the City's decision constituted a "prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid*.) As discussed below, following an unfair trial, the City's prejudicially abused its discretion in several important ways.

Ground 1 – Civil Zoning Violations Are Not Disqualifying As A Matter Of Law

39. CVMC § 5.19.050(A)(5) provides that "Phase One Applications *may* be rejected by the Police Chief for any of the following reasons in his/her discretion." (Emphasis provided.) As discussed in paragraphs 56-62, *infra*, the City failed to exercise its discretion by rejecting all applicants that were alleged to have encountered a civil zoning violation. While this failure is an independent ground for granting the petition, the City primarily erred as a matter of law by

misapplying the stated grounds for rejection under CVMC §§ 5.19.050(A)(5)(f) and (g).

40. The City's sole basis for rejecting Petitioner's application was an alleged civil zoning violation from 2012 that the City incorrectly determined was *per se* disqualifying pursuant CVMC §§ 5.19.050(A)(5)(f) and (g). Subdivision (f) states:

> The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure."

Subdivision (g) states:

> The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

41. The alleged civil zoning violation from 2012—long *after* medical cannabis was legalized by Proposition 215 and well *before* commercial cannabis was legalized by Proposition 64—involved the Holistic Café, a medicinal cannabis storefront that the City of San Diego sought to close using a variety of mundane zoning ordinances. To be clear, none of the ordinances that the City of San Diego accused the Holistic Café of violating actually barred a medicinal cannabis storefront (or even used the words marijuana or cannabis for that matter). A true and correct copy of the complaint in *Holistic Café* is attached as **Exhibit M**.

42. Specifically, the complaint in *Holistic Café* alleged violations of San Diego Municipal Code ("SDMC") §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111, 129.0314, 146.0104. (Exh. M ¶¶ 31-43, Prayer ¶ 1.) Nearly all of these code sections relate to mundane structural, electrical, and signage requirements. For example, Sections 129.0202 and 129.0111 required an inspection and building permit prior to making any structural alterations to a building. Sections 129.0302 and 129.0314 required an inspection and electrical permit prior to installing or altering electrical wiring or equipment. Section 129.0802 required a signage permit prior to installing a sign. And section 146.0104, which incorporates various provisions of the California Electrical Code, prohibited the use of extension cord wiring for electrical service or the use of junction boxes without proper covers. Each of these alleged violations would have been easily curable, except for Sections 121.0302 and 1512.0305, which the City of San Diego insisted

did not allow for medicinal cannabis storefronts.

43. Together, SDMC §§ 121.0302 and 1512.0305 enact zoning rules for zone CN-1A in the City of San Diego's Mid-City Communities Planned District. Table 1512-03I therein lists all permitted uses for buildings located in zone CN-1A and excludes all other uses (as opposed to identifying excluded uses). True and correct copies of SDMC § 1512.0305 and Table 1512-03I are attached as **Exhibit N**. Notably, Table 1512-03I specifically allows for the operation of drug stores, pharmacies, liquor stores, bakeries, confectioneries, florists, variety stores, food stores, and dry goods stores without any reference to the types of products sold therein. Yet, the City of San Diego contended in *Holistic Café* that a medicinal cannabis storefront was not specifically listed as a permitted use. By this flawed logic, the City of San Diego could have also challenged any café because the words "coffee" and "tea" were also not specifically listed.

44. Critically, during this 2010-2012 time period, localities and medical cannabis advocates hotly debated and litigated whether local governments could even use zoning regulations to ban otherwise legal medicinal cannabis storefronts with varying results. (See *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments cannot ban], *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 [local governments cannot ban], and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local governments can ban].) It was not until 2013 that the California Supreme Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, which ruled that local governments could ban medical cannabis storefronts.

45. In any event, despite having several legal and factual defenses available to them at the time, on December 14, 2012, the defendants in *Holistic Café*, including Mr. Senn, entered into a stipulated judgment that did not include any admission of wrongdoing. Again, the alleged civil zoning violations in *Holistic Café* were not zoning ordinances that banned medicinal cannabis storefronts whatsoever. They were the opposite; they were generic zoning laws limiting the scope of permissible uses at the location where the Holistic Café operated.

CVMC § 5.19.050(A)(5)(f) Does Not Apply To Civil Zoning Violations

46. With regard CVMC 5.19.050 § (A)(5)(f), the phrase "pharmaceutical or alcohol

licensure" has no bearing on this case because the *Holistic Café* matter had nothing to do with "pharmaceutical or alcohol licensure." The key language here is the phrase "related to Commercial Cannabis Activity." And to be clear, the term "Commercial Cannabis Activity" did not even come into existence until after Proposition 64 was passed in the State of California in 2016, after which City Ordinance No. 3418 was passed in March 2018.[3]

47. It was only then, under CVMC § 5.19.020, that the term Commercial Cannabis Activity was defined by the City as follows: ". . . the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." This language closely tracks the language of MAUCRSA, which was enacted by the State of California in 2017: "'Commercial cannabis activity' includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division." (Bus. & Prof. Code § 26001(k).)

48. There are two ways to read subdivision (f). The first is the broadest and vaguest way which, unfortunately, is the reading that the City improperly and uniformly adopted. Under the City's misapplication of subdivision (f), the words "laws or regulations" are not limited to the laws or regulations "related to" the regulatory schemes that defined the term "Commercial Cannabis Activity" and made commercial cannabis activity lawful in the State of California and in the City for the very first time. Rather, the City's tortured reading extends to any "laws or regulations" of general application, including laws and regulations that have absolutely nothing to do with the regulation of commercial cannabis activity (or medicinal for that matter).

49. Under this overbroad and unduly vague reading of subdivision (f), the City could, for example, reject an applicant whose otherwise lawful and licensed medicinal cannabis business was sanctioned by the Division of Labor Standards Enforcement for violating wage and hour laws.

[3] Prior to 2016, medicinal cannabis storefronts, such as the Holistic Café, were often organized as *nonprofit* mutual benefit corporations pursuant to guidelines promulgated by the California State Attorney General's Office. As discussed below in paragraphs 73-75, and as an additional grounds for granting this Petition, the City's findings were not supported by the evidence because there was no evidence presented that the Holistic Café, a *nonprofit* mutual benefit corporation, engaged in "commercial" cannabis activity as opposed to *nonprofit* medicinal cannabis activity.

The City could likewise reject an applicant who received a speeding ticket while transporting medicinal cannabis. Or the City could reject an applicant for violating a noise ordinance. It was under this overbroadly and unduly vague reading of subdivision (f) that the City erroneously concluded that any civil zoning violation at an otherwise lawful, nonprofit medical cannabis storefront constituted the violation of law ". . . related to Commercial Cannabis Activity."

50. The second way of reading subdivision (f) avoids these kinds of absurd results by interpreting the phrase "state or local laws or regulations *related to* Commercial Cannabis Activity . . ." to mean those laws and regulations that were enacted along with the specifically defined term "Commercial Cannabis Activity" in the first place (at both the state and local level). This reading provides applicants with fair notice of what is and what is not a disqualifying violation of law because applicants can review the Business and Professions Code and the CVMC and determine whether they have, in fact, violated any law or regulation enacted following Proposition 64, MAUCRSA, or Ordinance No. 3418. There are a litany of such commercial cannabis laws and regulations that have been enacted at the state and local level. Subdivision (f) can only reasonably be interpreted as disqualifying applicants who had violated laws and regulations enacted under a commercial cannabis regulatory scheme, not just any laws and regulations of general application.

51. Under this proper reading of subdivision (f), a violation of the City of San Diego's general zoning regulations that did not expressly exclude otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed (but was implied so as a café), is not a violation of law *related to* Commercial Cannabis Activity as that phrase was clearly intended in Subdivision (f).

CVMC § 5.19.050(A)(5)(g) Does Not Apply To Civil Zoning Violations

52. The language of subdivision (g), like subdivision (f), also uses the term "Commercial Cannabis Activity." However, in subdivision (g), the phrase is modified by the term "unlawful," such that an applicant will be denied a license if an owner, manager, or officer "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity." Again, for the reasons expressed above with regards to subdivision (f), the

phrase "unlawful Commercial Cannabis Activity" must be read to mean *commercial* activities that are unlawful under the regulatory scheme enacted by the State and City, not any activity that is unlawful in the abstract.

53. This has to be the case because, under CVMC §5.19.050(A)(1)(e)(i), the manager of a commercial cannabis license applicant must have "[a] minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity." Yet, there are no jurisdictions permitting lawful commercial cannabis activity anywhere in the country because all cannabis activity is unlawful under Federal law. In fact, even if the City were to ignore Federal law, there were no lawful commercial cannabis businesses anywhere in the state of California until its voters passed Proposition 64 in 2016 (prior to 2016, only Washington, Colorado, Alaska, and Oregon permitted such activities).

54. Thus, it cannot be that ***any*** unlawful conduct is a disqualifier because that would necessarily lead to the automatic disqualification of every single experienced applicant whose experience comes from managing a *commercial* business that is unlawful under federal law (or, ignoring Federal law, expressly limiting applicants to those who worked in Washington, Colorado, Alaska, and Oregon). Rather, for subdivision (g) to make sense in the context of the regulatory scheme in which it was enacted, it must be interpreted so that the phrase "unlawful Commercial Cannabis Activity" means activities that are unlawful under the regulatory scheme enacted by the State and City after 2016 and 2018, respectively, not any activity that is unlawful in the abstract.

55. Under this proper reading of subdivision (g), a violation of the City of San Diego's general zoning ordinances that did not ban otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed, cannot possibly be deemed an unlawful Commercial Cannabis Activity as that phrase was intended in Subdivision (g).

Ground 2 – The City Abused Its Discretion By Refusing To Exercise Its Discretion

56. The City is required, pursuant to CVMC § 5.19.050(A)(5), to exercise its discretion when rejecting any Phase One Application. "Phase One Applications *may* be rejected by the

Police Chief for any of the following reasons in his/her discretion." [Emphasis provided.]

57. As discussed above, under CVMC §5.19.050(A)(1)(e)(i), an applicant's manager must have "[a] minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity." Putting aside that cannabis businesses are unlawful in every jurisdiction under Federal law, it makes perfect sense to require that applicants have experience—of a minimum of 12 consecutive months—within the previous five years. Yet, Proposition 64 was not enacted until 2016.

58. The vast majority of experienced applicant managers gained their experience not with commercial cannabis, but with medicinal cannabis, which was lawful in the State of California long before Proposition 64. As described above, there was great conflict in the law over whether municipalities could use zoning ordinances to bar medicinal cannabis storefronts until the California Supreme Court finally decided the issue in 2013 in *Inland Empire*. Not surprisingly, the most experienced applicants that the City desired for its licensing program likely gained that experience at a time when zoning ordinances were haphazardly applied throughout the state and the law was unclear.

59. Pursuant to Public Record Act requests, Petitioner has learned that the City uniformly rejected any and all applicants that had been alleged to have violated civil zoning laws unrelated to the regulatory schemes that legalized commercial cannabis activity at the State and local level (going so far as to disqualify applicants who merely worked at otherwise lawful medicinal cooperatives in the City of San Diego). This includes applicants experienced with medicinal cannabis prior to 2013 when the law was unclear and several appellate courts had ruled that municipalities could not use zoning ordinances to bar medicinal cannabis storefronts. This relevant evidence could not, in the exercise of reasonable diligence, have been produced by Petitioner at the administrative hearing because Petitioner only obtained the evidence pursuant to Public Records Act requests that were not responded to until after the hearing. This relevant evidence is admissible pursuant to Code of Civil Procedure § 1094.5(e). A true and correct copy of the evidence of systematic exclusion of similarly situated applicants is attached hereto as

Exhibit O and incorporated herein by reference.

60. Considering that the City wants qualified and experienced applicants, and given the history by which medicinal and then recreational cannabis was slowly legalized and regulated in the State, the City could have and in fact should have exercised its discretion to approve otherwise highly qualified applicants that worked in medicinal cannabis and encountered general civil zoning violations prior to 2013. In contrast, the City abused its discretion in failing to exercise *any* discretion by uniformly rejecting *all* such applicants—including Petitioner, which scored higher in its district than any other applicant.

61. To have properly exercised its discretion, the City needed to make additional findings to demonstrate reasonable, not arbitrary or capricious, reasons to reject the application. Such reasons would have to have a nexus to previous violations of commercial cannabis laws. Such reasons would have required findings tied to the express purpose of the licensing codes and regulations in permitting, licensing, and fully regulating commercial cannabis activities in the City. An example would be findings that Petitioner would likely create negative impacts and secondary effects, danger and disruption for City residences and businesses, and therefore its license application should be rejected. No such findings were ever made.

62. Nor could such findings ever be made for Petitioner. As Petitioner's application materials showed, Mr. Senn operates the most successful cannabis retailer in San Diego and one of the most successful cannabis retailers in California, all of which are licensed. That is to say, Mr. Senn's operations are licensed by the very same City of San Diego that was a party to the stipulated judgement in *Holistic Café*. Surely, such licensure would not have occurred had Mr. Senn been likely to create negative impacts, secondary effects, danger, or disruption to the City of San Diego. To the contrary, Mr. Senn operates cannabis storefront locations in Bay Park, San Ysidro, Grover Beach, and Seaside, California. Mr. Senn also co-founded the City of San Diego's cannabis trade group, the United Medical Marijuana Coalition, as well as the Alliance for Responsible Medicinal Access, Patient Care Association of CA, and Citizen for Patient's Rights. The City should have considered each of these uniquely qualifying facts, which led to Petitioner being objectively scored as the most qualified applicant in the City's first district. It did not.

Ground 3 – The City Denied Applicants Fair Notice In Violation Of Due Process

63. As discussed above, it would have been impossible for applicants to determine in advance of applying that the City would uniformly reject all applicants who had an alleged civil zoning violation under the auspices of CVMC § 5.19.050(A)(5)(f) and (g), which should never have been applied as broadly as the City decided to apply them.

64. Out of an abundance of caution, Petitioner disclosed the stipulated judgment in *Holistic Café* (see Exh. D) contemporaneously with the submission of its application. Rather than rejecting the application on that basis, the City instructed Petitioner to engage in a series of a fundamentally unfair proceedings (i.e., application, background check, interview, scoring, etc.) where the ultimate decision would be a forgone conclusion: a rejection.

65. By staying silent upon receipt of Petitioner's application, the City invited Petitioner (and other similarly situated applicants) to continue to invest significant time and resources in the license process, all while the City continued to collect hefty application fees from them. By staying silent, the City further denied Petitioner (and other similarly situated applicants) the opportunity to amend their applications at the outset of the process in order to cure such defects (e.g. by modifying the ownership and/or management structure of the applicants).

66. If the City was to uniformly deny all applicants with prior civil zoning infractions, as it did, the City should have provided the applicants with fair notice so that they did not spend time and resources applying for a foregone conclusion.

67. Absent such fair notice, due process requires that the City be estopped from rejecting applicants on the basis of disclosed civil zoning violations. (*Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 963-964.)

Ground 4 – The City's Hearing Procedure Violated Petitioner's Due Process

68. The City further violated Petitioner's due process rights by conducting a procedurally improper hearing that did not provide Petitioner sufficient notice, both in terms of time in violation of Regs. § 0501(P)(2)(a), and in terms of content with its threadbare Notice of Decision. Together, these violations deprived Petitioner of its ability to meaningfully prepare for

the hearing on appeal by sourcing testimony and/or exhibits needed to appeal to the City Manager, which fact the City Manager cited in rejecting the appeal.

69. Further, the City's appeal process violated Petitioner's due process right to a fair tribunal "in which the judge or other decision maker is free of bias for or against a party." (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737 [citation and quotation marks omitted].) This is because Deputy City Attorney Simon Silva served as the adviser to the hearing officer, City Manager Gary Halbert, and Deputy City Attorney Megan McClurg served as counsel for Respondent. (Ex. K.)

70. Although a "city attorney's office may 'act[] as an advocate for one party in a contested hearing while at the same time serving as the legal adviser for the decision maker'" without violating the other party's right to a fair tribunal, "performance of both roles" offends due process when: (1) adequate measures to screen the deputy city attorney serving as prosecutor and the deputy city attorney serving as adviser; or (2) the deputy serving as prosecutor becomes a "primary legal adviser" to the decision maker. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813, overruled in unrelated part by *Morongo*, supra, p. 740, fn. 2, [citations and quotation marks omitted].)

71. Here, there is no evidence to suggest that the City Attorney's Office, which upon information and belief, has only nine full-time attorneys, employed adequate screening measures to guarantee the necessary separation between its dual roles of adviser and advocate. (See, *Quintero, supra*, p. 813 [clarifying that the respondent City of Santa Ana had the "burden of showing the required separation"].) More importantly, Ms. McClurg's service as counsel for Respondent in the hearing violates due process in light of her role as a drafter of the very code that governed the application and appeals process here.

72. Specifically, Ms. McClurg and a member of City Manager Halbert's staff, Deputy City Manager Kelley Bacon, played an integral role in the drafting of Ordinance 3418, eventually codified in CVMC § 5.19.010 *et seq.* Ms. McClurg and Ms. Bacon gave presentations to the Chula Vista City Council on the proposed ordinance, including on the mechanisms of the application process, and their ongoing revisions thereto, no less than four times prior to the

Ordinance's adoption. True and correct copies of the minutes for the City Council hearings at which Ms. McClurg and Ms. Bacon gave presentations are attached as **Exhibits P through S**. City Manager Halbert was present each time for these presentations. Given Ms. McClurg's and Ms. Bacon's joint role as drafters of the very code provisions which governed Petitioner's application and subsequent appeal, "[i]t would only be natural for [City Manager Halbert, Ms. Bacon's supervisor] . . . to give more credence to [Ms. McClurg's] arguments when deciding [Petitioner's] case." Under these facts, there is an "appearance of unfairness . . . sufficient to invalidate the hearing" on due process grounds. (*Quintero*, *supra*, p. 816.)

Ground 5 – The City's Findings Were Not Supported By The Evidence

73. Finally, the City abused its discretion because its decision is not supported by the findings and the findings are not supported by the evidence. Specifically, the evidence does not support the finding that Mr. Senn violated any state or local laws or regulations "related to Commercial Cannabis Activity," or that Mr. Senn was engaged in "unlawful Commercial Cannabis Activity" as defined in CVMC § 5.19.050(A)(5)(f) and (g).

74. First, as discussed above, the term "Commercial Cannabis Activity" is defined by the City as follows: ". . . the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." CVMC § 5.19.020. Critically, the City's definition relates only to "Cannabis or Cannabis Products," not "Medicinal Cannabis" or "Medicinal Cannabis Product," which terms are separately defined in CVMC § 5.19.020. Indeed, the City of Chula Vista's licensing scheme for commercial cannabis activities—i.e., the license at issue in this Petition—expressly excludes medicinal cannabis activities, thereby confirming an important distinction between what is commercial and what is medicinal. *See, e.g.,* CVMC § 5.19.090 ("A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products.").

75. Second, there was no evidence presented whatsoever that the Holistic Café—a *nonprofit* mutual benefit company—was engaged in any "commercial" cannabis activity at all, as opposed to "medicinal" cannabis activities that were lawful at the time under Proposition 215. And even then, the evidence presented was wholly inadmissible. For example, the stipulated

judgment, as well as other exhibits presented by the City in the *Holistic Café* case, is purely hearsay and expressly did "not constitute an admission or an adjudication of any of the allegations of the Complaint." (Exh. D, p. 2, lines 19-23.) The allegations of the Complaint were just that: allegations. The Stipulated Judgment was not an admission of those allegations, nor did it constitute an adjudication of any of the allegations. Allegations are not facts or evidence. There was no other non-hearsay evidence of unlawful commercial cannabis activity to support this basis for the City's rejection of Petitioner's application. Therefore, the evidence is insufficient as a matter of law to support the City's findings or its decision.

First Claim for Relief

(Ordinary Mandate)

76. Petitioner incorporates by reference paragraphs 1 through 75 above as though set forth in full at this point.

77. The City's issuance of cannabis business licenses is subject to requirements set forth under the Chula Vista Municipal Code, the City of Chula Vista Cannabis Regulations, and California law. The City is required to comply with its own ordinances and regulations, as well as California law, and was obligated not to abuse its discretion in disqualifying applicants using unstated, undisclosed, unduly vague, and arbitrary criteria. The City was also required to provide applicants with due process and follow its own procedures and rules.

78. The City's rejection of Petitioner's application is arbitrary and capricious and is likely to result in the City issuing licenses to potentially unqualified applicants, in violation of law. Any issuance by the City of cannabis business licenses is illegal, arbitrary, capricious, lacking in evidentiary support, and inconsistent with proper procedure.

79. For all of these reasons there are sufficient grounds for the Court to issue a writ of mandamus, enter judgment commanding the City to set aside its decision rejecting Petitioner's application ID No. 57074, and order the City to allow Petitioner to proceed to Phase Two of the licensing process.

80. The Court should also stay the operation of the City's decision to reject Petitioner's application and to enjoin the City from taking or failing to take any action that would in any way

interfere with the full and fair consideration of Petitioner's application for a storefront retail cannabis license, including but not limited to enjoining the City from issuing any of the retail storefront cannabis licenses and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void. (Code Civ. Proc., § 1094.5, subd. (g).) A stay is in the public's interest because it promotes the City's desire to give cannabis business licenses only to those most qualified to "operate a top-quality retail cannabis establishment" (Exh. A), as its purpose is to regulate and license commercial cannabis activity to "mitigate the negative impacts brought by unregulated Commercial Cannabis Activity." (CVMC, § 5.19.010.)

81. Petitioner is supremely qualified to operate a commercial cannabis storefront in the City; indeed, it was ranked number one in its district based on its application and interview scores. Rejection of its application based on the complaint and stipulated judgment regarding a general zoning ordinance from eight years ago—at a time when medicinal cannabis was legal but before the State and City enacted commercial cannabis laws and regulations—is inconsistent with the City's goal of combatting unregulated commercial cannabis activity because the City arbitrarily and without sufficient evidence rejected the best and most experienced candidate.

82. Petitioner has a clear, present, legal, and beneficial right in requiring the City to follow its own rules and to not abuse its discretion when issuing cannabis licenses.

83. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the writ sought by this petition. Petitioner has exhausted all administrative remedies available to it. Before filing this verified petition and serving it on the City, Petitioner timely appealed the Notice of Decision. This writ petition is filed less than 90 days after the City's Final Decision became final. Without the issuance of a writ of mandate, Petitioner will lose its opportunity to be issued a retail cannabis license by the City. The only means by which Petitioner may compel the City to follow the law is this petition for writ of mandate.

Second Claim for Relief

(Administrative Mandate)

84. Petitioner incorporates by reference paragraphs 1 through 83 above as though set forth in full at this point.

85. The City's issuance of cannabis business licenses is subject to requirements set forth under the Chula Vista Municipal Code, the City of Chula Vista Cannabis Regulations, and California law. The City is required to comply with its own ordinances and regulations, as well as California law, and was obligated not to abuse its discretion in disqualifying applicants using unstated, undisclosed, unduly vague, and arbitrary criteria. The City was also required to provide applicants with due process and follow its own procedures and rules.

86. In rejecting Petitioner's applications and arbitrarily and capriciously denying Petitioner the opportunity to proceed to Phase 2 based on a general zoning violation, the City has not proceeded in the manner required by law as it was required to, and its decision is not supported by the findings of the City Manager. Thus, the City has violated California law and must be ordered to follow the law and allow Petitioner to proceed to Phase 2.

87. Petitioner has a clear, present, legal, and beneficial right in requiring the City to follow its own rules and to not abuse its discretion when issuing cannabis licenses.

88. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ sought by this petition. Petitioner has exhausted all administrative remedies available to it. Before filing this verified petition and serving it on the City, Petitioner timely appealed the Notice of Decision. This writ petition is filed less than 90 days after the City's Final Decision became final. Without the issuance of a writ of mandate, Petitioner will lose its opportunity to be issued a retail cannabis license by the City. The only means by which Petitioner may compel the City to follow the law is this petition for writ of mandate.

Third Claim for Relief

(Declaratory & Injunctive Relief)

89. Petitioner incorporates by reference paragraphs 1 through 88 above as though set forth in full at this point.

90. An actual controversy has arisen and now exists between the parties concerning their respective rights, liabilities, obligations, and duties with respect to Petitioner's application.

91. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations.

92. Because there is no adequate remedy at law, Petitioner requests a declaration of the parties' rights, liabilities, and obligations. Specifically, Petitioner requests a judicial declaration that the City must permit Petitioner to proceed to Phase Two of the license application process.

93. Unless the City is enjoined from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, Petitioner will suffer great and irreparable injury and therefore seeks an injunction as prayed for below.

PRAYER

WHEREFORE, Petitioner prays:

1. For a peremptory writ of mandate to be issued that: (a) directs Respondent to set aside its decisions dated May 6, 2020 and August 26, 2020 and permit Petitioner to proceed to Phase Two of the license application process; and (b) enjoins Respondent from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, including but not limited to enjoining Respondent from issuing any other cannabis licenses in the City and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void;

2. For an alternative writ of mandate and order to show cause why a peremptory writ should issue granting the relief sought by Petitioner;

3. For a declaration that the City must set aside its decisions dated May 6, 2020 and August 26, 2020 and permit Petitioner to proceed to Phase Two of the license application process;

4. For a preliminary and permanent injunction restraining Respondent from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, including but not limited to enjoining Respondent from issuing any other cannabis licenses in the City and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void;

5. For Petitioner to recover its costs in this action, including attorney fees (Code Civ. Proc. § 1021.5);

6. For Petitioner recover its damages according to proof; and

/ / /

7. For Such other relief be granted that the Court considers proper.

DATED: November 13, 2020

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

GARY K. BRUCKER, JR.
CARSON P. BAUCHER
LANN G. MCINTYRE
Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

VERIFICATION

I have read the foregoing PETITION FOR WRIT OF MANDAMUS (CODE CIV. PROC., §§ 1085, 1094.5, 1094.6) and know its contents.

I am an officer of a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 13, 2020

Willie Senn, President of UL Holdings, Inc.,
Manager of Petitioner UL Chula Two LLC

-EXHIBIT A -

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

ORDINANCE NO. 3418

ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHULA VISTA MUNICIPAL CODE SECTION 5.19 TO REGULATE COMMERCIAL CANNABIS

WHEREAS, the Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medicinal cannabis businesses in California; and

WHEREAS, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California State Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the State of California; and

WHEREAS, under California Business and Professions Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries; and

WHEREAS, the California Attorney General's 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines") recognizes that the concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be impacted negatively by nuisance activity or more significant levels of crime; and

WHEREAS, the City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries; and

WHEREAS, unregulated businesses remain a source of danger and disruption for City residents and businesses; and

WHEREAS, in response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated cannabis businesses, the City now desires to permit, license, and fully regulate commercial cannabis activity in the City; and

WHEREAS, California voters have recognized the danger of cannabis use among youth by making the sale of cannabis to those under age 21 illegal (Cal. Bus. & Prof. Code § 26140(a)(1)-(3)) and by prohibiting the possession of cannabis or cannabis products by minors (Cal. Health & Safety Code §11357); and

WHEREAS, youth exposure to advertising of products such as alcohol, tobacco, and food has been shown to create positive attitudes, brand identification, and increased likelihood of initiation and use of these products; and

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

WHEREAS, the City of Chula Vista has a substantial interest in promoting compliance with state and local laws intended to regulate cannabis sales and use; in discouraging the illegal purchase of cannabis products by youth; in promoting compliance with laws prohibiting sales of cannabis and cannabis products to youth; and in protecting youth from being coerced and enticed into engaging in illegal activity; and

WHEREAS, pursuant to its police powers, including but not limited to California Constitution Article XI, Section 5(b) authority over municipal affairs, the City of Chula Vista has general authority over the public health, safety, and welfare of its citizens; and

WHEREAS, it is the intent of the City Council to adopt a comprehensive set of requirements, restrictions, and robust enforcement procedures with regard to cannabis activity within the City in order to protect public safety, health, and other law enforcement interests.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Environmental Findings

The City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to the following provisions of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

1. The Ordinance is exempt under Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, there is no possibility that this Ordinance would create cumulative impacts that are significant because this Ordinance does not authorize a total number of businesses in the City than would otherwise be authorized; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

2. The Ordinance is also exempt under Section 15183 (Projects Consistent with a Community Plan or Zoning) since the types of businesses permitted by the Ordinance are consistent with those contemplated by general plan and zoning;

3. The Ordinance is also exempt under CEQA Guidelines Section 15301 (Existing Facilities) since permitted cannabis business under the Ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

4. The Ordinance is exempt under Section 15303 (New Construction or Conversion of Small Structures). The businesses will be established in an urban area, and given the build out of the existing City, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

Section II. Chapter 5.19 is added to the Chula Vista Municipal Code to read as follows:

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Chapter 5.19

COMMERCIAL CANNABIS

Sections:

5.19.010 Purpose.
5.19.020 Definitions.
5.19.030 City License Required.
5.19.040 Maximum Number and Type of Authorized City Licenses.
5.19.050 City License Application Process.
5.19.060 Location Requirements for Cannabis Businesses.
5.19.070 Limitations on City's Liability.
5.19.080 Operating and Conduct Requirements for All Licensees and Individuals.
5.19.090 Operating Requirements for Storefront Retailers.
5.19.100 Operating Requirements for Non-Storefront Retailers.
5.19.110 Operating Requirements for Cultivators.
5.19.120 Operating Requirements for Manufacturers.
5.19.130 Operating Requirements for Distributors.
5.19.140 Operating Requirements for Testing Laboratories.
5.19.150 Recordkeeping.
5.19.160 Security Measures.
5.19.170 Community Relations.
5.19.180 Promulgation of Regulations, Standards, and Other Legal Duties.
5.19.190 Compliance With Laws.
5.19.200 Right of Access & Testing.
5.19.210 Restrictions on Transfer, Change, or Alteration of City License or City Licensee.
5.19.220 Restrictions on Transfer, Change, or Alteration of Location.
5.19.230 Expiration of City License.
5.19.240 Renewal of City License.
5.19.250 Effect of State License Suspension, Revocation, or Termination.
5.19.260 Suspension or Revocation of City License.
5.19.270 Advertising and Marketing of Cannabis.
5.19.280 Enforcement and Penalties.
5.19.290 Effectiveness Conditioned on Passage of Tax Measure.

5.19.010 Purpose

The Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medicinal cannabis businesses in California. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the State of California. Under California law,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

local jurisdictions are authorized to either permit or prohibit the operation of cannabis businesses within their boundaries.

The City has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. Unregulated businesses remain a source of danger and disruption for City residents and businesses. In response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated Commercial Cannabis Activity, the City now desires to permit, license, and fully regulate Commercial Cannabis Activities within the City.

5.19.020 Definitions.

When used in this Chapter, the following words and phrases shall have the meanings ascribed to them below. Words and phrases not specifically defined below shall have the meanings ascribed to them elsewhere in this Code, or shall otherwise be defined by common usage. For definitions of nouns, the singular shall also include the plural; for definitions of verbs, all verb conjugations shall be included. Any references to State Laws, including references to any California statutes or regulations, is deemed to include any successor or amended version of the referenced statute or regulations promulgated thereunder consistent with the terms of this Chapter.

"A-License" means a State License for Commercial Cannabis Activity related to products for individuals 21 years of age and over without the need for a physician's recommendation.

"A-Licensee" means a Person holding an "A-License."

"Adult-Use Cannabis" or "Adult-Use Cannabis Product" means Cannabis or Cannabis Products for individuals 21 years of age and over without the need for a physician's recommendation.

"Advertise" means to publish or disseminate an Advertisement.

"Advertisement" means any written or verbal statement, illustration, or depiction which is calculated to induce sales of Cannabis or Cannabis Products, including without limitation: any written, printed, graphic, or other material; billboard, sign, or other outdoor, digital, indoor or point-of-sale display; individual carrying a display; public transit card, other periodical, literature or publication, or in any similar media; except that such term shall not include:

A. Any label affixed to any Cannabis or Cannabis Products, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling.

B. Any editorial story, or other information (e.g., news release) in any periodical, publication or newspaper either in print or electronic format, for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any City Licensee or Person engaged in Commercial Cannabis Activity, and which is not written by or at the direction of a City Licensee or Person engaged in Commercial Cannabis Activity.

"Applicant" means the Owner or Owners applying for a City License pursuant to this Chapter.

"Attractive to Youth" means products, packaging, labeling, or Advertisements that are reasonably likely to encourage individuals under age 21 to initiate cannabis consumption or

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

otherwise to accidentally or purposely consume Cannabis or Cannabis Products. Attractive to Youth items include:

A. Products that resemble a non-Cannabis consumer product of a type that is typically consumed by, or marketed to Youth, such as a specific candy or baked treat.

B. Packaging or labeling that resembles packaging or labeling of a non-Cannabis consumer product of a type that is typically consumed by or marketed to Youth.

C. Packaging or labeling that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.

D. Advertising that mimics Advertising of a non-cannabis consumer product of a type that is typically consumed by, or marketed to Youth.

E. Advertising that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.

"Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this definition, "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

"Cannabis Concentrate" means Cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. Cannabis Concentrate does not include any product intended for oral ingestion by the final consumer. A Cannabis Concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or drug, as defined by Section 109925 of the Health and Safety Code.

"Cannabis Product" means Cannabis that has undergone a process whereby the plant material has been concentrated and, with or without the addition of ingredients, been transformed into a product for sale. Cannabis products include but are not limited to: Cannabis Concentrate, Edible Cannabis Products, Topical Cannabis, or an inhalant containing Cannabis or Cannabis Product.

"Canopy" means the designated area(s) at a City Licensed Premises, except nurseries, that contain growing or mature Cannabis plants at any point in time. The Canopy for each Premises shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain growing or mature plants at any point in time, including any and all space(s) within such boundaries. The Canopy for any Premises may be noncontiguous provided that each unique area included in the total Canopy calculation for any Premises shall be separated by an identifiable boundary. Identifiable boundaries may include, but are not limited to: interior walls,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

shelves, greenhouse walls, hoop house walls, or fencing. If plants are being cultivated using a shelving system, the surface of each level shall be included in the total Canopy calculation.

"Caregiver or Primary Caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

"City" means the City of Chula Vista, California.

"City Attorney" means the City Attorney of the City of Chula Vista, or his/her designee.

"City License" means the regulatory license issued by the City pursuant to this Chapter to a Commercial Cannabis Business that must be obtained prior to the commencement of any Commercial Cannabis Activity in the City.

"City Licensee" means any Person holding a City License.

"City Manager" means the City Manager of the City of Chula Vista, or his/her designee.

"Code" means The City of Chula Vista Municipal Code.

"Commercial Cannabis Activity" means the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products.

"Commercial Cannabis Business" or "Cannabis Business" means any Person lawfully engaged in a Commercial Cannabis Activity.

"Council District" means any of four political subdivisions within the City by which City Council members are elected.

"Crime of Moral Turpitude" means a crime involving deceit; fraud; a readiness to do evil; or an act of moral depravity of any kind that has a tendency in reason to shake one's confidence in the perpetrator's honesty.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis, other than for personal use. A City License is required for the Cultivation of Cannabis pursuant to 5.19.030.

"Cultivator" means a Person engaged in Cultivation.

"Customer" means an individual 21 years of age or over, or an individual 18 years of age or older who possesses a physician's recommendation.

"Day Care Center" has the same meaning as in Section 1596.76 of the California Health and Safety Code.

"Delivery" means the commercial transfer of Cannabis or Cannabis Products from a Non-Storefront Retailer Premises to a Customer at a physical address. Delivery also includes the use by a Non-Storefront Retailer of any technology platform to facilitate Delivery.

"Delivery Employee" means an employee of a Non-Storefront Retailer who conducts Deliveries.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Development Services Director" means the Director of the City's Development Services Department, or his/her designee.

"Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between Commercial Cannabis Businesses. A City License is required for Distribution pursuant to 5.19.030.

"Distributor" means a Person engaged in Distribution.

"Edible Cannabis Product" means a Cannabis Product that is intended to be used, in whole or in part, for human consumption, including, but not limited to chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. Edible Cannabis Product has the same meaning as California Business and Professions Code section 26001.

"Existing Residential Use" means a residential Pipeline Project or lawfully constructed structure or project intended for residential use within a Residential Zone.

"Finance Director" means the Director of the Chula Vista Finance Department, or his/her designee.

"Fire Chief" means the Chief of the Chula Vista Fire Department, or his/ her designee.

"Labor Peace Agreement" means an agreement between a licensee and any bona fide labor organization that is required by State Laws and this chapter and that, at a minimum, protects public interests with the following provisions: (1) a prohibition on labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with a City Licensee's Cannabis Business; (2) an agreement by the City Licensee not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the City Licensee's employees; access for a bona fide labor organization at reasonable times to areas in which the City Licensee's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

"Licensee" means any Person holding a State License and a City License.

"Liquid Assets" means assets that can be readily converted into cash. Liquid Assets include, but are not limited to, the following: funds in checking or savings accounts, certificates of deposit, money market accounts, mutual fund shares, publicly traded stocks, and United States savings bonds. Liquid Assets does not mean household items, furniture and equipment, vehicles, Cannabis plants or products, business inventory, or real property and improvements thereto.

"Live Plants" means living Cannabis flowers and plants including seeds, immature plants, and vegetative stage plants.

"M-License" means a State License for Commercial Cannabis Activity involving Medicinal Cannabis.

"M-Licensee" means a Person holding an M-License.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Manager" means any individual Person(s) designated by a Commercial Cannabis Business to manage day-to-day operations of the Commercial Cannabis Business or any Person acting with apparent management authority. Evidence of management authority includes, but is not limited to, evidence that the Person has the power to direct, supervise, or hire and dismiss employees, control hours of operation, create policy rules, or purchase supplies.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product. A City License to Manufacture is required pursuant to 5.19.030.

"Manufacturer" means a Person engaged in Manufacturing.

"Marketing" means any act or process of promoting or selling Cannabis or Cannabis Products, including, but not limited to, sponsorship of events, offers such as tickets to events, point-of-sale advertising, branded merchandise, pamphlets or product promotion materials.

"Medicinal Cannabis" or "Medicinal Cannabis Product" means Cannabis or a Cannabis Product for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Minor" means an individual under 18 years of age.

"Non-Storefront Retailer" means a Person that offers Cannabis, Cannabis Products, or devices for the use of Cannabis or Cannabis Products, either individually or in any combination, for retail Sale to Customers exclusively by Delivery. A City License is required to operate a Non-Storefront Retailer Business pursuant to 5.19.030..

"Officer" means any of the following:

A. The chief executive officer of an entity engaged in a Commercial Cannabis Business.

B. A member of the board of directors of an entity engaged in a Commercial Cannabis Business.

C. A Person participating in the direction or control of an Applicant for a City License or any Owner of a Commercial Cannabis Business within the City.

"Owner" means any of the following:

A. In the context of a Commercial Cannabis Business, a Person with an aggregate ownership interest, direct or indirect, of ten percent (10%) or more in a Commercial Cannabis Business, whether a partner, shareholder, member, or the like, including any security, lien, or encumbrance in an ownership interest that, upon default, could become an ownership interest of 10% or more in a Commercial Cannabis Business.

B. In the context of a Premises, a Person with an aggregate ownership or long-term lease interest, direct or indirect, of ten percent (10%) or more in the Premises, whether as a partner, shareholder, member, joint tenant or the like.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Operation" means any act for which licensure is required under the provisions of this Chapter or State Laws, or any commercial transfer of Cannabis or Cannabis Product.

"Patient or Qualified Patient" means a person who is entitled to the protections of California Health & Safety Code Section 11362.5 as further provided in California Health & Safety Code Section 11362.7.

"Person" means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination of persons acting as a unit.

"Pipeline Project" means a proposed use or project for which the City has received all required applications, and required supporting information and documents, and which has been entered into the City's project tracking system.

"Police Chief" means the Chief of the Chula Vista Police Department, or his/her designee.

"Premises" for Commercial Cannabis Activity means the designated structure or structures and land, or portions thereof, specified in an application for a City License or, if a City License is issued, that is owned, leased, or otherwise held under the control of the City Licensee, and is designated as the structure or structures and land, or portions thereof where the Commercial Cannabis Activity will be or is conducted.

"Private Parks" means privately owned outdoor premises, available for community use, containing recreational areas or playground equipment, including tot-lots, swings, or similar equipment, designed for use by Minors. Where a Private Park is located within a parcel containing other uses, the Private Park premises shall be defined as the area within which all recreational areas or playground equipment designed for use by Minors is contained.

"Public Parks" means outdoor premises containing existing or proposed parks, including community parks, neighborhood parks, mini-parks, and urban parks that are currently or proposed to be owned or operated by the City or other governmental agency.

"Public Street" is any public right-of-way designated for vehicular use.

"Purchaser" means the Customer who is engaged in a transaction with a Commercial Cannabis Business for purposes of obtaining Cannabis or Cannabis Products.

"Residential Zone" means an R-1, R-2, or R-3 zone, or an equivalent residential zone within a City approved Sectional Planning Area plan or Specific Plan, in each case within which residential uses are allowed by right and commercial uses are allowed only as accessory uses.

"Sell" and "Sale" mean any transaction whereby, for any consideration, title to Cannabis or Cannabis Products is transferred from one person to another, and includes the Delivery of Cannabis or Cannabis Products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

"State" means the State of California.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"State Laws" means the laws of the State of California, which includes, but are not limited to, California Health and Safety Code Sections 11000, *et seq.*; California Health and Safety Sections 11362.1 through 11362.45; California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7, *et seq.*(Medical Marijuana Program); California Health and Safety Code Sections 26000, *et seq.*(Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA")); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029; California Water Code Section 13276; all State regulations adopted pursuant to MAUCRSA; and all other applicable laws of the State of California.

"State License" means a license issued by the State of California, or one of its departments or divisions, under State Laws to engage in Commercial Cannabis Activity. License includes both an "A-license" (adult use) and an "M-license" (medicinal use), as defined by States Laws, as well as a testing laboratory license.

"State Licensee" means any Person holding a State License.

"Storefront Retailer" means a Person that offers Cannabis, Cannabis Products, or devices for the use thereof, either individually or in any combination, for retail sale to Customers exclusively at Premises providing access to the public. A City License is required to operate a Storefront Retailer Business pursuant to 5.19.030.

"Testing Laboratory" means a laboratory, facility, or entity in the State that offers or performs tests of Cannabis or Cannabis Products and that is both of the following:

A. Accredited by an accrediting body that is independent from all other persons involved in Commercial Cannabis Activity in the State; and

B. Licensed by the State.

A City License is required to operate a Testing Laboratory pursuant to 5.19.030.

"Testor" means a Licensee that offers or performs tests of Cannabis or Cannabis Products at a Testing Laboratory.

"Topical Cannabis" means a product intended for external application and/or absorption through the skin. A Topical Cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

"Transport" means transfer of Cannabis or Cannabis Products from the Premises of one Licensee to the Premises of another Licensee, for the purposes of conducting Commercial Cannabis Activity authorized by State Laws and this Chapter.

"Treatment Center" means a medical treatment or counseling facility licensed by the California Department of Health Care Services and located outside of a residential zone that treats five or more persons with substance abuse conditions in one calendar year.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Youth" means an individual under 21 years of age.

"Youth Center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

"Youth-Oriented Business" means any for-profit or non-profit business where the majority of individuals who patronize, congregate, or assemble at the business location are less than 21 years old.

5.19.030 City License Required.

A. No Person may engage in any Commercial Cannabis Business and/or in any Commercial Cannabis Activity within the City unless that Person: (1) has a valid State License authorizing such business or activity; (2) has a valid City License authorizing such business or activity; and (3) is currently in compliance with all other applicable state and local laws and regulations pertaining to such business or activity. No City License will be available for issuance until, at the earliest, January 1, 2019. Except as expressly authorized in this Chapter, all Commercial Cannabis Businesses and Commercial Cannabis Activities are prohibited within the City.

B. Notwithstanding the foregoing, the Delivery of Cannabis or Cannabis Product originating from a Commercial Cannabis Business licensed in accordance with California Business and Professions Code section 26050(a)(17) is permitted without a City License, so long as the Delivery originates from a licensed Commercial Cannabis Business outside the City of Chula Vista, and is conducted in accordance with all codified and administrative state and local laws and regulations, including but not limited to the requirements of section 5.19.100.C below.

5.19.040 Maximum Number and Types of Authorized City Licenses.

Commencing January 1, 2019, the authorized number of City Licenses for each type of Commercial Cannabis Business available for issuance within the City shall be as follows:

A. Storefront and Non-Storefront Retailer Licenses: Twelve (12) total, with no more than three (3) City Licenses available for Operation within each Council District. Of the three (3) City Licenses available for Operation within each Council District, no more than two (2) City Licenses shall be available for Storefront Retailers.

B. Indoor Cultivator: Ten (10) total City Licenses. Each Cultivator License shall be limited to a maximum of 20,000 total square feet of Canopy.

C. Other License Types: The City is also authorized to issue, without numerical limit, City Licenses for the following Commercial Cannabis Businesses:

1. Manufacturer;

2. Distributor; and

3. Testing Laboratory.

D. Storefront Retailer City Licenses shall be limited to A-Licensees only. All other City License types may be available to A-Licensees and M-Licensees.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

E. No City License shall issue for any Commercial Cannabis Business type other than those identified in subsections (A) through (C) above.

F. The City shall take no action to increase the maximum number of authorized Storefront Retail Licenses until July 1, 2020. After July 1, 2020, the City Council may consider increasing the maximum number of authorized Storefront Retail Licenses, but only after receiving and considering a report from the City Manager regarding any observed or projected adverse impacts on the community from such businesses.

G. The City Council may make a referral to the City Manager at any time for a recommendation on if and how the City should decrease the total number of City Licenses for any or all types of Commercial Cannabis Businesses, or to impose a cap on previously uncapped license types. If the City Council proceeds with a decrease in the total number of City Licenses for any or all types of Commercial Cannabis Businesses within the City, any such action shall include provisions for determining which, if any, existing City Licenses shall be eliminated and when Operations for eliminated City Licenses shall cease.

5.19.050 City License Application Process.
The following procedures shall govern the application process for the issuance of any City License under this Chapter.

A. Phase One Application Process

1. Application Requirements. Any Applicant seeking to obtain a City License to operate a Commercial Cannabis Business within the City shall submit a Phase One Application to the City, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase One Application must contain the following:

a. Applicant's name, address, telephone number, and e-mail address;

b. Names and addresses of all Owners, Officers, and Managers.

c. If any Applicant or Owner is a business entity or any other form of entity, the entity's legal status, formation documents, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

d. The type of City License the Applicant is seeking.

e. A description of any and all Commercial Cannabis Activity engaged in as an owner, manager, lender, employee, volunteer, or agent by the Applicant and all Owners, Officers, and Managers over the previous 5 years, including, but not limited to, the location of such activity and a copy of any permits, licenses, or other written forms of permission for such activity by a local or state government entity. An Applicant for a Storefront Retailer, Non-Storefront Retailer, Manufacturer, or Cultivator City License must demonstrate each of the following:

i. That at least one Manager has had managerial oversight or been directly engaged in the day-to-day operation of a Commercial Cannabis Business for a minimum of twelve (12) consecutive months, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Activity

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; and

ii. That at least one Owner has one of the following types of experience:

(A) a minimum of twelve (12) consecutive months as an Owner of a Commercial Cannabis Business, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Business ownership demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or

(B) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership of 30% or more in a lawful alcohol or pharmaceutical business licensed and regulated by a state or the federal government. The 36 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the applicant is applying; or

(C) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership interest of 30% or more in a lawful, properly licensed business with an average of ten (10) or more employees located within the City, thereby demonstrating a record of experience, familiarity and compliance with City rules and regulations.

f. Documentation demonstrating a minimum of $250,000 in Liquid Assets available under the Applicant's control.

g. A business plan that contains, at a minimum, the following: a defined scope of planning and capital improvements; estimated revenues and expenses; and a demonstrated ability to operate in a highly regulated industry.

h. An operating plan that contains, at a minimum, the following: provisions for adequate staffing, security, employee training, consumer education, and compliance with State and local laws and regulations.

i. Submission by each individual Applicant, Owner, Officer, and Manager of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If the Applicant or any Owner or Manager is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

j. A statement, under penalty of perjury, by each individual Applicant, Owner, Officer, and Manager, that all information provided thereby is true and correct and that he/she has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

k. If an individual Applicant, Owner, Officer, or Manager, or any entity such individual has been associated with in such capacity, has been denied authorization to conduct Commercial Cannabis Activity in any jurisdiction and/or such Person's authorization to conduct Commercial

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Cannabis Activity in any jurisdiction has been suspended or revoked at any time, a description of each denial, suspension and/or revocation and documentation demonstrating a material change in circumstances since such denial, suspension, or revocation.

l. For an Applicant with 10 or more employees, a statement that the Applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a Labor Peace Agreement.

m. The Finance Director or Police Chief may request such additional information, as he/she deems necessary including documents, from the Applicant to evaluate Applicant's qualifications. If the Applicant fails to provide such additional information in the time allotted, the Application shall be considered abandoned.

2. Site Identification. Phase One Applicants must also identify and submit a proposed site for its proposed Commercial Cannabis Business. Such submittal shall include the address and a general description of the proposed site location. In the event the site will be leased or acquired from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the site on a form approved by the City acknowledging that the Owner(s) of the site: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms already agreed to or to be negotiated with the Applicant that are or shall be consistent with the requirements of this Chapter.

3. Application Fee. The Phase One Application shall be accompanied by a nonrefundable application fee established by resolution of the City Council.

4. Initial Application Review by Finance Director. The Phase One Application shall be reviewed by the Finance Director for completeness and to determine if City's minimum City License qualifications have been satisfied. Phase One Applications may be rejected by the Finance Director for any of the following reasons in his/her discretion:

a. The application is received after the designated time and date;

b. The application is not in the required form and/or is incomplete. A Phase One Application shall not be considered complete until the Finance Director has: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase One application fee; and (iii) obtained all other information the Finance Director determines necessary to make a decision whether the Application meets the requirements of State Laws or this Code.

c. The Applicant has failed to pay the application fee required by this Chapter and specified by City Council resolution;

d. The Applicant has failed to demonstrate the financial capacity to operate its proposed Commercial Cannabis Business and to fulfill its obligations under this Chapter.

e. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

f. The Applicant, an Owner, Officer, or Manager is under twenty-one years of age.

g. The Applicant or any Owner is an entity that is incorporated outside of the United States.

h. The Applicant has failed to demonstrate the minimum experience required in accordance with section 5.19.050.A.1.e, above.

i. The Applicant, or any Owner, Officer, or Manager, has had his/her/its authorization to conduct Commercial Cannabis Activity in any jurisdiction suspended or revoked at any time, and such person has not demonstrated a material change in circumstances or corrective action since such suspension, and/or revocation.

5. Application Review by Police Chief. Phase One applications accepted by the Finance Director as minimally qualified shall be forwarded to the Police Chief for review and completion of any and all required background checks. Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion:

a. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;

b. The Applicant, any Owner, Manager, or Officer, or any other individual identified pursuant to 5.19.050.A.1.i has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

c. The Applicant or any Owner, Officer, or Manager has been convicted of a felony.

d. The Applicant or any Owner, Officer, or Manager has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

e. There are charges pending against the Applicant, or any Owner, Officer, or Manager for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

f. The Applicant, or any Owner, Officer, or Manager has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

g. The Applicant, or any Owner, Officer, or Manager has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Finance Director or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase One Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase One Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

7. Invitation to Submit Phase Two Application; Merit-Based System. Applicants who are approved by the Finance Director and Police Chief under the Phase One Application process, or by the City Manager upon appeal, shall be deemed qualified to submit a Phase Two Application. If the number of deemed "qualified" Phase One Applicants for Storefront Retail or Non-Storefront Retail Licenses exceeds the number of available City Licenses for those license types, a merit-based system established by the City shall be used to determine which of the qualified Applicants is invited to submit a Phase Two Application.

8. Phase One Approvals Valid for Six Months. Phase One approvals shall be valid for a maximum period of six (6) months in order to allow the Applicant to complete the Phase Two process. City regulations issued pursuant to this Chapter, may provide for extensions of this time periods in limited, defined circumstances.

B. Phase Two Application Process

1. Application Requirements. The Phase Two Application shall be submitted in writing, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase Two Application must contain the following:

a. Proposed Premises location and description.

b. Information and diagrams demonstrating that the proposed Premises location complies with the applicable locational requirements of this Chapter, the City's zoning code, and State Laws.

c. Identification of all Owners of the proposed Premises location and a copy of all agreements for site control.

d. Submission by each individual Owner of the proposed Premises location of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If an Owner of the Proposed Premises location is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

e. Proposed emergency action and fire prevention plan that includes, at a minimum, employee roles and responsibilities; emergency notification and egress procedures; fire hazard identification, maintenance, and procedures; and fire and life safety system identification, maintenance, and procedures.

f. Proposed security plan that includes, at a minimum, employee roles and responsibilities; entry/exit security and procedures; security guard coverage and duties; lighting, alarm, and camera placement and operation; limited-access area identification and procedures; cash handling processes and procedures, and demonstrates compliance with section 5.19.160.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

g. Information required or necessary to demonstrate the ability to comply with the applicable operational requirements set forth in sections 5.19.080 through 5.19.140, as applicable.

2. Application Fee. The Phase Two Application shall be accompanied by a non-refundable application fee established by resolution of the City Council.

3. Site Approval. As part of the application process, the Applicant shall be required to obtain all required land use approvals from the City and/or any other governmental agency with jurisdiction, including a certification from the Development Services Director certifying that the business is an allowed use in the zone where it is located, and the proposed site meets all of the requirements of this Chapter and Title 19 of this Code.

4. Site Control. As a condition precedent to the City's issuance of a City License pursuant to this Chapter, in the event the Premises will be leased from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the Premises on a form approved by the City acknowledging that the Owner(s) of the Premises: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms agreed to with the Applicant that are consistent with the requirements of this Chapter.

5. Application Review by Development Services Director, Fire Chief, and Police Chief. Phase Two Applications shall be reviewed and are subject to approval by the Development Services Director, the Fire Chief and the Police Chief. A Phase Two Application may be rejected by the Development Services Director, Fire Chief, and/or Police Chief for any of the following reasons:

a. The application is received after the designated time and date;

b. The application is not in the required form and/or is incomplete. A Phase Two Application shall not be considered complete until the Development Services Director, Fire Chief, and Police Chief have: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase Two application fee; and (iii) obtained all other information the Development Services Director, Fire Chief, and Police Chief determine is necessary to make a decision whether the application meets the requirements of State Laws or this Code.

c. The application fails to demonstrate that the proposed Premises location complies with this Chapter, the City's zoning code, and State Laws.

d. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;

e. An Owner of the proposed Premises location or any other individual identified pursuant to 5.19.050.B.1.d has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

f. An Owner of the proposed Premises location has been convicted of a felony.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

g. An Owner of the proposed Premises location has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

h. There are charges pending against an Owner of the proposed Premises location for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

i. An Owner of the proposed Premises location has been adversely sanctioned or penalized by City, or any other city, county, or state, for a material violation of state or local laws related to Commercial Cannabis Activity.

j. An Owner of the proposed Premises location has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Development Services Director, Fire Chief, or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase Two Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase Two Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

7. Conditional City Approval Valid for Six Months. Upon obtaining final approval of a Phase Two Application, an applicant shall be issued a conditional City approval. The conditional City approval shall be valid for a period of six (6) months to allow the Applicant to take all necessary actions to open its Commercial Cannabis Business. If the business is not fully permitted and operating by the end of this six (6) month period (the "Conditional Approval Period"), the conditional City approval will be void without the need for further action by the City. Notwithstanding the foregoing, if the only remaining action necessary for an Applicant holding a conditional City approval is the State's determination on such Applicant's pending State License application, the validity of the conditional City approval shall be extended until the earlier to occur of: (a) the State's determination on the issuance of the pending State License application, or (b) the date falling 6 months after the expiration of the Conditional Approval Period. City regulations issued pursuant to this Chapter may provide for other extensions of the Conditional Approval Period in limited, defined circumstances.

8. Pipeline Projects; Priority Regulations to be Issued. Prior to commencing the application process for City Licenses, City will develop and issue regulations to establish and clarify development rights priorities between, on the one hand, Commercial Cannabis Businesses, and, on the other hand, uses and businesses with separation requirements with respect to Commercial Cannabis Businesses. Regulations shall include, among other things, provisions applicable to Pipeline Projects and Existing Residential Uses.

C. Requirements Prior to Commencement of Operation. Prior to commencing Operations under a City License, in addition to any and all other applicable State and local requirements, a City Licensee must comply with the following requirements:

1. Fees and Charges. Pay in full all fees and charges required for the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Business shall be established by resolution of the City Council which may be amended from time to time.

2. Business License Tax. Pay to the City a business license tax as required by Code Chapter 5.02.

3. Permits and Approvals. Obtain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the Premises and the zoning district in which such business will be located.

4. Final Security Plan Approval. Obtain final security plan approval from the Police Chief for the Premises and Operation of the Commercial Cannabis Business.

5. Final Emergency Action and Fire Prevention Plan Approval. Obtain final safety approval from the Fire Chief for the Premises and Operation of the Commercial Cannabis Business.

6. Employee Work Permits. Obtain from the Police Chief work permits for each employee of the Commercial Cannabis Business whose name did not appear on an Application for a City License. Each employee shall submit their application for such work permit to the Police Chief, which application shall be under oath and shall include, among other things, the name, address, proposed job title, and past criminal record, if any, of the employee and shall be accompanied by the fingerprints of the employee. An application for an employee work permit shall be accompanied by the required fee(s) or the required renewal fee(s). The work permit, when issued, shall be valid for one year. The Police Chief may revoke, deny, or not renew any employee work permit upon finding that any of the factors outlined in sections 5.19.050.A.4 through A.5 and/or sections 5.19.260.E through .G apply.

7. State License. Submit proof that the necessary State License has been obtained and that Applicant remains in good standing thereunder.

8. Agreement. Submit a fully executed agreement as required by section 5.19.070.

9. Insurance. Submit proof of insurance at coverage limits and with conditions thereon determined necessary and appropriate by the City's insurance and claims administrator.

10. Operational Requirements. Demonstrate compliance with any and all pre-opening operational requirements that may apply as specified in section 5.19.080 through 5.19.140, below, and the ability to comply with any and all applicable and ongoing operational requirements.

D. General Rules.

1. If a Phase One or Phase Two application is denied or a corresponding conditional City License expires, no Applicant or Person named therein will be qualified to submit a new Phase One application until the passage of one year from the date of the denial or expiration.

2. Phase One and Phase Two applications shall include such supplemental materials as required by the rules and regulations adopted pursuant hereto. The City may, at the City Manager's

discretion, require additional documentation associated with any application as may be necessary to enforce the requirements of State Laws and this Code.

3. Applicants shall have no right to operate under a City License until a City License is actually issued thereto by the City. Each Applicant assumes the risk that, at any time prior to the issuance of a license, the City Council may terminate or delay the program created under this Chapter.

4. Issuance of a City License does not create a land use entitlement. Furthermore, no City License will be officially issued and no Applicant awarded a City License may begin operations until the City Licensee is fully in compliance with all state and local laws and regulations, including but not limited to State Laws.

5. The City reserves the right to reject or approve any and all applications and conditional licenses based on the standards set forth in this Chapter, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

E. Limits on Number of Applications Per Applicant/Owner. The number of applications allowed to be filed by each Applicant/Owner shall be determined by regulations promulgated by the City Council or the City Manager. Limits imposed, if any, may be applied on an overall basis, per license type, and/or per Council District.

5.19.060 Location Requirements for Cannabis Businesses

As set forth above in Code Section 5.19.030, a limited number of City Licenses for Commercial Cannabis Businesses shall be authorized and issued by the City. In locating such businesses, City Licensees shall be further subject to the following requirements.

A. In General. The licensed Premises of a Commercial Cannabis Business shall be a contiguous, fully enclosed area and shall be occupied only by one Licensee.

B. Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Storefront Retailers shall only be allowed in the following zones: (a) C-0 Administrative and Professional Office; (b) C-N Neighborhood Commercial; (c) C-C Central Commercial; (d) C-V Visitor Commercial; (e) C-T Thoroughfare Commercial; (f) other Commercial Zones in Specific Plans or Sectional Planning Area Plans that allow retail sales uses (including such zones that allow mixed commercial and residential uses); and (g) with a Conditional Use Permit, in the following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Specific Plans or Sectional Planning Area Plans that allow industrial uses.

2. Special Rules for Storefront Retailers in Industrial Zones. In addition to any and all other applicable Code requirements, Storefront Retailers proposed to be located in Industrial Zones (a) must be located in buildings with entrances that face, and are within 100 feet of a Public Street; and (b) must comply with parking and sign regulations applicable to retail sales businesses in commercial zones.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. Separation Requirements.

a. Storefront Retailers shall not be located within 1,000 feet of any Day Care Center or any public or private school providing instruction for kindergarten or any grades 1 through 12.

b. Storefront Retailers shall not be located within 600 feet of any Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park.

c. Storefront Retailers shall not be located within 150 feet of any Residential Zone.

4. Retail Sales Requirements Apply. Storefront Retailers are retail sales uses for purpose of the Code. Except as otherwise provided in this Chapter, all retail sales use requirements for the allowed zone in which the business is located shall apply.

C. Non-Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Non-Storefront Retailers shall only be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. Non-Storefront Retailers shall not be located within 150 feet of any Residential Zone.

3. Industrial Use Requirements Apply. Non-Storefront Retailers are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

D. Manufacturers; Distributors; Testing Laboratories; and Cultivators.

1. Allowed Zones. Subject to the separation requirements set forth herein, below, Manufacturers, Distributors, Testing Laboratories, and Cultivators shall be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. No Manufacturer, Distributor, Testing Laboratory or Cultivator shall be located within 150 feet of any zone allowing residential uses.

3. Industrial Use Requirements Apply. Manufacturers, Distributors, Testing Laboratories, and Cultivators are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

E. Standards for Measurement of Separation Distances. For purposes of this Section, separation distances between uses shall be measured as follows:

1. Measuring Points Established. Separation distance between uses shall be measured horizontally in a continuous series of straight lines that connect the two closest "measuring points" of each business or use as set forth herein, below.

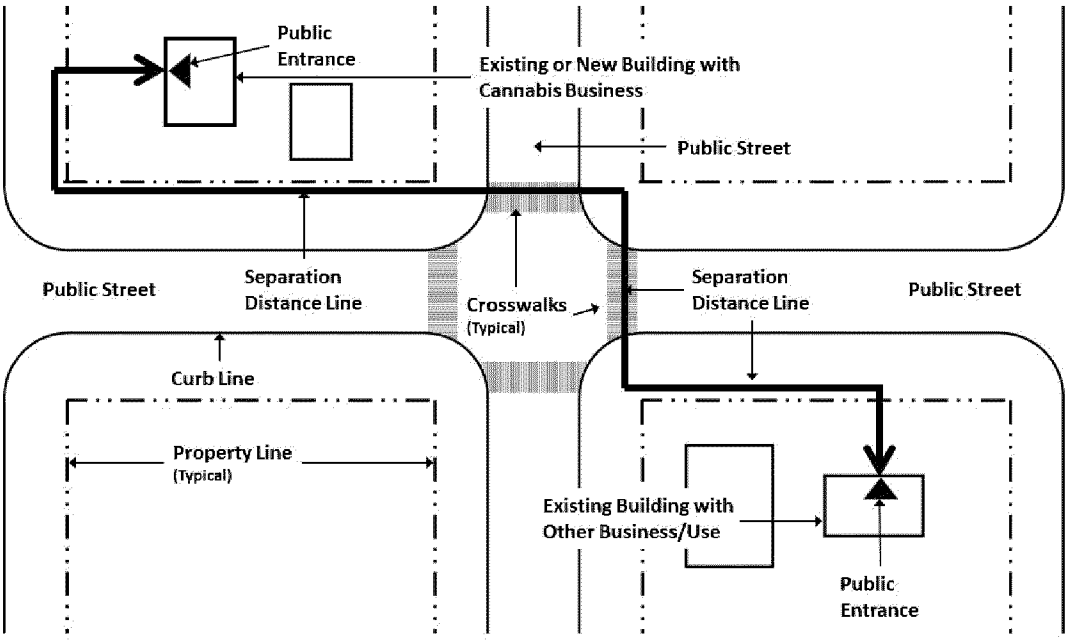
DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

a. For a Commercial Cannabis Business, the "measuring point" shall be the center point of the public entrance closest to a Public Street.

b. For a Day Care Center, Youth Center, Youth Oriented Business, or Treatment Facility, the "measuring point" shall be the center point of the public entrance closest to a Public Street.

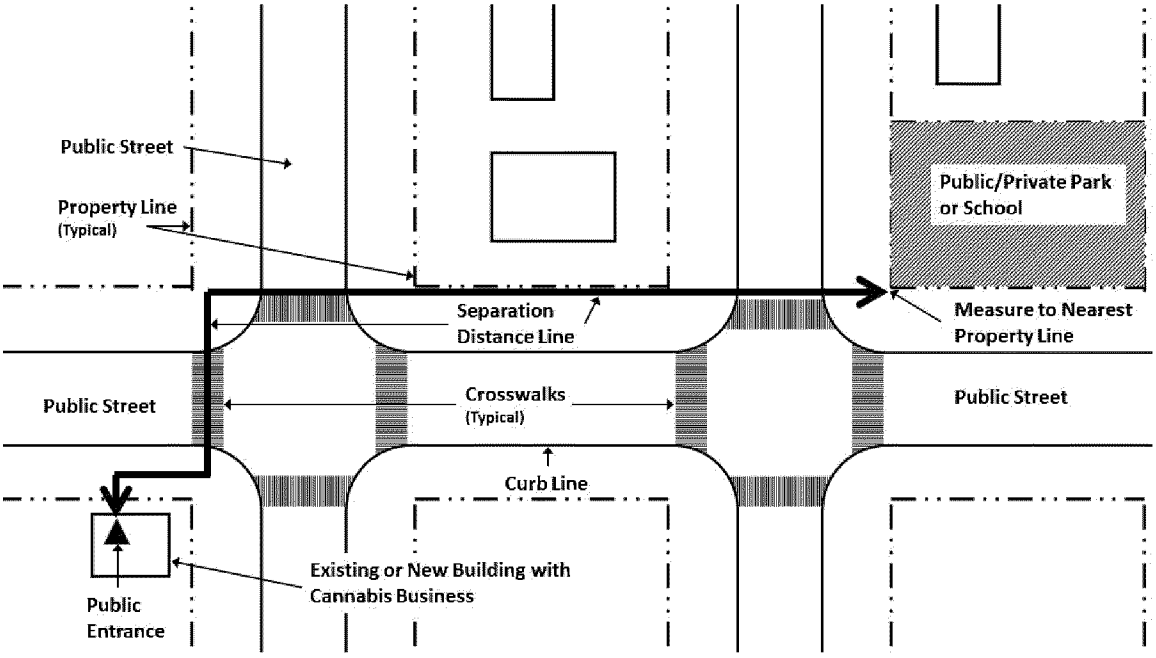
c. For a public or private school, Public Park, Private Park, or Residential Zone, the "measuring point" shall be the point located on the legal parcel boundary line abutting a Public Street or zone line, as applicable, that is closest to the "measuring point" of the Commercial Cannabis Business at issue.

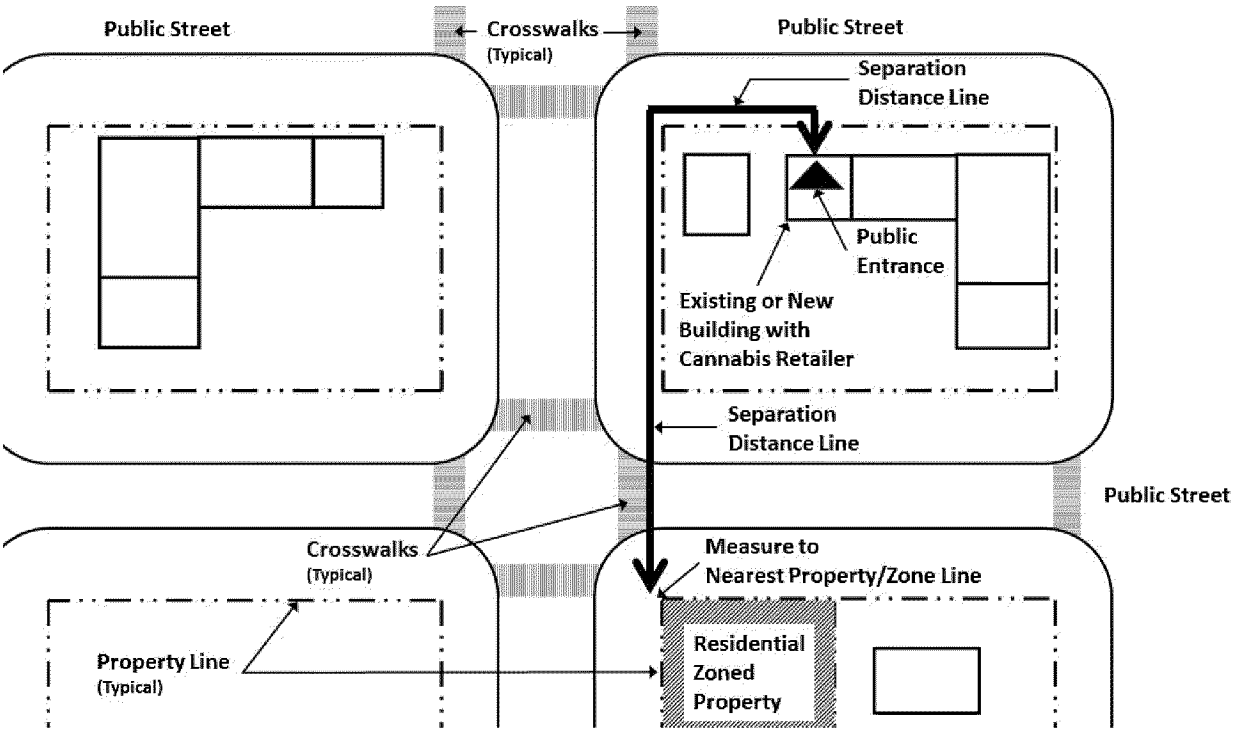
2. Measurement Paths; Examples. Measurements between public entrances shall start at the "measuring point" of Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the Public Street fronts, and in a direct line across intersections along the shortest pedestrian route toward the "measuring point" of the separated use until it reaches such "measuring point". See illustrations below.



Measurements between public entrances and legal parcel boundary lines shall start at "measuring point" of the Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the public street front(s), and in a direct line across intersections along the shortest pedestrian route towards the "measuring point" of the separated use until it reaches such "measuring point". See illustration below.

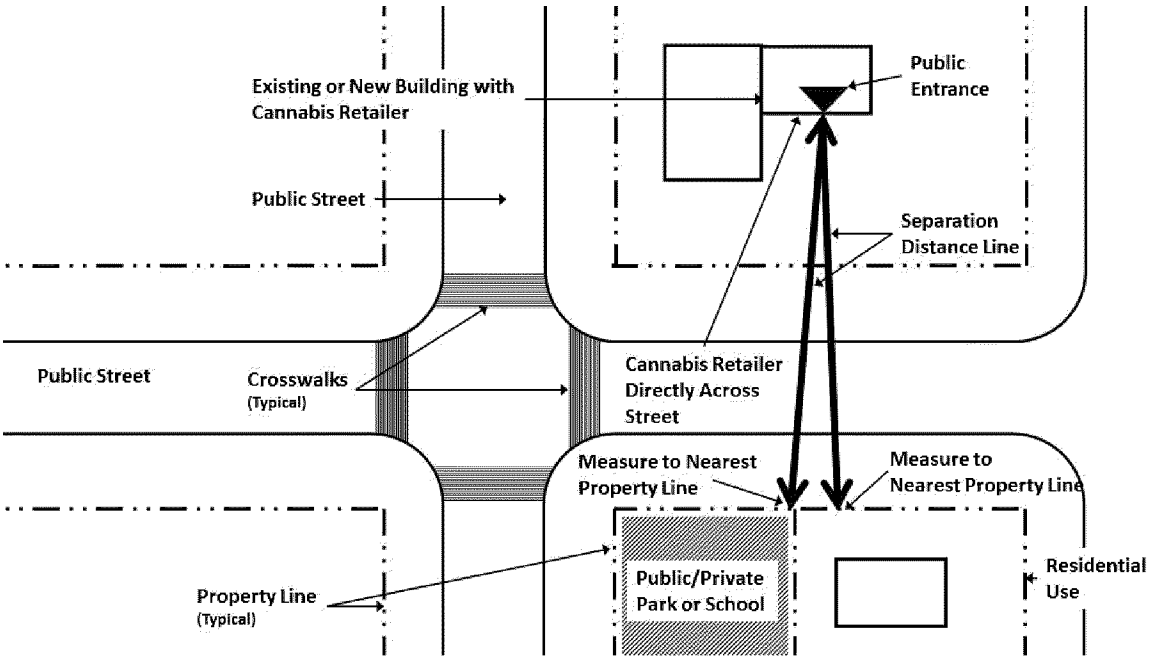
DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59



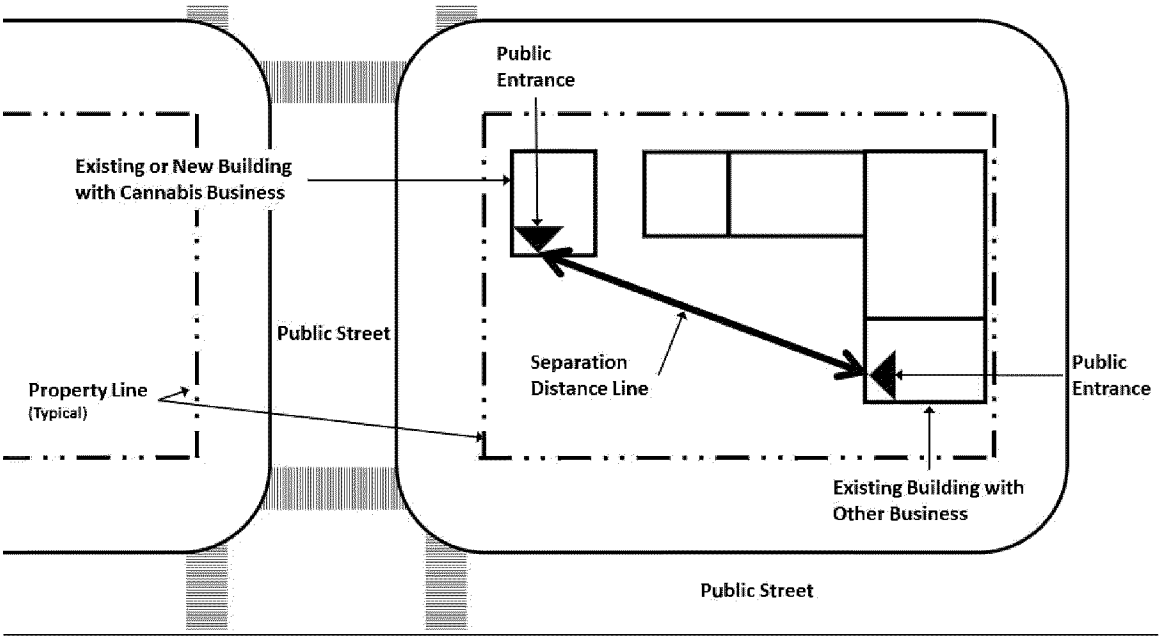


DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Where a public or private school, Public Park, Private Park, or residential use or Residential Zone are directly adjacent to or across a Public Street from a Storefront Retailer or Non-Storefront Retailer, the separation distance shall be measured between the respective "measuring points" without regard to a Public Street or intersections. See illustration below.



