

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,

*Defendant and Respondent.*

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From the Superior Court of the State of California  
For the County of San Diego  
Case No. 37-2020-00041554-CU-WM-CTL  
The Honorable Richard E. L. Strauss, Dept. 75

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**APPELLANT'S APPENDIX**

**[VOLUME 2 OF 2; PAGES 798-1183]**

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**UL CHULA TWO LLC**

## CHRONOLOGICAL INDEX

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
1.	Petition for Writ of Mandamus (Code Civ. Proc. §§ 1085, 1094.5, 1094.6); and Complaint for Declaratory and Injunctive Relief	11/13/20	1	10-265
2.	Amendment to Complaint naming TD Enterprise LLC	11/18/20	1	266
3.	Amendment to Complaint naming March and Ash Chula Vista, Inc.	11/18/20	1	267
4.	Petitioner/Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Stay of Decision	1/19/21	1	268-270
5.	Petitioner/Plaintiff's Memorandum of Points and Authorities in Support of Its Motion for Preliminary Injunction and Stay of Decision	1/19/21	1	271-289
6.	Declaration of Willie Senn in Support of Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision	1/19/21	1	290-292

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
7.	Notice of <i>Ex Parte</i> Application by Petitioner UL Chula Two LLC for Temporary Restraining Order or, In the Alternative, for an Order Advancing the Hearing on the Motion for Preliminary In junction; Memorandum of Points and Authorities in Support Thereof; Declaration of Gary K. Brucker Jr. In Support Thereof	2/1/21	1	293-519
8.	Amended Order Granting <i>Ex Parte</i> Petitioner UL Chula Two LLC for Temporary Restraining Order or, In the Alternative, for an Order Advancing the Hearing on the Motion for Preliminary In junction	2/11/21	1	520-521
9.	Notice of Certification and Future Lodgment of the Administrative Record	3/10/21	1	522-531
10.	Minute Order	3/26/21	1	532
11.	Notice of Entry of Order	3/30/21	1	533-538
12.	UL Chula Two LLC's Notice of Motion and Motion for Writ of Mandate	4/2/21	1	539-541
13.	UL Chula Two LLC's Memorandum of Points and Authorities in Support of Petition for Writ of Mandate	4/2/21 20.	1	542-565

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
14.	Declaration of Nathan Shaman in Support of Petitioner/Plaintiff's Motion for Writ of Mandate	4/2/21	1	566-569
15.	Petitioner/Plaintiff's Request of Judicial Notice in Support of Motion for Writ of Mandate	4/2/22	1	570-571
16.	Plaintiff UL Chula Two LLC Appendix of Exhibits in Support of Motion for Writ of Mandate	4/2/21	1	572-797
17.	Notice of Lodgment of the Administrative Record	4/13/21	2	807-810
18.	Joint Opposition to Petition of Writ of Mandate by City of Chula Vista, Chula Vista Manager and Real Parties in Interest March and Ash Chula Vista and TD Enterprises LLC	4/30/21	2	811-841
19.	Appendix of Evidence in Support of Joint Opposition to Petition for Writ of Mandate by City of Chula Vista, Chula Vista Manager and Real Parties in Interest March and Ash Chula Vista and TD Enterprises LLC	4/30/21	2	842-847
20.	Objections to Petitioner's Request for Judicial Notice and Declaration of Nathan Shaman	4/30/21	2	848-857



NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
21.	Petitioner/Plaintiff's UL Chula Two LLC's Reply Brief in Support of Petition of Writ of Mandate	5/14/21	2	858-868
22.	Petitioner/Plaintiff's UL Chula Two LLC's Excerpts of Administrative Record in Support of Petition of Writ of Mandate	5/14/21	2	869-1123
23.	Petitioner/Plaintiff's UL Chula Two LLC's Response to Respondent and Real Parties in Interest's Evidentiary Objections	5/14/21	2	1124-1134
24.	Minute Order Denying Petition for Writ of Mandate and Preliminary Injunction	5/21/21	2	1135-1138
25.	Judgment	6/17/21	2	1139-1148
26.	Notice of Entry of Judgment	7/1/21	2	1149-1160
27.	Notice of Appeal	7/6/21	2	1161-1165
28.	Appellant's Amended Notice Designating Record on Appeal	7/21/21	2	1166-1173
29.	Respondent's Notice Designating Record on Appeal	7/26/21	2	1174-1178
30.	Register of Actions	N/A	2	1179-1183

## ALPHABETICAL INDEX

NO.	DOCUMENT(S)	DATE	VOL.	PAGE(S)
8.	Amended Order Granting <i>Ex Parte</i> Petitioner UL Chula Two LLC for Temporary Restraining Order or, In the Alternative, for an Order Advancing the Hearing on the Motion for Preliminary In junction	2/11/21	1	520-521
3.	Amendment to Complaint naming March and Ash Chula Vista, Inc.	11/18/20	1	267
2.	Amendment to Complaint naming TD Enterprise LLC	11/18/20	1	266
28.	Appellant's Amended Notice Designating Record on Appeal	7/21/21	2	1166-1173
19.	Appendix of Evidence in Support of Joint Opposition to Petition for Writ of Mandate by City of Chula Vista, Chula Vista Manager and Real Parties in Interest March and Ash Chula Vista and TD Enterprises LLC	4/30/21	2	842-847
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**Exempt from Filing Fees  
Government Code § 6103**

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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**  
10

11 UL CHULA TWO LLC,  
12 Petitioner/Plaintiff,  
13 v.  
14 CITY OF CHULA VISTA, a California public  
entity; CHULA VISTA CITY MANAGER,  
15 and DOES 1 through 20,  
16 Respondents/Defendants.  
17 MARCH AND ASH CHULA VISTA, INC.; TD  
ENTERPRISE LLC; and DOES 23 through 50,  
18 Real Parties In Interest.  
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**CASE NO. 37-2020-00041554-CU-WM-CTL**  
**[Related To Case Nos. 2020-00041802-CUMC-**  
**CTL; 37-2020-00033446-CU-MC-CTL]**  
*Unlimited Jurisdiction*

(Case assigned to Hon. Richard E. L. Strauss,  
Dept. C-75)

**[IMAGED FILE]**

**NOTICE OF LODGMENT OF THE  
ADMINISTRATIVE RECORD**

Department: C-75

Complaint Filed: November 13, 2020  
Trial Date: June 18, 2021

24 **TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR**  
25 **ATTORNEYS OF RECORD:**

26 **PLEASE TAKE NOTICE** that Respondents and Defendants City of Chula Vista and  
27 Chula Vista City Manager (jointly, “City”) lodged the administrative record in this case in  
28 Department C-75 of the above-entitled Court on April 13, 2021. The City lodged the record in PDF

1 format via flash drive, as directed by the Court on March 26, 2021. The Administrative Record is in  
2 electronic format bookmarked tabs within one PDF formatted file, (1) video, and an index. The tabs  
3 are numbered one (1) through (16). The record comprises 428 pages of documents, excluding the  
4 index. The Bates Numbers are AR00001 through AR00428. The index is two (2) pages long.

5 Respectfully submitted,

6 DATED: April 13, 2021

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



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7  
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9 ALENA SHAMOS  
10 MATTHEW C. SLENTZ  
11 Attorneys for Respondents/Defendants,  
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13 CITY MANAGER  
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**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us. On April 13, 2021, I served the document(s) described as **NOTICE OF LODGMENT OF THE ADMINISTRATIVE RECORD** on the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on April 13, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on April 13, 2021, at Pasadena, California.

  
\_\_\_\_\_  
Shoeba Hassan



**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **FOR THE COUNTY OF SAN DIEGO, CENTRAL COURTHOUSE**

22  
23 UL CHULA TWO LLC,

24 Plaintiffs,

25 v.

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

Defendants.

**CASE NO. 37-2020-00041554-CU-WM-CTL**  
**[Related To Case Nos. 2020-00041802-**  
**CUMC-CTL; 37-2020-00033446-CU-MC-**  
**CTL]**

*Unlimited Jurisdiction*

(Case assigned to Hon. Judge Richard E. L.  
Strauss, Dept. C-75)

**JOINT OPPOSITION TO PETITION**  
**FOR WRIT OF MANDATE BY CITY OF**  
**CHULA VISTA, CHULA VISTA CITY**  
**MANAGER AND REAL PARTIES IN**

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

3 Real Parties in Interest.

**INTEREST MARCH AND ASH CHULA  
VISTA AND TD ENTERPRISE LLC**

Complaint Filed: November 13, 2020

Hearing Date: May 21, 2021

Time: 9:00 a.m.

Dept.: C-75

## TABLE OF CONTENTS

### Page(s)

I.	INTRODUCTION .....	8
II.	STATEMENTS OF FACTS .....	8
A.	The City Regulates Commercial Cannabis .....	8
B.	Petitioner’s Application, Denial, and Appeal.....	9
C.	The City’s Exhibits .....	11
D.	The City Manager’s Decision .....	13
III.	ARGUMENT .....	13
A.	Petitioner Cannot Meet its Burden.....	13
B.	The Court Should Reject Petitioner’s Extra-Record Evidence .....	14
C.	The City Properly Denied Petitioner’s Application .....	16
1.	Regulation of Cannabis Dispensaries Is Within a City’s Police Power .....	16
2.	Mr. Senn’s Prior Prosecution for Zoning Law Violations Disqualified Petitioner .....	17
3.	The Sale of Medical Cannabis Falls within the Definition of “Commercial Cannabis Activity” .....	19
4.	Petitioner Misinterprets the Term “Jurisdiction” .....	22
D.	The City Manager’s Findings Were Supported by Substantial Evidence .....	22
E.	The City Did Not Abuse Its Discretion.....	24
F.	The Administrative Hearing Did Not Violate Due Process .....	24
1.	The City Attorney Had No Conflict.....	24
2.	The City Provided Sufficient Notice.....	26
G.	The Injunctive Relief Sought in the Petition Is Too Broad.....	27
IV.	CONCLUSION.....	28

## TABLE OF AUTHORITIES

Page(s)

### Federal Cases

<i>Vill. of Euclid, Ohio v. Ambler Realty Co.</i> (1926) 272 U.S. 365 .....	18
--	----

### State Cases

<i>Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement</i> (2020) 9 Cal.5th 1032 .....	21
<i>Arambula v. Union Carbide Corp.</i> (2005) 128 Cal.App.4th 333 .....	27
<i>Barnes v. Wong</i> (1995) 33 Cal.App.4th 390 .....	13
<i>BreakZone Billiards v. City of Torrance</i> (2000) 81 Cal.App.4th 1205 .....	14
<i>California Aviation Council v. County of Amador</i> (1988) 200 Cal.App.3d 337 .....	19
<i>California Hotel &amp; Motel Assn. v. Industrial Welfare Com.</i> (1979) 25 Cal.3d 200 .....	21
<i>Carlton v. Quint</i> (2000) 77 Cal.App.4th 690 .....	27
<i>City of Claremont v. Kruse</i> (2009) 177 Cal.App.4th 1153 .....	16, 18
<i>City of Corona v. Naulls</i> (2008) 166 Cal.App.4th 418 .....	18
<i>City of Riverside v. Inland Empire Patients Health &amp; Wellness Center, Inc.</i> (2013) 56 Cal.4th 729 .....	16
<i>City of Vallejo v. NCORP4, Inc.</i> (2017) 15 Cal.App.5th 1078 .....	16, 17, 19, 22
<i>Clews Land &amp; Livestock, LLC v. City of San Diego</i> (2017) 19 Cal.App.5th 161 .....	19
<i>Daily Journal Corp. v. County of Los Angeles</i> (2009) 172 Cal.App.4th 1550 .....	24

1	<i>People ex rel. Dept. of Transportation v. Maldonado</i>	
2	(2001) 86 Cal.App.4th 1225 .....	28
3	<i>Fonseca v. City of Gilroy</i>	
4	(2007) 148 Cal.App.4th 1174 .....	17
5	<i>Fort Mojave Indian Tribe v. Department of Health Services</i>	
6	(1995) 38 Cal.App.4th 1574 .....	15, 16
7	<i>Friends of Outlet Creek v. Mendocino County Air Quality Management Dist.</i>	
8	(2017) 11 Cal.App.5th 1235 .....	13
9	<i>Harrington v. City of Davis</i>	
10	(2017) 16 Cal.App.5th 420 .....	14, 22
11	<i>Hauser v. Ventura County Bd. of Supervisors</i>	
12	(2018) 20 Cal.App.5th 572 .....	14
13	<i>IT Corp. v. Solano County Bd. of Supervisors</i>	
14	(1991) 1 Cal.4th 81 .....	18
15	<i>JMS Air Conditioning &amp; Appliance Service, Inc. v. Santa Monica Community College</i>	
16	<i>Dist.</i>	
17	(2018) 30 Cal.App.5th 945 .....	26
18	<i>Kieffer v. Spencer</i>	
19	(1984) 153 Cal.App.3d 954 .....	27
20	<i>Layton v. Merit System Commission</i>	
21	(1976) 60 Cal.App.3d 58 .....	23
22	<i>In re Lucero L.</i>	
23	(2000) 22 Cal.4th 1227 .....	23
24	<i>M.N. v. Morgan Hill Unified School Dist.</i>	
25	(2018) 20 Cal.App.5th 607 .....	14
26	<i>Morongo Band of Mission Indians v. State Water Resources Control Bd.</i>	
27	(2009) 45 Cal.4th 731 .....	24, 25
28	<i>Niles Freeman Equipment v. Joseph</i>	
	(2008) 161 Cal.App.4th 765 .....	19
	<i>Oregel v. American Isuzu Motors, Inc.</i>	
	(2001) 90 Cal.App.4th 1094 .....	14
	<i>People v. Baniani</i>	
	(2014) 229 Cal.App.4th 45 .....	21
	<i>People v. Delgado</i>	
	(2008) 43 Cal.4th 1059 .....	23

1	<i>People v. Wheeler</i>	
2	(1992) 4 Cal.4th 284 .....	23
3	<i>Pitchess v. Superior Court</i>	
4	(1969) 2 Cal.App.3d 644 .....	28
5	<i>Pomona Valley Hospital Medical Center v. Superior Court</i>	
6	(1997) 55 Cal.App.4th 93 .....	14
7	<i>Quintero v. City of Santa Ana</i>	
8	(2003) 114 Cal.App.4th 810 .....	24, 25
9	<i>Tate v. Superior Court</i>	
10	(1975) 45 Cal.App.3d 925 .....	26
11	<i>Today's Fresh Start, Inc. v. Los Angeles County Office of Education</i>	
12	(2013) 57 Cal.4th 197 .....	25
13	<i>Toyota of Visalia, Inc. v. New Motor Vehicle Bd.</i>	
14	(1987) 188 Cal.App.3d 872 .....	15
15	<i>Urgent Care Medical Services v. City of Pasadena</i>	
16	(2018) 21 Cal.App.5th 1086 .....	18
17	<i>Witt Home Ranch, Inc. v. County of Sonoma</i>	
18	(2008) 165 Cal.App.4th 543 .....	25
19	<b>State Statutes</b>	
20	Business & Professions Code,	
21	§ 26001, subd.(f) .....	20
22	§ 26001, subd.(k) .....	20
23	§ 26200(a)(1) .....	16, 19, 22
24	Chula Vista Municipal Code,	
25	§ 5.19.010.....	8, 16, 22
26	§ 5.19.020.....	19, 20, 21
27	§ 5.19.030.....	8
28	§ 5.19.040.....	8
	§ 5.19.050, subd.(A) .....	8
	§ 5.19.050, subd.(A)(1)(e)(i).....	18, 22
	§ 5.19.050, subd.(A)(5).....	9, 27
	§ 5.19.050, subd.(A)(5)(f).....	17, 25
	§ 5.19.050, subd.(A)(5)(f) and (g) .....	10, 13, 17
	§ 5.19.050, subds.(A)(5)(g) and (f).....	25
	§ 5.19.050, subd.(D)(4).....	27
	§ 5.19.090, subd.(B).....	21

1	California Code of Civil Procedure,	
2	§ 1094.5.....	13, 14
3	§ 1094.5, subd.(b) .....	13
4	§ 1094.5, subd.(e).....	15, 16
5	Evidence Code,	
6	§ 1280.....	23
7	Government Code,	
8	§ 11500.....	23
9	§ 11513, subd.(d) .....	23
10	Health & Safety Code,	
11	§ 11018.....	20
12	§ 11032.....	20
13	§ 11362.5 et seq. ....	21
14	<b>Regulations</b>	
15	Chula Vista Cannabis Regulations,	
16	§ 0501, subd.(N)(1).....	9
17	§ 0501, subd.(P)(2) .....	22
18	§ 0501, subd.(P)(4) .....	24
19	§ 0501, subd.(P)(2)(c).....	23
20	<b>Constitutional Provisions</b>	
21	California Constitution,	
22	Article XI, § 7 .....	18
23		
24		
25		
26		
27		
28		



**I. INTRODUCTION**

UL Chula Two, LLC (“Petitioner”), is an unsuccessful applicant dissatisfied with the review process conducted by the City of Chula Vista (“City”) for granting licenses to storefront cannabis retailers in Council District 1. However much Petitioner may disagree with the City’s decision not to award Petitioner a license, Petitioner cannot meet its burden to demonstrate that the City abused its discretion. The decision to deny Petitioner’s application occurred after a complete and thorough administrative process and appeal, and the City’s determination was amply supported by substantial evidence in the record as shown below. Since the City is entitled to deference in interpreting its own municipal code, upholding the City’s well-reasoned decision supports the separation of powers and inter-branch comity. Therefore, the City, March and Ash Chula Vista, Inc. (“M&A”) and TD Enterprise, LLC (“TD”) request that the Court reject Petitioner’s arguments and deny the Verified Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief (“Petition”)<sup>1</sup> in its entirety.

**II. STATEMENTS OF FACTS**

**A. The City Regulates Commercial Cannabis**

On March 16, 2018, the City enacted Ordinance No. 3418, which added Chapter 5.19 (“To Regulate Commercial Cannabis”) to the Chula Vista Municipal Code (“CVMC”). (AR00385–00428.) The purpose of Chapter 5.19 was “to mitigate the negative impacts brought by unregulated Commercial Cannabis Activity ... .” (CVMC § 5.19.010.)

CVMC Chapter 5.19 established a mandatory license for engaging in legal commercial cannabis activity in the City. (CVMC § 5.19.030.) Relevant here, the City restricted the number of “Storefront Retailers” in the City to eight, two for each of the City’s four Council Districts. (CVMC § 5.19.040.) It also established a two-phase application process for obtaining cannabis licenses. During Phase I, which is at issue in this case, applicants must comply with a strict list of application requirements, including demonstrating sufficient management experience and financial assets, as well as providing a viable business plan and site plan. (CVMC § 5.19.050, subd. (A).) The process

<sup>1</sup> As amended by the DOE Amendments naming Real Parties in Interest.

1 included a provisional background review, followed by an interview, that confirmed the applicant’s  
2 relevant experience/qualifications, assets, business plan and operating plan. (AR00363 [Chula Vista  
3 Cannabis Regulations, § 0501, subd. (N)(1)].)

4 Phase I then called for a discretionary review by the Finance Director and “completion of  
5 any and all required background checks” by the Chief of Police. (CVMC § 5.19.050, subd. (A)(5).)  
6 Following the in-depth secondary background check, the Police Chief was allowed to reject Phase I  
7 applications for many reasons, including:

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

12 g. The Applicant, or any **Owner of the Commercial Cannabis Business, Officer, or**  
13 **Manager has conducted, facilitated, caused, aided, abetted, suffered, or**  
14 **concealed unlawful Commercial Cannabis Activity in the City or any other**  
15 **jurisdiction.** (CVMC § 5.19.050, subd. (A)(5)(f) and (g); [emphasis added].)

16 In 2019, the City passed regulations for CVMC Chapter 5.19, including a comprehensive  
17 administrative appeal procedure. (AR00355–00384.)

## 18 **B. Petitioner’s Application, Denial, and Appeal**

19 Petitioner applied in 2019 to be a Storefront Retailer in all four City Council Districts,  
20 including District 1 (Application ID no. 57074), which is the district at issue here. (AR00001–  
21 00116<sup>2</sup>; Pet., ¶ 79.) As part of that application, Petitioner’s principals, including William Senn,  
22 certified under penalty of perjury that they “ha[d] not conducted, facilitated, caused, aided, abetted,  
23 suffered, or concealed unlawful Commercial Cannabis Activity in the City of Chula Vista or in any  
24 other jurisdiction.” (AR00112.) Mr. Senn’s affirmation was accompanied by a letter from Petitioner’s  
25 counsel notifying the City of a “stipulated judgment” with the City of San Diego (“San Diego”) in  
26 *City of San Diego v. The Holistic Café, Inc. et al.*, Case No. 37-2012-00087648-CU-MC-CTL,  
27 which the letter described as containing no admission or adjudication of the civil case filed by San  
28 Diego against Mr. Senn and the Holistic Café. (AR00113–00114.) Petitioner also included with its

<sup>2</sup> The redacted application is part of the administrative record. As these pages are not relied upon by  
the City, M&A and TD in their substantive arguments, they are not included in their entirety in the  
excerpts accompanying this brief, but are instead cited here for the Court’s convenience

1 application a resume for Mr. Senn, in which Mr. Senn listed himself as founder of Holistic Café  
2 (April 2009 – November 2012), which he described as “[o]perating in Hillcrest without issue since  
3 its inception.” (AR00026.) On June 10, 2019, the City notified Petitioner it would be interviewed,  
4 and that it was to pay the required fee for the Police Chief’s in-depth Secondary Background  
5 Review. (AR00118.) In that letter, the City warned Petitioner that review of its application was not  
6 yet approved and reserved the right to reject the application based on applicable law and the City’s  
7 police power authority. (*Ibid.*)

8 On May 6, 2020, the City issued Notices of Decision rejecting the application because Mr.  
9 Senn had been sanctioned by San Diego “for violations of laws or regulations related to unlawful  
10 Commercial Cannabis Activity” and because Mr. Senn “was involved in unlawful Commercial  
11 Cannabis activity in the City of San Diego from approximately 2010 to 2012.” (CVMC § 5.19.050,  
12 subd. (A)(5)(f), (g); AR00119–00122.) The City’s denial was based on Mr. Senn’s unlawful  
13 operation of the Holistic Café, a marijuana dispensary, in San Diego from 2010 to 2012, and San  
14 Diego’s subsequent sanctions. (AR00158–00203.)

15 Petitioner timely appealed the City’s decision to deny a Storefront Retailer license.  
16 (AR00123–00127.) Based on the appeal request, it is clear that Petitioner understood the scope and  
17 intent of the City’s denial as Petitioner’s paperwork focused solely on the San Diego violations and  
18 included a number of arguments that are raised in this litigation. On May 26, 2020, the City provided  
19 notice to Petitioner that its administrative hearing would be on June 10, 2020. (AR00128–00129.)  
20 The City sent an amended notice on May 28, 2020, indicating that (due to the COVID-19 pandemic)  
21 the hearing would take place virtually via WebEx. (AR00130–00131.) Petitioner did not object at  
22 any point to the hearing on the basis that the notice was untimely, nor did Petitioner ask for a  
23 continuance — despite the fact that the Notice of Hearing clearly stated that Petitioner could request  
24 a continuance by submitting an email request to the City Manager. (AR00129 [Notice of Hearing];  
25 AR00231 [Petitioner’s counsel indicating readiness to proceed with hearing]; see generally  
26 AR00225–00301 [transcript of hearing].)

27 On June 5, 2020, the City provided Petitioner with a copy of the evidence the City intended  
28 to use at the hearing, consisting of 16 exhibits. (AR00132–00214 .) That same day, Petitioner filed

1 its appeal brief, which further demonstrated that Petitioner understood the City’s decision was based  
2 on the illegal operation of the Holistic Café. (AR00215–00224.)

3 At the June 10, 2020 administrative appeal hearing, City Manager Gary Halbert (“City  
4 Manager”) acted as the hearing officer, advised by Deputy City Attorney Simon Silva. (AR00302.)  
5 Mr. Senn appeared for Petitioner along with counsel. (*Ibid.*) The City was represented by Deputy  
6 City Attorney Megan McClurg. (*Ibid.*) Chula Vista Police Department Sergeant Mike Varga,  
7 Development Services Director Kelly Broughton and Mathew Eaton of HdL Companies were all  
8 present and testified for the City. (*Ibid.*) In particular, Sergeant Varga testified about the background  
9 check conducted into Mr. Senn and the unlawful operation of the Holistic Café. (AR00241–00275.)  
10 Sergeant Varga also testified, without objection, that San Diego conducted cannabis enforcement  
11 using zoning regulations, rather than criminal sanctions, in and around 2012. (AR00264–00265.)

### 12 **C. The City’s Exhibits**

13 The City Manager received 16 exhibits presented by the City into evidence. (AR00132–  
14 00214; AR00302–00307.) Exhibits 1–7 and 14–16 were received by stipulation. (AR00231–00232;  
15 AR00302.) Petitioner objected to Exhibits 8-13; those documents were admitted through testimony  
16 over those objections. (AR00244–00266.)

17 The exhibits, which included records from San Diego and the San Diego Superior Court,  
18 showed that Holistic Cafe obtained a business license in San Diego by falsely representing its  
19 businesses activity as “the sale of herbal remedy teas and health products.” (City Appeal Ex. 10,  
20 AR00159 and Ex. 12, AR00170.) At some point, San Diego and Holistic Café’s landlord learned  
21 Holistic Café was an illegal marijuana dispensary. Holistic Café’s landlord initiated an unlawful  
22 detainer action to evict the illegal dispensary. (City Appeal Ex. 12, AR00175–00184.) The “Three  
23 Day Notice to Surrender Possession,” dated February 12, 2012, stated, “[y]ou are required to  
24 surrender possession of the premises as you are in violation of zoning laws of the City of San Diego  
25 for operating a medical marijuana dispensary and selling marijuana. Due to illegal activity, you must  
26 cease operation and vacate the premises.” (City Appeal Ex. 12, AR00182.)

27 Holistic Café continued its illegal operations despite the attempted eviction. On May 14 and  
28 May 17, 2012, San Diego conducted limited inspections of the Holistic Café premises. (City Appeal

1 Exs. 8 and 9; AR00158–00171.) On May 16, 2012, San Diego Code Enforcement asked for  
2 permission to conduct a more in-depth inspection, which Jessica McElfresh, acting as Holistic Café’s  
3 Counsel, declined to allow. (City Appeal Ex. 11, AR00172–00173; see also AR00158 [identifying  
4 Ms. McElfresh as agent of Holistic Café].)

5 The inspections resulted in San Diego issuing the Holistic Café a Notice of Violation on May  
6 22, 2012, for operating an unpermitted marijuana dispensary in violation of the San Diego zoning  
7 code. (City Appeal Ex. 8, AR00158–00164.) The Notice of Violation directed Holistic Café to  
8 address numerous code violations, the first being to “[c]ease operating the Marijuana  
9 **Dispensary.**” (Appeal Ex. 8, AR00162 [emphasis in original].)

10 After receiving the Notice of Violation, Holistic Café continued to operate, which forced San  
11 Diego to file a nuisance abatement action on December 14, 2012. (City Appeal Ex. 13, AR00186–  
12 00195.) The Complaint in that case alleged that Mr. Senn, as Chief Executive Officer of the Holistic  
13 Café, conducted unlawful cannabis activity by operating the Holistic Café “as a marijuana  
14 dispensary, which is also commonly known as a collective or cooperative ... within the City of San  
15 Diego.” (*Id.* ¶ 5; AR00187.)

16 Consistent with the aforementioned evidence, the Complaint alleged that the illegal  
17 marijuana dispensary operated between 2010 and 2012, and continued to do so despite the  
18 February 12, 2012 eviction notice and the City’s May 22, 2012 Notice of Violation. (*Id.* ¶¶ 12–33;  
19 AR00188–00191.) Paragraph 15 of the Complaint clearly alleges:

20 SDMC section 1512.0305 and corresponding Table 1512-031 list the permitted uses  
21 in the CN-1A zone in the Mid-City Communities Planned District where the  
22 PROPERTY is located. The operation or maintenance of a marijuana dispensary,  
collective, or cooperation is not one of the listed permitted uses in the SDMC section  
or table.  
23 (AR00189.) Paragraph 16 further asserts that “[t]he operation or maintenance of a marijuana  
24 dispensary is not a permitted use in any zone designation under the [San Diego Municipal Code].”  
25 (*Ibid.*) The Complaint thus prayed for an injunction to restrain and enjoin Ms. Senn’s illegal use. (*Id.*  
26 at pp. 9–10; AR00194–00195.)

27 Holistic Café and Mr. Senn ultimately entered into a stipulated judgement with San Diego,  
28 which did not constitute an admission or an adjudication of the civil case (City Appeal Ex. 13,

AR00196–00203.) The stipulated judgment did, however, enjoin Mr. Senn from operating a marijuana dispensary, required closure of the Holistic Café, and payment of civil penalties. (City Appeal Ex. 13, AR00198–00200, ¶¶ 6–12.) The Stipulated Judgment, Complaint, and the Notice of Violation, establish that San Diego sanctioned Holistic Café for its illegal operation. (City Appeal Ex. 8, AR00158–00164 and Ex. 13, AR00186–00203.)

#### **D. The City Manager’s Decision**

The City Manager considered the proffered evidence, and found it to be both relevant and admissible. (AR00305–00306.) Petitioner presented no evidence at the hearing. (AR00233.) Based on the briefs, the evidentiary documents and oral testimony, the City Manager concluded that San Diego had in fact sanctioned Mr. Senn for his illegal cannabis operation in violation of the San Diego Municipal Code, and therefore, the City Manager issued findings denying Petitioner’s appeal and ruling that Petitioner had not met its burden to show the City’s decision was erroneous. (City Appeal Ex. 8, AR00158–00164; CVMC § 5.19.050, subds. (A)(5)(f), (g); AR00302–00307.) This writ of mandate action followed, challenging the denial of Petitioner’s District 1 application. (Pet., ¶ 79; Pet. Brief, pp. 1–2.) Although Petitioner submitted applications in all four Council Districts, this Petition only asks the Court to issue a writ “commanding the City to set aside its decision rejecting Petitioner’s application ID No. 57074, and order the City to allow Petitioner to proceed to Phase Two of the licensing process” in District 1. (Pet., ¶ 79.)

### **III. ARGUMENT**

#### **A. Petitioner Cannot Meet its Burden**

The standard of review on an administrative writ from a quasi-judicial determination is familiar and briefly stated. “[W]hile mandamus is not available to control the discretion exercised by a public official or board, it is available to correct an abuse of discretion by such party.” (*Barnes v. Wong* (1995) 33 Cal.App.4th 390, 395.) Review is limited to the record before the City in denying Petitioner’s application and appeal (Code Civ. Proc., § 1094.5), and the Court is asked to determine only whether the City followed the law, and if the City’s actions and findings were supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (b); *Friends of Outlet Creek v. Mendocino County Air Quality Management Dist.* (2017) 11 Cal.App.5th 1235, 1244.)

Under the substantial evidence standard, the City’s “**findings are presumed to be supported by the administrative record.**” (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 443 (*Harrington*) [emphasis added].) All “reasonable doubt” must be resolved “in favor of the findings and decision,” and “[i]nferences may constitute substantial evidence as long as they are the product of logic and reason rather than speculation or conjecture.” (*M.N. v. Morgan Hill Unified School Dist.* (2018) 20 Cal.App.5th 607, 616; *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101.)

Petitioner improperly attempts to shift the burden of proof in this case onto the City. As the applicant whose permit was denied, **it is Petitioner who bears the applicable burden:**

Had the [City] decided in [Petitioner's] favor, its findings would have to be supported by substantial evidence. But the [City] decided [Petitioner] failed to carry [its] burden of proof. ... The determination that a party has failed to carry [its] burden of proof is, by its very nature, not required to be supported by substantial evidence, or any evidence at all. It is the lack of evidence of sufficient weight and credibility to convince the trier of fact that results in such a determination.

(*Hauser v. Ventura County Bd. of Supervisors* (2018) 20 Cal.App.5th 572, 576 (*Hauser*); *see also, BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224.) Petitioner must overcome the presumption that the City's findings are supported by the administrative record, and Petitioner “has the burden to show there is no substantial evidence whatsoever to support” those findings. (*Harrington, supra*, 16 Cal.App.5th at p. 443.)

Finally, it is important to remember that Petitioner has no vested right to a cannabis license, and is not entitled to a *de novo* hearing on the merits of its license application. (*Hauser, supra*, 20 Cal.App.5th at p. 575, citing Code Civ. Proc., § 1094.5, subd. (b).)

## **B. The Court Should Reject Petitioner’s Extra-Record Evidence**

Preliminarily, Petitioner has submitted a Request for Judicial Notice and asked the Court to consider its Petition, **28 exhibits** and a Declaration that are not part of the administrative record. “‘The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency.’” (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.) “Section 1094.5 contains limited exceptions to this rule. ‘It is error for the court to permit the record to be augmented, in the absence

1 of a proper preliminary foundation ... showing that one of these exceptions applies.” (*Toyota of*  
2 *Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.)

3 A petitioner may present extra-record evidence in administrative mandate cases only  
4 “[w]here the court finds that there is relevant evidence that, in the exercise of reasonable diligence,  
5 could not have been produced or that was improperly excluded at the hearing before  
6 respondent ... .” (Code Civ. Proc., § 1094.5, subd (e).) Even then, a court reviewing the record for  
7 substantial evidence is limited to “remanding the case to be reconsidered in the light of that [new]  
8 evidence ... .” (*Ibid.*)

9 As an initial matter, Petitioner does not assert that evidence was improperly excluded from  
10 the appeal hearing, and “[r]emand under Code of Civil Procedure section 1094.5, subdivision (e) for  
11 consideration of post-decision evidence generally has been limited to truly new evidence, of  
12 emergent facts.” (*Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th  
13 1574, 1595 (*Fort Mojave*).) As shown below, remand would not apply in this instance as the bulk of  
14 the extra-record material is not new and/or relevant.

15 Here, Petitioner does nothing more than make a conclusory statement that the evidence could  
16 not have been produced at the hearing because it was obtained via Public Records Act (“PRA”)  
17 requests after the fact. Petitioner does not, however, explain why it chose to wait to submit PRA  
18 requests until September of 2020, when the City denied the subject application on May 6, 2020, and  
19 held the administrative hearing on June 10, 2020. Given that the Notice of Hearing allowed for a  
20 continuance, Petitioner could have elected to push the administrative hearing and submit a PRA  
21 request to gather documents prompted by “industry gossip” at any time. (Declaration of Nathan  
22 Shaman, ¶ 9.)

23 With regard to the vast majority of documents included in the PRA responses that pre-date  
24 the May 6, 2020 denial, it is unclear why Petitioner was unable to – in the exercise of reasonable  
25 diligence – present this evidence as part of the administrative appeal.<sup>3</sup> Petitioner’s decision to delay a  
26 PRA request cannot and should not now serve as the basis for judicial notice. Moreover, four  
27

28 <sup>3</sup> It is particularly perplexing why Petitioner could not produce Exhibits 26-29 to the City Manager  
since those four documents are denials issued to Mr. Senn on May 6, 2020.



1 appellate rulings (included as part of Exhibits 11, 13, 16 and 18) post-date the June 10, 2020 hearing  
2 in this matter. Those documents have no bearing on the City Manager’s decision and are therefore  
3 irrelevant to the current litigation.

4 In sum, the City, M&A and TD object to all of the items proffered by Petitioner because the  
5 documents are not a part of the administrative record, and do not meet the standard for opening the  
6 “narrow, discretionary window for additional evidence” in Code of Civil Procedure section 1094.5,  
7 subdivision (e). (*Fort Mojave, supra*, 38 Cal.App.4th at p. 1595.) The Request for Judicial Notice,  
8 and the Appendix of Exhibits (2-29) should therefore be rejected.

9 **C. The City Properly Denied Petitioner’s Application**

10 **I. Regulation of Cannabis Dispensaries Is Within a City’s Police Power**

11 The City has the right to regulate the operation of cannabis dispensaries within its borders.  
12 The operation of a cannabis dispensary is a land use. (*City of Riverside v. Inland Empire Patients*  
13 *Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729; *City of Claremont v. Kruse* (2009) 177  
14 Cal.App.4th 1153 (*City of Claremont*); *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078,  
15 1081, 1088 (*City of Vallejo*)). And a city’s regulation of cannabis dispensaries is a land use function  
16 that falls well within its police power. (*City of Vallejo, supra*, 15 Cal.App.5th at pp. 1081, 1088.)  
17 Accordingly, the City need not license cannabis dispensaries within its city limits, and may place  
18 reasonable restrictions on granting such licenses. (CVMC § 5.19.010; see Bus. & Prof. Code,  
19 § 26200(a)(1); *City of Vallejo, supra*, 15 Cal.App.5th at pp. 1081–1082 [“[s]tate law permitting  
20 medicinal marijuana use and distribution does not preempt ‘the authority of California cities and  
21 counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely  
22 exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance  
23 actions.’”])<sup>4</sup>

24 One such reasonable restriction is the ability to deny a license to applicants who have  
25  
26

27 <sup>4</sup> The California Legislature reinforced local zoning authority over dispensaries enacting the Medicinal and  
28 Adult Use Cannabis Regulation and Safety Act [Cal. SB 94 and AB 133 (2017)], which provides that State  
law does not “supersede or limit existing local authority for... local zoning requirements or local ordinances,  
or enforcement of local license, permit, or other authorization requirements.” (Bus. & Prof. Code, § 26200  
(a)(1).)

1 violated local laws by running illegal dispensaries. Such activities show an applicant has a history of  
2 flouting municipal law, thereby presenting a potential risk to the health and safety of a city's  
3 residents. (See *City of Vallejo, supra*, 15 Cal.App.5th at pp. 1086 [“[P]ast compliance shows a  
4 willingness to follow the law, which suggests future lawful behavior.”]; *Fonseca v. City of Gilroy*  
5 (2007) 148 Cal.App.4th 1174, 1181 [“It is from this fundamental [police] power that local  
6 governments derive their authority to regulate land through planning, zoning, and building  
7 ordinances, thereby protecting public health, safety and welfare.”]) Here, Mr. Senn **operated a**  
8 **cannabis dispensary illegally and continued to do so despite a pending eviction and receipt of a**  
9 **Notice of Violation from San Diego.** The City could, and did, correctly refuse him a license.

## 10 **2. Mr. Senn's Prior Prosecution for Zoning Law Violations Disqualified** 11 **Petitioner**

12 Petitioner argues the City could not deny its license application based on Mr. Senn's illegal  
13 operation of a marijuana business in San Diego and the resulting abatement action filed by San  
14 Diego. (Pet. Brief, pp. 10–15.) Not so. The City acted well within its discretion in disqualifying  
15 Petitioner under CVMC section 5.19.50, subdivisions (A)(5)(f) and (g). Petitioner's attempt at a  
16 backward reading of San Diego's zoning code does not detract from the fact that Mr. Senn was  
17 operating a marijuana dispensary in violation of local law and was “adversely sanctioned or  
18 penalized” by San Diego for such operation. (CVMC § 5.19.050, subd. (A)(5)(f).)

19 Although Petitioner advised the City of the Stipulated Judgment between Mr. Senn and San  
20 Diego with its application, **it did not** disclose the information uncovered by the City's more in-depth  
21 background investigation. (See AR00113–00114.) In that investigation, the City discovered that Mr.  
22 Senn illegally operated the Holistic Café marijuana dispensary for several years, through at least  
23 2012, in a zone that did not permit the use. It is abundantly clear that San Diego issued at least one  
24 notice of violation and, following Mr. Senn's failure to cease the illegal operation, filed a civil action  
25 to abate the illegal use. (See AR00158–00164; AR00186–00203; CVMC § 5.19.050, subd. (A)(5)(f)  
26 and (g).) These concerns were further compounded by the fact that several months before San Diego  
27 issued the Notice of Violation, the Holistic Café's landlord served an eviction notice based on the  
28 illegal operation of a marijuana dispensary, a notice that Mr. Senn apparently disregarded.

1 (AR00182.)

2 As this Court is aware, the California Constitution confers police power to local government  
3 and their electors to determine the allowable land uses within their jurisdictions. (Cal. Const., art. XI,  
4 § 7; *Vill. of Euclid, Ohio v. Ambler Realty Co.* (1926) 272 U.S. 365, 392 [zoning regulations  
5 expressly within city’s police power]; *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th  
6 81, 89 (*IT Corp.*) [“The power of cities and counties to zone land use in accordance with local  
7 conditions is well entrenched.”])

8 “When use of a parcel violates applicable zoning rules, the responsible agency may obtain  
9 abatement—i.e., **removal of the violation and restoration of legal use.**” (*IT Corp., supra*, 1 Cal.4th  
10 at p. 89 [emphasis added].) That is exactly what occurred in 2012, when San Diego filed a  
11 Complaint against Mr. Senn and the Holistic Café and sought to enjoin them “from operating or  
12 maintaining a marijuana dispensary, cooperative, or collective” because “[t]he operation or  
13 maintenance of a marijuana dispensary is not a permitted use in any zone designation under the  
14 SDMC.” (AR00189, ¶ 16.)

15 California “courts have recognized permissive zoning **as a valid method of prohibiting**  
16 **dispensaries.**” (*Urgent Care Medical Services v. City of Pasadena* (2018) 21 Cal.App.5th 1086,  
17 1095 [emphasis added].) Under permissive zoning “where a particular use of land is not expressly  
18 enumerated in a city’s municipal code as constituting a permissible use, it follows that such use  
19 is impermissible.” (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433 (*City of Corona*); see  
20 also *City of Claremont, supra*, 177 Cal.App.4th 1153.) San Diego’s permissive zoning code did not  
21 allow operation of the Holistic Café; hence the numerous administrative and legal steps San Diego  
22 took to shut down the illegal business as a “non-permitted, non-conforming use.” (*City of Corona,*  
23 *supra*, 166 Cal.App.4th at p. 420; see also City Appeal Ex. 8, AR AR00158–00164; Ex. 12,  
24 AR00182 and Ex. 13, AR 00186–00195.)

25 Petitioner tangentially argues “there were no lawful *commercial* cannabis businesses  
26 anywhere in the state of California until voters passed Proposition 64 in 2016.” (Pet. Brief, p. 13  
27 [emphasis in original].) On that basis, Petitioner asserts that no unlawful activity before 2016, may  
28 be the basis for license denial. (*Ibid.*) However, the argument that CVMC section 5.19.050,

subdivision (A)(1)(e)(i) must be interpreted as applying to “activities that are unlawful under the regulatory schemes enacted by the State and City after 2016 and 2018” simply does not follow. (Pet. Brief, p. 14.) The City maintains the discretion to draft an ordinance that allows cannabis dispensaries while requiring a certain amount of experience, and allowing for disqualification of anyone who engaged in past unlawful cannabis activity. (Bus. & Prof. Code, § 26200 (a)(1); *City of Vallejo, supra*, 15 Cal.App.5th at p. 1086.) That such a system might winnow otherwise qualified applicants does not invalidate it.

### 3. The Sale of Medical Cannabis Falls within the Definition of “Commercial Cannabis Activity”

Petitioner argues in its Petition that the sale of medicinal cannabis is not covered in the definition of Commercial Cannabis Activity under the CVMC. (Pet. Brief, pp. 12–13.) First, Petitioner failed to exhaust its remedies on this issue by raising the argument before the City Manager during the administrative hearing. (*California Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 341 [“The exhaustion doctrine ... operates as a defense to litigation commenced by persons who have been aggrieved by action taken in an administrative proceeding which has in fact occurred but who have failed to ‘exhaust’ the remedy available to them in the course of the proceeding itself.”]) Exhaustion is jurisdictional (e.g., *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 184), and “issues not presented at an administrative hearing cannot be raised on review” (*Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 787.) As such, Petitioner waived the argument, and it must be rejected.

Should the Court consider this argument, despite the fatal procedural error, the claim also fails on the merits because Petitioner’s proposed dichotomy between “medicinal” cannabis activity on the one hand, and “commercial” cannabis activity on the other, finds no support in the municipal code. Specifically, the CVMC defines “Cannabis” as:

[A]ll parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis.

(CVMC § 5.19.020.) This definition is completely consistent with the definition of Cannabis in the

1 California Uniform Controlled Substances Act (Health & Saf. Code, § 11018) and the Medicinal and  
2 Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) (Bus. & Prof. Code, § 26001, subd.  
3 (f).)<sup>5</sup>

4 Consistent with MAUCRSA, CVMC section 5.19.20 also defines “Commercial Cannabis  
5 Activity” as “the commercial cultivation, possession, manufacture, distribution, processing, storing,  
6 laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis  
7 Products.” The term “sale” is not limited to for-profit transactions, but means “any transaction  
8 whereby, for any consideration, title to Cannabis or Cannabis Products is transferred from one  
9 person to another... .” (*Ibid.*; see also Bus. & Prof. Code, § 26001, subd. (k).)

10 Likewise, CVMC section 5.19.20 defines “Medicinal Cannabis” as “**Cannabis or a**  
11 **Cannabis Product** for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found  
12 at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in  
13 California who possesses a physician’s recommendation.” (*Ibid.* [emphasis added]; Bus. & Prof.  
14 Code, § 26001, subd. (ai) (1).) Medicinal Cannabis is a *subset* of Cannabis, not a different category,  
15 and the sale or transfer of Medicinal Cannabis is a form of Commercial Cannabis Activity. In the  
16 context of cannabis, “[s]ell,’ ‘sale,’ and ‘to sell’ include any transaction whereby, for any  
17 consideration, title to cannabis or cannabis products is transferred from one person to another.” (Bus.  
18 & Prof. Code, § 26001, subd. (as).) There is no legal distinction between the sale of “commercial”  
19 and “medicinal” cannabis for purposes of the legislation and/or this litigation.

20  
21 The lack of a distinction between medicinal and commercial cannabis in the CVMC is further  
22 confirmed by the existence of “M-Licenses” which are “a State License for **Commercial Cannabis**  
23 **Activity involving Medicinal Cannabis.**” (CVMC § 5.19.020 [emphasis added]; see also Bus. &  
24 Prof. Code, § 26001, subd. (ae).) Under both the CVMC and MAUCRSA, Commercial Cannabis  
25 Activity expressly embraces both medicinal and non-medicinal licenses:

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26  
27 <sup>5</sup> As set forth in Health and Safety Code section 11032, “where reference is made to the term ‘marijuana’ in  
28 any law not in this division, unless otherwise expressly provided, it means cannabis **as defined in this**  
**division.**” (Emphasis added.) Accordingly, cannabis and marijuana can be used interchangeably.

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

4 (CVMC § 5.19.20.) Petitioner conjures a distinction that does not exist.

5 Important to the current situation, the alleged distinction did not exist between 2010 and  
6 2012, when San Diego was seeking to end Mr. Senn’s illegal operation at the Holistic Café. Courts  
7 recognized at the time that, despite whatever exception to California’s marijuana laws existed under  
8 the Compassionate Use Act (Health & Saf. Code, § 11362.5 et seq.) for nonprofit medicinal  
9 marijuana sales, the sale or transfer of marijuana by a medical dispensary was still a **sale**, which  
10 required the dispensary to pay sales tax. (*People v. Baniani* (2014) 229 Cal.App.4th 45, 55 [“even  
11 those who do not make a profit from selling medical marijuana must pay taxes on the sales”].)

12 And counter to Petitioner’s assertion, the CVMC prohibition on Storefront Retailers selling  
13 Medicinal Cannabis does not mean the sale of Medicinal Cannabis is not Commercial Cannabis  
14 Activity. (Pet. Brief, p. 12.) The City also prohibits Storefront Retailers from making deliveries  
15 (CVMC, § 5.19.090, subd. (B)), as these activities are restricted to Non-Storefront Retailers. (*Id.* §  
16 5.19.040, subd. (D) [“Storefront Retailer City Licenses shall be limited to A-Licensees only. All  
17 other City License types may be available to A-Licensees and M-Licensees.”]) The illegal operation  
18 of a medical marijuana dispensary is unlawful Commercial Cannabis Activity, and as such, Mr. Senn  
19 and the Holistic Café’s activities served as a proper basis for the City to deny Petitioner’s  
20 application.

21 Finally, to the extent there is ambiguity in the CVMC, courts defer to a city’s interpretation of  
22 its own code. (E.g., *California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200,  
23 211–212.) “[Administrative bodies] have the ordinary authority ... to resolve, in the first instance,  
24 ambiguities in the interpretation and application of [governing] statutes ... .” (*Alameda County*  
25 *Deputy Sheriff’s Association v. Alameda County Employees’ Retirement* (2020) 9 Cal.5th 1032,  
26 1070.) “Greater deference should be given to an agency’s interpretation where ““the agency has  
27 expertise and technical knowledge, especially where the legal text to be interpreted is technical,  
28 obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.””

(*Harrington, supra*, 16 Cal.App.5th at p. 435.) Given the situation at hand, and in light of the substantial evidence in the record that supports the City’s interpretation of its own code, the Petition should be denied.

#### 4. Petitioner Misinterprets the Term “Jurisdiction”

Petitioner also argues “there are no jurisdictions permitting commercial cannabis activities anywhere in the United States because all cannabis activity is unlawful under Federal law.” (Pet. Brief, p. 13.) That cannabis is unlawful under federal law is immaterial here. CVMC Chapter 5.19 repeatedly refers to “jurisdictions” where commercial cannabis activity takes place. (See, e.g., CVMC §§ 5.19.050, subd. (A)(1)(e)(i); 5.19.050, subd. (B)(5).) Although the term “jurisdictions” is not specifically defined in the municipal code, the legislative purpose section of Chapter 5.19 clarifies that jurisdiction means a political subdivision: “[u]nder California law, local jurisdictions are authorized to either permit or prohibit the operation of cannabis businesses within their boundaries.” (CVMC § 5.19.010; see Bus. & Prof. Code, § 26200 (a)(1); *City of Vallejo, supra*, 15 Cal.App.5th at pp. 1081–1082.) That reading is further supported by the fact that jurisdiction is defined as a “geographic area within which political or judicial authority may be exercised (the accused fled to another jurisdiction)” or a “political or judicial subdivision within such an area (other jurisdictions have decided the issue differently)” in Black’s Law Dictionary. (Black’s Law Dict. (11th ed. 2019).) Petitioner’s tortured reading of the CVMC should be rejected.

#### D. The City Manager’s Findings Were Supported by Substantial Evidence

Petitioner argues that the City Manager’s ruling was not supported by substantial evidence, asserting “there was no non-hearsay evidence of unlawful commercial cannabis activity to support the City’s rejection of Petitioner’s application.” (Pet. Brief, pp. 15–16.) Petitioner is wrong. First, Petitioner is challenging the City Manager’s determination following the administrative hearing to deny its appeal. At that hearing, Petitioner had the burden to show error in the City’s rejection of its application. (AR00367 [Chula Vista Cannabis Regulations, § 0501, subd. (P)(2)].) The City Manager referenced this requirement multiple times in his Notice of Decision. (AR00302–00307.) Petitioner put on no evidence, and thus did not sustain its burden of proof. On that basis alone, the Petition cannot be granted.

1 Second, Petitioner repeatedly argues that the evidence presented by the City Attorney’s office  
2 at the hearing was hearsay. However, the formal rules of evidence did not apply to the hearing. Chula  
3 Vista’s Cannabis Regulations, section 0501, subdivision (P)(2)(c) states that the “hearing shall not be  
4 conducted according to technical rules of procedure and evidence applicable to judicial proceedings.  
5 Evidence that might otherwise be excluded under the California Evidence Code may be admissible if  
6 it is relevant and of the kind that reasonable persons rely on in making decisions.” (AR00367.)  
7 Hearsay, where permitted by statute, is competent evidence in an administrative proceeding. (*In re*  
8 *Lucero L.* (2000) 22 Cal.4th 1227, 1244.)

9 Further, the authorities cited by Petitioner are inapposite. Government Code section 11513,  
10 subdivision (d) only applies directly to state agencies. (Gov. Code, §§ 11500; 11501.) In *Layton v.*  
11 *Merit System Commission* (1976) 60 Cal.App.3d 58, 67, the burden was on the city to justify an  
12 employee’s suspension by a preponderance of the evidence under that agency’s own grievance  
13 procedure. The commission did not hold a hearing, and erroneously determined that the employee  
14 had the burden of proof. (*Ibid.*) The commission also relied on hearsay allegations to make its  
15 determination, where hearsay was not authorized by the city’s grievance procedure. (*Id.* at pp. 67–  
16 68.) Here, the burden was on Petitioner at the administrative hearing and hearsay was specifically  
17 allowed by the CVMC if “relevant and of the kind that reasonable persons rely on in making  
18 decisions.” (AR00367.)

19 Finally, even if the formal rules of evidence applied, the documents presented to the City  
20 Manager (AR00132–00214) were admissible under the official records exception to the hearsay rule.  
21 (Evid. Code, § 1280; AR00246–0024.7) For example, documentary evidence of a sanction is  
22 admissible to show that the sanction occurred. (See *People v. Delgado* (2008) 43 Cal.4th 1059, 1066  
23 [abstract of judgement]; *People v. Wheeler* (1992) 4 Cal.4th 284, 300 fn. 13 [misdemeanor  
24 conviction].) Similarly, San Diego’s Notice of Violation (AR00158–00164) and the unlawful  
25 detainer action (AR00175–00184) were relevant evidence that Mr. Senn had engaged in unlawful  
26 Commercial Cannabis Activity. Sergeant Varga’s testimony demonstrated that San Diego addressed  
27 illegal dispensaries through the zoning code enforcement process in 2012. (AR00264–00265.) Thus,  
28 the City Manager had ample, uncontroverted evidence that Mr. Senn had been sanctioned for



1 unlawfully running a marijuana dispensary. The City Manager thus correctly found that Petitioner  
2 was unable to meet its burden on appeal. (Chula Vista Cannabis Regulations, § 0501, subd. (P)(4);  
3 AR00369.)

#### 4 **E. The City Did Not Abuse Its Discretion**

5 Petitioner’s argument that the City abused its discretion by not exercising discretion is  
6 confused and incorrect. (Pet. Brief, pp. 16–18.) The City properly exercised its discretion and denied  
7 Petitioner’s application because it found Mr. Senn had been involved in and sanctioned for unlawful  
8 Commercial Cannabis Activity in San Diego. What Petitioner actually argues is that the City  
9 exercised its discretion to make the “wrong call,” which is not a basis for issuing a writ of mandate.  
10 “Although a court may order a government entity to exercise its discretion in the first instance when  
11 it has refused to act at all, the court will not ‘compel the exercise of that discretion in a particular  
12 manner or to reach a particular result.’ [Citation.]” (*Daily Journal Corp. v. County of Los Angeles*  
13 (2009) 172 Cal.App.4th 1550, 1555.) Petitioner cannot relitigate by writ the wisdom of the City’s  
14 discretionary acts.

#### 15 **F. The Administrative Hearing Did Not Violate Due Process**

##### 16 **I. The City Attorney Had No Conflict**

17 Petitioner also argues the City violated Petitioner’s due process rights in various ways. Each  
18 argument is without merit. For instance, Ms. McClurg serving as “prosecutor” does not offend due  
19 process. As Petitioner correctly notes, having a member of the city attorney’s office serve as both  
20 advisor and prosecutor in an administrative hearing is entirely acceptable, so long as they are  
21 properly screened. (Pet. Brief, p. 19.) Petitioner cites no evidence of impropriety, and simple  
22 speculation is insufficient.

23 Moreover, Petitioner incorrectly relies on *Quintero v. City of Santa Ana* (2003) 114  
24 Cal.App.4th 810, 813, to argue that Ms. McClurg’s role in advising the City Council in prior  
25 cannabis-related matters disqualified her from acting on behalf of the City at the appeal hearing.  
26 (Pet. Brief, pp. 19–20.) *Quintero* was distinguished on this point by the California Supreme Court in  
27 *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731.  
28 There, the Supreme Court held that absent evidence the agency attorney ever acted in both advisory

1 and prosecutorial capacities **in any single adjudicative proceeding**, or that the adjudicative body  
2 ever regarded the agency attorney **as its sole or primary legal adviser**, an agency attorney acting as  
3 adviser and prosecutor in separate matters does not violate due process. (*Id.* at p. 737 [emphasis  
4 added].) Ms. McClurg did not act as the City Manager’s attorney in the administrative appeal and as  
5 a result, the *Quintero* case is inapplicable. Since there is nothing in the administrative record that  
6 demonstrates bias or unfairness by the City Manager, especially where – as here – the City Manager  
7 had separate legal counsel during the hearing, Petitioner’s bald assertion without evidence that the  
8 City Manager *believed* Ms. McClurg was a subject matter expert on CVMC Chapter 5.19 has no  
9 support.

10 Additionally, a due process wall between Deputy City Attorneys Silva and McClurg was not  
11 required in this instance since the attorneys acted in separate and discrete roles – one acted as  
12 advocate and the other served merely in an evaluative or advisory role to the decisionmaker. (*Witt*  
13 *Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, 569.) In fact, the California  
14 Supreme Court has acknowledged a distinction between an attorney serving in an advocacy role and  
15 an attorney serving in an advisory capacity. (*Today’s Fresh Start, Inc. v. Los Angeles County Office*  
16 *of Education* (2013) 57 Cal.4th 197, 223.) As such, no due process wall was required in this matter.

17 To support its erroneous due process argument, Petitioner argues that Ms. McClurg  
18 prejudicially omitted the word “commercial” from “unlawful commercial cannabis activity” on  
19 occasion during the appeal. (Pet. Brief, p. 20.) Petitioner misstates the whole of the record wherein  
20 Ms. McClurg referred repeatedly to “Commercial Cannabis Activity” throughout the hearing,  
21 including during closing arguments. (AR00243; AR00268; AR00293.) Petitioner’s attorney also  
22 referred to “Commercial Cannabis Activity” throughout. (AR00235–00238; AR00274; AR00285–  
23 AR00291; AR00296–AR00298.)

24 In fact, there is no reason to believe that the City Manager was confused on the requirements  
25 of CVMC section 5.19.050, subdivisions (A)(5)(g) and (f). The final decision stated unequivocally  
26 that “Appellant’s conduct violated the San Diego Municipal Code which was related to Commercial  
27 Cannabis Activity and his cannabis license applications were properly denied pursuant to CVMC  
28 5.19.050(A)(5)(f),” and that section 5.19.050, subdivision (A)(5)(g) “focuses on Appellant’s

1 involvement in unlawful Commercial Cannabis Activity.” (AR00302–00309.)

2 Petitioner fails to cite any evidence that Ms. McClurg's choice of words resulted in any unfair  
3 prejudice. Simply making a statement to that effect does not make it so. Finally, because Petitioner  
4 failed to raise this issue at the hearing, the City did not have a chance to address any allegedly  
5 missed words and Ms. McClurg never had a reason to be more precise with her language.

## 6 **2. The City Provided Sufficient Notice**

7 Next, Petitioner asserts the City had to provide more detailed notice of the basis of its denial.  
8 (Pet. Brief, pp. 22–23.) The City informed Petitioner it had been disqualified because: (1) “[t]he City  
9 of San Diego sanctioned William Senn for violations of laws or regulations related to unlawful  
10 Commercial Cannabis Activity,” and (2) “William Senn was involved in unlawful Commercial  
11 Cannabis activity in the City of San Diego from approximately 2010 to 2012.” (AR00119.) This  
12 notice was more than adequate.

13 Notice satisfies due process where it provides sufficient information, given the particular  
14 circumstances, to apprise an administrative litigant of the charges fully and fairly with sufficient  
15 certainty to prepare a defense. (*JMS Air Conditioning & Appliance Service, Inc. v. Santa Monica*  
16 *Community College Dist.* (2018) 30 Cal.App.5th 945, 963.) Where a litigant receives ““reasonable  
17 notice and a reasonable opportunity to be heard, that is all that is required.”” (*Ibid.*, citing *Drumme*  
18 *v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 80–81.) Here, Petitioner was aware its  
19 application was denied based on Mr. Senn’s operation of the Holistic Café from 2010 to 2012, and  
20 argued against the denial on the merits during the administrative appeal. (AR00219–00222;  
21 AR00233–00238.) Due process has been satisfied.

22 Further, Petitioner waived any argument that notice of the administrative appeal hearing was  
23 untimely. The City’s Cannabis Regulations require notice 20 days before the appeal hearing, and  
24 Petitioner only received 14 days’ notice. However, Petitioner failed to object to the late notice or ask  
25 for a continuance, despite being informed of its ability to do so in the Notice of Hearing. (AR00131.)  
26 “It is well settled that the appearance of a party at the hearing of a motion and his or her opposition  
27 to the motion on its merits is a waiver of any defects or irregularities in the notice of motion.” (*Tate*  
28 *v. Superior Court* (1975) 45 Cal.App.3d 925, 930.) Petitioner was required to object to the late notice

1 at the hearing and request a continuance. It did neither (see AR00231), and thus waived any such  
2 defect in notice. (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 342–343; *Carlton*  
3 *v. Quint* (2000) 77 Cal.App.4th 690, 697–698.)

4 Finally, Petitioner argues the City is estopped from denying its application because the City  
5 did not issue a denial until after Petitioner “invest[ed] significant time and resources in the license  
6 process” and supports this argument by citing to *Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 963–  
7 964. (Pet. Brief, p. 23.) *Kieffer* is inapposite. In that case, officials actively misled applicants as to  
8 the law, inducing them to unlawfully install arcade machines at great risk and to their detriment.  
9 (*Kieffer, supra*, 153 Cal.App.3d at p. 963.)

10 Here, the City’s cannabis provisions indicate that the City may deny an application “based  
11 on the standards set forward in all applicable laws and regulations, or otherwise in its sole discretion,  
12 taking into account the health, safety and welfare of the community, and in accordance with its  
13 general police powers authority.” (CVMC § 5.19.050, subd. (D)(4).) The CVMC clearly states the  
14 Police Chief’s discretionary review occurs *only after* the interview process is complete and a  
15 candidate has been deemed “minimally qualified.” (CVMC § 5.19.050, subd. (A)(5).) The City has a  
16 rational basis to wait for candidates to be minimally qualified before incurring the significant  
17 administrative cost of full background checks. Petitioner cannot credibly claim to have been misled  
18 by the process.

19 Finally, Petitioner did not disclose the breadth of the violations levied against Mr. Senn by  
20 San Diego, which only became apparent upon the police review, and which rightfully occurred after  
21 the initial Phase I steps were complete. (AR00158–00203.) Petitioner may wish the review process  
22 had been structured differently to deny the application earlier in the process, and thus save it time  
23 and money, but such a desire does not render the process invalid. The City’s cannabis procedures  
24 were laid out from the beginning in writing and Petitioner voluntarily submitted an application  
25 pursuant to those procedures. As such, estoppel does not apply.

### 26 **G. The Injunctive Relief Sought in the Petition Is Too Broad**

27 Petitioner seeks a permanent injunction restraining the City “from taking or failing to take  
28 any action that would in any way interfere with the full and fair consideration of Petitioner’s

1 application,” including enjoining the City “from issuing any other cannabis licenses in the City and,  
2 to the extent that [the City] has already issued such licenses, to declare such licenses null and  
3 void ... .” (Pet., p. 23.) Identical to Petitioner’s previous requests for injunctive relief, this request is  
4 vague, overbroad and unenforceable. “An injunction must be sufficiently definite to provide a  
5 standard of conduct for those whose activities are to be proscribed, as well as a standard for the court  
6 to use in ascertaining an alleged violation of the injunction.” (*People ex rel. Dept. of Transportation*  
7 *v. Maldonado* (2001) 86 Cal.App.4th 1225, 1234.) “An injunction which forbids an act in terms so  
8 vague that men of common intelligence must necessarily guess at its meaning and differ as to its  
9 application exceeds the power of the court.” (*Pitchess v. Superior Court* (1969) 2 Cal.App.3d 644,  
10 651.) Were such an order issued, the City would have no guidance on which conduct is prohibited  
11 and which compelled. Similarly, Petitioner goes too far in asking the Court to find all Cannabis  
12 licenses issued in the City “null and void.” Not only would such an order be incredibly damaging to  
13 Real Parties, but it would also impact the substantive rights of other cannabis retailers in other  
14 Council Districts who are not parties to this action.

#### 15 **IV. CONCLUSION**

16 Petitioner fails to carry its burden to show an abuse of discretion by the City or the City  
17 Manager. The City properly denied Petitioner’s application based on Mr. Senn’s illegal operation of  
18 a marijuana dispensary, for which he was sanctioned by San Diego. The City Manager’s Statement  
19 of Decision upholding that denial was supported by the law and substantial evidence, and  
20 Petitioner’s due process arguments are without merit. The City, M&A and TD respectfully request  
21 that the Court deny the Petition.

22 DATED: April 30, 2021

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



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1 DATED: April 30, 2021

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6 DATED: April 30, 2021

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**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us. On April 30, 2021, I served the document(s) described as **JOINT OPPOSITION TO PETITION FOR WRIT OF MANDATE BY CITY OF CHULA VISTA, CHULA VISTA CITY MANAGER AND REAL PARTIES IN INTEREST MARCH AND ASH CHULA VISTA AND TD ENTERPRISE LLC** the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on April 30, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on April 30, 2021, at Pasadena, California.

  
\_\_\_\_\_  
Shoeba Hassan

**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF SAN DIEGO, CENTRAL COURTHOUSE**

23  
24 UL CHULA TWO LLC,

25 Plaintiffs,

26 v.

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

**CASE NO. 37-2020-00041554-CU-WM-CTL**  
**[Related to Case Nos. 2020-00041802-**  
**CUMC-CTL; 37-2020-00033446-CU-MC-**  
**CTL]**

*Unlimited Jurisdiction*

(Case assigned to Hon. Judge Richard E. L.  
Strauss, Dept. C-75)

**APPENDIX OF EVIDENCE IN  
SUPPORT OF JOINT OPPOSITION TO**

Defendants.

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

Real Parties in Interest.

**PETITION FOR WRIT OF MANDATE  
BY CITY OF CHULA VISTA, CHULA  
VISTA CITY MANAGER AND REAL  
PARTIES IN INTEREST MARCH AND  
ASH CHULA VISTA AND TD  
ENTERPRISE LLC**

Complaint Filed: November 13, 2020

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

**APPENDIX OF EVIDENCE IN SUPPORT OF JOINT OPPOSITION**

Defendants and Respondents, City of Chula Vista and the Chula Vista City Manager (jointly “City”) and Real Parties in Interest March and Ash Chula Vista, Inc. and TD Enterprise, LLC compile the Administrative Record excerpts on which their Joint Opposition to Writ of Mandate relies into this Appendix of Evidence and submit this table of contents. The City has previously lodged with the Court the complete, certified Administrative Record.

Tab	Evidence	Page #
1	Resume of Will Senn <sup>1</sup>	AR00025–00026
2	Will Senn Cannabis License Application Affirmation and Consent, signed 1/18/19	AR00112
3	Shaman Letter to Finance Department Re: Affirmation and Consent, dated 1/18/19	AR00113–00114
4	Bacon Letter to Petitioner Re: Phase 1C Interview, dated 6/10/19	AR00118
5	Notices of Decision – Commercial Cannabis Business Applications 57064, 57069, 57074, 58388, dated 5/6/20	AR00119–00122
6	Appellant’s Request to Appeal, submitted 5/21/20	AR00123–00127
7	Notice of Hearing, dated 5/26/20	AR00128–00129
8	Amended Notice of Hearing, dated 5/28/20	AR00130–00131 <sup>2</sup>


<sup>1</sup> Petitioner’s redacted Application (57074) is at AR00001–00116.

<sup>2</sup> Another copy of this document was an Exhibit to the Appeal, at AR00146–00147.

9	City's Admin. Appeal Exhibit List, served 6/5/20 (not including exhibits <sup>3</sup> )	AR00132-00133
10	City Admin. Appeal Ex. 8: City of SD Notice of Violation, dated 5/22/12	AR00158-00164
11	City Admin. Appeal Ex. 9: San Diego Code Enforcement Photos of Holistic Café	AR00166-00167
12	City Admin. Appeal Ex. 10: San Diego Business Tax Information, dated 5/24/10	AR00169-00170
13	City Admin. Appeal Ex. 11: Email Declining Inspection (Email string dated 5/10/12 – 5/16/12)	AR00172-00173
14	City Admin. Appeal Ex. 12: Unlawful Detainer Summons and Complaint with exhibits ( <i>Uptown 401, LLP. v. The Holistic Cafe, Inc.</i> , SD Court Case No. 37-2012- 00043424-CL-UD-CTL)	AR00175-00184
15	City Admin. Appeal Ex. 13: Complaint ( <i>City of San Diego v. The Holistic Café, Inc. et al.</i> , SD Court Case No. 37-2012-00087648-CU-MC-CTL)	AR00186-00195
16	City Admin. Appeal Ex. 13: Stipulated Judgment ( <i>City of San Diego v. The Holistic Café, Inc. et al.</i> , Case No. 37-2012-00087648-CU-MC-CTL)	AR00196-00203
17	Appellants' Brief Regarding Issues on Appeal	AR00215-00224
18	Cannabis Appeal Hearing Transcript	AR00225-00300
19	Findings and Statement of Decision on Appeal	AR00302-00307
20	Excerpts of City of Chula Vista Cannabis Regulations	AR00355; AR00363; AR00366-00370
21	Chula Vista Municipal Code Chapter 5.19	AR00385-00428

DATED: April 30, 2021

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**

  
\_\_\_\_\_  
ALENA SHAMOS  
MATTHEW C. SLENTZ  
Attorneys for Respondents/Defendants,  
CITY OF CHULA VISTA AND CHULA VISTA  
CITY MANAGER

<sup>3</sup> The complete Respondent's Appeal Hearing Exhibits are at AR00132-00214.

1 DATED: April 30, 2021

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP



HEATHER S. RILEY  
Attorney for Real Party In Interest  
MARCH AND ASH CHULA VISTA, INC.

7 DATED: April 30, 2021

TENCERSHERMAN LLP



PHILIP C. TENCER, ESQ. (173818)  
Attorneys for TD Enterprise LLC

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**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us. On April 30, 2021, I served the document(s) described as **APPENDIX OF EVIDENCE IN SUPPORT OF JOINT OPPOSITION TO PETITION FOR WRIT OF MANDATE BY CITY OF CHULA VISTA, CHULA VISTA CITY MANAGER AND REAL PARTIES IN INTEREST MARCH AND ASH CHULA VISTA AND TD ENTERPRISE LLC** the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on April 30, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on April 30, 2021, at Pasadena, California.

  
\_\_\_\_\_  
Shoeba Hassan

**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

Gary K. Brucker, Jr., SBN 238644 Lann G. McIntyre, SBN 106067 Anastasiya Menshikova, SBN 312392 <b>LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</b> 550 West C Street, Suite 1700 San Diego, CA 92101 Tel.: (619) 233-1006 Fax: (619) 233-8627 E-mail: Gary.Brucker@lewisbrisbois.com Anastasiya.Menshikova@lewisbrisbois.com Lann.McIntyre@lewisbrisbois.com	<i>Attorneys for Plaintiff</i> UL CHULA TWO LLC
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Government Code § 6103**

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19 Attorneys for Real Party in Interest TD Enterprise LLC

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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF SAN DIEGO, CENTRAL COURTHOUSE**

23  
24 UL CHULA TWO LLC,  
25 Plaintiffs,  
26 v.

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

**CASE NO. 37-2020-00041554-CU-WM-CTL**  
**[Related To Case Nos. 2020-00041802-**  
**CUMC-**  
**CTL; 37-2020-00033446-CU-MC-CTL]**  
*Unlimited Jurisdiction*

(Case assigned to Hon. Judge Richard E. L.  
Strauss, Dept. C-75)

**OBJECTIONS TO PETITIONER'S**

Defendants.

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

Real Parties in Interest.

**REQUEST FOR JUDICIAL NOTICE  
AND DECLARATION OF NATHAN  
SHAMAN**

Complaint Filed: November 13, 2020

Hearing Date: May 21, 2021

Time: 9:00 a.m.

Dept.: C-75

Respondent and Defendant City of Chula Vista (“City”) and Real Parties in Interest March and Ash Chula Vista, Inc (“M&A”) and TD Enterprise LLC (“TD”) hereby object to Petitioner, UL Chula Two LLC’s (“Petitioner”) Request for Judicial Notice (“RJN”) and the Declaration of Nathan Shaman (“Declaration”), submitted in support of Petitioner’s Motion for Writ of Mandate. The extra record evidence is not admissible in the administrative mandamus action. (Code of Civ. Proc., § 1094.5.) Additionally, the request for judicial notice is technically deficient in multiple ways, and the declaration of Nathan Shaman is replete with inadmissible evidence.

**I. EXTRA-RECORD EVIDENCE IS NOT ADMISSIBLE**

As discussed in the City’s, M&A’s and TD’s Joint Opposition (Opp., pp. 11–13), Petitioner’s extra record evidence (Plaintiff ULChula Two LLC Appendix of Exhibits, Nos. 2–29) is inadmissible. “‘The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency.’” (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.) “Section 1094.5 contains limited exceptions to this rule. ‘It is error for the court to permit the record to be augmented, in the absence of a proper preliminary foundation ... showing that one of these exceptions applies.’” (*Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.)

