



CITY OF COMMERCE AGENDA REPORT

Item No. _____

TO: Honorable City Council

FROM: City Manager

SUBJECT: Commercial Cannabis Development Agreement Application
Nos.: 18-005, 18-006, 18-013, 18-043, 18-046 and
Development Agreement Nos: 715, 717, 720, 722, 726, and
733.

MEETING DATE: January 7, 2020

APPLICATION REQUEST(S):

Consideration of Development Agreements, and First Amendments to Development Agreements related to the City's Commercial Cannabis Permitting Program.

RECOMMENDATION:

Staff recommends that the City Council:

1. Make a determination whether to waive Full Reading and Approve Second Reading by Title only, and Adoption of five (5) proposed Ordinances approving and adopting corresponding five (5) Development Agreements for Commercial Cannabis Development Agreement Application Nos. 18-005, 18-006, 18-013, 18-046, and 18-053, which were recommended for City Council approval by the Planning Commission.
2. Make a determination whether to waive Full Reading and Approve for Second Reading by Title only, and Adoption of six (6) proposed Ordinances approving and adopting corresponding six (6) First Amendments to Development Agreements for Development Agreement Nos. 715, 717, 720, 722, 726, and 733, which were recommended for City Council approval by the Planning Commission.
3. Make a determination regarding Denial or Approval of Second Reading and Adoption of up to eleven (11) Uncodified Ordinances approving the findings consistent with, and pursuant to, Government Code Section 65867.5; and

4. Make a determination regarding Denial or Approval of Second Reading and Adoption of up to Six (6) Uncodified Ordinances finding the Six (6) Development Agreements and five (5) First Amendments to 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. Direct staff to assign a number for all adopted Ordinances, Development Agreements and First Amendments to Development Agreements.

SUMMARY:

At a duly noticed public hearing held on December 17, 2019, the City Council considered and approved for introduction and first reading, five (5) development agreements and six (6) first amendments to development agreements. Information related to those development agreements and amendments is provided below and in the attachments.

PUBLIC HEARING NOTICE:

Notice of the City Council's consideration of five (5) development agreements and six (6) first amendments to development agreements was published in the Los Angeles Wave News on December 5, 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:

Pursuant to Ordinance No. 700, which established Commercial Cannabis regulations for the City of Commerce, the City has gone through selection of applications beginning of October of 2018. Of the 43 applications that originally submitted to the city, 28 are currently considered to be active applications. Of the active applications, 23 already have approval from the City Council with adopted ordinances and Development Agreements. The remaining 5, as listed in Table 1A, are for consideration by the City Council.

At the July 30, 2019 and August 21, 2019 Planning Commission hearings, the Commission adopted resolutions (Attachment B) recommending that the City Council adopt ordinances (Attachment A) and related Development Agreements (Attachment

D) to allow commercial cannabis operations for the following six (6) Commercial Cannabis Application Nos: 18-005, 18-006, 18-013, 18-046, and 18-053. Conversely, the Commission adopted a resolution recommending that the City Council deny Commercial Cannabis Application 18-043 for being non-responsive to staff's requests for information, materials, and payments. Additional details about each application are provided in the attachments to this agenda report and will be presented to City Council as part of this agenda report.

During the public comment portion of the hearings at both the July and August Planning Commission meetings, several neighboring residents and representatives of 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.

TABLE 1A					
Applications Considered by Planning Commission on July 30, 2019 or August 21, 2019					
App. #	Applicant	Activity	Zone	Project Location	Planning Commission Recommendation To the City Council
18-005	Heng Xin Int'l, Corporation	C/M/D/RD	M2	6557 Flotilla Street "A"	Adopt Ordinance and Related DA
18-006	California Green World, LLC	C/M/D/RD	M2	5401 Sheila Street	Adopt Ordinance and Related DA
18-013	RD Commerce	M/D/RD	M2	6459 Fleet Street	Adopt Ordinance and Related DA
18-043	Have a Heart Commerce City, LLC	RD		None Provided	Deny
18-046	Septem Leaf, Corp	C/M/D/RD	M2	6557 Flotilla Street "B"	Adopt Ordinance and Related DA
18-053	RS Innovations, LLC	M/D/RD	M2	4170 E. Washington Boulevard	Adopt Ordinance and Related DA

Since the August 21, 2019 planning commission meeting, the City Manager disqualified Application #18-043 for lack of responsiveness and lack of payment in accordance with CCP policies concerning applicants who fail to pay the established fees. Accordingly, there will be no action required by the City Council for this application.

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.

First Amendments to Development Agreements

Of the 23 already approved applications and Development Agreements, six applicants have contacted the City to request changes. Ordinance 700 put forth a process by which Commercial Cannabis Permit related Development Agreements could be amended depending on the requested changes. All the requests before the City Council on December 17, 2019, including change of ownership, relocation, and addition of cannabis use type(s), the ordinance specifies that City Council approval is required. Based on the information presented to them, the Planning Commission considered the requests on November 26, 2019 adopted resolutions recommending that the Council approve the requested changes by adopted the first amendments to the six development agreements noted below. The applications are separated based on the type of request.

C = Cultivation

D = Distribution

M = Manufacturing

RD = Retail Delivery (Non-Storefront)

Requests for Change of Ownership Only				
CCP App. #	DA #	Applicant	Address	Approved Uses
18-023	733	A&E Investment Group, LLC	4234 E. Pacific Way	C/M/D/RD
18-026	726	VK Labs, LLC* (Decano Analytical Laboratories, LLC	5608 E. Washington Blvd.	Testing

The applications above are requesting a change of ownership in their DA. The required background check(s) for new prospective owners have been completed and all requested/required application materials were submitted to staff and considered to be sufficient.

Scott Kawasaki is now the primary owner of A&E Investment Group, LLC.

*Albert Poghosyan and Dikran Kalousdian are the primary owners Decano Analytical Laboratories, LLC, who are assuming ownership from VK Labs, LLC.

Requests for Relocation Only					
CCP App. #	DA #	Applicant	Approved Address and Zone	Proposed Address and Zone	Approved Uses
18-052	722	DJCC	5350 E. Washington Blvd.; M2	5333 E. Slauson Ave; M2	C/M/D
18-017	717	2SBK	5136 Triggs Street; M2	6445 Bandini Blvd.; M2	C/M/D/R D

The above proposed locations have been reviewed by staff and determined to be satisfactory in terms of location, surrounding uses and site plan.

Request for Additional Cannabis License Types					
CCP App. #	DA #	Applicant	Approved Address and Zone	Approved Uses	Proposed Additional Use
18-047	720	Summit Manufacturing, LLC	3019 Vail Ave.; M2	M/D	C

The abovementioned site currently has approval for manufacturing and distribution. The site and building are large enough to house the proposed additional cannabis use.

Request for Change of Ownership, Relocation, and Additional Cannabis Uses						
CCP App. #	DA #	Applicant	Approved Address and Zone	Proposed Address and Zone	Approved Uses	Proposed Additional Uses
18-059	715	Commerce Concentrates, LLC	6445 Bandini Blvd. M2	2700 Yates Ave.; M2	M/D	C/RD

Andranik Badalian is now the primary owner of Commerce Concentrates, LLC.

The combinations of requests requiring a DA or first amendment to a DA have been reviewed by City staff and have met the minimum requirements set forth by the Ordinance 700.

All applicants will be required to comply fully with the Development Agreements and Conditions of Approval which include, but are not limited to, façade improvements, and compliance with all state and local ordinances.

A zoning analysis is incorporated into each respective First Amendment to a DA where a site relocation is proposed. The zoning analysis includes the following information:

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

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 or First Amendments to 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.

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 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 Planning Division recommends that the City Council adopt findings exempting the DAs and first amendments to DAs 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 the California Environmental Quality Act CEQA for each Development Agreement and First Amendments to Development Agreements 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 - 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 – make a determination on the eleven (11) ordinances as specifically outlined in the Recommendation section on page one of this report.

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

Attachments:

- A) Planning Commission Resolutions (without Attachments)
- B) Standard CCP Conditions (also incorporated as Exhibit G to DAs)
- C) Standard CCP Indemnification Agreements (also incorporated as Exhibit I to DAs)
- D) Zoning Map with Proposed Projects
- E) Ordinances with Respective Development Agreements and Exhibits
- F) Ordinances with Respective First Amendments to Development Agreements and Exhibits