

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS

68-700 AVENIDA LALO GUERRERO

CATHEDRAL CITY, CA 92234

Wednesday, February 22, 2017

**REGULAR MEETING** 

6:30 PM

- CALL TO ORDER
- PLEDGE OF ALLEGIANCE
- INVOCATION (MOMENT OF REFLECTION)
- ROLL CALL
- AGENDA FINALIZATION

At this time, the City Council may announce any items being pulled from the agenda or continued to another date.

• STATEMENT OF PARTICIPATION BY THE DEPUTY CITY CLERK

#### 1. PUBLIC COMMENT

Public Comment is limited to 3 minutes per person.

#### 2. CONSENT AGENDA

All matters on the Consent Agenda are considered routine in nature and are expected to be enacted upon by the Council at one time without discussion. Any Council Member, Staff Member, or Citizen may request removal of an item from the Consent Agenda for discussion.

#### 2.A. 2017-47 Purchase Agreement for the Downtown Mixed Use Project

Recommendation: Staff recommends the City Council, as the Housing Successor Agency

to the Former Redevelopment Agency, authorize the City Manager to execute a Purchase and Sale and Escrow Instructions Agreement between Cathedral Canyon Development, LLC and the City of Cathedral City as the Housing Successor Agency to the Former Redevelopment

Agency of the City of Cathedral City.

#### 2.B. <u>2017-82</u> Resolution Adopting Council Goals for 2017

Recommendation: Staff recommends the City Council approve a resolution establishing

Council's goals for 2017.

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#### 2.C. 2017-83 Appointment to the Mobile Home Fair Practices Commission

Recommendation: Staff recommends the City Council appoint Sharon Snow to the Mobile Home Fair Practices Commission for a temporary term.

#### 3. PUBLIC HEARINGS

3.A. <u>2017-76</u> Appeal of Planning Commission Denial of Conditional Use Permit

16-007 for Sunshine Coast Wellness, 28201 Date Palm Drive, Suite

B&C

Recommendation: Staff recommends the City Council hear an appeal of the decision of the

Planning Commission to deny a Conditional Use Permit; hold a public hearing; and then affirm, modify or reverse the Planning Commission

decision.

#### 4. LEGISLATIVE ACTIONS

4.A. 2017-52 Council Policy on Mayoral Rotation under the City Charter

Recommendation: Staff recommends the City Council introduce for first reading, waive

reading beyond the title and approve an ordinance establishing the

policy for Mayoral Rotation under the City Charter.

4.B. 2017-80 Extension of Tow Contracts - Fee Adjustment

Recommendation: City staff recommends Council endorse the extension of the current tow

contracts with an amended schedule of allowable fees to include fees

payable to the City for 30 day vehicle impound storages.

4.C. 2017-81 Amend Cathedral City Municipal Code Chapters 9.108, 9.26, 9.28,

9.30, 9.36, 9.38, 9.40 and 9.42 Related to Medical Cannabis (ZOA

16-003).

Recommendation: Approve second reading, by title only, Zone Amendment No 16-003, an

Ordinance of the City Council of Cathedral City, California, Amending Chapters 9.108, 9.26, 9.28, 9.30, 9.36, 9.38, 9.40 and 9.42 of the

Cathedral City Municipal Code Relating to Medical Cannabis.

#### 5. COUNCIL REPORTS

This is an opportunity for each member of the City Council to report on any conferences they attend, local events or make any other comments they may have.

#### 6. CLOSED SESSION

The following Closed Session Items may have been heard during Study Session, otherwise they will be heard at this time.

6.A. <u>2017-77</u> Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

Property Location: Approximately 12.5 acres at the Northwest Corner

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of East Palm Canyon Drive and Date Palm Drive.

**Negotiating Parties**: City of Cathedral City as Successor Agency to the former Redevelopment Agency and the City Urban Revitalization Corporation.

**Property Owners**: City Urban Revitalization Corporation

**Under Negotiations**: Price and Terms for potential purchase of real property.

6.B. <u>2017-78</u> Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

Property Location: Approximately 1.8 acres at the Northside of

Grandview Ave and Elna Way, APN: 686-141-007

Negotiating Parties: City of Cathedral City and Timothy Priehs

**Property Owners**: Timothy Priehs

Under Negotiations: Price and Terms for potential purchase of real

property.

6.C. 2017-79 Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

Property Location: Approximately 1.8 acres north on Mission Drive by

APN's 677-382-005 through 008

Negotiating Parties: City of Cathedral as the Housing Successor

Agency and Mario Perez, Inc.

**Property Owner:** City of Cathedral City as Housing Successor Agency **Under Negotiations:** Price and Terms for potential sale of real property

6.D. 2017-84 Conference with Legal Counsel - Anticipated Litigation Significant exposure to litigation pursuant to paragraphs (d)(2) and (e)(1) of the Government Code.

One (1) matter

#### **ADJOURN**

The next Regular City Council Meeting will be held on Wednesday, March 8, 2017 at 6:30 p.m.

#### NOTES TO THE PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's Office at (760)770-0385. Assisted-listening devices are available at this meeting. Ask the City Clerk if you desire to use this device. Notification at least 48 hours prior to the meeting or the time when services are needed will assist city staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.

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# Cathedral City

## **Agenda Report**

File #: 2017-47 Item No: 2.A.

Housing Successor Agency

**MEETING DATE: 2/22/2017** 

TITLE:

**Purchase Agreement for the Downtown Mixed Use Project** 

FROM:

Curt Watts, Economic Development Director

#### RECOMMENDATION:

Staff recommends the City Council, as the Housing Successor Agency to the Former Redevelopment Agency, authorize the City Manager to execute a Purchase and Sale and Escrow Instructions Agreement between Cathedral Canyon Development, LLC and the City of Cathedral City as the Housing Successor Agency to the Former Redevelopment Agency of the City of Cathedral City.

#### **BACKGROUND:**

In August 2013 the Housing Successor Agency to the Former Redevelopment Agency of the City of Cathedral City ("City") approved a Property Transfer Agreement ("Agreement") with Thermal Land, LLC for the future sale of an approximate two-acre site located at the southeast corner of East Palm Canyon Drive and West Buddy Rogers Avenue for development of a mixed use project. Per the Agreement, the site was to be developed primarily for housing purposes with a percentage of the units to be available to, and occupied by, moderate income households. The Agreement has been amended multiple times to extend the deadlines for close of escrow and completion of the project as defined in the amended Agreement. The City approved an assignment of the Agreement from Thermal Land, LLC to Saxony Living, LP ("Saxony") on November 18, 2014 and an assignment of the Agreement from Saxony to GreenSpring Capital, Inc. ("GreenSpring") on October 26, 2016. The Agreement was subsequently assigned to GreenSpring's single-asset entity Cathedral Canyon Development, LLC ("CCD") on November 30, 2016. Simultaneous with the assignment to CCD, Amendment No. 6 to the Agreement was approved to incorporate certain modifications to better position the Project for future success and to re-establish the timelines necessary to complete the entitlement process, acquire building permits, and provide proof of construction financing to allow for the close of escrow.

#### **DISCUSSION:**

Due to the multiple previous amendments and assignments of the original Agreement, and to accommodate CCD's interest in pursuing a future mixed-use development that would expand beyond

File #: 2017-47 Item No: 2.A.

the original two-acre site covered by the Agreement, a new Purchase and Sale and Escrow Agreement ("Purchase Agreement") has been drafted to replace the amended Agreement and incorporate all previous amendments into one easier to administer document (see attached).

The new Purchase Agreement will help simplify the administration of the future land sale and the monitoring of the development project as it proceeds through entitlement processing, close of escrow and construction. The Purchase Agreement also includes a provision for the parties involved to negotiate and execute a Performance Agreement that will provide a description of the future proposed project, time requirements for processing entitlements and eventual development of the Project, and post-closing obligations.

In addition to the previously approved purchase price of \$331,000 the following timelines have been established in keeping with Amendment No. 6 to the Agreement:

- 1) Completion of Due Diligence Period within 90 days after Effective Date of Purchase Agreement.
- 2) Approval of Performance Agreement to be negotiated and approved by all parties within 60 days after close of Due Diligence.
- 3) Close of Escrow by March 30, 2018 (extendable by 6 months to September 30, 2018 with increase in CCD's deposit to 50% of the \$331,000 Purchase Price (i.e. \$165,500). Close of Escrow requires completion of the entitlement process.
- 4) Completion of Construction within 18 months after Close of Escrow (i.e. September 30, 2019, or March 30, 2020 if Close of Escrow is extended by 6 months).

#### **FISCAL IMPACT:**

Upon Close of Escrow the Housing Successor Agency will receive \$331,000 and will also be relieved of its current obligation to pay remaining sewer district assessments of approximately \$148,000 (\$13,000 in annual principal and interest payments through 2035) as these will become the future responsibility of the Buyer following Close of Escrow.

#### ATTACHMENTS:

1. Purchase and Sale and Escrow Instructions Agreement

# PURCHASE AND SALE AND ESCROW INSTRUCTIONS AGREEMENT

This Purchase and Sale and Escrow Instructions Agreement ("Agreement") is entered into by and between CATHEDRAL CITY, a California charter city and municipal corporation, acting solely in its role as the Successor Housing Agency of the former Redevelopment Agency of the City of Cathedral City ("Seller"), and CATHEDRAL CANYON DEVELOPMENT, LLC, a California limited liability company ("Buyer"). Collectively, the parties may be referred to herein as the "Parties", or individually as a "Party." This Agreement is dated \_\_\_\_\_\_\_\_, 2017, for reference purposes only.

#### **RECITALS**

- A. Seller is the fee owner of certain unimproved real property located in the City of Cathedral City, California ("City"), which is described on the attached Exhibit A ("Property").
- B. Seller is a California charter city and municipal corporation, acting solely in its role as the Successor Housing Agency of the former Redevelopment Agency of the City of Cathedral City.
- C. The sale and development of the Property will further the housing purposes of Seller as the Successor to the Housing Agency by providing for a variety of needed additional housing within the core of Cathedral City's downtown.
- D. As a condition to the sale of the Property and close of escrow, Seller requires that Buyer develop plans and specifications for the Property's development that are satisfactory to Seller and that Buyer and Seller enter into an agreement for such development, as more particularly described in this Agreement.
- E. Seller now desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property on the terms and conditions set forth herein.
- F. This Purchase and Sale and Escrow Instructions Agreement, and the related Performance Agreement, are intended by the Parties to, and due hereby, replace and supersede that certain Property Transfer Agreement and Escrow Instructions dated August 28, 2013, as amended, which was previously assigned to and assumed by Buyer by means of the Assignment, Assumption, and Consent Agreement dated November 30, 2016. Seller and Buyer have previously opened escrow for the conveyance of the Property and will utilize that escrow to consummate this transaction.
- NOW, THEREFORE, the Parties agree to be bound by the promises, covenants and obligations contained in this Agreement, each of them acknowledging the sufficiency of the consideration given to it.

#### **TERMS AND CONDITIONS**

#### Section 1. Incorporation of Recitals, Exhibits

Each of the Recitals set forth above is incorporated in this Agreement and the Parties each acknowledge and agree to the truth and accuracy thereof. Each of the Exhibits attached hereto is included herein by reference.

#### Section 2. Purchase and Sale

- 2.1 <u>Purchase Price</u>. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, for the amount of Three Hundred Thirty One Thousand Dollars (\$331,000) ("**Purchase Price**") and upon all of the terms and conditions set forth in this Agreement. The Purchase Price shall be tendered by Buyer to Seller in immediate available funds at the Close of Escrow (as defined hereinafter).
- 2.2 <u>Deposit</u>. Buyer has previously made a deposit of the sum of Ten Thousand Dollars (\$10,000) ("**Deposit**") with the Escrow Agent. The Deposit shall be remitted to Buyer if Buyer is entitled to the return thereof pursuant to this Agreement or remitted to Seller as liquidated damages under Section 10.2 if Buyer defaults under the terms of this Agreement.
- 2.3 <u>Independent Consideration</u>. One Hundred Dollars (\$100) of the Deposit shall be paid to Seller as independent consideration for Seller entering into this Agreement (the "**Independent Consideration**") and shall be retained by Seller in all instances.
- 2.4 At the Closing, Buyer shall pay the Purchase Price in cash or cash equivalent, less the Deposit.

#### Section 3. <u>Due Diligence Period/Right of Entry</u>

#### 3.1 <u>Due Diligence Period</u>.

For the first ninety (90) days following the Effective Date as defined below in Section 14.18 ("Due Diligence Period"), Buyer shall have the right to review and approve or disapprove the physical condition of the Property, matters affecting title to the Property, financial investigations, zoning and land use restrictions, and all other matters that Buyer determines are relevant to its purchase and development of the Property. Buyer's obligations to close Escrow and acquire the Property are conditioned upon Buyer's approval (or deemed approval) of such matters, in its sole and absolute discretion. If Buyer approves of such matters, Buyer will provide written notice of such approval to Seller ("Approval Notice") prior to expiration of the Due Diligence Period. If Buyer provides Seller written notice disapproving of such matters ("Disapproval Notice") prior to the expiration of the Due Diligence Period, the Deposit shall be returned to Buyer and thereafter this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder except as provided by Section 13. The

failure of Buyer to provide an Approval Notice or Disapproval Notice on or before the expiration of the Due Diligence Period will be deemed to be approval by Buyer, in which event this Agreement will continue in full force and effect.

#### 3.2 Right of Entry.

At any time during the Due Diligence Period, upon forty-eight (48) hours prior written notice to Seller, and at Buyer's sole expense, Buyer and its authorized agents shall have the right to enter upon the Property during normal business days and hours for any lawful purpose, including, without limitation, making such surveys and site analyses, test borings and engineering studies as Buyer may deem necessary; provided, however, Buyer shall not conduct any invasive testing unless approved by Seller in writing, in Seller's sole but reasonable discretion. Buyer will defend, indemnify and hold Seller and the Property harmless from and against any and all claims and liens arising out of any act or failure to act of Buyer or its authorized agents as a result of their respective activities on the Property. Before entering the Property, Buyer (or its agents entering onto the Property) shall obtain and furnish to Seller an endorsement showing that Buyer (or such agent entering the Property) maintains commercial general liability insurance with a reputable insurer admitted in California, with a Best's rating of A or better, providing minimum limits of liability of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, and naming Seller as additional insured. Such endorsement must expressly provide that such insurance may not be canceled or reduced in scope or coverage without at least thirty (30) days' prior written notice to Seller.

#### Section 4. Title

Seller shall convey fee title to the Property to Buyer grant deed ("Grant Deed") at the Close of Escrow, free of any monetary or other interests or encumbrances affecting the condition of title except as otherwise permitted in Section 5.2 below or created by Buyer or its agents. Seller shall provide Buyer with an Owner's ALTA Standard Coverage Policy of Title Insurance ("Policy") in a policy amount equal to the Purchase Price, issued by First American Title Insurance Company, 74-770 Highway 111, Suite 101, Indian Wells, California 92210 ("Title Company"), Attn: Sharon Elkins ("Escrow Agent"), showing title vested in Buyer in the condition required by this Agreement.

#### Section 5. Conditions to Close of Escrow

The Close of Escrow shall be subject to the satisfaction of the conditions set forth in this Section 5 and elsewhere in this Agreement. If any of these conditions are not satisfied within the time periods provided in this Agreement, the Party to be benefited by that condition may, at its sole option and discretion, either waive such condition(s) in writing or terminate this Agreement by delivering written notice of termination to the other Party and Escrow Agent. Upon such termination, the Parties will be relieved of any and all obligations under this Agreement except as provided in Section 13 and the Deposit will be returned to Buyer.

#### 5.1 Closing Date

Escrow shall close ("Close of Escrow"), as evidenced by the recordation of the Grant Deed in the official records of Riverside County, California, as soon as the conditions to Close of Escrow have been met or waived in writing by the Party for whose benefit the condition exists, but in no event later than March 30, 2018 ("Closing Date"), except that Buyer may extend the Closing Date by six (6) months to September 30, 2018 ("Outside Closing Date"), upon depositing into Escrow the amount of One Hundred Sixty Five Thousand Five Hundred Dollars (\$165,500), which amount shall be made a part of the Deposit. For purpose of clarification, no event of force majeure, cure period, or other intervening event may extend the Close of Escrow past the Outside Closing Date without the written agreement of the Parties, given or withheld in their sole and absolute discretion.

#### 5.2 Approval of Title to the Property

5.2.1 Title to the Property shall be in the condition required by this Agreement as of the Close of Escrow. At the Close of Escrow, the Policy shall show as exceptions only the following: (a) the Title Company's standard printed exceptions; (b) general and special real property taxes and assessments, if any, for the current fiscal year, a lien not yet due and payable; (c) any exceptions approved or deemed approved by Buyer under Section 5.2.2; and (d) any other exception consented to in writing by Buyer or created by Buyer or its agents. Buyer agrees to assume the continuing obligation to pay any public assessment or facilities district charges which may be in place on the Property and that the existence of such assessments or charges shall not be a cause for Buyer to object. All of the items listed in clauses (a) through (d), inclusive, of this paragraph 5.2.1 shall be permitted exceptions to title ("**Permitted Exceptions**").

5.2.2 No later than five (5) calendar days after the Opening of Escrow (as defined in Section 6.2), the Title Company shall provide the Buyer with a preliminary title report ("Title Report") for each parcel of land contained in the Property, together with complete and legible copies of all instruments referred to in the Title Report as conditions or exceptions to title. No later than thirty (30) days prior to the expiration of the Due Diligence Period, Buyer must provide written notice ("Title Objection Notice") to Seller identifying and exceptions identified in the Title Report to which Buyer objects, other than Permitted Exceptions. If Buyer fails to timely provide a Title Objection Notice, then Buyer will be deemed to have approved of all matters shown as exceptions in the Title Report. If Buyer timely delivers a Title Objection Notice, then, within ten (10) days after its receipt of the Title Objection Notice, Seller must provide written notice ("Seller's Title Response") that Seller either: (a) will cause the removal of said exceptions on or before the Close of Escrow; or (b) is unable or unwilling to remove the exception. In the event Seller is unable or unwilling to cause any exception to be removed on or before the Close of Escrow, Buyer shall have the right for five (5) days after its receipt of Seller's Title Response to terminate this Agreement. Upon such termination, the Parties shall be relieved of any and all obligations under this Agreement except as provided by Section 13 and the Deposit will be returned to Buyer.

#### 5.3 Performance Agreement

- 5.3.1 As a condition to the Close of Escrow, Buyer, Seller, and City Urban Revitalization Corporation ("CURC"), must negotiate and execute a mutually acceptable agreement ("Performance Agreement") that provides, among other things: (a) a description of the proposed project to be developed upon the Property, and agreed to by Buyer, Seller, and CURC ("Project"), subject to the City's entitlement process, (b) time requirements for Buyer's processing of entitlements and development of the Project, including, without limitation, completion of construction of the Project within eighteen (18) months following the Close of Escrow, and (c) Buyer's continuing post-closing obligations with respect to the Project. The Parties will, commencing upon the start of the Due Diligence Period, attempt in good faith to negotiate with each other and the CURC's representatives a mutually agreeable form of Performance Agreement.
- 5.3.2 If the Parties are unable to mutually agree on a form of Performance Agreement within sixty (60) days following the expiration of the Due Diligence Period ("Performance Agreement Period"), then either Party may terminate this Agreement and, upon such termination, the Deposit will be returned to Buyer and neither Party will have any further rights or obligations hereunder, except as otherwise provided by Section 13. If the Parties agree on the form of Performance Agreement during the Performance Agreement Period, then Seller will, within five (5) days following the execution of the Performance Agreement by Buyer, Seller and CURC, deliver one fully--executed copy of the Performance Agreement to Escrow Agent, Buyer and CURC.
- 5.3.3. Nothing in this Agreement is a representation or warranty that either Seller's Board or CURC's governing body will approve any form of Performance Agreement presented to them. Neither Seller nor CURC will be bound by the Performance Agreement until it has been approved by both Seller's Board and CURC's governing body, following all legally required procedures and acting within the limits of the discretion granted to them by law. Any decision to not approve the Performance Agreement by either Seller's Board or CURC's governing body, for any reason or no reason at all, will not constitute a default under this Agreement or grant Buyer any right or remedy other than to terminate this Agreement and receive a refund of the Deposit as provided in Section 5.3.2.

#### 5.4 Seller's Approval of Buyer's Financing

Prior to the expiration of the Due Diligence Period, Buyer shall provide evidence satisfactory to Seller that it possesses funds, or loan commitment(s) reasonably acceptable and verifiable to Seller, sufficient to purchase the Property. Prior to the Close of Escrow, Buyer shall provide evidence satisfactory to Seller that it possesses funds, or loan commitment(s) reasonably acceptable and verifiable to Seller, sufficient to develop the entirety of the Project as approved by Seller and as described in the Performance Agreement.

#### 5.5 Seller Deposits

Prior to the Close of Escrow, Seller shall have deposited in Escrow all documents required by this Agreement or Escrow Agent's standard escrow instructions, including, without limitation, a duly executed and acknowledged Grant Deed, counterpart originals of the Performance Agreement as required by Section 5.3.2, and any other required documents.

#### 5.6 Buyer Deposits

Prior to the Close of Escrow, Buyer shall have deposited in Escrow all documents required by this Agreement or Escrow Agent's standard escrow instructions, including, without limitation, counterpart originals of the Performance Agreement as required by Section 5.3.2, any other required documents, and all funds required by this Agreement, including, without limitation, the Deposit, the Purchase Price and such other sums as are debited to Buyer through escrow.

#### Section 6. Escrow Provisions and Instructions

#### 6.1 Escrow Agent

The Parties have previously established an escrow (the "Escrow") with the Escrow Agent for the purposes of implementing the transaction described in this Agreement.

#### 6.2 Opening of Escrow

Within three (3) days after the Effective Date, Buyer and Seller shall each deposit with Escrow Agent one fully-executed counterpart of this Agreement. The date of delivery to Escrow Agent of such fully-executed counterparts shall be deemed the opening of escrow ("Opening of Escrow"), even though the Parties have previously opened escrow, and Escrow Agent shall notify Buyer and Seller in writing of the Opening of Escrow date. The Escrow Agent is hereby empowered to act under this Agreement upon indicating its acceptance of this Section 6.2 in writing, delivered to the Parties within five (5) calendar days after the Opening of Escrow, and shall thereafter carry out its duties as the Escrow Agent hereunder. In the event of any inconsistency between any supplemental escrow instructions required by Escrow Agent and this Agreement, this Agreement shall control, notwithstanding the fact that either Party may have intentionally or inadvertently executed such inconsistent instructions.

#### 6.3 <u>Additional Documents</u>

Each Party shall deliver to the Escrow Agent, executed and acknowledged where applicable, any additional documents necessary for the conveyance of title as applicable or implementation of any other provision of this Agreement or other obligations of said Party hereunder, including, as applicable, any funds owed by that Party under this Agreement. The Parties will act in good faith to attempt to have all

necessary documents, consents, approvals, or other required documents delivered to the Escrow Agent. However, in no event shall said additional documents increase the rights of one Party against the other Party or modify the terms and conditions of this Agreement.

#### 6.4 Closing Statement

Not less than five (5) calendar days prior to the Close of Escrow, the Escrow Agent shall provide each Party with a closing statement, showing any funds owed by or any credits to that Party, based on allocations as are normal in the County of Riverside, unless otherwise provided by this Agreement. Ad valorem property taxes, assessments and fees will be apportioned as necessary to the transferee and the transferor in each transaction based on the Closing Date. The Escrow Agent shall concurrently provide copies of each Party's closing statement to the other Party.

#### 6.5 Delivery of Documents and Funds

Seller shall deliver the Grant Deed and any additional documents required from Seller at least three (3) days prior to the Close of Escrow. Buyer shall deliver the balance of the Purchase Price and any additional funds and any additional documents required to close Escrow to Escrow Agent at least three (3) days prior to the Close of Escrow.

#### 6.6 Close of Escrow

When the Escrow Agent is in a position to close the Escrow, it shall do the following in the order listed:

- (1) Record the Grant Deed.
- (2) Provide each Party and the Agency with a collated fully-executed Performance Agreement.
- (3) Deliver or cause the Title Company to deliver the Policy to Buyer.
- (4) Pay to the Party entitled thereto any funds held by the Escrow Agent which are due to that Party.
- (5) Provide each Party with a final closing statement and provide the other Party with a copy of said closing statement.
- (6) Provide each Party with a copy of all documents recorded with the County Recorder.

#### 6.7 <u>Escrow and Sales Costs</u>

Buyer and Seller shall equally pay all costs and expenses incurred in connection with closing Escrow, including, without limitation, the escrow fee. Seller

shall pay the cost of the Standard Coverage portion of the Policy and Buyer shall pay the difference in the cost of any extended coverage requested by Buyer and the cost of any title endorsements requested by Buyer. Escrow Agent shall notify Buyer and Seller of the costs to be borne by each at least five (5) calendar days prior to the Close of Escrow.

#### 6.8 Prorations

Current real property taxes, bond and other assessments, and other obligations or fees shall be prorated at the Close of Escrow.

#### Section 7. AS-IS; Release

#### 7.1 As-Is

Buyer, having had the opportunity to undertake full testing or review of the Property during the Due Diligence Period, expressly assumes the risk that the Property may contain or have defects or conditions that might prevent the intended use of the Property or cause unexpected expense in connection with preparing the Property for the intended use. This Agreement contains all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements. Buyer acknowledges that, except as expressly contained in this Agreement, (a) neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Buyer concerning the physical aspects and condition of the Property, any dimensions or specifications of any of the Property, the feasibility, desirability, or convertibility of the Property into any particular use, or the projected income or expenses for the Property; (b) in entering into this Agreement, Buyer has not relied on any representation, statement, or warranty of Seller (except those expressly contained herein) or on the documentation provided by Seller to Buyer under this Agreement, or anyone acting for or on behalf of Seller, all of which are to be independently verified by Buyer; (c) Buyer is purchasing the Property based solely upon Buyer's own inspection and examination thereof; (d) that Buyer is purchasing the Property in its then "AS IS" physical condition and its then "AS IS" state without any representation, statement, or warranty of Seller (except those expressly contained herein); and (e) Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability, and use, except for the representations and warranties of Seller set forth herein.

#### 7.2 Release and Indemnity

Buyer hereby releases Seller from any claim for any condition of the Property. To that end, Buyer will defend, indemnify, and hold Seller, and its officials, officers, employees, attorneys and agents harmless for all claims, demands, causes of action, penalties, expenses and liability of whatsoever kind or nature which may arise out of, because of, concerning, or incident to the condition of the Property, including all

court actions, costs and expenses and attorneys' fees (collectively, "Damages") relative to being made a party in any action, suit, arbitration or mediation initiated by Buyer, its officials, officers, employees, attorneys, agents, lenders or any other person or entity seeking Damages, including any person or entity to whom the Property or any part thereof is leased or conveyed.

#### 7.3 Waiver of Civil Code Section 1542

In connection with the releases set forth in this Section 7, Buyer acknowledges that it has had the opportunity to consult with legal counsel concerning the provisions of California Civil Code Section 1542 and, based on those consultations, Buyer expressly waives the provisions of Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer specifically waives any and all rights and benefits under Section 1542 and all other state or federal laws or decisional authority of similar impact as they relate to the Damages and acknowledge that this Agreement would not have been entered into without such waiver.

Buyer's Initials

#### Section 8. Representations and Warranties of Seller

The Seller hereby represents and warrants the matters set forth below to be true to the best of the Seller's actual knowledge as of the date hereof and as of the Closing.

- 8.1 The Seller is the sole owner of the Property. The Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.
- 8.2 Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Seller is a party or by which the Seller or the Property may be bound.

#### Section 9. Representations and Warranties of Buyer

The Buyer hereby represents and warrants the matters set forth below to be true to the best of Buyer's knowledge as of the date hereof and as of the Closing.

- 9.1 The Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.
- 9.2 Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Buyer is a party or by which the Buyer may be bound.
- 9.3 Buyer is an experienced and sophisticated purchaser of property and Buyer is purchasing the Property in its current, "AS IS" condition subject to all faults except to the extent otherwise represented in this Agreement.
- 9.4 Buyer assumes the risk that there may be information about the Property that is unknown to either Seller or Buyer that would prompt Buyer to cancel its purchase of the Property if such information was known. Buyer acknowledges that Seller has no obligation to Buyer to investigate the Property and its condition but Seller's only obligation is to disclose matters that are known to Seller and that fall within the disclosure requirements imposed by this Agreement or under California law concerning the sale of vacant commercial property.

#### Section 10. Defaults; Liquidated Damages

#### 10.1 Default

Except as provided in Section 10.2, any non-defaulting Party may bring any action under law or equity to compel the defaulting Party to perform its obligations under this Agreement or to seek damages for the defaulting Party's default; provided, however that under no circumstances shall either Party be liable for consequential, special, or punitive damages, and the Parties hereby waive all rights to seek recovery of same.

#### 10.2 Liquidated Damages

SELLER AND BUYER AGREE THAT THE DAMAGES SELLER WOULD SUFFER IF BUYER DEFAULTS ON ITS OBLIGATION TO CLOSE ESCROW AS PROVIDED IN THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THE DEPOSIT REPRESENTS THE PARTIES' REASONABLE ESTIMATE OF SUCH DAMAGES, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED, AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY, IMPRACTICAL OR INCONVENIENT, AND PARTICULARLY IN VIEW OF THE FACT THAT SELLER IS

TAKING THE PROPERTY OFF THE MARKET, WHICH SELLER WOULD NOT DO BUT FOR **BUYER'S** AGREEMENT TO PURCHASE THE PROPERTY. ACCORDINGLY, IN THE EVENT BUYER DEFAULTS ON ITS OBLIGATION TO CLOSE ESCROW AS PROVIDED IN THIS AGREEMENT AND SO LONG AS SELLER IS NOT IN MATERIAL DEFAULT OF ANY OF ITS OBLIGATIONS HEREUNDER. SELLER SHALL RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. SAID SUM SHALL BE IN ADDITION TO ANY OTHER REMEDIES ALLOWED UNDER THIS AGREEMENT AND SHALL NOT BE DEEMED TO INCLUDE ANY ATTORNEYS' FEES THAT MAY BECOME DUE TO SELLER PURSUANT TO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. BY INITIALING THIS PROVISION, SELLER AND BUYER EACH CONFIRMS THE ACCURACY OF THE FOREGOING STATEMENTS, AND AFFIRMS ITS RESPECTIVE OBLIGATIONS THE FOREGOING SHALL NOT LIMIT SELLER'S UNDER THIS SECTION 10.2. REMEDIES WITH RESPECT TO BUYER'S INDEMNIFICATION OBLIGATIONS AGREEMENT; PROVIDED, HOWEVER THAT UNDER CIRCUMSTANCES SHALL BUYER BE LIABLE TO SELLER FOR CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, AND SELLER HEREBY WAIVES ALL RIGHTS TO SEEK RECOVERY OF SAME.

Buyer's	Seller's
Initials	Initials

#### Section 11. Notice Provisions

#### 11.1 Giving Notice

Any and all notices, demands or communications submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by a nationally known overnight service (e.g. Federal Express) or by registered or certified United States mail, postage prepaid, return receipt requested, to the location designated below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate as provided in this Section 11. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, on the day following dispatch by overnight service or two (2) calendar days after it is placed in the United States mail as heretofore provided.

#### 11.2 Where to Give Notice

All notices, demands or communications to a Party shall be sent to:

To Buyer: Cathedral Canyon Development, LLC &

GreenSpring Capital Inc.

c/o \_\_

2429 W. Coast Hwy, Suite #210 Newport Beach, CA 92663

With a copy to:

Attn: \_\_\_\_\_

To Seller: City of Cathedral City

Attn: City Manager

68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

With copy to: Burke, Williams & Sorensen, LLP

Attn: Eric S. Vail

1600 Iowa Avenue – Suite 250 Riverside, California 92507

#### Section 12. Brokerage Fees

Both Parties represent that no broker is involved in this Agreement and each Party agrees to defend and indemnify the other against brokerage or commission claims arising out of the indemnifying Party's actions.

#### Section 13. Indemnification

The defense, indemnification, and hold harmless provisions of this Agreement shall survive the Close of Escrow or termination for any reason of this Agreement for a period of five (5) years from the Close of Escrow or termination of this Agreement, as applicable.

#### Section 14. Miscellaneous Provisions

#### 14.1 Participation

Any action taken by a Party, including, but not limited to, the termination of this Agreement under the provisions hereof, shall be at the sole option of said Party and in its sole and absolute discretion, unless a different standard is otherwise specifically indicated. Each Party acknowledges that the other Party would not have entered into this Agreement in the absence of these covenants.

#### 14.2 Additional Documents

The Parties each agree to execute any additional documents, forms, notices, applications or other documents which Escrow Agent reasonably determines to be necessary to carry out the intent of this Agreement.

#### 14.3 <u>Severability</u>

The Parties agree that, should any provision, section, paragraph, sentence or word of this Agreement be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of legislation, the remaining provisions, sections, paragraphs, sentences and words of this Agreement shall remain in full force and effect and the Parties agree in good faith to immediately amend this Agreement in such a way as to provide alternative provisions, sections, paragraphs, sentences or words as to carry out the intent of this Agreement.

#### 14.4 No Transfers or Assignments

Neither of the Parties may, without prior written approval of the other Party, which approval may be given or withheld at the sole and absolute discretion of the approving Party, (a) assign or attempt to assign this Agreement or any right herein or (b) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Property prior to the Close of Escrow.

#### 14.5 Venue

Any legal action must be instituted in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

#### 14.6 Governing Law

The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles.

#### 14.7 <u>Cumulative Remedies</u>

Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any defaulting Party. A waiver of a requirement shall not constitute an ongoing waiver of that requirement in the future. Any waiver of a right must be in writing to be enforceable.

#### 14.8 No Consideration to any Third Party

Each of the Parties warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Party. For the purposes of this paragraph, third parties shall include any elected official, officer, employee or agent of the City.

#### 14.9 No Personal Liability

No official, member, officer, employee, agent or attorney of any Party shall be personally liable to the any other Party, its members or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by said Party for any amount which may become due to another Party or to its successors, or on any obligations under the terms of this Agreement, except for gross negligence or willful acts of such member, officer, employee or attorney, unless said person has entered into an express written agreement to be liable.

#### 14.10 Amendments by City Manager

The City Manager of Seller is authorized to sign on his or her own authority amendments to this Agreement which are of routine or technical nature, including extensions of time deadlines, except that the cumulative total of time extensions granted by the City Manager may not exceed one (1) year.

#### 14.11 Independent Legal Advice

Each Party represents and warrants the following: that it has carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and it has freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.

#### 14.12 Costs and Attorneys' Fees

If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, seeks the resolution of disputes, or is made a party to any action or proceeding brought by a third party with respect to the Agreement, the Project or the participation in either by either Party, then as between the Parties, the prevailing Party shall be entitled to recover as an element of its costs of suit

or resolution of disputes, and not as damages, its reasonable attorneys' fees as fixed by the Court or other forum for resolution of disputes as may be agreed upon by the Parties in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.

#### 14.13 Successors

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.

#### 14.14 Time Frames

Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

#### 14.15 Counterparts

This Agreement constitutes the entire understanding and agreement of the Parties. The Parties may sign this Agreement in counterparts. Faxed or electronically submitted signature pages shall bind a Party as if the other Party had received original signatures.

#### 14.16 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

#### 14.17 Waivers; Amendments

All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of the Party making the waiver. Except as otherwise provided in this Agreement, any amendment to this Agreement must be approved by Seller's City Council.

#### 14.18 Effective Date

The "Effective Date" of this Agreement is the date upon which it has been approved by Seller's Board of Directors and executed by the authorized signatories of each of the Parties.

#### [SIGNATURES APPEAR ON FOLLOWING PAGE]

authorized signatures to this Agreement. SELLER: **BUYER:** CITY OF CATHEDRAL CITY, a California CATHEDRAL CANYON DEVELOPMENT, municipal corporation LLC, a California limited liability company By: \_\_\_\_\_ Charles P. McClendon, By: \_\_\_\_\_ Name: Its: Managing Member City Manager ATTEST: Date:\_\_\_\_\_\_, 2017 APPROVED AS TO FORM: By: \_\_\_\_\_ Eric S. Vail, City Attorney

WHEREFORE, the Parties, intending to be bound hereby, have affixed their

Date:\_\_\_\_\_\_, 2017

#### **EXHIBIT A**

#### **PROPERTY**

In the City of Cathedral City, County of Riverside, State of California:

Lots 127 through 131, inclusive, together with Lots 142 through 147, inclusive of Cathedral City, as per map filed in Book 13, at Pages 24 through 26, inclusive, of Maps, Records of said Riverside County.

Together with any underlying fee interest in that portion of Grove Street, shown as Lot "II" on said map, abutting said lots.

Containing 1.722 acres gross, or 1.998 acres gross including the abutting portion of Grove Street.

(Assessor Parcels 687-196-001 through 006, and 687-198-001 through 006)



# Cathedral City

# **Agenda Report**

File #: 2017-82 Item No: 2.B.

City Council

**MEETING DATE: 2/22/2017** 

TITLE:

**Resolution Adopting Council Goals for 2017** 

FROM:

Charlie McClendon, City Manager

#### **RECOMMENDATION:**

Staff recommends the City Council approve a resolution establishing Council's goals for 2017.

#### **BACKGROUND:**

The City Council met in a planning and goal setting study session on January 28, 2017. The Council spent several hours discussing their priorities for the upcoming fiscal year.

#### **DISCUSSION:**

Among the responsibilities of a functional City Council is providing policy direction to the City government by establishing goals and objectives. The City Manager and staff can then use the goals as a guidebook for city operations. The likelihood of success increases when the entire organization is working toward the same end.

#### **FISCAL IMPACT:**

Many of the goals developed by Council can be achieved with existing resources. In those cases where additional resources are required, the need will be addressed through the development of the budget for FY17-18, which Council will be reviewing in public meetings during the upcoming weeks.

#### **ATTACHMENTS:**

Resolution
Goals Statements

# City Council Goals Council Planning Retreat January 28, 2017

# 1. Economic and Community Development

- Modify the City service contract with the Chamber of Commerce to require increased Chamber outreach to all Cathedral City businesses, with a particular emphasis on Latinoowned businesses, and promotion of business workshops
- Participate in franchisee events and explore ways to get franchise information to the community
- Complete a comprehensive update to the General Plan over the next two fiscal years.
- Continue to make downtown development a priority
- Modify the North City plans and corresponding zoning to update the uses allowed and to better reflect market realities
- Continue discussions with College of the Desert regarding options available to the College in Cathedral City
- Pursue a longer term arrangement with the Palm Springs International Film Festival
- Nurture positive relationships with the auto dealers
- Work with the business community to promote local hiring
- Review the downtown zoning districts and the mountain side zoning moving east from the Cove
- Explore tourism opportunities with our sister city of Tequila, Jalisco and talk to the Convention and Visitors Bureau to seek assistance in expanding air service
- Increase involvement with the CVB to make sure Cathedral City is included in their ads
- Identify and reach out to developers who specialize in reinventing outdated retail spaces
- Pursue the establishment of a Business Improvement District for small hotel properties
- Develop a contract for design services related to potential Perez Road improvements
- Develop a plan to process in appropriate phases with the annexation of Thousand Palms
- Support the Chamber and Rotary in the development of a new Bike Race event

# 2. Public Safety

- To the extent financially possible implement the recommendations of the Police and Fire strategic plans
- Evaluate options to provide Public Safety services to other communities or to form other joint services partnerships
- Focus efforts on reducing property crime

# 3. Community Engagement and Community Relations

- Fund the plan to have our three signature events presented by private promoters with the City as title sponsor and implement the plan to improve communications efforts
- Make a major effort to replace and update television equipment by December of 2017 and expand programming on Channel 17 and other available outlets

- Conduct the Community Benefits Agreements stakeholder's workshop in conjunction with the identified contractor
- Identify sites available, costs and constraints related to a possible Community Center
- Schedule a joint Council/Commission meeting with the Planning Commission, Arts Commission and Parks and Community Events Commission
- Rename the streets adjacent to the schools, which have no residences addressed on them, to reflect the school mascot

#### 4. Infrastructure

- Evaluate ways to address infrastructure needs in ways that will promote business development
- Participate in Riverside County efforts to improve communications access in the County
- Identify sites and develop plans for a new Public Works facility
- Complete the relocation of Fire Station 411
- Evaluate options for electrical service in the community
- Report to Council on the engineer's study on a city-wide assessment district and other methods to address pavement management funding needs

#### 5. Governance

- Continue to explore the possibility of joining the Desert Recreation District
- Work with the Health Care District on park grant opportunities
- Develop a local procurement ordinance and complete other items required to implement the City Charter

# 6. Financial Strength

- Complete the selection and installation of new financial software
- Develop a facilities and equipment restoration and replacement plan
- Develop and adopt a balanced budget for the FY17-18 and 18-19 biennium

#### **RESOLUTION NO. 2017-**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, CALIFORNIA, ESTABLISHING GOALS THAT HAVE BEEN IDENTIFIED BY THE CITY COUNCIL FOR 2017.

**WHEREAS**, on January 28, 2017 the City Council held a Planning and Goal Setting Workshop to establish goals for 2017; and

**WHEREAS**, many of the goals identified by the City Council can be achieved with existing resources, however, in those cases where additional resources are required, the need will be addressed through the development of the budget for the upcoming fiscal year.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

**SECTION 1**. The City Council has identified the following items, by category, as their Goals for 2017:

#### 1. Economic and Community Development

- Modify the City service contract with the Chamber of Commerce to require increased Chamber outreach to all Cathedral City businesses, with a particular emphasis on Latino-owned businesses, and promotion of business workshops
- Participate in franchisee events and explore ways to get franchise information to the community
- Complete a comprehensive update to the General Plan over the next two fiscal years.
- Continue to make downtown development a priority
- Modify the North City plans and corresponding zoning to update the uses allowed and to better reflect market realities
- Continue discussions with College of the Desert regarding options available to the College in Cathedral City
- Pursue a longer term arrangement with the Palm Springs International Film Festival
- Nurture positive relationships with the auto dealers
- Work with the business community to promote local hiring
- Review the downtown zoning districts and the mountain side zoning moving east from the Cove
- Explore tourism opportunities with our sister city of Tequila, Jalisco and talk to the Convention and Visitors Bureau to seek assistance in expanding air service

- Increase involvement with the CVB to make sure Cathedral City is included in their ads
- Identify and reach out to developers who specialize in reinventing outdated retail spaces
- Pursue the establishment of a Business Improvement District for small hotel properties
- Develop a contract for design services related to potential Perez Road improvements
- Develop a plan to process in appropriate phases with the annexation of Thousand Palms
- Support the Chamber and Rotary in the development of a new Bike Race event

#### 2. Public Safety

- To the extent financially possible implement the recommendations of the Police and Fire strategic plans
- Evaluate options to provide Public Safety services to other communities or to form other joint services partnerships
- Focus efforts on reducing property crime

#### 3. Community Engagement and Community Relations

- Fund the plan to have our three signature events presented by private promoters with the City as title sponsor and implement the plan to improve communications efforts
- Make a major effort to replace and update television equipment by December of 2017 and expand programming on Channel 17 and other available outlets
- Conduct the Community Benefits Agreements stakeholder's workshop in conjunction with the identified contractor
- Identify sites available, costs and constraints related to a possible Community Center
- Schedule a joint Council/Commission meeting with the Planning Commission, Arts Commission and Parks and Community Events Commission
- Rename the streets adjacent to the schools, which have no residences addressed on them, to reflect the school mascot

#### 4. Infrastructure

- Evaluate ways to address infrastructure needs in ways that will promote business development
- Participate in Riverside County efforts to improve communications access in the County
- Identify sites and develop plans for a new Public Works facility
- Complete the relocation of Fire Station 411
- Evaluate options for electrical service in the community

 Report to Council on the engineer's study on a city-wide assessment district and other methods to address pavement management funding needs

#### 5. Governance

Aves:

- Continue to explore the possibility of joining the Desert Recreation District
- Work with the Health Care District on park grant opportunities
- Develop a local procurement ordinance and complete other items required to implement the City Charter

#### 6. Financial Strength

- Complete the selection and installation of new financial software
- Develop a facilities and equipment restoration and replacement plan
- Develop and adopt a balanced budget for the FY17-18 and 18-19 biennium

**SECTION 2.** By adoption of this Resolution, the City Council is establishing the aforementioned as the Goals for the City for 2017 and directs staff to move forward with implementation and completion of these goals as feasible.

**SECTION 4.** This Resolution shall take effect immediately upon adoption.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Cathedral City held on this 22nd day of February, 2017, by the following vote:

	,	
	Noes:	
	Absent:	
	Abstain:	
		Stanley E. Henry, Mayor
ATTE	ST:	
Gary I	F. Howell, City Clerk	
APPR	OVED AS TO FORM:	

Eric S. Vail, City Attorney



# Cathedral City

## **Agenda Report**

File #: 2017-83 Item No: 2.C.

City Council

**MEETING DATE: 2/22/2017** 

TITLE:

**Appointment to the Mobile Home Fair Practices Commission** 

FROM:

Tracey R. Martinez, CMC Deputy City Clerk

#### **RECOMMENDATION:**

Staff recommends the City Council appoint Sharon Snow to the Mobile Home Fair Practices Commission for a temporary term.

#### BACKGROUND:

At the February 8, 2017 City Council Meeting interviews were conducted to fill a vacant seat on the Public Arts Commission and a vacant seat on the Parks and Community Events Commission. Sharon Snow applied to serve on the Parks and Community Events Commission but was not appointed. Council directed staff to invite her to serve on the Mobile Home Fair Practices Commission.

#### **DISCUSSION:**

Staff has reached out to Ms. Snow to see if she has an interest in serving on the Mobile Home Fair Practices Commission and she indicated that she is interested. There are currently five individuals that have been temporarily appointed to this Commission, however, due to the nature of the Commission and their infrequent meetings it can be difficult for everyone to be available for a necessary hearing at the same time. Appointing Ms. Snow for a temporary term will help ensure that we have a quorum for any future hearings that may be scheduled.

#### **FISCAL IMPACT:**

No fiscal impact results from making appointments to the Commissions.

#### **ATTACHMENTS:**

None



# Cathedral City

#### **Agenda Report**

File #: 2017-76 Item No: 3.A.

**City Council** 

**MEETING DATE: 2/22/2017** 

#### TITLE:

Appeal of Planning Commission Denial of Conditional Use Permit 16-007 for Sunshine Coast Wellness, 28201 Date Palm Drive, Suite B&C

#### FROM:

Pat Milos, Community Development Director

#### **RECOMMENDATION:**

Staff recommends the City Council hear an appeal of the decision of the Planning Commission to deny a Conditional Use Permit; hold a public hearing; and then affirm, modify or reverse the Planning Commission decision.

#### **BACKGROUND:**

Section 9.72 of the Cathedral City Municipal Code states that a "Conditional Use Permit is intended for those types of land uses which require special consideration because they possess unique characteristics or present special issues that make being a permitted use impractical or undesirable." The Conditional Use Permit process provides a mechanism for the Planning Commission and in the case of an appeal the City Council, to impose conditions to mitigate the potential negative impacts of a particular use. Typical conditions address impacts such as traffic, parking, noise, odors, light pollution, vibration, smoke or other concerns associated with the proposed use.

In this instance the Planning Commission denied a Conditional Use Permit.

In the appeal process, the City Council has several resources to draw upon in order to reach a conclusion about the merits of the application including, but not necessarily limited to:

- 1. The original Planning Commission staff report prepared for consideration by the Planning Commission (Attachment 2)
- 2. The record of the Planning Commission meeting (minutes) of October 19, 2016 (Attachment 7) and November 2, 2016 (Attachment 8)
- 3. The official applications for an appeal filed with the Community Development Department

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(Attachment 9)

4. Testimony of the applicant and the public at the public hearing

Once the City Council has had an opportunity to review the information listed above and held a public hearing, the City Council will need to deliberate on whether the decision of the Planning Commission should be affirmed, reversed or modified.

#### **DISCUSSION:**

On November 2, 2016 the Cathedral City Planning Commission denied Conditional Use Permit 16-007 for Sunshine Coast Wellness (Allen Cooper) to operate a Medical Cannabis Business (dispensary) in the Planned Community Commercial (PCC) District of Cathedral City. The Planning Commission denial was based on the Commission's concern that the facility did not meet the 250' setback requirement from a residential zone. Pursuant to CCMC section 9.108.090, a dispensary may only be located within the I-1 (Light Industrial), CBP-2 (Commercial Business Park) or PCC (Planned Community Commercial) Zoning Districts.

Furthermore, no dispensary shall be located: a) within six-hundred (600) feet of a school, day care center, or youth center; or b) within two-hundred and fifty (250) feet of East Palm Canyon Drive or a residential zone.

Following the denial by the Planning Commission, and within the 10 day appeal period, an appeal of the Planning Commission's decision was filed with the Deputy City Clerk.

In accordance with Section 9.72.080 of Title 9, Planning, Zoning, and Subdivisions of the Cathedral City Municipal Code, any person aggrieved or affected by the final determination of the Planning Commission concerning an application for a Conditional Use permit including any conditional requirement imposed on the project may appeal the decision within 10 calendar days. The Council may affirm, reverse or modify, in whole or in part, any final determination, condition or requirement of the Planning Commission.

The process for hearing the appeal is typically a summary of the situation by staff followed by testimony of the appellants. Following that testimony the City Council should open a public hearing and take comment from those in attendance. Following the hearing the City Council will take action on the appeal. The City Council has several options in relation to the appeal:

- 1. The City Council may affirm, in whole, the decision of the Planning Commission.
- 2. If the City Council finds that new or additional information has been discovered in the appeal

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process that may result in the Planning Commission reaching a different conclusion, the City Council may remand the application back to the Planning Commission with direction to consider the new or additional information.

- 3. The City Council may remand the application back to the Planning Commission with direction to further review specific elements of the proposal and impose conditions to mitigate the potential impact on the neighborhood.
- 4. The City Council may modify the approval of the Planning Commission to impose additional, fewer, modified conditions that the City Council finds will better mitigate the potential negative impacts of the proposal.
- 5. The City Council may reverse the decision of the Planning Commission and approve the Conditional Use Permit if the City Council finds the applicant is willing and able to satisfy the conditions of approval.

#### **FISCAL IMPACT:**

There is no direct fiscal impact related to this action

#### ATTACHMENTS:

- 1. Public Hearing Notice for Planning Commission CUP 16-007
- 2. Planning Commission Staff Report (10-19-16) for CUP 16-007
- Planning Commission Staff Report for item continuance (11-2-16) for CUP 16-007
- 4. Planning Commission Conditions of Approval for CUP 16-007
- 5. Planning Commission Site Plan for CUP 16-007
- 6. Planning Commission Floor Plan for CUP 16-007
- 7. MCL 16-012-D Suspension and Modification letter
- 8. MCL 16-012-D Modified Floor Plan
- 9. MCL 16-012-D Modified Stamped Certified surveyors map

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- 10. MCL 16-012-D Reinstatement letter
- 11. MCL 16-012-D Local License
- 12. Minutes of the October 19, 2016 Planning Commission Meeting
- 13. Minutes of the November 2, 2016 Planning Commission Meeting
- 14. Appeal of Planning Commissions denial of CUP 16-007 (Appellant Document)
- 15. Public Hearing Notice for Appeal for CUP 16-007



# City of Cathedral City Public Hearing Notice Notice of Availability for Public Review and Environmental Determination

Notice is hereby given that the Cathedral City Planning Commission will hold a Public Hearing on the following:

#### CASE(S)

Conditional Use Permit 16-007

#### APPLICANT/REPRESENTATIVE

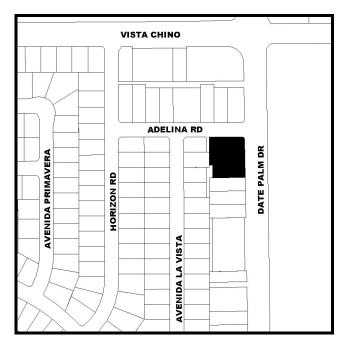
Sunshine Coast Wellness Allen Cooper

#### **PROPOSAL**

Request to operate a medical cannabis business (dispensary) in two suites within a multi-tenant commercial building.

#### **LOCATION**

28201 Date Palm Drive, Suites B & C Assessor's Parcel No. 675-145-015



#### **ENVIRONMENTAL DETERMINATION**

The Project is exempt from the California Environmental Quality Act (CEQA) per Section 15301, Existing Facilities.

All information regarding the proposed project is available for public review at the City of Cathedral City Civic Center, Planning Department, 68-700 Avenida Lalo Guerrero during regular business hours (Monday through Thursday, 7:00 AM - 6:00 PM)

#### DATE AND TIME OF HEARING

October 19, 2016 at 6:00 PM, or as soon thereafter as the matter may be heard.

#### PLACE OF HEARING

Cathedral City Civic Center Council Chamber 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

Any person may appear at the hearing and be heard in support of, or opposition to, or provide other testimony on the proposed project or environmental determination. In addition, persons may also submit written testimony on the proposed project or environmental determination, which must be received prior to the close of the public hearing by the Secretary of the Planning Commission, Robert Rodriguez. Please send all correspondence, written testimony or inquiries to Robert Rodriguez at:

68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

The Planning Commission, at the public hearing or during deliberations, may approve, deny, or propose changes to the project or the environmental determination.

If you challenge any of these items in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence.

For further information, contact the Project Planner at:

Robert Rodriguez, Planning Manager 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 (760) 770-0344

NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (760) 770-0340. Notification 48 hours prior to the meeting will enable the City to make reasonable accommodations to ensure accessibility to this meeting. {28 CFR 35.104 ADA TITLE II}

**MEETING DATE: 10/19/2016** 

CASE NO. Conditional Use Permit No. 16-007

**APPLICANT:** Sunshine Coast Wellness Dispensary

LOCATION: 28201 Date Palm Drive, Ste B & C

### STAFF PLANNER:

Pat Milos, Community Development Director

### **RECOMMENDATION:**

**APPROVE** an exemption to the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 (Existing Facilities).

**APPROVE** Conditional Use Permit No. 16-007 subject to the attached Conditions of Approval and based on the findings contained in the staff report.

### **REQUEST:**

A Conditional Use Permit Application to operate a medical cannabis business (dispensary) within an existing commercial building in the PCC (Planned Community Commercial) Zoning District located at 28201 Date Palm Drive, Ste. B&C (APN: 675-145-015).

### FINDINGS:

APPROVAL OF AN EXEMPTION TO CEQA based on the finding that the project qualifies as Categorically Exempt under Section 15301, Class 1 (Existing Facilities) of the State CEQA Guidelines.

**APPROVAL OF CONDITIONAL USE PERMIT NO. 16-007**, subject to the attached conditions of approval, and based on the following findings:

- 1. The medical cannabis business to be located at 28201 Date Palm Drive, Ste B&C in the PCC District is authorized as a conditional use per the City of Cathedral City Zoning Ordinance, Chapter 9.40.
- 2. The medical cannabis business as well as all operations as conducted therein, fully complies with all applicable building, electrical, zoning and fire codes, accessibility requirements of the Americans with Disability Act (ADA), and all relevant City and State Law. Staff has reviewed the site and floor plans submitted and determined that, as conditioned herein, the medical cannabis business will comply with all relevant building codes, zoning, and the ADA.

- 3. The medical cannabis business fully complies with and meets all operating criteria required pursuant to State Laws, Chapter 5.88 of the City Municipal Code (CCMC), any other provisions of the CCMC, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in this conditional use permit. The applicant has been granted a local license (MCL 16-012) in accordance with Chapter 5.88 of the CCMC, and in granting the local license the City Manager determined that the medical cannabis business was in compliance with all applicable laws regarding the operation of the business.
- 4. The number, type, and availability of dispensaries located in or near the proposed licensed premises is such that the issuance of a conditional use permit to the Applicant will not result in or add to an undue concentration of Dispensaries and/or result in a need for additional law enforcement resources. There are no existing dispensaries in the vicinity of the proposed dispensary.
- 5. The medical cannabis business is necessary or desirable for the development of the community, is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located. By allowing medical cannabis businesses in certain zones, the City Council has determined that medical cannabis businesses are necessary and desirable for the development of the community, is consistent with the general plan, and will not be detrimental to other uses in the zones.
- 6. The site for the medical cannabis business is adequate in size and shape to accommodate such use and any and all of the yards, setbacks and walls or fences, landscaping and other features required in order to adjust such use to those existing or permitted future uses on land in the neighborhood. The medical cannabis business meets all site development standards.
- 7. The site for the medical cannabis business relates properly to streets and highways which are designed and improved to carry the type and quantity of traffic generated or to be generated by the proposed use. The medical cannabis business is on Date Palm Drive, which has adequate capacity to serve the limited traffic that will be generated by the use.
- 8. The applicant agrees to comply with any and all of the conditions imposed by the Planning Commission or be subject to a revocation hearing.

### **BACKGROUND:**

As the Planning Commission is aware, the City Council recently enacted a number of ordinances allowing for the establishment of medical cannabis businesses (dispensaries, cultivation sites and manufacturing sites) within certain zoning districts of

the City, subject to a Conditional Use Permit (CUP). The ordinances regulating medical cannabis businesses are codified at CCMC Chapters 5.88 and 9.108 (the "Ordinance").

Under the ordinance, medical cannabis businesses are required to obtain both a medical cannabis license (local license) and CUP. For the local license, applicants are required to submit various documents such as the ownership structure of the medical cannabis business, a general description of the products and services to be provided and security and delivery plans (if delivery is proposed). In addition, all owners, directors, officers and persons who are managing or otherwise responsible for the activities of a proposed medical cannabis business must submit to a background check. The City Manager, or his designee, shall decide whether to approve or deny a local license application.

The Local License application for a dispensary was submitted on April 1, 2016. The Conditional Use Permit application was submitted on April 1, 2016. The Local License application was reviewed by staff including the Police Department, the background check completed and the license was granted on August 22, 2016 (see Attachment 4).

There are no exterior changes proposed to the building. Therefore, no review from the Architectural Review Subcommittee is needed. The Planning Commission will take final action on this matter unless it is appealed to the City Council.

### **ANALYSIS:**

The project site is located within the PCC (Planned Community Commercial) zoning district. The surrounding uses are a convenience store / fueling station, office spaces, sports memorabilia business, and a tattoo parlor. The commercial center where the dispensary will be located is comprised of multiple suites, three suites, suites B&C are currently vacant and the other suite is occupied by the afore mention convenience store / fueling station . Pursuant to CCMC section 9.108.090(A) (3), a dispensary may only be located within the I-1 (Light Industrial) Zoning District, the CBP-2 (Commercial Business Park) Zoning District or the PCC (Planned Community Commercial) Zoning District.

Furthermore, pursuant to section 9.108.080(A)(1), no dispensary shall be located: a) within six-hundred (600) feet of a school, day care center, or youth center; or b) within two-hundred and fifty (250) feet of East Palm Canyon Drive or a residential zone.

Staff has confirmed that the subject location does not violate any of the applicable location restrictions set forth in the CCMC.

The applicant is proposing to install motion lighting, perimeter window monitors and video surveillance equipment as one layer of security of the security plan for the dispensary. The windows will be equipped with penetration detection and aluminum

security strips, and with the existing tint on the windows, will not be visible from Date Palm Drive. There are also two columns, parking stop blocks and an existing sidewalk in front and rear of the facility to keep vehicles from crashing into the suite.

The applicant is not proposing exterior changes or the addition of square footage to the building. However, upon inspection of the site, there were a number of other concerns that the applicant has agreed to address and these are incorporated into the Conditions of Approval:

- 1. The dispensary will require odor control
- 2. The existing trash enclosure shall be retrofitted to City standard.
- 3. The existing ADA parking stalls and path of travel shall be restriped and properly signed.
- 4. The Building address numbers shall be a minimum of 12" in height shall be placed on the building, plainly visible from the public street, and be internally or externally illuminated.
- 5. The parking stalls in front and rear of the suite shall be restriped.
- 6. The existing landscape areas will be required to comply with current City design standards and requirements.
- 7. The applicant shall install barriers at the south end of the parking lot to prevent off road vehicle travel.

### **ENVIRONMENTAL ANALYSIS:**

Categorical Exemption under Section 15301, Class 1 (Existing Facilities) of the State CEQA Guidelines, which allows tenant improvements in existing buildings to be exempt. Since there is no outside expansion, this qualifies for a Class 1 Exemption.

NOTE: The City of Cathedral City Planning Department is custodian of the documents or other material, which constitute the record of proceedings upon which this decision is based.

### **PUBLIC NOTIFICATION:**

This project and the environmental determination were noticed in accordance with the City Municipal Code and CEQA (see Attachment 4).

### **ATTACHMENTS:**

Attachment 1: Conditions of Approval

Attachment 2: Site Plan, Floor Plan

Attachment 3: Local License

Attachment 4: Public Hearing Notice

**MEETING DATE: 11/2/2016** 

CASE NO. Conditional Use Permit No. 16-007

APPLICANT: Sunshine Coast Wellness (dba Sunshine Botanical), Allen Cooper

**LOCATION:** 28201 Date Palm Drive, Suites B & C (APN: 675-145-015)

**REQUEST:** Consider A Conditional Use Permit Application to operate a medical cannabis business (dispensary) within an existing multi-tenant commercial building in the PCC (Planned Community Commercial) Zoning District and Specific Plan No. 87-21 located at 28201 Date Palm Drive, Suites B & C.

### STAFF PLANNER:

Pat Milos, Community Development Director

### **RECOMMENDATION:**

**APPROVE** an exemption to the California Environmental Quality Act (CEQA) pursuant to Section No. 15301, Class No. 1 (Existing Facilities).

**APPROVE** Conditional Use Permit No. 16-007 subject to the attached Conditions of Approval and based on the findings contained in the staff report.

### FINDINGS:

**APPROVAL OF AN EXEMPTION TO CEQA** based on the finding that the project qualifies as Categorically Exempt under Section No. 15301, Class No. 1 (Existing Facilities) of the State CEQA Guidelines.

APPROVAL OF CONDITIONAL USE PERMIT NO. 16-007, subject to the attached conditions of approval, and based on the following findings:

- 1. The medical cannabis business to be located at 28201 Date Palm Drive, Suites B & C in the PCC District is authorized as a conditional use per the City of Cathedral City Zoning Ordinance, Chapter 9.30.
- 2. The medical cannabis business as well as all operations as conducted therein, fully complies with all applicable building, electrical, zoning and fire codes, accessibility requirements of the Americans with Disability Act (ADA), and all relevant City and State Law. Staff has reviewed the site and floor plans submitted and determined that, as conditioned herein, the medical cannabis business will comply with all relevant building codes, zoning, and the ADA.

- 3. The medical cannabis business fully complies with and meets all operating criteria required pursuant to State Laws, Chapter 5.88 of the City Municipal Code (CCMC), any other provisions of the CCMC, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in this conditional use permit. The applicant has been granted a local license (MCL 16-012) in accordance with Chapter 5.88 of the CCMC, and in granting the local license the City Manager determined that the medical cannabis business was in compliance with all applicable laws regarding the operation of the business.
- 4. The number, type, and availability of dispensaries located in or near the proposed licensed premises is such that the issuance of a conditional use permit to the Applicant will not result in or add to an undue concentration of Dispensaries and/or result in a need for additional law enforcement resources. There are no existing dispensaries in the vicinity of the proposed dispensary.
- 5. The medical cannabis business is necessary or desirable for the development of the community, is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located. By allowing medical cannabis businesses in certain zones, the City Council has determined that medical cannabis businesses are necessary and desirable for the development of the community, is consistent with the general plan, and will not be detrimental to other uses in the zones.
- 6. The site for the medical cannabis business is adequate in size and shape to accommodate such use and any and all of the yards, setbacks and walls or fences, landscaping and other features required in order to adjust such use to those existing or permitted future uses on land in the neighborhood. The medical cannabis business meets all site development standards.
- 7. The site for the medical cannabis business relates properly to streets and highways which are designed and improved to carry the type and quantity of traffic generated or to be generated by the proposed use. The medical cannabis business is on Date Palm Drive, which has adequate capacity to serve the limited traffic that will be generated by the use.
- 8. The applicant agrees to comply with any and all of the conditions imposed by the Planning Commission or be subject to a revocation hearing.

### **BACKGROUND:**

The proposed project was presented before the Commission at the October 19, 2016 meeting. At the meeting, questions were raised regarding the location and whether it met the locational requirements, specifically the minimum 250' setback requirement

from a residential zone. As a result, the item was continued by the Commission to the next regularly scheduled meeting to allow for investigation and verification of the map prepared by the licensed surveyor submitted with the application.

As the Planning Commission is aware, the City Council recently enacted a number of ordinances allowing for the establishment of medical cannabis businesses (dispensaries, cultivation sites and manufacturing sites) within certain zoning districts of the City, subject to a Conditional Use Permit (CUP). The ordinances regulating medical cannabis businesses are codified at CCMC Chapters 5.88 and 9.108 (the "Ordinance").

Under the ordinance, medical cannabis businesses are required to obtain both a medical cannabis license (local license) and CUP. For the local license, applicants are required to submit various documents such as the ownership structure of the medical cannabis business, a general description of the products and services to be provided and security and delivery plans (if delivery is proposed). In addition, all owners, directors, officers and persons who are managing or otherwise responsible for the activities of a proposed medical cannabis business must submit to a background check. The City Manager, or his designee, shall decide whether to approve or deny a local license application.

The Local License application for a dispensary was submitted on April 1, 2016. The Conditional Use Permit application was submitted on April 1, 2016. The Local License application was reviewed by staff including the Police Department, the background check completed and the license was granted on August 22, 2016 (see Attachment 4).

There are no exterior changes proposed to the building. Therefore, no review from the Architectural Review Subcommittee is needed. The Planning Commission will take final action on this matter unless it is appealed to the City Council.

### **ANALYSIS:**

The project site is located within the PCC (Planned Community Commercial) Zoning District and Specific Plan No. 87-21. The surrounding uses include service stations with convenience stores, office uses and residential. The commercial center where the dispensary will be located is a multi-tenant building. Suites B & C are currently vacant and the other suite is occupied by a service station with convenience store. Pursuant to CCMC section 9.108.090, a dispensary may only be located within the I-1 (Light Industrial), CBP-2 (Commercial Business Park) or PCC (Planned Community Commercial) Zoning Districts.

Furthermore, no dispensary shall be located: a) within six-hundred (600) feet of a school, day care center, or youth center; or b) within two-hundred and fifty (250) feet of East Palm Canyon Drive or a residential zone. Staff has confirmed that the subject

location does not violate any of the applicable location restrictions set forth in the CCMC.

Specific Plan 87-21 prescribes development regulations particularly related to new development or construction. Additionally, there is a list of prohibited uses which includes fast food restaurants and liquor stores. There is no new exterior construction proposed to the existing building. The use will be for a medical cannabis business which is not prohibited in the Specific Plan. Therefore, the project complies with the Specific Plan.

The applicant is proposing to install motion lighting, perimeter window monitors and video surveillance equipment for perimeter security. The windows will be equipped with penetration detection and aluminum security strips, and with the existing tint on the windows, will not be visible from Date Palm Drive. The applicant is proposing to construct walls on the interior of the windows, not visible from the exterior, as an additional security measure. There are also two columns, parking stop blocks and an existing sidewalk at the front and rear of the facility to prevent vehicles from entering the suites.

The dispensary will occupy two suites with a total square footage of approximately 2,200 square feet. The suites will have a patient waiting area, reception/security station, two restrooms, administration area, employee break room, safe room, inventory, and a dispensary area.

The applicant is not proposing exterior changes or the addition of square footage to the building. However, upon inspection of the site, there were a number of other concerns that the applicant has agreed to address and these have been incorporated into the Conditions of Approval:

- 1. The existing trash enclosure shall be retrofitted to City standard.
- 2. The existing ADA parking stalls and path of travel shall be restriped and properly signed.
- 3. The parking stalls at the front and rear of the suite shall be restriped.
- 4. Illuminated building address numbers, a minimum of 12" in height, shall be placed on the building.
- 5. The existing landscape areas shall be renovated to comply with current City design standards and requirements.
- 7. The applicant shall install barriers at the south end of the parking lot to prevent vehicles from entering the adjacent undeveloped areas.

### **ENVIRONMENTAL ANALYSIS:**

Categorical Exemption under Section No. 15301, Class No. 1 (Existing Facilities) of the State CEQA Guidelines, which allows tenant improvements in existing buildings to be exempt. Since there is no outside expansion, this qualifies for a Class No. 1 Exemption.

NOTE: The City of Cathedral City Planning Department is custodian of the documents or other material, which constitute the record of proceedings upon which this decision is based.

### **PUBLIC NOTIFICATION:**

This project and the environmental determination were noticed in accordance with the City Municipal Code and CEQA (see Attachment 5).

### **ATTACHMENTS:**

Attachment 1: Conditions of Approval

Attachment 2: Site Plan
Attachment 3: Floor Plan
Attachment 4: Local License

Attachment 5: Public Hearing Notice



### CITY OF CATHEDRAL CITY PLANNING COMMISSION

### CONDITIONS OF APPROVAL CONDITIONAL USE PERMIT NO. 16-007

SUNSHINE COAST WELLNESS (DBA SUNSHINE BOTANICAL)
28201 DATE PALM DRIVE, SUITES B & C
(ASSESSOR'S PARCEL NUMBER 675-145-015)

**DATE APPROVED: November 2, 2016** 

### **SECTION 1 ADMINISTRATIVE CONDITIONS**

- 1.1 Approval of the medical cannabis (dispensary) within an existing commercial building is preliminary only. All final working drawings for tenant improvements, if any, shall be submitted to and approved by the Planning and Building Departments prior to issuance of building permits. The development of the property shall conform substantially to the following conditions of approval.
- **1.2** Any deviation from these plans or this approval shall be submitted to the City Planner for review and approval.
- **1. 3** This approval shall be valid for two years from date of approval, unless extended, pursuant to the Zoning Ordinance.
- **1.4** No Certificate of Occupancy shall be granted until all conditions of approval have been satisfied.
- **1.5** The development of the site shall conform to all ordinances, codes, regulations, policies and development design controls pursuant to the Cathedral City Municipal Code taking effect prior to issuance of any building permits.
- **1.6** A copy of all pages of these Conditions shall be included in the construction drawing package.

### **SECTION 2 FEES**

2.1 The Applicant shall pay all applicable City of Cathedral City fees, charges and other costs as prescribed by City Ordinance, including development impact fees. Be advised that the fees may change at the time they become due and payable, as permitted by applicable law.

NOTICE TO APPLICANT: Pursuant to Government Code Section 66020(d)(1), the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this approval and any such protest must be in a manner that complies with Section 66020(a), and failure to follow this procedure in a timely manor will bar any subsequent legal action to attack, review, set aside, void or annul imposition.

The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in

connection with this project. It further does not apply to any fees, dedication, reservations, or exactions for which the applicant has been given a notice similar to this, nor does it revive challenges to any fees for which the Statute of Limitations has previously expired.

### **SECTION 3 PLANNING**

- **3.1** The applicant shall complete the following items prior to the issuance of the Certificate of Occupancy:
  - **a.** The parking stalls, including ADA stalls, within the existing parking areas shall be restriped and properly signed. A minimum of one stall shall be an ADA van accessible space.
  - **b.** An ADA compliant path of travel shall be added.
  - **c.** Building address numbers, a minimum of 12" in height, shall be placed on the building, plainly visible from the public street, and be internally or externally illuminated.
  - **d.** The existing landscape areas shall be renovated to comply with City design standards and requirements.
  - **e.** The existing trash enclosure shall be retroffited to City standard.
  - f. Vehicle barricades, barriers or similar devices shall be installed at the southerly end of the parking areas to prevent vehicles from entering the adjacent undeveloped areas.
- **3. 2** Any and all window and door security devices such as metal bars, gates and shutters shall be installed within the interior of the building and screened from the public street to the satisfaction of the Planning Manager.
- **3. 3** Signage is not a part of this approval and shall require a separate Sign Permit.
- **3.4** The applicant shall comply with all applicable provisions of the Cathedral City Municipal Code (CCMC) relating to medical cannabis businesses, including but not limited to those provisions of Chapters 3.48, 5.88 and 9.108, as they may be amended from time to time.
- 3. 5 The applicant shall install or provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Medical Cannabis Business that is distinctive to its operation is not detected outside the Medical Cannabis Business, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Medical Cannabis Business. As such, Medical Cannabis Businesses must install and maintain the following equipment or any other equipment which the Local Licensing Authority determines has the same or better effectiveness:
  - 1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

- An air system that creates negative air pressure between the Medical Cannabis Businesses' interior and exterior so that the odors generated inside the Medical Cannabis Business are not detectable outside the Medical Cannabis Business.
- 3. 6 The Applicant or its legal representative shall execute an agreement indemnifying and holding the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business. This Agreement must be executed as a prerequisite and prior to the issuance of a Certificate of Occupancy.
- 3. 7 The Applicant or its legal representative shall maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the Local Licensing Authority. Evidence of such insurance must be satisfied as a prerequisite to and prior to the issuance of a Certificate of Occupancy.
- **3.8** The Applicant or its legal representative shall name the City as an additionally insured on all City-required insurance policies. Evidence of such insurance must be satisfied as a prerequisite to and prior to the issuance of a Certificate of Occupancy.
- **3.9** The Applicant or its legal representative shall agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of the Local License, Conditional Use Permit or the operation of the Medical Cannabis Business.
- 3. 10 The Applicant or its legal representative shall agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a Conditional Use Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.
- **3.11** The Medical Cannabis Business as well as all operations as conducted therein shall comply with all applicable building, electrical, zoning and fire codes, accessibility requirements of the Americans with Disability Act, and all relevant City and State Law.
- 3. 12 The Medical Cannabis Business shall comply with and meet all operating criteria required pursuant to State Laws, Chapter 5.88 of the CCMC, any other provisions of the CCMC, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the Conditional Use Permit.
- **3.13** Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of Chapter 9.108, Chapter 5.88 or Chapter 9.72 shall constitute a violation of the CCMC and shall be enforced pursuant to the provisions of the CCMC.

**3. 14** Police Department approval is required prior to the issuance of a Certificate of Occupancy and/or operation of the medical cannabis business.

### **SECTION 4 FIRE PROTECTION**

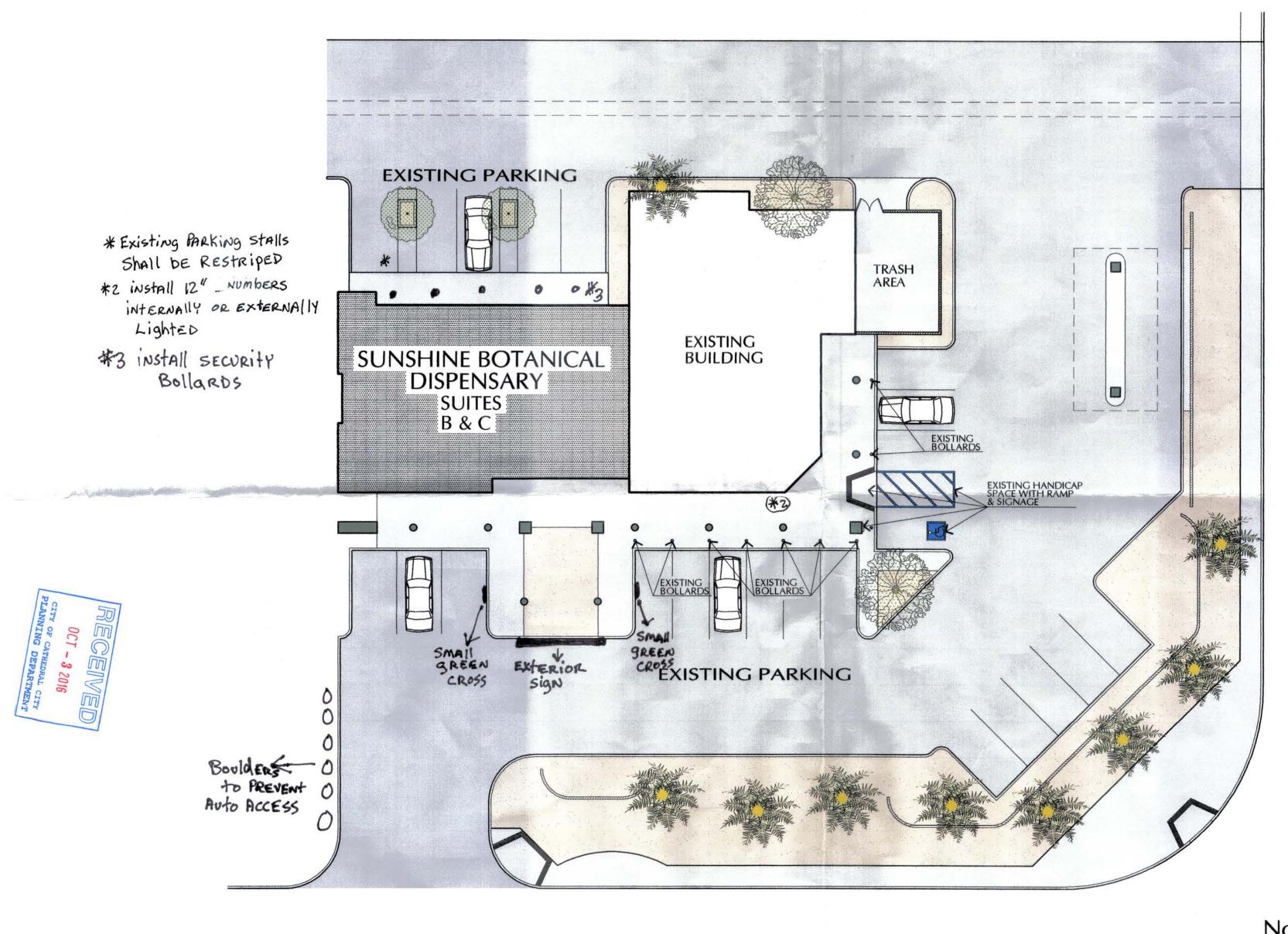
- **4.1** Fire Department approval is required prior to the issuance of a Certificate of Occupancy and/or operation of the medical cannabis business.
- **4.2** A "Knox"-keyed box, as approved by the Fire Chief, shall be installed for all emergency building access.
- **4. 3** The Final Conditions of Approval for this project shall be included in any site plan or construction plans submitted for permit issuance. Plans will not be approved without reference to these "conditions".
- 4. 4 This project is subject to review and approval in accordance with the CCR, Title 19 for Fire and Life Safety. This project is subject to an annual inspection and permit from the Cathedral City Fire Department for this type of occupancy (use).
- **4.5** Storage of combustible materials shall be in accordance with the CFC.
- **4.6** Provision for the storage or handling of hazardous materials, as defined by Federal, State, and Local Law, shall be in accordance with CFC, Chapter 50.
- **4.7** Storage and handling of flammable and combustible liquids shall be in accordance with the CFC, Chapter 57 and NFPA 30 (2015), Flammable and Combustible Liquids Code.
- **4. 8** All public fire hydrants shall be shown on building site plans.
- **4.9** Prior to tenant improvements commencing, install and/or upgrade as required, the street (off-site) fire hydrants and / or provide on-site private fire hydrants(s) pursuant to NFPA 24 and the City of Cathedral City Development Guidelines.
- **4. 10** Fire hydrants shall be located within 100 feet of Fire Department Connection (FDC) for the existing automatic fire sprinkler system.
- 4.11 In accordance with the CFC Section 903, the automatic fire sprinkler system must be certified by a third party fire sprinkler company prior to issuance of the certificate of occupancy. Systems with 20 heads or more shall be monitored by a UL listed central station alarm system meeting NFPA 72 (2013) and City of Cathedral City requirements.
- **4. 12** All check valves, post indicator valves, fire department controls, and connections shall be located as required and approved by the Fire Department.
- **4. 13** Portable fire extinguishers shall be installed and maintained in accordance with CFC, Section 906 and CCR, Title 19, Chapter 3. The type and spacing shall be approved by the Cathedral City Fire Department prior to installation.
- **4.14** Fire access is required to within 150 feet of all portions of every building unless otherwise approved by the Fire Chief.

Conditional Use Permit No. 16-007 Planning Commission Conditions of Approval November 2, 2016 Page 5

- **4.15** Prior to the issuance of a Certificate of Occupancy, "No Parking Fire Lane" signs, red curbing, street signs and other required markings shall be provided to the specifications of the Cathedral City Fire Department in accordance with the CFC, Section 503.3 and California Vehicle Code Section 22500.1.
- **4. 16** Prior to final inspection, an illuminated address on a contrasting background and illuminated (backlit or surface) shall be provided on all existing buildings in accordance with the CFC, Section 505.
- **4.17** In accordance with the CFC, Section 503, security gates if installed, shall be installed with approved automatic devices and/or key switches to allow Fire access and egress pursuant to the Cathedral City Fire Department guidelines.
- **4. 18** Install Knox key boxes and/or Knox locks for vehicle gate for Fire Department access in accordance with CFC Section 506.
- **4.19** A fence enclosure, if installed, shall lead to a safe dispersal area 50-feet from buildings or shall have gates which comply with CFC and IFC Section 1008 which lead to a public way.
- **4.20** No change in use or occupancy shall be made to any existing building or structure unless the means of egress system is made to comply with the requirements for the new use or occupancy in accordance with CFC, Chapter 10.
- **4.21** Fire safety during construction and demolition shall comply with CFC and IFC Chapter 33.
- 4. 22 Access during tenant improvement construction: Access for firefighting equipment shall be provided to the immediate job site at the start of construction and maintained until all construction is complete. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13' 6". Fire department access roads shall have an all-weather driving surface and support a minimum weight of 73,000 lbs. Access shall be provided to within 150 feet of all portions of combustible construction pursuant to CFC, Chapter 33.
- **4. 23** Trash containers with an individual capacity of 1.5 cubic yards or greater shall not be stored in buildings or within 5 feet of combustible walls, openings, eaves, etc. unless protected by an approved means (automatic fire sprinkler system and / or an approved 4-hour fire separation.

Approved for Planning Entitlements by the Cathedral City Planning Commission on November 2, 2016.

Attest:	Applicant:	
Pohort Podriguez		
Robert Rodriguez		
Planning Manager		



**ADELINA RD** 

North

DATE PALM

SITE PLAN

SCALE: 1/16" = 1'-0"

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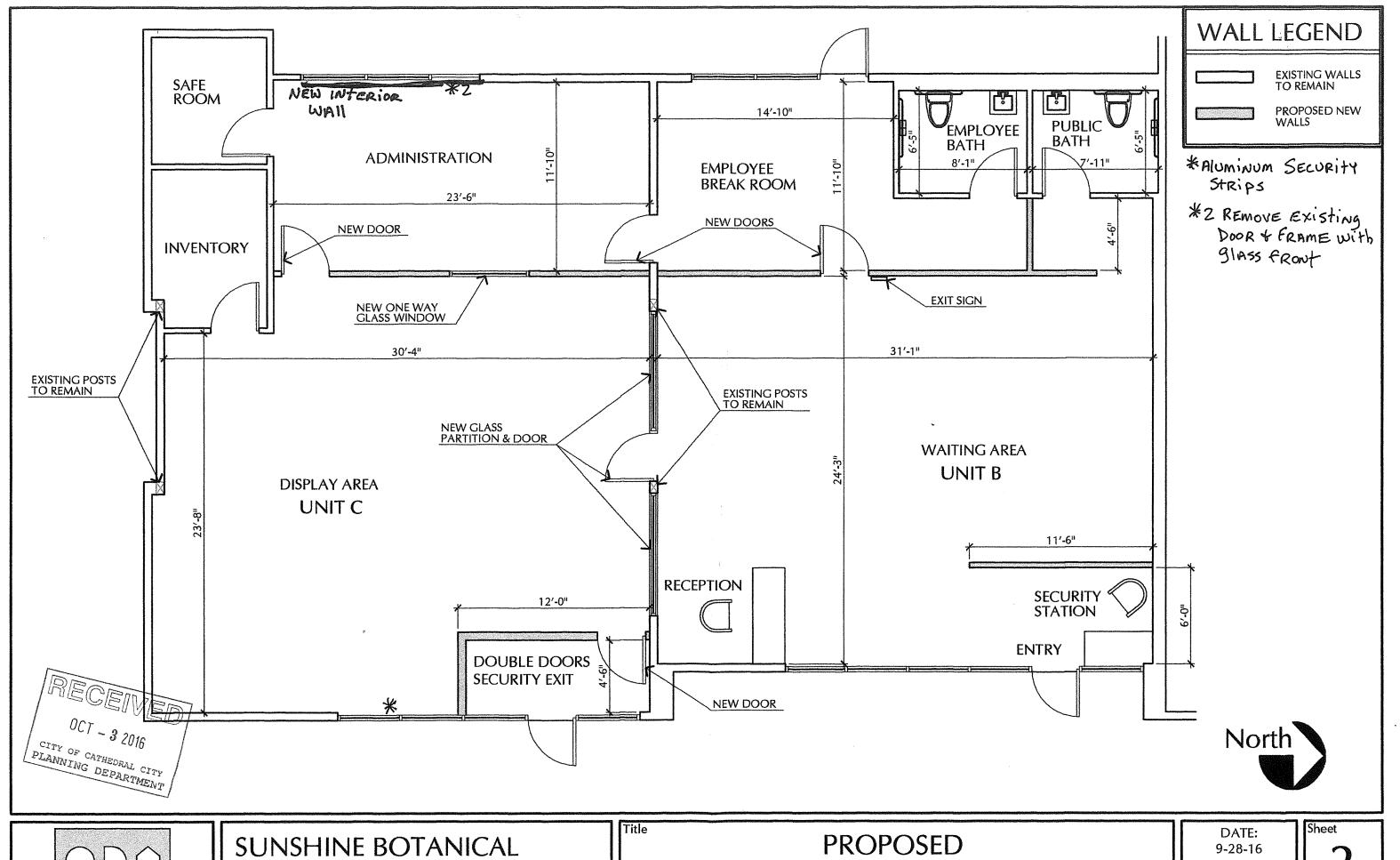
BOTANICAL NSARY S B & C

SUNSHINE BOTAN DISPENSARY SUITES B & C

> SITE PLAN/ XISTING PARKING LAYOUT

FILE: Active/ Sunshine Botanical / Floor Plan 5.1 DRAWN: A.A DATE: 9-26-16 SCALE: SHEET.

OF SHEETS.





28-201 DATE PALM CATHEDRAL CITY, CA 92234

**PROPOSED FLOOR PLAN** 

SCALE: 3/16"= 1'-0"



January 9, 2017

Alan Cooper Sunshine Botanicals 67782 E. Palm Canyon Drive, Suite B104-452 Cathedral City CA. 92234

Re: Suspension & Modification of Sunshine Botanicals' Medical Cannabis License

Mr. Cooper:

On January 3, 2017 at 9:00 a.m. you attended a hearing at City Hall regarding the City's proposed revocation of the medical cannabis license issued to Sunshine Botanicals. The grounds for the proposed revocation were that the licensed premises is within 250 feet of a residential zone, which was not discovered until after the license had been issued. As you are aware, medical cannabis dispensaries are not permitted within 250 feet of residential zones, as measured from the closest point of the suite in which the dispensary will be located to the closest point of any legally permitted structure in a residential zone.

At the hearing, you presented a revised site plan for Sunshine Botanicals that would create a separate suite at the rear of the building ("Suite D") that would not be occupied by Sunshine Botanicals. You have indicated that Suite D will add enough space between Sunshine Botanicals and the nearest residence to satisfy the 250 foot setback requirement.

Under Section 5.88.050(B) of the Cathedral City Municipal Code and Section 2.7 of the City's Medical Cannabis Administrative Rules, after a medical cannabis license is granted any substantial changes to the licensed premises, including decreases in total square footage, must be approved by the City through a modification to the medical cannabis license. Based on the information that you presented at the license revocation hearing, it appears that you would like to process a modification to Sunshine Botanical's medical cannabis license, and that the modification you are seeking may resolve the basis for the City seeking a revocation of the license.

Accordingly, I have determined that Sunshine Botanical's medical cannabis license should be suspended, rather than revoked, and that you should be allowed to apply for a modification to the

license. During the suspension, you may not operate a dispensary or engage in any other commercial cannabis activity on the licensed premises. If you receive approval of a modification to the medical cannabis license, the suspension will automatically lift. If you do not receive approval of a modification to the medical cannabis license, then the suspension will remain in place until such time as the City either formally revokes the license or the license expires by its own terms. The decision to suspend Sunshine Botanicals' medical cannabis license may be appealed to the City Council pursuant to Section 2.04.100 of the Cathedral City Municipal Code. A Notice of Appeal letter must be submitted within ten days of the date of this letter along with the applicable appeal fee of \$460.00.

Please note that you will need to submit a new map from a licensed surveyor showing that the modified premises meet the 250 foot setback requirement. Per Section 2.3(j) of the Medical Cannabis Administrative Rules, Suite D must be legally established an approved by the City prior to the submission of the application for modification. You may contact Pat Milos, Community Development Director, to discuss any additional supporting documentation that will be needed to process the modification.

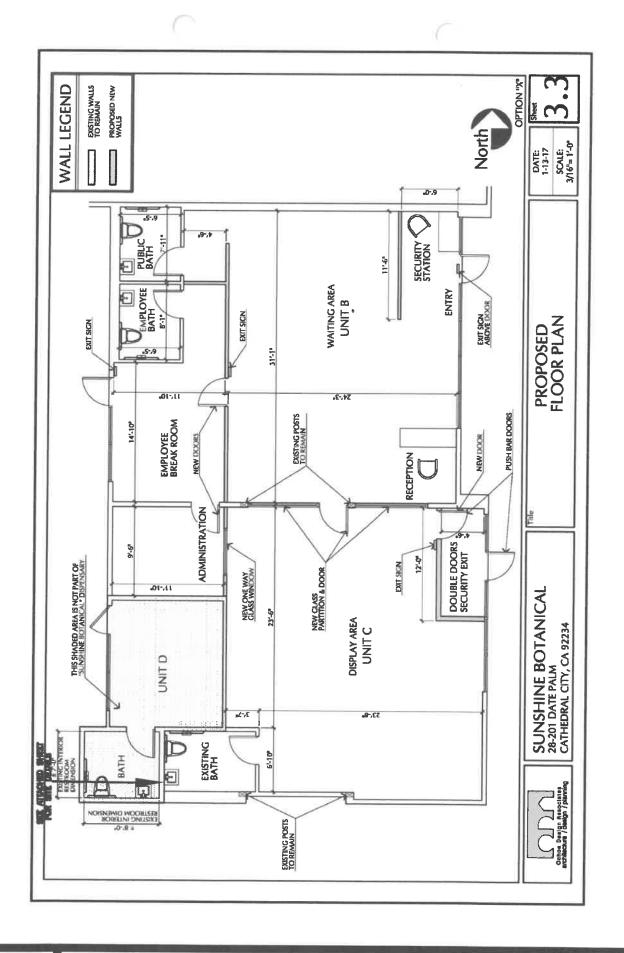
Finally, assuming that you intend to seek a modification to the medical cannabis license, the City suggests that you agree a stay of your appeal of the Planning Commission's denial of Sunshine Botanicals' conditional use permit until after a decision is made on the license modification application. The grounds for the denial of the conditional use permit were the same as the reasons for the proposed revocation of the medical cannabis license. Therefore, the City's decision on the license modification application will have a substantial, if not dispositive, impact on the outcome of the conditional use permit appeal. The license modification process should be allowed to run its course before a final decision is made on the conditional use permit. Please let me know as soon as possible whether you agree to stay the appeal, as it is currently scheduled to go to the City Council on January 11, 2017.

Sincerely,

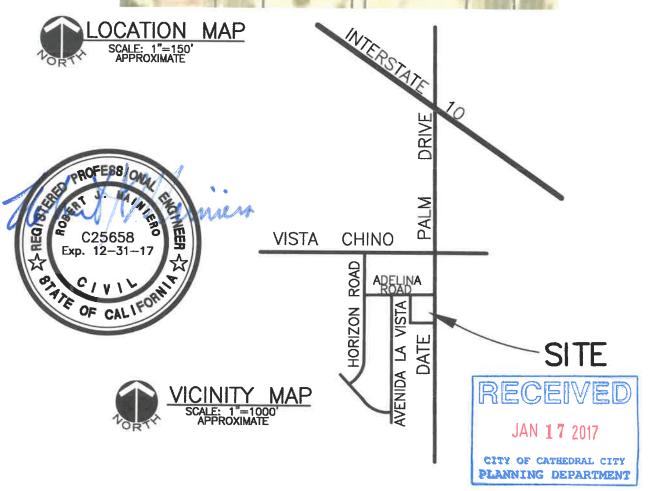
Charles P. McClendon

Iliable

City Manager







Cathedral City
City of Cathedral City

LOCATION EXHIBIT 28-201 Date Palm Drive, Suite C Scale: AS SHOWN
Date: 1/16/17



February 13, 2017

Alan Cooper Sunshine Botanicals 67782 E. Palm Canyon Drive, Suite B104-452 Cathedral City CA. 92234

Re: Modification of Sunshine Botanicals' Medical Cannabis License MCL 16-012-D

Mr. Cooper:

By letter dated January 9, 2017, the City of Cathedral City informed you that it was suspending Sunshine Botanicals' Medical Cannabis License until such time as you obtained approval of a modification to the license to reduce the footprint of the suite in which the business will be located to meet the 250 foot setback requirement from a residence in a residential zone.

I am pleased to inform you that I have approved the modification to Sunshine Botanicals' Medical Cannabis License and the suspension of the license has been lifted.

In addition, the City agreed to stay of your appeal of the Planning Commission's denial of Sunshine Botanicals' conditional use permit until after a decision was made on the license modification application. The City will be scheduling your appeal hearing for the City Council meeting on February 22, 2017 at 6:30 p.m. You should plan to appear at the hearing and present your case to the City Council.

Sincerely,

Charles P. McClendon City Manager



## Cathedral City

# MEDICAL CANNABIS BUSINESS LOCAL LICENSE

(MCL 16-012)

OWNER TO OPERATE OR MAINTAIN A BUSINESS IN VIOLATION OF ANY OTHER LAW OR ORDINANCE. THE LICENSE DOES NOT CONSTITUTE ENDORSEMENT OF ANY ORGANIZATION OR MERCHANDISE OR SERVICES OF ANY CHARACTER. THIS LICENSE IS NON-TRANSFERRABLE AND APPLICATION FOR RENEWAL MUST BE MADE AT LEAST 30 DAYS BEFORE EXPIRATION. THIS LICENSE HAS BEEN ISSUED PURSUANT TO CATHEDRAL CITY MUNICIPAL CODE CHAPTER 5.88. ISSUANCE HEREOF DOES NOT ENTITLE THE

# SUNSHINE COAST WELLNESS

ADDRESS: 28201 Date Palm Drive, Suites B&C

LICENSE TYPE: Dispensary

DELIVERY: No

Community Development Director

THIS PERMIT SHALL EXPIRE ON AUGUST 22, 2017

POST IN A CONSPICUOUS PLACE



### PLANNING COMMISSION ACTION MINUTES

CITY HALL – COUNCIL CHAMBER 68700 AVENIDA LALO GUERRERO CATHEDRAL CITY, CA 92234

**DATE: OCTOBER 19, 2016** 

CALLED TO ORDER: 6:04 P.M.

### **COMMISSIONERS PRESENT/ABSENT**

Chair Rivera Present
Vice-Chair Rodriguez Present
Commissioner Espericueta Present
Commissioner Hagedorn Present
Commissioner Holt Present
Commissioner Jaquess Present

### **STAFF PRESENT**

Pat Milos, Community Development Director Robert Rodriguez, Planning Manager Salvador Quintanilla, Associate Planner Sandra Campbell, Associate Planner John Corella, City Engineer Paul Wilson, Fire Chief Leisa Lukes, Economic Development Manager Erica L. Vega, Deputy City Attorney

### **APPROVAL OF MINUTES**

• September 21, 2016 and October 5, 2016 Minutes: Motion to approve by Commissioner Rodriguez, seconded by Commissioner Hagedorn (Commissioners Hagedorn, Jaquess and Rivera abstained from voting on September 21, 2016 minutes since they were not in attendance; Commissioner Jaquess abstained from voting on October 5, 2016 minutes since he was not in attendance).

### **PUBLIC HEARING ITEMS**

With the consent of the Planning Commission, the order of public hearing items were rearranged. Item 4.A. was moved to the front of the Public Public Comments.

### Item 4.A.

CASE No: Design Review No. 15-004 STAFF: Sandra Campbell

Associate Planner

**APPLICANT:** Narendra Patel, Patel Architecture

**Location:** The south side of East Palm Canyon Drive, between Date Palm Drive

and Van Fleet Avenue, and on the north side of D Street.

REQUEST: Consider a Design Review application for a 312-room resort hotel that

includes a fitness center building, podium and surface parking, and approximately two acres of outdoor recreation areas to be constructed on an approximately 14-acre vacant site located in the MXC (Mixed Use Commercial) and DRN (Downtown Residential Neighborhood)

Zoning Districts.

PUBLIC COMMENTS: Michael Azzarella, Neutral

**RECOMMENDATION:** Approval

**MOTION:** Approve an Initial Study prepared in accordance with the California

Environmental Quality Act (CEQA) and approve a Mitigated Negative

Declaration.

Approve Design Review No. 15-004 subject to the Conditions of Approval, adding "Condition 3.35. In the event of onsite parking exceeding peak demand, the applicant shall provide licensed shuttle service to and from the City multi-level parking garage to the applicant's 25 leased parking spaces on an as needed basis." and "Condition 3.36. Employees shall be prohibited from parking on

surrounding public streets."

**VOTING RESULTS:** Motion to approve by Commissioner Rodriguez, seconded by

Commissioner Hagedorn.

APPROVED: 6-0

AYES: Espericueta, Hagedorn, Holt, Jaguess, Rivera,

Rodriguez

NOES: ABSENT:

### **PUBLIC COMMENTS** – No comments

### Item 4.B.

CASE No: Conditional Use Permit No. 16-038 STAFF: Pat Milos

Community Dev. Dir.

**APPLICANT:** Green Dragon Collective, Glenn Standridge

**Location:** 68860 Perez Road, Suite K (APN 687-330-005)

REQUEST: Consider a Conditional Use Permit application to operate a medical

cannabis business (dispensary) within an existing commercial building

in the I-1 (Light Industrial) Zoning District located at 68860 Perez Road, Suite K.

**RECOMMENDATION:** Approval

MOTION:

**PUBLIC COMMENTS:** The applicant, Glenn Standridge, and attorney representing the

applicant, Katie Podein, provided additional information to the Planning Commission about their project and spoke in favor of its approval.

The following people spoke in opposition to Conditional Use Permit No. 16-038, mentioning issues concerning undue-concentration of medical cannabis facilities, safety and security issues, potential for additional criminal and vagrancy activity, displacement of existing businesses, odor and waste-water contamination issues, and negative impacts on children: Nick Hughes, David Smith, Gerald Davidson, Joseph Cervantes, Steven Willis, Karen Panico-Willis, Debra White, Debra Morrow, and Patricia Montenegro.

Deny an exemption to the California Environmental Quality Act (CEQA) pursuant to Section No. 15301, Class No. 1 (Existing

Facilities).

Deny Conditional Use Permit No. 16-038.

VOTING RESULTS: Motion to deny by Commissioner Hagedorn, seconded by

Commissioner Holt.

DENIED: 4-2

AYES: Espericueta, Hagedorn, Holt, Jaquess

NOES: Rivera, Rodriguez

ABSENT:

Item 4.C.

CASE No: Conditional Use Permit No. 16-007 STAFF: Pat Milos

Community Dev. Dir.

**APPLICANT:** Sunshine Coast Wellness (dba sunshine Botanical), Allen Cooper

**Location:** 28201 Date Palm Drive, Suite B & C (APN 675-145-015)

REQUEST: Consider a Conditional Use Permit application to operate a medical

cannabis business (dispensary) within an existing multi-tenant commercial building in the PCC (Planned Community Commercial) Zoning District and Specific Plan No. 87-21 located at 28201 Date

Palm Drive, Suites B & C.

**RECOMMENDATION:** Approval

PUBLIC COMMENTS: The applicant, Allen Cooper, was available to provide additional

information to the Planning Commission.

The following people spoke in opposition to Conditional Use Permit NO. 16-007, questioning whether the location met the distance requirement from residential uses: Klint Jackson and Dennis Dumas.

**MOTION:** Approve continuance the item to verify the distance requirement from a dispensary to a single-family residential home.

Motion to approve by Commissioner Hagedorn, seconded by Commissioner Rodriguez.

APPROVE: 6-0

AYES: Espericueta, Hagedorn, Holt, Jaquess, Rivera,

**VOTING RESULTS:** Rodriguez

NOES: ABSENT:

### Item 4.D.

CASE No: Conditional Use Permit No. 16-023 STAFF: Pat Milos

Community Dev. Dir.

**APPLICANT:** WCCC – West Coast Cannablis Club, Kenneth Churchill

**Location:** 68828 Ramon Road, Suite A2 (APN 678-312-024)

REQUEST: Consider a Conditional Use Permit application to operate a medical

cannabis business (dispensary) within an existing multi-tenant commercial building in the PCC (Planned Community Commercial) Zoning District and Specific Plan No. 1-022, located at 68828 Ramon

Road, Suite A2.

**RECOMMENDATION:** Approval

**PUBLIC COMMENTS:** The applicant, Kenneth Churchill, and the property owner, William

Bronstein, provided additional information to the Planning Commission

about the project and spoke in favor of its approval.

The following people spoke in opposition to Conditional Use Permit No. 16-023, mentioning issues with undue-concentration and the nearby proximity of a dance academy that included programs for

children: Tom Breitfeller and Michael Peterson.

MOTION: Approve an exemption to the California Environmental Quality Act

(CEQA) pursuant to Section No. 15301, Class No. 1 (Existing

Facilities).

Approve Conditional Use Permit No. 16-023 subject to the Conditions of Approval and based on the findings contained in the staff report, adding a condition that deliveries are limited to 8PM to 10PM.

**VOTING RESULTS:** Motion to approve by Commissioner Rivera, seconded by

Commissioner Rodriguez.

APPROVE: 4-1-1

AYES: Espericueta, Hagedorn, Rivera, Rodriguez

NOES: Holt ABSTAIN: Jaquess

ABSENT:

Item 4.E.

CASE No: Conditional Use Permit No. 16-021 STAFF: Pat Milos

Community Dev. Dir.

**APPLICANT:** Lean Green Industries, Bernard Steimann

**LOCATION:** 68721 Summit Drive (APN 687-162-004)

REQUEST: Consider a Conditional Use Permit application to operate a medical

cannabis business (cultivation and manufacturing site) within an existing industrial building in the I-1 (Light Industrial) Zoning District

located at 68721 Summit Drive.

**RECOMMENDATION:** Approval

PUBLIC COMMENTS: Karen Panico-Willis mentioned the issue of undue-concentration of

medical cannabis facilities.

MOTION: Approve a continuance in order to address minor items and details

associated with the medical cannabis business.

Motion to continue by Commissioner Rodriguez, seconded by

Commissioner Hagedorn.

**VOTING RESULTS:** APPROVE: 6-0

AYES: Espericueta, Hagedorn, Holt, Jaquess, Rivera,

Rodriguez

NOES: ABSENT:

### **COMMISSIONER'S COMMENTS**

 The Commissioner's expressed their frustration with the number of medical cannabis applications under consideration, possible negative effects, and lack of direction from City Council regarding the review and approval process.

### **CITY ATTORNEY REPORT**

None

### **CITY PLANNER REPORT**

• Staff informed the Planning Commission about the upcoming holidays and wanted to know if the Planning Commission will be available for the November 16<sup>th</sup> and December 21<sup>st</sup> Planning Commission meeting, to staff of the availability.

The meeting was adjourned at approximately 10:09 p.m.



### PLANNING COMMISSION ACTION MINUTES

CITY HALL – COUNCIL CHAMBER 68700 AVENIDA LALO GUERRERO CATHEDRAL CITY, CA 92234 DATE: NOVEMBER 2, 2016

CALLED TO ORDER: 6:03 P.M.

### **COMMISSIONERS PRESENT/ABSENT**

Chair Rivera Present
Vice-Chair Rodriguez Present
Commissioner Espericueta Present
Commissioner Hagedorn Present

Commissioner Holt Absent - Excused

Commissioner Jaquess Present

### **STAFF PRESENT**

Pat Milos, Community Development Director Robert Rodriguez, Planning Manager Salvador Quintanilla, Associate Planner John Corella, City Engineer Nicholas Hermsen, Deputy City Attorney

### **APPROVAL OF MINUTES**

• October 19, 2016 Minutes: Motion to approve by Commissioner Rodriguez, seconded by Commissioner Espericueta

### **NON-PUBLIC HEARING ITEMS**

### Item 3.A.

**TITLE:** Economic Development Update

**STAFF:** Curt Watts, Economic Development Direct

**RECOMMENDATION:** For information only. No formal action required on this item.

### Item 3.B.

CASE No: Tentative Parcel Map 30726 STAFF: Salvador Quintanilla

One-Year Time Extension Associate Planner

APPLICANT: 101223289 Saskatchewan LTD

**LOCATION:** Southwest of the intersection of Date Palm Drive and Varner Road.

**REQUEST:** A one-year time extension for Tentative Parcel Map No. 30726, a

subdivision of 18.72 acres into ten (10) parcels with one remainder

parcel located within the I-1 (Light Industrial) Zoning District.

**RECOMMENDATION:** Approval

**MOTION:** Approve a one-year time extension for Tentative Parcel Map No.

30726 and the associated California Environmental Quality Act (CEQA) Mitigated Negative Declaration (approved on September 28,

2005), based on the findings contained in the staff report.

VOTING RESULTS: Motion to approve by Commissioner Rodriguez, seconded by

Commissioner Hagedorn.

APPROVED: 5-0

AYES: Espericueta, Hagedorn, Jaquess, Rivera, Rodriguez

NOES: ABSENT:

### **PUBLIC HEARING ITEMS**

### Item 4.A.

CASE No: Conditional Use Permit No. 16-030 STAFF: Salvador Quintanilla

Associate Planner

**APPLICANT:** Ewing Irrigation & Landscape Supply

Raymond Duran

**Location:** Southwest corner of Avenida Ximino and Aliso Road.

**REQUEST:** A Conditional Use Permit application for the establishment of an

outdoor material storage yard on two vacant lots in the PCC (Planned Community Commercial) Zoning District and Specific Plan No. 91-49.

**RECOMMENDATION:** Approval

**MOTION:** Approve an exemption to the California Environmental Quality Act

(CEQA) pursuant to Section No. 15332, Class No. 32 (In-Fill

Development Projects).

Approve Conditional Use Permit No. 16-030 subject to the attached Conditions of Approval and based on the findings contained in the staff

report.

VOTING RESULTS: Motion to approve by Commissioner Hagedorn, seconded by

Commissioner Rodriguez.

APPROVED: 5-0

AYES: Espericueta, Hagedorn, Jaquess, Rivera, Rodriguez

NOES: ABSENT:

Item 4.B.

CASE No: Conditional Use Permit No. 16-021 STAFF: Pat Milos

Community Development

Director

**APPLICANT:** Lean Green Industries

Bernard Steimann

**Location:** 68721 Summit Drive (APN 687-162-004)

**REQUEST:** Consider a Conditional Use Permit application to operate a medical

cannabis business (cultivation and manufacturing site) within an existing industrial building in the I-1 (Light Industrial) Zoning District

located at 68721 Summit Drive.

**RECOMMENDATION:** Approval

**MOTION:** Approve an exemption to the California Environmental Quality

Act (CEQA) pursuant to Section No. 15301, Class No. 1 Existing

Facilities).

Approve Conditional Use Permit No. 16-021 subject to the attached Conditions of Approval and based on the findings

contained in the staff report, and adding Condition 3.44. – Deliveries and shipments shall be limited to the hours of 8:00 AM to 5:00 PM.

VOTING RESULTS: Motion to approve by Commissioner Hagedorn, seconded by

Commissioner Rodriguez.

APPROVED: 5-0

AYES: Espericueta, Hagedorn, Jaguess, Rivera, Rodriguez

NOES: ABSENT:

Item 4.C.

CASE No: Conditional Use Permit No. 16-007 STAFF: Pat Milos

Community Development

Director

**APPLICANT:** Sunshine Coast Wellness (dba Sunshine Botanical)

Allen Cooper

**Location:** 28201 Date Palm Drive, Suites B & C (APN 675-145-015)

**REQUEST:** Consider a Conditional Use Permit application to operate a medical

cannabis business (dispensary) within an existing multi-tenant commercial building in the PCC (Planned Community Commercial) Zoning District and Specific Plan 87-21 located at 28201 Date Palm

Drive, Suites B & C.

**RECOMMENDATION:** Approval

**MOTION:** Deny Conditional Use Permit No. 16-007.

VOTING RESULTS: Motion to deny by Commissioner Hagedorn, seconded by

Commissioner Rodriguez.

DENIED: 5-0

AYES: Espericueta, Hagedorn, Jaquess, Rivera, Rodriguez

NOES: ABSENT:

### **COMMISSIONER'S COMMENTS**

 Commissioner Rodriguez asked Planning staff to contact the property owners at 31850 Avenida Ximino (related to CUP 16-030) to inform them of the Planning Commission's decision and confirm that the site is zoned PCC (Planned Community Commercial).

### **CITY ATTORNEY REPORT**

None

### **CITY PLANNER REPORT**

• The Planning Commission meeting scheduled for December 21, 2016 is cancelled.

The meeting was adjourned at approximately 8:05 p.m.

Dear Sirs,

I would like to formally request an appeal to the City Council of the denial by the Planning Commission for a conditional use permit for Sunshine Coast Wellness.

Thank you for your attention.

Sincerely, Allen Cooper

11/10/16



### City of Cathedral City Public Hearing Notice for Appeal of Planning Commission's Denial of CUP No. 16-007 Notice of Availability for Public Review and Environmental Determination

Notice is hereby given that the City Council of Cathedral City will hold a Public Hearing on the Appeal of Planning Commission's Denial of the following:

### CASE(S)

Conditional Use Permit No. 16-007

### APPLICANT/REPRESENTATIVE

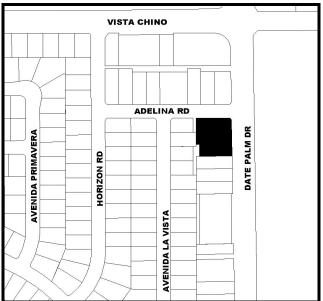
Sunshine Coast Wellness Allen Cooper

### **PROPOSAL**

Appeal of a decision of the Planning Commission to deny a request to operate a medical cannabis business (dispensary) in two suites within a multi-tenant commercial building.

### **LOCATION**

28201 Date Palm Drive, Suites B & C Assessor's Parcel No. 675-145-015



### **ENVIRONMENTAL DETERMINATION**

The Project is exempt from the California Environmental Quality Act (CEQA) per Section 15301, Existing Facilities.

All information regarding the proposed project is available for public review at the City of Cathedral City Civic Center, Planning Department, 68-700 Avenida Lalo Guerrero during regular business hours (Monday through Thursday, 7:00 AM - 6:00 PM.

### DATE AND TIME OF HEARING

January 11, 2017, at 6:30 PM, or as soon thereafter as the matter may be heard

### PLACE OF HEARING

Cathedral City Civic Center Council Chamber 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

Any person may appear at the hearing and be heard in support of, or opposition to, the proposed project or environmental determination.

The City Council, at the public hearing or during deliberations, may approve, deny, or propose changes to the project or to the environmental determination.

If you challenge any of these items in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Council at, or prior to, the public hearing. Please send all correspondence to the Project Planner.

For further information, contact the Project Planner at:

Robert Rodriguez, Planning Manager 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 (760) 770-0344

NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (760) 770-0340. Notification 48 hours prior to the meeting will enable the City to make reasonable accommodations to ensure accessibility to this meeting. {28 CFR 35.104 ADA TITLE II}



### Cathedral City

### **Agenda Report**

File #: 2017-52 Item No: 4.A.

**City Council** 

**MEETING DATE: 2/8/2017** 

TITLE:

Council Policy on Mayoral Rotation under the City Charter

FROM:

Charlie McClendon, City Manager

### RECOMMENDATION:

Staff recommends the City Council introduce for first reading, waive reading beyond the title and approve an ordinance establishing the policy for Mayoral Rotation under the City Charter.

### **BACKGROUND:**

On November 8, 2016 Cathedral City voters passed Measure HH, which adopted Charter government for the City. Under the Charter the current Mayor and Council will complete the terms to which they have been elected. Then the Charter provides in Section 601 that "The City Council members shall be elected at a general municipal election on even numbered years, three (3) City Council members beginning in 2018 and two (2) City Council members beginning in 2020, each for a four (4) year term." The Charter goes on to state in Section 603 that "Effective at the end of the current term of the elected Mayor, the position of Mayor shall become an appointed, rotating position. The City Council at the first meeting in December each year, shall appoint a Council Member to serve as Mayor for a one-year period on a rotating basis. After the City Council appoints the Mayor, at the first meeting in December each year, the Council shall appoint a Council Member to serve as Mayor Pro Tem for a one-year period on a rotating basis. The process for appointment of the Mayor and Mayor Pro Tem shall be implemented by ordinance of the City Council in accordance with this Section." Council discussed the policy in study session on January 25, 2017. Revisions suggested at that time are incorporated in the proposed ordinance.

### **DISCUSSION:**

The proposal before the Council is to establish a procedure to guide the selection of the Mayor and Mayor Pro Tem each year, beginning at the first meeting in December of 2018. At that time the Council will consist of five Councilmembers with three having been elected in November of 2018 and two serving terms to which they were elected in November of 2016 (assuming there has been no turnover in the interim).

File #: 2017-52 Item No: 4.A.

Included in the Council agenda packet for the first meeting in December of 2018, staff will provide a ranking of the five Councilmembers based on seniority. The Councilmembers will be ranked from 1 to 5, with 1 being the most senior member of the Council and 5 being the least senior. In cases where two or more Councilmembers have equal seniority, the highest voter getter among those with equal seniority, from the election at which they were most recently elected, will be ranked highest and the second highest vote getter will be ranked next, and so on. Seniority will be calculated based on uninterrupted service on the Council as either Mayor or Councilmember.

Council will then vote to appoint the number one ranked Councilmember as Mayor to serve a one-year term through the first meeting in December of 2019. Then Council will vote to appoint the number two ranked Councilmember to serve as Mayor Pro Tem for the same one-year term. The Councilmembers who were ranked 3, 4, and 5 on the seniority list will then move up to become numbers 2, 3 and 4 respectively on the list and the Councilmember appointed to be Mayor (previously ranked number 1) will become number 5 on the new list and the Councilmember appointed to be Mayor Pro Tem will move up to number 1 on the new list. Any Councilmember, at their time to be appointed Mayor, may decline the appointment and the rotation will move on to the next Councilmember on the list. If a Mayor, for whatever reason, does not complete their full on-year term, the Mayor Pro Tem will complete the term. Such time completing an unexpired term will not prevent that Councilmember from serving their full one-term as Mayor according to the rotation.

The process described above will then be repeated at the first meeting in December of 2019 and each year thereafter. At such time as the Council elections convert to district elections as outlined in the Charter, Council will likely have to amend the ordinance to make changes necessary to reflect the change to districts as using total votes to break ties in seniority may no longer be the best way to break ties.

Council discussed this proposal during the study session on January 25, 2017 and provided direction to staff regarding an ordinance to implement the rotational process. The ordinance incorporates the suggestions made by Council at study session. The ordinance will receive first reading on February 8, 2017, to be followed by second reading on February 22, 2017. The ordinance would then become effective thirty days after second reading assuming it is approved.

#### **FISCAL IMPACT:**

None.

#### **ATTACHMENTS:**

Ordinance

ORDINANCE NO.	ORDINANCE NO.	,
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY ADDING SECTION 2.04.180 TO THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO THE SELECTION OF A MAYOR AND MAYOR PROTEM

**WHEREAS**, the voters of the City of Cathedral City approved a charter for the City at the November 2016 election and also re-elected the Mayor to a two-year term; and

**WHEREAS**, Section 603 of the Charter provides that at the end of the current term of the elected Mayor, the position of Mayor shall be become and appointed rotating position, appointments shall be made annually at the first meeting in December, and the process for appointment of the Mayor and Mayor Pro Tem shall be set by ordinance; and

**WHEREAS**, this Ordinance fulfills the requirements of Section 603 of the Charter and provides for the orderly succession of the position of Mayor and Mayor Pro Tem.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES HEREBY ORDAIN AS FOLLOWS:

# SECTION 1 ADDITION OF SECTION 2.04.180 TO THE CATHEDRAL CITY MUNICIPAL CODE

A new Section 2.04.180 is hereby added to the Cathedral City Municipal Code to read as follows:

"2.04.180 Selection of Mayor and Mayor Pro Tem

- A. The purpose of this Section is to implement a rotating system for appointing Council members to the honorary positions of Mayor and Mayor Pro Tem pursuant to Section 603 of the City Charter. The appointment of individuals to serve as Mayor and Mayor Pro Tem must follow the requirements of this section.
- B. At the first City Council meeting in December of 2018, the City Council shall appoint a Council member to serve as Mayor and a Council member to serve as Mayor Pro Tem in accordance with the following:

- 1. The Council member with the longest continuous length of service on the City Council shall be appointed to serve as Mayor.
- 2. The Council member with the second longest continuous length of service on the City Council shall be appointed to serve as Mayor Pro Tem.
- C. At the first City Council meeting in December of 2019 and at the first City Council meeting in December of each year thereafter, the City Council shall appoint a Council member to serve as Mayor and a Council member to serve as Mayor Pro Tem in accordance with the following:
  - 1. The current Mayor Pro Tem shall automatically succeed to the position of Mayor.
  - 2. The City Council member who has served for the longest continuous period of time on the City Council other than the newly appointed Mayor shall be appointed to serve as the Mayor Pro Tem.
  - 3. Each Council member who was serving on the City Council as of December 2018 must have the opportunity to serve as Mayor under this rotational system before serving as Mayor a second time.
  - 4. A Council member shall not serve as Mayor or Mayor Pro Tem during their first year on the City Council.
- D. In the event that there are two or more Council members who have served continuously on the Council for the same amount of time, for the purposes of this section seniority shall be determined by the number of votes each Council member received at the last election where they were elected to serve on the City Council.
- E. If at any point in time a Council member serving as Mayor or Mayor Pro Tem resigns from the position or from City Council, or otherwise is no longer able to continue serving in their capacity as Mayor or Mayor Pro Tem, the position shall be filled in the same manner as the annual appointments. At the first Council meeting in December thereafter, the process for selecting a new Mayor and Mayor Pro Tem shall be modified as follows:
  - 1. If the Council member serving as Mayor has only served a partial term, that Council member shall continue to serve as Mayor.

- 2. If the Council member serving as Mayor Pro Tem has only served a partial term, that Council member shall continue to serve as Mayor Pro Tem unless there is an outgoing Mayor, in which case the Council Member shall be appointed to serve as Mayor.
- F. Notwithstanding any other provision of this section, a Council member may refuse to serve as Mayor or Mayor Pro Tem. If a Council member refuses to serve in either position, the selection of Mayor and Mayor Pro Tem shall continue as provided for in this section but removing the refusing Council member from the rotation.
- G. In the event that following the rules for the appointment of Mayor and Mayor Pro Tem as provided for in this section would result in no Council member being eligible to fill either position, then the City Council may vote to appoint anyone of its members to serve."

#### <u>SECTION 2</u> SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

#### <u>SECTION 3</u> EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after its second reading and adoption by the City Council.

#### SECTION 4 POSTING

The City Clerk shall, within fifteen (15) days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

#### <u>SECTION 5</u> CERTIFICATION

The foregoing	Ordinance	was	approved	and	adopted	at	а	meeting	of	the	City
Council held on the _	day of _			, 201	7, by the	fol	low	ving vote:			

-3-

Noes: Abstain: Absent:		
	Stan Henry, Mayor	
ATTEST:		
Gary F. Howell, City Clerk		
APPROVED AS TO FORM:		
Eric S. Vail, City Attorney		



# Cathedral City

## **Agenda Report**

**File #:** 2017-80 **Item No:** 4.B.

City Council

**MEETING DATE: 2/22/2017** 

TITLE:

**Extension of Tow Contracts - Fee Adjustment** 

FROM:

George Crum, Police Chief

#### RECOMMENDATION:

City staff recommends Council endorse the extension of the current tow contracts with an amended schedule of allowable fees to include fees payable to the City for 30 day vehicle impound storages.

## **BACKGROUND:**

The current three year extension to the tow contracts initiated in January of 2014 with Mohica Towing and Southwest Towing expired January of 2017. The Contract allows for two additional three year periods at the City's sole discretion. As both companies have fulfilled their obligations under the contract, staff has offered both tow companies the three year extension authorized in the contract and both have indicated they will accept the additional three year option from 2017 thru 2019.

Staff met with the owners of both tow companies, Miles Bois (Southwest) and Jesse Mojica (Mohica Towing) to discuss the current fee schedule allowable in Exhibit B under the existing agreement. These fee limits have been in place for 3 years and have not kept up with rising overhead for the tow companies or current rates charged in the open market. The franchise fees paid to the City by the two tow companies will not have a built in 3% increase, as our rising overhead expenses have had a significant increase in the franchise fee paid by the tow companies. The increases are listed under the Fiscal Impact section. Both towing companies have requested an increase in the fee schedule for towing services they may charge.

#### **DISCUSSION:**

Staff has listed the current allowable rates per the tow contract below and the corresponding average rate currently allowed by Riverside County Sheriff, California Highway Patrol, Desert Hot Springs Police and Palm Springs Police. The third column represents the rate adjustment staff is proposing. This rate is the current average fee allowed by the other identified agencies. Palm Springs Police

File #: 2017-80 Item No: 4.B.

Department's contract is expired and currently being negotiated. It is anticipated the new contract with Palm Springs Police Department will include increased rates comparable to the proposed rates. This will place them at or above an "average" fee schedule over the course of the entire three year extension.

#### **CHART OF TOW FEE SCHEDULES**

Service Description	Current Fee	Current Average Fee	Proposed Fees 2017/2018/2019
Tow-Pass Veh	\$170.00	\$188.75	\$195 /\$205 /\$215
Tow-Truck 2 axle	\$250.00	\$251.25	\$300.00
Tow-Truck 3 axle	\$350.00	\$352.50	\$400.00
Storage Per Day	\$ 50.00	\$ 61.25	\$62 / \$67 / \$72
Truck less than 20'	\$ 50.00	\$ 46.66	\$62 / \$67 / \$72
Truck more than 20'	\$ 80.00	\$73.32	\$80.00
Other/Lockout fee	\$ 85.00	No data	\$90.00
Hourly Rate	\$170.00	\$188.75	\$195 /\$205 /\$215
30 day impound fee collected for City	\$325.00	No Data	\$345.00*

<sup>\*</sup> Contractor shall pay to City on a monthly basis the following amounts:

- Vehicles released to the owner at or after 30 days: \$345.00
- Vehicles released to the owner before 30 days: \$11.50 per day
- Vehicles sold by the Contractor:
  - o Sale price is \$985.00 or more: \$345.00
  - o Sale price is between \$600.00 and \$984.99: 25% of sale price goes to City
  - o Sale price is less than \$600.00: \$0

The sale price of the vehicle shall be the amount for which the contractor sold the vehicle less the contractor's towing and lien fees.

#### **FISCAL IMPACT:**

The towing contracts require the two towing companies to pay the City a franchise fee each year. Last year's franchise fee per tow company was \$34,153.73. The contract extension will increase the franchise fee to \$46,153.73 for 2017 and increase to \$50,153.73 for 2018. The franchise fee will be \$54,153.73 for year 2019. The proposed chart of tow fee schedules includes a corresponding increase in storage fees paid to the City for 30 day impounds for vehicles stored pursuant to California Vehicle Code Section 14602.6 (driving a vehicle on a suspended license). The noted franchise fees and 30-Day Impound fees will provide for the City's cost recovery only.

File #: 2017-80 Item No: 4.B.

The proposed increases in allowable charges for towing services will not have a fiscal impact to the City. The current contract includes towing services for the City within 200 miles of Cathedral City at no charge.

## **ATTACHMENTS:**

Mohica - Contract Southwest - Contract

#### FIRST AMENDMENT TO VEHICLE TOW SERVICE FRANCHISE AGREEMENT

This First Amendment to Vehicle Tow Service Franchise Agreement ("First Amendment") is hereby entered into on this 4 day of February, 2017 by and between the CITY OF CATHEDRAL CITY, a California municipal corporation, ("City") and MOHICA TOWING INC., a California corporation ("Contractor"), as follows:

#### **RECITALS**

- A. On or about January 15, 2014, City and Contractor entered into a Vehicle Tow Service Franchise Agreement ("Agreement") after soliciting proposals through a competitive selection process.
- B. Section 2 of the Agreement provided for a three (3) year initial term, with the City having the unilateral option to extend the term twice for three (3) years each time.
- C. On or about November 22, 2016, the City notified Contractor that it intended to exercise the first of the two options, extending the term of the Agreement to January 15, 2020.
- D. Pursuant to Section 5 of the Agreement, Contractor notified City that it desired to enter into good faith negotiations to adjust its fees, rates, and service charges upon City's exercise of the first option.
- E. The City desires to amend the Agreement to increase the franchise fees to allow for full cost recovery of actual and reasonable costs associated with the administration of the towing program consistent with Vehicle Code section 12110.
- F. The Agreement requires the City Council to approve any adjustments to the fees, rates, and service charges to be charged by Contractor.
- G. The City and Contractor entered into good faith negotiations regarding the terms and conditions of the Agreement, and this First Amendment reflects the mutual agreement of the parties.
- H. On February \_\_\_, 2017, the City Council approved this First Amendment and authorized the City Manager to execute the First Amendment.

#### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this First Amendment which modifies and amends the Agreement as follows:

#### 1. FEES PAYABLE TO CITY.

- (a) Section 3(B) is amended to read as follows:
  - "B. The total amount of franchise fees that CONTRACTOR shall pay to CITY in advance during the initial term of this AGREEMENT is the amount of \$32,193.17 for the first year of this AGREEMENT which amount shall increase by 3% in Year 2 to \$33,158.96 and 3% in Year 3 to \$34,153.73. In Year 4 the franchise fee shall increase by \$12,000.00 to \$46,153.73, in Year 5 the franchise fee shall increase by an additional \$4,000.00 to \$50,153.73, and in Year 6 the

franchise fee shall increase an additional \$4,000.00 to \$54,153.73. In addition, for vehicles impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6, CONTRACTOR shall pay to CITY on a monthly basis the following amounts:

- Vehicles released to the owner at or after 30 days: \$345
- Vehicles released to the owner before 30 days: \$11.50 per day
- Vehicles sold by CONTRACTOR:
  - o Sale price is \$985 or more: \$345
  - o Sale price is between \$600 and \$984.99: 25% of sale price goes to CITY
  - o Sale price is less than \$600: \$0

For the purposes of this section, the sale price of the vehicle shall be the amount for which the CONTRACTOR sold the vehicle less the CONTRACTOR's towing and lien fees.

Attached hereto as Exhibit "A" and incorporated herein by this reference is a summary of an estimate of the of the actual and reasonable costs incurred by CITY in connection with the towing program and the parties hereto agree that said costs are reasonable estimates, and that the franchise fee and vehicle impound fees contained herein do not exceed these reasonable costs."

- (b) Section 3(D) is amended to delete the last sentence.
- (c) Exhibit "A" to the Agreement is replaced with Exhibit "A" to this First Amendment.

#### 2. RATES CHARGED BY CONTRACTOR.

- (a) Section 4(A)(2) of the Agreement is amended to read as follows:
  - "(2) Even when tow and storage services are specifically requested by CITY, CONTRACTOR acknowledges that it shall charge vehicle owners only for its tow and storage services incurred pursuant to the terms and provisions of this AGREEMENT. It is specifically acknowledged by CONTRACTOR that the vehicle owner shall be solely responsible for such charges. Except as provided for in Section 6(E)(1)(A)(2), CONTRACTOR shall not hold CITY liable for any tow or storage services incurred pursuant to and during the term of this AGREEMENT even when such services are requested by CITY."
- (b) Section 6(E)(1) of the Agreement is amended to read as follows:
  - "(1) Scope of Responsibility:

It shall be CONTRACTOR's responsibility to perform the following tasks for CITY. The performance of said tasks shall be at no cost to CITY unless expressly stated otherwise:

- a. Tow and store vehicles as requested by CITY including, but not limited to, the following:
  - 1. Vehicles taken into custody by the POLICE DEPARTMENT.
  - 2. Any and all vehicles requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT, including CITY owned vehicles, up to two hundred (200) miles round-trip beginning at the departure location of the tow truck.
    - i. If a Special Duty or Heavy Duty Tow Truck is required to tow a CITY owned vehicle, CONTRACTOR may charge CITY \$250 per hour, with a one hour minimum, for the towing service.
    - ii. Any towing of a CITY owned vehicle beyond two hundred (200) miles will be towed at the rate of \$5.00 per mile.
  - 3. Vehicles abandoned in public places or on public property or private property within the jurisdiction of CITY so long as requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT pursuant to their enforcement powers of the law.
  - 4. Vehicles seized and impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6.
  - 5. Vehicles requested to be towed and/or stored pursuant to CITY's Vehicle Abatement Program as more fully described below.
- b. Remove all debris resulting from vehicle accidents, including sweeping;
- c. Perform all necessary work preliminary to towing vehicles such as removing vehicles from ditches, righting vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required to enable the towing of certain vehicles; and
- d. Perform all requested and necessary towing, battery jump start, and tire change services on City-owned vehicles at the City's request."
- (c) Exhibit "B" to the Agreement is replaced with Exhibit "B" to this First Amendment.
- (d) Section 6(F)(1)(k) is amended to delete the final sentence.

#### 3. GENERAL PROVISIONS.

- (a) **Remainder Unchanged**. Except as specifically modified and amended in this First Amendment, the Agreement remains in full force and effect and binding upon the parties.
- (b) **Integration**. This First Amendment constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this First Amendment.
- (c) **Authority**. The persons executing this First Amendment on behalf of the parties hereto warrant that they are duly authorized to execute this First Amendment on behalf of said parties.
- (d) **Applicable Law**. The laws of the State of California shall govern the interpretation and enforcement of this First Amendment.
- (e) **References**. All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this First Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

CITY	OF	CA	THED	RAT	CITY:
	A . II	1			

MOHICA TOWING, INC.

Charles P. McClendon, City Manager  ATTEST:	Jesse Mojida	2-9-17
Gary Howell, City Clerk		
APPROVED AS TO FORM:		
Eric S. Vail, City Attorney		

NOTE:

CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS TYPE

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

## ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALL COUNTY OF RI			)	
			)	
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before me,	Date	10 St. (55.0056 ) (1.05.0056	3	Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appear	ed			
Personal approx	7 7	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	200	Name of Signer(s)
			person(s) instrument same in his/her/thei	d to me on the basis of satisfactory evidence to be the whose name(s) is/are subscribed to the within and acknowledged to me that he/she/they executed the his/her/their authorized capacity(ies), and that by r signature(s) on the instrument the person(s), or the h behalf of which the person(s) acted, executed the
				nder PENALTY OF PERJURY under the laws of the California that the foregoing paragraph is true and
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Signer is representing: Name Of Person(s) Or Entit	y(ies)			
				Signer(s) Other Than Named Above

## **EXHIBIT "A"**

## SUMMARY OF ANNUAL PROGRAM COSTS

A) Facilities and Infrastructure	
(1) Building - 2.5% of Operating costs of \$389,368	\$9,734
(2) Information Systems Expense – 4% of City's total information Systems Expenditures (\$733,047)	\$29,322
Total Incurred Facilities and Infrastructure costs	\$39,056
B) Professional Services	
(1) Legal Expenses for contract, consulting and litigation 15 hours - @\$245.00 per hour =\$3,675/3	\$1,225
C) Personnel Costs – Administrative (Fully Benefitted per hour cost) Based on 900 Vehicles Towed in Fiscal Year	
(1) Police Officer - 675 hours @ \$110 (2) Dispatcher - 450 hours @ \$78 (3) Records Clerk - 450 hours @ \$73 (4) Sergeants - 75 hours @ \$146 (5) Chief of Police - 10 hours @ \$250.00 (6) Deputy Chief of Police* - 20 hours @ \$206 per hour (7) Commander - 40 hours @ \$170 per hour (8) Administrative Office Coordinator - 20 hours @ \$94 (9) Management Analyst - 48 hours @ \$115  Total Incurred Administrative Personnel Costs  D) Materials and Supplies (1) Total Incurred forms, supplies and postage costs	\$74,250 \$35,100 \$32,850 \$10,950 \$2,500 \$4,120 \$6,800 \$1,880 \$5,520 \$165,470
Summary of Incurred Costs	\$1,000
<ol> <li>Facilities and Infrastructure</li> <li>Professional Services</li> <li>Personnel Costs Administrative</li> <li>Materials and Supplies</li> </ol>	\$39,056 \$1,225 \$165,470 \$1,000
<b>Grand Total Incurred Costs</b>	\$206,751

#### E) Revenue Received

Annual Revenue Received for Storage and Impound Releases and Lien Sales from Tow Contracts	\$73,500
Incurred Costs of \$206,751 – Revenue Received \$73,500 =	\$133,251
Franchise Fee for two operators \$133,251/2	\$66,625.50

## F) 30 Day Impound Vehicles - Additional Incurred Costs

- Additional Tow Hearing Expense 100 hearings at one hour per Hearing for Sergeant's salary and benefits \$146 (fully benefitted Per hour) \$14,600
- 2) Mobile Data Computer System Expense \$60,850 per year at 33% Vehicle storage and impound related emphasis \$20,080
- 3) Incurred cost per 30 day impound per year at 100 impounded vehicles \$34,680 (\$14,600 + \$20,080) divided by 100 impounded vehicles results in a cost of \$345 per vehicle impounded for 30 days.

Note: Line items that are struckthrough above are estimated actual and reasonable costs incurred by CITY that CITY has determined not to pass through to CONTRACTOR.

#### **EXHIBIT "B"**

#### **Chart of Tow Fee Schedules**

The following rate structure shall apply for all towing and storage services requested by the Police Department and Code Compliance Division, except those services requested by City employees for City-owned vehicles which shall be subject only to the charges in Section 6(E)(1)(A)(2) of the Agreement. The hourly rates below are calculated on a "door to door" basis, and charges commence when the tow truck is dispatched to the scene and conclude when the tow truck returns to the storage yard.

A. <u>Basic Hourly Tow Rate</u>: Class A Tow Truck 2017 - \$195

2018 - \$205 2019 - \$215

One hour minimum

1) The base hourly rate per tow shall apply to all towed passenger vehicles and trucks rated at less than ten thousand (10,000) pounds gross vehicle weight. This rate also applies to difficult removal work involving the remove of vehicles from deep ditches or flood control channels or separating two entangled vehicles.

B. Special Duty Hourly Tow Rate:

\$250

One hour minimum

1) The special duty hourly rate shall apply when a four wheel drive tow truck is necessary for off-road recovery of vehicles. The hourly rate

C. Heavy Duty Hourly Tow Rate:

1) Two Axel Category: Class B Tow Truck

\$300

One hour minimum

- a. The two (2) axel hourly rate shall apply to all towed vehicles with a rate capacity of ten thousand (10,000) pounds gross vehicle weight to, but not including, vehicles with thirty (30,000) pounds gross vehicle weight.
- 2) Three (3) Axel Category: Class C and D Tow Trucks

\$400

One hour minimum

- a. The three (3) axel hourly rate shall apply to all towed vehicles with a rate capacity of thirty (30,000) pounds gross vehicle weight or more.
- 3) The hourly rate for all heavy duty towing (two and three axels) includes difficult removal of vehicles, up righting overturned vehicles, and the use of special equipment and preparation prior to towing.

## D. Charges for Related Services:

## 1) Lock Out, Tire Change, Jump Start:

\$90

a. The standard charge for opening locked vehicles, tire change and jump start is ninety dollars (\$90) when no towing is involved. If towing is involved, there shall be no additional charge for these services.

#### 2) Dolly:

a. There is no additional charge for the use of dolly in the towing service.

## 3) After Hours Release Fee:

a. There shall be an after-hours gate fee of ninety dollars (\$90) for anyone desiring release of a vehicle at any time other than normal business hours.

#### E. Storage Fees: (Per Day)

1)	Motor cycles, passenger cars and trucks 20' or less	Outside Storage: Inside Storage:	2017 2018 2019	\$62 per day \$67 per day \$72 per day \$100 per day
2)	Trailers 15' or less	Outside Storage:		\$50 per day
3)	Trucks, trailers and other vehicles 20' to 30'	Outside Storage		\$80 per day
4)	Trucks, trailers and other vehicles 30' or more	Outside Storage		\$90 per day

- 5) Storage fees are charged per calendar day, not on a rolling 24 hour basis. The first daily fee per vehicle is incurred four hours after drop off at the storage facility. Thereafter, a full day's storage fee will be charged for each calendar day, or part thereof, that the vehicle is stored at Contractor's facility.
- 6) In addition to the daily storage fees above, Contractor may charge a fee of \$345 for all vehicles impounded pursuant to Vehicle Code Sections 14602.6 and 14607.6. Such fees shall be passed through to the City in satisfaction of Contractor's obligations under Section 3(B) of this Agreement.

#### F. Lien Fee:

Contractor shall charge lien fees in compliance with Civil Code Section 3074, which are presently \$70 for vehicles with a value of \$4,000 or less or \$100 for vehicles valued at

over \$4,000. No lien fee shall be charged if the vehicle is redeemed within seventy-two hours of initial storage.

#### G. Additional Conditions:

- 1) The above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered. Such towing charges shall include the clearing and clean-up of an accident site as may be required by the Police Department;
- 2) There shall be no additional charge for righting an overturned passenger car or a light pick-up truck if towing is involved;
- 3) There shall be no additional charge for disconnecting a drive shaft where required for towing;
- 4) There shall be no charge to City for the storage of a vehicle that has been seized as evidence in a pending investigation.
- 5) From time to time, the City may request Contractor waive its fees in the event that a vehicle is erroneously stored. When so requested by a sworn supervisor (sergeant or above) of the City's police department, Contractor shall waive all fees and report the waiver to a Commander in the City's Police Department as soon as is feasible thereafter.

#### FIRST AMENDMENT TO VEHICLE TOW SERVICE FRANCHISE AGREEMENT

This First Amendment to Vehicle Tow Service Franchise Agreement ("First Amendment") is hereby entered into on this 10th day of February, 2017 by and between the CITY OF CATHEDRAL CITY, a California municipal corporation, ("City") and SOUTH WEST TOWING INC., a California corporation ("Contractor"), as follows:

## **RECITALS**

- A. On or about January 15, 2014, City and Contractor entered into a Vehicle Tow Service Franchise Agreement ("Agreement") after soliciting proposals through a competitive selection process.
- B. Section 2 of the Agreement provided for a three (3) year initial term, with the City having the unilateral option to extend the term twice for three (3) years each time.
- C. On or about November 22, 2016, the City notified Contractor that it intended to exercise the first of the two options, extending the term of the Agreement to January 15, 2020.
- D. Pursuant to Section 5 of the Agreement, Contractor notified City that it desired to enter into good faith negotiations to adjust its fees, rates, and service charges upon City's exercise of the first option.
- E. The City desires to amend the Agreement to increase the franchise fees to allow for full cost recovery of actual and reasonable costs associated with the administration of the towing program consistent with Vehicle Code section 12110.
- F. The Agreement requires the City Council to approve any adjustments to the fees, rates, and service charges to be charged by Contractor.
- G. The City and Contractor entered into good faith negotiations regarding the terms and conditions of the Agreement, and this First Amendment reflects the mutual agreement of the parties.
- H. On February \_\_\_, 2017, the City Council approved this First Amendment and authorized the City Manager to execute the First Amendment.

#### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this First Amendment which modifies and amends the Agreement as follows:

#### 1. FEES PAYABLE TO CITY.

- (a) Section 3(B) is amended to read as follows:
  - "B. The total amount of franchise fees that CONTRACTOR shall pay to CITY in advance during the initial term of this AGREEMENT is the amount of \$32,193.17 for the first year of this AGREEMENT which amount shall increase by 3% in Year 2 to \$33,158.96 and 3% in Year 3 to \$34,153.73. In Year 4 the franchise fee shall increase by \$12,000.00 to \$46,153.73, in Year 5 the franchise fee shall increase by an additional \$4,000.00 to \$50,153.73, and in Year 6 the

franchise fee shall increase an additional \$4,000.00 to \$54,153.73. In addition, for vehicles impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6, CONTRACTOR shall pay to CITY on a monthly basis the following amounts:

- Vehicles released to the owner at or after 30 days: \$345
- Vehicles released to the owner before 30 days: \$11.50 per day
- Vehicles sold by CONTRACTOR:
  - o Sale price is \$985 or more: \$345
  - o Sale price is between \$600 and \$984.99: 25% of sale price goes to CITY
  - o Sale price is less than \$600: \$0

For the purposes of this section, the sale price of the vehicle shall be the amount for which the CONTRACTOR sold the vehicle less the CONTRACTOR's towing and lien fees.

Attached hereto as Exhibit "A" and incorporated herein by this reference is a summary of an estimate of the of the actual and reasonable costs incurred by CITY in connection with the towing program and the parties hereto agree that said costs are reasonable estimates, and that the franchise fee and vehicle impound fees contained herein do not exceed these reasonable costs."

- (b) Section 3(D) is amended to delete the last sentence.
- (c) Exhibit "A" to the Agreement is replaced with Exhibit "A" to this First Amendment.

#### 2. RATES CHARGED BY CONTRACTOR.

- (a) Section 4(A)(2) of the Agreement is amended to read as follows:
  - "(2) Even when tow and storage services are specifically requested by CITY, CONTRACTOR acknowledges that it shall charge vehicle owners only for its tow and storage services incurred pursuant to the terms and provisions of this AGREEMENT. It is specifically acknowledged by CONTRACTOR that the vehicle owner shall be solely responsible for such charges. Except as provided for in Section 6(E)(1)(A)(2), CONTRACTOR shall not hold CITY liable for any tow or storage services incurred pursuant to and during the term of this AGREEMENT even when such services are requested by CITY."
- (b) Section 6(E)(1) of the Agreement is amended to read as follows:
  - "(1) Scope of Responsibility:

It shall be CONTRACTOR's responsibility to perform the following tasks for CITY. The performance of said tasks shall be at no cost to CITY unless expressly stated otherwise:

- a. Tow and store vehicles as requested by CITY including, but not limited to, the following:
  - 1. Vehicles taken into custody by the POLICE DEPARTMENT.
  - 2. Any and all vehicles requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT, including CITY owned vehicles, up to two hundred (200) miles round-trip beginning at the departure location of the tow truck.
    - i. If a Special Duty or Heavy Duty Tow Truck is required to tow a CITY owned vehicle, CONTRACTOR may charge CITY \$250 per hour, with a one hour minimum, for the towing service.
    - ii. Any towing of a CITY owned vehicle beyond two hundred (200) miles will be towed at the rate of \$5.00 per mile.
  - 3. Vehicles abandoned in public places or on public property or private property within the jurisdiction of CITY so long as requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT pursuant to their enforcement powers of the law.
  - 4. Vehicles seized and impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6.
  - 5. Vehicles requested to be towed and/or stored pursuant to CITY's Vehicle Abatement Program as more fully described below.
- b. Remove all debris resulting from vehicle accidents, including sweeping;
- c. Perform all necessary work preliminary to towing vehicles such as removing vehicles from ditches, righting vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required to enable the towing of certain vehicles; and
- d. Perform all requested and necessary towing, battery jump start, and tire change services on City-owned vehicles at the City's request."
- (c) Exhibit "B" to the Agreement is replaced with Exhibit "B" to this First Amendment.
- (d) Section 6(F)(1)(k) is amended to delete the final sentence.

#### 3. GENERAL PROVISIONS.

- (a) **Remainder Unchanged**. Except as specifically modified and amended in this First Amendment, the Agreement remains in full force and effect and binding upon the parties.
- (b) Integration. This First Amendment constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this First Amendment.
- (c) Authority. The persons executing this First Amendment on behalf of the parties hereto warrant that they are duly authorized to execute this First Amendment on behalf of said parties.
- (d) **Applicable Law**. The laws of the State of California shall govern the interpretation and enforcement of this First Amendment.
- (e) **References**. All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this First Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

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## **SOUTH WEST TOWING INC.:**

	Myh.	
Charles P. McClendon, City Manager	Myles P. Bois, President	
ATTEST:		
Gary Howell, City Clerk		
APPROVED AS TO FORM:		
Eric S. Vail, City Attorney		

NOTE:

CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS TYPE

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

## ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFO		)			
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person instru same his/he entity			proved to me on the basis of satisfactory evidence to be the son(s) whose name(s) is/are subscribed to the withing rument and acknowledged to me that he/she/they executed the e in his/her/their authorized capacity(ies), and that by ther/their signature(s) on the instrument the person(s), or the ty upon behalf of which the person(s) acted, executed the rument.		
			er PENALTY OF PERJURY under the laws of the ifornia that the foregoing paragraph is true and		
		WITNESS m	y hand and official seal.		
		Signature of Notary Public			
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Though this section is opti	onal, completing this i	nformation can dete	r alternation of the document or fraudulent reattachment of this		
CAPACIT(IES) CI	AIMED BY SIGNER	R(S)	DESCRIPTION OF ATTACHED DOCUMENT		
Signer's Name:					
" Individual " Corporate Officer					
	Title(s)		Title or Type of Document		
" Partner(s)	" Limited " General				
<ul><li>Attorney-In-Fact</li><li>Trustee(s)</li><li>Guardian/Conservator</li><li>Other:</li></ul>			Number Of Pages		
Signer is representing: Name Of Person(s) Or Entity(ies)			Date Of Document		
			Signer(s) Other Than Named Above		

# EXHIBIT "A"

# SUMMARY OF ANNUAL PROGRAM COSTS

A) Facilities and Infrastructure	
(1) Building - 2.5% of Operating costs of \$389,368	\$9,734
(2) Information Systems Expense – 4% of City's total information Systems Expenditures (\$733,047)	\$29,322
Total Incurred Facilities and Infrastructure costs	\$39,056
B) Professional Services	
(1) Legal Expenses for contract, consulting and litigation 15 hours - @\$245.00 per hour =\$3,675/3	\$1,225
C) Personnel Costs – Administrative (Fully Benefitted per hour cost) Based on 900 Vehicles Towed in Fiscal Year	
(1) Police Officer - 675 hours @ \$110 (2) Dispatcher - 450 hours @ \$78 (3) Records Clerk - 450 hours @ \$73 (4) Sergeants - 75 hours @ \$146 (5) Chief of Police 10 hours @ \$250.00 (6) Deputy Chief of Police* 20 hours @ \$206 per hour (7) Commander - 40 hours @ \$170 per hour (8) Administrative Office Coordinator 20 hours @ \$94 (9) Management Analyst - 48 hours @ \$115  Total Incurred Administrative Personnel Costs	\$74,250 \$35,100 \$32,850 \$10,950 \$2,500 \$4,120 \$6,800 \$1,880 \$5,520 \$165,470
D) Materials and Supplies	
(1) Total Incurred forms, supplies and postage costs	\$1,000
Summary of Incurred Costs	
<ol> <li>Facilities and Infrastructure</li> <li>Professional Services</li> <li>Personnel Costs Administrative</li> <li>Materials and Supplies</li> </ol>	\$39,056 \$1,225 \$165,470 \$1,000
Grand Total Incurred Costs	\$206,751

#### E) Revenue Received

Annual Revenue Received for Storage and Impound Releases and Lien Sales from Tow Contracts

Incurred Costs of \$206,751 – Revenue Received \$73,500 = \$133,251

Franchise Fee for two operators \$133,251/2 \$66,625.50

## F) 30 Day Impound Vehicles - Additional Incurred Costs

- 1) Additional Tow Hearing Expense 100 hearings at one hour per Hearing for Sergeant's salary and benefits \$146 (fully benefitted Per hour) \$14,600
- 2) Mobile Data Computer System Expense \$60,850 per year at 33% Vehicle storage and impound related emphasis \$20,080
- 3) Incurred cost per 30 day impound per year at 100 impounded vehicles \$34,680 (\$14,600 + \$20,080) divided by 100 impounded vehicles results in a cost of \$345 per vehicle impounded for 30 days.

Note: Line items that are struckthrough above are estimated actual and reasonable costs incurred by CITY that CITY has determined not to pass through to CONTRACTOR.

#### **EXHIBIT "B"**

#### **Chart of Tow Fee Schedules**

The following rate structure shall apply for all towing and storage services requested by the Police Department and Code Compliance Division, except those services requested by City employees for City-owned vehicles which shall be subject only to the charges in Section 6(E)(1)(A)(2) of the Agreement. The hourly rates below are calculated on a "door to door" basis, and charges commence when the tow truck is dispatched to the scene and conclude when the tow truck returns to the storage yard.

A. Basic Hourly Tow Rate:

Class A Tow Truck

2017 - \$195

2018 - \$205 2019 - \$215

One hour minimum

1) The base hourly rate per tow shall apply to all towed passenger vehicles and trucks rated at less than ten thousand (10,000) pounds gross vehicle weight. This rate also applies to difficult removal work involving the remove of vehicles from deep ditches or flood control channels or separating two entangled vehicles.

B. Special Duty Hourly Tow Rate:

\$250

One hour minimum

1) The special duty hourly rate shall apply when a four wheel drive tow truck is necessary for off-road recovery of vehicles. The hourly rate

C. Heavy Duty Hourly Tow Rate:

1) Two Axel Category:

Class B Tow Truck

\$300

One hour minimum

- a. The two (2) axel hourly rate shall apply to all towed vehicles with a rate capacity of ten thousand (10,000) pounds gross vehicle weight to, but not including, vehicles with thirty (30,000) pounds gross vehicle weight.
- 2) Three (3) Axel Category: Class C and D Tow Trucks

\$400

One hour minimum

- a. The three (3) axel hourly rate shall apply to all towed vehicles with a rate capacity of thirty (30,000) pounds gross vehicle weight or more.
- 3) The hourly rate for all heavy duty towing (two and three axels) includes difficult removal of vehicles, up righting overturned vehicles, and the use of special equipment and preparation prior to towing.

## D. Charges for Related Services:

## 1) Lock Out, Tire Change, Jump Start:

\$90

a. The standard charge for opening locked vehicles, tire change and jump start is ninety dollars (\$90) when no towing is involved. If towing is involved, there shall be no additional charge for these services.

#### 2) Dolly:

a. There is no additional charge for the use of dolly in the towing service.

## 3) After Hours Release Fee:

a. There shall be an after-hours gate fee of ninety dollars (\$90) for anyone desiring release of a vehicle at any time other than normal business hours.

## E. Storage Fees: (Per Day)

1)	Motor cycles, passenger cars and trucks 20' or less	Outside Storage:	2017 2018 2019	\$62 per day \$67 per day \$72 per day
		Inside Storage:		\$100 per day
2)	Trailers 15' or less	Outside Storage:		\$50 per day
3)	Trucks, trailers and other vehicles 20' to 30'	Outside Storage		\$80 per day
4)	Trucks, trailers and other vehicles 30' or more	Outside Storage		\$90 per day

- 5) Storage fees are charged per calendar day, not on a rolling 24 hour basis. The first daily fee per vehicle is incurred four hours after drop off at the storage facility. Thereafter, a full day's storage fee will be charged for each calendar day, or part thereof, that the vehicle is stored at Contractor's facility.
- 6) In addition to the daily storage fees above, Contractor may charge a fee of \$345 for all vehicles impounded pursuant to Vehicle Code Sections 14602.6 and 14607.6. Such fees shall be passed through to the City in satisfaction of Contractor's obligations under Section 3(B) of this Agreement.

#### F. Lien Fee:

Contractor shall charge lien fees in compliance with Civil Code Section 3074, which are presently \$70 for vehicles with a value of \$4,000 or less or \$100 for vehicles valued at

over \$4,000. No lien fee shall be charged if the vehicle is redeemed within seventy-two hours of initial storage.

#### G. Additional Conditions:

- 1) The above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered. Such towing charges shall include the clearing and clean-up of an accident site as may be required by the Police Department;
- 2) There shall be no additional charge for righting an overturned passenger car or a light pick-up truck if towing is involved;
- 3) There shall be no additional charge for disconnecting a drive shaft where required for towing;
- 4) There shall be no charge to City for the storage of a vehicle that has been seized as evidence in a pending investigation.
- 5) From time to time, the City may request Contractor waive its fees in the event that a vehicle is erroneously stored. When so requested by a sworn supervisor (sergeant or above) of the City's police department, Contractor shall waive all fees and report the waiver to a Commander in the City's Police Department as soon as is feasible thereafter.



# Cathedral City

## **Agenda Report**

File #: 2017-81 Item No: 4.C.

City Council

**MEETING DATE: 2/8/2017** 

#### TITLE:

Amend Cathedral City Municipal Code Chapters 9.108, 9.26, 9.28, 9.30, 9.36, 9.38, 9.40 and 9.42 Related to Medical Cannabis (ZOA 16-003).

#### FROM:

Pat Milos, Community Development Director

#### RECOMMENDATION:

Approve second reading, by title only, Zone Amendment No 16-003, an Ordinance of the City Council of Cathedral City, California, Amending Chapters 9.108, 9.26, 9.28, 9.30, 9.36, 9.38, 9.40 and 9.42 of the Cathedral City Municipal Code Relating to Medical Cannabis.

#### **BACKGROUND:**

At its meeting on August 24, 2016, the City Council held a work study session on further amendments to the City's ordinances regulating Medical Cannabis Businesses, including the Zoning Ordinance. Specifically, the Council considered whether to allow medical cannabis testing laboratories and medical cannabis transportation and distribution sites. The direction from the City Council was to allow testing laboratories by right (i.e. without a Conditional Use Permit) in those zones where similar laboratories are permitted. The direction from the City Council as to transportation and distribution sites was to allow those uses with a Conditional Use Permit from the Planning Commission in similar zones to where cultivation and manufacturing are currently conditionally permitted. In addition, the City Council had given direction to amend the CBP-2 zone to include Manufacturing Sites as conditionally permitted in that zone.

The City's special legal counsel with respect to medical cannabis issues, Vicente Sederberg, prepared the proposed ordinance implementing the direction received from the City Council.

On December 7, 2016, the Planning Commission held a public hearing on the draft ordinance, but had questions that staff was unable to answer. The Commission continued the hearing to January 18, 2017, and staff arranged to have Mr. Jordan Wellington from Vicente Sederberg attend the continued hearing to answer the Commission's questions.

File #: 2017-81 Item No: 4.C.

At the January 18th meeting, the Planning Commission recommended approval of the amendments and made some suggestions regarding the cannabis ordinances in general, which are not a part of the ordinance under consideration tonight, but are attached for Council and will also be provided to the Cannabis Task Force for their review.

The ordinance was introduced and received first reading on February 8, 2017.

## **DISCUSSION:**

The proposed ordinance amends the Zoning Code to allow "testing laboratories" by right in the PPO (Planned Professional Office), PLC (Planned Limited Commercial), and NBP (Neighborhood Business Park) Districts. These zones allow medical and dental laboratories and/or clinics by right. A testing laboratory is defined in the Ordinance by reference to the definition in the State Law, which defines a testing laboratory as "the premises where tests are performed on medical cannabis or medical cannabis products and it holds a valid certificate of accreditation." The certificate of accreditation must come from a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

The proposed ordinance also amends the Zoning Ordinance to allow "distribution sites" and "transportation sites" with a conditional use permit in the I-1 (Light Industrial), CBP-2 (Commercial Business Park), and PCC (Planned Community Commercial) Districts. Distribution and Transportation Sites will be subject to the same setback requirements from residential, East Palm Canyon Drive, and youth centers, day cares and schools as apply to cultivation and manufacturing sites.

A "distribution site" is a facility where medical cannabis is stored or inspected by a "distributor" (a person licensed to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary) for the purposes of "distribution" (the procurement, sale, and transport of medical cannabis and medical cannabis products between licensed entities). In essence, a distribution site is a warehouse where items purchased at wholesale by the distributor are held prior to delivery to the dispensary that will sell the items at retail.

A "transportation site" is a facility where a "transporter" conducts business while not engaged in transport, or a facility where equipment used in transport is stored when not in use. A "transporter" is defined in the State law as a person who holds a license to transport medical cannabis or medical cannabis products about a certain amount (TBD) between licensees. Thus, a transportation site is a place where vehicles and other equipment are kept when not in use transporting medical cannabis. Neither the State nor the City Council have set an amount of medical cannabis that may be transported by a person or other licensed medical cannabis business without being considered a

File #: 2017-81 Item No: 4.C.

"transporter." Those amounts will be set through revisions to the licensing regulations.

In addition, the proposed ordinance adds manufacturing sites to the list of conditionally permitted uses in the CBP-2 zone and makes other clean up revisions to the Zoning Code. In particular, the ordinance changes all references to the Medical Marijuana Regulation and Safety Act, or MMRSA, to the Medical Cannabis Regulation and Safety Act, or MCRSA, consistent with revisions to State law that occurred after the adoption of the City's medical cannabis ordinances. Also, many of the citations to the MCRSA in the definitions needed to be revised to reflect renumbering that occurred after the City adopted its ordinances.

At the February 8, 2017 City Council Meeting a Public Hearing was held. The first reading of the Ordinance was approved as well as the associated exemption to the California Environmental Quality Act (CEQA) pursuant to section 15601 (b)(3) of the CEQA Guidelines.

#### **FISCAL IMPACT:**

There are no direct fiscal impacts related to this action

#### **ATTACHMENTS:**

- 1. Planning Commission Resolution
- 2. Exhibit "A": Proposed Ordinance
- 3. Memo on Testing, Distribution and Transportation
- 4. Public Hearing Notice
- 5. Planning Commission Recommendations for Cannabis Ordinance Amendment

#### PLANNING COMMISSION RESOLUTION NO. P17-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CATHEDRAL CITY, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE AMENDING CHAPTERS 9.108, 9.26, 9.28 9.30, 9.36, 9.38, 9.40, 9.42 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS.

**WHEREAS**, Title 9 (Planning and Development) of the City of Cathedral City's Municipal Code ("Zoning Code") provides for the organized, predictable, and efficient development of land within the City; and

**WHEREAS**, the Zoning Code establishes land use districts throughout the City and regulates the development of land in each district; and

**WHEREAS**, the Zoning Code establishes requirements for medical cannabis businesses within the City; and

**WHEREAS**, the City proposes to amend the Zoning Code to including testing laboratories, transportation sites, and distribution sites as permissible types of medical cannabis businesses, subject to regulations, and has initiated this Zoning Ordinance Amendment for that purpose; and

**WHEREAS**, this Zoning Ordinance Amendment further proposes to amend the Zoning Code to allow manufacturing sites in the CBP-2 zone and to make clean up revisions to the Zoning Code to reflect amendments to the State laws governing medical cannabis; and

WHEREAS, the City, acting as Lead Agency, has determined that this Zoning Ordinance Amendment will not have a significant impact on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations as this amendment is considered "Not a Project"; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on December 7, 2016 and January 18, 2017, at which time the public was invited to present testimony regarding this Zoning Ordinance Amendment.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CATHEDRAL CITY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Pursuant to the provisions of the California Environmental Quality Act (CEQA), the Planning Commission makes the following environmental determinations and recommendations:

(a) Pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations, the approval of this Zoning Ordinance Amendment is exempt from further review under CEQA as this amendment is considered

"Not a Project". Any land development project affected by this action will undergo its own environmental review.

# Section 2. The Planning Commission bases its recommendation for the City Council to adopt the proposed ordinance on the following findings:

- (a) This Zoning Ordinance Amendment is consistent with the intent of the Zoning Ordinance. The Zoning Ordinance is "intended to protect the public health, safety and general welfare of the residents and to provide economic and social benefits from an orderly planned use of land resources." This Zoning Ordinance Amendment is consistent with this intent in that it ensures that medical cannabis businesses are appropriately regulated and located within the City.
- (b) This Zoning Ordinance Amendment is consistent with the established goals, policies and objectives of the General Plan. The General Plan aims to achieve "a land use plan and pattern that preserves and enhances the integrity of neighborhoods, districts and corridors, while optimizing the community's natural assets, regional transportation systems, and opportunities for housing, employment and economic base-building." This Zoning Ordinance Amendment will further that purpose by allowing medical cannabis businesses in appropriate locations and subject to regulations.

## **Section 3**. The Planning Commission hereby recommends as follows:

(a) That the City Council adopt the ordinance attached hereto as Exhibit A, subject to revision by the City Attorney.

<u>Section 4.</u> The Secretary shall certify as to the adoption of this resolution and shall cause the same to be processed in the manner required by law.

THE FOREGOING RESOLUTION WAS APPROVED AND ADOPTED on this 18th day of January, 2017, by the following vote:

AYES: NOES: ABSTAIN: ABSENT:	
	John Rivera, Chair
ATTEST AND APPROVED AS TO CONTENT:	
Robert Rodriguez, Planning Manager	

Secretary to the Planning Commission

PREPARED BY:
Robert Rodriguez Planning Manager
APPROVED AS TO LEGAL FORM:
Erica L. Vega Assistant City Attorney

#### **EXHIBIT A**

#### ATTACHMENT 1, EXHIBIT A

#### ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, AMENDING CHAPTERS 9.108, 9.26, 9.28 9.30, 9.36, 9.38, 9.40, 9.42 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"), decriminalizing the use of cannabis for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 *et. seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate medical cannabis without being subject to criminal prosecution; and

**WHEREAS**, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

**WHEREAS**, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 ("Medical Cannabis Regulation and Safety Act" or "MCRSA") to clarify legal requirements pertaining to medical cannabis; and

WHEREAS, the MCRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to medical cannabis cultivation, dispensing, manufacturing or distribution pursuant to zoning powers that the city or counties governing body allows which including either expanding and allowing such activity within its city zoning area or can restrict, ban or prohibit within its zoning area; and

**WHEREAS**, Cathedral City supports the right of patients with debilitating medical conditions to have safe access to medical cannabis; and

**WHEREAS**, it is necessary for Cathedral City to adopt regulations for the purpose of facilitating safe access of medical cannabis to patients; and

**WHEREAS**, Cathedral City has adopted regulations governing the licensing and land use regulation of medical cannabis dispensaries, cultivators and manufacturers as permitted by state law;

**WHEREAS**, Cathedral City desires to license, permit, and adopt land use regulations governing the distribution, testing and transportation of medical cannabis as permitted by state law;

**WHEREAS**, Cathedral City has a legitimate interest in maintaining an appropriate balance of land uses within its borders, and Cathedral City desires to ensure that there is an appropriate balance of medical cannabis businesses and other uses; and

WHEREAS, it is the purpose and intent of this Chapter to regulate medical cannabis in a manner that is consistent with State law and which promotes the health, safety, and general welfare of citizens of Cathedral City and limits impacts associated with medical cannabis cultivation; and

**WHEREAS**, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California state law.

NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Section 9.08.020 of the Cathedral City Municipal Code ("Definitions") is hereby amended as follows:

#### The definition of "cultivation site" is amended to read as follows:

"Cultivation site" has the same meaning as that term is defined by Section 19300.5(l) of the California Business and Professions Code.

#### The definition of "manufacturing site" is amended to read as follows:

"Manufacturing site" has the same meaning as that term is defined by Section 19300.5(ae) of the California Business and Professions Code.

#### The definition of "medical cannabis business" is amended to read as follows:

"Medical cannabis business" has the same meaning as that term is defined by Section 9.108.030 of this title.

#### The following definitions are inserted into the section in alphabetical order:

"Distribution" has the same meaning as that term is defined by Section 19300.5(p) of the California Business and Professions Code.

"Distributor" has the same meaning as that term is defined by Section 19300.5(q) of the California Business and Professions Code

"Distribution site" means a facility where medical cannabis is stored or inspected by a Distributor for the purposes of Distribution.

"Testing Laboratory" has the same meaning as that term is defined by Section 19300.5(ak) of the California Business and Professions Code.

"Transporter" has the same meaning as that term is defined by Section 19300.5(an) of the California Business and Professions Code.

"Transportation site" means a physical location where a Transporter conducts business while not in transport or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

Section 3. Section 9.108.090(D) ("Conditional use permit requirements for medical cannabis businesses-Permitted zones-Distance and other conditions of approval") of the Cathedral City Municipal Code is hereby amended to read as follows:

#### D. Testing Laboratory

- 1. All testing laboratories, all operations conducted therein, and all equipment used must be in compliance with all applicable state, county and local laws, including all building, electrical and fire codes.
- 2. A testing laboratory shall adopt procedures to ensure that, as approved and conditioned, the facility will not result in detrimental impacts on the environment.
- 3. All windows on the licensed premises of the testing laboratory shall be appropriately secured and medical cannabis securely stored.

Section 4. Section 9.108.090(E) ("Conditional use permit requirements for medical cannabis businesses-Permitted zones-Distance and other conditions of approval") of the Cathedral City Municipal Code is hereby amended to read as follows:

#### E. Distribution and Transportation Site.

- 1. Distribution and Transportation Sites shall store all medical cannabis and medical cannabis products in a locked safe room, safe, or vault and in a manner to prevent diversion, theft, and loss.
- 2. All windows on the licensed premises of the distribution and transportation site shall be appropriately secured and medical cannabis securely stored.
- 3. No distribution or transportation site shall be located within six hundred feet of a school, day-care center, or youth center, or within two hundred fifty feet of East Palm Canyon Drive, or within three hundred feet of a residential zone, except that the restrictions in this subsection (E)(3) shall not apply to any location where the city previously issued a conditional use permit authorizing distribution or transportation under this chapter and Chapter 9.72 of this code and such distribution or transportation has existed in continuous operations at the subject location since the time of original permitting.

Section 5. Section 9.26.020 of the Cathedral City Municipal Code ("PPO PLANNED PROFESSIONAL OFFICE DISTRICT, Permitted Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

#### Testing laboratory

Section 6. Section 9.28.020 the Cathedral City Municipal Code ("PLC PLANNED LIMITED COMMERCIAL DISTRICT, Permitted Uses") is hereby amended to

add the following uses to be inserted in alphabetical order:

<u>Testing laboratory</u>

Section 7. Section 9.30.030 the Cathedral City Municipal Code ("PCC PLANNED COMMUNITY COMMERCIAL DISTRICT, Conditional Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

Distribution site

**Transportation site** 

Section 8. Section 9.36.040 the Cathedral City Municipal Code ("CBP-2 COMMERCIAL BUSINESS PARK DISTRICT, Conditional Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

**Distribution site** 

Manufacturing site

**Transportation site** 

Section 9. Section 9.38.030 the Cathedral City Municipal Code ("NBP NEIGHBORHOOD BUSINESS PARK (TRANSITION) DISTRICT, Permitted Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

Testing laboratory

Section 10. Section 9.40.040 the Cathedral City Municipal Code ("I-1 LIGHT INDUSTRIAL DISTRICT, Conditional Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

Distribution Site

**Transportation Site** 

Section 11. Section 9.42.030 of the Cathedral City Municipal Code ("OS Open Space District, Conditional Uses") is hereby amended to add the following uses to be inserted in alphabetical order:

**Distribution Site** 

**Transportation Site** 

# Section 12. Section 9.108.030 of the Cathedral City Municipal Code ("Definitions") is hereby amended as follows:

#### Subsection (D) is amended to read as follows:

D. "Commercial cannabis activity" has the same meaning as that term is defined by Section 19300.5(j) of the California Business and Professions Code, including the exclusion in Section 19319 of the California Business and Professions Code related to qualified patients and primary caregivers, and extending that exclusion to ID card holders.

#### Subsection (F) is amended to read as follows:

F. "Cultivation site" has the same meaning as that term is defined by Section 19300.5(l) of the California Business and Professions Code.

# Subsection (I)(4) is amended to replace the last sentence of that section with the following:

"In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the planning commission shall consider the factors as set forth in Section 19323(b)(4) of the California Business and Professions Code;"

#### Subsection (R) is amended to read as follows:

R. "Manufactured cannabis" has the same meaning as that term is defined by Section 19300.5(ac) of the California Business and Professions Code.

#### **Subsection (S) is amended to read as follows:**

S. "Manufacturing site" has the same meaning as that term is defined by Section 19300.5(ae) of the California Business and Professions Code.

#### **Subsection (T) is amended to read as follows:**

T. "Medical cannabis" has the same meaning as that term is defined by Section 19300.5(af) of the California Business and Professions Code.

#### Subsection (W) is hereby amended to read as follows:

W. "Medical Cannabis Regulation and Safety Act" or "MCRSA" means Chapter 3.5 of Division 8 of the California Business and Professions Code, Section 147.5 of the California Labor Code, Section 31020 of the California Revenue and Taxation Code, Section 12029 of the California Fish and Game Code, Sections 11362.769 and 11362.777 of the California Health and Safety Code, and Section 13276 of the California Water Code.

#### Subsection (Z) is amended to read as follows:

Z. "Person" has the same meaning as that term is defined by Section 19300.5(ah) of the California Business and Professions Code.

#### Subsection (GG) is amended to read as follows:

GG. "State license" has the same meaning as that term is defined by Section 19300.5(aj)

of the California Business and Professions Code.

Section 13. Title 9 of the Cathedral City Municipal Code is hereby amended to replace all references to the "Medical Marijuana Regulation and Safety Act" with the "Medical Cannabis Regulation and Safety Act" and all references to "MMRSA" with "MCRSA."

#### Section 14. ENVIRONMENTAL FINDINGS

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), as this amendment is considered "Not a Project".

#### Section 15. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

#### Section 16. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after certification.

#### Section 17. REPEAL OF CONFLICTING PROVISIONS

Except as otherwise provided herein, all the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the Effective Date.

#### Section 18. POSTING

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.



BRIAN VICENTE, ESQ. (CO)
CHRISTIAN SEDERBERG, ESQ. (CO)
JOSHUA KAPPEL, ESQ. (CO)
ADAM FINE, ESQ. (MA, NJ, PA)
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SPECIAL COUNSEL
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PHILIP A. CHERNER, ESQ. (CO)

# Testing, Distribution, and Transportation - Summary and Issues for Consideration

#### MCRSA and AUMA

A summary table of testing laboratory, distributor and transporter licensee privileges and restrictions under the Medical Cannabis Regulation and Safety Act (MCRSA) and Adult Use of Marijuana Act (AUMA) is provided on the final page of this memo.

MCRSA establishes 18 different "types" of licenses in six different "categories" (cultivation, manufacturing, testing, dispensary, distribution and transporter). Testing laboratories are entities registered with the Department of Health and accredited by an independent testing body to sample and test medical cannabis and medical cannabis products for potency and contaminants in accordance with forthcoming state testing requirements. Though nothing prohibits other licensees from performing in-house testing for quality assurance purposes, medical cannabis and medical cannabis products may not be released for distribution to a dispensary until a licensed, independent testing laboratory issues a certificate of accreditation demonstrating that the product has passed all mandatory testing.

Licensed transporters will have the exclusive ability to transport medical cannabis and medical cannabis products between licensees, but will not be authorized to conduct deliveries (i.e., commercial transfer from a licensed dispensary to a qualified patient, primary caregiver or testing laboratory).<sup>2,3</sup>

Licensed distributors will obtain finished medical cannabis and medical cannabis products from licensed cultivators and manufacturers, conduct mandatory quality assurance inspection and review, ensure sampling and testing by a licensed testing laboratory and ultimately distribute the

<sup>3</sup> Cal. Bus. & Prof. § 19300.5(m).

<sup>&</sup>lt;sup>1</sup> California Business and Professions Code (Cal. Bus. & Prof.) § 19342.

<sup>&</sup>lt;sup>2</sup> Cal. Bus. & Prof. § 19326.

product to dispensaries.<sup>4</sup> A licensed distributor must also hold a transporter license to carry out these activities, but a distributor may store product at individually licensed locations during distribution whereas an entity holding only a transporter license is not explicitly authorized to store product at present.<sup>5</sup> As such, a licensed transporter in California must only obtain an individual license for each place of business used other than for transport and for each location in which equipment (e.g., transport vehicles, shipping containers) is stored when not in use during transport.<sup>6</sup>

Licensed distributors may purchase products from licensed cultivators and manufacturers and resell them to dispensaries or may simply execute contracts between licensees and collect a fee for doing so.<sup>7</sup> Licensed cultivators and manufacturers (including those holding a producing dispensary license) are required to use a licensed distributor for quality assurance, testing and distribution of products, except when medical cannabis produced by a cultivator will be used in manufacturing or otherwise sold to a manufacturer.

Except as expressly authorized in MCRSA pursuant to enumerated exceptions, a person or entity that holds a state license in one category is prohibited from holding an ownership interest or license in another category. The enumerated exceptions include the aforementioned requirement that distributors (Type 11) must also hold a transporter (Type 12) license and the allowance for cultivators and manufacturers to hold a transporter license provided the cannabis is going from cultivator to manufacturer for further manufacturing. Otherwise, testing laboratories, distributors and transporters are prohibited from having an ownership interest in other license types for distributors, transporters and testing laboratories as these license types are contemplated as serving a quality control and support use role.

AUMA largely replicates the license categories and types set forth in MCRSA, but excludes a transporter license. This is significant given that MCRSA mandates the use of a licensed transporter for inter-licensee product movement. However, the Department of Consumer Affairs has the authority to create licenses for the transportation of marijuana, so a transporter license could potentially be added in rulemaking.<sup>8</sup> Under AUMA, only distributors are explicitly authorized to transport marijuana and marijuana products, but the use of a licensed distributor is optional, so the authority to transport under AUMA will likely be clarified in rulemaking.

There is a distributor license type under both programs but the distribution model differs. With few exceptions, MCRSA requires cultivators and manufacturers to send all products to distributors/transporters prior to distribution to a retailer. In contrast, AUMA gives cultivators and manufacturers the *option* of using a licensed distributor's services if so desired. Quality assurance, inspection and testing will be required prior to distribution in the same manner as required by MCRSA, but these activities may or may not be conducted by an independent licensed distributor.<sup>9</sup>

As stated above, under MCRSA, distributors, transporters, and testing labs are viewed as serving quality control and compliance needs and are generally not permitted to have ownership in other

<sup>&</sup>lt;sup>4</sup> Cal. Bus. & Prof. § 19326.

<sup>&</sup>lt;sup>5</sup> See Cal. Bus. & Prof. § 19334(a)(2) & § 19320(c).

<sup>&</sup>lt;sup>6</sup> Cal. Bus. & Prof. § 19320(c).

<sup>7</sup> Ibid.

<sup>&</sup>lt;sup>8</sup> AUMA, Division 10, Chapter 2, § 26012(a).

<sup>&</sup>lt;sup>9</sup> AUMA, Division 10, Chapter 11, § 26110.

categories. However, AUMA places fewer restrictions on the ability to hold a distributor license in addition to other license types. Apart from entities holding the large cultivation licenses (Type 5, 5A and 5B), there is nothing in the initiative language that prohibits a licensed cultivator, manufacturer or retailer from holding a distributor license as well. It remains to be seen whether this will be addressed in regulation or in clean-up legislation.

AUMA and MCRSA both prohibit a state testing laboratory licensee from becoming licensed for other commercial cannabis activities, which is the predominant policy position in legal cannabis states, and neither AUMA nor MCRSA prohibits an entity from obtaining multiple testing laboratory licenses. However, there is uncertainty surrounding which agency will ultimately have the authority to regulate testing laboratories; the California Department of Consumer Affairs (DCA) is responsible under MCRSA but AUMA grants this authority to the California Department of Public Health (DPH). This inconsistency may be addressed legislatively as well. AUMA as written does not address in-house testing by licensed cultivators and manufacturers, but this may be addressed in rulemaking.

#### Policy Considerations from Other States-Colorado

Colorado's experience in the regulation of distribution, transportation and testing of marijuana are informative in assessing what regulations have been effective and issues that will likely arise. We have summarized some relevant findings concerning state and local regulation of these license types in Colorado to help guide Cathedral City's local policy decisions in the meantime. Note that California's medical and adult-use cannabis statutes contain broad directives concerning state regulation of laboratory testing, distribution and transportation, so the specific requirements for these license types will remain uncertain until a later phase in the state rulemaking process.

Colorado issues state licenses for testing laboratories and transporters, but there is no distinct distributor license type. Instead, infused product manufacturers may effectively act as distributors by purchasing and selling cannabis and cannabis products at wholesale. Licensed cultivators and manufacturers are responsible for making sure their products undergo quality assurance and mandatory testing prior to wholesale or transfer to. Because product quality and safety are matters of statewide (and in most industries, federal) concern, the standards products must meet prior to distribution are comprehensively addressed in state regulation and are rarely exceeded by local government.

Colorado's current transporter scheme differs from MCRSA's in that licensed cultivators and manufacturers may transport their own products without obtaining a transporter license, but may voluntarily use a licensed transporter's services if desired. Prior to the establishment of retail transporter license in mid-2016, cannabis businesses transported their own products or contracted with unlicensed vendors offering courier services. In large part, this new license type was developed so that transporters could temporarily store products at their licensed premises and transportation and distribution could be further regulated; couriers were previously required to return to the originating licensee's facility when a delivery could not be completed in the allotted timeframe and were not authorized to store products overnight. This became incredibly burdensome for businesses, particularly for those on the outer areas of the state. Distributors and transporters in California will have a similar need for temporary storage due to the geographic area of the state. As transporters are not currently authorized to store product under MCRSA, legislation and rulemaking should be monitored for expansion of transporter storage privileges.

Localities that choose to license and regulate medical cannabis distributors (and transporters, if authorized to maintain storage sites) must consider appropriate zoning/land use for such facilities. We anticipate a greater need for such facilities in California as the use of a licensed transporter will be mandatory in most cases (under MCRSA).

Colorado requires testing laboratories to be state-licensed, third-party certified, and independent of other license types, as will be the case in California. Statewide testing regulations address license privileges and restrictions; certification requirements; personnel qualifications; operational standards; tracking, recordkeeping, reporting requirements and testing standards. It is extremely rare for localities to adopt more stringent regulations for testing laboratories for several reasons. First, even state agencies with sufficient resources and experience regulating laboratories struggle to craft appropriate testing regulations because there are so many unknowns in cannabis science and guidance from federal agencies is absent in the cannabis industry. Where generally, in the case of regulating an agricultural product and derivative consumer products, guidance and standards would be provided by the United States Department of Agriculture and Food and Drug Administration, state agencies regulating cannabis do not have the benefit of such guidance and are tasked with implementing their own standards. Furthermore, most cannabis states, including Oregon and Colorado, have experienced delays and deficiencies in testing program roll out because the market is poorly understood and imperfectly regulated. In addition, traditional experienced laboratories are often unwilling to enter the cannabis space, creating opportunity for unsophisticated operators to enter the market who can be difficult to regulate effectively. State regulators have struggled with ensuring consistency between facilities, implementing standards in the absence of federal regulation, and enforcing state laws. State mandated standards and ethics are seen as the best way to ensure accuracy, which may be compromised by requiring standards on the local level. Consequently, state testing regulations are frequently modified so localities that adopt specific testing standards may be burdened by frequent ordinance amendments.

#### Local Regulation of Testing, Distribution and Transportation

Transportation, distribution and testing of cannabis are generally matters of statewide concern. These license types are comprehensively regulated at the state level in most cases, so local governments tend to play a limited regulatory role. Localities in Colorado and other states typically regulate zoning/land use for these license types but otherwise generally find it unnecessary and impractical to exceed statewide requirements.

In California, there will continue to be unknowns surrounding these license types until statewide regulations are established and the inconsistencies between AUMA and MCRSA are resolved. Accordingly, any locality that establishes specific standards or requirements prior to state rulemaking will likely have to revisit those ordinances within a year.

As such, it is appropriate for Cathedral City to establish land use/zoning regulations and suitability requirements for testing laboratories, transporters and distributors, but to defer to forthcoming state regulations on all other particulars. Suitability requirements for these license types may simply be aligned with those in place for other cannabis licensees. Basic regulations aimed at achieving compliance with Cole Memorandum enforcement priorities are appropriate and important for

diversion prevention and for the protection of California cannabis businesses in advance of MCRSA and AUMA implementation.  $^{10}$ 

Cole Memo compliance is key, so it is critical that the City ensure appropriate security, tracking and vetting measures are ultimately in place. We anticipate that statewide regulations will address these areas of concern, but recommend a confirmatory review upon adoption of state regulations and adjustment of local ordinances as needed.

Deputy Attorney General James M. Cole. August 29, 2013. *Guidance regarding marijuana enforcement* [Memorandum]. Washington, D.C.: U.S. Department of Justice. Retrieved from: <a href="https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf">https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf</a>

	Testing Laboratory	Distributor	Transporter
MRCSA	"Testing laboratory" means the premises where tests are performed on medical cannabis or medical cannabis products and that holds a valid certificate of accreditation. <sup>11</sup> Notable Items: A testing laboratory licensee is prohibited from holding any other type of state license. A third-party accreditation body must accredit all testing laboratories. Regulated by the Department of Consumer Affairs.	"Distributor" means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary. 12  Notable Items: 13  Obtains finishes products from cultivators and manufacturers (mandatory, with limited exceptions 14), ensures products are tested and transports to and from testing lab, conducts pre-sale quality assurance, and sells the approved products to licensed dispensaries.  Transports products between the relevant licensed entities, but not to consumers. Must hold a Type 12 transporter license but may not hold any other type of state license.  Must individually license each location where product is stored for the purposes of distribution.	"Transporter" means a person who holds a license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between licensees that have been issued a license pursuant to this chapter. 15  Notable Items: Only licensed transporters may transport medical cannabis or medical cannabis products from one licensee to another licensee. 16 Cultivators and manufacturers (including nurseries and 10A producing dispensaries) may hold transporter license, subject to certain limitations. 17
AUMA	"Testing service" means a laboratory, facility or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state. (2) Registered with the Department of Health.  Notable Items: A testing laboratory licensee is prohibited from holding any other type of state license. <sup>18</sup> "Registered" is used in the definition above, but AUMA also references a testing laboratory license. Regulated by the Department of Public Health.	No "distributor" definition, but "distribution" definition in AUMA is consistent with MCRSA.  Notable Items: Use of licensed distributor is optional. Methods for ensuring products undergo quality assurance a testing prior to distribution is TBD in rulemaking.  Not required to hold transporter license because license type doesn't exist under AUMA.  May not hold a large cultivation license and distributor license, but otherwise distributors not required to be independent of other license types.	N/A

<sup>11</sup> Cal. Bus. & Prof. § 19300.5(ak).

<sup>12</sup> Cal. Bus. & Prof. § 19300.5(q).

<sup>13</sup> Cal. Bus. & Prof. § 19334(a)(2).

<sup>14</sup> Cal. Bus. & Prof. § 19326(b).

<sup>15</sup> 

Cal. Bus. & Prof. § 19300.5(an).

<sup>16</sup> Cal. Bus. & Prof. § 19326(a).

<sup>17</sup> Cal. Bus. & Prof. § 19328(a)(10).

AUMA, Division 10, Chapter 5, § 26053(b).



# City of Cathedral City Public Hearing Notice Notice of Availability for Public Review and Environmental Determination

Notice is hereby given that the Cathedral City City Council will hold a Public Hearing on the following:

CASE(S)

APPLICANT/REPRESENTATIVE

Zone Ordinance Amendment No. 16-003

City of Cathedral City

#### **PROPOSAL**

Amend Cathedral City Municipal Code Chapters 9.108, 9.26, 9.28 9.30, 9.36, 9.38, 9.40, and 9.42 relating to Medical Cannabis Businesses.

The Cathedral City Municipal Code currently allows medical marijuana dispensaries, cultivation sites, and manufacturing sites in certain zones with a conditional use permit. The proposed ordinance would amend the Code to allow distribution and transportation sites and testing laboratories in certain zones and subject to regulations.

#### **ENVIRONMENTAL DETERMINATION**

The Project is exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3).

All information regarding the proposed project is available for public review at the City of Cathedral City Civic Center, Planning Department, 68-700 Avenida Lalo Guerrero during regular business hours (Monday through Thursday, 7:00 AM - 6:00 PM).

#### DATE AND TIME OF CITY COUNCIL HEARING

February 8, 2017 at 6:30 PM

#### PLACE OF HEARING

Cathedral City Civic Center Council Chamber 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

Any person may appear at the hearings and be heard in support of, or opposition to, the proposed project or environmental determination.

The City Council, at the public hearing or during deliberations, may approve, deny, or propose changes to the project or to the environmental determination.

If you challenge any of these items in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Council at, or prior to, the public hearing. Please send all correspondence to the Project Planner.

For further information, contact the Project Planner at:

Robert Rodriguez, Planning Manager 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 (760) 770-0344

NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (760) 770-0340. Notification 48 hours prior to the meeting will enable the City to make reasonable accommodations to ensure accessibility to this meeting. {28 CFR 35.104 ADA TITLE II}

# Planning Commission Recommendations for Cannabis Ordinance Amendment January 18, 2017

#### Definition of Separation:

• Minimum distance requirement should be more clearly defined as the straight line, measured distance between two buildings at the closest points of the building footprint on site. Building footprint should include any area within the building structure whether occupied space or not and as defined and/or delineated by the exposed finish material of the structure. The Planning Commission also recommended that the related certified surveyors map be obtained and verified by the City as opposed to the current practice that places the onus on the applicant.

#### Separation from Youth and Recreation Facilities and Centers:

In addition to a minimum distance from Schools and Daycare, also include other types of youth based facilities and/or youth gathering locations and recreation areas such as:

- Big League Dreams
- Soccer Fields
- Football Fields
- Parks
- Dance Studios
- Karate Studios
- Movie Theaters
- Arcades
- Video Game Retailers
- Skate Board Retailers

#### **Architectural Context**

#### Exterior Façade:

Retail and/or Manufacturing building exterior must be both compatible and complimentary to existing, adjacent and surrounding business establishments and should add visual quality and vibrancy to its adjacent neighbors

Interior public spaces such as point of sale, product display, waiting rooms, etc., must be fully visible from the public way such that it compliments other adjacent

business as a collective means of promoting a safe, lively and inviting business environment

Windows requiring obscured view from public for "back of house" functions such as staff areas, storage, manufacturing, etc., shall be treated with opaque and/or translucent film or an opaque film applied mural or graphic artwork

Security screens at windows and/or storefront entry doors shall be installed on the interior side and shall be of a type that allows visibility to public areas when closed.

#### Signage:

Signage must remain consistent with current city requirements, but should clearly identify the establishment in conspicuous signage text, as a Medical Cannabis Dispensary, Cultivator and/or Manufacturer

#### Lighting:

Exterior lighting must be functional and provide security, but should also add visual quality and vibrancy to match and/or enhance its adjacent neighbors

In addition, a "City Surveyor" should prepare the required Certified Stamped Map and "testing laboratories" should be permitted with a Conditional Use Permit in the zoning districts that allow cultivation and manufacturing.



#### **Agenda Report**

File #: 2017-77 Item No: 6.A.

#### Successor Agency to the Former Redevelopment Agency

**MEETING DATE: 2/22/2017** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location**: Approximately 12.5 acres at the Northwest Corner of East Palm Canyon Drive and Date Palm Drive.

Negotiating Parties: City of Cathedral City as Successor Agency to the former Redevelopment

Agency and the City Urban Revitalization Corporation, **Property Owners**: City Urban Revitalization Corporation

**Under Negotiations**: Price and Terms for potential purchase of real property.

FROM:

Tami Scott, Administrative Services Director



#### **Agenda Report**

File #: 2017-78 Item No: 6.B.

City Council

**MEETING DATE: 2/22/2017** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

Property Location: Approximately 1.8 acres at the Northside of Grandview Ave and Elna Way, APN:

686-141-007

**Negotiating Parties**: City of Cathedral City and Timothy Priehs

**Property Owners**: Timothy Priehs

**Under Negotiations**: Price and Terms for potential purchase of real property.

FROM:

Tami Scott, Administrative Services Director



#### **Agenda Report**

File #: 2017-79 Item No: 6.C.

**Housing Successor Agency** 

**MEETING DATE: 2/8/2017** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location:** Approximately 1.8 acres north on Mission Drive by APN's 677-382-005 through

800

**Negotiating Parties:** City of Cathedral as the Housing Successor Agency and Mario Perez, Inc.

**Property Owner:** City of Cathedral City as Housing Successor Agency **Under Negotiations:** Price and Terms for potential sale of real property

FROM:

Tami E. Scott, Administrative Services Director



#### **Agenda Report**

File #: 2017-84 Item No: 6.D.

**City Council** 

**MEETING DATE: 2/22/2017** 

#### TITLE:

Conference with Legal Counsel - Anticipated Litigation Significant exposure to litigation pursuant to paragraphs (d)(2) and (e)(1) of the Government Code.

One (1) matter