



## CITY OF COMMERCE AGENDA REPORT

Item No.

**TO:** Honorable Mayor and City Council

**FROM:** Lena Shumway, City Clerk

**SUBJECT:** REFERENDUM PETITIONS SUBMITTED AGAINST COMMERCE ORDINANCE NOS. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, AND 746 - CONSIDERATION OF OPTIONS: (1) REPEALING ANY OR ALL ORDINANCES NOS. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, AND 746; AND/OR (2) CALLING SPECIAL MUNICIPAL ELECTION ON A DATE TO BE DETERMINED FOR SUBMITTING TO THE VOTERS ORDINANCES SUBJECT TO THE REFERENDUM MEASURES; OR 3) CONSOLIDATING WITH THE NOVEMBER 3, 2020 ELECTION TO SUBMIT TO THE VOTERS ORDINANCES SUBJECT TO THE REFERENDUM MEASURES.

**MEETING DATE:** JULY 7, 2020

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### RECOMMENDATION:

City Council may take one, or a combination if applicable, of the following actions:

(A) For each of the following Ordinances, make a Motion to **Repeal** any or all the Ordinances subject to the Referendum Petitions **OR Submit to the City's Voters** any or all the Ordinances\*:

1. Ordinance No. 736,
2. Ordinance No 737,
3. Ordinance No 738,
4. Ordinance. No 739,
5. Ordinance No 740,
6. Ordinance No 741,
7. Ordinance No 742,
8. Ordinance No 743,
9. Ordinance No 744,
10. Ordinance No 745, and
11. Ordinance No 746.

\*Based on the information in the table below under "Updates and/or Relevant Information",\*\* Staff is recommending that City Council consider said information and make a motion to Repeal Ordinance Nos. 736 and 742, at the applicants' request, and Repeal Ordinance Nos. 739, 745 and 746 for disqualification due to non-payment of applicable

Commercial Cannabis fees, **AND** make a motion to Submit to the Voters Ordinance Nos. 737, 738, 740, 741, 743 and 744.

(B) If Motion was made to Submit to the Voters any or all of the aforementioned Ordinances subject to the Referendum Petitions at an Election, make a Motion to **either**:

1. Call a Special Election by selecting a date of the special election as to the ***specified Ordinances as moved by City Council in Item A***, and accordingly direct staff to assess and report back at a future City Council meeting, **OR**

2. Consolidating with the November 3, 2020 election, and ***approve the attached two (2) Resolutions as to the specified Ordinances as moved by City Council in Item A, above:*** (1) Resolution calling a Special Municipal election to consolidate with the November 3, 2020 election to submit to the voters of the City of Commerce any or all of the referendum measures regarding *specified Ordinances as moved by City Council in Item A, above*; setting deadlines for filing written arguments for and against referendum measures, and rebuttal thereof; directing the City Attorney to prepare an impartial analysis; and related matters to said Special Municipal Election; and (2) Resolution requesting the Los Angeles County Board of Supervisors to consolidate the Special Municipal Election with the November 3, 2020 statewide election; and authorizing the City Attorney's Office to Make any Necessary Revisions to the attached Resolutions to be Consistent with City Council's Motions and Directives.

(C) City Council may provide an alternative directive to City staff prior to making any decision.

## **BACKGROUND:**

On December 17, 2019, City Council approved the first reading of eleven (11) ordinances:

1. **Ordinance 736** - approving and adopting First Amendment to Development Agreement No. 726 [also identified as Commercial Cannabis Permit I.D No. 18-026] between the City of Commerce and VK Labs, LLC [a California Limited Liability Company] for transfer of ownership of Development Agreement to operate the approved commercial cannabis business to Decano Laboratories, LLC.

2. **Ordinance 737** – approving and adopting First Amendment to Development Agreement No. 717 [also identified as Commercial Cannabis Permit I.D No. 18-017] between the City of Commerce and 2SBK, Inc. [a California Corporation] for relocation of an approved commercial cannabis business to 6445 Bandini Boulevard.

3. **Ordinance 738** - approving and adopting First Amendment to Development Agreement No. 715 [also identified as Commercial Cannabis Permit I.D No. 18-059] between the City of Commerce and Commerce Concentrates, LLC [a California Limited Liability Company] for change of membership and ownership of Commerce Concentrates, LLC, addition of cultivation and non-storefront retail delivery as license types, and relocation of an approved commercial cannabis business to 2700 Yates.

4. **Ordinance 739** - approving and adopting First Amendment to Development Agreement No. 722 [also identified as Commercial Cannabis Permit I.D No. 18-052] between

the City of Commerce and DJCC Corporation [a California Corporation] for relocation of an approved commercial cannabis business to 5333 E. Slauson.

5. **Ordinance 740** - approving and adopting First Amendment to Development Agreement No. 720 [also identified as Commercial Cannabis Permit I.D No. 18-047] between the City of Commerce and Summit Manufacturing, LLC [a California Limited Liability Company] for the addition of cultivation as a license type to an approved commercial cannabis business.

6. **Ordinance 741** - approving and adopting First Amendment to Development Agreement No. 733 [also identified as Commercial Cannabis Permit I.D No. 18-023] between the City of Commerce and A&E Investment Group, LLC [a California Limited Liability Company] for change of membership and ownership of A&E Investment Group, LLC, previously approved to operate a commercial cannabis business.

7. **Ordinance 742** - approving and adopting Development Agreement No. 742 [also identified as Commercial Cannabis Permit I.D No. 18-006] between the City of Commerce and California Green World, LLC [a California Limited Liability Company] for a commercial cannabis business; making findings consistent with and pursuant to Government Code Section 65867.5; and making findings of a CEQA categorical exemption.

8. **Ordinance 743** - approving and adopting Development Agreement No. 743 [also identified as Commercial Cannabis Permit I.D No. 18-013] between the City of Commerce and RD Commerce, LLC [a California Limited Liability Company] for a commercial cannabis business.

9. **Ordinance 744** - approving and adopting Development Agreement No. 744 [also identified as Commercial Cannabis Permit I.D No. 18-053] between the City of Commerce and RS Innovations, Inc. [a California Corporation] for a commercial cannabis business.

10. **Ordinance 745** - approving and adopting Development Agreement No. 745 [also identified as Commercial Cannabis Permit I.D No. 18-005] between the City of Commerce and HENG XIN INT'L, Corporation [a California Corporation] for a commercial cannabis business.

11. **Ordinance 746** - approving and adopting Development Agreement No. 746 [also identified as Commercial Cannabis Permit I.D No. 18-046] between the City of Commerce and Septem Leaf, Corp. [a California Corporation] for a commercial cannabis business.

On January 7, 2020, City Council approved the second reading and adoptions of Ordinances Nos. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746, which would become effective after 30 days from the date of adoption. Eleven (11) qualified Referendum Petitions challenging Ordinances Nos. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746 were timely filed and have been verified, as further discussed herein below. The effective date of said Ordinances are currently suspended due to the filing of said Referendum Petitions.

## **ANALYSIS:**

### **(1) General Referendum Principles.**

A referendum is "the power of the electors to approve or reject statutes or parts of statutes, except urgency statutes, statutes calling elections, and statutes providing for tax levies or

appropriations for usual current expenses of the State."<sup>1</sup> "[R]eferendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide."<sup>2</sup> Elections Code sections 9235 through 9247 establish the statutory procedures for city referenda. The referendum petition must be in a form prescribed by statute and each section must have a declaration of the circulator attached.<sup>3</sup> Each section of a referendum petition must contain the identifying number or title of the ordinance that is subject of the referendum.<sup>4</sup> If the City Clerk determines by a prima facie count that the petition has sufficient signatures, and it substantially and technically adheres to the applicable Elections Code provisions, then the signatures need to be verified to determine the number of valid signatures.<sup>5</sup> If the petition is deemed sufficient, the results of said examination are required to be certified and presented to City Council at the next regular city council meeting.<sup>6</sup> Thereafter, City Council is required to repeal the ordinance(s) subject of the referendum petitions, or submit the ordinance(s) to the voters at an election.<sup>7</sup>

**(2) "Prima Facie" Count of Signatures, Timely Filing of the Referendum Petitions, verification of signatures by County Clerk and certification by the City Clerk.**

On February 27, 2020, the City received eleven (11) citizen-sponsored referendum petitions (hereinafter, collectively the "Referendum Petitions") seeking rescission of eleven (11) ordinances: 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746. On February 27, 2020, the City Clerk undertook a "prima facie" count of the signatures of the Referendum Petitions to ensure each were signed by not less than ten percent (10%) of the registered voters in the City. According to the Los Angeles County Registrar, Recorder and County Clerk (hereinafter, "County Clerk"), as of February 2019, its last official report of registration indicates the number of registered voters in the City is 7,031.

The County Clerk verified each signature, and on April 9, 2020, the County Clerk deemed the eleven (11) Referendum Petitions to contain sufficient signatures, and the City Clerk certified the referendum petitions and issued certificates of sufficiency for eleven (11) Referendum Petitions on April 10, 2020 as required by the Elections Code. Thereafter, City Council accepted certification results on April 21, 2020.

**(3) City Staff Updates on Applicant(s) Whose Ordinances are Subject to the Referendum Petitions.**

City staff undertakes ongoing monitoring and enforcement activity of all applicant(s) and/or operator(s) related to the City's commercial cannabis program to ensure ongoing compliance with the City's and state laws, conditions of approval, terms of permits and development agreements, and related licenses and entitlements. Additionally, applicant(s) and operator(s) continuously communicate with City staff regarding all aspects of their commercial cannabis applications, or the City's overall program. Accordingly, regarding the applicant(s) or operator(s) whose ordinances approving their Development Agreement, or First Amendment to Development Agreement, are subject to the referendum petitions as discussed herein, City staff provides the City Council with the following information and updates:

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<sup>1</sup> Cal Const art II, §9(a).

<sup>2</sup> Cal Const art II, §11(a).

<sup>3</sup> Cal. Elec. Code § § 102, 104, 9238.

<sup>4</sup> Cal. Elec. Code § 9238.

<sup>5</sup> Cal. Elec. Code §§ 9210, 9237, 9239.

<sup>6</sup> Cal. Elec. Code § 9240.

<sup>7</sup> Cal. Elec. Code § 9241.

<b>**In Good Standing, Requesting Repeal</b>			
<b>Ord. No. / App. #</b>	<b>Applicant</b>	<b>Notes or Pending Items</b>	<b>Conclusion, and/or Action Taken by City Staff, if Any</b>
<b>736 / 18-026</b>	Decano Laboratories	Decano has requested that Ordinance No. 736 (First Amendment to Development Agreement No. 726) <b><i>be repealed by City Council.</i></b>	If Ordinance No. 736 is repealed, Ordinance and Development Agreement No. 726, by and between City of Commerce and VK Labs (the original owner and operator of an already approved cannabis business), remains in full force and effect.
<b>742 / 18-006</b>	California Green World, LLC	Owes City of Commerce Overdue Indemnification Fee	<i>Has requested that their development agreement be rescinded by the City Council and for a different project at a different site to be considered in the future.</i>

<b>**Not in Good Standing, Repeal Warranted</b>			
<b>Ord. No. / App. #</b>	<b>Applicant</b>	<b>Notes or Pending Items</b>	<b>Conclusion, and/or Action Taken by City Staff, if Any</b>
<b>739 / 18-052</b>	DJCC Corp.	Owes City of Commerce Overdue Indemnification Fee	<b><i>Notice of Disqualification</i></b> Issued for Failure to Pay Indemnification Fee
<b>745 / 18-005</b>	Heng Xin Int'l, Corporation	Owes City of Commerce Overdue Indemnification Fee	<b><i>Notice of Disqualification</i></b> Issued for Failure to Pay Indemnification Fee
<b>746 / 18-046</b>	Septem Leaf, Corp	Owes City of Commerce Overdue Phase III Fees and Indemnification Fee  Septem Leaf issued the City of Commerce a check for payment of their Phase III Fees, however, the check was rejected due to insufficient funds.	<b><i>Notice of Disqualification</i></b> Issued for Failure to Pay Phase III Fees and Indemnification Fee

Note: All relevant applicants subject to referendum as discussed in this report not listed are currently in good standing.

City of Commerce ("City") Municipal Code Section 5.61.090(d)(3)(F) provides that selected applicants will be required to cover the city's cost of preparing the development agreement, and to pay all other applicable fees associated with the process not covered in the application review, scoring and selection process pursuant to fees established by Resolution No. 18-121. Phase III fees in the amount of \$16,845 were established by City Resolution. With the adoption of the City Fee Resolution, the City Council created a full-cost reimbursement program to ensure all City costs accrued from processing CCP applications and administering the CCP program were covered by applicant and operator fees. Additionally, applicants executed an Indemnification and Hold Harmless Agreement that included indemnifying the City from costs

associated with both litigation and a referendum petition. Applicants(s) and operator(s) were advised that the City would be exercising its indemnity rights and demanded that they tender the City \$5,000.

Section 5.61.090(c)(3) of the Commerce Municipal Code provides that the City reserves the right to reject any application, at any time within, or in between, the three phases, for failure to pay any and all fees required by the City's Commercial Cannabis Program before, up to, and/or through, the three phase application process. Moreover, Section 5.61.270(b) of the Commerce Municipal Code states that no person may commence or continue any commercial cannabis activity in the City, without timely paying in full all fees and charges required for the operation of a commercial cannabis activity, and as mandated by the City's laws.

City staff made multiple attempts to inform DJCC (Ordinance No. 722), California Green World (Ordinance No. 742), Heng Xin Int'l (Ordinance No. 745) and Septem Leaf (Ordinance No. 746) of their outstanding Phase III fee and/or Indemnification Fees. Since these four applicant(s) do not at this time have a valid and effective development agreement with the City, City staff deemed it appropriate to issue a Notice of Disqualification for failure to pay required fees, consistent with past practice.

#### **(4) City Council's Options after Certification of Results.**

At tonight's meeting, since it has been determined that the Referendum Petitions qualify, City Council may take any of the following, or combined actions, as noted below, as to each subject Ordinance<sup>8</sup>:

##### **(A) Repeal any or all eleven (11) Ordinances.**

Repeal any or all eleven (11) Ordinance(s) against which the Referendum Petitions were filed. Ordinance(s) need to be approved repealing Ordinance No. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746. If City Council acts to repeal either any or all eleven (11) Ordinances, the Introduction and First Reading of the Ordinance(s) repealing respective Ordinance No. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746 may be considered by City Council at the next Council meeting.

#### **AND/OR**

##### **(B) Submit any or all eleven (11) Ordinances to the voters.**

**1. Select a date for Special Election and direct staff to bring back required resolutions; or**

**2. Call and give notice of the holding of a special municipal election on Tuesday, November 3, 2020 by consolidating said election with statewide election conducted by the Los Angeles County Registrar-Recorder office, and approve the attached related Resolutions.**

In order to place the any or all of the referendum measures on the Special Municipal Election ballot either at a selected stand-alone election or consolidating with the November 3, 2020 statewide election, certain actions needs to take place. Pursuant to Election Code Sections

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<sup>8</sup> Cal. Elec. Code § 9241.

9282 and 9285, proponents and opponents of the referendum measures are allowed to submit written arguments, as well as rebuttal arguments, to be included in the voters' guide. In addition, pursuant to Election Code Section 9280, whenever a referendum measure qualifies for a place on the ballot, the City Council may direct the City Attorney to prepare an impartial analysis. A statement will also be printed in the ballot advising voters that they may obtain a full copy of any of the subject ordinances upon request at the City Clerk's office, pursuant to Elections Code Sections 9243 and 9223.

If the City Council considers and adopts a Resolution calling and giving Notice of the holding of a Special Municipal Election on Tuesday, November 3, 2020, for submission to the qualified voters of the City of Commerce any or all of the eleven (11) referendum measures regarding Ordinance Nos. 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, and 746 (occurring not less than 88 days after the City Council's order); it is City Staff's recommendation, as reflected in the attached Resolutions, set a deadline of July 21, 2020, before 5:30 p.m. for the filing of written arguments for and against the referendum measures, and directing the City Attorney to prepare an impartial analysis of same; and setting a deadline of August 3, 2020, before 5:30 p.m. for the filing of rebuttal arguments to the filed arguments for and against the referendum measures; and authorizing that the full text of Ordinances not be printed in the ballot pamphlet due to cost, but both the ballot and the impartial analysis will let the qualified voters of the City of Commerce know that they will be able to obtain full copies, at no cost, by contacting the City Clerk or accessing the City's website.

**OR**

**(C) Interim Alternative Option: City Council may provide an alternative directive to City staff prior to making a decision.**

If City Council needs additional information, documentation, etc., before making a decision on Option A and/or Option B, the City Council can direct City staff to bring said information at the next regular City Council meeting to assist City Council – including preparing the necessary documentation to effectuate either option. There does not appear to be direct or explicit statutory requirements or related state provisions on when the City Council is required to repeal the Ordinance(s) or when to issue a "City Council order" to submit the Ordinance(s) to the voters after certification of the results. Please note for initiatives, state law indicates that a legislative body may ask an agency to present a report before making a decision no later than thirty (30) days after the city clerk certifies the sufficiency of the petition; and make a decision within ten (10) days after being presented said report.<sup>9</sup> While City Council is not statutorily required to adhere to said timeframes as said law governs the initiative process and not the referenda process, City Council may follow same as a guideline in the event City Council does require more information before taking action on Option A and/or Option B.

Please note because the Referendum Petitions have qualified, at this juncture, the Ordinance(s) do not become effective until and unless a majority of the voters voting on the Ordinance(s) vote in favor of them.

**FISCAL IMPACT:**

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<sup>9</sup> See Cal. Elec. Code §§ 9212, 9215.

The cost of the election will be determined by the Los Angeles County Registrar/Recorder Office. Applicants whose projects will be submitted before the voters will be billed for these services accordingly. Estimate for 11 Referendum petitions was estimated at \$56,000. Should the City Council not approve all cost of eliminating one at a time petitions is \$3,000. Cost per application, depending on the total number of applications approved, will be ranging from \$6,000 to \$9,000.

**ATTACHMENTS:**

- 1) Resolution calling and giving a Notice of holding a special municipal election on November 3, 2020
- 2) Resolution requesting consolidation of election

Respectfully submitted: Lena Shumway, Administrative Services Director & City Clerk  
Recommended by: Edgar P. Cisneros, City Manager  
Prepared by: Lena Shumway, Director of Administrative Services & City Clerk and  
Norma Copado, Assistant City Attorney  
Approved as to Form: Noel Tapia, City Attorney