Where a Commercial Cannabis Business and a Day Care Center, Youth Center, Treatment Facility, Youth-Oriented Business or existing residential use are on the same parcel, or contiguous parcels, the separation distance shall be measured in a straight line connecting their "measuring points". See illustration below.



DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. Interpretations, Determinations Made by Development Services Director. Interpretations and determinations of compliance with the requirements of this section and the calculation of separation distances shall be made by the Development Services Director. Exhibits from a Licensed Land Surveyor may be required by the City to make a final decision on compliance with the separation requirements of this subsection.

5.19.070 Limitations on City's Liability; Licensee's Indemnity Obligations

To the maximum extent allowed by law, the City shall not incur or assume any direct or indirect liability to any Applicant, government agency, or third party as a result of having issued a City License pursuant to this Chapter, or otherwise approving the Operation of any Commercial Cannabis Business. As a condition to the issuance of any City License, the Applicant shall be required to enter into and fulfill all requirements of an agreement, in a form approved by the City Attorney, whereby all Owners agree to (a) indemnify, protect, defend (at Owner's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities or losses that arise out of, or that are in any way related to, the City's issuance of the City License, the City's decision to approve the Operation of the Commercial Cannabis Business or Activity, the process used by the City in making its decision, City Licensee's Operation of its Commercial Cannabis Business, or the alleged violation of any federal, state or local laws by the Commercial Cannabis Business or any of its officers, employees or agents; and (b) provide evidence of and maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Risk Manager.

5.19.080 Operating and Conduct Requirements for All Licensees and Individuals.

A. No person shall consume Cannabis and/or Cannabis Products on the Premises of a Commercial Cannabis Business.

B. No person shall cause or license the sale, dispensing, or consumption of alcoholic beverages or tobacco products on the Premises of a Commercial Cannabis Business.

C. No Cannabis or Cannabis Products shall be visible from the exterior of any Premises issued a City License, or on any of the vehicles owned or used as part of a Commercial Cannabis Business. No outdoor storage of Cannabis or Cannabis Products is permitted at any time.

D. Each Commercial Cannabis Business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the Commercial Cannabis Business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The Commercial Cannabis Business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Finance Director prior to being used by the City Licensee.

E. All Cannabis and Cannabis Products sold, tested, distributed or manufactured shall be cultivated, manufactured, and transported by Commercial Cannabis Businesses that maintain operations in full conformance with State Laws, State regulations, local laws, and local regulations.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. All Commercial Cannabis Businesses shall have a Manager on the premises at all times during hours of operation.

G. Each Commercial Cannabis Business shall provide the City Manager with the name, telephone number (both land line and mobile, if available) of an on-site Manager or Owner to whom emergency notice may be provided at any hour of the day.

H. Each Commercial Cannabis Business premises shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the Premises or in the areas adjacent to the Commercial Cannabis Business is prohibited.

I. Persons under the age of twenty-one (21) years shall not be allowed and are not allowed on the Premises of a Commercial Cannabis Business, and shall not be allowed and are not allowed to serve as a driver for a Non-Storefront Retailer.

J. It shall be unlawful and a violation of this Chapter for any Person to employ an individual at a Commercial Cannabis Business who is not at least twenty-one (21) years of age.

K. Odor Control. Odor control devices and techniques shall be incorporated in the Premises of all Commercial Cannabis Businesses to ensure that odors from Cannabis are not detectable off-site. Commercial Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Commercial Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Commercial Cannabis Business. As such, Commercial Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;

2. An air system that creates negative air pressure between the Commercial Cannabis Business's interior and exterior, so that the odors generated inside the Commercial Cannabis Business are not detectable on the outside of the Commercial Cannabis Business.

L. Safety and Security Plans. Each Commercial Cannabis Business must comply with all requirements of the security plan approved by the Police Chief and with all safety requirements of the Emergency Action and Fire Prevention Plan approved by the Fire Chief.

M. Display of City License and City Business License. The original copy of the City License and the City Business License shall be posted inside the Premises of the Commercial Cannabis Business in a location readily-visible to the public.

N. Employee Identification. Each and every employee of a City Licensee must, at all times when present on a Premises and while conducting a Delivery, wear an identification badge containing their photograph, age, the name of the City Licensee for whom they are employed, and, if the employee is a Manager, the employee's job title.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

O. Delaying or Lingering Prohibited. The City Licensee shall take reasonable steps to prevent individuals from delaying or lingering on the Premises without a lawful purpose.

P. Cannabis Use on Premises Prohibited. The City Licensee shall take reasonable steps to prevent the use and consumption of Cannabis or Cannabis Products on the Premises.

Q. Licenses and other Approvals. Throughout the Operation of a Commercial Cannabis Business, the City Licensee must maintain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the zoning district in which the Commercial Cannabis Business Premises is located.

R. Persons with Disabilities. Nothing in this Chapter exempts a Commercial Cannabis Business from complying with all applicable local, State and federal laws and regulations pertaining to persons with disabilities.

S. Discrimination. No Commercial Cannabis Business may discriminate or exclude patrons in violation of local, State and federal laws and regulations.

T. Fees and Charges.

1. No Person may conduct Commercial Cannabis Activity without timely paying in full all fees and charges required associated with the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Activity shall be established by resolution of the City Council which may be amended from time to time.

2. City Licensees authorized to Operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, State and local law. Each Commercial Cannabis Business shall cooperate with City with respect to any reasonable request to audit the Commercial Cannabis Business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

U. Training Requirements. City reserves the right to impose training requirements on Managers, employees, and others involved in the Operation of a Commercial Cannabis Business, with the specific requirements to be determined and implemented through regulations.

5.19.090 Operating Requirements for Storefront Retailers.

A. A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products.

B. A Storefront Retailer shall not conduct Deliveries.

C. A Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. A Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Cannabis in a single day to a single customer.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

2. A Storefront Retailer shall Sell no more than 8 grams of Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.

3. A Storefront Retailer shall Sell no more than 6 immature Cannabis plants in a single day to a single customer.

4. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.

5. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.

6. A Storefront Retailer shall not Sell Cannabis Products that is in the shape of a human being, either realistic or caricature, animal, insect, or fruit.

7. A Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.

8. A Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.

9. A Storefront Retailer shall notify Customers of the following verbally (or by written agreement) and by posting of a notice or notices in a minimum of 24-point font conspicuously within the Storefront Retailer Premises:

a. "The sale or diversion of cannabis or cannabis products without a license issued by the City of Chula Vista is a violation of State law and the Chula Vista Municipal Code."

b. "Secondary sale, barter, or distribution of cannabis or cannabis products purchased from [Insert Name of Licensee] is a crime and can lead to arrest."

c. "Patrons must immediately leave the premises and not consume cannabis or cannabis products until at home or in an equivalent private location. Staff shall monitor the location and vicinity to ensure compliance."

10. All restroom facilities on the Premises shall remain locked and under the control of management.

5.19.100 Operating Requirement for Non-Storefront Retailers.

A. From a public right-of-way, there should be no exterior evidence of Non-Storefront Retailer Premises except for any signage authorized by this Code.

B. The general public is not permitted on the Premises of a City Non-Storefront Retailer Licensee except for the agents, applicants, managers, and employees of the City Non-Storefront Retailer Licensee and any agents or employees of the City.

C. A Non-Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. Delivery Regulations.

a. All Deliveries of Cannabis or Cannabis Product shall be made by and individual person to an individual person. A Delivery of Cannabis or Cannabis Product shall not be made through the use of an unmanned vehicle.

b. A Delivery Employee conducting a Delivery shall only travel in an enclosed motor vehicle operated by a Delivery Employee.

c. Delivery of Cannabis or Cannabis Product shall only be made to a physical address (e.g., not to a P.O. Box or a street intersection).

d. Delivery of Cannabis or Cannabis Products shall not be made to any public or private school providing instruction for kindergarten or any grades 1 through 12, Day Care Center, Youth Center, Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park. Deliveries to any workplace shall remain subject to any employer's right to limit or prohibit such activity.

e. While conducting a Delivery, a Delivery Employee shall ensure the Cannabis or Cannabis Products are not visible to the public.

f. A vehicle used for Delivery shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of a Delivery vehicle.

g. A Delivery Employee shall, during Deliveries, carry a copy of the Non-Storefront Retailer's current City License, the Delivery Employee's government-issued identification, an identification badge issued by the Police Chief, and a Delivery invoice.

h. While making a Delivery, a Delivery Employee shall not carry Cannabis and/or Cannabis Goods worth in excess of $3,000 at any time. This value shall be determined using the current retail price of all Cannabis and/or Cannabis Products carried by the Delivery Employee.

2. Product Regulations and Restrictions.

a. A Non-Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Adult-Use Cannabis in a single day to a single customer.

b. A Non-Storefront Retailer shall Sell no more than 8 grams of Adult-Use Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.

c. A Non-Storefront Retailer shall Sell no more than 6 immature Cannabis plants in a single day to a single customer.

d. A Non-Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.

e. A Non-Storefront Retailers shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.

f. A Non-Storefront Retailer shall not Sell Cannabis Products that are in the shape of a human being, either realistic or caricature, animal, insect, or fruit.

g. A Non-Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.

h. A Non-Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.

5.19.110 Operating Requirements for Cultivators.

A. Outdoor Cultivation Prohibited. Commercial Cannabis Cultivation must occur indoors. Outdoor cultivation is prohibited.

B. From a public right-of-way, there should be no exterior evidence of Cultivation except for any signage authorized by this Code.

C. The general public is not permitted on the Premises of a City Cultivation Licensee except for the agents, applicants, managers, and employees of the City Cultivation Licensee and any agents or employees of the City of Chula Vista.

D. A Cultivator shall only be allowed to Cultivate the square feet of Canopy authorized by the Cultivator's State License and City Cultivation License issued for the Premises.

E. A Cultivator shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. State and local laws related to electricity, water usage, water quality, discharges, and similar matters; and

2. Applicable federal, state and local laws and regulations regarding use, storage, and disposal of pesticides and fertilizers.

F. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife.

G. Cultivation shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the Commercial Cannabis Business, neighboring properties, and the end users of the Cannabis being Cultivated, to protect the environment from harm to waterways, fish, and wildlife; to ensure the security of the Cannabis being cultivated; and to safeguard against the diversion of Cannabis.

H. Cultivators shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.

I. All applicants for a City Cultivation License shall submit the following in addition to the information generally otherwise required for a City License:

1. A Cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

the Cultivation activities and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting.

2. A description of a legal water source, irrigation plan, and projected water use.

3. Identification of the source of electrical power and plan for compliance with applicable building codes and related codes as adopted and amended by the City.

4. Plan for addressing odor and other public nuisances that may derive from the Cultivation Premises.

5.19.120 Operating Requirements for Manufacturers.

A. From a public right-of-way, there should be no exterior evidence of Manufacturing except for any signage authorized by this Chapter.

B. The general public is not permitted on the Premises of a City Manufacture Licensee except for the agents, applicants, Owners, Officers, Managers, employees, and volunteers of the City Manufacture Licensee and any agents or employees of the City of Chula Vista.

C. All Manufacturing shall comply with the standards set by State Laws and regulations.

D. Any compressed gases used in the manufacturing process shall not be stored on any property within the City of Chula Vista in containers that exceeds the amount that is approved by the Fire Chief and authorized by the City Manufacture License. The Premises of a City Manufacture Licensee shall be limited to a total number of tanks as authorized by the Fire Chief on the Premises at any time.

E. Manufacturers may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human-related toxicity approved by the Fire Chief. These solvents must be of at least ninety-nine percent purity and any extraction process must use them in a professional grade closed loop extraction system designed to recover the solvents and work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

F. If an extraction process uses a professional grade closed loop CO_2 gas extraction system every vessel must be certified by the manufacturer for its safe use. Closed loop systems for compressed gas extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

G. Certification from an engineer licensed by the State of California must be provided to the Fire Chief for a professional grade closed loop system used by any Manufacturer to certify that the system was commercially manufactured, is safe for its intended use, and was built to codes of recognized and generally accepted good engineering practices, including but not limited to:

1. The American Society of Mechanical Engineers (ASME);

2. American National Standards Institute (ANSI);

3. Underwriters Laboratories (UL);

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

4. The American Society for Testing and Materials (ASTM); or

5. Intertek ETL

The certification document must contain the signature and stamp of the professional engineer and serial number of the extraction unit being certified.

H. Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the Fire Chief and meet any required fire, safety, and building code requirements specified in the California Building and Fire Codes, as adopted by the City.

I. Manufacturers may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create keef, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

J. Manufacturers may use food grade glycerin, ethanol, and propylene glycol solvents to create or refine extracts. Ethanol should be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

K. Manufacturers creating Cannabis extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace.

L. Any person using solvents or gases in a closed looped system to create Cannabis extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

M. Parts per million for one gram of finished extract cannot exceed State standards for any residual solvent or gas when quality assurance tested.

N. Manufacturers shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of equipment. Said report shall be approved by the Fire Department prior to Operation.

O. A Manufacturer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times.

5.19.130 Operating Requirements for Distributors.

A. From a public right-of-way, there should be no exterior evidence of Distributing except for any signage authorized by this Chapter.

B. A Distributor shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. The general public is not permitted on the Premises of the City Distributor Licensee except for the agents, applicants, managers, employees, and volunteers of the City Distributor Licensee and any agents or employees of the City.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

2. A Distributor shall only procure, sell, or transport Cannabis or Cannabis Products that is packaged and sealed in tamper-evident packaging that uses a unique identifier, such as a batch and lot number or bar code, to identify and track the Cannabis or Cannabis Products.

3. A Distributor shall maintain a database and provide a list of the individuals and vehicles authorized to conduct transportation on behalf of the Distributor to the City.

4. Individuals authorized to conduct transportation on behalf of the Cannabis Distribution licensee shall have a valid California Driver's License.

5. Individuals transporting Cannabis or Cannabis Products on behalf of the Distributor shall maintain a physical copy of the transportation request (and/or invoice) and shall make it available upon request of agents or employees of the City requesting documentation.

6. During transportation, the individual conducting transportation on behalf of the Distributor shall maintain a copy of the City Distributor License and shall make it available upon request of agents or employees of the City requesting documentation.

7. A Distributor shall only transport Cannabis or Cannabis Products in a vehicle that is (i) insured at or above the legal requirement in California, (ii) capable of securing (locking) the Cannabis or Cannabis Products during transportation, and (iii) capable of being temperature controlled if perishable Cannabis Products are being transported.

5.19.140 Operating Requirements for Testing Laboratories.

A. The general public is not permitted on the Premises of a City Testing Laboratory Licensee except for the agents, applicants, managers, and employees of the City Testing Laboratory Licensee and any agents or employees of the City.

B. Testing Laboratory activity shall take place within an enclosed locked structure.

C. From a public right-of-way, there should be no exterior evidence of a Testing Laboratory except for any signage authorized by this Chapter.

D. A Testing Laboratory shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.

E. A Testing Laboratory shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times.

5.19.150 Recordkeeping.

A. Each City Licensee shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis at or before the time of the renewal of a City License issued pursuant to this Chapter, or at any time upon reasonable request of the City, each City Licensee shall submit to the City, in a form approved thereby, a statement, sworn as to accuracy, detailing their Commercial Cannabis Business' revenue and number of sales during the previous twelve-month period, or shorter period based upon the timing of the request, provided on a per-month basis.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

The statement shall also include gross revenues for each month, and all applicable taxes paid or due to be paid.

B. On an annual basis, each City Licensee shall submit to the City Manager a financial audit of the business' operations conducted by an independent certified public accountant. Each City Licensee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager.

C. Each City Licensee shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in each Commercial Cannabis Business, and separately of all the Owners, Officers, Managers, employees, agents and volunteers currently employed or otherwise engaged by the Commercial Cannabis Business. The register required by this paragraph shall be provided to the City Manager promptly upon request.

D. All records collected by a City Licensee pursuant to this Chapter shall be maintained for a minimum of seven years and shall be made available by the City Licensee to the agents or employees of the City of Chula Vista upon request, except that private medical records shall be made available only pursuant to a properly executed search warrant, subpoena, or court order.

E. All City Licensees shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all Cannabis and Cannabis Products for all stages of the growing, production, manufacturing, laboratory testing, and distribution processes until purchase as set forth under State Law.

F. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) regulations, each City Licensee shall allow City officials to have access to each Commercial Cannabis Business's books, records, accounts, together with any other data or documents relevant to its Commercial Cannabis Activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than 24 hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

5.19.160 Security Measures.

A. All City Licensees shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing Cannabis or Cannabis Products, and to deter and prevent the theft of Cannabis or Cannabis Products at the Premises of the Commercial Cannabis Business. Except as may otherwise be determined by the Police Chief, these security measures shall include, but shall not be limited to, all of the following:

1. Preventing individuals from remaining on the Premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the Operations of the Commercial Cannabis Business.

2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. All Cannabis and Cannabis Products, including Live Plants, shall be kept in a secure manner so as to prevent diversion, theft, and loss. All Cannabis and Cannabis Products that are being stored must be stored in a secured and locked room, safe, or vault. All Cannabis and Cannabis Products on display for Sale shall be displayed in a secure case.

4. Installing 24-hour security surveillance cameras of at least HD-quality to monitor areas on the Premises including, but not limited to: entrances and exits to and from the Premises; all interior spaces which are open and accessible to the public; all interior spaces where Cannabis, cash or currency is being stored for any period of time on a regular basis; all areas where the purchase, Sale, Distribution, or Transfer of Cannabis or Cannabis Products take place; and all interior spaces where diversion of Cannabis could reasonably occur. The City Licensee shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief. Video recordings shall be maintained for a minimum of 60 days, and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the Premises of the Commercial Cannabis Business.

5. Sensors shall be installed to detect entry and exit from all secure areas.

6. Panic buttons shall be installed in all Commercial Cannabis Businesses.

7. A professionally installed, maintained, and monitored alarm system, with the required City alarm permit under Chapter 9.06.150 of this Code.

8. Security personnel shall be on the Premises 24 hours a day or alternatively, as authorized by the Police Chief. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the Police chief, with such approval not to be unreasonably withheld.

9. Each Commercial Cannabis Business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

B. Each Commercial Cannabis Business shall identify a designated security representative/liaison to the City, who shall be reasonably available to meet with the Police Chief regarding any security related measures or and operational issues.

C. As part of the application and licensing process, each Commercial Cannabis Business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all Cannabis, Cannabis Products, and any currency.

D. Each Commercial Cannabis Business shall cooperate with the City whenever the City Manager makes a request, upon reasonable notice to the Commercial Cannabis Business, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

E. A Commercial Cannabis Business shall notify the Police chief within 24 hours after discovering any of the following:

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Police chief.

2. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any Owner, Officer, Manager, agent, or employee of the Commercial Cannabis Business.

3. The loss or unauthorized alteration of records related to Cannabis, registering qualifying patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.

4. Any other breach of security.

5.19.170 Community Relations.

A. Each Commercial Cannabis Business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the Commercial Cannabis Business can be provided in addition to applicable City and State enforcement divisions. Each Commercial Cannabis Business shall also provide the above information to all businesses located within one hundred (100) feet of the Premises of the Commercial Cannabis Business and to all residences located within three hundred (300) feet of the Premises of the Commercial Cannabis Business.

B. During the first year of Operation pursuant to this Chapter, the Owner, Manager, and community relations contact from each Commercial Cannabis Business shall attend a quarterly meeting with the City Manager and other interested parties as deemed appropriate by the City Manager, to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of Operation, the Owner, Manager, and community relations contact from each such Commercial Cannabis Business shall meet with the City Manager when and as requested by the City Manager.

5.19.180 Promulgation of Regulations, Standards, and Other Legal Duties.

A. In addition to any regulations adopted by the City Council, the City Manager is authorized to establish, consistent with the terms of this Chapter, any additional administrative rules, regulations and standards governing the issuance, denial or renewal of City Licenses; the City's oversight of the ongoing operation of Commercial Cannabis Businesses; and any other subject determined to be necessary to carry out the purposes of this Chapter.

B. Regulations shall be published on the City's website and maintained and available to the public in the Office of the City Clerk.

C. Regulations promulgated by the City Council or the City Manager shall become effective and enforceable upon date of publication on the City's website or with respect to existing City Licensees, upon the date specified in a written notice to the City Licensee.

5.19.190 Compliance With All Applicable Laws Required.

A. Nothing in this Chapter shall be construed as authorizing or condoning any actions that violate federal, state or local law with respect to the operation of a Commercial Cannabis Business.

B. It shall be the responsibility of the City Licensees, Owners, Officers, and Managers of a Commercial Cannabis Business to ensure that a Commercial Cannabis Business is, at all times,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

operating in a manner compliant with all applicable federal, state, and local laws and regulations, including any subsequently enacted state or local law or regulatory, licensing, or certification standards or requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a State License or a City License.

C. Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in State Laws. In the event of a conflict between the provisions of this Chapter and the provisions of State Laws or any other applicable state or local law, the more restrictive provision shall control. To the extent allowed by State Law, the City shall have the right, but not the obligation, to enforce all applicable State Laws.

5.19.200 Right of Access & Testing.

A. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have full access to the Premises and records of every Commercial Cannabis Business in order to:

1. Inspect the Premises for compliance with the Code and State Laws.

2. Test any equipment possessed by, in control of, or used by a City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.

3. Test any Cannabis or Cannabis Product possessed by, in control of, or used by a City Licensee, Owner, Officer or Manager, and any other employee, agent, or volunteer of a City Licensee.

4. Copy any materials, books, or records of any City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.

B. Failure by any City Licensee, Owner, Officer or Manager to cooperate and participate in any City inspection or investigation under this section shall itself be a violation of this Chapter.

C. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have rights of access under subsection (A) during any inspection, investigation, review, audit, or as otherwise allowed by law.

D. Prior notice of an inspection, investigation, review, or audit is not required.

E. Any inspection, investigation, review, or audit of a City Licensed Premises shall be conducted anytime the City Licensee is exercising privileges under the City License, or as otherwise agreed to by the City or its Manager.

F. This subsection shall not be construed to deprive a City Licensee, Owner, Officer, or Manager, or any other employee, agent, or volunteer of a City Licensee of any privileged guaranteed by the Constitutions of the United States and/or the State of California, or any other statutory privileges.

5.19.210 Restrictions on Transfer, Change, or Alteration of City License or City Licensee.

A. A City License is valid only as to the City Licensee. No City Licensee is allowed to sell, transfer, pledge, assign, grant an option, or otherwise dispose of ("Transfer") its City License to any Person except pursuant to the terms of this section. Except as permitted, any such Transfer

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

or attempted Transfer shall be deemed to constitute a voluntary surrender of the City License and such City License shall thereafter be null and void, except as set forth in this Chapter.

B. A City Licensee may Transfer less than 50% ownership or control of a City License with prior written approval of the City Manager after submission of all required application materials, payment of applicable fees as set by resolution of City Council, and a determination that the applicants meet the requirements of this Chapter such as to be entitled to the issuance of an original City License.

C. A City Licensee may change the form of business entity without applying to the City Manager for a new City License, if the ownership of the new business entity is the same as the original City Licensee business entity. Although a new City License is not required, the City Licensee shall notify the City in writing of the change within 30 days of the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.

D. A City Licensee may change the name of the business entity without applying to the City Manager for a new City License. Although a new City License is not required, the City Licensee shall notify the City in writing of the change at least 30 days prior to the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.

E. No City Licensee shall be allowed to Transfer all or any portion of its City License prior to twelve (12) months after the City Licensee has opened and continuously operated its Commercial Cannabis Business authorized thereunder.

F. No City Licensee shall operate, conduct, manage, engage in, or carry on the business of a Commercial Cannabis Business under any name other than the name of the Commercial Cannabis Business specified in the City License.

G. No City Licensee may avail themselves of the provisions of this Section if the City Manager has notified the City Licensee that the City License has been or may be suspended, revoked, or not renewed.

H. For purposes of this section, the Transfer of all or any portion of a licensed Commercial Cannabis Business shall constitute the Transfer of the underlying City License.

I. Failure to comply with this section constitutes grounds for suspension or revocation of a City License.

5.19.220 Restrictions on Transfer, Change, or Alteration of Location.

A. A City License issued under this Chapter is valid only as to the Premises approved in accordance with the City License, and is therefore nontransferable to other locations except as authorized in this section. No City Licensee is authorized to relocate to other areas or units within a building structure without first obtaining written approval from the City Manager, regardless of any possessory interest or right to possession to such additional space.

B. No City Licensee shall change the location of the Premises approved in accordance with the City License until any such change of location is approved by the City Manager or his/her

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

designee. The City Manager shall adopt a process (to include any necessary forms and procedures) for Premises relocation that includes, but is not limited to, the following:

1. The City Licensee shall submit a change of location application to the City at least 90 days prior to the proposed change.

2. The proposed location shall meet all of the requirements under this Code, including but not limited to this Chapter and Title 19.

3. The proposed location shall be reviewed and evaluated using review criteria as referenced in Section 5.19.060.

4. The relocation of a City Licensee's Premises shall be subject to the prior review and approval by the Development Services Director and any and all other licenses, approvals, or permits required under State Law and the Code.

C. All required state and City approvals, plan approvals, permits, and licenses must be obtained before causing, allowing, or licensing alterations to, and/or extensions or expansions of, the existing Premises building(s), structure(s), or portions thereof, approved as a location for a Commercial Cannabis Business. Said alterations, extensions, or expansions shall comply with all applicable laws, regulations and standards, including those concerning building safety and occupancy.

5.19.230 Expiration of City License.
A City License issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. City Licenses may be renewed as provided in Section 5.19.240.

5.19.240 Renewal of City License.
A. An application for renewal of a City License shall be filed with the City Manager's office at least 60 calendar days prior to the expiration date of the current City License.

B. Any City Licensee submitting an application less than 60 days before its expiration shall be required to pay a late renewal application fee, as established by resolution of the City Council. Any renewal application filed less than 30 business days before its expiration may be rejected by the City on that basis alone.

C. The renewal application shall be submitted on a form issued or approved by the City.

D. The applicant shall pay a fee in an amount to be set by the City Council to cover the costs incurred by the City to administer the program created under this Chapter.

E. An application for renewal of a City License may be denied if any of the following grounds exists:

1. Any of the grounds for suspension or revocation under section 5.19.260;

2. The City License has been suspended or revoked at the time of the application.

3. The Commercial Cannabis Business has not been in regular and continuous operation in the four months prior to the renewal application.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

4. The City Licensee fails to or is unable to renew its State License.

5. The City Licensee has made a false, misleading or fraudulent statement or omission of fact as to any information provided to City pursuant to this Chapter.

F. The City Manager is authorized to make all decisions concerning the issuance of a renewal license. In making the decision, the City Manager is authorized to impose additional conditions on a renewal license, if it is determined to be necessary to ensure compliance with State or local laws and regulations or to preserve the public health, safety or welfare.

G. The City Manager shall serve the City Licensee, either personally or by first class mail addressed to the address listed on the renewal application, with dated written notice of the City Manager's decision to approve or deny the renewal, and the right of the City Licensee to seek judicial review of the City Manager's decision.

H. If a City Licensee submits the required renewal application, but a written approval from the City has not been received prior to the expiration of the subject City License, such license shall be deemed conditionally renewed until service of the City Manager's written renewal decision.

I. If a renewal application is denied, the City License shall no longer be effective and all related Commercial Cannabis Activity must cease immediately. A Person denied a renewal may file a new application pursuant to this Chapter no sooner than one year from the date of the rejection.

5.19.250 Effect of State License Suspension, Revocation, or Termination.

A. Suspension of a State License shall immediately suspend the ability of a Commercial Cannabis Business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State License.

B. Should the State, or any of its departments or divisions, revoke or terminate a State License, such revocation or termination shall also revoke or terminate the City License and City Licensee's ability to operate a Commercial Cannabis Business within the City.

5.19.260 Suspension and Revocation of City License.

The following may constitute grounds for suspension or revocation of a City License:

A. Failure of a City Licensee to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the City License, or any provision of local or State Laws and/or regulations. Any act or omission of any Owner, Officer, Manager, or employee of a City Licensee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the City Licensee for purposes of determining whether the City License shall be suspended and/or revoked.

B. Any change in the ownership of a City Licensee that does not have City's prior written approval, if required under this Chapter.

C. Revocation of a City Licensee's State License.

D. City is denied access to the Premises or records of a City Licensee.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

E. The City Licensee, or any of its Owners, Officers, or Managers has been adversely sanctioned or fined for, charged with, or found guilty of or plead guilty or no contest to a charge of operating a Commercial Cannabis Business without the necessary licenses and approvals from the applicable state and/or local jurisdictions.

F. Conviction of a City Licensee, Owner, Officer, or Manager for any felony offense.

G. Any City Licensee, Owner, Officer or Manager is charged with any of the following:

1. A violent felony, as specified in Section 667.5(c) of the Penal Code.

2. A serious felony, as specified in Section 1192.7(c) of the Penal Code.

3. A felony involving fraud, deceit, or embezzlement.

4. A felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

5. A felony for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

6. A felony or misdemeanor involving the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance occurring after January 1, 2016.

If the City Manager determines that a ground for suspension and/or revocation of a City License exists, the City Manager shall give notice of suspension and/or revocation by dated written notice to the City Licensee. The City Manager shall cause the City Licensee to be served, either personally or by first class mail addressed to the address listed on the application, with the written notice suspending or revoking the City License. This notice shall state the reasons for the action, the effective date of the decision, and the right of the City Licensee to appeal the decision.

5.19.270 Advertising and Marketing of Cannabis.

A. It is illegal to Market or Advertise within the City Cannabis or Cannabis Products that are not permitted to be sold in the City under State Law or this Chapter.

B. Advertising or Marketing is prohibited in the City on any sign located within 1,000 feet of a Day Care Center; school providing instruction in kindergarten or any grades 1 through 12; Youth Center; Youth-Oriented Facility; or Private or Public Park.

C. Advertising or Marketing is prohibited in the City on any sign within 1,000 feet of a Treatment Center.

D. Advertising or Marketing in the City shall not contain a depiction of an individual under 21 years of age consuming Cannabis or Cannabis Products.

E. Advertising or Marketing in the City shall not be Attractive to Youth.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. Advertising or Marketing in the City in a manner that is false or untrue or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression, is prohibited.

G. Advertisements or Marketing in the City shall not contain any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.

5.19.280 Enforcement and Penalties.

A. It is unlawful to:

1. Operate, conduct, or direct Commercial Cannabis Activity in the City without a valid City License authorizing such Activity;

2. Own, set up, operate, or maintain a Commercial Cannabis Business in the City without a valid City License;

3. Participate as an employee, contractor, agent, volunteer, or in any other capacity in a Commercial Cannabis Business in the City without a valid City License;

3. Use any parcel or any portion of parcel of land as a Commercial Cannabis Business without a valid City License;

4. Lease, rent to, or otherwise allow a Commercial Cannabis Business to occupy any parcel or portion of parcel of land in the City without a valid City License.

B. It shall be unlawful for any person to violate any provision, or to fail to comply with the requirements, of this Chapter or any regulation adopted hereunder. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the State of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with this Chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of $10,000 for each and every offense.

D. Whenever in this Chapter any act or omission is made unlawful, it shall include causing, aiding, abetting, suffering, or concealing the fact of such act or omission.

E. The remedies specified in this Section are cumulative and in addition to any other remedies available under State or local law for a violation of this Code.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. Nothing in this Section shall be construed as requiring the City to allow, permit, license, authorize, or otherwise regulate Commercial Cannabis Activity, or as abridging the City's police power with respect to enforcement regarding Commercial Cannabis Activity.

5.19.290 Effectiveness Conditioned on Passage of Tax Measure.
The effectiveness of the ordinance enacting this Chapter is contingent upon voter approval and the continuous legal validity of a tax measure anticipated to be submitted to voters in November 2018. The tax measure would impose an excise tax, in an amount and form yet to be determined, on all Commercial Cannabis Businesses. In the event the proposed tax measure is not approved by the voters, or is suspended or invalidated for any reason, the provisions of this ordinance permitting Commercial Cannabis Businesses shall be void without any further action required by the City.

Section III. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional. Notwithstanding the foregoing, the City Council reserves the right to modify or repeal this Ordinance, in its sole discretion, if all or any portion of it is invalidated on its face or as applied.

Section IV. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section V. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section VI. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

DocuSigned by:
0EC0EDEA0A854BE...
Gary Halbert
City Manager

Approved as to form by

DocuSigned by:
CE40650850444BF...
Glen R. Googins
City Attorney

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 6th day of March 2018, by the following vote:

AYES:	Councilmembers:	Aguilar, Diaz, Padilla, and Salas
NAYS:	Councilmembers:	McCann
ABSENT:	Councilmembers:	None

DocuSigned by:
062BFD7C0386456...
Mary Salas, Mayor

ATTEST:

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3418 had its first reading at a regular meeting held on the 27th day of February 2018 and its second reading and adoption at a regular meeting of said City Council held on the 6th day of March 2018; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

3/16/2018
Dated

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

-EXHIBIT B -

The following regulations are intended to clarify and facilitate implementation of CVMC Chapter 5.19, Commercial Cannabis ("Chapter 5.19"). To the extent of any conflict between these regulations and Chapter 5.19, the terms of Chapter 5.19 shall govern. Capitalized terms used herein shall have the same definitions provided in Chapter 5.19 except as otherwise expressly provided.

§0501 Phase One Application Process (CVMC 5.19.050.A)

A. Application Periods

1. Initial Application Period. The City Manager will designate an initial phase one application period ("Initial Application Period") and post notice of the Initial Application Period dates on the City's website no less than fourteen (14) days prior to the start of the Initial Application Period. The Initial Application Period for retail and cultivation licenses will run for five (5) consecutive business days. The Initial Application Period for manufacturing, distribution, and testing laboratory licenses will run for ten (10) consecutive business days.
2. Subsequent Application Periods. After the Initial Application Period, and from time to time thereafter, the City Manager may issue additional notices of Application Periods for specified license types. The terms for each and any subsequent Application Period will be set forth in the corresponding Application Period notice.
3. Extensions. The City Manager, in his/her discretion, may extend the length of the Initial Application Period or a subsequent Application Period on terms he/she specifies. Notice and terms for any such extension will be posted on the City website.
4. Late Applications. Cannabis Business license applications will only be accepted by City during the Initial Application Period and/or subsequent Application Periods, if any. Late applications will be disqualified from consideration.

5. Notice List. Prospective Cannabis Business license applicants may sign up to receive email notification of any Application Period notices at: www.chulavistaca.gov/cannabis.

B. Application Submittals

1. Applicants may submit one or multiple applications subject to the limits set forth in Section C, below. To be considered, each applicant must submit their application on City's standardized forms. City's standardized application forms will be available on the City's website and updated from time to time.
2. Resubmittal Applications. Applicants who submitted an application during the Initial Application Period are eligible to pay a reduced Resubmittal Application Fee if all of the following statements are true of the application they resubmit during the May 26, 2020 - June 9, 2020 Application Period:
   a. The application is for the same license type;
   b. The application includes the same proposed business site;
   c. The application removes no more than two total Owners, Officers, and Managers; and
   d. The application maintains at least one of the same Owners.

C. Limits on License Applications

1. Retail. Applicants may apply for no more than one retail license per council district and no more than four retail licenses City-wide. A retail license application must indicate whether the applicant is requesting to conduct storefront or non-storefront retail in the specified council district. An applicant may not submit an application for both storefront and non-storefront retail in the same council district; however, an applicant may submit a retail license application for storefront retailer in one council district and either a storefront or a non-storefront retailer in a separate council district.
2. Cultivation. Applicants may apply for no more than two cultivation licenses City-wide. In the event that there are unfilled cultivation licenses after all initial cultivation license

applications have been processed, the City Manager may, in his/her discretion, permit applicants to apply for more than two cultivation licenses City-wide.

3. Manufacturing, Distribution, Testing Laboratory. There is no limit to the number of applications an applicant may submit for manufacturing, distribution, or testing laboratory licenses.
4. Ownership Interest. For the purposes of this subsection, an "ownership interest" in a cannabis business means an interest in the profits and/or assets of the cannabis business attained in exchange for a loan, a capital contribution, and/or an in-kind contribution of capital or services. Notwithstanding the foregoing, an ownership interest shall not include an interest in the profits of a cannabis business provided as compensation for ongoing management or other services to that business. The following application limitations apply to individuals or entities with an ownership interest in a cannabis business:
    a. An individual or entity with an ownership interest of 10% or more in a cannabis business may only be associated with one retail license application per council district, and may only be associated with two cultivation license applications City-wide.
    b. An individual or entity with an ownership interest of less than 10% in a cannabis business may only be associated with two retail license applications per council district, and may only be associated with two cultivation license applications City-wide.

D. Individuals Identified on Application

1. An applicant must identify on their application all Owners of the Commercial Cannabis Business (see CVMC 5.19.020 "Owner" definition), Managers (see CVMC 5.19.020 "Manager" definition), and Officers (see CVMC 5.19.020 "Officer" definition).

2. An applicant must identify on their application all persons who direct or control the Commercial Cannabis Business. Persons who direct or control the Commercial Cannabis Business include but are not limited to:
    a. An individual who is determining how a portion of the cannabis business is run, including non-plant-touching portions of the Commercial Cannabis Business such as branding or marketing; and
    b. An individual who is determining what cannabis goods the Commercial Cannabis Business will cultivate, manufacture, distribute, purchase or sell.
3. An applicant must identify on their application all persons with a financial interest in the Commercial Cannabis Business. Persons with a financial interest include but are not limited to:
    a. An individual who manages or directs the Commercial Cannabis Business in exchange for a portion of the profits;
    b. An individual who will receive a portion of the profits of the Commercial Cannabis Business, including but not limited to:
        a. An employee who has entered into a profit share plan with the Commercial Cannabis Business;
        b. A landlord who has entered into a lease agreement with the Commercial Cannabis Business for a share of the profits;
        c. A consultant who is providing services to the Commercial Cannabis Business for a share of the profits;
        d. A broker who is engaging in activities for the Commercial Cannabis Business for a share of the profits;
        e. A salesperson who earns a commission.
    c. A person with an investment in the Commercial Cannabis Business;

d. An individual who assumes responsibility for a debt of the Commercial Cannabis Business;

e. An individual who has provided a loan to a Commercial Cannabis Business; and

f. An employee who has entered into a profit share plan with the Commercial Cannabis Business.

4. Not withstanding the foregoing, the following persons are not required to be listed on an application as persons holding a financial interest:

   a. A bank or financial institution whose interest constitutes a loan;

   b. Persons whose only financial interest in the Commercial Cannabis Business is through an interest in a diversified mutual fund, blind trust, or similar instrument;

   c. Persons whose only financial interest is a security interest, lien, or encumbrance on property that will be used by the Commercial Cannabis Business; and

   d. Persons who hold a share of stock that is less than 5 percent of the total shares in a publicly traded company.

5. An application shall include the name, birthdate, and government-issued identification type and number for all individuals who direct and control the Commercial Cannabis Business and for all individuals who have a financial interest in a Commercial Cannabis Business but are not Owners, Managers, or Officers of the Commercial Cannabis Business as defined in CVMC 5.19.020. After submission of the application, the Police Chief will notify an applicant if such individuals are also required to submit fingerprints for Live Scan.

6. When an entity is an Owner of a Commercial Cannabis Business, all entities and individuals with a financial interest in the entity shall be disclosed to the City. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain.

E. Experience Requirement (CVMC 5.19.050.A.1.e)

1. In addition to proof of the components listed in CVMC 5.19.050.A.1.e, an applicant must include in their application a description of any and all experience in developing and implementing security plans for the cannabis, pharmaceutical, alcohol, or other business used to meet the qualification requirements of CVMC 5.19.050.A.1.e.
2. Persons seeking to qualify under CVMC 5.19.050.A.1.e.ii.(C) must demonstrate that a substantial portion of the lawful, properly licensed business was conducted in the City of Chula Vista or that the lawful, properly licensed business premises was located in the City of Chula Vista.

F. Liquid Assets Requirement (CVMC 5.19.050.A.1.f)

An applicant must demonstrate that it has $250,000 in Liquid Assets under its control for each license requested. Proof of Liquid Assets must be submitted in the form of current bank statements, brokerage statements and/or other documentation approved by the Finance Director in his/her sole discretion (collectively, the "Qualifying Documentation"). Updated Qualifying Documentation must be submitted as a condition of proceeding to the Phase Two application process.

G. Business Plan (CVMC 5.19.050.A.1.g)

Applicants must submit a business plan. In addition to the components listed in CVMC 5.19.050.A.1.g, each business plan must identify all principle owners, all business positions and responsibilities, each person with oversight of day to day activities, and any person charged with making major business decisions. A business plan template can be found at the following link: http://www.sdivsbdc.org/wp-content/uploads/2015/01/business-plan-template.pdf; such business plan template is intended to provide general guidance only.

H. Operating Plan (CVMC 5.19.050.A.1.h)

A storefront retailer applicant must include the following components in the operating plan submitted pursuant to CVMC 5.19.050.A.1.h :

1. How they will address issues associated with customer flow on their proposed premises to avoid excessive queuing of customers outside the building and to minimize customers parking off-site;
2. How the cannabis business will participate in community activities intended to support the business community, build neighborhood relationships, and benefit City of Chula Vista programs supporting the community;
3. How the cannabis business will further the goals of the City's 2017 Climate Action Plan through sustainable, energy and water efficient buildings and by achieving zero waste; and
4. What steps the cannabis business will take, if any, to be compatible with the neighborhood surrounding the proposed premises.

I. Fingerprint and Background Check (CVMC 5.19.050.A.1.i)

1. Applicants, Owners of the Commercial Cannabis Business, Managers, Officers, and any additionally required persons must submit:
   a. a completed Police Controlled License Application (form available at www.chulavistaca.gov/cannabis).
   b. a completed Application Conviction Supplement (form available at www.chulavistaca.gov/cannabis).
   c. a signed and dated Statement of Understanding (form available at www.chulavistaca.gov/cannabis).
   d. one 2" x 2" color photo taken within the last six months
   e. color copy of government-issued picture I.D. (driver's license, California I.D., etc)
2. Applicants, Owners of a Commercial Cannabis Business, Managers, and Officers must make and complete a Live Scan appointment within 14 days after the application is submitted. Live Scan may be completed at any authorized California Live Scan location using the Live Scan form approved by the City of Chula Vista for Cannabis Business Licensing and found at: www.chulavistaca.gov/cannabis. Each Live Scan form submitted

must include the application submission number obtained upon submission of the relevant cannabis business application to the City of Chula Vista.

3. Any additional individual required by the Police Chief to make and complete a Live Scan appointment must do so within 15 days of the date that the applicant is notified of such additionally required Live Scan submittal.

J. Incomplete Applications (CVMC 5.19.050.A.4.b)

The Finance Director will provide the applicant by email or first class mail addressed to the address listed on the application, with dated written notice of any missing required Phase One application components and/or any additional information requested in accordance with 5.19.050.A.1.m. The Applicant must submit the missing and/or additional information to the Finance Director within 15 days of the notice date.

K. Sworn Statements Must be Notarized

The statements required to be made under penalty of perjury by each Applicant, Owner, Officer and Manager pursuant to Code Section5.19.050.A.1.j must be notarized.

L. Approval of Phase One Application (CVMC 5.19.050.A.7-8)

If an applicant's Phase One application has been approved by the Finance Director and Police Chief, the Finance Director will provide the applicant with dated, written notice that the Phase One Application has been deemed qualified. The notice will further identify each of the applicant's supplemental license applications that has been deemed qualified and notify the applicant of any guarantees or authorizations required to proceed through the application process. The applicant will have 180 days from the date of such notice to complete the Phase Two application process.

M. Storefront Retailer Applicant Notice Posting Requirement; Objection; Pipeline Period

1. Posting at Proposed Premises. Within 10 days after issuing a dated, written notice that a storefront retailer Phase One application has been deemed qualified, the City shall post a Public Notice of Application at the proposed storefront retailer premises in a location determined by the City to be clearly visible to the public, such as the front door of an

existing building or at the entrance driveway to the proposed premises. If multiple applications for storefront retailers are deemed qualified for the same premises, the City shall include the names of each deemed qualified storefront retailer on the notice posted at the proposed premises. Posted notices shall describe how to file an objection with the City contesting the location's compliance with state and/or local laws or regulations.

2. Maintenance of Posted Notice at Proposed Premises. The site owner and storefront retailer license applicant shall be responsible for maintenance of the posted notice on the premises. Posted notices shall be maintained on the premises throughout the "Pipeline Period" defined in Section 5, below.
3. Electronic Posting of Qualified Applicants. City shall post on the City's website and maintain in the Office of the City Clerk a list of all Phase One storefront retailer applications that have been deemed qualified and the date of posting at the proposed premises. The City's website shall describe how to file an objection with the City contesting the location's compliance with state and/or local laws or regulations.
4. Objection to Proposed Premise Location. Objections contesting the location's compliance with state and/or local laws or regulations must be filed within thirty (30) calendar days of the date that the Public Notice of Application is posted at the proposed premises, and must clearly state the basis for the objection.
5. Pipeline Project/Period. Once the Development Services Director confirms that the required notice has been posted at the proposed premises, the proposed premises will be considered a pipeline project as of the date that the Phase One application was deemed qualified; the proposed premises will remain a pipeline project until a City license has been issued or the City cannabis license process has been ended by denial of the application ("Pipeline Period"). Pipeline projects will not be subject to the separation requirements in CVMC Section 5.19.060 as to any new businesses or uses that open, occupy, or obtain required land use approvals or permits during the Pipeline Period.

N. Merit-Based System – Storefront & Non-Storefront Retailers (CVMC 5.19.050.A.7)

1. Scoring. All qualified retailer applications will be scored in the following four categories with the maximum points possible in each category as follows:
   a. Experience/Qualifications of the business owner/team (150 points)
   b. Liquid Assets (50 points)
   c. Business Plan (150 points)
   d. Operating Plan (150 points)

   The highest initially scored applications will undergo an additional interview process to further assess each scored category. The maximum aggregate score shall be 500 points.
2. Selection Process. All qualified applications will be ranked from highest to lowest in aggregate score and placed on a list in that order. Selection of applications to proceed to the Phase Two Application Process will be made from this list according to the following process:
   a. The highest aggregate scored application will be given a Phase Two application slot for the Council District and retailer category identified in their application. Applications that have received a tie aggregate score will be placed in rank order using a random selection process (pick numbers out of a hat, etc.) Subsequent applications will then be selected in the rank order of their aggregate score and placed into their selected Council District and retailer category.
      i. In the event that a subsequent, ranked applicant's proposed premises is no longer available in the Council District for which the applicant has applied, such applicant will be offered the opportunity to select another site within the same Council District and obtain a signed, notarized statement from the owner(s) of the site per the requirements of the Phase One application process. Such applicant shall have no more than 30 calendar days from the date of notice of opportunity to complete

site selection in the same Council District and submit the owner(s) notification statement to the Development Services Director.

b. The above process will continue until an application results in a Council District reaching the maximum number of licenses allowed by CVMC 5.19. This could be 2 storefront retailers and 1 non-storefront retailer; 1 storefront retailer and 2 non-storefront retailers; or 3 non-storefront retailers.

c. Once a Council District has reached the maximum number of retailer license applications allowed, only the remaining qualified applications for the unfilled Council Districts will be used to select for the remaining licenses in those unfilled Council District.

d. This selection process will continue for the remaining unfilled Council Districts following steps a. through c. above until the maximum number of licenses for each Council District have be reached, or until qualified applications for unfilled Council Districts are exhausted.

e. Should qualified applications for unfilled Council Districts be exhausted, any remaining unselected, qualified applications for filled Council Districts will be placed in rank order based on their aggregate score. The highest ranked remaining qualified application for a filled Council District that matches the retailer category in an unfilled Council District and that does not have another retailer license application that was selected in that unfilled Council District will be offered the opportunity to select a site within the unfilled Council District and obtain a signed, notarized statement from the owner(s) of a site located within that Council District per the requirements of the Phase One application process. Such applicant shall have no more than 30 calendar days from the date of notice of opportunity to complete site selection in the unfilled Council District and submit the owner(s) notification statement to the Development Services Director. Should the applicant decline the opportunity or fail to complete site selection

and submit the owner notification statement within 30 days, the next ranked remaining qualified application for a filled Council District will be selected and offered the same opportunity. The selection process contained in this subsection will continue for the remaining unfilled Council Districts.

f. If a selected qualified retailer applicant withdraws their application or is unable to complete the Phase Two process, the next ranked remaining unselected qualified application will be offered the same process as step e. This will continue until all Council Districts have reached the maximum number of licenses or until qualified applications are exhausted.

3. Notice of Decision. Qualified applicants who have been selected to proceed to the Phase Two application process will be sent a Notice of Decision in accordance with CVMC section 5.19.050.A.6 at the time selection is made. Once the Phase One selection process for all Council Districts is complete, any remaining unselected qualified applicants will be sent a Notice of Decision in accordance with CVMC Section 5.19.050 A.6.

O. Merit-Based System – Indoor Cultivation (CVMC 5.19.050.A.7)

1. Scoring. If the City receives more than ten qualified indoor cultivator applications, all applications will be scored in the following four categories with the maximum points possible in each category as follows:

   a. Experience/Qualifications of the business owner/team (150 points)

   b. Liquid Assets (50 points)

   c. Business Plan (150 points)

   d. Operating Plan (150 points)

   The highest initially scored applications will undergo an additional interview process to further assess each scored category. The maximum aggregate score shall be 500 points.

2. Selection. Applicants with the top 10 aggregate scores will be selected to proceed to the Phase Two application process. If a selected applicant withdraws their application or is

unable to complete the Phase Two process, the applicant with the highest aggregate score from the remaining qualified applications will be offered the opportunity to proceed to the Phase Two process. This process will continue until the City has reached 10 indoor cultivation licenses or until qualified applications are exhausted.

3. Notice of Decision. Qualified applicants who have been selected to proceed to the Phase Two Application Process will be sent a Notice of Decision in accordance with CVMC section 5.19.050.A.6 at the time selection is made. Once the license selection process for all indoor cultivation licenses is complete, any remaining unselected qualified applicants will be sent a Notice of Decision in accordance with CVMC Section 5.19.050 A.6.

P. Notice of Decision Appeal Rules and Procedures

1. Appeal of Notice of Decision. Applicants sent a Notice of Decision rejecting their application in accordance with CVMC section 5.19.050.A.6 shall have the right to appeal such decision regarding their application to the City Manager. The request to appeal must use the form provided by City for that purpose and must be received by the City no later than 15 calendar days from the date noted on the Applicant's Notice of Decision. The request to appeal must be accompanied by the appeal fee, must identify each independent reason for rejection contained in the Notice of Decision that the appellant seeks to appeal, and must indicate whether the appellant requests an appeal by hearing or requests an appeal in writing only. The appellant shall bear the burden of proof, by a preponderance of the evidence, to demonstrate that the identified reason(s) for rejection contained in the Notice of Decision were erroneous.
2. Appeal by Hearing. When an appeal by in person or virtual hearing is requested, the hearing shall be conducted as follows:
   a. The City Manager shall notify the appellant of the date, time, and place for the hearing by email or first-class mail addressed to the address listed on the request to appeal, allowing a minimum of 20 calendar days from the date the notice is mailed before the

hearing is to be held. The hearing may be continued from time to time upon stipulation of the parties, or upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause therefor.

b. At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing.

c. The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded.

d. Failure of an appellant to appear at the hearing shall constitute a forfeiture of the appeal fee and a waiver of the right to appeal except where the City Manager determines there is good cause for such failure to appear. If the appellant is more than 15 minutes late to the hearing, the City Manager may determine that appellant has failed to appear, forfeited the appeal fee, and waived the right to appeal.

e. City reserves the right to convert an in person hearing to a virtual hearing where the City Manager determines there is good cause for such conversion.

3. Appeal in Writing Only. When an appeal in writing is requested, the appeal shall proceed in writing as follows:

a. Appellant shall submit in writing, using a form provided by City for that purpose, appellant's evidence and argument concerning the Notice of Decision. Such evidence and argument must be received by the City Clerk within 30 calendar days of the date

noted on the Applicant's Notice of Decision. Failure to submit timely evidence or argument shall constitute forfeiture of the appeal fee and waiver of the right to appeal.

b. City staff may submit in writing, using a form established by City for that purpose, City's evidence and argument concerning the Notice of Decision. Such evidence and argument must be provided to the City Clerk and mailed to the Applicant within 50 calendar days of the date noted on the Applicant's Notice of Decision.

c. Appellant may submit in writing, using a form provided by City for that purpose, Appellant's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 65 calendar days of the date noted on the Applicant's Notice of Decision.

d. City staff may submit in writing, using a form established by City for that purpose, City's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 80 calendar days after the date noted on the Applicant's Notice of Decision.

e. All testimony submitted in writing must be by sworn declaration in a form consistent with Code of Civil Procedure section 2015.5.

f. Requests for a continuance must be in writing and supported by good cause. In the event the City Manager grants a request for continuance, all future submittal dates shall be adjusted by the City Manager accordingly.

4. Scope of Review. The City Manager's scope of review for purposes of appeal shall be limited to whether a basis for rejection is erroneous by a preponderance of the evidence.

a. If the City Manager makes a determination that an Applicant's score is erroneous and no other basis for rejection of the application exists, the City Manager shall grant the appeal and direct City to reassess the Applicant's score unless the City Manager has determined that reassessment of the Applicant's score could not result in a score that ranks high enough to be given a Phase Two application slot. City must then cause a

reassessment of the Applicant's score to be conducted, and thereafter issue a new Notice of Decision to the applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

b. If the City Manager makes a determination that the Applicant's score is not erroneous, but one or more other bases for rejection are erroneous, the City Manager shall grant the appeal and direct City to reassess the application so long as the Applicant's score ranks high enough to be given a Phase Two application slot. City must then cause a reassessment of the application to be conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

c. If the Applicant's score is not at issue on appeal, and the City Manager makes a determination that one or more other bases for rejection are erroneous, the City Manager shall grant the appeal and direct City to reassess the application so long as the Applicant's score ranks high enough to be given a Phase Two application slot. City must then cause a reassessment of the application to be conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

5. Notice of Appeal Determination. The City Manager shall provide a dated written notice to the appellant of the City Manager's appeal determination and the right of the appellant to seek judicial review of the City Manager's appeal determination.

§0502 Phase Two Application Process (CVMC 5.19.050.B)

A. Application Period (CVMC 5.19.050.A.8)

1. Submission of Application Materials. An applicant who has successfully completed the Phase One application process must submit Phase Two application materials no later than 30 calendar days after the "deemed qualified" notice is issued. The Development Services

Director may extend an applicant's submittal deadline if an applicant requests an extension and such request is supported by good cause. Requests for extension must be submitted in writing to the Development Services Director no later than 30 calendar days after the "deemed qualified" notice is issued and must identify the good cause reasons upon which such request is based.

Completion of Phase Two Process. Applicants will have six months from the date of the phase one "deemed qualified" notice to complete the Phase Two application process. Extensions may be granted to accommodate processing of City permit applications for land use approvals necessary to legally establish the Cannabis Business at the site designated in the Phase Two application. Extensions will be granted provided the Development Services Director determines that the applicant is diligently pursuing the required land use approvals or that events have occurred beyond the control of the applicant that could not reasonably be foreseen that caused delay in the processing of required land use approvals.

B. Premises and Location Information (CVMC 5.19.050.B.1)

1. Location and Site Plan Information Required. Applicants must submit premises location and site plan(s) information that clearly identifies the location of the premises; front entrances for the business; and the surrounding public streets, sidewalks, adjacent businesses, land uses, and zones. Storefront retailers must identify surrounding public streets, sidewalks, adjacent businesses, land uses, and zones within 1,000 feet of the existing or proposed premises; all other cannabis businesses must identify surrounding public streets, sidewalks, adjacent businesses, land uses, and zones within 200 feet of the existing or proposed premises. Applicants shall also submit a scaled floor plan delineating use areas, such as lobby, storage, breakrooms, restrooms, entrances, exits, etc., with clear, descriptive labels.

2. Licensed Professionals. Plans must be drawn to scale by a registered professional licensed to prepare such plans, such as a Land Surveyor, Civil Engineer, Landscape Architect or Architect.
3. Location information and plans must provide sufficient detail to determine compliance with CVMC Section 5.19.060.
4. Land Use Approvals. If the location for the cannabis business requires any land use approvals such as design review, conditional use permits, etc., the Phase Two submittal materials shall also include complete permit applications for such approvals. The City's submittal requirements for land use approvals can be found at the Development Services Department or on their website at (www.chulavistaca.gov/departments/development-services).
5. Site Control Statement. Applicants must also submit a signed and notarized Site Control Statement for each Premises Owner and submit proof of each Premises Owner's ownership and/or interest in the Premises.

C. *Fingerprint and Background Information (CVMC 5.19.050.B.1.d)*

1. Owners of a Premises and any additional individuals identified by the Police Chief pursuant to CVMC 5.19.050.B.1.d must submit the following documents:
   a. a completed Police Controlled License Application (form available at www.chulavistaca.gov/cannabis).
   b. a completed Application Conviction Supplement (form available at www.chulavistaca.gov/cannabis).
   c. a signed and dated Statement of Understanding (form available at www.chulavistaca.gov/cannabis).
   d. a completed Live Scan Form (form available at www.chulavistaca.gov/cannabis).
   e. one 2" x 2" color photo taken within the last six months
   f. color copy of government-issued picture I.D. (driver's license, California I.D., etc)

6. Owners of the Premises and any additionally required individuals must make and complete a Live Scan appointment. Live Scan may be completed at any authorized California Live Scan location using the Live Scan form approved by the City of Chula Vista for Cannabis Business Licensing. Each Live Scan form submitted must include the application submission number obtained upon submission of the relevant cannabis business application to the City of Chula Vista.

D. Proposed Emergency Action and Fire Prevention (CVMC 5.19.050.B.1.e)

A preliminary emergency action and fire prevention plan must be submitted with the Phase Two application materials. The preliminary emergency action and fire prevention plan must incorporate the applicable provisions contained in Chapter 4, sections 404-407 of the California Fire Code, 2016 edition, including emergency preparedness requirements; fire safety, evacuation and lockdown plans; emergency evacuation drills; employee training and response procedures; and hazard communication requirements.

E. Proposed Security Plan (CVMC 5.19.050.B.1.f)

1. Preliminary Security Plan Information Required. A preliminary security plan must be submitted with the Phase Two application materials. The preliminary security plan shall include, but not be limited to: a description of each employee position that bears responsibility for implementing and overseeing security measures; a description of entry/exit door security measures; a description of the number of security personnel, security personnel working hours, and security personnel responsibilities; a description of the security lighting specifications and placement, including the location/angles of all security lights; a description of the security camera system specifications and placement, including the location/angles of all cameras; a description of any security-related signs that will be posted, including their location and purpose; a description of the electronic identification scanner and verification system specifications and set up to be utilized; and a description of the security system specification and set up.

2. Security Policies Required. The preliminary security plan shall also include the following security policies: physical altercation policy; security exclusion policy; weapon incident policy; employee firearm policy; physical restraint policy; police notification policy; contraband policy; and counterfeit money policy. Each policy must be approved by the Chula Vista Police Department prior to commencement of operation. The plan must demonstrate how employees will be trained on and required to comply with all security policies.
3. The preliminary security plan should be consistent with the security requirements contained in CVMC 5.19.160 and the §1600 regulations specified below.

F. Incomplete Applications (CVMC 5.19.050.B.5)

The Development Services Director will serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of any missing required Phase Two application components and/or any additional information requested in accordance with 5.19.050.B. The Applicant must submit the missing and/or additional information to the Development Services Director within 15 calendar days of the notice date.

G. Conditional Approval (CVMC 5.19.050.B.7)

An applicant may apply for building permits and request final security plan and emergency action and fire prevention plan approval prior to receiving a state license; however, applicants are not required to do so and may submit such permits and requests after receiving their state license. Extensions of the six month conditional approval period may be granted to accommodate processing of City permit applications necessary to legally establish the commercial cannabis business at the site designated in the phase two application or to accommodate processing of the applicant's State cannabis license. Extensions will be granted provided the Development Services Director determines that the applicant is diligently pursuing the required approvals and/or permits, or that events have occurred beyond the control of the applicant that could not reasonably be foreseen that caused delay in the processing of required permit or license approvals. Each

applicant is required to provide to the Development Services Director a complete copy of each cannabis license application submitted to the State within 14 calendar days of such State submittal.

§0600 Location Requirement (CVMC 5.19.060)

Cannabis Businesses will not be subject to the separation requirements in CVMC Section 5.19.060 as to any new businesses or uses that open, occupy, or obtain required land use approvals or permits after a City license has been issued.

§0800 Operating Requirements (CVMC 5.19.080)

A. Conformance with State and Local Laws and Regulations

All Cannabis Businesses shall maintain operations in full conformance with state and local laws and regulations.

B. Odor control

1. Odor Control Equipment. All Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Cannabis Business. As such, Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:
   a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;

b. An air system that creates negative air pressure between the Cannabis Business's interior and exterior, so that the odors generated inside the Cannabis Business are not detectable on the outside of the Cannabis Business.

2. Odor Control Plan. At time of building permit application, applicant to submit an odor control plan prepared by a California licensed mechanical engineer, an environmental engineer, or a similar professional discipline acceptable to the Building Official describing the approach and equipment to be utilized to contain, absorb and neutralize all odors emanating from the property and the field testing methodology to be utilized to determine the effectiveness of the odor containment/absorption/neutralization. The plan shall also include a description of the maintenance activities that will be performed, the frequency with which such activities will be performed, and the role/title(s) of the personnel responsible for maintenance activities. The activities should serve to maintain the odor mitigation system and optimize performance.
3. Construction Drawings. Submitted construction drawings must detail all construction and equipment required to be installed in accordance with the odor control plan. The odor control system construction drawings must be prepared by a California licensed mechanical engineer, an environmental engineer, or a similar professional discipline acceptable to the Building Official.
4. Written Statement of Inspection by Professional. Prior to final inspection, the mechanical engineer of record, environment engineer of record, or accepted design professional of record that prepared the required Odor Control Plan and the approved mechanical plans, shall submit a written statement to the Building Official that the mechanical engineer, environmental engineer or the accepted designed professional has inspected all installed odor control mechanical equipment and certifies that the installation of that equipment is in accordance with the accepted Odor Control Plan and the approved mechanical plans, and that the equipment is functioning properly.

5. Temporary Certificate of Occupancy; Odor Data Submittal. Temporary Certificate of Occupancy (TCO) will be granted for a period of 180 calendar days from the date of final inspection approval. During the 180-day TCO period it is anticipated that the facility will achieve full operation/cultivation/production. Upon reaching full operation/cultivation/production, and prior to the expiration of the 180-day temporary occupancy approval, the Cannabis Businesses shall submit test data from an approved independent third-party testing agency, environmental engineer, certified industrial hygienist, mechanical engineer or other accepted testing professional that clearly indicates that no odors are detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Cannabis Business and includes an affirmative statement to that effect.
6. Certificate of Occupancy. Upon Building Official approval of submitted test data and certification required under item E above, and subject to the facility being in compliance with all other applicable regulations and requirements, a Certificate of Occupancy (C of O) will be granted.
7. If at any time the Building Official has reason to believe that the Cannabis Business is in violation of this regulation, the Building Official may require the Commercial Cannabis Business to submit test data from an independent third-party testing agency demonstrating compliance.

C. Cannabis Waste Management

1. All Cannabis Businesses shall utilize a waste hauler franchised, contracted, or permitted by the City of Chula Vista to collect and process cannabis waste.
2. All cannabis waste shall be unrecognizable and unusable at time of disposal.

D. Inspections

1. Initial Inspection. City, through its officials, employees, and/or their designees, will inspect all Cannabis Businesses prior to issuance of a City license to verify that the facilities are constructed and can be operated in accordance with the application submitted and the requirements of local and state laws and regulations. The initial inspection shall occur once the Cannabis Business has obtained its State license and is ready for operation, but prior to issuance of a City license. No cannabis or cannabis products will be allowed on the premises until authorized by City.
2. Scheduled Inspections; Re-Inspections. City, through its officials, employees, and/or their designees, may perform scheduled inspections of Cannabis Businesses at a minimum on a quarterly basis during the first year following licensure, and on a biannual basis following the first year of operation. The City may additionally schedule re-inspections to verify correction of violations observed during scheduled inspections.
3. Unscheduled Inspections. In accordance with CVMC 5.19.200, City, through its officials, employees, and/or their designees, may perform additional inspections without prior notice.
4. Plans. A copy of the approved building plans; Fire and Life Safety Technical Report; Emergency Action/Fire Prevention Plan; Security Plan; and floor plan, which includes depictions of limited access areas and security camera placement, must be kept on the licensed premises at all times.
5. Inspection of Records. Upon request, the Cannabis Business licensee or business manager on duty shall retrieve and provide to City officials, employees, or their designees any business records deemed by City to be necessary for the proper administration of applicable laws and regulations, including but not limited to, security camera recordings, cannabis inventory manifests, and copies of invoices and receipts.

6. Manufacturing and Cultivation Inspections. When deemed necessary by City, City may require manufacturing and/or cultivation premises and/or equipment to undergo inspection by a third party approved by City. The licensee is responsible for any related inspection costs.
7. Recording of Inspection. City officials, employees, and/or their designees may record the inspection, investigation, or audit.

E. Fire Regulations

1. Cannabis Businesses are required to hire a Professional Engineering firm to submit a Technical Fire and Life Safety Report to the Fire Chief for review and approval. The Professional Engineering firm shall be qualified to complete such a report, by specializing in hazardous materials, compressed gases, cannabis operations, and any other applicable specializations. The Technical Report shall be completed, stamped, and signed by a licensed Professional Engineer (State of California).
2. The Professional Engineering firm shall submit the Fire and Life Safety Technical Report directly to the Fire Chief no later than the date that the Cannabis Business submits architectural and engineering permit plans to the Development Services Director.
3. Fire and Life Safety Technical Reports are required regardless of the need for architectural and engineering permit plans. In the event that no architectural and/or engineering permit plans are required for the Cannabis Business, the Fire and Life Safety Technical Report shall be submitted to the Fire Chief for review and approval prior to business occupancy.
4. The Professional Engineering firm that completed the Fire and Life Safety Technical Report shall, prior to business occupancy, perform an inspection of the Cannabis Business premises. This inspection shall be a compliance inspection to ensure the Cannabis Business is compliant with the provision of the Fire and Life Safety Technical Report. The Professional Engineering firm shall submit a letter and/or report to the Fire Chief assessing the Cannabis Business's compliance with the Fire and Life Safety Technical Report.

5. For any change in the Cannabis Business's operation, the Chula Vista Fire Department may require a supplement to the approved Fire and Life Safety Technical Report. If a supplement is required, a compliance inspection and letter, as indicated above, will also be required.
6. The Chula Vista Fire Department reserves the right to require, at any time, a third-party inspection from a Professional Engineering firm. The Cannabis Business shall pay the cost of such third-party inspection. The third-party inspection shall assess the Cannabis Business's compliance with the approved Fire and Life Safety Technical Report and provide a letter and/or report to the Fire Chief in regard to such assessment.
7. Cannabis facilities that utilize flammable materials (e.g., solids, liquids, gases) in the processing of cannabis materials shall improve the occupiable space with an automatic fire sprinkler system.

§1600 Security Measures (CVMC 5.19.160)

A. *Security Personnel*

1. All Security Personnel must register and maintain valid registration status with the state of California's Department of Consumer Affairs at a level equal to or higher than a proprietary private security officer. In the case of proprietary security officers employed by the Cannabis Business, proof of application and registration for all Security Personnel must be maintained by the cannabis business and consist of copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.
2. All Security Personnel shall at all times carry state-issued guard license certifications on their person and make such certifications immediately available to law enforcement personnel on demand.
3. While on duty, all Security Personnel must have a nameplate containing the Security

Personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate must be exhibited prominently on the clothing, at chest level, and must be visible and easily read at all times. The nameplate must be a minimum of two inches high and four inches wide, with the required information printed in capital letters, at least three fourths inches high and in a contrasting color. As an alternative to a nameplate, the Security Personnel's name and the word "SECURITY" may be embroidered on the Security Personnel's outermost garment with the required information meeting the above specifications and located at chest level.

B. Firearms on Premises

1. Notice of Firearms on Premises. A Cannabis Business shall complete and submit a Notice of Firearms on Premises (form available at www.chulavistaca.gov/cannabis) to the Special Investigation Supervisor of the Chula Vista Police Department prior to permitting any firearms on the premises that are not in the possession and control of Security Personnel.
2. Update Required. A Cannabis Business shall submit an Updated Notice of Firearms on Premises (form available at www.chulavistaca.gov/cannabis) to the Special Investigation Supervisor of the Chula Vista Police Department within twenty-four (24) hours of any change in the information contained in the previously submitted Notice of Firearms on Premises.
3. Notification of Loss/Theft of Firearm on Premises. In the event that any firearm on the premises is lost or stolen, the Chula Vista Police Department shall be notified by phone at (619) 691-5151 within twenty-four (24) hours of discovery of such loss or theft.

C. Lighting

Exterior lighting on the Cannabis Business and parking area lighting for the Cannabis Business must be balanced; cannot result in glare on adjoining properties; must complement the cannabis business security system to ensure that all areas of the Cannabis Business are visible; and

must provide increased lighting at all entrances to the Cannabis Business. The lighting required in this subsection must be turned on from dusk to dawn.

D. Employee Work Permit and Identification Badges

After obtaining conditional license approval from the City and prior to operation of the Cannabis Business, all employees who will be working at or from the premises of the Cannabis Business must apply for and obtain an Employee Work Permit and Identification Badge from the Chula Vista Police Department. All employees of a Cannabis Business shall display the laminated or plastic-coated identification badge issued by the City at all times while acting in the scope of their employment. The identification badge shall, at a minimum, include the Cannabis Business's "doing business as" name and state license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height. Notwithstanding the forgoing, Delivery Employees lawfully conducting a Delivery for a licensed Cannabis Business located outside the City of Chula Vista shall not be required to obtain or carry an identification badge issued by the Police Chief until six months after commencement of the Initial Application Period.

E. *Electronic Identification Verification System*

All Storefront and Non-Storefront Retail Cannabis Businesses will use an electronic identification scanner and verification system that has the capability of storing identifying information. All patrons entering the establishment shall be required to scan their valid government-issued identification card containing the patron's photograph, date of birth, and physical description; only official government passports with current photographs shall be accepted as a valid form of foreign identification.

F. Surveillance Camera System (CVMC 5.19.060.A.4.)

1. All security surveillance cameras must have a minimum camera resolution of 1280 x 720 pixels. Cameras shall record continuously 24 hours per day and at a minimum of 15 frames

per second. The storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft; at least one security camera shall record the access points to the secured storage device area.

2. The surveillance camera system shall at all times be able to effectively and clearly record images of the areas under surveillance and allow for the clear and certain identification of any person and activities in all areas required to be filmed.
3. Recordings shall clearly and accurately maintain a time and date display; time is to be measured in accordance with the United States National Institute Standards and Technology Standards.
4. Each camera shall be permanently mounted and in a fixed location that allows the camera to record the area being filmed. Each camera recording entrances and/or exits shall be placed in a location that allows the camera to clearly record activity occurring within 20-feet of all points of entry and exit on the Premises from both indoor and outdoor vantage points.
5. The surveillance camera system shall be equipped with a failure notification system that provides notification to the Licensee of any interruption or failure of the video surveillance system or storage device.
6. Surveillance recordings and/or storage devices are subject to inspection by the Chula Vista Police Department, and shall be copied and sent to or otherwise provided to the Chula Vista Police Department in an expeditious manner for viewing upon request.
7. A trained employee with the knowledge and authority to operate the surveillance system should be available at all times to provide timely assistance to law enforcement personnel in the event of a time-sensitive investigation requiring surveillance recordings.

§2000 Inventory Audit

The City, through its officials, employees, and/or designees, may perform at its discretion an audit of the physical inventory and inventory as reported in the track-and-trace system of any licensee. Audits of the licensee shall be conducted during standard business hours at another reasonable time, or as otherwise mutually agreed to by the City and the licensee. For the purposes of this section standard business hours are 8:00am – 5:00pm (Pacific Standard Time). Prior notice of audit is not required.

§3000 Tax Payment Process

All excise taxes are to be paid to the City on a monthly basis within 30 calendar days of the end of the prior month (i.e., June taxes are due to the City by July 30th). While cash is currently the only known payment method, any changes in law at the federal or state level that allow for electronic payment methods will be accepted and supported administratively by the City until the City's rules and regulations are updated to require electronic payment to the City. All payment amounts should tie to the monthly sales records submitted to the State of California through the track and trace program. All tax payments will be audited for compliance with the Chula Vista Municipal Code.

-EXHIBIT C -

CITY OF CHULA VISTA CANNABIS LICENSE APPLICATION
AFFIRMATION AND CONSENT

I, WILLIE FRANK SENN (full name), hereby declare that the information contained within and submitted with the cannabis license application is complete, true, and correct, and that I have not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City of Chula Vista or in any other jurisdiction. I understand that a misrepresentation of fact is cause for rejection of this application, denial of a license, or revocation of a license issued.

Date: 1/15/19 Signature: Willie Senn

Printed Name: Willie Senn

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On 15 January 2019, before me, Nicole Novak, Notary Public,

personally appeared Willie Senn

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his/her/their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NICOLE NOVAK
COMM. #2261738
Notary Public - California
San Diego County
My Comm. Expires Oct. 7, 2022

SIGNATURE Nicole Novak

(Seal)

-EXHIBIT D -

The Law Offices of Nathan Shaman

[redacted]

January 18, 2019

Via Electronic Transmission

Finance Department
276 Fourth Avenue
Chula Vista, CA 91910

Re: Affirmation and Consent of Willie Frank Senn for Application for Cannabis License at 4150 Bonita Road

To Whom It May Concern,

I represent UL Holdings Inc., a California corporation ("UL"). As you will see from the application materials included with this letter, UL is the owner of 51% of the equity interests in UL Chula Two LLC, which is the applicant for a retail storefront cannabis license at 4150 Bonita Road in the City of Chula Vista.

