

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.*

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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

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**APPELLANT'S APPENDIX OF EXHIBITS**  
**[VOLUME 3 OF 3; PAGES 697-1130]**

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**LEWIS BRISBOIS BISGAARD & SMITH LLP**

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San Diego, California 92101  
Telephone: 619.233.1006  
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*Attorneys for Plaintiff and Appellant*  
**UL CHULA TWO LLC**

# EXHIBIT 6

**From:** [cannabis](#)  
**To:** [cannabis](#); [Webmaster](#)  
**Subject:** City of Chula Vista: Cannabis License Application for Restricted Licenses - Submission  
**Date:** Friday, January 18, 2019 5:00:44 PM

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A new entry to a form/survey has been submitted.

**Form Name:** Cannabis License Application for Restricted Licenses  
**Date & Time:** 01/18/2019 5:00 PM  
**Response #:** 113  
**Submitter ID:** 57074  
**IP address:** [REDACTED]  
**Time to complete:** 12 min. , 9 sec.

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#### Survey Details

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[S]: This question is marked as sensitive, answers to sensitive questions are not sent by email. [Log in](#) to the CMS to view the answer to this question.

#### Page 1

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### For Non-Storefront Retailer, Storefront Retailer or Cultivator Licenses

**Save Progress -** This will save your progress. It only works if your browser allows cookies to be saved and you use the same browser.

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## SECTION A - APPLICANT/BUSINESS INFORMATION

### Business Name

UL Chula Two LLC

### Business Organizational Structure

(o) Limited Liability Company

### 3. Applicant/Owner Name

<b>First Name</b>	Will	<b>Last Name</b>	Senn
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### 4. Primary Contact

<b>First Name</b>	Will	<b>Last Name</b>	Senn
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# The Law Offices of Nathan Shaman

444 W. C Street, Suite 400  
San Diego, California 92101  
Tel: (619) 564-8796; Fax: (858) 737-5123  
nathan@shamanlegal.com

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.



January 18, 2019

Page 2

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



## Office of the City Manager

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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 4<sup>th</sup> 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  
619-691-5144



Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
[REDACTED]

**Re: Notice of Decision – Commercial Cannabis Business Application  
UL Chula One LLC dba Urbn Leaf (Submitter ID: 57064) – 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 total application score of 900.3 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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police



Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
[REDACTED]

**Re: Notice of Decision – Commercial Cannabis Business Application  
2446 Main Street LLC dba Urbn Leaf (Submitter ID: 57069) – 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 total application score of 900.3 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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police





Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
[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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police





Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
[REDACTED]

**Re: Notice of Decision – Commercial Cannabis Business Application  
UL Chula One dba Urbn Leaf (Submitter ID: 58388) – Manufacturer**

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](http://www.chulavistaca.gov/cannabis).

For your information, City anticipates opening another Application Period for manufacturing, distribution, cultivation, and testing laboratories in 2020, with 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

Nathan Shaman (SBN 272928)  
General Counsel  
Urbn Leaf  
1295 W. Morena Blvd.  
San Diego, CA 92110  
Telephone: (619) 630-5618  
Email: nshaman@urbnleaf.com

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	)	Submitter IDs: 57064, 57069, 57074, 58388
limited liability company, UL CHULA ONE	)	
LLC, a California limited liability company,	)	<b>APPELLANTS' CONSOLIDATED</b>
and UL CHULA TWO LLC, a California	)	<b>REQUEST TO APPEAL NOTICES OF</b>
limited liability company,	)	<b>DECISION</b>
	)	
Appellants,	)	
	)	
vs.	)	
	)	
ROXANA KENNEDY, in her capacity of	)	
Chief of Police of the City of Chula Vista,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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 appeal is filed in accordance with Chula Vista Municipal Code section 5.19.050(A)(5) and Chula Vista Cannabis Regulations section 0501(P).

1 Pursuant to Chula Vista Cannabis Regulations section 0501(P)(2), Appellants hereby request a  
2 virtual hearing on this Appeal.

3 This Appeal is made on the basis that all NODs were issued in error on the following grounds:

4 1. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will  
5 Senn, an Owner of each of Appellants, was adversely sanctioned or penalized by the City of  
6 Chula Vista, or any other city, county, or state, for a material violation of state or local laws or  
7 regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol license.

8 2. Chief Kennedy's decision was not based on any relevant, admissible evidence that Will  
9 Senn, an Owner of each of Appellants, conducted, facilitated, caused, aided, abetted, suffered,  
10 or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

11 3. To the extent the City Manager determines there is relevant, admissible to sustain Chief  
12 Kennedy's decisions, Appellants ask that the City Manager exercise discretion to set aside such  
13 decisions for the following reasons:

14 a. The alleged violations are stale as they are eight years old.

15 b. The alleged violations were technical violations of land-use and building code  
16 ordinances that did not pertain to cannabis.

17 c. The alleged violations occurred during a time in which state law, pursuant to the  
18 Medical Marijuana Program Act, generally allowed for the existence of medical  
19 marijuana collectives and cooperatives, but during which time neither state nor City of  
20 San Diego law contained any specific regulation of commercial cannabis businesses.

21 d. Today, Will Senn operates the most successful cannabis retailer in San Diego  
22 and one of the most successful cannabis retailers in California. In addition to Urbn  
23 Leaf's flagship location in the Bay Park neighborhood of San Diego, Will Senn also  
24 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



## Office of the City Attorney

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Sent by Email:  
May 21, 2020

Gary Halbert, City Manager  
Will Senn, Appellant  
Nathan Shaman, Counsel for Appellant

[ghalbert@chulavistaca.gov](mailto:ghalbert@chulavistaca.gov)  
[REDACTED]  
[nshaman@urbleaf.com](mailto:nshaman@urbleaf.com)

**RE: City of Chula Vista Documentary Evidence  
June 10, 2020 Cannabis Appeal Hearing: Urbn Leaf/UL Chula/2446 Main St.**

Dear Messrs. Halbert, Senn, and Shaman:

City hereby produces the following documentary evidence intended to be introduced into at the time of the cannabis appeal hearing identified above:

- Exhibit 1: Notices of Decision
- Exhibit 2: Request to Appeal
- Exhibit 3: Amended Notice of Hearing
- Exhibit 4: Cannabis Application Scoring Matrix
- Exhibit 5: HdL Application Reviews Scores
- Exhibit 6: HdL Interview Scores
- Exhibit 7: HdL Combined Application and Interview Scores
- Exhibit 8: City of SD Notice of Violation
- Exhibit 9: Photos of Holistic Cafe
- Exhibit 10: SD 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



City reserves the right to introduce additional evidence at the time of the scheduled hearing.

Sincerely,



Megan McClurg,  
Deputy City Attorney on behalf of Appellee City of Chula Vista



**CITY OF CHULA VISTA**  
**Commercial Cannabis Business Application & Interview Scores**  
**Sorted by: Points (Highest to Lowest)/District**

	<b>Id</b>	<b>Business Name</b>	<b>District</b>	<b>License Type</b>	<b>Total Points Possible</b>	<b>Total Points Awarded</b>
1.	56809	Grasshopper Cannabis Delivery, LLC	1	Non-Storefront	1000	934.5
2.	57074	UL Chula Two, LLC	1	Retail	1000	900.3
3.	59535	4041 Bonita dba Educanna	1	Retail	1000	876.8
4.	57058	Tradecraft Farms - Chula Vista	1	Retail	1000	875
5.	57015	Have a Heart Chula Vista	1	Retail	1000	869
6.	56875	Chula Vista Cannabis Co.	2	Retail	1000	969
7.	56811	Vista Property Holding, LLC	2	Retail	1000	934.5
8.	57061	TD Enterprise	2	Retail	1000	931.2
9.	56993	March and Ash Chula Vista, Inc.	2	Retail	1000	926.3
10.	57064	UL Chula One, LLC	2	Retail	1000	900.3
11.	56928	Loud, Inc	2	Retail	1000	893.2
12.	59539	Educanna LLC	2	Retail	1000	876.8
13.	56982	Southern Erudite Ventures	2	Retail	1000	874.7
14.	56991	3rd Ave, LLC	2	Retail	1000	873.3
15.	57063	Verano Chula Vista, LLC	2	Retail	1000	872.7
16.	57012	Have a Heart Chula Vista	2	Retail	1000	869
17.	56933	RMFS Holdings, LLC	2	Non-Storefront	1000	868.3
18.	56855	Greenleaf, Inc	2	Retail	1000	857.8
19.	57090	Coastal	2	Retail	1000	836.3
20.	57047	Jiva Life	2	Retail	1000	824.5
21.	57003	March and Ash Nirvana, Inc	3	Retail	1000	926.3
22.	56969	Southern Erudite Ventures	3	Retail	1000	874.7
23.	57024	Have a Heart Chula Vista	3	Retail	1000	869
24.	57001	Adam Knopf & Deborah Thomas dba Golden State Greens	3	Retail	1000	864.5
25.	57033	Three Habitat Consulting Chula Vista	3	Retail	1000	840.8
26.	57059	Coastal Dispensary, LLC	3	Retail	1000	836.3
27.	57034	Element 7 Chula Vista One	4	Retail	1000	976
28.	56924	Harvest of Chula Vista	4	Retail	1000	958
29.	57123	TD Enterprise	4	Retail	1000	931.2
30.	56968	NMG Chula Vista, LLC	4	Retail	1000	914.7
31.	57021	Stephen Ablahad dba Greener Times	4	Retail	1000	905.8
32.	57069	2446 Main Street LLC	4	Retail	1000	900.3
33.	56986	NC5 Systems, Inc	4	Non-Storefront	1000	889
34.	57027	Chula Vista Cannabis Village	4	Retail	1000	886.8
35.	59538	Educanna LLC	4	Retail	1000	876.8
36.	56931	RMFS Holdings, LLC	4	Retail	1000	868.3
37.	59549	Bobnick, LLC	4	Non-Storefront	1000	852.3
38.	56799	Starbranch, LLC	4	Retail	1000	837
39.	57056	Coastal Delivery Services, LLC	4	Non-Storefront	1000	836.3

12 DEC 14 AM 10:05

CLERK OF THE 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@sanidiego.gov](mailto:JDwyer@sanidiego.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

L:\CEU\CASE.ZN\1681.gb\Pleadings\ID\Civ.Complaint.docx

1

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER  
EQUITABLE RELIEF

1 prohibiting Defendants from operating or maintaining a marijuana dispensary, cooperative, or  
2 collective, or other distribution or sales business; and also seeks to obtain civil penalties, costs  
3 and other equitable relief for the Defendants' violations of law.

4 2. The omission or commission of acts and violations of law by Defendants as alleged in  
5 this Complaint occurred within the City of San Diego, State of California. Each Defendant at all  
6 times mentioned in this Complaint has transacted business within the City of San Diego, State of  
7 California, or is a resident of San Diego County, within the State of California, or both.

8 3. The property where the business acts and practices described in this Complaint were  
9 performed is located in the City of San Diego.

10 **THE PARTIES**

11 4. At all times mentioned in this Complaint, Plaintiff City of San Diego, is a municipal  
12 corporation and a chartered city, organized and existing under the laws of the State of California.

13 5. Defendant THE HOLISTIC CAFÉ, INC. (HOLISTIC CAFÉ), is a California  
14 nonprofit mutual benefit corporation, organized and existing under the laws of the State of  
15 California, according to the California Secretary of State corporate filing number C3252464. At  
16 all times relevant to this action HOLISTIC CAFÉ was and is conducting business as a marijuana  
17 dispensary, which is also commonly known as a collective or cooperative, at 415 University  
18 Avenue, San Diego, California (PROPERTY) within the City of San Diego.

19 6. Defendant WILLIE FRANK SENN (SENN) is an individual and resident of and/or  
20 transacts business in the County of San Diego, State of California. At all times relevant to this  
21 action, SENN was and is the President and/or Chief Executive Officer of HOLISTIC CAFÉ  
22 which has been doing business at the PROPERTY according to the California Secretary of State  
23 corporate filing number C3252464.

24 7. Defendant PATRICK IAN CARROLL (CARROLL) is an individual and resident of  
25 and/or transacts business in the County of San Diego, State of California. At all times relevant to  
26 this action, CARROLL was and is the Secretary of HOLISTIC CAFÉ, which has been doing  
27 business at the PROPERTY according to the California Secretary of State corporate filing number  
28 C3252464.

1 8. Defendant ZACHARY ROMAN (ROMAN) is an individual and resident of and/or  
2 transacts business in the County of San Diego, State of California. At all times relevant to this  
3 action, ROMAN was and is the Chief Financial Officer of HOLISTIC CAFÉ which has been  
4 doing business at the PROPERTY according to the California Secretary of State corporate filing  
5 number C3252464.

6 9. Defendants HOLISTIC CAFÉ, SENN, CARROLL, and ROMAN will sometimes be  
7 referred to independently and sometimes collectively as the "MD OPERATORS."

8 10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the  
9 provisions of California Code of Civil Procedure section 474, their true names and capacities  
10 being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1  
11 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly  
12 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to  
13 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities  
14 of DOES 1 through 50 when ascertained.

15 11. At all relevant times mentioned in this Complaint, all Defendants were and are agents,  
16 principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers of each  
17 other Defendant and at all times were acting within the course, purpose and scope of said  
18 relationship and with the authorization or consent of each of their co-defendants.

19 **PROPERTY**

20 12. The PROPERTY where the marijuana dispensary is operating consists of one parcel  
21 of land developed with a two-story building consisting of both residential and commercial space.  
22 The address of the PROPERTY is 415 University Avenue, San Diego, County of San Diego,  
23 State of California. The PROPERTY is also identified as Assessor's Parcel Number 452-056-01-  
24 00, according to San Diego County Recorder's Grant Deed document No. 2006-0529341, filed  
25 July 26, 2006. The legal description of the PROPERTY is:

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1 University Retail Apartments, (401-425 University Avenue, San Diego,  
2 California 92103) Lots 1 and 2 in Block 3 of Nutt's Addition, in the  
3 City of San Diego, County of San Diego, State of California, according  
4 to Map thereon No. 628, filed in the Office of the County Recorder of  
5 said County, April 8, 1890.

6 13. The PROPERTY is located in the Mid-City Communities Planned District CN-1A  
7 zone in the City of San Diego. It was originally constructed in 1913, as a two story structure with  
8 commercial suites on the first floor and nine residential dwelling units on the second floor.

9 14. The Grant Deed lists the owner of the PROPERTY as Uptown University, LLC, a  
10 California Limited Liability Company.

#### 11 **FACTUAL ALLEGATIONS**

12 15. SDMC section 1512.0305 and corresponding Table 1512-031 list the permitted uses in  
13 the CN-1A zone in the Mid-City Communities Planned District where the PROPERTY is located.  
14 The operation or maintenance of a marijuana dispensary, collective, or cooperation is not one of  
15 the listed permitted uses in the SDMC section or table.

16 16. The operation or maintenance of a marijuana dispensary is not a permitted use in any  
17 zone designation under the SDMC.

18 17. On August 24, 2009, attorney DAVID SPECKMAN, listed as "Officer/Pres" of  
19 HOLISTIC CAFÉ, submitted an application for a Business Tax Certificate (BTC) to the San  
20 Diego City Treasurer's Office, listing "The Holistic Café, Inc. " as the business name and 415  
21 University Avenue as the address. The application described the primary business activity of the  
22 HOLISTIC CAFÉ as the "sale of herbal remedies; teas; health products." No mention of  
23 marijuana appeared in the application. The application listed the start date of the business as  
24 August 24, 2009.

25 18. On May 17, 2012, the San Diego Business Tax Program sent a letter cancelling the  
26 Defendants' Business Tax Certificate.

27 19. Defendants have not taken any action to file an application with the San Diego  
28 Development Services Department (DSD) pursuant to SDMC section 131.0110(b) to request that  
the Planning Commission make a use determination.

1 20. Plaintiff is informed and believes that the MD OPERATORS opened for business at  
2 the PROPERTY since at least August 24, 2009.

3 21. On or about May 24, 2010, the Code Enforcement Section (CES) of the DSD,  
4 previously known as the Neighborhood Code Compliance Division received a request for  
5 investigation regarding an illegal marijuana dispensary operating at the PROPERTY.

6 22. On July 26, 2010, CES staff inspected the PROPERTY and observed numerous  
7 building code violations and the operation of a marijuana dispensary.

8 23. On February 24, 2012, the PROPERTY owner served Defendants with a 3-day notice  
9 to vacate the PROPERTY.

10 24. Defendants did not vacate the PROPERTY, and on April 6, 2012 the PROPERTY  
11 owner filed an unlawful detainer action against Defendant HOLISTIC CAFÉ in case 37-2012-  
12 00043424-CL-UD-CTL, which is pending trial.

13 25. On May 17, 2012, CES's Combination Building Inspector II Renee Kinninger  
14 (Inspector Kinninger) inspected the PROPERTY and again confirmed that HOLISTIC CAFÉ was  
15 operating a marijuana dispensary at the PROPERTY in violation of the City's zoning laws. She  
16 also observed that the building code violations previously observed in 2010 had not been  
17 corrected.

18 26. Through inspection of the PROPERTY and research of City records, Inspector  
19 Kinninger determined that the building had been illegally divided into a reception area with non-  
20 permitted lighting, grid ceiling, and other building and electrical modifications.

21 27. On or about May 22, 2012, CES issued Defendants and the property owners a Notice  
22 of Violation (NOV) which outlined the code violations observed at the PROPERTY. The NOV  
23 required Defendants to immediately cease operating or maintaining the marijuana dispensary in  
24 violation of zoning laws, to remove non-permitted signs advertising the business at the  
25 PROPERTY, to remove all electrical extension cords providing electrical service, and to schedule  
26 a complete inspection of the PROPERTY. Defendants were also ordered to obtain all required  
27 permits and submit an application with appropriate plans.

28 / / / / /

1 28. On October 4, 2012, City Attorney Investigator Deanna Walker visited the  
2 PROPERTY and confirmed that the MD OPERATORS are continuing to operate their business  
3 in defiance of the law. The MD OPERATORS also continue to advertise their business as verified  
4 by recent advertising on the Internet, including their own website.

5 29. Currently no record exists with the City of San Diego indicating the required permits  
6 were obtained for PROPERTY in its current state.

7 30. Plaintiff has no adequate remedy at law other than this action. Defendants are blatantly  
8 and willfully in violation of the SDMC and will continue to maintain the unlawful code violations  
9 in the future unless the Court enjoins and prohibits such conduct.

10 **FIRST AND ONLY CAUSE OF ACTION**

11 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**  
12 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**  
13 **ALL DEFENDANTS**

14 31. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1  
15 through 29 of this Complaint as though fully set forth here in their entirety.

16 32. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use  
17 any premises in violation of any of the provisions of the Land Development Code<sup>1</sup>, without a  
18 required permit, contrary to permit conditions, or without a required variance."

19 33. The PROPERTY is located in a Mid-City Communities Planned District CN-1A zone.  
20 SDMC section 1512.0305 governs the uses allowed in a Mid-City Communities Planned District  
21 CN-1A zone. Table 1512-03I does not list a marijuana dispensary, cooperative, or collective as a  
22 permitted use. Beginning on an exact date unknown to Plaintiff but since at least July 26, 2010,  
23 and continuing to the present, Defendants have maintained and used the PROPERTY for a  
24 purpose or activity not listed in SDMC section 1512.0305 and Table 1512-03I, in direct violation  
25 of SDMC sections 121.0302(a) and 1512.0305.

26 34. SDMC section 129.0202(a) provides "No *structure* regulated by the Land  
27 Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted,

28 <sup>1</sup> 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.

1 permanently relocated or partially demolished unless a separate Building Permit for each  
2 structure has first been obtained from the Building Official.” Beginning on an exact date  
3 unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present, Defendants  
4 have maintained and used the PROPERTY in violation of the SDMC by failing to obtain a  
5 building permit for structural work in violation of SDMC sections 121.0302(a) and 129.0202.

6 35. SDMC section 129.0111 requires inspections and approvals by a Building Official for  
7 all structural work. Beginning on an exact date unknown to Plaintiff, but since at least July 26,  
8 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in  
9 violation of the SDMC by failing to obtain the required building inspections and approvals for  
10 structural work in violation of SDMC section 129.0111.

11 36. SDMC section 129.0302 makes it unlawful to install any electrical wiring, device,  
12 appliance, or equipment within or on any structure or premises, or to alter, add, or replace any  
13 existing wiring, device, appliance, or equipment unless a separate Electrical Permit has been  
14 obtained for such work. Beginning on an exact date unknown to Plaintiff, but since at least July  
15 26, 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in  
16 violation of the SDMC by failing to obtain the required electrical permit for electrical work in  
17 violation of SDMC sections 121.0302(a) and 129.0302.

18 37. SDMC section 129.0314 requires that inspections and approvals be obtained from the  
19 City Building Official for all electrical permits. Beginning on an exact date unknown to Plaintiff,  
20 but since at least July 26, 2010, and continuing to the present, Defendants have maintained and  
21 used the PROPERTY in violation of the SDMC by failing to obtain inspections and approvals for  
22 electrical work in violation of SDMC section 129.0314.

23 38. SDMC section 129.0802 requires that a sign permit be obtained for each sign that is  
24 installed or altered. Beginning on an exact date unknown to Plaintiff, but since at least July 26,  
25 2010, and continuing to the present, Defendants have maintained and used the PROPERTY in  
26 violation of the SDMC by failing to obtain the required sign permit for sign installation in  
27 violation of SDMC section 129.0802.

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1           39. The 2010 California Electrical Code section 400.8, as adopted by SDMC section  
2 146.0104, makes it unlawful to use extension cord wiring for electrical service. Beginning on an  
3 exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the present,  
4 Defendants have maintained and used the PROPERTY in violation of the SDMC by using  
5 electrical extension cord wiring to provide electrical service to equipment and lighting in  
6 violation of SDMC section 146.0104.

7           40. The 2010 California Electrical Code section 314.28, as adopted by SDMC section  
8 146.0104, makes it unlawful to fail to provide compatible covers for junction boxes. Beginning  
9 on an exact date unknown to Plaintiff, but since at least July 26, 2010, and continuing to the  
10 present, Defendants have maintained and used the PROPERTY in violation of the SDMC by  
11 failing to maintain covers over electrical components visible in the reception area ceiling in  
12 violation of SDMC section 146.0104.

13           41. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws  
14 and therefore unable to ensure the compatibility between land uses. Irreparable harm will be  
15 suffered by Plaintiff in that the City's land use scheme and regulations under the Municipal Code  
16 become meaningless and the public is left unprotected from the direct and indirect negative  
17 effects associated with unpermitted and incompatible uses in their neighborhoods.

18           42. Absent injunctive relief, the justifiable expectation by citizens that state law and local  
19 zoning laws be enforced and their safety and quality of life be protected, remains frustrated.  
20 Despite a formal Notice of Violation from CES, Defendants have failed and refused to comply  
21 with the law and there is no expectation they will change their behavior.

22           43. Defendants are willfully violating the law and continue to operate their business.  
23 Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit Defendants from  
24 violating the law.

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1 PRAYER

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
3 follows:

4 1. That the PROPERTY be declared in violation of:

5 San Diego Municipal Code sections

6 1512.0305	121.0302
129.0202	129.0111
7 129.0302	129.0314
8 129.0802	146.0104

9 2. That pursuant to SDMC sections 12.0202, and 121.0311, California Code of Civil  
10 Procedure section 526, and the Court's inherent equity powers, the Court grant preliminary and  
11 permanent injunctions enjoining and restraining Defendants and their agents, servants,  
12 employees, partners, associates, officers, representatives and all persons acting under or in  
13 concert with or for Defendants, from engaging in any of the following acts:

14 a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail,  
15 nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or  
16 distribution of marijuana, including but not limited to any marijuana dispensary, collective, or  
17 cooperative organized pursuant to the Health and Safety Code;

18 b. Maintaining, operating, or allowing the operation of any unpermitted use at the  
19 PROPERTY;

20 c. Maintaining, operating, or allowing the operation of any unpermitted use  
21 anywhere within the City of San Diego;

22 d. Maintaining signage on the PROPERTY advertising a marijuana dispensary;

23 e. Advertising in any manner, including on the Internet, the existence of any  
24 commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth,  
25 storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary,  
26 collective, or cooperative organized pursuant to the Health and Safety Code at the PROPERTY;

27 f. Conducting any type of business within the City without first obtaining a business  
28 tax certificate;

1 g. Maintaining or performing any construction, electrical, or plumbing/mechanical  
2 work at the PROPERTY without first obtaining all required permits, inspections, and approvals;  
3 and

4 h. Violating any provisions of the SDMC at the PROPERTY.

5 3. That no later than 30 calendar days from the date of entry of judgment, Defendants  
6 obtain all applicable permits from DSD to correct any existing building, electrical, and  
7 plumbing/mechanical violations and timely call for inspections.

8 4. That Defendants allow personnel from the City of San Diego access to the  
9 PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice.  
10 Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

11 5. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the  
12 costs of investigation, as appropriate.

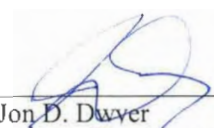
13 6. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of  
14 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

15 7. That Plaintiff be granted such other and further relief as the nature of the case may  
16 require and the Court deems appropriate.

17 Dated: December 14, 2012.

18 JAN I. GOLDSMITH, City Attorney

19  
20 Bv

  
21 Jon D. Dwyer  
Deputy City Attorney

22 Attorneys for Plaintiff  
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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) 533-5500  
Fax: (619) 533-5696  
JDwyer@sandiego.gov

No Fee GC §6103

**F I L E D**  
Clerk of the Superior Court  
DEC 14 2012  
By: LEE RYAN, Deputy

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

STIPULATED JUDGMENT FOR ENTRY  
OF FINAL JUDGMENT IN ITS ENTIRETY  
AND PERMANENT INJUNCTION;  
JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its  
attorneys, Jan I. Goldsmith, City Attorney, and Jon D. Dwyer, Deputy City Attorney, and  
Defendants HOLISTIC CAFÉ, INC., a California nonprofit mutual benefit corporation, WILLIE  
FRANK SENN, as an individual and as president/chief executive officer of 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., appearing by and through their attorney, Stephen G. Cline, enter into the following

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1

STIPULATED JUDGMENT FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT  
INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

1 Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case  
2 without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so  
3 entered.

4 1. This Stipulation for Entry of Final Judgment (Stipulated Judgment) is executed  
5 between and among Plaintiff City of San Diego, a municipal corporation, HOLISTIC CAFÉ,  
6 INC., a California nonprofit mutual benefit corporation, WILLIE FRANK SENN, as an  
7 individual and as president/chief executive officer of HOLISTIC CAFÉ, INC., PATRICK IAN  
8 CARROLL, as an individual and as secretary of THE HOLISTIC CAFÉ, INC., and ZACHARY  
9 ROMAN, as an individual and as chief financial officer of THE HOLISTIC CAFÉ, INC.,  
10 (Defendants) who are named parties in the above-entitled action. (Collectively referred to  
11 hereinafter as Parties.)

12 2. The Parties to this Stipulated Judgment are parties to a civil suit pending in the  
13 Superior Court of the State of California for the County of San Diego, entitled *CITY OF SAN*  
14 *DIEGO, a municipal corporation v. HOLISTIC CAFÉ, INC., a California nonprofit mutual*  
15 *benefit corporation, WILLIE FRANK SENN, as an individual and as president and chief executive*  
16 *officer of HOLISTIC CAFÉ, INC., PATRICK IAN CARROLL, as an individual and as secretary of*  
17 *THE HOLISTIC CAFÉ, INC., ZACHARY ROMAN, as an individual and as chief financial officer*  
18 *of THE HOLISTIC CAFÉ, INC.; and DOES 1 through 50, inclusive.*

19 3. The Parties wish to avoid the burden and expense of further litigation and accordingly  
20 have determined to compromise and settle their differences in accordance with the provisions of  
21 this Stipulated Judgment. Neither this Stipulated Judgment nor any of the statements or  
22 provisions contained herein shall be deemed to constitute an admission or an adjudication of any  
23 of the allegations of the Complaint. The Parties to this Stipulated Judgment agree to resolve this  
24 action in its entirety by mutually consenting to the entry of Final Judgment in its Entirety and  
25 Permanent Injunction by the Superior Court.

26 4. The property involved in this action is located at 415 University Avenue, San Diego,  
27 California (PROPERTY). The PROPERTY is also identified as Assessor's Parcel Number 452-

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STIPULATED JUDGMENT FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT  
INJUNCTION; JUDGMENT THEREON [CCP § 664.6]



1 c. The Parties acknowledge that if in the future, local zoning ordinances are enacted  
2 or amended by either legislation or municipal code enactment and/or by operation of law pursuant  
3 to rulings by California Supreme Court in relevant cases, including but not limited to, *City of*  
4 *Riverside v. Inland Empire Patients and Wellness Center Case No. S198638* and *City of Lake*  
5 *Forest v. Evergreen Holistic Case No. S201454* to allow commercial, retail, nonprofit, collective,  
6 cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana,  
7 including but not limited to any marijuana dispensary, collective, or cooperative organized  
8 pursuant to the California Health and Safety Code, as a permitted use in the City of San Diego,  
9 then Defendants can apply to this Court for a modification of the terms of this Final Judgment;

10 d. Performing or maintaining any structural work at the PROPERTY without first  
11 obtaining all required permits, inspections and approvals as required by the SDMC;

12 e. Performing or maintaining any electrical work at the PROPERTY without first  
13 obtaining all required permits, inspections and approvals as required by the SDMC;

14 f. Performing or maintaining any plumbing/mechanical work at the PROPERTY  
15 without first obtaining all required permits, inspections or approvals as required by the SDMC;

16 g. Maintaining any violation of the SDMC at the PROPERTY or at any other  
17 property, premises, or location in the City of San Diego; and

18 h. Operating any business in the City of San Diego without first obtaining a Business  
19 Tax Certificate as required by SDMC section 31.0121.

#### 20 COMPLIANCE MEASURES

##### 21 Defendants agree to do the following at the PROPERTY:

22 7. Immediately cease maintaining, operating, or allowing at the PROPERTY any  
23 commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth,  
24 storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary,  
25 collective, or cooperative organized pursuant to the California Health and Safety Code.

26 8. Immediately, and no later than 48 hours from entry of this Stipulated Judgment,  
27 remove all signage from the PROPERTY advertising a marijuana dispensary or "The Holistic  
28 Café."

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STIPULATED JUDGMENT FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT  
INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

Nathan Shaman (SBN 272928)  
General Counsel  
Urbn Leaf  
1295 W. Morena Blvd.  
San Diego, CA 92110  
Telephone: (619) 630-5618  
Email: nshaman@urbnleaf.com

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	)	Submitter IDs: 57064, 57069, 57074, 58388
limited liability company, UL CHULA ONE	)	
LLC, a California limited liability company,	)	<b>APPELLANTS' BRIEF REGARDING</b>
and UL CHULA TWO LLC, a California	)	<b>ISSUES ON APPEAL</b>
limited liability company,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
ROXANA KENNEDY, in her capacity of	)	
Chief of Police of the City of Chula Vista,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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.

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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).)

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1 be given a Phase Two application slot. City must then cause a reassessment of the application to be  
2 conducted, and thereafter issue a new Notice of Decision to the Applicant; such Notice of Decision  
3 shall be final and contain no right to appeal to the City Manager.”

4 **Grounds for Rejection of the Applications**

5 This Appeal is made on the basis that all Notices of Decision (NODs) were issued in error.  
6 Specifically, two grounds for rejection were given as the basis for all four NODs:

7 1. “The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned  
8 or penalized by the City, or any other city, county, or state, for a material violation of state or  
9 local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or  
10 alcohol licensure. (CVMC 5.19.050(A)(5)(f). *The City of San Diego sanctioned William [sic]*  
11 *Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity.*”  
12 (Italics in original.)

13 2. “The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated,  
14 caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the  
15 City or any other jurisdiction. (CVMC 5.19.050(A)(5)(f). *William [sic] Senn was involved in*  
16 *unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to*  
17 *2012.*” (Italics in original.)

18 One additional ground for rejections was given in the NODs for submitter IDs 57064 and  
19 57069: “The total application score [] has failed to rank high enough to be given a Phase Two  
20 application slot. . . . (CVMC 5.19.050(A)(7) and Cannabis Regulations § 0501(N).)”

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1 Discussion

2 **A. The first and second grounds for rejection, stated in all NODs, are so vague as to violate**  
3 **the Due Process Clause.**

4 In cases where an aggrieved party has a right to a hearing, such right “embraces not only the  
5 right to present evidence, but also a reasonable opportunity to know the claims of the opposing party  
6 and to meet them.” (*Morgan v. United States* (1938) 304 U.S. 1, 18.) In this case, as Appellants have a  
7 right to a hearing (see Chula Vista Mun. Code, § 5.19.050(A)(6)), Appellants must be afforded a  
8 reasonable opportunity to know the grounds on which their applications were rejected. The NODs fail  
9 to provide this information as to the first and second grounds for rejection.

10 Chief Kennedy’s first ground for rejection does not reference a specific date on which Mr. Senn  
11 was allegedly sanctioned or penalized for the violation of any law. Indeed, it references no time frame  
12 whatsoever. As such, that ground for rejection is fundamentally so vague that it cannot possibly be  
13 reasonably opposed as this lack of information makes it impossible to ascertain what facts and law were  
14 used to determine Mr. Senn was sanctioned or penalized for a violation of law. The second ground for  
15 rejection is little better given that it alleges Mr. Senn “was involved in unlawful Commercial Cannabis  
16 activity [*sic*] in the City of San Diego from approximately 2010 to 2012.” This finding still suffers from  
17 such a lack of specificity that it fails to adequately apprise Appellants of the relevant conduct or laws at  
18 issue in order to provide them with an adequate opportunity to argue against it. Without this  
19 information, Appellants have not been afforded adequate notice in order to provide them with a  
20 meaningful opportunity to investigate and prepare their arguments. For these reasons, the first and  
21 second grounds for rejection must be set aside as they violate the Due Process Clause of the Fourteenth  
22 Amendment to the United States Constitution.

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**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



1 enumerated state criminal and nuisance statutes.”].) California did not make a foray into regulation of  
2 commercial activities involving cannabis until 2015, when it enacted the Medical Marijuana Regulation  
3 and Safety Act, which consisted of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643. (See  
4 Stats. 2015, chs. 688, 689, 719.) This became the framework for the current Medicinal and Adult-use  
5 Cannabis Regulation and Safety Act. (See Bus. & Prof. Code, §§ 26000 *et seq.*)

6 Thus, even assuming for the sake of argument that Chief Kennedy’s findings in support of both  
7 the first and second grounds for rejection are based on conduct that occurred sometime between 2010  
8 and 2012, there were no applicable laws or regulations in the City of San Diego or the State of  
9 California governing Commercial Cannabis Activity. As such, both of these grounds for rejection must  
10 be set aside.

11 **C. There is no relevant, admissible evidence that Mr. Senn was sanctioned or penalized by**  
12 **the City of San Diego for violations of laws or regulations related to Commercial Cannabis**  
13 **Activity or that Mr. Senn engaged in unlawful Commercial Cannabis Activity.**

14 Appellants are unaware of *any* evidence relied on in relation to this matter. However,  
15 Appellants are assuming Chief Kennedy will claim reliance on a judgment entered upon a stipulation  
16 for entry of judgment between the City of San Diego and Mr. Senn in the San Diego Superior Court  
17 case *City of San Diego v. The Holistic Café, Inc. et al.*, Case No. 37-2012-00087648-CU-MC-CTL.  
18 This is problematic for a number of reasons.

19 As was discussed above, there were no actual laws or regulations pertaining to Commercial  
20 Cannabis Activity in the City of San Diego or the State of California at the time of the conduct alleged  
21 in the complaint underlying *City of San Diego v. The Holistic Café*. As the complaint in the case  
22 outlines, the allegations pertain to conduct that occurred between 2010 and 2012. The allegations cite  
23 violations of the San Diego Municipal Code pertaining to land use, zoning, and the building code. No  
24 allegation was made as to the violation of any local or state law or regulation specifically related to

1 Commercial Cannabis Activity. As such, nothing in the stipulation is evidence that Mr. Senn violated a  
2 law of regulation related to Commercial Cannabis Activity or that he engaged in unlawful Commercial  
3 Cannabis Activity.

4 Additionally, the stipulation itself is not legally relevant. “Relevant evidence” is defined as  
5 “evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of  
6 consequence to the determination of the action.” (Evid. Code, § 210.) The stipulation specifically  
7 states, “Neither this Stipulated Judgment nor any of the statements or provisions contained herein shall  
8 be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint.”  
9 Given that nothing in the stipulation is an actual admission or adjudication of a fact, it has no tendency  
10 in reason to prove or disprove that Mr. Senn committed a violation of a law or regulation *of any kind* or  
11 engaged in unlawful conduct *of any kind*. Indeed, if such evidence were construed as relevant toward  
12 the end of sustaining Chief Kennedy’s findings, that construction would fly in the face of the express  
13 purpose of the stipulation that it not constitute an admission or adjudication. Moreover, given this  
14 express purpose, such evidence is not “the kind that reasonable persons rely on in making decisions.”  
15 (See Chula Vista Cannabis Regs., § 0501(P)(2)(c).) If the parties to a suit expressly stipulate that a  
16 determination of facts has not been made, and if the court overseeing the suit approves that stipulation,  
17 it is patently unreasonable to then rely on such evidence for making *any* determination of facts because  
18 the evidence itself expressly indicates it is not reliable for such purpose.

19 Finally, assuming for the sake of argument that the stipulation is relevant, it constitutes  
20 unreliable hearsay. It is not a document signed under penalty of perjury, it was filed in an unrelated  
21 civil lawsuit almost eight years ago, and it discusses allegations the evidence for which may no longer  
22 exist or may be unavailable (especially in the case of percipient witnesses or missing documents). Thus,  
23 again, this is not evidence of the kind that reasonable persons rely on in making decisions, especially  
24 decisions that have serious business consequences.



1           Thus, for all these reasons, there is no relevant, admissible evidence to support Chief Kennedy's  
2 findings for the first and second grounds, and they should be set aside.

3           **D. The third ground given in the NODs for submitter IDs 57064 and 57069 should be set**  
4           **aside to the extent the scores were determined in any degree of reliance on the findings**  
5           **made in support of any evidence underlying the first and second grounds or in direct**  
6           **reliance on any such evidence.**

7           As a third ground for rejection, the NODs for submitter IDs 57064 and 57069 rely on  
8 inadequate scoring to reach Phase Two. Thus, to the extent any of the scoring determinations for these  
9 applications relied in any way on alleged sanctions or penalties imposed on Mr. Senn by the City of  
10 San Diego or alleged unlawful Commercial Cannabis Activity, those scores must be set aside, and the  
11 applications must be rescored by impartial decisionmakers without the influence of such improper  
12 considerations.

13           **E. To the extent the City Manager determines there is relevant, admissible to sustain Chief**  
14           **Kennedy's findings in support of the first and second grounds for rejection for NODs**  
15           **pertaining to submitter IDs 57074 and 58388, Appellants ask that the City Manager set**  
16           **them aside on equitable grounds.**

17           Even if the City Manager rules that Chief Kennedy's findings in support of the first and second  
18 grounds for rejection stated in the NODs pertaining to submitter IDs 57074 and 58388 are supported by  
19 relevant, admissible evidence, Appellants ask that the City Manager set aside those NODs on equitable  
20 grounds. In particular, the alleged violations pertain to conduct that occurred anywhere from eight to  
21 ten years ago. The alleged violations occurred during a time in which state law, pursuant to the Medical  
22 Marijuana Program Act, generally allowed for the existence of medical marijuana collectives and  
23 cooperatives, but during which time neither the State nor the City of San Diego had enacted any laws or  
24 regulations pertaining to Commercial Cannabis Activity. The law (or lack thereof) at the time was

1 confusing and inconsistently applied, but there was strong demand for safe access to medical marijuana  
2 in the City of San Diego, and Mr. Senn sought to help address that need. Moreover, the alleged  
3 violations were violations of land-use, zoning, and building code ordinances that did not pertain to  
4 cannabis. It is highly unusual to deny a license or permit to an applicant for such local code violations  
5 because they are strict liability violations and because it is well known that most business owners have  
6 had such violations at one time or another. Such violations do not represent a serious character flaw or  
7 a serious risk to the residents of Chula Vista.

8 Today, Will Senn operates the most successful cannabis retailer in San Diego and one of the  
9 most successful cannabis retailers in California. Like all his operations, those in the City of San Diego  
10 are licensed. *That is to say, Mr. Senn's operations are licensed by the very municipality that was*  
11 *party to the stipulation for entry of judgment that Chief Kennedy apparently relied on to issue the*  
12 *NODs.* Surely, such licensure would not have occurred had Mr. Senn committed an act of moral  
13 turpitude or otherwise posed a threat to public safety that would disqualify him from operating a  
14 commercial cannabis business. On the contrary, in addition to Urbn Leaf's flagship location in the Bay  
15 Park neighborhood of San Diego, Mr. Senn also operates three other retail cannabis facilities under the  
16 Urbn Leaf brand: one in San Ysidro, CA (also located in the City of San Diego's jurisdiction), one in  
17 Grover Beach, CA, and one in Seaside, CA. Mr. Senn was the co-founder of the City of San Diego's  
18 cannabis trade group, the United Medical Marijuana Coalition, and has spearheaded the creation and  
19 maintenance of deep cooperation with San Diego officials in addition to forming solid, cooperative  
20 relationships with officials in all other locations in which Urbn Leaf operates.

21 Thus, for the foregoing reasons, Appellants ask that the City Manager allow the applications  
22 under submitter IDs 57074 and 58388 to proceed forward to Phase Two on equitable grounds.

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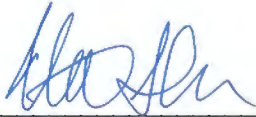
1 **Conclusion**

2 For the foregoing reasons, Appellants request that the City Manager set aside the NODs and  
3 remand them for reconsideration and approval to move to Phase Two.

4  
5 Dated: June 5, 2020

APPELLANTS

6  
7 By:



8 Nathan Shaman  
9 Attorney for Appellants  
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**CITY OF CHULA VISTA - OFFICE OF  
THE CITY ATTORNEY**

## Cannabis Appeal Hearing

## Willie Senn dba Urbn Leaf

**Submitter ID: 57064; 57069; 57074; 58388**



2 [START Cannabis Appeal-Urbn Leaf (Willie  
3 Senn) 57064 57069 57074 58388-20200610 2101-  
4 1.mp4]

5 MR. GARY HALBERT: All right, thank you.  
6 Um, let's see, I will call this appeal hearing  
7 to order. I will note for the record that the  
8 hearing is being recorded. This appeal is being  
9 held on June 10th, 2020. The hearing is  
10 starting at 2:01 p.m.

11 This hearing is being conducted by agreement  
12 of the parties via teleconferencing. For  
13 purposes of jurisdiction and venue, I ask that  
14 the parties stipulate that the hearing is being  
15 held in Chula Vista, California, 91910. Agree  
16 to the stipulation?

17 MR. NATHAN SHAMAN: So stipulated.

18 MR. HALBERT: Um, I Gary Halbert, City  
19 Manager, will preside over the hearing. I am  
20 asked--I am tasked to hear and decide this  
21 appeal matter as the Hearing Examiner, pursuant  
22 to Chula Vista Municipal Code Section 5.19.050.  
23 My role in this matter is to provide due  
24 process. Due process involves notice, and an  
25 opportunity to be heard before a fair and

2 neutral decision maker.

3 As the decision maker, I am required to be  
4 neutral and an unbiased decision maker, showing  
5 fairness to both parties equally. I am assisted  
6 by Simon Silva, Deputy City Attorney, acting as  
7 legal advisor to me in my capacity as the  
8 Hearing Officer.

9 I ask that everyone present identify  
10 themselves for the record by stating their first  
11 and last name, and their role. I will start,  
12 and ask that the City members introduce  
13 themselves, then Urbn Leaf members introduce  
14 themselves, and conclude with anybody else, to  
15 introduce themselves. So I'm Gary Halbert, City  
16 Manager, acting as the Hearing Officer in this  
17 appeal.

18 MS. MEGAN MCCLURG: Megan McClurg, uh,  
19 Deputy City Attorney for the City of Chula  
20 Vista, representing [unintelligible].

21 MR. HALBERT: Simon?

22 MS. SIMON VEGA: [unintelligible], Deputy  
23 City Manager, staff.

24 MR. HALBERT: Uh, Simon, you're, you're  
25 still muted.

2 MS. SIMON SILVA: Simon Silva, Deputy City  
3 Attorney [unintelligible].

4 SERGEANT VARGA: Hi, good afternoon, Mike  
5 Varga, Chula Vista P.D. Sergeant.

6 MR. KELLY BROUGHTON: Kelly Broughton  
7 [unintelligible] Director, City of Chula Vista.

8 MR. HALBERT: Uh, I think that's all the  
9 City folks. Uh, Urbn Leaf?

10 MR. SHAMAN: This is Nathan Shaman, uh,  
11 attorney for Appellants.

12 MR. WILL SENN: And Will Senn, um, founder  
13 of Urbn Leaf, and uh, Appellant.

14 MR. SHAMAN: Uh, Mr. Halbert, we have some  
15 other members of Urbn Leaf that are just  
16 observing. Would you like them to identify  
17 themselves as well, or could I just state that  
18 for the record?

19 MR. HALBERT: You can go ahead and state  
20 them for the record.

21 MR. SHAMAN: Okay. So I believe we've got  
22 uh, just--I'm trying to look at the whole list  
23 here. And Ms. McClurg, maybe you could see uh,  
24 a deeper list of the individuals. But I know  
25 that uh, in addition to Mr. Senn, Troy Housman

2 MS. SIMON SILVA: Simon Silva, Deputy City  
3 Attorney [unintelligible].

4 SERGEANT VARGA: Hi, good afternoon, Mike  
5 Varga, Chula Vista P.D. Sergeant.

6 MR. KELLY BROUGHTON: Kelly Broughton  
7 [unintelligible] Director, City of Chula Vista.

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24 a deeper list of the individuals. But I know  
25 that uh, in addition to Mr. Senn, Troy Housman



1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 has joined, and I'm not sure if there's anybody  
3 else from our team.

4 MS. MCCLURG: That's the only other person  
5 that I see.

6 MR. SHAMAN: Okay.

7 MR. HALBERT: All right, thank you. Um, I  
8 asked that the Appellant provide an address for  
9 any further notices or communications to be  
10 served before leaving today. Any objections,  
11 motion, arguments, or procedural questions  
12 should be directed to me. Wait for my response  
13 before continuing to speak.

14 This is not a court proceeding; we're not  
15 bound by the technical rules of evidence  
16 applicable to civil or criminal proceedings  
17 conducted in the courts of this state. However,  
18 it is our desire to proceed efficiently and to  
19 hear only evidence that pertains to the issues.  
20 Therefore, I ask the parties and their  
21 representatives to stick to the issues and to  
22 act courteously.

23 All testimony of witnesses will be under  
24 oath. Witnesses will be subject to all  
25 applicable penalties provided by state law for

perjury. I will take judicial notice of the Chula Vista charter, the Chula Vista municipal code, including chapter 5.19, and City cannabis regulations effective 11/19/19 pertaining to cannabis licensing, and they will be a part of the record in this matter.

The order of the procedure shall be as follows: the Appellant shall present their case first, beginning with opening, an--an opening statement or remarks. The City then shall present its case, including an opening statement or remarks. After a witness testifies, the other party or I may ask questions of that witness.

For the record, staff will make a list of witnesses and any Exhibits introduced by the parties and will mark Exhibits as admitted or not admitted. After the parties present their cases, I may ask additional questions of either party.

Both parties may make a closing statement or remarks. The Appellant bearing the burden of proof shall go first, and then the City, with Appellant having a final statement. After the

2 final statement, the matter will be submitted  
3 and I will deliberate on the matter and render a  
4 written decision in compliance with City code.  
5 The decision will thereafter be provided to the  
6 parties via U.S. mail or e-mail, or other agreed  
7 upon means of service.

8 Appellant shall bear the burden of proof by  
9 a preponderance of the evidence to demonstrate  
10 that the identified reason or rejection  
11 contained in the notice of decision were  
12 erroneous. Are there any preliminary matters  
13 the parties need to present for consideration?

14 MR. HALBERT: I'm sorry, nothing for  
15 Appellants.

16 MS. MCCLURG: Um, Nathan, I was wondering  
17 um--or I should say Mr. Shaman, I was wondering  
18 if you're amenable to stipulating to any  
19 Exhibits of City's that would be um, admitted?

20 MR. SHAMAN: We would stipulate to the  
21 admissibility of Exhibits 1, 2, 3, 4, 5, 6, 7,  
22 14, 15, and 16.

23 MR. HALBERT: Are there any questions from  
24 anyone on the procedure for the hearing?

25 MR. SILVA: Yes, the Exhibits that

2 [unintelligible].

3 MR. HALBERT: Simon, we can't hear you.

4 MR. SILVA: Can you hear me now?

5 MR. HALBERT: Yes.

6 MR. SILVA: Um, I, I would ask the Hearing  
7 Officer to uh, uh, to admit the Exhibits that  
8 the two parties stipulated could be admitted for  
9 the record.

10 MR. HALBERT: All right. To admit those to  
11 the record. Any, any questions on procedures?  
12 Okay, none? Um, now I will administer the oath  
13 for all witnesses. Um, all witnesses please  
14 raise your right hands and give the answer to  
15 the following oath for witnesses. Do you  
16 solemnly swear or affirm that the testimony you  
17 shall give in this matter shall be the truth,  
18 the whole truth, and nothing but the truth? You  
19 guys are muted.

20 MR. KELLY BRAUGHTON: Yes. Yes.

21 MR. HALBERT: Yeah, thank you, Kelly. And  
22 Mike, unmute.

23 SERGEANT VARGA: Yes.

24 MR. HALBERT: Thank you. Uh, is Will going  
25 to be testifying as well?



MR. SHAMAN: No he is not.

MR. HALBERT: Okay. All right then. Um, so we'll move in to the Appellant uh, giving me, giving their opening statement, and the City may give an opening statement thereafter, or at the conclusion of the Appellant's case.

MR. SHAMAN: Thank you, Mr. Halbert, I appreciate it. The crux of the Appellant's uh, appeal relies essentially on legal principles alone. We are not moving into evidence any particular documents or testimony. And fundamentally, um, there are a couple issues that I want to expound upon. Uh, first, uh, Mr. Halbert, I, I do want to confirm that you are in receipt of the brief I submitted last Friday?

MR. HALBERT: Yes we are.

MR. SHAMAN: Okay. So um, I'm not going to go too extensively into the issues, because I do believe they've been uh, sufficiently discussed in the brief. But I will just add a summary for the record of our position. And effectively, um, there are several different issues. The first issue that I raised in a brief is that as pertains to all Notices of Decision, the first

2 and second grounds stated for rejection are so  
3 vague as to violate the due process clause.

4 Specifically, the first ground for rejection  
5 states no timeframe for the allegations made,  
6 and relies instead on just vague statements that  
7 the--that Mr. Senn either was sanctioned by the  
8 City of San Diego for violation of a commercial  
9 cannabis law, or was uh, or committed some  
10 violation of a commercial cannabis law. Um, and  
11 no timeframe is stated.

12 Um, for the second uh, ground for rejection  
13 does state a timeframe, but even then it's, it's  
14 merely between 2010 and 2012. So I believe that  
15 both of those grounds provide insufficient  
16 information for an average reasonable person to  
17 sufficiently determine and intelligently defend  
18 against the actual grounds for rejection that  
19 are stated.

20 Um, the due process clause requires that  
21 when there is a hearing given that the parties  
22 be given a meaningful opportunity to be heard,  
23 and part of that guarantee is the ability to  
24 meet those allegations, charges, etcetera with  
25 um, an intelligent defense, and the only way to

prepare an intelligent defense is to have an adequate understanding of those allegations. So I do believe those grounds uh, fail to satisfy due process.

Um, assuming those grounds are adequately stated, the laws and regulations that were in effect um, during the only ascertainable timeframe stated in the Notice of Decision for each submitter ID, it is the timeframe 2010 to 2012. And as I've elaborated on at length in my brief, the City of San Diego had no applicable regulations or laws at that time pertaining to Commercial Cannabis Activity. In fact, the entire notion of "Commercial Cannabis Activity" didn't even really exist throughout the state of California itself at that time.

And we know that because the state of California did not enact laws pertaining to Commercial Cannabis Activity for the first time until 2015, when the state enacted the Medical Marijuana Regulation and Safety Act, which was the predecessor and bedrock for the current Medicinal and Adult-use uh, Cannabis Regulation and Safety Act.

All that existed at the time in the City of San Diego were standard land development code provisions, building code provisions, zoning provisions, electric provisions, plumbing provisions, etcetera. None of them pertaining to the use of property for cannabis in any way, shape, or form.

The State of California at the time only had in place the Compassionate Use Act, which provided a limited exemption for personal use, possession, cultivation of cannabis, marijuana, and the state then also had enacted in 2003 the Medical Marijuana Program Act, which provided for collective and cooperative cultivation efforts.

The Supreme Court of California stated years later um, after these [unintelligible] those laws were only ever intended to provide a very limited framework to exempt certain activities from criminal laws provided by the state, and that they had no civil effect whatsoever in terms of any regulation, to the extent that they didn't prohibit a city or county from actually banning any commercial activity, or regulating



it in any other way.

So the fundamental issue becomes that as to grounds one and two for rejection, both rely on either a sanction due to a violation of a law regarding Commercial Cannabis Activity, or they rely on a violation of a law pertaining to Commercial Cannabis Activity, and those laws simply did not exist at that time.

So fundamentally, it seems impossible for the uh, for any such grounds to be stated in the first instance. Um, beyond that, my brief addresses what I had believed at the time I submitted was the scope of evidence that was going to be relied upon, which I believed at the time would only be the stipulation for uh, judgment.

I have subsequently, almost simultaneously with the submission of my brief received the City's evidence, and um, specifically what I see in that evidence are a series of documents that lack foundation, are hearsay, are unreliable, um, etcetera. And I will get into those details, obviously, as that evidence is submitted for admission. Um, but I do not

believe that any of that evidence is admissible to actually establish any sort of conduct, even assuming there were laws on the books regarding Commercial Cannabis Activity.

And finally, um, we would ask that regardless of any of those, uh, issues that on equitable grounds the City reconsider issuance of these entitlements to uh, the Appellants, and specifically in, in reference to Mr. Senn. He's been a known operator within the City of San Diego and throughout the state of California now for years. The City itself, the City of San Diego itself issued him permits, and has collaborated closely with him for years, including as the founder of the local trade group in the City of San Diego. And so we believe it would be in the best interest not only, of course of Appellant's, but of the City of Chula Vista to have such an operator have those entitlements.

So with that--that's the Summary of Argument. As I've stated, we do not intend to present any affirmative evidence, um, and I will uh, defer to the City at this time.

MR. HALBERT: Uh, Ms. McClurg?

MS. MCCLURG: To set the framework for this appeal, um, it involves four applications, three are storefront retail applications in district one, two, and four, and one is a manufacturing application. Um, it's the City's position that there are valid grounds for rejection, um, that all applications were rejected based on the Appellant's um, involvement in unlawful cannabis activity in the City of San Diego.

Um, to the extent that that's confusing as to which unlawful cannabis activity we were referring to, um, we can certainly provide more information, but um, we are aware of one incident in which um, Mr. Senn was sanctioned, and that will be um, discussed today.

The uh, D2, district 2 and district 4 applications were also rejected based on score. Um, and you will hear the Appellant's paperwork um, requested that that score be reconsidered um, to not include the unlawful activity. You'll hear testimony today that the score had never included any background information that was never taken into account, in um, awarding a

2 score to anyone.

3 Um, City has three witnesses um, that are  
4 going to testify, uh, Sergeant Varga from the  
5 police department, uh, who will talk about um,  
6 the information that the police department used  
7 in determining that the um, application was  
8 going to be rejected. Um, he will discuss  
9 Notice of Violation um, issued by the City and  
10 other information that led them to believe that  
11 unlawful activity had occurred.

12 Um, you will hear from Kelly Braughton, who  
13 designed the scoring matrix for City. Um, and  
14 then you will also hear from Matt Eaton, an HDL,  
15 uh, who will also testify as to what the score  
16 was based on and what it wasn't based on.

17 Um, at the end, City would just ask that you  
18 render a decision in its favor, uh, and uphold  
19 the Notice of Decision. And I think if um, if  
20 uh, Mr. Shaman is not going to be presenting  
21 evidence, then I can call my witnesses, if that  
22 works for you.

23 MR. SHAMAN: Yes, the Appellants will rest  
24 their case in chief.

25 MS. MCCLURG: Okay. So um, I will first



1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 call Sergeant Varga.

3 SERGEANT VARGA: All right, um, can you  
4 please tell us what your job title is?

5 SERGEANT VARGA: Uh, good afternoon again.  
6 My name is Mike Varga. I am a Sergeant with the  
7 Chula Vista Police Department. Just simply I  
8 supervise our [unintelligible] Investigations  
9 Unit.

10 MS. MCCLURG: Um, how long have you been  
11 with the police department?

12 SERGEANT VARGA: A little over 19 years.

13 MS. MCCLURG: Um, so Mr. Shaman, do you mind  
14 if you--you, you can unmute for any objections,  
15 but do you mind if I just mute you during the  
16 testimony? Because I think we're getting a  
17 little bit of feedback.

18 MR. SHAMAN: That's fine.

19 MS. MCCLURG: Okay. And if for some reason  
20 you can't unmute yourself, send me a typed  
21 message and I will unmute you, but I think you  
22 should be able to unmute yourself. Okay. Um,  
23 were you involved in the background assessments  
24 of cannabis license applicants?

25 SERGEANT VARGA: Yes I was.

2 MS. MCCLURG: What was the nature of your  
3 involvement?

4 MS. MCCLURG: I have several detectives that  
5 work in the Special Investigations Unit, and  
6 those detectives are responsible for running  
7 background checks and gathering information on  
8 applicants. And I review that information as  
9 their supervisor.

10 MS. MCCLURG: Um, in phase one of City's  
11 process, were you backgrounding owners,  
12 officers, and managers of businesses?

13 SERGEANT VARGA: Yes we were.

14 MS. MCCLURG: All right, and did that  
15 include a review of like, fingerprint  
16 information, but also local and law enforcement  
17 databases?

18 SERGEANT VARGA: All of the above.  
19 Fingerprints and uh, a number of databases.

20 MS. MCCLURG: All right, did that also  
21 include court records?

22 SERGEANT VARGA: Yes it did.

23 MS. MCCLURG: Um, are you familiar with uh,  
24 the municipal code section that pertains to uh,  
25 background as qualifiers in phase one?

2 SERGEANT VARGA: Yes I am.

3 MS. MCCLURG: Uh, is that 5.19.050(a)5?

4 SERGEANT VARGA: Yes it is.

5 MS. MCCLURG: Uh, did you use those factors  
6 in assessing whether to accept or reject an  
7 application?

8 SERGEANT VARGA: I did.

9 MS. MCCLURG: Uh, if an applicant or an  
10 owner has been sanctioned um, for laws related  
11 to cannabis activity, is that a basis for  
12 rejection in the municipal code?

13 SERGEANT VARGA: Yes it is.

14 MS. MCCLURG: If an applicant or owner has  
15 conducted, facilitated, or somehow been involved  
16 in unlawful Commercial Cannabis Activity, is  
17 that a basis for rejection of the application?

18 SERGEANT VARGA: Yes it is.

19 MS. MCCLURG: Are you familiar with the  
20 police department's background assessment of um,  
21 UL Chula 1, UL Chula 2, um, and the 2446 Main  
22 Street applications?

23 SERGEANT VARGA: Yes I am.

24 MS. MCCLURG: Um, did SIU conduct background  
25 checks on the owners, officers, and managers

2 associated with those businesses?

3 SERGEANT VARGA: Yes we did.

4 MS. MCCLURG: Would that include an  
5 individual named Will Senn?

6 SERGEANT VARGA: It did.

7 MS. MCCLURG: Did SIU's background check  
8 flag any issues um, related to Will Senn?

9 SERGEANT VARGA: Yes it did.

10 MS. MCCLURG: And what kind of issues did it  
11 flag?

12 SERGEANT VARGA: Uh, he was found to be an  
13 owner/operator of a business named the Holistic  
14 Café in the city of San Diego, which was  
15 identified by the City of San Diego as a  
16 marijuana dispensary and as an illegal business.

17 MS. MCCLURG: Did SIU obtain any documents  
18 from the City of San Diego?

19 SERGEANT VARGA: Yes we did.

20 MS. MCCLURG: And how did you um, obtain  
21 those?

22 SERGEANT VARGA: Through a public records  
23 request act.

24 MS. MCCLURG: Okay, I'm going to draw your  
25 attention to Exhibit 8, which I will try to use



1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 my uh, technological skills here and see if I  
3 can share it with everyone. Um, can everyone  
4 see this? Exhibit 8, which uh, consists of  
5 state stamp CV0017, and CV2--CV0023, do you  
6 recognize that document?

7 SERGEANT VARGA: Yes I do.

8 MS. MCCLURG: What is it?

9 SERGEANT VARGA: That's a Notice of  
10 Violation from the City of San Diego to the  
11 property owner and listed associates.

12 MS. MCCLURG: Okay. And um, was this  
13 document obtained through the um, records,  
14 public records act request?

15 SERGEANT VARGA: Yes it was.

16 MS. MCCLURG: Um, City would ask that this  
17 document be admitted.

18 MR. SHAMAN: Appellants object. Um, Mr.  
19 Halbert, could I state the grounds for  
20 objection?

21 MR. HALBERT: Yes, please do.

22 MR. SHAMAN: Uh, so just generally uh, we  
23 object that the document is irrelevant, lacks  
24 foundation, lacks authentication, and  
25 constitutes unreliable hearsay. Um,

specifically in this case, the detective has testified that he obtained it pursuant to a public records act request. He is not the originator of the document. He has no personal knowledge of any of the contents, um, or occurrences in the document. He can't verify whether the document was signed by the person that purportedly signed it, so he cannot possibly lay a foundation to establish that the document is, in fact, what it purports to be.

Um, and because of the lack of knowledge regarding the circumstances of its creation or any of the activities related in the document, he has no ability to relate the reliability of those observations or comment on the reliability of the person that allegedly made them. So there are several major fatal defects underlying the ability to consider that document and admit it into evidence.

MS. MCCLURG: Um, so City um, would just remind that this is, these are relaxed rules of evidence, not technical rules of evidence. But if we are looking at the technical rules of evidence, we do have the business records,

exceptions, uh, and the official records--uh, exceptions to the rules and hearsay rules, um, for the reason that typically, especially public record employees are required to provide documents--and even in this case, a Notice of Violation, would have been created as part of the duties of one of the employees of a public agency.

Um, so in that sense it is a reliable record that's typically created um, in the scope of that person's duties. So City would ask that it be admitted, given the evidence uh, the weight that the Hearing Officer determines that it deserves.

MR. HALBERT: Um, I'll admit it uh, subject to determining its weight.

MS. MCCLURG: Uh, so Mr. Varga, uh, if you-- Sergeant Varga, sorry. Um, if you look at the City's Exhibit 8, the Notice of Violation. Um, is uh, Will Senn's name um, contained on that document?

SERGEANT VARGA: Yes it is.

MS. MCCLURG: And where is it contained?

SERGEANT VARGA: Uh, it says business

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 entity, owner/owners. And it says the Holistic  
3 Café Incorporated, and it'll say number of  
4 owners, Willie Senn being one of those.

5 MS. MCCLURG: Okay. Um, you know--all  
6 right, I'm sorry. What was the location, um, or  
7 address of the alleged violation?

8 SERGEANT VARGA: 415 University Avenue in  
9 San Diego.

10 MS. MCCLURG: And um, what type of business  
11 did this document indicate that Holistic Café  
12 was at that, at that address?

13 SERGEANT VARGA: Uh, it was a herbal um,  
14 remedy type place, a herbal medicinal type place  
15 and tea place.

16 MR. SHAMAN: Objection, lacks foundation.  
17 Hearsay, move to strike.

18 MS. MCCLURG: Is there anywhere on the  
19 document that you--that indicated what kind of  
20 um, violation was being issued?

21 SERGEANT VARGA: Uh, yes there is. Uh, if I  
22 scroll through the document I could find out for  
23 you.

24 MS. MCCLURG: Um, okay, do you want me to  
25 scroll and then you tell me when to stop,



2 please?

3 SERGEANT VARGA: Sure, give me one second  
4 here. So if we go to uh, [unintelligible] you  
5 will get to page 26. Page 26 through 27,  
6 please.

7 MS. MCCLURG: Uh, 26 through--oh. On 8, or  
8 were you referring to a different document?

9 SERGEANT VARGA: I'm sorry--

10 MR. HALBERT: Ms. McClurg, Ms. McClurg. Ms.  
11 McClurg, could you, could you uh, cut down the--  
12 mute, mute people that are not talking?

13 MS. MCCLURG: Yeah, let me find how I--let  
14 me just set this up again. All right, I have  
15 muted everyone. I don't hear any more feedback.  
16 I've muted everyone except for Mike and I. Uh,  
17 so Sergeant Varga, sorry, were you referring to  
18 an item in Exhibit 8?

19 SERGEANT VARGA: Yeah, Exhibit 8, if we can  
20 go to 18, or page 18, labeled CV0018?

21 MS. MCCLURG: Okay, I'm on CV0018.

22 SERGEANT VARGA: Uh, okay let's see here.  
23 Um, I'm sorry, I'm trying to read it. It's very  
24 small on my screen here. So it talks about the,  
25 the history of the, the violations there, it

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 identifies it as a marijuana dispensary  
3 operating at that location named the Holistic  
4 Café Incorporated.

5 MS. MCCLURG: Um, was, according to this  
6 Notice of Violation, was marijuana--was a  
7 marijuana dispensary a permitted use in San  
8 Diego at that time?

9 SERGEANT VARGA: It was not.

10 MS. MCCLURG: Um, I'm going to direct your  
11 attention to Exhibit 9, um, which can, is  
12 composed of two different uh, documents. Do you  
13 recognize these documents?

14 SERGEANT VARGA: Uh, those are photographs  
15 that were also obtained.

16 MS. MCCLURG: Obtained from where?

17 SERGEANT VARGA: Uh, the records request  
18 act.

19 MS. MCCLURG: Okay, from the public records  
20 request--

21 MR. HALBERT: Object--

22 MS. MCCLURG: Um, so these--oh, sorry,  
23 Nathan did I--

24 MR. SHAMAN: No, go ahead. Go ahead.

25 MS. MCCLURG: Uh, so these photos were

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 contained in the public records act response  
3 that you received?

4 SERGEANT VARGA: Yes.

5 MS. MCCLURG: And um, what did you uh,  
6 understand these to be, or the relevance of  
7 these?

8 SERGEANT VARGA: Uh, based on the lettering  
9 on the windows, the words, and the address, it  
10 is the address of the Holistic Café. Uh, that's  
11 what I took as being a picture of the outside of  
12 the dispensary.

13 MS. MCCLURG: Okay, and City would ask that  
14 um, Exhibit 9 uh, be admitted.

15 MR. HALBERT: Uh, I'll, again, object, on  
16 the basis that these photographs are irrelevant,  
17 lack foundation, lack authentication. And um,  
18 specifically here we have the picture of a  
19 building with the number 415. We don't have any  
20 indication of who took the photograph, when the  
21 photograph was taken, um, and uh, what street  
22 the photograph was taken on. The allegation is  
23 that this was 415 University Avenue, but we have  
24 no evidence of that. So again, I believe that  
25 there's no foundation for the admissibility of

2 these photographs.

3 MS. MCCLURG: Just--

4 MR. HALBERT: I'll admit the documents  
5 subject to determining its weight.

6 MS. MCCLURG: All right. Um, Sergeant  
7 Varga, I'm going to direct your attention to um-  
8 -oh, actually first, on Exhibit 9, uh, is there  
9 anything in this Exhibit that indicates to you  
10 that this might be a marijuana business?

11 SERGEANT VARGA: Uh, there's--it's hard to  
12 see in this photograph, uh, but there is a sign  
13 on the door that talks about marijuana, and  
14 there is a marijuana leaf that I've seen  
15 displayed on many, many different uh,  
16 dispensaries.

17 MS. MCCLURG: Um, I'm going to direct your  
18 attention to Exhibit 10. Um, do you recognize  
19 this document? It is composed of two pages.

20 SERGEANT VARGA: Yes. Is there a way to  
21 make that a little bit bigger, by any chance?

22 MS. MCCLURG: Yes. Let me see if I can make  
23 that--is that slightly better?

24 SERGEANT VARGA: Uh, yes it is.

25 MS. MCCLURG: Okay. Um, do you recognize



2 this document with two pages?

3 SERGEANT VARGA: Yes, this was another one  
4 of the documents that we received through the  
5 public records request act, and it pertains to  
6 business taxes.

7 MS. MCCLURG: Okay. Um, I--the City's going  
8 to request uh--oh sorry, this was part of the  
9 public records act request documents that you  
10 received from City of San Diego?

11 SERGEANT VARGA: That's correct.

12 MS. MCCLURG: Okay. And City would ask that  
13 this um, Exhibit be admitted as well.

14 MR. SHAMAN: Again, Appellants object that  
15 this document is irrelevant, lacks foundation,  
16 lacks authentication, and constitutes unreliable  
17 hearsay.

18 MR. HALBERT: And I will admit the document  
19 subject to determining its weight.

20 MS. MCCLURG: Uh, Sergeant Varga, um, do  
21 you--what address did this business tax uh,  
22 certificate, or information pertain to?

23 SERGEANT VARGA: Uh, 415 University Avenue  
24 in the City of San Diego.

25 MS. MCCLURG: And is 415 the same address

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 that was noted in the Notice of Violation, and  
3 on the photographs?  
4 SERGEANT VARGA: Yes it is.  
5 MS. MCCLURG: Um, and what was the name of  
6 this business in this business tax certificate?  
7 SERGEANT VARGA: The Holistic Café, Inc.  
8 MS. MCCLURG: And did this document identify  
9 uh, what type of business this was?  
10 SERGEANT VARGA: Uh, it did.  
11 MS. MCCLURG: Okay, and where is that?  
12 SERGEANT VARGA: On the next page, I  
13 believe.  
14 MS. MCCLURG: So page CV0027?  
15 SERGEANT VARGA: Yes, that's correct.  
16 MS. MCCLURG: Okay, and what type of um,  
17 business did it indicate that it was?  
18 SERGEANT VARGA: Uh, sales of herbal  
19 remedies, teas, and health products.  
20 MS. MCCLURG: And was marijuana listed or  
21 included anywhere in that description of the  
22 business?  
23 SERGEANT VARGA: No, it was not.  
24 MS. MCCLURG: Okay. I'm going to direct  
25 your attention to Exhibit 11. Um, do you

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 recognize--let me try and make it a little  
3 bigger--uh, this document? It is composed of  
4 two pages.

5 SERGEANT VARGA: Yes I do.

6 MS. MCCLURG: And um, where, where did this  
7 document come from?

8 SERGEANT VARGA: So it appears to have come  
9 from the City of San Diego building inspection  
10 department.

11 MS. MCCLURG: How did you get a hold of this  
12 document?

13 SERGEANT VARGA: Uh, again, through the  
14 public records request act.

15 MS. MCCLURG: Okay. Um, and so City would  
16 request that this document be admitted also.

17 MR. SHAMAN: Again, Appellants object that  
18 the document is irrelevant, lacks foundation,  
19 lacks authentication, and constitutes unreliable  
20 hearsay.

21 MR. HALBERT: I'll admit the document  
22 subject to determining its weight.

23 MS. MCCLURG: Uh, Sergeant Varga, um, this  
24 e-mail was from May 2012, is that correct?

25 SERGEANT VARGA: Uh, correct.

2 MS. MCCLURG: And did it reference 415  
3 University Avenue?

4 SERGEANT VARGA: Yes it does.

5 MS. MCCLURG: Uh, where does it reference  
6 that?

7 SERGEANT VARGA: Uh, in the subject line of  
8 the e-mail.

9 MS. MCCLURG: And what was, um why was this  
10 document of interest to the police department?

11 SERGEANT VARGA: Uh, if you scroll down,  
12 please, to page 29, which I, I believe is the  
13 beginning of a correspondence. Uh, it appears  
14 that the City of San Diego, the building  
15 inspector is asking for, or is asking to  
16 schedule an inspection of what they identify as  
17 a marijuana dispensary called the Holistic Café.  
18 The building inspector is asking for an  
19 availability time of when uh, he or she could go  
20 and conduct the inspection.

21 MS. MCCLURG: And did the e-mail indicate at  
22 all whether an inspection occurred?

23 SERGEANT VARGA: Uh, pursuant to the e-mail  
24 chain, it did not occur. The request for the  
25 inspection was declined by the uh, the attorney.



2 MS. MCCLURG: Um, I'm going to direct your  
3 attention to Exhibit 12. Um, do you recognize  
4 this document? It starts at CV0030 and  
5 continues to CV0039.

6 SERGEANT VARGA: I do.

7 MS. MCCLURG: And what is this?

8 SERGEANT VARGA: A notice of Unlawful  
9 Detainer, basically an eviction notice.

10 MS. MCCLURG: And um, where did you obtain  
11 these documents?

12 SERGEANT VARGA: Again, through the public  
13 records request act.

14 MS. MCCLURG: Okay. City would ask that um,  
15 it be admitted into evidence. [unintelligible]  
16 court stamp, so um, [unintelligible] it's been  
17 court stamped.

18 MR. SHAMAN: Uh, Appellants again, object  
19 that the document is irrelevant, lacks  
20 foundation, lacks authentication, and  
21 constitutes unreliable hearsay.

22 MR. HALBERT: And I will admit the document  
23 subject to determining its weight.

24 MS. MCCLURG: Uh, Sergeant Varga, um, was  
25 this um, document um, did it involved the

2 Holistic Café?

3 SERGEANT VARGA: Yes it did.

4 MS. MCCLURG: Um, it was filed uh, when?

5 SERGEANT VARGA: Uh, the date on here is  
6 April 6th, 2012.

7 MS. MCCLURG: And who did this indicate um,  
8 was possessing the premises at issue in the  
9 Unlawful Detainer?

10 SERGEANT VARGA: They have the defendant  
11 listed as the Holistic Café, Inc.

12 MS. MCCLURG: All right, and is there an  
13 address associated with that, um, in regard to  
14 the Unlawful Detainer?

15 SERGEANT VARGA: Uh, I believe there's a,  
16 one on the subsequent pages. I don't see it  
17 listed uh, on this page.

18 MS. MCCLURG: All right. If I get to the  
19 document will you tell me to stop--

20 SERGEANT VARGA: Yes, if I can, if I can see  
21 it. I see--oh, if you go back one more, please?

22 MS. MCCLURG: Uh, up, or?

23 SERGEANT VARGA: Back up--up, up. Now we  
24 go--oh so we can see the plaintiff in the case,  
25 we can see it uh, the defendant is, that's

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 Holistic Café. And I'm trying to see the small  
3 writing of where the address--  
4 MR. HALBERT: Can you expand this a little  
5 bit?  
6 MS. MCCLURG: Sure. Let me see if I can  
7 zoom into it.  
8 SERGEANT VARGA: On, on this page, on page  
9 33?  
10 MS. MCCLURG: Uh, yes, we're on page 33.  
11 SERGEANT VARGA: Number three, you'll see  
12 the--there we go, thank you very much. Number  
13 three it says the defendant named above, and it  
14 provides an address of 415 University Avenue in  
15 San Diego.  
16 MS. MCCLURG: Okay. And was there anywhere  
17 that they talked about the basis um, for this  
18 Unlawful Detainer?  
19 SERGEANT VARGA: Uh, yes, I believe further  
20 down, or further on in the document it discusses  
21 that.  
22 MS. MCCLURG: Um, do you want to let me know  
23 either a page number, or as I scroll through,  
24 um, which page you're referring to?  
25 SERGEANT VARGA: Uh, let's go to, let's try

2 37, I believe.

3 MS. MCCLURG: Trying to go to 37. Is this  
4 the page that you're referring to?

5 SERGEANT VARGA: Yes, I believe so.

6 MS. MCCLURG: Okay, and what was your  
7 understanding based on this notice as to the  
8 basis for um, the eviction?

9 SERGEANT VARGA: So--

10 MS. MCCLURG: The Unlawful Detainer, excuse  
11 me.

12 SERGEANT VARGA: This document is  
13 identifying uh, the Holistic Café as a medical  
14 marijuana dispensary, and it is stating that  
15 the, the premises, the locations, and violation  
16 of zoning laws for operating a medical marijuana  
17 dispensary, and for selling marijuana. They're  
18 also identifying this activity as being illegal,  
19 and they are asking for a cease of operations,  
20 and a vacation of the premises.

21 MS. MCCLURG: Um, I'm going to direct your  
22 attention to Exhibit 13, um, which is comprised  
23 of pages CV0040 through CV0057. Do you  
24 recognize this document?

25 SERGEANT VARGA: Uh, yes I do.



2 MS. MCCLURG: Uh, and uh, where did you  
3 obtain--well, I guess it has a court stamp on  
4 it. Uh, did you obtain this--how did you obtain  
5 this document?

6 SERGEANT VARGA: Again, this was one of the  
7 documents through public records request act.

8 MS. MCCLURG: Okay. And um, City's going  
9 to request that it be admitted. It is also file  
10 stamped uh, by the court.

11 MR. HALBERT: I'll admit that record.

12 MR. SHAMAN: I, I apologize; I was trying to  
13 unmute my microphone. Uh, Appellants will  
14 again, object that the documents are irrelevant,  
15 lack foundation, authentication, and constitute  
16 unreliable hearsay.

17 I do want to point out--and these issues  
18 were briefed--um, the complaint itself was  
19 merely, as a matter of law, a statement of  
20 allegations that have not been tested in court,  
21 and have had no evidence submitted in support of  
22 them. And the stipulation itself expressly  
23 states that it is not to be relied upon for  
24 finding any kind of admission of liability.

25 So both of these documents merely contain

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 allegations asserted by the City of San Diego  
3 without any kind of judicial determination or  
4 hearing on whether those allegations had  
5 actually any validity support. So I, I just  
6 want to emphasize that for those reasons these  
7 documents are irrelevant.

8 MR. HALBERT: I'll admit the document  
9 subject to determination of weight.

10 MS. MCCLURG: All right, Sergeant Varga,  
11 looking at Exhibit 13, um, was--what is your  
12 understanding of what this document is?

13 SERGEANT VARGA: Uh, so it's basically uh,  
14 an injunction to stop somebody from doing  
15 something. It's a lawsuit. It's a lawsuit  
16 against--from the City of San Diego against the  
17 Holistic Cafe uh, that identifies as the  
18 President, chief executive officer uh, Willie  
19 Frank Senn.

20 MS. MCCLURG: Um, is there an allegation in  
21 this document as to what Holistic Cafe is?

22 SERGEANT VARGA: Uh, yes there is.

23 MS. MCCLURG: Okay. And um, can you direct  
24 me to that section?

25 SERGEANT VARGA: I believe that's going to

2 be on page 41.

3 MS. MCCLURG: There you go.

4 SERGEANT VARGA: Here, I think it's on  
5 number five. It's going to be--can you make  
6 that just a tiny bit larger? Sorry. There we  
7 go. Uh, dah, dah, dah, dah--okay, yes, that's  
8 under uh, paragraph five, where it says uh, it  
9 begins with the defendant, the Holistic Café.

10 Uh, it goes on to state that the Holistic  
11 Cafe was and is conducting business as a  
12 marijuana dispensary, which is also commonly  
13 known as a collective or a cooperative, and it  
14 states the address of 415 University Avenue in  
15 San Diego.

16 MS. MCCLURG: Okay, and does this, does this  
17 document contain any allegations that  
18 inspections were conducted, um, at the location  
19 by the City of San Diego?

20 SERGEANT VARGA: Um, it does. And I'm  
21 trying to see if I remember correctly. Uh, if  
22 you scroll down, I believe it was 44, page 44,  
23 or marked page 44.

24 MS. MCCLURG: Okay, this is page 44.

25 SERGEANT VARGA: Okay. And there's a code

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 enforcement officer um, and a building  
3 inspector, see. Dah, dah, dah--yes. Under 25,  
4 it says on May 17th, 2012, it discusses the  
5 building inspector inspected the property and  
6 again confirmed that the Holistic Café was  
7 operating a marijuana dispensary at the  
8 property, which was in violation of the City's  
9 zoning laws.

10 MS. MCCLURG: So um, is it your  
11 understanding that this lawsuit was based on an  
12 allegation that an unpermitted or unlawful  
13 marijuana dispensary was operating at that  
14 location?

15 SERGEANT VARGA: Yes it is.

16 MS. MCCLURG: And um, are you familiar with  
17 the way um, the San Diego--City of San Diego has  
18 conducted um, cannabis enforcement over the past  
19 several years?

20 SERGEANT VARGA: Uh, in the past, uh, about  
21 this timeframe when they didn't have certain  
22 laws on the books, they were using existing  
23 laws, for example, zoning regulations, uh, to  
24 enforce um, basically illegal marijuana  
25 dispensaries or collectives.



2 MS. MCCLURG: And was it your understanding,  
3 uh, do you--are you aware of whether or not the  
4 City of San Diego was using criminal enforcement  
5 at that time?

6 SERGEANT VARGA: They were not, to my  
7 knowledge.

8 MS. MCCLURG: Um, I'm going to direct your  
9 attention to um, another part of this document,  
10 which is--to this document, this part of the  
11 document. Um, this is um, a stipulated judgment  
12 from the same case, is that correct?

13 SERGEANT VARGA: That is correct.

14 MS. MCCLURG: And is Willie Senn's um,  
15 signature on this document?

16 SERGEANT VARGA: Uh, it is--it is, it's not  
17 on this page, but it is on the document.

18 MR. SHAMAN: Objection, lacks foundation.  
19 He has no knowledge of Mr. Senn's signature one  
20 way or the other.

21 MS. MCCLURG: I can rephrase the question.  
22 Does, does it appear that Willie Senn has signed  
23 this, or someone purporting to be Willie Senn  
24 has signed the document with Willie Senn's name  
25 on it here?

2 SERGEANT VARGA: Uh, it appears to do so on  
3 the page that's currently reflected on my  
4 screen, dated 12/7/2012. There is a signature  
5 uh, over the [unintelligible] that says Willie  
6 Frank Senn.

7 MS. MCCLURG: And uh--

8 MR. SHAMAN: Again, I just, I want to renew  
9 the objection that that statement lacks  
10 foundation, and move to strike.

11 MR. HALBERT: Overruled.

12 MR. SHAMAN: Now this document of stipulated  
13 judgment, um, it contains an injunction. Um,  
14 what, if anything, are you aware that this  
15 judgment, stipulated judgment um, prohibits um,  
16 the defendants from doing?

17 SERGEANT VARGA: It prohibits them from  
18 operating uh, any kind of marijuana dispensary,  
19 uh, or collective.

20 MS. MCCLURG: Okay. Um, did this judgment  
21 include any kind of monetary relief or civil  
22 penalty information?

23 SERGEANT VARGA: Uh, yes it did.

24 MS. MCCLURG: Okay. And were the defendants  
25 um, in this judgment, did they agree to pay a

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 civil penalty?

3 SERGEANT VARGA: They did.

4 MS. MCCLURG: Okay. Um, I am going to  
5 direct your attention to Exhibit 14, which was  
6 previously admitted.

7 MS. MCCLURG: Uh, do you recognize this  
8 document? It's comprised of CV0058 through  
9 CV0061.

10 SERGEANT VARGA: Yes I do.

11 MS. MCCLURG: And what is it?

12 SERGEANT VARGA: This is a City of Chula  
13 Vista Police Department police controlled  
14 license application specifically for the adult  
15 use cannabis retailer section.

16 MS. MCCLURG: Okay. And in this document,  
17 um, did it request, um, employment history?

18 SERGEANT VARGA: It did.

19 MS. MCCLURG: Um, and is this the police  
20 controlled license that Willie Senn um,  
21 submitted?

22 SERGEANT VARGA: Yes.

23 MS. MCCLURG: Did it include or mention um,  
24 Holistic Cafe?

25 SERGEANT VARGA: It did not.

2 MS. MCCLURG: Um, which section would have  
3 um, requested the employment history, or did  
4 request the information?

5 SERGEANT VARGA: Uh, if you please scroll  
6 down. I believe it's going to be--uh, no,  
7 that's references. Keep going, please. I think  
8 62, maybe?

9 MS. MCCLURG: 62 is not on there.

10 SERGEANT VARGA: Sorry. Oh, and it's--so  
11 keep going up, I'm sorry. Uh, okay, there it is  
12 in section two-employment history. Sorry, page  
13 59, section two, employment history.

14 MS. MCCLURG: Okay. Um, moving on to  
15 Exhibit 15. Um, what is this document?

16 SERGEANT VARGA: Oh, that's a conviction  
17 supplemental, uh; if someone is convicted of a  
18 crime they would fill that out.

19 MS. MCCLURG: Did this document um, also  
20 require people to report any unlawful Commercial  
21 Cannabis Activity?

22 SERGEANT VARGA: Yes.

23 MS. MCCLURG: Okay. And um, I'm going to  
24 show you what's been marked as Exhibit 16. Um,  
25 do you recognize this document?



2 SERGEANT VARGA: Yes, it was included in  
3 that packet, and it states conviction  
4 supplemental not needed.

5 MS. MCCLURG: Okay. So other than the  
6 police controlled license application, this is  
7 the only other document you had. Um, was um,  
8 cannabis activity at Holistic Café mentioned in  
9 any part uh, of this, these police controlled  
10 um, documents?

11 SERGEANT VARGA: Uh, no it was not.

12 MS. MCCLURG: Um, I have nothing further for  
13 Sergeant Varga.

14 MR. HALBERT: Mr. Shaman, do you have any  
15 questions for the Sergeant?

16 MR. SHAMAN: Uh, yes I do. Thank you. Um,  
17 Sergeant, let's just start back at the first uh,  
18 document that was uh, introduced into evidence  
19 by Ms. McClurg, and that's Exhibit 8, um, which  
20 is the Notice of Violation. Um, in that  
21 document, is there any indication that anyone  
22 actually saw the sale of marijuana? Sir?

23 SERGEANT VARGA: Uh, in this particular one,  
24 I don't want confuse it with the other ones. I  
25 don't believe in this particular Exhibit there

2 is, no.

3 MR. SHAMAN: Have you spoke with uh, any of  
4 the code enforcement inspectors that were  
5 involved in the investigation?

6 SERGEANT VARGA: No I have not.

7 MR. SHAMAN: Do you have any personal  
8 knowledge of the investigation?

9 SERGEANT VARGA: No I do not.

10 MR. SHAMAN: Did you ever visit the Holistic  
11 Café when it allegedly was open?

12 SERGEANT VARGA: I did not.

13 MR. SHAMAN: Um, are you aware of any other  
14 actual evidence, whether in this record or not,  
15 of marijuana transactions occurring at that  
16 location during the years 2010 to 2012?

17 SERGEANT VARGA: Uh, just the record that  
18 we've already discussed, where the code  
19 enforcement officer conducted inspection, and  
20 observed the marijuana dispensary operating, and  
21 that's the same record that we've discussed  
22 previously.

23 MR. SHAMAN: Understood. Okay. Um, and  
24 just scrolling down to date--uh, date stamp page  
25 19, um, and, and going through page 21, there's

2 a series of violations that are alleged to have  
3 occurred according to various sections of the,  
4 what appears to be the California building code,  
5 the California electrical code, and the San  
6 Diego municipal code. Can you point to any of  
7 those that actually regulate cannabis activity?

8 SERGEANT VARGA: Uh, well the first one says  
9 the non-permitted use of the commercial building  
10 as a marijuana dispensary. Uh, that's about as  
11 close as it gets to, I think, answering your  
12 question, with specifically attempting to  
13 regulate the, the industry, or the use of a  
14 building for marijuana.

15 MR. SHAMAN: Can you--and could you be a bit  
16 more specific when you say the first one?

17 SERGEANT VARGA: I'm sorry, it says the non-  
18 permitted use and construction included, and are  
19 not to be limited to--we're looking at page  
20 CV0019, bullet point one, or point one, a non-  
21 permitted use of commercial building as a  
22 marijuana dispensary.

23 MR. SHAMAN: I see where you're saying,  
24 okay. But, but specifically, going down further  
25 on the page, at the bottom of, of 0019, and in

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 looking through to the end of 0021, can you  
3 point to a specific section of any of those  
4 codes that was alleged to have been violated  
5 that actually regulated or concerned marijuana  
6 activity in any way, shape, or form?

7 SERGEANT VARGA: Could we go back up one,  
8 please? Uh, let's see here. So 1512.0305, Use  
9 Regulations for Commercial Zones. Uh, there in  
10 italics it states marijuana dispensaries are not  
11 allowed use in any zone within the City of San  
12 Diego.

13 MR. SHAMAN: Understood. But that, not  
14 aware of that section actually articulating  
15 anything specific regarding the marijuana, are  
16 you?

17 SERGEANT VARGA: Uh, no, I'm not that  
18 familiar with that section, you're correct.

19 MR. SHAMAN: Okay. And moving on, um, to  
20 the photographs that were uh, admitted in  
21 Exhibit 9. Um, do you have any knowledge of  
22 when these photographs were taken?

23 SERGEANT VARGA: No I do not.

24 MR. SHAMAN: Moving on to Exhibit 10, did  
25 you discuss that, that document with anyone, any



2 personnel in the City of San Diego?

3 SERGEANT VARGA: Uh, no I did not.

4 MR. SHAMAN: Are you aware of whether or not  
5 Mr. Senn had any involvement in the submission  
6 of a business tax certificate application to the  
7 City of San Diego?

8 SERGEANT VARGA: I do not.

9 MR. SHAMAN: I apologize, just a moment.  
10 Did you ever attempt to--or, or uh, did anyone  
11 that you're aware of ever attempt to contact  
12 the, the plaintiff/landlord that is identified  
13 in Exhibit 12, uh, the Unlawful Detainer  
14 complaint?

15 SERGEANT VARGA: Uh, I did not.

16 MR. SHAMAN: Do you have any personal  
17 knowledge of any of the allegations in that  
18 complaint?

19 SERGEANT VARGA: No.

20 MR. SHAMAN: Do you have any personal  
21 knowledge of any of the allegations stated in  
22 the civil complaint filed by the City of San  
23 Diego?

24 SERGEANT VARGA: I do not.

25 MR. SHAMAN: And um, in examining that

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 document, are you aware of any specific sections  
3 of the San Diego municipal code alleged to have  
4 been violated involving the regulation of  
5 Commercial Cannabis Activity?

6 SERGEANT VARGA: No.

7 MR. SHAMAN: Same question as to the  
8 Stipulated Judgment. Are you aware of any  
9 specific findings or allegations regarding the  
10 alleged uh, violation of a specific regulation  
11 or law pertaining to Commercial Cannabis  
12 Activity?

13 SERGEANT VARGA: No.

14 MR. SHAMAN: Just a moment, please. I have  
15 nothing further at this time.

16 MR. HALBERT: Uh, Ms. McClurg, do you have  
17 any additional questions?

18 MS. MCCLURG: Uh, I have no additional  
19 questions. Um, but City does have additional  
20 witnesses.

21 MR. HALBERT: Okay.

22 MS. MCCLURG: And if it's okay, um, with uh,  
23 Mr. Shaman, I would ask that um, Sergeant Varga  
24 be excused, because I'm sure he has plenty of  
25 work to do.

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20

2 MR. SHAMAN: That's fine.

3 SERGEANT VARGA: Thank you.

4 MS. MCCLURG: Thanks, Sergeant Varga.

5 MR. SHAMAN: Thank you.

6 MS. MCCLURG: All right, uh, City will call

7 Kelly Broughton.

8 MR. BROUGHTON: I'm here.

9 MS. MCCLURG: Hi, all right. So um, can

10 you--I'm going to go ahead and take the--oh

11 actually we might need the sharing. Okay. Um,

12 can you please um, tell us who you work for?

13 MR. BROUGHTON: I work for the City of Chula

14 Vista.

15 MS. MCCLURG: And what is your position?

16 MR. BROUGHTON: I am the development

17 services director.

18 MS. MCCLURG: Okay. Were you involved in

19 designing um, the cannabis license application

20 process for the City of Chula Vista?

21 MR. BROUGHTON: Yes, I worked with a group

22 of department managers to design that.

23 MS. MCCLURG: Okay. And um, were you

24 involved in creating the scoring system?

25 MR. BROUGHTON: Yes I was, based upon the

2 municipal code.

3 MS. MCCLURG: Was this a merit based scoring  
4 system?

5 MR. BROUGHTON: Yes.

6 MS. MCCLURG: Um, did you, were you--  
7 actually I'm going to ask you to look at one of  
8 City's Exhibits, which has been admitted. It  
9 would be Exhibit 4. Um, do you recognize this  
10 document? Page CV0012?

11 MR. BROUGHTON: Yes, that's the scoring  
12 matrix that we prepared.

13 MS. MCCLURG: Okay. Um, can you explain  
14 what it shows?

15 MR. BROUGHTON: It shows the major  
16 categories of elements that are required by the  
17 municipal code for a qualified candidate, for a  
18 cannabis business, and the breakdown of the  
19 qualifications that were identified in the code  
20 with a weighting um, structure added to it for  
21 those elements that were most important to the  
22 City Council as the municipal code was adopted  
23 to regulate cannabis businesses in the City of  
24 Chula Vista.

25 MS. MCCLURG: Um, did you provide the



2 scoring matrix to HDL?

3 MR. BROUGHTON: Yes I did.

4 MS. MCCLURG: And did you personally do any  
5 of the scoring?

6 MR. BROUGHTON: No I did not.

7 MS. MCCLURG: Um, and is it your  
8 understanding that HDL um, was to conduct the  
9 scoring for City?

10 MR. BROUGHTON: Yes, correct.

11 MS. MCCLURG: Okay. Um, now when you  
12 designed the scoring matrix, um, is there  
13 anything in it that would take into account a  
14 criminal investigation, a background, or any of  
15 those criminal background issues?

16 MR. BROUGHTON: No it did not.

17 MS. MCCLURG: Okay. So it was not your  
18 intent, you're saying, to include any of those  
19 in the scoring matrix?

20 MR. BROUGHTON: Those were covered by other  
21 requirements that would be weighed based upon  
22 the code provisions for those elements. This  
23 was the merit-based component of the scoring.

24 MS. MCCLURG: Okay, so to your knowledge,  
25 the scoring and the backgrounding were separate

2 processes?

3 MR. BROUGHTON: That's correct.

4 MS. MCCLURG: Okay. I have nothing further  
5 from Mr. Broughton.

6 MR. SHAMAN: Nothing from Appellant.

7 MS. MCCLURG: Okay. And if it's all right  
8 with you, I will excuse Mr. Broughton so he can  
9 get on with his day.

10 MR. SHAMAN: No objection.

11 MS. MCCLURG: Thank you.

12 MR. BROUGHTON: Thanks.

13 MS. MCCLURG: So City will next call um, Mr.  
14 Eaton. And I believe he will, he would need to  
15 be sworn in.

16 MR. MATT EATON: I'm there.

17 MS. MCCLURG: Uh, hi, Mr. Eaton. I think  
18 um, uh, the Hearing Officer will swear you in  
19 now.

20 MR. HALBERT: Mr. Eaton, if you would raise  
21 your right hand.

22 MR. EATON: So done.

23 MR. HALBERT: Give me one moment. Uh, do  
24 you solemnly swear or affirm that the testimony  
25 you shall give in this matter shall be the

2 truth, the whole truth, and nothing but the  
3 truth?

4 MR. EATON: I do.

5 MR. HALBERT: Thank you, go ahead.

6 MS. MCCLURG: All right. Mr. Eaton, uh, who  
7 do you work for?

8 MR. EATON: HDL companies.

9 MS. MCCLURG: Um, and uh, was HDL involved  
10 in City's cannabis application process?

11 MR. EATON: Yes we were.

12 MS. MCCLURG: Um, how were you involved?

13 MR. EATON: It's the, I'm the Deputy  
14 Director of Compliance Services, which oversees  
15 uh, the staff responsible for conducting  
16 application reviews, uh, compliance inspections,  
17 and all backgrounds.

18 MS. MCCLURG: And did HDL conduct all of  
19 City's um, cannabis application reviews?

20 MR. EATON: Yes ma'am.

21 MS. MCCLURG: Um, both ones that were scored  
22 and ones that were not scored?

23 MR. EATON: Yes.

24 MS. MCCLURG: Okay. Um, did HDL also  
25 conduct um, preliminary background reviews of

2 criminal--

3 MR. EATON: Yes, yes ma'am.

4 MS. MCCLURG: Okay. Um, were the  
5 application assessments and the preliminary  
6 background assessments conducted by the same  
7 people?

8 MR. EATON: No they were not.

9 MS. MCCLURG: All right. Um, how was, how  
10 were those tasks differentiated?

11 MR. EATON: When the City submitted the  
12 applications to HDL, the application, the  
13 business applications came in a separate digital  
14 file for the um, owner backgrounds. As soon as  
15 they come in through HDL, my administrative  
16 assistant is responsible for uh, taking the  
17 information out of the compressed file and  
18 compartmentalizing the information in our secure  
19 server.

20 The background uh, information is set aside  
21 and sent directly to the background investigator  
22 who conducts the criminal background check,  
23 completes an independent report, and returns  
24 that information directly back to the  
25 administrative assistant for my review, and, and



2 sending back to the City.

3 At no time did uh, the criminal backgrounds  
4 uh, ever cross paths with the uh, commercial  
5 applications. The commercial applications uh,  
6 for business were reviewed by a completely  
7 separate set of people in a completely separate  
8 location uh, through a different uh, digital  
9 file.

10 MS. MCCLURG: Um, in scoring those  
11 applications did you use um, the City's scoring  
12 matrix? Uh, it's identified as Exhibit 4 in  
13 City's documents. CV0012.

14 MR. EATON: Yes ma'am.

15 MS. MCCLURG: Okay. And in, in using that  
16 scoring matrix did the backgrounds, did the--uh,  
17 the criminal backgrounds, or any issues related  
18 to criminal disqualifiers, did those, were those  
19 considered or incorporated into the application  
20 scores?

21 MR. EATON: They were not. The application  
22 evaluators did not have any of that information  
23 at the time that they completed the review of  
24 the application and scoring process.

25 MS. MCCLURG: Okay. I'm going to direct

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 your attention to City's Exhibit 5, which has  
3 been um, admitted. Um, does this document look  
4 familiar to you? It's two pages, CV0013 and  
5 CV0014.

6 MR. EATON: Yes ma'am.

7 MS. MCCLURG: Okay, and what is this  
8 document?

9 MR. EATON: That is the uh, score breakdown  
10 for the uh, application review phase.

11 MS. MCCLURG: Okay. And I'm going to direct  
12 your attention to Exhibit 6, um, you--what's  
13 this document--it's already been admitted,  
14 actually.

15 MR. EATON: Uh, yes ma'am.

16 MS. MCCLURG: What is it?

17 MR. EATON: Uh, that was sorted by points,  
18 uh, for the application. It's a report that we  
19 provided the City, uh.

20 MS. MCCLURG: And this was for interview  
21 scores?

22 MR. EATON: Yes ma'am.

23 MS. MCCLURG: And then I'll direct your  
24 attention to the final um, Exhibit related to  
25 HDL. Um, this document, do you recognize it?

CV0016?

MR. EATON: Yes ma'am.

MS. MCCLURG: And what is that?

MR. EATON: That is the uh, application and interview scores combined, uh, ranked highest to lowest.

MS. MCCLURG: In any of those score sheets that were provided to City, um, Exhibit 5, Exhibit 6, and Exhibit 7, um, did any of those scores um, incorporate or reflect um, Will Senn's um--City's determination about Will Senn's criminal background?

MR. EATON: Uh, no they did not.

MS. MCCLURG: I have nothing further for Mr. Eaton.

MR. SHAMAN: No questions from Appellants.

MS. MCCLURG: Uh, then I believe we might be--actually, uh, well, City would ask if he's willing, for Will, Mr. Senn to testify?

MR. SHAMAN: No. Uh, Mr. Senn is not going to testify.

MS. MCCLURG: Okay. Um, then that will be all of City's witnesses.

MR. HALBERT: Okay then, Mr. Shaman, uh, you

2 have any, do a closing remark?

3 MR. SHAMAN: Uh, yes. Thank you, Mr.

4 Halbert, I appreciate it. Um, so effectively,

5 what we have here is, we have one witness who

6 has testified to alleged facts pertaining to um,

7 certain violations of the San Diego Municipal

8 Code that occurred sometime in 2010 to 2012, and

9 this is uh, Detective Varga.

10 Detective Varga has indicated that the

11 entirety of his testimony is based on documents

12 that he requested through a publicly available

13 vehicle, which is the public records act. He

14 has not personally discussed any of the facts or

15 allegations contained in any of those documents

16 with anyone who drafted them, and he has no

17 personal knowledge of any facts or allegations.

18 And that is not the kind of evidence that

19 reasonable people [unintelligible] to make

20 decisions, which is the standard in the Chula

21 Vista municipal code [unintelligible] Chula

22 Vista cannabis regulations.

23 Um, we expect that when people give

24 testimony in administrative hearings, civil and

25 criminal hearings, hearings of any kind, that



they will have some personal knowledge regarding what they're talking about. And Detective Varga does not. He obtained information that any single person in the public could have obtained his or her self. Did not take the time to actually interview a single witness or to investigate any of the underlying facts. Yet we're expected to rely exclusively on his testimony to find that Mr. Senn violated certain laws and to reject his application on which he spent a lot of time and money for these entitlements.

Fundamentally, the issue that I outlined at the beginning of this hearing remains the same, and that is, there is not a single violation of a law regarding Commercial Cannabis Activity. And I will specifically now quote the two grounds from [unintelligible] decision that apply to all four of them, first being the applicant and owner, a manager, and/or an officer [unintelligible] 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.

It is unambiguously a fact that the City of San Diego had no laws related to Commercial Cannabis Activity that were in effect at the time the conduct was allegedly--that allegedly occurred. And in fact, if you, if you get at all specific and realize that the allegations are being considered in the timeframe of 2010 and 2012, you will realize that in looking at the Notice of Violation, the actual statement that a marijuana dispensary was observed is based on not on an inspection that happened in 2012, and not on an inspection that happened in 2011, but in fact, on an inspection that happened in 2010, at which time the City had not even considered passing an ordinance regulating collectives and cooperatives.

That ordinance wasn't even enacted for the first time until 2011. And even then, that ordinance was repealed before it was implemented, and a new one was not enacted and effective until 2014. And again, the State of California had not enacted a single law related

2 to Commercial Cannabis Activity until 2015.

3 So at best this evidence, if it's  
4 admissible, shows that Mr. Senn violated, or his  
5 company violated, the California electric code,  
6 the California building code, or the San Diego  
7 Municipal code, none of which regulated  
8 marijuana or cannabis except the San Diego  
9 municipal codes regulations for personal use  
10 that existed at the time. There's no evidence  
11 whatsoever that he violated a single law related  
12 to Commercial Cannabis Activity.

13 And so there's a fundamental flaw in that  
14 finding made by Chief Kennedy. Furthermore, the  
15 other section--that section required--that, that  
16 really is the crux of the second uh, the second  
17 ground for rejection, which requires that Mr.  
18 Senn had been found to "have conducted,  
19 facilitated, caused, aided, abetted, suffered,  
20 or concealed unlawful Commercial Cannabis  
21 Activity in the City, or any other jurisdiction.  
22 So again, there's no evidence of that.

23 And as to the first ground, the, the real  
24 ground for rejection is that Mr. Senn had been  
25 adversely sanctioned or penalized for such

activity. But the problem, fundamentally, with that, again, going to the stipulated judgment, is that the judgment itself expressly provides at section three, which is date stamped 0051, neither of 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.

I.e., no one should rely on this document to find that anything happened, because the parties have decided to settle this matter, which means that we cannot rely on that document, or the complaint for a finding that Mr. Senn was adversely sanctioned by the City. No hearing was held, no facts were found by a court. There were just allegations made, and the parties settled, and relief was granted on the basis of that settlement.

So that is, that evidence fundamentally is not relevant to establish that there was an actual sanction or any kind of violation of a commercial--of a law relating to Commercial Cannabis Activity. So regardless of the



evidence that's been presented here today, the reality is, again, that we have a bunch of second or third-hand statements from a detective that was not there, could not observe any of the activity, does not have familiarity with the laws of the City of San Diego that applied at the time, does not have familiarity with the investigation itself, and obtained records that were simply available to any member of the public.

And that, that evidence, even if it's admissible, is clearly lacking in establishing a basis, a substantial basis, as required by the law, for Chief Kennedy to have made those determinations. And again, no law regarding or regulating Commercial Cannabis Activity existed at the time.

As to uh, the Notices of Determination for submitter IDs 57064 and 57069, they both contained a third ground for rejection on the basis of the lack of sufficient application score, and it does appear from the testimony presented um, by Mr. Braughton and Mr. Eaton that the background information did not enter

into the decision making process. And so if that is, in fact, the case, um, then the scores likely were too low for those to proceed.

And then finally, regarding the other two Notices [unintelligible] 57074 and 58388, which are the ones that rely only on the first two grounds as grounds for rejection, I just want to remind the City, and the City Manager, that the scores were high enough, that UL Chula 2LLC had a high enough score to move forward and obtain a uh, retail license if approved through phase two. And as regards to the manufacturer license, there is no scoring process, and so otherwise, the application would have moved forward.

Mr. Senn has been an operator in the City of San Diego now since 2017, when Urbn Leaf first opened its store in the Bay Park neighborhood. He has been involved with the City of San Diego since well before that, including as a founder of the United Medical Marijuana Coalition, which is the uh, sole trade group that represents local dispensaries in San Diego, and he's been an instrumental ally and uh, representative of

the City and of the dispensaries in facilitating regulation of Commercial Cannabis Activity in the City.

The City itself subsequently granted Mr. Senn a conditional use permit to conduct Commercial Cannabis Activity, not once but twice. And we--uh, Urbn Leaf has also assumed operations in another store in San Ysidro, and has stores in the City of Seaside and the City of Grover Beach. Mr. Senn has demonstrated his good behavior over a decade of interactions with these cities, and has obtained numerous licenses, and been through numerous licensing processes, and has been found fit in those licensing processes.

And so I would ask that, all other things aside, the City reconsider the decision and grant the two licenses--or set aside the two decisions rather for submitter IDs 57074 and 58388 on equitable grounds, given that Mr. Senn is a, clearly uh, ideal candidate, really, to operate commercial cannabis businesses in the City of Chula Vista, um, given his strong ties to city governments throughout the state

already, and his long history of being a good operator in the space. And I will uh, conclude my argument at this time subject to rebuttal.

MR. HALBERT: Ms. McClurg?

MS. MCCLURG: Okay. So um, uh, in this appeal, um, the Appellant has the preponderance of evidence, um, to prove that the City's decisions were in error. Um, as to the way the City makes decisions in disqualifying people, um, it, it's not a court proceeding. Um, the City has a right to determine its own threshold disqualifiers.

Um, the City had a significant number of applications, the City chose a merit based process, um, and chose the disqualifiers that would apply in this city, regardless of what disqualifiers would apply in other cities.

Um, and the City's intention was clear. The City has--has had, and continues to have an ongoing problem with unlawful marijuana businesses, especially in the City. We knew it was prevalent, we heard--you heard people in the City express that um, eliminating unlawful operators was one of the City's main objectives



in disqualifying um, applicants.

Um, here you have--the City needs to be reasonable, absolutely, in its disqualifications, um, but it's City's position that this disqualification was reasonable. If it walks like a duck, quacks like a duck, it's reasonable to conclude it's a duck.

Um, we have documents from the City of San Diego, multiple documents, um, suggesting certainly--and then also documenting that the City of San Diego has sanctioned, um, or penalized Will Senn for laws that are related to Commercial Cannabis Activity. And the municipal code doesn't say specifically cannabis laws; it says laws related to Commercial Cannabis Activity.

And you heard testimony that during that time period, the City of San Diego, just like a lot of other jurisdictions, was using civil, land use--all kinds of other regulations to um, combat the problem of unlawful marijuana dispensaries, and that's what you see in the documents that are presented today.

Um, you see a Notice of Violation, um, to

Will Senn specifically. Um, that is a sanction by a local jurisdiction to Will Senn. The Notice of Violation clearly outlines that it is related to unlawful marijuana activity.

You also see a Stipulated Judgment, a court case, an injunction, um, related to marijuana activity. Those are allegations in the complaint, but they certainly suggest the case was related to marijuana activity. Um, the Stipulated Judgment um, did agree, or contain an order to stop conducting unlawful marijuana activity. It also contained an agreement to pay civil penalties. Penalties are part of a penalty issued by a local jurisdiction, and in this case it was certainly related to illegal marijuana activity, or unlawful marijuana activity.

Um, the writings, all of these documents submitted from the code enforcement case file are um, writings that are made within the scope of the duty of any public employee. Um, all of these documents together um, certainly paint the picture that um, this business was um, unlawful at the time in the City of San Diego at the

time, it was unpermitted. Um, that the City of San Diego used its land use codes in order to try to prevent those businesses from continuing to operate when they were not permitted.

Um, the score issue, I believe um, we--it sounds like we are in agreement, that the score did not take into account any of the background issues.

Um, for these reasons, uh, the City feels that there is sufficient evidence to show one, that the score disqualifiers are correct for two of the applications, and that the um, unlawful cannabis activity disqualifiers were also correct.

If you look specifically at those provisions, it was a sanction or a penalty by any jurisdiction for laws related to cannabis activity, and that, um, what you do see here um, and by definition those sanctions included some kind of aiding, abetting, facilitating unlawful activity.

The City doesn't need to prove beyond a reasonable doubt that this happened. Um, all of these documents together um, certainly suggest

that we have an issue here with unlawful cannabis activity. That was one of the biggest concerns for the City, um, in adopting its cannabis regulations, and so the City does stand behind its um, rejection of any applicant that was involved previously in unlawful uh, cannabis activity in any jurisdiction.

So City would ask that you do, uh, deny the appeal and that you uphold um, the City's Notices of Decision.

MR. HALBERT: You have the final word.

MR. SHAMAN: Yes, thank you. So I just have a uh, a rebuttal that I--I want to focus, again, on the, the definitions in the municipal code. Because if you want to talk about intent and why these laws were written, there's no better indicator of that than looking at the language itself.

And the language specifically states as is pertinent to the first ground for rejection that the, it must be a law or regulation related to Commercial Cannabis Activity. The definition espoused by the City just a moment ago would have effectively find that literally any law



would be related to Commercial Cannabis Activity if marijuana was involved. And that just doesn't make any sense. When you use the plain meaning of that language, a law that is related to a subject is a law that actually talks about that subject. And here we don't have a law or regulation that says the word marijuana or cannabis at issue, at all. None of them do.

So the position taken by the City is patently absurd. The reality is that this was specific--and, and if you look further and you say--or to pharmaceutical or alcohol licensure, that statement is the City's way of indicating through legislation that it is interested in violations of laws that regulate Commercial Cannabis Activity, that regulate pharmaceutical activity, or that regulate alcohol activity. None of those laws are involved here. So I, I believe the City's interpretation is patently absurd for that reason.

The second issue that I do want to point out is that the first ground for rejection, again, requires a finding that the person has been adversely sanctioned or penalized. And I will,

again, go back to the fact that the stipulation itself provides that it is not to be relied upon for finding that an admission of liability has been made. There is no finding of any kind of illegal conduct as a result of that case.

So how can you made the determination that Mr. Senn was sanctioned, or penalized for unlawful activity when the document that imposes the penalty says it's not to be relied on for finding that there was any kind of actual liability or culpability?

The second ground for rejection more specifically requires that there has to be a finding of actually conducting, facilitating, causing, aiding, abetting, suffering, or concealing unlawful Commercial Cannabis Activity. And so in this case, all we really have is a statement in a complaint, and in a stipulated judgment, and in a Notice of Violation that a marijuana dispensary was operating. There's no specific evidence whatsoever that anybody actually observed marijuana on the premises, observed transactions occurring on the premises, there's no

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 photographs of that activity. We just have some  
3 bare statements that there was a dispensary  
4 there.

5 And that is just not the kind of evidence  
6 that people rely upon to make serious  
7 determinations. And that's what the City  
8 manager is being asked to do.

9 So for those reasons, Appellants ask that  
10 the uh, grounds for rejection be set aside, that  
11 the applications for submitter IDs 57074 and  
12 58388 be remanded to the chief of police, and  
13 that the chief be given instruction to proceed  
14 um, without any basis on the findings that were  
15 previously made, and that the applicant instead  
16 be allowed to move on to phase two and to  
17 ultimately pursue licensure. Thank you.

18 MR. HALBERT: Thank you. Um, I will  
19 deliberate on the matter and render a written  
20 decision. I want to be sure that we have your  
21 correct address, Nathan. Um, so what do you  
22 have on file, Megan?

23 MR. SHAMAN: Megan, you--

24 MR. HALBERT: Megan?

25 MS. MCCLURG: Um, I have on file that what's

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 in Exhibit two, which is the request--Request to  
3 Appeal, and that has um, Nathan, that has your  
4 address as 1295 West Marina Boulevard, is that  
5 correct?

6 MR. SHAMAN: That is, that is correct.

7 MS. MCCLURG: Perfect.

8 MR. HALBERT: Okay. Okay, and earlier I  
9 made a uh, I had an error in my statement. Um,  
10 the regulations, cannabis regulations for the  
11 City have been updated, um, and uh, as of May  
12 12th of this year, 2020. All right, so I will  
13 get that um--we'll deliberate and get back to  
14 you guys with a written decision.

15 MR. SHAMAN: Thank you.

16 MR. HALBERT: Thank you.

17 MS. MCCLURG: Okay, I will stop the  
18 recording now.

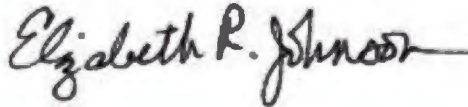
19 MR. HALBERT: Thanks.

20 [END Cannabis Appeal-Urbn Leaf (Willie Senn)  
21 57064 57069 57074 58388-20200610 2101-1.mp4]



C E R T I F I C A T E

I, Elizabeth Johnson certify that the foregoing transcript of Cannabis Appeal-Urbn Leaf (Willie Senn) 57064 57069 57074 58388-20200610 2101-1.mp4 was prepared using standard electronic transcription equipment and is a true and accurate record.



Signature \_\_\_\_\_

Date \_\_\_\_\_ October 2, 2020 \_\_\_\_\_

**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**

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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 90<sup>th</sup> 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  
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]  
[REDACTED]  
[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 26<sup>th</sup> 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

# EXHIBIT 7

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 03/26/2021

TIME: 09:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: Richard E. L. Strauss

CLERK: Meaghan Abosamra

REPORTER/ERM: Kim Ross CSR# 7842

BAILIFF/COURT ATTENDANT: P. Darvin

CASE NO: **37-2020-00041554-CU-MC-CTL** CASE INIT.DATE: 11/13/2020

CASE TITLE: **UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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**EVENT TYPE:** Motion Hearing (Civil)

**MOVING PARTY:** UL CHULA TWO LLC

**CAUSAL DOCUMENT/DATE FILED:** Motion for Preliminary Injunction, 01/19/2021

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**APPEARANCES**

Gary K Brucker, Jr, counsel, present for Petitioner,Plaintiff(s) via remote audio conference.

Philip C Tencer, counsel, present for Defendant(s) via remote audio conference.

Alena Shamos, counsel, present for Defendant,Respondent(s) via remote video conference.

Heather S. Riley - Interested Party attorney is present via remote video appearance.

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The matter before the Court, Motion hearing.

The Court finds good cause to continue this hearing and advance the motion set on 6/18/2021 so all matters may be heard at the same time.

Motion Hearing (Civil) is continued pursuant to Court's motion to 05/21/2021 at 09:00AM before Judge Richard E. L. Strauss.

Hearing on Petition is advanced pursuant to Court's motion to 05/21/2021 at 09:00AM before Judge Richard E. L. Strauss.

All papers are due per code with the reply due no later than 5/14/2021.

Th Court grants the request of Plaintiff for a 20 page brief.

Additionally the Court requests the record in this matter be provided via USB thumb drive with excerpts and cites provided in paper.

Parties waive notice.

# EXHIBIT 8



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8 UL CHULA TWO LLC

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 **UL CHULA TWO LLC,**

13 **Petitioner/Plaintiff,**

14 **vs.**

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

18 **Respondents/Defendants,**

19 **MARCH AND ASH CHULA VISTA, INC.;**  
20 **TD ENTERPRISE LLC; and DOES 23**  
21 **through 50,**

22 **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 NATHAN SHAMAN  
IN SUPPORT OF PETITIONER/  
PLAINTIFF'S MOTION FOR WRIT OF  
MANDATE**

[IMAGED FILE]

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021

Time: 9:00 a.m.

Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021

Trial Date: None Set

1 I, Nathan Shaman, declare as follows:

2 1. I am an attorney duly admitted to practice in all of the courts of the State of  
3 California and I am currently the general counsel of UL Holdings Inc. (“UL”), which is the  
4 majority member and manager of petitioner/plaintiff UL Chula Two LLC (“Petitioner.”) I have  
5 personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could  
6 competently and truthfully do so.

7 2. Before joining UL as its general counsel, I operated my own law practice through  
8 The Law Offices of Nathan Shaman. In that capacity I represented UL in connection with  
9 Petitioner’s application for a retail storefront cannabis license. On January 18, 2019, I wrote a  
10 letter to the City of Chula Vista in connection with Petitioner’s application, which disclosed the  
11 fact that Willie Frank Senn, who was then the sole shareholder of UL, had a stipulated judgment  
12 entered against him on December 14, 2012 in the San Diego Superior Court case of *City of San*  
13 *Diego v. The Holistic Café, Inc. et al.*, case no. 37-2012-00087648-CU-MC-CTL. A true and  
14 correct copy of this letter is found in the Administrative Record (“AR”) at AR00113-114.

15 3. Although I invited the City to reach out to me if the City had any questions about  
16 the *Holistic Café* matter, I never received a response from the City to the letter. Petitioner,  
17 however, was notified by the City on June 10, 2019 that it had successfully completed Phases 1A  
18 and 1B of the application process, and was invited to proceed to Phase 1C (i.e., the interview) on  
19 July 17, 2019. Following the interview, Petitioner received a total score of 900.3 points—the  
20 highest for a retail storefront in the City’s District One (AR156).

21 4. Then, on May 6, 2020, the City issued a Notice of Decision rejecting Petitioner’s  
22 Application on the grounds that “The City of San Diego sanctioned William [*sic*] Senn for  
23 violations of laws or regulations related to unlawful Commercial Cannabis Activity” and “William  
24 [*sic*] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from  
25 approximately 2010 to 2012.” The Notice of Decision did not specifically reference the *Holistic*  
26 *Café* matter and I was not at all certain at the time if the grounds cited by the City were related to  
27 the *Holistic Café* matter, which I had disclosed to the City in writing 16 months earlier, or was  
28 related to something else, entirely.

1           5.       On May 21, 2020, while serving as general counsel to UL, I submitted Petitioner's  
2 appeal of the Notice of Decision (AR125-127). There were several grounds for the appeal. The  
3 primary ground was that there was no relevant, admissible evidence that Mr. Senn was adversely  
4 sanctioned for any laws related to "Commercial Cannabis Activity." In fact, my appeal cited the  
5 undisputed fact that from 2010 to 2012 there were no commercial cannabis laws in the City of San  
6 Diego. I also assumed given my January 18, 2019 letter to the City that the denial may have been  
7 based on the *Holistic Café* matter. I therefore pointed out that the alleged violations were of land-  
8 use and building code ordinances that did not pertain to cannabis, and that the Medical Marijuana  
9 Program Act allowed for medical marijuana collectives and cooperatives such as the Holistic Café.

10           6.       On May 26, 2020, I was notified that the appeal would be heard on June 10, 2020.  
11 Nowhere in the notice of appeal did the City mention the *Holistic Café* matter. The notice did  
12 state that the evidence to be submitted at the hearing should be submitted "at least five days prior  
13 to the hearing." (AR00129.) The City's exhibits were emailed in the late afternoon on Friday,  
14 June 5, 2020 (AR213-214), less than five full days before the June 10, 2020 hearing, giving me  
15 essentially two business days to prepare for the hearing. The City's exhibits included references to  
16 *Holistic Café*, which was the first time the City ever cited to the *Holistic Café* matter as a basis for  
17 rejecting Petitioner's application.

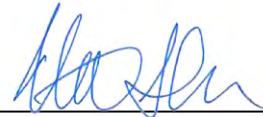
18           7.       On June 5, 2020, I submitted Petitioner's appellate brief (AR215-224). I addressed  
19 several flaws with the City's procedures, including that the Notice of Decision was impermissibly  
20 vague so as to deny Petitioner sufficient notice and due process. I provided detailed legal citations  
21 explaining that the City of San Diego did not have any laws or regulations related to "Commercial  
22 Cannabis Activity" from 2010-2012. And I raised concerns with the City relying upon the  
23 *Holistic Café* matter, "assuming" that the City based its decision on the stipulated judgment in the  
24 *Holistic Café* matter that I had disclosed on January 18, 2019. I was not able to address the other  
25 exhibits that the City intended to rely upon at the hearing because they were not disclosed to me  
26 prior to submission of my brief.

27           8.       On June 10, 2020, I attended the hearing on the appeal along with Willie Senn. I  
28 objected to the admission of the City's exhibits pertaining to the *Holistic Café* matter on numerous

1 grounds. All objections were overruled by the City Manager, who acted as the hearing officer. At  
2 the hearing, I reiterated the legal issues raised in the appellate brief, including the denial of due  
3 process. I was, however, unable to meaningfully prepare to present any testimony or evidence to  
4 rebut the City's contentions regarding *Holistic Café*.

5 9. The City served its Findings and Statement of Decision with Regard to Appeal of  
6 Notice of Decision Rejecting Application for Cannabis License on August 26, 2020. I suspected  
7 based upon the findings and industry gossip that the City denied other applicants on the same or  
8 similar grounds. To investigate, I served a public records act request on the City on September 2,  
9 2020 (Reference # R000005-090220). I served a second public records act request on the City on  
10 October 1, 2020 (Reference # R000079-100120). Attached as **Exhibits 11-29** to the concurrently  
11 filed Appendix of Exhibits are relevant portions of the City's document production in response to  
12 my public record act requests.

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct and that this declaration was executed on this 29th day of March,  
15 2021, at San Diego, California.

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19 Nathan Shaman  
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# EXHIBIT 9

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

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8 UL CHULA TWO LLC

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 **UL CHULA TWO LLC,**

13 **Petitioner/Plaintiff,**

14 **vs.**

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

18 **Respondents/Defendants,**

19 **MARCH AND ASH CHULA VISTA, INC.;**  
20 **TD ENTERPRISE LLC; and DOES 23**  
21 **through 50,**

22 **Real Parties In Interest.**

**ELECTRONICALLY FILED**  
Superior Court of California  
County of San Diego

**04/02/2021 at 05:20:00 PM**  
Court in the Superior Court  
of San Diego - Dept. Clerk

Case No. 37-2020-00041554-CU-WM-CTL  
[Related To Case Nos. 2020-00041802-CU-  
MC-CTL; 37-2020-00033446-CU-MC-CTL]

**UL CHULA TWO LLC'S NOTICE OF  
MOTION AND MOTION FOR WRIT OF  
MANDATE**

**[Statement of Decision Requested Pursuant  
to Code Civ. Proc., § 632]**

**[IMAGED FILE]**

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021  
Time: 9:00 a.m.  
Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021  
Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 18, 2021, at 9:00 a.m., or as soon as thereafter as  
3 the matter may be heard in Dept. C-75 of the above-entitled court, located at 330 West Broadway,  
4 San Diego, California 92101, UL Chula Two LLC (“UL Chula”) will, hereby does, move this  
5 court for issuance of a writ of mandate under Code of Civil Procedure §§ 1085, 1094.5, and/or  
6 1094.6, which per the Parties’ Stipulation dated March 11, 2021 (though not entered by the Court)  
7 shall also fully determine and decide UL Chula’s claims for declaratory and injunctive relief as  
8 alleged in the Petition. Petitioner also requests a Statement of Decision pursuant to Code of Civil  
9 Procedure § 632.

10 The motion is made pursuant to and in accordance with the Code of Civil Procedure  
11 §§ 1085, 1088.5, 1089, 1094.5, and 1094.6, as well as San Diego Local Rule 2.4.8(a), and is based  
12 on the grounds that defendants and respondents City of Chula Vista and the Chula Vista City  
13 Manager (collectively “City”) failed to act in accordance with the law and/or prejudicially abused  
14 its discretion by: (1) disqualifying UL Chula’s application for a retail storefront cannabis business  
15 license; and (2) denying UL Chula due process during its appeal to the City. UL Chula has no  
16 other plain, speedy, and adequate remedy in the ordinary course of law.

17 UL Chula requests that the Court grant this motion, issue a writ of mandate, and enter  
18 judgment in Petitioner’s favor. The Writ of Mandate shall issue immediately and: (1) command  
19 the City to set aside its Notice of Decision dated May 6, 2020 and its Findings and Statement of  
20 Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License  
21 dated August 26, 2020 and permit Petitioner UL Chula TWO LLC to proceed to Phase Two of the  
22 license application process; (2) enjoin the City from issuing any “City Licenses” related to  
23 storefront retail commercial cannabis activity under Chula Vista Municipal Code Chapter 5.19 in  
24 City District One until such time as the City has fully processed and then either granted or denied  
25 Petitioner’s license application in a manner consistent with the law; (3) command the City, to the  
26 extent the City has already issued any such City Licenses in District One prior to the Court’s  
27 issuance of this relief, the City is ordered: (i) to declare that such licenses are null and void; and  
28 (ii) not to collect any business tax revenue arising from such commercial cannabis activity; and

1 (4) command the City to file and serve a return demonstrating compliance with this Writ within  
2 thirty (30 days) of fully processing Petitioner's application or one hundred and twenty (120) days  
3 of service of this Writ, whichever is sooner.

4 This motion is based on this Notice of Motion; the concurrently filed memorandum of  
5 points and authorities, Declaration of Nathan Shaman, Esq., Appendix of Exhibits and Exhibits  
6 thereto, Request for Judicial Notice, and proposed order and writ; the administrative record; all  
7 pleadings and papers on file in this action; and other oral and documentary evidence that may be  
8 presented at the time of the hearing on this application.

9 DATED: April 2, 2021

Respectfully submitted,

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11  
12 By: 

13 GARY K. BRUCKER, JR.

14 Attorneys for Petitioner/Plaintiff

15 UL CHULA TWO LLC



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7 Attorneys for Petitioner/Plaintiff

8 UL CHULA TWO LLC

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 UL CHULA TWO LLC,

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14 vs.

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

18 Respondents/Defendants,

19 MARCH AND ASH CHULA VISTA, INC.;  
20 TD ENTERPRISE LLC; and DOES 23  
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21 Real Parties In Interest.  
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**ELECTRONICALLY FILED**

Superior Court of California  
County of San Diego

04/02/2021 at 05:20:00 PM

Filed in the Superior Court  
of San Diego - Central Division

Case No. 37-2020-00041554-CU-WM-CTL  
[Related To Case Nos. 2020-00041802-CU-  
MC-CTL; 37-2020-00033446-CU-MC-CTL]

**UL CHULA TWO LLC'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION FOR WRIT OF MANDATE**

**[Statement of Decision Requested Pursuant  
to Code Civ. Proc., § 632]**

[IMAGED FILE]

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021  
Time: 9:00 a.m.  
Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021  
Trial Date: None Set



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1 **STATUTORY AUTHORITIES**

2 Bus. & Prof. Code, §§ 26000 et seq. .... 6, 7, 8

3 Code Civ. Proc., § 1094.5(e) ..... 17, 19

4 Code Civ. Proc., § 1094.5, subd. (a) ..... 9

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1 **I. INTRODUCTION**

2 Petitioner UL Chula Two LLC (“Petitioner”) applied to respondent City of Chula Vista  
3 (collectively, with respondent Chula Vista City Manager, the “City”) for a retail storefront  
4 cannabis business license on or about January 18, 2019. With its application, Petitioner disclosed  
5 that one of its principals had been sued by the City of San Diego for allegedly violating civil  
6 zoning laws eight years earlier. The lawsuit, entitled *City of San Diego v. The Holistic Café, Inc.*  
7 (*Holistic Café*), was settled without any admission of liability. With this disclosure in mind, the  
8 City continually advanced Petitioners’ application and background check, which culminated in an  
9 invitation to participate in the interview stage. Petitioner scored the highest of any retail storefront  
10 applicant in the City’s District One and fully expected to advance to the next stage.

11 On May 6, 2020, the City issued a perfunctory notice of decision denying Petitioner’s  
12 application. Although the notice gave no factual basis and vaguely referred to two sections of the  
13 City of Chula Vista Municipal Code (CVMC), the City eventually revealed that its decision was  
14 based on the allegations in *Holistic Café*, which were disclosed to the City *sixteen* months earlier.  
15 After a procedurally defective hearing process, the City’s Hearing Officer erroneously concluded  
16 that mere allegations of a civil zoning violation constituted unlawful “cannabis activity.”

17 The City’s decision denied Petitioner a fair trial and was a prejudicial abuse of discretion.  
18 First, the City applied the wrong legal standard when it found that the Holistic Café, a *nonprofit*  
19 *medicinal* cannabis storefront, had engaged in unlawful “cannabis activity.” The correct standard  
20 set forth in the CVMC is “*commercial* cannabis activity.” Second, the City’s decision was not  
21 supported by the findings and the findings were not supported by *any* admissible evidence. Third,  
22 the City abused its discretion by declining to exercise its discretion, choosing instead to uniformly  
23 disqualify similarly situated applicants. Fourth, the City denied Petitioner a fair and impartial  
24 hearing because the City Attorney’s Office served not only as a primary drafter of the ordinance at  
25 issue, but also served as both advocate and advisor to the hearing officer. Finally, the City denied  
26 Petitioner fair notice in violation of due process.

27 The Court should therefore issue a writ of mandate directing the City to set aside its  
28 decisions, conduct further proceedings consistent with the law, and require a return.

1 **II. STATEMENT OF THE PROCEEDINGS BELOW**

2 **A. The Regulatory Scheme**

3 The citizens of the state of California passed Proposition 215 in 1996, decriminalizing the  
4 possession and cultivation of cannabis for *medicinal* purposes. Proposition 215 was followed by  
5 Senate Bill 420 in 2003, which among other things, authorized the California Attorney General's  
6 Office to issue guidelines related to the distribution of medicinal cannabis through nonprofit  
7 cooperatives and collectives. (Health & Saf. Code, § 11362.81, subd. (d).)

8 California voters passed Proposition 64 in 2016, which legalized *commercial and adult*  
9 *recreational* cannabis use, and gave each locality the discretion to allow commercial cannabis  
10 activities within their jurisdiction. Proposition 64 was followed by Senate Bill 94 in 2017, the  
11 Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which established  
12 California's regulatory and licensing system for the cultivation, manufacture, distribution, and sale  
13 of cannabis for medicinal and adult use. (Bus. & Prof. Code, §§ 26000 et seq.)

14 On March 6, 2018, the City adopted Ordinance No. 3418, which added Chapter 5.19 to the  
15 Chula Vista Municipal Code (CVMC), in order to permit, license, and regulate commercial  
16 cannabis activity within the City. (CVMC, § 5.19.010.) Pursuant to CVMC Chapter 5.19, any  
17 person who desires to engage in lawful commercial cannabis activity or to operate a commercial  
18 cannabis business within the City's jurisdiction must have a valid "State License" and a valid  
19 "City License." (CVMC, § 5.19.030.)

20 The City established a two-phase licensing application process. (CVMC, § 5.19.050.)  
21 Phase One involved a set of threshold qualifying criteria, a criminal background check, and a  
22 merit-based scoring system. (CVMC, § 5.19.050, subd. (A)(7).) The City also enacted Cannabis  
23 Regulations (Regs), which were intended to "clarify and facilitate implementation of CVMC  
24 Chapter 5.19." (Regs, § 0501, subds. (A)-(D).) The Regs describe the experience and liquid asset  
25 requirements for applicants, and the requirements for a business plan, operating plan,  
26 fingerprinting, and a background check. (Regs., § 0501, subds. (E)-(I).)

27 Chapter 5.19 of the CVMC and the Regs are located in the Administrative Record at  
28 AR385 and AR355, respectively.

1           **B.     Petitioner’s Application**

2           Petitioner applied for a retail storefront license in the City’s District One. {AR1.} As  
3 required by the application and CVMC 5.19.050(A)(1)(j), one of Petitioner’s principals, Willie  
4 Senn, was obligated to sign an Affirmation and Consent affirming that he “has not conducted,  
5 facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity  
6 in the City or any other jurisdiction.” {AR 113-114.} Contemporaneously, and in order to be  
7 fully transparent, counsel for Petitioner disclosed to the City of a stipulated judgment involving  
8 Mr. Senn on December 14, 2012, in the *Holistic Café* matter. {*Id.*} The *Holistic Café* complaint  
9 alleged various civil zoning violations in the City of San Diego. {AR 186-195.} In resolving the  
10 lawsuit, the parties stipulated and agreed in the *Holistic Café* matter that “[n]either this Stipulated  
11 Judgment nor any of the statements or provisions contained herein shall be deemed to constitute  
12 an admission or an adjudication of any of the allegations of the Complaint.” {*Id.* at 197.}

13           Despite disclosing the Holistic Café matter, on June 10, 2019, the City notified Petitioner  
14 that it had successfully completed Phases 1A and 1B, and invited Petitioner to proceed to Phase  
15 1C (the interview) on July 17, 2019. {AR 118.} Petitioner’s total score following the interview  
16 was 900.3 points—the highest for a retail storefront in the City’s District One. {*Id.* at 156.}

17           **C.     The Denial**

18           On May 6, 2020 the City issued a Notice of Decision rejecting Petitioner’s Application.  
19 {AR 119-122.} The City cited two sections of CVMC 5.19.050 as the basis for its decision:

- 20           •     First, the City cited CVMC § 5.19.050(A)(5)(f), stating, Mr. Senn “has been  
21 adversely sanctioned or penalized by the City . . . for a material violation of state or  
22 local laws or regulations related to **Commercial Cannabis Activity** . . . .” It went  
23 on to claim that “The City of San Diego sanctioned William [*sic*] Senn for  
24 violations of laws or regulations related to **unlawful Commercial Cannabis**  
25 **Activity**.”
- 26           •     Second, the City cited CMVC § 5.19.050(A)(5)(g), stating, Mr. Senn has  
27 “conducted, facilitated, caused, aided, abetted, suffered, or concealed **unlawful**  
28 **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.”  
(*Ibid.*)

27           The Notice of Decision did not mention *Holistic Café* or any of the particular facts or evidence  
28 that the City relied upon in reaching its conclusions. {AR 119-122.}

1           **D.     The Appeal**

2           The City’s application procedure specifically allows for an appeals process,  
3 including a requirement for a hearing. (CVMC, § 5.19.050, subd. (A)(6); Regs, § 0501, subd.  
4 (P)(2)(b).)<sup>1</sup> The Notice of Decision gave Petitioner until May 21, 2020 to appeal the decision.  
5 {AR 119-122.} On May 21, 2020, Petitioner timely filed a Consolidated Request to Appeal with  
6 the City of Chula Vista. {AR 125-127.} On May 26, 2020, the City sent notice of a hearing on  
7 June 10, 2020. {AR 128-131.} The notice was served 15 days prior to the scheduled hearing,  
8 even though the City’s regulations required that Petitioner be given 20 days’ notice. (Regs. §  
9 0501(P)(2)(a).) In addition, the notice required evidence intended to be presented at the hearing  
10 must be disclosed to the City Manager no less than five days before the hearing. {*Id.* at 129, 131.}

11           On Friday, June 5, 2020, the City emailed its evidence to Petitioner, which consisted of 16  
12 exhibits, although under a cover letter misdated May 21, 2020. {AR 132-133.} The email was  
13 not sent until late in the afternoon on June 5, 2020, the Friday before the June 10, 2020 hearing  
14 (which was already on shortened notice). {AR 213-214; Shaman Decl., ¶ 6.} This was the first  
15 time the City disclosed that it was relying upon the allegations in *Holistic Café* as the basis to deny  
16 Petitioner’s Application. {AR 132; Shaman Decl., ¶ 6.}

17           Also on June 5, 2020, Petitioner submitted a brief on appeal arguing: (1) the rejection of  
18 its applications was impermissibly vague and violated due process in that it did not disclose any of  
19 the facts or evidence that the City relied upon in rejecting the application; (2) there were no laws  
20 related to Commercial Cannabis Activity in 2010-2012 in the City of San Diego; (3) to the extent  
21 the City’s decision was related to *Holistic Café*, there is no relevant, admissible evidence that Mr.  
22 Senn engaged in unlawful *commercial* cannabis activity; and (4) that the City should exercise its  
23 discretion and set aside the Notice of Decision on equitable grounds. {AR 215-224.}

24           A hearing was held on June 10, 2020, with the City Manager serving as the hearing officer.  
25 A deputy city attorney was present as an advisor to the City Manager, and another deputy city  
26

27 <sup>1</sup> Even if the City’s application procedure had not provided for an appeal, a “fair and impartial  
28 hearing” so that an applicant can “present the merits of her application to the licensing tribunal” is  
nonetheless required by law. (See *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 268-270.)  
(footnote continued)



1 attorney was present as counsel for the City. {AR 225-228.} Testimony was given by witnesses  
2 for the City and the City’s evidence was admitted, over Petitioner’s objections. {*Id.* at 228-301.}<sup>2</sup>  
3 Petitioner presented no evidence or testimony at the hearing because the City’s impermissibly  
4 vague Notice of Decision prejudiced Petitioner’s ability to prepare for the hearing, which itself  
5 was scheduled on less than legally sufficient notice under the Regs. {Shaman Decl., ¶ 7.}

6 The City served its “Findings and Statement of Decision with Regard to Appeal of Notice  
7 of Decision Rejecting Application for Cannabis License” (“Final Decision”) on August 26, 2020.  
8 {AR 302-309.} The Final Decision denied Petitioner’s appeal and concluded “the evidence shows  
9 the City reasonably and properly denied Appellant’s application.” {*Id.* at 307.}

10 **E. Real Parties In Interest**

11 Only eight storefront licenses were available in the City, two per each of the City’s four  
12 districts. (CVMC, § 5.19.040, subd. (A).) Because the City denied every applicant in District  
13 One, the City invited real parties in interest March and Ash Chula Vista, Inc. (from District Two)  
14 and TD Enterprise LLC (from District Four) to change districts, select new locations in District  
15 One, and move to Phase II of the application process. {Ex. 2 to App’x.}

16 **III. SCOPE OF REVIEW**

17 Administrative mandamus is an appropriate remedy for challenging “the validity of any  
18 final administrative order or decision made as the result of a proceeding in which by law a hearing  
19 is required to be given, evidence is required to be taken, and discretion in the determination of  
20 facts is vested in the inferior tribunal . . . .” (Code Civ. Proc., § 1094.5, subd. (a).) The Court may  
21 enter judgment for Petitioner and command the City to set aside its Final Decision if there was not  
22 a fair trial, or if the City’s decision constituted a “prejudicial abuse of discretion.” (Code Civ.  
23 Proc., § 1094.5, subd. (b).) “Abuse of discretion is established if the respondent has not proceeded  
24 in the manner required by law, the order or decision is not supported by the findings, or the  
25 findings are not supported by the evidence.” (*Ibid.*) As discussed below, Petitioner was denied a  
26

27  
28 <sup>2</sup> Petitioner stipulated to the admissibility of Exhibits 1-7, 14, 15 and 16. Petitioner raised  
objections with specific grounds to the remaining exhibits as they were presented during the  
hearing. {AR 245-246, 251-253, 255, 257, 261, 266.}

1 fair trial and the City prejudicially abused its discretion in rejecting Petitioner’s application for a  
2 license to operate a commercial cannabis business in the City of Chula Vista.

3 **IV. THE CITY’S DECISION CONSTITUTES AN ABUSE OF DISCRETION**

4 The City’s sole basis for rejecting Petitioner’s application was an alleged civil zoning  
5 violation in the *Holistic Café* matter from 2012 that the City incorrectly determined was  
6 disqualifying pursuant to CVMC §§ 5.19.050(A)(5)(f) and (g). {AR 119-122.} These two code  
7 sections state, respective:

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

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

15 To be clear, none of the zoning ordinances that the City of San Diego accused the Holistic Café of  
16 violating in 2012 barred a medicinal cannabis storefront (or used the words marijuana or cannabis  
17 for that matter).<sup>3</sup> Indeed, the City’s Statement of Decision concedes that “[s]pecific state licensing  
18 and local licensing of cannabis dispensaries” did not go into effect until 2016, four years *after* the  
19 City of San Diego entered into a stipulated judgment in *Holistic Cafe*. {AR 304.} There simply  
20 were no “state or local laws or regulations related to *Commercial Cannabis Activity*” in effect in  
21 2012 that could have been the basis for the City’s rejection of Petitioner’s application.

22 Nonetheless, the Hearing Officer’s Statement of Decision, which applied the wrong legal  
23 standard because it omitted the key term “commercial,” found that:

24 The City of Chula Vista Municipal Code has two sections that address the denial of  
25 a license for *Unlawful Cannabis Activity*, CVMC section 5.19.050(A)(5)(f) and (g).  
26 . . . The record shows Appellant engaged in *Unlawful Cannabis Activity* and, as a  
27 result, his cannabis license applications were properly denied . . .

28 {AR 304-305.} The City erred for three key reasons. First, the civil zoning violations found in  
the *Holistic Café* matter do not constitute unlawful “*Commercial Cannabis Activity*” as a matter of

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<sup>3</sup> 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. {Ex. 5 to App’x.}

1 law, which is the proper legal standard. Second, the City’s findings were not supported by the  
2 evidence. Third, the City refused to exercise its discretion.

3       **A.     The Holistic Café Matter Did Not Involve Commercial Cannabis Activity**

4       The complaint in *Holistic Café* alleged violations of San Diego Municipal Code  
5 (“SDMC”) §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111, 129.0314,  
6 146.0104. {AR 186-195.} Other than Sections 121.0302 and 1512.0305, these code sections  
7 related to structural, electrical, and signage requirements, each of which could have been easily  
8 corrected by calling a contractor.

9       Together, SDMC §§ 121.0302 and 1512.0305 enact zoning rules for zone CN-1A in the  
10 City of San Diego’s Mid-City Communities Planned District.<sup>4</sup> Table 1512-03I therein lists all  
11 permitted uses for buildings located in zone CN-1A and excludes all other uses (as opposed to  
12 identifying excluded uses). Notably, Table 1512-03I specifically allows for the operation of drug  
13 stores, pharmacies, liquor stores, bakeries, confectioneries, florists, variety stores, food stores, and  
14 dry goods stores without any reference to the types of products sold therein. Yet, the City of San  
15 Diego contended in *Holistic Café* that a medicinal cannabis storefront was not specifically listed  
16 as a permitted use. By this flawed logic, the City of San Diego could have also cited any café  
17 because the words “coffee,” “tea,” and “scones” were also not specifically listed.

18       During this 2010-2012 time period, localities and medical cannabis advocates hotly  
19 debated and litigated whether local governments could even use zoning regulations to ban legal  
20 medicinal cannabis storefronts with varying results. (See *City of Lake Forest v. Evergreen*  
21 *Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments cannot ban]; *County of Los*  
22 *Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 [local  
23 governments cannot ban]; and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local  
24 governments can ban].) It was not until 2013 that the California Supreme Court decided *City of*  
25 *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 761-  
26 762, which ruled that local governments could ban medical cannabis storefronts.

27  
28       \_\_\_\_\_  
<sup>4</sup> A copy of the Municipal Code in effect at the time is attached as Exhibit 4 to the App’x.  
4847-9715-4531.3

1 Despite having several legal and factual defenses available to them in 2012, the defendants  
2 in *Holistic Café*, including Mr. Senn, decided to settle the matter and entered into a stipulated  
3 judgment that did *not* include any admission of liability. {AR 196.} What the stipulated  
4 judgment did include was a reference to the uncertainty in the law (i.e., the then-pending *City of*  
5 *Riverside* case), and a provision that allowed the stipulated judgment to be amended in the future  
6 if the law were to change. {AR 199.} Consistent with that provision, the Superior Court in  
7 *Holistic Café* amended the judgment on May 3, 2019 so as to specifically permit the defendants  
8 therein to engage in cannabis activities. {Ex. 6 to App’x.}

9 Keeping these facts in mind, the City’s determination that the Holistic Café operated an  
10 unlawful *commercial* cannabis dispensary is unsupported by either the law or the evidence.

11 1. Medicinal Cannabis Is Not Commercial Cannabis

12 As is discussed in more detail in Section V.A., *infra*, the City Attorney and Hearing  
13 Officer conflated the term “cannabis activity” with “*commercial* cannabis activity” as though they  
14 were interchangeable. To be clear, they are not. The scope of CVMC §§ 5.19.050(A)(5)(f) and  
15 (g) is limited to misconduct surrounding “*Commercial Cannabis Activity*.” This term is defined  
16 by the City as follows: “. . . the *commercial* cultivation, possession, manufacture, distribution,  
17 processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of  
18 Cannabis or Cannabis Products.” (CVMC, § 5.19.020 (emphasis added).) Critically, the City’s  
19 definition relates only to “commercial” and not “Medicinal Cannabis” or “Medicinal Cannabis  
20 Product,” which terms are separately defined in CVMC § 5.19.020. Indeed, the City’s licensing  
21 scheme for *commercial* cannabis activities expressly excludes medicinal cannabis activities,  
22 thereby confirming an important distinction between what is *commercial* and what is medicinal  
23 under the City’s own laws. (See, e.g., CVMC, § 5.19.090 [“A Storefront Retailer shall not Sell  
24 Medicinal Cannabis or Medicinal Cannabis Products.”].)

25 The Holistic Café was a nonprofit mutual benefit corporation organized in compliance with  
26 Attorney General guidelines for the lawful distribution of medicinal cannabis by collectives and  
27 cooperatives. {AR 187, 260, 263, 304, Ex. 3 to App’x.} Neither CMVC §§ 5.19.050(A)(5)(f) nor  
28 (g) therefore apply as a matter of law, and the City erred by applying a standard that omitted the

1 term “commercial.” (See Code Civ. Proc., § 1858 [“In the construction of a statute or instrument,  
2 the office of the Judge is simply to ascertain and declare what is in terms or in substance contained  
3 therein, not to insert what has been omitted, or to omit what has been inserted . . .”].) Further,  
4 even if the defined term “Commercial Cannabis Activity” could be read as encompassing the  
5 nonprofit distribution of medicinal cannabis (it cannot), the alleged civil zoning violations in  
6 Holistic Café are not disqualifying under CMVC §§ 5.19.050(A)(5)(f) or (g) as a matter of law  
7 and the City committed clear legal error in finding the contrary.

8                   2.       CMVC § 5.19.050(A)(5)(g) Does Not Apply

9           Analyzing subdivisions (f) and (g) out of order helps to explain how both should be read.  
10 Subdivision (g) permits the City to reject an applicant if its owner, manager, or officer “conducted,  
11 facilitated, caused, aided, abetted, suffered, or concealed unlawful *Commercial Cannabis*  
12 *Activity.*” To avoid absurd results and unintended consequences, the phrase “unlawful  
13 *Commercial Cannabis Activity*” must be read to mean *commercial* cannabis activities that are  
14 unlawful under the regulatory schemes enacted by the State and localities following the passage of  
15 Proposition 64 in 2016, and not just any activity that is unlawful in the abstract.

16           For example, under CMVC § 5.19.050(A)(1)(e)(i), the manager of a commercial cannabis  
17 license applicant must have “[a] minimum of 12 consecutive months, within the previous five  
18 years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of  
19 a lawful Commercial Cannabis Business in a *jurisdiction permitting such Commercial Cannabis*  
20 *Activity.*” (CMVC, § 5.19.050(A)(1)(e)(i), italics added.) Yet, there are no jurisdictions  
21 permitting commercial cannabis activities *anywhere* in the United States because all cannabis  
22 activity is unlawful under Federal law. (See, e.g., 21 U.S.C., § 811.) In fact, even if the City were  
23 to ignore Federal law entirely, there were no lawful *commercial* cannabis businesses anywhere in  
24 the state of California until its voters passed Proposition 64 in 2016.

25           Thus, it cannot be that *any* unlawful cannabis activities are disqualifying because that  
26 would necessarily lead to the automatic disqualification of every single experienced applicant  
27 whose experience in cannabis comes from managing a cannabis business that is unlawful under  
28 Federal Law. (See *City of Sanger v. Super. Ct.* (1992) 8 Cal.App.4th 444, 448 [courts should



1 decline to interpret statutes in a manner that would frustrate the purposes of legislation or lead to  
2 absurd results[.].) Rather, for subdivision (g) to make any sense (and to avoid an otherwise direct  
3 conflict with CVMC § 5.19.050(A)(1)(e)(i)), subdivision (g) must be interpreted so that the phrase  
4 “unlawful Commercial Cannabis Activity” means activities that are unlawful under the regulatory  
5 schemes enacted by the State and City after 2016 and 2018, respectively, which is when each  
6 jurisdiction first coined the term “*Commercial Cannabis Activity*” in their respective codes.

7 Under this common sense reading of subdivision (g), an alleged violation of the City of  
8 San Diego’s general zoning ordinances from back in 2012—ordinances that did not expressly ban  
9 otherwise lawful, nonprofit, medicinal cannabis storefronts under Senate Bill 420—cannot  
10 possibly be deemed an unlawful *Commercial Cannabis Activity*, because that phrase should only  
11 apply to activities deemed unlawful under the regulatory schemes enacted by the State and City  
12 following the passage of Proposition 64. Had the City intended otherwise, it could have changed  
13 the definition of *Commercial Cannabis Activity* to include nonprofit medicinal cannabis. It did  
14 not. The City could have also dropped the term “commercial” so that the disqualification was  
15 expanded to any “unlawful Cannabis Activity.” It did not, but as explained in Section V.A., *infra*,  
16 this is the errant standard the City used to disqualify Petitioner’s application. Under the only  
17 proper reading of subdivision (g), the City clearly erred in denying Petitioner’s application.

18 3. CVMC § 5.19.050(A)(5)(f) Does Not Apply Either

19 With regard to CVMC 5.19.050 § (A)(5)(f), the key language is the phrase “laws or  
20 regulations *related to* Commercial Cannabis Activity.” (Italics added.) There are two ways to  
21 read subdivision (f). The first is the broadest and vaguest way which, unfortunately, is the reading  
22 that the City improperly applied. Under the City’s misapplication of subdivision (f), the words  
23 “laws or regulations” are not limited to the laws or regulations “related to” the regulatory schemes  
24 that defined the term “Commercial Cannabis Activity” and made commercial cannabis activity  
25 lawful in the State of California and in the City. Rather, the City’s tortured reading extends to any  
26 “laws or regulations” of general application, including laws and regulations that have absolutely  
27 nothing to do with the regulation of commercial cannabis activity (or medicinal cannabis activity  
28 or even cannabis generally, for that matter).

1 Under this overbroad and unduly vague reading of subdivision (f), the City could,  
2 theoretically, reject an applicant whose otherwise lawful and licensed medicinal cannabis business  
3 was sanctioned for violating wage and hour laws. The City could likewise reject an applicant who  
4 received a speeding ticket while transporting medicinal cannabis. Or the City could reject an  
5 applicant for violating a noise ordinance. It was using this overly broad and unduly vague reading  
6 of subdivision (f) that the City erroneously concluded that *any* civil zoning violation at an  
7 otherwise lawful, nonprofit medical cannabis storefront constituted a violation of law “related to  
8 Commercial Cannabis Activity.”

9 Alternatively, subdivision (f) can be read consistently with the clear intent of subdivision  
10 (g), discussed above, which avoids these kinds of absurd results by interpreting the phrase “state  
11 or local laws or regulations related to Commercial Cannabis Activity” to mean those laws and  
12 regulations that were enacted along with the regulatory scheme that first defined the term  
13 “Commercial Cannabis Activity” (at both the state and local level). This reading provides  
14 applicants with fair notice of what is and what is not a disqualifying violation of law because  
15 applicants can review the Business and Professions Code and the CVMC and determine whether  
16 they have, in fact, violated any of the myriad commercial cannabis laws and regulations enacted  
17 following Proposition 64, MAUCRSA, or Ordinance No. 3418. Indeed, the City requires  
18 applicants to sign a “Statement of Understanding” that defines “Commercial Cannabis Activity”  
19 on the very first page and discloses a litany of commercial cannabis laws. {AR 80-89.}

20 Under this proper reading of subdivision (f), a violation of the City of San Diego’s general  
21 zoning regulations that did not expressly exclude otherwise lawful, nonprofit, medicinal cannabis  
22 storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which  
23 medicinal cannabis was not explicitly listed (but was impliedly so, as discussed above), is not a  
24 violation of law *related to Commercial Cannabis Activity* as that phrase should be interpreted.

25 **B. The City’s Findings Were Not Supported By The Evidence**

26 In addition to errors in law, the City abused its discretion because there was no admissible  
27 evidence presented whatsoever that the Holistic Café—a *nonprofit* mutual benefit company—was  
28 engaged in any “commercial” cannabis activity at all, as opposed to “medicinal” cannabis

1 activities that were lawful at the time under Proposition 215.

2 Preliminarily, the stipulated judgment, as well as other exhibits presented by the City in the  
3 *Holistic Café* case, is purely hearsay and expressly did “not constitute an admission or an  
4 adjudication of any of the allegations of the Complaint.” {AR 113, 257, 261, 266, 288.} The  
5 allegations of the Complaint were just that: allegations. Allegations are not facts or evidence.  
6 There was no non-hearsay evidence of unlawful commercial cannabis activity to support the  
7 City’s rejection of Petitioner’s application. Each of the documents the City relied on were  
8 inadmissible hearsay, lacked foundation, were improperly authenticated and irrelevant. {See AR  
9 245-246, 251-253, 255, 257, 261, 266.} Hearsay evidence, alone, cannot support a finding.  
10 (Govt. Code, § 11513(d); *Layton v. Merit Sys. Comm’n* (1976) 60 Cal.App.3d 58, 67.)

11 The City also relied upon the testimony by Sergeant Mike Varga, who was an Sergeant  
12 with the *Chula Vista* Police Department. {AR 228.} Sargent Varga admitted he had no personal  
13 knowledge of the any of the allegations in the *Holistic Café* or any of the other exhibits he sourced  
14 through public records act requests, he had never been to the *Holistic Café*, and did not know who  
15 or when the photographs were taken. {AR 270-274.} Despite also not having any personal  
16 knowledge about the practices of the City of San Diego, Sergeant Varga opined that cannabis  
17 dispensaries during the 2010-2012 time frame “were regulated via zoning laws and in particular in  
18 the City of San Diego as unpermitted businesses.” {AR 304.} Sergeant Varga admitted, however,  
19 that San Diego Municipal Code § 1512.0305 did not say anything about marijuana. {AR 272.} In  
20 fact, Sergeant Varga was unable to identify *any* sections of the San Diego Municipal Code alleged  
21 to have been violated involving the regulation of *Commercial Cannabis Activity*. {AR 273-274.}

22 Considering the foregoing, the City offered no admissible evidence that would support the  
23 City’s findings and its findings are insufficient to support its decision.

24 **C. The City Abused Its Discretion By Refusing To Exercise Its Discretion**

25 The City is required, pursuant to CVMC § 5.19.050(A)(5), to exercise its discretion when  
26 rejecting any Phase One Application: “Phase One Applications *may* be rejected by the Police  
27 Chief for any of the following reasons in his/her discretion.” [Emphasis provided.]

28 As discussed above, under CVMC §5.19.050(A)(1)(e)(i), an applicant’s manager must

1 have “[a] minimum of 12 consecutive months, within the previous five years, as a Manager with  
2 managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial  
3 Cannabis Business in a *jurisdiction* permitting such Commercial Cannabis Activity.” (Emphasis  
4 added.) While it makes perfect sense to require that applicants have recent experience in  
5 jurisdictions permitting Commercial Cannabis Activity, no such jurisdictions exist anywhere in  
6 America because cannabis is unlawful under Federal law.

7 Even if Federal law were ignored, there was still great conflict in California State law over  
8 whether municipalities could use civil zoning ordinances to bar medicinal cannabis storefronts  
9 from the passage of Proposition 215 in 1996 until the California Supreme Court finally decided  
10 the issue in 2013 in *Inland Empire*. Not surprisingly, the most experienced applicants that the  
11 City reasonably demanded for its licensing program gained that experience at a time when civil  
12 zoning ordinances were unevenly and haphazardly applied throughout the state.

13 Pursuant to Public Record Act requests, Petitioner has learned that the City uniformly  
14 rejected applicants under CVMC 5.19.050 § (A)(5)(f) and (g) that were alleged to have violated  
15 laws that were not related to the regulatory schemes that legalized *commercial* cannabis activity at  
16 the State and local level (going so far as to disqualify applicants who merely worked at otherwise  
17 lawful medicinal cooperatives in the City of San Diego). {See Exs. 11-29 to App’x.} This  
18 relevant evidence could not, in the exercise of reasonable diligence, have been produced by  
19 Petitioner at the administrative hearing because Petitioner only obtained the evidence pursuant to  
20 Public Records Act after the hearing. {Shaman Decl., ¶ 9.} This relevant evidence is admissible  
21 pursuant to Code of Civil Procedure § 1094.5(e). (*Fairfield v. Superior Court of Solano County*  
22 (1975) 14 Cal.3d 768, 771-771 [extra-record evidence may be introduced if that evidence could  
23 not with reasonable diligence have been presented at the administrative hearing]; see also *Western*  
24 *States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575, fn. 5.)

25 Considering that the City demands qualified and experienced applicants, who’s experience  
26 comes from operating a business that is still illegal to this day under Federal Law, the City should  
27 have exercised its discretion in choosing the most qualified applicant (such as Petitioner, which  
28 scored the highest in City District One), rather than the applicant that was lucky or clandestine

1 enough to avoid government scrutiny. The Holistic Café was neither clandestine nor lucky. It  
2 operated in plain view of Code Enforcement at 415 University Avenue in the heart of Hillcrest.  
3 {AR248.} Perhaps if the Holistic Café operated in a back alley or an unmarked business park to  
4 avoid detection that would have been preferable to the City. Perhaps not. But the City abused its  
5 discretion in failing to exercise any discretion by rejecting Petitioner without making additional  
6 factual findings to demonstrate its reasons to reject the application. (*Topanga Assn. for a Scenic*  
7 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [agency must set forth findings to  
8 bridge the analytic gap between the raw evidence and ultimate decision].)

9       Such reasons would have required, for example, findings tied to the express purpose of the  
10 licensing codes and regulations in permitting, licensing, and fully regulating commercial cannabis  
11 activities in the City. (*People v. Amdur* (1954) 123 Cal.App.2d Supp. 951, 964 [“The granting or  
12 denying of permits . . . must be based upon considerations related to public health, safety, comfort,  
13 morals or the promotion of the general welfare, and the law requires uniform nondiscriminatory  
14 and consistent administration.”].) An example would be findings that Petitioner would likely  
15 create negative impacts and secondary effects, danger and disruption for City residences and  
16 businesses, and therefore its license application should be rejected. No such findings were ever  
17 made. Nor could such findings ever be made for Petitioner. As Petitioner’s application materials  
18 showed, Mr. Senn is a highly experienced and well-qualified applicant. {AR 25-26, 27, 29-30, 32,  
19 33, 34-40, 126.} That is to say, Mr. Senn’s operations are licensed by the very same City of San  
20 Diego that was a party to the stipulated judgement in *Holistic Café*. {*Id.*} Surely, such licensure  
21 would not have occurred had Mr. Senn been likely to create negative impacts, secondary effects,  
22 danger, or disruption to the City of San Diego. In fact, the City of San Diego expressly  
23 determined the contrary in issuing him a conditional use permit. (AR 65-68.) The City should  
24 have considered these qualifying facts, which led to Petitioner being objectively scored as the  
25 most qualified applicant in the City’s District One. It did not.

26 **V. PETITIONER WAS DENIED A FAIR HEARING**

27 **A. Petitioner Was Deprived Of Its Due Process Right To A Fair Tribunal**

28 The City’s appeal process violated Petitioner’s due process right to a fair tribunal “in



1 which the judge or other decision maker is free of bias for or against a party.” (*Morongo Band of*  
2 *Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737 [citation and  
3 quotation marks omitted].) This is because Deputy City Attorney Simon Silva served as the  
4 adviser to the hearing officer (i.e., City Manager Gary Halbert), and Deputy City Attorney Megan  
5 McClurg served as counsel for Respondent. {AR 302.}

6 Although a “city attorney’s office may ‘act[] as an advocate for one party in a contested  
7 hearing while at the same time serving as the legal adviser for the decision maker’” without  
8 violating the other party’s right to a fair tribunal, “performance of both roles” offends due process  
9 when: (1) adequate measures to screen the deputy city attorney serving as prosecutor and the  
10 deputy city attorney serving as adviser are absent; or (2) the deputy serving as prosecutor becomes  
11 a “primary legal adviser” to the decision maker. (*Quintero v. City of Santa Ana* (2003) 114  
12 Cal.App.4th 810, 813, overruled in unrelated part by *Morongo*, supra, p. 740, fn. 2, [citations and  
13 quotation marks omitted].) Here, there is no evidence to suggest that the City Attorney’s Office  
14 employed adequate screening measures to guarantee the necessary separation between its dual  
15 roles of adviser and advocate. (See, *Quintero*, supra, p. 813 [clarifying that the respondent City of  
16 Santa Ana had the “burden of showing the required separation”].)

17 Additionally, Ms. McClurg’s service as counsel for Respondent in the hearing violated due  
18 process in light of her role as a drafter of the very code that governed the application and appeals  
19 process. Specifically, Ms. McClurg and a member of City Manager Halbert’s staff, Deputy City  
20 Manager Kelley Bacon, played an integral role in the drafting of Ordinance 3418, eventually  
21 codified in CVMC § 5.19.010 *et seq.* Ms. McClurg and Ms. Bacon gave presentations to the  
22 Chula Vista City Council on the proposed ordinance, including their ongoing revisions thereto, no  
23 less than four times prior to the Ordinance’s adoption. {Exs. 7-10 to App’x.}<sup>5</sup> City Manager  
24 Halbert was present each time for these presentations. {*Id.*} Given Ms. McClurg’s and Ms.  
25 Bacon’s joint role as drafters of the very code provisions which governed Petitioner’s application  
26 and subsequent appeal, “[i]t would only be natural for [City Manager Halbert, Ms. Bacon’s  
27  
28

<sup>5</sup> These exhibits are admissible pursuant to Code of Civil Procedure § 1094.5(e).

1 supervisor] . . . to give more credence to [Ms. McClurg's] arguments when deciding [Petitioner's]  
2 case." Under these facts, there is an "appearance of unfairness . . . sufficient to invalidate the  
3 hearing" on due process grounds. (*Quintero, supra*, p. 816.)

4 And, in this case, the City's appearance of unfairness had real adverse consequences. This  
5 is because the City's counsel, Ms. McClurg and the witnesses she called to testify materially  
6 misrepresented what the code says. Specifically, on no less than *ten* occasions, they accused the  
7 *Holistic Café* of engaging in "unlawful cannabis activity" when the CVMC sections at issue  
8 clearly requires evidence of "unlawful *commercial* cannabis activity." For example:

- 9 • "MS. MCCLURG: . . . it's the City's position that there are valid grounds for  
10 rejection, um, that all applications were rejected based on the Appellant's um,  
11 involvement in *unlawful cannabis activity* in the City of San Diego. Um, to the  
12 extent that that's confusing as to which *unlawful cannabis activity* we were  
referring to, um, we can certainly provide more information, but um, we are aware  
of one incident in which um, Mr. Senn was sanctioned . . . ." {AR 239 (emphasis  
added).}
- 13 • "MS. MCCLURG: . . . [Sergeant Varga] will discuss Notice of Violation, um,  
14 issued by the City and other information that led them to believe that *unlawful*  
*activity* had occurred." {AR 240 (emphasis added).}
- 15 • "Ms. MCCLURG: Uh, if an applicant or an owner has been sanctioned um, for  
16 laws related to *cannabis activity*, is that a basis for rejection in the municipal code?  
SERGEANT VARGA: Yes it is." {AR 243 (emphasis added).}
- 17 • "MS. MCCLURG: . . . in this case it was certainly related to illegal *marijuana*  
18 *activity*, or unlawful *marijuana activity*." {AR 294 (emphasis added).}
- 19 • "MS. MCCLURG: . . . for these reasons, uh, the City feels that there is sufficient  
20 evidence to show . . . that the um, *unlawful cannabis activity* disqualifiers were also  
21 correct. If you look specifically at those provisions, it was a sanction or a penalty  
22 by any jurisdiction for laws related to *cannabis activity* . . . all of these documents  
together um, certain suggest that we have an issue here with unlawful *cannabis*  
*activity*. . . . the City does stand behind its um, rejection of any applicant that was  
involved previously in unlawful uh, *cannabis activity* in any jurisdiction." {AR 296  
(emphasis added).}

23 Due process requires an impartial adjudicator. (*El-Attar v. Hollywood Presbyterian Med.*  
24 *Ctr.* (2013) 56 Cal.4th 976.) In this case, the hearing officer heard argument by Ms. McClurg and  
25 testimony elicited by Ms. McClurg that applied the wrong legal standard at least ten times.  
26 Considering that the hearing officer knew of Ms. McClurg's role in drafting the relevant code  
27 sections, not only is it reasonably probable that Petitioner's appeal was impermissibly tainted by  
28 bias, but that the hearing officer erred as a direct result of the City Attorney's repeated use of the

1 wrong legal standard. (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th  
2 1012, 1021 [“the rule against bias has been framed in terms of probabilities, not certainties”].)

3 Indeed, the hearing officer’s statement of decision employed the exact same erroneous  
4 legal standard repeated by Ms. McClurg throughout the hearing: “All four applications were  
5 denied pursuant to CVMC section 5.19.050(A)(5)(f) and (g) because Appellant was involved in  
6 *Unlawful Cannabis Activity*.” {AR 302-303 (emphasis added).} This error in the statement of  
7 decision was repeated by the hearing officer at least ten times, which shows that the City  
8 impermissibly conflated the terms “cannabis activity” with “*commercial* cannabis activity” as if  
9 they had the same meaning under the CVMC when they do not:

- 10 • “Appellant . . . made the following claims of error: (1) that he was denied Due  
11 Process because the Notices of Decision did not provide sufficient notice as to  
12 when the *Unlawful Cannabis Activity* took place. . . . he asks the City to exercise its  
discretion and not consider the *Unlawful Cannabis Activity* allegations to deny the  
applications.” {AR 303 (emphasis added).}
- 13 • “The evidence supports the conclusion Appellant had notice as to the time frame in  
14 which he was alleged to have engaged in the *Unlawful Cannabis Activity*.” {AR  
303 (emphasis added).}
- 15 • “. . . Appellant had ample notice that the alleged *Unlawful Cannabis Activities* took  
16 place between 2010 and 2012 in the City of San Diego, specifically at the Holistic  
Café.<sup>6</sup> Thus, he could have presented a defense that he did not engage in any  
17 *Unlawful Cannabis Activities* between 2010 and 2012.” {AR 304 (emphasis  
added).}
- 18 • “The City of Chula Vista Municipal Code has two sections that address the denial  
19 of a license for *Unlawful Cannabis Activity*, CVMC section 5.19.050(A)(5)(f) and  
(g).” {AR 304 (emphasis added).}
- 20 • “The record shows Appellant engaged in *Unlawful Cannabis Activity* and, as a  
21 result, his cannabis license applications were properly denied pursuant to CVMC  
5.19.505(A)(5)(g).” {AR 305 (emphasis added).}
- 22 • “Here, the issue was whether Appellant was involved in *Unlawful Cannabis*  
23 *Activity* or violated a law involving *Unlawful Cannabis*.” {AR 305 (emphasis  
added).}
- 24 • “As a result, the exhibits were relevant to prove Appellant’s alleged *Unlawful*  
25 *Cannabis Activities*.” {AR 306 (emphasis added).}

26 Though the City may regret that CVMC sections 5.19.050(A)(5)(f) and (g) are written in  
27  
28

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<sup>6</sup> To be clear, the Notice of Decision did not reference the Holistic Café whatsoever. {AR121.}

1 terms of “*commercial* cannabis,” the law is the law and the City’s misconduct violated Petitioner’s  
2 due process right to an impartial hearing.

3       **B.       The City Provided Insufficient Time And Notice in Violation of Petitioner’s**  
4       **Due Process Rights**

5       The City further violated Petitioner’s due process rights by conducting a procedurally  
6 improper hearing that did not provide Petitioner sufficient notice, both in terms of time in  
7 violation of Regs. § 0501(P)(2)(a), and in terms of the basis for the rejection with its threadbare  
8 Notice of Decision. Together, these violations deprived Petitioner of its ability to meaningfully  
9 prepare for the hearing on appeal by sourcing testimony and/or exhibits needed to appeal to the  
10 City Manager, which fact the City Manager cited in rejecting the appeal. {AR 302-307.}

11       In cases where an aggrieved party has a right to a hearing, such right “embraces not only  
12 the right to present evidence, but also a reasonable opportunity to know the claims of the opposing  
13 party and to meet them.” (*Morgan v. United States* (1938) 304 U.S. 1, 18.) Here, Petitioners were  
14 not afforded reasonable notice and an opportunity to know the grounds on which their applications  
15 were rejected in order to prepare for the hearing. This is because the City’s Notice of Decision did  
16 not mention the *Holistic Café* lawsuit at all, or any of the particular facts or evidence that the City  
17 relied upon in reaching its conclusions in the Notice of Decision. {AR 119-122.}

18       Though the City will likely argue in its opposition that the omission was harmless, any  
19 such argument is severely undermined by the fact that City *materially misrepresented* the contents  
20 of the notice of decision in its statement of decision on the appeal: “The NOD provides notice that  
21 the Unlawful Cannabis Activity took place between 2010 and 2012 in the City of San Diego,  
22 *specifically at the Holistic Café.*” {AR 303 (emphasis added).} There is no rational basis for the  
23 City to have misrepresented what was in the notice of decision, other than to cover up the fact that  
24 the City did not provide Petitioner with fair notice.

25       This is particularly true when considering that Petitioner disclosed the stipulated judgment  
26 in *Holistic Café* contemporaneously with the submission of its application. {AR 113.} Rather  
27 than rejecting the application on that basis, the City instructed Petitioner to engage in a series of  
28 proceedings (i.e., application, background check, interview, scoring, etc.) that would lead any

1 reasonable applicant to conclude that the *Holistic Café* matter was not a disqualifier. By staying  
2 silent, the City invited Petitioner to continue to invest significant time and resources in the license  
3 process, all while the City continued to collect application fees from them. This alone should be  
4 grounds for granting of the writ. (*Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 963-964 [City  
5 was estopped from denying business permits to arcade owners who made substantial investment  
6 after permits has in effect been granted].)

7 Under these circumstances, it would have been unrealistic to expect Petitioner to know that  
8 the notice of decision was based on the *Holistic Café* matter and prepare for a hearing on that  
9 basis. Making matters worse, the City failed to provide Petitioner with enough time to prepare for  
10 the hearing. Although the City was required to give 20 day's notice of the hearing, the City gave  
11 five days less than the required notice period. {AR 128.} Further, the City did not provide the list  
12 of evidence it would rely on at the hearing until late in the day on Friday, June 5, 2020, for the  
13 hearing set on June 10, 2020. {*Id.* at 213.} This was the **first time** Petitioner was informed that the  
14 hearing would focus on the *Holistic Café* matter, thus giving Petitioner just two business days to  
15 prepare. {Shaman Decl., ¶ 6.}

16 Had proper notice been provided, Petitioner could have presented evidence that the San  
17 Diego Superior Court entered an order modifying the stipulated judgment in *Holistic Café* on May  
18 3, 2019 to clarify that the defendants are allowed to operate commercial cannabis businesses in the  
19 City of San Diego. {Ex. 6 to App'x.} Petitioner could have also called witnesses from the City of  
20 San Diego, such as Paul Cooper, a former Executive City Attorney that offered a letter of  
21 recommendation in support of Petitioner's application, which stated in part: "One of the first  
22 Dispensaries the City of San Diego permitted was Urbn Leaf, owned and operated by Mr. Senn.  
23 Urbn Leaf has operated without problem since its existence and is often used as a model of how a  
24 dispensary should be run. . . . Mr. Senn worked closely with our office to assist in drafting  
25 regulations that benefited both the legal dispensaries but also the City." {AR 32.}

26 The lack of notice, both in terms of time and content, prevented Petitioner from receiving a  
27 fair hearing. The City's failure on these fronts "offends ordinary concepts of fairness and justice"  
28 and its decision must be vacated. (*Kieffer* at p. 964.)



1 **VI. STATEMENT OF DECISION REQUESTED**

2 Petitioner requests a Statement of Decision pursuant to Code of Civil Procedure § 632.

3 **VII. CONCLUSION**

4 For the aforementioned reasons, the Court should grant this motion, which is determinative  
5 of each of Petitioner's claims, issue a writ of mandate in the proposed form served concurrently  
6 herewith, and issue a judgment in Petitioner's favor consistent with this ruling. Petitioner has no  
7 other plain, speedy, and adequate remedy in the ordinary course of law.

8 DATED: April 2, 2021

Respectfully submitted,

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By: \_\_\_\_\_

GARY K. BRUCKER, JR.

12 Attorneys for Petitioner/Plaintiff

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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 **UL CHULA TWO LLC,**

13 **Petitioner/Plaintiff,**

14 **vs.**

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

18 **Respondents/Defendants,**

19 **MARCH AND ASH CHULA VISTA, INC.;**  
20 **TD ENTERPRISE LLC; and DOES 23**  
21 **through 50,**

22 **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 NATHAN SHAMAN  
IN SUPPORT OF PETITIONER/  
PLAINTIFF'S MOTION FOR WRIT OF  
MANDATE**

[IMAGED FILE]

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021

Time: 9:00 a.m.

Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021

Trial Date: None Set

1 I, Nathan Shaman, declare as follows:

2 1. I am an attorney duly admitted to practice in all of the courts of the State of  
3 California and I am currently the general counsel of UL Holdings Inc. (“UL”), which is the  
4 majority member and manager of petitioner/plaintiff UL Chula Two LLC (“Petitioner.”) I have  
5 personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could  
6 competently and truthfully do so.

7 2. Before joining UL as its general counsel, I operated my own law practice through  
8 The Law Offices of Nathan Shaman. In that capacity I represented UL in connection with  
9 Petitioner’s application for a retail storefront cannabis license. On January 18, 2019, I wrote a  
10 letter to the City of Chula Vista in connection with Petitioner’s application, which disclosed the  
11 fact that Willie Frank Senn, who was then the sole shareholder of UL, had a stipulated judgment  
12 entered against him on December 14, 2012 in the San Diego Superior Court case of *City of San*  
13 *Diego v. The Holistic Café, Inc. et al.*, case no. 37-2012-00087648-CU-MC-CTL. A true and  
14 correct copy of this letter is found in the Administrative Record (“AR”) at AR00113-114.

15 3. Although I invited the City to reach out to me if the City had any questions about  
16 the *Holistic Café* matter, I never received a response from the City to the letter. Petitioner,  
17 however, was notified by the City on June 10, 2019 that it had successfully completed Phases 1A  
18 and 1B of the application process, and was invited to proceed to Phase 1C (i.e., the interview) on  
19 July 17, 2019. Following the interview, Petitioner received a total score of 900.3 points—the  
20 highest for a retail storefront in the City’s District One (AR156).

21 4. Then, on May 6, 2020, the City issued a Notice of Decision rejecting Petitioner’s  
22 Application on the grounds that “The City of San Diego sanctioned William [*sic*] Senn for  
23 violations of laws or regulations related to unlawful Commercial Cannabis Activity” and “William  
24 [*sic*] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from  
25 approximately 2010 to 2012.” The Notice of Decision did not specifically reference the *Holistic*  
26 *Café* matter and I was not at all certain at the time if the grounds cited by the City were related to  
27 the *Holistic Café* matter, which I had disclosed to the City in writing 16 months earlier, or was  
28 related to something else, entirely.

1           5.       On May 21, 2020, while serving as general counsel to UL, I submitted Petitioner's  
2 appeal of the Notice of Decision (AR125-127). There were several grounds for the appeal. The  
3 primary ground was that there was no relevant, admissible evidence that Mr. Senn was adversely  
4 sanctioned for any laws related to "Commercial Cannabis Activity." In fact, my appeal cited the  
5 undisputed fact that from 2010 to 2012 there were no commercial cannabis laws in the City of San  
6 Diego. I also assumed given my January 18, 2019 letter to the City that the denial may have been  
7 based on the *Holistic Café* matter. I therefore pointed out that the alleged violations were of land-  
8 use and building code ordinances that did not pertain to cannabis, and that the Medical Marijuana  
9 Program Act allowed for medical marijuana collectives and cooperatives such as the Holistic Café.

10           6.       On May 26, 2020, I was notified that the appeal would be heard on June 10, 2020.  
11 Nowhere in the notice of appeal did the City mention the *Holistic Café* matter. The notice did  
12 state that the evidence to be submitted at the hearing should be submitted "at least five days prior  
13 to the hearing." (AR00129.) The City's exhibits were emailed in the late afternoon on Friday,  
14 June 5, 2020 (AR213-214), less than five full days before the June 10, 2020 hearing, giving me  
15 essentially two business days to prepare for the hearing. The City's exhibits included references to  
16 *Holistic Café*, which was the first time the City ever cited to the *Holistic Café* matter as a basis for  
17 rejecting Petitioner's application.

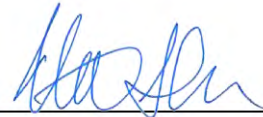
18           7.       On June 5, 2020, I submitted Petitioner's appellate brief (AR215-224). I addressed  
19 several flaws with the City's procedures, including that the Notice of Decision was impermissibly  
20 vague so as to deny Petitioner sufficient notice and due process. I provided detailed legal citations  
21 explaining that the City of San Diego did not have any laws or regulations related to "Commercial  
22 Cannabis Activity" from 2010-2012. And I raised concerns with the City relying upon the  
23 *Holistic Café* matter, "assuming" that the City based its decision on the stipulated judgment in the  
24 *Holistic Café* matter that I had disclosed on January 18, 2019. I was not able to address the other  
25 exhibits that the City intended to rely upon at the hearing because they were not disclosed to me  
26 prior to submission of my brief.

27           8.       On June 10, 2020, I attended the hearing on the appeal along with Willie Senn. I  
28 objected to the admission of the City's exhibits pertaining to the *Holistic Café* matter on numerous

1 grounds. All objections were overruled by the City Manager, who acted as the hearing officer. At  
2 the hearing, I reiterated the legal issues raised in the appellate brief, including the denial of due  
3 process. I was, however, unable to meaningfully prepare to present any testimony or evidence to  
4 rebut the City's contentions regarding *Holistic Café*.

5 9. The City served its Findings and Statement of Decision with Regard to Appeal of  
6 Notice of Decision Rejecting Application for Cannabis License on August 26, 2020. I suspected  
7 based upon the findings and industry gossip that the City denied other applicants on the same or  
8 similar grounds. To investigate, I served a public records act request on the City on September 2,  
9 2020 (Reference # R000005-090220). I served a second public records act request on the City on  
10 October 1, 2020 (Reference # R000079-100120). Attached as **Exhibits 11-29** to the concurrently  
11 filed Appendix of Exhibits are relevant portions of the City's document production in response to  
12 my public record act requests.

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct and that this declaration was executed on this 29th day of March,  
15 2021, at San Diego, California.

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18 \_\_\_\_\_  
19 Nathan Shaman  
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11 COUNTY OF SAN DIEGO – CENTRAL DIVISION

12 UL CHULA TWO LLC,

13 Petitioner/Plaintiff,

14 vs.

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

18 Respondents/Defendants,

19 MARCH AND ASH CHULA VISTA, INC.;  
20 TD ENTERPRISE LLC; and DOES 23  
through 50,

21 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]

**PLAINTIFF UL CHULA TWO LLC  
APPENDIX OF EXHIBITS IN SUPPORT  
OF MOTION FOR WRIT OF MANDATE**

[IMAGED FILE]

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021  
Time: 9:00 a.m.  
Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021  
Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEY'S OF RECORD:

2 Petitioner and plaintiff UL Chula Two LLC respectfully submits the following exhibits  
3 in support of its motion for writ of mandate. These exhibits are authenticated in the concurrently  
4 filed supporting declaration of Nathan Shaman, Esq. and/or Request for Judicial Notice.

5 ***APPENDIX OF EXHIBITS***

6 <b><u>Ex.</u></b>	<b><u>Description</u></b>
7 1.	Verified Petition (without exhibits).
8 2.	List of Cannabis Business Applicants Invited to Proceed to Phase Two (2/16/2021).
9 3.	Holistic Café Articles Of Incorporation (8/10/2009).
10 4.	Relevant Portions Of San Diego Municipal Code In Effect During Holistic Café Matter.
11 5.	City of San Diego Ordinance No. O-20356.
12 6.	Amendment to Judgment In Holistic Café Matter (5/3/19).
13 7.	City of Chula Vista Meeting Minutes – Final (8/3/2017).
14 8.	City of Chula Vista Meeting Minutes – Final (10/26/2017).
15 9.	City of Chula Vista Meeting Minutes – Final (12/12/2017).
16 10.	City of Chula Vista Meeting Minutes – Final (2/27/2018).
17 11.	City of Chula Vista Notice of Decision re Submitter ID 56918 (12/12/2019); Findings and 18 Statement of Decision on Appeal (7/14/2020).
19 12.	City of Chula Vista Notice of Decision re Submitter ID 57346 (1/31/2020).
20 13.	City of Chula Vista Notice of Decision re Submitter ID 59535 (1/31/2020); Findings and 21 Statement of Decision on Appeal (7/17/2020).
22 14.	City of Chula Vista Notice of Decision re Submitter ID 57347 (1/31/2020).
23 15.	City of Chula Vista Notice of Decision re Submitter ID 57039 (1/31/2020).
24 16.	City of Chula Vista Notice of Decision re Submitter ID 57058 (1/31/2020); Findings and 25 Statement of Decision on Appeal (8/7/2020).
26 17.	City of Chula Vista Notice of Decision re Submitter ID 57133 (2/20/2020).

Ex.	Description
18.	City of Chula Vista Notice of Decision re Submitter ID 57032 (2/20/2020); Findings and Statement of Decision on Appeal (8/11/2020).
19.	City of Chula Vista Notice of Decision re Submitter ID 59538 (2/20/2020).
20.	City of Chula Vista Notice of Decision re Submitter ID 57116 (2/20/2020).
21.	City of Chula Vista Notice of Decision re Submitter ID 59539 (2/25/2020).
22.	City of Chula Vista Notice of Decision re Submitter ID 56891 (4/22/2020).
23.	City of Chula Vista Notice of Decision re Submitter ID 56894 (4/22/2020).
24.	City of Chula Vista Notice of Decision re Submitter ID 56898 (4/22/2020).
25.	City of Chula Vista Notice of Decision re Submitter ID 59586 (5/6/2020).
26.	City of Chula Vista Notice of Decision re Submitter ID 57064 (5/6/2020).
27.	City of Chula Vista Notice of Decision re Submitter ID 57069 (5/6/2020).
28.	City of Chula Vista Notice of Decision re Submitter ID 57074 (5/6/2020).
29.	City of Chula Vista Notice of Decision re Submitter ID 58388 (5/6/2020).

DATED: April 2, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



GARY K. BRUCKER, JR.  
Attorneys for Petitioner/Plaintiff  
UL CHULA TWO LLC

# -EXHIBIT 1 -

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13 UL CHULA TWO LLC

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

16 UL CHULA TWO LLC,

17 Petitioner/Plaintiff,

18 vs.

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

22 Respondents/Defendants

23 DOES 21 through 50,

24 Real Parties In Interest

Case No. 37-2020-00041554-CL-10002111

**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.”

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

6                                   **JURISDICTION, VENUE, AND PARTIES**

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

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

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

14          9.       The Court has jurisdiction over this petition pursuant to Code of Civil Procedure  
15 §§ 1094.5, 1094.6, and 1085.

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

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

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

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

#### 4 **GENERAL ALLEGATIONS**

##### 5 ***Prop 215, Prop 64, And The City's Regulatory Scheme***

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

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

18 15. On March 6, 2018, the City adopted Ordinance No. 3418, which added Chapter  
19 5.19 to the Chula Vista Municipal Code ("CVMC"), in order to permit, license, and regulate  
20 Commercial Cannabis Activities within the City. (CVMC § 5.19.010.) Much of the language  
21 found in the CVMC is borrowed from the text of MAUCRSA. Thereafter, the City sought to tax  
22 commercial cannabis activity through Measure Q, which the City's voters approved on November  
23 6, 2018. A true and correct copy of the City's Ordinance No. 3418 is attached as **Exhibit A**.

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

26 The City has experienced the negative impacts and secondary effects associated  
27 with the operation of unlawful cannabis businesses within its corporate  
28 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

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

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

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

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

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

25 21. Petitioner is informed and believes that 136 applications were submitted, 84 of  
26 which were for storefront retailer City Licenses. Only 8 storefront retailer licenses were available  
27 (two per each of the City's four districts). (CVMC, § 5.19.040, subd. (A) [no more than 12  
28 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).)<sup>1</sup>

---

<sup>1</sup> 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)

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

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

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

20           32.     Also on June 5, 2020, Petitioner submitted a brief on appeal arguing: (1) the  
21 rejection of its applications was impermissibly vague and violated due process in that it did not  
22 disclose any of the facts or evidence that the City relied upon in rejecting the application; (2) there  
23 were no laws related to Commercial Cannabis Activity in 2010-2012 in the City of San Diego;  
24 (3) to the extent the City's decision was related to *Holistic Café*, there is no relevant, admissible  
25 evidence that Mr. Senn engaged in unlawful commercial cannabis activity; and (4) that the City  
26 should exercise its discretion and set aside the Notice of Decision on equitable grounds. A true  
27

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

<sup>2</sup> Note, the only application at issue in this Petition is Application ID 57074.

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

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

14       34.     The City served its "Findings and Statement of Decision with Regard to Appeal of  
15 Notice of Decision Rejecting Application for Cannabis License" ("Final Decision") on August 26,  
16 2020. A true and correct copy of the Final Decision is attached hereto as **Exhibit K**. The Final  
17 Decision denied Petitioner's appeal and concluded "the evidence shows the City reasonably and  
18 properly denied Appellant's application." (Exhibit K, p. 6.) The Final Decision provided notice  
19 that "Appellant may appeal this decision by filing an appeal in the San Diego Superior Court  
20 pursuant to Code of Civil Procedure 1094.5 on or before the 90th day after this decision is final."  
21 The Final Decision was served by mail on August 26, 2020. (Exhibit K.)

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

26                   **A WRIT OF MANDATE SHOULD ISSUE**

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

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

4 37. Accordingly, ordinary mandamus is appropriate because Petitioner has no plain,  
5 speedy, and adequate alternative remedy, the City has a clear, present, and ministerial duty to  
6 perform; and Petitioner has a clear, present, and beneficial right to performance. (Code Civ. Proc.,  
7 § 1085; *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.) The City was required by law to  
8 permit the highest scoring applicants to proceed to Phase 2 and failed to abide by the law when it  
9 rejected Petitioner’s application and denied Petitioner (and Petitioner is informed and believes, all  
10 other applicants with civil zoning law violations) the opportunity to proceed to Phase 2 of the  
11 licensing process based on alleged violation of civil zoning laws as having engaged in unlawful  
12 “commercial cannabis activity.”

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

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

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

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

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

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

8 Subdivision (g) states:

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

11       41.     The alleged civil zoning violation from 2012—long *after* medical cannabis was  
12 legalized by Proposition 215 and well *before* commercial cannabis was legalized by Proposition  
13 64—involved the Holistic Café, a medicinal cannabis storefront that the City of San Diego sought  
14 to close using a variety of mundane zoning ordinances. To be clear, none of the ordinances that  
15 the City of San Diego accused the Holistic Café of violating actually barred a medicinal cannabis  
16 storefront (or even used the words marijuana or cannabis for that matter). A true and correct copy  
17 of the complaint in *Holistic Café* is attached as **Exhibit M**.

18       42.     Specifically, the complaint in *Holistic Café* alleged violations of San Diego  
19 Municipal Code (“SDMC”) §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111,  
20 129.0314, 146.0104. (Exh. M ¶¶ 31-43, Prayer ¶ 1.) Nearly all of these code sections relate to  
21 mundane structural, electrical, and signage requirements. For example, Sections 129.0202 and  
22 129.0111 required an inspection and building permit prior to making any structural alterations to a  
23 building. Sections 129.0302 and 129.0314 required an inspection and electrical permit prior to  
24 installing or altering electrical wiring or equipment. Section 129.0802 required a signage permit  
25 prior to installing a sign. And section 146.0104, which incorporates various provisions of the  
26 California Electrical Code, prohibited the use of extension cord wiring for electrical service or the  
27 use of junction boxes without proper covers. Each of these alleged violations would have been  
28 easily curable, except for Sections 121.0302 and 1512.0305, which the City of San Diego insisted



1 did not allow for medicinal cannabis storefronts.

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

12 44. Critically, during this 2010-2012 time period, localities and medical cannabis  
13 advocates hotly debated and litigated whether local governments could even use zoning  
14 regulations to ban otherwise legal medicinal cannabis storefronts with varying results. (See *City*  
15 *of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments  
16 cannot ban], *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207  
17 Cal.App.4th 601 [local governments cannot ban], and *City of Claremont v. Kruse* (2009) 177  
18 Cal.App.4th 1153 [local governments can ban].) It was not until 2013 that the California Supreme  
19 Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013)  
20 56 Cal.4th 729, which ruled that local governments could ban medical cannabis storefronts.

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

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

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

1 licensure” has no bearing on this case because the *Holistic Café* matter had nothing to do with  
2 “pharmaceutical or alcohol licensure.” The key language here is the phrase “related to  
3 Commercial Cannabis Activity.” And to be clear, the term “Commercial Cannabis Activity” did  
4 not even come into existence until after Proposition 64 was passed in the State of California in  
5 2016, after which City Ordinance No. 3418 was passed in March 2018.<sup>3</sup>

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

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

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

25 \_\_\_\_\_  
26 <sup>3</sup> Prior to 2016, medicinal cannabis storefronts, such as the *Holistic Café*, were often organized as  
27 *nonprofit* mutual benefit corporations pursuant to guidelines promulgated by the California State  
28 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 **Exhibit O** and incorporated herein by reference.

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

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

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

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

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

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

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

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

20 67. Absent such fair notice, due process requires that the City be estopped from  
21 rejecting applicants on the basis of disclosed civil zoning violations. (*Kieffer v. Spencer* (1984)  
22 153 Cal.App.3d 954, 963-964.)

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

24 68. The City further violated Petitioner's due process rights by conducting a  
25 procedurally improper hearing that did not provide Petitioner sufficient notice, both in terms of  
26 time in violation of Regs. § 0501(P)(2)(a), and in terms of content with its threadbare Notice of  
27 Decision. Together, these violations deprived Petitioner of its ability to meaningfully prepare for  
28

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

3         69. Further, the City’s appeal process violated Petitioner’s due process right to a fair  
4 tribunal “in which the judge or other decision maker is free of bias for or against a party.”  
5 (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731,  
6 737 [citation and quotation marks omitted].) This is because Deputy City Attorney Simon Silva  
7 served as the adviser to the hearing officer, City Manager Gary Halbert, and Deputy City Attorney  
8 Megan McClurg served as counsel for Respondent. (Ex. K.)

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

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

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

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

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

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

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

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

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

9 **First Claim for Relief**

10 (Ordinary Mandate)

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

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

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

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

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



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

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

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

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

## 25                                   **Second Claim for Relief**

26                                   (Administrative Mandate)

27       84.     Petitioner incorporates by reference paragraphs 1 through 83 above as though set  
28 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.

## PRA YER

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

/ / /

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

2  
3       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

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**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 -

## City of Chula Vista

### List of Cannabis Businesses Applicants Invited to Proceed to Phase Two\*

(updated February 16, 2021)

*\*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	Conditional Approval
March and Ash Chula Vista, Inc.	1	Storefront Retailer	Conditional Approval
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	Phase II Document Review
Adam Knopf and Deborah Thomas	3	Storefront Retailer	Document Submittal Pending
March and Ash Nirvana, Inc.	3	Storefront Retailer	Conditional Approval
Chula Vista Cannabis Village	4	Cultivator	Document Submittal Pending
HOTN Club	4	Cultivator	Conditional Approval
Terra Pharma Inc	4	Cultivator	Document Submittal Pending
3384 Vernon Investments, LLC	4	Cultivator	Conditional Approval
Chula Vista Cannabis Village	4	Distributor	Document Submittal Pending
HOTN Club	4	Distributor	Conditional Approval
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	Conditional Approval
Chula Vista Cannabis Village	4	Manufacturer	Document Submittal Pending
Terra Pharma Inc	4	Manufacturer	Document Submittal Pending
C.S. Designs, Inc	4	Manufacturer	Phase II Document Review
Element 7 Chula Vista One LLC	4	Manufacturer	Document Submittal Pending
HOTN Club	4	Manufacturer	Conditional Approval
3384 Vernon Investments, LLC	4	Manufacturer	Conditional Approval
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

# -EXHIBIT 3 -

**ARTICLES OF INCORPORATION****FILED**  
In the office of the Secretary of State  
of the State of California

AUG 10 2009

**I**

The name of the corporation is: The Holistic Café, Inc.

**II**

A. This corporation is a nonprofit **Mutual Benefit Corporation** organized under the **Nonprofit Mutual Benefit Corporation Law**. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation is to enhance the welfare and health of people through holistic and natural herbal medicines and treatments.

**III**

The name and address in the State of California of this corporation's initial agent for service of process is:

Name: David L. Speckman, Esq.  
Address: 835 5<sup>th</sup> Ave., Suite 301  
City: San Diego State: California Zip Code: 92101

**IV**

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.



David L. Speckman, Incorporator

# -EXHIBIT 4 -



**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 1512-031. No use may be conducted outdoors on any premises except as indicated by footnote 4, or by specific reference.

**Legend for Table 1512-031****"P" = Permitted****"-" = Not Permitted****Table 1512-031  
Permitted Uses Table**

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	NP-1,2,3
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P <sup>(7)</sup>
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P <sup>(10)</sup>	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 <sup>(4)</sup>	P <sup>(4)</sup>	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P <sup>(8)</sup>	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P <sup>(9)</sup>	P	P <sup>(9)</sup>	P <sup>(11)</sup>	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P <sup>(4)</sup>	P <sup>(4)</sup>	-	-	-
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	-	-	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	NP-1,2,3
Business and Professional Office Uses (not including Hiring Halls in the CL-5 Zone). (Such Uses may 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 <sup>(1)(9)</sup>	P <sup>(1)</sup>	P <sup>(1)(9)</sup>	P <sup>(1)</sup>	P <sup>(1)</sup>
Business Machine Sales Display and Service	P	P	-	-	P <sup>(7)</sup>
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P <sup>(3)</sup>	P <sup>(3)</sup>	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 <sup>(3)</sup>	P <sup>(3)</sup>	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P <sup>(11)</sup>	-
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 <sup>(7)</sup>
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 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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 <sup>(3)</sup>	p <sup>(3)</sup>	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	p <sup>(3)</sup>	p <sup>(3)</sup>	-	-	-
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 <sup>(4)</sup>	p <sup>(4)</sup>	p <sup>(4)</sup>	p <sup>(4)</sup>	-
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 <sup>(7)</sup>
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 <sup>(3)</sup>	p <sup>(3)</sup>	-	-	-
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	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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 <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>
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 <sup>(3)</sup>	-	P <sup>(3)</sup>	-
Construction of Windows, Doors and Screens	-	P <sup>(3)</sup>	-	P <sup>(3)</sup>	-
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P <sup>(3)</sup>	-	P <sup>(3)</sup>	-
Repair of Tools, Machinery and Electronic Equipment	-	P <sup>(3)</sup>	-	-	-
Public Parks and Playgrounds	P	P	P	P	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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, enumerated 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
<b>Accessory Uses as Follows:</b>					
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 1512-031

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.
- <sup>3</sup> The floor area of any establishment may not exceed 5,000 square feet.
- <sup>4</sup> Indicated use may be conducted outside a fully enclosed building.
- <sup>5</sup> Commercial uses in the CL-1 Zone are restricted along University Avenue between 28th Street and Georgia Street in accordance with Section ~~141.0309(b)(1)~~.
- <sup>6</sup> 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.
- <sup>7</sup> 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.
- <sup>8</sup> 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.
- <sup>9</sup> 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.
- <sup>10</sup> 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.
- <sup>11</sup> No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.
- <sup>12</sup> 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 Richardson  
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 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	NP-1,2,3
Advertising, Secretarial & Telephone Answering Services	P	P	-	-	P <sup>(7)</sup>
Antique Shops	P	P	P	-	-
Apartments (Subject to Specific Zone Limitations)	P <sup>(10)</sup>	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 <sup>(4)</sup>	P <sup>(4)</sup>	-	-	-
Automobile Wash Establishments	P	P	-	-	-
Automobile Paint & Repair Shops, Including Body and Fender Work if entirely within enclosed building.	P	P	P <sup>(8)</sup>	-	-
Bakeries	P	P	P	P	-
Banks, Including Branch Banks, and Other Similar Financial Institutions	P <sup>(9)</sup>	P	P <sup>(9)</sup>	P <sup>(1)H</sup>	-
Barber and Beauty Shops	P	P	P	P	-
Bicycle Shops	P	P	P	P	-
Boat Sales Agencies	P <sup>(4)</sup>	P <sup>(4)</sup>	-	-	-
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 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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 may 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 <sup>(1)(9)</sup>	P <sup>(1)</sup>	P <sup>(1)(9)</sup>	P <sup>(1)</sup>	P <sup>(1)</sup>
Business Machine Sales Display and Service	P	P	-	-	P <sup>(7)</sup>
Cleaning and Dyeing Works, Including Rugs, Carpets and Upholstery if entirely within an enclosed building with not more than 10 employees.	P <sup>(3)</sup>	P <sup>(3)</sup>	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 <sup>(3)</sup>	P <sup>(3)</sup>	-	-	-
Dairy Stores, including Drive-In	P	P	-	-	-
Drafting and Blueprint Services	P	P	-	-	-
Drug Stores	P	P	P	P <sup>(11)</sup>	-
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	-	-	-

Ch. Art. Div.

<b>Permitted Uses</b>	<b>CN-1,2 CN-1A,2A CL-1<sup>(6)</sup> CL-3 CL-6 CV-1,2,4</b>	<b>CL-2<sup>(6)</sup></b>	<b>CN-3,4<sup>(2)</sup> CV-3<sup>(2)</sup></b>	<b>CL-5<sup>(6)</sup></b>	<b>NP-1,2,3</b>
Electronic Data Processing, Tabulating, and Record Keeping Services	P	P	-	-	P <sup>(7)</sup>
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 <sup>(3)</sup>	P <sup>(3)</sup>	-	-	-
Leather Goods and Luggage Shops	P	P	-	-	-
Lithography Shops	P <sup>(3)</sup>	P <sup>(3)</sup>	-	-	-
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 <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	-
Office Furniture and Equipment Sales	P	P	-	-	-

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15 12 3 19

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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 <sup>(7)</sup>
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 <sup>(3)</sup>	P <sup>(3)</sup>	-	-	-
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 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	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 <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>	P <sup>(4)</sup>
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 <sup>(10)</sup>	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 <sup>(3)</sup>	-	P <sup>(3)</sup>	-
Construction of Windows, Doors and Screens	-	P <sup>(3)</sup>	-	P <sup>(3)</sup>	-

Permitted Uses	CN-1,2 CN-1A,2A CL-1 <sup>(6)</sup> CL-3 CL-6 CV-1,2,4	CL-2 <sup>(6)</sup>	CN-3,4 <sup>(2)</sup> CV-3 <sup>(2)</sup>	CL-5 <sup>(6)</sup>	NP-1,2,3
Manufacturing of Mattresses, Chair Upholstery and Awnings	-	P <sup>(3)</sup>	-	P <sup>(3)</sup>	-
Repair of Tools, Machinery and Electronic Equipment	-	P <sup>(3)</sup>	-	-	-
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
<b>Accessory Uses as Follows:</b>					
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**

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> The floor area of any establishment may not exceed 5,000 square feet.
- <sup>4</sup> Indicated use may be conducted outside a fully enclosed building.
- <sup>5</sup> 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).

- <sup>6</sup> Special Regulations: CI-5 & CI-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.
- <sup>7</sup> 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.
- <sup>8</sup> 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.
- <sup>9</sup> 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.
- <sup>10</sup> 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.
- <sup>11</sup> No more than 10 percent of the gross floor area shall be utilized for display of alcoholic beverages.
- <sup>12</sup> 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 5 -



ORDINANCE NUMBER O- 20356 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 25 2014

ITEM # 50

2/11/14

2ND READING

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222, TABLE 131-02B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322, TABLE 131-03B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422, TABLE 131-04B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY ADDING A NEW SECTION 141.0614 AND RENUMBERING THE CURRENT SECTION 141.0614 TO 141.0615; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 2, DIVISION 3 BY AMENDING SECTION 152.0312; AMENDING CHAPTER 15, ARTICLE 3, DIVISION 3 BY AMENDING SECTIONS 153.0309 AND 153.0310; AMENDING CHAPTER 15, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 156.0308, TABLE 156-0308-A; AMENDING CHAPTER 15, ARTICLE 14, DIVISION 3 BY AMENDING SECTION 1514.0305, TABLE 1514-03J; AMENDING CHAPTER 15, ARTICLE 17, DIVISION 3 BY AMENDING SECTIONS 1517.0301 AND 1517.0302; AND AMENDING CHAPTER 15, ARTICLE 19, APPENDIX A, ALL RELATED TO MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of medical marijuana consumer cooperatives in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; and

WHEREAS, these regulations are intended to apply to commercial retail facilities; NOW,  
THEREFORE.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 11, Article 3, Division 1, of the San Diego Municipal Code is amended by amending section 113.0103, to read as follows:

**§113.0103 Definitions**

*Medical marijuana consumer cooperative* means a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83.

*A medical marijuana consumer cooperative* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

*MHPA through Mining Waste* [No change in text.]

*Minor-oriented facility* means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the *primary use* is devoted to people under the age of 18.

*Mobilehome through Planned Urbanized Communities* [No change in text.]

*Playground* means any outdoor *premises* or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by any person less than eighteen (18) years old.

*Premises to Yard* [No change in text.]

Section 2. That Chapter 12, Article 6, Division 3, of the San Diego Municipal Code is amended by amending section 126.0303, to read as follows:

**§126.0303 When a Conditional Use Permit Is Required**

An application for the following types of uses in certain zones may require a

Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13. The decision process is described in Section 126.0304.

(a) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops through Major transmission, relay, or communication switching station [No change in text.]

*Medical marijuana consumer cooperatives*

Museums through *Wireless communication facilities* (under circumstances described in Section 141.0420) [No change in text.]

(b) through (c) [No change in text.]

Section 3. That Chapter 13, Article 1, Division 2, of the San Diego Municipal Code is amended by amending section 131.0222, Table 131-02B, to read as follows:

**§131.0222 Use Regulations Table for Open Space Zones**

The uses allowed in the open space zones are shown in Table 131-02B.

**Legend for Table 131-02B**

[No change in text.]

**Table 131-02B**  
**Use Regulations Table of Open Space Zones**

<b>Use Categories/Subcategories</b> [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	<b>Zone Designator</b>	<b>Zones</b>				
	1st & 2nd >>	OP-		OC-		OR <sup>(1)</sup> -
	3rd >>	1-	2-	1-	1-	1-
	4th >>	1	1	1	1	2
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]				
<i>Medical Marijuana Consumer Cooperatives</i>		-	-	-	-	-
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses: Theater Marquees</b> [No change in text.]		[No change in text.]				

**Footnotes for Table 131-02B** [No change in text.]

Section 4. That Chapter 13, Article 1, Division 3, of the San Diego Municipal Code is amended by amending section 131.0322, Table 131-03B, to read as follows:

**§131.0322 Use Regulations Table for Agricultural Zones**

The uses allowed in the agricultural zones are shown in Table 131-03B.

**Legend for Table 131-03B**

[No change in text.]

**Table 131-03B**  
**Use Regulations Table of Agricultural Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1		1	
	4th >>	1	2	1	2
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]			
<i>Medical Marijuana Consumer Cooperatives</i>					
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees</b> [No change in text.]		[No change in text.]			

**Footnotes for Table 131-03B** [No change in text.]

Section 5. That Chapter 13, Article 1, Division 4, of the San Diego Municipal Code is amended by amending section 131.0422, Table 131-04B, to read as follows:

**§131.0422 Use Regulations Table for Residential Zones**

The uses allowed in the residential zones are shown in the Table 131-04B.

**Legend for Table 131-04B**

[No change in text.]



**Table 131-04B**  
**Use Regulations Table of Residential Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																							
	1st & 2nd >>	RE-		RS-												RX-		RT-							
	3rd >>	1-		1-												1-		1-							
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]																							
<i>Medical Marijuana Consumer Cooperatives</i>		-	-												-	-									
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees</b> [No change in text.]		[No change in text.]																							

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]											
<i>Medical Marijuana Consumer Cooperatives</i>		-			-			-			-		-
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees</b> [No change in text.]		[No change in text.]											

Footnotes for Table 131-04B [No change in text.]

Section 6. That Chapter 13, Article 1, Division 5, of the San Diego Municipal Code is amended by amending section 131.0522, Table 131-05B, to read as follows:

**§131.0522 Use Regulations Table for Commercial Zones**

The uses allowed in the commercial zones are shown in the Table 131-05B.

**Legend for Table 131-05B**

[No change in text.]

**Table 131-05B**  
**Use Regulations Table for Commercial Zones**

Use Categories/Subcategories  [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd >>	CN <sup>(1)</sup>			CR-		CO-		CV-		CP-
		1-		1-	2-		1-	1-		1-	
		1	2	3	1	1	1	2	1	2	1
Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]									
Medical Marijuana Consumer Cooperatives		-	-	C	-	-	-	-	-	-	
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]									

Use Categories/Subcategories  [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zone																			
	1st &> 2nd>>	CC-																			
	3rd >>	1-		2-		3-		4-					5-								
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5		
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]																			
<i>Medical Marijuana Consumer Cooperatives</i>		-			C			-			-								-		
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees</b> [No change in text.]		[No change in text.]																			

Footnotes to Table 131-05B [No change in text.]

Section 7. That Chapter 13, Article 1, Division 6, of the San Diego Municipal Code is amended by amending section 131.0622, Table 131-06B, to read as follows:

**§131.0622 Use Regulations Table for Industrial Zones**

The uses allowed in the industrial zones are shown in the Table 131-06B.

**Legend for Table 131-06B**

[No change in text.]

**Table 131-06B**  
**Use Regulations Table for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones							
	1st & 2nd >>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]	[No change in text.]								
<i>Medical Marijuana Consumer Cooperatives</i>	-	-	-	-	C	-	-	-	C
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Community Entry Signs</b> [No change in text.]	[No change in text.]								
<b>Neighborhood Identification Signs</b>	[No change in text.]								
<b>Comprehensive Sign Program through Theater Marquees</b> [No change in text.]	[No change in text.]								

**Footnotes to Table 131-06B** [No change in text.]

Section 8. That Chapter 14, Article 1, Division 6, of the San Diego Municipal Code is amended by adding a new section 141.0614 and by renumbering the current section 141.0614 to section 141.0615, to read as follows:

**§141.0614 Medical Marijuana Consumer Cooperatives**

*Medical marijuana consumer cooperatives* may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *medical marijuana consumer cooperatives* are permitted in each City Council District. *Medical marijuana consumer cooperatives* are subject to the following regulations.

- (a) *Medical marijuana consumer cooperatives* shall maintain the following minimum separation between uses, as measured between *property lines*, in accordance with Section 113.0225:
- (1) 1,000 feet from *public parks, churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, other *medical marijuana consumer cooperatives*, residential care facilities, or schools.
- For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
- (2) 100 feet from a residential zone.
- (b) Consultations by medical professionals shall not be a permitted *accessory use* at a *medical marijuana consumer cooperative*.
- (c) Lighting shall be provided to illuminate the interior of the *medical marijuana consumer cooperative*, facade, and the immediate surrounding area, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
- (d) Security shall be provided at the *medical marijuana consumer cooperative* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours. The security guard should only be

engaged in activities related to providing security for the facility, except on an incidental basis.

- (c) *Signs* shall be posted on the outside of the *medical marijuana consumer cooperative* and shall only contain the name of the business, limited to two colors.
- (f) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the *medical marijuana consumer cooperative* in character size at least two inches in height.
- (g) The *medical marijuana consumer cooperative* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
- (h) The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to medical marijuana without a human intermediary.
- (i) A permit shall be obtained as required pursuant to Chapter 4, Article 2, Division 15.
- (j) A Conditional Use Permit for a *medical marijuana consumer cooperative* shall expire no later than five (5) years from the date of issuance.

**§141.0615 Nightclubs and Bars over 5,000 Square Feet in Size**

[No change in text.]



Section 9. That Chapter 15, Article 1, Division 1, of the San Diego Municipal Code is amended by amending section 151.0103, to read as follows:

**§151.0103 Applicable Regulations**

- (a) {No change in text.}
- (b) The following regulations apply in all planned districts:
  - (1) through (7) [No change in text.]
  - (8) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

Section 10. That Chapter 15, Article 2, Division 3, of the San Diego Municipal Code is amended by amending section 152.0312, to read as follows:

**§152.0312 Subdistrict D Permitted Uses**

- (a) through (b) [No change in text.]
- (c) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.
- (d) All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed in Section 152.0405(b) (Outdoor Display, Operation and Storage) shall be operated entirely within enclosed buildings or walls or fences as required in Section 152.0405.

Section 11. That Chapter 15, Article 3, Division 3, of the San Diego Municipal Code is amended by amending sections 153.0309 and 153.0310, to read as follows:

**§153.0309 Employment Center (EC)**

(a) Permitted Uses

No building, improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged; nor shall any lot or premises be used except for one or more of the following purposes:

(1) through (10) [No change in text.]

(11) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(12) The following manufacturing uses only when secondary and supportive to the primary manufacturing use of the premises;

(A) through (D) [No change in text.]

(13) The following uses and classes of uses shall be prohibited from locating in the Employment Center Zone;

(A) through (F) [No change in text.]

(14) The following manufacturing uses shall be prohibited:

(A) through (H). [No change in text.]

(b) through (c) [No change in text.]

**§153.0310 Special Use Area (SP)**

(a) [No change in text.]

(b) Permitted Uses

The following uses are permitted in the Special Use Area:

(1) through (11) [No change in text.]

- (12) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.
- (13) Any other use, including accessory uses, which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses enumerated above and consistent with the purpose and intent of this zone. The adopted resolution embodying such findings shall be filed in the office of the City Clerk.

(c) through (d) [No change in text.]

Section 12. That Chapter 15, Article 6, Division 3, of the San Diego Municipal Code is amended by amending section 156.0308, Table 156-0308-A, to read as follows:

**§156.0308 Base District Use Regulations**

(a) through (b) [No change in text.]

Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS															
LEGEND: P = Permitted by Right; C = Conditional Use Permit Required; -- = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required; S = Site Development Permit Required; MS = Main Street; CS= Commercial Street; E= Employment Overlay															
Use Categories/ Subcategories	C	NC	ER	BP	WM <sup>7</sup>	MC	RE	I <sup>7</sup>	T <sup>7</sup>	PC	PP <sup>16</sup>	OS	CC <sup>7</sup>	Additional Regulations	MS/CS & E Overlays
Public Park/ Plaza/Open Space through Commercial Services, Maintenance & Repair [No change in text.]	[No change in text.]														
Medical Marijuana Consumer Cooperatives	-	-	-	-	C	-	-	C	C	-	-	-	C	\$141.0614	

**Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS**

**LEGEND:** P = Permitted by Right; C = Conditional Use Permit Required;  
-- = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required;  
S = Site Development Permit Required; MS = Main Street; CS = Commercial Street;  
E = Employment Overlay

Use Categories/ Subcategories	C	NC	ER	BP	WM	MC	RE	I	T	PC	PF <sup>10</sup>	OS	CC	Additional Regulations	MS/CS & E Overlays
Commercial Services, Off- Site Services through Other Use Requirements, Outdoor Activities [No change in text.]	[No change in text.]														

Footnotes to Table 156-0308-A [No change in text.]

Section 13. That Chapter 15, Article 14, Division 3, of the San Diego Municipal Code  
is amended by amending section 1514.0305, Table 1514-03J, to read as follows:

**§1514.0305 Commercial Zones (MV-CO, MV-CV, MV-CR)**

(a) through (b) [No change in text.]

**Legend for Table 1514-03J**

[No change in text.]

**Table 1514-03J  
Commercial Zones Use Table**

COMMERCIAL	MV-CO	MV-CV	MV-CR
Accessory Uses through Medical appliance sales [No change in text.]	[No change in text.]		
Medical marijuana consumer cooperatives	CUP <sup>3</sup>	CUP <sup>3</sup>	CUP <sup>3</sup>
<b>COMMERCIAL</b> , Music Stores through <b>COMMERCIAL</b> , Wholesaling or warehousing of goods and merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 sq. ft. For automobile dealership, the area shall not exceed 15,000 sq. ft. [No change in text.]			
Any other use which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses, including accessory uses, enumerated in this section and consistent with the purpose and intent of this planned district. The adopted resolution embodying such finding shall be filed in the office of the City Clerk. [No change in text.]			

**Footnotes Table 1514-03J**

(1) through (2) [No change in text.]

(3) When the multiple use option is utilized, medical marijuana consumer cooperatives are prohibited.

(2) through (4) [No change in text.]

(c) through (l) [No change in text.]

Section 14. That Chapter 15, Article 17, Division 3 of the San Diego Municipal Code is amended by amending sections 1517.0301 and 1517.0302, to read as follows:

**§1517.0301 Permitted Uses**

(a) Industrial Subdistrict

No building or improvement or portion thereof shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) through (9) [No change in text.]

(10) Medical marijuana consumer cooperatives

Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(b) Commercial Subdistricts

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

**§1517.0302 Otay International Center Precise Plan Subdistrict**

In the Otay International Center Precise Plan Subdistrict identified on Map Drawing No. C-680.2, the property development regulations as set forth within the Otay International Center Precise Plan shall apply, and no building or

improvement or portion thereof, shall be erected, constructed, converted,  
established, altered or enlarged, nor shall any premises be used except for one or  
more of the land uses permitted on the parcel by the Precise Plan, except that  
medical marijuana consumer cooperatives are permitted in accordance with  
Section 141.0614.

Section 15. That Chapter 15, Article 19, of the San Diego Municipal Code is amended  
by amending Appendix A, to read as follows:

**Appendix A: Uses**

Legend: P = Permitted

- = Not Permitted

L = Subject to Limitations

C = Conditional Use Permit in accordance with Chapter 12, Article 6, Division 3

SP = Special Permit

Special Permit for Alcohol Sales and Distribution - See Appendix C

Permitted Uses	Residential Zones		Commercial Zones			Industrial Zones	
	SF	MF	1	2	3	I-1	I-2
<b>Residential through Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated: Medical Appliance Sales [No change in text.]</b>							
Medical Marijuana Consumer Cooperatives	-	-	C	C	C	C	-
<b>Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated: Motor Vehicle, Parts and Accessories, Retail Sale of New Items Only through The following business and professional establishments: Addressing and Secretarial Services [No change in text.]</b>	[No change in text.]						
Any other use which the Planning Commission may find to be similar in character or compatible to the uses permitted in the specific zone or zones. The adopted resolution embodying such finding shall be filed in the Office of the City Clerk. Any other use allowed with a Conditional Use Permit decided in accordance with Process Five as identified in Section 151.0401(f) (General Provisions). [No change in text.]	[No change in text.]						

Footnotes for Appendix A: Uses [No change in text.]



Section 16. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 17. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 18. That if the Otay Mesa Planned District Ordinance, San Diego Municipal Code Chapter 15, Article 15 is repealed, that repeal shall prevail over the amendments set forth in Section 14 of this Ordinance.

Section 19. That if Ordinance No. O-20312, which is available for review at the Office of the City Clerk, which amended the San Diego Municipal Code relating to the Barrio Logan Community Plan Update, and which will be suspended at the time of this ordinance's anticipated effective date, is made effective upon a vote of the People at the Citywide Primary Election to be held on June 3, 2014, those amendments shall prevail over the provisions of this Ordinance, where the two conflict. In addition, if Ordinance No. O-20312 is approved, medical marijuana consumer cooperatives shall be shown as not permitted in Table 131-04B, zone RT-1-5, and Table 131-05B, zones CN-1-4, CC-3-6, CC-4-6, and CC-5-6, because residential uses will be allowed in those zones, and shall be shown as allowed with a Conditional Use Permit in Table 131-05B, zones CO-2-1 and CO-2-2.

Section 20. That City staff is directed to return to the appropriate committee, one year from adoption, to discuss how effective the ordinance is in providing safe access, while negating avoidable negative impacts.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas  
Shannon M. Thomas  
Deputy City Attorney

SMT:als  
02/06/14  
02/26/14 Rev. Copy  
02/27/14 Rev.COR.  
Or.Dept:DSD  
Doc. No. 557668\_8

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 11 2014.

ELIZABETH S. MALAND  
City Clerk

By Elizabeth S. Maland  
Deputy City Clerk

Approved: 3/25/2014  
(date)

Kevin L. Falconer  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

## STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222, TABLE 131-02B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322, TABLE 131-03B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422, TABLE 131-04B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY ADDING A NEW SECTION 141.0614 AND RENUMBERING THE CURRENT SECTION 141.0614 TO 141.0615; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 2, DIVISION 3 BY AMENDING SECTION 152.0312; AMENDING CHAPTER 15, ARTICLE 3, DIVISION 3 BY AMENDING SECTIONS 153.0309 AND 153.0310; AMENDING CHAPTER 15, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 156.0308, TABLE 156-0308-A; AMENDING CHAPTER 15, ARTICLE 14, DIVISION 3 BY AMENDING SECTION 1514.0305, TABLE 1514-03J; AMENDING CHAPTER 15, ARTICLE 17, DIVISION 3 BY AMENDING SECTIONS 1517.0301 AND 1517.0302; AND AMENDING CHAPTER 15, ARTICLE 19, APPENDIX A, ALL RELATED TO MEDICAL MARIJUANA CONSUMER COOPERATIVES.

### §113.0103 Definitions

*Abutting property through Marquee* [No change in text.]

*Medical marijuana consumer cooperative* means a facility where marijuana is

transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83. A medical marijuana consumer cooperative shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

*MIIPA through Mining Waste* [No change in text.]

Minor-oriented facility means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the primary use is devoted to people under the age of 18.

*Mobilehome through Planned Urbanized Communities* [No change in text.]

Playground means any outdoor premises or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by any person less than eighteen (18) years old.

*Premises to Yard* [No change in text.]

#### **§126.0303 When a Conditional Use Permit Is Required**

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13. The decision process is described in Section 126.0304.

##### **(a) Conditional Use Permits Decided by Process Three**

Agricultural equipment repair shops through Major transmission, relay, or communication switching station [No change in text.]

Medical marijuana consumer cooperatives

Museums through *Wireless communication facilities* (under circumstances described in Section 141.0420) [No change in text.]

(b) through (c) [No change in text.]

**§131.0222 Use Regulations Table for Open Space Zones**

The uses allowed in the open space zones are shown in Table 131-02B.

**Legend for Table 131-02B**

[No change in text.]

**Table 131-02B  
Use Regulations Table of Open Space Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones				
	1st & 2nd >>	OP-		OC-	OR <sup>(1)</sup> -	OF <sup>(11)</sup> -
	3rd >>	1-	2-	1-	1-	1-
	4th >>	1	1	1	1	2
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]				
<u>Medical Marijuana Consumer Cooperatives</u>		=	=	=	=	=
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses: Theater Marquees</b> [No change in text.]		[No change in text.]				

Footnotes for Table 131-02B [No change in text.]

**§131.0322 Use Regulations Table for Agricultural Zones**

The uses allowed in the agricultural zones are shown in Table 131-03B.

**Legend for Table 131-03B**

[No change in text.]

**Table 131-03B**  
**Use Regulations Table of Agricultural Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]			
<u>Medical Marijuana Consumer Cooperatives</u>		=		=	
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]			

Footnotes for Table 131-03B [No change in text.]

**§131.0422 Use Regulations Table for Residential Zones**

The uses allowed in the residential zones are shown in the Table 131-04B.

**Legend for Table 131-04B**

[No change in text.]

**Table 131-04B**  
**Use Regulations Table of Residential Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																							
	1st & 2nd >>	RE-		RS-														RX-		RT-					
	3rd >>	1-		1-														1-		1-					
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																							
<u>Medical Marijuana Consumer Cooperatives</u>																									

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																							
	1st & 2nd >>	RE-		RS-														RX-		RT-					
	3rd >>	1-		1-														1-		1-					
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]																							

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]											
<u>Medical Marijuana Consumer Cooperatives</u>		=			=			=			=		=
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]											

Footnotes for Table 131-04B [No change in text.]

**§131.0522 Use Regulations Table of for Commercial Zones**

The uses allowed in the commercial zones are shown in the Table 131-05B.

**Legend for Table 131-05B**

[No change in text.]



**Table 131-05B**  
**Use Regulations Table for Commercial Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd >>	CN <sup>(1)</sup>		CR-		CO-		CV-		CP-	
	3rd >>	1-		1-		1-		1-		1-	
	4th >>	1	2	3	1	1	1	2	1	2	1
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice</b> [No change in text.]		[No change in text.]									
<u>Medical Marijuana Consumer Cooperatives</u>		=	=	C	=	=	=	=	=	=	=
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees</b> [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zone																	
	1st & 2nd>>	CC-																	
	3rd >>	1-			2-			3-			4-					5-			
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																	
<u>Medical Marijuana Consumer Cooperatives</u>		=		C						=		=							=
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]																	

Footnotes to Table 131-05B [No change in text.]

**§131.0622 Use Regulations Table for Industrial Zones**

The uses allowed in the industrial zones are shown in the Table 131-06B.

**Legend for Table 131-06B**

[No change in text.]

**Table 131-06B  
Use Regulations Table for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones							
	1st & 2nd>>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
<b>Open Space through Commercial Services, Separately Regulated Commercial Services Uses, Massage Establishments, Specialized Practice [No change in text.]</b>	[No change in text.]								
<u>Medical Marijuana Consumer Cooperatives</u>	=	=	:	=	<u>C</u>	=	=	=	<u>C</u>
<b>Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs &amp; Bars over 5,000 square feet in size through Signs, Separately Regulated Signs Uses, Community Entry Signs [No change in text.]</b>	[No change in text.]								
<del>Neighborhood</del> <u>Neighborhood</u> Identification Signs	[No change in text.]								
Comprehensive Sign Program through Theater <i>Marquees</i> [No change in text.]	[No change in text.]								

Footnotes to Table 131-06B [No change in text.]

**§141.0614 Medical Marijuana Consumer Cooperatives**

Medical marijuana consumer cooperatives may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four medical marijuana consumer cooperatives are permitted in each City Council District. Medical marijuana consumer cooperatives are subject to the following regulations.

- (a) Medical marijuana consumer cooperatives shall maintain the following minimum separation between uses, as measured between property lines, in accordance with Section 13.0225:
- (1) 1,000 feet from public parks, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, or schools.
- For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
- (2) 100 feet from a residential zone.
- (b) Consultations by medical professionals shall not be a permitted accessory use at a medical marijuana consumer cooperative.
- (c) Lighting shall be provided to illuminate the interior of the medical marijuana consumer cooperative, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
- (d) Security shall be provided at the medical marijuana consumer cooperative, which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the premises during business hours. The security guard

should only be engaged in activities related to providing security for the facility, except on an incidental basis.

- (e) Signs shall be posted on the outside of the medical marijuana consumer cooperative and shall only contain the name of the business, limited to two colors.
- (f) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the medical marijuana consumer cooperative in character size at least two inches in height.
- (g) The medical marijuana consumer cooperative shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
- (h) The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to medical marijuana without a human intermediary.
- (i) A permit shall be obtained as required pursuant to Chapter 4, Article 2, Division 15.
- (j) A Conditional Use Permit for a medical marijuana consumer cooperative shall expire no later than five (5) years from the date of issuance.

§ 141.0614 141.0615 Nightclubs and Bars over 5,000 Square Feet in Size

[No change in text.]

**§151.0103 Applicable Regulations**

- (a) [No change in text.]
- (b) The following regulations apply in all planned districts:
  - (1) through (7) [No change in text.]
  - (8) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

**§152.0312 Subdistrict D Permitted Uses**

- (a) through (b) [No change in text.]
- (c) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.
- (d) All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed in Section 152.0405(b) (Outdoor Display, Operation and Storage) shall be operated entirely within enclosed buildings or walls or fences as required in Section 152.0405.

**§153.0309 Employment Center (EC)**

- (a) Permitted Uses

No building, improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged; nor shall any lot or premises be used except for one or more of the following purposes:

  - (1) through (10) [No change in text.]
  - (11) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

~~(+12)~~ The following manufacturing uses only when secondary and  
supportive to the primary manufacturing use of the premises:

(A) through (D) [No change in text.]

~~(4213)~~ The following uses and classes of uses shall be prohibited from  
locating in the Employment Center Zone:

(A) through (F) [No change in text.]

~~(4314)~~ The following manufacturing uses shall be prohibited:

(A) through (H) [No change in text.]

(b) through (c) [No change in text.]

**§153.0310 Special Use Area (SP)**

(a) [No change in text.]

(b) ~~Permitted Uses~~  
Permitted Uses

The following uses are permitted in the Special Use Area:

(I) through (11) [No change in text.]

~~(12)~~ Medical marijuana consumer cooperatives are permitted in  
accordance with Section 141.0614.

~~(+213)~~ Any other use, including accessory uses, which the Planning  
Commission may find, in accordance with Process Four, to be  
similar in character to the uses enumerated above and consistent  
with the purpose and intent of this zone. The adopted resolution  
embodying such findings shall be filed in the office of the City  
Clerk.

(c) through (d) [No change in text.]

**§156.0308 Base District Use Regulations**

(a) through (b) [No change in text.]

<b>Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS</b>															
<b>LEGEND:</b> P = Permitted by Right; C = Conditional Use Permit Required; = = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required; S = Site Development Permit Required; MS = Main Street; CS = Commercial Street; E = Employment Overlay															
Use Categories/ Subcategories	C	NC	ER	BP	WM <sup>7</sup>	MC	RE	I <sup>7</sup>	T <sup>7</sup>	PC	PF <sup>10</sup>	OS	CC <sup>7</sup>	Additional Regulations	MS/CS & E Overlays
Public Park/ Plaza/Open Space through Commercial Services, Maintenance & Repair [No change in text.]	[No change in text.]														
Medical Marijuana Consumer Cooperatives	=	=	=	=	C	=	=	C	C	=	=	=	C		<u>§141.0614</u>
Commercial Services, Off-Site Services through Other Use Requirements, Outdoor Activities [No change in text.]	[No change in text.]														

Footnotes to Table 156-0308-A [No change in text.]

**§1514.0305 Commercial Zones (MV-CO, MV-CV, MV-CR)**

(a) through (b) [No change in text.]

Legend for Table 1514-03J

[No change in text.]



Table 1514-03J  
Commercial Zones Use Table

COMMERCIAL	MV-CO	MV-CV	MV-CR
Accessory Uses through Medical appliance sales [No change in text.]	[No change in text.]		
<u>Medical marijuana consumer cooperatives</u>	<u>CUP<sup>3</sup></u>	<u>CUP<sup>3</sup></u>	<u>CUP<sup>3</sup></u>
<b>COMMERCIAL</b> , Music Stores through <b>COMMERCIAL</b> , Wholesaling or warehousing of goods and merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 sq. ft. For automobile dealership, the area shall not exceed 15,000 sq. ft. [No change in text.]			
Any other use which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses, including accessory uses, enumerated in this section and consistent with the purpose and intent of this planned district. The adopted resolution embodying such finding shall be filed in the office of the City Clerk. [No change in text.]			

Footnotes Table 1514-03J Footnotes Table 1514-03J

(1) through (2) [No change in text.]

(3) When the multiple use option is utilized, medical marijuana consumer cooperatives are prohibited.

(2) through (4) [No change in text.]

(c) through (l) [No change in text.]

#### §1517.0301 Permitted Uses

(a) Industrial Subdistrict

No building or improvement or portion thereof shall be erected,  
constructed, converted, established or enlarged, nor shall any premises be  
used except for one or more of the following purposes:

(1) through (9) [No change in text.]

(10) Medical marijuana consumer cooperatives

Medical marijuana consumer cooperatives are permitted in  
accordance with Section 141.0614.

(b) Commercial Subdistricts

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperatives are permitted in  
accordance with Section 141.0614.

**§1517.0302 Otay International Center Precise Plan Subdistrict**

In the Otay International Center Precise Plan Subdistrict identified on Map Drawing No. C-680.2, the property development regulations as set forth within the Otay International Center Precise Plan shall apply, and no building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the land uses permitted on the parcel by the Precise Plan, except that medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

EXHIBIT

Article 19: Southeastern San Diego Planned District

Appendix A: Uses

Legend: P = Permitted

- = Not Permitted

L = ~~subject~~ Subject to Limitations

C = Conditional Use Permit in accordance with Chapter 12, Article 6, Division 3

SP = Special Permit

Special Permit for Alcohol Sales and Distribution - See Appendix C

Permitted Uses	Residential Zones		Commercial Zones			Industrial Zones	
	SF	MF	1	2	3	I-1	I-2
Residential through Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated; Medical Appliance Sales [No change in text.]							
<u>Medical Marijuana Consumer Cooperatives</u>	-	-	C	C	C	C	-
Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated: Motor Vehicle, Parts and Accessories, Retail Sale of New Items Only through The following business and professional establishments: Addressing and Secretarial Services [No change in text.]	[No change in text.]						
Any other use which the Planning Commission may find to be similar in character or compatible to the uses permitted in the specific zone or zones. The adopted resolution embodying such finding shall be filed in the Office of the City Clerk. Any other use allowed with a Conditional Use Permit decided in accordance with Process Five as identified in Section 151.0401(f) (General Provisions). [No change in text.]	[No change in text.]						

Footnotes for Appendix A: Uses [No change in text.]

SMT:als

02/06/14

02/26/14 Rev.Copy

02/27/14 Rev.Cor.

Or.Dept:DSD

Doc. No. 558503\_6

Passed by the Council of The City of San Diego on MAR 11 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 2 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 25 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Elizabeth S. Maland*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 25 2014

MAR 25 2014

and on \_\_\_\_\_

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Elizabeth S. Maland*, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20356

# -EXHIBIT 6 -

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**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

[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:

///

1 Subparagraphs 6(a), 6(b) and 6(c) of the Judgment are deleted and replaced by the  
2 following language:

3 Keeping, maintaining, operating or allowing any commercial, retail,  
4 collective, cooperative or group establishment for the growth, storage,  
5 sale or distribution of marijuana, including, but not limited to, any  
6 marijuana outlet or marijuana production facility anywhere in the City of  
7 San Diego without first obtaining all permits required per the San Diego  
8 Municipal Code, including, but not limited to, a Conditional Use Permit.

9 All other provisions of the Judgment remain in full force and effect.

10 Dated: \_\_\_\_\_, 2019

11  5/3/19  
12 JUDGE OF THE SUPERIOR COURT  
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# -EXHIBIT 7 -

# City of Chula Vista

## Meeting Minutes - Final

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Thursday, August 3, 2017

4:00 PM

Council Chambers  
276 4th Avenue, Building A  
Chula Vista, CA 91910

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### 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.*

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Kerry K. Bigelow, Acting City Clerk

# -EXHIBIT 8 -

# City of Chula Vista

## Meeting Minutes - Final

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Thursday, October 26, 2017

6:00 PM

Council Chambers  
276 4th Avenue, Building A  
Chula Vista, CA 91910

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### 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.*

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Kerry K. Bigelow, MMC, City Clerk

# -EXHIBIT 9 -

# City of Chula Vista

## Meeting Minutes - Final

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Tuesday, December 12, 2017

6:00 PM

Council Chambers  
276 4th Avenue, Building A  
Chula Vista, CA 91910

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### 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.*

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Kerry K. Bigelow, MMC, City Clerk

# -EXHIBIT 10 -

# City of Chula Vista

## Meeting Minutes - Final

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Tuesday, February 27, 2018

5:00 PM

Council Chambers  
276 4th Avenue, Building A  
Chula Vista, CA 91910

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### 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.*

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Kerry K. Bigelow, MMC, City Clerk

# -EXHIBIT 11 -



Sent by US Mail:  
December 12, 2019

Ebon Johnson  
EBZ Management dba Mankind of Chula Vista

PERSONAL/PRIVACY

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)). PERSONAL/PRIVACY
- 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
- 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
- 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)

**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)(i)-(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."

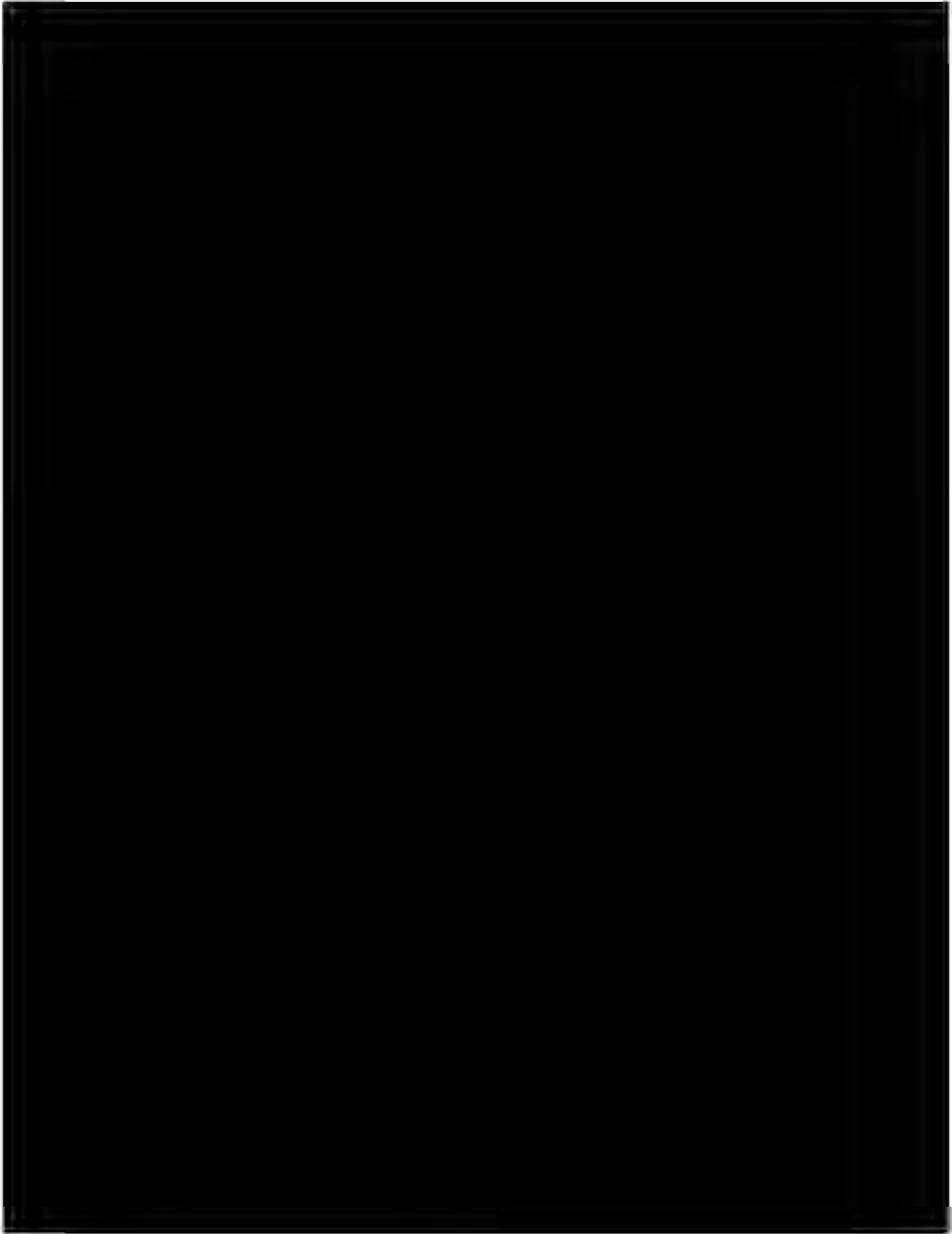
2. Appellant applied for a City of Chula Vista license to operate as a Cannabis Storefront Retailer. (City's Exhibit 5.) He submitted to a Livescan criminal background check. (City's Exhibit 3.) He further provided bank statements showing liquid assets, a "Business Plan," and "Operations Plan" in support of his application. (City's Exhibits 8, 9, and 10.)

4. The Chula Vista Chief of Police rejected Appellant's application, via a Notice of Decision dated December 12, 2019, because of the following:

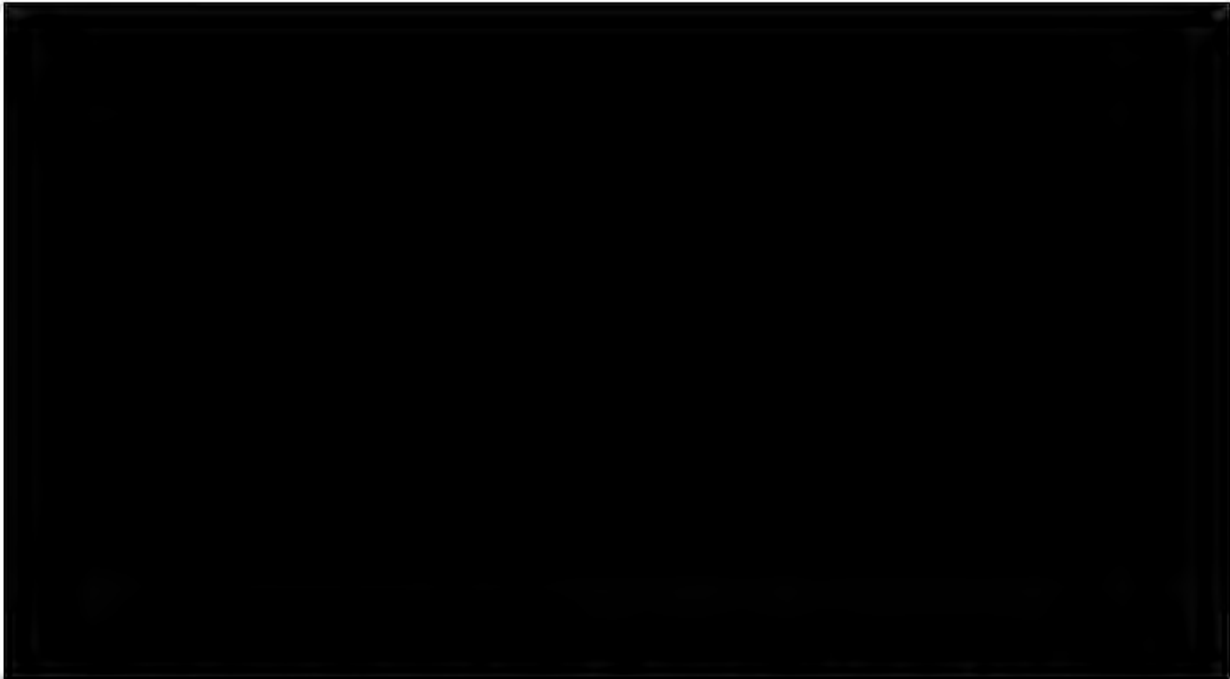
; (3) an applicant, owner, manager, or officer has been has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful commercial cannabis activity in the city or any other jurisdiction (it was alleged Appellant had engaged in unlawful cannabis activity, including that he was convicted of Health and Safety Code section 11366.5); and

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:



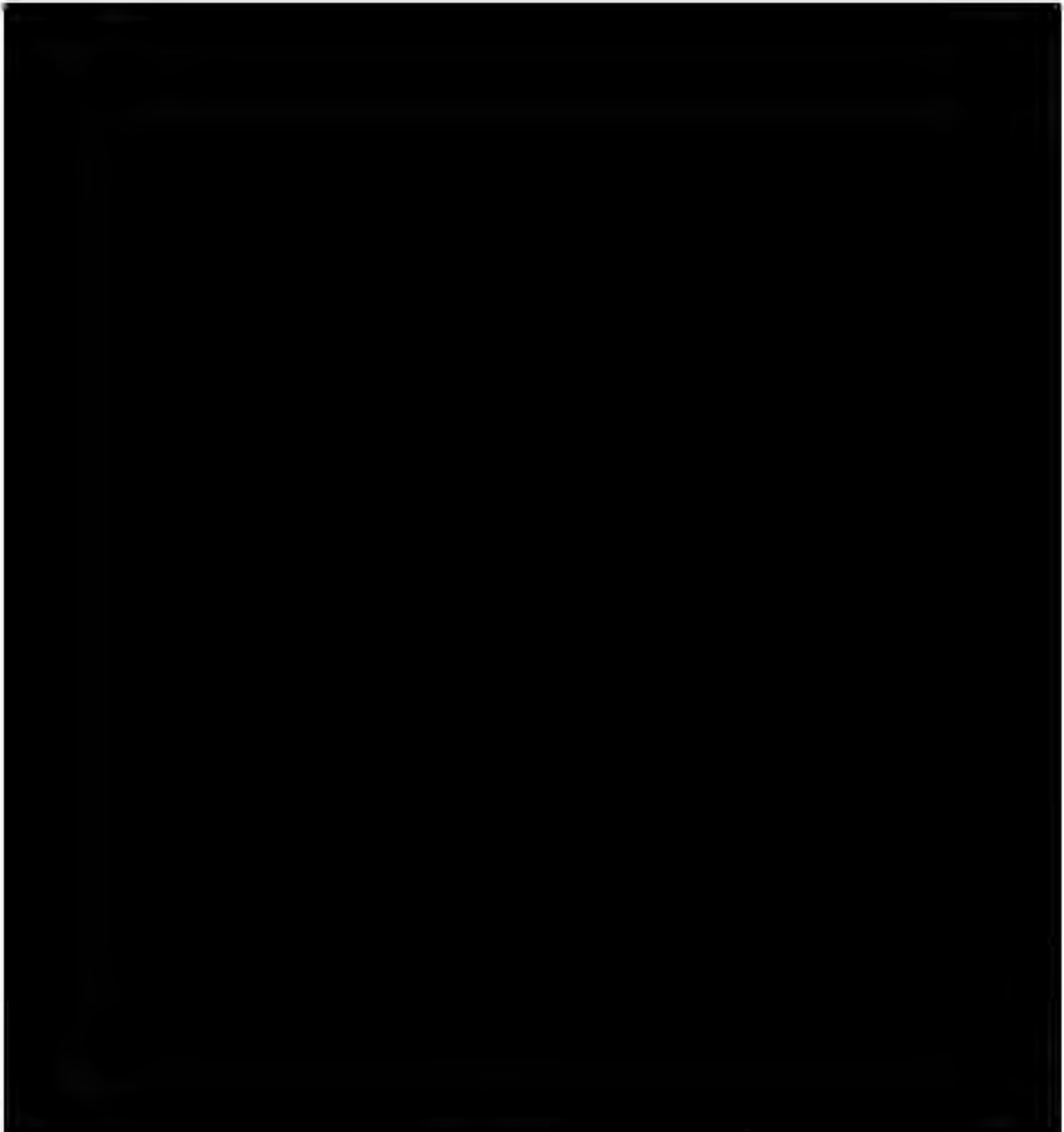


Page 6



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.)



### **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 90<sup>th</sup> 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

# -EXHIBIT 12 -



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/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.** 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](http://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



## Redaction Log

Total Number of Redactions in Document: 4

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	4

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(4)

# -EXHIBIT 13 -



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:

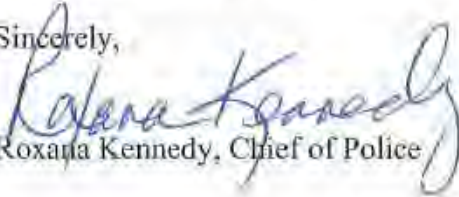
- The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process. (CVMC 5.19.050(A)(4)(e) and CVMC 5.19.050(A)(5)(a)). PERSONAL/PRIVACY  
PERSONAL/PRIVACY
- There are charges pending against the Applicant, an Owner, a Manager, and/or 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in blue ink, appearing to read "Roxana Kennedy".

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 7

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	7

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(7)



# -EXHIBIT 14 -



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: 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

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](http://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,

A handwritten signature in blue ink, appearing to read "Roxana Kennedy".

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 4

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	4

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(4)

**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]  
[REDACTED]  
[REDACTED]
3. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[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]



[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]

[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]



6. Manager Gagnon's omission of employment and prior involvement in unlawful commercial cannabis activity. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]


[REDACTED]

[REDACTED]


[REDACTED]

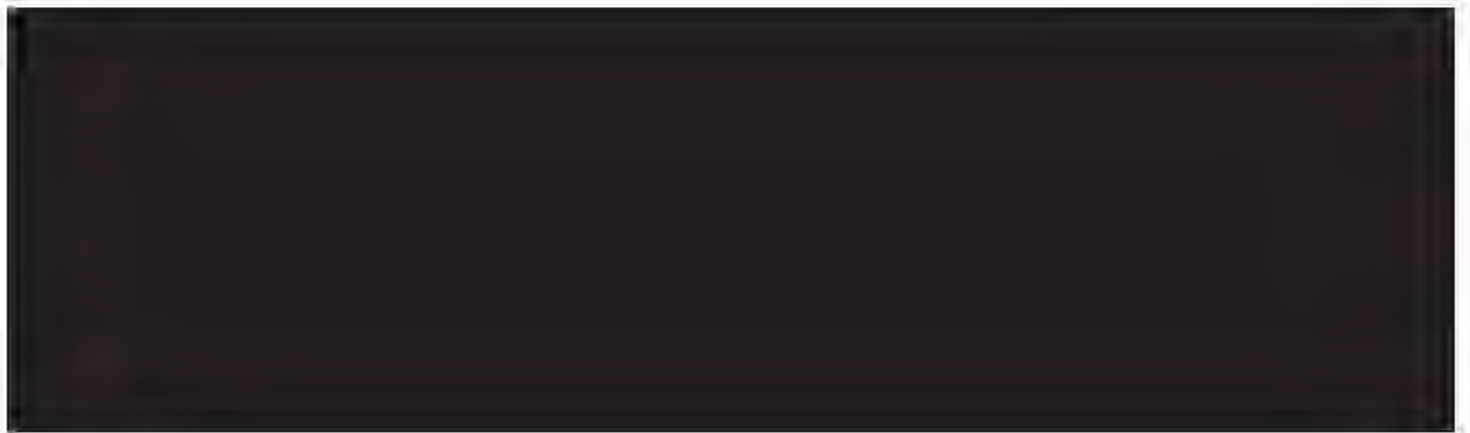
[REDACTED]

[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.





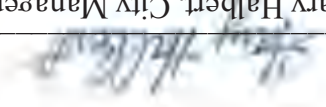
## DECISION

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 90<sup>th</sup> 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

# -EXHIBIT 15 -



Sent by US Mail & Email:  
January 31, 2020

Khalsa Jagatjoti  
c/o Jessica McElfresh  
179 Calle Magdalena  
Encinitas, CA 92024  
jessica@mcelfreshlaw.com

**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](http://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



## Redaction Log

Total Number of Redactions in Document: 4

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	4

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(4)

# -EXHIBIT 16 -



Sent by US Mail:  
January 31, 2020

Barry Walker  
c/o Damian Martin  
721 E 5<sup>th</sup> Street  
Los Angeles, CA 90013

**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  
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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in black ink, appearing to read "Roxana Kennedy". The signature is fluid and cursive, with the first name "Roxana" and last name "Kennedy" clearly distinguishable.

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)



**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]

[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]

[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]"

[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 it was an offense involving the use of a weapon. That is simply factually incorrect. [REDACTED]

[REDACTED]

[REDACTED]

[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.4<sup>th</sup> 284; *People v. Castro* (1985) 38 Cal.3d 301; *In re Hallinan* (1954) 43 Cal.2d 243.

C. [REDACTED]

[REDACTED]

[REDACTED]

D. [REDACTED]

[REDACTED]

E. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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]  
[REDACTED]  
[REDACTED] conviction is incontrovertibly established in his application (City Exhibit 4) and the conviction documents (City's Exhibit 9, w [REDACTED]  
[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]  
[REDACTED]  
[REDACTED] City's Exhibit 9 and declaration of Chula Vista Police Department Lieutenant Christopher Kelly, Paragraph 8.)

- J. [REDACTED]  
[REDACTED]  
[REDACTED]  
[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]  
[REDACTED]  
[REDACTED]
- L. Appellant files no documents, evidence, or testimony to establish that [REDACTED] [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] [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]  
[REDACTED] (City Exhibit 9, declaration of Lt. Kelly.)
- P. Based on the foregoing, the Hearing Officer finds by a preponderance that [REDACTED]  
[REDACTED]  
[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]  
[REDACTED]  
[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.

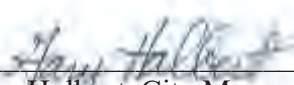
### **DECISION**

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 90<sup>th</sup> 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

# -EXHIBIT 17 -





Sent by US Mail:  
February 20, 2020

Edvin Mailyan  
1891 Nirvana Ave  
Chula Vista, CA 91911

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/PRIVACY

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

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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 5

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	5

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(5)

# -EXHIBIT 18 -



Sent by US Mail & Email:  
February 20, 2020

Khalsa Jagatjoti  
c/o Jessica McElfresh  
179 Calle Magdalena  
Encinitas, CA 92024  
jessica@mcelfreshlaw.com

**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/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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in cursive script, appearing to read "Roxana Kennedy".

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 4

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	4



## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(4)

**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.)

- [illegible]

- 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]  
[REDACTED]  
[REDACTED]  
[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]

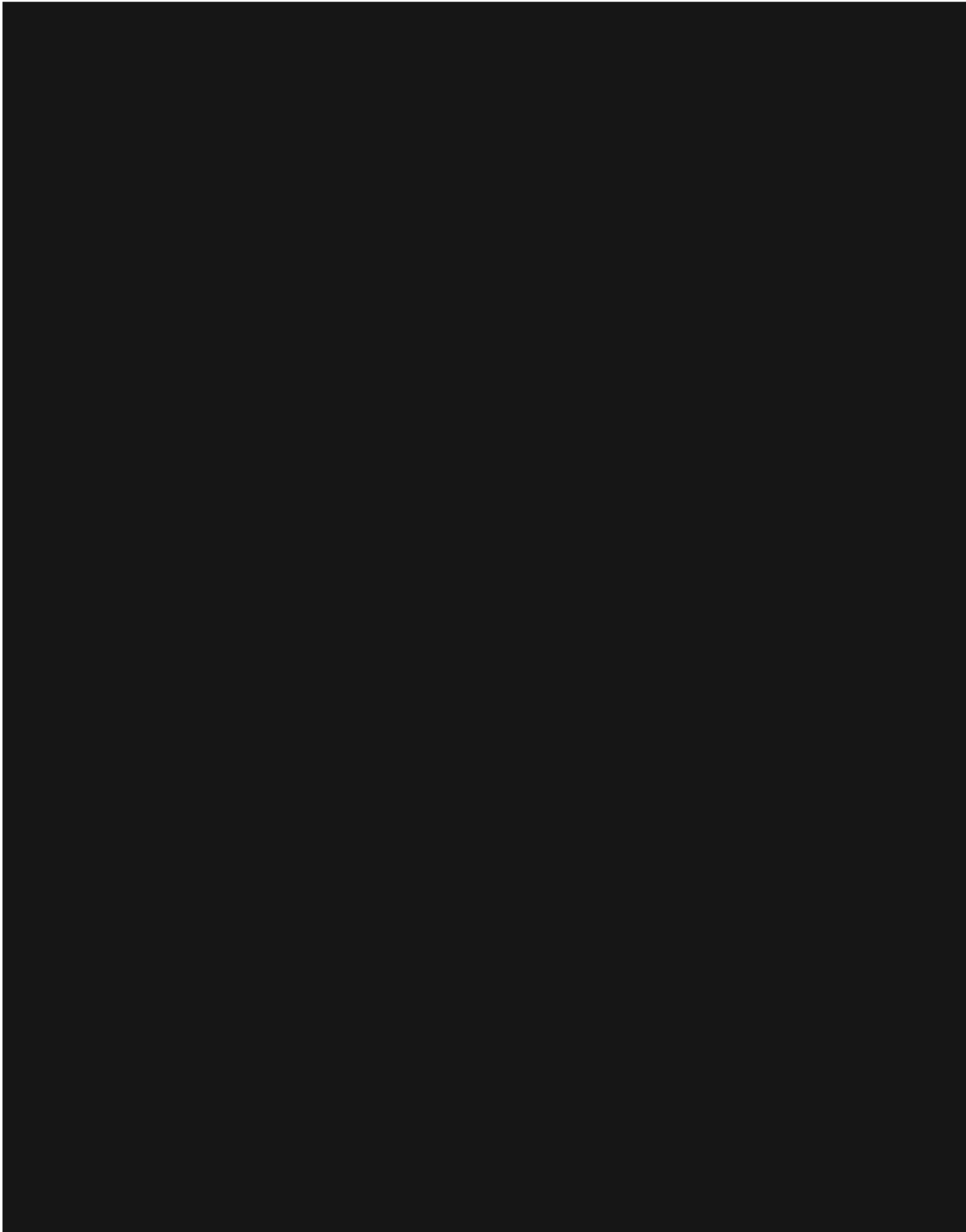
[REDACTED]

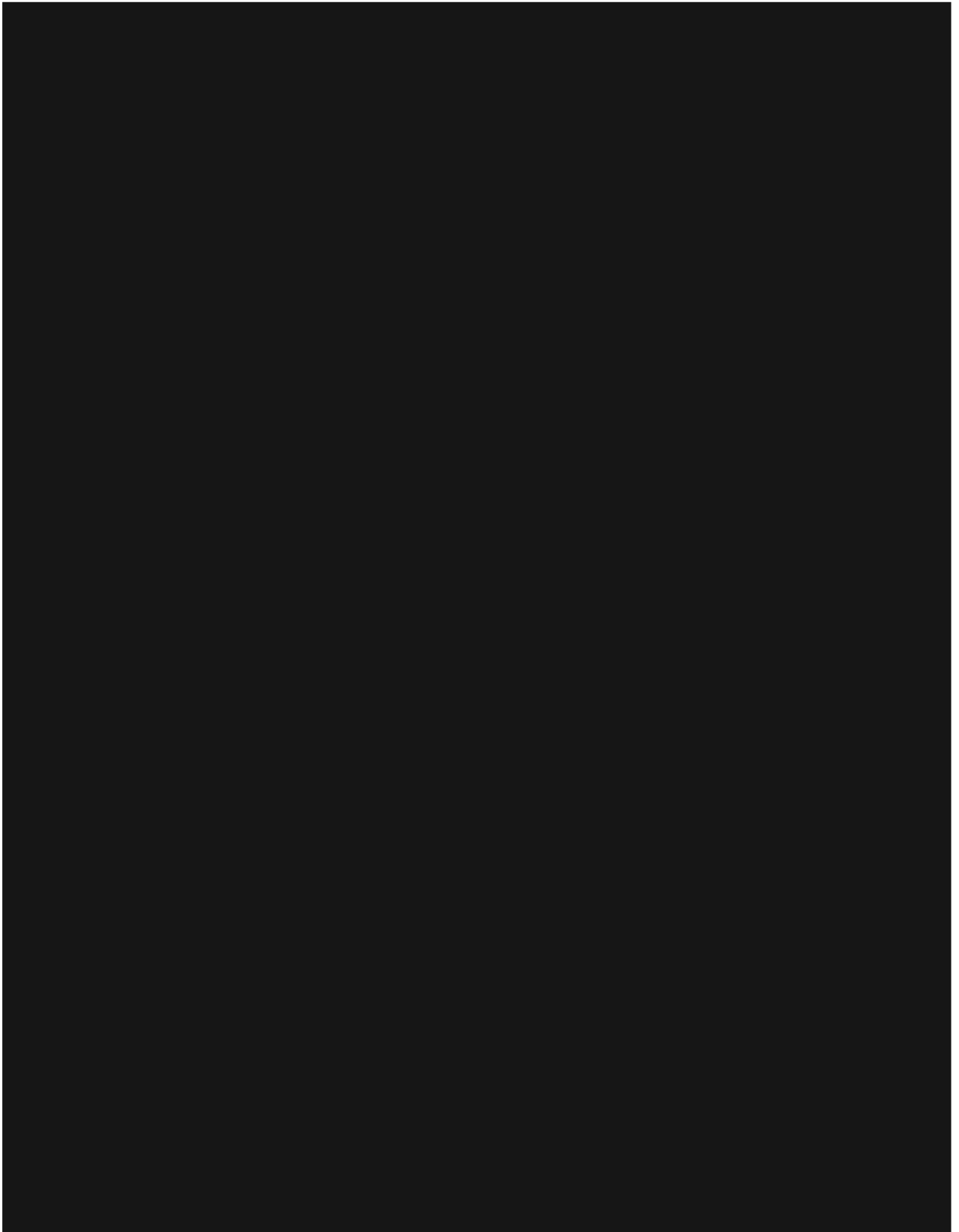
6. [REDACTED]

7. [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.







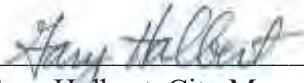
## **DECISION**

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 90<sup>th</sup> 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



# -EXHIBIT 19 -



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/PRIVACY

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

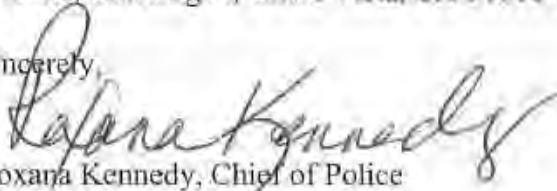
PERSONAL/PRIVACY

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](http://www.chulavistaca.gov/cannabis).

Sincerely,



Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 7

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	7

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(7)

# -EXHIBIT 20 -



Sent by US Mail  
February 20, 2020

Edvin Mailyan  
15445 Ventura Blvd. #30  
Sherman Oaks, CA 91403

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/PRIVACY

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

PERSONAL/PRIVACY

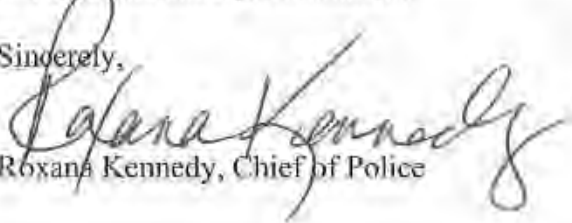
- The provisional application score of 395 has failed to rank high enough to be given a Phase Two application slot for Council District 2. (CVMC 5.19.050(A)(7) and Cannabis Regulations §0501(N)).

(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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police



## Redaction Log

Total Number of Redactions in Document: 5

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	5

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(5)

# -EXHIBIT 21 -



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/PRIVACY  
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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in blue ink that reads "Roxana Kennedy". The signature is fluid and cursive, with the first name "Roxana" and last name "Kennedy" clearly distinguishable.

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 7

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	7

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(7)

# -EXHIBIT 22 -





Sent by US Mail:  
April 22, 2020

Pierre Rouleau  
5800 South Eastern Ave. Ste 300  
Commerce, CA 90040  
info@chulavistaretailsolutions.com

**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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in cursive script, appearing to read "Roxana Kennedy".

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)

# -EXHIBIT 23 -



Sent by US Mail:  
April 22, 2020

Pierre Rouleau  
5800 South Eastern Ave. Ste 300  
Commerce, CA 90040  
info@chulavistaretailsolutions.com

**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  
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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police



## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6



## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)

# -EXHIBIT 24 -



Sent by US Mail:  
April 22, 2020

Pierre Rouleau  
5800 South Eastern Ave. Ste 300  
Commerce, CA 90040  
info@chulavistaretailsolutions.com

**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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in black ink, appearing to read "Roxana Kennedy". The signature is fluid and cursive, with the first name "Roxana" being more prominent than the last name "Kennedy".

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)

# -EXHIBIT 25 -



Sent by US Mail and Email:

May 6, 2020

Micah Anderson  
c/o Joe Hasson  
5666 La Jolla Blvd. #270  
La Jolla, CA 92037  
jhasson@obscc.com

**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), i.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](http://www.chulavistaca.gov/cannabis).

Sincerely,

A handwritten signature in dark ink, appearing to read "Roxana Kennedy". The signature is fluid and cursive, with a large, stylized "K" and "G" at the end.

Roxana Kennedy, Chief of Police

## Redaction Log

Total Number of Redactions in Document: 6

### Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	6

## Redaction Log

### Redaction Reasons by Exemption

Reason	Description	Pages (Count)
PERSONAL/PRIVACY	Please be advised that some of the responsive records that are being disclosed have been redacted based upon the "personal/privacy" exemption pursuant to Government Code section 6255.	1(6)

# -EXHIBIT 26 -



Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
will@urbnleaf.com

**Re: Notice of Decision – Commercial Cannabis Business Application  
UL Chula One LLC dba Urbn Leaf (Submitter ID: 57064) – 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 total application score of 900.3 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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police

# -EXHIBIT 27 -





Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
will@urbanleaf.com

**Re: Notice of Decision – Commercial Cannabis Business Application  
2446 Main Street LLC dba Urbn Leaf (Submitter ID: 57069) – Storefront Retailer**

Dear Will Senn:

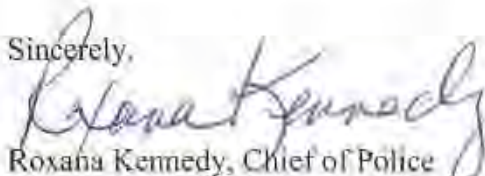
You recently submitted an application to the City of Chula Vista ("City") seeking a license to operate a commercial cannabis business in the City of Chula Vista pursuant to Chula Vista Municipal Code ("CVMC") Chapter 5.19.

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 total application score of 900.3 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 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](http://www.chulavistaca.gov/cannabis).

Sincerely,



Roxana Kennedy, Chief of Police

# -EXHIBIT 28 -





Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
will@urbleaf.com

**Re: Notice of Decision – Commercial Cannabis Business Application  
UL Chula Two LLC dba Urbleaf (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](http://www.chulavistaca.gov/cannabis).

Sincerely,

  
Roxana Kennedy, Chief of Police

# -EXHIBIT 29 -



Sent by US Mail & Email:  
May 6, 2020

Will Senn  
1028 Buenos Avenue  
San Diego, CA 92110  
will@urbanleaf.com

**Re: Notice of Decision – Commercial Cannabis Business Application  
UL Chula One dba Urban Leaf (Submitter ID: 58388) – Manufacturer**

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](http://www.chulavistaca.gov/cannabis).

For your information, City anticipates opening another Application Period for manufacturing, distribution, cultivation, and testing laboratories in 2020, with 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

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

GARY K. BRUCKER, JR., SB# 238644

2 E-Mail: Gary.Brucker@lewisbrisbois.com

ANASTASIYA MENSHIKOVA, SB# 312392

3 E-Mail: Anastasiya.Menshikova@lewisbrisbois.com

LANN G. MCINTYRE, SB # 106067

4 E-Mail: Lann.McIntyre@lewisbrisbois.com

550 West C Street, Suite 1700

5 San Diego, California 92101

Telephone: 619.233.1006

6 Facsimile: 619.233.8627

7 Attorneys for Petitioner/Plaintiff

UL CHULA TWO LLC

8  
9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 **UL CHULA TWO LLC,**

13 **Petitioner/Plaintiff,**

14 **vs.**

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

18 **Respondents/Defendants,**

19 **MARCH AND ASH CHULA VISTA, INC.;**  
20 **TD ENTERPRISE LLC; and DOES 23**  
21 **through 50,**

22 **Real Parties In Interest.**  
23  
24  
25  
26  
27  
28

**ELECTRONICALLY FILED**  
Superior Court of California  
County of San Diego

**04/02/2021 at 09:20:00 PM**  
Court in the Superior Court  
10 Sacramento Street, Suite 3100

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 REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT  
OF MOTION FOR WRIT OF  
MANDATE**

[IMAGED FILE]

Assigned to:  
Hon. Richard E. L. Strauss, Dept. C-75

Hearing Date: May 21, 2021  
Time: 9:00 a.m.  
Dept.: C-75

**[TO BE HEARD VIA COURTCALL]**

Action Filed: November 13, 2021  
Trial Date: None Set



1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2       Petitioner/Plaintiff UL Chula Two, LLC (“UL Chula”) hereby requests that, pursuant to  
3 Evidence Code Sections 452 and 453, this Court take judicial notice of the following described  
4 documents, attached as exhibits to Petitioner/Plaintiff’s concurrently filed Appendix of Exhibits in  
5 Support of Motion for Writ of Mandate:

6 Exs.	Description	Grounds For Judicial Notice
7 2	City of Chula Vista Published List of Cannabis Business Applicants, dated February 16, 2021, downloaded from chulavista.gov.	Cal. Evid. Code § 452(c).
8 3	Secretary of State file-stamped Articles of Incorporation of Holistic Café, downloaded from businesssearch.sos.ca.gov.	Cal. Evid. Code § 452(c).
9 4	San Diego Municipal Code.	Cal. Evid. Code § 452(c).
10 5	San Diego City Ordinance.	Cal. Evid. Code § 452(c).
11 6	Amendment to Judgment in <i>Holistic Café</i> .	Cal. Evid. Code § 452(d).
12 7-10	City of Chula Vista Meeting Minutes.	Cal. Evid. Code § 452(c).
13 11-29	City of Chula Vista Notices of Decision and Findings and Statement of Decision on Appeal	Cal. Evid. Code § 452(c).

18 DATED: April 2, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By: \_\_\_\_\_

22 GARY K. BRUCKER, JR.  
23 Attorneys for Petitioner/Plaintiff  
24 UL CHULA TWO LLC  
25  
26  
27  
28

# EXHIBIT 10

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/21/2021

TIME: 09:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: Richard E. L. Strauss

CLERK: Blanca Delgado

REPORTER/ERM: Stephanie Bryant CSR# 13160

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00041554-CU-MC-CTL** CASE INIT.DATE: 11/13/2020

CASE TITLE: **UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

---

**EVENT TYPE:** Motion Hearing (Civil)

MOVING PARTY: UL CHULA TWO LLC

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction, 01/19/2021

---

**EVENT TYPE:** Hearing on Petition

MOVING PARTY: UL CHULA TWO LLC

CAUSAL DOCUMENT/DATE FILED: Motion - Other MOTION FOR WRIT OF MANDATE, 04/02/2021

---

**APPEARANCES**

Gary K Brucker, Jr, counsel, present for Petitioner,Plaintiff(s) via remote video conference.

Alena Shamos, counsel, present for Defendant,Respondent(s) via remote video conference.

HEATHER S RILEY, counsel, present for Defendant,Interested Party(s) via remote video conference.

Phillip Tencer, counsel, present for Real Party in Interest, via Remote Audio Appearance.

---

This being the time set for oral argument on the above entitled motion(s), the Court issued its tentative ruling on May 20, 2021,

The Court hears oral argument and CONFIRMS as **MODIFIED** the tentative ruling as follows:

Petitioner UL Chula Two LLC's Motion for Writ of Mandate is denied.

Petitioner has pled two claims for writ of mandate, one for administrative mandate and one for traditional mandate. This petition focuses on the claim for administrative mandate. Petitioner contends that Respondent City of Chula Vista abused its discretion in denying the application for a cannabis license. The claim for traditional mandate does not appear applicable since Petitioner is not seeking to require Respondent to undertake a ministerial duty. There is no analysis on this claim in the moving papers.

Abuse of discretion is established if the court determines that the agency's decision is not supported by the findings or the findings are not supported by the evidence. (CCP § 1094.5(b).) The court must exercise its independent judgment where an administrative decision substantially affects a fundamental vested right (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32; CCP

§ 1094.5(c).) In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; CCP § 1094.5(c).)

Petitioner's first argument is that the civil zoning violations at issue in the *Holistic Caf&#233;* matter do not constitute unlawful Commercial Cannabis Activity. The Notice of Decision rejecting Petitioner's application states that William Senn, Petitioner's principal, had been adversely sanctioned or panelized for a material violation of state or local laws or regulations related to Commerical Cannabis Activity. (CVMC § 5.19.050(A)(5)(f).) The second reason stated was that Mr. Senn "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity..." when he was involved in unlawful Commercial Cannabis Activity in the City of San Diego from 2010-2012. (CVMC § 5.19.050(A)(5)(g); AR 119-122.) Petitioner concedes he was operating a medicinal cannabis storefront (*Holistic Caf&#233;*) and agreed to resolve the matter by entering into a stipulated judgment with the City of San Diego. (AR 196.) However, Petitioner challenges the finding that a medicinal cannabis storefront falls within the definition of "Commerical Cannabis Activity" as set forth by the Chula Vista Municipal Code.

Here, Petitioner has not met its burden to establish that operation of a medicinal marijuana storefront does not fall under the definition of "Commercial Cannabis Activity." Pursuant to the CVMC, this is defined as "the commercial Cultivation, possession, furnishing, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." (CVMC § 5.19.020.) Petitioner does not identify any language which would exclude the sale medicinal cannabis from being subsumed into the definition of Commercial Cannabis Activity. The fact that other sections are specific to medicinal marijuana does not exclude it from rules which have broader application.

Petitioner's contention that CVMC § 5.19.050 (A)(5)(f) is not disqualifying because Respondent applied an overbroad interpretation unconvincing. *Holistic Caf&#233;* was cited for zoning violations related to the Commercial Cannabis Activity, which is specific ineligibility under the Municipal Code. The record reflects that Mr. Senn was operating the marijuana business illegally. (AR 158-164, 186-203.) Thus, Petitioner's argument that the statute might exclude applicants who were cited for mundane violations unrelated to the cannabis business is irrelevant.

The argument that Mr. Senn was not engaged in "unlawful Commercial Cannabis Activity" is unpersuasive. Petitioner argues that it is irrational to interpret all commercial cannabis activity as being illegal because no commercial cannabis activity is permitted under Federal law. Petitioner asserts that the plain language must mean that commercial activity that would be unlawful after the enactment of Prop 64 in 2016. Thus, Petitioner would like to apply a future standard to past conduct. There is no authority for this argument nor would it reasonable to apply such a standard. Doing so would lead to absurd results. In addition, this argument ignores the definition of "jurisdiction" within the CVMC which limits it to areas where commercial cannabis takes place. (CVMC §§ 5.19.040(A)(1)(e)(i) and (B)(5).)

The second argument is that the City's findings were not supported by the evidence. As a preliminary issue, Petitioner does not cite to any authority that the evidence presented was insufficient in the proceedings before the City. Specifically, there is no authority that the City improperly relied upon hearsay evidence in the appeal. The fact that Petitioner did not approve of the evidence relied upon by the City in the appeal does not mean the decision was not supported by the evidence. The little authority that was provided is inapplicable. Govt. Code § 11513(d) precluding hearsay applies only to state agencies. In *Layton v. Merit System Commission* (1976) 60 Cal.App. 3d. 58, the analysis involved an



agency's internal procedural. Neither arise from fact comparable to the instant situation. Without applicable authority, this argument is not a sufficient basis to grant the writ of mandate.

Finally, the third argument is that the City refused to exercise its discretion in not rejecting Petitioner. CVMC § 5.19.050(A)(5) states "Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion." The analysis here is a regurgitation of the arguments made previously. There is no new argument that it was an abuse of discretion for the Police Chief to exercise the discretion specifically granted by the Municipal Code.

#### Due Process Violations

Petitioner argues that its due process rights were violated because Deputy City Attorney Simon Silva served as the advisor to the hearing officer and Deputy City Attorney Megan McClurg served as counsel for Respondent. In *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737 the Supreme Court discussed the standard for due process before a fair tribunal as follows:

When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. (*Withrow v. Larkin* (1975) 421 U.S. 35, 46,.) A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. (*People v. Harris* (2005) 37 Cal.4th 310, 346,; see *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025 ["When due process requires a hearing, the adjudicator must be impartial."].) Violation of this due process guarantee can be demonstrated not only by proof of actual bias, but also by showing a situation "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." (*Withrow v. Larkin, supra*, at p. 47, 95 S.Ct. 1456.)

Petitioner contends that the City Attorney's office had a conflict by both providing services as a legal advisor and an advocate in the same proceeding. In support of this argument, Petitioner cites to *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813. In *Quintero*, the Court of Appeal relied on the fact that the specific Deputy City Attorney at issue had acted as both a prosecutor and advisory in the same proceeding. In addition, the same Deputy City Attorney had become the primary legal advisor to the personnel board. (*Morongo Band, supra* at 740.) There is no evidence here that Deputy City Attorneys' roles were comparable to those cited in the case. Further, Petitioner's argument relies on the court accepting its interpretation of the law in finding there was a conflict because it presumes a finding that Ms. McClurg was providing erroneous advice on the law. As discussed above, the court is not adopting this finding.

The court does not find that the City provided insufficient time and notice in violation of Petitioner's due process rights. Petitioner claims its due process rights were violated because sufficient notice of the hearing was not provided and that the initial basis for rejection of the application lacked substantive information.

The Notice of Decision states the basis for the denial. It identifies that an applicant or owners was adversely sanctioned or penalized for a material violation of state or local laws or regulations and identified the party and the time frame of the violations. (AR 119-120) The fact that Petitioner was surprised that Respondent viewed the operation of the Holistic Caf&#233; as disqualifying does not mean the notice was insufficient. Petitioner essentially argues that it was lulled into a false sense of security since it had disclosed the stipulated judgment in the Holistic Caf&#233; case. However, this was information for evaluation and investigation by Respondent. There is also no indication that

Respondent's process did not comply with the CVMC. There is no indication in the rules that disclosure in and of itself precluded further inquiry such that Petitioner was somehow reasonable in its position.

With regard to the timing of the hearing, Petitioner waived its right to object by not raising this issue previously. "It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion." (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930.) Petitioner was aware the notice was shorter than required and took no action. The Cannabis Regulations include a provision for continuances. (Chula Vista Cannabis Regulations § 0501(P)(2)(a).) Although the notice cited to the incorrect section, the Notice of Appeal identified the applicable basis for seeking a continuance. (AR 131.) Thus, Petitioner has no reasonable basis to argue it was prejudiced by the lack of notice in this proceeding.

Petitioner/Plaintiff UL Chula Two, LLC's Motion for Preliminary Injunction and Stay of Decision is denied. UL Chula Two has not met its burden that it is likely to prevail on the merits.

The court declines to consider evidence outside the administrative record.  
The court will hear from the parties as to whether there are any outstanding claims if the tentative rulings are confirmed and, if so, how to proceed.

**Upon inquiry of the Court, Attorney Brucker dismisses the remaining claims not addressed in the Court's Tentative Ruling.**

**Following further discussion, by agreement of parties and approval of the Court, the Court's Tentative Ruling is deemed the Statement of Decision.**

**The Court denies the request to extend the stay in this matter.**

IT IS SO ORDERED:



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Judge Richard E. L. Strauss

# EXHIBIT 11

***In The Matter Of:***

***UL Chula Two LLC***

***v.***

***City of Chula Vista***

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***Transcript of Proceedings VOL***

***May 21, 2021***

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DIVISION  
DEPARTMENT C-75 HONORABLE RICHARD E.L. STRAUSS

UL CHULA TWO LLC,	)	
	)	
Petitioner/Plaintiff,	)	
	)	Case No.:
vs.	)	37-2020-00041554-CU-
	)	WM-CTL
CITY OF CHULA VISTA, a	)	
California public entity;	)	
CHULA VISTA CITY MANAGER, and	)	
DOES 1-20,	)	MOTION HEARING
	)	
Respondents/Defendants,	)	HEARING ON PETITION
	)	
MARCH AND ASH CHULA VISTA,	)	
INC.; TD ENTERPRISE LLC; and	)	
DOES 23 through 50,	)	
	)	
Real Parties In Interest.)	)	
_____	)	

REPORTER'S TRANSCRIPT - MS TEAMS

SAN DIEGO, CALIFORNIA

MAY 21, 2021

PAGES 1 THROUGH 14

STEPHANIE Y. BRYANT, RPR, CSR NO. 13160  
PRO TEMPORE REPORTER

1 APPEARANCES:

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5 Gary.brucker@lewisbrisbois.com

6 For City of Chula Vista and Chula Vista City Manager:

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10 For March and Ash Chula Vista, Inc.:

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1 SAN DIEGO, CALIFORNIA; FRIDAY, MAY 21, 2021

2 10:02 A.M.

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4 THE CLERK: Next items, Items 31 through 32,  
5 UL Chula Two versus City of Chula Vista.

6 MR. BRUCKER: Good morning, your Honor.  
7 Gary Brucker for the petitioner.

8 THE COURT: Good morning.

9 MS. SHAMOS: Good morning, your Honor.  
10 Alena Shamos for City of Chula Vista and the  
11 Chula Vista City Manager.

12 THE COURT: Good morning.

13 MS. RILEY: Good morning, your Honor.  
14 Heather Riley on behalf of the real party in  
15 interest March and Ash.

16 THE COURT: Good morning.

17 Is that everyone?

18 MR. TENCER: Good morning, your Honor.  
19 Philip Tencer on behalf of the real party in  
20 interest TD Enterprise.

21 THE COURT: Good morning.

22 THE CLERK: Your Honor, I have notated that we  
23 have a court reporter on this matter. I did not receive  
24 the appointment form from the reporter. Oh, my  
25 apologies. I do have it.

26 Court reporter, are you present?

27 THE REPORTER: I am. Thank you.

28 THE CLERK: Thank you.

1 THE COURT: All right. Any comments on this  
2 tentative ruling?

3 MR. BRUCKER: Yes, your Honor.

4 Can you hear me okay?

5 MS. SHAMOS: Gary, may I, or do you want to go  
6 ahead?

7 MR. BRUCKER: I'd like to go ahead, if you  
8 don't mind.

9 MS. SHAMOS: That's fine.

10 MR. BRUCKER: Thank you.

11 All right, your Honor. Can you hear me okay?

12 THE COURT: Go ahead.

13 MR. BRUCKER: Okay. First, I want to thank you  
14 for the tentative. I thought it was very thorough, and  
15 I'm not going to spend a lot of time going over the  
16 majority of it. I just want to address one point within  
17 the tentative where I believe the tentative ruling is  
18 erred, and then cover some procedural issues in the  
19 event that the tentative is confirmed.

20 On the merits, we disagree that a zoning  
21 ordinance that is unrelated to cannabis can be deemed  
22 related to commercial cannabis activity or be deemed  
23 unlawful commercial cannabis activity. Now, the  
24 tentative states petitioner would like to apply a future  
25 standard to past conduct which could lead to absurd  
26 results. We respectfully disagree.

27 There is no future standard. There is only one  
28 standard, and it's the standard adopted by the City in



1 the municipal code. That standard could have been  
2 written differently. It could have been far broader.  
3 It could have disqualified applicants for any reason,  
4 but it didn't. It was confined to commercial cannabis  
5 activity, and that didn't exist in the state of  
6 California before 2016.

7 Second, if the standard in the tentative ruling  
8 is the law, that would lead to unintended consequences.  
9 And let me explain by pointing to Chula Vista Municipal  
10 Code Section 5.19.190(B), which is located in the  
11 administrative record at Page 421. And it says it shall  
12 be the responsibility of the city licensees, owners,  
13 officers, and managers of a commercial cannabis business  
14 to ensure that a commercial cannabis business is at all  
15 times operating in a manner compliant with all  
16 applicable federal, state, and local laws and  
17 regulations.

18 The last time I checked, cannabis is still  
19 illegal under federal law, and any licensee would  
20 violate the code the day they opened their doors. That  
21 cannot have been the City's intent in enacting the  
22 rules. Similarly here, it cannot have been the City's  
23 intent to disqualify applicants that engaged in unlawful  
24 commercial cannabis activity in the city in any other  
25 jurisdiction when "any other jurisdiction" means federal  
26 law.

27 And I understand the tentative ruling cites  
28 that the term "jurisdiction" is defined in the code, but

1 it is not. There is no definition for "jurisdiction."  
2 The City's opposition brief confirms that the term  
3 "jurisdiction" is not admitted, and when the municipal  
4 code uses the term "local jurisdiction," it means local  
5 jurisdiction. You can see examples of that in the  
6 administrative code -- administrative record at Page 402  
7 and 425.

8 Here we're dealing with any other jurisdiction.  
9 That means precisely what it says. We can't ignore  
10 federal jurisdiction. And as the code makes clear,  
11 licenses must comply with federal jurisdiction. So  
12 keeping this in mind, the reading advanced by the City  
13 and adopted by the Court in the tentative ruling would  
14 disqualify every applicant, because every applicant has  
15 to have experience and you can only get experience if  
16 you engage in a federally unlawful activity.

17 So it can't be that any unlawful activity  
18 qualifies. And that's why the City enacted the  
19 ordinance the way it did. The City said "commercial  
20 cannabis activity," to take it out of the broader, more  
21 general legalities.

22 Now, I understand the Court fears that this  
23 could lead to poor results where perhaps a bad applicant  
24 would not be able to be disqualified, and that's just  
25 not the case. There are specific disqualifying factors  
26 in the Chula Vista Municipal Code. You can bounce an  
27 applicant for a felony conviction, a crime of moral  
28 turpitude, offenses involving a weapon, and other

1 reasons. Lots of reasons to get rid of an applicant  
2 that is not desirable.

3 But when we're dealing with an industry that is  
4 illegal everywhere in the country and the City wants  
5 experienced applicants that have never been engaged in  
6 unlawful activity, it just can't work. The only fair  
7 and reasonable reading of the code is to limit the  
8 illegality, limit the disqualifiers to those violations  
9 that were enacted in 2016 in California, in 2018 in the  
10 City of Chula Vista; otherwise, the result is you  
11 disqualify every single applicant and you have no code.

12 And just like the City couldn't have required  
13 applicants and licensees to follow federal law when  
14 federal law doesn't allow what they're licensed to do,  
15 they can't disqualify applicants that didn't engage in  
16 unlawful commercial cannabis activity.

17 And that is all I have on the merits, and I'll  
18 allow Ms. Shamos to respond before we talk about  
19 procedures.

20 THE COURT: All right. Ms. Shamos.

21 MS. SHAMOS: Your Honor, the City submits on  
22 the tentative. We agree with the standard that the  
23 Court applied. The jurisdiction permitting such  
24 commercial cannabis activity is defined under  
25 5.19.040(A)(1)(e)(i). It is clear with respect to local  
26 jurisdictions. The City of San Diego sanctioned  
27 Mr. Senn for prior illegal marijuana dispensary  
28 activity. It was very clear on the face of the notice

1 of violation. It was very clear on the face of the  
2 abatement complaint. The City acted well within its  
3 jurisdiction and within the substantial evidence  
4 standard, and, accordingly, we submit on the tentative.

5 And with respect to your Honor's question on  
6 the procedural issues, everything arises out of the same  
7 primary right, which is the writ-of-mandate action.  
8 There should be no further proceedings. And, in fact,  
9 the stipulation the petitioner was willing to agree to  
10 stated that everything was going to be resolved at the  
11 merits hearing, and that is in accordance with the law  
12 being that injunctive relief is a remedy and declaratory  
13 relief is subsumed in an administrative mandamus.

14 Thank you, your Honor.

15 THE COURT: All right. To answer the first  
16 question, then, I am confirming the tentative ruling.

17 What else, sir, did you want to bring up,  
18 procedurally?

19 MR. BRUCKER: Thank you, your Honor.

20 Procedurally, one, as Ms. Shamos stated, we did  
21 submit a stipulation to have everything determined at  
22 once, but the stipulation was not signed by the Court.  
23 I think procedurally the proper thing for us to do is to  
24 dismiss the remaining claims that were not ruled upon by  
25 the Court to perfect our appeal.

26 And as my appellate lawyers, sitting next to  
27 me, are telling me, I have to remind the Court we did  
28 ask for a statement of decision in our opening brief.

1           And then, finally, we would ask that under  
2   CCP1094.5(g), the Court stay the -- or essentially  
3   continue the TRO and stay the issuing licensing until  
4   the time for our appeal has expired so it would allow us  
5   to bring an appeal and file a writ of supersedeas.

6           THE COURT: All right. Ms. Shamos, your  
7   comments about his further comments?

8           MS. SHAMOS: Your Honor, with respect to the  
9   statement of decision, it is my understanding that  
10   according to the code and the Rules of Court that this  
11   tentative ruling can become the statement of decision.

12           (Technical interference.)

13           MS. SHAMOS: I don't know why the echo is. I  
14   apologize.

15           But we object to the stay because this affects  
16   a number of parties. And as the Court articulated on  
17   the preliminary injunction motion, it was denied. So  
18   there is no basis for extending the stay.

19           THE COURT: Would you repeat all of that again?  
20   I was having a very difficult time hearing you.

21           MS. SHAMOS: Can you hear me now?

22           THE COURT: I can.

23           MS. SHAMOS: Okay. I apologize, your Honor, if  
24   it is a problem on my end.

25           We agree that a statement of decision was  
26   requested. And according to my understanding of the  
27   code and the Rules of Court, the tentative ruling can  
28   become that statement.

1           With respect to the stay, the Court denied the  
2 preliminary injunction. The stay should not be  
3 continued because it would prejudice other parties.

4           THE COURT: I did not hear your last point  
5 about the statement of decision. You said that --

6           MS. SHAMOS: Your Honor, I'm sorry.

7           THE COURT: You said that you agree that one  
8 was requested, and then I couldn't understand what --

9           MS. SHAMOS: I'm sorry.

10          THE COURT: Go ahead.

11          MS. SHAMOS: That this tentative ruling could  
12 become the statement of decision.

13          THE COURT: All right.

14          MS. SHAMOS: And then the other point was that  
15 we object to continuing the stay in that the preliminary  
16 injunction was denied, and it will prejudice other  
17 parties as the City's process is proceeding.

18          THE COURT: Counsel, is this tentative ruling  
19 descriptive enough to serve as the statement of decision  
20 that you have requested?

21          MR. BRUCKER: Your Honor, it is very thorough.  
22 You know, I do consult with my appellate lawyers, and  
23 they do tell me that, you know, there are portions of it  
24 that don't cite to the record, et cetera. If your Honor  
25 would like to make this the statement of decision, then  
26 I guess your Honor can make that the statement of  
27 decision. It's kind of outside of my area of expertise  
28 of what the statement of decision should or should not

1 have.

2 THE COURT: All right. Well, in that case, it  
3 is very thorough. If you're not objecting to that  
4 happening, that this be the statement of decision, then  
5 that's what I'll deem it as, and we'll go on from there.

6 MR. BRUCKER: No objection, your Honor. That  
7 is fine.

8 And then as to the points on the stay, you  
9 know, our motion for preliminary injunction was also a  
10 motion to stay licensure. It was a dual-purpose motion.  
11 And I think the standard for the stay is a little  
12 different. It's not necessarily reliant upon the -- you  
13 know, showing minimal merit or showing probability. And  
14 so here we are. I'm not sure how long it will take to  
15 get an appeal and a writ of supersedeas on file. I  
16 can't imagine it will take very long. And so at least  
17 some sort of short stay, perhaps four to six weeks,  
18 would be enough for us to get that on file and give us a  
19 chance with the Court of Appeal.

20 And I can't say at this point whether another  
21 four to six weeks is going to impact the City. The City  
22 has not updated its website on the status of licensing,  
23 so I don't know how close anyone is to a license. But  
24 from our perspective, about four to six weeks may be  
25 enough for us to, you know, get us through the hurdle of  
26 the Court of Appeal.

27 MS. RILEY: Your Honor, may I be heard?

28 THE COURT: Yes, of course.

1 MS. RILEY: This is Heather Riley, with  
2 Allen Matkins, on behalf of March and Ash, one of the  
3 real parties.

4 Your tentative not only denied the preliminary  
5 injunction, it also denied the stay of decision, and I  
6 would urge you to maintain that. We have had no notice  
7 of an extension of the temporary restraining order.  
8 That was not part of the motion that was filed. I  
9 object to it procedurally, but I also object to it  
10 substantively.

11 If petitioner wants to move quickly towards an  
12 appeal, they can and should do that. But I don't think  
13 the temporary restraining order should stay in effect.

14 MR. TENCER: Your Honor, this is Phillip Tencer  
15 on behalf of TD Enterprise. I join in that.

16 MR. BRUCKER: Your Honor, the way the code  
17 reads, if you were to grant the stay, the stay would  
18 last through the notice of appeal period. And we did  
19 ask for a stay. And while your tentative is to deny, I  
20 guess what we're asking for the Court to do is to  
21 reconsider that at least for a short period of time.

22 THE COURT: Anybody else have a comment about a  
23 stay?

24 Ms. Shamos?

25 MS. SHAMOS: Your Honor, the City joins with  
26 real parties in objecting to the stay.

27 THE COURT: All right. I'm not going to extend  
28 out -- confirm this tentative ruling, of course, and I'm



1 not going to extend the stay.

2 Thank you very much.

3 MR. BRUCKER: Thank you, your Honor.

4 MR. TENCER: Thank you, your Honor.

5 MS. RILEY: Thank you, your Honor.

6 THE COURT: Thank you.

7 (Proceedings concluded at 10:16 a.m.)

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1 STATE OF CALIFORNIA)  
2 :  
3 COUNTY OF SAN DIEGO)

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UL CHULA TWO LLC

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VS

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CITY OF CHULA VISTA

8

CASE NO. 37-2020-00041554-CU-WM-CTL

9

10

11 I, Stephanie Y. Bryant, Certified Shorthand  
12 Reporter licensed in the State of California, License  
13 No. 13160, hereby certify:

14

15 I reported stenographically the proceedings had  
16 in the above-entitled cause, and that the foregoing  
17 transcript is a full, true, and correct transcription of  
18 my shorthand notes taken during the proceedings had on  
19 May 21, 2021.

20

21 Dated at San Diego, California, on July 1, 2021.

22

23

24

25

26

Stephanie Y. Bryant, CSR No. 13160

27

28

# EXHIBIT 12

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]

**[PROPOSED] JUDGMENT**

**Petition for Writ of Mandate Filed:**  
November 13, 2021

Judge: Hon. Richard E. L. Strauss  
Dept.: C-75  
Action Filed: November 13, 2021  
Hearing Date: May 21, 2021

1 The above-entitled action came on regularly for hearing in Department 75 of the above-  
2 entitled court on May 21, 2021, the Honorable Richard E. L. Strauss, Judge, presiding. Gary K.  
3 Brucker, Jr. of Lewis Brisbois Bisgaard & Smith LLP appeared for petitioner UL Chula Two LLC  
4 (“Petitioner”). Alena Shamos of Colantuono, Highsmith & Whatley, PC appeared for the  
5 respondents City of Chula Vista and Chula Vista City Manager (collectively, “Respondents”).  
6 Heather Riley of Allen Matkins Leck Gamble Mallory & Natsis, LLP appeared for Real Party in  
7 Interest March and Ash Chula Vista, Inc. (“March and Ash”). Philip Tencer of TencerSherman  
8 LLP appeared for Real Party in Interest TD Enterprise LLC (“TD”, or along with March and Ash,  
9 “Real Parties in Interest”).

10 After consideration of the Administrative Record, the briefs filed by the parties, and the  
11 oral arguments of counsel:

12 **THE COURT FINDS AS FOLLOWS:**

13 1. Petitioner’s motion for writ of administrative mandamus is denied for the reasons  
14 stated in the Court’s May 21, 2021 Minute Order, which ruling constitutes the Court’s Statement  
15 of Decision as set forth therein. A true and correct copy of the minute order is attached hereto as  
16 Exhibit A.

17 2. Pursuant to the Parties’ stipulation and by operation of law, Petitioner’s first cause  
18 of action for traditional mandamus and Petitioner’s third cause of action for declaratory and  
19 injunctive relief are subsumed within Petitioner’s second cause of action for administrative  
20 mandamus. As a result, and as is reflected in the Court’s May 21, 2021 Minute Order, Petitioner  
21 dismissed the first and third causes of action upon the Court’s inquiry, thereby disposing of all  
22 causes of action.

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment shall be for  
24 and in favor of Respondents and Real Parties In Interest.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

26 1. The relief prayed for by Petitioner is DENIED.

27 ///

28 ///


2. Respondents and Real Parties in Interest shall recover their costs in this action in the amount of \$ \_\_\_\_\_, as allowed by law.

DATED: June 17, 2021




Honorable Richard E. L. Strauss  
Judge of the Superior Court


Respectfully submitted and so stipulated,




By: \_\_\_\_\_  
Gary K. Brucker, Jr., Esq.  
Attorneys for Petitioner UL Chula Two LLC



By: \_\_\_\_\_  
Alena Shamos, Esq.  
Attorneys for Respondents City Of Chula Vista  
And Chula Vista City Manager



By: \_\_\_\_\_  
Philip Tencer, Esq.  
Attorneys for Real Party in Interest TD Enterprise  
LLC



By: \_\_\_\_\_  
Heather Riley, Esq.  
Attorneys for Real Party in Interest March And  
Ash Chula Vista, Inc.

# EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/21/2021

TIME: 09:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: Richard E. L. Strauss

CLERK: Blanca Delgado

REPORTER/ERM: Stephanie Bryant CSR# 13160

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00041554-CU-MC-CTL** CASE INIT.DATE: 11/13/2020

CASE TITLE: **UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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**EVENT TYPE:** Motion Hearing (Civil)

MOVING PARTY: UL CHULA TWO LLC

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction, 01/19/2021

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**EVENT TYPE:** Hearing on Petition

MOVING PARTY: UL CHULA TWO LLC

CAUSAL DOCUMENT/DATE FILED: Motion - Other MOTION FOR WRIT OF MANDATE, 04/02/2021

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**APPEARANCES**

Gary K Brucker, Jr, counsel, present for Petitioner,Plaintiff(s) via remote video conference.

Alena Shamos, counsel, present for Defendant,Respondent(s) via remote video conference.

HEATHER S RILEY, counsel, present for Defendant,Interested Party(s) via remote video conference.

Phillip Tencer, counsel, present for Real Party in Interest, via Remote Audio Appearance.

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This being the time set for oral argument on the above entitled motion(s), the Court issued its tentative ruling on May 20, 2021,

The Court hears oral argument and CONFIRMS as **MODIFIED** the tentative ruling as follows:

Petitioner UL Chula Two LLC's Motion for Writ of Mandate is denied.

Petitioner has pled two claims for writ of mandate, one for administrative mandate and one for traditional mandate. This petition focuses on the claim for administrative mandate. Petitioner contends that Respondent City of Chula Vista abused its discretion in denying the application for a cannabis license. The claim for traditional mandate does not appear applicable since Petitioner is not seeking to require Respondent to undertake a ministerial duty. There is no analysis on this claim in the moving papers.

Abuse of discretion is established if the court determines that the agency's decision is not supported by the findings or the findings are not supported by the evidence. (CCP § 1094.5(b).) The court must exercise its independent judgment where an administrative decision substantially affects a fundamental vested right (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32; CCP



§ 1094.5(c).) In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; CCP § 1094.5(c).)

Petitioner's first argument is that the civil zoning violations at issue in the *Holistic Caf&#233;* matter do not constitute unlawful Commercial Cannabis Activity. The Notice of Decision rejecting Petitioner's application states that William Senn, Petitioner's principal, had been adversely sanctioned or panelized for a material violation of state or local laws or regulations related to Commerical Cannabis Activity. (CVMC § 5.19.050(A)(5)(f).) The second reason stated was that Mr. Senn "conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity..." when he was involved in unlawful Commercial Cannabis Activity in the City of San Diego from 2010-2012. (CVMC § 5.19.050(A)(5)(g); AR 119-122.) Petitioner concedes he was operating a medicinal cannabis storefront (*Holistic Caf&#233;*) and agreed to resolve the matter by entering into a stipulated judgment with the City of San Diego. (AR 196.) However, Petitioner challenges the finding that a medicinal cannabis storefront falls within the definition of "Commerical Cannabis Activity" as set forth by the Chula Vista Municipal Code.

Here, Petitioner has not met its burden to establish that operation of a medicinal marijuana storefront does not fall under the definition of "Commercial Cannabis Activity." Pursuant to the CVMC, this is defined as "the commercial Cultivation, possession, furnishing, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." (CVMC § 5.19.020.) Petitioner does not identify any language which would exclude the sale medicinal cannabis from being subsumed into the definition of Commercial Cannabis Activity. The fact that other sections are specific to medicinal marijuana does not exclude it from rules which have broader application.

Petitioner's contention that CVMC § 5.19.050 (A)(5)(f) is not disqualifying because Respondent applied an overbroad interpretation unconvincing. *Holistic Caf&#233;* was cited for zoning violations related to the Commercial Cannabis Activity, which is specific ineligibility under the Municipal Code. The record reflects that Mr. Senn was operating the marijuana business illegally. (AR 158-164, 186-203.) Thus, Petitioner's argument that the statute might exclude applicants who were cited for mundane violations unrelated to the cannabis business is irrelevant.

The argument that Mr. Senn was not engaged in "unlawful Commercial Cannabis Activity" is unpersuasive. Petitioner argues that it is irrational to interpret all commercial cannabis activity as being illegal because no commercial cannabis activity is permitted under Federal law. Petitioner asserts that the plain language must mean that commercial activity that would be unlawful after the enactment of Prop 64 in 2016. Thus, Petitioner would like to apply a future standard to past conduct. There is no authority for this argument nor would it reasonable to apply such a standard. Doing so would lead to absurd results. In addition, this argument ignores the definition of "jurisdiction" within the CVMC which limits it to areas where commercial cannabis takes place. (CVMC §§ 5.19.040(A)(1)(e)(i) and (B)(5).)

The second argument is that the City's findings were not supported by the evidence. As a preliminary issue, Petitioner does not cite to any authority that the evidence presented was insufficient in the proceedings before the City. Specifically, there is no authority that the City improperly relied upon hearsay evidence in the appeal. The fact that Petitioner did not approve of the evidence relied upon by the City in the appeal does not mean the decision was not supported by the evidence. The little authority that was provided is inapplicable. Govt. Code § 11513(d) precluding hearsay applies only to state agencies. In *Layton v. Merit System Commission* (1976) 60 Cal.App. 3d. 58, the analysis involved an

agency's internal procedural. Neither arise from fact comparable to the instant situation. Without applicable authority, this argument is not a sufficient basis to grant the writ of mandate.

Finally, the third argument is that the City refused to exercise its discretion in not rejecting Petitioner. CVMC § 5.19.050(A)(5) states "Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion." The analysis here is a regurgitation of the arguments made previously. There is no new argument that it was an abuse of discretion for the Police Chief to exercise the discretion specifically granted by the Municipal Code.

#### Due Process Violations

Petitioner argues that its due process rights were violated because Deputy City Attorney Simon Silva served as the advisor to the hearing officer and Deputy City Attorney Megan McClurg served as counsel for Respondent. In *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737 the Supreme Court discussed the standard for due process before a fair tribunal as follows:

When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. (*Withrow v. Larkin* (1975) 421 U.S. 35, 46,.) A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. (*People v. Harris* (2005) 37 Cal.4th 310, 346,; see *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025 ["When due process requires a hearing, the adjudicator must be impartial."].) Violation of this due process guarantee can be demonstrated not only by proof of actual bias, but also by showing a situation "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." (*Withrow v. Larkin, supra*, at p. 47, 95 S.Ct. 1456.)

Petitioner contends that the City Attorney's office had a conflict by both providing services as a legal advisor and an advocate in the same proceeding. In support of this argument, Petitioner cites to *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813. In *Quintero*, the Court of Appeal relied on the fact that the specific Deputy City Attorney at issue had acted as both a prosecutor and advisory in the same proceeding. In addition, the same Deputy City Attorney had become the primary legal advisor to the personnel board. (*Morongo Band, supra* at 740.) There is no evidence here that Deputy City Attorneys' roles were comparable to those cited in the case. Further, Petitioner's argument relies on the court accepting its interpretation of the law in finding there was a conflict because it presumes a finding that Ms. McClurg was providing erroneous advice on the law. As discussed above, the court is not adopting this finding.

The court does not find that the City provided insufficient time and notice in violation of Petitioner's due process rights. Petitioner claims its due process rights were violated because sufficient notice of the hearing was not provided and that the initial basis for rejection of the application lacked substantive information.

The Notice of Decision states the basis for the denial. It identifies that an applicant or owners was adversely sanctioned or penalized for a material violation of state or local laws or regulations and identified the party and the time frame of the violations. (AR 119-120) The fact that Petitioner was surprised that Respondent viewed the operation of the Holistic Caf&#233; as disqualifying does not mean the notice was insufficient. Petitioner essentially argues that it was lulled into a false sense of security since it had disclosed the stipulated judgment in the Holistic Caf&#233; case. However, this was information for evaluation and investigation by Respondent. There is also no indication that

Respondent's process did not comply with the CVMC. There is no indication in the rules that disclosure in and of itself precluded further inquiry such that Petitioner was somehow reasonable in its position.

With regard to the timing of the hearing, Petitioner waived its right to object by not raising this issue previously. "It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion." (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930.) Petitioner was aware the notice was shorter than required and took no action. The Cannabis Regulations include a provision for continuances. (Chula Vista Cannabis Regulations § 0501(P)(2)(a).) Although the notice cited to the incorrect section, the Notice of Appeal identified the applicable basis for seeking a continuance. (AR 131.) Thus, Petitioner has no reasonable basis to argue it was prejudiced by the lack of notice in this proceeding.

Petitioner/Plaintiff UL Chula Two, LLC's Motion for Preliminary Injunction and Stay of Decision is denied. UL Chula Two has not met its burden that it is likely to prevail on the merits.

The court declines to consider evidence outside the administrative record.  
The court will hear from the parties as to whether there are any outstanding claims if the tentative rulings are confirmed and, if so, how to proceed.

**Upon inquiry of the Court, Attorney Brucker dismisses the remaining claims not addressed in the Court's Tentative Ruling.**

**Following further discussion, by agreement of parties and approval of the Court, the Court's Tentative Ruling is deemed the Statement of Decision.**

**The Court denies the request to extend the stay in this matter.**

IT IS SO ORDERED:



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Judge Richard E. L. Strauss

**CALIFORNIA STATE COURT PROOF OF SERVICE**  
UL CHULA TWO v. CITY OF CHULA VISTA, a California public entity, CITY MANAGER  
OF CHULA VISTA, et al.  
Case No. 37-2020-00033884-CU-CT-CTL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. My business address is 550 West C Street, Suite 1700, San Diego, CA 92101.

On May 28, 2021, I served true copies of the following document(s):

(1) [PROPOSED] JUDGMENT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Alena Shamos, Esq.  
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*Attorneys for TD Enterprise LLC*

*Attorneys for March and Ash Chula Vista, Inc.*

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address Jeff.deGruchy@lewisbrisbois to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

3 Executed on May 28, 2021, at San Diego, California.

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7 Jeff de Gruchy  
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# EXHIBIT 13

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: <b>Lann G. McIntyre (SBN 106067)</b> FIRM NAME: <b>Lewis Brisbois Bisgaard &amp; Smith LLP</b> STREET ADDRESS: <b>550 West C Street, Suite 1700</b> CITY: <b>San Diego</b> STATE: <b>CA</b> ZIP CODE: <b>92101</b> TELEPHONE NO.: <b>(619) 233-1006</b> FAX NO.: <b>(619) 233-8627</b> E-MAIL ADDRESS: <b>lann.mcintyre@lewisbrisbois.com</b> ATTORNEY FOR (name): <b>Petitioner and Plaintiff UL Chula Two LLC</b>		<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego  <b>07/06/2021 at 02:45:00 PM</b> Clerk of the Superior Court By Abraham Barragan, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: <b>330 West Broadway</b> CITY AND ZIP CODE: <b>San Diego 92101</b> BRANCH NAME: <b>CENTRAL DIVISION</b>		
PLAINTIFF/PETITIONER: <b>UL CHULA TWO LLC</b> DEFENDANT/RESPONDENT <b>CITY OF CHULA VISTA, ET AL.</b>		
<input checked="" type="checkbox"/> <b>NOTICE OF APPEAL</b> <input type="checkbox"/> <b>CROSS-APPEAL</b> <b>(UNLIMITED CIVIL CASE)</b>		CASE NUMBER: <b>37-2020-00041554-CU-WM-CTL</b>

**Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.**

1. NOTICE IS HEREBY GIVEN that (name): **Petitioner and Plaintiff UL Chula Two LLC**  
 appeals from the following judgment or order in this case, which was entered on (date): **June 17, 2021**

- ☐ Judgment after jury trial  
☒ Judgment after court trial (C.C.P. § 1094.5)  
☐ Default judgment  
☐ Judgment after an order granting a summary judgment motion  
☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430  
☐ Judgment of dismissal after an order sustaining a demurrer  
☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)  
☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)  
☐ Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:  
 b. Date superior court clerk mailed notice of original appeal:  
 c. Court of Appeal case number (if known):

Date: **July 6, 2021**

**Lann G. McIntyre**

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

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6 Facsimile: 619.233.8627

7 Attorneys for Petitioner/Plaintiff

8 UL CHULA TWO LLC

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**07/06/2021** at 02:45:00 PM

Clerk of the Superior Court  
By Abraham Barragan, Deputy Clerk

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 UL CHULA TWO LLC,

13 Petitioner/Plaintiff,

14 vs.

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

18 Respondents/Defendants,

19 MARCH AND ASH CHULA VISTA, INC.;  
20 TD ENTERPRISE LLC; and DOES 23  
through 50,

21 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]

**PROOF OF SERVICE**

Judge: Hon. Richard E. L. Strauss  
Date: May 12, 2021  
Time: 9:00 a.m.  
Dept.: C-75

Action Filed: November 13, 2020  
Trial Date: None Set

22  
23 At the time of service, I was over 18 years of age and not a party to this action.

24 My business address is 550 West C Street, Suite 1700, San Diego, CA 92101.

25 On July 6, 2021, I served true copies of the following document(s):

26 **(1) NOTICE OF APPEAL (UNLIMITED CIVIL CASE)**

27 ///

28 ///



I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

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*Attorneys for TD Enterprise LLC*

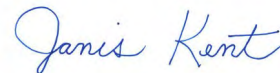
*Attorneys for March and Ash Chula Vista, Inc.*

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address janis.kent@lewisbrisbois.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on July 6, 2021, at San Diego, California.



Janis Kent

# EXHIBIT 14

**SUPERIOR COURT OF CALIFORNIA**  
**County of SAN DIEGO**

**Register of Actions Notice**

Case Number:	37-2020-00041554-CU-MC-CTL	Filing Date:	11/13/2020
Case Title:	UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]	Case Age:	216 days
Case Status:	Appeal	Location:	Central
Case Category:	Civil - Unlimited	Judicial Officer:	Richard E. L. Strauss
Case Type:	Misc Complaints - Other	Department:	C-75

**Future Events**

Date	Time	Department	Event
No future events			

**Participants**

Name	Role	Representation
CHULA VISTA CITY MANAGER	Respondent, Respondent on Appeal	Self-Represented; Shamos, Alena; Slentz, Matthew C.
City of Chula Vista	Respondent, Respondent on Appeal	Self-Represented; Shamos, Alena; Slentz, Matthew C.
March and Ash Chula Vista Inc	Defendant, Respondent on Appeal	RILEY, HEATHER S; Self-Represented
TD Enterprise LLC	Defendant, Respondent on Appeal	Self-Represented; Tencer, Philip C
UL CHULA TWO LLC	Petitioner, Appellant	Brucker, Gary K Jr

**Representation**

Name	Address	Phone Number
BRUCKERJR, GARY K	LEWIS BRISBOIS BISGAARD AND SMITH LP 550 W C Street 1700 San Diego CA 92101	(619) 233-1006
MARCH AND ASH CHULA VISTA INC	Not Available	
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SHAMOS, ALENA	COLANTUONO HIGHSMITH & WHATLEY PC 440 STEVENS Avenue 200 SOLANA BEACH CA 92075	(213) 542-5700
SLENTZ, MATTHEW C	440 Stevens Avenue 200 Solana Beach CA 92075	(213) 542-5700
TD ENTERPRISE LLC	Not Available	
TENCER, PHILIP C	12520 High Bluff Drive 230 San Diego CA 92130	

ROA#	Entry Date	Short/Long Entry	Filed By
1	11/13/2020	Petition for Writ of Mandate filed by UL CHULA TWO LLC. Refers to: City of Chula Vista; CHULA VISTA CITY MANAGER; TD Enterprise LLC; March and Ash Chula Vista Inc	UL CHULA TWO LLC (Petitioner)
2	11/13/2020	[A document for ROA# 2]	
2	11/13/2020	Civil Case Cover Sheet filed by UL CHULA TWO LLC. Refers to: City of Chula Vista; CHULA VISTA CITY MANAGER	UL CHULA TWO LLC (Plaintiff)
3	11/13/2020	Case assigned to Judicial Officer Taylor, Timothy.	
4	11/16/2020	Case initiation form printed.	
5	11/16/2020	[Another document for ROA# 5]	
5	11/16/2020	[Another document for ROA# 5]	

5	11/16/2020	E-filing transaction partially accepted.	
6	11/17/2020	Notice of Related Case filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
7	11/16/2020	Original Summons filed by UL CHULA TWO LLC. Refers to: City of Chula Vista; CHULA VISTA CITY MANAGER	UL CHULA TWO LLC (Petitioner)
8	11/17/2020	Summons issued.	
9	11/20/2020	Proof of Service by Mail filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
10	12/02/2020	Notice of Related Case filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
11	12/21/2020	Case reassigned from Judge Taylor, Timothy to Richard Strauss effective 12/21/2020	
12	01/12/2021	Motion Hearing (Civil) scheduled for 04/30/2021 at 09:00:00 AM at Central in C-75 Richard E. L. Strauss.	
13	11/18/2020	Amendment to Complaint/Cross-Complaint naming Doe (Doe 21) filed by UL CHULA TWO LLC. Refers to: TD Enterprise LLC	UL CHULA TWO LLC (Petitioner)
14	11/18/2020	Amendment to Complaint/Cross-Complaint naming Doe (Doe 22) filed by UL CHULA TWO LLC. Refers to: March and Ash Chula Vista Inc	UL CHULA TWO LLC (Petitioner)
15	01/13/2021	Amendment to Complaint/Cross-Complaint naming Doe (Doe 22) filed by UL CHULA TWO LLC. Refers to: March and Ash Chula Vista Inc	UL CHULA TWO LLC (Petitioner)
16	01/13/2021	Amendment to Complaint/Cross-Complaint naming Doe (Doe 21) filed by UL CHULA TWO LLC. Refers to: TD Enterprise LLC	UL CHULA TWO LLC (Petitioner)
17	01/14/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
18	01/14/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
19	01/20/2021	Ex Parte scheduled for 02/02/2021 at 09:00:00 AM at Central in C-75 Richard E. L. Strauss.	
20	01/19/2021	Motion for Preliminary Injunction filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
21	01/19/2021	Memorandum of Points and Authorities (in support of motion for preliminary injunction) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
22	01/19/2021	Declaration - Other (of Willie Senn in support of motion for preliminary injunction) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
23	01/19/2021	Declaration - Other (of Gary K Brucker Jr in support of motion for preliminary injunction) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
24	01/19/2021	Declaration - Other (appendix of exhibits in support of motion for preliminary injunction) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
25	01/19/2021	Proposed Order (granting order on motion for preliminary injunction) submitted by UL CHULA TWO LLC received but not filed on 01/19/2021.	UL CHULA TWO LLC (Petitioner)
26	01/19/2021	Proof of Service (motion, memorandum, declarations, proposed order) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
27	01/27/2021	Hearing on Petition scheduled for 06/18/2021 at 09:00:00 AM at Central in C-75 Richard E. L. Strauss.	
28	01/28/2021	The Ex Parte was rescheduled to 02/04/2021 at 09:00:00 AM in C-75 before Richard E. L. Strauss at Central.	
29	01/28/2021	Ex Parte scheduled for 02/04/2021 at 09:00:00 AM at Central in C-75 Richard E. L. Strauss.	
30	02/01/2021	Ex Parte Application - Other and Supporting Documents (for TRO) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)

31	02/01/2021	Proposed Order (granting order on ex parte) submitted by UL CHULA TWO LLC received but not filed on 02/01/2021.	UL CHULA TWO LLC (Petitioner)
32	02/01/2021	Proof of Service (ex parte, proposed order) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
33	02/03/2021	Opposition - Other (to petitioner's ex parte for TRO) filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
34	02/03/2021	Declaration - Other (of David Kramer in support of opposition) filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
35	02/03/2021	Opposition - Other (to ex parte for TRO) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
36	02/03/2021	Declaration - Other (of Alena Shamos in support of opposition to ex parte for TRO) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
37	02/03/2021	Opposition - Other (to ex parte for TRO) filed by March and Ash Chula Vista, Inc..	March and Ash Chula Vista Inc (Interested Party)
38	02/03/2021	Proof of Service (opposition) filed by March and Ash Chula Vista, Inc..	March and Ash Chula Vista Inc (Interested Party)
39	02/04/2021	Notice - Other (OF RESCHEDULED HEARING) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
42	02/04/2021	Motion Hearing (Civil) continued pursuant to Court's motion to 03/26/2021 at 09:00AM before Judge Richard E. L. Strauss.	
43	02/04/2021	Minutes finalized for Ex Parte heard 02/04/2021 09:00:00 AM.	
44	02/04/2021	Appointment of Official Reporter Pro Tempore (Stephanie Bryant, CSR#13160) filed by The Superior Court of San Diego.	
45	02/11/2021	Order - Other (Amended Order Granting Ex Parte Application) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
46	02/11/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
47	02/16/2021	Answer filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
48	03/10/2021	Notice - Other (of certification) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
49	03/15/2021	Opposition to Noticed Motion and Supporting Declarations filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
50	03/15/2021	Declaration - Other filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
51	03/15/2021	Proof of Service filed by TD Enterprise LLC.	TD Enterprise LLC (Defendant)
52	03/19/2021	Reply filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
53	03/19/2021	Declaration - Other filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
54	03/19/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
55	03/22/2021	Opposition to Noticed Motion and Supporting Declarations filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
56	03/25/2021	Tentative Ruling for Motion Hearing (Civil) published.	
61	03/26/2021	Motion Hearing (Civil) continued pursuant to Court's motion to 05/21/2021 at 09:00AM before Judge Richard E. L. Strauss.	
62	03/26/2021	Hearing on Petition continued pursuant to Court's motion to 05/21/2021 at 09:00AM before Judge Richard E. L. Strauss.	
63	03/26/2021	Minutes finalized for Motion Hearing (Civil) heard 03/26/2021 09:00:00 AM.	
64	03/26/2021	Appointment of Official Reporter Pro Tempore (Kim Ross, CSR#7842) filed by The Superior Court of San Diego.	

65	04/02/2021	Motion - Other (MOTION FOR WRIT OF MANDATE) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
66	04/02/2021	Proposed Order submitted by UL CHULA TWO LLC received but not filed on 04/02/2021.	UL CHULA TWO LLC (Petitioner)
67	04/02/2021	Declaration - Other (DECLARATION OF NATHAN SHAMAN) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
68	04/02/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
69	04/02/2021	Request for Judicial Notice filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
70	04/02/2021	Memorandum of Points and Authorities filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
71	04/02/2021	Exhibit List (APPENDIX OF EXHIBITS) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
72	04/06/2021	Answer filed by March and Ash Chula Vista Inc.	March and Ash Chula Vista Inc (Defendant)
73	04/06/2021	Proof of Service filed by March and Ash Chula Vista Inc.	March and Ash Chula Vista Inc (Defendant)
74	03/15/2021	Opposition - Other filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
75	04/07/2021	[Another document for ROA# 75]	
75	04/07/2021	E-filing transaction partially accepted.	
76	04/09/2021	Answer filed by CHULA VISTA CITY MANAGER; City of Chula Vista. Refers to: UL CHULA TWO LLC	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
77	04/13/2021	Notice of Lodgment (of the administrative record) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
78	04/13/2021	Notice of Lodgment (of the administrative record) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
79	04/23/2021	Notice of Lodgment filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
80	04/30/2021	Opposition - Other (Joint Opposition to Petition) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
81	04/30/2021	Declaration - Other (Appendix of evidence) filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
82	04/30/2021	Objections filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent); City of Chula Vista (Respondent)
83	05/14/2021	Reply filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
84	05/14/2021	Declaration - Other (Excerpts of Administrative Record) filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
85	05/14/2021	Response filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
86	05/14/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
87	05/20/2021	Tentative Ruling for Hearing on Petition published.	
88	05/21/2021	Minutes finalized for Multiple Events heard 05/21/2021 09:00:00 AM.	
89	05/21/2021	Appointment of Official Reporter Pro Tempore (Stephanie Bryant, CSR#13160) filed by The Superior Court of San Diego.	

90	06/17/2021	Judgment was entered as follows: Judgment entered for March and Ash Chula Vista Inc;TD Enterprise LLC;CHULA VISTA CITY MANAGER;City of Chula Vista and against UL CHULA TWO LLC for \$ 0.00, punitive damages: \$ 0.00, attorney fees: \$ 0.00, interest: \$ 0.00, prejudgment costs: \$ 0.00, other costs: \$ 0.00, amount payable to court: \$ .00, for a grand total of \$ 0.00.	
91	06/17/2021	Judgment filed by UL CHULA TWO LLC. Refers to: TD Enterprise LLC; March and Ash Chula Vista Inc	UL CHULA TWO LLC (Petitioner)
92	07/01/2021	Notice of Entry of Judgment filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
93	07/06/2021	[Another document for ROA# 93]	
93	07/06/2021	Notice of Appeal filed by UL CHULA TWO LLC. Refers to: CHULA VISTA CITY MANAGER; City of Chula Vista; TD Enterprise LLC; March and Ash Chula Vista Inc	UL CHULA TWO LLC (Appellant)
94	07/06/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
95	07/16/2021	Appellant's Notice Designating Record on Appeal filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Appellant)
96	07/16/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
97	07/21/2021	Appellant's Notice Designating Record on Appeal filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Appellant)
98	07/21/2021	Proof of Service filed by UL CHULA TWO LLC.	UL CHULA TWO LLC (Petitioner)
99	07/26/2021	Respondent's Notice Designating Record on Appeal filed by CHULA VISTA CITY MANAGER; City of Chula Vista.	CHULA VISTA CITY MANAGER (Respondent On Appeal); City of Chula Vista (Respondent On Appeal)