Petitioners may present extra-record evidence in administrative mandate cases only “[w]here the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent ... .” (Code Civ. Proc., § 1094.5, subd (e); see also *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1595.) Neither the RJN nor the Declaration meet this narrow exception, and both should not be rejected by the Court.



Sustained: \_\_\_\_\_ Overruled: \_\_\_\_\_  
Hon. Richard E. L. Strauss

## II. THE REQUEST FOR JUDICIAL NOTICE IS DEFECTIVE

Petitioner's RJN in Support of Motion for Writ of Mandate fails to furnish the Court "with sufficient information to enable it to take judicial notice of the matter." (Evid. Code § 453 (b).) Preliminarily, the RJN does not establish the relevance of the records sought to be judicially noticed. Documents must be relevant to the material issue be judicially noticeable. (*People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415,422, fn. 2; *Save Lafayette Trees v. City of Lafayette* (2019) 32 Cal.App.5th 148, 157, fn. 4.) And, as set forth in the Opposition, Petitioner has failed to establish the right to introduce extra record evidence in this action, much less the relevance of such records.

To the extent the records sought to be judicially noticed are not certified or file stamped, Petitioner fails to authenticate or establish the source of these records. (*Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 743 ["It is the burden of the party seeking judicial notice to demonstrate a reason for the failure to furnish certified copies."]) Petitioner also fails to identify, with any specificity, which portions of the offered documents Petitioner seeks to have judicially noticed. Given its technical deficiencies, Petitioner's RJN should be denied.

Finally, to the extent this Court takes judicial notice, such notice must be limited to the existence of the records, and does not include notice of the truth of the matters stated therein. (*Magnolia Square Homeowners Ass'n v. Safeco Ins. Co. of America* (1990) 221 Cal.App.3d 1049, 1056; *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145–146 [hearsay statements contained in court records not judicially noticeable.]; *People v. Long* (1970) 7 Cal.App.3d 586, 591 ["While the courts take judicial notice of public records, they do not take notice of the truth of matters stated therein." ].)

Sustained: \_\_\_\_\_ Overruled: \_\_\_\_\_  
Hon. Richard E. L. Strauss

## III. THE DECLARATION OF NATHAN SHAMAN CONTAINS INADMISSIBLE EVIDENCE

The City, M&A and TD object to the following evidence submitted in the Declaration of

Nathan Shaman. Generally, Mr. Shaman’s statements regarding the contents of various documents in the administrative record should be rejected. Oral testimony to prove the content of a writing is not admissible (Evid. Code, § 1523), and the documents themselves are before the Court and are the best evidence of their contents.

No.	Material Objected to:	Grounds for Objection:	Court’s Ruling:
1.	Declaration ¶ 2: “On January 18, 2019, I wrote a letter to the City of Chula Vista in connection with Petitioner’s application, which disclosed the fact that Willie Frank Senn, who was then the sole shareholder of UL, had a stipulated judgment entered against him on December 14, 2012 in the San Diego Superior Court case of <i>City of San Diego v. The Holistic Café, Inc. et al.</i> , case no. 37-2012-00087648-CU-MC-CTL.”	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	Sustained: _____ Overruled: _____ _____ Hon. Richard E. L. Strauss
2.	Declaration ¶ 3: “Although I invited the City to reach out to me if the City had any questions about the <i>Holistic Café</i> matter, I never received a response from the City to the letter.”	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	Sustained: _____ Overruled: _____ _____ Hon. Richard E. L. Strauss
3.	Declaration ¶ 3: “Petitioner, however, was notified by the City on June 10, 2019 that it had successfully completed Phases 1A and 1B of the application process, and was invited to proceed to Phase 1C (i.e., the interview) on July 17, 2019. Following the interview, Petitioner received a total score of 900.3 points—the highest for a retail storefront in the City’s District One”	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	Sustained: _____ Overruled: _____ _____ Hon. Richard E. L. Strauss
4.	Declaration ¶ 4: “Then, on May 6, 2020, the City issued a Notice of Decision rejecting Petitioner’s Application on the grounds that ‘The City of San Diego sanctioned William [ <i>sic</i> ] Senn for violations	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral	Sustained: _____ Overruled: _____

No.	Material Objected to:	Grounds for Objection:	Court's Ruling:
	of laws or regulations related to unlawful Commercial Cannabis Activity" and "William [sic] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012.' The Notice of Decision did not specifically reference the <i>Holistic Café</i> matter..."	testimony to prove the content of a writing.	<hr/> Hon. Richard E. L. Strauss
5.	Declaration ¶ 4: "I was not at all certain at the time if the grounds cited by the City were related to the <i>Holistic Café</i> matter, which I had disclosed to the City in writing 16 months earlier, or was related to something else, entirely."	<b>Speculation and Conjecture.</b> (Evid. Code, §§ 702, 800.) Shaman speculates regarding the grounds for the City's denial.  <b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____ <hr/> Hon. Richard E. L. Strauss
6.	Declaration ¶ 5: "On May 21, 2020, while serving as general counsel to UL, I submitted Petitioner's appeal of the Notice of Decision (AR125-127). There were several grounds for the appeal. The primary ground was that there was no relevant, admissible evidence that Mr. Senn was adversely sanctioned for any laws related to "Commercial Cannabis Activity." In fact, my appeal cited the undisputed fact that from 2010 to 2012 there were no commercial cannabis laws in the City of San Diego. I also assumed given my January 18, 2019 letter to the City that the denial may have been based on the <i>Holistic Café</i> matter. I therefore pointed out that the alleged violations were of land-use and building code ordinances that did not pertain to cannabis,	<b>Argumentative.</b> ( <i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.  .	<b>Sustained:</b> _____ <b>Overruled:</b> _____ <hr/> Hon. Richard E. L. Strauss

No.	Material Objected to:	Grounds for Objection:	Court's Ruling:
	and that the Medical Marijuana Program Act allowed for medical marijuana collectives and cooperatives such as the Holistic Café."		
7.	Declaration ¶ 6: "On May 26, 2020, I was notified that the appeal would be heard on June 10, 2020. Nowhere in the notice of appeal did the City mention the <i>Holistic Café</i> matter. The notice did state that the evidence to be submitted at the hearing should be submitted "at least five days prior to the hearing." (AR00129.) The City's exhibits were emailed in the late afternoon on Friday, June 5, 2020 (AR213-214), less than five full days before the June 10, 2020 hearing, giving me essentially two business days to prepare for the hearing. The City's exhibits included references to <i>Holistic Café</i> , which was the first time the City ever cited to the <i>Holistic Café</i> matter as a basis for rejecting Petitioner's application."	<p><b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.</p> <p><b>Argumentative.</b> (<i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Hon. Richard E. L. Strauss</p>
8.	Declaration ¶ 7: "On June 5, 2020, I submitted Petitioner's appellate brief (AR215-224). I addressed several flaws with the City's procedures, including that the Notice of Decision was impermissibly vague so as to deny Petitioner sufficient notice and due process. I provided detailed legal citations explaining that the City of San Diego did not have any laws or regulations related to "Commercial Cannabis Activity" from 2010-2012. And I raised concerns with the City relying upon the <i>Holistic Café</i> matter, "assuming" that the City based its decision on the stipulated judgment in the <i>Holistic Café</i> matter that I had disclosed on January 18, 2019. I was not able to address the other exhibits that the City intended to rely upon at the hearing because they were not	<p><b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.</p> <p><b>Argumentative.</b> (<i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Hon. Richard E. L. Strauss</p>

No.	Material Objected to:	Grounds for Objection:	Court's Ruling:
	disclosed to me prior to submission of my brief."		
9.	Declaration ¶ 8: "On June 10, 2020, I attended the hearing on the appeal along with Willie Senn. I objected to the admission of the City's exhibits pertaining to the <i>Holistic Café</i> matter on numerous grounds. All objections were overruled by the City Manager, who acted as the hearing officer. At the hearing, I reiterated the legal issues raised in the appellate brief, including the denial of due process. I was, however, unable to meaningfully prepare to present any testimony or evidence to rebut the City's contentions regarding <i>Holistic Café</i> ."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.  <b>Argumentative.</b> ( <i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  Hon. Richard E. L. Strauss
10.	Declaration ¶ 9: "The City served its Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License on August 26, 2020."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  Hon. Richard E. L. Strauss
11.	Declaration ¶ 9: "I suspected based upon the findings and industry gossip that the City denied other applicants on the same or similar grounds. To investigate, I served a public records act request on the City on September 2, 2020 (Reference # R000005-090220). I served a second public records act request on the City on October 1, 2020 (Reference # R000079-100120). Attached as <b>Exhibits 11-29</b> to the concurrently filed Appendix of Exhibits are relevant portions of the City's document production in	<b>Irrelevant.</b> (Evid. Code, §§ 210, 350.) The City's basis for denying other applications are not probative of any material fact at issue.  <b>Speculation and Conjecture.</b> (Evid. Code, §§ 702, 800.) Shaman's beliefs regarding other applications are improper speculation.  <b>Argumentative.</b> ( <i>Schaefer v.</i>	<b>Sustained:</b> _____ <b>Overruled:</b> _____  Hon. Richard E. L. Strauss

No.	Material Objected to:	Grounds for Objection:	Court's Ruling:
	response to my public record act requests."	<p><i>Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.</p> <p><b>Hearsay.</b> (Evid. Code, § 1200 et seq.) Shaman testifies to the contents of out-of-court "industry gossip."</p> <p><b>Lack of Foundation.</b> (Evid. Code § 403.) Shaman does not identify facts to show personal knowledge "industry gossip."</p>	

DATED: April 30, 2021

**COLANTUONO, HIGHSMITH & WHATLEY, PC**



ALENA SHAMOS  
MATTHEW C. SLENTZ  
Attorneys for Respondents/Defendants,  
CITY OF CHULA VISTA AND CHULA VISTA  
CITY MANAGER

DATED: April 30, 2021

**ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP**



HEATHER S. RILEY  
Attorney for Real Party In Interest  
MARCH AND ASH CHULA VISTA, INC.

DATED: April 30, 2021

**TENCERSHERMAN LLP**



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Attorneys for TD Enterprise LLC

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**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us. On April 30, 2021, I served the document(s) described as **OBJECTIONS TO PETITIONER'S REQUEST FOR JUDICIAL NOTICE AND DECLARATION OF NATHAN SHAMAN** the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on April 30, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on April 30, 2021, at Pasadena, California.

  
\_\_\_\_\_  
Shoeba Hassan



**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

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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  
through 50,

21 Real Parties In Interest.

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**05/14/2021** at 04:33:00 PM

Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

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

**PLAINTIFF/PETITIONER UL CHULA  
TWO LLC'S REPLY BRIEF IN SUPPORT  
OF PETITION FOR WRIT OF MANDATE**

[IMAGED FILE]

Judge: Hon. Richard E. L. Strauss  
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. INTRODUCTION**

2 The crux of the City's joint opposition is reflected in the following sentence: "The City  
3 maintains the discretion to draft an ordinance that allows cannabis dispensaries while requiring a  
4 certain amount of experience, and allowing for disqualification of anyone who engaged in past  
5 unlawful cannabis activity." (Opp. at 19:5.) This argument is a logical fallacy and illustrates why  
6 the City acted arbitrarily, capriciously, and contrary to law when it denied Petitioner's application  
7 for a retail storefront cannabis license.

8 First, the Chula Vista Municipal Code ("CVMC") cannot allow the City to reject "anyone  
9 who engaged in past unlawful cannabis activity" precisely because the City requires experienced  
10 candidates. Cannabis is unlawful *everywhere* under Federal law and, therefore, any experienced  
11 candidate would have necessarily engaged in some form of past unlawful cannabis activity.

12 Second, to avoid this outcome the CVMC disqualifies *only* those applicants that engaged  
13 in unlawful "*commercial* cannabis activity," which term did not exist in California until 2016.  
14 During the administrative hearing and in the statement of decision, the Deputy City Attorney and  
15 Hearing Officer misstated the legal standard by omitting the word "commercial" over 20 times.  
16 The opposition advocates in favor of this misstated legal standard no less than 16 times.

17 Third, the *only* exhibits that the City cited at the administrative hearing, in the statement of  
18 decision, and in its opposition that supposedly evidence Petitioner's alleged "unlawful" activities  
19 are rank hearsay. Hearsay, alone, cannot support the City's findings as a matter of law.

20 Fourth, even if the City could rely upon only hearsay alone, the judgment in *Holistic Café*  
21 did not reach any conclusion on illegality: "[n]either this Stipulated Judgment nor any of the  
22 statements or provisions contained herein shall be deemed to constitute an admission or an  
23 adjudication of any of the allegations of the Complaint." {AR 197.}

24 Finally, the exact same hearsay records establish that in 2012 the *Holistic Café* was a  
25 nonprofit mutual benefit medical cannabis storefront and therefore not engaged in "*commercial*  
26 cannabis activity" as that term was later defined in 2016. {AR 182, 197.}

27 Any one of these errors, standing alone, justifies awarding Petitioner the relief it seeks.  
28 When further considering the City's due process violations, the Court's ruling should be clear.

1 **II. THE CITY ABUSED ITS DISCRETION**

2 **A. “Commercial Cannabis Activity” Cannot Be Read Out Of The CVMC**

3 The City begins by arguing the noncontroversial points that “[r]egulation of Cannabis  
4 Dispensaries Is Within a City’s Police Power” and “[o]ne such reasonable restriction is the ability  
5 to deny a license to applicants who have violated local laws by running illegal dispensaries.”  
6 (Opp. at 16:10, 16:28-17:1.) From here, the City *skips a critical step* and extrapolates that  
7 “Mr. Senn operated a cannabis dispensary illegally and continued to do so despite a pending  
8 eviction and receipt of a Notice of Violation from San Diego. The City could, and did, correctly  
9 refuse him a license.” (Opp. at 17:7-9.)

10 The critical missed step is the text of the CVMC. And it does not state, as the City  
11 repeatedly and falsely claims, that the City may disqualify “anyone who engaged in past unlawful  
12 cannabis activity.” (Opp. at 19:5.) Rather, the CVMC clearly and unambiguously speaks only to  
13 unlawful “*commercial* cannabis activity.” As explained in Petitioner’s opening brief, to avoid  
14 absurd results and unintended consequences, the unlawful *Commercial Cannabis Activity* must be  
15 read to mean *commercial* cannabis activities that are unlawful under the regulatory schemes  
16 enacted by the State and localities following the passage of Proposition 64 in 2016, and not just  
17 any activity that is unlawful in the abstract (e.g., civil zoning law violations that have nothing to  
18 do with cannabis whatsoever).

19 The City failed to address the heart of this argument and the absurdity of the results that  
20 would follow if *any* illegal activity could disqualify an applicant. Rather, the City misstated the  
21 law a total of *16 times* by either ignoring the text of the CVMC when describing the law or by  
22 claiming that all the City needs to show is *any* kind of illegality at a dispensary. (Opp. at 11:1-2,  
23 11:21-22, 11:27, 12:16-17, 13:10, 17:8, 17:12-13, 17:17, 17:22, 17:24, 17:28, 19:5, 21:6, 23:28-  
24 24:1, 28:17-18.) This is the exact same tactic the City employed when it misstated the law at the  
25 administrative hearing {AR 239, 240, 243, 294, 296} and when it misrepresented the law in its  
26 statement of decision {AR 302-306}. It is abundantly clear that the City now regrets the text of its  
27 own ordinances, but it is required to follow the language of the CVMC as drafted and not pull the  
28 rug out from under applicants by applying a different legal standard after-the-fact.

1           **B.       Medical Cannabis Is Not Commercial Cannabis**

2                   1.       The Waiver Argument Misstates The Record And The Law

3           It is obvious that the law treats medicinal and commercial cannabis differently. That is  
4 why the City’s primary tactic has always been to ignore the term “commercial” and its secondary  
5 tactic is to now claim Petitioner waived this argument by not raising it during the administrative  
6 hearing. (Opp. at 19:12-20.) The City is wrong. Petitioner raised and argued extensively the  
7 distinction between commercial and medicinal cannabis laws, the former of which was not  
8 existent at the time of the zoning violations in the *Holistic Café* matter. {AR 126, 219, 220, 235,  
9 237.} Further, even if not raised at the administrative hearing, the Court has the discretion to  
10 consider new legal arguments or theories because the issue is purely a question of law based on  
11 undisputed facts. (*Taye v. Coxe* (1994) 29 Cal.App.4th 1339, 1344.) The City’s continued efforts  
12 to avoid discussing real issues underscores just how bad the City’s substantive argument really is.

13                   2.       Medicinal Sales Do Not Constitute Commercial Sales

14           The City’s argument that medicinal sales constitutes commercial sales begins with the  
15 definition of the term “cannabis,” which does not distinguish between commercial and medicinal  
16 cannabis. (Opp. at 19:21-28.) Of course it does not. The genetic makeup of the cannabis plant  
17 does not change depending on how or why it is sold. The regulatory scheme governing the sale of  
18 *commercial* cannabis is what matters and medicinal cannabis is excluded under that scheme.

19           Indeed, the term “Commercial Cannabis Activity” is defined to mean “the **commercial**  
20 cultivation, possession, manufacture, distribution, processing, storing, laboratory testing,  
21 packaging, labeling, transportation, delivery or **sale of Cannabis** or Cannabis Products.” (CVMC  
22 § 5.19.20 (emphasis added).) In support of its argument, the City looks only to the words “sale of  
23 Cannabis” and then jumps to the conclusion that this means the sale of any cannabis, including  
24 medicinal cannabis. The City’s argument fails for at least two independent reasons.

25           First, under the Series-Qualifier Canon of Construction, the proper way to read the  
26 definition of “Commercial Cannabis Activity” is to apply the prepositive modifier “commercial”  
27 not just to the term “cultivation” that immediately follows, but to each parallel term in the series  
28 that follows: i.e., commercial possession, commercial manufacture, commercial distribution, . . .

1 commercial delivery or *commercial sale*. Under this proper construction of the CVMC, it is clear  
2 that only a *commercial sale* of cannabis qualifies as a “Commercial Cannabis Activity.”

3 Second, the CVMC separately licenses commercial and medicinal cannabis businesses,  
4 separately defines “Medicinal Cannabis” and “Medicinal Cannabis Product,” and expressly  
5 forbids storefront retailers from selling Medicinal Cannabis or Medicinal Cannabis Products.  
6 (CVMC §§ 5.19.020, 5.19.090.) Had the City intended to include “Medicinal Cannabis” or  
7 “Medicinal Cannabis Products” within the defined term “Commercial Cannabis Activity,” it could  
8 have easily done so. The CVMC does not, and the City cannot now re-write its own definitions.

9 The City next points to the existence of “M-Licenses,” which the CVMC defines as “State  
10 License for Commercial Cannabis Activity involving Medicinal Cannabis.” The City extrapolates  
11 from this definition that medicinal cannabis must be commercial sales. The City again misreads  
12 the law by ignoring the term “involving.” Indeed, were the City right, and Commercial Cannabis  
13 Activity included medicinal sales, then the M-License definition would absurdly read: Medicinal  
14 Cannabis Activity involving Medicinal Cannabis. The only sound way to read the CVMC is to  
15 acknowledge that a business engaged in Commercial Cannabis Activity can also be *involved* with  
16 Medicinal Cannabis if they receive an M-License.

17 The sales tax argument that the City next makes is a dishonest non sequitur. (Opp. at 21:5-  
18 11.) Although it is true that sales taxes are collected on the sale of medicinal cannabis, the same  
19 opinion cited by the City concedes that “medical marijuana cooperatives and collectives are not  
20 authorized to make a profit from the sale or distribution of medical marijuana.” (*People v. Baniani*  
21 (2014) 229 Cal.App.4th 45, 55.) In other words, nonprofit medicinal cannabis dispensaries like  
22 the Holistic Cafe are assessed sales tax no differently than Father Joe’s Villages: “[a]lthough  
23 many nonprofit and religious organizations are exempt from federal and state income tax, there is  
24 no similar broad exemption from California sales and use tax.” (Cal. Dep’t of Tax & Fee Admin.,  
25 Nonprofit Orgs., Pub. 18 (October 2020) (<https://www.cdtfa.ca.gov/formspubs/pub18.pdf>).)

26 The City concludes its arguments by asking the Court to defer to the City’s errant  
27 interpretation of its ostensibly ambiguous code. Preliminarily, there is no ambiguity. Commercial  
28 means commercial and medicinal means medicinal. More importantly, the law is clear, it is the

1 Court and not the City that is the arbiter of what the law means. (*Alameda Cnty. Deputy Sheriff's*  
2 *Ass'n v. Alameda Cnty. Emps' Ret.* (2020) 9 Cal.5th 1032, 1070.)

3 **C. The City's Interpretation Of "Jurisdiction" Is Wholly Unsupportable**

4 Petitioner's opening brief pointed out the absurdity of requiring applicants to have at least  
5 12 consecutive months of experience "... in the day-to-day operation of a lawful Commercial  
6 Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity" (CVMC §  
7 5.19.050(A)(1)(e)(i)), when there are no such jurisdictions anywhere in America because cannabis  
8 is unlawful everywhere under Federal law. The only way to require experienced applicants is to  
9 ignore Federal law on the grounds that Federal law is *unrelated* to the regulatory scheme enacted  
10 by the State and City following legalization of Commercial Cannabis Activity in 2016. And if you  
11 ignore Federal law, then you need to ignore other laws that are *unrelated* to Commercial Cannabis  
12 Activity, including zoning law violations of the type raised in *Holistic Café* way back in 2012.

13 The City ignores this issue and instead argues that the undefined term "jurisdiction"  
14 doesn't mean jurisdiction as it is commonly known and used (e.g., Federal question jurisdiction),  
15 but instead means local, political subdivisions within the state of California. The City is wrong  
16 again. To remind the Court, the City sought to disqualify Petitioner's application under CVMC §  
17 5.19.050(A)(5)(g), which disqualifies applicants based upon "... unlawful Commercial Cannabis  
18 Activity in the City or ***any other jurisdiction.***" If the City's ultranarrow reading of jurisdiction  
19 were correct, then the City could disqualify an applicant due to a civil zoning violation in the City  
20 of San Diego, but would be helpless to disqualify an applicant who was charged by the Federal  
21 government for dealing heroin at a medicinal dispensary in the City of San Diego.

22 Clearly, jurisdiction means jurisdiction in the normal and traditional sense, and for the  
23 City's regulatory scheme to make any sense at all, unlawful Commercial Cannabis Activity must  
24 mean conduct that is unlawful under the commercial cannabis laws first enacted by the State and  
25 localities following the passage of Proposition 64 in 2016.

26 **D. The City Manager's Decision Was Not Supported By Substantial Evidence**

27 The City offered zero non-hearsay evidence that would establish the Holistic Café engaged  
28 in unlawful *commercial* cannabis activity. The City's argument on hearsay ignores two important

1 rules. First, even if the administrative procedure allowed for flexibility, uncorroborated hearsay,  
2 *alone*, cannot constitute substantial evidence. (*Walker v. San Gabriel* (1942) 20 Cal.3d 879, 881,  
3 overruled on another ground in *Strumsky v. San Diego Cnty. Emp. Ret. Assn.* (1974) 11 Cal.3d 28,  
4 37, 44 [city abused its discretion in revoking license based solely on hearsay].) The admissibility  
5 and substantiality of hearsay evidence are different issues. *Gregory v. State Bd. of Control*, 73  
6 Cal.App.4th 584, 597 (1999). Indeed, “mere admissibility of evidence does not necessarily confer  
7 the status of ‘sufficiency’ to support a finding *absent other competent evidence*.” *Daniels v.*  
8 *Department of Motor Vehicles* (1983) 33 Cal.3d 532, 538, fn. 3.

9 Here, the City erred by relying solely on hearsay. To avoid this argument, the City claims  
10 that the hearsay documents presented fall within the official records exception—Evidence Code  
11 § 1280. Yet, the City presented no evidence that the foundational requirements of the official  
12 records exception were met. For example, the City references evidence of a sanction, but does not  
13 identify any exhibit. (Opp. at 23:21-24.) Likewise, the City did not establish that the Notice of  
14 Violation {AR 00158-00164} or unlawful detainer action {AR 00175-00184} fell within the  
15 official records exception. (Opp. at 23:24-26.) Finally, Sargeant Varga admitted he had no  
16 personal knowledge regarding the City’s documentary evidence that was admitted over objection.  
17 {AR 00269-00274.} He was a Chula Vista police officer and had no foundation for his testimony  
18 about the San Diego Police Department’s practices in 2012. {AR 00264.}

19 And even if all this hearsay evidence were admissible and properly considered and  
20 somehow corroborated by non hearsay evidence, Petitioner still should have prevailed at the  
21 administrative hearing because the hearsay evidence confirmed that the Holistic Café was a  
22 nonprofit mutual benefit medical cannabis storefront and therefore not engaged in “*commercial*  
23 cannabis activity” as that term is defined. {AR 182, 197.}

24 **E. The City Manager Did Not Exercise His Discretion**

25 The City misses the point of Petitioner’s argument on the exercise of discretion or, more  
26 specifically, the City Manager’s failure to exercise his discretion. This is not about a wrong call in  
27 one particular instance. This is about a uniform series of no calls as the Notices of Decisions and  
28 Statement of Decisions (Exhibits 11-29) issued by the City and sourced by Petitioner via public

1 record act reveal.<sup>1</sup> These records show that the City uniformly rejected similarly situated  
2 applicants and, as a result, failed to exercise its discretion.

3 It would be one thing to disqualify an applicant upon a showing that they would create  
4 negative impacts or dangerous secondary effects on the City, but that was not the case. Here, the  
5 City disqualified every applicant who was unfortunate enough to face government scrutiny.  
6 Indeed, one applicant was disqualified simply for having worked at a dispensary in the City of San  
7 Diego. (Exs. 14, 18 to App'x.) In a world where the City rightfully wants *experienced* applicants  
8 in an industry that is unlawful everywhere under Federal law, uniformly disqualifying applicants  
9 like Petitioner—who currently operates one of the most successful and law abiding dispensaries in  
10 the City of San Diego—can only be described as a clear failure to exercise the City's discretion.

### 11 **III. THE CITY DENIED PETITIONER A FAIR TRIAL**

#### 12 **A. The City Attorney's Office Was Hopelessly Conflicted**

13 Deputy City Attorney Silva served as advisor to the hearing officer and Deputy City  
14 Attorney McClurg serving as counsel for the City. {AR 302.} This type of conflict is permissible  
15 when there are adequate screening measures in place. Though the City agrees (Opp. at 24:21), the  
16 City offered no evidence that any screening measures were in place, thus failing to satisfy *its*  
17 burden of proof. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813.)

18 The case law relied upon by the City is inapposite. (Opp. at 25:10-16.) In *Witt Home*  
19 *Ranch, Inc. v. Cnty. of Sonoma* (2008) 165 Cal.App.4th 543, there was no evidence the county  
20 counsel performed incompatible dual roles; she was solely an advisor to the Board. *Id.* at p. 569.  
21 In *Today's Fresh Start, Inc. v. Los Angeles Cnty. Office of Ed.* (2013) 57 Cal.4th 197, the hearing  
22 was not adversarial and there was no prosecutor. *Id.* at p. 223. In *Howitt v. Super. Ct.* (1992) 3  
23 Cal.App.4th 1575, the court held that due process requires “assurances that the adviser for the  
24 decision maker is screened from inappropriate contact with the advocate.” *Id.* at p. 1586. The  
25 City's failure to present any evidence of screening measures is fatally detrimental to their case.

26  
27 <sup>1</sup> The City overreaches when it asks the Court to disregard 28 exhibits submitted with Petitioner's  
28 opening brief. As explained in detail in Petitioner's concurrently filed response to the City's  
evidentiary objections, *all* of Petitioner's exhibits are properly considered.



1 Even if there were screening measures in place, it would not matter because the City of  
2 Chula Vista Meeting Minutes reflected that Ms. McClurg worked closely with Deputy City  
3 Manager Kelly Bacon on the drafting of the City’s cannabis laws in the presence of the City  
4 Manager/Hearing Officer Gary Halbert. {Exs. 7-10 to App’x.} This set of circumstances creates  
5 an unacceptable risk of bias because the City Manager would naturally consider Ms. McClurg a  
6 “primary legal adviser,” creating an incurable violation of due process. (*Quintero v. City of Santa*  
7 *Ana* (2003) 114 Cal.App.4th 810, 813.)

8 Though the law does not require any evidence of bias or unfairness, the record shows there  
9 was ample bias and unfairness in the proceedings. For example, though Ms. McClurg knew what  
10 the CVMC said having participated in drafting the law, no less than 10 times she ignored the term  
11 “commercial” and articulated a lesser standard for the hearing officer. {AR 239, 240, 243, 294,  
12 296.} The City claims these repeated misstatements were harmless because Ms. McClurg used the  
13 word “commercial” during the hearing (a whopping *four* times) and Petitioner’s counsel correctly  
14 used the words “commercial cannabis activity” during the hearing. But Ms. McClurg’s statements  
15 did matter. Most notably, the Statement of Decision issued by the Hearing Officer misstated the  
16 correct legal standard over ten times in a six page document. {AR 302-307.} And while it is true  
17 that the Statement of Decision did correctly quote the language from the CVMC, it also recited the  
18 wrong legal standard over twice as many times as the right legal standard. {*Id.*}

19 **B. The City’s Notice Of Decision Was Impermissibly Vague**

20 There is no dispute that Petitioner disclosed the stipulated judgment in *Holistic Café* with  
21 its application. {AR 113.} There is also no dispute that the City’s Notice of Decision, served 15  
22 months after Petitioner disclosed the *Holistic Café* matter failed to identify the Holistic Café at all.  
23 {AR 119.} There is also no dispute that Petitioner objected to the vague notice. {AR 218.} The  
24 City now argues the omission was harmless because Petitioner’s counsel, Nathan Shaman, was  
25 still able to address the issue at the hearing. In contrast, Mr. Shaman’s declaration supports  
26 Petitioner’s contention that it was prejudiced by the lack of proper notice. (Shaman Dec. ¶¶ 2-8.)

27 While there may be a dispute as to the harm caused by the City’s defective notice, there is  
28 no dispute that City misrepresented the Notice of Decision in its Statement of Decision: “The

1 NOD provides notice that the Unlawful Cannabis Activity took place between 2010 and 2012 in  
2 the City of San Diego, *specifically at the Holistic Café*.” {AR 303 (emphasis added).} The very  
3 fact that the City misrepresented the contents of the notice, following Petitioner’s objection to that  
4 notice, confirms that this issue is not one to gloss over because Petitioner “assum[ed]” that the  
5 denial was based on the stipulated judgment in the *Holistic Café* matter. {AR 220.} (*People v.*  
6 *Seo* (2020) 48 Cal.App.5th 1081, 1092 [due process requires more than the opportunity to guess].)

7 **C. The City’s Sandbagged Petitioner In Advance Of The Hearing**

8 The City admits that it set Petitioner’s appeal on 14 days’ notice, rather than 20 days as  
9 required. (Opp. at 26:22-24.) The City also admits that it did not disclose its exhibits to Petitioner  
10 until Friday, June 5, 2020, leaving just two business days to prepare for the administrative hearing  
11 on Wednesday, June 10, 2020. (*Id.* at 10:27-11:3.) The first time the City ever disclosed that it  
12 was relying on *Holistic Café* to deny a license was on June 5, 2020. (Shaman Dec. ¶ 7.)

13 Rather than acknowledge that the City rushed the hearing and hid the ball until the last  
14 minute, the City argues no harm, no foul because Petitioner did not ask for a continuance that was  
15 available per the notice of hearing. (Opp. at 26:28-27:1.) Though the notice of hearing states that  
16 a continuance is possible if requested in accordance with Cannabis Regulation § 0501(P)(2)(b)  
17 {AR 131}, that regulation does not allow for a continuance. {AR 367.} In fact, none of the  
18 hearing procedures in Cannabis Regulation § 0501(P)(2) allow for a continuance. {AR 367-368.}  
19 It is beyond disingenuous to set a hearing on short notice, and then blame the Petitioner for not  
20 asking for a continuance when the regulations do not allow for a continuance.

21 **D. The City Should Be Estopped From Rejecting Petitioner’s Application**

22 Petitioner disclosed the *Holistic Café* matter with its application. {AR 113.} Petitioner  
23 then spent time and money proceeding through the application process. {E.g., AR 116, 118.}  
24 Only then did the City reject Petitioner’s application on the basis of the *Holistic Café*. The City  
25 argues that this was okay because “The CVMC clearly states the Police Chief’s discretionary  
26 review occurs only after the interview process is complete and a candidate has been deemed  
27 ‘minimally qualified’.” (Opp. at 27:13-15.) The CVMC section quoted by Petitioner does not say  
28 that at all. Rather, CVMC § 5.19.050(A)(5) states “Phase One applications accepted by the

1 Finance Director as minimally qualified shall be forwarded to the Police Chief for review and  
2 **completion** of any and all required background checks.” {AR 397 (emphasis added).}

3 It is not clear why the City misrepresents this code section, but there is nothing in the code  
4 that delays background checks until after the interview and scoring of the applicant. To the  
5 contrary, when Petitioner was invited to the interview phase, in which it scored the highest in the  
6 City’s District One, Petitioner was notified that “you have successfully completed this initial  
7 portion of the application process” in reference to the “provisional background review.” {AR  
8 118.} It would be one thing for the *Holistic Café* matter to have gone unnoticed during the  
9 “provisional background review” if it were concealed, but Petitioner voluntarily disclosed the  
10 matter with its application. Rather than rejecting the application at that time, the City took more  
11 and more of Petitioner’s money, time, and effort before slamming the door shut on Petitioner’s  
12 application over a year later. This is a textbook case of estoppel.

13 **IV. INJUNCTIVE RELIEF**

14 The City objects to the scope of the injunction sought in the Petition. The proposed order  
15 and proposed writ of mandate submitted by Petitioner, however, are materially different in scope  
16 and follow the language of the narrow relief sought in Petitioner’s Temporary Restraining Order,  
17 which the Court granted over the City’s objection.

18 **V. CONCLUSION**

19 For the aforementioned reasons, the Court should issue a writ of mandate in the form  
20 submitted with Petitioner’s proposed order.

21 DATED: May 14, 2021

Respectfully submitted,

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23  
24 By:



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28

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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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17 and DOES 1-20,

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21 Real Parties In Interest.

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**05/14/2021** at 04:33:00 PM

Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

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

**PLAINTIFF/PETITIONER UL CHULA  
TWO LLC'S EXCERPTS OF  
ADMINISTRATIVE RECORD IN  
SUPPORT OF MOTION FOR WRIT OF  
MANDATE**

Date: May 21, 2021  
Time: 9:00 a.m.

Judge: Hon. Richard E.L. Strauss  
Dept.: C-75  
Action Filed: November 13, 2021  
Trial Date: None Set

Plaintiff/Petitioner UL Chula Two LLC (“Petitioner”) hereby submits for the Court’s convenience relevant excerpts of the Administrative Record on which Petitioner’s Motion for Writ of Mandate and Reply Brief in Support of Motion for Writ of Mandate rely and submits this table of contents. The City of Chula Vista has previously lodged with the Court and served upon all parties the complete, certified Administrative Record.