Willie Frank Senn is the sole shareholder of UL. As such, under section 5.19.050(A)(1)(j) of the Chula Vista Municipal Code, Mr. Senn is required to submit the form prescribed therein, entitled the "City of Chula Vista Cannabis License Application Affirmation and Consent" (the "Affirmation"), which is attached to this cover letter, to affirm that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." (*Ibid.*)

With respect to the Affirmation, Mr. Senn desires to make the City aware of a stipulated judgment (the "Stipulated Judgment") entered against Mr. Senn on December 14, 2012 in the San Diego Superior Court case of *City of San Diego v. The Holistic Café, Inc. et al.*, case no. 37-2012-00087648-CU-MC-CTL. The Stipulated Judgment was entered in relation to allegations from the City of San Diego that Mr. Senn, along with other defendants, operated a medical marijuana dispensary in the City of San Diego in violation of local law. However, the Stipulated Judgment specifically provides that nothing contained therein shall constitute an admission or adjudication of the underlying complaint. Additionally, Mr. Senn denied the allegations at the time and continues to deny them today. As such, Mr. Senn has signed the Affirmation with the honest belief that he has not "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." (See CVMC, § 5.19.050(A)(1)(j).) The purpose of this letter is to be transparent regarding the events of Mr. Senn's past and to assure the City of the legitimacy of the attached Affirmation.

As the application materials show, Mr. Senn has operated lawful cannabis businesses in San Diego for many years and is a respected member of the cannabis business community. Mr. Senn hopes to bring his experience to Chula Vista and become a model member of the Chula Vista cannabis business community as well.

We appreciate your time and consideration. Please do not hesitate to contact Mr. Senn or me if you have any questions or would like any additional information.

Very truly yours,

Nathan A. Shaman

Encl.
CC: Client

-EXHIBIT E -

CITY OF CHULA VISTA

Office of the City Manager

June 10, 2019

Dear Applicant

The City of Chula Vista and HdL have completed review of phase 1A, 1B and the provisional background review for the Cannabis Applications. You have successfully completed this initial portion of the application process and will proceed to phase 1C, the interview and secondary ranking.

Your interview for submitter ID's 57064 and 57074 will be scheduled for 8:30 – 9:45 on July 17, 2019 at City Hall, 276 4th avenue, Chula Vista, 91910 in building A. Check in will be in Administration. The interview panel may consist of two staff from HDL with one staff member from the City of Chula Vista. We encourage you to bring members of your team in which you feel bring added value to your interview and may include the Applicant/Owner, Day-to-day on-site manager, security consultant, person familiar with your financial structure and fiscal operations and/or person with technical knowledge. You will be limited to a total of five individuals present during your interview. While preparing for the interview please keep in mind the following:

-The interview is scheduled to last 1.5 hours. Please go to the inside lobby in Administration and someone will come and get you.
- There will not be time for you to conduct a presentation, however if you choose to bring with you 3 copies of the material the panelists will agree to examine everything after all the interviews have been conducted.
- Please be prepared to answer questions on topics including but not limited to:

Relevant experience/Qualifications of your cannabis team.
Liquid assets – financial resources
Business Plan
Operating Plan

Furthermore, as part of the application process the fee for phase 1C "Interview and Second Ranking" $868 per submitter ID and Secondary Background Review fee of $347 per each individual secondary background is due. Please submit these fees prior to your scheduled interview by clicking here. We look forward to the upcoming discussion. Should you have any additional questions or concerns please feel free to contact me.

Please be aware that although your application is being forwarded for further assessment within Phase One of City's application process, your application has **not** been approved at this time. City reserves the right to reject or approve any and all applications based on the standards set forward in all applicable laws and regulations, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

Sincerely,

Kelley K. Bacon
Deputy City Manager
[redacted]

-EXHIBIT F -

CITY OF
CHULA VISTA

Sent by US Mail & Email:
May 6, 2020

Will Senn
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
UL Chula Two LLC dba Urbn Leaf (Submitter ID: 57074) – Storefront Retailer

Dear Will Senn:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). *The City of San Diego sanctioned William Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity.*
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). *William Senn was involved in unlawful Commercial Cannabis activity in the City of San Diego from approximately 2010 to 2012.*

The effective date of this decision is May 6, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 21, 2020**. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy

Roxana Kennedy, Chief of Police

-EXHIBIT G -

Megan McClurg

From: City of Chula Vista | 276 Fourth Avenue Chula Vista, CA 91910 <webmaster@chulavistaca.gov>
Sent: Thursday, May 21, 2020 3:25 PM
To: Megan McClurg; Simon Silva; Melanie Culuko
Subject: *NEW SUBMISSION* Request to Appeal Notice of Decision

Warning: External Email

Request to Appeal Notice of Decision

Submission #: 334517
IP Address: [redacted]
Submission Date: 05/21/2020 3:24
Survey Time: 24 minutes, 15 seconds

You have a new online form submission.
Note: all answers displaying "*****" are marked as sensitive and must be viewed after your login.

1. Applicant Name

Willie Senn

2. What type of appeal are you filing?

Consolidated Request to Appeal Notices of Decision (please note: a consolidated request to appeal is permitted if you received more than one Notice of Decision and the grounds for rejection contained in such Notices of Decision are identical)

3. Submitter ID Number(s):

57064, 57069, 57074, 58388

4. Please upload a copy of each Notice of Decision you are appealing. If you are appealing more than one Notice of Decision, please combine copies of all Notice of Decision letters into one PDF document that you upload.

All Notices of Decision.pdf

5. Basis for Appeal: I hereby appeal the Notice(s) of Decision issued to me that I have identified above. My appeal request is based on the following information (please note: you must identify all bases for appeal on a document attached to this request form):

Grounds for Appeal.pdf

6. Hearing Type Request

Virtual. I hereby waive my right to an in person appeal hearing. I instead request a virtual appeal hearing (via webcast). I understand that I will be notified 15 days in advance of the time, date, and process for the hearing. I understand that if I fail to appear at the hearing, I forfeit my appeal fee and waive my right to a hearing. I understand that if I appear more than 10 minutes late, the hearing officer may determine that I have failed to appear, forfeited my appeal fee, and waived my right to a hearing.

7. Cannabis License Application Appeal Fees

Consolidated Request to Appeal Notices of Decision ($3,276.00) - Quantity: 1

8. If you are submitting a Consolidated Request to Appeal Notices of Decision, please enter the number of each additional Notice of Decision you are appealing below.

$500.00 - Quantity: 3

9. Total Cannabis License Application Appeal Payment

ITEM	PRICE	QUANTITY	SUBTOTAL
Consolidated Request to Appeal Notices of Decision	$3,276.00	1	$3,276.00
Single Item Payment	$500.00	3	$1,500.00

Sub Total: $4,776.00
Tax: $0.00
Grand Total: $4,776.00

Read-Only Content

10. Appellant Address

[redacted]

11. Appellant Email

[redacted]

12. Appellant Phone Number

[redacted]

13. Signature

I certify that the information submitted in this Request to Appeal Notice of Decision is true and correct.
I have full signatory authority to act on behalf of the Appellant identified above.

14. Type Full Name

Willie Frank Senn

Read-Only Content

15. Optional Designation of Representative

Nathan Aaron Shaman, [redacted]

Thank you,
City of Chula Vista

This is an automated message generated by the Vision Content Management System™. Please do not reply directly to this email.

Nathan Shaman (SBN 272928)
General Counsel
Urbn Leaf
[redacted]

Attorney for Applicants 2446 Main Street LLC,
UL Chula One LLC, and UL Chula Two LLC

CITY OF CHULA VISTA

OFFICE OF THE CITY MANAGER

2446 MAIN STREET LLC, a California limited liability company, UL CHULA ONE LLC, a California limited liability company, and UL CHULA TWO LLC, a California limited liability company, Appellants, vs. ROXANA KENNEDY, in her capacity of Chief of Police of the City of Chula Vista, Respondent.	Submitter IDs: 57064, 57069, 57074, 58388 **APPELLANTS' CONSOLIDATED REQUEST TO APPEAL NOTICES OF DECISION**

PLEASE TAKE NOTICE that Appellants 2446 Main Street LLC, UL Chula One LLC, and UL Chula Two LLC (Appellants) hereby file this Consolidated Request to Appeal (Appeal) Notices of Decision (NODs) issued by Respondent Roxana Kennedy (Chief Kennedy), dated May 6, 2020, rejecting Appellants' applications for commercial cannabis business licenses in the City of Chula Vista. This is appeal is filed in accordance with Chula Vista Municipal Code section 5.19.050(A)(5) and Chula Vista Cannabis Regulations section 0501(P).

Pursuant to Chula Vista Cannabis Regulations section 0501(P)(2), Appellants hereby request a virtual hearing on this Appeal.

This Appeal is made on the basis that all NODs were issued in error on the following grounds:

1. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will Senn, an Owner of each of Appellants, was adversely sanctioned or penalized by the City of Chula Vista, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol license.

2. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will Senn, an Owner of each of Appellants, conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

3. To the extent the City Manager determines there is relevant, admissible to sustain Chief Kennedy's decisions, Appellants ask that the City Manager exercise discretion to set aside such decisions for the following reasons:

a. The alleged violations are stale as they are eight years old.

b. The alleged violations were technical violations of land-use and building code ordinances that did not pertain to cannabis.

c. The alleged violations occurred during a time in which state law, pursuant to the Medical Marijuana Program Act, generally allowed for the existence of medical marijuana collectives and cooperatives, but during which time neither state nor City of San Diego law contained any specific regulation of commercial cannabis businesses.

d. Today, Will Senn operates the most successful cannabis retailer in San Diego and one of the most successful cannabis retailers in California. In addition to Urbn Leaf's flagship location in the Bay Park neighborhood of San Diego, Will Senn also operates three other retail cannabis facilities under the Urbn Leaf brand: one in San

Ysidro, one in Grover Beach, CA, and one in Seaside, CA. Will Senn was the co-founder of the City of San Diego's cannabis trade group, the United Medical Marijuana Coalition, and has spearheaded the creation and maintenance of deep cooperation with San Diego officials in addition to forming solid, cooperative relationships with officials in all other locations in which Urbn Leaf operates.

This Appeal is further made on the basis that the NODs corresponding to Submitter IDs 57064 and 57069 were issued in error on the following grounds:

1. The scores of the respective applications were calculated incorrectly to the extent that such scores or any components thereof were based in part or in full on any finding, belief, or opinion that Will Senn was:

   a. adversely sanctioned or penalized by the City of Chula Vista, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol license; or

   b. conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

Dated: May 21, 2020

APPELLANTS

By: _____

Nathan Shaman
Attorney for Appellants

-EXHIBIT H -

CITY OF CHULA VISTA

Office of the City Manager

May 26, 2020

VIA
FIRST CLASS MAIL & EMAIL
[redacted]

Willie Senn
Urbn Leaf
[redacted]

Re: Notice of Appeal Hearing Date & Time
Urbn Leaf (Submitter ID: 57064; 57069; 57074; 58388)

Dear Willie Senn:

You have submitted a Request to Appeal the May 6, 2020 Notice of Decision issued by City of Chula Vista ("City") in regard to the above referenced cannabis business license application.

Pursuant to Cannabis Regulations §0501(P)(2)(a), this letter hereby notifies you that your hearing will occur at the following date, time, and place:

Hearing Date: **June 10, 2020**

Hearing Time: **2:00 p.m.**

Hearing Place: **Chula Vista Civic Center**
Building A, Room 103A
276 Fourth Avenue
Chula Vista, CA 91910

Failure to Appear at Scheduled Hearing/Late Arrival

Failure to appear at the hearing may result in a forfeiture of your appeal fee and a waiver of your right to appeal. If you are more than 15 minutes late to the hearing, the City Manager may determine that you have failed to appear, forfeited your appeal fee, and waived your right to appeal. (Cannabis Regulations §0501(P)(2)(d).)

Willie Senn
Urbn Leaf
May 26, 2020

Hearing Procedure (taken from Cannabis Regulations §0501(P)

- At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. (Cannabis Regulations §0501(P)(2)(b).)

- The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing. (Cannabis Regulations §0501(P)(2)(b).) Documentary evidence may be provided to the City Manager by email to Marisa Aguayo at maguayo@chulavistaca.gov.

- The hearing shall be conducted in an expeditious and orderly manner as determined by the City manager and shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence will be excluded. (Cannabis Regulations §0501(P)(2)(c).)

Request for Continuance

In accordance with Cannabis Regulations §0501(P)(2)(b), the above scheduled hearing may be continued upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause for the continuance request. If you wish to request a continuance of the above scheduled hearing, please submit your request online at the following link: https://www.chulavistaca.gov/departments/city-manager/commercial-cannabis/request-to-continue-appeal-hearing-date. Please be aware that your hearing date has not been continued until and unless you receive an email response stating that a continuance has been granted.

Sincerely,

Gary Halbert
City Manager

GH/ma

cc: Simon Silva
Megan McClurg

-EXHIBIT I -

Nathan Shaman (SBN 272928)
General Counsel
Urbn Leaf
[redacted]

Attorney for Applicants 2446 Main Street LLC,
UL Chula One LLC, and UL Chula Two LLC

CITY OF CHULA VISTA

OFFICE OF THE CITY MANAGER

2446 MAIN STREET LLC, a California limited liability company, UL CHULA ONE LLC, a California limited liability company, and UL CHULA TWO LLC, a California limited liability company, Appellants, vs. ROXANA KENNEDY, in her capacity of Chief of Police of the City of Chula Vista, Respondent.	Submitter IDs: 57064, 57069, 57074, 58388 **APPELLANTS' BRIEF REGARDING ISSUES ON APPEAL**

This consolidated appeal was taken from notices of decision rejecting four separate applications for commercial cannabis business licenses in the City of Chula Vista, three for adult-use cannabis retail storefronts, and one for cannabis manufacturing, by Respondent Roxanna Kennedy (Chief Kennedy). For the foregoing reasons, the City Manager should order Chief Kennedy's denials be set aside, that the applications be reevaluated, and that the applications proceed to Phase Two.

///

Basic Rules of Procedure and Standard of Review

"At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing." (Chula Vista Cannabis Regs., § 0501(P)(2)(b).) "The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded." (*Id.*, § 0501(P)(2)(c).)

On appeal, "[t]he appellant shall bear the burden of proof, by a preponderance of the evidence, to demonstrate that the identified reason(s) for rejection contained in the Notice of Decision were erroneous." (*Id.*, § 0501(P)(1); see. *id.*, § 0501(P)(4).) "If the City Manager makes a determination that an Applicant's score is erroneous and no other basis for rejection of the application exists, the City Manager shall grant the appeal and direct City to reassess the Applicant's score unless the City Manager has determined that reassessment of the Applicant's score could not result in a score that ranks high enough to be given a Phase Two application slot. City must then cause a reassessment of the Applicant's score to be conducted, and thereafter issue a new Notice of Decision to the applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager." (*Id.*, § 0501(P(4)(a).)

On the other hand, "[i]f the City Manager makes a determination that the Applicant's score is not erroneous, but one or more other bases for rejection are erroneous, the City Manager shall grant the appeal and direct City to reassess the application so long as the Applicant's score ranks high enough to

be given a Phase Two application slot. City must then cause a reassessment of the application to be conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager."

Grounds for Rejection of the Applications

This Appeal is made on the basis that all Notices of Decision (NODs) were issued in error. Specifically, two grounds for rejection were given as the basis for all four NODs:

1. "The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f). *The City of San Diego sanctioned William* [*sic*] *Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity.*" (Italics in original.)

2. "The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(f). *William* [*sic*] *Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012.*" (Italics in original.)

One additional ground for rejections was given in the NODs for submitter IDs 57064 and 57069: "The total application score [] has failed to rank high enough to be given a Phase Two application slot. . . . (CVMC 5.19.050(A)(7) and Cannabis Regulations § 0501(N).)"

///

///

///

Discussion

A. The first and second grounds for rejection, stated in all NODs, are so vague as to violate the Due Process Clause.

In cases where an aggrieved party has a right to a hearing, such right "embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them." (*Morgan v. United States* (1938) 304 U.S. 1, 18.) In this case, as Appellants have a right to a hearing (see Chula Vista Mun. Code, § 5.19.050(A)(6)), Appellants must be afforded a reasonable opportunity to know the grounds on which their applications were rejected. The NODs fail to provide this information as to the first and second grounds for rejection.

Chief Kennedy's first ground for rejection does not reference a specific date on which Mr. Senn was allegedly sanctioned or penalized for the violation of any law. Indeed, it references no time frame whatsoever. As such, that ground for rejection is fundamentally so vague that it cannot possibly be reasonably opposed as this lack of information makes it impossible to ascertain what facts and law were used to determine Mr. Senn was sanctioned or penalized for a violation of law. The second ground for rejection is little better given that it alleges Mr. Senn "was involved in unlawful Commercial Cannabis activity [*sic*] in the City of San Diego from approximately 2010 to 2012." This finding still suffers from such a lack of specificity that it fails to adequately apprise Appellants of the relevant conduct or laws at issue in order to provide them with an adequate opportunity to argue against it. Without this information, Appellants have not been afforded adequate notice in order to provide them with a meaningful opportunity to investigate and prepare their arguments. For these reasons, the first and second grounds for rejection must be set aside as they violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

///

///

B. No laws or regulations related to Commercial Cannabis Activity existed in 2010, 2011, or 2012 in the City of San Diego or the State of California.

For purposes of argument, it could be assumed (albeit improperly) by reference to the second ground for rejection that the applicable time period for the finding in the first ground for rejection was also 2010 to 2012. Thus, this discussion will assume for purposes of this discussion that such time frame is the relevant period for both the first and second grounds for rejection.

Between 2010 and 2012, there were no laws or regulations in the City of San Diego that applied to "Commercial Cannabis Activity," which the Chula Vista Municipal Code defines as "commercial Cultivation, possession, furnishing, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." (§ 5.19.020.) Indeed, the first time the City of San Diego passed any law regulating activity other than individual possession, use, or cultivation of marijuana or cannabis was on March 28, 2011, and it was repealed on September 27, 2011 before it was even implemented, due to a voter referendum. (See San Diego Ordinance Numbers O-20042, O-20043, O-20098.) Another, similar law was not passed again until March 25, 2014, which led to the emergence in 2015 of non-profit medical marijuana cooperatives with storefront dispensaries operating in the City of San Diego pursuant to conditional use permits. (See San Diego Ordinance Number O-20356 [regulating transfers of marijuana from medical marijuana consumer cooperatives to qualified patients or primary caregivers].)

As to the State of California, it passed the Compassionate Use Act in 1996 (see Health & Safety Code, § 11362.5) and Senate Bill 420, known as the Medical Marijuana Program Act, in 2003. (See Stats. 2003, ch. 875, § 2.) However, these laws merely exempted certain individuals from certain criminal statutes, while not purporting to regulate any commercial activity. (See *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2012) 56 Cal.4th 729, 760-761 ["The sole effect of [Senate Bill 420's] substantive terms is to exempt specified medical marijuana activities from

enumerated state criminal and nuisance statutes."].) California did not make a foray into regulation of commercial activities involving cannabis until 2015, when it enacted the Medical Marijuana Regulation and Safety Act, which consisted of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643. (See Stats. 2015, chs. 688, 689, 719.) This became the framework for the current Medicinal and Adult-use Cannabis Regulation and Safety Act. (See Bus. & Prof. Code, §§ 26000 *et seq.*)

Thus, even assuming for the sake of argument that Chief Kennedy's findings in support of both the first and second grounds for rejection are based on conduct that occurred sometime between 2010 and 2012, there were no applicable laws or regulations in the City of San Diego or the State of California governing Commercial Cannabis Activity. As such, both of these grounds for rejection must be set aside.

C. There is no relevant, admissible evidence that Mr. Senn was sanctioned or penalized by the City of San Diego for violations of laws or regulations related to Commercial Cannabis Activity or that Mr. Senn engaged in unlawful Commercial Cannabis Activity.

Appellants are unaware of *any* evidence relied on in relation to this matter. However, Appellants are assuming Chief Kennedy will claim reliance on a judgment entered upon a stipulation for entry of judgment between the City of San Diego and Mr. Senn in the San Diego Superior Court case *City of San Diego v. The Holistic Café, Inc. et al.*, Case No. 37-2012-00087648-CU-MC-CTL. This is problematic for a number of reasons.

As was discussed above, there were no actual laws or regulations pertaining to Commercial Cannabis Activity in the City of San Diego or the State of California at the time of the conduct alleged in the complaint underlying *City of San Diego v. The Holistic Café.* As the complaint in the case outlines, the allegations pertain to conduct that occurred between 2010 and 2012. The allegations cite violations of the San Diego Municipal Code pertaining to land use, zoning, and the building code. No allegation was made as to the violation of any local or state law or regulation specifically related to

Commercial Cannabis Activity. As such, nothing in the stipulation is evidence that Mr. Senn violated a law of regulation related to Commercial Cannabis Activity or that he engaged in unlawful Commercial Cannabis Activity.

Additionally, the stipulation itself is not legally relevant. "Relevant evidence" is defined as "evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) The stipulation specifically states, "Neither this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint." Given that nothing in the stipulation is an actual admission or adjudication of a fact, it has no tendency in reason to prove or disprove that Mr. Senn committed a violation of a law or regulation *of any kind* or engaged in unlawful conduct *of any kind*. Indeed, if such evidence were construed as relevant toward the end of sustaining Chief Kennedy's findings, that construction would fly in the face of the express purpose of the stipulation that it not constitute an admission or adjudication. Moreover, given this express purpose, such evidence is not "the kind that reasonable persons rely on in making decisions." (See Chula Vista Cannabis Regs., § 0501(P)(2)(c).) If the parties to a suit expressly stipulate that a determination of facts has not been made, and if the court overseeing the suit approves that stipulation, it is patently unreasonable to then rely on such evidence for making *any* determination of facts because the evidence itself expressly indicates it is not reliable for such purpose.

Finally, assuming for the sake of argument that the stipulation is relevant, it constitutes unreliable hearsay. It is not a document signed under penalty of perjury, it was filed in an unrelated civil lawsuit almost eight years ago, and it discusses allegations the evidence for which may no longer exist or may be unavailable (especially in the case of percipient witnesses or missing documents). Thus, again, this is not evidence of the kind that reasonable persons rely on in making decisions, especially decisions that have serious business consequences.

Thus, for all these reasons, there is no relevant, admissible evidence to support Chief Kennedy's findings for the first and second grounds, and they should be set aside.

D. The third ground given in the NODs for submitter IDs 57064 and 57069 should be set aside to the extent the scores were determined in any degree of reliance on the findings made in support of any evidence underlying the first and second grounds or in direct reliance on any such evidence.

As a third ground for rejection, the NODs for submitter IDs 57064 and 57069 rely on inadequate scoring to reach Phase Two. Thus, to the extent any of the scoring determinations for these applications relied in any way on alleged sanctions or penalties imposed on Mr. Senn by the City of San Diego or alleged unlawful Commercial Cannabis Activity, those scores must be set aside, and the applications must be rescored by impartial decisionmakers without the influence of such improper considerations.

E. To the extent the City Manager determines there is relevant, admissible to sustain Chief Kennedy's findings in support of the first and second grounds for rejection for NODs pertaining to submitter IDs 57074 and 58388, Appellants ask that the City Manager set them aside on equitable grounds.

Even if the City Manager rules that Chief Kennedy's findings in support of the first and second grounds for rejection stated in the NODs pertaining to submitter IDs 57074 and 58388 are supported by relevant, admissible evidence, Appellants ask that the City Manager set aside those NODs on equitable grounds. In particular, the alleged violations pertain to conduct that occurred anywhere from eight to ten years ago. The alleged violations occurred during a time in which state law, pursuant to the Medical Marijuana Program Act, generally allowed for the existence of medical marijuana collectives and cooperatives, but during which time neither the State nor the City of San Diego had enacted any laws or regulations pertaining to Commercial Cannabis Activity. The law (or lack thereof) at the time was

confusing and inconsistently applied, but there was strong demand for safe access to medical marijuana in the City of San Diego, and Mr. Senn sought to help address that need. Moreover, the alleged violations were violations of land-use, zoning, and building code ordinances that did not pertain to cannabis. It is highly unusual to deny a license or permit to an applicant for such local code violations because they are strict liability violations and because it is well known that most business owners have had such violations at one time or another. Such violations do not represent a serious character flaw or a serious risk to the residents of Chula Vista.

Today, Will Senn operates the most successful cannabis retailer in San Diego and one of the most successful cannabis retailers in California. Like all his operations, those in the City of San Diego are licensed. ***That is to say, Mr. Senn's operations are licensed by the very municipality that was party to the stipulation for entry of judgment that Chief Kennedy apparently relied on to issue the NODs***. Surely, such licensure would not have occurred had Mr. Senn committed an act of moral turpitude or otherwise posed a threat to public safety that would disqualify him from operating a commercial cannabis business. On the contrary, in addition to Urbn Leaf's flagship location in the Bay Park neighborhood of San Diego, Mr. Senn also operates three other retail cannabis facilities under the Urbn Leaf brand: one in San Ysidro, CA (also located in the City of San Diego's jurisdiction), one in Grover Beach, CA, and one in Seaside, CA. Mr. Senn was the co-founder of the City of San Diego's cannabis trade group, the United Medical Marijuana Coalition, and has spearheaded the creation and maintenance of deep cooperation with San Diego officials in addition to forming solid, cooperative relationships with officials in all other locations in which Urbn Leaf operates.

Thus, for the foregoing reasons, Appellants ask that the City Manager allow the applications under submitter IDs 57074 and 58388 to proceed forward to Phase Two on equitable grounds.

///

///

Conclusion

For the foregoing reasons, Appellants request that the City Manager set aside the NODs and remand them for reconsideration and approval to move to Phase Two.

Dated: June 5, 2020

APPELLANTS

By: _____

Nathan Shaman
Attorney for Appellants

-EXHIBIT J -

FILED
SAN DIEGO SUPERIOR COURT
MAY - 3 2019
CLERK OF THE SUPERIOR COURT
BY: T. RAY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

THE HOLISTIC CAFÉ, INC., a California nonprofit mutual benefit corporation; WILLIE FRANK SENN, as an individual, as president of THE HOLISTIC CAFÉ, INC., and as chief executive officer of THE HOLISTIC CAFÉ, INC.; PATRICK IAN CARROLL, as an individual and as secretary of THE HOLISTIC CAFÉ, INC.; ZACHARY ROMAN, as an individual and as chief financial officer of THE HOLISTIC CAFÉ, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2012-00087648-CU-MC-CTL

[P[redacted]] ORDER AMENDING JUDGMENT ENTERED DECEMBER 14, 2012, AS TO DEFENDANT WILLIE FRANK SENN

Action Filed: December 12, 2012
Judgment Entered: December 14, 2012

THE COURT, having read and considered the motion by Defendant Willie Frank Senn to amend the Stipulated Judgment for Entry of Final Judgment in its Entirety and Permanent Injunction (Judgment) entered by this Court on December 14, 2012; opposition by the City of San Diego; and oral argument by the parties on May 3, 2019, hereby orders that the Judgment be amended as follows:

///

Subparagraphs 6(a), 6(b) and 6(c) of the Judgment are deleted and replaced by the following language:

> Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana outlet or marijuana production facility anywhere in the City of San Diego without first obtaining all permits required per the San Diego Municipal Code, including, but not limited to, a Conditional Use Permit.

All other provisions of the Judgment remain in full force and effect.

Dated: _____, 2019

5/3/19

JUDGE OF THE SUPERIOR COURT

-EXHIBIT K -

IN THE MATTER OF URBN LEAF:

CITY OF CHULA VISTA FINDINGS AND STATEMENT OF DECISION WITH REGARD APPEAL OF NOTICE OF DECISION REJECTING APPLICATION FOR CANNABIS LICENSE

An appeal hearing regarding Notices of Decision rejecting applications for cannabis licenses by Urbn Leaf was heard on June 10, 2020, via teleconference by stipulation of the parties, at the City of Chula Vista Civic Center, located at 276 Fourth Avenue, Chula Vista, California 91910. City Manager Gary Halbert acted as the lone Hearing Officer. Simon Silva, Deputy City Attorney, was present and served as advisor to the Hearing Officer. The matter was recorded via WebEx.

Appellant (Willie Frank Senn AKA Will Senn) was represented by Nathan Shaman, Esq. Appellant did not testify nor was any evidence or exhibits presented on his behalf. Appellant filed a hearing brief dated June 5, 2020. The brief is not an evidentiary exhibit but is part of the record.

The City was represented by Megan McClurg. The following City witnesses were sworn in and testified for the City: CVPD Sgt. Mike Varga, Kelly Broughton (DSD director), and Mr. Mathew Eaton of HdL. The City introduced and had admitted Exhibits 1 to 16. Appellant objected to City Exhibits 8-13, but they were admitted over her objections regarding relevance, authentication, foundation, and reliability. While the Hearing Officer admitted the exhibits, he did so subject to determining what appropriate weight to give such exhibits. (See Attachment 1.)

The Chula Vista City Charter ("Charter"), the Chula Vista Municipal Code ("CVMC"), including Chapter 5.19, and City Cannabis Regulations ("Regulation(s)") were also admitted into evidence, via judicial notice, without objection.

Appellant bears the burden of proof and must show error by a preponderance of the evidence.

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. Appellant applied for four cannabis licenses under submitter ID numbers 57064 [Retailer-D2], 57069 [Retailer-D3], 57074[Retailer-D1], and 58388 [Manufacturer]. Appellant was subsequently sent four Notices of Decision ("NOD") dated May 6, 2020, for all four ID numbers, denying the applications for cannabis licenses. All four applications were denied

pursuant to CVMC section 5.19.050(A)(5)(f) and (g) because Appellant was involved in Unlawful Cannabis Activity. Applications 57064 and 57069 were also denied pursuant to CVMC 5.19.050(A)(7) and Chula Vista Cannabis Regulation 0501(N) for not scoring high enough to proceed to Phase Two of the application process, having scored 900.3. (City Exhibit 1.)

2. Appellant filed timely notices of appeal. Appellant, in support of his appeal, with regard to all four applications, made the following claims of error: (1) that he was denied Due Process because the Notices of Decision did not provide sufficient notice as to when the Unlawful Cannabis Activity took place; (2) the City of San Diego did not have any laws applicable to marijuana dispensaries that fell within the meaning of CVMC section 5.19.050(A)(5)(f) and (g) in 2010 through 2012; and that the City's evidence used to support the Unlawful Commercial Activity allegations (City Exhibits 8-13), was irrelevant, hearsay, lacked authentication/foundation, and was unreliable. With regard to application 57064 and 57069, Appellant also claimed there may be error in his score of 900.3 if the Unlawful Cannabis Activity allegations were considered in the scoring. Finally, he asks the City to exercise its discretion and not consider the Unlawful Cannabis Activity allegations to deny the applications.

3. With regard to Appellant's Due Process claim that he did not receive sufficient notice of when the Unlawful Cannabis Activity took place, the evidence showed the following. Appellant was issued four Notices of Decision. They were all the same regarding allegations involving Unlawful Cannabis Activity. Appellant argues there was insufficient notice as to when the alleged violations occurred. There are no formal rules of pleading with regard to Notices of Decision. Instead, the issue is whether Appellant had sufficient notice as to the time frame when the Unlawful Cannabis Activities occurred. The evidence supports the conclusion Appellant had notice as to the time frame in which he was alleged to have engaged in the Unlawful Cannabis Activity.

   The NOD provides notice that the Unlawful Cannabis Activity took place between 2010 and 2012 in the City of San Diego, specifically at the Holistic Café. That time frame is bolstered and explained by the evidence that was provided to Appellant by the City via its exhibits.

   For example, Exhibit 8 (City of San Diego Notice of Violation) explains that 415 University Avenue operated as the Holistic Café and that it had been an unpermitted dispensary since 2011 with inspections on May 14, 2012 and May 17, 2012. Exhibit 11 (City of San Diego email) also provides notice as to the time frame by requesting an inspection of The Holistic Café premises which was operating as a marijuana dispensary on May 10, 2012. Exhibit 12 (Unlawful Detainer Documents) also provides notice as to

when the Unlawful Cannabis Activity was taking place. The "Three Day Notice to Surrender Possession," dated February 12, 2012, stated, "You are required to surrender possession of the premises as you are in violation of zoning laws of the City of San Diego for operating a medical marijuana dispensary and selling marijuana. Due to illegal activity, you must cease operation and vacate the premises." Exhibit 13 (Complaint and Stipulated Judgement) further provides notice that the Unlawful Cannabis Activity was alleged to have occurred between 2010 and 2012. Exhibit 13 also provides notice that Appellant was President and Chief Executive Officer of the Holistic Café, which as operating as an unpermitted marijuana dispensary.

Accordingly, when looking at everything as a whole, Appellant had ample notice that the alleged Unlawful Cannabis Activities took place between 2010 and 2012 in the City of San Diego, specifically at the Holistic Café. Thus, he could have presented a defense that he did not engage in any Unlawful Cannabis Activities between 2010 and 2012. Appellant has failed to meet his burden and prove by the preponderance of the evidence error and, as such, this claim of error cannot support the granting of Appellant's appeal.

4. With regard to Appellant's claim of error that there were no laws in the City of San Diego between 2010 and 2012 that were applicable to cannabis dispensaries, the record shows as follows. The City of Chula Vista Municipal Code has two sections that address the denial of a license for Unlawful Cannabis Activity, CVMC section 5.19.050(A)(5)(f) and (g).

   With regard to CVMC section 5.19.050(A)(5)(f), it states "The Applicant, an Owner, a Manager, and/or Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure." Thus, this section requires, that there be a city, county, or state law or regulation related to Commercial Cannabis Activity. Specific state licensing and local licensing of cannabis dispensaries went into effect in 2016. Prior to that time frame, as Sgt. Varga testified, cannabis dispensaries were regulated via zoning laws and in particular in the City of San Diego as unpermitted businesses. San Diego Municipal Code section 1512.0305(a) prohibited any "use" that was not listed in table 1512-031 and indicated with a "P." Operating a marijuana dispensary was not listed as an allowable use in the aforementioned table and, hence, unlawful. Here, the record shows that Appellant was the President and CEO of the Holistic Café, which was operating as a marijuana dispensary. Appellant presented no evidence to the contrary, even though he was present and declined to testify when asked if he would testify by the City. It is Appellant's burden to show error. As a result, Appellant's conduct violated the San Diego Municipal Code which was related to Commercial Cannabis Activity and his cannabis license applications were properly denied pursuant to CVMC 5.19.505(A)(5)(f).

With regard to CVMC section 5.19.050(A)(5)(g), it states, "The Applicant, an Owner, a Manager, and/or Officer has conducted, facilitated, caused, aided, abetted, suffered, concealed unlawful Commercial Cannabis Activity." Thus, this section focuses on Appellant's involvement in unlawful Commercial Cannabis Activity. Here, the record shows that Appellant was the President and CEO of the Holistic Café, which was operating as an unpermitted marijuana dispensary. Appellant presented no evidence to the contrary, even though he was present and declined to testify when asked to testify by the City. It was Appellant's burden to show error. The record shows Appellant engaged in Unlawful Cannabis Activity and, as a result, his cannabis license applications were properly denied pursuant to CVMC 5.19.505(A)(5)(g).

Accordingly, in light of the above, Appellant has failed to meet his burden and show error by a preponderance of the evidence. As a result, this claim does not support the granting of his appeal.

5. With regard to Appellant's claim of error that the City's evidence (City Exhibits 8-13) to support the Unlawful Commercial Activity allegations was irrelevant, hearsay, lacked authentication/foundation, and was unreliable, the evidence shows as follows. The instant hearing is not a court proceeding and is not subject to the technical rules of evidence. Chula Vista Cannabis Regulation 0501(P)(2)(c) provides as follows, "The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to the technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded." Thus, Appellant's Evidence Code objections are not applicable. Instead, the evidence is admissible if it is relevant and reliable. The preponderance of the evidence showed that it was relevant and reliable.

   First, City's Exhibits 8-13 are relevant. Evidence is relevant if it has a tendency in reason to prove or disprove a material issue. (See Evidence Code section 210.) Here, the issue was whether Appellant was involved in Unlawful Cannabis Activity or violated a law involving Unlawful Cannabis. Exhibits 8-13, individually and collectively, showed that Appellant was President and CEO of the Holistic Café (City Exhibit 13); that it had been operating as a unpermitted marijuana dispensary resulting in a Notice of Violation (Exhibit 8) and subsequent civil complaint (Exhibit 13); that it had been the subject of inspection requests due to its operations as a marijuana dispensary (Exhibit 11); and that as a result of the unlawful marijuana dispensary activity an unlawful detainer action to evict the Holistic

Café was initiated (Exhibit 12). As a result, the exhibits were relevant to prove Appellant's alleged Unlawful Cannabis Activities.

Second, Exhibits 8-13, individually and collectively, were of the kind that reasonable persons rely on in making decisions and therefore reliable. The following facts support such a conclusion. The separate exhibits are in a logical sequence and of the type a reasonable person would rely upon in pursuing a code violation--the property owner sought to evict the Holistic Café because it was operating as an unpermitted marijuana dispensary (Exhibit 12); thereafter, an inspection was requested because the Holistic Café was identified as an unpermitted dispensary (Exhibit 11); because the Holistic Café was operating as an unpermitted dispensary a Notice of Violation ("NOV") was issued by the City of San Diego (Exhibit 8); because there was no compliance with the NOV, the City of San Diego initiated a civil complaint (for the same violations listed in the NOV) (Exhibit 13); and the civil complaint was settled via Stipulated Judgement (Exhibit 13). The documents are reliable because they were consistent with the process and of the type (unlawful detainer, NOV, and civil complaint) used in pursuing this type of code violation. The documents are also reliable because they involve different parties--the City of San Diego and the property owner. The unlawful detainer action (Exhibit 12) and civil complaint (Exhibit 13) were filed in court. The exhibits make references to Willie Frank Senn (Exhibit 13) and Will Senn (Exhibit 8) as being involved with the Holistic Café, which was operating an unpermitted marijuana dispensary. Appellant lists his name as Willie Frank Senn, and his AKA as Will Senn in the current cannabis license application. The subject of the exhibits involves the operation of a marijuana dispensary, where Willie Frank Senn AKA Will Senn is the president of the operating business. Here, Appellant (Willie Frank Senn AKA Will Senn) seeks a license to operate a marijuana dispensary as president of the operating business. Appellant presented no evidence that he was not involved in the Unlawful Commercial Activity. Appellant, who was present, and when requested to testify by the City, declined. Appellant has the burden to demonstrate error. Appellant did not meet his burden in this matter. As a result, this claim of error does not support the granting of the appeal.

6. Appellant requests that the City exercise its discretion and not consider the allegations that Appellant engaged in Unlawful Cannabis Activities. The Hearing Officer declines Appellant's request to forgo consideration of any prior Unlawful Cannabis Activities. Allegations of Unlawful Cannabis Activities are serious allegations. Furthermore, Appellant did not present any witnesses, including that of Mr. Senn who was present, to support such a request. Arguments, as set forth in his briefing and arguments, are not evidence. As a result, the Hearing Officer declines Appellant's request.

7. With regard to the applications 57064 and 57069, Appellant claims there might be error if the City considered the alleged Unlawful Cannabis Activities in determining his score of 900.3. The preponderance of the evidence shows, as testified to by Mr. Broughton and Mr. Eaton, that Appellant's alleged Unlawful Cannabis Activities were not considered in scoring Appellant's Retailer Applications. Appellant presented no evidence in opposition to such testimony. Indeed, Appellant presented no at all evidence in the matter. Thus, Appellant did not show any error in the scoring of his applications and this cannot be a basis to grant his appeal with regard to applications 57064 and 57069.

DECISION

Based upon the above, the preponderance of the evidence that has been presented shows that Appellant has failed to meet his burden and show error. Instead, for the reasons stated above, Appellant arguments lack merit and the evidence shows the City reasonably and properly denied Appellant's application. As a result, Appellant's appeal is denied.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure 1094.5 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED:

By: Gary Halbert
Gary Halbert, City Manager
Hearing Officer

Attachments:
1. City's Exhibit List
2. Certificate of Mailing/Proof of Service

IN THE MATTER OF URBN LEAF:
City's Exhibit List

Exhibit 1:	Notice of Decision
Exhibit 2:	Urbn Leaf's Request to Appeal
Exhibit 3:	Amended Notice of Hearing
Exhibit 4:	Cannabis Application Scoring Matrix
Exhibit 5:	HdL Application Review Scores
Exhibit 6:	HdL Interview Scores
Exhibit 7:	HdL Combined Application and Interview Scores
Exhibit 8:	City of San Diego Notice of Violation
Exhibit 9:	Photos of Holistic Cafe
Exhibit 10:	San Diego Business Tax Information
Exhibit 11:	Email Declining Inspection
Exhibit 12:	Unlawful Detainer
Exhibit 13:	Complaint & Stipulated Judgment
Exhibit 14:	Will Senn Police Controlled License Application
Exhibit 15:	Application Conviction Supplement Form
Exhibit 16:	Submitted Conviction Supplement Response

CERTIFICATE OF SERVICE

I, the undersigned certify and declare:

I am over the age of 18, employed in the County of San Diego, State of California. I am not a party to the within action; my business address is 276 Fourth Avenue, Chula Vista, California, 91910.

On August 26, 2020, I served the foregoing document described as:

- **CITY OF CHULA VISTA FINDINGS AND STATEMENT OF DECISION WITH REGARD APPEAL OF NOTICE OF DECISION REJECTING APPLICATION FOR CANNABIS LICENSE**

on the interested parties in this action and in the manner of service designated below:

Appellant:
Willie Senn
[redacted]

☒ BY U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Chula Vista, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☒ BY ELECTRONIC SERVICE based upon court order or an agreement of the parties to accept service by electronic transmission, by electronically mailing the document(s) listed above to the e-mail address(es) set forth above, or as stated on the attached service list and/or by electronically notifying the parties set forth above that the document(s) listed above can be located and downloaded from the hyperlink provided. No error was received, within a reasonable time after the transmission, nor any electronic message or other indication that the transmission was unsuccessful.

Executed on this 26th day of August 2020 at Chula Vista, County of San Diego, California. I declare, under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Marisa Aguayo
MARISA AGUAYO

-EXHIBIT L -

[redacted]
San Diego, CA 92110
www.urbnleaf.com
[redacted]

September 3, 2020

Via Certified Mail,
Return Receipt Requested

Kerry K. Bigelow, MMC
City Clerk, City of Chula Vista
276 Fourth Ave., Bldg. A
Chula Vista, CA 91910

Re: Request for Administrative Record of Proceedings Before City Manager/Hearing Officer Gary Halbert on June 10, 2020 as to Appeal of Denial of Application for Cannabis Storefront Retailer License, Submitter I.D. 57074

Ms. Bigelow

I represent UL Chula Two LLC and Willie Frank Senn in regard to the above-referenced matter.

Pursuant to Code of Civil Procedure section 1094.6(c) and Section 1.40.020(H) of the Chula Vista Municipal Code, UL Chula Two LLC and Willie Frank Senn hereby request that the City of Chula Vista prepare the complete record of the proceedings referenced above as soon as possible. Such record shall include the transcript of the proceedings before City Manager and/or any recordings thereof as well as all pleadings, all notices and orders, all proposed decisions, all final decisions, and all admitted exhibits from such proceedings, all rejected exhibits in the possession of the City of Chula Vista, or any agent thereof, all written evidence submitted to the City Manager, and any other papers related to the proceedings.

Please contact me at your earliest convenience with an estimate of the actual costs of transcribing or otherwise preparing the record.

Very truly yours,

Nathan A. Shaman
General Counsel, Urbn Leaf
[redacted]

-EXHIBIT M -

JAN I. GOLDSMITH, City Attorney
JON D. DWYER, Deputy City Attorney
California State Bar No. 233123
Office of the City Attorney
Community Justice Division/Code Enforcement Unit
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone: (619) 533-5655
Fax: (619) 533-5696
JDwyer@sandiego.gov

Attorneys for Plaintiff

FILED
CIVIL BUSINESS OFFICE 8
12 DEC 14 AM 8:05
No Fee CC §6103
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA
FILED
Clerk of the Superior Court
DEC 14 2012
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. THE HOLISTIC CAFÉ, INC., a California nonprofit mutual benefit corporation; WILLIE FRANK SENN, as an individual, as president of THE HOLISTIC CAFÉ, INC., and as chief executive officer of THE HOLISTIC CAFÉ, INC.; PATRICK IAN CARROLL, as an individual and as secretary of THE HOLISTIC CAFÉ, INC.; ZACHARY ROMAN, as an individual and as chief financial officer of THE HOLISTIC CAFÉ, INC.; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2012-00087648-CU-MC-CTL UNLIMITED JURISDICTION COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City Attorney, by Jon D. Dwyer, Deputy City Attorney, alleges the following based on information and belief:

JURISDICTION AND VENUE

1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526, seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as alleged in this Complaint, and seeks a preliminary injunction and permanent injunction

prohibiting Defendants from operating or maintaining a marijuana dispensary, cooperative, or collective, or other distribution or sales business; and also seeks to obtain civil penalties, costs and other equitable relief for the Defendants' violations of law.

2. The omission or commission of acts and violations of law by Defendants as alleged in this Complaint occurred within the City of San Diego, State of California. Each Defendant at all times mentioned in this Complaint has transacted business within the City of San Diego, State of California, or is a resident of San Diego County, within the State of California, or both.

3. The property where the business acts and practices described in this Complaint were performed is located in the City of San Diego.

THE PARTIES

4. At all times mentioned in this Complaint, Plaintiff City of San Diego, is a municipal corporation and a chartered city, organized and existing under the laws of the State of California.

5. Defendant THE HOLISTIC CAFÉ, INC. (HOLISTIC CAFÉ), is a California nonprofit mutual benefit corporation, organized and existing under the laws of the State of California, according to the California Secretary of State corporate filing number C3252464. At all times relevant to this action HOLISTIC CAFÉ was and is conducting business as a marijuana dispensary, which is also commonly known as a collective or cooperative, at 415 University Avenue, San Diego, California (PROPERTY) within the City of San Diego.

6. Defendant WILLIE FRANK SENN (SENN) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, SENN was and is the President and/or Chief Executive Officer of HOLISTIC CAFÉ which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

7. Defendant PATRICK IAN CARROLL (CARROLL) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, CARROLL was and is the Secretary of HOLISTIC CAFÉ, which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

8. Defendant ZACHARY ROMAN (ROMAN) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, ROMAN was and is the Chief Financial Officer of HOLISTIC CAFÉ which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

9. Defendants HOLISTIC CAFÉ, SENN, CARROLL, and ROMAN will sometimes be referred to independently and sometimes collectively as the "MD OPERATORS."

10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the provisions of California Code of Civil Procedure section 474, their true names and capacities being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to amend this Complaint and to insert in lieu of such fictitious names the true names and capacities of DOES 1 through 50 when ascertained.

11. At all relevant times mentioned in this Complaint, all Defendants were and are agents, principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers of each other Defendant and at all times were acting within the course, purpose and scope of said relationship and with the authorization or consent of each of their co-defendants.

PROPERTY

12. The PROPERTY where the marijuana dispensary is operating consists of one parcel of land developed with a two-story building consisting of both residential and commercial space. The address of the PROPERTY is 415 University Avenue, San Diego, County of San Diego, State of California. The PROPERTY is also identified as Assessor's Parcel Number 452-056-01-00, according to San Diego County Recorder's Grant Deed document No. 2006-0529341, filed July 26, 2006. The legal description of the PROPERTY is:

/ / / / /

/ / / / /

/ / / / /

University Retail Apartments, (401-425 University Avenue, San Diego, California 92103) Lots 1 and 2 in Block 3 of Nutt's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereon No. 628, filed in the Office of the County Recorder of said County, April 8, 1890.

13. The PROPERTY is located in the Mid-City Communities Planned District CN-1A zone in the City of San Diego. It was originally constructed in 1913, as a two story structure with commercial suites on the first floor and nine residential dwelling units on the second floor.

14. The Grant Deed lists the owner of the PROPERTY as Uptown University, LLC, a California Limited Liability Company.

FACTUAL ALLEGATIONS

15. SDMC section 1512.0305 and corresponding Table 1512-03I list the permitted uses in the CN-1A zone in the Mid-City Communities Planned District where the PROPERTY is located. The operation or maintenance of a marijuana dispensary, collective, or cooperation is not one of the listed permitted uses in the SDMC section or table.

16. The operation or maintenance of a marijuana dispensary is not a permitted use in any zone designation under the SDMC.

17. On August 24, 2009, attorney DAVID SPECKMAN, listed as "Officer/Pres" of HOLISTIC CAFÉ, submitted an application for a Business Tax Certificate (BTC) to the San Diego City Treasurer's Office, listing "The Holistic Café, Inc. " as the business name and 415 University Avenue as the address. The application described the primary business activity of the HOLISTIC CAFÉ as the "sale of herbal remedies; teas; health products." No mention of marijuana appeared in the application. The application listed the start date of the business as August 24, 2009.

18. On May 17, 2012, the San Diego Business Tax Program sent a letter cancelling the Defendants' Business Tax Certificate.

19. Defendants have not taken any action to file an application with the San Diego Development Services Department (DSD) pursuant to SDMC section 131.0110(b) to request that the Planning Commission make a use determination.

20. Plaintiff is informed and believes that the MD OPERATORS opened for business at the PROPERTY since at least August 24, 2009.

21. On or about May 24, 2010, the Code Enforcement Section (CES) of the DSD, previously known as the Neighborhood Code Compliance Division received a request for investigation regarding an illegal marijuana dispensary operating at the PROPERTY.

22. On July 26, 2010, CES staff inspected the PROPERTY and observed numerous building code violations and the operation of a marijuana dispensary.

23. On February 24, 2012, the PROPERTY owner served Defendants with a 3-day notice to vacate the PROPERTY.

24. Defendants did not vacate the PROPERTY, and on April 6, 2012 the PROPERTY owner filed an unlawful detainer action against Defendant HOLISTIC CAFÉ in case 37-2012-00043424-CL-UD-CTL, which is pending trial.

25. On May 17, 2012, CES's Combination Building Inspector II Renee Kinninger (Inspector Kinninger) inspected the PROPERTY and again confirmed that HOLISTIC CAFÉ was operating a marijuana dispensary at the PROPERTY in violation of the City's zoning laws. She also observed that the building code violations previously observed in 2010 had not been corrected.

26. Through inspection of the PROPERTY and research of City records, Inspector Kinninger determined that the building had been illegally divided into a reception area with non-permitted lighting, grid ceiling, and other building and electrical modifications.

27. On or about May 22, 2012, CES issued Defendants and the property owners a Notice of Violation (NOV) which outlined the code violations observed at the PROPERTY. The NOV required Defendants to immediately cease operating or maintaining the marijuana dispensary in violation of zoning laws, to remove non-permitted signs advertising the business at the PROPERTY, to remove all electrical extension cords providing electrical service, and to schedule a complete inspection of the PROPERTY. Defendants were also ordered to obtain all required permits and submit an application with appropriate plans.

/ / / / /

28. On October 4, 2012, City Attorney Investigator Deanna Walker visited the PROPERTY and confirmed that the MD OPERATORS are continuing to operate their business in defiance of the law. The MD OPERATORS also continue to advertise their business as verified by recent advertising on the Internet, including their own website.

29. Currently no record exists with the City of San Diego indicating the required permits were obtained for PROPERTY in its current state.

30. Plaintiff has no adequate remedy at law other than this action. Defendants are blatantly and willfully in violation of the SDMC and will continue to maintain the unlawful code violations in the future unless the Court enjoins and prohibits such conduct.

FIRST AND ONLY CAUSE OF ACTION

VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

31. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 29 of this Complaint as though fully set forth here in their entirety.

32. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code[1], without a required permit, contrary to permit conditions, or without a required variance."

33. The PROPERTY is located in a Mid-City Communities Planned District CN-1A zone. SDMC section 1512.0305 governs the uses allowed in a Mid-City Communities Planned District CN-1A zone. Table 1512-03I does not list a marijuana dispensary, cooperative, or collective as a permitted use. Beginning on an exact date unknown to Plaintiff but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY for a purpose or activity not listed in SDMC section 1512.0305 and Table 1512-03I, in direct violation of SDMC sections 121.0302(a) and 1512.0305.

34. SDMC section 129.0202(a) provides "No *structure* regulated by the Land Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted,

[1] SDMC §111.0101 (a) Chapters 11, 12, 13,14, and 15 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

permanently relocated or partially demolished unless a separate Building Permit for each *structure* has first been obtained from the Building Official." Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain a building permit for structural work in violation of SDMC sections 121.0302(a) and 129.0202.

35. SDMC section 129.0111 requires inspections and approvals by a Building Official for all structural work. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required building inspections and approvals for structural work in violation of SDMC section 129.0111.

36. SDMC section 129.0302 makes it unlawful to install any electrical wiring, device, appliance, or equipment within or on any structure or premises, or to alter, add, or replace any existing wiring, device, appliance, or equipment unless a separate Electrical Permit has been obtained for such work. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required electrical permit for electrical work in violation of SDMC sections 121.0302(a) and129.0302.

37. SDMC section 129.0314 requires that inspections and approvals be obtained from the City Building Official for all electrical permits. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain inspections and approvals for electrical work in violation of SDMC section 129.0314.

38. SDMC section 129.0802 requires that a sign permit be obtained for each sign that is installed or altered. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required sign permit for sign installation in violation of SDMC section 129.0802.

/ / / / /

39. The 2010 California Electrical Code section 400.8, as adopted by SDMC section 146.0104, makes it unlawful to use extension cord wiring for electrical service. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by using electrical extension cord wiring to provide electrical service to equipment and lighting in violation of SDMC section 146.0104.

40. The 2010 California Electrical Code section 314.28, as adopted by SDMC section 146.0104, makes it unlawful to fail to provide compatible covers for junction boxes. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to maintain covers over electrical components visible in the reception area ceiling in violation of SDMC section 146.0104.

41. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between land uses. Irreparable harm will be suffered by Plaintiff in that the City's land use scheme and regulations under the Municipal Code become meaningless and the public is left unprotected from the direct and indirect negative effects associated with unpermitted and incompatible uses in their neighborhoods.

42. Absent injunctive relief, the justifiable expectation by citizens that state law and local zoning laws be enforced and their safety and quality of life be protected, remains frustrated. Despite a formal Notice of Violation from CES, Defendants have failed and refused to comply with the law and there is no expectation they will change their behavior.

43. Defendants are willfully violating the law and continue to operate their business. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit Defendants from violating the law.

/ / / / /

/ / / / /

/ / / / /

/ / / / /

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. That the PROPERTY be declared in violation of:

San Diego Municipal Code sections

1512.0305	121.0302
129.0202	129.0111
129.0302	129.0314
129.0802	146.0104

2. That pursuant to SDMC sections 12.0202, and 121.0311, California Code of Civil Procedure section 526, and the Court's inherent equity powers, the Court grant preliminary and permanent injunctions enjoining and restraining Defendants and their agents, servants, employees, partners, associates, officers, representatives and all persons acting under or in concert with or for Defendants, from engaging in any of the following acts:

a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health and Safety Code;

b. Maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY;

c. Maintaining, operating, or allowing the operation of any unpermitted use anywhere within the City of San Diego;

d. Maintaining signage on the PROPERTY advertising a marijuana dispensary;

e. Advertising in any manner, including on the Internet, the existence of any commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health and Safety Code at the PROPERTY;

f. Conducting any type of business within the City without first obtaining a business tax certificate;

g. Maintaining or performing any construction, electrical, or plumbing/mechanical work at the PROPERTY without first obtaining all required permits, inspections, and approvals; and

h. Violating any provisions of the SDMC at the PROPERTY.

3. That no later than 30 calendar days from the date of entry of judgment, Defendants obtain all applicable permits from DSD to correct any existing building, electrical, and plumbing/mechanical violations and timely call for inspections.

4. That Defendants allow personnel from the City of San Diego access to the PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

5. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the costs of investigation, as appropriate.

6. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of $2,500 per day for each and every SDMC violation maintained at the PROPERTY.

7. That Plaintiff be granted such other and further relief as the nature of the case may require and the Court deems appropriate.

Dated: December 14, 2012.

JAN I. GOLDSMITH, City Attorney

By _____
Jon D. Dwyer
Deputy City Attorney

Attorneys for Plaintiff

-EXHIBIT N -

FORMER SAN DIEGO MUNICIPAL CODE § 1512.0305 AND TABLE 1512-03I

(*Effective April 26, 2007 – Aug. 8, 2015)*

(O-2007-79) 53 (N) 3/20/07

19598

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE MAR 27 2007

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO REPEALING CHAPTER 10, ARTICLE 3, DIVISION 15, OF THE SAN DIEGO MUNICIPAL CODE, AND AMENDING CHAPTER 15, BY ADDING ARTICLE 12, DIVISION 1 TITLED "GENERAL RULES," SECTIONS 1512.0101, 1512.0102, 1512.0103, AND 1512.0110; DIVISION 2 TITLED "PERMITS AND PROCEDURES," SECTIONS 1512.0201, 1512.0202, 1512.0203, AND 1512.0204; DIVISION 3 TITLED "ZONING," SECTIONS 1512.0301, 1512.0302, 1512.0303 , 1512.0304, 1512.0305, 1512.0306, 1512.0307, 1512.0308, 1512.0309, 1512.0310, 1512.0311, AND 1512.0312; DIVISION 4 TITLED "GENERAL AND SUPPLEMENTAL REGULATIONS," SECTIONS 1512.0401, 1512.0402, 1512.0403, 1512.0404, 1512.0405, 1512.0406, 1512.0407, AND 1512.0408, ALL RELATING TO THE MID-CITY PLANNED DISTRICT.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 10, Article 3, Division 15, is repealed, and Chapter 15 of the San Diego Municipal Code is amended by adding Article 12, Division 1, Sections 1512.0101, 1512.0102, 1512.0103 and 1512.0110, to read as follows:

Article 12: Mid-City Communities Planned District

Division 1: General Rules

§1512.0101 Purpose and Intent

The purpose of the Mid-City Communities Planned District is to assist in implementing the goals and objectives of the adopted community plans for older, developed communities generally located east of Interstate 5 and south of Interstate 8 and to assist in implementation of the Progress Guide and General

(I) Battered window openings with a minimum 6 inches depth on a minimum of all street facing windows

(J) Molded stucco wall detail

(3) Bungalow Style

(A) Lap siding on a minimum of all street elevations

(B) Entry porch

(C) Minimum 18 inch eaves with articulated rafter ends

(D) A minimum of one attic eyebrow

(E) Wood window frames

(F) A minimum of one brick masonry chimney per the 3 dwelling units

(G) Multi-panel entrance door

(H) A minimum of one window planter box

(I) Operable window shutters on a minimum of all windows facing a street

(J) Trim surrounding all windows

§1512.0305 Commercial Zones (CN, CL, CV, NP) - Permitted Uses

(a) No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor be used except for one or more of the purposes indicated with an "P" in Table 1512-03I. No use may be conducted outdoors on any premises except as indicated by footnote 4, or by specific reference.

Legend for Table 1512-03I

"P" = Permitted
"-" = Not Permitted

Table 1512-03I
Permitted Uses Table

Permitted Uses	**CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4**	**CL-2[6]**	**CN-3,4[2] CV-3[2]**	**CL-5[6]**	**NP-1,2,3**
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P[7]
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P[10]	P	P	P	-
Apparel Shops	P	P	P	P	-
Apparel Shops	P	P	P	P	-
Art Stores and Art Galleries	P	P	P	-	-
Automobile & Truck Sales, Rental Agencies (Usable Vehicles Only)	P[4]	P[4]	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P[8]	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P[9]	P	P[9]	P[1]H	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P[4]	P[4]	-	-	-
Book Stores (No Adult Book Stores Shall Be Permitted in the Cl-5 Zone)	P	P	P	P	-
Building Materials Stores, provided that open storage areas are completely enclosed by walls or buildings or a combination thereof; said walls and buildings shall be not less than 6 feet in height, and provided also there shall be no outdoor storage of merchandise, material, equipment or other goods to a height greater than that of any enclosing wall or building.	P	P	-	-	-

19593
PA 167

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Business and Professional Office Uses (not including Hiring Halls in the Cl-5 Zone). (Such Uses my include Accountants, Advertising Agencies, Architects, Attorneys, Contractors, Doctors, Engineers, Financial Institutions, Insurance Agencies, Medical Clinics (No Overnight Patients), Photographers, Real Estate Brokers, Securities Brokers, Surveyors and Graphic Artists.	P[1][9]	P[1]	P[1][9]	P[1]	P[1]
Business Machine Sales Display and Service	P	P	-	-	P[7]
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	P	-	-
Confectioneries	P	P	P	P	-
Curtain and Drapery and Upholstery Shops	P	P	P	P	-
Custom Shop for Curtains, Draperies, Floor Coverings, Upholstery and Wearing Apparel	P[3]	P[3]	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P[11]	-
Dry Cleaning Establishments (No Truck Delivery of Finished Cleaning)	P	P	-	P	-
Dry Cleaning and Laundry Establishments (also includes self-service)	P	P	P	P	-
Dry Good Stores	P	P	-	-	-
Electronic Data Processing, Tabulating, and Record Keeping Services	P	P	-	-	P[7]
Employment Agencies	P	P	-	-	-
Equipment and Tool Rental Establishments (No Man-ridden Equipment)	P	P	-	-	-
Feed Stores	P	P	-	-	-
Florists	P	P	P	P	-
Food Stores	P	P	P	P	-
Frozen Food Lockers	P	P	-	-	-
Funeral Parlors	P	P	-	-	-
Furniture Stores	P	P	-	-	-
Gymnasium and Health Studios	P	P	P	-	-
Hardware Stores	P	P	P	-	-
Hardware Stores, excluding the sale of Used Building Materials, Used Appliances and Used Plumbing Supplies	-	-	P	-	-
Hobby Shops	P	P	P	P	-
Hotels, Motels, and Time Share Projects	P	P	-	-	-
Ice Delivery Stations	P	P	-	-	-
Interior Decorators	P	P	P	-	-
Jewelry Stores	P	P	P	P	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Labor Unions (No Hiring Halls) and Trade Associations	P	P	P	-	-
Laundries, if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	P[3]	P[3]	-	-	-
Liquor Stores	P	P	P	-	-
Live/Work Quarters	P(12)	P(12)	P(12)	-	-
Locksmith Shops	P	P	-	-	-
Medical Appliance Sales	P	P	-	-	-
Medical, Dental, Biological and X-ray Laboratories	P	P	P	-	-
Moving and Household Storage Facilities	P	P	-	-	-
Music Stores	P	P	P	-	-
Newspaper Plants	P	P	-	-	-
Nurseries-plants	P[4]	P[4]	P[4]	P[4]	-
Office Furniture and Equipment Sales	P	P	-	-	-
Paint and Wallpaper	P	P	P	P	-
Parking Lots-commercial	P	P	-	-	-
Parking Lots and Facilities, if accessory to a permitted primary use, on the same premises, except that facilities completely below grade need not be accessory.	-	-	P	-	-
Pawn Shops	P	P	-	-	-
Pet Shops	P	P	-	-	-
Pharmacies	P	P	-	-	P[7]
Photographic Studios and Retail Outlets	-	-	P	-	-
Photographic Studios	P	P	-	P	-
Photographic Equipment, Supplies and Film Processing Stores	P	P	-	-	-
Plumbing Shops, provided that any open storage areas are completely enclosed by walls, or buildings, or a combination thereof, not less than six feet in height, and provided also there shall be no outdoor storage of merchandise, materials, equipment or other goods, to a height greater than that of any enclosing wall or building.	P[3]	P[3]	-	-	-
Post Offices	P	P	-	-	-
Private Clubs, Fraternal Organizations and Lodges	P	P	P	P	P
Public Utility Electric Substations, Gas Regulators and Communications Equipment Buildings developed in accordance with building and landscaping plans approved by the City Manager.	P	P	-	-	-
Radio and Television Broadcasting Studios	P	P	P	P	-

O - 19598
PA 169

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Radio, Television and Home Appliance Repair Shops	P	P	P	P	-
Recreational Facilities, including Bowling Lanes, Miniature Golf Courses, Skating Rinks, Gymnasiums and Health Centers	P	P	-	-	-
Restaurants (In the Cl-5 Zone, excluding Drive-in and Drive-thru Restaurants and further excluding Live Entertainment and sale of all Intoxicating Beverages except Beer and Wine)	P[4]	P[4]	P[4]	P[4]	P[4]
Rug and Carpet Stores	P	P	P	-	-
Shoe Stores	P	P	P	P	-
Shoe Repair Shops	P	P	P	P	-
Sporting Goods Stores	P	P	P	-	-
Stationers	P	P	P	P	-
Storage Garages	P	P	-	-	-
Studios for Teaching of Art, Dancing and Music	P	P	P	P	-
Theaters, Nightclubs and Bars, with or without Live Entertainment, or any combination thereof (not permitted except by Conditional Use Permit if the size of the establishment exceeds 5,000 square feet in Gross Floor Area)	P	P	P	-	-
Tire Sales, Repair and Recapping Establishments, if entirely Within an Enclosed Building	P	P	-	-	-
Trade and Business Schools	-	-	-	-	-
Trailer Sales Agencies	P	P	-	-	-
Transportation Terminals	P	P	-	-	-
Travel Bureaus	P	P	-	-	-
Variety Stores	P	P	P	P	-
Wedding Chapels	P	P	-	-	-
Wholesaling or Warehousing of Goods and Merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 square feet.	P	P	-	-	-
Construction of Cabinets and Shelves, and Musical Instruments, or other Wood Working	-	P[3]	-	P[3]	-
Construction of Windows, Doors and Screens	-	P[3]	-	P[3]	-
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P[3]	-	P[3]	-
Repair of Tools, Machinery and Electronic Equipment	-	P[3]	-	-	-
Public Parks and Playgrounds	P	P	P	P	-

PA 19598

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Residential Development, in accordance with the regulations of the Mid-City Communities Planned District, according to the permitted densities of equivalent Multi-Family Zones as specified in the RM-3-9 Zone (Land Development Code Chapter 13, Article 1, Division 4 (Residential Base Zones) (e.g., One Dwelling Unit per 600 Square Feet)	P	P	P	P	P
Any other use which the Planning Commission may find to be similar in character to the uses, including accessory uses, numerated in this section and consistent with the purpose and intent of the particular zone in which it would be located. The adopted resolution embodying such finding shall be filed in the office of the City Clerk	P	P	P	P	P
Accessory Uses as Follows:					
Signs constructed, fabricated, erected, installed, attached, fastened, placed, positioned, operated, and abated in accordance with the regulations as set forth in Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations) subject to Section 1512.0408.	-	-	-	P	-
Accessory Uses determined by the Development Review Director to be appropriate in character and placement in relationship to a primary use.	P	P	P	P	P

Footnotes for Table 1512-03I

1

a. Facilities providing medical and counseling services which meet the criteria in Section 1512.0302(h)(3)(A) through (C) are not permitted on a lot or parcel located within 1,000 feet of any premises occupied by an elementary, junior, or senior high school, except that such use is permitted by organizations described in Land Development Code Section 141.0702(b).

b. Facilities where 5 or more persons as described in Section 1512.0302(h)(3)(B) are medically treated or medically or psychologically counseled, on a group or individual basis;

c. The persons have committed, been charged by criminal indictment or complaint, or convicted of, a sex-related offense outside the family unit as defined in the California Penal Code, Part 1, Title 9, Chapter 1, or in Sections 286, 286.5, 288, 288a, 289 of Chapter 5, or in Section 314 of Chapter 8, or any amendment for remodification or any such sections.

d. The medical and counseling services are directly related to physical or psychological treatment for the sex-related offenses committed and described in the above California Penal Code sections.

2

a. No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the table above; provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area; and, further provided, that no premises shall contain drive-in facilities except through a Mid-City Communities Development Permit.

b. All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed below shall be operated entirely within enclosed buildings. The following listed merchandise sold or rented on the premises may be displayed outdoors without screening walls or fences except along common property lines of abutting residentially-zoned lots:
   1) Flowers and plants.
   2) Food products
   3) Handcrafted products and goods
   4) Artwork and pottery

c. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

d. No mechanical equipment, tank duct, elevator enclosure, cooling tower or mechanical ventilator shall be erected, constructed, maintained or altered anywhere on the premises unless all such equipment and appurtenances are contained within a completely enclosed penthouse or other portion of a building having walls or visual screening with construction and appearances similar to main building.

[3] The floor area of any establishment may not exceed 5,000 square feet.

[4] Indicated use may be conducted outside a fully enclosed building.

[5] Commercial uses in the CL-1 Zone are restricted along University Avenue between 28th Street and Georgia Street in accordance with Section 1512.0309(b)(1).

[6] Special Regulations: Cl-5 & Cl-2 (At Texas and University)

a. No permitted use shall commence operating prior to 6:00 a.m. nor continue later than 12:00 midnight of any day.

b. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

[7] At least 75 percent of the gross floor area of the structure or structures on the lot or premises shall be devoted to business and professional office uses.

[8] In the CV-3 Zone, auto repair permitted only as an expansion of an existing previously conforming use with the approval of a Mid-City Communities Development Permit.

[9] In the CN-1A Zone and in the CN-2A Zone for lots exceeding 100 feet of street frontage, banks and business and professional office use together shall not exceed 50 percent of the ground floor area.

[10] Residential use is not permitted for lots in the CN-1 Zone west of I-805 which do not have access to a street or alley other than to University Avenue.

[11] No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.

[12] Live/Work Quarters are permitted subject to the regulations in Section 141.0311.

(b) Additional Permitted Uses in the Commercial Node (CN), Commercial Linear (CL) Zones, Commercial Village (CV), and Neighborhood Professional (NP) Zones

No building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except as set forth in Sections 1512.0302 and 1512.0305(a).

(1) Residential development is permitted in accordance with the regulations of the Mid-City Communities Planned District. This includes all permitted uses of the equivalent multi-family zones as established by the residential density provisions of Section 1512.0305(b)(3).

(2) In the CN-3 Zone, no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the Sections 1512.0302 and 1512.0305(a) provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area.

(3) In the Commercial Transition Zones (CN-1T, CN-2T and CN-3T), commercial uses are permitted only if the lot fronts on Adams Avenue, El Cajon Boulevard, University Avenue, Lincoln Avenue, 43rd Street, Fairmount Avenue, Euclid Avenue, Collwood Boulevard, College Avenue or 70th Street. This provision includes lots which are legally consolidated in accordance with Land Development Code Chapter 14, Article 4 (Subdivision Regulations).

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Section 7. That this activity is not a project and is therefore not subject to the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
01/16/07
Or.Dept:DSD
O-2007-79
MMS#3582

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 20 2007.

ELIZABETH S. MALAND
City Clerk

By Sara Richard
Deputy City Clerk

Approved: 3.17.07
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

CURRENT SAN DIEGO MUNICIPAL CODE § 1512.0305 AND TABLE 1512-03I

(*Effective Aug. 9, 2015)*

§1512.0305 Commercial Zones (CN, CL, CV, NP) - Permitted Uses

(a) No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor be used except for one or more of the purposes indicated with an "P" in Table 1512-03I. No use may be conducted outdoors on any premises except as indicated by footnote 4, or by specific reference.

Legend for Table 1512-03I

"P" = Permitted
"-" = Not Permitted

Table 1512-03I
Permitted Uses Table

Permitted Uses	CN-1,2 CN-1A,2A CL-1(6) CL-3 CL-6 CV-1,2,4	CL-2(6)	CN-3,4(2) CV-3(2)	CL-5(6)	NP-1,2,3
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P(7)
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P(10)	P	P	P	-
Apparel Shops	P	P	P	P	-
Art Stores and Art Galleries	P	P	P	-	-
Automobile & Truck Sales, Rental Agencies (Usable Vehicles Only)	P(4)	P(4)	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P(8)	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P(9)	P	P(9)	P(1)H	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P(4)	P(4)	-	-	-
Book Stores (No Adult Book Stores Shall Be Permitted in the Cl-5 Zone)	P	P	P	P	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Building Materials Stores, provided that open storage areas are completely enclosed by walls or buildings or a combination thereof; said walls and buildings shall be not less than 6 feet in height, and provided also there shall be no outdoor storage of merchandise, material, equipment or other goods to a height greater than that of any enclosing wall or building.	P	P	-	-	-
Business and Professional Office Uses (not including Hiring Halls in the Cl-5 Zone). (Such Uses my include Accountants, Advertising Agencies, Architects, Attorneys, Contractors, Doctors, Engineers, Financial Institutions, Insurance Agencies, Medical Clinics (No Overnight Patients), Photographers, Real Estate Brokers, Securities Brokers, Surveyors and Graphic Artists.	P[1][9]	P[1]	P[1][9]	P[1]	P[1]
Business Machine Sales Display and Service	P	P	-	-	P[7]
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	P	-	-
Confectioneries	P	P	P	P	-
Curtain and Drapery and Upholstery Shops	P	P	P	P	-
Custom Shop for Curtains, Draperies, Floor Coverings, Upholstery and Wearing Apparel	P[3]	P[3]	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P[11]	-
Dry Cleaning Establishments (No Truck Delivery of Finished Cleaning)	P	P	-	P	-
Dry Cleaning and Laundry Establishments (also includes self-service)	P	P	P	P	-
Dry Good Stores	P	P	-	-	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Electronic Data Processing, Tabulating, and Record Keeping Services	P	P	-	-	P[7]
Employment Agencies	P	P	-	-	-
Equipment and Tool Rental Establishments (No Man-ridden Equipment)	P	P	-	-	-
Feed Stores	P	P	-	-	-
Florists	P	P	P	P	-
Food Stores	P	P	P	P	-
Frozen Food Lockers	P	P	-	-	-
Funeral Parlors	P	P	-	-	-
Furniture Stores	P	P	-	-	-
Gymnasium and Health Studios	P	P	P	-	-
Hardware Stores	P	P	P	-	-
Hardware Stores, excluding the sale of Used Building Materials, Used Appliances and Used Plumbing Supplies	-	-	P	-	-
Hobby Shops	P	P	P	P	-
Hotels, Motels, and Time Share Projects	P	P	-	-	-
Ice Delivery Stations	P	P	-	-	-
Interior Decorators	P	P	P	-	-
Jewelry Stores	P	P	P	P	-
Labor Unions (No Hiring Halls) and Trade Associations	P	P	P	-	-
Laundries, if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	P[3]	P[3]	-	-	-
Liquor Stores	P	P	P	-	-
Live/Work Quarters	P(12)	P(12)	P(12)	-	-
Locksmith Shops	P	P	-	-	-
Medical Appliance Sales	P	P	-	-	-
Medical, Dental, Biological and X-ray Laboratories	P	P	P	-	-
Moving and Household Storage Facilities	P	P	-	-	-
Music Stores	P	P	P	-	-
Newspaper Plants	P	P	-	-	-
Nurseries-plants	P[4]	P[4]	P[4]	P[4]	-
Office Furniture and Equipment Sales	P	P	-	-	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Paint and Wallpaper	P	P	P	P	-
Parking Lots-commercial	P	P	-	-	-
Parking Lots and Facilities, if accessory to a permitted primary use, on the same premises, except that facilities completely below grade need not be accessory.	-	-	P	-	-
Pawn Shops	P	P	-	-	-
Pet Shops	P	P	-	-	-
Pharmacies	P	P	-	-	P[7]
Photographic Studios and Retail Outlets	-	-	P	-	-
Photographic Studios	P	P	-	P	-
Photographic Equipment, Supplies and Film Processing Stores	P	P	-	-	-
Plumbing Shops, provided that any open storage areas are completely enclosed by walls, or buildings, or a combination thereof, not less than six feet in height, and provided also there shall be no outdoor storage of merchandise, materials, equipment or other goods, to a height greater than that of any enclosing wall or building.	P[3]	P[3]	-	-	-
Post Offices	P	P	-	-	-
Private Clubs, Fraternal Organizations and Lodges	P	P	P	P	P
Public Utility Electric Substations, Gas Regulators and Communications Equipment Buildings developed in accordance with building and landscaping plans approved by the City Manager.	P	P	-	-	-
Radio and Television Broadcasting Studios	P	P	P	P	-
Radio, Television and Home Appliance Repair Shops	P	P	P	P	-
Recreational Facilities, including Bowling Lanes, Miniature Golf Courses, Skating Rinks, Gymnasiums and Health Centers	P	P	-	-	-

Permitted Uses	**CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4**	**CL-2[6]**	**CN-3,4[2] CV-3[2]**	**CL-5[6]**	**NP-1,2,3**
Restaurants (In the Cl-5 Zone, excluding Drive-in and Drive-thru Restaurants and further excluding Live Entertainment and sale of all Intoxicating Beverages except Beer and Wine)	P[4]	P[4]	P[4]	P[4]	P[4]
Rug and Carpet Stores	P	P	P	-	-
Shoe Stores	P	P	P	P	-
Shoe Repair Shops	P	P	P	P	-
Shopkeeper Units (See Section 113.0103) (Subject to Specific Zone Limitations)	P[10]	P	P	P	P
Sporting Goods Stores	P	P	P	-	-
Stationers	P	P	P	P	-
Storage Garages	P	P	-	-	-
Studios for Teaching of Art, Dancing and Music	P	P	P	P	-
Theaters, Nightclubs and Bars, with or without Live Entertainment, or any combination thereof (not permitted except by Conditional Use Permit if the size of the establishment exceeds 5,000 square feet in Gross Floor Area)	P	P	P	-	-
Tire Sales, Repair and Recapping Establishments, if entirely Within an Enclosed Building	P	P	-	-	-
Trade and Business Schools	-	-	-	-	-
Trailer Sales Agencies	P	P	-	-	-
Transportation Terminals	P	P	-	-	-
Travel Bureaus	P	P	-	-	-
Variety Stores	P	P	P	P	-
Wedding Chapels	P	P	-	-	-
Wholesaling or Warehousing of Goods and Merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 square feet.	P	P	-	-	-
Construction of Cabinets and Shelves, and Musical Instruments, or other Wood Working	-	P[3]	-	P[3]	-
Construction of Windows, Doors and Screens	-	P[3]	-	P[3]	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P[3]	-	P[3]	-
Repair of Tools, Machinery and Electronic Equipment	-	P[3]	-	-	-
Public Parks and Playgrounds	P	P	P	P	-
Residential Development, in accordance with the regulations of the Mid-City Communities Planned District, according to the permitted densities of equivalent Multi-Family Zones as specified in the RM-3-9 Zone (Land Development Code Chapter 13, Article 1, Division 4 (Residential Base Zones) (e.g., One Dwelling Unit per 600 Square Feet)	P	P	P	P	P
Any other use which the Planning Commission may find to be similar in character to the uses, including accessory uses, numerated in this section and consistent with the purpose and intent of the particular zone in which it would be located. The adopted resolution embodying such finding shall be filed in the office of the City Clerk	P	P	P	P	P
Accessory Uses as Follows:					
Signs constructed, fabricated, erected, installed, attached, fastened, placed, positioned, operated, and abated in accordance with the regulations as set forth in Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations) subject to Section 1512.0408.	-	-	-	P	-
Accessory Uses determined by the Development Services Director to be appropriate in character and placement in relationship to a primary use.	P	P	P	P	P

Footnotes for Table 1512-03I

[1] a. Facilities providing medical and counseling services which meet the criteria in Section 1512.0302(h)(3)(A) through (C) are not permitted on a lot or parcel located within 1,000 feet of any premises occupied by an elementary, junior, or senior high school, except that such use is permitted by organizations described in Land Development Code Section 141.0702(b).

b. Facilities where 5 or more persons as described in Section 1512.0302(h)(3)(B) are medically treated or medically or psychologically counseled, on a group or individual basis;

c. The persons have committed, been charged by criminal indictment or complaint, or convicted of, a sex-related offense outside the family unit as defined in the California Penal Code, Part 1, Title 9, Chapter 1, or in Sections 286, 286.5, 288, 288a, 289 of Chapter 5, or in Section 314 of Chapter 8, or any amendment for remodification or any such sections.

d. The medical and counseling services are directly related to physical or psychological treatment for the sex-related offenses committed and described in the above California Penal Code sections.

[2] a. No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the table above; provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area; and, further provided, that no premises shall contain drive-in facilities except through a Mid-City Communities Development Permit.

b. All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed below shall be operated entirely within enclosed buildings. The following listed merchandise sold or rented on the premises may be displayed outdoors without screening walls or fences except along common property lines of abutting residentially-zoned lots:

1) Flowers and plants.
2) Food products
3) Handcrafted products and goods
4) Artwork and pottery

c. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

d. No mechanical equipment, tank duct, elevator enclosure, cooling tower or mechanical ventilator shall be erected, constructed, maintained or altered anywhere on the premises unless all such equipment and appurtenances are contained within a completely enclosed penthouse or other portion of a building having walls or visual screening with construction and appearances similar to main building.

[3] The floor area of any establishment may not exceed 5,000 square feet.

[4] Indicated use may be conducted outside a fully enclosed building.

[5] Commercial uses in the CL-1 Zone are restricted along University Avenue between 28th Street and Georgia Street in accordance with Section 1512.0309(b)(1).

[6] Special Regulations: Cl-5 & Cl-2 (At Texas and University)

a. No permitted use shall commence operating prior to 6:00 a.m. nor continue later than 12:00 midnight of any day.

b. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

[7] At least 75 percent of the gross floor area of the structure or structures on the lot or premises shall be devoted to business and professional office uses.

[8] In the CV-3 Zone, auto repair permitted only as an expansion of an existing previously conforming use with the approval of a Mid-City Communities Development Permit.

[9] In the CN-1A Zone and in the CN-2A Zone for lots exceeding 100 feet of street frontage, banks and business and professional office use together shall not exceed 50 percent of the ground floor area.

[10] Residential use is not permitted for lots in the CN-1 Zone west of I-805 which do not have access to a street or alley other than to University Avenue.

[11] No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.

[12] Live/Work Quarters are permitted subject to the regulations in Section 141.0311.

(b) Additional Permitted Uses in the Commercial Node (CN), Commercial Linear (CL) Zones, Commercial Village (CV), and Neighborhood Professional (NP) Zones.

No building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except as set forth in Sections 1512.0302 and 1512.0305(a).

(1) Residential development is permitted in accordance with the regulations of the Mid-City Community Planned District.

(2) In the CN-3 Zone, no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the Sections 1512.0302 and 1512.0305(a) provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area.

("Commercial Zones (CN, CL, CV, NP) - Permitted Uses" added 3-27-2007 by O-19598 N.S.; effective 4-26-2007.)
(Amended 7-10-2015 by O-20512 N.S.; effective 8-9-2015.)
(Amended 12-1-2016 by O-20751 N.S.; effective 12-31-2016.)

§1512.0306 Commercial Zones - General Regulations

(a) Maximum Number of Dwelling Units

In no case shall any project exceed the maximum number of dwelling units listed below unless the project is on a single lot which 1) was created or consolidated, or for which an application has been submitted to the City to create a lot or consolidate lots, prior to the effective date of this ordinance; or 2) was created from a lot or lots which had a larger average square footage than the lot created.

-EXHIBIT O -

CITY OF CHULA VISTA

Sent by US Mail:
December 12, 2019

Ebon Johnson
EBZ Management dba Mankind of Chula Vista
[redacted]

Re: **Notice of Decision – Commercial Cannabis Business Application**
EBZ Management dba Mankind of Chula Vista (Submitter ID: 56918) – Storefront Retail

Dear Ebon Johnson:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of a felony. (CVMC 5.19.050(A)(5)(c)). [redacted]
- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). [redacted]
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). [redacted]
- The provisional application score of 338 has failed to rank high enough to be given a Phase Two application slot for Council District 4. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this decision is December 12, 2019. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than December 27, 2019**. A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy

Roxana Kennedy, Chief of Police

IN THE MATTER OF EBZ MANAGEMENT DBA MANKIND OF CHULA VISTA:

FINDINGS AND STATEMENT OF DECISION ON APPEAL OF NOTICE OF DECISION REJECTING APPLICATION FOR CANNABIS LICENSE - - APPEAL DENIED

A hearing on an appeal of a Notice of Decision rejecting an application for a City of Chula Vista cannabis license for EBZ Management, doing business as Mankind of Chula Vista, was heard on March 10, 2020 at the City of Chula Vista Civic Center, Executive Conference Room, located at 276 Fourth Avenue, Chula Vista, California 91910. City Manager Gary Halbert acted as Hearing Officer. Simón Silva, Deputy City Attorney, was present and served as advisor to the Hearing Officer. The matter was audio-recorded.

Ebon Johnson, an Owner/Manager of Mankind of Chula Vista ("Appellant") was present and appeared in propria persona. Appellant was sworn in and testified on his behalf. Documents in support of his appeal were admitted as City's Exhibit 1 with no objection. Appellant did not introduce any other documents.

The City was represented by Deputy City Attorney Megan McClurg. The following witnesses were present, sworn in and testified for the City: Lieutenant Christopher Kelley of the Chula Vista Police Department and Matthew Eaton of HdL, a City consultant firm. The City introduced and had admitted Exhibits 1 to 11 without objection (Attachment 1, City's Exhibits.)

The Hearing Officer took judicial notice of the Chula Vista Charter, the Chula Vista Municipal Code ("CVMC"), including section 5.19, Commercial Cannabis, and City of Chula Vista Cannabis Regulations (effective November 19, 2019) ("Regulations"), all of which were admitted into evidence without objection.

Appellant bears the burden of proof, by a preponderance of the evidence, to demonstrate the identified reason(s) for rejection contained in the Notice(s) of Decision were erroneous. (Regulations sections 0501(P)(1).) The City Manager's scope of review for purposes of appeal is limited to whether a basis for rejection is erroneous by a preponderance of evidence. (Regulations section 0501(P)(4).)

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. CVMC section 5.19.050 details the City cannabis license application process, including the following relevant sections:

    a. Section 5.19.050(A)(1)-(4) details the application requirements, including factors that will result in a score used in ranking an application.

b. Section 5.19.050(A)(5) details a process for review by the Chief of Police and type of conduct which may result in the rejection an application by the Chief of Police, including the following relevant conduct:

i. Section 5.19.050(A)(5)(c) states, "The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted of a felony."

ii. Section 5.19.050(A)(5)(d) states, "The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted any Crime of Moral Turpitude or any offense involving the use of a weapon."

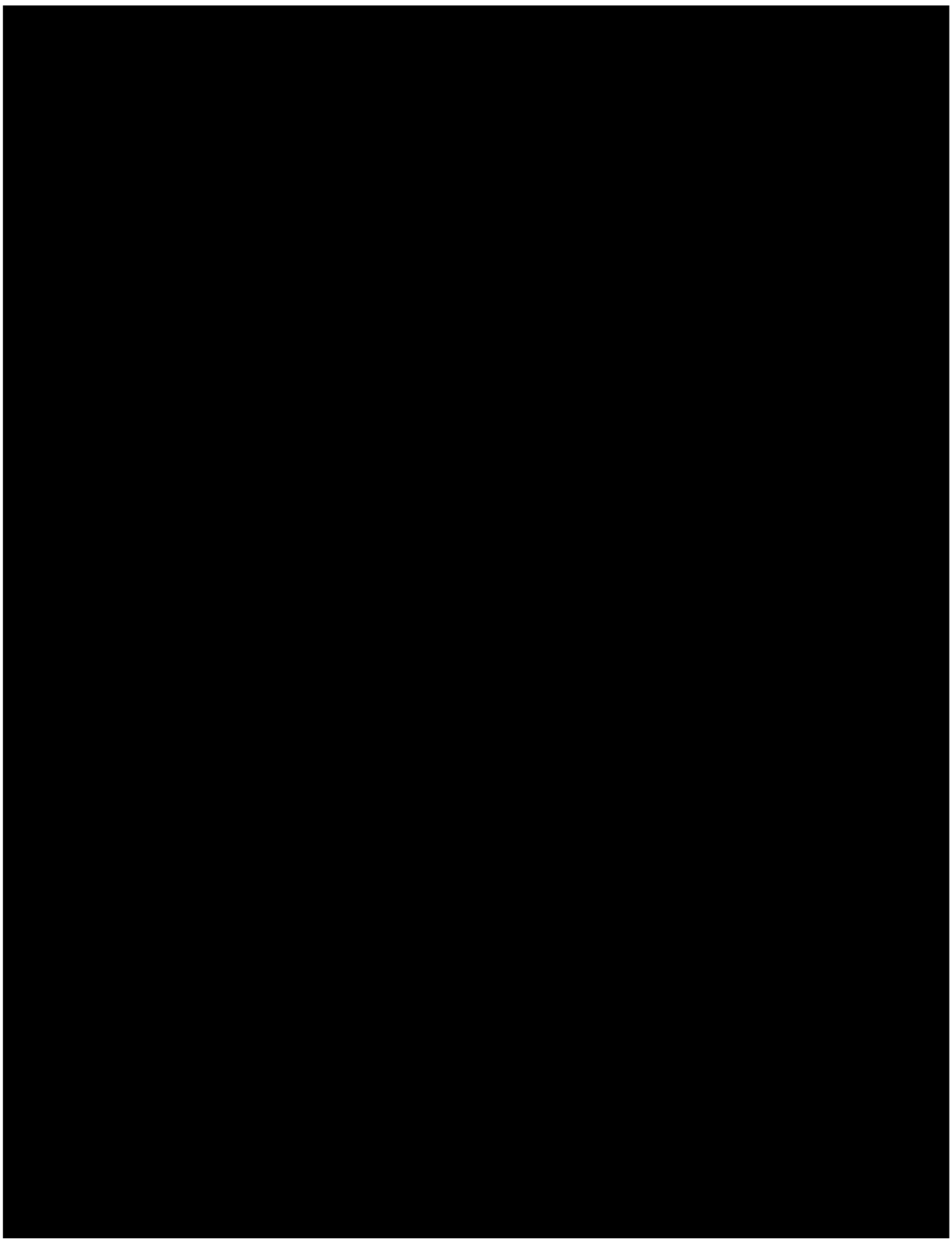
iii. Section 5.19.050(A)(5)(g) states, "The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction."

2. Appellant applied for a City of Chula Vista license to operate as a Cannabis Storefront Retailer. (City's Exhibit 5.) He submitted to a Livescan criminal background check. (City's Exhibit 3.) He further provided bank statements showing liquid assets, a "Business Plan," and "Operations Plan" in support of his application. (City's Exhibits 8, 9, and 10.)

[redacted]

4. The Chula Vista Chief of Police rejected Appellant's application, via a Notice of Decision dated December 12, 2019, because of the following: [redacted]; (3) an applicant, owner, manager, or officer has been has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful commercial cannabis activity in the city or any other jurisdiction (it was alleged Appellant had engaged in unlawful cannabis activity, including that he was convicted of Health and Safety Code section 11366.5); and ([redacted]

5. Appellant timely appealed the Notice of Decision by filing a Request to Appeal Notice of Decision on December 27, 2019. (City's Exhibit 1.) Referring to the above-referenced Notice of Decision, Appellant alleged the City's decision was erroneous because of the following: [redacted]

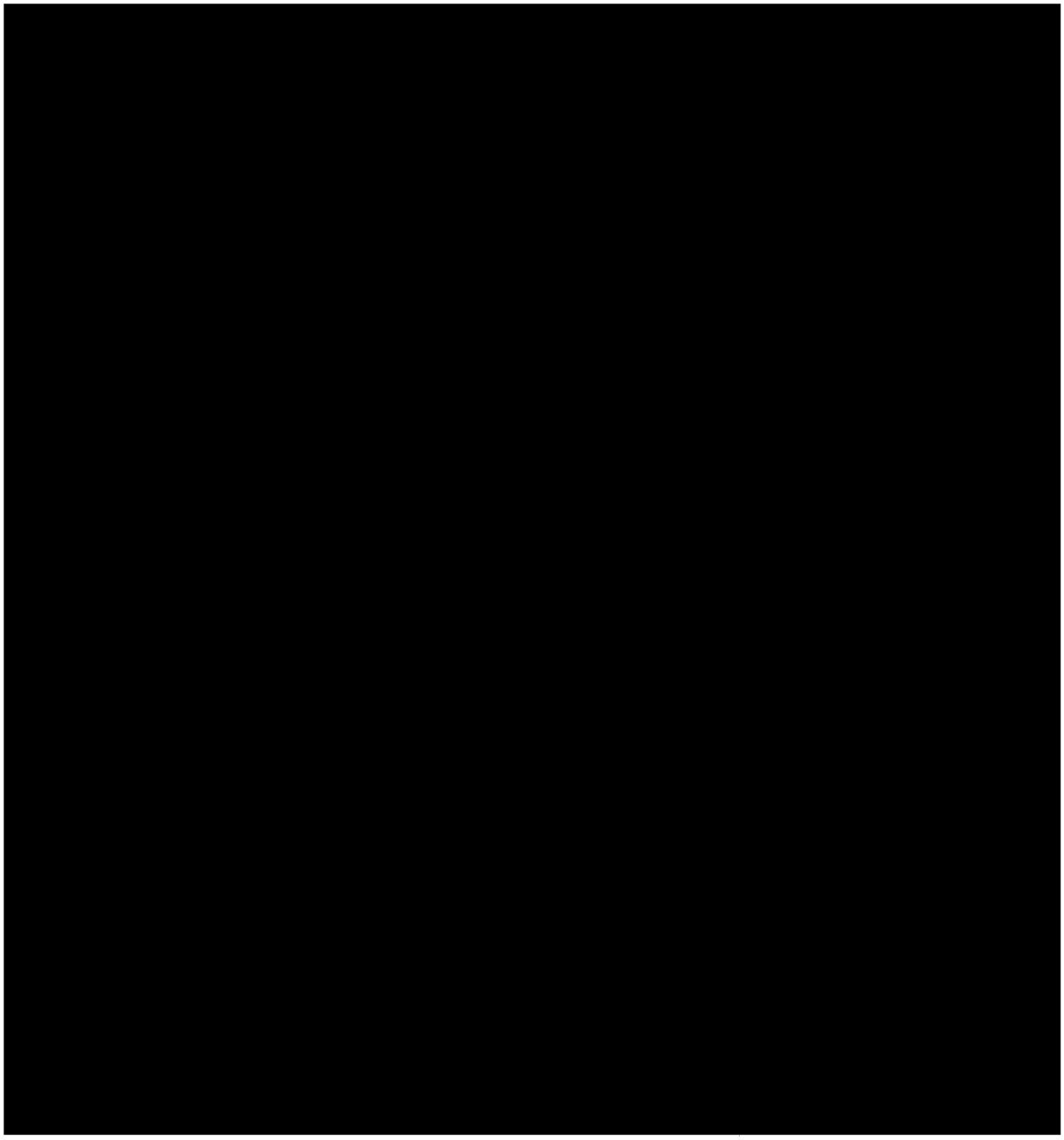


[redacted]

9. Unlawful Commercial Cannabis Activity. With regard to CVMC section 5.19.050(A)(5)(g), involvement in unlawful commercial cannabis activity, the evidence was as follows:

(a) Civil lawsuit. On July 7, 2014, Appellant and others were named in a civil complaint filed by the City of San Diego in San Diego Superior Court, case number 37-2014-00022324-CU-MC-CTL, alleging that he and others were operating an illegal marijuana dispensary. On August 27, 2014, Appellant and the others settled this civil case, and Appellant and the others agreed to be enjoined, *inter alia*, from operating or maintaining a marijuana dispensary at the property that was the subject of the complaint. (City's Exhibit 6, at Pages 75 and 78.)

[redacted]



DECISION

Based upon the above, the preponderance of the evidence presented shows that Appellant has failed to meet his burden and show error. Instead, for the reasons stated above, the evidence shows the City reasonably and properly denied Appellant's application. As a result, Appellant's appeal is DENIED.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure sections 1094.5 and 1094.6 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED.

By: Gary Halbert

Gary Halbert, City Manager, (retired)
Hearing Officer
July 14, 2020

Attachments:

1. Exhibit List
2. Certificate of Mailing/Proof of Service

CITY OF CHULA VISTA

Sent by US Mail:
January 31, 2020

Sarmad Hallak
PERSONAL/PRIVACY
educannaca@gmail.com

Re: Notice of Decision – Commercial Cannabis Business Application
4041 Bonita LLC dba EDUCANNA (Submitter ID: 59535) – Storefront Retailer

Dear Sarmad Hallak:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC PERSONAL/PRIVACY
- There are charges pending against the Applicant, an Owner, a Manager, and/or an Officer for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon. (CVMC 5.19.050(A)(5)(e)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY

The effective date of this decision is January 31, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than February 17, 2020**.

(continued on next page)

A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

IN THE MATTER OF EDUCANNA LLC AND 4041 BONITA LLC DBA EDUCANNA:

FINDINGS AND STATEMENT OF DECISION ON APPEAL OF NOTICE OF DECISION REJECTING APPLICATIONS FOR CITY OF CHULA VISTA CANNABIS LICENSES -- APPEAL DENIED

A consolidated hearing on appeals of Notices of Decision rejecting three applications by Educanna LLC and 4041 Bonita LLC, doing business as EduCanna ("Appellant"), for City of Chula Vista cannabis licenses was held on May 28, 2020. Chula Vista City Manager Gary Halbert acted as Hearing Officer ("Hearing Officer.") Simón Silva, Deputy City Attorney, was present and served as advisor to the Hearing Officer. The hearing was conducted by Webex teleconference by stipulation and was audio- and video-recorded.

Appellant was represented by Jessica C. McElfresh, attorney-at-law. Also present for Appellant were owners Michael Reidy, Sarmad Hallak, and Mitchell Compton. Lunar Loussia was present. Documents in support of Appellant's appeal were admitted without objection. (Appellant's Exhibit List, Attachment 2, including a color copy of business and operating plans for application 59535 at the proposed site of 4041 Bonita Road, at Pages 003 to 658.) Appellant did not introduce any other documents.

The City of Chula Vista ("City") was represented by Megan McClurg, Deputy City Attorney. Also present for the City were Police Lieutenant Christopher Kelley of the Chula Vista Police Department; Kelly Broughton, Director of Development Services; and Kelley Bacon, Deputy City Manager. The City's documents were admitted without objection. (City's Exhibit List, Attachment 1.) City did not introduce any other documents.

In July 2020, it was discovered that Page 3 of Appellant's Request to Appeal the Notice of Decision in application number 59535 was missing and that City's Revised Notices of Decision for application numbers 59538, and 59539 had not been included in City's Exhibits. The parties conferred and stipulated to amendment. Accordingly the record before the Hearing Officer now includes the complete and operant documents as City's Exhibits 1 (notices of decision) and 2 (requests to appeal).

All witnesses were sworn in before they testified. The parties stipulated to jurisdiction and venue in Chula Vista. The Hearing Officer took judicial notice of the Chula Vista Charter, the Chula Vista Municipal Code ("CVMC"), including section 5.19, Commercial Cannabis, and City of Chula Vista Cannabis Regulations (effective November 19, 2019) ("Regulations"), which were admitted into evidence without objection. The parties had the opportunity to make opening and

closing statements, question witnesses, and discuss admitted exhibits during the hearing, which was roughly one hour and fifty minutes.

Appellant bears the burden of proof, by a preponderance of the evidence, to demonstrate the identified reason(s) for rejection contained in the Notice(s) of Decision were erroneous. (CVMC section 5.19.050(A)(6), Regulations sections 0501(P)(1).) The City Manager's scope of review for purposes of appeal is whether a basis for rejection is erroneous by a preponderance of evidence. (Regulations section 0501(P)(4).)

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. Appellant timely appealed City's rejection of three applications for Restricted Cannabis licenses for retail storefronts, application numbers 59535, 59538, and 59539. (City's Exhibit 2.)

2. According to the Revised Notices of Decision for application numbers 59538 and 59539, the grounds for rejection were scores too low to advance in the selection process and two Managers' disqualifying criminal issues. (City's Exhibit 1.) Application number 59535, in contrast, scored high enough to advance in the selection process. (City's Exhibit 7.) [redacted]

3. [redacted]

4. CVMC section 5.19.050 governs the City's cannabis license application process, including the following relevant sections:
    a. Section 5.19.050(A)(1)-(4) lists the application requirements, including factors that will result in a score used in ranking an application, including the following relevant conduct:
        i. [redacted]

[redacted]

b. Section 5.19.050(A)(5) describes a process for review by the Chief of Police and types of conduct that are grounds for rejection of the application, at the Police Chief's discretion, including the following relevant conduct:

i. [redacted]

iii. Section 5.19.050(A)(5)(g) states that Phase One Applications may be rejected by the Chief of Police because "the Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or other jurisdiction."

[redacted]

[redacted]

6. Manager Gagnon's omission of employment and prior involvement in unlawful commercial cannabis activity. [redacted]

[redacted]

The evidence shows by a preponderance of evidence that Ms. Gagnon worked at an unlicensed, unlawful San Diego marijuana dispensary in 2010 and that she omitted this fact from the application and in the application process. The Hearing Officer finds by preponderance of evidence that City's rejection of Appellant's applications on the ground of omission of fact in the application or application process, pursuant to CVMC sections 5.19.050(A)(4)(e) and 5.19.050(A)(5)(a), was reasonable and appropriate. The Hearing Officer also finds by a preponderance of evidence that City's rejection of Appellant's applications on the ground of a Manager's prior involvement in, and/or concealment of, unlawful commercial cannabis activity, pursuant to Section 5.19.050(A)(5)(g), was reasonable and appropriate and not erroneous. Appellant did not meet its burden to demonstrate by a preponderance of evidence that City's rejection of the applications on any of these grounds was erroneous.

[redacted]

[redacted]

DECISION

Based upon the foregoing, the preponderance of the evidence presented shows that Appellant has failed to meet its burden and show error. Instead, for the foregoing reasons, the evidence shows the City reasonably and appropriately denied Appellant's application. As a result, Appellant's appeal is DENIED.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that City may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure section 1094.5 and section 1094.6 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED:

By: _____
Gary Halbert, City Manager (retired)
Hearing Officer
July 17, 2020

Attachments:

1. City's Exhibit List
2. Appellant's Exhibit List
3. Certificate of Mailing/Proof of Service

CITY OF CHULA VISTA

Sent by US Mail:
February 20, 2020

Sarmad Hallak
PERSONAL/PRIVACY
educannaca@gmail.com

Re: Notice of Decision – Commercial Cannabis Business Application
Educanna LLC (Submitter ID: 59538) – Storefront Retailer

Dear Sarmad Hallak:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC PERSONAL/PRIVACY
- There are charges pending against the Applicant, an Owner, a Manager, and/or an Officer for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon. (CVMC 5.19.050(A)(5)(e)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY

The effective date of this decision is February 20, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than March 6, 2020.**

(continued on next page)

A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail:
February 25, 2020

Sarmad Hallak
PERSONAL/PRIVACY
educannaca@gmail.com

Re: *REVISED* Notice of Decision – Commercial Cannabis Business Application Educanna LLC (Submitter ID: 59539) – Storefront Retailer

Dear Sarmad Hallak:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This **revised** letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC PERSONAL/PRIVACY
- There are charges pending against the Applicant, an Owner, a Manager, and/or an Officer for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon. (CVMC 5.19.050(A)(5)(e)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The total application score of 876.8 has failed to rank high enough to be given a Phase Two application slot for Council District 2. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this **revised** decision is February 25, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than March 11, 2020**. Please be aware that this **revised** decision supersedes the Notice of Decision letter sent to you on February 20, 2020.

(continued on next page)

A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail & Email:
January 31, 2020

Khalsa Jagatjoti
c/o James Whalen
179 Calle Magdalena
Encinitas, CA 92024
jessica@mcelfreshlaw.com

Re: Notice of Decision – Commercial Cannabis Business Application
Good Earth Chula Vista, LLC (Submitter ID: 57346) – Distributor

Dear Khalsa Jagatjoti:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY

The effective date of this decision is January 31, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than February 17, 2020.** A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

(continued on next page)

For your information, City anticipates opening another Application Period for manufacturing, distribution, cultivation, and testing laboratories in late February or early March 2020. City is also exploring the possibility of a reduced application fee for those who have previously submitted a substantially similar application with the City of Chula Vista.

Sincerely,

Roxana Kennedy

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail & Email:
January 31, 2020

Khalsa Jagatjoti
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Good Earth Chula Vista, LLC (Submitter ID: 57039) – Cultivator

Dear Khalsa Jagatjoti:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY

The effective date of this decision is January 31, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than February 17, 2020.** A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

(continued on next page)

For your information, City anticipates opening another Application Period for manufacturing, distribution, cultivation, and testing laboratories in late February or early March 2020. City is also exploring the possibility of a reduced application fee for those who have previously submitted a substantially similar application with the City of Chula Vista.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail & Email:
January 31, 2020

Khalsa Jagatjoti
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Good Earth Chula Vista, LLC (Submitter ID: 57347) – Manufacturer

Dear Khalsa Jagatjoti:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY

The effective date of this decision is January 31, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than February 17, 2020.** A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

(continued on next page)

For your information, City anticipates opening another Application Period for manufacturing, distribution, cultivation, and testing laboratories in late February or early March 2020. City is also exploring the possibility of a reduced application fee for those who have previously submitted a substantially similar application with the City of Chula Vista.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail & Email:
February 20, 2020

Khalsa Jagatjoti
c[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Good Earth Chula Vista, LLC (Submitter ID: 57032) – Storefront Retailer

Dear Khalsa Jagatjoti:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVAC PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The provisional application score of 267.5 has failed to rank high enough to be given a Phase Two application slot for Council District 3. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this decision is February 20, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager.

(continued on next page)

Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than March 6, 2020. A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

IN THE MATTER OF GOOD EARTH CHULA VISTA LLC:

FINDINGS AND STATEMENT OF DECISION ON APPEAL OF NOTICE OF DECISION REJECTING AN APPLICATION FOR A CITY OF CHULA VISTA CANNABIS LICENSE -- APPEAL DENIED

A hearing on an of a Notice of Decision rejecting the application of Good Earth Chula Vista, LLL ("Appellant"), for City of Chula Vista ("City") storefront retailer cannabis license, submitter identification number 57032, was held on June 19, 2020. Chula Vista City Manager Gary Halbert acted as Hearing Officer ("Hearing Officer.") Carol Trujillo, Deputy City Attorney, was present and served as advisor to the Hearing Officer. The hearing was conducted by Webex teleconference by stipulation and was audio- and video-recorded.

Appellant was represented by Jessica C. McElfresh, attorney-at-law. Also present for Appellant were owners James Mumford and Rodger Quist. James Whelan and Bob Kurilko also were present. Documents in support of Appellant's appeal were admitted without objection. (Appellant's Exhibit List, Attachment 2, includes a May 29, 2020 cover letter listing Appellant's donations of flowering plants to local businesses and City departments and medical marijuana case law from 2012.) Appellant did not introduce any other documents.

The City of Chula Vista ("City") was represented by Megan McClurg, Deputy City Attorney. Also present for the City were Police Officer Jason Edlin of the Chula Vista Police Department; Kelly Broughton, Director of Development Services; Matthew Eaton of HdL, a City consultant; and Kelley Bacon, Deputy City Manager. The City's documents were admitted without objection. (City's Exhibit List, Attachment 1.) City did not introduce any other documents.

All witnesses were sworn in before they testified. The parties stipulated to jurisdiction and venue in Chula Vista. The Hearing Officer took judicial notice of the Chula Vista Charter, the Chula Vista Municipal Code ("CVMC"), including section 5.19, Commercial Cannabis, and City of Chula Vista Cannabis Regulations (effective November 19, 2019) ("Regulations"), which were admitted into evidence without objection. The parties had the opportunity to make opening and closing statements, question witnesses, and discuss admitted exhibits during the hearing, which was three hours and 13 minutes.

Appellant bears the burden of proof, by a preponderance of the evidence, to demonstrate the identified reasons for rejection contained in the Notice of Decision were erroneous. [CVMC section 5.19.050(A)(6), Regulations sections 0501(P)(1).] The City Manager's scope of review for purposes of appeal is whether a basis for rejection is erroneous by a preponderance of evidence. [Regulations section 0501(P)(4).]

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. Appellant timely appealed City's rejection of its application for a storefront retailer license in Council District 3, submitter identification number 57032. (City's Exhibit 2.)

2. According to the Notice of Decision ("NOD"), the grounds for rejection were a Manager's disqualifying criminal history issues and a score too low to advance in the selection process. (City's Exhibit 1.)

3. [redacted]

    b. Section 5.19.050(A)(5) describes a process for review by the Chief of Police and types of conduct that are grounds for rejection of the application, at the Police Chief's discretion, including the following relevant conduct:

        i. [redacted]

        ii. Section 5.19.050(A)(5)(g) states that Phase One Applications may be rejected by the Chief of Police because "the Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has conducted,

facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or other jurisdiction."

4. Owner/Manager Gagnon's omission of employment and prior involvement in unlawful commercial cannabis activity. [redacted]

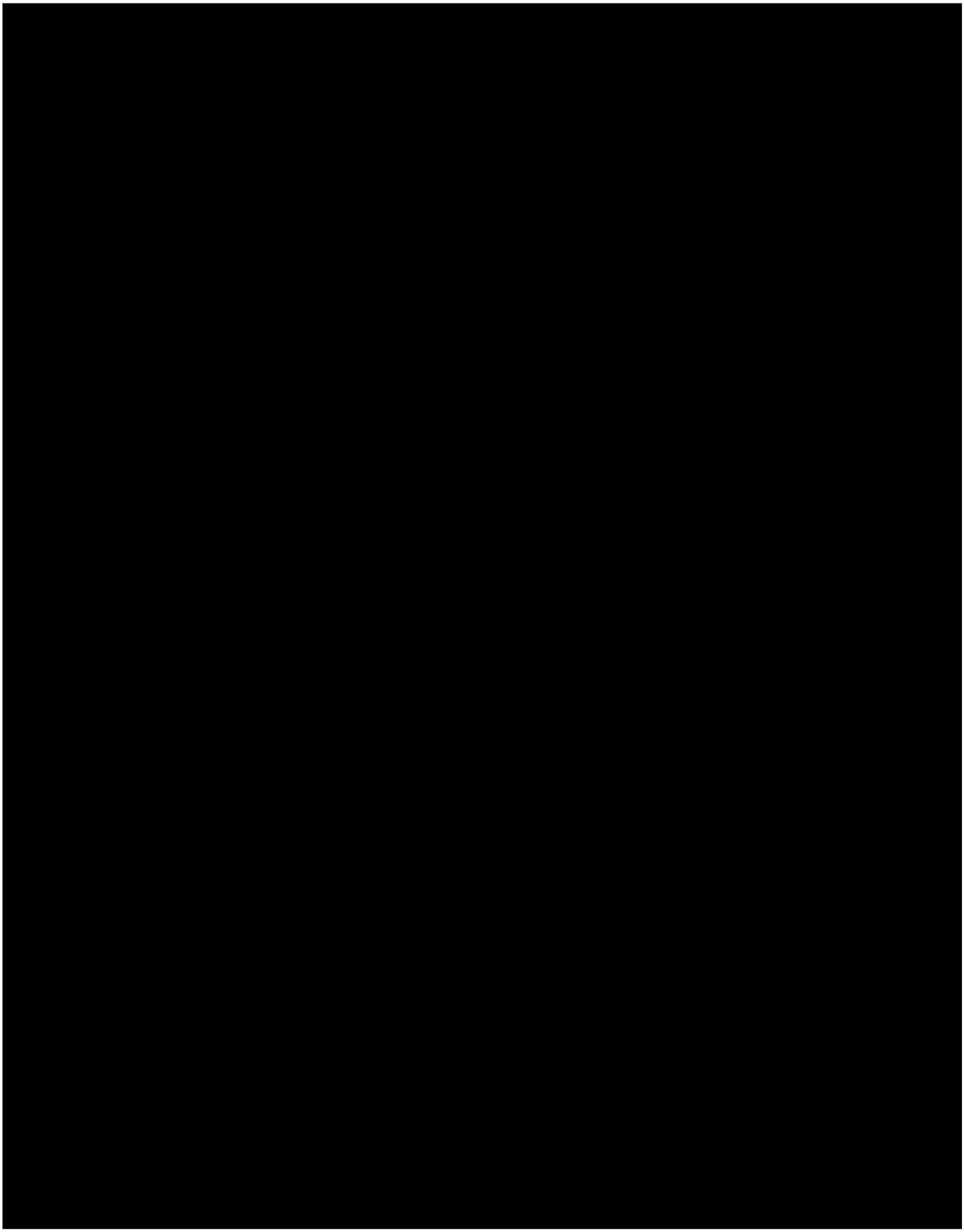
[redacted]

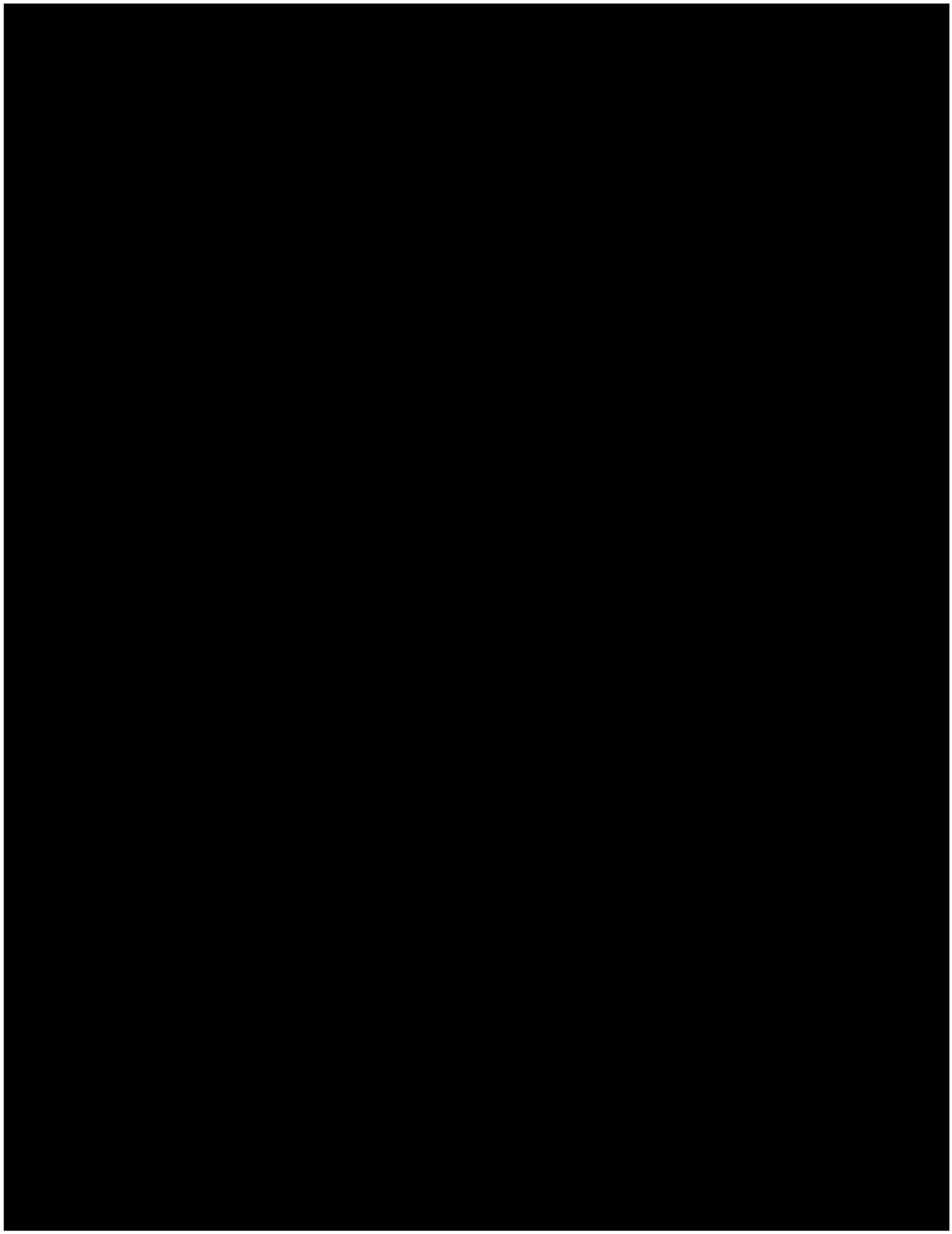
6. [redacted]

7. [redacted]

[redacted]. The Hearing Officer also finds by a preponderance of evidence that City's rejection of Appellant's applications on the ground of a Manager's prior involvement in, and/or concealment of, unlawful commercial cannabis activity, pursuant to Section 5.19.050(A)(5)(g), was reasonable and appropriate and not erroneous. Appellant did not meet its burden to demonstrate by a preponderance of evidence that City's rejection of the applications on any of these grounds was erroneous.

[redacted]





DECISION

Based upon the foregoing, the preponderance of the evidence presented shows that Appellant has failed to meet its burden to show error. Instead, for the foregoing reasons, the evidence shows the City reasonably and appropriately denied Appellant's application. As a result, Appellant's appeal is DENIED.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure section 1094.5 and section 1094.6 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED:

By: _____
Gary Halbert, City Manager (retired)
Hearing Officer
August 11, 2020

Attachments:

1. City's Exhibit List
2. Appellant's Exhibit List
3. Certificate of Mailing/Proof of Service

CITY OF
CHULA VISTA

Sent by US Mail:
January 31, 2020

Barry Walker
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Tradecraft Farms – Chula Vista, LLC dba Tradecraft Farms
(Submitter ID: 57058) – Storefront Retailer

Dear Barry Walker:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY

The effective date of this decision is January 31, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than February 17, 2020.**

(continued on next page)

A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

IN THE MATTER OF CHULA VISTA LLC dba TRADECRAFT FARMS:

FINDINGS AND STATEMENT OF DECISION ON APPEAL OF NOTICE OF DECISION REJECTING AN APPLICATION FOR A CITY OF CHULA VISTA COMMERCIAL CANNABIS LICENSE – DENIED

This Appeal Determination is issued by the City Manager of the City of Chula Vista ("City") in response to the appeal request of Chula Vista LLC dba Tradecraft Farms ("Appellant"), made in response to the Notice of Decision ("NOD") issued on January 31, 2020 by the City rejecting Appellant's commercial cannabis business application, storefront retailer, submitter identification number 57058.

Appellant timely appealed, waived its right to an in-person appeal hearing and requested, instead, to appeal in writing. Appellant promptly submitted a "Request to Appeal Notice of Decision" dated June 5, 2020 and supporting information in support of its appeal. (*See,* Appellant's Exhibit List, Attachment 1). The City submitted its final evidence and argument in its "Memorandum in Support of Tradecraft Farms Notice of Decision," dated June 12, 2020, including the sworn written testimony of Christopher Kelley, and its exhibits numbered 1 through 11. (*See*, City's Exhibit List, Attachment 2.)

Appellant bears the burden of proof, by a preponderance of the evidence, to demonstrate that the identified reasons for rejection contained in the Notices of Decision were erroneous. [Chula Vista Municipal Code ("CVMC") section 5.19.050(A)(6); and Chula Vista Cannabis Regulations ("Regulations") section 0501(P)(1).)] The Hearing Officer's scope of review for purposes of appeal is whether a basis for rejection is erroneous by a preponderance of the evidence. [Regulations section 0501(P)(4).]

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. Appellant submitted to the City an application to operate as a commercial cannabis business as a storefront retailer, submitter identification number 57058. (City Exhibits 4 and 5.)

2. On January 31, 2020, the City issued a NOD rejecting Appellant's application on three grounds of disqualifying criminal history. (A) First, the rejection was based on CVMC section 5.19.050(A)(5)(d), which states that an application may be rejected if the applicant, an owner, a manager, or an officer has been convicted of a crime of moral turpitude or any

offense involving use of a weapon. Specifically, [redacted] (B) Second, the rejection was based on CVMC 5.19.050(A)(5)(f), which states that an application may be rejected if the applicant, an owner, a manager, or an officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to commercial cannabis activity. Specifically, [redacted] (C) Third, the rejection was based on CVMC 5.19.050(A)(5)(g), which states that an application may be rejected if an applicant, an owner, a manager, or an officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful commercial cannabis activity in any jurisdiction. [redacted]

3. Appellant timely appealed the City's rejection of the Application, challenging the rejection and all bases for the rejections. Appellant waived its right to an in-person hearing. (Regulations, section 0501.P.3.) Appellant submitted evidence along with the Appeal, in support of Appellant's position. (Appellant Exhibit 1)

4. Grounds for Appeal

   A. The [redacted] Convictions Are Not Crimes of Moral Turpitude. Appellant does not contest that brothers [redacted] have misdemeanor criminal convictions, which are uncontrovertibly established in their applications signed under penalty of perjury (City Exhibits 4 and 5) and conviction documents. (City's Exhibits 6-11). Rather Appellant contends rejection of its application was erroneous because only felony convictions may be crimes of moral turpitude. (Appellant Exhibit 1.) Specifically: "(N)one of the convictions constitutes a crime of moral turpitude. [redacted]. By definition, these are not crimes of moral turpitude. If they had been crimes of "moral depravity" constituting "shocking" and "extreme" departures from the norm of ordinary standards, then they would not have

been charged as misdemeanors and no court would have imposed merely a sentence of probation." (Appellant Exhibit 1, page 4.) Appellant further contends the "Notice of Decision also erroneously uses [redacted] as a basis to deny the application on the ground that is was an offense involving the use of a weapon. That is simply factually incorrect. [redacted]

B. CVMC 5.19.050.A.5. describes a process for review by the Chief of Police and the types of conduct that are grounds for rejection of an application, at the Police Chief's discretion, with specific relevant sections noted *supra* in Paragraph 2. CVMC 5.19.050(A)(5)(d) allows the Police Chief to reject a cannabis business license application if an owner or manager has been convicted of a crime of moral turpitude or any offense involving use of a weapon. This provision does not limit the rejection basis to convictions for felony crimes of moral turpitude. The California Supreme Court has identified crimes of moral turpitude as those that either involve dishonesty as an element (i.e., fraud, perjury, theft) or indicate a "general readiness to do evil", regardless of their status as a misdemeanor or felony. *People v. Wheeler* (1992) 4 Cal.4th 284; *People v. Castro* (1985) 38 Cal.3d 301; *In re Hallinan* (1954) 43 Cal.2d 243.

C. [redacted]

D. [redacted]

E. [redacted]

i. Based on the foregoing, the Hearing Officer finds by a preponderance that the decision to reject Appellant's commercial cannabis application, as stated in the NOD, was made in accordance with CVMC Chapter 5.19 and governing law and was not erroneous. Specifically: (a) [redacted] misdemeanor conviction for [redacted] is a crime of moral turpitude; (b) [redacted] misdemeanor

conviction for [redacted] is an offense involving use of a weapon; and (c) [redacted] misdemeanor conviction for [redacted] is a crime of moral turpitude. Therefore, [redacted] misdemeanor convictions is a valid, appropriate and independent ground for the Police Chief's rejection of Appellant's application pursuant to CVMC 5.19.050(A)(5)(d).

F. Accordingly, the Hearing Officer finds Appellant has not met its burden of proof, which is a preponderance of the evidence, to demonstrate that the first ground for rejection contained in the NOD is erroneous.

G. Because [redacted] Was Dismissed Nunc Pro Tunc, It Cannot Be Used to Disqualify. Similarly, Appellant does not contest that [redacted] conviction is incontrovertibly established in his application (City Exhibit 4) and the conviction documents (City's Exhibit 9, w[redacted]) Rather, Appellant contends the conviction does not constitute a "material violation of state or local laws or regulations related to Commercial Cannabis Activity," pursuant to CVMC 5.19.050(A)(5)(f), the second rejection ground in the NOD. Or that [redacted] "concealed unlawful Commercial Cannabis Activity," pursuant to CVMC 5.19.050(A)(5) (g), the third rejection ground in the NOD. According to Appellant, neither ground can be used to deny the application, however, because [redacted]) has been dismissed by the Court *nunc pro tunc,* Latin for "this for that."

H. CVMC 5.19.050(A)(5)(f) states that an application may be rejected by the Police Chief if the applicant, an owner, a manager, or an officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to commercial cannabis activity. Additionally, CVMC 5.19.050(A)(5)(g) states that an application may be rejected if an applicant, an owner, a manager, or an officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful commercial cannabis activity in any jurisdiction. (City's Exhibit 1.)

I. Documents from [redacted] (City's Exhibit 9) establish that a [redacted] City's Exhibit 9 and declaration of Chula Vista Police Department Lieutenant Christopher Kelly, Paragraph 8.)

J. [redacted]

K. Appellant argues that because [redacted] conviction was dismissed *nunc pro tunc*, it cannot be used to disqualify the application. Appellant additionally argues that [redacted]

L. Appellant files no documents, evidence, or testimony to establish that [redacted] has been dismissed. Even if [redacted] conviction had been dismissed after successful probation, such dismissal would not erase the underlying facts of the offense.

M. Expungement or dismissal frees a convicted person from certain penalties and disabilities of a criminal or like nature, but does not purge the defendant of the guilt established, particularly in instances of license revocation or denial. *In re Phillips* (1941) 17 Cal.2d 55; *Meyer v. Board of Medical Examiners* (1949) 34 Cal.2d 62; *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872; *Copeland v. Department of Alcohol Beverage Control* (1966) 241 Cal.App.2d 186; *People v. Frawley* (2000) 82 Cal.App.4th 784.

N. Additionally, even if [redacted], they would not bind the Chula Vista Police Chief's determination on a Chula Vista business license application determination.

O. The bases for rejection contained in the Chula Vista Municipal Code under sections 5.19.050(A)(5)(f) & (g) do not require a criminal conviction – they require sanction by another jurisdiction related to unlawful cannabis activity or involvement in unlawful cannabis activity. [redacted](City Exhibit 9, declaration of Lt. Kelly.)

P. Based on the foregoing, the Hearing Officer finds by a preponderance that [redacted] This conviction establishes by a preponderance of evidence that an owner or manager had been aversely sanctioned or penalized by a city for a material violation of state or local laws or regulations related to commercial cannabis activity, pursuant to CVMC section 5.19.050(A)(5)(f). This

conviction also establishes by a preponderance of evidence that a manager and owner has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful commercial cannabis activity in any jurisdiction, pursuant to CVMC section 5.19.050(A)(5)(g). The Police Chief's rejection of Appellant's application on each of these grounds is therefore justified and not erroneous.

Q. [redacted] Accordingly, the Hearing Officer finds Appellant has not met its burden of proof, which is a preponderance of the evidence, to demonstrate the second and third grounds for rejection contained in the NOD was erroneous.

DECISION

Based upon the above, the preponderance of the evidence presented shows the City reasonably and appropriately rejected Appellant's Applications and that Appellant failed to meet its burden to show that the decisions were erroneous. As a result, Appellant's appeal is DENIED.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure section 1094.5 and section 1094.6 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED:

By: _____
Gary Halbert, City Manager (retired)
Hearing Officer
August 7, 2020

Attachments:

1. Appellant's Exhibit List
2. City's Exhibit List
3. Certificate of Mailing/Proof of Service

CITY OF CHULA VISTA

Sent by US Mail:
April 22, 2020

Pierre Rouleau
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Chula Vista Retail Solutions (Submitter ID: 56891) – Non-Storefront Retailer

Dear Pierre Rouleau:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The provisional application score of 198 has failed to rank high enough to be given a Phase Two application slot for Council District 3. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this decision is April 22, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager.

(continued on next page)

Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 7, 2020. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF CHULA VISTA

Sent by US Mail:
April 22, 2020

Pierre Rouleau
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Chula Vista Retail Solutions (Submitter ID: 56894) – Storefront Retailer

Dear Pierre Rouleau:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The provisional application score of 198 has failed to rank high enough to be given a Phase Two application slot for Council District 2. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this decision is April 22, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager.

(*continued on next page)*

Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 7, 2020. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail:
April 22, 2020

Pierre Rouleau
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Chula Vista Retail Solutions (Submitter ID: 56898) – Storefront Retailer

Dear Pierre Rouleau:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The provisional application score of 198 has failed to rank high enough to be given a Phase Two application slot for Council District 4. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

The effective date of this decision is April 22, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager.

(continued on next page)

Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 7, 2020. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF
CHULA VISTA

Sent by US Mail:
February 20, 2020

Edvin Mailyan
1 [redacted]
[redacted]
PERSONAL/PRIVACY

Re: Notice of Decision – Commercial Cannabis Business Application
Leafed, Inc. dba Cookies Chula Vista (Submitter ID: 57116) – Storefront Retailer

Dear Edvin Mailyan:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The application is incomplete (CVMC 5.19.050(A)(4)(b)). *Edvin Mailyan failed to submit a Police Controlled Application.*
- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVA [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, an Officer, and/or any individual identified pursuant to 5.19.050.A.1.i. has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. *Edvin Mailyan failed to submit a Police Controlled Application.*
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The provisional application score of 395 has failed to rank high enough to be given a Phase Two application slot for Council District 2. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

(continued on next page)

The effective date of this decision is February 20, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than March 6, 2020.** A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF CHULA VISTA

Sent by US Mail:
February 20, 2020

Edvin Mailyan
[redacted]
PERSONAL/PRIVACY

Re: Notice of Decision – Commercial Cannabis Business Application
Leafed, Inc. dba Cookies Chula Vista (Submitter ID: 57133) – Storefront Retailer

Dear Edvin Mailyan:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The application is incomplete (CVMC 5.19.050(A)(4)(b)). *Edvin Mailyan failed to submit a Police Controlled Application.*
- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVA [redacted] PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, an Officer, and/or any individual identified pursuant to 5.19.050.A.1.i. has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. *Edvin Mailyan failed to submit a Police Controlled Application.*
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY [redacted] PERSONAL/PRIVACY
- The provisional application score of 395 has failed to rank high enough to be given a Phase Two application slot for Council District 3. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

(continued on next page)

The effective date of this decision is February 20, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City Clerk no later than March 6, 2020.** A Request for Appeal form can be obtained in person at the Chula Vista City Clerk's Office, 276 Fourth Avenue, Building A, Chula Vista, CA 91910 or online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

CITY OF CHULA VISTA

Sent by US Mail and Email:
May 6, 2020

Micah Anderson
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
Anderson Development Chula Vista 1, LLC (Submitter ID: 59586) – Storefront Retailer

Dear Micah Anderson:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The application is incomplete (CVMC 5.19.050(A)(4)(b)). *Jonathan Mangini, Joseph Hasson, Emily Delaney, and Greg Avioli failed to submit fingerprints (Live Scan).*
- The Applicant, an Owner, a Manager, an Officer, and/or any individual identified pursuant to 5.19.050.A.1.i. has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. *Jonathan Mangini, Joseph Hasson, Emily Delaney, and Greg Avioli failed to submit fingerprints (Live Scan) necessary to complete a background check.*
- The Applicant, an Owner, a Manager, and/or an Officer has been convicted of any Crime of Moral Turpitude or any offense involving use of a weapon. (CVMC 5.19.050(A)(5)(d)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). PERSONAL/PRIVACY PERSONAL/PRIVACY
- The provisional application score of 246 has failed to rank high enough to be given a Phase Two application slot for Council District 3. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

(continued on next page)

The effective date of this decision is May 6, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 21, 2020**. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy, Chief of Police

-EXHIBIT P -

City of Chula Vista

Meeting Minutes - Final

Thursday, August 3, 2017 **4:00 PM** **Council Chambers**
276 4th Avenue, Building A
Chula Vista, CA 91910

REGULAR CITY COUNCIL WORKSHOP

CALL TO ORDER

A regular meeting of the City Council of the City of Chula Vista was called to order at 4:01 p.m. in the Council Chambers, located in City Hall, 276 Fourth Avenue, Chula Vista, California.

ROLL CALL:

Present: Councilmember Aguilar, Councilmember Diaz, Deputy Mayor McCann, Councilmember Padilla and Mayor Casillas Salas

Also Present: City Manager Halbert, City Attorney Googins, Acting City Clerk Bigelow, and Deputy City Clerk Larrarte

PLEDGE OF ALLEGIANCE TO THE FLAG AND MOMENT OF SILENCE

Councilmember Padilla led the Pledge of Allegiance.

PUBLIC COMMENTS

There were none.

WORKSHOP

17-0306 CANNABIS WORKSHOP

Presentation and discussion of current state cannabis laws and the future of local regulations regarding cannabis

Deputy City Manager Bacon, Deputy City Attorney McClurg, and Police Chief Kennedy presented information on the item and answered questions of the Council.

The following members of the public spoke in support of regulations that would allow cannabis sales in the City:
- Sam Elhomsy, Bonita resident, representing Pharmacists Association, and he gave a presentation
- David King, San Diego resident, and he also expressed concerns regarding marijuana use
- Alan Cassell, Chula Vista resident
- Mike Barbee, San Diego resident, representing Lighthouse Pharmacy
- Theresa Acerro, Chula Vista resident, and she also spoke in support of adequate staffing for regulation, inspections, and criminal enforcement
- Ken Sobel, San Diego resident, representing Grow for Vets US California
- Mickey Kasparian, San Diego resident, representing UFCW Local 135
- Sapphire Blackwood, San Diego resident, representing Association of Cannabis Professionals
- Derek Candelario, Chula Vista resident

The following members of the public spoke in opposition to regulations that would allow cannabis sales in the City:
- Manolo Guillen, Chula Vista resident
- William Perno, Chula Vista resident
- Kathleen Lippitt, Poway resident, representing San Diegans for Safe Neighborhoods

John Redman, San Diego resident, representing CADFY, spoke regarding issues with marijuana sale and use in other countries.

Carol Green, Chula Vista resident, spoke in opposition to commercializing marijuana.

Randy Epstein, Chula Vista resident, submitted a request but declined to speak.

At the request of Councilmember Padilla, there was consensus of the Council to request a summary of the recent trip Mayor Casillas Salas and staff took to Aurora, Colorado to learn about Aurora's implementation of cannabis regulations.

At the request of Mayor Casillas Salas, there was consensus of the Council to direct staff to provide a report within 90 days on the effects of legalizing and regulating the sale of cannabis, including the following points:
- Efforts of cities that have approved cannabis sales, both regulatory and educational, to prevent and reduce the use of cannabis by minors;
- Potential or proposed regulations that may be required to protect public safety;
- Zoning requirements to prevent clustering of cannabis operations and to protect the City's neighbors and economy;
- Regulations and resources needed to quickly shut down unlicensed operations, as well as costs associated with current efforts to close illegal operations; and
- Additional information on the two initiatives that had been submitted to the city clerk, including efforts to inform and solicit input from the public.

Councilmember Diaz requested staff also provide information on the following:
- Anticipated resources and costs for all affected departments to administer a legalized cannabis program, including education, prevention, and treatment programs;
- Cost for the City Attorney to implement a criminal prosecution unit; and
- Actions the City could take to oppose the proposed initiatives.

Councilmember Diaz also spoke in support of staff creating a webpage to make materials provided to the City available to the public, including reports and studies.

Councilmember Padilla requested staff also provide information on the following:
- Research and information on the correlation between individual use and access to cannabis;
- Options for potential regulations to address safety concerns related to cash-based businesses; and
- The ability of local regulations to control aspects of cannabis sales, such as the potency and availability of certain products to specified age groups.

City Attorney Googins provided information on the citizen initiative process and related timeline.

Councilmember Aguilar requested staff also provide information on the following:
- Possible regulations related to cultivation;
- Ability to limit the amount of THC (Tetrahydrocannabinol) in products; and
- Regulations to limit advertising and signage of dispensaries.

Councilmember Aguilar also spoke in support of illegal dispensaries being closed quickly and requested additional information on the resources necessary to do so.

Deputy Mayor McCann requested staff also provide information on the following:
- Protections for children and neighborhoods, such as buffers between dispensaries and houses, parks, and schools;
- Potential impacts on public safety and ensuring affected departments would have adequate resources to address the effects; and
- The status of Federal law and the 1970 Controlled Substance Act, in conjunction with local cannabis legalization efforts.

ADJOURNMENT

At 6:40 p.m., Mayor Casillas Salas adjourned the meeting to the Regular City Council Meeting on August 8, 2017, at 5:00 p.m., in the Council Chambers.

Kerry K. Bigelow, Acting City Clerk

-EXHIBIT Q -

City of Chula Vista

Meeting Minutes - Final

Thursday, October 26, 2017 | **6:00 PM** | **Council Chambers, 276 4th Avenue, Building A, Chula Vista, CA 91910**

SPECIAL CITY COUNCIL WORKSHOP

CALL TO ORDER

A special meeting of the City Council of the City of Chula Vista was called to order at 6:00 p.m. in the Council Chambers, located in City Hall, 276 Fourth Avenue, Chula Vista, California.

ROLL CALL:

Present: Councilmember Aguilar, Councilmember Diaz, Deputy Mayor McCann, Councilmember Padilla and Mayor Casillas Salas

Also Present: City Manager Halbert, City Attorney Googins, City Clerk Bigelow, and Deputy City Clerk Larrarte

PLEDGE OF ALLEGIANCE TO THE FLAG AND MOMENT OF SILENCE

Councilmember Aguilar led the Pledge of Allegiance.

PUBLIC COMMENTS

There were none.

WORKSHOP

1. 17-0475 CANNABIS (MARIJUANA) POLICY IN THE CITY OF CHULA VISTA

As a follow up to the City's previous discussions on this topic, this workshop shall include Staff Presentations, Input from the Public, City Council Discussions and Directions to Staff Regarding Possible Changes to the City's Current Policies Banning Commercial Cannabis Businesses in Chula Vista.

City Attorney Googins, Deputy City Manager Bacon, Deputy City Attorney McClurg, Development Services Director Broughton gave a presentation on the item and answered questions of the Council.

Staff answered questions of the Council and discussion ensued.

The following members of the public spoke in support of legalizing and regulating commercial marijuana sales:
- Kelly Paulson, Chula Vista resident
- Ken Sobel
- Mickey Kasparian, UFCW Local 135
- Daniel Green
- Gina Austin, San Diego resident
- Andrew Deddeh, Chula Vista resident
- Dorian Zaentz, Chula Vista resident
- Edgar Garcia, Chula Vista resident, representing Green Seed Investments

The following members of the public spoke in opposition to legalizing commercial marijuana sales:
- Niesha Hernandez, Chula Vista resident
- Michael Monaco, Chula Vista resident
- Sara Fernando, Bonita resident
- Vanessa McEvoy, Chula Vista resident
- Art Castanares, Chula Vista resident
- David Oyos, representing the Chula Vista Police Officers Association
- Janelly Favela, Chula Vista resident
- Manolo Guillen, Chula Vista resident
- Carol Green, Chula Vista resident

Mark Hoekstra, representing The Heritage Group, spoke in opposition to allowing marijuana sales in industrial zones.

Ali Golchi, Chula Vista resident, expressed concern regarding illegal marijuana dispensaries.

Virginia Jensen, Coronado resident, representing Terry Enterprises, expressed concern regarding illegal marijuana dispensaries and requested information regarding the petition that was being circulated.

At the request of Councilmember Aguilar, there was consensus of the Council to direct staff to plan an additional Council workshop to discuss a potential draft ordinance.

Councilmembers spoke in support of including the following provisions in a draft ordinance that would regulate cannabis:

- Councilmember Diaz: limiting advertising at the retail locations; considering fire safety concerns; requiring video surveillance; considering the proximity of potential retail locations to drug treatment centers; requiring the tracking of cannabis sales and sources of products sold; and implementing a criminal prosecution unit.

- Councilmember Aguilar: protecting areas where children congregate, including parks, schools, and businesses that serve children; considering the proximity of potential retail locations to drug treatment centers; requiring video cameras and other security measures at retail locations; considering regulation of potency of products sold; addressing medicinal and adult use; keeping the kind of use compatible with existing zoning, such as retail use in retail zones; equally distributing locations among council districts, with a cap of two or three businesses per district; implementing a tax range; and she requested additional information regarding cultivation and banking methods for dispensaries.

- Councilmember Padilla: setting a timetable to direct staff to return to Council with a draft ordinance; permitting cultivation, testing, and manufacturing in industrial zones and retail locations in retail zones; balancing the distribution of retail locations throughout the City; expressly prohibiting any currently unpermitted business from obtaining a license for a future permitted business; periodically reviewing the impacts; considering caps on commercial operations; and earmarking tax revenues for public safety.

- Deputy Mayor McCann: protecting children; preparing an initiative for the ballot to include taxation; prohibiting retail locations near parks; requiring video cameras and other security measures; allowing one retail location per district; prohibiting any currently unpermitted business from obtaining a license for a future permitted business; including adequate fees for businesses; and considering tax based on the square footage of the business.

- Mayor Casillas Salas: including a stringent vetting process for permit applicants; and she requested information on a potential oversight committee for the tax revenues.

There was consensus of the Council to direct staff to return to Council in early December with a draft ordinance for further discussion that incorporated the Council's feedback.

There was consensus of the Council to direct staff to engage with the cannabis industry, with a focus on the industry that was circulating the petition, in order to assist with the process of providing the Council with a draft ordinance.

ADJOURNMENT

At 10:26 p.m., Mayor Casillas Salas adjourned the meeting to the Special City Council Workshop on November 2, 2017, at 5:00 p.m., in the Council Chambers; and thence to the Regular City Council Meeting on November 7, 2017, at 5:00 p.m., in the Council Chambers.

_____

Kerry K. Bigelow, MMC, City Clerk

-EXHIBIT R -

City of Chula Vista

Meeting Minutes - Final

Tuesday, December 12, 2017 | **6:00 PM** | **Council Chambers, 276 4th Avenue, Building A, Chula Vista, CA 91910**

SPECIAL CITY COUNCIL WORKSHOP

CALL TO ORDER

A Special Meeting of the City Council of the City of Chula Vista was called to order at 6:12 p.m. in the Council Chambers, located in City Hall, 276 Fourth Avenue, Chula Vista, California.

PLEDGE OF ALLEGIANCE TO THE FLAG AND MOMENT OF SILENCE

Councilmember Diaz led the Pledge of Allegiance.

ROLL CALL:

Present: Councilmember Aguilar, Councilmember Diaz, Deputy Mayor McCann, Councilmember Padilla and Mayor Casillas Salas

Also Present: City Manager Halbert, City Attorney Googins, City Clerk Bigelow, and Deputy City Clerk Larrarte

WORKSHOP

1. 17-0537 CANNABIS (MARIJUANA) POLICY IN THE CITY OF CHULA VISTA

As a follow up to the City's previous discussions on this topic, staff will present to Council a draft ordinance outlining potential changes to the City's current policy prohibiting all commercial cannabis activity in Chula Vista, including a future process for permitting and regulating such activity. Staff will seek consideration and feedback from the Council on the draft ordinance.

Deputy City Manager Bacon, Deputy City Attorney McClurg, Development Services Director Broughton and City Attorney Googins presented the draft ordinance and responded to questions from the Council.

Deputy Mayor McCann, Councilmember Padilla, and Councilmember Diaz expressed concern regarding the proposed lottery system and recommended considering applicants' qualifications.

Councilmember Diaz spoke in support of increasing the proposed setbacks, including a formal definition of "sensitive receptors," and he spoke in support of a skilled and trained workforce.

Mayor Casillas Salas spoke regarding requirements for retail employees and requested additional information regarding including labor peace agreement language. She distributed additional information to the Council.

John Acosta, Chula Vista resident, expressed concern regarding retail cannabis activities and requested additional information on the draft ordinance.

Lupe Ruiz, Chula Vista resident, expressed concern regarding cannabis use in public, employee training, and application fees.

Dorian Zaentz, Chula Vista resident, spoke about the medical benefits of cannabis.

The following members of the public spoke in support of the proposed ordinance and offered suggested modifications:
-Sam Elhomsy, Chula Vista resident
-Alexis Del Castillo, Chula Vista resident
-Daniel Green, Chula Vista resident
-Cynara Velazquez, representing the Association of Cannabis Professionals
-Gina Austin, San Diego resident
-Michelle Reynoso, Chula Vista resident
-Dallin Young, representing the Association of Cannabis Professionals
-Denise Price, representing Eaze
-Jessica McElfresh, representing Citizens for Safe Access
-Sapphire Blackwood, representing the Association of Cannabis Professionals

Janice Draper, Chula Vista resident, spoke in support of the proposed ordinance.

The following members of the public spoke in opposition to the proposed ordinance and offered suggested modifications:
-William Perno, Chula Vista resident
-Lisa Martin Goodsell, Bonita resident
-Manolo Guillen, Chula Vista resident

The following members of the public spoke in opposition to the proposed ordinance:
-Kathleen Lippitt, Poway resident
-Susan Wilcox, Chula Vista business owner
-Judi Strang, Chula Vista resident, representing the Parent-Teacher Association
-Carol Green, Chula Vista resident

Councilmember Aguilar expressed concern that the proposed setbacks would not result in enough available properties to allow 3 storefronts in each district. She requested additional information regarding the issue of storefront deliveries and also spoke in support of allowing storefronts to sell products only for adult use and not medical.

Councilmember Diaz spoke in support of not allowing the sale of medical use products in retail locations, starting with a fewer number of retail locations, the possibility of a city employee taking on role of community liaison, limiting the conditional use permits to one year, ensuring funding for public safety and education would be available, and strict application requirements to ensure applicants with no criminal history. He recommended including offsite storage for security video, re-examining setbacks to consider allowing a storefront in areas such as 3rd Ave, and he requested more information regarding state regulations on alcohol business advertising.

Councilmember Padilla requested data on medical marijuana prohibition and on issues associated with storefront operations also providing delivery. He agreed with Councilmember Aguilar regarding the availability of properties. He clarified that greenhouses are considered enclosed. He agreed with Councilmember Diaz regarding strict application requirements to ensure quality applicants. He requested the clarification of certain definitions to clean up ambiguity, endorsed labor peace agreement language and requested additional information regarding deliveries to the City from outside the City. Councilmember Padilla spoke in support of any changes to the allowable number of licenses being made at the legislative level by the Council or the voters, and not at the administrative level.

Deputy Mayor McCann spoke in support of one dispensary per district to start. He did not support a lottery system, and recommended that candidates' qualifications be considered. He recommended that funding from retail operations go to the Police and City Attorney for enforcement.

Mayor Casillas Salas spoke in opposition to reducing the number of dispensaries.

City Attorney Googins spoke regarding the applicant selection process.

There was consensus of the Council to direct staff to return to Council in January with a draft ordinance for further discussion that incorporated the Council's feedback.

There was consensus of the Council to direct staff to research the following topics and make recommendations to the Council: whether or not to allow storefronts to deliver, medical and recreation use in storefronts, applicant selection criteria (lottery or merit-based), and options to address setbacks and separation.

ADJOURNMENT

At 9:30 p.m., Mayor Casillas Salas adjourned the meeting to the Regular City Council Meeting on December 19, 2017 at 5:00 p.m., in the Council Chambers.

_____

Kerry K. Bigelow, MMC, City Clerk

-EXHIBIT S -

City of Chula Vista

Meeting Minutes - Final

Tuesday, February 27, 2018 | **5:00 PM** | **Council Chambers, 276 4th Avenue, Building A, Chula Vista, CA 91910**

REGULAR MEETING OF THE CITY COUNCIL

CALL TO ORDER

A regular meeting of the City Council of the City of Chula Vista was called to order at 5:12 p.m. in the Council Chambers, located in City Hall, 276 Fourth Avenue, Chula Vista, California.

ROLL CALL:

Present: Councilmember Aguilar, Deputy Mayor Diaz, Councilmember McCann, Councilmember Padilla and Mayor Casillas Salas

Councilmember McCann arrived at 6:05 p.m.

Also Present: City Manager Halbert, City Attorney Googins, City Clerk Bigelow, and Deputy City Clerk Larrarte

PLEDGE OF ALLEGIANCE TO THE FLAG AND MOMENT OF SILENCE

Deputy Mayor Diaz led the Pledge of Allegiance.

Mayor Casillas Salas requested a moment of silence in honor of the victims of the Parkland School shooting.

SPECIAL ORDERS OF THE DAY

A. 18-0074 PRESENTATION BY INTERIM LIBRARY DIRECTOR JOY WHATLEY AND US DEPARTMENT OF STATE, CUSTOMER SERVICE MANAGER SAUL LEYVA, OF THE 2017 NATIONAL PASSPORT ACCEPTANCE FACILITY OF THE YEAR AWARD TO THE OTAY RANCH BRANCH LIBRARY

Interim Library Director Whatley gave the presentation and United States Department of State Customer Service Manager Saul Leyva presented the award.

B. 18-0050 PRESENTATION BY SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) SENIOR REGIONAL PLANNER STEPHAN VANCE ON THE SAN DIEGO BAYSHORE BIKEWAY

San Diego Association of Governments Regional Planner Stephan Vance gave the presentation.

CONSENT CALENDAR (Items 1 - 8)

Mayor Salas announced that Item 2 was removed from the consent calendar by a member of the public.

There was consensus of the Council to add Item 10 to the consent calendar.

1. 18-0081 APPROVAL OF MINUTES of November 21, 2017.

Recommended Action: Council approve the minutes.

3. 17-0532 RESOLUTION NO. 2018-027 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING A PARK MASTER PLAN FOR THE 3.6-ACRE P-6 PUBLIC NEIGHBORHOOD PARK, LOCATED IN MILLENIA, AND APPROVING THE PARK NAME "MILLENIA PARK"

Recommended Action: Council adopt the resolution.

4. 18-0061 INVESTMENT REPORT FOR THE QUARTER ENDED DECEMBER 31, 2017

Recommended Action: Council accept the report.

5. 18-0003 RESOLUTION NO. 2018-028 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ACCEPTING BIDS, AWARDING THE CONTRACT FOR THE "PALOMAR STREET AND ORANGE AVENUE SIDEWALK IMPROVEMENTS (STL420)" PROJECT TO TRI-GROUP CONSTRUCTION AND DEVELOPMENT INC., IN THE AMOUNT OF $809,284; APPROPRIATING $312,750 FROM THE AVAILABLE BALANCE OF THE TRAFFIC SIGNAL FUND TO STL420; AND TRANSFERRING $187,250 IN TRANSNET APPROPRIATIONS FROM DRN0206 TO STL420 (4/5 VOTE REQUIRED)

Recommended Action: Council adopt the resolution.

6. 17-0484 RESOLUTION NO. 2018-029 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ACCEPTING BIDS AND AWARDING A CONTRACT FOR THE CONSTRUCTION OF THE "TRAFFIC SIGNAL MODIFICATIONS AT FOUR INTERSECTIONS: FOURTH AVENUE & J STREET, HILLTOP DRIVE & L STREET, THIRD AVENUE & H STREET, AND THIRD AVENUE & I STREET (CIP# TRF0388)" PROJECT TO HMS CONSTRUCTION, INC. IN THE AMOUNT OF $893,565.50; AND APPROPRIATING $260,000 FROM THE AVAILABLE BALANCE OF THE TRAFFIC SIGNAL FUND TO TRF0388 (4/5 VOTE REQUIRED)

Recommended Action: Council adopt the resolution.

7. 18-0036 ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 9.20 TO PERMIT RECOVERY OF THE CITY'S AVERAGE COSTS RELATED TO GRAFFITI ABATEMENT AND REMEDIATION BY THE SAN DIEGO PROBATION OFFICE IN JUVENILE COURT PROCEEDINGS AND ADOPTING THE 2018 CHULA VISTA GRAFFITI ABATEMENT COST AND EXPENSES MATRIX (FIRST READING)

Recommended Action: Council place the ordinance on first reading.

8. 18-0073 ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.56 TO PERMIT AND REGULATE TOBACCO RETAILERS (FIRST READING)

Recommended Action: Council place the ordinance on first reading.

10. 18-0037 RESOLUTION NO. 2018-032 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AUTHORIZING THE CITY TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG), THE CITY, AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) REGARDING ROLES AND RESPONSIBILITIES FOR THE SAN DIEGO REGIONAL PROVING GROUND

Recommended Action: Council adopt the resolution.

Approval of the Consent Calendar

ACTION: A motion was made by Councilmember Padilla, seconded by Deputy Mayor Diaz, to approve staff's recommendations on the above Consent Calendar items, headings read, text waived. The motion carried by the following vote:

Yes: 4 - Aguilar, Diaz, Padilla and Casillas Salas

No: 0

Abstain: 0

ITEMS REMOVED FROM THE CONSENT CALENDAR

2. 18-0077 ORDINANCE NO. 3415 OF THE CITY OF CHULA VISTA ADDING CHAPTER 3.34 TO TITLE 3 OF THE CHULA VISTA MUNICIPAL CODE TO ESTABLISH A ONE- HALF CENT GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR CITIZENS' OVERSIGHT AND ACCOUNTABILITY (SECOND READING AND ADOPTION) (4/5 VOTE REQUIRED)

Steven Pavka, Chula Vista resident, requested information regarding the spending plan for the proposed tax measure.

ACTION: A motion was made by Councilmember Padilla, seconded by Deputy Mayor Diaz, to adopt Ordinance No. 3415, heading read, text waived. The motion carried by the following vote:

Yes: 4 - Aguilar, Diaz, Padilla and Casillas Salas

No: 0

Abstain: 0

PUBLIC COMMENTS

Efren Mouette, Chula Vista resident, expressed concern regarding illegal activities in the area of the H Street Trolley Station and stated written communications had been provided to the Council.

Steven Pavka, Chula Vista resident, expressed concern regarding gun control.

PUBLIC HEARINGS

9. 17-0396

A. RESOLUTION NO. 2018-030 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT "BIKE LANES ON BROADWAY - PHASE II" (CIP# STM0392) TO INCLUDE THE SCOPE OF PHASE III (L STREET TO MAIN STREET), RENAMING CIP# STM0392 AS, "CLASS 2 BIKE LANES ON BROADWAY," AND APPROPRIATING $103,728 FROM THE SB-1 ATPL GRANT PROGRAM OF THE STATE GRANTS FUND TO STM0392 (4/5 VOTE REQUIRED)

B. RESOLUTION NO. 2018-031 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ACCEPTING THE TRAFFIC IMPACT STUDY AND ENVIRONMENTAL ANALYSIS, APPROVING THE RECOMMENDATION TO INSTALL BIKE LANES ON BROADWAY FROM C STREET TO MAIN STREET, AND AMENDING SCHEDULE VI OF THE REGISTER MAINTAINED BY THE OFFICE OF THE CITY ENGINEER TO REFLECT THE REVISED TIME-LIMITED PARKING ZONES UPON COMPLETION OF THE PROJECT

Notice of the hearing was given in accordance with legal requirements, and the hearing was held on the date and no earlier than the time specified in the notice.

Principal Civil Engineer Rivera gave the presentation.

Armando Ibarra, Chula Vista Resident, submitted written documentation in support of staff's recommendation.

Mayor Casillas Salas opened the public hearing. There being no members of the public who wished to speak, Mayor Casillas Salas closed the public hearing.

ACTION: A motion was made by Councilmember Aguilar, seconded by Councilmember Padilla, to adopt Resolution No. 2018-030 and Resolution No. 2018-031, heading read, text waived. The motion carried by the following vote:

Yes: 4 - Aguilar, Diaz, Padilla and Casillas Salas

No: 0

Abstain: 0

Item 10 was considered as part of the consent calendar.

ACTION ITEMS

11. 18-0071 ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHULA VISTA MUNICIPAL CODE SECTION 5.19 TO REGULATE COMMERCIAL CANNABIS (FIRST READING)

Deputy City Manager Bacon, Development Services Director Broughton, and Deputy City Attorney McClurg gave a presentation on the item.

Deputy City Attorney McClurg announced that a revision to the proposed ordinance had been distributed to Council.

Staff responded to questions of the Council.

The following members of the public spoke in support of the proposed ordinance and offered suggested modifications:
-Chris Creighton, representing Murchison Chemicals
-Chris Coggan, San Diego resident, representing the San Diego Cannabis Delivery Alliance
-Ken Sobel
-Jarrod Adams, San Diego resident
-Sean McDermott
-Sam Humeid, Oceanside resident, representing the San Diego Cannabis Delivery Alliance
-Mark Morris, San Marcos resident, representing cannabis therapy practitioners
-Cynara Velazquez, San Diego resident, representing Citizens for Public Safety, and she distributed written communications to the Council
-Sapphire Blackwood, San Diego resident, representing the Association of Cannabis Professionals
-Gina Austin, San Diego resident
-Jessica McElfresh, Solana Beach resident
-Laura Wilkinson, South Bay resident

The following members of the public spoke in support of the proposed ordinance:
-Michael Gilgun, Chula Vista resident
-Heidi Whitman, San Diego resident, representing Flow Kana

Michelle Reynoso expressed gratitude for the ability to work with the Council and staff on the draft ordinance and encouraged members of the public to provide feedback and be involved in the process.

Rudy Ramirez, Chula Vista resident, suggested the Council consider approaching the issue of commercial cannabis activity from an economic development standpoint.

Stephen Ablahad, San Diego resident, spoke in opposition to the proposed ordinance and offered suggested modifications.

The following members of the public spoke in opposition to the proposed ordinance:
-Kelly McCormick
-Peggy Walker, and she distributed written communications to the Council
-Janet Asaro, San Diego resident
-John Humiston, Chula Vista resident
-Damian Johnson
-Judi Strang
-Carol Green, Chula Vista resident, and she distributed written communications to the Council

Council discussion ensued.

ACTION: **A motion was made by Councilmember Padilla, seconded by Mayor Casillas Salas, to amend the draft ordinance to limit the number of licenses for cultivation facilities to 10 citywide. The motion carried by the following vote:**

Yes: 5 - Aguilar, Diaz, McCann, Padilla and Casillas Salas

No: 0

Abstain: 0

Council discussion continued.

ACTION: **A motion was made by Councilmember Padilla, seconded by Mayor Casillas Salas, to adopt the above ordinance, as previously amended and further amended to 1) replace reference to a lottery system with a merit-based system to be developed through regulations, and 2) to limit the 10 citywide cultivation facilities to 20,000 square feet, heading read, text waived. The motion carried by the following vote:**

Yes: 4 - Aguilar, Diaz, Padilla and Casillas Salas

No: 1 - McCann

Abstain: 0

12. 18-0015 A. QUARTERLY FINANCIAL REPORT FOR THE QUARTER ENDING DECEMBER 31, 2017

B. RESOLUTION NO. 2018-033 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA MAKING VARIOUS AMENDMENTS TO THE FISCAL YEAR 2017/18 BUDGET TO ADJUST FOR VARIANCES AND APPROPRIATING FUNDS THEREFOR (4/5 VOTE REQUIRED)

Finance Director Bilby and Budget Manager Prendell gave the presentation.

Staff answered questions of the Council.

ACTION: **A motion was made by Councilmember McCann, seconded by Deputy Mayor Diaz, to accept the report and adopt Resolution No. 2018-033, heading read, text waived. The motion carried by the following vote:**

Yes: 5 - Aguilar, Diaz, McCann, Padilla and Casillas Salas

No: 0

Abstain: 0

13. 18-0048

A. RESOLUTION NO. 2018-034 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING THE COMPENSATION SCHEDULE AND CLASSIFICATION PLAN TO REFLECT THE ADDITION OF VARIOUS POSITION TITLES AND AMENDING THE AUTHORIZED POSITION COUNT IN VARIOUS DEPARTMENTS WITH NO NET INCREASE IN AUTHORIZED STAFFING

B. RESOLUTION NO. 2018-035 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE REVISED FISCAL YEAR 2017/18 COMPENSATION SCHEDULE EFFECTIVE MARCH 2, 2018, AS REQUIRED BY CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, TO REFLECT: (1) THE ADDITION AND ELIMINATION OF CERTAIN POSITION TITLES AND (2) SALARY ADJUSTMENTS FOR ACCOUNTANT, ASSOCIATE ACCOUNTANT, DEPUTY CITY MANAGER, DIRECTOR OF ECONOMIC DEVELOPMENT, SEASONAL ASSISTANT, AND SENIOR ACCOUNTANT

C. ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 2.05.010 TO ADD THE UNCLASSIFIED POSITIONS OF CITY LIBRARIAN, PARKS AND RECREATION ADMINISTRATOR, DIRECTOR OF COMMUNITY SERVICES, AND REVENUE MANAGER (FIRST READING) (4/5 VOTE REQUIRED)

Deputy City Manager Bacon gave a presentation on the item. Human Resources Director Chase provided information regarding the impact on executive compensation.

ACTION: **A motion was made by Mayor Casillas Salas, seconded by Councilmember McCann, to adopt Resolution Nos. 2018-034 and 2018-035, and to place the above ordinance on first reading, headings read, text waived. The motion carried by the following vote:**

Yes: 5 - Aguilar, Diaz, McCann, Padilla and Casillas Salas

No: 0

Abstain: 0

CITY MANAGER'S REPORTS

There were none.

MAYOR'S REPORTS

14. 18-0083 APPOINTMENT OF A MEMBER TO THE SANDAG SHORELINE PRESERVATION WORKING GROUP

ACTION: **A motion was made by Mayor Casillas Salas, seconded by Councilmember McCann, to appoint Councilmember Padilla to the SANDAG Shoreline Preservation Working Group. The motion carried by the following vote:**

Yes: 5 - Aguilar, Diaz, McCann, Padilla and Casillas Salas

No: 0

Abstain: 0

Mayor Casillas Salas presented pictures from the City of Champions Event and thanked staff. She also announced the Irapuato delegation visit.

COUNCILMEMBERS' COMMENTS

15. 18-0078 COUNCILMEMBER AGUILAR:
CONSIDERATION OF CITY ENDORSEMENT OF THE 2018 "VILLAGE SUMMER NIGHTS" SERIES OF EVENTS PLANNED FOR THE THIRD AVENUE VILLAGE IN CHULA VISTA

Village Summer Nights is a series of six bi-weekly displays of vehicles, music, and specialty business products planned for every other Tuesday evening beginning June 12 and ending August 28, 2018.

The following members of the public spoke in support of the City's endorsement of the 2018 Village Summer Nights and future events on Third Avenue:
-Raquel Rico Cortez, representing the Third Avenue Village Business Owners "Village Summer Nights"
-Rosa Lopez, representing the Third Avenue Village Business Owners "Village Summer Nights"
-Anamaria Snooky Rico, Chula Vista resident, representing Rico's on 3rd

ACTION: **A motion was made by Councilmember Aguilar, seconded by Mayor Casillas Salas, to endorse the 2018 "Village Summer Nights" series of events planned for the Third Avenue Village in Chula Vista. The motion carried by the following vote:**

Yes: 5 - Aguilar, Diaz, McCann, Padilla and Casillas Salas

No: 0

Abstain: 0

Councilmember Aguilar reported on a recent City planning forum.

Councilmember Padilla spoke regarding the recent City of Champions event.

Deputy Mayor Diaz announced the 24-hour giveback fundraising event at Seven Mile Casino, which benefitted South Bay Community Services.

Councilmember Aguilar announced an upcoming community meeting on the topic of school safety.

Councilmember McCann recognized the Marines, Sailors, and Coast Guard members, with whom he had recently worked.

CITY ATTORNEY'S REPORTS

City Attorney Googins provided information regarding the prohibited use of public funds in advocating for or against ballot measures.

City Attorney Googins announced that the Council would convene in closed session to discuss the items listed below.

Mayor Casillas Salas recessed the meeting at 9:59 p.m. The Council reconvened in Closed Session at 10:05 p.m., with all members present.

CLOSED SESSION

Pursuant to Resolution No. 13706 and Council Policy No. 346-03, Official Minutes and records of action taken during Closed Sessions are maintained by the City Attorney.

16. 18-0054 CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (d)(1)

Name of case: Juan Abenojar and Salome Rincon v. City of Chula Vista, San Diego Superior Court, Case No. 37-2016-00024897-CU-PO-CTL

ACTION: No reportable action.

17. 18-0070 CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Initiation of litigation pursuant to Government Code Section 54956.9(d)(4):

One (1) Case: City of Chula Vista v. International Boundary & Water Commission, et al.

ACTION: Reportable action pending.

ADJOURNMENT

At 10:45 p.m., the meeting was adjourned to the Regular City Council Meeting on March 6, 2017 at 5:00 p.m., in the Council Chambers.

_____
Kerry K. Bigelow, MMC, City Clerk

EXHIBIT 2

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: Lann.McIntyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
11/19/2021 at 05:31:00 PM
Clerk of the Superior Court
Lawrence Blen, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC,

Petitioner/Plaintiff,

vs.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Respondents/Defendants,

MARCH AND ASH CHULA VISTA, INC.; TD ENTERPRISE LLC; and DOES 23 through 50,

Real Parties In Interest.

Case No. 37-2020-00041554-CU-WM-CTL
[Related To Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]

PETITIONER/PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION AND STAY OF DECISION

Hearing Date:	April 30, 2021
Time:	9:00 a.m.
Judge:	Hon. Richard E. L. Strauss
Dept.:	C-75
Action Filed:	November 13, 2021
Trial Date:	None Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 30, 2021, at 9:00 am, or as soon thereafter as the matter may be heard in Department C-75, of the above entitled court, located at 330 West Broadway, San Diego, California 92101, petitioner and plaintiff UL Chula Two LLC ("Petitioner"), will and hereby does move the Court under Code of Civil Procedure § 526 for a preliminary injunction to enjoin respondents and defendants City of Chula Vista and the Chula Vista City Manager (collectively, "Respondent" or "City") and its agents, officers, employees, and representatives from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application for a retail storefront cannabis business license (Application ID 57074). Compliance with the requested order should include, but is not limited to, halting the issuance of any other cannabis licenses in the City's District One. Further, to the extent that Respondent has already issued such licenses, the Court's order should declare such licenses null and void.

A preliminary injunction is necessary and appropriate pursuant to Code of Civil Procedure § 526(a) because:

1. Petitioner is entitled to the relief requested [Cal. Civ. Proc. Code § 526(a)(1)];
2. Petitioner would suffer irreparable injury if the injunction is not issued [Cal. Civ. Proc. Code § 526(a)(2)];
3. Respondent continues the licensing process for other applicants pending this mandamus proceeding, which could result in the awarding of licenses to Petitioner's competitors and render a judgment herein ineffectual because only two retail storefront cannabis business licenses are permitted per City district [Cal. Civ. Proc. Code § 526(a)(3)];
4. Pecuniary damages will not adequately compensate Petitioner for the harm caused by Respondents [Cal. Civ. Proc. Code § 526(a)(4)]; and
5. It would be extremely difficult to ascertain the amount of compensation that would afford Petitioner adequate relief [Cal. Civ. Proc. Code § 526(a)(5)].

For these same reasons, petitioner further moves for a stay of the City's May 6, 2020 Notice of Decision denying Petitioner's application for a retail storefront cannabis business license (Application ID 57074), as well as its August 26, 2020 decision denying Petitioner's administrative appeal, pursuant to Code of Civil Procedure § 1094.5(g).

This Motion is based upon this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities, the Declarations of Gary K. Brucker, Jr. and Willie Senn, and the Appendix of Exhibits, as well as all pleadings, papers, records, and files herein (including the Verified Petition and Complaint), and upon such further oral and documentary evidence as may be presented at the time of the hearing on this Motion.

DATED: January 19, 2021

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
GARY K. BRUCKER, JR.
Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: Lann.McIntyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
11/19/2021 at 09:31:00 PM
Clerk of the Superior Court
By Sen Dieu, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC,

Petitioner/Plaintiff,

vs.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Respondents/Defendants,

MARCH AND ASH CHULA VISTA, INC.; TD ENTERPRISE LLC; and DOES 23 through 50,

Real Parties In Interest.

Case No. 37-2020-00041554-CU-WM-CTL
[Related To Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]

PETITIONER/PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION AND STAY OF DECISION

Hearing Date:	April 30, 2021
Time:	9:00 a.m.
Judge:	Hon. Richard E. L. Strauss
Dept.:	C-75
Action Filed:	November 13, 2021
Trial Date:	None Set

TABLE OF CONTENTS

Page

I. Introduction 1

II. Factual Summary....2

A. Proposition 215, Proposition 64, And The City's Regulatory Scheme....2

B. Petitioner's Application....3

C. The Denial And Appeal....3

D. The City Allows Applicants From Other Districts To Invade District One....4

III. A Preliminary Injunction Should Issue 5

A. Petitioner Is Likely To Succeed On The Merits....5

1. Civil Zoning Violations Are Not Disqualifying As A Matter Of Law 6

(a) Holistic Café Did Not Involve "Commercial" Cannabis Activity....7

(b) CVMC § 5.19.050(A)(5)(g) Does Not Apply 8

(c) CVMC § 5.19.050(A)(5)(f) Does Not Apply Either 10

2. The City's Error Entitles Petitioner To Relief 11

B. The Balance Of Hardships Weighs Strongly In Favor Of An Injunction 11

1. Petitioner Will Be Irreparably Harmed Unless The City Is Enjoined....11

(a) A Wrong Of A Repeated And Continuing Character 12

(b) Inability To Quantify Loss....13

2. Any Burden On The City Will Be Negligible....13

3. The Balance Of The Equities Tips In Favor Of An Injunction....14

IV. The Court Should Stay The City's Decisions 15

V. Conclusion....15

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

TABLE OF AUTHORITIES

Cases **Page**

Abrams v. Saint John's Hospital Health Center
(1994) 25 Cal.App.4th 628 7

Butt v. State of California
(1992) 4 Cal.4th 668 ..... 7, 16

City of Claremont v. Kruse
(2009) 177 Cal.App.4th 1153 9

City of Lake Forest v. Evergreen Holistic Collective
(2012) 203 Cal.App.4th 1413 9

City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.
(2013) 56 Cal.4th 729 9

City of Sanger v. Super. Ct.
(1992) 8 Cal.App.4th 444 11

Common Cause v. Board of Supervisors
(1989) 49 Cal.3d 432 16

Continental Banking Co. v. Katz
(1968) 68 Cal.2d 512 7

County of Los Angeles v. Alternative Medicinal Cannabis Collective
(2012) 207 Cal.App.4th 601 9

Dodge, Warren & Peters Insurance Services, Inc. v. Riley
(2003) 105 Cal.App.4th 1414 7

Donahue Schriber Realty Grp., Inc. v. Nu Creation Outreach
(2014) 232 Cal.App.4th 1171 14

Engle v. Oroville
(1965) 238 Cal.App.2d 266 15

Lubavitch Congregation v. City of Long Beach
(1990) 217 Cal.App.3d 1388 7

Moorpark Homeowners' Association v. VRT Corp.
(1998) 63 Cal.App.4th 1396 7

San Francisco Newspaper Printing Co., Inc. v. Super. Ct.
(1985) 170 Cal. 3d 438 7

Sanchez-Corea v. Bank of Am.
(1985) 38 Cal.3d 892 15

Wind v. Herbert
(1960) 186 Cal.App.2d 276 14

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

Statutory Authorities

Bus. & Prof. Code, §§ 26000 et seq. 4

Code Civ. Proc., § 526 7

Code Civ. Proc., § 526, subd. (a)(1) 13

Code Civ. Proc., §§ 1085 13

Code Civ. Proc., § 1094.5(g) 17

Code Civ. Proc., § 1094.5(g) 3

Code Civ. Proc., § 1858 10

Health & Saf. Code, § 11362.81, subd. (d) 4

I. INTRODUCTION

Petitioner and plaintiff UL Chula Two LLC ("Petitioner") applied to respondent and defendant City of Chula Vista (hereafter, and collectively with respondent and defendant Chula Vista City Manager, the "City") for a retail storefront cannabis business license on or about January 18, 2019. On August 27, 2019, following a protracted background check and interview process, Petitioner scored 900.3—the highest of any retail storefront applicant in the City's District One. Only the two highest scoring applicants in each of the City's districts advance to the next stage of the licensing process. Petitioner fully expected to advance to the next stage.

On May 6, 2020, more than another eight months later, the City issued a notice of decision denying Petitioner's application. The City did so on the basis of an alleged civil zoning violation by one of Petitioner's principals (Willie Senn) that took place in the City of San Diego over eight years earlier, which the City determined was unlawful "commercial cannabis activity." In support of its finding, the City relied upon a stipulated judgment in *City of San Diego v. The Holistic Café, Inc.* (*Holistic Café*), San Diego Superior Court, Case No. 37-2012-00087648-CU-MC-CTL.

The City's decision was as baffling as it was arbitrary, capricious, and contrary to law. Although the City erred in numerous ways, for purposes of this motion, Petitioner focuses only on the City's clear legal error. The City erred when it concluded that the Holistic Café, a lawful, *nonprofit medicinal* cannabis storefront, engaged in unlawful "commercial cannabis activity" because it (along with Mr. Senn) settled a civil action alleging zoning violations that were wholly unrelated to "commercial cannabis activity," let alone cannabis in any way, shape, or form.

By denying Petitioner's application, the City excluded its most qualified applicant who, today, operates the most successful commercial cannabis storefront in the City of San Diego. Unless the Court orders injunctive relief, the City will permit real parties in interest from *other districts* to take Petitioner's place in the City's District One, which will cause irreparable harm not only to Petitioner, but to the residents of the City's District One. Because any harm to the City is substantially outweighed by harm to Petitioner, which is likely to prevail for the reasons discussed below, a preliminary injunction should issue. Additionally, the Court should enter a stay of the City's order denying Petitioner's application under Code of Civil Procedure § 1094.5(g).

II. FACTUAL SUMMARY

A. Proposition 215, Proposition 64, And The City's Regulatory Scheme

The citizens of the state of California passed Proposition 215 in 1996, which decriminalized possession and cultivation of cannabis for medicinal purposes. Proposition 215 was followed by Senate Bill 420 in 2003, which among other things, authorized the California Attorney General's Office to issue guidelines related to the distribution of medicinal cannabis through nonprofit cooperatives. (Health & Saf. Code, § 11362.81, subd. (d).)

California voters passed Proposition 64 in 2016, which legalized commercial and adult recreational cannabis use, and gave each locality the discretion to allow commercial cannabis activities within their jurisdiction. Proposition 64 was followed by Senate Bill 94 in 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which established California's regulatory and licensing system for the cultivation, manufacture, distribution, and sale of cannabis for medicinal and adult use. (Bus. & Prof. Code, §§ 26000 *et seq*.)

On March 6, 2018, the City adopted Ordinance No. 3418,[1] which added Chapter 5.19 to the Chula Vista Municipal Code (CVMC), in order to permit, license, and regulate commercial cannabis activity within the City. (CVMC, § 5.19.010.) Pursuant to CVMC Chapter 5.19, any person who desires to engage in lawful commercial cannabis activity or to operate a commercial cannabis business within the City's jurisdiction must have a valid "State License" and a valid "City License." (CVMC, § 5.19.030.)

The City established a two-phase licensing application process. (CVMC, § 5.19.050.) Phase One involved a set of threshold qualifying criteria, a criminal background check, and a merit-based scoring system. (CVMC, § 5.19.050, subd. (A)(7).) The City also enacted Cannabis Regulations (Regs),[2] which were intended to "clarify and facilitate implementation of CVMC Chapter 5.19." (Regs, § 0501, subds. (A)-(D).) The Regs describe the experience and liquid asset requirements for applicants, and the requirements for a business plan, operating plan, fingerprinting, and a background check. (Regs., § 0501, subds. (E)-(I).)

[1] Ordinance 3418 is attached as Exhibit 1 to the concurrently filed Appendix of Exhibits (App'x).
[2] The Regs are attached as Exhibit 2 to the App'x.

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

B. Petitioner's Application

Petitioner applied for a retail storefront license in the City's District One. (Ver. Pet. ¶ 23, Ex. 1 to App'x.) On January 18, 2019, as required by the application and CVMC 5.19.050(A)(1)(j), one of Petitioner's principals, Willie Senn, signed an Affirmation and Consent affirming that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." (Ex. 4 to App'x.)

Contemporaneously, counsel for Petitioner voluntarily advised the City of a stipulated judgment involving Mr. Senn that was dated December 14, 2012, in *Holistic Café, supra*. (Ex. 5 to App'x) The complaint alleged various civil zoning violations in the City of San Diego. (Ex. 3 to *id*.) The parties stipulated and agreed in *Holistic Café* that "[n]either this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint." (*Ibid*.)

Despite the disclosed *Holistic Café* matter, on June 10, 2019, the City notified Petitioner that it had successfully completed Phases 1A and 1B, and invited Petitioner to proceed to Phase 1C: the interview. (Ex. 6 to App'x.) An interview was set for July 17, 2019. (Ver. Pet. ¶ 26, Ex. 1 to App'x.) Petitioner successfully completed the interview process. (*Ibid*.)

In total, approximately 136 applications were submitted to the City, 84 of which were for retail storefront licenses. (Ver. Pet. ¶ 21, Ex. 1 to App'x.) Only eight storefront licenses were available (two per each of the City's four districts). (CVMC, § 5.19.040, subd. (A).) The highest initially scored applications proceeded to an interview process (as noted above, Phase 1C) to further assess each scored category, and the City also awarded up to 500 additional points based on the interview. (Ver. Pet. ¶ 22, Ex. 1 to App'x.) Petitioner's total score following the interview was 900.3 points—the highest in the City's District One. (*Ibid*.)

C. The Denial And Appeal

On May 6, 2020 the City issued a Notice of Decision rejecting Petitioner's Application. (Ex. 7 to App'x.) The City cited two sections of CVMC 5.19.050 as the basis for its decision:

a. First, the City cited CVMC § 5.19.050(A)(5)(f), stating, Mr. Senn "has been adversely sanctioned or penalized by the City . . . for a material violation of state or local

laws or regulations related to Commercial Cannabis Activity . . . ." It went on to claim that "The City of San Diego sanctioned William [*sic*] Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity."

b. Second, the City cited CMVC § 5.19.050(A)(5)(g), stating, Mr. Senn has "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other Jurisdiction . . . ." It went on to claim that "William [*sic*] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012."

To be clear, the cursory Notice of Decision did not mention *Holistic Café* or any of the particular facts or evidence that the City relied upon in reaching its conclusions in the Notice of Decision.

The Notice of Decision gave Petitioner until May 21, 2020 to appeal the decision. On May 21, 2020, Petitioner timely filed a Consolidated Request to Appeal with the City of Chula Vista. (Ex. 8 to App'x.) A hearing was held on June 10, 2020, and the City served its "Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License" ("Final Decision") on August 26, 2020. (Ex. 10 to App'x.) The Final Decision denied Petitioner's appeal and concluded "the evidence shows the City reasonably and properly denied Appellant's application." (*Ibid*.)

On September 3, 2020, Petitioner sent a written request for the administrative record of the June 10, 2020 appeal proceedings. (Ex. 11 to App'x.) The administrative record has not yet been received. (Brucker Dec. ¶ 2.)

D. The City Allows Applicants From Other Districts To Invade District One

Because the City denied *every* applicant in its District One, the City permitted March and Ash Chula Vista, Inc. (from District Two) and TD Enterprise LLC (from District Four) to change districts, select new locations in District One, and move to Phase II of the application process. (Brucker Dec. ¶¶ 3-4, Ex. 14 to App'x.) March and Ash Chula Vista, Inc. and TD Enterprise LLC are real parties in interest herein. (Brucker Dec. ¶ 5.) Although the City was open to a stipulation providing for certain of the relief requested in this motion, the real parties in interest disagreed on the appropriate scope of relief, and the parties were unable to reach a stipulation. (*Id*.)

III. A PRELIMINARY INJUNCTION SHOULD ISSUE

Under California Code of Civil Procedure § 526, a preliminary injunction is appropriate when *any* of the following appear by way of a verified complaint and/or declarations: (1) the plaintiff is entitled to the relief demanded; (2) continuance of some action would produce waste, irreparable injury, or render a judgment ineffectual; (3) pecuniary compensation is inadequate relief; and/or (4) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. (Code Civ. Proc., § 526.) California courts have consistently said that the general purpose of preliminary injunctive relief is to "preserve the status quo" until a final determination of the merits of the action. (*Continental Banking Co. v. Katz* (1968) 68 Cal.2d 512, 528; *Lubavitch Congregation v. City of Long Beach* (1990) 217 Cal.App.3d 1388, 1391.)

A trial court will consider two factors when determining whether to issue a preliminary injunction: (1) "the likelihood that the plaintiff will prevail on the merits of the case at trial" and (2) "the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants the preliminary injunction." (*Abrams v. Saint John's Hosp. Health Center* (1994) 25 Cal.App.4th 628, 635-36; *14859 Moorpark Homeowners' Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) "[T]he greater the . . . showing on one, the less must be shown on the other to support an injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 678; *Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.)

A. Petitioner Is Likely To Succeed On The Merits

A court may grant a preliminary injunction upon a showing that it is "reasonably probable that the moving party will prevail on the merits." (*San Francisco Newspaper Printing Co., Inc. v. Super. Ct.* (1985) 170 Cal. 3d 438, 442.) Under this standard, all that is required is that the moving party establish a "reasonable probability" (not certainty) that the moving party will succeed on the merits. (*Baypoint Mortg. Corp. v. Crest Premium Real Estate etc. Tr.* (1985) 168 Cal.App.3d 818, 824.) Although the Petition describes five separate grounds for relief, each of which alone entitles Petitioner to relief, for purposes of this motion (and because the record is not yet complete), Petitioner will focus only on the first ground.

1. Civil Zoning Violations Are Not Disqualifying As A Matter Of Law

The City's sole basis for rejecting Petitioner's application was an alleged civil zoning violation from 2012 that the City incorrectly determined was disqualifying pursuant CVMC §§ 5.19.050(A)(5)(f) and (g). Subdivision (f) states:

> The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure."

Subdivision (g) states:

> The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

The alleged civil zoning violation from 2012—long after medicinal cannabis was legalized by Proposition 215 in 1996 and well before commercial cannabis was legalized by Proposition 64 in 2016—involved the Holistic Café. It was a medicinal cannabis storefront that the City of San Diego sought to close by asserting various zoning ordinance violations.

To be clear, none of the ordinances that the City of San Diego accused the Holistic Café of violating actually barred a medicinal cannabis storefront (or even used the words marijuana or cannabis for that matter).[3] Specifically, the complaint in *Holistic Café* alleged violations of San Diego Municipal Code ("SDMC") §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111, 129.0314, 146.0104. (Ex. 12 to App'x.) Nearly all of these code sections relate to structural, electrical, and signage requirements, each of which would have been easily curable. But the City of San Diego also claimed, incorrectly, that Sections 121.0302 and 1512.0305 prohibited medicinal cannabis storefronts.

Together, SDMC §§ 121.0302 and 1512.0305 enact zoning rules for zone CN-1A in the City of San Diego's Mid-City Communities Planned District.[4] Table 1512-03I therein lists all permitted uses for buildings located in zone CN-1A and excludes all other uses (as opposed to

[3] In fact, the City of San Diego did not amend its zoning rules to address medicinal cannabis until March 25, 2014, with the passage of Ordinance No. O-20356.

[4] A copy of the Municipal Code in effect at the time is attached as Exhibit 13 to the App'x.

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

identifying excluded uses). Notably, Table 1512-03I specifically allows for the operation of drug stores, pharmacies, liquor stores, bakeries, confectioneries, florists, variety stores, food stores, and dry goods stores without any reference to the types of products sold therein. Yet, the City of San Diego contended in *Holistic Café* that a medicinal cannabis storefront was not specifically listed as a permitted use. By this flawed logic, the City of San Diego could have also challenged any café because the words "coffee," "tea," and "scones" were also not specifically listed.

Moreover, during this 2010-2012 time period, localities and medical cannabis advocates hotly debated and litigated whether local governments could use zoning regulations to ban legal medicinal cannabis storefronts with varying results. (See *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments cannot ban]; *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 [local governments cannot ban]; and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local governments can ban].) It was not until 2013 that the California Supreme Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 761-762, which ruled that local governments could ban medical cannabis storefronts.

In any event, despite having several legal and factual defenses available to them at the time, on December 14, 2012, the defendants in *Holistic Café*, including Mr. Senn, decided to settle the matter and entered into a stipulated judgment that did ***not*** include any admission of liability. Then, on May 3, 2019, the Superior Court in *Holistic Café* amended the judgment so as to specifically permit the defendants therein to engage in commercial cannabis activities. (Ex. 9 to App'x.) More importantly for purposes of this motion, the City committed clear legal error when it concluded that the *Holistic Café* matter was a basis for rejecting Petitioner's application.

(a) Holistic Café Did Not Involve "Commercial" Cannabis Activity

Preliminarily, the scope of CVMC §§ 5.19.050(A)(5)(f) and (g) is limited to misconduct surrounding "Commercial Cannabis Activity." This term is defined by the City as follows: ". . . the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." (CVMC, § 5.19.020.) Critically, the City's definition relates only to "commercial" "Cannabis or

Cannabis Products," not "Medicinal Cannabis" or "Medicinal Cannabis Product," which terms are separately defined in CVMC § 5.19.020. Indeed, the City's licensing scheme for commercial cannabis activities expressly ***excludes*** medicinal cannabis activities, thereby confirming an important distinction between what is commercial and what is medicinal under the City's own laws. (See, e.g., CVMC, § 5.19.090 ["A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products."].)

Thus, because the Holistic Café was a nonprofit mutual benefit corporation (Ver. Pet. ¶ 75, Ex. 1 to App'x.) organized in compliance with Attorney General guidelines for the lawful distribution of medicinal cannabis (*id*.), neither CMVC §§ 5.19.050(A)(5)(f) nor (g) apply as a matter of law, and the City erred in rejecting Petitioner's application on this basis. (See Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . ."].)

Furthermore, even if the specifically defined term "Commercial Cannabis Activity" could be read as encompassing the nonprofit distribution of medicinal cannabis (it cannot), the alleged civil zoning violations in *Holistic Café* are not disqualifying under CMVC §§ 5.19.050(A)(5)(f) or (g) as a matter of law and the City committed clear legal error in finding the contrary.

(b) CVMC § 5.19.050(A)(5)(g) Does Not Apply

Analyzing subdivisions (f) and (g) out of order helps to explain how both should be read. Subdivision (g) permits the City to reject an applicant if its owner, manager, or officer "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity."

To avoid absurd results and unintended consequences, the phrase "unlawful Commercial Cannabis Activity" must be read to mean commercial cannabis activities that are unlawful under the regulatory schemes enacted by the State and localities following the passage of Proposition 64 in 2016, and not just any activity that is unlawful in the abstract. For example, under CVMC § 5.19.050(A)(1)(e)(i), the manager of a commercial cannabis license applicant must have "[a] minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis

Business *in a jurisdiction permitting such Commercial Cannabis Activity*." (CVMC, § 5.19.050(A)(1)(e)(i), italics added.) Yet, there are no jurisdictions permitting lawful commercial cannabis activity anywhere in the United States because *all* cannabis activity is unlawful under Federal law. (See, e.g., 21 U.S.C., § 811.) In fact, even if the City were to ignore Federal law entirely, there were no lawful *commercial* cannabis businesses anywhere in the state of California until its voters passed Proposition 64 in 2016.

Thus, it cannot be that *any* unlawful cannabis activities are disqualifying because that would necessarily lead to the automatic disqualification of every single experienced applicant whose experience in cannabis comes from managing a cannabis business (which is unlawful under Federal Law) or from engaging in any commercial cannabis activities in California before 2016. (See *City of Sanger v. Super. Ct.* (1992) 8 Cal.App.4th 444, 448 [courts should decline to interpret statutes in a manner that would frustrate the purposes of legislation or lead to absurd results].) Rather, for subdivision (g) to make any sense (and to avoid an otherwise direct conflict with CVMC § 5.19.050(A)(1)(e)(i)), subdivision (g) must be interpreted so that the phrase "unlawful Commercial Cannabis Activity" means activities that are unlawful under the regulatory schemes enacted by the State and City after 2016 and 2018, respectively, which is when each jurisdiction first coined the term "Commercial Cannabis Activity" in their respective codes.

Under this common sense reading of subdivision (g), an alleged violation of the City of San Diego's general zoning ordinances from back in 2012—ordinances that did not expressly ban otherwise lawful, nonprofit, medicinal cannabis storefronts under Senate Bill 420—cannot possibly be deemed an *unlawful* Commercial Cannabis Activity, because that phrase should only apply to activities deemed unlawful under the regulatory schemes enacted by the State and City following the passage of Proposition 64. Had the City intended otherwise, it could have changed the definition of Commercial Cannabis Activity to include nonprofit medicinal cannabis. It did not. The City could have also dropped the term "commercial" so that the disqualification was expanded to any "unlawful Cannabis Activity." It did not. Under the only logical reading of subdivision (g), the City clearly erred in denying Petitioner's application.

(c) CVMC § 5.19.050(A)(5)(f) Does Not Apply Either

With regard to CVMC 5.19.050 § (A)(5)(f), the key language is the phrase "laws or regulations *related to* Commercial Cannabis Activity." (Italics added.) There are two ways to read subdivision (f). The first is the broadest and vaguest way which, unfortunately, is the reading that the City improperly applied. Under the City's misapplication of subdivision (f), the words "laws or regulations" are not limited to the laws or regulations "related to" the regulatory schemes that defined the term "Commercial Cannabis Activity" and made commercial cannabis activity lawful in the State of California and in the City for the very first time. Rather, the City's tortured reading extends to any "laws or regulations" of general application, including laws and regulations that have absolutely nothing to do with the regulation of commercial cannabis activity (or medicinal cannabis activity or even cannabis generally, for that matter).

Under this overbroad and unduly vague reading of subdivision (f), the City could, theoretically, reject an applicant whose otherwise lawful and licensed medicinal cannabis business was sanctioned for violating wage and hour laws. The City could likewise reject an applicant who received a speeding ticket while transporting medicinal cannabis. Or the City could reject an applicant for violating a noise ordinance. It was using this overly broad and unduly vague reading of subdivision (f) that the City erroneously concluded that any civil zoning violation at an otherwise lawful, nonprofit medical cannabis storefront constituted a violation of law "related to Commercial Cannabis Activity."

Alternatively, subdivision (f) can be read consistently with the clear intent of subdivision (g), discussed above, which avoids these kinds of absurd results by interpreting the phrase "state or local laws or regulations related to Commercial Cannabis Activity" to mean those laws and regulations that were enacted along with the regulatory scheme that first defined the term "Commercial Cannabis Activity" (at both the state and local level). This reading provides applicants with fair notice of what is and what is not a disqualifying violation of law because applicants can review the Business and Professions Code and the CVMC and determine whether they have, in fact, violated any of the myriad commercial cannabis laws and regulations enacted following Proposition 64, MAUCRSA, or Ordinance No. 3418.

Under this proper reading of subdivision (f), a violation of the City of San Diego's general zoning regulations that did not expressly exclude otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed (but was impliedly so, as discussed above), is not a violation of law *related to* Commercial Cannabis Activity as that phrase should be interpreted.

2. The City's Error Entitles Petitioner To Relief

But for the City's clear legal error, Petitioner would have advanced to the second round of the application process. Having exhausted all available administrative remedies and having no other remedy available, Petitioner brought a Petition and Complaint for declaratory and injunctive relief to compel the City to set aside its decisions dated May 6, 2020 and August 26, 2020 and permit Petitioner to proceed to Phase Two of the license application process. This is an appropriate remedy given the City's error on these discrete issues of law. (Code Civ. Proc., §§ 1085, 1094.5.) Relief is likewise appropriate given the numerous other substantive and procedural violations described in the Petition, however, Petitioner is cognizant that moving for injunctive relief on these other more factually intensive grounds may be premature as the City has yet to prepare the administrative record for this Petition.

In any event, because the City continues to move forward with other applicants, including two that were migrated into District One from other districts (i.e., real parties in interest March and Ash Chula Vista, Inc. and TD Enterprise LLC) (Ex. 14 to App'x), the Court will not be able to award Petitioner meaningful relief unless the Court enjoins the City from issuing any other cannabis storefront licenses in the City's District One and, to the extent that Respondent has already issued such licenses, declares such licenses null and void. Such relief is appropriate here to preserve the status quo. (Code Civ. Proc., § 526, subd. (a)(1)-(5).)

B. The Balance Of Hardships Weighs Strongly In Favor Of An Injunction

1. Petitioner Will Be Irreparably Harmed Unless The City Is Enjoined

"Irreparable harm" means a "'wrong[] of a repeated and continuing character, or which occasion damages estimable only by conjecture and not by any accurate standard . . . .'"

(*Donahue Schriber Realty Grp., Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1184, quoting *Wind v. Herbert* (1960) 186 Cal.App.2d 276, 285.)

(a) A Wrong Of A Repeated And Continuing Character

The City only permits eight storefront licenses—two for each of the City's four districts. (CVMC, § 5.19.040, subd. (A).) Petitioner incurred the substantial time and expense necessary to source and secure a location in the City's District One, and then applied for one of the two licenses in January 2019, at the cost of thousands of dollars. To date, Petitioner has invested $56,900 toward its license for a retail storefront. (Senn Dec. ¶ 5.) Out of an abundance of caution, and to ensure that its substantial investment was not wasted, Petitioner disclosed the *Holistic Café* matter to the City with its application on January 18, 2019 in case the City viewed it as a disqualifying event. (Ex. 5 to App'x.) Rather than issue a rejection at that time, the City allowed Petitioner's application to advance to the interview stage and then ranked Petitioner the highest, most qualified applicant in the City's District One, all the while extracting more incremental fees. Only after doing so did the City abruptly deny Petitioner's application on May 6, 2020 and, after securing more fees on appeal, rubber stamped the denial on appeal.

Since that date, the City has allowed two applicants from *other* districts, who did not qualify to advance to stage two in their original districts (i.e., real parties in interest), to migrate into District One and advance to Phase II of the application process there. If these two applicants are issued licenses, no open spots will remain for Petitioner. Further, the application process has proceeded at a snail's pace since day one. Should the City open up more licenses in the future, and that is not certain at all, it could take years before Petitioner is granted a license. And then, even if Petitioner is granted what would be a third or even fourth license in the City's District One, it will have a difficult time competing against already established "first-to-market" competitors with a loyal customer base. (Cf. *Donahue, supra,* 232 Cal.App.4th at 1185 ["customers choose to shop at a particular location based on custom and habit . . . a shopping center's success depends on customer goodwill and a desire to return to the same location out of habit and loyalty."].) This is particularly true in the cannabis industry. (Senn Dec. ¶¶ 3-6.)

Long story short, if the City's error in denying Petitioner's application is not corrected now, it is highly unlikely that Petitioner will ever receive a license worth applying for in the future given the substantial time and expense it takes to apply, the lost opportunity to be one of the first to market, and the uncertainty facing applicants following the City's multiple, cumulative errors in the application process laid out in the Petition.

(b) Inability To Quantify Loss

Petitioner's principal, Willie Senn, operates a network of cannabis business in California under the brand name Urbn Leaf. (Senn Dec. ¶¶ 1-2.) Urbn Leaf Bay Park is amongst the most successful cannabis businesses in San Diego and the State of California. (*Id.*) It is because of this depth and breadth of experience that Petitioner was able to put forward a strong application and score the highest of any retail storefront applicant in the City's District One. (*Id.* ¶ 5.)

While Petitioner fully expects an Urbn Leaf store in the City's District One to perform with success similar to that of its Bay Park store and its stores throughout California, the fact of the matter is that there are barriers to quantifying loss when it comes to new enterprises. (See, e.g., *Sanchez-Corea v. Bank of Am.* (1985) 38 Cal.3d 892, 907 ["[E]vidence of lost profits must be unspeculative and in order to support a lost profits award the evidence must show 'with reasonable certainty both their occurrence and the extent thereof.'" (Citations.)]; see also *Engle v. Oroville* (1965) 238 Cal.App.2d 266, 273 ["Because of a justifiable doubt as to the success of new and untried enterprises, more specific evidence of their probable profits is required than where the claim is for harm to an established business."].) Because of these barriers, the only safe way to preserve Petitioner's rights is to maintain the status quo until the Court rules on the Petition.

2. Any Burden On The City Will Be Negligible

In contrast to shutting Petitioner out of the Chula Vista market or damaging its prospects therein, thereby denying the residents of Chula Vista access to a successful Urbn Leaf storefront, entering an injunction will cause little to no harm to the City. For example, the City has already moved at a snail's pace since first accepting applications two years ago. (Ex. 14 to App'x.) That the City may have to wait a few more months pending a dispositive hearing in this matter to issue licenses is a small price to pay when expediency has not been a concern of the City to date.

To the extent the City claims that delaying the already protracted application process will cost it tax revenue, any such loses would be negated by positive tax revenues derived from an Urbn Leaf location established by Petitioner in Chula Vista. Indeed, in 2019, the Urbn Leaf flagship location in Bay Park, San Diego paid $2,662,164 in sales taxes to the City of San Diego. (Senn Dec. ¶ 2.) Though not yet finalized, Urbn Leaf believes that in 2020, it outperformed its 2019 revenue and sales tax figures. (*Ibid*.) Additionally, any such claim from the City should be viewed with great skepticism given the City's obvious lack of prior diligence in issuing licenses.

As for the real parties in interest that sought to migrate from their respective districts to the City's District One, they were only permitted to do so under section 0501(N)(2)(e) of the Regs, which permits applicants to switch districts once the City concludes that there are not enough qualified applicants to fill a given district's open licenses. Such migration would not have occurred, for at least one of the two applicants, but for the fact that the City improperly rejected Petitioner's application. Neither applicant should have cause to complain to the extent their migration was improper to begin with.[5]

3. The Balance Of The Equities Tips In Favor Of An Injunction

In ruling on an injunction, courts must weigh the likelihood of injury to the plaintiff if the injunction is improperly denied against the likelihood of injury to the defendant if the injunction is improperly granted. (See *Butt v. State of Cal.* (1992) 4 Cal.4th 668, 677-78; *Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 441-42.) For Petitioner, denying the injunction will potentially prevent it from ever opening an Urbn Leaf location in Chula Vista, leading to large but potentially incalculable losses. For the City and any applicant awaiting the outcome of this matter, the delay envisioned by a preliminary injunction will be short lived, as the case should be heard promptly following the City's preparation of the administrative record. A short delay (on top of an already delayed process), coupled with what should be a desire by the City to get things right, tips the balance in favor of a narrowly tailored injunction, as requested here.

[5] Real Parties TD Enterprise LLC and March and Ash Chula Vista, Inc. disagree on which of the two applicants would be first in line behind Petitioner for a license in the City's District One if Petitioner prevails in this action. (Brucker Dec. ¶ 5.) Petitioner takes no position on this issue.

IV. THE COURT SHOULD STAY THE CITY'S DECISIONS

Petitioner's second cause of action is for administrative mandate. Under Code of Civil Procedure § 1094.5(g), ". . . the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court . . . . However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest." For the same reasons discussed above, the public interest favors allowing for the most qualified applicant in District One to proceed forward with the licensing process, the equities weigh in favor of Petitioner, and the Court should exercise its discretion to stay the City's May 6, 2020 Notice of Decision and August 26, 2020 Denial of Appeal in order to ensure that Petitioner's "spot in line"—i.e., the status quo—is preserved.

V. CONCLUSION

For the aforementioned reasons, the Court should preliminarily enjoin the City and its agents, officers, employees, and representatives from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application for a retail storefront cannabis business license (Application ID 57074). Compliance with the Court's order should include, but not be limited to, halting the issuance of any other cannabis licenses in the City's District One. Further, to the extent that Respondent has already issued such licenses, the Court's order should declare such licenses null and void. For these same reasons, the Court should also stay the City's May 6, 2020 Notice of Decision denying Petitioner's application for a retail storefront cannabis business license (Application ID 57074), as well as its August 26, 2020 decision denying Petitioner's administrative appeal, under Code of Civil Procedure § 1094.5(g).

DATED: January 19, 2021

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

GARY K. BRUCKER, JR.
Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: Lann.McIntyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/19/2021 at 02:44:00 PM
Clerk of the Superior Court
By Gen Dieu,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC,

Petitioner/Plaintiff,

vs.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Respondents/Defendants,

MARCH AND ASH CHULA VISTA, INC.; TD ENTERPRISE LLC; and DOES 23 through 50,

Real Parties In Interest.

Case No. 37-2020-00041554-CU-WM-CTL
[Related To Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]

DECLARATION OF WILLIE SENN IN SUPPORT OF PETITIONER/PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND STAY OF DECISION

Judge:	Hon. Richard E.L. Strauss
Dept.:	C-75
Action Filed:	November 13, 2021
Trial Date:	None Set

I, Willie Senn, declare as follows:

1. I am the President of UL Holdings Inc. ("UL Holdings"), which is the majority member and manager of petitioner/plaintiff UL Chula Two LLC ("Petitioner"). I have personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could competently and truthfully do so.

2. UL Holdings currently operates five retail cannabis businesses across California, which operate under the brand name Urbn Leaf. UL Holdings' flagship Urbn Leaf store is in Bay Park, San Diego. It is amongst the most successful cannabis businesses in both the City of San Diego and State of California in large part because of the diversity and breadth of UL Holdings' experience in the industry. Indeed, in 2019, Urbn Leaf Bay Park generated record revenue and paid $2,662,164 in sales taxes to the City of San Diego. Urbn Leaf's 2020 numbers exceeded what it was able to accomplish in 2019.

3. After many years in the retail cannabis industry, I am familiar with the shopping habits of cannabis customers. Cannabis customers choose to shop at a particular location based on custom and habit. When a cannabis customer begins shopping at a particular location, the customer often establishes loyalty with that location and, out of custom and habit, may not change shopping locations. The development of this type of goodwill is invaluable to a new business.

4. It is for this reason that there is a stark "first-to-market" advantage for the first retail cannabis business to be established and develop goodwill in a particular geographic location. When a cannabis retailer is third, fourth, fifth, or later in a location, it is very difficult to establish a market share comparable to the first or second retailers in the area, even with superior products and customer service, and lower prices.

5. In January 2019, Petitioner applied for a retail storefront cannabis business license (Application ID 57074) with Respondent City of Chula Vista (the "City"). Because of the depth and breadth of experience among Petitioner's leadership, Petitioner was able to put forward a strong application and score the highest of any retail storefront applicant in the City's District One. When the application was denied, Petitioner appealed the denial to Respondent Chula Vista City Manager. To date, Petitioner has invested $56,900 toward its application for a retail

storefront license and its administrative appeal of the application's denial. Petitioner expects to invest substantially more toward this license as this matter has resulted in this litigation.

6. Even if Petitioner prevails in this litigation and is eventually granted a retail storefront license in the City's District One, being denied the opportunity to establish Petitioner as the first or second in the market would deprive Petitioner of its "first-to-market" goodwill advantage and, thus, result in irreparable harm to Petitioner's business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 15th day of January 2021, at San Diego, California.

Willie Senn

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: Lann.McIntyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/19/2021 at 01:41:00 PM
Clerk of the Superior Court
By Ben Dieu,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC,

Petitioner/Plaintiff,

vs.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Respondents/Defendants,

MARCH AND ASH CHULA VISTA, INC.; TD ENTERPRISE LLC; and DOES 23 through 50,

Real Parties In Interest.

Case No. 37-2020-00041554-CU-WM-CTL
[Related To Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]

DECLARATION OF GARY K. BRUCKER, JR. IN SUPPORT OF PETITIONER/PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND STAY OF DECISION

Hearing Date:	April 30, 2021
Time:	9:00 a.m.
Judge:	Hon. Richard E. L. Strauss
Dept.:	C-75
Action Filed:	November 13, 2021
Trial Date:	None Set

I, Gary K. Brucker, Jr., declare as follows:

1. I am an attorney duly admitted to practice in all of the courts of the State of California and I am a partner with Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for petitioner/plaintiff UL Chula Two LLC ("Petitioner") herein. The facts set forth herein are of my own personal knowledge, and if sworn I could and would competently testify thereto.

2. The respondent and defendant City of Chula Vista (City), to date, has yet to prepare the administrative record following Petitioner's request on June 10, 2020.

3. Upon information and belief, including the exhibits referenced below, the City denied *every* applicant for a retail cannabis storefront in its District One. Then, pursuant to City of Chula Vista Cannabis Regulations section 0501(N)(2)(e), the City permitted March and Ash Chula Vista, Inc. (from District Two) and TD Enterprise LLC (from District Four) to change districts, select new locations in the City's District One, and move to Phase II of the application process.

4. Attached as **Exhibit 14** to the Appendix of Exhibits is the City's *List of Cannabis Businesses Applicants Invited To Proceed to Phase Two (updated December 7, 2020).* This list identifies TD Enterprise LLC, which originally applied for a license in District Four, as proceeding to Phase II of the application process in District One.

5. On December 9, 2020, I spoke with counsel for the City, Alena Shamos, Esq., regarding whether the parties would be amenable to a stipulated stay of licensing in the City's District One in lieu of motion practice. Ms. Shamos informed me on or about December 17, 2020 that, although the City would be amenable to a stipulated stay, the City would require the approval of real parties March and Ash Chula Vista, Inc. and TD Enterprise LLC. On or about December 29, 2020, I participated in a conference call with Ms. Shamos and counsel for real parties, Heather Riley, Esq. and David Kramer, Esq., to discuss a stipulated stay in lieu of motion practice. The parties participated in a subsequent conference call on January 6, 2021. Counsel for real party March and Ash Chula Vista, Inc. stated on the second conference call that it would be amenable to a stipulated stay provided that the stay enjoined the issuance of a license for both of the real parties in the City's District One. Counsel for real party TD Enterprise LLC asserted his belief that TD Enterprise LLC has priority over March and Ash Chula Vista, Inc. for a license in the City's

District One and that TD Enterprise LLC may not be amenable to a stipulation to stay all storefront licensing in the City's District One (as opposed to a stay of issuance of a single license in the event Petitioner prevails in this action). On January 11, 2021, counsel for TD Enterprise LLC confirmed that it would not agree to a stipulation that would enjoin the City from issuing any storefront license in the City's District One (as opposed to a single license to be reserved for Petitioner). On January 12, 2021, I informed counsel for all parties that Petitioner would proceed with the instant motion practice given a stipulation was seemingly not possible.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 19th day of January 2021, at San Diego, California.

Gary K. Brucker, Jr.

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: Lann.McIntyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/19/2021 at 01:41:00 PM
Clerk of the Superior Court
By Ben Dieu,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC,

Petitioner/Plaintiff,

vs.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Respondents/Defendants,

MARCH AND ASH CHULA VISTA, INC.; TD ENTERPRISE LLC; and DOES 23 through 50,

Real Parties In Interest.

Case No. 37-2020-00041554-CU-WM-CTL
[Related To Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]

APPENDIX OF EXHIBITS IN SUPPORT OF PETITIONER/PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND STAY OF DECISION

Hearing Date:	April 30, 2021
Time:	9:00 a.m.
Judge:	Hon. Richard E. L. Strauss
Dept.:	C-75
Action Filed:	November 13, 2021
Trial Date:	None Set

Petitioner/Plaintiff UL Chula Two LLC hereby submits the following Appendix of Exhibits in support of its Motion for Preliminary Injunction and Stay of Decision:

Ex.	Exhibit Name/Description
1.	Petition For Writ Of Mandamus (Code Civ. Proc, §§ 1085, 1094.5, 1094.6); And Complaint For Declaratory & Injunctive Relief, filed in this above-captioned action on November 13, 2020, without exhibits thereto. (Ver. Pet.)
2.	Exhibit A to the Ver. Pet.: City of Chula Vista Ordinance No. 3418.
3.	Exhibit B to the Ver. Pet.: City of Chula Vista Cannabis Regulations.
4.	Exhibit C to the Ver. Pet.: Willie Senn Affirmation And Consent, dated January 15, 2019.
5.	Exhibit D to the Ver. Pet.: Letter To City of Chula Vista re Affirmation And Consent, dated January 18, 2019.
6.	Exhibit E to the Ver. Pet.: June 10, 2019 Letter re completion of phase 1A and 1B of the application process.
7.	Exhibit F to the Ver. Pet.: May 6, 2020 Letter re Notice of Decision.
8.	Exhibit G to the Ver. Pet.: May 21, 2020 Consolidated Request to Appeal.
9.	Exhibit J to the Ver. Pet.: Order Amending Judgment in *City of San Diego v. The Holistic Café, Inc.* (*Holistic Café*), San Diego Superior Court, Case No. 37-2012-00087648-CU-MC-CTL.
10.	Exhibit K to the Ver. Pet.: August 26, 2020 Findings and Statement of Decision re Appeal.
11.	Exhibit L to the Ver. Pet.: September 3, 2020 Letter re: Request for Record.
12.	Exhibit M to the Ver. Pet.: Complaint in *Holistic Café*.
13.	Exhibit N to the Ver. Pet.: Former San Diego Municipal Code § 1512.0305 and Table 1512-03I (Effective April 26, 2007 – August 8, 2015).
14.	City's List of Cannabis Businesses Applicants Invited To Proceed to Phase Two (updated December 7, 2020).

signature on next page

DATED: January 19, 2021

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
GARY K. BRUCKER, JR.
Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

-EXHIBIT 1 -

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
11/13/2020 at 02:29:00 PM
Clerk of the Superior Court
By Mary David Deputy Clerk

LEWIS BRISBOIS BISGAARD & SMITH LLP
GARY K. BRUCKER, JR., SB# 238644
E-Mail: Gary.Brucker@lewisbrisbois.com
CARSON P. BAUCHER, SB# 298884
E-Mail: Carson.Baucher@lewisbrisbois.com
LANN G. MCINTYRE, SB # 106067
E-Mail: lann.mcintyre@lewisbrisbois.com
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

UL CHULA TWO LLC, Petitioner/Plaintiff, vs. CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20, Respondents/Defendants DOES 21 through 50, Real Parties In Interest	Case No. 37-2020-00041554-CU-[illegible] **PETITION FOR WRIT OF MANDAMUS (CODE CIV. PROC, §§ 1085, 1094.5, 1094.6); AND COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF** Judge: Dept. Action Filed: Trial Date: None Set

Petitioner and plaintiff UL Chula Two LLC ("Petitioner" or "ULC2") petitions the Court for a writ of mandate under Code of Civil Procedure §§ 1085, 1094.5, and 1095.6, directed to defendants and respondents City of Chula Vista and the Chula Vista City Manager (collectively, "Respondent" or "City"), and by this verified petition and complaint alleges as follows:

INTRODUCTION

1. Petitioner applied to the City for a retail storefront cannabis business license on or about January 18, 2019. On August 27, 2019, following a protracted background check and interview process, Petitioner scored 900.3—the highest of any retail storefront applicant in the City's first district. Only the two highest scoring applicants in each of the City's districts advance to the next stage of the licensing process. Petitioner fully expected to advance to the next stage.

2. On May 6, 2020, however, the City issued a notice of decision denying Petitioner's application. The City did so on the basis of an alleged civil zoning violation by one of Petitioner's principals that took place in the City of San Diego over eight years earlier, which the City cited as disqualifying unlawful "commercial cannabis activity." The City's decision was as baffling as it was arbitrary, capricious, and contrary to law.

3. Preliminarily, and in an effort to be thoroughly transparent, Petitioner disclosed to the City along with its application the existence of a stipulated judgment against one of its principals, Willie Senn, in *City of San Diego v. The Holistic Café, Inc.* (*Holistic Café*), San Diego Superior Court, Case No. 37-2012-00087648-CU-MC-CTL. This stipulated judgment settled an alleged civil zoning violation without any admission of wrongdoing. Had this been *per se* disqualifying, the City should have notified Petitioner at that time, rather than 15 months later.

4. More importantly, the alleged civil zoning violations in *Holistic Café* do not constitute unlawful "commercial cannabis activity" as a matter of law, and the City's decision to treat it as such was plain error. The ruling also constituted an abuse of discretion in that the City did not exercise any discretion. Indeed, based upon the City's responses to Public Records Act requests and other information known to Petitioner, it appears that the City uniformly (and improperly) treated civil zoning violations that involved otherwise lawful, medicinal cannabis activity as *per se* disqualifying unlawful "commercial cannabis activity."

5. Based upon these and other errors, including due process violations that took place during the City's flawed internal appellate process, Petitioner now seeks relief in the form of an order: (1) compelling the City to set aside its decision and to permit Petitioner to proceed to Phase Two of the license application process; and (2) enjoining the City from issuing any storefront retail cannabis licenses in the City pending the Court's ruling on this Petition.

JURISDICTION, VENUE, AND PARTIES

6. Petitioner ULC2 is, and at all times herein mentioned was, a limited liability company duly organized and existing under the laws of the State of California, qualified to business in California, with its principal place of business in the City of Chula Vista.

7. Respondent City of Chula Vista is, and all times mentioned was, a charter city incorporated under the laws of the State of California located in the County of San Diego.

8. Respondent Chula Vista City Manager is the executive officer of the City of Chula Vista and is appointed by the City of Chula Vista City Council.

9. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure §§ 1094.5, 1094.6, and 1085.

10. Venue is proper before the Court because the City is a public entity located in this judicial district, and the business licenses will be issued for commercial activity in the county.

11. Petitioner does not know the true names and capacities of the respondents named as DOES 1 through 20 and, therefore, sues them by fictitious names. Petitioner is informed and believes DOES 1 through 20 are in some way responsible for the events described in this Petition or impacted by them. Petitioner is informed and believes there are or may be real parties in interest to the extent any applicant for a cannabis business license has been issued a license. Their identities are not known at this time and, therefore, they are sued by fictitious names DOES 21-50. Petitioner will seek leave to amend this Petition when the true names and capacities of these respondents and real parties in interest have been ascertained.

12. At all times mentioned, each respondent was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

At all times mentioned, each real party in interest was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

GENERAL ALLEGATIONS

Prop 215, Prop 64, And The City's Regulatory Scheme

13. In 1996, the citizens of the state of California passed Proposition 215, which decriminalized possession and cultivation of cannabis for medicinal purposes if prescribed by a licensed physician. Proposition 215 was followed by Senate Bill 420 in 2003, which among other things, authorized the California Attorney General's Office to issue guidelines related to the distribution of medicinal cannabis through nonprofit cooperatives.

14. In 2016, California voters passed Proposition 64, which legalized commercial cannabis activity and adult recreational cannabis use in California. Proposition 64 gave each locality in California the discretion to either allow or prohibit commercial cannabis activities within their local jurisdictions. Proposition 64 was followed by Senate Bill 94 in 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which set forth the State of California's regulatory and licensing system for the cultivation, manufacturing, delivery, and sale of medicinal and adult use cannabis.

15. On March 6, 2018, the City adopted Ordinance No. 3418, which added Chapter 5.19 to the Chula Vista Municipal Code ("CVMC"), in order to permit, license, and regulate Commercial Cannabis Activities within the City. (CVMC § 5.19.010.) Much of the language found in the CVMC is borrowed from the text of MAUCRSA. Thereafter, the City sought to tax commercial cannabis activity through Measure Q, which the City's voters approved on November 6, 2018. A true and correct copy of the City's Ordinance No. 3418 is attached as **Exhibit A**.

16. The City's stated purpose in permitting, licensing, and fully regulating commercial cannabis activities is as follows:

> The City has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. Unregulated businesses remain a source of danger and disruption for City residents and businesses. In response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated Commercial

Cannabis Activity, the City now desires to permit, license, and fully regulate Commercial Cannabis Activities within the City. (CVMC, § 5.19.010.)

17. Pursuant to CVMC Chapter 5.19, any person who desires to engage in lawful commercial cannabis activity or to operate a commercial cannabis business within the City's jurisdiction must have a valid "State License" and a valid "City License." (CVMC, § 5.19.030.) A State License is a license "issued by the state of California, or one of its departments or divisions, under State Laws to engage in Commercial Cannabis Activity[,]" and a City License is "the regulatory license issued by the City pursuant to [Chapter 5.19] to a Commercial Cannabis Business[.]" (CVMC, § 5.19.020.)

18. The City established a two-phase licensing application process for City Licenses. (CVMC, § 5.19.050.) Phase One involved a set of minimally qualifying criteria, a criminal background check, and a merit-based scoring system. (CVMC, § 5.19.050, subd. (A)(7).)

19. The City also enacted the City of Chula Vista Cannabis Regulations ("Regs"), which were intended to "clarify and facilitate implementation of CVMC Chapter 5.19," including the application periods and submittals, limits on license applications, and individuals that must be identified on an application. (Regs, § 0501, subds. (A)-(D).) It also describes the experience and liquid assets requirements for applicants, the requirements for a business plan, operating plan, and fingerprinting, and a background check. (Regs., § 0501, subds. (E)-(I).) A true and correct copy of the Regs, amended and effective as of November 19, 2019, is attached as **Exhibit B**.

20. The City's application process was necessary because of the large number of applicants but limited number of licenses available. The process was also necessary to ensure that each applicant to whom a license was eventually issued was the most qualified to assist the City in its "effort to mitigate the negative impacts bought by unregulated Commercial Cannabis Activity." (CVMC, § 5.19.010.)

21. Petitioner is informed and believes that 136 applications were submitted, 84 of which were for storefront retailer City Licenses. Only 8 storefront retailer licenses were available (two per each of the City's four districts). (CVMC, § 5.19.040, subd. (A) [no more than 12 retailer licenses and only 8 for storefront retailers].)

22. The City's application process allowed for a maximum of 1000 points. The Regulations provided for a total maximum of 500 points, as follows:

a. Experience/Qualifications of the business owner/team (150 points)
b. Liquid Assets (50 points)
c. Business Plan (150 points)
d. Operating Plan (150 points)

(Regs., § 0501, subd. (N)(1).) The highest initially scored applications proceeded to an additional interview process to further assess each scored category. The City also awarded up to 500 additional points based on an interview. Petitioner's total score was 900.3 points.

Petitioner's Application

23. Petitioner applied for a retail storefront license in District 1 within the timeframe required by the City. Petitioner expended a great deal of time and resources in preparing its application and followed every requirement in CVMC Chapter 5.19 and in the Regs. Petitioner caused $2,683 to be paid for Application ID 57074.

24. As required by the application and CVMC 5.19.050(A)(1)(j), ULC2's principals, including, Willie Senn, signed an Affirmation and Consent affirming that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." A true and correct copy of the Affirmation and Consent submitted to the City is attached hereto as **Exhibit C**.

25. By letter dated January 18, 2019, the Law Offices of Nathan Shaman, counsel for ULC2, advised the City of a stipulated judgment involving Mr. Senn that was dated December 14, 2012, in *Holistic Café, supra*. A true and correct copy of the letter submitted to the City is attached hereto as **Exhibit D**. The complaint in *Holistic Café* alleged various civil zoning violations in the City of San Diego. The parties stipulated and agreed they "wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulated Judgment. ***Neither this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint.***" (Exhibit D, p. 2, lines 19-23, emphasis provided.)

26. On June 10, 2019, the City notified Petitioner that it had successfully completed Phases 1A and 1B. Upon payment of even more fees, Petitioner was to proceed to Phase 1C: the interview. A true and correct copy of the City's letter is attached hereto as **Exhibit E**. An interview was set for July 17, 2019. Petitioner successfully completed the interview process.

The Denial and Appeal

27. On May 6, 2020, the City rejected Petitioner's Application. A true and correct copy of the Notice of Decision regarding the Application (the "Notice of Decisions") is attached hereto as **Exhibit F**. The City cited two sections of CVMC 5.19.050 as the basis for its decision:

a. First, the City cited CVMC § 5.19.050(A)(5)(f), stating Mr. Senn "has been adversely sanctioned or penalized by the City, or any other city . . . for a material violation of state or local laws or regulations related to Commercial Cannabis Activity . . . ." It went on to claim that "The City of San Diego sanctioned William [*sic*] Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity."

b. Second, the City cited CMVC § 5.19.050(A)(5)(g), stating Mr. Senn has "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other Jurisdiction . . . ." It went on to claim that "William [*sic*] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012."

To be clear, the cursory Notice of Decision did not mention *Holistic Café* or any of the particular facts or evidence that the City relied upon in reaching its conclusions in the Notice of Decision.

28. The Notice of Decision was signed by Chief of Police Roxanna Kennedy and gave Petitioner until May 21, 2020 to appeal the decision. The City's application procedure specifically allows for an appeals process, including a requirement for a hearing. (CVMC, § 5.19.050, subd. (A)(6); Regs, § 0501, subd. (P)(2)(b).) The hearing was to be "conducted in an expeditious and orderly manner as determined by the City Manager." (Regs, § 0501, subd. (P)(2)(c).)[1]

[1] Even if the City's application procedure had not specifically provided for an appeals process that required a hearing after denial of an application, a "fair and impartial hearing" so that an applicant can "present the merits of her application to the licensing tribunal" is nonetheless required by law. (footnote continued)

29. On May 21, 2020, Petitioner filed a Consolidated Request to Appeal with the City of Chula Vista and paid filing fees of $3,217. A true and correct copy of the Consolidated Request to Appeal is attached hereto as **Exhibit G**.[2]

30. On May 26, 2020, the City sent notice of a hearing on June 10, 2020. A true and correct copy of the May 26, 2020 hearing notice is attached hereto as **Exhibit H**. The notice was served 15 days prior to the scheduled hearing, even though the City's regulations required that Petitioner be given 20 days' notice. (Regs. § 0501(P)(2)(a).) It stated that testimony and evidence could be presented, but that the hearing is not conducted under rules of procedure and evidence, and therefore evidence is admissible if it is relevant and of the kind that a reasonable person would rely on in making decisions. Further, the notice provided that irrelevant and unduly repetitious evidence will be excluded, citing Regs. § 0501(P)(2)(c). In addition, the notice required evidence intended to be presented at the hearing must be disclosed to the City Manager five days before the hearing. On May 28, 2020, the City sent an amended notice that the hearing would take place remotely by WebEx.

31. On June 5, 2020, the City emailed its evidence to Petitioner, which consisted of 16 exhibits, although under a cover letter dated May 21, 2020. This email, late in the afternoon on the Friday before the June 10, 2020 hearing (which was already on shortened notice), was the first time the City made it clear that it was relying upon *Holistic Café* as the sole and exclusive basis to deny Petitioner's Application.

32. Also on June 5, 2020, Petitioner submitted a brief on appeal arguing: (1) the rejection of its applications was impermissibly vague and violated due process in that it did not disclose any of the facts or evidence that the City relied upon in rejecting the application; (2) there were no laws related to Commercial Cannabis Activity in 2010-2012 in the City of San Diego; (3) to the extent the City's decision was related to *Holistic Café,* there is no relevant, admissible evidence that Mr. Senn engaged in unlawful commercial cannabis activity; and (4) that the City should exercise its discretion and set aside the Notice of Decision on equitable grounds. A true

(See *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 268-270.)

[2] Note, the only application at issue in this Petition is Application ID 57074.

and correct copy of the brief is attached hereto as **Exhibit I**.

33. A hearing was held on June 10, 2020, with the City Manager serving as the sole hearing officer, and a deputy city attorney present as an advisor to the City Manager, and a separate deputy city attorney present as counsel for the City. Testimony was given by witnesses for the City and the City's written evidence was admitted. Petitioner presented no evidence or testimony at the hearing because the City's impermissibly vague Notice of Decision prejudiced Petitioner's ability to prepare for the hearing, which itself was scheduled on less than legally sufficient notice under the Regs. Had proper notice been provided, for example, Petitioner could have presented evidence that the San Diego Superior Court entered an order modifying the stipulated judgment in *Holistic Café* on May 3, 2019 to clarify that the defendants are allowed to operate commercial cannabis businesses. In fact, Mr. Senn operates the most successful licensed cannabis storefront in the City of San Diego today. A true and correct copy of the order amending the stipulated judgment is attached hereto as **Exhibit J**.

34. The City served its "Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License" ("Final Decision") on August 26, 2020. A true and correct copy of the Final Decision is attached hereto as **Exhibit K.** The Final Decision denied Petitioner's appeal and concluded "the evidence shows the City reasonably and properly denied Appellant's application." (Exhibit K, p. 6.) The Final Decision provided notice that "Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure 1094.5 on or before the 90th day after this decision is final." The Final Decision was served by mail on August 26, 2020. (Exhibit K.)

35. On September 3, 2020, counsel for ULC2 and Mr. Senn sent a written request for the administrative record of the June 10, 2020 appeal proceedings. A true and correct copy of the request is attached hereto as **Exhibit L.** As of the filing of this Petition, the administrative record has not yet been received.

A WRIT OF MANDATE SHOULD ISSUE

36. Petitioner has exhausted every available administrative remedy and has no plain, speedy, and adequate remedy in the ordinary course of the law to compel the City to reverse its

decision and to grant Petitioner's request to proceed to Phase 2 of the application process. (CVMC, § 5.19.050, subd. (A)(6) ["The City Manager's determination regarding the Phase One Application shall be final."].)

37. Accordingly, ordinary mandamus is appropriate because Petitioner has no plain, speedy, and adequate alternative remedy, the City has a clear, present, and ministerial duty to perform; and Petitioner has a clear, present, and beneficial right to performance. (Code Civ. Proc., § 1085; *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.) The City was required by law to permit the highest scoring applicants to proceed to Phase 2 and failed to abide by the law when it rejected Petitioner's application and denied Petitioner (and Petitioner is informed and believes, all other applicants with civil zoning law violations) the opportunity to proceed to Phase 2 of the licensing process based on alleged violation of civil zoning laws as having engaged in unlawful "commercial cannabis activity."

38. Administrative mandamus is an appropriate remedy for challenging "the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal . . . ." (Code Civ. Proc., § 1094.5, subd. (a).) The Court may enter judgment for Petitioner and command the City to set aside its Final Decision if there was not a fair trial, or if the City's decision constituted a "prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid*.) As discussed below, following an unfair trial, the City's prejudicially abused its discretion in several important ways.

