



## **CITY OF COMMERCE AGENDA REPORT**

**Item No. \_\_\_\_\_**

**TO:** Honorable City Council

**FROM:** City Administrator

**CASE NO:** Development Agreement Application Nos.: 18-023, 18-031, 18-043, 18-052, 18-053, 18-064, 18-065, and 18-094

**MEETING DATE:** April 30, 2019

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### **APPLICATION REQUEST(S):**

Consider Denial or Approval of Development Agreements related to the City's Commercial Cannabis Permitting Program.

### **RECOMMENDATION:**

1. Consideration of Denial or Approval and Adoption by Introduction and First Reading of up to Eight (8) Uncodified Ordinances Approving up to Eight (8) Development Agreements for the Operation of Commercial Cannabis Activities, for Commercial Cannabis Permit Application Nos. 18-023, 18-031, 18-043, 18-052, 18-053, 18-064, 18-065, and 18-094.
2. Consideration of Denial or Approval by Introduction and First Reading of up to Eight (8) Uncodified Ordinances approving the findings consistent with, and pursuant to, Government Code Section 65867.5; and
3. Consideration of Denial or Approval of the Conditions of Approval (as also incorporated into the Development Agreements); and
4. Consideration of Denial or Approval by Introduction and First Reading of up to Eight (8) Uncodified Ordinances finding the Eight (8) Development Agreements are exempt from further CEQA review pursuant to Administrative Code, Title 14, Chapter 3, Section 15301(a), Class 1, Existing Facilities, because the Development Agreements include projects 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. If Council approves development agreements, direct staff to assign the Uncodified Ordinances and the Development Agreements the next number in order.

## **PUBLIC HEARING NOTICE:**

Notice of the City Council's consideration of eight (8) development agreements was published in the Los Cerritos News on April 19, 2019. 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:**

The Planning Commission has made recommendations for denial for the eight (8) development agreement applications presented as part of this agenda report. Development Agreement Application Nos.: 18-023, 18-031, 18-043, 18-052, 18-053, 18-064, 18-065, and 18-094. These applicants are listed in Table 1A. Additional details are also provided in the attachments to this agenda report and in the form of a presentation which will be provided to this City Council as part of this agenda report.

<b>TABLE 1A</b>				
<b>Applications Recommended for Denial by Planning Commission and Scheduled for City Council Consideration on April 30, 2019 (8 Total)</b>				
<b>App. #</b>	<b>Applicant</b>	<b>Activity</b>	<b>Zone</b>	<b>Project Location</b>
18-023	A&E Investments, LLC	C/M/RD	M2	4234 E. Pacific Way, #B
18-031	Lifted Global Holdings	MB: C/D/RD	M2	7250 Bandini Boulevard
18-043	Have a Heart Commerce City, LLC	RD	C/M1	5401 E. Washington Boulevard
18-052	DJCC Corp	C/M/D	M2	5350 E. Washington Boulevard
18-053	RS Innovations, LLC	M/D/RD	C/M1	5940 E. Washington Boulevard
18-064	NotStanLA, Inc.	M/D	M2	2620 S. Malt Avenue
18-065	From the Earth, LLC	C/M/D/RD	M2	2919 Tanager Avenue
18-094	6436 Corvette, LLC	MB: C/M/D	M2	6436 Corvette

The Planning Commission has also previously recommended a total of twenty (20) development agreements for City Council approval. Those applications were presented or will be presented to City Council in a separate agenda report.

## **FURTHER ABBREVIATED DISCUSSION REGARDING JANUARY 30, FEBRUARY 13, MARCH 20, AND APRIL 24, 2019 PLANNING COMMISSION MEETINGS:**

Accordingly, to date, 28 applicants have been presented to the Planning Commission for recommendation. The following three (3) applications remain to be considered for approval or denial by the Planning Commission: DA Nos. 18-005, 18-013, and 18-046. As such, they will be presented to the Planning Commission and subsequently the City Council at a future yet to be determined date.

During the Planning Commission public comment periods and the public hearings, several neighboring residents and representatives of several interest groups expressed their concerns regarding the City's allowance of commercial cannabis activities. The concerns expressed were general policy objections to the industry and ordinance.

### **ORDINANCE NO. 700 AND APPLICATION SUBMITTALS:**

Previously, on September 4, 2018, the City Council approved for second reading and adoption of Ordinance No. 700, establishing commercial cannabis regulations. The ordinance took effect on October 5, 2018. On October 5, 2018, the City also published the City's Cannabis Regulations and Facts Page, which can be accessed at: <http://www.ci.commerce.ca.us/index.aspx?NID=1448>. The City's Cannabis Regulations and Facts Page also included information detailing the City's process for considering applications for Commercial Cannabis Permits (CCP). The CCP application posted on the webpage provided a complete overview of the application submittal process and respective timelines. Further, applicants were directed to the CCP webpage to regularly monitor whether the City posted any supplemental information regarding the application process. Applicants were also instructed to submit any questions regarding the application process in order to minimize confusion to the following email address: [ccp@ci.commerce.ca.us](mailto:ccp@ci.commerce.ca.us). The City's Cannabis Regulations and Facts Page has posted regular updates to supplement the public notices and published Planning Commission and City Council agendas and agenda reports. The date of those updates is April 25, 2019, April 22, 2019, April 9, 2019, March 8, 2019, November 15, 2019, November 13, 2019, November 9, 2019, October 26, 2019, October 22, 2019, and October 16 2019. This was done as an effort to keep both applicants and the public informed on the status of the Commercial Cannabis Permit application process in a transparent and accessible manner.

A central part of the CCP process is the negotiation and approval of a development agreement. Each CCP application has a development agreement that requires the Planning Commission to conduct a public hearing and provide a recommendation to the City Council. The development agreements (DAs) are structured and based on the approved procedures and requirements adopted by the City Council on April 17, 2018, pursuant to Resolution No. 18-50, which are consistent with, and in adherence to, applicable state law. Each DA formalizes the applicant's requirements as outlined in Ordinance No. 700, including the information required to be submitted as part of the original CCP application, and adherence to applicable state and local laws, regulations, and policies, in order to lawfully operate a commercial cannabis business in the City of Commerce. Conditions of approval are also included as part of the DA, including those

enumerated in Exhibit “G” of each DA that outline provisions within Ordinance No. 700, and other terms and conditions regulating the operations, land uses, and business activities of each commercial cannabis business.

On October 5, 2018, after CCP staff published the complete cannabis application on the Cannabis Facts page, staff immediately began to receive and accept appointment requests to submit a CCP application. The last day to submit an appointment request to CCP staff was October 22, 2018 on or before 12:00 p.m. The timeframe established for the scheduling of appointments was from October 15 through October 26, 2018, which was the first last day (respectively) to submit an application via and pursuant to a pre-scheduled appointment.

After the close of the application submittal period, forty-three (43) complete applications were submitted to the City. The eligible applications were reviewed by the Review Committee (RC). The members of the RC were appointed by the City Administrator. Pursuant to his authority under Ordinance No. 700, the City Administrator found grounds for disqualification for two (2) applications. Specifically, these two (2) applications were disqualified for failure to submit complete applications and/or make the requirement payment by the stated deadlines. Therefore, the disqualified applications were not reviewed nor ranked by the RC.

On November 13, 2018, the City Council approved the issuance of a “Notice of Selection” to thirty-three (33) selected CCP applicants, with the understanding that the issuance of a “Notice of Selection” is conditional and contingent on selected applicants adhering to Ordinance No. 700 requirements, the successful negotiation of a development agreement, identifying a compliant known premises, if not already previously identified, and most importantly, City Council approval of a DA which is the action being considered for seven (7) applications presented as part of this report.

As a side note, of the thirty-three (33) CCP applicants approved by the City Council to receive a “Notice of Selection”, two (2) were disqualified for failure to submit a development agreement deposit payment by the required deadline. Consequently, as of the date of this staff report, thirty-one (31) applications are considered active.

## **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 projects contemplated by the DAs include only minor interior alterations to the subject properties. No major construction or expansions of facilities 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.

While the Planning Commission expressed general concerns for potential environmental impacts, there were no compelling verbal or written testimony from the public, other agencies or the Planning Commission that identified any specific potential environmental impact. 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 written and verbal testimony received by the City is 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 DAs. The City Council has the authority and discretion to make findings exempting the approval of the Development Agreement from further CEQA review. Therefore, in accordance with Section 15061(d) of the CEQA Guidelines, the City of Commerce Public Works and Development Services Department recommends that the City Council adopt findings exempting the DAs from further CEQA review and direct staff to prepare and file a Notice of Exemption for each project recommended for approval.

**LAND USE, ZONING AND APPLICABLE REGULATIONS:**

<b>Project Site – Various locations, specifically identified in Table 1A Above</b>	
General Plan Designation:	Industrial, Commercial, Manufacturing
Zoning:	M2 (Heavy Manufacturing), and C/M1 (Commercial- Manufacturing),
Applicable Zoning Regulations:	Commerce Municipal Code (“CMC”) Chapter 19.09, Commercial Zone; 19.11, Manufacturing Zones; CMC Chapter 19.19, Development Standards; CMC Chapter 19.21, Off-Street Parking; CMC Chapter 19.23, Landscaping; CMC Chapter 19.25, Signs; CMC Chapter 19.39 Division 10, Site Plan Review; CMC Section 19.39.680 Basis for Approval; Chapter 19.39, General Zoning Provisions.

Exhibit “F” as incorporated into each respective DA provides the zoning analysis for each proposed project 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
6. Site and Floor Plan

The proposed commercial cannabis activities are consistent with the applicable zoning code. However, some of the proposed project sites may not conform with the City’s future development plans. Those projects include Nos. 18-043, 18-052, 18-053 and 18-094 as currently proposed. No. 18-052 agreed to an enhanced re-location clause prior to Planning Commission consideration and No. 18-053 has since taken the extra step of acquiring a property that is better suited for CCP activities.

**ENVIRONMENTAL ASSESSMENT:**

A Notice of Exemption from the California Environmental Quality Act CEQA for each Development Agreement have been 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 subject Development Agreements are "projects" that are subject to environmental review.

City staff anticipates that the Notice of Exemptions will find that the projects contemplated by the Development Agreements are 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 these projects, all of the applicants will limit the construction to interior tenant improvements, electrical, plumbing and façade improvements.

## **CONCLUSION:**

Staff recommends that the City Council take into account, CCP staff's prior recommendation of Nos. 18-023 and 18-052 (to the Planning Commission) and also the good faith efforts made by No. 18-053, while taking into account that staff time has constraints and that the City is not bound to approve all or any CCP development agreement applications that come before it. Staff further 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 - review and make a determination of approval or denial on any of the eight (8) Development Agreement applications being presented as part of this report.

1. Consideration of Denial or Approval by Introduction and First Reading of up to Eight (8) Uncodified Ordinances Approving Eight (8) Development Agreements for the Operation of Commercial Cannabis Activities, for Commercial Cannabis Permit Application Nos. 18-023, 18-031, 18-043, 18-052, 18-053, 18-064, 18-065, and 18-094.
2. Consideration of Denial or Approval by Introduction and First Reading of up to Eight (8) Uncodified Ordinances approving the findings consistent with, and pursuant to, Government Code Section 65867.5; and
3. Consideration of Denial or Approval of the Conditions of Approval (as also incorporated into the Development Agreements); and
4. Consideration of Denial or Approval by Introduction and First Reading of up to Eight (8) Uncodified Ordinances finding the Eight (8) Development Agreements are exempt from further CEQA review pursuant to Administrative Code, Title 14, Chapter 3, Section 15301(a), Class 1, Existing Facilities,

because the Development Agreements include projects 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. If Council approves development agreements, direct staff to assign the Uncodified Ordinances and the Development Agreements the next number in order.

**ATTACHMENTS:**

- A) Ordinance(s)**
- B) Resolution(s)**
- C) Development Agreement(s), and Exhibits thereof, including Legal Description, Map, Conditions of Approval, and Zoning Analysis**
- D) Zoning Map with Proposed Projects**
- E) Standard CCP Conditions of Approval (also to be incorporated as Exhibit “G” to the Development Agreement(s))**
- F) Standard CCP Indemnification Agreement (also Exhibit “I” to the Development Agreement(s))**

Prepared by:	Manuel Acosta, Contract Planner
Reviewed by:	Manuel Acosta, Contract Planner
Reviewed by:	Noel Tapia, City Attorney