Tab	Evidence	Page #
1	Appellant’s Cannabis License Application 57074 (Redacted)	AR00001
2	Resume of Will Senn	AR00024-00026
3	Adult-Use and Medicinal - Retailer Temporary License	AR00027
4	Medical Marijuana Consumer Cooperative Permit	AR00029-00030
5	Recommendation Letter for Will Senn from Paul Cooper, Former Executive City Attorney	AR00032
6	Honoree Invite from High Times 100 to Will Senn	AR00033
7	Conditional Use Permit No. 1605038 approved by the Planning Commission of the City of San Diego to MISSION & GRAND, LLC, Owner and WILLIE SENN	AR00034-00040
8	Cannabis Business License for the City of Chula Vista	AR00080-00089
9	Shaman Letter to Finance Department Re: Affirmation and Consent, dated 1/18/19	AR00113-00114
10	Receipt from City of Chula Vista Finance Department	AR00116
11	Bacon Letter to Petitioner Re: Phase 1C Interview, dated 6/10/19	AR00118
12	Notices of Decision – Commercial Cannabis Business Applications 57064, 57069, 57074, 58388, dated 5/6/20	AR00119-00122
13	Appellant’s Request to Appeal, submitted 5/21/20	AR00125-00127
14	Notice of Hearing, dated 5/26/20; Amended Notice of Hearing, dated 5/28/20	AR00128-00131
15	City’s Admin. Appeal Exhibit List, served 6/5/20 (not including exhibits)	AR00132-00133
16	City Admin. Appeal Ex. 5: Hd.L Application Reviews Scores	AR00151-00152

Tab	Evidence	Page #
17	City Admin. Appeal Ex. 7: Hd.L Combined Application and Interview Scores	AR00156
18	City Admin. Appeal Ex. 8: City of SD Notice of Violation, dated 5/22/12	AR00158-00164
19	City Admin. Appeal Ex. 12: Unlawful Detainer Summons and Complaint with exhibits ( <i>Uptown 401, LLP. v. The Holistic Cafe, Inc.</i> , SD Court Case No. 37-2012- 00043424-CL-UD-CTL)	AR00175-00184
20	City Admin. Appeal Ex. 13: Complaint (City of San Diego v. The Holistic Café, Inc. et al., SD Court Case No. 37-2012-00087648-CU-MC-CTL)	AR00186-00195
21	City Admin. Appeal Ex. 13: Stipulated Judgment (City of San Diego v. The Holistic Café, Inc. et al., Case No. 37-2012-00087648-CUMC-CTL)	AR00196-00203
22	City Admin. Appeal Proof of Service	AR00213-00214
23	Appellants' Brief Regarding Issues on Appeal	AR00215-00224
24	Cannabis Appeal Hearing Transcript	AR00225-00301
25	Findings and Statement of Decision on Appeal	AR00302-00309
26	Excerpts of City of Chula Vista Cannabis Regulations	AR00355; AR00367-00368
27	Chula Vista Municipal Code Chapter 5.19	AR00385-00428

DATED: May 14, 2021

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



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

**-TAB 1 -**

**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

---

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.

---

#### 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

---

### 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
-------------------	------	------------------	------

### 4. Primary Contact

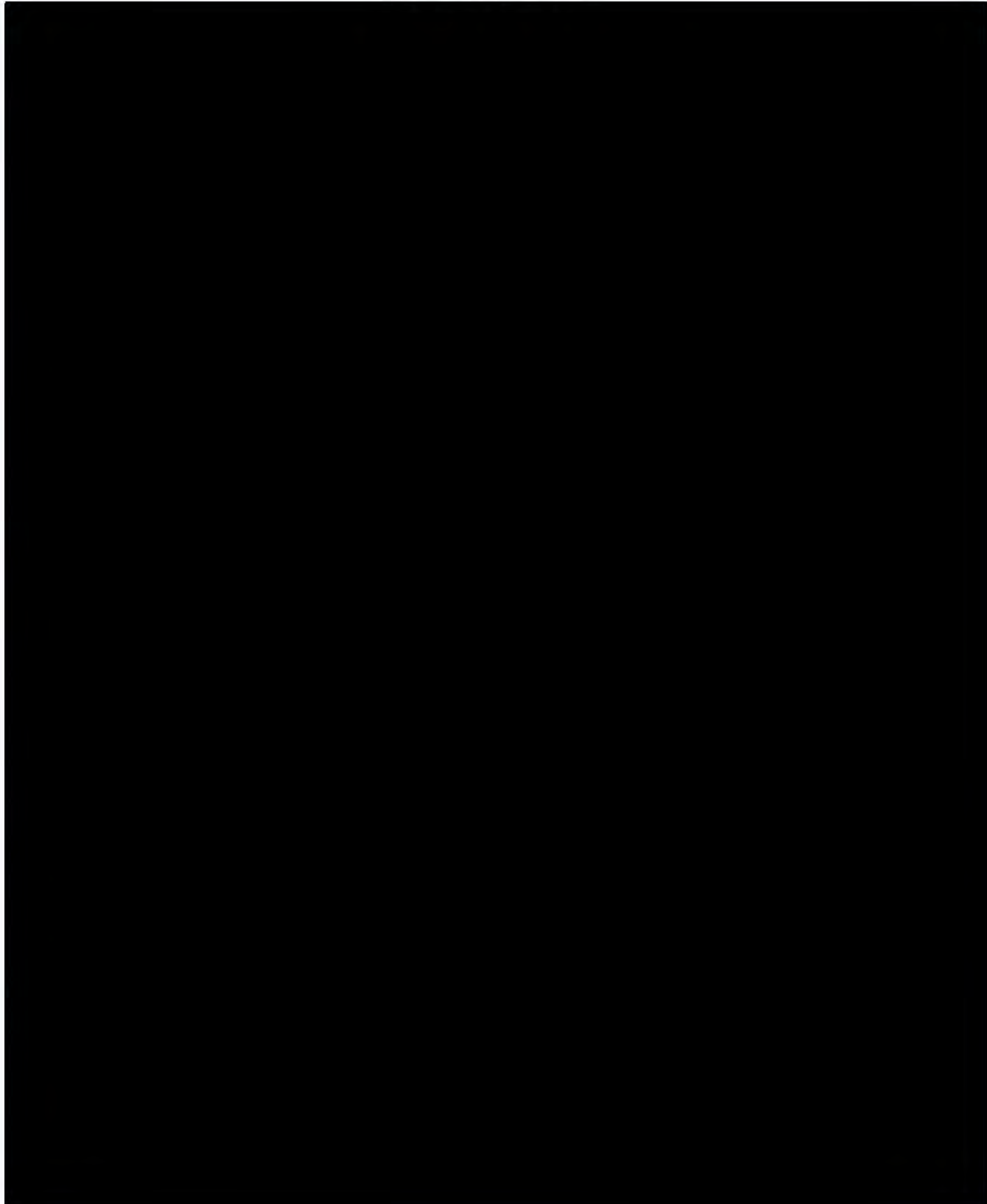
<b>First Name</b>	Will	<b>Last Name</b>	Senn
-------------------	------	------------------	------



-TAB 2 -

**REMAINING PAGES WITHHELD**

**OPERATING AGREEMENT  
for  
CVC HOLDING, LLC**



# Will Senn

---

## Education

## Skills & Abilities

### MANAGEMENT

### SALES

### LEADERSHIP

## Experience

### FOUNDER & CEO | URBAN LEAF | DEC 2016 - PRESENT

### CO-FOUNDER | FLORIS CAPITAL MANAGEMENT | JAN 2017 - PRESENT

### FOUNDER | UNITED MEDICAL MARIJUANA COALITION (UMMC) | FEB 2016 - PRESENT

**CO-FOUNDER | ALLIANCE FOR RESPONSIBLE MEDICINAL ACCESS (ARMA)| FEB 2014 – AUG 2015**

[REDACTED]

**FOUNDER | PATIENT CARE ASSOCIATION OF CA (PCA)| FEB 2011 – NOV 2013**

[REDACTED]

**FOUNDER | CITIZENS FOR PATIENT'S RIGHTS| JUNE 2011 – OCT 2012**

[REDACTED]

**FOUNDER | THE HOLISTIC CAFE | APR 2009 – NOV 2012**

- Founded The Holistic Café and established the facility as the new standard in Medical Cannabis dispensaries in San Diego. Operating in Hillcrest without issue since its inception, The Café, as it was fondly known, supported multiple HIV programs in the area as well as numerous cancer support groups for those in need. Established the first Compassion program in San Diego in which those with financial hardships or terminal illnesses could come to procure cannabis medications for little or no cost.

**-TAB 3 -**



**BUREAU OF  
CANNABIS  
CONTROL**  
CALIFORNIA

Bureau of Cannabis Control  
(833) 768-5880

## **Adult-Use and Medicinal - Retailer Temporary License**

**LICENSE NO:**  
**A10-17-0000008-TEMP**

**VALID:**  
**1/1/2018**

**LEGAL BUSINESS NAME:**  
**URBN LEAF BAY PARK INC.**

**EXPIRES:**  
**7/25/2019**

**PREMISE:**  
**1028 BUENOS AVE**  
**SAN DIEGO, CA 92110**



*Non-Transferable*

*Prominently display this license  
as required by Title 16 CCR § 5039*

**2-AA-879**  
AR00027

**-TAB 4 -**



City of San Diego  
Development Services  
1222 First Ave., MS-501  
San Diego, CA 92101  
(619) 446-5000

# Medical Marijuana Consumer Cooperative Permit

FORM  
**DS-191**  
FEBRUARY 2015

Pursuant to Chapter 4, Article 2, Division 15 of the San Diego Municipal Code, a permit must be obtained once a Medical Marijuana Consumer Cooperative (MMCC) Conditional Use Permit (CUP) has been approved and prior to operating the MMCC. MMCC Permits issued pursuant to this Division shall be valid for one year. The MMCC must comply with San Diego Municipal Code, Chapter 4, Article 2, Division 15, the regulating CUP, and all applicable City, County, State and Federal Regulations. **Any other permits or licenses required by law must be obtained from the appropriate agency.**

Business Name:

Telephone No.:

1028 Buenos Ave MMCC

Business Address:

City:

State:

Zip Code:

1028 Buenos Ave

San Diego

CA

92110

Conditional Use Permit No.:

Date of Approval:

Recordation Date of CUP:

1605038

04/07/2016

04/15/2016

Conditional Use Permit PTS No.:

CUP Expiration Date:

369290

04/07/2021

**The MMCC's responsible person or responsible managing officer must complete the following section and sign where indicated.**

I am aware that the business described above is subject to the Medical Marijuana Consumer Cooperative regulations in the San Diego Municipal Code Chapter 4, Article 2, Division 15, and the regulating Conditional Use Permit. MMCC Permits issued pursuant to this Division shall be valid for one year. I have a copy of the aforementioned codes, have read them, and certify that the proposed business will comply with all requirements including, but not limited to, required fingerprinting and criminal history checks of all responsible persons, and limitations related to age of responsible persons.

**Responsible Managing Officer or Responsible Person Name:**

Willie Senn

E-mail Address:

Telephone No.:

619.346.0587

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

9/13/16



**FOR CITY USE ONLY**Conditional Use Permit No.: 1605038Recordation Date of CUP: 04/15/2016CUP Expiration Date: 04/07/2021**Staff shall check each box once the item is addressed.**

- ☒ The business address matches the address approved in the Conditional Use Permit for the Medical Marijuana Consumer Cooperative.
- ☒ The responsible person(s)<sup>1</sup> completed and submitted the Live Scan form and Form DS-192 to the San Diego Police Department (SDPD) for a criminal background check. Development Services has received the form back from SDPD verifying that the responsible persons(s) comply with SDMC Section 42.1507.
- ☒ The applicant has been provided copies of San Diego Municipal Code Chapter 4, Division 4, Article 15 and a copy of this permit.
- ☒ This permit and the following have been placed in the original Conditional Use Permit file:
  - ☒ Recorded CUP.
  - ☒ Articles of Incorporation certified by the Secretary of State.
  - ☒ Form DS-192 for each responsible person(s) signed by the SDPD verifying that each responsible person(s) has passed the criminal background check.

☒ **APPROVED**☐ **DENIED**

By: \_\_\_\_\_

Edith Gutierrez  
PRINT NAME

Date: \_\_\_\_\_

4/13/16

1. Responsible persons includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a medical marijuana consumer cooperative. It also includes an employee who is in apparent charge of the medical marijuana consumer cooperative.

**-TAB 5 -**

To Whom it May Concern,

I am in writing in support of Will Senn and his application for a Cannabis Dispensary in Culver City. I came to know Mr. Senn in my capacity as Executive Assistant City Attorney at the San Diego City Attorney's Office. During my time at the City Attorney's Office, medical marijuana and legal cannabis were an important issue we took seriously as we wanted to make sure it was done properly. At one point the City of San Diego had nearly 100 illegal dispensaries. We understood early on, if we were going to have safe, legitimate, dispensaries we had to shut down the illegal ones. One of the first Dispensaries the City of San Diego permitted was Urbn Leaf, owned and operated by Mr. Senn. Urbn Leaf has operated without problem since its existence and is often used as a model of how a dispensary should be run. Mr. Senn also founded the United Medical Marijuana Coalition where he was able to pool resources and energy from other authorized and permitted dispensaries. Mr. Senn worked closely with our office to assist in drafting regulations that benefited both the legal dispensaries but also the City. I have found Mr. Senn to be a person of impeccable character and someone who's word can be relied upon.

Sincerely,

Paul Cooper  
Former Executive City Attorney  
Office of the San Diego City Attorney

-TAB 6 -

**Subject:** Honoree Invite: High Times 100  
**Date:** Tuesday, January 15, 2019 at 6:23:50 PM Pacific Standard Time  
**From:** HT 100  
**To:** Will Senn  
**Attachments:** image.png

Dear Will,

Congratulations! You have been selected to High Times 100 most influential people in cannabis in 2018. It is our pleasure to invite you to join us for the second annual installment of the **High Times 100 Gala**. We take a look at the landscape of the cannabis industry and choose the people who we believe deserve recognition for their contributions in business, technology, science, health, and innovation. This will be a special night of live entertainment, awards ceremonies, and networking with some of the most prominent figures in our circle. Dinner and drinks will be served. This invite is good for you + 1 guest.

As an Honoree, we need a headshot and short bio from you. Please send these materials using this [FORM](#) by **Friday, January 25** in order to make it into the special magazine issue.

Please see below invite for details and RSVP to [REDACTED] by **Friday, March 15**.



Thanks,  
High Times Magazine  
[REDACTED]

**-TAB 7 -**



7  
138  
1C  
DOC# 2016-0175351



Apr 15, 2016 11:28 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$51.00

PAGES: 13

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

**PROJECT MANAGEMENT**  
PERMIT CLERK  
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004683

**CONDITIONAL USE PERMIT NO. 1605038**  
**1028 BUENOS AVENUE MMCC - PROJECT NO. 369290**  
**PLANNING COMMISSION**

This Conditional Use Permit No. 1605038 is approved by the Planning Commission of the City of San Diego to MISSION & GRAND, LLC, Owner and WILLIE SENN, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 0.73-acre site is located at 1028 Buenos Avenue in the IL-3-1 Zone, Parking Impact Overlay Zone (Campus), and the Community Plan Implementation Overlay Zone (Type A) within the Linda Vista Community Plan Area. The project site is legally described as: Lots 7 and 8, Morena Plaza Unit No. 1, Map 7418, September 5, 1972.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 7, 2016, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 2,452-square-foot tenant space within an existing 16,542 square-foot building on a 0.73-acre site;
- b. Existing landscaping (planting, irrigation and landscape related improvements);
- c. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning

regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by April 7, 2019.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on April 7, 2021.
3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.
4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department.
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.
5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).



9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

13. The use within the 2,452 square-foot tenant space shall be limited to the MMCC and any use permitted in the IL-3-1 Zone.



14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.
15. Lighting shall be provided to illuminate the interior of the MMCC, 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.
16. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.
17. The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees.
18. The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in the reception area and vault room.
19. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.
20. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
21. 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 and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.
22. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.
23. Medical marijuana shall not be consumed anywhere within the 0.73-acre site.
24. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.
25. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and

typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

**ENGINEERING REQUIREMENTS:**

26. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement to the existing two driveways, serving the project site on Buenos Avenue, with City standard driveways, per Standard Drawing SDG-159, satisfactory to the City Engineer.

**TRANSPORTATION REQUIREMENTS:**

27. No fewer than 21 off-street parking spaces shall be required, including 2 disabled accessible spaces (at least one van-sized); with 12 spaces for MMCC use and 9 spaces for remaining previously conforming warehouse use. All parking spaces shall be permanently maintained on the property within the approximate locations shown on the project's Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

28. The rollup door on the eastern front of the building will be removed and the adjacent pedestrian door will be modified to not interfere with the proposed parking spaces.

29. The proposed 2,452 square-foot Buenos Avenue MMCC shall lease an additional 1,390 square feet within the 16,542 square-foot building and retain it as vacant space. The lease shall specifically state that the additional 1,390 square-foot leased space is to be kept vacant and not to be occupied at any time during the entire term, for any use whatsoever, including storage space.

**POLICE DEPARTMENT RECOMMENDATION:**

30. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

**INFORMATION ONLY:**

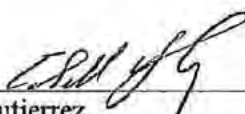
- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on April 7, 2016 and Resolution No. 4769-PC.

Conditional Use Permit No.1605038/PTS No. 369290  
Date of Approval: April 7, 2016

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

  
\_\_\_\_\_  
Edith Gutierrez  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

MISSION & GRAND, LLC  
Owner

By   
\_\_\_\_\_  
Ronald E. Taylor  
Manager

WILLIE SENN  
Permittee

By   
\_\_\_\_\_  
Willie Senn  
Permittee

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

SEE ATTACHED  
COMMISSION # 2090207  
Exp NOV 16, 2018

-TAB 8 -



**CITY OF CHULA VISTA  
CANNABIS BUSINESS LICENSE  
Statement Of Understanding - Operating Requirements and Regulations**

**PLEASE READ CAREFULLY:** All applicants must complete a "Statement of Understanding- Operating Requirements and Regulations." It is unlawful for any person to establish, operate, engage in, conduct, or carry on any cannabis business without a City issued license as required by Chula Vista Municipal Code Chapter 5.19. A cannabis business license is valid for one year. As a holder of such a license you are required to comply with the provisions of Chula Vista Municipal Code Chapter 5.19 and the City's Cannabis Regulations. Copies of the Chapter 5.19 may obtained from the Chula Vista City Clerk's Office located at 276 Fourth Avenue, Bldg. 100, Chula Vista, CA 91910. The following is a summary of some, but not all, of the provisions applicable to your cannabis business license:

**Please initial:**

*WS* **5.19.020 Definitions.**

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

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

*WS* **5.19.030 City License Required.**

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

*WS* **5.19.080 Operating and Conduct Requirements for All Licenses and Individuals.**

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

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

C. No Cannabis or Cannabis Products shall be visible from the exterior of any Premises issued a City License, or on any of the vehicles owned or used as part of

a Commercial Cannabis Business. No outdoor storage of Cannabis or Cannabis Products is permitted at any time.

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

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

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

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

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

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

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

K. Odor Control. Odor control devices and techniques shall be incorporated in the Premises of all Commercial Cannabis Businesses to ensure that odors from Cannabis are not detectable off-site. Commercial Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Commercial Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located



inside the same building as the Commercial Cannabis Business. As such, Commercial Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:

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

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

L. Safety, Security, and Operating Plans. Each Commercial Cannabis Business must comply with all requirements of the security plan approved by the Police Chief; with all safety requirements of the Emergency Action and Fire Prevention Plan approved by the Fire Chief; and with all provisions of the operating plan approved by the Development Services Director.

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

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

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

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

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

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

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

T. Fees and Charges.

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

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

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

V. Temporary Events Prohibited. Cannabis temporary events, as described in California Business and Professions Code section 26200 as presently adopted or further amended, are prohibited in the City at all times.

WS **5.19.090 – 5.19.140 Operating Requirements for Individual License Types.** CVMC sections 5.19.090 through 5.19.140 set forth additional operating requirements for Storefront Retailers, Non-Storefront Retailers, Cultivators, Manufacturers, Distributors, and Testing Laboratories. Licensees are expected to know and understand the additional requirements applicable to their specific license type. Compliance with operating requirements is required and failure to do so may lead to sanctions, including but not limited to, the denial, suspension, or revocation of a cannabis business license.

WS **5.19.160 Security Measures.**

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

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

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

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

4. Installing 24-hour security surveillance cameras of at least HD-quality to monitor areas on the Premises including, but not limited to: entrances and exits to and from the Premises; all interior spaces which are open and accessible to the public; all interior spaces where Cannabis, cash or currency is being stored for any period of time on a regular basis; all areas where the purchase, Sale, Distribution, or Transfer of Cannabis or Cannabis Products take place; and all exterior and interior spaces where diversion of Cannabis could reasonably occur. The City Licensee shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief. Video recordings shall be maintained for a minimum of 90 days, and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the Premises of the Commercial Cannabis Business.

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

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

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

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

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

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

C. As part of the application and licensing process, each Commercial Cannabis Business shall have a storage and transportation plan, which describes in detail

the procedures for safely and securely storing and transporting all Cannabis, Cannabis Products, and any currency.

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

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

1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Police chief.
2. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any Owner, Officer, Manager, agent, or employee of the Commercial Cannabis Business.
3. The loss or unauthorized alteration of records related to Cannabis, registering qualifying patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.
4. Any other breach of security.

WS **5.19.190 Compliance With All Applicable Laws Required.**

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

B. It shall be the responsibility of the City Licensees, Owners, Officers, and Managers of a Commercial Cannabis Business to ensure that a Commercial Cannabis Business is, at all times, operating in a manner compliant with all applicable federal, state, and local laws and regulations, including any subsequently enacted state or local law or regulatory, licensing, or certification standards or requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a State License or a City License.

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

125 **5.19.192 License Holder Responsible for Violations By Employees or Agents.**

The City Licensee shall be responsible for all violations of the regulations and ordinances of the City committed by the City Licensee, or any employee or agent of the City Licensee. Violations by a City Licensee, or employee or agent of the City Licensee, may result in revocation or non-renewal of the City License.

125 **5.19.200 Right of Access & Testing.**

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

1. Inspect the Premises for compliance with the Code and State Laws.
2. Test any equipment possessed by, in control of, or used by a City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.
3. Test any Cannabis or Cannabis Product possessed by, in control of, or used by a City Licensee, Owner, Officer or Manager, and any other employee, agent, or volunteer of a City Licensee.
4. Copy any materials, books, or records of any City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.

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

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

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

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

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

125 **5.19.250 Effect of State License Suspension, Revocation, or Termination.**

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



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

425

**5.19.260 Suspension and Revocation of City License.**

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

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

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

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

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

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

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

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

1. A violent felony, as specified in Section 667.5(c) of the Penal Code.
2. A serious felony, as specified in Section 1192.7(c) of the Penal Code.
3. A felony involving fraud, deceit, or embezzlement.
4. A felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
5. A felony for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

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

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

WS **5.19.280 Enforcement and Penalties.**

A. It is unlawful to:

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

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

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

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

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

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

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the State of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel

compliance with this Chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of \$10,000 for each and every offense.

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

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

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

**I have read and understand the operating requirements and regulations summarized above. I understand it is my responsibility to be familiar with all laws and regulation governing this activity. I understand that my cannabis business license is subject to sanctions, including, but not limited to, the denial, suspension, or revocation of a permit for any violation of the laws and regulations governing my cannabis business.**

Applicant Signature: Willie Senn  
Applicant Name: Willie Senn

Date: 1/15/19



-TAB 9 -

# 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

-TAB 10 -

City of Chula Vista  
Finance Department  
Finance Department  
276 4th Avenue  
Chula Vista, CA 91910  
(619) 691-5250

001774-0012 Patricia 02/27/2019 03:01PM

5/B 57074

MISCELLANEOUS

Reference 1: 57064

Reference 2: SBC MGMT

2019 Item: 090123

1.00 @ 2,683.00 2,683.00

Payment Id: 64557

-----  
2,683.00

Subtotal 2,683.00

Total 2,683.00

CHECK 2,683.00

Check Number [REDACTED]

Change due 0.00

Paid by: SBC MANAGEMENT INC

Thank you for your payment

City of Chula Vista COPY  
DUPLICATE RECEIPT

**-TAB 11 -**



## Office of the City Manager

---

June 10, 2019

Dear Applicant

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

Your interview for submitter ID's 57064 and 57074 will be scheduled for 8:30 – 9:45 on July 17, 2019 at City Hall, 276 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

-TAB 12 -





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

-TAB 13 -

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



**-TAB 14 -**



## Office of the City Manager

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May 26, 2020

**VIA  
FIRST CLASS MAIL & EMAIL**

Willie Senn  
Urbn Leaf  
[REDACTED]  
[REDACTED]

**Re: Notice of Appeal Hearing Date & Time  
Urbn Leaf (Submitter ID: 57064; 57069; 57074; 58388)**

Dear Willie Senn:

You have submitted a Request to Appeal the May 6, 2020 Notice of Decision issued by City of Chula Vista ("City") in regard to the above referenced cannabis business license application.

Pursuant to Cannabis Regulations §0501(P)(2)(a), this letter hereby notifies you that your hearing will occur at the following date, time, and place:

Hearing Date: **June 10, 2020**

Hearing Time: **2:00 p.m.**

Hearing Place: **Chula Vista Civic Center  
Building A, Room 103A  
276 Fourth Avenue  
Chula Vista, CA 91910**

**Failure to Appear at Scheduled Hearing/Late Arrival**

**Failure to appear at the hearing may result in a forfeiture of your appeal fee and a waiver of your right to appeal. If you are more than 15 minutes late to the hearing, the City Manager may determine that you have failed to appear, forfeited your appeal fee, and waived your right to appeal. (Cannabis Regulations §0501(P)(2)(d).)**

**Hearing Procedure (taken from Cannabis Regulations §0501(P))**

- At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. (Cannabis Regulations §0501(P)(2)(b).)
- The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing. (Cannabis Regulations §0501(P)(2)(b).) Documentary evidence may be provided to the City Manager by email to Marisa Aguayo at [REDACTED].
- The hearing shall be conducted in an expeditious and orderly manner as determined by the City manager and shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence will be excluded. (Cannabis Regulations §0501(P)(2)(c).)

**Request for Continuance**

In accordance with Cannabis Regulations §0501(P)(2)(b), the above scheduled hearing may be continued upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause for the continuance request. If you wish to request a continuance of the above scheduled hearing, please submit your request online at the following link: <https://www.chulavistaca.gov/departments/city-manager/commercial-cannabis/request-to-continue-appeal-hearing-date>. Please be aware that your hearing date has not been continued until and unless you receive an email response stating that a continuance has been granted.

Sincerely,



Gary Halbert  
City Manager

GH/ma

cc: Simon Silva  
Megan McClurg



May 28, 2020

VIA  
FIRST CLASS MAIL & EMAIL

Willie Senn  
Urbn Leaf

Re: **AMENDED Notice of Appeal Hearing Date & Time**  
**Urbn Leaf (Submitter ID: 57064; 57069; 57074; 58388)**

Dear Willie Senn:

You have submitted a Request to Appeal the May 6, 2020 Notice of Decision issued by City of Chula Vista ("City") in regard to the above referenced cannabis business license application.

Pursuant to Cannabis Regulations §0501(P)(2)(a), this letter hereby notifies you that your hearing will occur at the following date, time, and place:

Hearing Date: **June 10, 2020**

Hearing Time: **2:00 p.m.**

Hearing Place: **Virtual via Webex**

**Failure to Appear at Scheduled Hearing/Late Arrival**

**Failure to appear at the hearing may result in a forfeiture of your appeal fee and a waiver of your right to appeal. If you are more than 15 minutes late to the hearing, the City Manager may determine that you have failed to appear, forfeited your appeal fee, and waived your right to appeal. (Cannabis Regulations §0501(P)(2)(d).)**

**Hearing Procedure (taken from Cannabis Regulations §0501(P))**

- At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. (Cannabis Regulations §0501(P)(2)(b).)

Page 1 of 2

- The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing. (Cannabis Regulations §0501(P)(2)(b).) Documentary evidence may be provided to the City Manager by email to Marisa Aguayo at [maguayo@chulavistaca.gov](mailto:maguayo@chulavistaca.gov).
- The hearing shall be conducted in an expeditious and orderly manner as determined by the City manager and shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence will be excluded. (Cannabis Regulations §0501(P)(2)(c).)

**Request for Continuance**

In accordance with Cannabis Regulations §0501(P)(2)(b), the above scheduled hearing may be continued upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause for the continuance request. If you wish to request a continuance of the above scheduled hearing, please submit your request online at the following link: <https://www.chulavistaca.gov/departments/city-manager/commercial-cannabis/request-to-continue-appeal-hearing-date>. Please be aware that your hearing date has not been continued until and unless you receive an email response stating that a continuance has been granted.

Sincerely,



Gary Halbert  
City Manager

GH/ma

cc: Simon Silva  
Megan McClurg

-TAB 15 -



## 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@urbnleaf.com](mailto:nshaman@urbnleaf.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



-TAB 16 -



CITY OF CHULA VISTA

Commercial Cannabis Business Retail Application Scores by Categories

Sorted by: Points Awarded (Highest to Lowest)/District

	Id	Business Name	District	License Type	Experience / Qualifications	Liquid Assets	Business Plan	Operating Plan	Points Awarded
1.	56809	Grasshopper Cannabis Delivery, LLC	1	Non-Storefront	150	40	150	150	490
2.	59535	4041 Bonita LLC	1	Retail	146	50	127.5	145	468.5
3.	57074	UL Chula Two LLC	1	Retail	135	50	120	120	425
4.	57058	Tradecraft Farms - Chula Vista, LLC	1	Retail	120	50	120	120	410
5.	57015	Have a Heart Chula Vista LLC	1	Retail	129 5	35	127.5	110	402
6.	56948	Rakesh Goyal	1	Retail	145	41	105	103	394
7.	57070	CV Retail	1	Retail	108	40	120	120	388
8.	57077	VEC Ventures	1	Retail	81.5	50	135	110.5	377
9.	57139	The Artist Tree III, LLC	1	Retail	141	41	85	100	367
10.	57014	EZMANAGE	1	Retail	120	38	120	80	358
11.	57036	CV Amalgamated LLC dba Caligrown	1	Retail	84	40	95	120	339
12.	56993	March and Ash Chula Vista, Inc.	2	Retail	150	50	150	140	490
13.	56811	Vista Property Holding, LLC	2	Retail	150	40	150	150	490
14.	56875	Chula Vista Cannabis Co, Inc.	2	Retail	138	50	150	150	488
15.	57061	TD Enterprise LLC	2	Retail	150	50	140	145	485
16.	56928	Loud Inc	2	Retail	144 5	50	147 5	140	482
17.	56991	3rd Ave, LLC	2	Retail	146	49	137.5	145	477.5
18.	59539	Educanna LLC	2	Retail	146	50	127 5	145	468.5
19.	56933	RMFS Holdings, LLC	2	Non-Storefront	132 5	50	135	135	452.5
20.	56982	Southern Erudite Ventures	2	Retail	120	40	135	133	428
21.	57064	UL Chula One LLC	2	Retail	135	50	120	120	425
22.	57063	Verano Chula Vista, LLC	2	Retail	130	40	120	120	410
23.	57047	Jiva Life LLC	2	Retail	120	48	120	120	408
24.	57090	Coastal	2	Retail	114	40	120	130	404
25.	56855	Greenleaf, Inc.	2	Retail	124	40	115	125	404
26.	57012	Have a Heart Chula Vista LLC	2	Retail	129 5	35	127.5	110	402
27.	57116	Leafed, Inc	2	Retail	81	44	140	130	395
28.	57004	AMS Retail Group CV LLC	2	Retail	117	20	127.5	127	391.5
29.	57072	Northstar Equities Inc.	2	Retail	119	30	120	120	389
30.	59541	CV Retail	2	Retail	108	40	120	120	388
31.	56985	SLO Cultivation Inc., dba Cresco California	2	Retail	114	40	100	120	374
32.	57137	The Artist Tree III, LLC	2	Retail	141	41	85	100	367
33.	56906	769 Broadway, Inc.	2	Retail	141	4	70	145	360
34.	57022	CV Amalgamated LLC dba Caligrown	2	Retail	84	40	95	120	339
35.	57028	2SLRW LLC	2	Retail	141	41	60	60	302
36.	59536	Liquid Assets International LLC	2	Retail	86	26	97 5	82.5	292
37.	57067	Alternative Health Sunrise	2	Retail	140	4	80	60	284
38.	57051	Ocean Green Management	2	Retail	75	20	85	74	254
39.	59557	Kindred Collective, LLC	2	Retail	110	22	35	70	237
40.	56983	Shoreline Bloom LLC	2	Retail	60	4	75	80	219
41.	57002	Chula Vista Helping Hands, LLC	2	Retail	52	20	65	73	210
42.	56894	Chula Vista Retail Solutions, Inc	2	Retail	96	8	50	44	198
43.	57003	March and Ash Nirvana, Inc.	3	Retail	150	50	150	140	490
44.	57001	Adam Knopf & Deborah Thomas dba Golden State Greens	3	Retail	135	20	145	145	445
45.	56969	Southern Erudite Ventures	3	Retail	120	40	135	133	428
46.	57033	Three Habitat Consulting Chula Vista	3	Retail	120	50	120	120	410
47.	57059	Coastal Dispensary, LLC	3	Retail	114	40	120	130	404
48.	57024	Have a Heart Chula Vista LLC	3	Retail	129 5	35	127.5	110	402
49.	57133	Leafed Inc.	3	Retail	81	44	140	130	395
50.	56955	Rakesh Goyal	3	Retail	145	41	105	103	394
51.	57140	The Artist Tree III, LLC	3	Retail	141	41	85	100	367
52.	57019	CV Amalgamated LLC dba Caligrown	3	Retail	84	40	95	120	339
53.	57032	Good Earth Chula Vista, LLC	3	Retail	89	25	65	88.5	267.5

	Id	Business Name	District	License Type	Experience / Qualifications	Liquid Assets	Business Plan	Operating Plan	Points Awarded
54.	59586	Anderson Development Chula Vista 1, LLC	3	Retail	135	41	10	60	246
55.	57049	Zoar	3	Retail	60	50	75	60	245
56.	57044	Archway Investments Inc.	3	Retail	108	41	40	54	243
57.	56891	Chula Vista Retail Solutions, Inc	3	Retail	96	8	50	44	198
58.	57007	790 Alternative Health Inc.	3	Retail	78	20	45	54	197
59.	57034	Element 7 Chula Vista One LLC	4	Retail	144	50	150	150	494
60.	57123	TD Enterprise LLC	4	Retail	150	50	140	145	485
61.	57021	Stephen Ablahad--dba Greener Times	4	Retail	140 5	49	150	141.5	481
62.	56968	NMG Chula Vista, LLC	4	Retail	142 5	49	145	141.5	478
63.	56924	Harvest of Chula Vista, LLC	4	Retail	147	49	135	140	471
64.	59538	Educanna LLC	4	Retail	146	50	127.5	145	468.5
65.	56931	RMFS Holdings LLC	4	Retail	132 5	50	135	135	452.5
66.	57027	Chula Vista Cannabis Village	4	Retail	125	50	140	121.5	436.5
67.	56986	NC5 Systems, INC.	4	Non-Storefront	129	40	127.5	130	426.5
68.	59549	Bobnick LLC	4	Non-Storefront	141	50	90	145	426
69.	57069	2446 Main Street LLC	4	Retail	135	50	120	120	425
70.	56799	Starbranch, LLC	4	Retail	109	40	140	120	409
71.	57056	Coastal Delivery Services, LLC	4	Non-Storefront	114	40	120	130	404
72.	61950	Northstar Equities Inc.	4	Retail	119	30	120	120	389
73.	57075	CVretail LLC	4	Retail	108	40	120	120	388
74.	57046	HOTN Club	4	Retail	120	26	120	120	386
75.	56909	1214 Broadway, Inc.	4	Retail	141	8	115	120	384
76.	56940	1322 Third Holdings, LLC	4	Retail	146	8	75	120	349
77.	57013	Strategic Star Properties	4	Retail	141	50	90	67	348
78.	57020	Tychee LLC	4	Retail	87	32	112 5	110	341.5
79.	57035	CV Amalgamated LLC	4	Retail	84	40	95	120	339
80.	56918	EBZ Management	4	Retail	84	24	110	120	338
81.	56987	Green Dreams, LLC.	4	Retail	109	42	102 5	63	316.5
82.	57018	CV Coastal, Inc.	4	Retail	60	24	100	120	304
83.	57068	SVRMC, LLC.	4	Retail	146	41	80	30	297
84.	56997	PMT Industries, LLC	4	Retail	84	30	90	90	294
85.	56996	CALMA GG, LLC	4	Retail	138 5	4	60	91	293.5
86.	56998	South Bay Leaves Inc.	4	Retail	86	26	97.5	82.5	292
87.	57008	CV Holistic Care	4	Retail	75	8	70	120	273
88.	57016	Green Pearl Enterprises LLC	4	Retail	55	30	90	93	268
89.	57017	Monarch Management Consulting, Inc.	4	Retail	60	20	75	60	215
90.	57057	Chaldean Properties, Inc.	4	Retail	123	10	20	60	213
91.	56758	Firefly Delivery, LLC	4	Retail	60	24	65	60	209
92.	56898	Chula Vista Retail Solutions, Inc	4	Retail	96	8	50	44	198
93.	57030	Budee, inc.	4	Retail	130	2	55	0	187
94.	59537	G.O.A.T. Investments LLC	4	Retail	0	0	35	50	85
95.	59542	420 Oceanside LLC	4	Retail	15	20	25	0	60

**-TAB 17 -**



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

	Id	Business Name	District	License Type	Total Points Possible	Total Points Awarded
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

-TAB 18 -



THE CITY OF SAN DIEGO

May 22, 2012

# NOTICE OF VIOLATION

**Location:** 415 University Avenue  
(401-425 University Avenue & 3871 Fourth Avenue)

**Assessor's Parcel No.:** 452-056-01-00

**Owner:** Uptown University LLC  
**Property Manager:** Michael McNally  
**Address:** 3978 Sorrento Valley Blvd., Suite # 100  
San Diego, CA 92121-1436

**Owner:** Uptown University LLC  
**Agent for Service:** Farschin Samimi  
**Address:** 1011 Muirlands Vista Way  
La Jolla, CA 92037

**Owner:** Uptown University LLC  
**Managing Member:** Farschin Samimi  
**Address:** 7629 Girard Avenue, Suite 303  
La Jolla, CA 92037

**Business Entity:** The Holistic Café, Incorporated  
**Agent for Service:** Jessica McElfresh  
**Mailing Address:** 16021 Via Dicha  
Rancho Santa, Fe CA 92091

**Business Entity:** The Holistic Café, Incorporated  
**Mailing Address:** 415 University Avenue  
San Diego, CA 92103-3115

**Business Entity:** The Holistic Café, Incorporated  
**Owner(s):** David L. Speckman, Willie Senn, Patrick Ian Carroll,  
Zachary Roman  
**Mailing Address:** 1414 Oliver Avenue  
San Diego, CA 92109

## Neighborhood Code Compliance Division

1222 First Avenue, 5th Floor, MS 511 • San Diego, California 92101-4101  
Tel (619) 236-5500 Fax (619) 533-6142



Notice of Violation  
415 University Avenue  
May 22, 2012  
Page 2

Business Entity: The Holistic Café, Incorporated  
Owner: David Speckman and Will Senn  
Address: 1350 Columbia Street, Suite 503  
San Diego, CA 92101

**Zone: Mid City's Community Planned District (MCCPD-CN-1A)**

A representative of the Neighborhood Code Compliance Division conducted a limited inspection of the above referenced premises on May 14, 2012 and May 17, 2012.

**The specific elements in violation include, but may not be limited to, the following:**

**History:**

This property is located within the City of San Diego. The originally permitted structure was constructed in 1913, as a two story structure with commercial suites on the first floor and nine residential dwelling units on the second floor. It is constructed of masonry block, type V construction and "B" Occupancy on the first floor. The approved configuration consisted of 8910 square feet of commercial first floor use and 8034 square feet of residential second floor use.

**Subsequent changes to the structures and premises have been made without the required change of use, construction permits, inspections and/or approvals.**

**415 University Avenue**

Commercial Tenant Improvement Permits were issued in March 1986, for the suite addressed 415 University Avenue which was used as a Poster Shop. The configuration included a gallery, poster framing area, office, dressing room and restroom.

A Marijuana Dispensary is operating at this location as The Holistic Café, Incorporated. The Business Tax certificate issued to David Speckman, President of the Holistic Café, in 2011, misrepresented the business activity as the sale of herbal remedy teas and health products.

There has been non-permitted tenant improvements to the suite. Limited access to view the suite revealed it has been reconfigured with non-permitted building and electrical modifications.

The Marijuana Dispensary has been illegally divided into a reception area with non-permitted grid ceiling and electrical lighting, an office, a sales area with display counters, storage room, and restroom.



There is non-permitted electrical extension cords which provide electrical service to equipment and lighting and lack of covers over electrical components visible in the reception areas ceiling.

Marijuana Dispensaries are not a permitted use and no zone within the City of San Diego permits Marijuana Dispensaries.

**The non-permitted use and construction include and are not be limited to:**

- 1.) The non-permitted Use of the commercial building as a Marijuana Dispensary.
- 2.) The non-permitted commercial tenant improvement include but are not limited to:
  - (a) The non-permitted construction, reconfiguration and alteration of the suite. *Submit Architectural Plans and permit the removal of the non-permitted construction and other improvements.*
- 3.) The non-permitted use of electrical extension cords. *Remove.*
- 4.) The non-permitted installation of electrical lighting and grid ceiling systems. *Submit Architectural Plans; obtain Permits and Approvals to remove all additions and modifications once the Dispensary has vacated.*
- 5.) The non-permitted installation of signage. *Remove.*

***Commercial Tenant Improvement Permit(s) are required to remove the non-permitted construction and restore the premises to its last approved configuration.***

In accordance with the California Building Code (CBC), California Electrical Code (CEC) and the San Diego Municipal Code (SDMC) this is to notify you that the following violation(s) were observed.

**The specific code sections in violation, but may not be limited to, the following:**

<u>CEC Sec.</u>	<u>Violation Description</u>
400.8	Unlawful use of Extension Cord Wiring
314.28(C)	<b>Covered Junction Boxes</b> All junction boxes shall be provided with compatible covers which are suitable for the conditions of use.

**SDMC Sec.**

**Violation Description**

**1512.0103**

**Mid-City Communities Planned District Applicable Regulations**

The following provisions of the Land Development Code apply to the Mid-City Communities Planned District.

Chapter 11 (Land Development Procedure)  
Chapter 12 (Land Development Reviews)  
Chapter 13 (Zones)  
Chapter 14 (Separately Regulated Use Regulations)  
    (Sign Regulations)  
    (Supplemental Development Regulations)  
    (Building Regulations)  
    (Electrical Regulations)  
    (Plumbing and Mechanical Regulations)

**1512.0305**

**Use Regulations for Commercial Zones (CN) (Table 1512-03I)**

(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. *Marijuana Dispensaries are not an allowed use in any zone within the City of San Diego.*

**131.0520**

**Use Regulations of Commercial Zones**

The regulations of Section 131.0522 apply in the commercial zones unless otherwise specifically provided by footnotes indicated in Table 131-05B. The uses permitted in any zone may be further limited if the *premises* is located within the Airport Land Use Compatibility Overlay Zone (Chapter 13, Article 2, Division 15), or if *environmentally sensitive lands* are present, pursuant to Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations).

(a) Within the commercial zones, no *structure* or improvement, or portion thereof, shall be constructed, established, or altered, nor shall any *premises* be used or maintained except for one or more of the purposes or activities listed in Table 131-05B. It is unlawful to establish, maintain, or use any *premises* for any purpose or activity not listed in this section or Section 131.0522.

- 121.0302(b)(1) Failure to comply with the Land Development Code.**  
(b) It is unlawful for any person to engage in any of the following activities, or cause any of the following activities to occur in a manner contrary to the provisions of the Land Development Code:
- (1) To erect, place, construct, convert, establish, alter, use, enlarge, repair, move, remove, equip, maintain, improve, occupy, or demolish any structures.
- 129.0202 Failure to obtain the required Building Permits for Structural Work.**
- 129.0111 Failure to obtain the required Building Inspections and Approvals.**
- 129.0302 Failure to obtain the required Electrical Permit for Electrical Work.**
- 129.0314 Failure to obtain the required Electrical Inspections and Approvals.**
- 129.0802 Failure to Obtain the Required Sign Permit.**  
A Sign Permit is required for the installation or alteration of any *Sign*. Sign Permit Stickers are required for each *sign*. The sticker is applicable to one *sign* at one location.

You are hereby ordered to correct the violations by completing the following actions set forth below:

**Immediately:**

- 1.) Cease operating the Marijuana Dispensary.
- 2.) Remove any non-permitted signage.
- 3.) Remove all electrical extension cords.
- 4.) Schedule a complete inspection of the Suite addressed 415 University Avenue

**Additional requirements for compliance will require you to comply with the following:**

- 5.) Schedule a complete inspection of the property once the Marijuana Dispensary has vacated.

- 6.) Submit a completed application which references this Notice and a full set of architectural plans to the Neighborhood Code Compliance Division, Attention: Reneé Kinninger, prior to submittal to the Development Service Department for permits.
- 7.) Scale drawings which address the non-permitted construction, additions and modifications are required in order to restore the premises to its last approved configuration.

**Note: The submission of an incomplete application and/or plans will not satisfy the compliance time frame requirements. There is to be no delay on your part in making revisions, if any, required on the submitted plans.**

The plans shall reference this Notice in the "Scope of Work" narrative outlining the proposed project. It shall include the violations and deficiencies listed in this Violation Notice along with the proposed corrections.

The plans shall also include: a site plan; elevations; existing and proposed floor plans; existing and proposed uses; All existing, non-permitted construction shall be labeled and identified on the plans. Only work which was legally permitted and unchanged may be labeled as "existing". Additionally, a copy this Notice shall be included as a page of the plans.

- 8.) Submit a complete application and set of plans to the Development Services Department and have the application deemed complete.
- 9.) Obtain required permits
- 10.) Schedule an **initial inspection within 15 days** from the permits issuance and obtain all required inspections and **final approval within 60 days** from the permits issuance.

**THIS NOTICE MUST BE SUBMITTED WHEN APPLYING FOR APPROVAL TO DEVELOP AND/OR APPLYING FOR PERMITS. REFERENCE THE ISSUANCE OF THIS NOTICE WHEN DISCUSSING THE DEVELOPMENT OR REQUIRED RESTORATION PERMITS.**

*Note:*

**The Property Owner is strictly liable for all violations occurring on the property.**

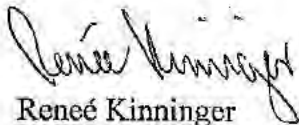
Notice of Violation  
415 University Avenue  
May 22, 2012  
Page 7

**This case has been referred to the Code Enforcement Unit of the City Attorney's Office.**

Failure to comply with this Notice of Violation may result in further enforcement actions such as administrative citations, administrative abatement, civil penalties, re-inspection fees, revocation of permits, recordation of the notice of violation, withholding of future municipal permits, or prosecution via criminal complaint or civil injunction.

Be advised that there is a re-inspection fee (\$105.00) to recover costs for additional inspection services in accordance with San Diego Municipal Code, Section 13.0103. A bill for this service will be mailed to you immediately following the third (3rd) scheduled inspection.

If you have any questions, please contact me at (619) 236-7390.



Renee Kinninger  
Combination Building Inspector II

RK/lm

cc: File

NC# 143656

This information will be made available in alternative formats upon request.

415\_UniversityAve\_nccd127\_MMD\_rvg

-TAB 19 -



**SUMMONS  
(CITACION JUDICIAL)  
UNLAWFUL DETAINER-EVICTION  
(RETENCIÓN ILÍCITA DE UN INMUEBLE-DESALOJO)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**  
THE HOLISTIC CAFE, INC.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
UPTOWN 401, L.P.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2012 APR 06 PM 1:57  
CLERK

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER:  
07-2012-00043424-CL-UD-CTL

San Diego Superior Court  
330 W. Broadway  
San Diego, CA 92101

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David A. Stevens

619-260-0507

3115 4th Avenue  
San Diego, CA 92103

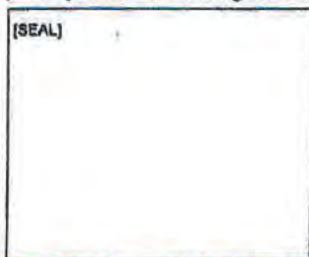
3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:  
(Fecha) APR 06 2012

Clerk, by  
(Secretario) S. Goodrich

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (PCS-010)).



4. NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual defendant.  
b. ☒ as the person sued under the fictitious name of (specify): The Holistic Cafe, I  
c. ☐ as an occupant  
d. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 415.46 (occupant)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

☒ other (specify): Limited Partner

5. ☐ by personal delivery on (date):

Page 1 of 2



PLAINTIFF (Name): UPTOWN 401, L.P.

CASE NUMBER:

DEFENDANT (Name): THE HOLISTIC CAFE, INC.

6. Unlawful detainer assistant (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):
- a. Assistant's name:
  - b. Telephone no.:
  - c. Street address, city, and ZIP:
  - d. County of registration:
  - e. Registration no.:
  - f. Registration expires on (date):

Farschin Samimi



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address): <b>David A. Stevens</b> 054635		FOR COURT USE ONLY
3115 4th Avenue San Diego, CA 92103 TELEPHONE NO.: 619-260-0507 FAX NO.: 619-297-5908 ATTORNEY FOR (Name): UPTOWN 401, L.P.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		2012-07-03 11:57
CASE NAME: UPTOWN 401, LLP. v. THE HOLISTIC CAFE, INC.		
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER <b>37-2012-00043424-CL-UD-CTL</b> JUDGE DEPT.

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input checked="" type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 4/5/12

David A. Stevens  
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use  
Judicial Council of California  
CM-010 (Rev. July 1, 2007)



#### CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
Cal. Standards of Judicial Administration, std. 3.10  
www.courtinfo.ca.gov

Farschin Samimi



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, telephone number, and address): <b>David A. Stevens 054635</b>  3115 4th Avenue San Diego, CA 92103 TELEPHONE NO.: 619-260-0507 FAX NO. (Optional): 619-297-5908 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>UPTOWN 401, L.P.</b>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	
PLAINTIFF: <b>UPTOWN 401, L.P.</b>  DEFENDANT: <b>THE HOLISTIC CAFE, INC.</b>	
<input type="checkbox"/> DOES 1 TO _____	
<input checked="" type="checkbox"/> <b>COMPLAINT - UNLAWFUL DETAINER*</b> <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number): _____	CASE NUMBER <b>37-2012-00043424-CL-UD-CTL</b>
Jurisdiction (check all that apply): <input checked="" type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input checked="" type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000  <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited	

1. PLAINTIFF (name each): **UPTOWN 401, L.P.**

alleges causes of action against DEFENDANT (name each):  
**THE HOLISTIC CAFE, INC.**

2. a. Plaintiff is (1) ☐ an individual over the age of 18 years. (4) ☒ a partnership.  
 (2) ☐ a public agency. (5) ☐ a corporation.  
 (3) ☐ other (specify):

b. ☒ Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):  
**UPTOWN 401, L.P.**

3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):  
**415 University Avenue, San Diego, CA 92103**

4. Plaintiff's interest in the premises is ☒ as owner ☐ other (specify):

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): defendant (name each):  
**THE HOLISTIC CAFE, INC.**

(1) agreed to rent the premises as a ☐ month-to-month tenancy ☒ other tenancy (specify): **1- year lease**

(2) agreed to pay rent of \$ **4,170** payable ☒ monthly ☐ other (specify frequency):

(3) agreed to pay rent on the ☒ first of the month ☐ other day (specify):

b. This ☒ written ☐ oral agreement was made with

(1) ☒ plaintiff.

(2) ☐ plaintiff's agent.

(3) ☐ plaintiff's predecessor in interest.

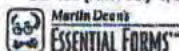
(4) ☐ other (specify):

\*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

Form Approved for Optional Use  
 Judicial Council of California  
 UD-100 (Rev. July 1, 2005)

### COMPLAINT - UNLAWFUL DETAINER

Page 1 of 3  
 Civil Code, § 1940 et seq.  
 Code of Civil Procedure §§ 425.12, 116  
 www.courtinfo.ca.gov



Farschin Samimi



PLAINTIFF (Name): <u>UPTOWN 40 L.P.</u>	CASE NUMBER:
DEFENDANT (Name): <u>THE HOLISTIC CAFE, INC.</u>	

6. c. ☐ The defendants not named in item 6a are
- (1) ☐ subtenants.
- (2) ☐ assignees.
- (3) ☐ other (specify):
- d. ☐ The agreement was later changed as follows (specify):
- e. ☒ A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)
- f. ☐ (For residential property) A copy of the written agreement is not attached because (specify reason):
- (1) ☐ the written agreement is not in the possession of the landlord or the landlord's employees or agents.
- (2) ☐ this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).
7. ☒ a. Defendant (name each): THE HOLISTIC CAFE, INC.

was served the following notice on the same date and in the same manner:

- |   |  |
|---|--|
| (1) <input type="checkbox"/> 3-day notice to pay rent or quit | (4) <input type="checkbox"/> 3-day notice to perform covenants or quit |
| (2) <input type="checkbox"/> 30-day notice to quit            | (5) <input checked="" type="checkbox"/> 3-day notice to quit           |
| (3) <input type="checkbox"/> 60-day notice to quit            | (6) <input type="checkbox"/> Other (specify):                          |

- b. (1) On (date): 2/24/2012 the period stated in the notice expired at the end of the day.
- (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. ☐ The notice included an election of forfeiture.
- e. ☒ A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)
- f. ☐ One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)

8. a. ☒ The notice in item 7a was served on the defendant named in item 7a as follows:
- (1) ☐ by personally handing a copy to defendant on (date):
- (2) ☒ by leaving a copy with (name or description): Front Counter person at defendant's
- a person of suitable age and discretion, on (date): 2/24/2012
- ☐ residence ☒ business AND mailing a copy to defendant at defendant's place of residence on (date): 2/24/12 because defendant cannot be found at defendant's residence or usual place of business.
- (3) ☐ by posting a copy on the premises on (date): ☐ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date):
- (a) ☐ because defendant's residence and usual place of business cannot be ascertained OR
- (b) ☐ because no person of suitable age or discretion can be found there.
- (4) ☐ (Not for 3-day notice; see Civil Code, § 1946 before using). by sending a copy by certified or registered mail addressed to defendant on (date):
- (5) ☐ (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.
- b. ☒ (Name): The Holistic Cafe, INC.
- was served on behalf of all defendants who signed a joint written rental agreement.
- c. ☐ Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.
- d. ☒ Proof of service of the notice in item 7a is attached and labeled Exhibit 3.



PLAINTIFF (Name): UPTOWN 1, L.P.	CASE NUMBER:
DEFENDANT (Name): THE HOLISTIC CAFE, INC.	

9. ☐ Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10. ☐ At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$
11. ☐ The fair rental value of the premises is \$ per day.
12. ☐ Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
13. ☒ A written agreement between the parties provides for attorney fees.
14. ☐ Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

Plaintiff has met all applicable requirements of the ordinances.

15. ☒ Other allegations are stated in Attachment 15.
16. Plaintiff accepts the jurisdictional limit, if any, of the court.

17. PLAINTIFF REQUESTS

- |  |   |
|--|---|
| a. possession of the premises.                                   | f. <input type="checkbox"/> damages at the rate stated in item 11 from (date): for each day that defendants remain in possession through entry of judgment. |
| b. costs incurred in this proceeding:                            | g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in item 12.   |
| c. <input type="checkbox"/> past-due rent of \$                  | h. <input type="checkbox"/> other (specify):  |
| d. <input checked="" type="checkbox"/> reasonable attorney fees. |   |
| e. <input type="checkbox"/> forfeiture of the agreement.         |   |


18. ☒ Number of pages attached (specify):

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400-6415)

19. (Complete in all cases.) An unlawful detainer assistant ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state:)

- |  |                            |
|--|----------------------------|
| a. Assistant's name:                   | c. Telephone No.:          |
| b. Street address, city, and zip code: | d. County of registration: |
|  | e. Registration No.:       |
|  | f. Expires on (date):      |

Date: 4-5-12  
DAVID STEVENJ  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. 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 PLAINTIFF)

AMENDMENT TO LEASE  
(Lease Extension)

I. PARTIES AND DATE

THIS AMENDMENT TO LEASE (this "Amendment") dated as of February 10, 2011, is entered into by and between UPTOWN 401, L. P. ("LESSOR"), and THE HOLISTIC CAFÉ ("LESSEE").

II. RECITALS

A. Lessor's predecessor-in-interest, Uptown University, LLC, and Lessee's predecessor-in-interest, PDC Enterprises, entered into that certain Lease, dated August 9, 2009, for the Premises known as 415 University Avenue, San Diego, CA 92103.

B. Lessor and Lessee desire to modify the Lease as set forth in this Amendment, which modifications shall be deemed effective as of the date of this Amendment as indicated above.

III. MODIFICATIONS

Lessor and Lessee hereby agree to amend the Term and Base Rent, upon the terms and conditions hereinafter set forth.

A. Term: The Term of the Lease is hereby extended by One Year, commencing February 1, 2011, and ending January 31, 2012.

B. Base Rent: The Base Rent will remain at the present amount of \$4,170.00 per month until the expiration of this Amendment.

NNN charges of \$1,000<sup>00</sup> to be paid monthly in addition to the base rent.

IV. GENERAL

Effect of Amendment; Ratification: Except to the extent that the Lease is modified by this Amendment, the terms and provisions of the Lease shall remain unmodified and in full force and effect. In the event of conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall prevail.

AGREED AND ACCEPTED:  
LESSOR

Uptown 401, L.P.

Sarschik Samimi

By: [Signature]

Its: Gen. Partner

Date: 3-28-2011

LESSEE

The Holistic Cafe

By: [Redacted Signature]

Its: Pres.

Date: 2/18/11



**Three Day Notice to Surrender Possession**

To The Holistic Café

and all other occupants in possession

for the premises located at 415 University Avenue, San Diego, California 92103

NOTICE IS HEREBY GIVEN that within three (3) days of this Notice, you are required to quit and deliver up possession of the subject premises to the undersigned or to:


Uptown University, LLC c/o Pacific Commercial Management, Inc., located at  
3978 Sorrento Valley Boulevard, Suite 100, San Diego, California 92121

who is authorized to receive the same, or the undersigned will institute legal proceedings to recover possession of said premises which could result in a judgment against you and all other residents in possession, including attorneys' fees and court costs, as allowed by law.

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 this illegal activity, you must cease operation and vacate the premises.

February 24, 2012

Date

  
\_\_\_\_\_  
Michael P. McNally, Agent  
UPTOWN UNIVERSITY, LLC

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David A. Stevens #054635  3115 4th Even San Diego, CA 92103 TELEPHONE NO.: 619-260-0507      FAX NO. (Optional): 619-297-5908 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Uptown 401, L.P.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	CASE NUMBER:
PLAINTIFF/PETITIONER: Uptown 401, L.P.  DEFENDANT/RESPONDENT: The Holistic Cafe, Inc.	JUDGE:  DEPT.:
<b>PROOF OF SERVICE-CIVIL</b>	
Check method of service (only one): <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:  
3978 Sorrento Valley Blvd, Suite 100, San Diego, CA 92121
3. ☐ The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
4. On (date): February 24, 2012 I served the following documents (specify):  
3 Day Notice to Quit and Vacate Premises
- ☐ The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
  - a. Name of person served: The Holistic Cafe, Inc.
  - b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
Business or residential address where person was served:  
Left with front counter person @ 415 University, San Diego, CA 92103
  - c. ☐ (Complete if service was by fax or electronic service.)  
(1) Fax number or electronic service address where person was served:
  - (2) Time of service:
- ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service-Civil (Persons Served) (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a. ☒ By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.



CASE NAME Uptown 401, L.P.	CASE NUMBER:
-------------------------------	--------------

6. b. ☐ By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2) ☐ placed the envelope for collection and mailing, 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.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state):
- c. ☐ By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ By electronic service. Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: February 24, 2012  
Aric W. Deneen

(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ By personal service. I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

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

Date:

(NAME OF DECLARANT) (SIGNATURE OF DECLARANT)



-TAB 20 -

12 DEC 14 AM 05:03

CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

FILED  
Clerk of the Superior Court

DEC 14 2012

By: \_\_\_\_\_ Deputy

1 JAN I. GOLDSMITH, City Attorney  
2 JON D. DWYER, Deputy City Attorney  
3 California State Bar No. 233123 •  
4 Office of the City Attorney  
5 Community Justice Division/Code Enforcement Unit  
6 1200 Third Avenue, Suite 700  
7 San Diego, California 92101-4103  
8 Telephone: (619) 533-5655  
9 Fax: (619) 533-5696  
10 JDwyer@sandiego.gov

11 Attorneys for Plaintiff

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 CITY OF SAN DIEGO, a municipal  
15 corporation,

16 Plaintiff,

17 v.

18 THE HOLISTIC CAFÉ, INC., a California  
19 nonprofit mutual benefit corporation;  
20 WILLIE FRANK SENN, as an individual, as  
21 president of THE HOLISTIC CAFÉ, INC.,  
22 and as chief executive officer of  
23 THE HOLISTIC CAFÉ, INC.;  
24 PATRICK IAN CARROLL, as an individual  
25 and as secretary of THE HOLISTIC CAFÉ,  
26 INC.;  
27 ZACHARY ROMAN, as an individual and as  
28 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

21 Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City  
22 Attorney, by Jon D. Dwyer, Deputy City Attorney, alleges the following based on information  
23 and belief:

24 JURISDICTION AND VENUE

25 1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code  
26 (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526,  
27 seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as  
28 alleged in this Complaint, and seeks a preliminary injunction and permanent injunction

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.

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

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

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

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

## PROPERTY

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

/ / / / /

/ / / / /

/ / / / /

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 1512-03I 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.

28 / / / / /

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

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

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

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

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

/ / / / /

/ / / / /

/ / / / /

/ / / / /

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
7 129.0202	129.0111
8 129.0302	129.0314
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.

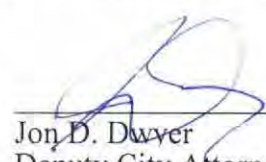
13 6. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of  
14 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

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 By

  
Jon D. Dwyer  
Deputy City Attorney

21  
22 Attorneys for Plaintiff  
23  
24  
25  
26  
27  
28

-TAB 21 -

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

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-

28 / / / / /

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



056-01-00, according to San Diego County Recorder's Grant Deed document No. 2006-0529341,  
filed July 26, 2006. The legal description of the PROPERTY is:

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

5. This action is brought under California law and this Court has jurisdiction over the  
subject matter, the PROPERTY, and each of the parties in this action.

### INJUNCTION

6. The provisions of this Stipulated Judgment are applicable to Defendants, their  
successors and assigns, and any of their agents, officers, employees, representatives and all  
persons, corporations or other entities acting by, through, under or on behalf of Defendants and  
all persons acting in concert with or participating with Defendants with actual or constructive  
knowledge of this Stipulated Judgment and Injunction. **Effective immediately upon the date of  
entry of this Stipulated Judgment**, Defendants and all persons mentioned above are hereby  
enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and  
121.0311 and California Code of Civil Procedure section 526, and under the Court's inherent  
equity powers from engaging in or performing, directly or indirectly, any of the following acts:

a. Operating or maintaining at the PROPERTY any commercial, retail, nonprofit,  
collective, cooperative, or group establishment for the growth, storage, sale, or distribution of  
marijuana, including but not limited to any marijuana dispensary, collective, or cooperative  
organized pursuant to the California Health and Safety Code;

b. Operating or maintaining at any property, premises, or location anywhere in the  
City of San Diego any commercial, retail, nonprofit, collective, cooperative, or group  
establishment for the growth, storage, sale, or distribution of marijuana, including but not limited  
to any marijuana dispensary, collective, or cooperative organized pursuant to the California  
Health and Safety Code;

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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]

9. Immediately, and no later than 48 hours from entry of this Stipulated Judgment, cease advertising on the Internet, magazines, or through any other medium the existence of a marijuana dispensary business or "The Holistic Café" at the PROPERTY.

10. On or before January 15, 2013, Defendants HOLISTIC CAFÉ, INC., WILLIE FRANK SENN, PATRICK IAN CARROLL, and ZACHARY ROMAN must have removed all fixtures, items, and property affiliated with the operation of a marijuana dispensary, collective, or cooperative at the PROPERTY.

## MONETARY RELIEF

11. Within fifteen (15) calendar days from the entry of this Stipulated Judgment, Defendants shall pay Plaintiff City of San Diego for the Department of Services Division, Code Enforcement Section's (CES), investigative costs, in the amount of \$2,609.38. Payment shall be in the form of a certified check, payable to the "City of San Diego." Such payment shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be personally delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 500, San Diego, CA 92101, Attention: Jon D. Dwyer.

12. Within fifteen (15) calendar days from the date of the entry of this Stipulated Judgment, Defendants shall pay Plaintiff City of San Diego, a civil penalty in the amount of \$20,000, pursuant to SDMC section 12.0202(b). \$17,500 of these penalties is immediately suspended and shall only be imposed if Defendants fail to comply with the terms of this Stipulated Judgment. The balance of civil penalties in the amount of \$2,500 shall be paid in the form of a certified check, payable to the "City of San Diego," and shall be personally delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 500, San Diego, CA 92101, Attention: Jon Dwyer.

## ENFORCEMENT OF JUDGMENT

13. In the event of default by Defendants as to any amount due per this Stipulated Judgment, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law

/ / / / /

1 for the enforcement of this Stipulated Judgment. Further, any amount in default shall bear interest  
2 at the prevailing legal rate from the date of default until paid in full.

3 14. Nothing in this Stipulated Judgment shall prevent any party from pursuing any  
4 remedies as provided by law to subsequently enforce this Stipulated Judgment or the provisions  
5 of the SDMC, including criminal prosecution and civil penalties that may be authorized by the  
6 court according to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 15. Defendants agree that any act, intentional or negligent, or any omission or failure by  
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to  
9 comply with the respective requirements set forth in Paragraphs 7-12 above will be deemed to be  
10 the act, omission, or failure of Defendants and shall not constitute a defense for a failure to  
11 comply with any respective requirement or part of this Stipulated Judgment. Further, should any  
12 dispute arise between any contractor, successor, assign, partner, member, agent, employee or  
13 representative of Defendants for any reason, Defendants agree that such dispute shall not  
14 constitute a defense for any failure to comply with any respective requirement or part of this  
15 Stipulated Judgment, nor justify a delay in executing any of its terms and requirements.

16 **DISMISSAL OF DOES**

17 16. All allegations as to Does 1 through 50, inclusive, are dismissed.

18 **RETENTION OF JURISDICTION**

19 17. The Court will retain jurisdiction for the purpose of enabling any of the parties to this  
20 Stipulated Judgment to apply to this Court at any time for such order or directions that may be  
21 necessary or appropriate for the construction, operation or modification of the Stipulated  
22 Judgment, or for the enforcement or compliance therewith.

23 18. The clerk is ordered to immediately enter this Stipulated Judgment.

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1 19. By signing this Stipulated Judgment, Defendants admit personal knowledge of the  
2 terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

3 IT IS SO STIPULATED.

4 Dated: 12/7, 2012

JAN I. GOLDSMITH, City Attorney

6 By 

Jon D. Dwyer  
Deputy City Attorney

8 Attorneys for Plaintiff

10 Dated: 12/6, 2012



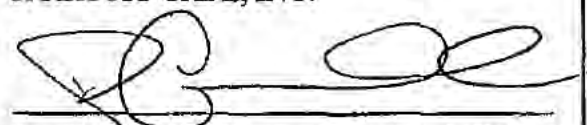
THE HOLISTIC CAFÉ, INC., a California  
nonprofit mutual benefit corporation; by  
WILLIE FRANK SENN, as president/chief  
executive officer of THE HOLISTIC CAFÉ,  
INC.

14 Dated: 12/6, 2012



WILLIE FRANK SENN, as an individual, as  
president of THE HOLISTIC CAFÉ, INC.,  
and as chief executive officer of THE  
HOLISTIC CAFÉ, INC.

18 Dated: 12/6, 2012




PATRICK IAN CARROLL, as an individual  
and as secretary of THE HOLISTIC CAFÉ,  
INC.

22 Dated: 12/6, 2012



ZACHARY ROMAN, as an individual and  
as chief financial officer of THE HOLISTIC  
CAFÉ, INC.

26 Dated: 12/7/12, 2012

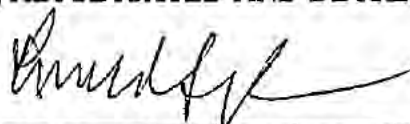


Stephen G. Cline, Attorney for THE  
HOLISTIC CAFÉ, INC., WILLIE FRANK  
SENN, PATRICK IAN CARROLL, and  
ZACHARY ROMAN



1       Upon the Stipulated Judgment of the parties hereto and upon their agreement to entry of  
2 this Stipulated Judgment without trial or adjudication of any issue of fact or law herein, and good  
3 cause appearing therefore, IT IS SO ORDERED, ADJUDICATED AND DECREED.

4  
5       Dated: DEC 14 2012



JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

-TAB 22 -



**PROOF 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 June 5, 2020, I served the foregoing document described as:

- **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**

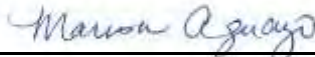
on the interested parties in this action and in the manner of service designated below:

**APPELLANT:** .  
Willie Senn  
[REDACTED]

**COUNSEL FOR APPELLANT**  
Nathan Shaman, Esq.  
[nshaman@urbnleaf.com](mailto:nshaman@urbnleaf.com)

☒ 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 5<sup>th</sup> day of June 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

-TAB 23 -

1 Nathan Shaman (SBN 272928)  
2 General Counsel  
3 Urbn Leaf  
4 1295 W. Morena Blvd.  
5 San Diego, CA 92110  
6 Telephone: (619) 630-5618  
7 Email: nshaman@urbnleaf.com

8 Attorney for Applicants 2446 Main Street LLC,  
9 UL Chula One LLC, and UL Chula Two LLC

10 **CITY OF CHULA VISTA**

11 **OFFICE OF THE CITY MANAGER**

12 2446 MAIN STREET LLC, a California ) Submitter IDs: 57064, 57069, 57074, 58388  
13 limited liability company, UL CHULA ONE )  
14 LLC, a California limited liability company, ) **APPELLANTS' BRIEF REGARDING**  
15 and UL CHULA TWO LLC, a California ) **ISSUES ON APPEAL**  
16 limited liability company, )

17 Appellants, )

18 vs. )

19 ROXANA KENNEDY, in her capacity of )  
20 Chief of Police of the City of Chula Vista, )

21 Respondent. )

22 This consolidated appeal was taken from notices of decision rejecting four separate applications  
23 for commercial cannabis business licenses in the City of Chula Vista, three for adult-use cannabis retail  
24 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.

///

[illegible]

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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2  
2

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).)”

21 ///

22 ///

23 ///

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.

23 ///

24 ///



**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.

23 ///

24 ///

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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-TAB 24 -



# **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

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?

2 MR. SHAMAN: No he is not.

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

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

17 MR. HALBERT: Yes we are.

18 MR. SHAMAN: Okay. So um, I'm not going to  
19 go too extensively into the issues, because I do  
20 believe they've been uh, sufficiently discussed  
21 in the brief. But I will just add a summary for  
22 the record of our position. And effectively,  
23 um, there are several different issues. The  
24 first issue that I raised in a brief is that as  
25 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

score to anyone.

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

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

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

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

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,



1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 specifically in this case, the detective has  
3 testified that he obtained it pursuant to a  
4 public records act request. He is not the  
5 originator of the document. He has no personal  
6 knowledge of any of the contents, um, or  
7 occurrences in the document. He can't verify  
8 whether the document was signed by the person  
9 that purportedly signed it, so he cannot  
10 possibly lay a foundation to establish that the  
11 document is, in fact, what it purports to be.

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

21 MS. MCCLURG: Um, so City um, would just  
22 remind that this is, these are relaxed rules of  
23 evidence, not technical rules of evidence. But  
24 if we are looking at the technical rules of  
25 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.

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

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

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

MR. HALBERT: I'll admit that record.

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

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

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 overseas  
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?

2 CV0016?

3 MR. EATON: Yes ma'am.

4 MS. MCCLURG: And what is that?

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

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

14 MR. EATON: Uh, no they did not.

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

17 MR. SHAMAN: No questions from Appellants.

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

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

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

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

have any, do a closing remark?

MR. SHAMAN: Uh, yes. Thank you, Mr. Halbert, I appreciate it. Um, so effectively, what we have here is, we have one witness who has testified to alleged facts pertaining to um, certain violations of the San Diego Municipal Code that occurred sometime in 2010 to 2012, and this is uh, Detective Varga.

Detective Varga has indicated that the entirety of his testimony is based on documents that he requested through a publicly available vehicle, which is the public records act. He has not personally discussed any of the facts or allegations contained in any of those documents with anyone who drafted them, and he has no personal knowledge of any facts or allegations.

And that is not the kind of evidence that reasonable people [unintelligible] to make decisions, which is the standard in the Chula Vista municipal code [unintelligible] Chula Vista cannabis regulations.

Um, we expect that when people give testimony in administrative hearings, civil and 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

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

5 MR. HALBERT: Ms. McClurg?

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

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

19 Um, and the City's intention was clear. The  
20 City has--has had, and continues to have an  
21 ongoing problem with unlawful marijuana  
22 businesses, especially in the City. We knew it  
23 was prevalent, we heard--you heard people in the  
24 City express that um, eliminating unlawful  
25 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

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 time, it was unpermitted. Um, that the City of  
3 San Diego used its land use codes in order to  
4 try to prevent those businesses from continuing  
5 to operate when they were not permitted.

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

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

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

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

1 Cannabis Appeal Hearing - Willie Senn - 6/10/20  
2 that we have an issue here with unlawful  
3 cannabis activity. That was one of the biggest  
4 concerns for the City, um, in adopting its  
5 cannabis regulations, and so the City does stand  
6 behind its um, rejection of any applicant that  
7 was involved previously in unlawful uh, cannabis  
8 activity in any jurisdiction.

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

12 MR. HALBERT: You have the final word.

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

20 And the language specifically states as is  
21 pertinent to the first ground for rejection that  
22 the, it must be a law or regulation related to  
23 Commercial Cannabis Activity. The definition  
24 espoused by the City just a moment ago would  
25 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.

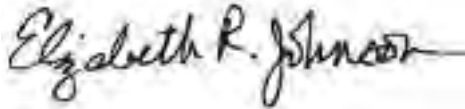
17 MS. MCCLURG: Okay, I will stop the  
18 recording now.

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\_\_\_\_\_



-TAB 25 -

**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**

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- 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**

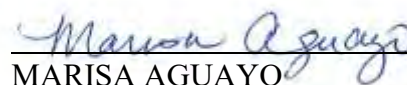
on the interested parties in this action and in the manner of service designated below:

**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

-TAB 26 -

**City of Chula Vista**  
**CANNABIS REGULATIONS**  
*[amended and effective as of 11.19.19]*

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

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

*A. Application Periods*

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

**City of Chula Vista**  
**CANNABIS REGULATIONS**  
*[amended and effective as of 11.19.19]*

later than 15 calendar days from the date noted on the Applicant's Notice of Decision. The request to appeal must be accompanied by the appeal fee, must identify each independent reason for rejection contained in the Notice of Decision that the appellant seeks to appeal, and must indicate whether the appellant requests an appeal by hearing or requests an appeal in writing only. The appellant shall bear the burden of proof, by a preponderance of the evidence, to demonstrate that the identified reason(s) for rejection contained in the Notice of Decision were erroneous.

2. Appeal by Hearing. When an appeal by hearing is requested, the hearing shall be conducted as follows:
  - a. The City Manager shall notify the appellant of the date, time, and place for the hearing by email or first-class mail addressed to the address listed on the request to appeal, allowing a minimum of 20 calendar days from the date the notice is mailed before the hearing is to be held. The hearing may be continued from time to time upon request of a party to the City Manager and upon a finding by the City Manager that the requesting party has shown good cause therefor.
  - b. At the time set for hearing, each party shall have the opportunity to testify and introduce evidence concerning the Notice of Decision. Testimony must be by oath or affirmation. The City Manager may exclude from introduction at the time of hearing any documentary evidence not provided to the City Manager and all parties at least five days prior to the hearing.
  - c. The hearing shall be conducted in an expeditious and orderly manner as determined by the City Manager. The hearing shall not be conducted according to technical rules of procedure and evidence applicable to judicial proceedings. Evidence that might otherwise be excluded under the California Evidence Code may be admissible if it is relevant and of the kind that reasonable persons rely on in making decisions. Irrelevant and unduly repetitious evidence shall be excluded.

**City of Chula Vista**  
**CANNABIS REGULATIONS**  
*[amended and effective as of 11.19.19]*

- d. Failure of an appellant to appear at the hearing shall constitute a forfeiture of the appeal fee and a waiver of the right to appeal except where the City Manager determines there is good cause for such failure to appear. If the appellant is more than 15 minutes late to the hearing, the City Manager may determine that appellant has failed to appear, forfeited the appeal fee, and waived the right to appeal.
3. Appeal in Writing Only. When an appeal in writing is requested, the appeal shall proceed in writing as follows:
  - a. Appellant shall submit in writing, using a form provided by City for that purpose, appellant's evidence and argument concerning the Notice of Decision. Such evidence and argument must be received by the City Clerk within 30 calendar days of the date noted on the Applicant's Notice of Decision. Failure to submit timely evidence or argument shall constitute forfeiture of the appeal fee and waiver of the right to appeal.
  - b. City staff may submit in writing, using a form established by City for that purpose, City's evidence and argument concerning the Notice of Decision. Such evidence and argument must be provided to the City Clerk and mailed to the Applicant within 50 calendar days of the date noted on the Applicant's Notice of Decision.
  - c. Appellant may submit in writing, using a form provided by City for that purpose, Appellant's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 65 calendar days of the date noted on the Applicant's Notice of Decision.
  - d. City staff may submit in writing, using a form established by City for that purpose, City's final evidence and argument concerning the Notice of Decision. Such evidence and argument must be submitted within 80 calendar days after the date noted on the Applicant's Notice of Decision.
  - e. All testimony submitted in writing must be by sworn declaration in a form consistent with Code of Civil Procedure section 2015.5.

-TAB 27 -

## **Chapter 5.19**

### **COMMERCIAL CANNABIS**

#### Sections:

- 5.19.010 Purpose.**
- 5.19.020 Definitions.**
- 5.19.030 City license required.**
- 5.19.040 Maximum number and types of authorized City licenses.**
- 5.19.050 City license application process.**
- 5.19.060 Location requirements for cannabis businesses.**
- 5.19.070 Limitations on City's liability – Licensee's indemnity obligations.**
- 5.19.080 Operating and conduct requirements for all licensees and individuals.**
- 5.19.090 Operating requirements for storefront retailers.**
- 5.19.100 Operating requirements for non-storefront retailers.**
- 5.19.110 Operating requirements for cultivators.**
- 5.19.120 Operating requirements for manufacturers.**
- 5.19.130 Operating requirements for distributors.**
- 5.19.140 Operating requirements for testing laboratories.**
- 5.19.150 Record keeping.**
- 5.19.160 Security measures.**
- 5.19.170 Community relations.**
- 5.19.180 Promulgation of regulations, standards, and other legal duties.**
- 5.19.190 Compliance with all applicable laws required.**
- 5.19.192 License holder responsible for violations by employees or agents.**
- 5.19.194 Fees deemed debt to City.**
- 5.19.200 Right of access and testing.**
- 5.19.210 Restrictions on transfer, change, or alteration of City license or City licensee.**
- 5.19.220 Restrictions on transfer, change, or alteration of location.**
- 5.19.230 Expiration of City license.**
- 5.19.240 Renewal of City license.**
- 5.19.250 Effect of state license suspension, revocation, or termination.**
- 5.19.260 Suspension and revocation of City license.**
- 5.19.270 Advertising and marketing of cannabis.**
- 5.19.280 Enforcement and penalties.**
- 5.19.290 Effectiveness conditioned on passage of tax measure.**

### **5.19.010 Purpose.**

The Adult Use of Marijuana Act (AUMA), adopted by the voters of the state of California in November 2016, decriminalized nonmedicinal cannabis and established a regulatory system for nonmedicinal cannabis businesses in California. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and nonmedicinal cannabis activity throughout the state of California. Under California law, local jurisdictions are authorized to either permit or prohibit the operation of cannabis businesses within their boundaries.

The City has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. Unregulated businesses remain a source of danger and disruption for City residents and businesses. In response to changes in California law, and in an effort to mitigate the negative impacts brought by unregulated Commercial Cannabis Activity, the City now desires to permit, license, and fully regulate Commercial Cannabis Activities within the City. (Ord. 3418 § 2, 2018).

### **5.19.020 Definitions.**

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

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

“A-Licensee” means a Person holding an “A-License.”

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

“Advertise” means to publish or disseminate an Advertisement.

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

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



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

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

“Attractive to Youth” means products, packaging, labeling, or Advertisements that are reasonably likely to encourage individuals under age 21 to initiate cannabis consumption or otherwise to accidentally or purposely consume Cannabis or Cannabis Products. Attractive to Youth items include:

1. Products that resemble a non-Cannabis consumer product of a type that is typically consumed by, or marketed to, Youth, such as a specific candy or baked treat.
2. Packaging or labeling that resembles packaging or labeling of a non-Cannabis consumer product of a type that is typically consumed by or marketed to Youth.
3. Packaging or labeling that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.
4. Advertising that mimics Advertising of a non-cannabis consumer product of a type that is typically consumed by, or marketed to, Youth.
5. Advertising that contains images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to Youth.

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

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

“Cannabis Product” means Cannabis that has undergone a process whereby the plant material has been concentrated and, with or without the addition of ingredients, been transformed into a product for sale. Cannabis

products include but are not limited to: Cannabis Concentrate, Edible Cannabis Products, Topical Cannabis, or an inhalant containing Cannabis or Cannabis Product.

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

“Caregiver or Primary Caregiver” has the same meaning as that term is defined in California Health and Safety Code Section [11362.7](#).

“City” means the City of Chula Vista, California.

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

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

“City Licensee” means any person holding a City License.

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

“Code” means the City of Chula Vista Municipal Code.

“Commercial Cannabis Activity” means the commercial Cultivation, possession, furnishing, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products.

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

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

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

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis, other than for personal use. A City License is required for the Cultivation of Cannabis pursuant to CVMC [5.19.030](#).

“Cultivator” means a Person engaged in Cultivation.

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

“Day Care Center” has the same meaning as in California Health and Safety Code Section [1596.76](#).

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

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

“Development Services Director” means the Director of the City’s Development Services Department, or his/her designee.

“Distribution” means the procurement, sale, and transport of Cannabis and Cannabis Products between Commercial Cannabis Businesses. A City License is required for Distribution pursuant to CVMC [5.19.030](#).

“Distributor” means a Person engaged in Distribution.

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

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

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

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

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

“Licensee” means any person holding a State License and a City License.

“Liquid Assets” means assets that can be readily converted into cash. Liquid Assets include, but are not limited to, the following: funds in checking or savings accounts, certificates of deposit, money market accounts, mutual fund shares, publicly traded stocks, and United States savings bonds. “Liquid Assets” does not mean household items,

furniture and equipment, vehicles, Cannabis plants or products, business inventory, or real property and improvements thereto.

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

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

“M-Licensee” means a Person holding an M-License.

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

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product. A City License to Manufacture is required pursuant to CVMC [5.19.030](#).

“Manufacturer” means a Person engaged in Manufacturing.

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

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

“Minor” means an individual under 18 years of age.

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

“Officer” means any of the following:

1. The chief executive officer of an entity engaged in a Commercial Cannabis Business.
2. A member of the board of directors of an entity engaged in a Commercial Cannabis Business.
3. A Person participating in the direction or control of an Applicant for a City License or any Owner of a Commercial Cannabis Business within the City.

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

“Owner” means any of the following:

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

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

“Patient or Qualified Patient” means a person who is entitled to the protections of California Health and Safety Code Section [11362.5](#) as further provided in California Health and Safety Code Section [11362.7](#).

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

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

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

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

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

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

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

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

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

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

“State” means the state of California.

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

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

“State Licensee” means any Person holding a State License.

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

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

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

A City License is required to operate a Testing Laboratory pursuant to CVMC [5.19.030](#).

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

“Topical Cannabis” means a product intended for external application and/or absorption through the skin. A Topical Cannabis product is not considered a drug as defined by California Health and Safety Code Section [109925](#).

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

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

“Youth” means an individual under 21 years of age.

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

“Youth-Oriented Business” means any for-profit or nonprofit business where the majority of individuals who patronize, congregate, or assemble at the business location are less than 21 years old. (Ord. 3453 § 1(C), 2019; Ord. 3418 § 2, 2018).

### **5.19.030 City license required.**

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

B. Notwithstanding the foregoing, the Delivery of Cannabis or Cannabis Product originating from a Commercial Cannabis Business licensed in accordance with California Business and Professions Code Section [26050\(a\)\(17\)](#) is permitted without a City License, so long as the Delivery originates from a licensed Commercial Cannabis Business outside the City of Chula Vista, and is conducted in accordance with all codified and administrative state and local laws and regulations, including but not limited to the requirements of CVMC [5.19.100\(C\)](#). (Ord. 3418 § 2, 2018).

### **5.19.040 Maximum number and types of authorized City licenses.**

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

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

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

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

1. Manufacturer;
2. Distributor; and

### 3. Testing Laboratory.

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

E. No City License shall issue for any Commercial Cannabis Business type other than those identified in subsections [\(A\)](#) through [\(C\)](#) of this section.

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

G. The City Council may make a referral to the City Manager at any time for a recommendation on if and how the City should decrease the total number of City Licenses for any or all types of Commercial Cannabis Businesses, or to impose a cap on previously uncapped license types. If the City Council proceeds with a decrease in the total number of City Licenses for any or all types of Commercial Cannabis Businesses within the City, any such action shall include provisions for determining which, if any, existing City Licenses shall be eliminated and when Operations for eliminated City Licenses shall cease. (Ord. 3418 § 2, 2018).

## 5.19.050 City license application process.

The following procedures shall govern the application process for the issuance of any City License under this chapter:

### A. Phase One Application Process.

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

- a. Applicant's name, address, telephone number, and e-mail address.
- b. Names and addresses of all Owners of the Commercial Cannabis Business, Officers, and Managers.
- c. If any Applicant or Owner of the Commercial Cannabis Business is a business entity or any other form of entity, the entity's legal status, formation documents, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.
- d. The type of City License the Applicant is seeking.
- e. A description of any and all Commercial Cannabis Activity engaged in as an owner, manager, lender, employee, volunteer, or agent by the Applicant and all Owners of the Commercial Cannabis Business, Officers, and Managers over the previous five years, including, but not limited to, the location of such



activity and a copy of any permits, licenses, or other written forms of permission for such activity by a local or State government entity. An Applicant for a Storefront Retailer, Non-Storefront Retailer, Manufacturer, or Cultivator City License must demonstrate each of the following:

- i. That at least one Manager has one of the following types of experience:
  - (A) A minimum of 12 consecutive months, within the previous five years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Activity demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or
  - (B) A minimum of 60 consecutive months, within the previous seven years, as a Manager with managerial oversight and direct engagement in the day-to-day operation of a lawful pharmaceutical business licensed and regulated by a State or the federal government. The 60 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; and
- ii. That at least one Owner of the Commercial Cannabis Business has one of the following types of experience:
  - (A) A minimum of 12 consecutive months as an Owner of a Commercial Cannabis Business, within the previous five years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Business ownership demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or
  - (B) A minimum of 36 consecutive months as an owner with an aggregate ownership of 30 percent or more in a lawful alcohol business licensed and regulated by a State or the federal government. The 36 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the applicant is applying; or
  - (C) A minimum of 36 consecutive months as an owner with an aggregate ownership interest of 30 percent or more in a lawful, properly licensed business with an average of 10 or more employees located within the City, thereby demonstrating a record of experience, familiarity and compliance with City rules and regulations.
- f. Documentation demonstrating a minimum of \$250,000 in Liquid Assets available under the Applicant's control.
- g. A business plan that contains, at a minimum, the following: a defined scope of planning and capital improvements; estimated revenues and expenses; and a demonstrated ability to operate in a highly regulated industry.
- h. An operating plan that contains, at a minimum, the following provisions: capacity to comply with State and local laws and regulations; adequate staffing, security, and employee training; effective exterior and

interior customer flow management, if applicable; compatibility with the surrounding neighborhood; community outreach; and environmental sustainability.

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

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

k. If an individual Applicant, Owner of the Commercial Cannabis Business, Officer, or Manager, or any entity such individual has been associated with in such capacity, has been denied authorization to conduct Commercial Cannabis Activity in any jurisdiction and/or such Person's authorization to conduct Commercial Cannabis Activity in any jurisdiction has been suspended or revoked at any time, a description of each denial, suspension and/or revocation and documentation demonstrating a material change in circumstances since such denial, suspension, or revocation.

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

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

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

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

4. *Initial Application Review by Finance Director.* The Phase One Application shall be reviewed by the Finance Director for completeness and to determine if City's minimum City License qualifications have been satisfied.

Phase One Applications may be rejected by the Finance Director for any of the following reasons in his/her discretion:

- a. The application is received after the designated time and date;
- b. The application is not in the required form and/or is incomplete. A Phase One Application shall not be considered complete until the Finance Director has: (i) determined that all requirements of the application have been provided to the City; (ii) received the nonrefundable Phase One application fee; and (iii) obtained all other information the Finance Director determines necessary to make a decision whether the Application meets the requirements of State Laws or this Code;
- c. The Applicant has failed to pay the application fee required by this chapter and specified by City Council resolution;
- d. The Applicant has failed to demonstrate the financial capacity to operate its proposed Commercial Cannabis Business and to fulfill its obligations under this chapter;
- e. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;
- f. The Applicant, an Owner of the Commercial Cannabis Business, Officer, or Manager is under 21 years of age;
- g. The Applicant or any Owner of the Commercial Cannabis Business is an entity that is incorporated outside of the United States;
- h. The Applicant has failed to demonstrate the minimum experience required in accordance with subsection [\(A\)\(1\)\(e\)](#) of this section;
- i. The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager, has had his/her/its authorization to conduct Commercial Cannabis Activity in any jurisdiction suspended or revoked at any time, and such person has not demonstrated a material change in circumstances or corrective action since such suspension, and/or revocation.

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

- a. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;
- b. The Applicant, any Owner of the Commercial Cannabis Business, Manager, or Officer, or any other individual identified pursuant to subsection [\(A\)\(1\)\(i\)](#) of this section has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

- c. The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted of a felony.
- d. The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.
- e. There are charges pending against the Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.
- f. The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of State or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.
- g. The Applicant, or any Owner 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.

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

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

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

#### B. Phase Two Application Process

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

- a. Proposed Premises location and description.

- b. Information and diagrams demonstrating that the proposed Premises location complies with the applicable locational requirements of this chapter, the City's zoning code, and State Laws.
  - c. Identification of all Owners of the proposed Premises location and a copy of all agreements for site control.
  - d. Submission by each individual Owner of the proposed Premises location of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If an Owner of the Proposed Premises location is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.
  - e. Proposed emergency action and fire prevention plan that includes, at a minimum, employee roles and responsibilities; emergency notification and egress procedures; fire hazard identification, maintenance, and procedures; and fire and life safety system identification, maintenance, and procedures.
  - f. Proposed security plan that includes, at a minimum, employee roles and responsibilities; entry/exit security and procedures; security guard coverage and duties; lighting, alarm, and camera placement and operation; limited-access area identification and procedures; cash handling processes and procedures, and demonstrates compliance with CVMC [5.19.160](#).
  - g. Information required or necessary to demonstrate the ability to comply with the applicable operational requirements set forth in CVMC [5.19.080](#) through [5.19.140](#), as applicable.
2. *Application Fee.* The Phase Two Application shall be accompanied by a nonrefundable application fee established by resolution of the City Council.
3. *Site Approval.* As part of the application process, the Applicant shall be required to obtain all required land use approvals from the City and/or any other governmental agency with jurisdiction, including a certification from the Development Services Director certifying that the business is an allowed use in the zone where it is located, and the proposed site meets all of the requirements of this chapter and CVMC Title [19](#).
4. *Site Control.* As a condition precedent to the City's issuance of a City License pursuant to this chapter, in the event the Premises will be leased from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the Premises on a form approved by the City acknowledging that the Owner(s) of the Premises: (a) has read this chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms agreed to with the Applicant that are consistent with the requirements of this chapter.
5. *Application Review by Development Services Director, Fire Chief, and Police Chief.* Phase Two Applications shall be reviewed and are subject to approval by the Development Services Director, the Fire Chief and the Police Chief. A Phase Two Application may be rejected by the Development Services Director, Fire Chief, and/or Police Chief for any of the following reasons:

- a. The application is received after the designated time and date.
  - b. The application is not in the required form and/or is incomplete. A Phase Two Application shall not be considered complete until the Development Services Director, Fire Chief, and Police Chief have: (i) determined that all requirements of the application have been provided to the City; (ii) received the nonrefundable Phase Two application fee; and (iii) obtained all other information the Development Services Director, Fire Chief, and Police Chief determine is necessary to make a decision whether the application meets the requirements of State Laws or this Code.
  - c. The application fails to demonstrate that the proposed Premises location complies with this chapter, the City's zoning code, and State Laws.
  - d. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process.
  - e. An Owner of the proposed Premises location or any other individual identified pursuant to subsection [\(B\)\(1\)\(d\)](#) of this section has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.
  - f. An Owner of the proposed Premises location has been convicted of a felony.
  - g. An Owner of the proposed Premises location has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.
  - h. There are charges pending against an Owner of the proposed Premises location for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.
  - i. An Owner of the proposed Premises location has been adversely sanctioned or penalized by City, or any other city, county, or state, for a material violation of State or local laws related to Commercial Cannabis Activity.
  - j. An Owner of the proposed Premises location has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.
6. *Notice of Decision.* The Development Services Director, Fire Chief, or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase Two Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase Two Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.
7. *Conditional City Approval Valid for Six Months.* Upon obtaining final approval of a Phase Two Application, an applicant shall be issued a conditional City approval. The conditional City approval shall be valid for a period of six months to allow the Applicant to take all necessary actions to open its Commercial Cannabis Business. If

the business is not fully permitted and operating by the end of this six-month period (the “Conditional Approval Period”), the conditional City approval will be void without the need for further action by the City. Notwithstanding the foregoing, if the only remaining action necessary for an Applicant holding a conditional City approval is the State’s determination on such Applicant’s pending State License application, the validity of the conditional City approval shall be extended until the earlier to occur of: (a) the State’s determination on the issuance of the pending State License application, or (b) the date falling six months after the expiration of the Conditional Approval Period. City regulations issued pursuant to this chapter may provide for other extensions of the Conditional Approval Period in limited, defined circumstances.

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

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

1. *Fees and Charges.* Pay in full all fees and charges required for the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Business shall be established by resolution of the City Council which may be amended from time to time.
2. *Business License Tax.* Pay to the City a business license tax as required by Chapter [5.02](#) CVMC.
3. *Permits and Approvals.* Obtain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the Premises and the zoning district in which such business will be located.
4. *Final Security Plan Approval.* Obtain final security plan approval from the Police Chief for the Premises and Operation of the Commercial Cannabis Business.
5. *Final Emergency Action and Fire Prevention Plan Approval.* Obtain final safety approval from the Fire Chief for the Premises and Operation of the Commercial Cannabis Business.
6. *Employee Work Permits.* Obtain from the Police Chief work permits for each employee of the Commercial Cannabis Business whose name did not appear on an Application for a City License. Each employee shall submit their application for such work permit to the Police Chief, which application shall be under oath and shall include, among other things, the name, address, proposed job title, and past criminal record, if any, of the employee and shall be accompanied by the fingerprints of the employee. An application for an employee work permit shall be accompanied by the required fee(s) or the required renewal fee(s). The work permit, when issued, shall be valid for one year. The Police Chief may revoke, deny, or not renew any employee work permit upon finding that any of the factors apply:
  - a. The employee has made a false, misleading or fraudulent statement or omission of fact in the employee work permit application or renewal application.

- b. The employee is under 21 years of age.
- c. The employee has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.
- d. The employee has been convicted of a felony.
- e. The employee has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.
- f. There are charges pending against the employee for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.
- g. The employee 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.
- h. The employee has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.
- i. The employee has failed to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this chapter, or any term or condition imposed on the City License, or any provision of local or State Laws and/or regulations.
- j. The employee has been adversely sanctioned or fined for, charged with, or found guilty of or pled guilty or no contest to a charge of operating a Commercial Cannabis Business without the necessary licenses and approvals from the applicable State and/or local jurisdiction.

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

8. *Agreement.* Submit a fully executed agreement as required by CVMC [5.19.070](#).

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

10. *Operational Requirements.* Demonstrate compliance with any and all pre-opening operational requirements that may apply as specified in CVMC [5.19.080](#) through [5.19.140](#), and the ability to comply with any and all applicable and ongoing operational requirements.

D. *General Rules.*

1. Phase One and Phase Two applications shall include such supplemental materials as required by the rules and regulations adopted pursuant hereto. The City may, at the City Manager's discretion, require additional documentation associated with any application as may be necessary to enforce the requirements of State Laws and this Code.



2. Applicants shall have no right to operate under a City License until a City License is actually issued thereto by the City. Each Applicant assumes the risk that, at any time prior to the issuance of a license, the City Council may terminate or delay the program created under this chapter.
3. Issuance of a City License does not create a land use entitlement. Furthermore, no City License will be officially issued and no Applicant awarded a City License may begin operations until the City Licensee is fully in compliance with all State and local laws and regulations, including but not limited to State Laws.
4. The City reserves the right to reject or approve any and all applications and conditional licenses based on the standards set forth in this chapter, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

E. *Limits on Number of Applications Per Applicant/Owner.* The number of applications allowed to be filed by each Applicant/Owner shall be determined by regulations promulgated by the City Council or the City Manager. Limits imposed, if any, may be applied on an overall basis, per license type, and/or per Council District. (Ord. 3479 § 1, 2020; Ord. 3446 § 2, 2018; Ord. 3418 § 2, 2018).

### **5.19.060 Location requirements for cannabis businesses.**

As set forth above in CVMC [5.19.040](#), a limited number of City Licenses for Commercial Cannabis Businesses shall be authorized and issued by the City. In locating such businesses, City Licensees shall be further subject to the following requirements:

- A. *In General.* The licensed Premises of a Commercial Cannabis Business shall be a contiguous, fully enclosed area and shall be occupied only by one Licensee.
- B. *Storefront Retailers.*
  1. *Allowed Zones.* Subject to the separation requirements set forth below, Storefront Retailers shall only be allowed in the following zones: (a) C-O administrative and professional office; (b) C-N neighborhood commercial; (c) C-C central commercial; (d) C-V visitor commercial; (e) C-T thoroughfare commercial; (f) other commercial zones in specific plans or sectional planning area plans that allow retail sales uses (including such zones that allow mixed commercial and residential uses); and (g) with a Conditional Use Permit, in the following industrial zones: I-L limited industrial; I-R research industrial; I general industrial; and equivalent industrial zones in specific plans or sectional planning area plans that allow industrial uses.
  2. *Special Rules for Storefront Retailers in Industrial Zones.* In addition to any and all other applicable Code requirements, Storefront Retailers proposed to be located in industrial zones (a) must be located in buildings with entrances that face, and are within 100 feet of, a Public Street; and (b) must comply with parking and sign regulations applicable to retail sales businesses in commercial zones.
  3. *Separation Requirements.*
    - a. Storefront Retailers shall not locate within 1,000 feet of any Day Care Center or any public or private school providing instruction for kindergarten or any grades one through 12.

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

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

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

C. *Non-Storefront Retailers.*

1. *Allowed Zones.* Subject to the separation requirements set forth below, Non-Storefront Retailers shall only be allowed in the following industrial zones: I-L limited industrial; I-R research industrial; I general industrial; and equivalent industrial zones in specific plans or sectional planning area plans that allow industrial uses.

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

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

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

1. *Allowed Zones.* Subject to the separation requirements set forth hereinbelow, Manufacturers, Distributors, Testing Laboratories, and Cultivators shall be allowed in the following industrial zones: I-L limited industrial; I-R research industrial; I general industrial; and equivalent industrial zones in specific plans or sectional planning area plans that allow industrial uses.

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

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

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

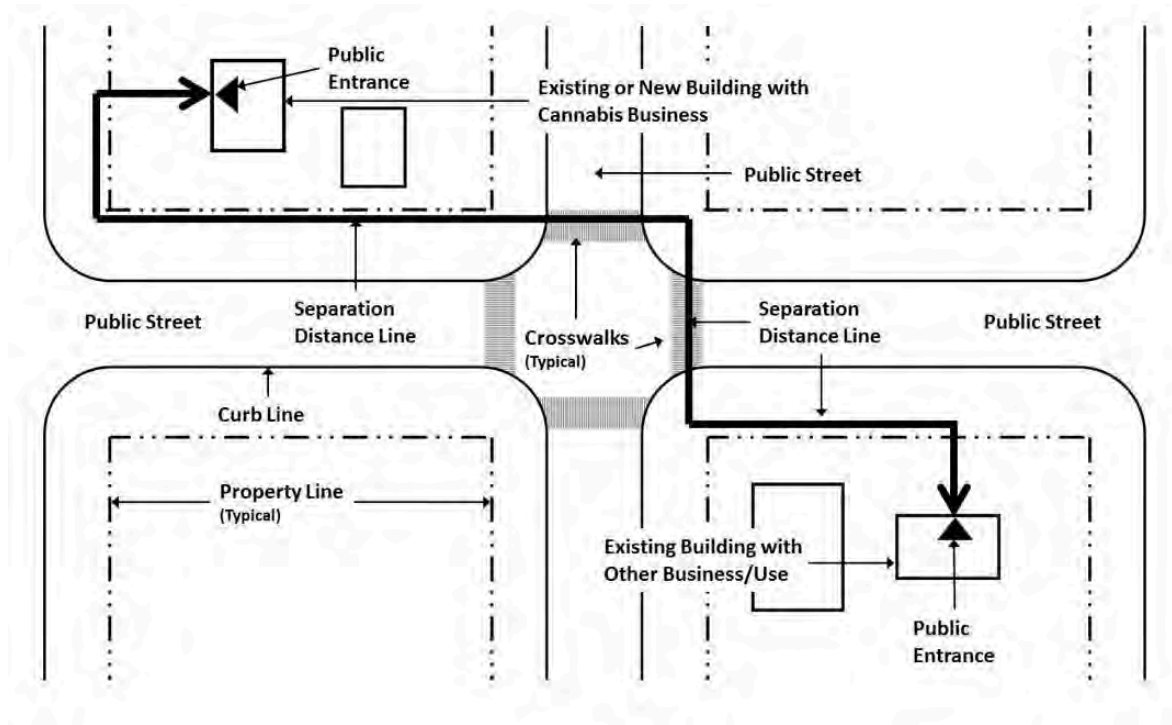
1. *Measuring Points Established.* Separation distance between uses shall be measured horizontally in a continuous series of straight lines that connect the two closest “measuring points” of each business or use as set forth hereinbelow.

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

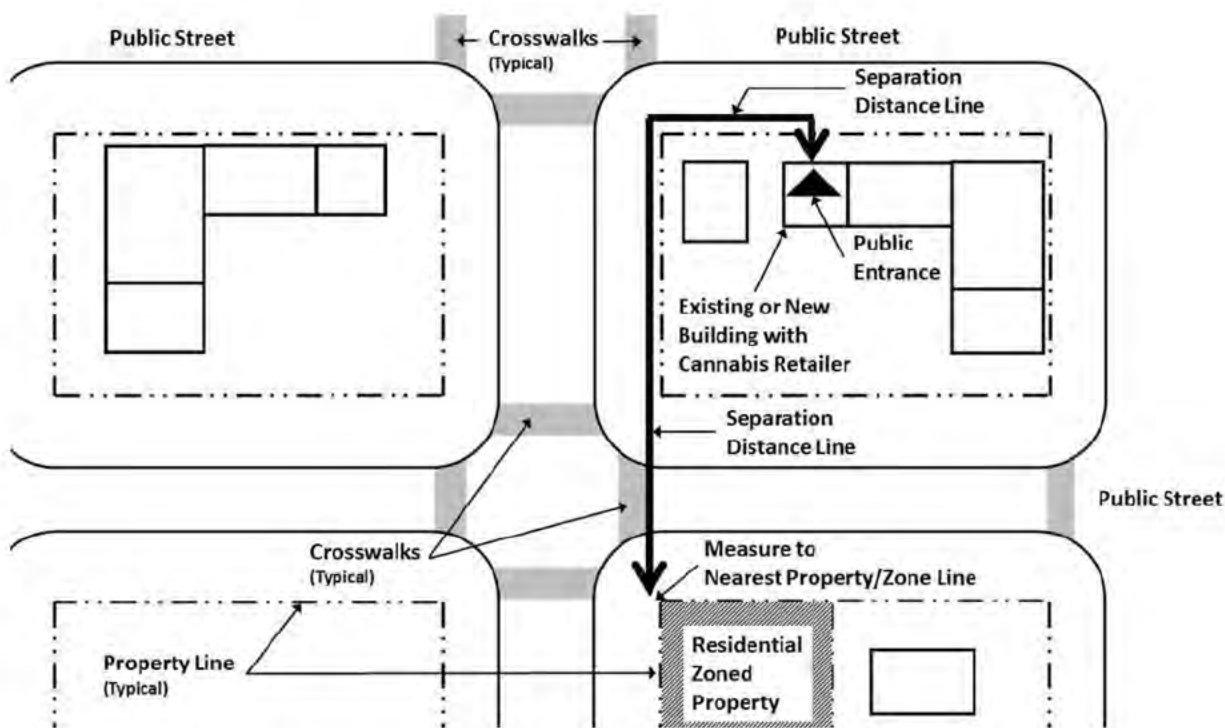
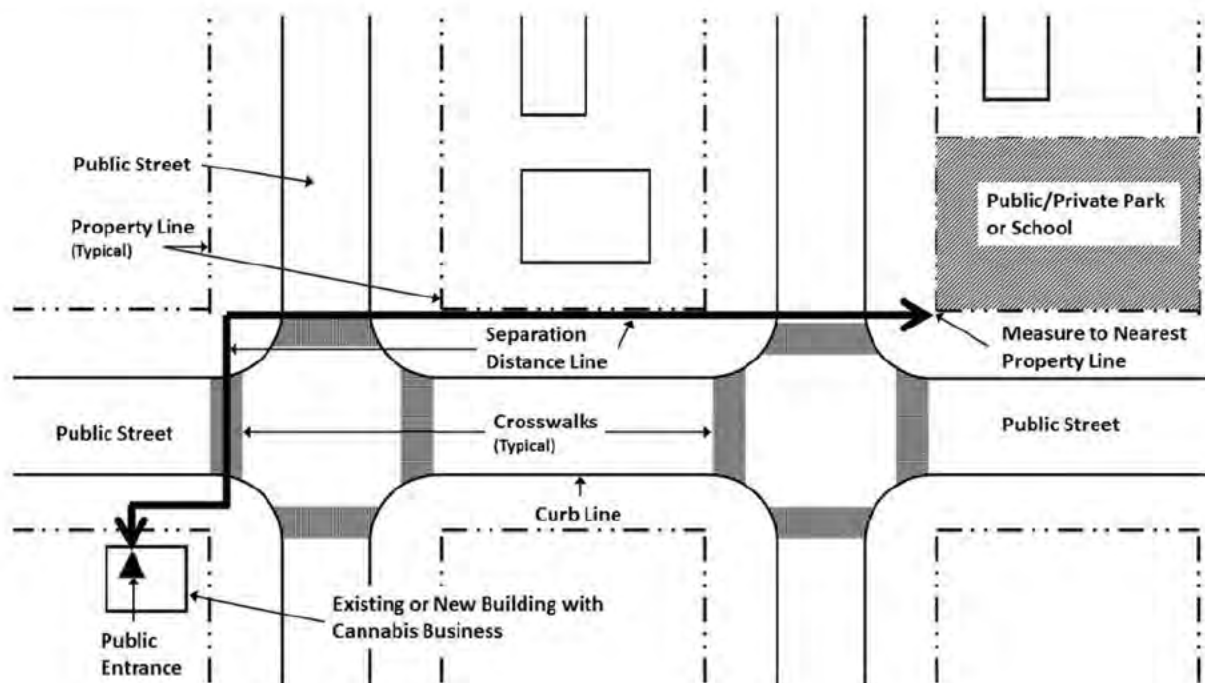
b. For a Day Care Center, Youth Center, Youth-Oriented Business, or Treatment Facility, the “measuring point” shall be the center point of the public entrance closest to a Public Street.

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

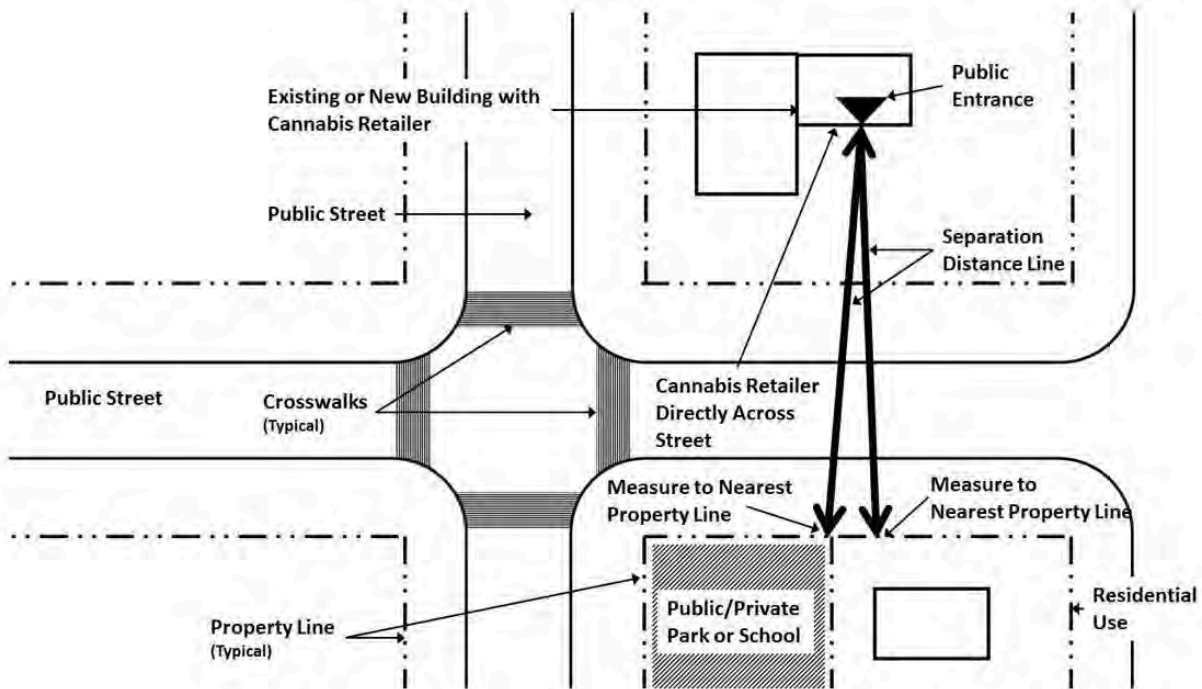
2. *Measurement Paths – Examples.* Measurements between public entrances shall start at the “measuring point” of the Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then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



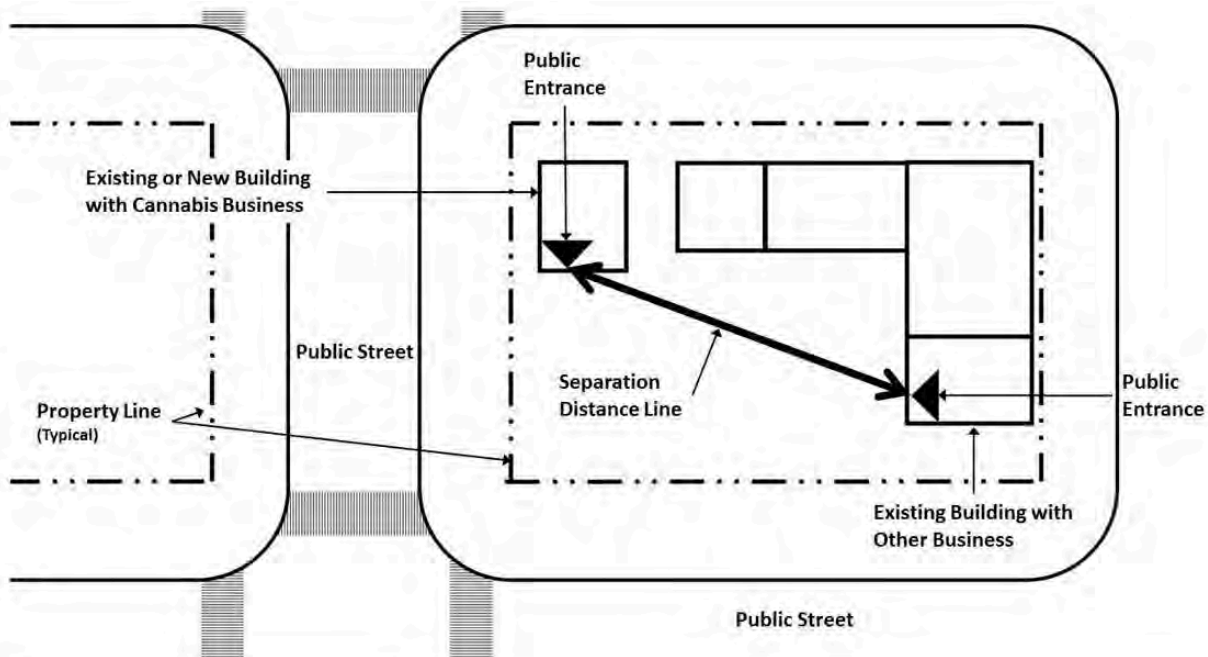
Measurements between public entrances and legal parcel boundary lines shall start at “measuring point” of the Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue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



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



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



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

make a final decision on compliance with the separation requirements of this subsection. (Ord. 3446 § 2, 2018; Ord. 3418 § 2, 2018).

### **5.19.070 Limitations on City's liability – Licensee's indemnity obligations.**

To the maximum extent allowed by law, the City shall not incur or assume any direct or indirect liability to any Applicant, government agency, or third party as a result of having issued a City License pursuant to this Chapter, or otherwise approving the Operation of any Commercial Cannabis Business. As a condition to the issuance of any City License, the Applicant shall be required to enter into and fulfill all requirements of an agreement, in a form approved by the City Attorney, whereby all Owners agree to (A) indemnify, protect, defend (at Owner's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities or losses that arise out of, or that are in any way related to, the City's issuance of the City License, the City's decision to approve the Operation of the Commercial Cannabis Business or Activity, the process used by the City in making its decision, City Licensee's Operation of its Commercial Cannabis Business, or the alleged violation of any federal, state or local laws by the Commercial Cannabis Business or any of its officers, employees or agents; and (B) provide evidence of and maintain insurance at coverage limits and with conditions thereon determined necessary and appropriate from time to time by the City Risk Manager. (Ord. 3418 § 2, 2018).

### **5.19.080 Operating and conduct requirements for all licensees and individuals.**

- A. No person shall consume Cannabis and/or Cannabis Products on the Premises of a Commercial Cannabis Business.
- B. No person shall cause or license the sale, dispensing, or consumption of alcoholic beverages or tobacco products on the Premises of a Commercial Cannabis Business.
- C. No Cannabis or Cannabis Products shall be visible from the exterior of any Premises issued a City License, or on any of the vehicles owned or used as part of a Commercial Cannabis Business. No outdoor storage of Cannabis or Cannabis Products is permitted at any time.
- D. Each Commercial Cannabis Business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the Commercial Cannabis Business including, but not limited to, such matters as Cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The Commercial Cannabis Business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Finance Director prior to being used by the City Licensee.

- E. All Cannabis and Cannabis Products sold, tested, distributed or manufactured shall be cultivated, manufactured, and transported by Commercial Cannabis Businesses that maintain Operations in full conformance with State Laws, State regulations, local laws, and local regulations.
- F. All Commercial Cannabis Businesses shall have a Manager on the premises at all times during hours of Operation.
- G. Each Commercial Cannabis Business shall provide the City Manager with the name, telephone number (both land line and mobile, if available) of an on-site Manager or Owner to whom emergency notice may be provided at any hour of the day.
- H. Each Commercial Cannabis Business premises shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming Cannabis on the Premises or in the areas adjacent to the Commercial Cannabis Business is prohibited.
- I. Persons under the age of 21 years shall not be allowed and are not allowed on the Premises of a Commercial Cannabis Business, and shall not be allowed and are not allowed to serve as a driver for a Non-Storefront Retailer.
- J. It shall be unlawful and a violation of this chapter for any Person to employ an individual at a Commercial Cannabis Business who is not at least 21 years of age.
- K. *Odor Control.* Odor control devices and techniques shall be incorporated in the Premises of all Commercial Cannabis Businesses to ensure that odors from Cannabis are not detectable off site. Commercial Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Commercial Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Commercial Cannabis Business. As such, Commercial Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:
1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;
  2. An air system that creates negative air pressure between the Commercial Cannabis Business's interior and exterior, so that the odors generated inside the Commercial Cannabis Business are not detectable on the outside of the Commercial Cannabis Business.
- L. *Safety, Security, and Operating Plans.* Each Commercial Cannabis Business must comply with all requirements of the security plan approved by the Police Chief; with all safety requirements of the Emergency Action and Fire Prevention Plan approved by the Fire Chief; and with all provisions of the operating plan approved by the Development Services Director.
- M. *Display of City License and City Business License.* The original copy of the City License and the City Business License shall be posted inside the Premises of the Commercial Cannabis Business in a location readily visible to the public.

- N. *Employee Identification.* Each and every employee of a City Licensee must, at all times when present on a Premises and while conducting a Delivery, wear an identification badge containing their photograph, age, the name of the City Licensee for whom they are employed, and, if the employee is a Manager, the employee's job title.
- O. *Delaying or Linger Prohibited.* The City Licensee shall take reasonable steps to prevent individuals from delaying or lingering on the Premises without a lawful purpose.
- P. *Cannabis Use on Premises Prohibited.* The City Licensee shall take reasonable steps to prevent the use and consumption of Cannabis or Cannabis Products on the Premises.
- Q. *Licenses and Other Approvals.* Throughout the Operation of a Commercial Cannabis Business, the City Licensee must maintain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the zoning district in which the Commercial Cannabis Business Premises is located.
- R. *Persons with Disabilities.* Nothing in this chapter exempts a Commercial Cannabis Business from complying with all applicable local, State and federal laws and regulations pertaining to persons with disabilities.
- S. *Discrimination.* No Commercial Cannabis Business may discriminate or exclude patrons in violation of local, State and federal laws and regulations.
- T. *Fees and Charges.*
1. No Person may conduct Commercial Cannabis Activity without timely paying in full all fees and charges required associated with the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Activity shall be established by resolution of the City Council which may be amended from time to time.
  2. City Licensees authorized to Operate under this chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, State and local law. Each Commercial Cannabis Business shall cooperate with City with respect to any reasonable request to audit the Commercial Cannabis Business's books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.
- U. *Training Requirements.* City reserves the right to impose training requirements on Managers, employees, and others involved in the Operation of a Commercial Cannabis Business, with the specific requirements to be determined and implemented through regulations.
- V. *Temporary Events Prohibited.* Cannabis temporary events, as described in California Business and Professions Code Section [26200](#) as presently adopted or further amended, are prohibited in the City at all times. (Ord. 3446 § 2, 2018; Ord. 3418 § 2, 2018).



### **5.19.090 Operating requirements for storefront retailers.**

- A. A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products.
- B. A Storefront Retailer shall not conduct Deliveries.
- C. A Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:
  - 1. A Storefront Retailer shall Sell no more than 28.5 grams of nonconcentrated Cannabis in a single day to a single customer.
  - 2. A Storefront Retailer shall Sell no more than eight grams of Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.
  - 3. A Storefront Retailer shall Sell no more than six immature Cannabis plants in a single day to a single customer.
  - 4. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.
  - 5. A Storefront Retailer shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.
  - 6. A Storefront Retailer shall not Sell Cannabis Products that are in the shape of a human being, either realistic or caricature, animal, insect, or fruit.
  - 7. A Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.
  - 8. A Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.
  - 9. A Storefront Retailer shall notify customers of the following verbally (or by written agreement) and by posting of a notice or notices in a minimum of 24-point font conspicuously within the Storefront Retailer Premises:

a.

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

b.

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

c.

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

10. All restroom facilities on the Premises shall remain locked and under the control of management. (Ord. 3418 § 2, 2018).

### **5.19.100 Operating requirements for non-storefront retailers.**

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

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

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

1. *Delivery Regulations.*

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

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

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

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

- e. While conducting a Delivery, a Delivery Employee shall ensure the Cannabis or Cannabis Products are not visible to the public.
- f. A vehicle used for Delivery shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of a Delivery vehicle.
- g. A Delivery Employee shall, during Deliveries, carry a copy of the Non-Storefront Retailer's current City License, the Delivery Employee's government-issued identification, an identification badge issued by the Police Chief, and a Delivery invoice.
- h. While making a Delivery, a Delivery Employee shall not at any time carry Cannabis and/or Cannabis Goods worth an amount in excess of that authorized by State Laws. This value shall be determined using the current retail price of all Cannabis and/or Cannabis Products carried by the Delivery Employee.

2. *Product Regulations and Restrictions.*

- a. A Non-Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Adult-Use Cannabis in a single day to a single customer.
- b. A Non-Storefront Retailer shall Sell no more than eight grams of Adult-Use Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.
- c. A Non-Storefront Retailer shall Sell no more than six immature Cannabis plants in a single day to a single customer.
- d. A Non-Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.
- e. A Non-Storefront Retailer shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.
- f. A Non-Storefront Retailer shall not Sell Cannabis Products that are in the shape of a human being, either realistic or caricature, animal, insect, or fruit.
- g. A Non-Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.
- h. A Non-Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person. (Ord. 3446 § 2, 2018; Ord. 3418 § 2, 2018).

### **5.19.110 Operating requirements for cultivators.**

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

- B. From a public right-of-way, there should be no exterior evidence of Cultivation except for any signage authorized by this Code.
- C. The general public is not permitted on the Premises of a City Cultivation Licensee except for the agents, applicants, managers, and employees of the City Cultivation Licensee and any agents or employees of the City of Chula Vista.
- D. A Cultivator shall only be allowed to Cultivate the square feet of Canopy authorized by the Cultivator's State License and City Cultivation License issued for the Premises.
- E. A Cultivator shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:
1. State and local laws related to electricity, water usage, water quality, discharges, and similar matters; and
  2. Applicable federal, state and local laws and regulations regarding use, storage, and disposal of pesticides and fertilizers.
- F. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife.
- G. Cultivation shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the Commercial Cannabis Business, neighboring properties, and the end users of the Cannabis being Cultivated; to protect the environment from harm to waterways, fish, and wildlife; to ensure the security of the Cannabis being cultivated; and to safeguard against the diversion of Cannabis.
- H. Cultivators shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.
- I. All applicants for a City Cultivation License shall submit the following in addition to the information generally otherwise required for a City License:
1. A Cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of the Cultivation activities and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting.
  2. A description of a legal water source, irrigation plan, and projected water use.
  3. Identification of the source of electrical power and plan for compliance with applicable building codes and related codes as adopted and amended by the City.
  4. Plan for addressing odor and other public nuisances that may derive from the Cultivation Premises. (Ord. 3418 § 2, 2018).

### **5.19.120 Operating requirements for manufacturers.**

- A. From a public right-of-way, there should be no exterior evidence of Manufacturing except for any signage authorized by this Chapter.
- B. The general public is not permitted on the Premises of a City Manufacture Licensee except for the agents, applicants, Owners, Officers, Managers, employees, and volunteers of the City Manufacture Licensee and any agents or employees of the City of Chula Vista.
- C. All Manufacturing shall comply with the standards set by State Laws and regulations.
- D. Any compressed gases used in the manufacturing process shall not be stored on any property within the City of Chula Vista in containers that exceed the amount that is approved by the Fire Chief and authorized by the City Manufacture License. The Premises of a City Manufacture Licensee shall be limited to a total number of tanks as authorized by the Fire Chief on the Premises at any time.
- E. Manufacturers may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human-related toxicity approved by the Fire Chief. These solvents must be of at least 99 percent purity and any extraction process must use them in a professional grade closed loop extraction system designed to recover the solvents and work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.
- F. If an extraction process uses a professional grade closed loop CO<sub>2</sub> gas extraction system every vessel must be certified by the manufacturer for its safe use. Closed loop systems for compressed gas extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.
- G. Certification from an engineer licensed by the state of California must be provided to the Fire Chief for a professional grade closed loop system used by any Manufacturer to certify that the system was commercially manufactured, is safe for its intended use, and was built to codes of recognized and generally accepted good engineering practices, including but not limited to:
1. The American Society of Mechanical Engineers (ASME);
  2. American National Standards Institute (ANSI);
  3. Underwriters Laboratories (UL);
  4. The American Society for Testing and Materials (ASTM); or
  5. Intertek ETL.

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

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

- I. Manufacturers may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create keef, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.
- J. Manufacturers may use food grade glycerin, ethanol, and propylene glycol solvents to create or refine extracts. Ethanol should be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.
- K. Manufacturers creating Cannabis extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace.
- L. Any person using solvents or gases in a closed looped system to create Cannabis extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.
- M. Parts per million for one gram of finished extract cannot exceed State standards for any residual solvent or gas when quality assurance tested.
- N. Manufacturers shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the cannabis operation, including the certification of equipment. Said report shall be approved by the Fire Department prior to Operation.
- O. A Manufacturer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. (Ord. 3418 § 2, 2018).

### **5.19.130 Operating requirements for distributors.**

- A. From a public right-of-way, there should be no exterior evidence of Distributing except for any signage authorized by this Chapter.
- B. A Distributor shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:
  - 1. The general public is not permitted on the Premises of the City Distributor Licensee except for the agents, applicants, managers, employees, and volunteers of the City Distributor Licensee and any agents or employees of the City.
  - 2. A Distributor shall only procure, sell, or transport Cannabis or Cannabis Products that are packaged and sealed in tamper-evident packaging that uses a unique identifier, such as a batch and lot number or bar code, to identify and track the Cannabis or Cannabis Products.
  - 3. A Distributor shall maintain a database and provide a list of the individuals and vehicles authorized to conduct transportation on behalf of the Distributor to the City.

4. Individuals authorized to conduct transportation on behalf of the Cannabis Distribution licensee shall have a valid California Driver's License.
5. Individuals transporting Cannabis or Cannabis Products on behalf of the Distributor shall maintain a physical copy of the transportation request (and/or invoice) and shall make it available upon request of agents or employees of the City requesting documentation.
6. During transportation, the individual conducting transportation on behalf of the Distributor shall maintain a copy of the City Distributor License and shall make it available upon request of agents or employees of the City requesting documentation.
7. A Distributor shall only transport Cannabis or Cannabis Products in a vehicle that is (a) insured at or above the legal requirement in California, (b) capable of securing (locking) the Cannabis or Cannabis Products during transportation, and (c) capable of being temperature controlled if perishable Cannabis Products are being transported. (Ord. 3418 § 2, 2018).

#### **5.19.140 Operating requirements for testing laboratories.**

- A. The general public is not permitted on the Premises of a City Testing Laboratory Licensee except for the agents, applicants, managers, and employees of the City Testing Laboratory Licensee and any agents or employees of the City.
- B. Testing Laboratory activity shall take place within an enclosed locked structure.
- C. From a public right-of-way, there should be no exterior evidence of a Testing Laboratory except for any signage authorized by this Chapter.
- D. A Testing Laboratory shall provide a fire and life safety technical report to the Fire Department, prepared by a licensed professional engineer, to evaluate the totality of the Cannabis Operation, including the certification of any equipment. Said report shall be approved by the Fire Department prior to Operation.
- E. A Testing Laboratory shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. (Ord. 3418 § 2, 2018).

#### **5.19.150 Record keeping.**

- A. Each City Licensee shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis at or before the time of the renewal of a City License issued pursuant to this Chapter, or at any time upon reasonable request of the City, each City Licensee shall submit to the City, in a form approved thereby, a statement, sworn as to accuracy, detailing their Commercial Cannabis Business's revenue and number of sales during the previous 12-month period, or shorter period based upon the timing of the request, provided on a per-month basis. The statement shall also include gross revenues for each month, and all applicable taxes paid or due to be paid.

- B. On an annual basis, each City Licensee shall submit to the City Manager a financial audit of the business's operations conducted by an independent certified public accountant. Each City Licensee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager.
- C. Each City Licensee shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in each Commercial Cannabis Business, and separately of all the Owners, Officers, Managers, employees, agents and volunteers currently employed or otherwise engaged by the Commercial Cannabis Business. The register required by this subsection shall be provided to the City Manager promptly upon request.
- D. All records collected by a City Licensee pursuant to this Chapter shall be maintained for a minimum of seven years and shall be made available by the City Licensee to the agents or employees of the City of Chula Vista upon request, except that private medical records shall be made available only pursuant to a properly executed search warrant, subpoena, or court order.
- E. All City Licensees shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all Cannabis and Cannabis Products for all stages of the growing, production, manufacturing, laboratory testing, and distribution processes until purchase as set forth under State Law.
- F. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) regulations, each City Licensee shall allow City officials to have access to each Commercial Cannabis Business's books, records, accounts, together with any other data or documents relevant to its Commercial Cannabis Activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than 24 hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware. (Ord. 3418 § 2, 2018).

### **5.19.160 Security measures.**

- A. All City Licensees shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing Cannabis or Cannabis Products, and to deter and prevent the theft of Cannabis or Cannabis Products at the Premises of the Commercial Cannabis Business. Except as may otherwise be determined by the Police Chief, these security measures shall include, but shall not be limited to, all of the following:
1. Preventing individuals from remaining on the Premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the Operations of the Commercial Cannabis Business.
  2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.
  3. All Cannabis and Cannabis Products, including Live Plants, shall be kept in a secure manner so as to prevent diversion, theft, and loss. All Cannabis and Cannabis Products that are being stored must be stored in a secured and locked room, safe, or vault. All Cannabis and Cannabis Products on display for Sale shall be displayed in a secure case.



4. Installing 24-hour security surveillance cameras of at least HD-quality to monitor areas on the Premises including, but not limited to: entrances and exits to and from the Premises; all interior spaces which are open and accessible to the public; all interior spaces where Cannabis, cash or currency is being stored for any period of time on a regular basis; all areas where the purchase, Sale, Distribution, or Transfer of Cannabis or Cannabis Products take place; and all exterior and interior spaces where diversion of Cannabis could reasonably occur. The City Licensee shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief. Video recordings shall be maintained for a minimum of 90 days, and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the Premises of the Commercial Cannabis Business.
  5. Sensors shall be installed to detect entry and exit from all secure areas.
  6. Panic buttons shall be installed in all Commercial Cannabis Businesses.
  7. A professionally installed, maintained, and monitored alarm system, with the required City alarm permit under CVMC [9.06.150](#).
  8. Security personnel shall be on the Premises 24 hours a day or alternatively, as authorized by the Police Chief. Security personnel must be licensed by the state of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the Police Chief, with such approval not to be unreasonably withheld.
  9. Each Commercial Cannabis Business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
- B. Each Commercial Cannabis Business shall identify a designated security representative/liaison to the City, who shall be reasonably available to meet with the Police Chief regarding any security related measures or and operational issues.
- C. As part of the application and licensing process, each Commercial Cannabis Business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all Cannabis, Cannabis Products, and any currency.
- D. Each Commercial Cannabis Business shall cooperate with the City whenever the City Manager makes a request, upon reasonable notice to the Commercial Cannabis Business, to inspect or audit the effectiveness of any security plan or of any other requirement of this chapter.
- E. A Commercial Cannabis Business shall notify the Police Chief within 24 hours after discovering any of the following:
1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Police Chief.

2. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any Owner, Officer, Manager, agent, or employee of the Commercial Cannabis Business.
3. The loss or unauthorized alteration of records related to Cannabis, registering Qualifying Patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.
4. Any other breach of security. (Ord. 3446 § 2, 2018; Ord. 3418 § 2, 2018).

### **5.19.170 Community relations.**

- A. Each Commercial Cannabis Business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the Commercial Cannabis Business can be provided in addition to applicable City and State enforcement divisions. Each Commercial Cannabis Business shall also provide the above information to all businesses located within 100 feet of the Premises of the Commercial Cannabis Business and to all residences located within 300 feet of the Premises of the Commercial Cannabis Business.
- B. During the first year of Operation pursuant to this Chapter, the Owner, Manager, and community relations contact from each Commercial Cannabis Business shall attend a quarterly meeting with the City Manager and other interested parties as deemed appropriate by the City Manager, to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of Operation, the Owner, Manager, and community relations contact from each such Commercial Cannabis Business shall meet with the City Manager when and as requested by the City Manager. (Ord. 3418 § 2, 2018).

### **5.19.180 Promulgation of regulations, standards, and other legal duties.**

- A. In addition to any regulations adopted by the City Council, the City Manager is authorized to establish, consistent with the terms of this Chapter, any additional administrative rules, regulations and standards governing the issuance, denial or renewal of City Licenses; the City's oversight of the ongoing operation of Commercial Cannabis Businesses; and any other subject determined to be necessary to carry out the purposes of this Chapter.
- B. Regulations shall be published on the City's website and maintained and available to the public in the Office of the City Clerk.
- C. Regulations promulgated by the City Council or the City Manager shall become effective and enforceable upon date of publication on the City's website or, with respect to existing City Licensees, upon the date specified in a written notice to the City Licensee. (Ord. 3418 § 2, 2018).

**5.19.190 Compliance with all applicable laws required.**

- A. Nothing in this Chapter shall be construed as authorizing or condoning any actions that violate federal, state or local law with respect to the operation of a Commercial Cannabis Business.
- B. It shall be the responsibility of the City Licensees, Owners, Officers, and Managers of a Commercial Cannabis Business to ensure that a Commercial Cannabis Business is, at all times, operating in a manner compliant with all applicable federal, state, and local laws and regulations, including any subsequently enacted state or local law or regulatory, licensing, or certification standards or requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a State License or a City License.
- C. Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in State Laws. In the event of a conflict between the provisions of this Chapter and the provisions of State Laws or any other applicable state or local law, the more restrictive provision shall control. To the extent allowed by State Law, the City shall have the right, but not the obligation, to enforce all applicable State Laws. (Ord. 3418 § 2, 2018).

**5.19.192 License holder responsible for violations by employees or agents.**

The City Licensee shall be responsible for all violations of the regulations and ordinances of the City committed by the City Licensee, or any employee or agent of the City Licensee. Violations by a City Licensee, or employee or agent of the City Licensee, may result in revocation or nonrenewal of the City License. (Ord. 3446 § 2, 2018).

**5.19.194 Fees deemed debt to City.**

The amount of any fee, cost or charge imposed pursuant to this chapter shall be deemed a debt to the City that is recoverable in any manner authorized by law. (Ord. 3446 § 2, 2018).

**5.19.200 Right of access and testing.**

- A. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have full access to the Premises and records of every Commercial Cannabis Business in order to:
1. Inspect the Premises for compliance with the Code and State Laws.
  2. Test any equipment possessed by, in control of, or used by a City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.
  3. Test any Cannabis or Cannabis Product possessed by, in control of, or used by a City Licensee, Owner, Officer or Manager, and any other employee, agent, or volunteer of a City Licensee.

4. Copy any materials, books, or records of any City Licensee, Owner, Officer, or Manager, and any other employee, agent, or volunteer of a City Licensee.
- B. Failure by any City Licensee, Owner, Officer or Manager to cooperate and participate in any City inspection or investigation under this section shall itself be a violation of this Chapter.
- C. City officials, employees, and their designees authorized to enforce the provisions of the Code shall have rights of access under subsection [\(A\)](#) of this section during any inspection, investigation, review, audit, or as otherwise allowed by law.
- D. Prior notice of an inspection, investigation, review, or audit is not required.
- E. Any inspection, investigation, review, or audit of a City Licensed Premises shall be conducted anytime the City Licensee is exercising privileges under the City License, or as otherwise agreed to by the City or its Manager.
- F. This subsection shall not be construed to deprive a City Licensee, Owner, Officer, or Manager, or any other employee, agent, or volunteer of a City Licensee, of any privileges guaranteed by the Constitutions of the United States and/or the state of California, or any other statutory privileges. (Ord. 3418 § 2, 2018).

#### **5.19.210 Restrictions on transfer, change, or alteration of City license or City licensee.**

- A. A City License is valid only as to the City Licensee. No City Licensee is allowed to sell, transfer, pledge, assign, grant an option, or otherwise dispose of ("Transfer") its City License to any Person except pursuant to the terms of this section. Except as permitted, any such Transfer or attempted Transfer shall be deemed to constitute a voluntary surrender of the City License and such City License shall thereafter be null and void, except as set forth in this Chapter.
- B. A City Licensee may Transfer less than 50 percent ownership or control of a City License with prior written approval of the City Manager after submission of all required application materials, payment of applicable fees as set by resolution of City Council, and a determination that the applicants meet the requirements of this Chapter such as to be entitled to the issuance of an original City License.
- C. A City Licensee may change the form of business entity without applying to the City Manager for a new City License, if the ownership of the new business entity is the same as the original City Licensee business entity. Although a new City License is not required, the City Licensee shall notify the City in writing of the change within 30 days of the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.
- D. A City Licensee may change the name of the business entity without applying to the City Manager for a new City License. Although a new City License is not required, the City Licensee shall notify the City in writing of the change at least 30 days prior to the change, and obtain an amendment to the original City License after paying the applicable fee set by resolution of the City Council.

- E. No City Licensee shall be allowed to Transfer all or any portion of its City License prior to 12 months after the City Licensee has opened and continuously operated its Commercial Cannabis Business authorized thereunder.
- F. No City Licensee shall operate, conduct, manage, engage in, or carry on the business of a Commercial Cannabis Business under any name other than the name of the Commercial Cannabis Business specified in the City License.
- G. No City Licensee may avail themselves of the provisions of this Section if the City Manager has notified the City Licensee that the City License has been or may be suspended, revoked, or not renewed.
- H. For purposes of this section, the Transfer of all or any portion of a licensed Commercial Cannabis Business shall constitute the Transfer of the underlying City License.
- I. Failure to comply with this section constitutes grounds for suspension or revocation of a City License. (Ord. 3418 § 2, 2018).

### **5.19.220 Restrictions on transfer, change, or alteration of location.**

- A. A City License issued under this Chapter is valid only as to the Premises approved in accordance with the City License, and is therefore nontransferable to other locations except as authorized in this section. No City Licensee is authorized to relocate to other areas or units within a building structure without first obtaining written approval from the City Manager, regardless of any possessory interest or right to possession to such additional space.
- B. No City Licensee shall change the location of the Premises approved in accordance with the City License until any such change of location is approved by the City Manager or his/her designee. The City Manager shall adopt a process (to include any necessary forms and procedures) for Premises relocation that includes, but is not limited to, the following:
  - 1. The City Licensee shall submit a change of location application to the City at least 90 days prior to the proposed change.
  - 2. The proposed location shall meet all of the requirements under this Code, including but not limited to this Chapter and CVMC Title [19](#).
  - 3. The proposed location shall be reviewed and evaluated using review criteria as referenced in CVMC [5.19.060](#).
  - 4. The relocation of a City Licensee's Premises shall be subject to the prior review and approval by the Development Services Director and any and all other licenses, approvals, or permits required under State Law and the Code.
- C. All required state and City approvals, plan approvals, permits, and licenses must be obtained before causing, allowing, or licensing alterations to, and/or extensions or expansions of, the existing Premises building(s), structure(s), or portions thereof approved as a location for a Commercial Cannabis Business. Said alterations,

extensions, or expansions shall comply with all applicable laws, regulations and standards, including those concerning building safety and occupancy. (Ord. 3418 § 2, 2018).

### **5.19.230 Expiration of City license.**

A City License issued pursuant to this Chapter shall expire 12 months after the date of its issuance. City Licenses may be renewed as provided in CVMC [5.19.240](#). (Ord. 3418 § 2, 2018).

### **5.19.240 Renewal of City license.**

- A. An application for renewal of a City License shall be filed with the City Manager's office at least 60 calendar days prior to the expiration date of the current City License.
- B. Any City Licensee submitting an application less than 60 days before its expiration shall be required to pay a late renewal application fee, as established by resolution of the City Council. Any renewal application filed less than 30 business days before its expiration may be rejected by the City on that basis alone.
- C. The renewal application shall be submitted on a form issued or approved by the City.
- D. The applicant shall pay a fee in an amount to be set by the City Council to cover the costs incurred by the City to administer the program created under this Chapter.
- E. An application for renewal of a City License may be denied if any of the following grounds exists:
  - 1. Any of the grounds for suspension or revocation under CVMC [5.19.260](#).
  - 2. The City License has been suspended or revoked at the time of the application.
  - 3. The Commercial Cannabis Business has not been in regular and continuous operation in the four months prior to the renewal application.
  - 4. The City Licensee fails to or is unable to renew its State License.
  - 5. The City Licensee has made a false, misleading or fraudulent statement or omission of fact as to any information provided to City pursuant to this Chapter.
- F. The City Manager is authorized to make all decisions concerning the issuance of a renewal license. In making the decision, the City Manager is authorized to impose additional conditions on a renewal license, if it is determined to be necessary to ensure compliance with State or local laws and regulations or to preserve the public health, safety or welfare.
- G. The City Manager shall serve the City Licensee, either personally or by first class mail addressed to the address listed on the renewal application, with dated written notice of the City Manager's decision to approve or deny the renewal, and the right of the City Licensee to seek judicial review of the City Manager's decision.

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

I. If a renewal application is denied, the City License shall no longer be effective and all related Commercial Cannabis Activity must cease immediately. A Person denied a renewal may file a new application pursuant to this Chapter no sooner than one year from the date of the rejection. (Ord. 3418 § 2, 2018).

### **5.19.250 Effect of state license suspension, revocation, or termination.**

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

B. Should the State, or any of its departments or divisions, revoke or terminate a State License, such revocation or termination shall also revoke or terminate the City License and City Licensee's ability to operate a Commercial Cannabis Business within the City. (Ord. 3418 § 2, 2018).

### **5.19.260 Suspension and revocation of City license.**

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

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

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

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

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

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

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

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

1. A violent felony, as specified in Penal Code Section [667.5\(c\)](#).
2. A serious felony, as specified in Penal Code Section [1192.7\(c\)](#).
3. A felony involving fraud, deceit, or embezzlement.
4. A felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
5. A felony for drug trafficking with enhancements pursuant to Health and Safety Code Section [11370.4](#) or [11379.8](#).
6. A felony or misdemeanor involving the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance occurring after January 1, 2016.

If the City Manager determines that a ground for suspension and/or revocation of a City License exists, the City Manager shall give notice of suspension and/or revocation by dated written notice to the City Licensee. The City Manager shall cause the City Licensee to be served, either personally or by first class mail addressed to the address listed on the application, with the written notice suspending or revoking the City License. This notice shall state the reasons for the action, the effective date of the decision, and the right of the City Licensee to appeal the decision. (Ord. 3418 § 2, 2018).

### **5.19.270 Advertising and marketing of cannabis.**

- A. It is illegal to Market or Advertise within the City Cannabis or Cannabis Products that are not permitted to be sold in the City under State Law or this Chapter.
- B. Advertising or Marketing is prohibited in the City on any sign located within 1,000 feet of a Day Care Center; school providing instruction in kindergarten or any grades one through 12; Youth Center; Youth-Oriented Facility; or Private or Public Park.
- C. Advertising or Marketing is prohibited in the City on any sign within 1,000 feet of a Treatment Center.
- D. Advertising or Marketing in the City shall not contain a depiction of an individual under 21 years of age consuming Cannabis or Cannabis Products.
- E. Advertising or Marketing in the City shall not be Attractive to Youth.
- F. Advertising or Marketing in the City in a manner that is false or untrue or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression is prohibited.
- G. Advertisements or Marketing in the City shall not contain any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof. (Ord. 3418 § 2, 2018).



### **5.19.280 Enforcement and penalties.**

A. It is unlawful to:

1. Own, operate, set up, conduct, maintain, facilitate, or direct Commercial Cannabis Activity in the City without a valid City License authorizing such Commercial Cannabis Activity;
2. Participate as an employee, contractor, agent, volunteer, or in any other capacity in Commercial Cannabis Activity in the City without a valid City License;
3. Use any parcel or any portion of parcel of land for Commercial Cannabis Activity without a valid City License;
4. Lease, rent to, or otherwise allow Commercial Cannabis Activity to occupy or access any parcel or portion of parcel of land in the City without a valid City License.

B. It shall be unlawful for any person to violate any provision, or to fail to comply with the requirements, of this chapter or any regulation adopted hereunder. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

C. Any condition caused or allowed to exist in violation of any of the provisions of this chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the state of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the state of California, may seek injunctive relief to enjoin violations of, or to compel compliance with, this chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense. Civil penalties for violations of this chapter may be assessed at a rate not to exceed \$10,000 per violation per day.

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

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

F. Nothing in this section shall be construed as requiring the City to allow, permit, license, authorize, or otherwise regulate Commercial Cannabis Activity, or as abridging the City's police power with respect to enforcement regarding Commercial Cannabis Activity. (Ord. 3453 § 1(D), 2019; Ord. 3418 § 2, 2018).

### **5.19.290 Effectiveness conditioned on passage of tax measure.**

The effectiveness of the ordinance enacting this Chapter is contingent upon voter approval and the continuous legal validity of a tax measure anticipated to be submitted to voters in November 2018. The tax measure would impose an excise tax, in an amount and form yet to be determined, on all Commercial Cannabis Businesses. In the event the proposed tax measure is not approved by the voters, or is suspended or invalidated for any reason, the provisions of this Chapter permitting Commercial Cannabis Businesses shall be void without any further action required by the City. (Ord. 3418 § 2, 2018).

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**The Chula Vista Municipal Code is current through Ordinance 3494, passed November 3, 2020.**

Disclaimer: The City Clerk's Office has the official version of the Chula Vista Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

**Note:** This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

[City Website: www.chulavistaca.gov](http://www.chulavistaca.gov)

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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  
through 50,

21 Real Parties In Interest.  
22  
23  
24  
25  
26  
27  
28

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Superior Court of California,  
County of San Diego

**05/14/2021** at 04:33:00 PM

Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

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

**PLAINTIFF/PETITIONER  
UL CHULA TWO LLC'S RESPONSE TO  
RESPONDENT AND REAL PARTIES IN  
INTEREST'S EVIDENTIARY  
OBJECTIONS**

Judge: Hon. Richard E.L. Strauss  
Dept.: C-75  
Action Filed: November 13, 2021  
Trial Date: None Set

1 **I. INTRODUCTION**

2 Respondent and Real Parties In Interest’s (collectively, the “City”) joint opposition brief  
3 asks the Court to disregard 28 exhibits submitted along with Petitioner/Plaintiff UL Chula Two,  
4 LLC’s (“Petitioner”) motion for writ of mandate. These exhibits were authenticated through a  
5 combination of Petitioner’s request for judicial notice and the declaration of Nathan Shaman. The  
6 City also lodged objections to the request for judicial notice and the declaration of Nathan Shaman  
7 on several grounds, each of which should be overruled for the reasons discussed below.

8 **II. PETITIONER’S EXTRA-RECORD EVIDENCE SHOULD BE CONSIDERED**

9 Though the City speaks in general platitudes about extra-record evidence, a cursory  
10 examination of the 28 exhibits submitted with Petitioner’s motion for writ of mandate shows that  
11 each is properly considered by the Court. Exhibit 1, for example, is merely a courtesy copy of the  
12 Petition in this matter. Exhibit 2 identifies the Real Parties in Interest and has no bearing on the  
13 merits. Exhibits 4 and 5 are courtesy copies of judicially noticeable municipal codes sections.

14 There are, however, three categories of extra-record evidence submitted by Petitioner that  
15 impact the merits of this dispute with regard to due process violations (i.e., improper and untimely  
16 notice and the City Attorney’s Office’s conflict of interest) and the City’s failure to exercise  
17 discretion.<sup>1</sup> The first category consists of two exhibits regarding the Holistic Café (Exhibits 3 and  
18 6). As the declaration of Nathan Shaman explains, the City’s improper and untimely notice  
19 hampered his ability to prepare for the administrative hearing. (Shaman Dec. ¶¶ 6-9.) The Court  
20 may receive this “relevant evidence that, in the exercise of reasonable diligence, could not have  
21 been produced . . . at the hearing before respondent.” (Code Civ. Pro., § 1094.5(e).)

22 The second category consists of four City of Chula Vista Meeting Minutes (Exhibits 7-10).  
23 These exhibits reflect that the City Attorney’s Office improperly served as the City’s advocate  
24 during the administrative hearing and as the Hearing Officer’s primary legal advisor. This  
25 evidence could not have been produced at the hearing because the notice failed to disclose who  
26 would be advising the Hearing Officer. {AR 128.} It is well-established that new evidence  
27

28 <sup>1</sup> These extra-record exhibits have no bearing on Petitioner’s strictly legal arguments.

1 demonstrating procedural unfairness may be considered by the trial court in a mandate proceeding.  
2 (Code Civ. Proc., § 1094.5 (e); *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 485;  
3 *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 788 [“... a party claiming that  
4 an administrative hearing is unfair may present new evidence in a mandate proceeding.”].)

5 The third category consists of Notices of Decisions and Statements of Decisions (Exhibits  
6 11-29) issued by the City and sourced by Petitioner via public record act requests after the  
7 Statement of Decision. (Shaman Dec. ¶ 9.) These records were submitted to show that the City  
8 uniformly rejected similarly situated applicants and, as a result, failed to exercise its discretion.  
9 Though the City suggests that these records could have been sourced sooner, Petitioner did not  
10 suspect widespread wrongdoing by the City until after the Statement of Decision. (*Id.*) Moreover,  
11 post-hearing evidence (including Exhibits 11, 13, 16 and 18) falls squarely within the trial court’s  
12 discretion to consider. (*Fort Mojave Indian Tribe v. Department of Health Services* (1985) 38  
13 Cal.App.4th 1574, 1585 [“it reasonably may be inferred that [the Legislature] meant to authorize  
14 the receipt of evidence of events which took place after the administrative hearing”].) The City  
15 also criticizes Petitioner’s failure to request a continuance while it awaited responses to its PRA,  
16 but there is no provision for a hearing continuance. {AR 367-368.}

17 The Court should overrule the City’s extra-record evidence objection.

### 18 **III. THE REQUEST FOR JUDICIAL NOTICE**

19 The City’s primary reason for objecting to the request for judicial notice is relevance.  
20 Specifically, the City claims that the exhibits for which Petitioner seeks judicial notice are outside  
21 the record and are therefore not the proper subject of judicial notice. This is simply a rehashing of  
22 the extra-record evidence argument addressed above and requires no further analysis.

23 The City next argues that the request for judicial notice is technically defective because it  
24 fails to authenticate the records or establish the source of the records. Yet, the City fails to raise  
25 any objections to any of the exhibits on the grounds of authentication. Nor could the City do so in  
26 good faith. Indeed, most of the exhibits at issue were sourced from the City via a public records  
27 act request (Shaman Dec. ¶ 9) or are otherwise City records (i.e., Exhibits 2, 7-10).

The City's final argument is that the Court should not judicially notice the truth of the matters asserted in the exhibits. Like the City's authentication argument, the City's hearsay argument fails because the City did not object to any of the exhibits on the basis of hearsay. Nor could it, as most of the exhibits are City records and, therefore, qualify as party admissions.

The Court should overrule the City's objections to the request for judicial notice.

**IV. THE DECLARATION OF NATHAN SHAMAN**

No.	Material Objected To	Grounds for Objection:	Court's Ruling:
1.	Declaration ¶ 2: "On January 18, 2019, I wrote a letter to the City of Chula Vista in connection with Petitioner's application, which disclosed the fact that Willie Frank Senn, who was then the sole shareholder of UL, had a stipulated judgment entered against him 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."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss

**PETITIONER'S REPLY TO OBJECTION NO. 1**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the letter referenced in the declaration is in the Administrative Record. {AR 113-114.}

2.	Declaration ¶ 3: "Although I invited the City to reach out to me if the City had any questions about the Holistic Café matter, I never received a response from the City to the letter."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 2**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the letter referenced in the declaration is in the Administrative Record. {AR 113-114.}

3.	Declaration ¶ 3: "Petitioner, however, was notified by the City on June 10, 2019 that it had successfully completed Phases 1A and 1B of the application process, and was invited to proceed to Phase 1C (i.e., the interview) on July 17, 2019. Following the interview, Petitioner received a total score of 900.3 points—the highest for a retail storefront in the City's District One"	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 3**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the notification letter and scoring referenced in the declaration is in the Administrative Record. {AR 118, 151.}

4.	Declaration ¶ 4: "Then, on May 6, 2020, the City issued a Notice of Decision rejecting Petitioner's Application on the grounds that 'The City of San Diego sanctioned William [sic] Senn for violations of laws or regulations related to unlawful Commercial Cannabis Activity' and 'William [sic] Senn was involved in unlawful Commercial Cannabis Activity in the City of San Diego from approximately 2010 to 2012.' The Notice of Decision did not specifically reference the <i>Holistic Café</i> matter..."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 4**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the notice of decision referenced in the declaration is in the Administrative Record. {AR 119.}

5.	Declaration ¶ 4: "I was not at all certain at the time if the grounds cited by the City were related to the Holistic Café matter, which I had disclosed to the City in writing 16 months earlier, or was related to something else, entirely."	<b>Speculation and Conjecture.</b> (Evid. Code, §§ 702, 800.) Shaman speculates regarding the grounds for the City's denial.  <b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 5**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the letter referenced in the declaration is in the Administrative Record. {AR 113-114.} Nor is the quoted portion speculative. Mr. Shaman is testifying as to his own state of mind, not the City's state of mind.

6.	Declaration ¶ 5: "On May 21, 2020, while serving as general counsel to UL, I submitted Petitioner's appeal of the Notice of Decision (AR125-127). There were several grounds for the appeal. The primary ground was that there was no relevant, admissible evidence that Mr. Senn was adversely sanctioned for any laws related to "Commercial Cannabis Activity." In fact, my appeal cited the undisputed fact that from 2010 to 2012 there were no commercial cannabis laws in the City of San Diego. I also assumed given my January 18, 2019 letter to the City that the denial may have been based on the Holistic	<b>Argumentative.</b> ( <i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.	<b>Sustained:</b> _____ <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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1	Café matter. I therefore		
2	pointed out that the alleged		
3	violations were of land- use		
4	and building code ordinances		
5	that did not pertain to		
6	cannabis, and that the		
	Medical Marijuana Program		
	Act allowed for medical		
	marijuana collectives and		
	cooperatives such as the		
	Holistic Café.”		

**PETITIONER’S REPLY TO OBJECTION NO. 6**

The City’s argumentative objection is baseless. Mr. Shaman testifies as to why he included certain arguments in a document that he drafted for petitioner’s administrative appeal. To be clear, that document is in the administrative record. {AR125-127.}

7.	Declaration ¶ 6: “On May 26, 2020, I was notified that the appeal would be heard on June 10, 2020. Nowhere in the notice of appeal did the City mention the Holistic Café matter. The notice did state that the evidence to be submitted at the hearing should be submitted “at least five days prior to the hearing.” (AR00129.) The City’s exhibits were emailed in the late afternoon on Friday, June 5, 2020 (AR213-214), less than five full days before the June 10, 2020 hearing, giving me essentially two business days to prepare for the hearing. The City’s exhibits included references to Holistic Café, which was the first time the City ever cited to the Holistic Café matter as a basis for rejecting Petitioner’s application.”	<p><b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.</p> <p><b>Argumentative.</b> (<i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.</p>	<p><b>Sustained:</b> _____</p> <p><b>Overruled:</b> _____</p> <p>_____ Hon. Richard E. L. Strauss</p>
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**PETITIONER'S REPLY TO OBJECTION NO. 7**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the letters referenced in the declaration are in the Administrative Record. {AR 129, 213-214.} Nor is the quoted portion argumentative. Mr. Shaman is merely relating truthful, undisputed facts.

8.	Declaration ¶ 7: "On June 5, 2020, I submitted Petitioner's appellate brief (AR215-224). I addressed several flaws with the City's procedures, including that the Notice of Decision was impermissibly vague so as to deny Petitioner sufficient notice and due process. I provided detailed legal citations explaining that the City of San Diego did not have any laws or regulations related to "Commercial Cannabis Activity" from 2010-2012. And I raised concerns with the City relying upon the Holistic Café matter, "assuming" that the City based its decision on the stipulated judgment in the Holistic Café matter that I had disclosed on January 18, 2019. I was not able to address the other exhibits that the City intended to rely upon at the hearing because they were not disclosed to me prior to submission of my brief."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.  <b>Argumentative.</b> ( <i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.	<b>Sustained:</b> _____  <b>Overruled:</b> _____  _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 8**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the brief referenced in the declaration is in the Administrative Record. {AR 215-224.} Nor is the quoted portion argumentative. Mr. Shaman is merely relating truthful, undisputed facts.

9.	Declaration ¶ 8: "On June 10, 2020, I attended the hearing on the appeal along	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman	<b>Sustained:</b> _____
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1	with Willie Senn. I objected to the admission of the City's exhibits pertaining to the Holistic Café matter on numerous grounds. All objections were overruled by the City Manager, who acted as the hearing officer. At the hearing, I reiterated the legal issues raised in the appellate brief, including the denial of due process. I was, however, unable to meaningfully prepare to present any testimony or evidence to rebut the City's contentions regarding Holistic Café."	improperly offers oral testimony to prove the content of a writing.	<b>Overruled:</b> _____
2		<b>Argumentative.</b> ( <i>Schaefer v. Manufacturers Bank</i> (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.	_____ Hon. Richard E. L. Strauss

**PETITIONER'S REPLY TO OBJECTION NO. 9**

The quoted portion of Mr. Shaman's declaration does not discuss the contents of any writing and the Secondary Evidence Rule is therefore irrelevant. Nor is it argumentative to relate truthful, undisputed facts that occurred at a hearing attended by Mr. Shaman.

14	10.	Declaration ¶ 9: "The City served its Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License on August 26, 2020."	<b>Secondary Evidence Rule.</b> (Evid. Code, § 1523.) Shaman improperly offers oral testimony to prove the content of a writing.	<b>Sustained:</b> _____ <b>Overruled:</b> _____ _____ Hon. Richard E. L. Strauss
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**PETITIONER'S REPLY TO OBJECTION NO. 10**

The quoted portion of Mr. Shaman's declaration is not offered to prove the contents of a writing and the Secondary Evidence Rule is therefore irrelevant. Indeed, the Findings and Statement of Decision referenced in the declaration are in the Administrative Record. {AR 302-307.}

24	11.	Declaration ¶ 9: "I suspected based upon the findings and industry gossip that the City denied other applicants on the same or similar grounds. To investigate, I served a public records act request on the City on September 2, 2020 (Reference # R000005-090220). I served a	<b>Irrelevant.</b> (Evid. Code, §§ 210, 350.) The City's basis for denying other applications are not probative of any material fact at issue.  <b>Speculation and Conjecture.</b> (Evid. Code, §§ 702, 800.)	<b>Sustained:</b> _____ <b>Overruled:</b> _____ _____ Hon. Richard E. L. Strauss
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second public records act request on the City on October 1, 2020 (Reference # R000079-100120). Attached as Exhibits 11-29 to the concurrently filed Appendix of Exhibits are relevant portions of the City's document production in response to my public record act requests."

Shaman's beliefs regarding other applications are improper speculation.

**Argumentative.**  
(*Schaefer v. Manufacturers Bank* (1980) 31 Cal.App.3d 70, 76.) Shaman improperly asserts arguments as to facts, law, and legal contentions.

**Hearsay.** (Evid. Code, § 1200 et seq.) Shaman testifies to the contents of out-of-court "industry gossip."

**Lack of Foundation.**  
(Evid. Code § 403.) Shaman does not identify facts to show personal knowledge "industry gossip."

#### PETITIONER'S REPLY TO OBJECTION NO. 11

The City's uniform denial of similarly situated applicants is relevant because it is probative of the question as to whether the City uniformly failed to exercise its discretion, which is raised in the Petition and Petitioner's Motion for Writ of Mandate.

The City's argumentative objection lacks merit. There is nothing argumentative about the facts recited in Mr. Shaman's declaration.

The City's hearsay, speculation, and foundation objections likewise lack merit. Mr. Shaman is not offering industry gossip for the purposes of establishing any truth to that gossip. Rather, he is explaining the effect of that gossip on the listener (i.e., Mr. Shaman), which is a legitimate, non hearsay purpose. The effect of that gossip was that it prompted Mr. Shaman to serve public record act requests, which led to the City's production of records that Petitioner believes supports Petitioner's claims in this matter (i.e., Exhibits 11-29).

1 **V. CONCLUSION**

2 The City's evidentiary objections serve no purpose other than to distract from the merits.  
3 The Court should overrule these needless, meritless objections.

4 DATED: May 14, 2021

Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By:



8 GARY K. BRUCKER, JR.

9 Attorneys for Petitioner/Plaintiff UL CHULA  
10 TWO LLC  
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**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:



Judge Richard E. L. Strauss

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

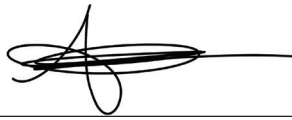


Honorable Richard E. L. Strauss  
Judge of the Superior Court

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.

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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:



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.  
Matthew Slentz, Esq.  
Colantuono, Highsmith & Whatley, PC  
440 Stevens Avenue, Suite 200  
Solana Beach, CA 92075  
Direct Tel: 858-682-3665  
Tel: 213-542-5700  
Fax: 213-542-5710  
E-Mail: ashamos@chwlaw.us  
E-Mail: mslentz@chwlaw.us

David Kramer, Esq.  
Josh Kappel, Esq.  
Vicente Sederberg LLP  
633 West 5th Street, 26th Floor  
Los Angeles, California 90071  
Tel: 310-695-1836  
Mobile: 917-929-0248  
Fax: (303) 860-4505  
E-Mail: d.kramer@vicensederberg.com  
E-Mail: josh@vicensederberg.com

*Attorneys for Defendants  
City of Chula Vista and City Manager of Chula Vista*

*Attorneys for TD Enterprise LLC*

Heather Riley, Esq.  
Rebecca Williams, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
One America Plaza  
600 West Broadway, Suite 2700  
San Diego, CA 92101-0903  
Tel: (619) 233-1155  
Fax: (619) 233-1158  
E-Mail: hriley@allenmatkins.com  
E-Mail: bwilliams@allenmatkins.com

Philip Tencer, Esq.  
TencerSherman LLP  
12520 High Bluff Drive, Suite 240  
San Diego, CA 92130  
Tel: (858) 408-6901  
Fax: (858) 754-1260  
E-Mail: Phil@tencersherman.com

*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@lewisbrisois 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.

**2-AA-1147**

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

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Gary K. Brucker, Jr. SB#238644</b> <b>Lewis Brisbois Bisgaard &amp; Smith LLP</b> <b>550 West C Street, Suite 1700</b> <b>San Diego, CA 92101</b> TELEPHONE NO.: <b>619-233-1006</b> FAX NO. (Optional): <b>619-233-8627</b> E-MAIL ADDRESS (Optional): <b>gary.brucker@lewisbrisbois.com</b> ATTORNEY FOR (Name): <b>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>07/01/2021 at 04:36:00 PM</b> Clerk of the Superior Court By Candace Schaeffer, 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, CA 92101</b> BRANCH NAME: <b>Central - Civil Division</b>	
PLAINTIFF/PETITIONER: <b>UL CHULA TWO LLC</b> DEFENDANT/RESPONDENT: <b>CITY OF CHULA VISTA, et al.</b>	
<p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b></p> <p>(Check one):    <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b>    <input type="checkbox"/> <b>LIMITED CASE</b>          (Amount demanded    (Amount demanded was          exceeded \$25,000)    \$25,000 or less)</p>	CASE NUMBER: <b>37-2020-00041554-CU-WM-CTL</b> [Related to Case Nos. 2020- 00041802-CU-MC-CTL; 37-2020- 00033446-CU-MC-CTL]

**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on (date): June 17, 2021
2. A copy of the judgment, decree, or order is attached to this notice.

Date: July 1, 2021

Gary K. Brucker, Jr.

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

**NOTICE OF ENTRY OF JUDGMENT OR ORDER**

PLAINTIFF/PETITIONER: UL Chula Two LLC	CASE NUMBER: 37-2020-00041554-CU-WM-CTL
DEFENDANT/RESPONDENT: City of Chula Vista, et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL****NOTICE OF ENTRY OF JUDGMENT OR ORDER**

**(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:  
Lewis Brisbois Bisgaard & Smith LLP, 550 West C Street, Suite 1700, San Diego, CA 92101
  2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:
    - a. ☐ deposited the sealed envelope with the United States Postal Service.
    - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  3. The *Notice of Entry of Judgment or Order* was mailed:
    - a. on *(date)*: July 1, 2021
    - b. from *(city and state)*: San Diego, California
  4. The envelope was addressed and mailed as follows:
 

a. Name of person served: Alena Shamos, Esq. and Matthew Slentz, Esq. Street address: 440 Stevens Avenue, Suite 200 City: Solana Beach State and zip code: CA, 92075	c. Name of person served: David Kramer, Esq. and Josh Kappel, Esq. Street address: 633 West 5 <sup>th</sup> Street, 26 <sup>th</sup> Floor City: Los Angeles State and zip code: CA, 90071
b. Name of person served: Heather Riley, Esq. and Rebecca Williams, Esq. Street address: 600 West Broadway, Suite 2700 City: San Diego State and zip code: CA, 92101-0903	d. Name of person served: Philip Tencer, Esq. Street address: 12520 High Bluff Drive, Suite 240 City: San Diego State and zip code: CA, 92130
- ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 10

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

Date: July 1, 2021

Emily Brosky

(TYPE OR PRINT NAME OF DECLARANT)



*Emily Brosky*

(SIGNATURE OF DECLARANT)

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  
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23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment shall be for  
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26 1. The relief prayed for by Petitioner is DENIED.

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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

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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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MOVING PARTY: UL CHULA TWO LLC

CAUSAL DOCUMENT/DATE FILED: Motion - Other MOTION FOR WRIT OF MANDATE, 04/02/2021

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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.

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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:

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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

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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:



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):

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Josh Kappel, 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@lewisbrisois 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.

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

Executed on May 28, 2021, at San Diego, California.



---

Jeff de Gruchy

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>	FOR COURT USE ONLY  <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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**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  
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]

**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

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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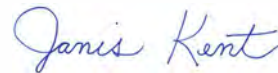
*Attorneys for TD Enterprise LLC*

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

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
Short Title: UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]	
<b>NOTICE OF CONFIRMATION OF ELECTRONIC FILING</b>	CASE NUMBER: 37-2020-00041554-CU-MC-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

**Electronic Filing Summary Data**

Electronically Submitted By:	Gary Brucker, Jr
On Behalf of:	UL CHULA TWO LLC
Transaction Number:	21053382
Court Received Date:	07/06/2021
Filed Date:	07/06/2021
Filed Time:	02:45 PM
Fee Amount Assessed:	\$0.00
Case Number:	37-2020-00041554-CU-MC-CTL
Case Title:	UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]
Location:	Central
Case Type:	Misc Complaints - Other
Case Category:	Civil - Unlimited
Jurisdictional Amount:	> 25000

**Status**

**Documents Electronically Filed/Received**

Accepted	Notice of Appeal
Accepted	Proof of Service

**Comments**

**Clerk's Comments:**

**Electronic Filing Service Provider Information**

Service Provider:	LegalConnect
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Phone:	(800) 909-6859

**From:** [Kent, Janis](#)  
**To:** [ashamos@chwlaw.us](#); [mslentz@chwlaw.us](#); [d.kramer@vicentesederberg.com](#); [josh@vicentesederberg.com](#); [hriley@allenmatkins.com](#); [bwilliams@allenmatkins.com](#); [phil@tencersherman.com](#)  
**Cc:** [Lann Gottesman McIntyre \(Lann.McIntyre@lewisbrisbois.com\)](#); [Brucker, Gary](#); [Menshikova, Anastasiya](#)  
**Subject:** UL Chula Two LLC v. City of Chula Vista, et al.  
**Date:** Tuesday, July 6, 2021 2:41:18 PM  
**Attachments:** [UL Chula Two - Notice of Appeal \(Unlimited Civil Case\) - FINAL 7.6.2021.pdf](#)  
[image001.png](#)

---

Dear Counsel,

On behalf of Lann G. McIntyre, please find attached a copy of the Notice of Appeal (Unlimited Civil Case), in regard to the above referenced matter.

Thank you,

Jan



**Janis Kent**  
Legal Secretary to Lann G. McIntyre and Tracy D. Forbath  
[Janis.Kent@lewisbrisbois.com](mailto:Janis.Kent@lewisbrisbois.com)  
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ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: <b>Lann G. McIntyre (SBN 106067); Gary K. Brucker, Jr. (SBN 238644)</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; gary.brucker@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>07/21/2021 at 02:17:00 PM</b> Clerk of the Superior Court By <b>Abraham Barragan, Deputy Clerk</b>
<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> OTHER PARENT/PARTY:	
<b>APPELLANT'S AMENDED NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER: <b>37-2020-00041554-CU-MC-CTL</b>
Re: Appeal filed on (date): <b>July 6, 2021</b>	COURT OF APPEAL CASE NUMBER (if known): <b>D079215</b>
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

## 1 RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I choose to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section (item 4) on pages 2 and 3 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rules 3.50-3.58; or
- (b) ☐ An application for a waiver of court fees and costs under rules 3.50-3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate (agree) to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

## 2 RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I choose to proceed (you must check a or b below):

- a. ☐ WITHOUT a record of the oral proceedings (what was said at the hearing or trial) in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in deciding whether an error was made in the superior court proceedings.



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

SUPERIOR COURT CASE NUMBER:  
37-2020-00041554-CU-MC-CTL

2. b. ☒ WITH the following record of the oral proceedings in the superior court (you must check (1), (2), or (3) below):
- (1) ☒ A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.) I have (check all that apply):
- (a) ☒ Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (check either (i) or (ii)):
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) ☐ An agreed statement. (Check and complete either (a) or (b) below.)
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have stipulated (agreed) in writing to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137. (You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.)
- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
- (c) ☐ I am asking to use a settled statement for reasons other than those listed in (a) or (b). (You must serve and file the motion required under rule 8.137(b) at the same time that you file this form. You may use form APP-025 to prepare the motion.)

### 3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE COURT OF APPEAL

- ☐ I request that the clerk transmit to the Court of Appeal under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

### 4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a above indicating that you choose to use a clerk's transcript as the record of the documents filed in the superior court.)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal (this document)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (if any)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (if any)

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

SUPERIOR COURT CASE NUMBER:  
37-2020-00041554-CU-MC-CTL

#### 4 NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

- ☐ I request that the clerk include in the transcript the following documents that were filed in the superior court proceeding. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		

- ☐ See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (12).)

c. **Exhibits to be included in clerk's transcript**

- ☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			

- ☐ See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (5).)

#### 5 NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you choose to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

a. **Format of the reporter's transcript**

I request that the reporters provide (check one):

- (1) ☒ My copy of the reporter's transcript in electronic format.
- (2) ☐ My copy of the reporter's transcript in paper format.
- (3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

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

SUPERIOR COURT CASE NUMBER:  
37-2020-00041554-CU-MC-CTL

5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1) 3/26/21	C-75	Partial	Hearing on Preliminary Injunction	Kim Ross (CSR # 7842)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(2) 5/21/21	C-75	Partial	Hearing on Petition for Writ of Administrative Mandamus	Stephanie Y. Bryant (CSR # 13160)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(3) 2/4/21	C-75	Partial	Ex Parte Hearing	Stephanie Y. Bryant (CSR # 13160)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ See additional pages. (Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).)

6 **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you choose to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start with number (5).)


7. a. The proceedings designated in 5b or 6 ☒ include ☐ do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (Rule 8.130(a)(2) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.) Points are set forth: ☐ Below ☐ On a separate page labeled "Attachment 7."

Date: July 21, 2021

Lann G. McIntyre

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

Attorneys for Petitioner and Plaintiff UL Chula Two LLC



1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

2 GARY K. BRUCKER, JR., SB# 238644

3 E-Mail: Gary.Brucker@lewisbrisbois.com

4 ANASTASIYA MENSHIKOVA, SB# 312392

5 E-Mail: Anastasiya.Menshikova@lewisbrisbois.com

6 LANN G. MCINTYRE, SB # 106067

7 E-Mail: Lann.McIntyre@lewisbrisbois.com

8 550 West C Street, Suite 1700

9 San Diego, California 92101

10 Telephone: 619.233.1006

11 Facsimile: 619.233.8627

12 Attorneys for Petitioner/Plaintiff

13 UL CHULA TWO LLC

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**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]

**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

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 July 21, 2021, I served true copies of the following document(s):

**(1) APPELLANT'S AMENDED NOTICE DESIGNATING RECORD ON APPEAL  
(UNLIMITED CIVIL CASE)**

///

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Alena Shamos, Esq.  
Matthew Slentz, Esq.  
Colantuono, Highsmith & Whatley, PC  
440 Stevens Avenue, Suite 200  
Solana Beach, CA 92075  
Direct Tel: 858-682-3665  
Tel: 213-542-5700  
Fax: 213-542-5710  
E-Mail: ashamos@chwlaw.us  
E-Mail: mslentz@chwlaw.us

*Attorneys for Defendants  
City of Chula Vista and City Manager of Chula Vista*

Heather Riley, Esq.  
Rebecca Williams, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
One America Plaza  
600 West Broadway, Suite 2700  
San Diego, CA 92101-0903  
Tel: (619) 233-1155  
Fax: (619) 233-1158  
E-Mail: hriley@allenmatkins.com  
E-Mail: bwilliams@allenmatkins.com

*Attorneys for March and Ash Chula Vista, Inc.*

David Kramer, Esq.  
Josh Kappel, Esq.  
Vicente Sederberg LLP  
633 West 5th Street, 26th Floor  
Los Angeles, California 90071  
Tel: 310-695-1836  
Mobile: 917-929-0248  
Fax: (303) 860-4505  
E-Mail: d.kramer@vicensederberg.com  
E-Mail: josh@vicensederberg.com

*Attorneys for TD Enterprise LLC*

Philip Tencer, Esq.  
TencerSherman LLP  
12520 High Bluff Drive, Suite 240  
San Diego, CA 92130  
Tel: (858) 408-6901  
Fax: (858) 754-1260  
E-Mail: Phil@tencersherman.com

*Attorneys for TD Enterprise LLC*

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 21, 2021, at San Diego, California.



Janis Kent

**From:** [Kent, Janis](#)  
**To:** [ashamos@chwlaw.us](#); [mslentz@chwlaw.us](#); [d.kramer@vicentesederberg.com](#); [josh@vicentesederberg.com](#); [hriley@allenmatkins.com](#); [bwilliams@allenmatkins.com](#); [phil@tencersherman.com](#)  
**Cc:** [McIntyre, Lann](#); [Brucker, Gary](#); [Menshikova, Anastasiya](#)  
**Subject:** UL Chula Two LLC v. City of Chula Vista, et al.  
**Date:** Wednesday, July 21, 2021 2:00:51 PM  
**Attachments:** [UL Chula Two - Appellant's Amended Notice Designating Record On Appeal \(Unlimited Civil Case\) - FINAL 7.21.2021.pdf](#)  
[image001.png](#)

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Dear Counsel,

On behalf of Lann G. McIntyre, attached please find a copy of the Appellant's Amended Notice Designating Record on Appeal (Unlimited Civil Case), in regard to the above referenced matter.

Thank you,

Jan



**Janis Kent**  
Legal Secretary to Lann G. McIntyre and Tracy D. Forbath  
[Janis.Kent@lewisbrisbois.com](mailto:Janis.Kent@lewisbrisbois.com)  
T: 619.685.5504 F: 619.233.8627

550 West C Street, Suite 1700, San Diego, CA 92101 | [LewisBrisbois.com](http://LewisBrisbois.com)

[Representing clients from coast to coast. View our locations nationwide.](#)

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

**2-AA-1172**

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
Short Title: UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]	
<b>NOTICE OF CONFIRMATION OF ELECTRONIC FILING</b>	CASE NUMBER: 37-2020-00041554-CU-MC-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

**Electronic Filing Summary Data**

Electronically Submitted By: Gary Brucker, Jr  
 On Behalf of: UL CHULA TWO LLC  
 Transaction Number: 21067118  
 Court Received Date: 07/21/2021  
  
 Filed Date: 07/21/2021  
 Filed Time: 02:17 PM  
  
 Fee Amount Assessed: \$0.00  
 Case Number: 37-2020-00041554-CU-MC-CTL  
 Case Title: UL CHULA TWO LLC vs CITY OF CHULA VISTA [IMAGED]  
 Location: Central  
 Case Type: Misc Complaints - Other  
 Case Category: Civil - Unlimited  
 Jurisdictional Amount: > 25000

**Status**

**Documents Electronically Filed/Received**

Accepted Appellant's Notice Designating Record on Appeal  
  
 Accepted Proof of Service

**Comments**

**Clerk's Comments:**

**Electronic Filing Service Provider Information**

Service Provider: LegalConnect  
 Email: support@legalconnect.com  
 Contact Person: LEGALCONNECT Support  
 Phone: (800) 909-6859





CASE NAME:

UL CHULA TWO, LLC, V. CITY OF CHULA VISTA, ET AL.

SUPERIOR COURT CASE NUMBER:

37-2020-00041554-CU-WM-CTL

1. b. ☒ **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those exhibits here.)

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiffs #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

Exhibit Number	Description	Admitted (Yes/No)
(1)	Administrative Record (Cal. Rules of Court, rule 8.123(b).) Certified Administrative Record, consisting of one (1) PDF formatted file indexed and bookmarked with tabs numbered (1) through sixteen (16), and one (1) video file. The PDF portion of the record comprises 428 pages of documents, excluding the index which is 2 pages long. The Bates Numbers are AR00001 through AR00428.	Lodged via USB by Respondents, City of Chula Vista and Chula Vista City Manager, on April 23, 2021
(2)		
(3)		
(4)		

- ☐ See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number (5).)

- c. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. (Check (1) or (2).)

- (1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rules 3.50 - 3.58; or
- (b) ☐ An application for a waiver of court fees and costs under rules 3.50- 3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has chosen to use a reporter's transcript under rule 8.130.

- a. ☐ **Designation of additional proceedings.** (If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)
- (1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

CASE NAME: UL CHULA TWO, LLC, V. CITY OF CHULA VISTA, ET AL.	SUPERIOR COURT CASE NUMBER: 37-2020-00041554-CU-WM-CTL
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2. a. (1) *(continued)*

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 2a(1)," and start with letter (h).)

(2) **Deposit for additional proceedings.**

I have (check a, b, c, or d):

- (a) ☐ Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (check either (i) or (ii)):
- (i) ☐ All of the designated proceedings.
- (ii) ☐ Part of the designated proceedings.
- (d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

- (1) ☒ I request a copy of the reporter's transcript.
- (2) ☒ I request that the reporters provide (check (a), (b), or (c)) :
- (a) ☒ My copy of the reporter's transcript in electronic format.
- (b) ☐ My copy of the reporter's transcript in paper format.
- (c) ☐ My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

(Code Civ. Proc., § 271.)

Date: July 26, 2021

ALENA SHAMOS, SBN 216548

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT OR ATTORNEY)

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**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us. On July 26, 2021, I served the document(s) described as **RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)** the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on July 26, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on July 26, 2021, at Pasadena, California.

  
\_\_\_\_\_  
SHOEBA HASSAN



**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*  
San Diego Superior Court Case No.: 37-2020-00041554-CU-WM-CTL  
Our File No. 33020.0009

<p>Gary K. Brucker, Jr., SBN 238644 Lann G. McIntyre, SBN 106067 Anastasiya Menshikova, SBN 312392 <b>LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</b> 550 West C Street, Suite 1700 San Diego, CA 92101 Tel.: (619) 233-1006 Fax: (619) 233-8627 E-mail: Gary.Brucker@lewisbrisbois.com Anastasiya.Menshikova@lewisbrisbois.com Lann.McIntyre@lewisbrisbois.com</p>	<p><i>Attorneys for Plaintiff</i> UL CHULA TWO LLC</p>
<p>David Kramer, Esq. Josh Kappel, Esq. <b>VICENTE SEDERBERG LLP</b> 633 West 5th Street, 26th Floor Los Angeles, California 90071 Tel.: (310) 695-1836 Fax: (303) 860-4505 E-mail: d.kramer@vicentesederberg.com E-mail: josh@vicentesederberg.com</p>	<p><i>Attorneys for Defendant</i> TD ENTERPRISE LLC</p>
<p>Heather Riley, Esq. Rebecca Williams, Esq. <b>ALLEN MATKINS LECK GAMBLE MALLORY &amp; NATSIS LLP</b> One America Plaza 600 West Broadway, Suite 2700 San Diego, CA 92101-0903 Tel.: (619) 233-1155 Fax: (619) 233-1158 E-mail: hriley@allenmatkins.com E-mail: bwilliams@allenmatkins.com</p>	<p><i>Attorneys for Defendant</i> MARCH AND ASH CHULA VISTA, INC.</p>
<p>Philip Tencer, Esq. <b>TENCERSHERMAN LLP</b> 12520 High Bluff Drive, Suite 240 San Diego, CA 92130 Tel.: (858) 408-6901 Fax: (858) 754-1260 E-mail: Phil@tencersherman.com</p>	<p><i>Attorneys for Defendant</i> TD ENTERPRISE LLC</p>

**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	
RILEY, HEATHER S	ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LL 600 West Broadway 27th Floor SAN DIEGO CA 92101 0903	(619) 233-1155
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)

<b>STATE OF CALIFORNIA</b> California Court of Appeal, Fourth Appellate District Division 1	<b><i>PROOF OF SERVICE</i></b>  <b>STATE OF CALIFORNIA</b> California Court of Appeal, Fourth Appellate District Division 1
Case Name: <b>UL Chula Two LLC v. City of Chula Vista et al.</b>	
Case Number: <b>D079215</b>	
Lower Court Case Number: <b>37-2020-00041554-CU-WM-CTL</b>	

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
BRIEF - APPELLANTS OPENING BRIEF	UL Chula Two - Appellant's Opening Brief - FINAL 12.21.2021
APPENDIX - JOINT APPENDIX	UL Chula Two Appellant's Appendix Volume 1 of 2
APPENDIX - JOINT APPENDIX	UL Chula Two Appellant's Appendix Volume 2 of 2

Service Recipients:

Person Served	Email Address	Type	Date / Time
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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.

12/21/2021

Date

/s/Janis Kent

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm