

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE		COURT OF APPEAL CASE NUMBER (if known): D079215
ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: Lann G. McIntyre (SBN 106067); Gary K. Brucker, Jr. (SBN 238644) FIRM NAME: Lewis Brisbois Bisgaard & Smith LLP STREET ADDRESS: 550 West C Street, Suite 1700 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: (619) 233-1006 FAX NO.: (619) 233-8627 E-MAIL ADDRESS: lann.mcintyre@lewisbrisbois.com; gary.brucker@lewisbrisbois.com ATTORNEY FOR (name): Petitioner and Plaintiff UL Chula Two LLC		FOR COURT USE ONLY
APPELLANT: UL CHULA TWO LLC RESPONDENT: CITY OF CHULA VISTA, ET AL.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: CENTRAL DIVISION		
JUDGES (all who participated in case): Richard E. L. Strauss (Dept. C-75)		SUPERIOR COURT CASE NUMBER: 37-2020-00041554-CU-MC-CTL
CIVIL CASE INFORMATION STATEMENT		
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).		

PART I – APPEAL INFORMATION**1. APPEALABILITY****a. Appeal is from:**

- ☐ judgment after jury trial.
☒ judgment after court trial.
☐ default judgment.
☐ judgment after an order granting a summary judgment motion.
☐ judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430.
☐ judgment of dismissal after an order sustaining a demurrer.
☐ an order after judgment under Code Civ. Proc., § 904.1(a)(2).
☐ an order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13).
☐ Other (describe and specify code section that authorizes this appeal):

b. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- ☒ Yes ☐ No (If no, please explain why the judgment is appealable):

2. TIMELINESS OF APPEAL (Provide all applicable dates.)

- a.** Date of entry of judgment or order appealed from: June 17, 2021
b. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104: July 1, 2021
c. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?
☐ Yes ☒ No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

- d.** Date notice of ☒ appeal or ☐ cross-appeal filed: July 6, 2021

3. BANKRUPTCY OR OTHER STAY

- Is there a related bankruptcy case or a court-ordered stay that affects this appeal? ☐ Yes ☒ No
 (If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:
UL CHULA TWO LLC v. CITY OF CHULA VISTA, ET AL.

APPELLATE COURT CASE NUMBER:
D079215

4. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment 4.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

☐ Yes ☒ No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

5. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

☐ Yes ☒ No (*If yes, please indicate the rule or statute that applies*)

- | | |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party) | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat) |
| <input type="checkbox"/> Bus. & Prof. Code, § 16750.2 (Antitrust) | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act) | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising) | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act) |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations) |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing) | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
| | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA) |
| | <input type="checkbox"/> Other (specify statute): |

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

1. Nature of action (*check all that apply*):

- a. ☐ Conservatorship
- b. ☐ Contract
- c. ☐ Eminent domain
- d. ☐ Equitable action (1) ☐ Declaratory relief (2) ☐ Other (*describe*):
- e. ☐ Family law
- f. ☐ Guardianship
- g. ☐ Probate
- h. ☐ Real property rights (1) ☐ Title of real property (2) ☐ Other (*describe*):
- i. ☐ Tort
 - (1) ☐ Medical malpractice (2) ☐ Product liability
 - (3) ☐ Other personal injury (4) ☐ Personal property
 - (5) ☐ Other tort (*describe*):
- j. ☐ Trust proceedings
- k. ☐ Writ proceedings in superior court
 - (1) ☒ Mandate (Code Civ. Proc., § 1085) (2) ☒ Administrative mandate (Code Civ. Proc., § 1094.5)
 - (3) ☐ Prohibition (Code Civ. Proc., § 1102) (4) ☐ Other (*describe*):
- l. ☐ Other action (*describe*):

2. ☐ This appeal is entitled to calendar preference/priority on appeal (*cite authority*):

APPELLATE CASE TITLE: UL CHULA TWO LLC v. CITY OF CHULA VISTA, ET AL.	APPELLATE COURT CASE NUMBER: D079215
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PART III – PARTY AND ATTORNEY INFORMATION

In the spaces below or on a separate page or pages, list all the parties and all their attorneys of record who will participate in the appeal. For each party, provide all of the information requested on the left side of the page. On the right side of the page, if a party is self-represented please check the appropriate box and provide the party's mailing address, telephone number, fax number, and e-mail address. If a party is represented by an attorney, on the right side of the page, check the appropriate box and provide all of the requested information about that party's attorney.

☐ Responses to Part III are attached instead of below

Name of Party: UL Chula Two LLC Appellate court designation: <input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Lann G. McIntyre / Gary K. Brucker, Jr. State Bar no: 106067 / 238644 Firm name: Lewis Brisbois Bisgaard & Smith LLP Mailing address: 550 West C Street, Suite 1700, San Diego, CA 92101 Telephone no.: (619) 233-1006 Fax no: (619) 233-8627 Email address: lann.mcintyre@lewisbrisbois.com
Name of Party: City of Chula Vista Appellate court designation: <input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Alena Shamos / Matthew C. Slentz State Bar no: 216548 / 285143 Firm name: Colantuono, Highsmith & Whatley, PC Mailing address: 440 Stevens Avenue, Suite 200, Solana Beach, CA 92075 Telephone no.: (858) 682-3665 Fax no: Email address: ashamos@chwlaw.us / mslentz@chwlaw.us
Name of Party: Chula Vista City Manager Appellate court designation: <input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Alena Shamos / Matthew C. Slentz State Bar no: 216548 / 285143 Firm name: Colantuono, Highsmith & Whatley, PC Mailing address: 440 Stevens Avenue, Suite 200, Solana Beach, CA 92075 Telephone no.: (858) 682-3665 Fax no: Email address: ashamos@chwlaw.us / mslentz@chwlaw.us
Name of Party: March and Ash Chula Vista, Inc. Appellate court designation: <input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (specify): Real Party in Interest	<input checked="" type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: Heather S. Riley / Rebecca H. Williams State Bar no: 214482 / 328320 Firm name: Allen Matkins Leck Gamble Mallory & Natsis LLP Mailing address: 600 West Broadway, Suite 2700, San Diego, CA 92101 Telephone no.: (619) 233-1155 Fax no: (619) 233-1158 Email address: hriley@allenmatkins.com / bwilliams@allenmatkins.com

☒ Additional pages attached

Date: August 3, 2021

This statement is prepared and submitted by:

► /s/ Lann G. McIntyre

(SIGNATURE OF ATTORNEY OR SELF-REPRESENTED PARTY)

Lann G. McIntyre

APPELLATE CASE TITLE:
UL CHULA TWO LLC v. CITY OF CHULA VISTA, ET AL.

APPELLATE COURT CASE NUMBER:
D079215

NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, THE MAILING OR DELIVERY MUST BE PERFORMED BY SOMEONE WHO IS NOT A PARTY TO THE APPEAL. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

☐ Mail ☐ Personal Service ☐ Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):

PLEASE SEE ATTACHED PROOF OF SERVICE

3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
 - (1) I enclosed a copy in an envelope **and**
 - (a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:
 - c. ☐ **Electronic service.** My electronic service address is (*specify*):
I electronically served a copy as follows:
 - (1) Name of person served:
 - (2) Electronic service address of person served:
 - (3) On (*date*):

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

SHORT TITLE: UL CHULA TWO LLC v. CITY OF CHULA VISTA, ET AL.	CASE NUMBER: D079215
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Additional Page to
Part III of Civil Case

ATTACHMENT (Number): Info. Statement

(This Attachment may be used with any Judicial Council form.)

Name of Party: **TD Enterprise LLC**

Appellate Court Designation: Respondent; Trial Court Designation: Real Party in Interest

Represented by Attorney - Name of Attorney: Philip C. Tencer (SBN 173818)

Firm Name: TencerSherman LLP

Mailing Address: 12520 High Bluff Drive, Suite 240, San Diego, CA 92130

Telephone No.: (858) 408-6901; Fax No.: (858) 754-1260

E-Mail Address: Phil@TencerSherman.com

Name of Party: **TD Enterprise LLC**

Appellate Court Designation: Respondent; Trial Court Designation: Real Party in Interest

Represented by Attorney - Name of Attorney: David C. Kramer (SBN 298672)

Firm Name: Vicente Sederberg LLP

Mailing Address: 633 West 5th Street, 26th Floor, Los Angeles, CA 90071

Telephone No.: (917) 929-0248; Fax No.: (303) 860-4505

E-Mail Address: davidckramer@gmail.com

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 5 of 5

(Add pages as required)

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

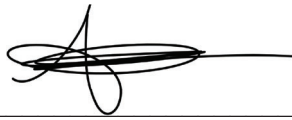


Honorable Richard E. L. Strauss
Judge of the Superior Court

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

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 Café* 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 Café*) 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 Café* 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 Café 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 Café 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:



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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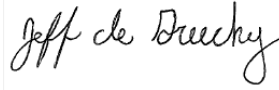
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The documents were served by the following means:

☒ (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.

4 

5

Jeff de Gruchy

PROOF OF SERVICE

UL Chula Two LLC vs. City of Chula Vista, a California public entity; Chula Vista City Manager; and DOES 1-20; March and Ash Chula Vista, Inc., TD Enterprise LLC, and DOES 23 through 50 (Real Parties in Interest)
Fourth Civil Number D079215

I, Janis Kent, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 West C Street, Suite 1700, San Diego, California 92101.

On August 3, 2021, I served the following document described as **CIVIL CASE INFORMATION STATEMENT** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the attached service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

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

Executed on August 3, 2021, at San Diego, California.

/s/ Janis Kent

Janis Kent

SERVICE LIST

UL Chula Two LLC vs. City of Chula Vista, a California public entity; Chula Vista City Manager; and DOES 1-20; March and Ash Chula Vista, Inc., TD Enterprise LLC, and DOES 23 through 50 (Real Parties in Interest)
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STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	<i>PROOF OF SERVICE</i> STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1
Case Name: UL Chula Two LLC v. City of Chula Vista et al.	
Case Number: D079215	
Lower Court Case Number: 37-2020-00041554-CU-WM-CTL	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **lann.mcintyre@lewisbrisbois.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
STATEMENT - CIVIL CASE INFORMATION STATEMENT	UL Chula Two - Civil Case Information Statement - FINAL 8.3.2021

Service Recipients:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/3/2021

Date

/s/Janis Kent

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm