



CITY OF COMMERCE AGENDA REPORT

Item No. _____

TO: Honorable City Council

FROM: City Manager

SUBJECT: **Second Reading and Adoption** by Waiving Full Reading and Reading by Title Only, an Uncodified Ordinance Approving an Amended and Restated Development Agreement Related to Application No. 18-074 to Replace Commercial Cannabis Development Agreement No. 724

MEETING DATE: February 22, 2022

APPLICATION REQUEST(S):

Consideration of an Ordinance Approving Amended and Restated Development Agreement No. 7## Related to Application No. 18-074 Replacing Commercial Cannabis Development Agreement No. 724.

RECOMMENDATION:

Staff recommends that the City Council:

1. Consideration of Second Reading by Title only an Uncodified Ordinance approving and adopting corresponding Amended and Restated Development Agreement related to Application No. 18-074 replacing Development Agreement No. 724, which was recommended for City Council approval by the Planning Commission; and
2. Consideration of Approval for Second Reading by Waiving Full Reading and Reading by Title only an Uncodified an Uncodified Ordinance approving the findings consistent with, and pursuant to, Government Code Section 65867.5; and
3. Approve the Conditions of Approval (as also incorporated into the Amended and Restated Development Agreement); and
4. Consideration of Approval for Second Reading by Waiving Full Reading and

Reading by Title only an Uncodified Ordinance finding Amended and Restated Amended and Restated Development Agreement are exempt from further CEQA review pursuant to Administrative Code, Title 14, Chapter 3, Section 15301(a), Class 1, Existing Facilities, because the Development Agreement includes a project that consist of small additions, expansions or alterations to existing structures where there will be negligible or no expansion of the existing structures and/or uses; and pursuant to said findings, direct staff to prepare and file corresponding Notices of Exemption; and

5. Direct staff to assign a number for the adopted Ordinance, and Amended and Restated Development Agreement.

PUBLIC HEARING NOTICE:

Notices of the City Council's consideration of the development agreement, and the amended and restated development agreement were published in Los Cerritos News on January 28, 2022. Specific notices were also mailed to property owners located within 500 feet of a proposed project site, in accordance with City of Commerce Municipal Code.

BACKGROUND AND ANALYSIS:

Pursuant to Ordinance No. 700, which established Commercial Cannabis regulations for the City of Commerce, the City commenced the development agreement process at the beginning of October of 2018. and The Cure Company, LLC were first allowed to pursue a Commercial Cannabis Permit and permanent State licensing for commercial cannabis activity in 2019. Specific information about their application is included in the analysis section below.

Ordinance No. 700 also established a process by which Commercial Cannabis Permit related Development Agreements could be amended depending on the requested change. On January 19, 2022, the Planning Commission considered amended and restated Development Agreement to replace Development Agreement No 724 to incorporate an expansion of square footage. The Planning Commission voted to recommend that the City Council adopt an ordinance approving amended and restated Development Agreement to replace Development Agreement No 724.

On February 8, 2022, staff asked the City Council to continue the item per the request of the applicant in order to clarify an additional request. The applicant had noted that the request should include a change in name of business from The Cure Company to Green City, LLC. Pursuant to Commerce Municipal Code Section 5.61.190 (Changes in Name Only) a change of name must be made in the form of an amendment to the executed Development Agreement "as required by the city's policy concerning amendments to development agreements." City's policy has provided the ability to amend development agreements that require a change of name only, not change of ownership or any other substantive change (i.e. change in location, request for

additional license, expansion of space), to be conducted at an administrative level. For this reason, the change in name request, in addition to expansion of cultivation space that was previously noticed and reviewed by the Planning Commission, has been added as part of this application.

On February 15, 2022, the City Council held a public hearing to consider approval of amended and restated development agreement to replace Development Agreement No. 724. The City Council voted 5-0 to and conducting the first reading of the uncodified ordinance, by title only, to approve said amended and restated development agreement to replace Development Agreement No. 724.

Key: C = Cultivation, D = Distribution, M = Manufacturing, RD = Retail Delivery (Non-Storefront)

The Cure Company, LLC/Green City, LLC – Future Expansion of Cultivation			
CCP Application #/ DA #	Applicant/Proposed Name	Address and Zone	Uses
18-074/ DA 724	The Cure Company/Green City LLC	2939 S. Vail Ave; M2	C/M

The Cure Company currently holds a legal or equitable interest in real property considered in the amended and restated development agreement, located at 2939 S. Vail Ave, in the City of Commerce. The existing building is 96,945 square feet on a 144,210 square foot lot. The applicant has been allowed to pursue full approvals of 60,259 square feet for commercial cannabis activity. They are asking for City Council approval that would permit a future expansion of 23,665 square feet for a total of 83,924 square feet of commercial cannabis activity. All additional square footage must comply with maximum square footages for distinct license types as determined by the State. The requested proposed expansion of square footage within the footprint of the existing building has been incorporated in the attached amended and restated development agreement.

Additionally, the applicant is requesting that the change of name of the business officially be changed to Green City LLC for all City records. It should be noted that this request is not a change of ownership.

The request for amended and restated development agreements have been reviewed by City staff and has met the minimum requirements set forth by Ordinance No. 700.

If approved, the applicant will be required to comply fully with the terms of the amended and restated development agreement as well as conditions of approval which include, but are not limited to, façade improvements, and compliance with all state and local ordinances.

Attached Exhibit A for the Planning Commission resolution provides the zoning analysis for the subject site. The zoning analysis includes the following information:

1. General Plan Designation
2. Zoning Designation
3. Applicable Zoning Regulation
4. Environmental Assessment
5. Project Description

The amended and restated development agreement also address technical changes such as the proper title for staff, the correct name for the Economic Development and Planning Department instead of Planning or Public Works/Development Services, adjusted certain dates, including when community benefits fees are due and in what amount. Also, for the sake of clarity, the revised community liaison requirements are consistent with the definition provided in Section J.4.k of the application. The amended and restated development agreement also proposes five-year term, which is consistent with past development agreement approvals. The term of the amended and restated development agreement will be valid for five years from the effective date of the amended and restated development agreement. Clarifications have also been made as to the timeframe to submit required payments and penalties for not doing such in a timely manner.

CEQA COMPLIANCE AND CATEGORICAL EXEMPTIONS:

The California Environmental Quality Act (“CEQA”) requires public agencies to analyze and consider the impacts a “project” may have on the environment. A project is only subject to CEQA if the project requires a discretionary decision by the public agency. The required level of review depends on the probability and intensity of project related impacts. Additionally, a project may be exempt from CEQA review if the project qualifies for a categorical exemption.

The Guidelines for the Implementation of the California Environmental Quality Act (collectively, “CEQA Guidelines”) are clear regarding how CEQA should be carried out by Lead Agencies. A “Lead Agency”, as defined by CEQA, is the public agency that has the primary responsibility for carrying out or approving a project. Section 15021(a) states, “CEQA establishes a duty for public agencies to avoid environmental damage where feasible.” Section 15022(a) provides guidance on how public agencies should

develop implementing procedures for CEQA, stating:

Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

*(1) Identify the activities that are exempt from CEQA. These procedures should contain: (A) Provisions for evaluation of a proposed activity to determine if there is no possibility that the activity may have a **significant** effect on the environment.” [emphasis added]*

While a standard development agreement can be treated like a contract and thereby does not constitute a project under CEQA, the DAs used by the City for the approval of Commercial Cannabis Permits are those authorized by Government Code Section 65864 et. seq. The Government Code treats these DAs as legislative acts authorizing land uses and contemplating certain land development which qualify as a project pursuant to CEQA. As such, staff determined that the proposed projects anticipated by the DAs, require CEQA compliance. After a thorough examination of the project applications of each proposed facility, including, but not limited to, standard operating procedures (“SOPs”), security plan, site plan and environmental data form, staff determined that the projects meet the provisions of CEQA Categorical Exemptions. These categorical exemptions were mandated by Public Resource Code Section 21084 and listed as a part of the CEQA Guidelines by the Secretary for Resource in Article 19 of the CEQA Guidelines.

Staff determined that the activities anticipated in the DAs can be exempted from further environmental review as they meet the stipulations outlined in the “Existing Facilities” exemption (CEQA Section 15301). This section is provided for reference below.

15301. Existing Facilities

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(i) Fish stocking by the California Department of Fish and Game;

(j) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(k) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(l) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(m) Conversion of a single family residence to office use.

(n) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(o) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

The project contemplated by the development agreement and amended and restated Development Agreement includes only minor interior alterations to the subject property. No major construction or expansions of facility or uses are proposed. Further, the activities, including manufacturing, will occur in a facility located within the City's commercial or manufacturing zones. These zones were previously analyzed for environmental impacts with the approval of the City's Zoning Ordinance and General Plan. Impacts were evaluated based on the anticipated activities likely to occur in such zones (i.e., Manufacturing in M-2 Heavy Manufacturing). Commercial cannabis activities are like in nature to those uses allowed by right currently existing or allowed in the zones in which commercial cannabis activities are proposed. Therefore, there is no nexus between commercial cannabis activities and additional significant environmental impacts in the zones that allow such activities.

CEQA requires that a Lead Agency have substantial evidence in the light of the whole record to determine that a project may have a significant impact on the environment. CEQA Section 15064(b) further clarifies how a Lead Agency must make this determination by adding, “[T]he determination of whether a project may have a significant effect on the environment calls for the careful judgement on the part of the public agency involved, based to the extent possible on scientific and factual data.” Section 15064 (e) further advises:

*Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not creditable, shall not constitute substantial evidence. **Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [emphasis added]***

The verbal testimony received by the City in the past has been speculative in nature and most comments address social or community-based issues. CEQA also states that economic and social impacts that do not contribute to, or known to cause, physical changes in the environment, do not qualify as substantial evidence that a project may have an effect on the environment.

There has been no scientific or factual data presented, to date, identifying any direct or indirect environmental impacts resulting from the manufacturing process or any other cannabis related activity. In fact, many of the processes used in the manufacturing of cannabis, like extraction methods, are currently used in other manufacturing industries. The impacts associated with the extraction process include “off-gassing” and work hazards resulting from the use of explosive materials. However, these impacts can be mitigated or otherwise regulated by the permitting process of other regulatory agencies. For example, all manufacturing facilities are required to obtain approvals and permits by the Fire Department (in this case, Los Angeles County Fire) and regional air quality management districts (in this case, South Coast Air Quality Management District).

None of the conditions described in CEQA Guidelines, requiring the preparation of a Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report, will occur as part of the proposed projects contemplated as part of the amended and restated DAs. The City Council has the authority and discretion to make findings exempting the approval of the amended and restated development agreements from further CEQA review. Therefore, in accordance with Section 15061(d) of the CEQA Guidelines, the City of Commerce Planning Division recommends that the City Council adopt findings exempting the development agreement and amended and restated development agreement from further CEQA review and direct staff to prepare and file a Notice of Exemption for each project recommended for approval.

ENVIRONMENTAL ASSESSMENT:

A Notice of Exemption from CEQA for the amended and restated development agreement will be prepared pursuant to CEQA (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations, Division 6, Chapter 3, §15000 et seq.) prior to the City Council's consideration for approval. The amended and restated development agreements are considered "projects" subject to environmental review.

City staff anticipates that the Notice of Exemption will find that the project contemplated by the proposed amended and restated development agreement is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code § 21080(b)(9); Administrative Code, Title 14, Chapter 3, § 15301(a), Class 1, Existing Facilities). This section specifically applies to small additions, expansions or alterations to existing structures where there is negligible or no expansion of the use. For this project, the applicant will limit construction to interior tenant improvements, electrical, plumbing and façade improvements.

CONCLUSION:

Staff recommends that the City Council after independent review, consideration, analysis of staff's report and the information presented, oral and written testimony by all parties and persons of the public, and the record as a whole, adopt by waiving full reading and reading title only an uncodified ordinance approving Amended and Restated Development Agreement No. 7## replacing Commercial Cannabis Development Agreement No. 724.

Prepared by: CCP Staff
Reviewed by: Edgar P. Cisneros, City Manager
Approved as to form by: Noel Tapia, City Attorney

Attachments:

- A) Planning Commission Resolution
- B) Ordinance and Amended and Restated Development Agreement