



CITY OF COMMERCE AGENDA REPORT

Item No. _____

TO: City Council

FROM: City Manager

CASE NO: Development Agreement Application No.: 18-023 –Adoption and second reading of Ordinance

MEETING DATE: July 2, 2019

RECOMMENDATION:

1. Approval and Adoption, and waive Second reading of Ordinance Approving one (1) Development Agreement for the Operation of Commercial Cannabis Activities, for Commercial Cannabis Permit Application No. 18-023; and
2. Approval and adoption, and waive second Ordinance approving the findings consistent with, and pursuant to, Government Code Section 65867.5;
3. Approve the Conditions of Approval (as also incorporated into the Development Agreement); and
4. Approval and adoption, and waive second reading of Uncodified Ordinance finding that one (1) Development Agreement is 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 consists of small additions, expansions or alterations to an existing structure where there will be negligible or no expansion of the existing structure and/or use; and pursuant to said findings, direct staff to prepare and file corresponding Notice of Exemption; and Read the Ordinance by Title only;
5. Direct staff to assign the Uncodified Ordinance the next number in order.

BACKGROUND AND ANALYSIS:

The development agreement covered in this agenda report for City Council's consideration was approved during a public hearing for first reading on May 7, 2019. The proposed location and cannabis activities for application No. 18-023 are identified in the table below.

Applications Recommended for Denial by Planning Commission and/or Continued by the City Council on April 30, 2019 (Scheduled for May 7, 2019) (1 Total)				
App. #	Applicant	Activity	Zone	Project Location
18-023	A&E Investments, LLC	C/M/D/RD	M2	4234 E. Pacific Way, #B

On April 30, 2019, the City Council discussed amendment would adjust the number of employees from 20 to 10 employees in order to prompt the Labor Peace Agreement.

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 this Development Agreement includes only minor interior alterations to the subject property. No major construction or expansion of the facility or use is 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 project contemplated as part of this Development Agreement. 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 this Development Agreement from further CEQA review and direct staff to prepare and file a Notice of Exemption if the project is recommended for approval.

LAND USE, ZONING AND APPLICABLE REGULATIONS:	
General Plan Designation:	Industrial, Commercial, Manufacturing
Zoning:	M2 (Heavy Manufacturing)
Applicable Zoning Regulations:	Commerce Municipal Code ("CMC") Chapter 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

Exhibit "C" as incorporated into this respective Development Agreement provides the zoning analysis for the 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

ENVIRONMENTAL ASSESSMENT:

A Notice of Exemption from the California Environmental Quality Act CEQA for this Development Agreement has 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 Agreement is a "project" that is subject to environmental review.

City staff anticipates that the Notice of Exemptions will find that the project contemplated by the 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 the 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 - review and reconsider the approval of the amended Development Agreement for application No. 18-023, but with City Council's approvals and findings as listed herein below. However, the City Council may make a determination of approval or denial on this Development Agreement application being presented as part of this report.

1. Approval and adoption and waive second reading of Uncodified Ordinance Approving one (1) Development Agreement for the Operation of Commercial Cannabis Activities, for Commercial Cannabis Permit Application No. 18-023; and read the Ordinance by Title only;
2. Approval and adoption, and waive second reading of one (1) 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 Development Agreement); and
4. Approval and adoption of one (1) Uncodified Ordinance finding the one (1) Development Agreement is 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 consists of small additions, expansions or alterations to existing structures where there will be negligible or no expansion of the existing structure

and/or use; and pursuant to said findings, direct staff to prepare and file corresponding Notice of Exemption; and

5. Direct staff to assign the Uncodified Ordinance the next number in order.

ATTACHMENTS: (See next page)

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

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