Ground 1 – Civil Zoning Violations Are Not Disqualifying As A Matter Of Law

39. CVMC § 5.19.050(A)(5) provides that "Phase One Applications *may* be rejected by the Police Chief for any of the following reasons in his/her discretion." (Emphasis provided.) As discussed in paragraphs 56-62, *infra*, the City failed to exercise its discretion by rejecting all applicants that were alleged to have encountered a civil zoning violation. While this failure is an independent ground for granting the petition, the City primarily erred as a matter of law by

misapplying the stated grounds for rejection under CVMC §§ 5.19.050(A)(5)(f) and (g).

40. The City's sole basis for rejecting Petitioner's application was an alleged civil zoning violation from 2012 that the City incorrectly determined was *per se* disqualifying pursuant CVMC §§ 5.19.050(A)(5)(f) and (g). Subdivision (f) states:

> The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure."

Subdivision (g) states:

> The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

41. The alleged civil zoning violation from 2012—long *after* medical cannabis was legalized by Proposition 215 and well *before* commercial cannabis was legalized by Proposition 64—involved the Holistic Café, a medicinal cannabis storefront that the City of San Diego sought to close using a variety of mundane zoning ordinances. To be clear, none of the ordinances that the City of San Diego accused the Holistic Café of violating actually barred a medicinal cannabis storefront (or even used the words marijuana or cannabis for that matter). A true and correct copy of the complaint in *Holistic Café* is attached as **Exhibit M**.

42. Specifically, the complaint in *Holistic Café* alleged violations of San Diego Municipal Code ("SDMC") §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111, 129.0314, 146.0104. (Exh. M ¶¶ 31-43, Prayer ¶ 1.) Nearly all of these code sections relate to mundane structural, electrical, and signage requirements. For example, Sections 129.0202 and 129.0111 required an inspection and building permit prior to making any structural alterations to a building. Sections 129.0302 and 129.0314 required an inspection and electrical permit prior to installing or altering electrical wiring or equipment. Section 129.0802 required a signage permit prior to installing a sign. And section 146.0104, which incorporates various provisions of the California Electrical Code, prohibited the use of extension cord wiring for electrical service or the use of junction boxes without proper covers. Each of these alleged violations would have been easily curable, except for Sections 121.0302 and 1512.0305, which the City of San Diego insisted

did not allow for medicinal cannabis storefronts.

43. Together, SDMC §§ 121.0302 and 1512.0305 enact zoning rules for zone CN-1A in the City of San Diego's Mid-City Communities Planned District. Table 1512-03I therein lists all permitted uses for buildings located in zone CN-1A and excludes all other uses (as opposed to identifying excluded uses). True and correct copies of SDMC § 1512.0305 and Table 1512-03I are attached as **Exhibit N**. Notably, Table 1512-03I specifically allows for the operation of drug stores, pharmacies, liquor stores, bakeries, confectioneries, florists, variety stores, food stores, and dry goods stores without any reference to the types of products sold therein. Yet, the City of San Diego contended in *Holistic Café* that a medicinal cannabis storefront was not specifically listed as a permitted use. By this flawed logic, the City of San Diego could have also challenged any café because the words "coffee" and "tea" were also not specifically listed.

44. Critically, during this 2010-2012 time period, localities and medical cannabis advocates hotly debated and litigated whether local governments could even use zoning regulations to ban otherwise legal medicinal cannabis storefronts with varying results. (See *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments cannot ban], *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 [local governments cannot ban], and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local governments can ban].) It was not until 2013 that the California Supreme Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, which ruled that local governments could ban medical cannabis storefronts.

45. In any event, despite having several legal and factual defenses available to them at the time, on December 14, 2012, the defendants in *Holistic Café*, including Mr. Senn, entered into a stipulated judgment that did not include any admission of wrongdoing. Again, the alleged civil zoning violations in *Holistic Café* were not zoning ordinances that banned medicinal cannabis storefronts whatsoever. They were the opposite; they were generic zoning laws limiting the scope of permissible uses at the location where the Holistic Café operated.

CVMC § 5.19.050(A)(5)(f) Does Not Apply To Civil Zoning Violations

46. With regard CVMC 5.19.050 § (A)(5)(f), the phrase "pharmaceutical or alcohol

licensure" has no bearing on this case because the *Holistic Café* matter had nothing to do with "pharmaceutical or alcohol licensure." The key language here is the phrase "related to Commercial Cannabis Activity." And to be clear, the term "Commercial Cannabis Activity" did not even come into existence until after Proposition 64 was passed in the State of California in 2016, after which City Ordinance No. 3418 was passed in March 2018.[3]

47. It was only then, under CVMC § 5.19.020, that the term Commercial Cannabis Activity was defined by the City as follows: ". . . the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." This language closely tracks the language of MAUCRSA, which was enacted by the State of California in 2017: "'Commercial cannabis activity' includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division." (Bus. & Prof. Code § 26001(k).)

48. There are two ways to read subdivision (f). The first is the broadest and vaguest way which, unfortunately, is the reading that the City improperly and uniformly adopted. Under the City's misapplication of subdivision (f), the words "laws or regulations" are not limited to the laws or regulations "related to" the regulatory schemes that defined the term "Commercial Cannabis Activity" and made commercial cannabis activity lawful in the State of California and in the City for the very first time. Rather, the City's tortured reading extends to any "laws or regulations" of general application, including laws and regulations that have absolutely nothing to do with the regulation of commercial cannabis activity (or medicinal for that matter).

49. Under this overbroad and unduly vague reading of subdivision (f), the City could, for example, reject an applicant whose otherwise lawful and licensed medicinal cannabis business was sanctioned by the Division of Labor Standards Enforcement for violating wage and hour laws.

[3] Prior to 2016, medicinal cannabis storefronts, such as the Holistic Café, were often organized as *nonprofit* mutual benefit corporations pursuant to guidelines promulgated by the California State Attorney General's Office. As discussed below in paragraphs 73-75, and as an additional grounds for granting this Petition, the City's findings were not supported by the evidence because there was no evidence presented that the Holistic Café, a *nonprofit* mutual benefit corporation, engaged in "commercial" cannabis activity as opposed to *nonprofit* medicinal cannabis activity.

The City could likewise reject an applicant who received a speeding ticket while transporting medicinal cannabis. Or the City could reject an applicant for violating a noise ordinance. It was under this overbroadly and unduly vague reading of subdivision (f) that the City erroneously concluded that any civil zoning violation at an otherwise lawful, nonprofit medical cannabis storefront constituted the violation of law ". . . related to Commercial Cannabis Activity."

50. The second way of reading subdivision (f) avoids these kinds of absurd results by interpreting the phrase "state or local laws or regulations *related to* Commercial Cannabis Activity . . ." to mean those laws and regulations that were enacted along with the specifically defined term "Commercial Cannabis Activity" in the first place (at both the state and local level). This reading provides applicants with fair notice of what is and what is not a disqualifying violation of law because applicants can review the Business and Professions Code and the CVMC and determine whether they have, in fact, violated any law or regulation enacted following Proposition 64, MAUCRSA, or Ordinance No. 3418. There are a litany of such commercial cannabis laws and regulations that have been enacted at the state and local level. Subdivision (f) can only reasonably be interpreted as disqualifying applicants who had violated laws and regulations enacted under a commercial cannabis regulatory scheme, not just any laws and regulations of general application.

51. Under this proper reading of subdivision (f), a violation of the City of San Diego's general zoning regulations that did not expressly exclude otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed (but was implied so as a café), is not a violation of law *related to* Commercial Cannabis Activity as that phrase was clearly intended in Subdivision (f).

CVMC § 5.19.050(A)(5)(g) Does Not Apply To Civil Zoning Violations

52. The language of subdivision (g), like subdivision (f), also uses the term "Commercial Cannabis Activity." However, in subdivision (g), the phrase is modified by the term "unlawful," such that an applicant will be denied a license if an owner, manager, or officer "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity." Again, for the reasons expressed above with regards to subdivision (f), the

phrase "unlawful Commercial Cannabis Activity" must be read to mean *commercial* activities that are unlawful under the regulatory scheme enacted by the State and City, not any activity that is unlawful in the abstract.

53. This has to be the case because, under CVMC §5.19.050(A)(1)(e)(i), the manager of a commercial cannabis license applicant must have "[a] minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity." Yet, there are no jurisdictions permitting lawful commercial cannabis activity anywhere in the country because all cannabis activity is unlawful under Federal law. In fact, even if the City were to ignore Federal law, there were no lawful commercial cannabis businesses anywhere in the state of California until its voters passed Proposition 64 in 2016 (prior to 2016, only Washington, Colorado, Alaska, and Oregon permitted such activities).

54. Thus, it cannot be that ***any*** unlawful conduct is a disqualifier because that would necessarily lead to the automatic disqualification of every single experienced applicant whose experience comes from managing a *commercial* business that is unlawful under federal law (or, ignoring Federal law, expressly limiting applicants to those who worked in Washington, Colorado, Alaska, and Oregon). Rather, for subdivision (g) to make sense in the context of the regulatory scheme in which it was enacted, it must be interpreted so that the phrase "unlawful Commercial Cannabis Activity" means activities that are unlawful under the regulatory scheme enacted by the State and City after 2016 and 2018, respectively, not any activity that is unlawful in the abstract.

55. Under this proper reading of subdivision (g), a violation of the City of San Diego's general zoning ordinances that did not ban otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed, cannot possibly be deemed an unlawful Commercial Cannabis Activity as that phrase was intended in Subdivision (g).

Ground 2 – The City Abused Its Discretion By Refusing To Exercise Its Discretion

56. The City is required, pursuant to CVMC § 5.19.050(A)(5), to exercise its discretion when rejecting any Phase One Application. "Phase One Applications *may* be rejected by the

Police Chief for any of the following reasons in his/her discretion." [Emphasis provided.]

57. As discussed above, under CVMC §5.19.050(A)(1)(e)(i), an applicant's manager must have "[a] minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity." Putting aside that cannabis businesses are unlawful in every jurisdiction under Federal law, it makes perfect sense to require that applicants have experience—of a minimum of 12 consecutive months—within the previous five years. Yet, Proposition 64 was not enacted until 2016.

58. The vast majority of experienced applicant managers gained their experience not with commercial cannabis, but with medicinal cannabis, which was lawful in the State of California long before Proposition 64. As described above, there was great conflict in the law over whether municipalities could use zoning ordinances to bar medicinal cannabis storefronts until the California Supreme Court finally decided the issue in 2013 in *Inland Empire*. Not surprisingly, the most experienced applicants that the City desired for its licensing program likely gained that experience at a time when zoning ordinances were haphazardly applied throughout the state and the law was unclear.

59. Pursuant to Public Record Act requests, Petitioner has learned that the City uniformly rejected any and all applicants that had been alleged to have violated civil zoning laws unrelated to the regulatory schemes that legalized commercial cannabis activity at the State and local level (going so far as to disqualify applicants who merely worked at otherwise lawful medicinal cooperatives in the City of San Diego). This includes applicants experienced with medicinal cannabis prior to 2013 when the law was unclear and several appellate courts had ruled that municipalities could not use zoning ordinances to bar medicinal cannabis storefronts. This relevant evidence could not, in the exercise of reasonable diligence, have been produced by Petitioner at the administrative hearing because Petitioner only obtained the evidence pursuant to Public Records Act requests that were not responded to until after the hearing. This relevant evidence is admissible pursuant to Code of Civil Procedure § 1094.5(e). A true and correct copy of the evidence of systematic exclusion of similarly situated applicants is attached hereto as

Exhibit O and incorporated herein by reference.

60. Considering that the City wants qualified and experienced applicants, and given the history by which medicinal and then recreational cannabis was slowly legalized and regulated in the State, the City could have and in fact should have exercised its discretion to approve otherwise highly qualified applicants that worked in medicinal cannabis and encountered general civil zoning violations prior to 2013. In contrast, the City abused its discretion in failing to exercise *any* discretion by uniformly rejecting *all* such applicants—including Petitioner, which scored higher in its district than any other applicant.

61. To have properly exercised its discretion, the City needed to make additional findings to demonstrate reasonable, not arbitrary or capricious, reasons to reject the application. Such reasons would have to have a nexus to previous violations of commercial cannabis laws. Such reasons would have required findings tied to the express purpose of the licensing codes and regulations in permitting, licensing, and fully regulating commercial cannabis activities in the City. An example would be findings that Petitioner would likely create negative impacts and secondary effects, danger and disruption for City residences and businesses, and therefore its license application should be rejected. No such findings were ever made.

62. Nor could such findings ever be made for Petitioner. As Petitioner's application materials showed, Mr. Senn operates the most successful cannabis retailer in San Diego and one of the most successful cannabis retailers in California, all of which are licensed. That is to say, Mr. Senn's operations are licensed by the very same City of San Diego that was a party to the stipulated judgement in *Holistic Café*. Surely, such licensure would not have occurred had Mr. Senn been likely to create negative impacts, secondary effects, danger, or disruption to the City of San Diego. To the contrary, Mr. Senn operates cannabis storefront locations in Bay Park, San Ysidro, Grover Beach, and Seaside, California. Mr. Senn also co-founded the City of San Diego's cannabis trade group, the United Medical Marijuana Coalition, as well as the Alliance for Responsible Medicinal Access, Patient Care Association of CA, and Citizen for Patient's Rights. The City should have considered each of these uniquely qualifying facts, which led to Petitioner being objectively scored as the most qualified applicant in the City's first district. It did not.

Ground 3 – The City Denied Applicants Fair Notice In Violation Of Due Process

63. As discussed above, it would have been impossible for applicants to determine in advance of applying that the City would uniformly reject all applicants who had an alleged civil zoning violation under the auspices of CVMC § 5.19.050(A)(5)(f) and (g), which should never have been applied as broadly as the City decided to apply them.

64. Out of an abundance of caution, Petitioner disclosed the stipulated judgment in *Holistic Café* (see Exh. D) contemporaneously with the submission of its application. Rather than rejecting the application on that basis, the City instructed Petitioner to engage in a series of a fundamentally unfair proceedings (i.e., application, background check, interview, scoring, etc.) where the ultimate decision would be a forgone conclusion: a rejection.

65. By staying silent upon receipt of Petitioner's application, the City invited Petitioner (and other similarly situated applicants) to continue to invest significant time and resources in the license process, all while the City continued to collect hefty application fees from them. By staying silent, the City further denied Petitioner (and other similarly situated applicants) the opportunity to amend their applications at the outset of the process in order to cure such defects (e.g. by modifying the ownership and/or management structure of the applicants).

66. If the City was to uniformly deny all applicants with prior civil zoning infractions, as it did, the City should have provided the applicants with fair notice so that they did not spend time and resources applying for a foregone conclusion.

67. Absent such fair notice, due process requires that the City be estopped from rejecting applicants on the basis of disclosed civil zoning violations. (*Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 963-964.)

Ground 4 – The City's Hearing Procedure Violated Petitioner's Due Process

68. The City further violated Petitioner's due process rights by conducting a procedurally improper hearing that did not provide Petitioner sufficient notice, both in terms of time in violation of Regs. § 0501(P)(2)(a), and in terms of content with its threadbare Notice of Decision. Together, these violations deprived Petitioner of its ability to meaningfully prepare for

the hearing on appeal by sourcing testimony and/or exhibits needed to appeal to the City Manager, which fact the City Manager cited in rejecting the appeal.

69. Further, the City's appeal process violated Petitioner's due process right to a fair tribunal "in which the judge or other decision maker is free of bias for or against a party." (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737 [citation and quotation marks omitted].) This is because Deputy City Attorney Simon Silva served as the adviser to the hearing officer, City Manager Gary Halbert, and Deputy City Attorney Megan McClurg served as counsel for Respondent. (Ex. K.)

70. Although a "city attorney's office may 'act[] as an advocate for one party in a contested hearing while at the same time serving as the legal adviser for the decision maker'" without violating the other party's right to a fair tribunal, "performance of both roles" offends due process when: (1) adequate measures to screen the deputy city attorney serving as prosecutor and the deputy city attorney serving as adviser; or (2) the deputy serving as prosecutor becomes a "primary legal adviser" to the decision maker. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813, overruled in unrelated part by *Morongo*, supra, p. 740, fn. 2, [citations and quotation marks omitted].)

71. Here, there is no evidence to suggest that the City Attorney's Office, which upon information and belief, has only nine full-time attorneys, employed adequate screening measures to guarantee the necessary separation between its dual roles of adviser and advocate. (See, *Quintero, supra*, p. 813 [clarifying that the respondent City of Santa Ana had the "burden of showing the required separation"].) More importantly, Ms. McClurg's service as counsel for Respondent in the hearing violates due process in light of her role as a drafter of the very code that governed the application and appeals process here.

72. Specifically, Ms. McClurg and a member of City Manager Halbert's staff, Deputy City Manager Kelley Bacon, played an integral role in the drafting of Ordinance 3418, eventually codified in CVMC § 5.19.010 *et seq.* Ms. McClurg and Ms. Bacon gave presentations to the Chula Vista City Council on the proposed ordinance, including on the mechanisms of the application process, and their ongoing revisions thereto, no less than four times prior to the

Ordinance's adoption. True and correct copies of the minutes for the City Council hearings at which Ms. McClurg and Ms. Bacon gave presentations are attached as **Exhibits P through S**. City Manager Halbert was present each time for these presentations. Given Ms. McClurg's and Ms. Bacon's joint role as drafters of the very code provisions which governed Petitioner's application and subsequent appeal, "[i]t would only be natural for [City Manager Halbert, Ms. Bacon's supervisor] . . . to give more credence to [Ms. McClurg's] arguments when deciding [Petitioner's] case." Under these facts, there is an "appearance of unfairness . . . sufficient to invalidate the hearing" on due process grounds. (*Quintero*, *supra*, p. 816.)

Ground 5 – The City's Findings Were Not Supported By The Evidence

73. Finally, the City abused its discretion because its decision is not supported by the findings and the findings are not supported by the evidence. Specifically, the evidence does not support the finding that Mr. Senn violated any state or local laws or regulations "related to Commercial Cannabis Activity," or that Mr. Senn was engaged in "unlawful Commercial Cannabis Activity" as defined in CVMC § 5.19.050(A)(5)(f) and (g).

74. First, as discussed above, the term "Commercial Cannabis Activity" is defined by the City as follows: ". . . the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." CVMC § 5.19.020. Critically, the City's definition relates only to "Cannabis or Cannabis Products," not "Medicinal Cannabis" or "Medicinal Cannabis Product," which terms are separately defined in CVMC § 5.19.020. Indeed, the City of Chula Vista's licensing scheme for commercial cannabis activities—i.e., the license at issue in this Petition—expressly excludes medicinal cannabis activities, thereby confirming an important distinction between what is commercial and what is medicinal. *See, e.g.,* CVMC § 5.19.090 ("A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products.").

75. Second, there was no evidence presented whatsoever that the Holistic Café—a *nonprofit* mutual benefit company—was engaged in any "commercial" cannabis activity at all, as opposed to "medicinal" cannabis activities that were lawful at the time under Proposition 215. And even then, the evidence presented was wholly inadmissible. For example, the stipulated

judgment, as well as other exhibits presented by the City in the *Holistic Café* case, is purely hearsay and expressly did "not constitute an admission or an adjudication of any of the allegations of the Complaint." (Exh. D, p. 2, lines 19-23.) The allegations of the Complaint were just that: allegations. The Stipulated Judgment was not an admission of those allegations, nor did it constitute an adjudication of any of the allegations. Allegations are not facts or evidence. There was no other non-hearsay evidence of unlawful commercial cannabis activity to support this basis for the City's rejection of Petitioner's application. Therefore, the evidence is insufficient as a matter of law to support the City's findings or its decision.

First Claim for Relief

(Ordinary Mandate)

76. Petitioner incorporates by reference paragraphs 1 through 75 above as though set forth in full at this point.

77. The City's issuance of cannabis business licenses is subject to requirements set forth under the Chula Vista Municipal Code, the City of Chula Vista Cannabis Regulations, and California law. The City is required to comply with its own ordinances and regulations, as well as California law, and was obligated not to abuse its discretion in disqualifying applicants using unstated, undisclosed, unduly vague, and arbitrary criteria. The City was also required to provide applicants with due process and follow its own procedures and rules.

78. The City's rejection of Petitioner's application is arbitrary and capricious and is likely to result in the City issuing licenses to potentially unqualified applicants, in violation of law. Any issuance by the City of cannabis business licenses is illegal, arbitrary, capricious, lacking in evidentiary support, and inconsistent with proper procedure.

79. For all of these reasons there are sufficient grounds for the Court to issue a writ of mandamus, enter judgment commanding the City to set aside its decision rejecting Petitioner's application ID No. 57074, and order the City to allow Petitioner to proceed to Phase Two of the licensing process.

80. The Court should also stay the operation of the City's decision to reject Petitioner's application and to enjoin the City from taking or failing to take any action that would in any way

interfere with the full and fair consideration of Petitioner's application for a storefront retail cannabis license, including but not limited to enjoining the City from issuing any of the retail storefront cannabis licenses and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void. (Code Civ. Proc., § 1094.5, subd. (g).) A stay is in the public's interest because it promotes the City's desire to give cannabis business licenses only to those most qualified to "operate a top-quality retail cannabis establishment" (Exh. A), as its purpose is to regulate and license commercial cannabis activity to "mitigate the negative impacts brought by unregulated Commercial Cannabis Activity." (CVMC, § 5.19.010.)

81. Petitioner is supremely qualified to operate a commercial cannabis storefront in the City; indeed, it was ranked number one in its district based on its application and interview scores. Rejection of its application based on the complaint and stipulated judgment regarding a general zoning ordinance from eight years ago—at a time when medicinal cannabis was legal but before the State and City enacted commercial cannabis laws and regulations—is inconsistent with the City's goal of combatting unregulated commercial cannabis activity because the City arbitrarily and without sufficient evidence rejected the best and most experienced candidate.

82. Petitioner has a clear, present, legal, and beneficial right in requiring the City to follow its own rules and to not abuse its discretion when issuing cannabis licenses.

83. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the writ sought by this petition. Petitioner has exhausted all administrative remedies available to it. Before filing this verified petition and serving it on the City, Petitioner timely appealed the Notice of Decision. This writ petition is filed less than 90 days after the City's Final Decision became final. Without the issuance of a writ of mandate, Petitioner will lose its opportunity to be issued a retail cannabis license by the City. The only means by which Petitioner may compel the City to follow the law is this petition for writ of mandate.

Second Claim for Relief

(Administrative Mandate)

84. Petitioner incorporates by reference paragraphs 1 through 83 above as though set forth in full at this point.

85. The City's issuance of cannabis business licenses is subject to requirements set forth under the Chula Vista Municipal Code, the City of Chula Vista Cannabis Regulations, and California law. The City is required to comply with its own ordinances and regulations, as well as California law, and was obligated not to abuse its discretion in disqualifying applicants using unstated, undisclosed, unduly vague, and arbitrary criteria. The City was also required to provide applicants with due process and follow its own procedures and rules.

86. In rejecting Petitioner's applications and arbitrarily and capriciously denying Petitioner the opportunity to proceed to Phase 2 based on a general zoning violation, the City has not proceeded in the manner required by law as it was required to, and its decision is not supported by the findings of the City Manager. Thus, the City has violated California law and must be ordered to follow the law and allow Petitioner to proceed to Phase 2.

87. Petitioner has a clear, present, legal, and beneficial right in requiring the City to follow its own rules and to not abuse its discretion when issuing cannabis licenses.

88. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ sought by this petition. Petitioner has exhausted all administrative remedies available to it. Before filing this verified petition and serving it on the City, Petitioner timely appealed the Notice of Decision. This writ petition is filed less than 90 days after the City's Final Decision became final. Without the issuance of a writ of mandate, Petitioner will lose its opportunity to be issued a retail cannabis license by the City. The only means by which Petitioner may compel the City to follow the law is this petition for writ of mandate.

Third Claim for Relief

(Declaratory & Injunctive Relief)

89. Petitioner incorporates by reference paragraphs 1 through 88 above as though set forth in full at this point.

90. An actual controversy has arisen and now exists between the parties concerning their respective rights, liabilities, obligations, and duties with respect to Petitioner's application.

91. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations.

92. Because there is no adequate remedy at law, Petitioner requests a declaration of the parties' rights, liabilities, and obligations. Specifically, Petitioner requests a judicial declaration that the City must permit Petitioner to proceed to Phase Two of the license application process.

93. Unless the City is enjoined from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, Petitioner will suffer great and irreparable injury and therefore seeks an injunction as prayed for below.

PRAYER

WHEREFORE, Petitioner prays:

1. For a peremptory writ of mandate to be issued that: (a) directs Respondent to set aside its decisions dated May 6, 2020 and August 26, 2020 and permit Petitioner to proceed to Phase Two of the license application process; and (b) enjoins Respondent from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, including but not limited to enjoining Respondent from issuing any other cannabis licenses in the City and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void;

2. For an alternative writ of mandate and order to show cause why a peremptory writ should issue granting the relief sought by Petitioner;

3. For a declaration that the City must set aside its decisions dated May 6, 2020 and August 26, 2020 and permit Petitioner to proceed to Phase Two of the license application process;

4. For a preliminary and permanent injunction restraining Respondent from taking or failing to take any action that would in any way interfere with the full and fair consideration of Petitioner's application, including but not limited to enjoining Respondent from issuing any other cannabis licenses in the City and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void;

5. For Petitioner to recover its costs in this action, including attorney fees (Code Civ. Proc. § 1021.5);

6. For Petitioner recover its damages according to proof; and

/ / /

7. For Such other relief be granted that the Court considers proper.

DATED: November 13, 2020

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

GARY K. BRUCKER, JR.
CARSON P. BAUCHER
LANN G. MCINTYRE
Attorneys for Petitioner/Plaintiff
UL CHULA TWO LLC

VERIFICATION

I have read the foregoing PETITION FOR WRIT OF MANDAMUS (CODE CIV. PROC., §§ 1085, 1094.5, 1094.6) and know its contents.

I am an officer of a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 13, 2020

Willie Senn, President of UL Holdings, Inc., Manager of Petitioner UL Chula Two LLC

-EXHIBIT 2 -

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

ORDINANCE NO. 3418

ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHULA VISTA MUNICIPAL CODE SECTION 5.19 TO REGULATE COMMERCIAL CANNABIS

WHEREAS, the Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medicinal cannabis businesses in California; and

WHEREAS, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California State Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the State of California; and

WHEREAS, under California Business and Professions Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries; and

WHEREAS, the California Attorney General's 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines") recognizes that the concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be impacted negatively by nuisance activity or more significant levels of crime; and

WHEREAS, the City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries; and

WHEREAS, unregulated businesses remain a source of danger and disruption for City residents and businesses; and

WHEREAS, in response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated cannabis businesses, the City now desires to permit, license, and fully regulate commercial cannabis activity in the City; and

WHEREAS, California voters have recognized the danger of cannabis use among youth by making the sale of cannabis to those under age 21 illegal (Cal. Bus. & Prof. Code § 26140(a)(1)-(3)) and by prohibiting the possession of cannabis or cannabis products by minors (Cal. Health & Safety Code §11357); and

WHEREAS, youth exposure to advertising of products such as alcohol, tobacco, and food has been shown to create positive attitudes, brand identification, and increased likelihood of initiation and use of these products; and

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

WHEREAS, the City of Chula Vista has a substantial interest in promoting compliance with state and local laws intended to regulate cannabis sales and use; in discouraging the illegal purchase of cannabis products by youth; in promoting compliance with laws prohibiting sales of cannabis and cannabis products to youth; and in protecting youth from being coerced and enticed into engaging in illegal activity; and

WHEREAS, pursuant to its police powers, including but not limited to California Constitution Article XI, Section 5(b) authority over municipal affairs, the City of Chula Vista has general authority over the public health, safety, and welfare of its citizens; and

WHEREAS, it is the intent of the City Council to adopt a comprehensive set of requirements, restrictions, and robust enforcement procedures with regard to cannabis activity within the City in order to protect public safety, health, and other law enforcement interests.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Environmental Findings

The City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to the following provisions of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

1. The Ordinance is exempt under Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, there is no possibility that this Ordinance would create cumulative impacts that are significant because this Ordinance does not authorize a total number of businesses in the City than would otherwise be authorized; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

2. The Ordinance is also exempt under Section 15183 (Projects Consistent with a Community Plan or Zoning) since the types of businesses permitted by the Ordinance are consistent with those contemplated by general plan and zoning;

3. The Ordinance is also exempt under CEQA Guidelines Section 15301 (Existing Facilities) since permitted cannabis business under the Ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

4. The Ordinance is exempt under Section 15303 (New Construction or Conversion of Small Structures). The businesses will be established in an urban area, and given the build out of the existing City, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

Section II. Chapter 5.19 is added to the Chula Vista Municipal Code to read as follows:

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Chapter 5.19

COMMERCIAL CANNABIS

Sections:

5.19.010 Purpose.
5.19.020 Definitions.
5.19.030 City License Required.
5.19.040 Maximum Number and Type of Authorized City Licenses.
5.19.050 City License Application Process.
5.19.060 Location Requirements for Cannabis Businesses.
5.19.070 Limitations on City's Liability.
5.19.080 Operating and Conduct Requirements for All Licensees and Individuals.
5.19.090 Operating Requirements for Storefront Retailers.
5.19.100 Operating Requirements for Non-Storefront Retailers.
5.19.110 Operating Requirements for Cultivators.
5.19.120 Operating Requirements for Manufacturers.
5.19.130 Operating Requirements for Distributors.
5.19.140 Operating Requirements for Testing Laboratories.
5.19.150 Recordkeeping.
5.19.160 Security Measures.
5.19.170 Community Relations.
5.19.180 Promulgation of Regulations, Standards, and Other Legal Duties.
5.19.190 Compliance With Laws.
5.19.200 Right of Access & Testing.
5.19.210 Restrictions on Transfer, Change, or Alteration of City License or City Licensee.
5.19.220 Restrictions on Transfer, Change, or Alteration of Location.
5.19.230 Expiration of City License.
5.19.240 Renewal of City License.
5.19.250 Effect of State License Suspension, Revocation, or Termination.
5.19.260 Suspension or Revocation of City License.
5.19.270 Advertising and Marketing of Cannabis.
5.19.280 Enforcement and Penalties.
5.19.290 Effectiveness Conditioned on Passage of Tax Measure.

5.19.010 Purpose

The Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medicinal cannabis businesses in California. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the State of California. Under California law,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

local jurisdictions are authorized to either permit or prohibit the operation of cannabis businesses within their boundaries.

The City has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. Unregulated businesses remain a source of danger and disruption for City residents and businesses. In response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated Commercial Cannabis Activity, the City now desires to permit, license, and fully regulate Commercial Cannabis Activities within the City.

5.19.020 Definitions.
When used in this Chapter, the following words and phrases shall have the meanings ascribed to them below. Words and phrases not specifically defined below shall have the meanings ascribed to them elsewhere in this Code, or shall otherwise be defined by common usage. For definitions of nouns, the singular shall also include the plural; for definitions of verbs, all verb conjugations shall be included. Any references to State Laws, including references to any California statutes or regulations, is deemed to include any successor or amended version of the referenced statute or regulations promulgated thereunder consistent with the terms of this Chapter.

"A-License" means a State License for Commercial Cannabis Activity related to products for individuals 21 years of age and over without the need for a physician's recommendation.

"A-Licensee" means a Person holding an "A-License."

"Adult-Use Cannabis" or "Adult-Use Cannabis Product" means Cannabis or Cannabis Products for individuals 21 years of age and over without the need for a physician's recommendation.

"Advertise" means to publish or disseminate an Advertisement.

"Advertisement" means any written or verbal statement, illustration, or depiction which is calculated to induce sales of Cannabis or Cannabis Products, including without limitation: any written, printed, graphic, or other material; billboard, sign, or other outdoor, digital, indoor or point-of-sale display; individual carrying a display; public transit card, other periodical, literature or publication, or in any similar media; except that such term shall not include:

A. Any label affixed to any Cannabis or Cannabis Products, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling.

B. Any editorial story, or other information (e.g., news release) in any periodical, publication or newspaper either in print or electronic format, for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any City Licensee or Person engaged in Commercial Cannabis Activity, and which is not written by or at the direction of a City Licensee or Person engaged in Commercial Cannabis Activity.

"Applicant" means the Owner or Owners applying for a City License pursuant to this Chapter.

"Attractive to Youth" means products, packaging, labeling, or Advertisements that are reasonably likely to encourage individuals under age 21 to initiate cannabis consumption or

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

otherwise to accidentally or purposely consume Cannabis or Cannabis Products. Attractive to Youth items include:

A. Products that resemble a non-Cannabis consumer product of a type that is typically consumed by, or marketed to Youth, such as a specific candy or baked treat.

B. Packaging or labeling that resembles packaging or labeling of a non-Cannabis consumer product of a type that is typically consumed by or marketed to Youth.

C. Packaging or labeling that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.

D. Advertising that mimics Advertising of a non-cannabis consumer product of a type that is typically consumed by, or marketed to Youth.

E. Advertising that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.

"Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this definition, "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

"Cannabis Concentrate" means Cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. Cannabis Concentrate does not include any product intended for oral ingestion by the final consumer. A Cannabis Concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or drug, as defined by Section 109925 of the Health and Safety Code.

"Cannabis Product" means Cannabis that has undergone a process whereby the plant material has been concentrated and, with or without the addition of ingredients, been transformed into a product for sale. Cannabis products include but are not limited to: Cannabis Concentrate, Edible Cannabis Products, Topical Cannabis, or an inhalant containing Cannabis or Cannabis Product.

"Canopy" means the designated area(s) at a City Licensed Premises, except nurseries, that contain growing or mature Cannabis plants at any point in time. The Canopy for each Premises shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain growing or mature plants at any point in time, including any and all space(s) within such boundaries. The Canopy for any Premises may be noncontiguous provided that each unique area included in the total Canopy calculation for any Premises shall be separated by an identifiable boundary. Identifiable boundaries may include, but are not limited to: interior walls,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

shelves, greenhouse walls, hoop house walls, or fencing. If plants are being cultivated using a shelving system, the surface of each level shall be included in the total Canopy calculation.

"Caregiver or Primary Caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

"City" means the City of Chula Vista, California.

"City Attorney" means the City Attorney of the City of Chula Vista, or his/her designee.

"City License" means the regulatory license issued by the City pursuant to this Chapter to a Commercial Cannabis Business that must be obtained prior to the commencement of any Commercial Cannabis Activity in the City.

"City Licensee" means any Person holding a City License.

"City Manager" means the City Manager of the City of Chula Vista, or his/her designee.

"Code" means The City of Chula Vista Municipal Code.

"Commercial Cannabis Activity" means the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products.

"Commercial Cannabis Business" or "Cannabis Business" means any Person lawfully engaged in a Commercial Cannabis Activity.

"Council District" means any of four political subdivisions within the City by which City Council members are elected.

"Crime of Moral Turpitude" means a crime involving deceit; fraud; a readiness to do evil; or an act of moral depravity of any kind that has a tendency in reason to shake one's confidence in the perpetrator's honesty.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis, other than for personal use. A City License is required for the Cultivation of Cannabis pursuant to 5.19.030.

"Cultivator" means a Person engaged in Cultivation.

"Customer" means an individual 21 years of age or over, or an individual 18 years of age or older who possesses a physician's recommendation.

"Day Care Center" has the same meaning as in Section 1596.76 of the California Health and Safety Code.

"Delivery" means the commercial transfer of Cannabis or Cannabis Products from a Non-Storefront Retailer Premises to a Customer at a physical address. Delivery also includes the use by a Non-Storefront Retailer of any technology platform to facilitate Delivery.

"Delivery Employee" means an employee of a Non-Storefront Retailer who conducts Deliveries.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Development Services Director" means the Director of the City's Development Services Department, or his/her designee.

"Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between Commercial Cannabis Businesses. A City License is required for Distribution pursuant to 5.19.030.

"Distributor" means a Person engaged in Distribution.

"Edible Cannabis Product" means a Cannabis Product that is intended to be used, in whole or in part, for human consumption, including, but not limited to chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. Edible Cannabis Product has the same meaning as California Business and Professions Code section 26001.

"Existing Residential Use" means a residential Pipeline Project or lawfully constructed structure or project intended for residential use within a Residential Zone.

"Finance Director" means the Director of the Chula Vista Finance Department, or his/her designee.

"Fire Chief" means the Chief of the Chula Vista Fire Department, or his/ her designee.

"Labor Peace Agreement" means an agreement between a licensee and any bona fide labor organization that is required by State Laws and this chapter and that, at a minimum, protects public interests with the following provisions: (1) a prohibition on labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with a City Licensee's Cannabis Business; (2) an agreement by the City Licensee not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the City Licensee's employees; access for a bona fide labor organization at reasonable times to areas in which the City Licensee's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

"Licensee" means any Person holding a State License and a City License.

"Liquid Assets" means assets that can be readily converted into cash. Liquid Assets include, but are not limited to, the following: funds in checking or savings accounts, certificates of deposit, money market accounts, mutual fund shares, publicly traded stocks, and United States savings bonds. Liquid Assets does not mean household items, furniture and equipment, vehicles, Cannabis plants or products, business inventory, or real property and improvements thereto.

"Live Plants" means living Cannabis flowers and plants including seeds, immature plants, and vegetative stage plants.

"M-License" means a State License for Commercial Cannabis Activity involving Medicinal Cannabis.

"M-Licensee" means a Person holding an M-License.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Manager" means any individual Person(s) designated by a Commercial Cannabis Business to manage day-to-day operations of the Commercial Cannabis Business or any Person acting with apparent management authority. Evidence of management authority includes, but is not limited to, evidence that the Person has the power to direct, supervise, or hire and dismiss employees, control hours of operation, create policy rules, or purchase supplies.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product. A City License to Manufacture is required pursuant to 5.19.030.

"Manufacturer" means a Person engaged in Manufacturing.

"Marketing" means any act or process of promoting or selling Cannabis or Cannabis Products, including, but not limited to, sponsorship of events, offers such as tickets to events, point-of-sale advertising, branded merchandise, pamphlets or product promotion materials.

"Medicinal Cannabis" or "Medicinal Cannabis Product" means Cannabis or a Cannabis Product for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Minor" means an individual under 18 years of age.

"Non-Storefront Retailer" means a Person that offers Cannabis, Cannabis Products, or devices for the use of Cannabis or Cannabis Products, either individually or in any combination, for retail Sale to Customers exclusively by Delivery. A City License is required to operate a Non-Storefront Retailer Business pursuant to 5.19.030..

"Officer" means any of the following:

A. The chief executive officer of an entity engaged in a Commercial Cannabis Business.

B. A member of the board of directors of an entity engaged in a Commercial Cannabis Business.

C. A Person participating in the direction or control of an Applicant for a City License or any Owner of a Commercial Cannabis Business within the City.

"Owner" means any of the following:

A. In the context of a Commercial Cannabis Business, a Person with an aggregate ownership interest, direct or indirect, of ten percent (10%) or more in a Commercial Cannabis Business, whether a partner, shareholder, member, or the like, including any security, lien, or encumbrance in an ownership interest that, upon default, could become an ownership interest of 10% or more in a Commercial Cannabis Business.

B. In the context of a Premises, a Person with an aggregate ownership or long-term lease interest, direct or indirect, of ten percent (10%) or more in the Premises, whether as a partner, shareholder, member, joint tenant or the like.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Operation" means any act for which licensure is required under the provisions of this Chapter or State Laws, or any commercial transfer of Cannabis or Cannabis Product.

"Patient or Qualified Patient" means a person who is entitled to the protections of California Health & Safety Code Section 11362.5 as further provided in California Health & Safety Code Section 11362.7.

"Person" means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination of persons acting as a unit.

"Pipeline Project" means a proposed use or project for which the City has received all required applications, and required supporting information and documents, and which has been entered into the City's project tracking system.

"Police Chief" means the Chief of the Chula Vista Police Department, or his/her designee.

"Premises" for Commercial Cannabis Activity means the designated structure or structures and land, or portions thereof, specified in an application for a City License or, if a City License is issued, that is owned, leased, or otherwise held under the control of the City Licensee, and is designated as the structure or structures and land, or portions thereof where the Commercial Cannabis Activity will be or is conducted.

"Private Parks" means privately owned outdoor premises, available for community use, containing recreational areas or playground equipment, including tot-lots, swings, or similar equipment, designed for use by Minors. Where a Private Park is located within a parcel containing other uses, the Private Park premises shall be defined as the area within which all recreational areas or playground equipment designed for use by Minors is contained.

"Public Parks" means outdoor premises containing existing or proposed parks, including community parks, neighborhood parks, mini-parks, and urban parks that are currently or proposed to be owned or operated by the City or other governmental agency.

"Public Street" is any public right-of-way designated for vehicular use.

"Purchaser" means the Customer who is engaged in a transaction with a Commercial Cannabis Business for purposes of obtaining Cannabis or Cannabis Products.

"Residential Zone" means an R-1, R-2, or R-3 zone, or an equivalent residential zone within a City approved Sectional Planning Area plan or Specific Plan, in each case within which residential uses are allowed by right and commercial uses are allowed only as accessory uses.

"Sell" and "Sale" mean any transaction whereby, for any consideration, title to Cannabis or Cannabis Products is transferred from one person to another, and includes the Delivery of Cannabis or Cannabis Products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

"State" means the State of California.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"State Laws" means the laws of the State of California, which includes, but are not limited to, California Health and Safety Code Sections 11000, *et seq.*; California Health and Safety Sections 11362.1 through 11362.45; California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7, *et seq.*(Medical Marijuana Program); California Health and Safety Code Sections 26000, *et seq.*(Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA")); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029; California Water Code Section 13276; all State regulations adopted pursuant to MAUCRSA; and all other applicable laws of the State of California.

"State License" means a license issued by the State of California, or one of its departments or divisions, under State Laws to engage in Commercial Cannabis Activity. License includes both an "A-license" (adult use) and an "M-license" (medicinal use), as defined by States Laws, as well as a testing laboratory license.

"State Licensee" means any Person holding a State License.

"Storefront Retailer" means a Person that offers Cannabis, Cannabis Products, or devices for the use thereof, either individually or in any combination, for retail sale to Customers exclusively at Premises providing access to the public. A City License is required to operate a Storefront Retailer Business pursuant to 5.19.030.

"Testing Laboratory" means a laboratory, facility, or entity in the State that offers or performs tests of Cannabis or Cannabis Products and that is both of the following:

A. Accredited by an accrediting body that is independent from all other persons involved in Commercial Cannabis Activity in the State; and

B. Licensed by the State.

A City License is required to operate a Testing Laboratory pursuant to 5.19.030.

"Testor" means a Licensee that offers or performs tests of Cannabis or Cannabis Products at a Testing Laboratory.

"Topical Cannabis" means a product intended for external application and/or absorption through the skin. A Topical Cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

"Transport" means transfer of Cannabis or Cannabis Products from the Premises of one Licensee to the Premises of another Licensee, for the purposes of conducting Commercial Cannabis Activity authorized by State Laws and this Chapter.

"Treatment Center" means a medical treatment or counseling facility licensed by the California Department of Health Care Services and located outside of a residential zone that treats five or more persons with substance abuse conditions in one calendar year.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

"Youth" means an individual under 21 years of age.

"Youth Center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

"Youth-Oriented Business" means any for-profit or non-profit business where the majority of individuals who patronize, congregate, or assemble at the business location are less than 21 years old.

5.19.030 City License Required.

A. No Person may engage in any Commercial Cannabis Business and/or in any Commercial Cannabis Activity within the City unless that Person: (1) has a valid State License authorizing such business or activity; (2) has a valid City License authorizing such business or activity; and (3) is currently in compliance with all other applicable state and local laws and regulations pertaining to such business or activity. No City License will be available for issuance until, at the earliest, January 1, 2019. Except as expressly authorized in this Chapter, all Commercial Cannabis Businesses and Commercial Cannabis Activities are prohibited within the City.

B. Notwithstanding the foregoing, the Delivery of Cannabis or Cannabis Product originating from a Commercial Cannabis Business licensed in accordance with California Business and Professions Code section 26050(a)(17) is permitted without a City License, so long as the Delivery originates from a licensed Commercial Cannabis Business outside the City of Chula Vista, and is conducted in accordance with all codified and administrative state and local laws and regulations, including but not limited to the requirements of section 5.19.100.C below.

5.19.040 Maximum Number and Types of Authorized City Licenses.

Commencing January 1, 2019, the authorized number of City Licenses for each type of Commercial Cannabis Business available for issuance within the City shall be as follows:

A. Storefront and Non-Storefront Retailer Licenses: Twelve (12) total, with no more than three (3) City Licenses available for Operation within each Council District. Of the three (3) City Licenses available for Operation within each Council District, no more than two (2) City Licenses shall be available for Storefront Retailers.

B. Indoor Cultivator: Ten (10) total City Licenses. Each Cultivator License shall be limited to a maximum of 20,000 total square feet of Canopy.

C. Other License Types: The City is also authorized to issue, without numerical limit, City Licenses for the following Commercial Cannabis Businesses:

1. Manufacturer;

2. Distributor; and

3. Testing Laboratory.

D. Storefront Retailer City Licenses shall be limited to A-Licensees only. All other City License types may be available to A-Licensees and M-Licensees.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

E. No City License shall issue for any Commercial Cannabis Business type other than those identified in subsections (A) through (C) above.

F. The City shall take no action to increase the maximum number of authorized Storefront Retail Licenses until July 1, 2020. After July 1, 2020, the City Council may consider increasing the maximum number of authorized Storefront Retail Licenses, but only after receiving and considering a report from the City Manager regarding any observed or projected adverse impacts on the community from such businesses.

G. The City Council may make a referral to the City Manager at any time for a recommendation on if and how the City should decrease the total number of City Licenses for any or all types of Commercial Cannabis Businesses, or to impose a cap on previously uncapped license types. If the City Council proceeds with a decrease in the total number of City Licenses for any or all types of Commercial Cannabis Businesses within the City, any such action shall include provisions for determining which, if any, existing City Licenses shall be eliminated and when Operations for eliminated City Licenses shall cease.

5.19.050 City License Application Process.
The following procedures shall govern the application process for the issuance of any City License under this Chapter.

A. Phase One Application Process

1. Application Requirements. Any Applicant seeking to obtain a City License to operate a Commercial Cannabis Business within the City shall submit a Phase One Application to the City, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase One Application must contain the following:

a. Applicant's name, address, telephone number, and e-mail address;

b. Names and addresses of all Owners, Officers, and Managers.

c. If any Applicant or Owner is a business entity or any other form of entity, the entity's legal status, formation documents, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

d. The type of City License the Applicant is seeking.

e. A description of any and all Commercial Cannabis Activity engaged in as an owner, manager, lender, employee, volunteer, or agent by the Applicant and all Owners, Officers, and Managers over the previous 5 years, including, but not limited to, the location of such activity and a copy of any permits, licenses, or other written forms of permission for such activity by a local or state government entity. An Applicant for a Storefront Retailer, Non-Storefront Retailer, Manufacturer, or Cultivator City License must demonstrate each of the following:

i. That at least one Manager has had managerial oversight or been directly engaged in the day-to-day operation of a Commercial Cannabis Business for a minimum of twelve (12) consecutive months, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Activity

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; and

ii. That at least one Owner has one of the following types of experience:

(A) a minimum of twelve (12) consecutive months as an Owner of a Commercial Cannabis Business, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Business ownership demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or

(B) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership of 30% or more in a lawful alcohol or pharmaceutical business licensed and regulated by a state or the federal government. The 36 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the applicant is applying; or

(C) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership interest of 30% or more in a lawful, properly licensed business with an average of ten (10) or more employees located within the City, thereby demonstrating a record of experience, familiarity and compliance with City rules and regulations.

f. Documentation demonstrating a minimum of $250,000 in Liquid Assets available under the Applicant's control.

g. A business plan that contains, at a minimum, the following: a defined scope of planning and capital improvements; estimated revenues and expenses; and a demonstrated ability to operate in a highly regulated industry.

h. An operating plan that contains, at a minimum, the following: provisions for adequate staffing, security, employee training, consumer education, and compliance with State and local laws and regulations.

i. Submission by each individual Applicant, Owner, Officer, and Manager of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If the Applicant or any Owner or Manager is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

j. A statement, under penalty of perjury, by each individual Applicant, Owner, Officer, and Manager, that all information provided thereby is true and correct and that he/she has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

k. If an individual Applicant, Owner, Officer, or Manager, or any entity such individual has been associated with in such capacity, has been denied authorization to conduct Commercial Cannabis Activity in any jurisdiction and/or such Person's authorization to conduct Commercial

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Cannabis Activity in any jurisdiction has been suspended or revoked at any time, a description of each denial, suspension and/or revocation and documentation demonstrating a material change in circumstances since such denial, suspension, or revocation.

l. For an Applicant with 10 or more employees, a statement that the Applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a Labor Peace Agreement.

m. The Finance Director or Police Chief may request such additional information, as he/she deems necessary including documents, from the Applicant to evaluate Applicant's qualifications. If the Applicant fails to provide such additional information in the time allotted, the Application shall be considered abandoned.

2. Site Identification. Phase One Applicants must also identify and submit a proposed site for its proposed Commercial Cannabis Business. Such submittal shall include the address and a general description of the proposed site location. In the event the site will be leased or acquired from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the site on a form approved by the City acknowledging that the Owner(s) of the site: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms already agreed to or to be negotiated with the Applicant that are or shall be consistent with the requirements of this Chapter.

3. Application Fee. The Phase One Application shall be accompanied by a nonrefundable application fee established by resolution of the City Council.

4. Initial Application Review by Finance Director. The Phase One Application shall be reviewed by the Finance Director for completeness and to determine if City's minimum City License qualifications have been satisfied. Phase One Applications may be rejected by the Finance Director for any of the following reasons in his/her discretion:

a. The application is received after the designated time and date;

b. The application is not in the required form and/or is incomplete. A Phase One Application shall not be considered complete until the Finance Director has: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase One application fee; and (iii) obtained all other information the Finance Director determines necessary to make a decision whether the Application meets the requirements of State Laws or this Code.

c. The Applicant has failed to pay the application fee required by this Chapter and specified by City Council resolution;

d. The Applicant has failed to demonstrate the financial capacity to operate its proposed Commercial Cannabis Business and to fulfill its obligations under this Chapter.

e. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

f. The Applicant, an Owner, Officer, or Manager is under twenty-one years of age.

g. The Applicant or any Owner is an entity that is incorporated outside of the United States.

h. The Applicant has failed to demonstrate the minimum experience required in accordance with section 5.19.050.A.1.e, above.

i. The Applicant, or any Owner, Officer, or Manager, has had his/her/its authorization to conduct Commercial Cannabis Activity in any jurisdiction suspended or revoked at any time, and such person has not demonstrated a material change in circumstances or corrective action since such suspension, and/or revocation.

5. Application Review by Police Chief. Phase One applications accepted by the Finance Director as minimally qualified shall be forwarded to the Police Chief for review and completion of any and all required background checks. Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion:

a. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;

b. The Applicant, any Owner, Manager, or Officer, or any other individual identified pursuant to 5.19.050.A.1.i has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

c. The Applicant or any Owner, Officer, or Manager has been convicted of a felony.

d. The Applicant or any Owner, Officer, or Manager has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

e. There are charges pending against the Applicant, or any Owner, Officer, or Manager for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

f. The Applicant, or any Owner, Officer, or Manager has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

g. The Applicant, or any Owner, Officer, or Manager has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Finance Director or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase One Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase One Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

7. Invitation to Submit Phase Two Application; Merit-Based System. Applicants who are approved by the Finance Director and Police Chief under the Phase One Application process, or by the City Manager upon appeal, shall be deemed qualified to submit a Phase Two Application. If the number of deemed "qualified" Phase One Applicants for Storefront Retail or Non-Storefront Retail Licenses exceeds the number of available City Licenses for those license types, a merit-based system established by the City shall be used to determine which of the qualified Applicants is invited to submit a Phase Two Application.

8. Phase One Approvals Valid for Six Months. Phase One approvals shall be valid for a maximum period of six (6) months in order to allow the Applicant to complete the Phase Two process. City regulations issued pursuant to this Chapter, may provide for extensions of this time periods in limited, defined circumstances.

B. Phase Two Application Process

1. Application Requirements. The Phase Two Application shall be submitted in writing, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase Two Application must contain the following:

a. Proposed Premises location and description.

b. Information and diagrams demonstrating that the proposed Premises location complies with the applicable locational requirements of this Chapter, the City's zoning code, and State Laws.

c. Identification of all Owners of the proposed Premises location and a copy of all agreements for site control.

d. Submission by each individual Owner of the proposed Premises location of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If an Owner of the Proposed Premises location is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

e. Proposed emergency action and fire prevention plan that includes, at a minimum, employee roles and responsibilities; emergency notification and egress procedures; fire hazard identification, maintenance, and procedures; and fire and life safety system identification, maintenance, and procedures.

f. Proposed security plan that includes, at a minimum, employee roles and responsibilities; entry/exit security and procedures; security guard coverage and duties; lighting, alarm, and camera placement and operation; limited-access area identification and procedures; cash handling processes and procedures, and demonstrates compliance with section 5.19.160.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

g. Information required or necessary to demonstrate the ability to comply with the applicable operational requirements set forth in sections 5.19.080 through 5.19.140, as applicable.

2. Application Fee. The Phase Two Application shall be accompanied by a non-refundable application fee established by resolution of the City Council.

3. Site Approval. As part of the application process, the Applicant shall be required to obtain all required land use approvals from the City and/or any other governmental agency with jurisdiction, including a certification from the Development Services Director certifying that the business is an allowed use in the zone where it is located, and the proposed site meets all of the requirements of this Chapter and Title 19 of this Code.

4. Site Control. As a condition precedent to the City's issuance of a City License pursuant to this Chapter, in the event the Premises will be leased from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the Premises on a form approved by the City acknowledging that the Owner(s) of the Premises: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms agreed to with the Applicant that are consistent with the requirements of this Chapter.

5. Application Review by Development Services Director, Fire Chief, and Police Chief. Phase Two Applications shall be reviewed and are subject to approval by the Development Services Director, the Fire Chief and the Police Chief. A Phase Two Application may be rejected by the Development Services Director, Fire Chief, and/or Police Chief for any of the following reasons:

a. The application is received after the designated time and date;

b. The application is not in the required form and/or is incomplete. A Phase Two Application shall not be considered complete until the Development Services Director, Fire Chief, and Police Chief have: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase Two application fee; and (iii) obtained all other information the Development Services Director, Fire Chief, and Police Chief determine is necessary to make a decision whether the application meets the requirements of State Laws or this Code.

c. The application fails to demonstrate that the proposed Premises location complies with this Chapter, the City's zoning code, and State Laws.

d. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;

e. An Owner of the proposed Premises location or any other individual identified pursuant to 5.19.050.B.1.d has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

f. An Owner of the proposed Premises location has been convicted of a felony.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

g. An Owner of the proposed Premises location has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

h. There are charges pending against an Owner of the proposed Premises location for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

i. An Owner of the proposed Premises location has been adversely sanctioned or penalized by City, or any other city, county, or state, for a material violation of state or local laws related to Commercial Cannabis Activity.

j. An Owner of the proposed Premises location has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Development Services Director, Fire Chief, or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase Two Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase Two Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

7. Conditional City Approval Valid for Six Months. Upon obtaining final approval of a Phase Two Application, an applicant shall be issued a conditional City approval. The conditional City approval shall be valid for a period of six (6) months to allow the Applicant to take all necessary actions to open its Commercial Cannabis Business. If the business is not fully permitted and operating by the end of this six (6) month period (the "Conditional Approval Period"), the conditional City approval will be void without the need for further action by the City. Notwithstanding the foregoing, if the only remaining action necessary for an Applicant holding a conditional City approval is the State's determination on such Applicant's pending State License application, the validity of the conditional City approval shall be extended until the earlier to occur of: (a) the State's determination on the issuance of the pending State License application, or (b) the date falling 6 months after the expiration of the Conditional Approval Period. City regulations issued pursuant to this Chapter may provide for other extensions of the Conditional Approval Period in limited, defined circumstances.

8. Pipeline Projects; Priority Regulations to be Issued. Prior to commencing the application process for City Licenses, City will develop and issue regulations to establish and clarify development rights priorities between, on the one hand, Commercial Cannabis Businesses, and, on the other hand, uses and businesses with separation requirements with respect to Commercial Cannabis Businesses. Regulations shall include, among other things, provisions applicable to Pipeline Projects and Existing Residential Uses.

C. Requirements Prior to Commencement of Operation. Prior to commencing Operations under a City License, in addition to any and all other applicable State and local requirements, a City Licensee must comply with the following requirements:

1. Fees and Charges. Pay in full all fees and charges required for the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Business shall be established by resolution of the City Council which may be amended from time to time.

2. Business License Tax. Pay to the City a business license tax as required by Code Chapter 5.02.

3. Permits and Approvals. Obtain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the Premises and the zoning district in which such business will be located.

4. Final Security Plan Approval. Obtain final security plan approval from the Police Chief for the Premises and Operation of the Commercial Cannabis Business.

5. Final Emergency Action and Fire Prevention Plan Approval. Obtain final safety approval from the Fire Chief for the Premises and Operation of the Commercial Cannabis Business.

6. Employee Work Permits. Obtain from the Police Chief work permits for each employee of the Commercial Cannabis Business whose name did not appear on an Application for a City License. Each employee shall submit their application for such work permit to the Police Chief, which application shall be under oath and shall include, among other things, the name, address, proposed job title, and past criminal record, if any, of the employee and shall be accompanied by the fingerprints of the employee. An application for an employee work permit shall be accompanied by the required fee(s) or the required renewal fee(s). The work permit, when issued, shall be valid for one year. The Police Chief may revoke, deny, or not renew any employee work permit upon finding that any of the factors outlined in sections 5.19.050.A.4 through A.5 and/or sections 5.19.260.E through .G apply.

7. State License. Submit proof that the necessary State License has been obtained and that Applicant remains in good standing thereunder.

8. Agreement. Submit a fully executed agreement as required by section 5.19.070.

9. Insurance. Submit proof of insurance at coverage limits and with conditions thereon determined necessary and appropriate by the City's insurance and claims administrator.

10. Operational Requirements. Demonstrate compliance with any and all pre-opening operational requirements that may apply as specified in section 5.19.080 through 5.19.140, below, and the ability to comply with any and all applicable and ongoing operational requirements.

D. General Rules.

1. If a Phase One or Phase Two application is denied or a corresponding conditional City License expires, no Applicant or Person named therein will be qualified to submit a new Phase One application until the passage of one year from the date of the denial or expiration.

2. Phase One and Phase Two applications shall include such supplemental materials as required by the rules and regulations adopted pursuant hereto. The City may, at the City Manager's

discretion, require additional documentation associated with any application as may be necessary to enforce the requirements of State Laws and this Code.

3. Applicants shall have no right to operate under a City License until a City License is actually issued thereto by the City. Each Applicant assumes the risk that, at any time prior to the issuance of a license, the City Council may terminate or delay the program created under this Chapter.

4. Issuance of a City License does not create a land use entitlement. Furthermore, no City License will be officially issued and no Applicant awarded a City License may begin operations until the City Licensee is fully in compliance with all state and local laws and regulations, including but not limited to State Laws.

5. The City reserves the right to reject or approve any and all applications and conditional licenses based on the standards set forth in this Chapter, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

E. Limits on Number of Applications Per Applicant/Owner. The number of applications allowed to be filed by each Applicant/Owner shall be determined by regulations promulgated by the City Council or the City Manager. Limits imposed, if any, may be applied on an overall basis, per license type, and/or per Council District.

5.19.060 Location Requirements for Cannabis Businesses

As set forth above in Code Section 5.19.030, a limited number of City Licenses for Commercial Cannabis Businesses shall be authorized and issued by the City. In locating such businesses, City Licensees shall be further subject to the following requirements.

A. In General. The licensed Premises of a Commercial Cannabis Business shall be a contiguous, fully enclosed area and shall be occupied only by one Licensee.

B. Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Storefront Retailers shall only be allowed in the following zones: (a) C-0 Administrative and Professional Office; (b) C-N Neighborhood Commercial; (c) C-C Central Commercial; (d) C-V Visitor Commercial; (e) C-T Thoroughfare Commercial; (f) other Commercial Zones in Specific Plans or Sectional Planning Area Plans that allow retail sales uses (including such zones that allow mixed commercial and residential uses); and (g) with a Conditional Use Permit, in the following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Specific Plans or Sectional Planning Area Plans that allow industrial uses.

2. Special Rules for Storefront Retailers in Industrial Zones. In addition to any and all other applicable Code requirements, Storefront Retailers proposed to be located in Industrial Zones (a) must be located in buildings with entrances that face, and are within 100 feet of a Public Street; and (b) must comply with parking and sign regulations applicable to retail sales businesses in commercial zones.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. Separation Requirements.

a. Storefront Retailers shall not be located within 1,000 feet of any Day Care Center or any public or private school providing instruction for kindergarten or any grades 1 through 12.

b. Storefront Retailers shall not be located within 600 feet of any Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park.

c. Storefront Retailers shall not be located within 150 feet of any Residential Zone.

4. Retail Sales Requirements Apply. Storefront Retailers are retail sales uses for purpose of the Code. Except as otherwise provided in this Chapter, all retail sales use requirements for the allowed zone in which the business is located shall apply.

C. Non-Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Non-Storefront Retailers shall only be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. Non-Storefront Retailers shall not be located within 150 feet of any Residential Zone.

3. Industrial Use Requirements Apply. Non-Storefront Retailers are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

D. Manufacturers; Distributors; Testing Laboratories; and Cultivators.

1. Allowed Zones. Subject to the separation requirements set forth herein, below, Manufacturers, Distributors, Testing Laboratories, and Cultivators shall be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. No Manufacturer, Distributor, Testing Laboratory or Cultivator shall be located within 150 feet of any zone allowing residential uses.

3. Industrial Use Requirements Apply. Manufacturers, Distributors, Testing Laboratories, and Cultivators are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

E. Standards for Measurement of Separation Distances. For purposes of this Section, separation distances between uses shall be measured as follows:

1. Measuring Points Established. Separation distance between uses shall be measured horizontally in a continuous series of straight lines that connect the two closest "measuring points" of each business or use as set forth herein, below.

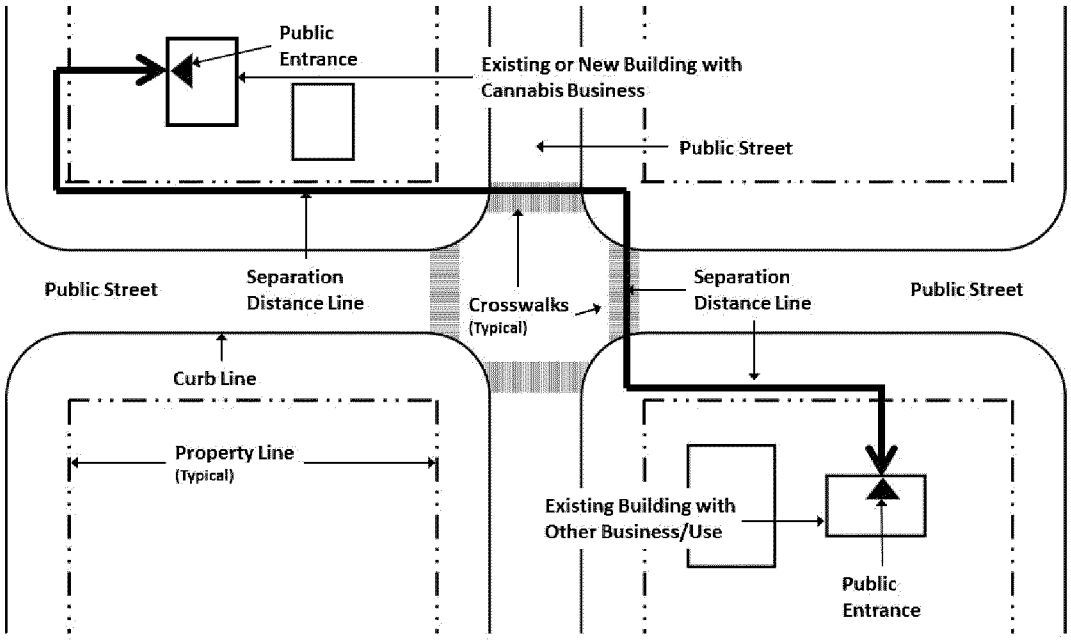
DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

a. For a Commercial Cannabis Business, the "measuring point" shall be the center point of the public entrance closest to a Public Street.

b. For a Day Care Center, Youth Center, Youth Oriented Business, or Treatment Facility, the "measuring point" shall be the center point of the public entrance closest to a Public Street.

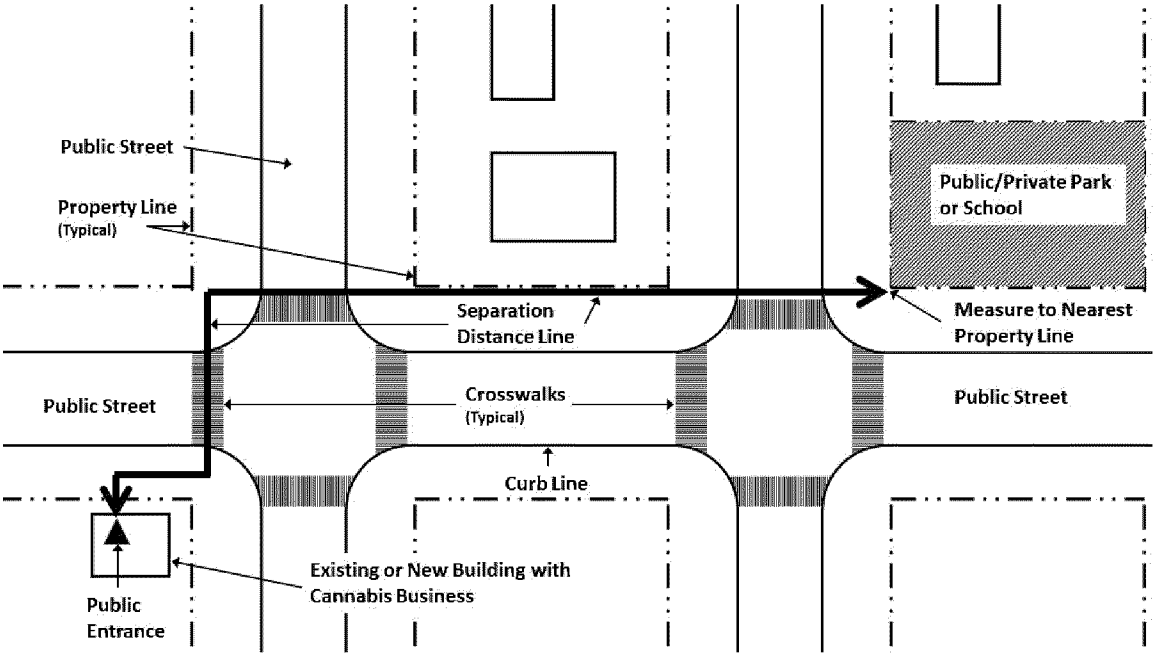
c. For a public or private school, Public Park, Private Park, or Residential Zone, the "measuring point" shall be the point located on the legal parcel boundary line abutting a Public Street or zone line, as applicable, that is closest to the "measuring point" of the Commercial Cannabis Business at issue.

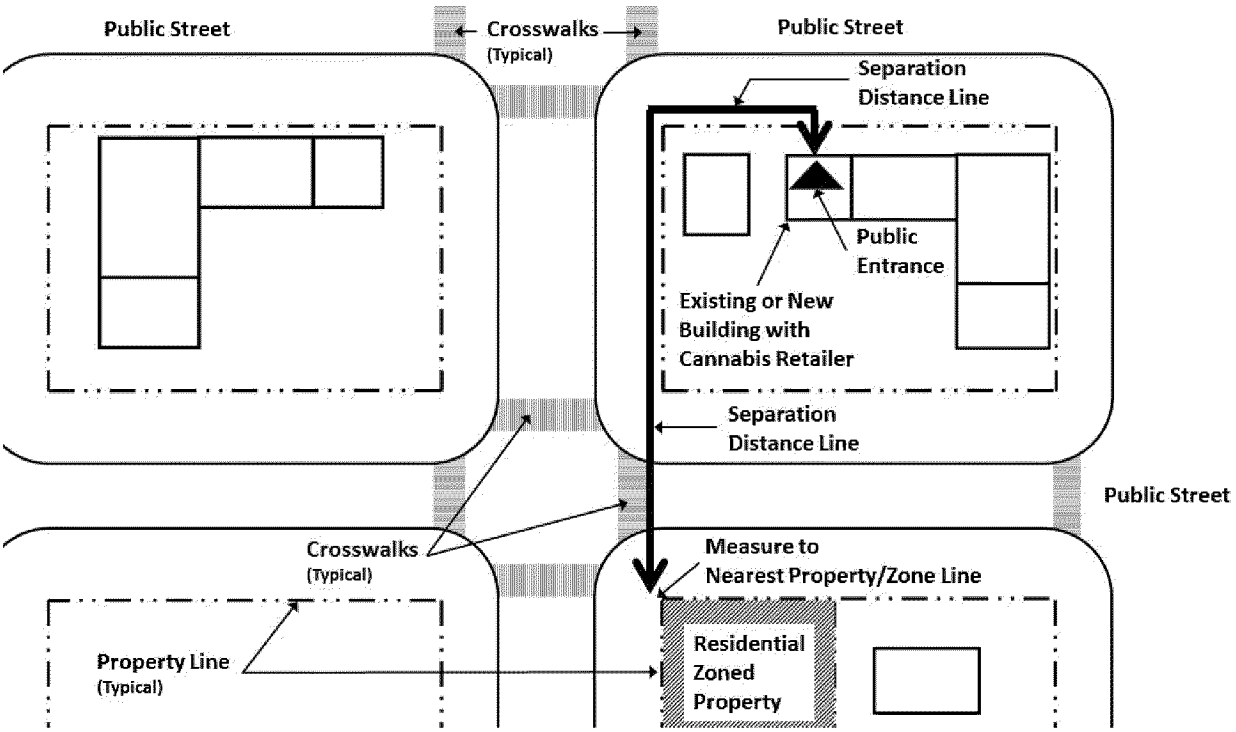
2. Measurement Paths; Examples. Measurements between public entrances shall start at the "measuring point" of Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the Public Street fronts, and in a direct line across intersections along the shortest pedestrian route toward the "measuring point" of the separated use until it reaches such "measuring point". See illustrations below.



Measurements between public entrances and legal parcel boundary lines shall start at "measuring point" of the Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the public street front(s), and in a direct line across intersections along the shortest pedestrian route towards the "measuring point" of the separated use until it reaches such "measuring point". See illustration below.

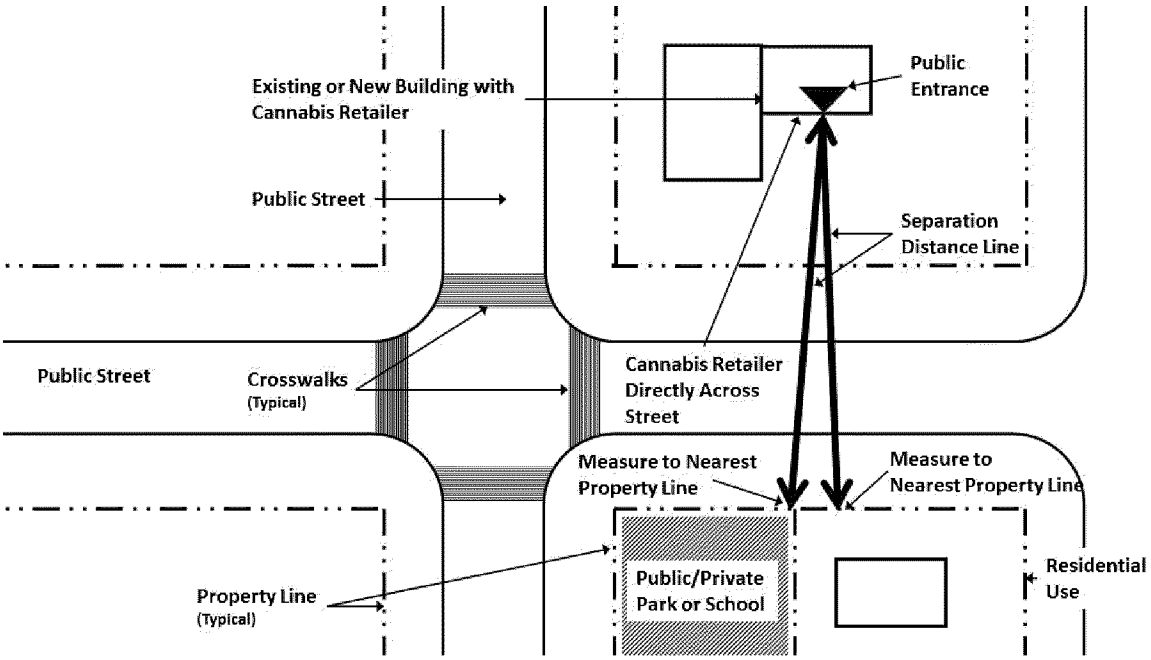
DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59



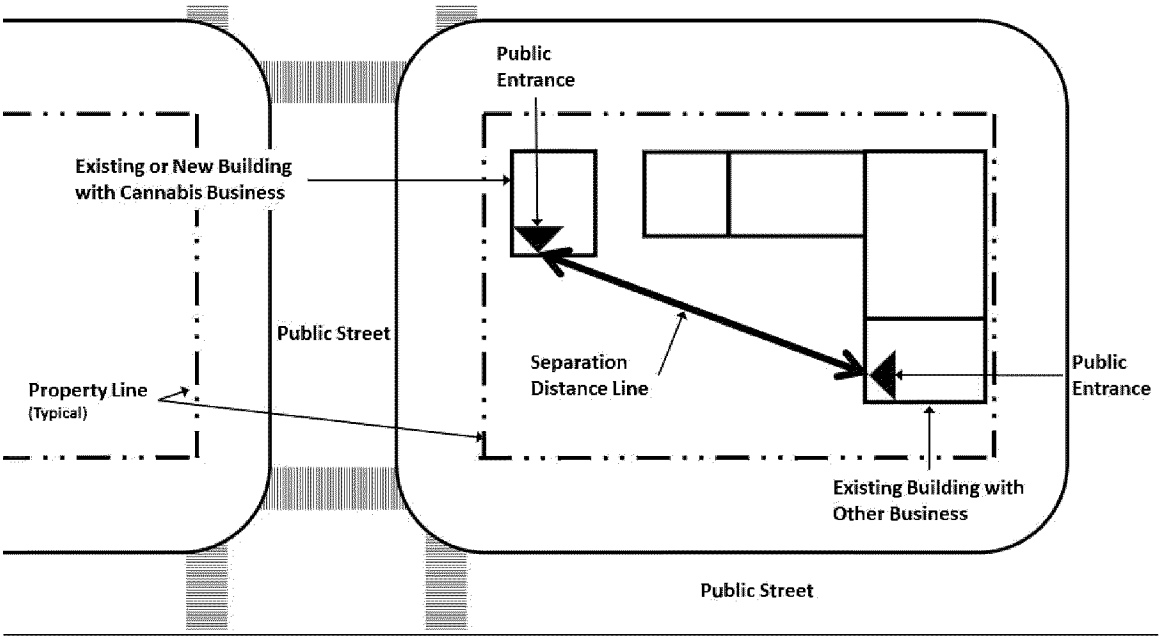


DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

Where a public or private school, Public Park, Private Park, or residential use or Residential Zone are directly adjacent to or across a Public Street from a Storefront Retailer or Non-Storefront Retailer, the separation distance shall be measured between the respective "measuring points" without regard to a Public Street or intersections. See illustration below.



Where a Commercial Cannabis Business and a Day Care Center, Youth Center, Treatment Facility, Youth-Oriented Business or existing residential use are on the same parcel, or contiguous parcels, the separation distance shall be measured in a straight line connecting their "measuring points". See illustration below.



DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. Interpretations, Determinations Made by Development Services Director. Interpretations and determinations of compliance with the requirements of this section and the calculation of separation distances shall be made by the Development Services Director. Exhibits from a Licensed Land Surveyor may be required by the City to make a final decision on compliance with the separation requirements of this subsection.

5.19.070 Limitations on City's Liability; Licensee's Indemnity Obligations

To the maximum extent allowed by law, the City shall not incur or assume any direct or indirect liability to any Applicant, government agency, or third party as a result of having issued a City License pursuant to this Chapter, or otherwise approving the Operation of any Commercial Cannabis Business. As a condition to the issuance of any City License, the Applicant shall be required to enter into and fulfill all requirements of an agreement, in a form approved by the City Attorney, whereby all Owners agree to (a) indemnify, protect, defend (at Owner's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities or losses that arise out of, or that are in any way related to, the City's issuance of the City License, the City's decision to approve the Operation of the Commercial Cannabis Business or Activity, the process used by the City in making its decision, City Licensee's Operation of its Commercial Cannabis Business, or the alleged violation of any federal, state or local laws by the Commercial Cannabis Business or any of its officers, employees or agents; and (b) provide evidence of and maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Risk Manager.

5.19.080 Operating and Conduct Requirements for All Licensees and Individuals.

A. No person shall consume Cannabis and/or Cannabis Products on the Premises of a Commercial Cannabis Business.

B. No person shall cause or license the sale, dispensing, or consumption of alcoholic beverages or tobacco products on the Premises of a Commercial Cannabis Business.

C. No Cannabis or Cannabis Products shall be visible from the exterior of any Premises issued a City License, or on any of the vehicles owned or used as part of a Commercial Cannabis Business. No outdoor storage of Cannabis or Cannabis Products is permitted at any time.

D. Each Commercial Cannabis Business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the Commercial Cannabis Business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The Commercial Cannabis Business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Finance Director prior to being used by the City Licensee.

E. All Cannabis and Cannabis Products sold, tested, distributed or manufactured shall be cultivated, manufactured, and transported by Commercial Cannabis Businesses that maintain operations in full conformance with State Laws, State regulations, local laws, and local regulations.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. All Commercial Cannabis Businesses shall have a Manager on the premises at all times during hours of operation.

G. Each Commercial Cannabis Business shall provide the City Manager with the name, telephone number (both land line and mobile, if available) of an on-site Manager or Owner to whom emergency notice may be provided at any hour of the day.

H. Each Commercial Cannabis Business premises shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the Premises or in the areas adjacent to the Commercial Cannabis Business is prohibited.

I. Persons under the age of twenty-one (21) years shall not be allowed and are not allowed on the Premises of a Commercial Cannabis Business, and shall not be allowed and are not allowed to serve as a driver for a Non-Storefront Retailer.

J. It shall be unlawful and a violation of this Chapter for any Person to employ an individual at a Commercial Cannabis Business who is not at least twenty-one (21) years of age.

K. Odor Control. Odor control devices and techniques shall be incorporated in the Premises of all Commercial Cannabis Businesses to ensure that odors from Cannabis are not detectable off-site. Commercial Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Commercial Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Commercial Cannabis Business. As such, Commercial Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;

2. An air system that creates negative air pressure between the Commercial Cannabis Business's interior and exterior, so that the odors generated inside the Commercial Cannabis Business are not detectable on the outside of the Commercial Cannabis Business.

L. Safety and Security Plans. Each Commercial Cannabis Business must comply with all requirements of the security plan approved by the Police Chief and with all safety requirements of the Emergency Action and Fire Prevention Plan approved by the Fire Chief.

M. Display of City License and City Business License. The original copy of the City License and the City Business License shall be posted inside the Premises of the Commercial Cannabis Business in a location readily-visible to the public.

N. Employee Identification. Each and every employee of a City Licensee must, at all times when present on a Premises and while conducting a Delivery, wear an identification badge containing their photograph, age, the name of the City Licensee for whom they are employed, and, if the employee is a Manager, the employee's job title.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

O. Delaying or Lingering Prohibited. The City Licensee shall take reasonable steps to prevent individuals from delaying or lingering on the Premises without a lawful purpose.

P. Cannabis Use on Premises Prohibited. The City Licensee shall take reasonable steps to prevent the use and consumption of Cannabis or Cannabis Products on the Premises.

Q. Licenses and other Approvals. Throughout the Operation of a Commercial Cannabis Business, the City Licensee must maintain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the zoning district in which the Commercial Cannabis Business Premises is located.

R. Persons with Disabilities. Nothing in this Chapter exempts a Commercial Cannabis Business from complying with all applicable local, State and federal laws and regulations pertaining to persons with disabilities.

S. Discrimination. No Commercial Cannabis Business may discriminate or exclude patrons in violation of local, State and federal laws and regulations.

T. Fees and Charges.

1. No Person may conduct Commercial Cannabis Activity without timely paying in full all fees and charges required associated with the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Activity shall be established by resolution of the City Council which may be amended from time to time.

2. City Licensees authorized to Operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, State and local law. Each Commercial Cannabis Business shall cooperate with City with respect to any reasonable request to audit the Commercial Cannabis Business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

U. Training Requirements. City reserves the right to impose training requirements on Managers, employees, and others involved in the Operation of a Commercial Cannabis Business, with the specific requirements to be determined and implemented through regulations.

5.19.090 Operating Requirements for Storefront Retailers.

A. A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products.

B. A Storefront Retailer shall not conduct Deliveries.

C. A Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. A Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Cannabis in a single day to a single customer.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

2. A Storefront Retailer shall Sell no more than 8 grams of Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.

3. A Storefront Retailer shall Sell no more than 6 immature Cannabis plants in a single day to a single customer.

4. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.

5. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.

6. A Storefront Retailer shall not Sell Cannabis Products that is in the shape of a human being, either realistic or caricature, animal, insect, or fruit.

7. A Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.

8. A Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.

9. A Storefront Retailer shall notify Customers of the following verbally (or by written agreement) and by posting of a notice or notices in a minimum of 24-point font conspicuously within the Storefront Retailer Premises:

a. "The sale or diversion of cannabis or cannabis products without a license issued by the City of Chula Vista is a violation of State law and the Chula Vista Municipal Code."

b. "Secondary sale, barter, or distribution of cannabis or cannabis products purchased from [Insert Name of Licensee] is a crime and can lead to arrest."

c. "Patrons must immediately leave the premises and not consume cannabis or cannabis products until at home or in an equivalent private location. Staff shall monitor the location and vicinity to ensure compliance."

10. All restroom facilities on the Premises shall remain locked and under the control of management.

5.19.100 Operating Requirement for Non-Storefront Retailers.

A. From a public right-of-way, there should be no exterior evidence of Non-Storefront Retailer Premises except for any signage authorized by this Code.

B. The general public is not permitted on the Premises of a City Non-Storefront Retailer Licensee except for the agents, applicants, managers, and employees of the City Non-Storefront Retailer Licensee and any agents or employees of the City.

C. A Non-Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. Delivery Regulations.

a. All Deliveries of Cannabis or Cannabis Product shall be made by and individual person to an individual person. A Delivery of Cannabis or Cannabis Product shall not be made through the use of an unmanned vehicle.

b. A Delivery Employee conducting a Delivery shall only travel in an enclosed motor vehicle operated by a Delivery Employee.

c. Delivery of Cannabis or Cannabis Product shall only be made to a physical address (e.g., not to a P.O. Box or a street intersection).

d. Delivery of Cannabis or Cannabis Products shall not be made to any public or private school providing instruction for kindergarten or any grades 1 through 12, Day Care Center, Youth Center, Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park. Deliveries to any workplace shall remain subject to any employer's right to limit or prohibit such activity.

e. While conducting a Delivery, a Delivery Employee shall ensure the Cannabis or Cannabis Products are not visible to the public.

f. A vehicle used for Delivery shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of a Delivery vehicle.

g. A Delivery Employee shall, during Deliveries, carry a copy of the Non-Storefront Retailer's current City License, the Delivery Employee's government-issued identification, an identification badge issued by the Police Chief, and a Delivery invoice.

h. While making a Delivery, a Delivery Employee shall not carry Cannabis and/or Cannabis Goods worth in excess of $3,000 at any time. This value shall be determined using the current retail price of all Cannabis and/or Cannabis Products carried by the Delivery Employee.

2. Product Regulations and Restrictions.

a. A Non-Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Adult-Use Cannabis in a single day to a single customer.

b. A Non-Storefront Retailer shall Sell no more than 8 grams of Adult-Use Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.

c. A Non-Storefront Retailer shall Sell no more than 6 immature Cannabis plants in a single day to a single customer.

d. A Non-Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.

e. A Non-Storefront Retailers shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.

f. A Non-Storefront Retailer shall not Sell Cannabis Products that are in the shape of a human being, either realistic or caricature, animal, insect, or fruit.

g. A Non-Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.

h. A Non-Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.

5.19.110 Operating Requirements for Cultivators.

A. Outdoor Cultivation Prohibited. Commercial Cannabis Cultivation must occur indoors. Outdoor cultivation is prohibited.

B. From a public right-of-way, there should be no exterior evidence of Cultivation except for any signage authorized by this Code.

C. The general public is not permitted on the Premises of a City Cultivation Licensee except for the agents, applicants, managers, and employees of the City Cultivation Licensee and any agents or employees of the City of Chula Vista.

D. A Cultivator shall only be allowed to Cultivate the square feet of Canopy authorized by the Cultivator's State License and City Cultivation License issued for the Premises.

E. A Cultivator shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. State and local laws related to electricity, water usage, water quality, discharges, and similar matters; and

2. Applicable federal, state and local laws and regulations regarding use, storage, and disposal of pesticides and fertilizers.

F. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife.

G. Cultivation shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the Commercial Cannabis Business, neighboring properties, and the end users of the Cannabis being Cultivated, to protect the environment from harm to waterways, fish, and wildlife; to ensure the security of the Cannabis being cultivated; and to safeguard against the diversion of Cannabis.

H. Cultivators shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.

I. All applicants for a City Cultivation License shall submit the following in addition to the information generally otherwise required for a City License:

1. A Cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

the Cultivation activities and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting.

2. A description of a legal water source, irrigation plan, and projected water use.

3. Identification of the source of electrical power and plan for compliance with applicable building codes and related codes as adopted and amended by the City.

4. Plan for addressing odor and other public nuisances that may derive from the Cultivation Premises.

5.19.120 Operating Requirements for Manufacturers.

A. From a public right-of-way, there should be no exterior evidence of Manufacturing except for any signage authorized by this Chapter.

B. The general public is not permitted on the Premises of a City Manufacture Licensee except for the agents, applicants, Owners, Officers, Managers, employees, and volunteers of the City Manufacture Licensee and any agents or employees of the City of Chula Vista.

C. All Manufacturing shall comply with the standards set by State Laws and regulations.

D. Any compressed gases used in the manufacturing process shall not be stored on any property within the City of Chula Vista in containers that exceeds the amount that is approved by the Fire Chief and authorized by the City Manufacture License. The Premises of a City Manufacture Licensee shall be limited to a total number of tanks as authorized by the Fire Chief on the Premises at any time.

E. Manufacturers may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human-related toxicity approved by the Fire Chief. These solvents must be of at least ninety-nine percent purity and any extraction process must use them in a professional grade closed loop extraction system designed to recover the solvents and work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

F. If an extraction process uses a professional grade closed loop CO_2 gas extraction system every vessel must be certified by the manufacturer for its safe use. Closed loop systems for compressed gas extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

G. Certification from an engineer licensed by the State of California must be provided to the Fire Chief for a professional grade closed loop system used by any Manufacturer to certify that the system was commercially manufactured, is safe for its intended use, and was built to codes of recognized and generally accepted good engineering practices, including but not limited to:

1. The American Society of Mechanical Engineers (ASME);

2. American National Standards Institute (ANSI);

3. Underwriters Laboratories (UL);

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

4. The American Society for Testing and Materials (ASTM); or

5. Intertek ETL

The certification document must contain the signature and stamp of the professional engineer and serial number of the extraction unit being certified.

H. Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the Fire Chief and meet any required fire, safety, and building code requirements specified in the California Building and Fire Codes, as adopted by the City.

I. Manufacturers may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create keef, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

J. Manufacturers may use food grade glycerin, ethanol, and propylene glycol solvents to create or refine extracts. Ethanol should be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

K. Manufacturers creating Cannabis extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace.

L. Any person using solvents or gases in a closed looped system to create Cannabis extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

M. Parts per million for one gram of finished extract cannot exceed State standards for any residual solvent or gas when quality assurance tested.

N. Manufacturers shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of equipment. Said report shall be approved by the Fire Department prior to Operation.

O. A Manufacturer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times.

5.19.130 Operating Requirements for Distributors.

A. From a public right-of-way, there should be no exterior evidence of Distributing except for any signage authorized by this Chapter.

B. A Distributor shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. The general public is not permitted on the Premises of the City Distributor Licensee except for the agents, applicants, managers, employees, and volunteers of the City Distributor Licensee and any agents or employees of the City.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

2. A Distributor shall only procure, sell, or transport Cannabis or Cannabis Products that is packaged and sealed in tamper-evident packaging that uses a unique identifier, such as a batch and lot number or bar code, to identify and track the Cannabis or Cannabis Products.

3. A Distributor shall maintain a database and provide a list of the individuals and vehicles authorized to conduct transportation on behalf of the Distributor to the City.

4. Individuals authorized to conduct transportation on behalf of the Cannabis Distribution licensee shall have a valid California Driver's License.

5. Individuals transporting Cannabis or Cannabis Products on behalf of the Distributor shall maintain a physical copy of the transportation request (and/or invoice) and shall make it available upon request of agents or employees of the City requesting documentation.

6. During transportation, the individual conducting transportation on behalf of the Distributor shall maintain a copy of the City Distributor License and shall make it available upon request of agents or employees of the City requesting documentation.

7. A Distributor shall only transport Cannabis or Cannabis Products in a vehicle that is (i) insured at or above the legal requirement in California, (ii) capable of securing (locking) the Cannabis or Cannabis Products during transportation, and (iii) capable of being temperature controlled if perishable Cannabis Products are being transported.

5.19.140 Operating Requirements for Testing Laboratories.

A. The general public is not permitted on the Premises of a City Testing Laboratory Licensee except for the agents, applicants, managers, and employees of the City Testing Laboratory Licensee and any agents or employees of the City.

B. Testing Laboratory activity shall take place within an enclosed locked structure.

C. From a public right-of-way, there should be no exterior evidence of a Testing Laboratory except for any signage authorized by this Chapter.

D. A Testing Laboratory shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.

E. A Testing Laboratory shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times.

5.19.150 Recordkeeping.

A. Each City Licensee shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis at or before the time of the renewal of a City License issued pursuant to this Chapter, or at any time upon reasonable request of the City, each City Licensee shall submit to the City, in a form approved thereby, a statement, sworn as to accuracy, detailing their Commercial Cannabis Business' revenue and number of sales during the previous twelve-month period, or shorter period based upon the timing of the request, provided on a per-month basis.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

The statement shall also include gross revenues for each month, and all applicable taxes paid or due to be paid.

B. On an annual basis, each City Licensee shall submit to the City Manager a financial audit of the business' operations conducted by an independent certified public accountant. Each City Licensee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager.

C. Each City Licensee shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in each Commercial Cannabis Business, and separately of all the Owners, Officers, Managers, employees, agents and volunteers currently employed or otherwise engaged by the Commercial Cannabis Business. The register required by this paragraph shall be provided to the City Manager promptly upon request.

D. All records collected by a City Licensee pursuant to this Chapter shall be maintained for a minimum of seven years and shall be made available by the City Licensee to the agents or employees of the City of Chula Vista upon request, except that private medical records shall be made available only pursuant to a properly executed search warrant, subpoena, or court order.

E. All City Licensees shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all Cannabis and Cannabis Products for all stages of the growing, production, manufacturing, laboratory testing, and distribution processes until purchase as set forth under State Law.

F. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) regulations, each City Licensee shall allow City officials to have access to each Commercial Cannabis Business's books, records, accounts, together with any other data or documents relevant to its Commercial Cannabis Activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than 24 hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

5.19.160 Security Measures.

A. All City Licensees shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing Cannabis or Cannabis Products, and to deter and prevent the theft of Cannabis or Cannabis Products at the Premises of the Commercial Cannabis Business. Except as may otherwise be determined by the Police Chief, these security measures shall include, but shall not be limited to, all of the following:

1. Preventing individuals from remaining on the Premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the Operations of the Commercial Cannabis Business.

2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

3. All Cannabis and Cannabis Products, including Live Plants, shall be kept in a secure manner so as to prevent diversion, theft, and loss. All Cannabis and Cannabis Products that are being stored must be stored in a secured and locked room, safe, or vault. All Cannabis and Cannabis Products on display for Sale shall be displayed in a secure case.

4. Installing 24-hour security surveillance cameras of at least HD-quality to monitor areas on the Premises including, but not limited to: entrances and exits to and from the Premises; all interior spaces which are open and accessible to the public; all interior spaces where Cannabis, cash or currency is being stored for any period of time on a regular basis; all areas where the purchase, Sale, Distribution, or Transfer of Cannabis or Cannabis Products take place; and all interior spaces where diversion of Cannabis could reasonably occur. The City Licensee shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief. Video recordings shall be maintained for a minimum of 60 days, and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the Premises of the Commercial Cannabis Business.

5. Sensors shall be installed to detect entry and exit from all secure areas.

6. Panic buttons shall be installed in all Commercial Cannabis Businesses.

7. A professionally installed, maintained, and monitored alarm system, with the required City alarm permit under Chapter 9.06.150 of this Code.

8. Security personnel shall be on the Premises 24 hours a day or alternatively, as authorized by the Police Chief. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the Police chief, with such approval not to be unreasonably withheld.

9. Each Commercial Cannabis Business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

B. Each Commercial Cannabis Business shall identify a designated security representative/liaison to the City, who shall be reasonably available to meet with the Police Chief regarding any security related measures or and operational issues.

C. As part of the application and licensing process, each Commercial Cannabis Business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all Cannabis, Cannabis Products, and any currency.

D. Each Commercial Cannabis Business shall cooperate with the City whenever the City Manager makes a request, upon reasonable notice to the Commercial Cannabis Business, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

E. A Commercial Cannabis Business shall notify the Police chief within 24 hours after discovering any of the following:

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Police chief.

2. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any Owner, Officer, Manager, agent, or employee of the Commercial Cannabis Business.

3. The loss or unauthorized alteration of records related to Cannabis, registering qualifying patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.

4. Any other breach of security.

5.19.170 Community Relations.

A. Each Commercial Cannabis Business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the Commercial Cannabis Business can be provided in addition to applicable City and State enforcement divisions. Each Commercial Cannabis Business shall also provide the above information to all businesses located within one hundred (100) feet of the Premises of the Commercial Cannabis Business and to all residences located within three hundred (300) feet of the Premises of the Commercial Cannabis Business.

B. During the first year of Operation pursuant to this Chapter, the Owner, Manager, and community relations contact from each Commercial Cannabis Business shall attend a quarterly meeting with the City Manager and other interested parties as deemed appropriate by the City Manager, to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of Operation, the Owner, Manager, and community relations contact from each such Commercial Cannabis Business shall meet with the City Manager when and as requested by the City Manager.

5.19.180 Promulgation of Regulations, Standards, and Other Legal Duties.

A. In addition to any regulations adopted by the City Council, the City Manager is authorized to establish, consistent with the terms of this Chapter, any additional administrative rules, regulations and standards governing the issuance, denial or renewal of City Licenses; the City's oversight of the ongoing operation of Commercial Cannabis Businesses; and any other subject determined to be necessary to carry out the purposes of this Chapter.

B. Regulations shall be published on the City's website and maintained and available to the public in the Office of the City Clerk.

C. Regulations promulgated by the City Council or the City Manager shall become effective and enforceable upon date of publication on the City's website or with respect to existing City Licensees, upon the date specified in a written notice to the City Licensee.

5.19.190 Compliance With All Applicable Laws Required.

A. Nothing in this Chapter shall be construed as authorizing or condoning any actions that violate federal, state or local law with respect to the operation of a Commercial Cannabis Business.

B. It shall be the responsibility of the City Licensees, Owners, Officers, and Managers of a Commercial Cannabis Business to ensure that a Commercial Cannabis Business is, at all times,

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

operating in a manner compliant with all applicable federal, state, and local laws and regulations, including any subsequently enacted state or local law or regulatory, licensing, or certification standards or requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a State License or a City License.

C. Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in State Laws. In the event of a conflict between the provisions of this Chapter and the provisions of State Laws or any other applicable state or local law, the more restrictive provision shall control. To the extent allowed by State Law, the City shall have the right, but not the obligation, to enforce all applicable State Laws.

5.19.200 Right of Access & Testing.

A. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have full access to the Premises and records of every Commercial Cannabis Business in order to:

1. Inspect the Premises for compliance with the Code and State Laws.

2. Test any equipment possessed by, in control of, or used by a City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.

3. Test any Cannabis or Cannabis Product possessed by, in control of, or used by a City Licensee, Owner, Officer or Manager, and any other employee, agent, or volunteer of a City Licensee.

4. Copy any materials, books, or records of any City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.

B. Failure by any City Licensee, Owner, Officer or Manager to cooperate and participate in any City inspection or investigation under this section shall itself be a violation of this Chapter.

C. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have rights of access under subsection (A) during any inspection, investigation, review, audit, or as otherwise allowed by law.

D. Prior notice of an inspection, investigation, review, or audit is not required.

E. Any inspection, investigation, review, or audit of a City Licensed Premises shall be conducted anytime the City Licensee is exercising privileges under the City License, or as otherwise agreed to by the City or its Manager.

F. This subsection shall not be construed to deprive a City Licensee, Owner, Officer, or Manager, or any other employee, agent, or volunteer of a City Licensee of any privileged guaranteed by the Constitutions of the United States and/or the State of California, or any other statutory privileges.

5.19.210 Restrictions on Transfer, Change, or Alteration of City License or City Licensee.

A. A City License is valid only as to the City Licensee. No City Licensee is allowed to sell, transfer, pledge, assign, grant an option, or otherwise dispose of ("Transfer") its City License to any Person except pursuant to the terms of this section. Except as permitted, any such Transfer

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

or attempted Transfer shall be deemed to constitute a voluntary surrender of the City License and such City License shall thereafter be null and void, except as set forth in this Chapter.

B. A City Licensee may Transfer less than 50% ownership or control of a City License with prior written approval of the City Manager after submission of all required application materials, payment of applicable fees as set by resolution of City Council, and a determination that the applicants meet the requirements of this Chapter such as to be entitled to the issuance of an original City License.

C. A City Licensee may change the form of business entity without applying to the City Manager for a new City License, if the ownership of the new business entity is the same as the original City Licensee business entity. Although a new City License is not required, the City Licensee shall notify the City in writing of the change within 30 days of the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.

D. A City Licensee may change the name of the business entity without applying to the City Manager for a new City License. Although a new City License is not required, the City Licensee shall notify the City in writing of the change at least 30 days prior to the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.

E. No City Licensee shall be allowed to Transfer all or any portion of its City License prior to twelve (12) months after the City Licensee has opened and continuously operated its Commercial Cannabis Business authorized thereunder.

F. No City Licensee shall operate, conduct, manage, engage in, or carry on the business of a Commercial Cannabis Business under any name other than the name of the Commercial Cannabis Business specified in the City License.

G. No City Licensee may avail themselves of the provisions of this Section if the City Manager has notified the City Licensee that the City License has been or may be suspended, revoked, or not renewed.

H. For purposes of this section, the Transfer of all or any portion of a licensed Commercial Cannabis Business shall constitute the Transfer of the underlying City License.

I. Failure to comply with this section constitutes grounds for suspension or revocation of a City License.

5.19.220 Restrictions on Transfer, Change, or Alteration of Location.

A. A City License issued under this Chapter is valid only as to the Premises approved in accordance with the City License, and is therefore nontransferable to other locations except as authorized in this section. No City Licensee is authorized to relocate to other areas or units within a building structure without first obtaining written approval from the City Manager, regardless of any possessory interest or right to possession to such additional space.

B. No City Licensee shall change the location of the Premises approved in accordance with the City License until any such change of location is approved by the City Manager or his/her

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

designee. The City Manager shall adopt a process (to include any necessary forms and procedures) for Premises relocation that includes, but is not limited to, the following:

1. The City Licensee shall submit a change of location application to the City at least 90 days prior to the proposed change.

2. The proposed location shall meet all of the requirements under this Code, including but not limited to this Chapter and Title 19.

3. The proposed location shall be reviewed and evaluated using review criteria as referenced in Section 5.19.060.

4. The relocation of a City Licensee's Premises shall be subject to the prior review and approval by the Development Services Director and any and all other licenses, approvals, or permits required under State Law and the Code.

C. All required state and City approvals, plan approvals, permits, and licenses must be obtained before causing, allowing, or licensing alterations to, and/or extensions or expansions of, the existing Premises building(s), structure(s), or portions thereof, approved as a location for a Commercial Cannabis Business. Said alterations, extensions, or expansions shall comply with all applicable laws, regulations and standards, including those concerning building safety and occupancy.

5.19.230 Expiration of City License.
A City License issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. City Licenses may be renewed as provided in Section 5.19.240.

5.19.240 Renewal of City License.
A. An application for renewal of a City License shall be filed with the City Manager's office at least 60 calendar days prior to the expiration date of the current City License.

B. Any City Licensee submitting an application less than 60 days before its expiration shall be required to pay a late renewal application fee, as established by resolution of the City Council. Any renewal application filed less than 30 business days before its expiration may be rejected by the City on that basis alone.

C. The renewal application shall be submitted on a form issued or approved by the City.

D. The applicant shall pay a fee in an amount to be set by the City Council to cover the costs incurred by the City to administer the program created under this Chapter.

E. An application for renewal of a City License may be denied if any of the following grounds exists:

1. Any of the grounds for suspension or revocation under section 5.19.260;

2. The City License has been suspended or revoked at the time of the application.

3. The Commercial Cannabis Business has not been in regular and continuous operation in the four months prior to the renewal application.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

4. The City Licensee fails to or is unable to renew its State License.

5. The City Licensee has made a false, misleading or fraudulent statement or omission of fact as to any information provided to City pursuant to this Chapter.

F. The City Manager is authorized to make all decisions concerning the issuance of a renewal license. In making the decision, the City Manager is authorized to impose additional conditions on a renewal license, if it is determined to be necessary to ensure compliance with State or local laws and regulations or to preserve the public health, safety or welfare.

G. The City Manager shall serve the City Licensee, either personally or by first class mail addressed to the address listed on the renewal application, with dated written notice of the City Manager's decision to approve or deny the renewal, and the right of the City Licensee to seek judicial review of the City Manager's decision.

H. If a City Licensee submits the required renewal application, but a written approval from the City has not been received prior to the expiration of the subject City License, such license shall be deemed conditionally renewed until service of the City Manager's written renewal decision.

I. If a renewal application is denied, the City License shall no longer be effective and all related Commercial Cannabis Activity must cease immediately. A Person denied a renewal may file a new application pursuant to this Chapter no sooner than one year from the date of the rejection.

5.19.250 Effect of State License Suspension, Revocation, or Termination.

A. Suspension of a State License shall immediately suspend the ability of a Commercial Cannabis Business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State License.

B. Should the State, or any of its departments or divisions, revoke or terminate a State License, such revocation or termination shall also revoke or terminate the City License and City Licensee's ability to operate a Commercial Cannabis Business within the City.

5.19.260 Suspension and Revocation of City License.

The following may constitute grounds for suspension or revocation of a City License:

A. Failure of a City Licensee to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the City License, or any provision of local or State Laws and/or regulations. Any act or omission of any Owner, Officer, Manager, or employee of a City Licensee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the City Licensee for purposes of determining whether the City License shall be suspended and/or revoked.

B. Any change in the ownership of a City Licensee that does not have City's prior written approval, if required under this Chapter.

C. Revocation of a City Licensee's State License.

D. City is denied access to the Premises or records of a City Licensee.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

E. The City Licensee, or any of its Owners, Officers, or Managers has been adversely sanctioned or fined for, charged with, or found guilty of or plead guilty or no contest to a charge of operating a Commercial Cannabis Business without the necessary licenses and approvals from the applicable state and/or local jurisdictions.

F. Conviction of a City Licensee, Owner, Officer, or Manager for any felony offense.

G. Any City Licensee, Owner, Officer or Manager is charged with any of the following:

1. A violent felony, as specified in Section 667.5(c) of the Penal Code.

2. A serious felony, as specified in Section 1192.7(c) of the Penal Code.

3. A felony involving fraud, deceit, or embezzlement.

4. A felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

5. A felony for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

6. A felony or misdemeanor involving the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance occurring after January 1, 2016.

If the City Manager determines that a ground for suspension and/or revocation of a City License exists, the City Manager shall give notice of suspension and/or revocation by dated written notice to the City Licensee. The City Manager shall cause the City Licensee to be served, either personally or by first class mail addressed to the address listed on the application, with the written notice suspending or revoking the City License. This notice shall state the reasons for the action, the effective date of the decision, and the right of the City Licensee to appeal the decision.

5.19.270 Advertising and Marketing of Cannabis.

A. It is illegal to Market or Advertise within the City Cannabis or Cannabis Products that are not permitted to be sold in the City under State Law or this Chapter.

B. Advertising or Marketing is prohibited in the City on any sign located within 1,000 feet of a Day Care Center; school providing instruction in kindergarten or any grades 1 through 12; Youth Center; Youth-Oriented Facility; or Private or Public Park.

C. Advertising or Marketing is prohibited in the City on any sign within 1,000 feet of a Treatment Center.

D. Advertising or Marketing in the City shall not contain a depiction of an individual under 21 years of age consuming Cannabis or Cannabis Products.

E. Advertising or Marketing in the City shall not be Attractive to Youth.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. Advertising or Marketing in the City in a manner that is false or untrue or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression, is prohibited.

G. Advertisements or Marketing in the City shall not contain any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.

5.19.280 Enforcement and Penalties.

A. It is unlawful to:

1. Operate, conduct, or direct Commercial Cannabis Activity in the City without a valid City License authorizing such Activity;

2. Own, set up, operate, or maintain a Commercial Cannabis Business in the City without a valid City License;

3. Participate as an employee, contractor, agent, volunteer, or in any other capacity in a Commercial Cannabis Business in the City without a valid City License;

3. Use any parcel or any portion of parcel of land as a Commercial Cannabis Business without a valid City License;

4. Lease, rent to, or otherwise allow a Commercial Cannabis Business to occupy any parcel or portion of parcel of land in the City without a valid City License.

B. It shall be unlawful for any person to violate any provision, or to fail to comply with the requirements, of this Chapter or any regulation adopted hereunder. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the State of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with this Chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of $10,000 for each and every offense.

D. Whenever in this Chapter any act or omission is made unlawful, it shall include causing, aiding, abetting, suffering, or concealing the fact of such act or omission.

E. The remedies specified in this Section are cumulative and in addition to any other remedies available under State or local law for a violation of this Code.

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

F. Nothing in this Section shall be construed as requiring the City to allow, permit, license, authorize, or otherwise regulate Commercial Cannabis Activity, or as abridging the City's police power with respect to enforcement regarding Commercial Cannabis Activity.

5.19.290 Effectiveness Conditioned on Passage of Tax Measure.
The effectiveness of the ordinance enacting this Chapter is contingent upon voter approval and the continuous legal validity of a tax measure anticipated to be submitted to voters in November 2018. The tax measure would impose an excise tax, in an amount and form yet to be determined, on all Commercial Cannabis Businesses. In the event the proposed tax measure is not approved by the voters, or is suspended or invalidated for any reason, the provisions of this ordinance permitting Commercial Cannabis Businesses shall be void without any further action required by the City.

Section III. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional. Notwithstanding the foregoing, the City Council reserves the right to modify or repeal this Ordinance, in its sole discretion, if all or any portion of it is invalidated on its face or as applied.

Section IV. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section V. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section VI. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

DocuSigned by:
Gary Halbert
0EC0EDEA0A854BE...
Gary Halbert
City Manager

Approved as to form by

DocuSigned by:
Glen Googins
CE40650850444BF...
Glen R. Googins
City Attorney

DocuSign Envelope ID: 94BC5F21-1746-4B28-AC71-5C50BF4D9C59

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 6th day of March 2018, by the following vote:

AYES:	Councilmembers:	Aguilar, Diaz, Padilla, and Salas
NAYS:	Councilmembers:	McCann
ABSENT:	Councilmembers:	None

DocuSigned by:
062BFD7C0386456...
Mary Salas, Mayor

ATTEST:

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3418 had its first reading at a regular meeting held on the 27th day of February 2018 and its second reading and adoption at a regular meeting of said City Council held on the 6th day of March 2018; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

3/16/2018
Dated

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

-EXHIBIT 3 -

The following regulations are intended to clarify and facilitate implementation of CVMC Chapter 5.19, Commercial Cannabis ("Chapter 5.19"). To the extent of any conflict between these regulations and Chapter 5.19, the terms of Chapter 5.19 shall govern. Capitalized terms used herein shall have the same definitions provided in Chapter 5.19 except as otherwise expressly provided.

§0501 Phase One Application Process (CVMC 5.19.050.A)

A. Application Periods

1. Initial Application Period. The City Manager will designate an initial phase one application period ("Initial Application Period") and post notice of the Initial Application Period dates on the City's website no less than fourteen (14) days prior to the start of the Initial Application Period. The Initial Application Period for retail and cultivation licenses will run for five (5) consecutive business days. The Initial Application Period for manufacturing, distribution, and testing laboratory licenses will run for ten (10) consecutive business days.
2. Subsequent Application Periods. After the Initial Application Period, and from time to time thereafter, the City Manager may issue additional notices of Application Periods for specified license types. The terms for each and any subsequent Application Period will be set forth in the corresponding Application Period notice.
3. Extensions. The City Manager, in his/her discretion, may extend the length of the Initial Application Period or a subsequent Application Period on terms he/she specifies. Notice and terms for any such extension will be posted on the City website.
4. Late Applications. Cannabis Business license applications will only be accepted by City during the Initial Application Period and/or subsequent Application Periods, if any. Late applications will be disqualified from consideration.

5. Notice List. Prospective Cannabis Business license applicants may sign up to receive email notification of any Application Period notices at: www.chulavistaca.gov/cannabis.

B. Application Submittals

1. Applicants may submit one or multiple applications subject to the limits set forth in Section C, below. To be considered, each applicant must submit their application on City's standardized forms. City's standardized application forms will be available on the City's website and updated from time to time.
2. Resubmittal Applications. Applicants who submitted an application during the Initial Application Period are eligible to pay a reduced Resubmittal Application Fee if all of the following statements are true of the application they resubmit during the May 26, 2020 - June 9, 2020 Application Period:
   a. The application is for the same license type;
   b. The application includes the same proposed business site;
   c. The application removes no more than two total Owners, Officers, and Managers; and
   d. The application maintains at least one of the same Owners.

C. Limits on License Applications

1. Retail. Applicants may apply for no more than one retail license per council district and no more than four retail licenses City-wide. A retail license application must indicate whether the applicant is requesting to conduct storefront or non-storefront retail in the specified council district. An applicant may not submit an application for both storefront and non-storefront retail in the same council district; however, an applicant may submit a retail license application for storefront retailer in one council district and either a storefront or a non-storefront retailer in a separate council district.
2. Cultivation. Applicants may apply for no more than two cultivation licenses City-wide. In the event that there are unfilled cultivation licenses after all initial cultivation license

applications have been processed, the City Manager may, in his/her discretion, permit applicants to apply for more than two cultivation licenses City-wide.

3. Manufacturing, Distribution, Testing Laboratory. There is no limit to the number of applications an applicant may submit for manufacturing, distribution, or testing laboratory licenses.
4. Ownership Interest. For the purposes of this subsection, an "ownership interest" in a cannabis business means an interest in the profits and/or assets of the cannabis business attained in exchange for a loan, a capital contribution, and/or an in-kind contribution of capital or services. Notwithstanding the foregoing, an ownership interest shall not include an interest in the profits of a cannabis business provided as compensation for ongoing management or other services to that business. The following application limitations apply to individuals or entities with an ownership interest in a cannabis business:
    a. An individual or entity with an ownership interest of 10% or more in a cannabis business may only be associated with one retail license application per council district, and may only be associated with two cultivation license applications City-wide.
    b. An individual or entity with an ownership interest of less than 10% in a cannabis business may only be associated with two retail license applications per council district, and may only be associated with two cultivation license applications City-wide.

D. Individuals Identified on Application

1. An applicant must identify on their application all Owners of the Commercial Cannabis Business (see CVMC 5.19.020 "Owner" definition), Managers (see CVMC 5.19.020 "Manager" definition), and Officers (see CVMC 5.19.020 "Officer" definition).

2. An applicant must identify on their application all persons who direct or control the Commercial Cannabis Business. Persons who direct or control the Commercial Cannabis Business include but are not limited to:
    a. An individual who is determining how a portion of the cannabis business is run, including non-plant-touching portions of the Commercial Cannabis Business such as branding or marketing; and
    b. An individual who is determining what cannabis goods the Commercial Cannabis Business will cultivate, manufacture, distribute, purchase or sell.
3. An applicant must identify on their application all persons with a financial interest in the Commercial Cannabis Business. Persons with a financial interest include but are not limited to:
    a. An individual who manages or directs the Commercial Cannabis Business in exchange for a portion of the profits;
    b. An individual who will receive a portion of the profits of the Commercial Cannabis Business, including but not limited to:
        a. An employee who has entered into a profit share plan with the Commercial Cannabis Business;
        b. A landlord who has entered into a lease agreement with the Commercial Cannabis Business for a share of the profits;
        c. A consultant who is providing services to the Commercial Cannabis Business for a share of the profits;
        d. A broker who is engaging in activities for the Commercial Cannabis Business for a share of the profits;
        e. A salesperson who earns a commission.
    c. A person with an investment in the Commercial Cannabis Business;

d. An individual who assumes responsibility for a debt of the Commercial Cannabis Business;

e. An individual who has provided a loan to a Commercial Cannabis Business; and

f. An employee who has entered into a profit share plan with the Commercial Cannabis Business.

4. Not withstanding the foregoing, the following persons are not required to be listed on an application as persons holding a financial interest:

   a. A bank or financial institution whose interest constitutes a loan;

   b. Persons whose only financial interest in the Commercial Cannabis Business is through an interest in a diversified mutual fund, blind trust, or similar instrument;

   c. Persons whose only financial interest is a security interest, lien, or encumbrance on property that will be used by the Commercial Cannabis Business; and

   d. Persons who hold a share of stock that is less than 5 percent of the total shares in a publicly traded company.

5. An application shall include the name, birthdate, and government-issued identification type and number for all individuals who direct and control the Commercial Cannabis Business and for all individuals who have a financial interest in a Commercial Cannabis Business but are not Owners, Managers, or Officers of the Commercial Cannabis Business as defined in CVMC 5.19.020. After submission of the application, the Police Chief will notify an applicant if such individuals are also required to submit fingerprints for Live Scan.

6. When an entity is an Owner of a Commercial Cannabis Business, all entities and individuals with a financial interest in the entity shall be disclosed to the City. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain.

E. Experience Requirement (CVMC 5.19.050.A.1.e)

1. In addition to proof of the components listed in CVMC 5.19.050.A.1.e, an applicant must include in their application a description of any and all experience in developing and implementing security plans for the cannabis, pharmaceutical, alcohol, or other business used to meet the qualification requirements of CVMC 5.19.050.A.1.e.
2. Persons seeking to qualify under CVMC 5.19.050.A.1.e.ii.(C) must demonstrate that a substantial portion of the lawful, properly licensed business was conducted in the City of Chula Vista or that the lawful, properly licensed business premises was located in the City of Chula Vista.

F. Liquid Assets Requirement (CVMC 5.19.050.A.1.f)

An applicant must demonstrate that it has $250,000 in Liquid Assets under its control for each license requested. Proof of Liquid Assets must be submitted in the form of current bank statements, brokerage statements and/or other documentation approved by the Finance Director in his/her sole discretion (collectively, the "Qualifying Documentation"). Updated Qualifying Documentation must be submitted as a condition of proceeding to the Phase Two application process.

G. Business Plan (CVMC 5.19.050.A.1.g)

Applicants must submit a business plan. In addition to the components listed in CVMC 5.19.050.A.1.g, each business plan must identify all principle owners, all business positions and responsibilities, each person with oversight of day to day activities, and any person charged with making major business decisions. A business plan template can be found at the following link: http://www.sdivsbdc.org/wp-content/uploads/2015/01/business-plan-template.pdf; such business plan template is intended to provide general guidance only.

H. Operating Plan (CVMC 5.19.050.A.1.h)

A storefront retailer applicant must include the following components in the operating plan submitted pursuant to CVMC 5.19.050.A.1.h :

1. How they will address issues associated with customer flow on their proposed premises to avoid excessive queuing of customers outside the building and to minimize customers parking off-site;
2. How the cannabis business will participate in community activities intended to support the business community, build neighborhood relationships, and benefit City of Chula Vista programs supporting the community;
3. How the cannabis business will further the goals of the City's 2017 Climate Action Plan through sustainable, energy and water efficient buildings and by achieving zero waste; and
4. What steps the cannabis business will take, if any, to be compatible with the neighborhood surrounding the proposed premises.

I. Fingerprint and Background Check (CVMC 5.19.050.A.1.i)

1. Applicants, Owners of the Commercial Cannabis Business, Managers, Officers, and any additionally required persons must submit:
   a. a completed Police Controlled License Application (form available at www.chulavistaca.gov/cannabis).
   b. a completed Application Conviction Supplement (form available at www.chulavistaca.gov/cannabis).
   c. a signed and dated Statement of Understanding (form available at www.chulavistaca.gov/cannabis).
   d. one 2" x 2" color photo taken within the last six months
   e. color copy of government-issued picture I.D. (driver's license, California I.D., etc)
2. Applicants, Owners of a Commercial Cannabis Business, Managers, and Officers must make and complete a Live Scan appointment within 14 days after the application is submitted. Live Scan may be completed at any authorized California Live Scan location using the Live Scan form approved by the City of Chula Vista for Cannabis Business Licensing and found at: www.chulavistaca.gov/cannabis. Each Live Scan form submitted

must include the application submission number obtained upon submission of the relevant cannabis business application to the City of Chula Vista.

3. Any additional individual required by the Police Chief to make and complete a Live Scan appointment must do so within 15 days of the date that the applicant is notified of such additionally required Live Scan submittal.

J. Incomplete Applications (CVMC 5.19.050.A.4.b)

The Finance Director will provide the applicant by email or first class mail addressed to the address listed on the application, with dated written notice of any missing required Phase One application components and/or any additional information requested in accordance with 5.19.050.A.1.m. The Applicant must submit the missing and/or additional information to the Finance Director within 15 days of the notice date.

K. Sworn Statements Must be Notarized

The statements required to be made under penalty of perjury by each Applicant, Owner, Officer and Manager pursuant to Code Section5.19.050.A.1.j must be notarized.

L. Approval of Phase One Application (CVMC 5.19.050.A.7-8)

If an applicant's Phase One application has been approved by the Finance Director and Police Chief, the Finance Director will provide the applicant with dated, written notice that the Phase One Application has been deemed qualified. The notice will further identify each of the applicant's supplemental license applications that has been deemed qualified and notify the applicant of any guarantees or authorizations required to proceed through the application process. The applicant will have 180 days from the date of such notice to complete the Phase Two application process.

M. Storefront Retailer Applicant Notice Posting Requirement; Objection; Pipeline Period

1. Posting at Proposed Premises. Within 10 days after issuing a dated, written notice that a storefront retailer Phase One application has been deemed qualified, the City shall post a Public Notice of Application at the proposed storefront retailer premises in a location determined by the City to be clearly visible to the public, such as the front door of an

existing building or at the entrance driveway to the proposed premises. If multiple applications for storefront retailers are deemed qualified for the same premises, the City shall include the names of each deemed qualified storefront retailer on the notice posted at the proposed premises. Posted notices shall describe how to file an objection with the City contesting the location's compliance with state and/or local laws or regulations.

2. Maintenance of Posted Notice at Proposed Premises. The site owner and storefront retailer license applicant shall be responsible for maintenance of the posted notice on the premises. Posted notices shall be maintained on the premises throughout the "Pipeline Period" defined in Section 5, below.
3. Electronic Posting of Qualified Applicants. City shall post on the City's website and maintain in the Office of the City Clerk a list of all Phase One storefront retailer applications that have been deemed qualified and the date of posting at the proposed premises. The City's website shall describe how to file an objection with the City contesting the location's compliance with state and/or local laws or regulations.
4. Objection to Proposed Premise Location. Objections contesting the location's compliance with state and/or local laws or regulations must be filed within thirty (30) calendar days of the date that the Public Notice of Application is posted at the proposed premises, and must clearly state the basis for the objection.
5. Pipeline Project/Period. Once the Development Services Director confirms that the required notice has been posted at the proposed premises, the proposed premises will be considered a pipeline project as of the date that the Phase One application was deemed qualified; the proposed premises will remain a pipeline project until a City license has been issued or the City cannabis license process has been ended by denial of the application ("Pipeline Period"). Pipeline projects will not be subject to the separation requirements in CVMC Section 5.19.060 as to any new businesses or uses that open, occupy, or obtain required land use approvals or permits during the Pipeline Period.

N. Merit-Based System – Storefront & Non-Storefront Retailers (CVMC 5.19.050.A.7)

1. Scoring. All qualified retailer applications will be scored in the following four categories with the maximum points possible in each category as follows:
   a. Experience/Qualifications of the business owner/team (150 points)
   b. Liquid Assets (50 points)
   c. Business Plan (150 points)
   d. Operating Plan (150 points)

   The highest initially scored applications will undergo an additional interview process to further assess each scored category. The maximum aggregate score shall be 500 points.
2. Selection Process. All qualified applications will be ranked from highest to lowest in aggregate score and placed on a list in that order. Selection of applications to proceed to the Phase Two Application Process will be made from this list according to the following process:
   a. The highest aggregate scored application will be given a Phase Two application slot for the Council District and retailer category identified in their application. Applications that have received a tie aggregate score will be placed in rank order using a random selection process (pick numbers out of a hat, etc.) Subsequent applications will then be selected in the rank order of their aggregate score and placed into their selected Council District and retailer category.
      i. In the event that a subsequent, ranked applicant's proposed premises is no longer available in the Council District for which the applicant has applied, such applicant will be offered the opportunity to select another site within the same Council District and obtain a signed, notarized statement from the owner(s) of the site per the requirements of the Phase One application process. Such applicant shall have no more than 30 calendar days from the date of notice of opportunity to complete

site selection in the same Council District and submit the owner(s) notification statement to the Development Services Director.

b. The above process will continue until an application results in a Council District reaching the maximum number of licenses allowed by CVMC 5.19. This could be 2 storefront retailers and 1 non-storefront retailer; 1 storefront retailer and 2 non-storefront retailers; or 3 non-storefront retailers.

c. Once a Council District has reached the maximum number of retailer license applications allowed, only the remaining qualified applications for the unfilled Council Districts will be used to select for the remaining licenses in those unfilled Council District.

d. This selection process will continue for the remaining unfilled Council Districts following steps a. through c. above until the maximum number of licenses for each Council District have be reached, or until qualified applications for unfilled Council Districts are exhausted.

e. Should qualified applications for unfilled Council Districts be exhausted, any remaining unselected, qualified applications for filled Council Districts will be placed in rank order based on their aggregate score. The highest ranked remaining qualified application for a filled Council District that matches the retailer category in an unfilled Council District and that does not have another retailer license application that was selected in that unfilled Council District will be offered the opportunity to select a site within the unfilled Council District and obtain a signed, notarized statement from the owner(s) of a site located within that Council District per the requirements of the Phase One application process. Such applicant shall have no more than 30 calendar days from the date of notice of opportunity to complete site selection in the unfilled Council District and submit the owner(s) notification statement to the Development Services Director. Should the applicant decline the opportunity or fail to complete site selection

and submit the owner notification statement within 30 days, the next ranked remaining qualified application for a filled Council District will be selected and offered the same opportunity. The selection process contained in this subsection will continue for the remaining unfilled Council Districts.

f. If a selected qualified retailer applicant withdraws their application or is unable to complete the Phase Two process, the next ranked remaining unselected qualified application will be offered the same process as step e. This will continue until all Council Districts have reached the maximum number of licenses or until qualified applications are exhausted.

3. Notice of Decision. Qualified applicants who have been selected to proceed to the Phase Two application process will be sent a Notice of Decision in accordance with CVMC section 5.19.050.A.6 at the time selection is made. Once the Phase One selection process for all Council Districts is complete, any remaining unselected qualified applicants will be sent a Notice of Decision in accordance with CVMC Section 5.19.050 A.6.

O. Merit-Based System – Indoor Cultivation (CVMC 5.19.050.A.7)

1. Scoring. If the City receives more than ten qualified indoor cultivator applications, all applications will be scored in the following four categories with the maximum points possible in each category as follows:

   a. Experience/Qualifications of the business owner/team (150 points)

   b. Liquid Assets (50 points)

   c. Business Plan (150 points)

   d. Operating Plan (150 points)

   The highest initially scored applications will undergo an additional interview process to further assess each scored category. The maximum aggregate score shall be 500 points.

2. Selection. Applicants with the top 10 aggregate scores will be selected to proceed to the Phase Two application process. If a selected applicant withdraws their application or is

unable to complete the Phase Two process, the applicant with the highest aggregate score from the remaining qualified applications will be offered the opportunity to proceed to the Phase Two process. This process will continue until the City has reached 10 indoor cultivation licenses or until qualified applications are exhausted.

3. Notice of Decision. Qualified applicants who have been selected to proceed to the Phase Two Application Process will be sent a Notice of Decision in accordance with CVMC section 5.19.050.A.6 at the time selection is made. Once the license selection process for all indoor cultivation licenses is complete, any remaining unselected qualified applicants will be sent a Notice of Decision in accordance with CVMC Section 5.19.050 A.6.

P. Notice of Decision Appeal Rules and Procedures

1. Appeal of Notice of Decision. Applicants sent a Notice of Decision rejecting their application in accordance with CVMC section 5.19.050.A.6 shall have the right to appeal such decision regarding their application to the City Manager. The request to appeal must use the form provided by City for that purpose and must be received by the City no later than 15 calendar days from the date noted on the Applicant's Notice of Decision. The request to appeal must be accompanied by the appeal fee, must identify each independent reason for rejection contained in the Notice of Decision that the appellant seeks to appeal, and must indicate whether the appellant requests an appeal by hearing or requests an appeal in writing only. The appellant shall bear the burden of proof, by a preponderance of the evidence, to demonstrate that the identified reason(s) for rejection contained in the Notice of Decision were erroneous.
2. Appeal by Hearing. When an appeal by in person or virtual hearing is requested, the hearing shall be conducted as follows:
   a. The City Manager shall notify the appellant of the date, time, and place for the hearing by email or first-class mail addressed to the address listed on the request to appeal, allowing a minimum of 20 calendar days from the date the notice is mailed before the

hearing is to be held. The hearing may be continued from time to time upon stipulation of the parties, or upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause therefor.

b. At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing.

c. The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded.

d. Failure of an appellant to appear at the hearing shall constitute a forfeiture of the appeal fee and a waiver of the right to appeal except where the City Manager determines there is good cause for such failure to appear. If the appellant is more than 15 minutes late to the hearing, the City Manager may determine that appellant has failed to appear, forfeited the appeal fee, and waived the right to appeal.

e. City reserves the right to convert an in person hearing to a virtual hearing where the City Manager determines there is good cause for such conversion.

3. Appeal in Writing Only. When an appeal in writing is requested, the appeal shall proceed in writing as follows:

a. Appellant shall submit in writing, using a form provided by City for that purpose, appellant's evidence and argument concerning the Notice of Decision. Such evidence and argument must be received by the City Clerk within 30 calendar days of the date

noted on the Applicant's Notice of Decision. Failure to submit timely evidence or argument shall constitute forfeiture of the appeal fee and waiver of the right to appeal.

b. City staff may submit in writing, using a form established by City for that purpose, City's evidence and argument concerning the Notice of Decision. Such evidence and argument must be provided to the City Clerk and mailed to the Applicant within 50 calendar days of the date noted on the Applicant's Notice of Decision.

c. Appellant may submit in writing, using a form provided by City for that purpose, Appellant's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 65 calendar days of the date noted on the Applicant's Notice of Decision.

d. City staff may submit in writing, using a form established by City for that purpose, City's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 80 calendar days after the date noted on the Applicant's Notice of Decision.

e. All testimony submitted in writing must be by sworn declaration in a form consistent with Code of Civil Procedure section 2015.5.

f. Requests for a continuance must be in writing and supported by good cause. In the event the City Manager grants a request for continuance, all future submittal dates shall be adjusted by the City Manager accordingly.

4. Scope of Review. The City Manager's scope of review for purposes of appeal shall be limited to whether a basis for rejection is erroneous by a preponderance of the evidence.

a. If the City Manager makes a determination that an Applicant's score is erroneous and no other basis for rejection of the application exists, the City Manager shall grant the appeal and direct City to reassess the Applicant's score unless the City Manager has determined that reassessment of the Applicant's score could not result in a score that ranks high enough to be given a Phase Two application slot. City must then cause a

reassessment of the Applicant's score to be conducted, and thereafter issue a new Notice of Decision to the applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

b. If the City Manager makes a determination that the Applicant's score is not erroneous, but one or more other bases for rejection are erroneous, the City Manager shall grant the appeal and direct City to reassess the application so long as the Applicant's score ranks high enough to be given a Phase Two application slot. City must then cause a reassessment of the application to be conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

c. If the Applicant's score is not at issue on appeal, and the City Manager makes a determination that one or more other bases for rejection are erroneous, the City Manager shall grant the appeal and direct City to reassess the application so long as the Applicant's score ranks high enough to be given a Phase Two application slot. City must then cause a reassessment of the application to be conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision shall be final and contain no right to appeal to the City Manager.

5. Notice of Appeal Determination. The City Manager shall provide a dated written notice to the appellant of the City Manager's appeal determination and the right of the appellant to seek judicial review of the City Manager's appeal determination.

§0502 Phase Two Application Process (CVMC 5.19.050.B)

A. Application Period (CVMC 5.19.050.A.8)

1. Submission of Application Materials. An applicant who has successfully completed the Phase One application process must submit Phase Two application materials no later than 30 calendar days after the "deemed qualified" notice is issued. The Development Services

Director may extend an applicant's submittal deadline if an applicant requests an extension and such request is supported by good cause. Requests for extension must be submitted in writing to the Development Services Director no later than 30 calendar days after the "deemed qualified" notice is issued and must identify the good cause reasons upon which such request is based.

Completion of Phase Two Process. Applicants will have six months from the date of the phase one "deemed qualified" notice to complete the Phase Two application process. Extensions may be granted to accommodate processing of City permit applications for land use approvals necessary to legally establish the Cannabis Business at the site designated in the Phase Two application. Extensions will be granted provided the Development Services Director determines that the applicant is diligently pursuing the required land use approvals or that events have occurred beyond the control of the applicant that could not reasonably be foreseen that caused delay in the processing of required land use approvals.

B. Premises and Location Information (CVMC 5.19.050.B.1)

1. Location and Site Plan Information Required. Applicants must submit premises location and site plan(s) information that clearly identifies the location of the premises; front entrances for the business; and the surrounding public streets, sidewalks, adjacent businesses, land uses, and zones. Storefront retailers must identify surrounding public streets, sidewalks, adjacent businesses, land uses, and zones within 1,000 feet of the existing or proposed premises; all other cannabis businesses must identify surrounding public streets, sidewalks, adjacent businesses, land uses, and zones within 200 feet of the existing or proposed premises. Applicants shall also submit a scaled floor plan delineating use areas, such as lobby, storage, breakrooms, restrooms, entrances, exits, etc., with clear, descriptive labels.

2. Licensed Professionals. Plans must be drawn to scale by a registered professional licensed to prepare such plans, such as a Land Surveyor, Civil Engineer, Landscape Architect or Architect.
3. Location information and plans must provide sufficient detail to determine compliance with CVMC Section 5.19.060.
4. Land Use Approvals. If the location for the cannabis business requires any land use approvals such as design review, conditional use permits, etc., the Phase Two submittal materials shall also include complete permit applications for such approvals. The City's submittal requirements for land use approvals can be found at the Development Services Department or on their website at (www.chulavistaca.gov/departments/development-services).
5. Site Control Statement. Applicants must also submit a signed and notarized Site Control Statement for each Premises Owner and submit proof of each Premises Owner's ownership and/or interest in the Premises.

C. *Fingerprint and Background Information (CVMC 5.19.050.B.1.d)*

1. Owners of a Premises and any additional individuals identified by the Police Chief pursuant to CVMC 5.19.050.B.1.d must submit the following documents:
   a. a completed Police Controlled License Application (form available at www.chulavistaca.gov/cannabis).
   b. a completed Application Conviction Supplement (form available at www.chulavistaca.gov/cannabis).
   c. a signed and dated Statement of Understanding (form available at www.chulavistaca.gov/cannabis).
   d. a completed Live Scan Form (form available at www.chulavistaca.gov/cannabis).
   e. one 2" x 2" color photo taken within the last six months
   f. color copy of government-issued picture I.D. (driver's license, California I.D., etc)

6. Owners of the Premises and any additionally required individuals must make and complete a Live Scan appointment. Live Scan may be completed at any authorized California Live Scan location using the Live Scan form approved by the City of Chula Vista for Cannabis Business Licensing. Each Live Scan form submitted must include the application submission number obtained upon submission of the relevant cannabis business application to the City of Chula Vista.

D. Proposed Emergency Action and Fire Prevention (CVMC 5.19.050.B.1.e)

A preliminary emergency action and fire prevention plan must be submitted with the Phase Two application materials. The preliminary emergency action and fire prevention plan must incorporate the applicable provisions contained in Chapter 4, sections 404-407 of the California Fire Code, 2016 edition, including emergency preparedness requirements; fire safety, evacuation and lockdown plans; emergency evacuation drills; employee training and response procedures; and hazard communication requirements.

E. Proposed Security Plan (CVMC 5.19.050.B.1.f)

1. Preliminary Security Plan Information Required. A preliminary security plan must be submitted with the Phase Two application materials. The preliminary security plan shall include, but not be limited to: a description of each employee position that bears responsibility for implementing and overseeing security measures; a description of entry/exit door security measures; a description of the number of security personnel, security personnel working hours, and security personnel responsibilities; a description of the security lighting specifications and placement, including the location/angles of all security lights; a description of the security camera system specifications and placement, including the location/angles of all cameras; a description of any security-related signs that will be posted, including their location and purpose; a description of the electronic identification scanner and verification system specifications and set up to be utilized; and a description of the security system specification and set up.

2. Security Policies Required. The preliminary security plan shall also include the following security policies: physical altercation policy; security exclusion policy; weapon incident policy; employee firearm policy; physical restraint policy; police notification policy; contraband policy; and counterfeit money policy. Each policy must be approved by the Chula Vista Police Department prior to commencement of operation. The plan must demonstrate how employees will be trained on and required to comply with all security policies.
3. The preliminary security plan should be consistent with the security requirements contained in CVMC 5.19.160 and the §1600 regulations specified below.

F. Incomplete Applications (CVMC 5.19.050.B.5)

The Development Services Director will serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of any missing required Phase Two application components and/or any additional information requested in accordance with 5.19.050.B. The Applicant must submit the missing and/or additional information to the Development Services Director within 15 calendar days of the notice date.

G. Conditional Approval (CVMC 5.19.050.B.7)

An applicant may apply for building permits and request final security plan and emergency action and fire prevention plan approval prior to receiving a state license; however, applicants are not required to do so and may submit such permits and requests after receiving their state license. Extensions of the six month conditional approval period may be granted to accommodate processing of City permit applications necessary to legally establish the commercial cannabis business at the site designated in the phase two application or to accommodate processing of the applicant's State cannabis license. Extensions will be granted provided the Development Services Director determines that the applicant is diligently pursuing the required approvals and/or permits, or that events have occurred beyond the control of the applicant that could not reasonably be foreseen that caused delay in the processing of required permit or license approvals. Each

applicant is required to provide to the Development Services Director a complete copy of each cannabis license application submitted to the State within 14 calendar days of such State submittal.

§0600 Location Requirement (CVMC 5.19.060)

Cannabis Businesses will not be subject to the separation requirements in CVMC Section 5.19.060 as to any new businesses or uses that open, occupy, or obtain required land use approvals or permits after a City license has been issued.

§0800 Operating Requirements (CVMC 5.19.080)

A. Conformance with State and Local Laws and Regulations

All Cannabis Businesses shall maintain operations in full conformance with state and local laws and regulations.

B. Odor control

1. Odor Control Equipment. All Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Cannabis Business. As such, Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:
   a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;

b. An air system that creates negative air pressure between the Cannabis Business's interior and exterior, so that the odors generated inside the Cannabis Business are not detectable on the outside of the Cannabis Business.

2. Odor Control Plan. At time of building permit application, applicant to submit an odor control plan prepared by a California licensed mechanical engineer, an environmental engineer, or a similar professional discipline acceptable to the Building Official describing the approach and equipment to be utilized to contain, absorb and neutralize all odors emanating from the property and the field testing methodology to be utilized to determine the effectiveness of the odor containment/absorption/neutralization. The plan shall also include a description of the maintenance activities that will be performed, the frequency with which such activities will be performed, and the role/title(s) of the personnel responsible for maintenance activities. The activities should serve to maintain the odor mitigation system and optimize performance.
3. Construction Drawings. Submitted construction drawings must detail all construction and equipment required to be installed in accordance with the odor control plan. The odor control system construction drawings must be prepared by a California licensed mechanical engineer, an environmental engineer, or a similar professional discipline acceptable to the Building Official.
4. Written Statement of Inspection by Professional. Prior to final inspection, the mechanical engineer of record, environment engineer of record, or accepted design professional of record that prepared the required Odor Control Plan and the approved mechanical plans, shall submit a written statement to the Building Official that the mechanical engineer, environmental engineer or the accepted designed professional has inspected all installed odor control mechanical equipment and certifies that the installation of that equipment is in accordance with the accepted Odor Control Plan and the approved mechanical plans, and that the equipment is functioning properly.

5. Temporary Certificate of Occupancy; Odor Data Submittal. Temporary Certificate of Occupancy (TCO) will be granted for a period of 180 calendar days from the date of final inspection approval. During the 180-day TCO period it is anticipated that the facility will achieve full operation/cultivation/production. Upon reaching full operation/cultivation/production, and prior to the expiration of the 180-day temporary occupancy approval, the Cannabis Businesses shall submit test data from an approved independent third-party testing agency, environmental engineer, certified industrial hygienist, mechanical engineer or other accepted testing professional that clearly indicates that no odors are detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Cannabis Business and includes an affirmative statement to that effect.
6. Certificate of Occupancy. Upon Building Official approval of submitted test data and certification required under item E above, and subject to the facility being in compliance with all other applicable regulations and requirements, a Certificate of Occupancy (C of O) will be granted.
7. If at any time the Building Official has reason to believe that the Cannabis Business is in violation of this regulation, the Building Official may require the Commercial Cannabis Business to submit test data from an independent third-party testing agency demonstrating compliance.

C. Cannabis Waste Management

1. All Cannabis Businesses shall utilize a waste hauler franchised, contracted, or permitted by the City of Chula Vista to collect and process cannabis waste.
2. All cannabis waste shall be unrecognizable and unusable at time of disposal.

D. Inspections

1. Initial Inspection. City, through its officials, employees, and/or their designees, will inspect all Cannabis Businesses prior to issuance of a City license to verify that the facilities are constructed and can be operated in accordance with the application submitted and the requirements of local and state laws and regulations. The initial inspection shall occur once the Cannabis Business has obtained its State license and is ready for operation, but prior to issuance of a City license. No cannabis or cannabis products will be allowed on the premises until authorized by City.
2. Scheduled Inspections; Re-Inspections. City, through its officials, employees, and/or their designees, may perform scheduled inspections of Cannabis Businesses at a minimum on a quarterly basis during the first year following licensure, and on a biannual basis following the first year of operation. The City may additionally schedule re-inspections to verify correction of violations observed during scheduled inspections.
3. Unscheduled Inspections. In accordance with CVMC 5.19.200, City, through its officials, employees, and/or their designees, may perform additional inspections without prior notice.
4. Plans. A copy of the approved building plans; Fire and Life Safety Technical Report; Emergency Action/Fire Prevention Plan; Security Plan; and floor plan, which includes depictions of limited access areas and security camera placement, must be kept on the licensed premises at all times.
5. Inspection of Records. Upon request, the Cannabis Business licensee or business manager on duty shall retrieve and provide to City officials, employees, or their designees any business records deemed by City to be necessary for the proper administration of applicable laws and regulations, including but not limited to, security camera recordings, cannabis inventory manifests, and copies of invoices and receipts.

6. Manufacturing and Cultivation Inspections. When deemed necessary by City, City may require manufacturing and/or cultivation premises and/or equipment to undergo inspection by a third party approved by City. The licensee is responsible for any related inspection costs.
7. Recording of Inspection. City officials, employees, and/or their designees may record the inspection, investigation, or audit.

E. Fire Regulations

1. Cannabis Businesses are required to hire a Professional Engineering firm to submit a Technical Fire and Life Safety Report to the Fire Chief for review and approval. The Professional Engineering firm shall be qualified to complete such a report, by specializing in hazardous materials, compressed gases, cannabis operations, and any other applicable specializations. The Technical Report shall be completed, stamped, and signed by a licensed Professional Engineer (State of California).
2. The Professional Engineering firm shall submit the Fire and Life Safety Technical Report directly to the Fire Chief no later than the date that the Cannabis Business submits architectural and engineering permit plans to the Development Services Director.
3. Fire and Life Safety Technical Reports are required regardless of the need for architectural and engineering permit plans. In the event that no architectural and/or engineering permit plans are required for the Cannabis Business, the Fire and Life Safety Technical Report shall be submitted to the Fire Chief for review and approval prior to business occupancy.
4. The Professional Engineering firm that completed the Fire and Life Safety Technical Report shall, prior to business occupancy, perform an inspection of the Cannabis Business premises. This inspection shall be a compliance inspection to ensure the Cannabis Business is compliant with the provision of the Fire and Life Safety Technical Report. The Professional Engineering firm shall submit a letter and/or report to the Fire Chief assessing the Cannabis Business's compliance with the Fire and Life Safety Technical Report.

5. For any change in the Cannabis Business's operation, the Chula Vista Fire Department may require a supplement to the approved Fire and Life Safety Technical Report. If a supplement is required, a compliance inspection and letter, as indicated above, will also be required.
6. The Chula Vista Fire Department reserves the right to require, at any time, a third-party inspection from a Professional Engineering firm. The Cannabis Business shall pay the cost of such third-party inspection. The third-party inspection shall assess the Cannabis Business's compliance with the approved Fire and Life Safety Technical Report and provide a letter and/or report to the Fire Chief in regard to such assessment.
7. Cannabis facilities that utilize flammable materials (e.g., solids, liquids, gases) in the processing of cannabis materials shall improve the occupiable space with an automatic fire sprinkler system.

§1600 Security Measures (CVMC 5.19.160)

A. *Security Personnel*

1. All Security Personnel must register and maintain valid registration status with the state of California's Department of Consumer Affairs at a level equal to or higher than a proprietary private security officer. In the case of proprietary security officers employed by the Cannabis Business, proof of application and registration for all Security Personnel must be maintained by the cannabis business and consist of copies of all relevant documentation including: application forms, receipts for application fees and live scan fees, and actual proof of registration.
2. All Security Personnel shall at all times carry state-issued guard license certifications on their person and make such certifications immediately available to law enforcement personnel on demand.
3. While on duty, all Security Personnel must have a nameplate containing the Security

Personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate must be exhibited prominently on the clothing, at chest level, and must be visible and easily read at all times. The nameplate must be a minimum of two inches high and four inches wide, with the required information printed in capital letters, at least three fourths inches high and in a contrasting color. As an alternative to a nameplate, the Security Personnel's name and the word "SECURITY" may be embroidered on the Security Personnel's outermost garment with the required information meeting the above specifications and located at chest level.

B. Firearms on Premises

1. Notice of Firearms on Premises. A Cannabis Business shall complete and submit a Notice of Firearms on Premises (form available at www.chulavistaca.gov/cannabis) to the Special Investigation Supervisor of the Chula Vista Police Department prior to permitting any firearms on the premises that are not in the possession and control of Security Personnel.
2. Update Required. A Cannabis Business shall submit an Updated Notice of Firearms on Premises (form available at www.chulavistaca.gov/cannabis) to the Special Investigation Supervisor of the Chula Vista Police Department within twenty-four (24) hours of any change in the information contained in the previously submitted Notice of Firearms on Premises.
3. Notification of Loss/Theft of Firearm on Premises. In the event that any firearm on the premises is lost or stolen, the Chula Vista Police Department shall be notified by phone at (619) 691-5151 within twenty-four (24) hours of discovery of such loss or theft.

C. Lighting

Exterior lighting on the Cannabis Business and parking area lighting for the Cannabis Business must be balanced; cannot result in glare on adjoining properties; must complement the cannabis business security system to ensure that all areas of the Cannabis Business are visible; and

must provide increased lighting at all entrances to the Cannabis Business. The lighting required in this subsection must be turned on from dusk to dawn.

D. Employee Work Permit and Identification Badges

After obtaining conditional license approval from the City and prior to operation of the Cannabis Business, all employees who will be working at or from the premises of the Cannabis Business must apply for and obtain an Employee Work Permit and Identification Badge from the Chula Vista Police Department. All employees of a Cannabis Business shall display the laminated or plastic-coated identification badge issued by the City at all times while acting in the scope of their employment. The identification badge shall, at a minimum, include the Cannabis Business's "doing business as" name and state license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height. Notwithstanding the forgoing, Delivery Employees lawfully conducting a Delivery for a licensed Cannabis Business located outside the City of Chula Vista shall not be required to obtain or carry an identification badge issued by the Police Chief until six months after commencement of the Initial Application Period.

E. *Electronic Identification Verification System*

All Storefront and Non-Storefront Retail Cannabis Businesses will use an electronic identification scanner and verification system that has the capability of storing identifying information. All patrons entering the establishment shall be required to scan their valid government-issued identification card containing the patron's photograph, date of birth, and physical description; only official government passports with current photographs shall be accepted as a valid form of foreign identification.

F. Surveillance Camera System (CVMC 5.19.060.A.4.)

1. All security surveillance cameras must have a minimum camera resolution of 1280 x 720 pixels. Cameras shall record continuously 24 hours per day and at a minimum of 15 frames

per second. The storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft; at least one security camera shall record the access points to the secured storage device area.

2. The surveillance camera system shall at all times be able to effectively and clearly record images of the areas under surveillance and allow for the clear and certain identification of any person and activities in all areas required to be filmed.
3. Recordings shall clearly and accurately maintain a time and date display; time is to be measured in accordance with the United States National Institute Standards and Technology Standards.
4. Each camera shall be permanently mounted and in a fixed location that allows the camera to record the area being filmed. Each camera recording entrances and/or exits shall be placed in a location that allows the camera to clearly record activity occurring within 20-feet of all points of entry and exit on the Premises from both indoor and outdoor vantage points.
5. The surveillance camera system shall be equipped with a failure notification system that provides notification to the Licensee of any interruption or failure of the video surveillance system or storage device.
6. Surveillance recordings and/or storage devices are subject to inspection by the Chula Vista Police Department, and shall be copied and sent to or otherwise provided to the Chula Vista Police Department in an expeditious manner for viewing upon request.
7. A trained employee with the knowledge and authority to operate the surveillance system should be available at all times to provide timely assistance to law enforcement personnel in the event of a time-sensitive investigation requiring surveillance recordings.

§2000 Inventory Audit

The City, through its officials, employees, and/or designees, may perform at its discretion an audit of the physical inventory and inventory as reported in the track-and-trace system of any licensee. Audits of the licensee shall be conducted during standard business hours at another reasonable time, or as otherwise mutually agreed to by the City and the licensee. For the purposes of this section standard business hours are 8:00am – 5:00pm (Pacific Standard Time). Prior notice of audit is not required.

§3000 Tax Payment Process

All excise taxes are to be paid to the City on a monthly basis within 30 calendar days of the end of the prior month (i.e., June taxes are due to the City by July 30th). While cash is currently the only known payment method, any changes in law at the federal or state level that allow for electronic payment methods will be accepted and supported administratively by the City until the City's rules and regulations are updated to require electronic payment to the City. All payment amounts should tie to the monthly sales records submitted to the State of California through the track and trace program. All tax payments will be audited for compliance with the Chula Vista Municipal Code.

-EXHIBIT 4 -

CITY OF CHULA VISTA CANNABIS LICENSE APPLICATION AFFIRMATION AND CONSENT

I, WILLIE FRANK SENN (full name), hereby declare that the information contained within and submitted with the cannabis license application is complete, true, and correct, and that I have not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City of Chula Vista or in any other jurisdiction. I understand that a misrepresentation of fact is cause for rejection of this application, denial of a license, or revocation of a license issued.

Date: 1/15/19 Signature: Willi Senn

Printed Name: Willie Senn

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On 15 January 2019, before me, Nicole Novak, Notary Public,

personally appeared Willie Senn

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NICOLE NOVAK
COMM. #2261738
Notary Public - California
San Diego County
My Comm. Expires Oct. 7, 2022

SIGNATURE Nicole Novak

(Seal)

-EXHIBIT 5 -

The Law Offices of Nathan Shaman

[redacted]

January 18, 2019

Via Electronic Transmission

Finance Department
276 Fourth Avenue
Chula Vista, CA 91910

Re: Affirmation and Consent of Willie Frank Senn for Application for Cannabis License at 4150 Bonita Road

To Whom It May Concern,

I represent UL Holdings Inc., a California corporation ("UL"). As you will see from the application materials included with this letter, UL is the owner of 51% of the equity interests in UL Chula Two LLC, which is the applicant for a retail storefront cannabis license at 4150 Bonita Road in the City of Chula Vista.

Willie Frank Senn is the sole shareholder of UL. As such, under section 5.19.050(A)(1)(j) of the Chula Vista Municipal Code, Mr. Senn is required to submit the form prescribed therein, entitled the "City of Chula Vista Cannabis License Application Affirmation and Consent" (the "Affirmation"), which is attached to this cover letter, to affirm that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." (*Ibid.*)

With respect to the Affirmation, Mr. Senn desires to make the City aware of a stipulated judgment (the "Stipulated Judgment") entered against Mr. Senn on December 14, 2012 in the San Diego Superior Court case of *City of San Diego v. The Holistic Café, Inc. et al.*, case no. 37-2012-00087648-CU-MC-CTL. The Stipulated Judgment was entered in relation to allegations from the City of San Diego that Mr. Senn, along with other defendants, operated a medical marijuana dispensary in the City of San Diego in violation of local law. However, the Stipulated Judgment specifically provides that nothing contained therein shall constitute an admission or adjudication of the underlying complaint. Additionally, Mr. Senn denied the allegations at the time and continues to deny them today. As such, Mr. Senn has signed the Affirmation with the honest belief that he has not "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." (See CVMC, § 5.19.050(A)(1)(j).) The purpose of this letter is to be transparent regarding the events of Mr. Senn's past and to assure the City of the legitimacy of the attached Affirmation.

As the application materials show, Mr. Senn has operated lawful cannabis businesses in San Diego for many years and is a respected member of the cannabis business community. Mr. Senn hopes to bring his experience to Chula Vista and become a model member of the Chula Vista cannabis business community as well.

We appreciate your time and consideration. Please do not hesitate to contact Mr. Senn or me if you have any questions or would like any additional information.

Very truly yours,

Nathan A. Shaman

Encl.
CC: Client

-EXHIBIT 6 -

CITY OF CHULA VISTA

Office of the City Manager

June 10, 2019

Dear Applicant

The City of Chula Vista and HdL have completed review of phase 1A, 1B and the provisional background review for the Cannabis Applications. You have successfully completed this initial portion of the application process and will proceed to phase 1C, the interview and secondary ranking.

Your interview for submitter ID's 57064 and 57074 will be scheduled for 8:30 – 9:45 on July 17, 2019 at City Hall, 276 4th avenue, Chula Vista, 91910 in building A. Check in will be in Administration. The interview panel may consist of two staff from HDL with one staff member from the City of Chula Vista. We encourage you to bring members of your team in which you feel bring added value to your interview and may include the Applicant/Owner, Day-to-day on-site manager, security consultant, person familiar with your financial structure and fiscal operations and/or person with technical knowledge. You will be limited to a total of five individuals present during your interview. While preparing for the interview please keep in mind the following:

-The interview is scheduled to last 1.5 hours. Please go to the inside lobby in Administration and someone will come and get you.
- There will not be time for you to conduct a presentation, however if you choose to bring with you 3 copies of the material the panelists will agree to examine everything after all the interviews have been conducted.
- Please be prepared to answer questions on topics including but not limited to:

Relevant experience/Qualifications of your cannabis team.
Liquid assets – financial resources
Business Plan
Operating Plan

Furthermore, as part of the application process the fee for phase 1C "Interview and Second Ranking" $868 per submitter ID and Secondary Background Review fee of $347 per each individual secondary background is due. Please submit these fees prior to your scheduled interview by clicking here. We look forward to the upcoming discussion. Should you have any additional questions or concerns please feel free to contact me.

Please be aware that although your application is being forwarded for further assessment within Phase One of City's application process, your application has **not** been approved at this time. City reserves the right to reject or approve any and all applications based on the standards set forward in all applicable laws and regulations, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

Sincerely,

Kelley K. Bacon
Deputy City Manager
[redacted]

-EXHIBIT 7 -

CITY OF
CHULA VISTA

Sent by US Mail & Email:
May 6, 2020

Will Senn
[redacted]

Re: Notice of Decision – Commercial Cannabis Business Application
UL Chula Two LLC dba Urbn Leaf (Submitter ID: 57074) – Storefront Retailer

Dear Will Senn:

You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

This letter is issued pursuant to CVMC sections 5.19.050(A)(4) and 5.19.050(A)(6), and advises you that your application has been rejected. The application has been rejected for the following reasons, any one of which is a lawful basis for rejection under City's laws and regulations:

- The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure. (CVMC 5.19.050(A)(5)(f)). *The City of San Diego sanctioned William Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity.*
- The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction. (CVMC 5.19.050(A)(5)(g)). *William Senn was involved in unlawful Commercial Cannabis activity in the City of San Diego from approximately 2010 to 2012.*

The effective date of this decision is May 6, 2020. Please be advised that, pursuant to CVMC 5.19.050(A)(6), the applicant has the right to appeal this decision to the City Manager. **Any appeal must be in writing using a form approved by City, must describe the basis for the appeal, and must be received by the City no later than May 21, 2020**. A Request for Appeal form and appeal instructions can be obtained online at: www.chulavistaca.gov/cannabis.

Sincerely,

Roxana Kennedy

Roxana Kennedy, Chief of Police

-EXHIBIT 8 -

Megan McClurg

From: City of Chula Vista | 276 Fourth Avenue Chula Vista, CA 91910 <webmaster@chulavistaca.gov>
Sent: Thursday, May 21, 2020 3:25 PM
To: Megan McClurg; Simon Silva; Melanie Culuko
Subject: *NEW SUBMISSION* Request to Appeal Notice of Decision

Warning: External Email

Request to Appeal Notice of Decision

Submission #: 334517
IP Address: [redacted]
Submission Date: 05/21/2020 3:24
Survey Time: 24 minutes, 15 seconds

You have a new online form submission.
Note: all answers displaying "*****" are marked as sensitive and must be viewed after your login.

1. Applicant Name

Willie Senn

2. What type of appeal are you filing?

Consolidated Request to Appeal Notices of Decision (please note: a consolidated request to appeal is permitted if you received more than one Notice of Decision and the grounds for rejection contained in such Notices of Decision are identical)

3. Submitter ID Number(s):

57064, 57069, 57074, 58388

4. Please upload a copy of each Notice of Decision you are appealing. If you are appealing more than one Notice of Decision, please combine copies of all Notice of Decision letters into one PDF document that you upload.

All Notices of Decision.pdf

5. Basis for Appeal: I hereby appeal the Notice(s) of Decision issued to me that I have identified above. My appeal request is based on the following information (please note: you must identify all bases for appeal on a document attached to this request form):

Grounds for Appeal.pdf

6. Hearing Type Request

Virtual. I hereby waive my right to an in person appeal hearing. I instead request a virtual appeal hearing (via webcast). I understand that I will be notified 15 days in advance of the time, date, and process for the hearing. I understand that if I fail to appear at the hearing, I forfeit my appeal fee and waive my right to a hearing. I understand that if I appear more than 10 minutes late, the hearing officer may determine that I have failed to appear, forfeited my appeal fee, and waived my right to a hearing.

7. Cannabis License Application Appeal Fees

Consolidated Request to Appeal Notices of Decision ($3,276.00) - Quantity: 1

8. If you are submitting a Consolidated Request to Appeal Notices of Decision, please enter the number of each additional Notice of Decision you are appealing below.

$500.00 - Quantity: 3

9. Total Cannabis License Application Appeal Payment

ITEM	PRICE	QUANTITY	SUBTOTAL
Consolidated Request to Appeal Notices of Decision	$3,276.00	1	$3,276.00
Single Item Payment	$500.00	3	$1,500.00

Sub Total: $4,776.00
Tax: $0.00
Grand Total: $4,776.00

Read-Only Content

10. Appellant Address

[redacted]

11. Appellant Email

[redacted]

12. Appellant Phone Number

[redacted]

13. Signature

I certify that the information submitted in this Request to Appeal Notice of Decision is true and correct.
I have full signatory authority to act on behalf of the Appellant identified above.

14. Type Full Name

Willie Frank Senn

Read-Only Content

15. Optional Designation of Representative

Nathan Aaron Shaman, [redacted]

Thank you,
City of Chula Vista

This is an automated message generated by the Vision Content Management System™. Please do not reply directly to this email.

Nathan Shaman (SBN 272928)
General Counsel
Urbn Leaf
[redacted]

Attorney for Applicants 2446 Main Street LLC,
UL Chula One LLC, and UL Chula Two LLC

CITY OF CHULA VISTA

OFFICE OF THE CITY MANAGER

2446 MAIN STREET LLC, a California limited liability company, UL CHULA ONE LLC, a California limited liability company, and UL CHULA TWO LLC, a California limited liability company, Appellants, vs. ROXANA KENNEDY, in her capacity of Chief of Police of the City of Chula Vista, Respondent.	Submitter IDs: 57064, 57069, 57074, 58388 **APPELLANTS' CONSOLIDATED REQUEST TO APPEAL NOTICES OF DECISION**

PLEASE TAKE NOTICE that Appellants 2446 Main Street LLC, UL Chula One LLC, and UL Chula Two LLC (Appellants) hereby file this Consolidated Request to Appeal (Appeal) Notices of Decision (NODs) issued by Respondent Roxana Kennedy (Chief Kennedy), dated May 6, 2020, rejecting Appellants' applications for commercial cannabis business licenses in the City of Chula Vista. This is appeal is filed in accordance with Chula Vista Municipal Code section 5.19.050(A)(5) and Chula Vista Cannabis Regulations section 0501(P).

Pursuant to Chula Vista Cannabis Regulations section 0501(P)(2), Appellants hereby request a virtual hearing on this Appeal.

This Appeal is made on the basis that all NODs were issued in error on the following grounds:

1. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will Senn, an Owner of each of Appellants, was adversely sanctioned or penalized by the City of Chula Vista, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol license.

2. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will Senn, an Owner of each of Appellants, conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

3. To the extent the City Manager determines there is relevant, admissible to sustain Chief Kennedy's decisions, Appellants ask that the City Manager exercise discretion to set aside such decisions for the following reasons:

a. The alleged violations are stale as they are eight years old.

b. The alleged violations were technical violations of land-use and building code ordinances that did not pertain to cannabis.

c. The alleged violations occurred during a time in which state law, pursuant to the Medical Marijuana Program Act, generally allowed for the existence of medical marijuana collectives and cooperatives, but during which time neither state nor City of San Diego law contained any specific regulation of commercial cannabis businesses.

d. Today, Will Senn operates the most successful cannabis retailer in San Diego and one of the most successful cannabis retailers in California. In addition to Urbn Leaf's flagship location in the Bay Park neighborhood of San Diego, Will Senn also operates three other retail cannabis facilities under the Urbn Leaf brand: one in San

Ysidro, one in Grover Beach, CA, and one in Seaside, CA. Will Senn was the co-founder of the City of San Diego's cannabis trade group, the United Medical Marijuana Coalition, and has spearheaded the creation and maintenance of deep cooperation with San Diego officials in addition to forming solid, cooperative relationships with officials in all other locations in which Urbn Leaf operates.

This Appeal is further made on the basis that the NODs corresponding to Submitter IDs 57064 and 57069 were issued in error on the following grounds:

1. The scores of the respective applications were calculated incorrectly to the extent that such scores or any components thereof were based in part or in full on any finding, belief, or opinion that Will Senn was:

   a. adversely sanctioned or penalized by the City of Chula Vista, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol license; or

   b. conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

Dated: May 21, 2020

APPELLANTS

By: _____

Nathan Shaman
Attorney for Appellants

-EXHIBIT 9 -

FILED
SAN DIEGO SUPERIOR COURT
MAY - 3 2019
CLERK OF THE SUPERIOR COURT
BY: T. RAY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

THE HOLISTIC CAFÉ, INC., a California nonprofit mutual benefit corporation; WILLIE FRANK SENN, as an individual, as president of THE HOLISTIC CAFÉ, INC., and as chief executive officer of THE HOLISTIC CAFÉ, INC.; PATRICK IAN CARROLL, as an individual and as secretary of THE HOLISTIC CAFÉ, INC.; ZACHARY ROMAN, as an individual and as chief financial officer of THE HOLISTIC CAFÉ, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2012-00087648-CU-MC-CTL

[P[redacted] ORDER AMENDING JUDGMENT ENTERED DECEMBER 14, 2012, AS TO DEFENDANT WILLIE FRANK SENN

Action Filed: December 12, 2012
Judgment Entered: December 14, 2012

THE COURT, having read and considered the motion by Defendant Willie Frank Senn to amend the Stipulated Judgment for Entry of Final Judgment in its Entirety and Permanent Injunction (Judgment) entered by this Court on December 14, 2012; opposition by the City of San Diego; and oral argument by the parties on May 3, 2019, hereby orders that the Judgment be amended as follows:

///

Subparagraphs 6(a), 6(b) and 6(c) of the Judgment are deleted and replaced by the following language:

> Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana outlet or marijuana production facility anywhere in the City of San Diego without first obtaining all permits required per the San Diego Municipal Code, including, but not limited to, a Conditional Use Permit.

All other provisions of the Judgment remain in full force and effect.

Dated: _____, 2019

5/3/19

JUDGE OF THE SUPERIOR COURT

-EXHIBIT 10 -

IN THE MATTER OF URBN LEAF:

CITY OF CHULA VISTA FINDINGS AND STATEMENT OF DECISION WITH REGARD APPEAL OF NOTICE OF DECISION REJECTING APPLICATION FOR CANNABIS LICENSE

An appeal hearing regarding Notices of Decision rejecting applications for cannabis licenses by Urbn Leaf was heard on June 10, 2020, via teleconference by stipulation of the parties, at the City of Chula Vista Civic Center, located at 276 Fourth Avenue, Chula Vista, California 91910. City Manager Gary Halbert acted as the lone Hearing Officer. Simon Silva, Deputy City Attorney, was present and served as advisor to the Hearing Officer. The matter was recorded via WebEx.

Appellant (Willie Frank Senn AKA Will Senn) was represented by Nathan Shaman, Esq. Appellant did not testify nor was any evidence or exhibits presented on his behalf. Appellant filed a hearing brief dated June 5, 2020. The brief is not an evidentiary exhibit but is part of the record.

The City was represented by Megan McClurg. The following City witnesses were sworn in and testified for the City: CVPD Sgt. Mike Varga, Kelly Broughton (DSD director), and Mr. Mathew Eaton of HdL. The City introduced and had admitted Exhibits 1 to 16. Appellant objected to City Exhibits 8-13, but they were admitted over her objections regarding relevance, authentication, foundation, and reliability. While the Hearing Officer admitted the exhibits, he did so subject to determining what appropriate weight to give such exhibits. (See Attachment 1.)

The Chula Vista City Charter ("Charter"), the Chula Vista Municipal Code ("CVMC"), including Chapter 5.19, and City Cannabis Regulations ("Regulation(s)") were also admitted into evidence, via judicial notice, without objection.

Appellant bears the burden of proof and must show error by a preponderance of the evidence.

FINDINGS

Having reviewed and considered the evidence in this matter, including the testimony of witnesses and admitted exhibits, the Hearing Officer makes the following findings of fact and determinations, based on a preponderance of evidence:

1. Appellant applied for four cannabis licenses under submitter ID numbers 57064 [Retailer-D2], 57069 [Retailer-D3], 57074[Retailer-D1], and 58388 [Manufacturer]. Appellant was subsequently sent four Notices of Decision ("NOD") dated May 6, 2020, for all four ID numbers, denying the applications for cannabis licenses. All four applications were denied

pursuant to CVMC section 5.19.050(A)(5)(f) and (g) because Appellant was involved in Unlawful Cannabis Activity. Applications 57064 and 57069 were also denied pursuant to CVMC 5.19.050(A)(7) and Chula Vista Cannabis Regulation 0501(N) for not scoring high enough to proceed to Phase Two of the application process, having scored 900.3. (City Exhibit 1.)

2. Appellant filed timely notices of appeal. Appellant, in support of his appeal, with regard to all four applications, made the following claims of error: (1) that he was denied Due Process because the Notices of Decision did not provide sufficient notice as to when the Unlawful Cannabis Activity took place; (2) the City of San Diego did not have any laws applicable to marijuana dispensaries that fell within the meaning of CVMC section 5.19.050(A)(5)(f) and (g) in 2010 through 2012; and that the City's evidence used to support the Unlawful Commercial Activity allegations (City Exhibits 8-13), was irrelevant, hearsay, lacked authentication/foundation, and was unreliable. With regard to application 57064 and 57069, Appellant also claimed there may be error in his score of 900.3 if the Unlawful Cannabis Activity allegations were considered in the scoring. Finally, he asks the City to exercise its discretion and not consider the Unlawful Cannabis Activity allegations to deny the applications.

3. With regard to Appellant's Due Process claim that he did not receive sufficient notice of when the Unlawful Cannabis Activity took place, the evidence showed the following. Appellant was issued four Notices of Decision. They were all the same regarding allegations involving Unlawful Cannabis Activity. Appellant argues there was insufficient notice as to when the alleged violations occurred. There are no formal rules of pleading with regard to Notices of Decision. Instead, the issue is whether Appellant had sufficient notice as to the time frame when the Unlawful Cannabis Activities occurred. The evidence supports the conclusion Appellant had notice as to the time frame in which he was alleged to have engaged in the Unlawful Cannabis Activity.

   The NOD provides notice that the Unlawful Cannabis Activity took place between 2010 and 2012 in the City of San Diego, specifically at the Holistic Café. That time frame is bolstered and explained by the evidence that was provided to Appellant by the City via its exhibits.

   For example, Exhibit 8 (City of San Diego Notice of Violation) explains that 415 University Avenue operated as the Holistic Café and that it had been an unpermitted dispensary since 2011 with inspections on May 14, 2012 and May 17, 2012. Exhibit 11 (City of San Diego email) also provides notice as to the time frame by requesting an inspection of The Holistic Café premises which was operating as a marijuana dispensary on May 10, 2012. Exhibit 12 (Unlawful Detainer Documents) also provides notice as to

when the Unlawful Cannabis Activity was taking place. The "Three Day Notice to Surrender Possession," dated February 12, 2012, stated, "You are required to surrender possession of the premises as you are in violation of zoning laws of the City of San Diego for operating a medical marijuana dispensary and selling marijuana. Due to illegal activity, you must cease operation and vacate the premises." Exhibit 13 (Complaint and Stipulated Judgement) further provides notice that the Unlawful Cannabis Activity was alleged to have occurred between 2010 and 2012. Exhibit 13 also provides notice that Appellant was President and Chief Executive Officer of the Holistic Café, which as operating as an unpermitted marijuana dispensary.

Accordingly, when looking at everything as a whole, Appellant had ample notice that the alleged Unlawful Cannabis Activities took place between 2010 and 2012 in the City of San Diego, specifically at the Holistic Café. Thus, he could have presented a defense that he did not engage in any Unlawful Cannabis Activities between 2010 and 2012. Appellant has failed to meet his burden and prove by the preponderance of the evidence error and, as such, this claim of error cannot support the granting of Appellant's appeal.

4. With regard to Appellant's claim of error that there were no laws in the City of San Diego between 2010 and 2012 that were applicable to cannabis dispensaries, the record shows as follows. The City of Chula Vista Municipal Code has two sections that address the denial of a license for Unlawful Cannabis Activity, CVMC section 5.19.050(A)(5)(f) and (g).

   With regard to CVMC section 5.19.050(A)(5)(f), it states "The Applicant, an Owner, a Manager, and/or Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure." Thus, this section requires, that there be a city, county, or state law or regulation related to Commercial Cannabis Activity. Specific state licensing and local licensing of cannabis dispensaries went into effect in 2016. Prior to that time frame, as Sgt. Varga testified, cannabis dispensaries were regulated via zoning laws and in particular in the City of San Diego as unpermitted businesses. San Diego Municipal Code section 1512.0305(a) prohibited any "use" that was not listed in table 1512-031 and indicated with a "P." Operating a marijuana dispensary was not listed as an allowable use in the aforementioned table and, hence, unlawful. Here, the record shows that Appellant was the President and CEO of the Holistic Café, which was operating as a marijuana dispensary. Appellant presented no evidence to the contrary, even though he was present and declined to testify when asked if he would testify by the City. It is Appellant's burden to show error. As a result, Appellant's conduct violated the San Diego Municipal Code which was related to Commercial Cannabis Activity and his cannabis license applications were properly denied pursuant to CVMC 5.19.505(A)(5)(f).

With regard to CVMC section 5.19.050(A)(5)(g), it states, "The Applicant, an Owner, a Manager, and/or Officer has conducted, facilitated, caused, aided, abetted, suffered, concealed unlawful Commercial Cannabis Activity." Thus, this section focuses on Appellant's involvement in unlawful Commercial Cannabis Activity. Here, the record shows that Appellant was the President and CEO of the Holistic Café, which was operating as an unpermitted marijuana dispensary. Appellant presented no evidence to the contrary, even though he was present and declined to testify when asked to testify by the City. It was Appellant's burden to show error. The record shows Appellant engaged in Unlawful Cannabis Activity and, as a result, his cannabis license applications were properly denied pursuant to CVMC 5.19.505(A)(5)(g).

Accordingly, in light of the above, Appellant has failed to meet his burden and show error by a preponderance of the evidence. As a result, this claim does not support the granting of his appeal.

5. With regard to Appellant's claim of error that the City's evidence (City Exhibits 8-13) to support the Unlawful Commercial Activity allegations was irrelevant, hearsay, lacked authentication/foundation, and was unreliable, the evidence shows as follows. The instant hearing is not a court proceeding and is not subject to the technical rules of evidence. Chula Vista Cannabis Regulation 0501(P)(2)(c) provides as follows, "The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to the technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded." Thus, Appellant's Evidence Code objections are not applicable. Instead, the evidence is admissible if it is relevant and reliable. The preponderance of the evidence showed that it was relevant and reliable.

   First, City's Exhibits 8-13 are relevant. Evidence is relevant if it has a tendency in reason to prove or disprove a material issue. (See Evidence Code section 210.) Here, the issue was whether Appellant was involved in Unlawful Cannabis Activity or violated a law involving Unlawful Cannabis. Exhibits 8-13, individually and collectively, showed that Appellant was President and CEO of the Holistic Café (City Exhibit 13); that it had been operating as a unpermitted marijuana dispensary resulting in a Notice of Violation (Exhibit 8) and subsequent civil complaint (Exhibit 13); that it had been the subject of inspection requests due to its operations as a marijuana dispensary (Exhibit 11); and that as a result of the unlawful marijuana dispensary activity an unlawful detainer action to evict the Holistic

Café was initiated (Exhibit 12). As a result, the exhibits were relevant to prove Appellant's alleged Unlawful Cannabis Activities.

Second, Exhibits 8-13, individually and collectively, were of the kind that reasonable persons rely on in making decisions and therefore reliable. The following facts support such a conclusion. The separate exhibits are in a logical sequence and of the type a reasonable person would rely upon in pursuing a code violation--the property owner sought to evict the Holistic Café because it was operating as an unpermitted marijuana dispensary (Exhibit 12); thereafter, an inspection was requested because the Holistic Café was identified as an unpermitted dispensary (Exhibit 11); because the Holistic Café was operating as an unpermitted dispensary a Notice of Violation ("NOV") was issued by the City of San Diego (Exhibit 8); because there was no compliance with the NOV, the City of San Diego initiated a civil complaint (for the same violations listed in the NOV) (Exhibit 13); and the civil complaint was settled via Stipulated Judgement (Exhibit 13). The documents are reliable because they were consistent with the process and of the type (unlawful detainer, NOV, and civil complaint) used in pursuing this type of code violation. The documents are also reliable because they involve different parties--the City of San Diego and the property owner. The unlawful detainer action (Exhibit 12) and civil complaint (Exhibit 13) were filed in court. The exhibits make references to Willie Frank Senn (Exhibit 13) and Will Senn (Exhibit 8) as being involved with the Holistic Café, which was operating an unpermitted marijuana dispensary. Appellant lists his name as Willie Frank Senn, and his AKA as Will Senn in the current cannabis license application. The subject of the exhibits involves the operation of a marijuana dispensary, where Willie Frank Senn AKA Will Senn is the president of the operating business. Here, Appellant (Willie Frank Senn AKA Will Senn) seeks a license to operate a marijuana dispensary as president of the operating business. Appellant presented no evidence that he was not involved in the Unlawful Commercial Activity. Appellant, who was present, and when requested to testify by the City, declined. Appellant has the burden to demonstrate error. Appellant did not meet his burden in this matter. As a result, this claim of error does not support the granting of the appeal.

6. Appellant requests that the City exercise its discretion and not consider the allegations that Appellant engaged in Unlawful Cannabis Activities. The Hearing Officer declines Appellant's request to forgo consideration of any prior Unlawful Cannabis Activities. Allegations of Unlawful Cannabis Activities are serious allegations. Furthermore, Appellant did not present any witnesses, including that of Mr. Senn who was present, to support such a request. Arguments, as set forth in his briefing and arguments, are not evidence. As a result, the Hearing Officer declines Appellant's request.

7. With regard to the applications 57064 and 57069, Appellant claims there might be error if the City considered the alleged Unlawful Cannabis Activities in determining his score of 900.3. The preponderance of the evidence shows, as testified to by Mr. Broughton and Mr. Eaton, that Appellant's alleged Unlawful Cannabis Activities were not considered in scoring Appellant's Retailer Applications. Appellant presented no evidence in opposition to such testimony. Indeed, Appellant presented no at all evidence in the matter. Thus, Appellant did not show any error in the scoring of his applications and this cannot be a basis to grant his appeal with regard to applications 57064 and 57069.

DECISION

Based upon the above, the preponderance of the evidence that has been presented shows that Appellant has failed to meet his burden and show error. Instead, for the reasons stated above, Appellant arguments lack merit and the evidence shows the City reasonably and properly denied Appellant's application. As a result, Appellant's appeal is denied.

NOTICE PURSUANT TO CODE OF CIVIL PROCEDURE 1094.5

Notice is hereby provided that Appellant may appeal this decision by filing an appeal in the San Diego Superior Court pursuant to Code of Civil Procedure 1094.5 on or before the 90th day after this decision is final. This decision is deemed final on the date of mailing noted in the attached Certificate of Mailing/Proof of Service.

IT IS SO ORDERED:

By: Gary Halbert
Gary Halbert, City Manager
Hearing Officer

Attachments:
1. City's Exhibit List
2. Certificate of Mailing/Proof of Service

IN THE MATTER OF URBN LEAF:
City's Exhibit List

Exhibit 1:	Notice of Decision
Exhibit 2:	Urbn Leaf's Request to Appeal
Exhibit 3:	Amended Notice of Hearing
Exhibit 4:	Cannabis Application Scoring Matrix
Exhibit 5:	HdL Application Review Scores
Exhibit 6:	HdL Interview Scores
Exhibit 7:	HdL Combined Application and Interview Scores
Exhibit 8:	City of San Diego Notice of Violation
Exhibit 9:	Photos of Holistic Cafe
Exhibit 10:	San Diego Business Tax Information
Exhibit 11:	Email Declining Inspection
Exhibit 12:	Unlawful Detainer
Exhibit 13:	Complaint & Stipulated Judgment
Exhibit 14:	Will Senn Police Controlled License Application
Exhibit 15:	Application Conviction Supplement Form
Exhibit 16:	Submitted Conviction Supplement Response

CERTIFICATE OF SERVICE

I, the undersigned certify and declare:

I am over the age of 18, employed in the County of San Diego, State of California. I am not a party to the within action; my business address is 276 Fourth Avenue, Chula Vista, California, 91910.

On August 26, 2020, I served the foregoing document described as:

- **CITY OF CHULA VISTA FINDINGS AND STATEMENT OF DECISION WITH REGARD APPEAL OF NOTICE OF DECISION REJECTING APPLICATION FOR CANNABIS LICENSE**

on the interested parties in this action and in the manner of service designated below:

Appellant:
Willie Senn
[redacted]

☒ BY U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Chula Vista, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☒ BY ELECTRONIC SERVICE based upon court order or an agreement of the parties to accept service by electronic transmission, by electronically mailing the document(s) listed above to the e-mail address(es) set forth above, or as stated on the attached service list and/or by electronically notifying the parties set forth above that the document(s) listed above can be located and downloaded from the hyperlink provided. No error was received, within a reasonable time after the transmission, nor any electronic message or other indication that the transmission was unsuccessful.

Executed on this 26th day of August 2020 at Chula Vista, County of San Diego, California. I declare, under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Marisa Aguayo
MARISA AGUAYO

-EXHIBIT 11 -

[redacted]
San Diego, CA 92110
www.urbnleaf.com
[redacted]

September 3, 2020

Via Certified Mail,
Return Receipt Requested

Kerry K. Bigelow, MMC
City Clerk, City of Chula Vista
276 Fourth Ave., Bldg. A
Chula Vista, CA 91910

Re: Request for Administrative Record of Proceedings Before City Manager/Hearing Officer Gary Halbert on June 10, 2020 as to Appeal of Denial of Application for Cannabis Storefront Retailer License, Submitter I.D. 57074

Ms. Bigelow

I represent UL Chula Two LLC and Willie Frank Senn in regard to the above-referenced matter.

Pursuant to Code of Civil Procedure section 1094.6(c) and Section 1.40.020(H) of the Chula Vista Municipal Code, UL Chula Two LLC and Willie Frank Senn hereby request that the City of Chula Vista prepare the complete record of the proceedings referenced above as soon as possible. Such record shall include the transcript of the proceedings before City Manager and/or any recordings thereof as well as all pleadings, all notices and orders, all proposed decisions, all final decisions, and all admitted exhibits from such proceedings, all rejected exhibits in the possession of the City of Chula Vista, or any agent thereof, all written evidence submitted to the City Manager, and any other papers related to the proceedings.

Please contact me at your earliest convenience with an estimate of the actual costs of transcribing or otherwise preparing the record.

Very truly yours,

Nathan A. Shaman
General Counsel, Urbn Leaf
[redacted]

-EXHIBIT 12 -

FILED
CIVIL [illegible] OFFICE 8
[illegible]
12 DEC 14 AM 8:05
No Fee CC §6103
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA
FILED
Clerk of the Superior Court
DEC 14 2012
By: _____ Deputy

JAN I. GOLDSMITH, City Attorney
JON D. DWYER, Deputy City Attorney
California State Bar No. 233123
Office of the City Attorney
Community Justice Division/Code Enforcement Unit
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone: (619) 533-5655
Fax: (619) 533-5696
JDwyer@sandiego.gov

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. THE HOLISTIC CAFÉ, INC., a California nonprofit mutual benefit corporation; WILLIE FRANK SENN, as an individual, as president of THE HOLISTIC CAFÉ, INC., and as chief executive officer of THE HOLISTIC CAFÉ, INC.; PATRICK IAN CARROLL, as an individual and as secretary of THE HOLISTIC CAFÉ, INC.; ZACHARY ROMAN, as an individual and as chief financial officer of THE HOLISTIC CAFÉ, INC.; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2012-00087648-CU-MC-CTL UNLIMITED JURISDICTION COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City Attorney, by Jon D. Dwyer, Deputy City Attorney, alleges the following based on information and belief:

JURISDICTION AND VENUE

1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526, seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as alleged in this Complaint, and seeks a preliminary injunction and permanent injunction

prohibiting Defendants from operating or maintaining a marijuana dispensary, cooperative, or collective, or other distribution or sales business; and also seeks to obtain civil penalties, costs and other equitable relief for the Defendants' violations of law.

2. The omission or commission of acts and violations of law by Defendants as alleged in this Complaint occurred within the City of San Diego, State of California. Each Defendant at all times mentioned in this Complaint has transacted business within the City of San Diego, State of California, or is a resident of San Diego County, within the State of California, or both.

3. The property where the business acts and practices described in this Complaint were performed is located in the City of San Diego.

THE PARTIES

4. At all times mentioned in this Complaint, Plaintiff City of San Diego, is a municipal corporation and a chartered city, organized and existing under the laws of the State of California.

5. Defendant THE HOLISTIC CAFÉ, INC. (HOLISTIC CAFÉ), is a California nonprofit mutual benefit corporation, organized and existing under the laws of the State of California, according to the California Secretary of State corporate filing number C3252464. At all times relevant to this action HOLISTIC CAFÉ was and is conducting business as a marijuana dispensary, which is also commonly known as a collective or cooperative, at 415 University Avenue, San Diego, California (PROPERTY) within the City of San Diego.

6. Defendant WILLIE FRANK SENN (SENN) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, SENN was and is the President and/or Chief Executive Officer of HOLISTIC CAFÉ which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

7. Defendant PATRICK IAN CARROLL (CARROLL) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, CARROLL was and is the Secretary of HOLISTIC CAFÉ, which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

8. Defendant ZACHARY ROMAN (ROMAN) is an individual and resident of and/or transacts business in the County of San Diego, State of California. At all times relevant to this action, ROMAN was and is the Chief Financial Officer of HOLISTIC CAFÉ which has been doing business at the PROPERTY according to the California Secretary of State corporate filing number C3252464.

9. Defendants HOLISTIC CAFÉ, SENN, CARROLL, and ROMAN will sometimes be referred to independently and sometimes collectively as the "MD OPERATORS."

10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the provisions of California Code of Civil Procedure section 474, their true names and capacities being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to amend this Complaint and to insert in lieu of such fictitious names the true names and capacities of DOES 1 through 50 when ascertained.

11. At all relevant times mentioned in this Complaint, all Defendants were and are agents, principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers of each other Defendant and at all times were acting within the course, purpose and scope of said relationship and with the authorization or consent of each of their co-defendants.

PROPERTY

12. The PROPERTY where the marijuana dispensary is operating consists of one parcel of land developed with a two-story building consisting of both residential and commercial space. The address of the PROPERTY is 415 University Avenue, San Diego, County of San Diego, State of California. The PROPERTY is also identified as Assessor's Parcel Number 452-056-01-00, according to San Diego County Recorder's Grant Deed document No. 2006-0529341, filed July 26, 2006. The legal description of the PROPERTY is:

/ / / / /

/ / / / /

/ / / / /

University Retail Apartments, (401-425 University Avenue, San Diego, California 92103) Lots 1 and 2 in Block 3 of Nutt's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereon No. 628, filed in the Office of the County Recorder of said County, April 8, 1890.

13. The PROPERTY is located in the Mid-City Communities Planned District CN-1A zone in the City of San Diego. It was originally constructed in 1913, as a two story structure with commercial suites on the first floor and nine residential dwelling units on the second floor.

14. The Grant Deed lists the owner of the PROPERTY as Uptown University, LLC, a California Limited Liability Company.

FACTUAL ALLEGATIONS

15. SDMC section 1512.0305 and corresponding Table 1512-03I list the permitted uses in the CN-1A zone in the Mid-City Communities Planned District where the PROPERTY is located. The operation or maintenance of a marijuana dispensary, collective, or cooperation is not one of the listed permitted uses in the SDMC section or table.

16. The operation or maintenance of a marijuana dispensary is not a permitted use in any zone designation under the SDMC.

17. On August 24, 2009, attorney DAVID SPECKMAN, listed as "Officer/Pres" of HOLISTIC CAFÉ, submitted an application for a Business Tax Certificate (BTC) to the San Diego City Treasurer's Office, listing "The Holistic Café, Inc. " as the business name and 415 University Avenue as the address. The application described the primary business activity of the HOLISTIC CAFÉ as the "sale of herbal remedies; teas; health products." No mention of marijuana appeared in the application. The application listed the start date of the business as August 24, 2009.

18. On May 17, 2012, the San Diego Business Tax Program sent a letter cancelling the Defendants' Business Tax Certificate.

19. Defendants have not taken any action to file an application with the San Diego Development Services Department (DSD) pursuant to SDMC section 131.0110(b) to request that the Planning Commission make a use determination.

20. Plaintiff is informed and believes that the MD OPERATORS opened for business at the PROPERTY since at least August 24, 2009.

21. On or about May 24, 2010, the Code Enforcement Section (CES) of the DSD, previously known as the Neighborhood Code Compliance Division received a request for investigation regarding an illegal marijuana dispensary operating at the PROPERTY.

22. On July 26, 2010, CES staff inspected the PROPERTY and observed numerous building code violations and the operation of a marijuana dispensary.

23. On February 24, 2012, the PROPERTY owner served Defendants with a 3-day notice to vacate the PROPERTY.

24. Defendants did not vacate the PROPERTY, and on April 6, 2012 the PROPERTY owner filed an unlawful detainer action against Defendant HOLISTIC CAFÉ in case 37-2012-00043424-CL-UD-CTL, which is pending trial.

25. On May 17, 2012, CES's Combination Building Inspector II Renee Kinninger (Inspector Kinninger) inspected the PROPERTY and again confirmed that HOLISTIC CAFÉ was operating a marijuana dispensary at the PROPERTY in violation of the City's zoning laws. She also observed that the building code violations previously observed in 2010 had not been corrected.

26. Through inspection of the PROPERTY and research of City records, Inspector Kinninger determined that the building had been illegally divided into a reception area with non-permitted lighting, grid ceiling, and other building and electrical modifications.

27. On or about May 22, 2012, CES issued Defendants and the property owners a Notice of Violation (NOV) which outlined the code violations observed at the PROPERTY. The NOV required Defendants to immediately cease operating or maintaining the marijuana dispensary in violation of zoning laws, to remove non-permitted signs advertising the business at the PROPERTY, to remove all electrical extension cords providing electrical service, and to schedule a complete inspection of the PROPERTY. Defendants were also ordered to obtain all required permits and submit an application with appropriate plans.

/ / / / /

28. On October 4, 2012, City Attorney Investigator Deanna Walker visited the PROPERTY and confirmed that the MD OPERATORS are continuing to operate their business in defiance of the law. The MD OPERATORS also continue to advertise their business as verified by recent advertising on the Internet, including their own website.

29. Currently no record exists with the City of San Diego indicating the required permits were obtained for PROPERTY in its current state.

30. Plaintiff has no adequate remedy at law other than this action. Defendants are blatantly and willfully in violation of the SDMC and will continue to maintain the unlawful code violations in the future unless the Court enjoins and prohibits such conduct.

FIRST AND ONLY CAUSE OF ACTION

VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

31. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 29 of this Complaint as though fully set forth here in their entirety.

32. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code[1], without a required permit, contrary to permit conditions, or without a required variance."

33. The PROPERTY is located in a Mid-City Communities Planned District CN-1A zone. SDMC section 1512.0305 governs the uses allowed in a Mid-City Communities Planned District CN-1A zone. Table 1512-03I does not list a marijuana dispensary, cooperative, or collective as a permitted use. Beginning on an exact date unknown to Plaintiff but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY for a purpose or activity not listed in SDMC section 1512.0305 and Table 1512-03I, in direct violation of SDMC sections 121.0302(a) and 1512.0305.

34. SDMC section 129.0202(a) provides "No *structure* regulated by the Land Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted,

[1] SDMC §111.0101 (a) Chapters 11, 12, 13,14, and 15 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

permanently relocated or partially demolished unless a separate Building Permit for each *structure* has first been obtained from the Building Official." Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain a building permit for structural work in violation of SDMC sections 121.0302(a) and 129.0202.

35. SDMC section 129.0111 requires inspections and approvals by a Building Official for all structural work. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required building inspections and approvals for structural work in violation of SDMC section 129.0111.

36. SDMC section 129.0302 makes it unlawful to install any electrical wiring, device, appliance, or equipment within or on any structure or premises, or to alter, add, or replace any existing wiring, device, appliance, or equipment unless a separate Electrical Permit has been obtained for such work. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required electrical permit for electrical work in violation of SDMC sections 121.0302(a) and129.0302.

37. SDMC section 129.0314 requires that inspections and approvals be obtained from the City Building Official for all electrical permits. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain inspections and approvals for electrical work in violation of SDMC section 129.0314.

38. SDMC section 129.0802 requires that a sign permit be obtained for each sign that is installed or altered. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to obtain the required sign permit for sign installation in violation of SDMC section 129.0802.

/ / / / /

39. The 2010 California Electrical Code section 400.8, as adopted by SDMC section 146.0104, makes it unlawful to use extension cord wiring for electrical service. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by using electrical extension cord wiring to provide electrical service to equipment and lighting in violation of SDMC section 146.0104.

40. The 2010 California Electrical Code section 314.28, as adopted by SDMC section 146.0104, makes it unlawful to fail to provide compatible covers for junction boxes. Beginning on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in violation of the SDMC by failing to maintain covers over electrical components visible in the reception area ceiling in violation of SDMC section 146.0104.

41. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between land uses. Irreparable harm will be suffered by Plaintiff in that the City's land use scheme and regulations under the Municipal Code become meaningless and the public is left unprotected from the direct and indirect negative effects associated with unpermitted and incompatible uses in their neighborhoods.

42. Absent injunctive relief, the justifiable expectation by citizens that state law and local zoning laws be enforced and their safety and quality of life be protected, remains frustrated. Despite a formal Notice of Violation from CES, Defendants have failed and refused to comply with the law and there is no expectation they will change their behavior.

43. Defendants are willfully violating the law and continue to operate their business. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit Defendants from violating the law.

/ / / / /

/ / / / /

/ / / / /

/ / / / /

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. That the PROPERTY be declared in violation of:

San Diego Municipal Code sections

1512.0305	121.0302
129.0202	129.0111
129.0302	129.0314
129.0802	146.0104

2. That pursuant to SDMC sections 12.0202, and 121.0311, California Code of Civil Procedure section 526, and the Court's inherent equity powers, the Court grant preliminary and permanent injunctions enjoining and restraining Defendants and their agents, servants, employees, partners, associates, officers, representatives and all persons acting under or in concert with or for Defendants, from engaging in any of the following acts:

a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health and Safety Code;

b. Maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY;

c. Maintaining, operating, or allowing the operation of any unpermitted use anywhere within the City of San Diego;

d. Maintaining signage on the PROPERTY advertising a marijuana dispensary;

e. Advertising in any manner, including on the Internet, the existence of any commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health and Safety Code at the PROPERTY;

f. Conducting any type of business within the City without first obtaining a business tax certificate;

g. Maintaining or performing any construction, electrical, or plumbing/mechanical work at the PROPERTY without first obtaining all required permits, inspections, and approvals; and

h. Violating any provisions of the SDMC at the PROPERTY.

3. That no later than 30 calendar days from the date of entry of judgment, Defendants obtain all applicable permits from DSD to correct any existing building, electrical, and plumbing/mechanical violations and timely call for inspections.

4. That Defendants allow personnel from the City of San Diego access to the PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

5. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the costs of investigation, as appropriate.

6. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of $2,500 per day for each and every SDMC violation maintained at the PROPERTY.

7. That Plaintiff be granted such other and further relief as the nature of the case may require and the Court deems appropriate.

Dated: December 14, 2012.

JAN I. GOLDSMITH, City Attorney

By _____
Jon D. Dwyer
Deputy City Attorney

Attorneys for Plaintiff

-EXHIBIT 13 -

FORMER SAN DIEGO MUNICIPAL CODE § 1512.0305 AND TABLE 1512-03I

(*Effective April 26, 2007 – Aug. 8, 2015)*

19598

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE MAR 27 2007

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO REPEALING CHAPTER 10, ARTICLE 3, DIVISION 15, OF THE SAN DIEGO MUNICIPAL CODE, AND AMENDING CHAPTER 15, BY ADDING ARTICLE 12, DIVISION 1 TITLED "GENERAL RULES," SECTIONS 1512.0101, 1512.0102, 1512.0103, AND 1512.0110; DIVISION 2 TITLED "PERMITS AND PROCEDURES," SECTIONS 1512.0201, 1512.0202, 1512.0203, AND 1512.0204; DIVISION 3 TITLED "ZONING," SECTIONS 1512.0301, 1512.0302, 1512.0303 , 1512.0304, 1512.0305, 1512.0306, 1512.0307, 1512.0308, 1512.0309, 1512.0310, 1512.0311, AND 1512.0312; DIVISION 4 TITLED "GENERAL AND SUPPLEMENTAL REGULATIONS," SECTIONS 1512.0401, 1512.0402, 1512.0403, 1512.0404, 1512.0405, 1512.0406, 1512.0407, AND 1512.0408, ALL RELATING TO THE MID-CITY PLANNED DISTRICT.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 10, Article 3, Division 15, is repealed, and Chapter 15 of the San Diego Municipal Code is amended by adding Article 12, Division 1, Sections 1512.0101, 1512.0102, 1512.0103 and 1512.0110, to read as follows:

Article 12: Mid-City Communities Planned District

Division 1: General Rules

§1512.0101 Purpose and Intent

The purpose of the Mid-City Communities Planned District is to assist in implementing the goals and objectives of the adopted community plans for older, developed communities generally located east of Interstate 5 and south of Interstate 8 and to assist in implementation of the Progress Guide and General

(I) Battered window openings with a minimum 6 inches depth on a minimum of all street facing windows

(J) Molded stucco wall detail

(3) Bungalow Style

(A) Lap siding on a minimum of all street elevations

(B) Entry porch

(C) Minimum 18 inch eaves with articulated rafter ends

(D) A minimum of one attic eyebrow

(E) Wood window frames

(F) A minimum of one brick masonry chimney per the 3 dwelling units

(G) Multi-panel entrance door

(H) A minimum of one window planter box

(I) Operable window shutters on a minimum of all windows facing a street

(J) Trim surrounding all windows

§1512.0305 Commercial Zones (CN, CL, CV, NP) - Permitted Uses

(a) No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor be used except for one or more of the purposes indicated with an "P" in Table 1512-03I. No use may be conducted outdoors on any premises except as indicated by footnote 4, or by specific reference.

Legend for Table 1512-03I

"P" = Permitted
"-" = Not Permitted

Table 1512-03I
Permitted Uses Table

Permitted Uses	**CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4**	**CL-2[6]**	**CN-3,4[2] CV-3[2]**	**CL-5[6]**	**NP-1,2,3**
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P[7]
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P[10]	P	P	P	-
Apparel Shops	P	P	P	P	-
Apparel Shops	P	P	P	P	-
Art Stores and Art Galleries	P	P	P	-	-
Automobile & Truck Sales, Rental Agencies (Usable Vehicles Only)	P[4]	P[4]	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P[8]	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P[9]	P	P[9]	P[1]H	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P[4]	P[4]	-	-	-
Book Stores (No Adult Book Stores Shall Be Permitted in the Cl-5 Zone)	P	P	P	P	-
Building Materials Stores, provided that open storage areas are completely enclosed by walls or buildings or a combination thereof; said walls and buildings shall be not less than 6 feet in height, and provided also there shall be no outdoor storage of merchandise, material, equipment or other goods to a height greater than that of any enclosing wall or building.	P	P	-	-	-

19593
PA 442

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Business and Professional Office Uses (not including Hiring Halls in the Cl-5 Zone). (Such Uses my include Accountants, Advertising Agencies, Architects, Attorneys, Contractors, Doctors, Engineers, Financial Institutions, Insurance Agencies, Medical Clinics (No Overnight Patients), Photographers, Real Estate Brokers, Securities Brokers, Surveyors and Graphic Artists.	P[1][9]	P[1]	P[1][9]	P[1]	P[1]
Business Machine Sales Display and Service	P	P	-	-	P[7]
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	P	-	-
Confectioneries	P	P	P	P	-
Curtain and Drapery and Upholstery Shops	P	P	P	P	-
Custom Shop for Curtains, Draperies, Floor Coverings, Upholstery and Wearing Apparel	P[3]	P[3]	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P[11]	-
Dry Cleaning Establishments (No Truck Delivery of Finished Cleaning)	P	P	-	P	-
Dry Cleaning and Laundry Establishments (also includes self-service)	P	P	P	P	-
Dry Good Stores	P	P	-	-	-
Electronic Data Processing, Tabulating, and Record Keeping Services	P	P	-	-	P[7]
Employment Agencies	P	P	-	-	-
Equipment and Tool Rental Establishments (No Man-ridden Equipment)	P	P	-	-	-
Feed Stores	P	P	-	-	-
Florists	P	P	P	P	-
Food Stores	P	P	P	P	-
Frozen Food Lockers	P	P	-	-	-
Funeral Parlors	P	P	-	-	-
Furniture Stores	P	P	-	-	-
Gymnasium and Health Studios	P	P	P	-	-
Hardware Stores	P	P	P	-	-
Hardware Stores, excluding the sale of Used Building Materials, Used Appliances and Used Plumbing Supplies	-	-	P	-	-
Hobby Shops	P	P	P	P	-
Hotels, Motels, and Time Share Projects	P	P	-	-	-
Ice Delivery Stations	P	P	-	-	-
Interior Decorators	P	P	P	-	-
Jewelry Stores	P	P	P	P	-

Permitted Uses	**CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4**	**CL-2[6]**	**CN-3,4[2] CV-3[2]**	**CL-5[6]**	**NP-1,2,3**
Labor Unions (No Hiring Halls) and Trade Associations	P	P	P	-	-
Laundries, if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	P[3]	P[3]	-	-	-
Liquor Stores	P	P	P	-	-
Live/Work Quarters	P(12)	P(12)	P(12)	-	-
Locksmith Shops	P	P	-	-	-
Medical Appliance Sales	P	P	-	-	-
Medical, Dental, Biological and X-ray Laboratories	P	P	P	-	-
Moving and Household Storage Facilities	P	P	-	-	-
Music Stores	P	P	P	-	-
Newspaper Plants	P	P	-	-	-
Nurseries-plants	P[4]	P[4]	P[4]	P[4]	-
Office Furniture and Equipment Sales	P	P	-	-	-
Paint and Wallpaper	P	P	P	P	-
Parking Lots-commercial	P	P	-	-	-
Parking Lots and Facilities, if accessory to a permitted primary use, on the same premises, except that facilities completely below grade need not be accessory.	-	-	P	-	-
Pawn Shops	P	P	-	-	-
Pet Shops	P	P	-	-	-
Pharmacies	P	P	-	-	P[7]
Photographic Studios and Retail Outlets	-	-	P	-	-
Photographic Studios	P	P	-	P	-
Photographic Equipment, Supplies and Film Processing Stores	P	P	-	-	-
Plumbing Shops, provided that any open storage areas are completely enclosed by walls, or buildings, or a combination thereof, not less than six feet in height, and provided also there shall be no outdoor storage of merchandise, materials, equipment or other goods, to a height greater than that of any enclosing wall or building.	P[3]	P[3]	-	-	-
Post Offices	P	P	-	-	-
Private Clubs, Fraternal Organizations and Lodges	P	P	P	P	P
Public Utility Electric Substations, Gas Regulators and Communications Equipment Buildings developed in accordance with building and landscaping plans approved by the City Manager.	P	P	-	-	-
Radio and Television Broadcasting Studios	P	P	P	P	-

O - 19598
PA 444

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Radio, Television and Home Appliance Repair Shops	P	P	P	P	-
Recreational Facilities, including Bowling Lanes, Miniature Golf Courses, Skating Rinks, Gymnasiums and Health Centers	P	P	-	-	-
Restaurants (In the Cl-5 Zone, excluding Drive-in and Drive-thru Restaurants and further excluding Live Entertainment and sale of all Intoxicating Beverages except Beer and Wine)	P[4]	P[4]	P[4]	P[4]	P[4]
Rug and Carpet Stores	P	P	P	-	-
Shoe Stores	P	P	P	P	-
Shoe Repair Shops	P	P	P	P	-
Sporting Goods Stores	P	P	P	-	-
Stationers	P	P	P	P	-
Storage Garages	P	P	-	-	-
Studios for Teaching of Art, Dancing and Music	P	P	P	P	-
Theaters, Nightclubs and Bars, with or without Live Entertainment, or any combination thereof (not permitted except by Conditional Use Permit if the size of the establishment exceeds 5,000 square feet in Gross Floor Area)	P	P	P	-	-
Tire Sales, Repair and Recapping Establishments, if entirely Within an Enclosed Building	P	P	-	-	-
Trade and Business Schools	-	-	-	-	-
Trailer Sales Agencies	P	P	-	-	-
Transportation Terminals	P	P	-	-	-
Travel Bureaus	P	P	-	-	-
Variety Stores	P	P	P	P	-
Wedding Chapels	P	P	-	-	-
Wholesaling or Warehousing of Goods and Merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 square feet.	P	P	-	-	-
Construction of Cabinets and Shelves, and Musical Instruments, or other Wood Working	-	P[3]	-	P[3]	-
Construction of Windows, Doors and Screens	-	P[3]	-	P[3]	-
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P[3]	-	P[3]	-
Repair of Tools, Machinery and Electronic Equipment	-	P[3]	-	-	-
Public Parks and Playgrounds	P	P	P	P	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Residential Development, in accordance with the regulations of the Mid-City Communities Planned District, according to the permitted densities of equivalent Multi-Family Zones as specified in the RM-3-9 Zone (Land Development Code Chapter 13, Article 1, Division 4 (Residential Base Zones) (e.g., One Dwelling Unit per 600 Square Feet)	P	P	P	P	P
Any other use which the Planning Commission may find to be similar in character to the uses, including accessory uses, numerated in this section and consistent with the purpose and intent of the particular zone in which it would be located. The adopted resolution embodying such finding shall be filed in the office of the City Clerk	P	P	P	P	P
Accessory Uses as Follows:					
Signs constructed, fabricated, erected, installed, attached, fastened, placed, positioned, operated, and abated in accordance with the regulations as set forth in Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations) subject to Section 1512.0408.	-	-	-	P	-
Accessory Uses determined by the Development Review Director to be appropriate in character and placement in relationship to a primary use.	P	P	P	P	P

Footnotes for Table 1512-03I

1

a. Facilities providing medical and counseling services which meet the criteria in Section 1512.0302(h)(3)(A) through (C) are not permitted on a lot or parcel located within 1,000 feet of any premises occupied by an elementary, junior, or senior high school, except that such use is permitted by organizations described in Land Development Code Section 141.0702(b).

b. Facilities where 5 or more persons as described in Section 1512.0302(h)(3)(B) are medically treated or medically or psychologically counseled, on a group or individual basis;

c. The persons have committed, been charged by criminal indictment or complaint, or convicted of, a sex-related offense outside the family unit as defined in the California Penal Code, Part 1, Title 9, Chapter 1, or in Sections 286, 286.5, 288, 288a, 289 of Chapter 5, or in Section 314 of Chapter 8, or any amendment for remodification or any such sections.

d. The medical and counseling services are directly related to physical or psychological treatment for the sex-related offenses committed and described in the above California Penal Code sections.

2

a. No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the table above; provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area; and, further provided, that no premises shall contain drive-in facilities except through a Mid-City Communities Development Permit.

b. All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed below shall be operated entirely within enclosed buildings. The following listed merchandise sold or rented on the premises may be displayed outdoors without screening walls or fences except along common property lines of abutting residentially-zoned lots:
   1) Flowers and plants.
   2) Food products
   3) Handcrafted products and goods
   4) Artwork and pottery

c. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

d. No mechanical equipment, tank duct, elevator enclosure, cooling tower or mechanical ventilator shall be erected, constructed, maintained or altered anywhere on the premises unless all such equipment and appurtenances are contained within a completely enclosed penthouse or other portion of a building having walls or visual screening with construction and appearances similar to main building.

[3] The floor area of any establishment may not exceed 5,000 square feet.

[4] Indicated use may be conducted outside a fully enclosed building.

[5] Commercial uses in the CL-1 Zone are restricted along University Avenue between 28th Street and Georgia Street in accordance with Section 1512.0309(b)(1).

[6] Special Regulations: Cl-5 & Cl-2 (At Texas and University)

a. No permitted use shall commence operating prior to 6:00 a.m. nor continue later than 12:00 midnight of any day.

b. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

[7] At least 75 percent of the gross floor area of the structure or structures on the lot or premises shall be devoted to business and professional office uses.

[8] In the CV-3 Zone, auto repair permitted only as an expansion of an existing previously conforming use with the approval of a Mid-City Communities Development Permit.

[9] In the CN-1A Zone and in the CN-2A Zone for lots exceeding 100 feet of street frontage, banks and business and professional office use together shall not exceed 50 percent of the ground floor area.

[10] Residential use is not permitted for lots in the CN-1 Zone west of I-805 which do not have access to a street or alley other than to University Avenue.

[11] No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.

[12] Live/Work Quarters are permitted subject to the regulations in Section 141.0311.

O - 19593
PA 447

(b) Additional Permitted Uses in the Commercial Node (CN), Commercial Linear (CL) Zones, Commercial Village (CV), and Neighborhood Professional (NP) Zones

No building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except as set forth in Sections 1512.0302 and 1512.0305(a).

(1) Residential development is permitted in accordance with the regulations of the Mid-City Communities Planned District. This includes all permitted uses of the equivalent multi-family zones as established by the residential density provisions of Section 1512.0305(b)(3).

(2) In the CN-3 Zone, no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the Sections 1512.0302 and 1512.0305(a) provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area.

(3) In the Commercial Transition Zones (CN-1T, CN-2T and CN-3T), commercial uses are permitted only if the lot fronts on Adams Avenue, El Cajon Boulevard, University Avenue, Lincoln Avenue, 43rd Street, Fairmount Avenue, Euclid Avenue, Collwood Boulevard, College Avenue or 70th Street. This provision includes lots which are legally consolidated in accordance with Land Development Code Chapter 14, Article 4 (Subdivision Regulations).

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Section 7. That this activity is not a project and is therefore not subject to the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
01/16/07
Or.Dept:DSD
O-2007-79
MMS#3582

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 20 2007.

ELIZABETH S. MALAND
City Clerk

By Sara Richard
Deputy City Clerk

Approved: 3.17.07
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

CURRENT SAN DIEGO MUNICIPAL CODE § 1512.0305 AND TABLE 1512-03I

(*Effective Aug. 9, 2015)*

§1512.0305 Commercial Zones (CN, CL, CV, NP) - Permitted Uses

(a) No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor be used except for one or more of the purposes indicated with an "P" in Table 1512-03I. No use may be conducted outdoors on any premises except as indicated by footnote 4, or by specific reference.

Legend for Table 1512-03I

"P" = Permitted
"-" = Not Permitted

Table 1512-03I
Permitted Uses Table

Permitted Uses	CN-1,2 CN-1A,2A CL-1(6) CL-3 CL-6 CV-1,2,4	CL-2(6)	CN-3,4(2) CV-3(2)	CL-5(6)	NP-1,2,3
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P(7)
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P(10)	P	P	P	-
Apparel Shops	P	P	P	P	-
Art Stores and Art Galleries	P	P	P	-	-
Automobile & Truck Sales, Rental Agencies (Usable Vehicles Only)	P(4)	P(4)	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P(8)	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P(9)	P	P(9)	P(1)H	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P(4)	P(4)	-	-	-
Book Stores (No Adult Book Stores Shall Be Permitted in the Cl-5 Zone)	P	P	P	P	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Building Materials Stores, provided that open storage areas are completely enclosed by walls or buildings or a combination thereof; said walls and buildings shall be not less than 6 feet in height, and provided also there shall be no outdoor storage of merchandise, material, equipment or other goods to a height greater than that of any enclosing wall or building.	P	P	-	-	-
Business and Professional Office Uses (not including Hiring Halls in the Cl-5 Zone). (Such Uses my include Accountants, Advertising Agencies, Architects, Attorneys, Contractors, Doctors, Engineers, Financial Institutions, Insurance Agencies, Medical Clinics (No Overnight Patients), Photographers, Real Estate Brokers, Securities Brokers, Surveyors and Graphic Artists.	P[1][9]	P[1]	P[1][9]	P[1]	P[1]
Business Machine Sales Display and Service	P	P	-	-	P[7]
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	P	-	-
Confectioneries	P	P	P	P	-
Curtain and Drapery and Upholstery Shops	P	P	P	P	-
Custom Shop for Curtains, Draperies, Floor Coverings, Upholstery and Wearing Apparel	P[3]	P[3]	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P[11]	-
Dry Cleaning Establishments (No Truck Delivery of Finished Cleaning)	P	P	-	P	-
Dry Cleaning and Laundry Establishments (also includes self-service)	P	P	P	P	-
Dry Good Stores	P	P	-	-	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Electronic Data Processing, Tabulating, and Record Keeping Services	P	P	-	-	P[7]
Employment Agencies	P	P	-	-	-
Equipment and Tool Rental Establishments (No Man-ridden Equipment)	P	P	-	-	-
Feed Stores	P	P	-	-	-
Florists	P	P	P	P	-
Food Stores	P	P	P	P	-
Frozen Food Lockers	P	P	-	-	-
Funeral Parlors	P	P	-	-	-
Furniture Stores	P	P	-	-	-
Gymnasium and Health Studios	P	P	P	-	-
Hardware Stores	P	P	P	-	-
Hardware Stores, excluding the sale of Used Building Materials, Used Appliances and Used Plumbing Supplies	-	-	P	-	-
Hobby Shops	P	P	P	P	-
Hotels, Motels, and Time Share Projects	P	P	-	-	-
Ice Delivery Stations	P	P	-	-	-
Interior Decorators	P	P	P	-	-
Jewelry Stores	P	P	P	P	-
Labor Unions (No Hiring Halls) and Trade Associations	P	P	P	-	-
Laundries, if entirely within an enclosed building with not more than 10 employees.	P[3]	P[3]	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	P[3]	P[3]	-	-	-
Liquor Stores	P	P	P	-	-
Live/Work Quarters	P(12)	P(12)	P(12)	-	-
Locksmith Shops	P	P	-	-	-
Medical Appliance Sales	P	P	-	-	-
Medical, Dental, Biological and X-ray Laboratories	P	P	P	-	-
Moving and Household Storage Facilities	P	P	-	-	-
Music Stores	P	P	P	-	-
Newspaper Plants	P	P	-	-	-
Nurseries-plants	P[4]	P[4]	P[4]	P[4]	-
Office Furniture and Equipment Sales	P	P	-	-	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Paint and Wallpaper	P	P	P	P	-
Parking Lots-commercial	P	P	-	-	-
Parking Lots and Facilities, if accessory to a permitted primary use, on the same premises, except that facilities completely below grade need not be accessory.	-	-	P	-	-
Pawn Shops	P	P	-	-	-
Pet Shops	P	P	-	-	-
Pharmacies	P	P	-	-	P[7]
Photographic Studios and Retail Outlets	-	-	P	-	-
Photographic Studios	P	P	-	P	-
Photographic Equipment, Supplies and Film Processing Stores	P	P	-	-	-
Plumbing Shops, provided that any open storage areas are completely enclosed by walls, or buildings, or a combination thereof, not less than six feet in height, and provided also there shall be no outdoor storage of merchandise, materials, equipment or other goods, to a height greater than that of any enclosing wall or building.	P[3]	P[3]	-	-	-
Post Offices	P	P	-	-	-
Private Clubs, Fraternal Organizations and Lodges	P	P	P	P	P
Public Utility Electric Substations, Gas Regulators and Communications Equipment Buildings developed in accordance with building and landscaping plans approved by the City Manager.	P	P	-	-	-
Radio and Television Broadcasting Studios	P	P	P	P	-
Radio, Television and Home Appliance Repair Shops	P	P	P	P	-
Recreational Facilities, including Bowling Lanes, Miniature Golf Courses, Skating Rinks, Gymnasiums and Health Centers	P	P	-	-	-

Permitted Uses	**CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4**	**CL-2[6]**	**CN-3,4[2] CV-3[2]**	**CL-5[6]**	**NP-1,2,3**
Restaurants (In the Cl-5 Zone, excluding Drive-in and Drive-thru Restaurants and further excluding Live Entertainment and sale of all Intoxicating Beverages except Beer and Wine)	P[4]	P[4]	P[4]	P[4]	P[4]
Rug and Carpet Stores	P	P	P	-	-
Shoe Stores	P	P	P	P	-
Shoe Repair Shops	P	P	P	P	-
Shopkeeper Units (See Section 113.0103) (Subject to Specific Zone Limitations)	P[10]	P	P	P	P
Sporting Goods Stores	P	P	P	-	-
Stationers	P	P	P	P	-
Storage Garages	P	P	-	-	-
Studios for Teaching of Art, Dancing and Music	P	P	P	P	-
Theaters, Nightclubs and Bars, with or without Live Entertainment, or any combination thereof (not permitted except by Conditional Use Permit if the size of the establishment exceeds 5,000 square feet in Gross Floor Area)	P	P	P	-	-
Tire Sales, Repair and Recapping Establishments, if entirely Within an Enclosed Building	P	P	-	-	-
Trade and Business Schools	-	-	-	-	-
Trailer Sales Agencies	P	P	-	-	-
Transportation Terminals	P	P	-	-	-
Travel Bureaus	P	P	-	-	-
Variety Stores	P	P	P	P	-
Wedding Chapels	P	P	-	-	-
Wholesaling or Warehousing of Goods and Merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 square feet.	P	P	-	-	-
Construction of Cabinets and Shelves, and Musical Instruments, or other Wood Working	-	P[3]	-	P[3]	-
Construction of Windows, Doors and Screens	-	P[3]	-	P[3]	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1[6] CL-3 CL-6 CV-1,2,4	CL-2[6]	CN-3,4[2] CV-3[2]	CL-5[6]	NP-1,2,3
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P[3]	-	P[3]	-
Repair of Tools, Machinery and Electronic Equipment	-	P[3]	-	-	-
Public Parks and Playgrounds	P	P	P	P	-
Residential Development, in accordance with the regulations of the Mid-City Communities Planned District, according to the permitted densities of equivalent Multi-Family Zones as specified in the RM-3-9 Zone (Land Development Code Chapter 13, Article 1, Division 4 (Residential Base Zones) (e.g., One Dwelling Unit per 600 Square Feet)	P	P	P	P	P
Any other use which the Planning Commission may find to be similar in character to the uses, including accessory uses, numerated in this section and consistent with the purpose and intent of the particular zone in which it would be located. The adopted resolution embodying such finding shall be filed in the office of the City Clerk	P	P	P	P	P
Accessory Uses as Follows:					
Signs constructed, fabricated, erected, installed, attached, fastened, placed, positioned, operated, and abated in accordance with the regulations as set forth in Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations) subject to Section 1512.0408.	-	-	-	P	-
Accessory Uses determined by the Development Services Director to be appropriate in character and placement in relationship to a primary use.	P	P	P	P	P

Footnotes for Table 1512-03I

[1] a. Facilities providing medical and counseling services which meet the criteria in Section 1512.0302(h)(3)(A) through (C) are not permitted on a lot or parcel located within 1,000 feet of any premises occupied by an elementary, junior, or senior high school, except that such use is permitted by organizations described in Land Development Code Section 141.0702(b).

b. Facilities where 5 or more persons as described in Section 1512.0302(h)(3)(B) are medically treated or medically or psychologically counseled, on a group or individual basis;

c. The persons have committed, been charged by criminal indictment or complaint, or convicted of, a sex-related offense outside the family unit as defined in the California Penal Code, Part 1, Title 9, Chapter 1, or in Sections 286, 286.5, 288, 288a, 289 of Chapter 5, or in Section 314 of Chapter 8, or any amendment for remodification or any such sections.

d. The medical and counseling services are directly related to physical or psychological treatment for the sex-related offenses committed and described in the above California Penal Code sections.

[2] a. No building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the table above; provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area; and, further provided, that no premises shall contain drive-in facilities except through a Mid-City Communities Development Permit.

b. All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed below shall be operated entirely within enclosed buildings. The following listed merchandise sold or rented on the premises may be displayed outdoors without screening walls or fences except along common property lines of abutting residentially-zoned lots:

1) Flowers and plants.
2) Food products
3) Handcrafted products and goods
4) Artwork and pottery

c. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

d. No mechanical equipment, tank duct, elevator enclosure, cooling tower or mechanical ventilator shall be erected, constructed, maintained or altered anywhere on the premises unless all such equipment and appurtenances are contained within a completely enclosed penthouse or other portion of a building having walls or visual screening with construction and appearances similar to main building.

[3] The floor area of any establishment may not exceed 5,000 square feet.

[4] Indicated use may be conducted outside a fully enclosed building.

[5] Commercial uses in the CL-1 Zone are restricted along University Avenue between 28th Street and Georgia Street in accordance with Section 1512.0309(b)(1).

[6] Special Regulations: Cl-5 & Cl-2 (At Texas and University)

a. No permitted use shall commence operating prior to 6:00 a.m. nor continue later than 12:00 midnight of any day.

b. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties.

[7] At least 75 percent of the gross floor area of the structure or structures on the lot or premises shall be devoted to business and professional office uses.

[8] In the CV-3 Zone, auto repair permitted only as an expansion of an existing previously conforming use with the approval of a Mid-City Communities Development Permit.

[9] In the CN-1A Zone and in the CN-2A Zone for lots exceeding 100 feet of street frontage, banks and business and professional office use together shall not exceed 50 percent of the ground floor area.

[10] Residential use is not permitted for lots in the CN-1 Zone west of I-805 which do not have access to a street or alley other than to University Avenue.

[11] No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.

[12] Live/Work Quarters are permitted subject to the regulations in Section 141.0311.

(b) Additional Permitted Uses in the Commercial Node (CN), Commercial Linear (CL) Zones, Commercial Village (CV), and Neighborhood Professional (NP) Zones.

No building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except as set forth in Sections 1512.0302 and 1512.0305(a).

(1) Residential development is permitted in accordance with the regulations of the Mid-City Community Planned District.

(2) In the CN-3 Zone, no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premise be used except for one or more of the purposes indicated in the Sections 1512.0302 and 1512.0305(a) provided, however, that no premises shall contain an establishment exceeding a total of 5,000 square feet in gross floor area.

("Commercial Zones (CN, CL, CV, NP) - Permitted Uses" added 3-27-2007 by O-19598 N.S.; effective 4-26-2007.)
(Amended 7-10-2015 by O-20512 N.S.; effective 8-9-2015.)
(Amended 12-1-2016 by O-20751 N.S.; effective 12-31-2016.)

§1512.0306 Commercial Zones - General Regulations

(a) Maximum Number of Dwelling Units

In no case shall any project exceed the maximum number of dwelling units listed below unless the project is on a single lot which 1) was created or consolidated, or for which an application has been submitted to the City to create a lot or consolidate lots, prior to the effective date of this ordinance; or 2) was created from a lot or lots which had a larger average square footage than the lot created.

-EXHIBIT 14 -

City of Chula Vista

List of Cannabis Businesses Applicants Invited to Proceed to Phase Two*

(updated December 7, 2020)

**Phase Two of City's Application Process requires applicants to submit and obtain approval of site control, site plans, property owner backgrounds, emergency action and fire prevention plans, security plans, and any required land use approvals. An applicant's timeline for completing Phase Two is dependent on multiple individualized factors, such as when documents are submitted by the applicant, the complexity of the plans and documents submitted, the number of corrections required, and the date livescan results are received from the California Department of Justice. Once an applicant has successfully completed Phase Two, City issues a Conditional Approval and the applicant then proceeds to finalize all remaining necessary steps to open their business.*

Business Name	District	License Type	Status
Grasshopper Cannabis Delivery, LLC	1	Non-Storefront Retailer	City License Issued
TD Enterprise LLC	1	Storefront Retailer	Phase II Document Review
March and Ash Chula Vista, Inc.	1	Storefront Retailer	Phase II Document Review
Vista Property Holding, LLC	2	Storefront Retailer	Conditional Approval
Chula Vista Cannabis Co, Inc.	2	Storefront Retailer	Phase II Document Review
Adam Knopf and Deborah Thomas	3	Cultivator	Document Submittal Pending
Good Earth Chula Vista, LLC	3	Cultivator	Document Submittal Pending
Three Habitat Consulting Chula Vista LLC dba Chronic Factory	3	Distributor	Application Withdrawn
Three Habitat Consulting Chula Vista LLC dba Chronic Factory	3	Distributor	Application Withdrawn
Good Earth Chula Vista, LLC	3	Distributor	Document Submittal Pending
Frederick Beck IV dba Chronic Factory	3	Manufacturer	Application Withdrawn
Three Habitat Consulting Chula Vista LLC dba Chronic Factory	3	Manufacturer	Application Withdrawn
Green Papaya, LLC	3	Manufacturer	Document Submittal Pending
Zoar LLC	3	Manufacturer	Document Submittal Pending
Good Earth Chula Vista, LLC	3	Manufacturer	Document Submittal Pending
Bobnick LLC	3	Non-Storefront Retailer	Document Submittal Pending
March and Ash Nirvana, Inc.	3	Storefont Retailer	Phase II Document Review
Chula Vista Cannabis Village	4	Cultivator	Document Submittal Pending
HOTN Club	4	Cultivator	Phase II Document Review
Terra Pharma Inc	4	Cultivator	Document Submittal Pending
3384 Vernon Investments, LLC	4	Cultivator	Phase II Document Review
Chula Vista Cannabis Village	4	Distributor	Document Submittal Pending
HOTN Club	4	Distributor	Phase II Document Review
Terra Pharma Inc.	4	Distributor	Document Submittal Pending
Element 7 Chula Vista One LLC	4	Distributor	Document Submittal Pending
3384 Vernon Investments, LLC	4	Distributor	Phase II Document Review
Chula Vista Cannabis Village	4	Manufacturer	Document Submittal Pending
Terra Pharma Inc	4	Manufacturer	Document Submittal Pending
C.S. Designs, Inc	4	Manufacturer	Document Submittal Pending
Element 7 Chula Vista One LLC	4	Manufacturer	Document Submittal Pending
HOTN Club	4	Manufacturer	Phase II Document Review
3384 Vernon Investments, LLC	4	Manufacturer	Phase II Document Review
NC5 Systems, INC.	4	Non-Storefront Retailer	Conditional Approval
Element 7 Chula Vista One LLC	4	Storefront Retailer	Phase II Document Review
Harvest of Chula Vista, LLC	4	Storefront Retailer	Document Submittal Pending
Great North Analytical LLC	4	Testing Laboratory	Document Submittal Pending

Court of Appeal, Fourth Appellate District, Division One
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 8/4/2021

STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Fourth Appellate District Division 1

Case Name: **UL Chula Two LLC v. City of Chula Vista et al.**
Case Number: **D079215**
Lower Court Case Number: **37-2020-00041554-CU-WM-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **lann.mcintyre@lewisbrisbois.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION - PETITION FOR WRIT OF SUPERSEDEAS (WITH ONE TIME RESPONSIVE FEE)	UL Chula Two - Petition for Writ of Supersedeas - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 1 of 3) - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 2 of 3) - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 3 of 3) - FINAL 8.3.2021

Service Recipients:

Person Served	Email Address	Type	Date / Time
Rebecca Williams Allen Matkins Leck Gamble Mallory & Natsis	bwilliams@allenmatkins.com	e-Serve	8/3/2021 5:46:35 PM
David Kramer Vicente Sederberg LLP	d.kramer@vicentesederberg.com	e-Serve	8/3/2021 5:46:35 PM
Philip Tencer TencerSherman LLP 173818	phil@tencersherman.com	e-Serve	8/3/2021 5:46:35 PM

Alena Shamos Colantuono, Highsmith & Whatley, PC 216548	ashamos@chwlaw.us	e-Serve	8/3/2021 5:46:35 PM
Lann Mcintyre Lewis Brisbois Bisgaard & Smith LLP 106067	lann.mcintyre@lewisbrisbois.com	e-Serve	8/3/2021 5:46:35 PM
Matthew Slentz Colantuono, Highsmith & Whatley 285143	mslentz@chwlaw.us	e-Serve	8/3/2021 5:46:35 PM
Heather Riley Allen Matkins Leck Gamble Mallory & Natsis LLP 214482	hriley@allenmatkins.com	e-Serve	8/3/2021 5:46:35 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/3/2021

Date

/s/Janis Kent

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm