



**THE CITY OF SAN DIEGO**

**M E M O R A N D U M**

DATE: July 31, 2019

TO: City of San Diego Planning Commission

FROM: Tim Daly, Development Project Manager/Development Services Department

SUBJECT: Planning Commission Meeting, August 15, 2019; Continuation of the July 9, 2015 Planning Commission Item No. 10, Appeal of the Hearing Officer's decision to deny a Conditional Use Permit for Glass Tek Entities MMCC - [Project No. 368509](#).

REFERENCE: [Report to the Planning Commission, Report No. PC-15-077](#), Appeal of the Hearing Officer's decision to deny a Conditional Use Permit for Glass Tek Entities MMCC - Project No. 368509 (Attachment 1).

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On March 25, 2014, the City of San Diego adopted [Ordinance No. O-20356](#), to implement zoning regulations for Medical Marijuana Consumer Cooperatives (MMCC). MMCCs are allowed with a Conditional Use Permit (CUP), Process 3, Hearing Officer Decision. Pursuant to San Diego Municipal Code (SDMC) Section 141.0504, a limit of four MMCCs allowed per Council District (36 City-wide) was adopted in order to minimize the impact on the City and residential neighborhoods. [Ordinance No. O-20793](#) was approved by City Council in February 22, 2017, which included amendments to the Land Development Code and the Local Coastal Program, replacing the MMCC use with a new retail sales use, Marijuana Outlet (MO). The Ordinance became effective in areas of the City of San Diego outside of the Coastal Overlay Zone on April 12, 2017, and within the Coastal Overlay Zone on October 12, 2017. The subject MMCC application was deemed complete on May 21, 2014, prior to the effective date of the MO ordinance, and continues to be processed subject to the MMCC regulations in effect at the time when the application was deemed complete.

On April 22, 2015, the Hearing Officer denied a Conditional Use Permit for the Glass Tek Entities MMCC - Project No. 368509 [Project] and on May 5, 2015, an appeal of the Hearing Officer's decision was filed by Stephen G. Cline, Esq., Law Offices of Stephen G. Cline, on the grounds of Findings not supported and New Information.

On June 25, 2015, the Planning Commission considered the Project's appeal and continued the item to July 9, 2015. This Project was one of six MMCC CUP applications in Council District 6 to be consider by the Planning Commission through the appeal process. As the SDMC only allows for four MMCC/MO CUPs in each Council District and to provide equitable impartiality in the City's processing

of the MMCC/MO CUP applications, the applications are scheduled for a decision in the order that the review of the project has been completed and the environmental determination made. In the event of any overlap in the preceding factors, the project application's deemed complete date is also considered. As a result, this Project was the sixth in succession order to be considered by the City's decision maker. Ultimately, the Planning Commission considered similar MMCC CUP application appeals, denied the appeals, and approved four within Council District 6: (1), Zen SD MMCC - Project No. 373481; (2), EJ Marketing MMCC -Project No. 368343; (3), SD Health & Wellness MMCC - Project No. 369478; and (4), 8863 Balboa Ste. E MMCC -Project No. 368347.

During the July 9, 2015 Planning Commission hearing, the Commissioners approved 8863 Balboa Ste. E MMCC -Project No. 368347 as the fourth MMCC CUP in Council District 6. At the same hearing, the Planning Commission subsequently continued the hearing for 7625 Carroll Road MMCC - Project No. 370687 and this Project to an indefinite date should an MMCC CUP application within Council District 6 not be executed and the fourth position would become available (Attachment 2). Prior to the Planning Commission's decision on the continuances, City staff recommended against each of the application's continuance considering direct conflicts with the SDMC Section 126.0114, Closing of Development Permit Application and the California Government Code Section 65920 – 65964, Permit Streamlining Act, regarding the responsible agency (City of San Diego) failure to act to approve or disapprove a development project within time limits required by the Municipal and Government Code sections.

The Zen SD MMCC - Project No. 373481, CUP application approved within Council District 6, was never executed and utilized by the Owner/Permittee. On March 22, 2018, the CUP expired and deemed void pursuant to SDMC Section 126.0107, Issuance of a Development Permit and SDMC Section 126.0108, Utilization of a Development Permit. Therefore, on February 14, 2019, the Planning Commission approved 7625 Carroll Road MMCC - Project No. 370687, the previous fifth project application in order of succession. Thereafter, the Development Services Department contacted Mr. Joel Volsky, the Glass Tek Entities MMCC applicant, to inform him that the fourth MMCC/MO had been approved in Council District 6. City staff provided Mr. Volsky with the following Project application processing options: (1), withdraw their application, (2) have the City close their application pursuant to SDMC Section 126.0114, Closing of Development Permit Application, or (3) proceed with processing the Project's continued appeal hearing with the Planning Commission. Mr. Volsky decided to continue processing the Project appeal hearing with the Planning Commission.

To date, a total of four CUP applications for MMCC/MO's have been approved within Council District 6 with the final decisions and they are not pending any appeals. Pursuant to SDMC Section 141.0504, a limit of four MMCCs allowed per Council District (36 City-wide) was adopted in order to minimize the impact on the City and residential neighborhoods. Approval of the proposed MMCC would exceed the limitation established by the SDMC and would not comply with the SDMC. Therefore, City staff supports the Hearing Officer's decision to deny the Project and recommends the Planning Commission affirm the Hearing Officer's decision and deny the Appeal based upon the inability to make the CUP findings pursuant to SDMC section 126.0305(b), (c), and (d), since no more than four MMCC/MO's are allowed within a Council District by the adopted City Ordinance.

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Should you have any questions, I will be available at the public hearing.



Tim Daly  
Development Project Manager

TD/tpd

Attachments:

1. [Report to the Planning Commission, Report No. PC-15-077](#), Appeal of the Hearing Officer's decision to approve a Conditional Use Permit for Glass Tek Entities MMCC - Project No. 368509, June 17, 2015
2. [Planning Commission Meeting Minutes, July 9, 2015](#)
3. Draft Resolution

cc: Legislative Recorder, Planning Commission  
Corrine Neuffer, Deputy City Attorney, Office of the City Attorney  
File

See the below City of San Diego webpage link to the Report to the Planning Commission, Report No. PC-15-077, Appeal of the Hearing Officer's decision to approve a Conditional Use Permit for Glass Tek Entities MMCC - Project No. 368509, June 17, 2015:

<https://www.sandiego.gov/sites/default/files/legacy/planning-commission/pdf/pcreports/2015/pc15077.pdf>

**PLANNING COMMISSION OF THE CITY OF SAN DIEGO  
MINUTES OF REGULAR SCHEDULED MEETING OF  
JULY 9, 2015  
IN COUNCIL CHAMBERS – 12<sup>TH</sup> FLOOR  
CITY ADMINISTRATION BUILDING**

**CHRONOLOGY OF THE MEETING:**

Chairperson Golba called the meeting to order at 9: 05 a.m. Chairperson Golba adjourned the meeting at 11:25 a.m.

**ATTENDANCE DURING THE MEETING:**

Chairperson Tim Golba – present  
Vice-Chairperson Stephen Haase – present  
Commissioner James Whalen – in at 9:13 a.m.  
Commissioner Anthony Wagner – present  
Commissioner Sue Peerson – present  
Commissioner Theresa Quiroz – present  
Commissioner Douglas Austin – present

Staff

Shannon Thomas, City Attorney – present  
Tait Galloway, Planning Department. - present  
Mike Westlake, Development Services Department – present  
Louis Schultz, Development Services Department - present  
Carmina Trajano, Recorder – present

PLANNING COMMISSION MINUTES FOR JULY 9, 2015

ITEM – 1: **ANNOUNCEMENTS/PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:**

NONE

ITEM – 2: **REQUESTS FOR CONTINUANCE AND/OR ITEMS TO BE WITHDRAWN:**

ITEM #7 - 3385 SUNRISE STREET MMCC – PROJECT NO. 368337 –  
**WITHDRAWN**

ITEM – 3: **REQUESTS FOR ITEMS TO BE PLACED ON THE CONSENT AGENDA:**

ITEM #11 - SPRINT – CENTREPOINT – PROJECT NO. 396602

ITEM – 4: **APPROVAL OF THE AGENDA:**

Accepted as presented.

ITEM – 5: **DIRECTOR’S REPORT:**

NONE

ITEM – 6: **COMMISSION COMMENT:**

NONE

ITEM – 7: *Trailed from June 25, 2015; Continued from May 28, 2015; Appeal of Hearing Officer’s decision on March 25, 2015*

**3385 SUNRISE STREET MMCC – PROJECT NO. 368337**

City Council District: 8

Plan Area: Southeastern San Diego

Staff: Edith Gutierrez

No speaker slips in favor of the project were submitted.

Speaker slips in opposition to the project submitted by Scott Chipman.

**COMMISSION ACTION:**

THIS ITEM WAS WITHDRAWN.

ITEM – 8: *Continued from June 25, 2015; Appeal of Hearing Officer's decision on April 22, 2015*

**8863 BALBOA STE E MMCC – PROJECT NO. 368347**

City Council District: 6

Plan Area: Kearny Mesa

Staff: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Jim Bartell, Abhay Schweitzer, Kristine Byers, Stephanie Hess, Bradford Harcourt, Michael Sherlock, Damielli Teza, Javier Santana, Alexander Garza, Nicholas Enciso, Christine Bordenave and Gia-rose Strada.

Speaker slips in opposition to the project, in favor of appeal submitted by Daniel Burakowski, Ed Quinn, Greg Izor, Connie Chambers, Judi Strang, Glenn Strand, Brian Kean, Tana Duong, Rod Chambers, P. Michelet, John Murray, William Budd, Scott Chipman, Spencer Harris, Edward Scudder, Kathy Lippitt, Cree Scudder, Peggy Walker, John Peek, Tom Brady, Hilary Brady, Luiza Savchuk, Candace Wo, Cory Berlin, Nathalie Matthews, Tuesday Nunes, Patrice Johnson, Kacie Miller, Michelle Johnson, David S. Demian, Tom Hanley, Heidi Runge, Rick Engebretsen, Steven Hwang and Jim O'Sullivan (not present).

**COMMISSION ACTION:**

COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1296130 WITH CONDITIONS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Golba, Haase, Austin, Quiroz and Wagner voting yea and with Commissioner Peerson voting nay and with Commissioner Whalen abstaining due to Comic-Con traffic.

ITEM –9: *Continued from June 25, 2015; Appeal of Hearing Officer's decision on April 22, 2015*

**7625 CARROLL ROAD MMCC – PROJECT NO. 370687**

City Council District: 6

Plan Area: Mira Mesa

Staff: Edith Gutierrez

## PLANNING COMMISSION MINUTES FOR JULY 9, 2015

Speaker slips in favor of the project, opposed to appeal submitted by David Demian, Jim O'Sullivan, Tom Hanley, Rick Engebretsen, Steven Hwang and Heidi Runge.

Speaker slips in opposition to the project submitted by Barbara Gordon, Peggy Walker, Judi Strang, Scott Chipman and Kathleen Lippitt.

**COMMISSION ACTION:**

COMMISSIONER WAGNER MADE THE MOTION TO APPROVE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 5-2 with Commissioners Golba, Austin, Peerson, Wagner and Whalen voting yea and with Commissioners Haase and Quiroz voting nay.

ITEM –10: *Continued from June 25, 2015; Appeal of Hearing Officer's decision on April 22, 2015*

**9212 MIRA ESTE CT (GLASS TEK) MMCC – PROJECT NO. 368509**

City Council District: 6

Plan Area: Mira Mesa

Staff: Edith Gutierrez

Speaker slips in favor of the project submitted by Michael Rellins, Steve Cline, Will Senn and Gavin Band.

Speaker slips in opposition to the project submitted by Scott Chipman, Kathleen Lippitt, Judi Strang, Peggy Walker and Barbara Gordon.

**COMMISSION ACTION:**

COMMISSIONER WAGNER MADE THE MOTION TO APPROVE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Austin, Quiroz, Peerson, Wagner and Whalen voting yea and with Commissioner Haase voting nay.

ITEM – 11: **SPRINT – CENTREPOINT – PROJECT NO. 396602**

City Council District: 9

Plan Area: Mid-City: Eastern Area

Staff: Alexander Hempton

No speaker slips in favor of the project were submitted.

No speaker slips in opposition to the project were submitted.



**COMMISSION ACTION:**

COMMISSIONER WAGNER MADE THE MOTION TO PLACE THIS ITEM ON CONSENT. Commissioner Quiroz seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Golba, Haase, Austin, Quiroz, Peerson and Wagner voting yea and with Commissioner Whalen absent.

PLANNING COMMISSION RESOLUTION NO. XXXX-PC  
CONDITIONAL USE PERMIT NO. 1296451  
**GLASS TEK ENTITIES MMCC - PROJECT NO. 368509**

WHEREAS, SUN DUK KIM and YUN CHUI KIM, HUSBAND and WIFE AS JOINT TENANTS, Owner, and GLASS TEK ENTITIES, INC., Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,200 square-foot tenant space within an existing 15,760 square-foot building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1296451), on portions of a 0.60-acre site;

WHEREAS, the project site is located at 9212 Mira Este in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, and the 65-70 dB CNEL for Miramar within the Mira Mesa Community Plan;

WHEREAS, the project site is legally described as Lot 14 of Mira Este Business Park, Map No. 11683, December 17, 1986;

WHEREAS, on December 8, 2014, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures); and the Environmental Determination was appealed to City Council, which heard and denied the appeal on March 3, 2015 pursuant to Resolution No. 309531;

WHEREAS, on April 22, 2015, the Hearing Officer of the City of San Diego denied Conditional Use Permit No. 1296451 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on May 5, 2015, Stephen G. Cline, Esq., Law Offices of Stephen G. Cline, filed an appeal of the Hearing Officer's decision;

WHEREAS, on July 9, 2015, the Planning Commission of the City of San Diego continued the appeal of Conditional Use Permit No. 1296451 to a date to be determined; and

WHEREAS, on August 15, 2019, the Planning Commission of the City of San Diego considered the appeal and Conditional Use Permit No. 1296451 pursuant to the Land Development Code of the City of San Diego, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the Planning Commission having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by Planning Commission of the City of San Diego, that it denies the appeal, affirms the Hearing Officer's decision, and adopts the following findings with respect to Conditional Use Permit No. 1296451:

**A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]**

**1. Findings for all Conditional Use Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.**

The 1,200 square-foot tenant space is located within an existing 15,760 square-foot building. The 0.60-acre site is located at 9212 Mira Este Court in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 65-70 dB CNEL for Miramar within the Mira Mesa Community Plan (Community Plan) area.

The Community Plan designates the site for Light Industrial Land Use Area and the Miramar Subarea. The Light Industrial designation is intended to accommodate manufacturing, storage, warehousing, distribution, and similar uses. The Miramar Subarea was foreseen in the community plan to be developed with a mix of light industrial and specialized commercial uses. The purpose and intent of the IL-3-1 Zone is to accommodate a range of industrial and manufacturing activities in designated areas to promote balanced land use and provide flexibility in the design of new and redeveloped industrial projects, while assuring high quality development and protecting land for industrial uses and limiting nonindustrial uses. The development standards of this zone are intended to encourage sound industrial development by providing an

attractive environment free from adverse impacts associated with some heavy industrial uses. The IL Zones are intended to permit a range of uses, including non-industrial uses in some instances. Specifically, the IL-3-1 allows a mix of light industrial, office, and commercial uses.

The project site is designated Industrial Employment by the Land Use and Community Planning Element of the General Plan. The General Plan identifies a citywide shortage of land suitable for manufacturing activities and a need to protect a reserve of manufacturing land from non-manufacturing uses.

The parcels to the north and southeast are within the IL-3-1 Zone, the other adjoining parcels are in the IL-2-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of the Community Plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit and is consistent with the Community Plan, therefore will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The 1,200 square-foot tenant space is located within an existing 15,760 square-foot building. The 0.60-acre site is located at 9212 Mira Este Court in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 65-70 dB CNEL for Miramar within the Mira Mesa Community Plan (Community Plan) area.

MMCCs are allowed in the IL-3-1 Base Zone with a Conditional Use Permit (CUP). Pursuant to San Diego Municipal Code (SDMC) Section 141.0504, a limit of four MMCCs allowed per Council District was adopted in order to minimize the impact on the City and residential neighborhoods. [Ordinance No. O-20793](#) was approved by City Council in February 22, 2017, which included amendments to the Land Development Code and the Local Coastal Program, replacing the MMCC use with a new retail sales use, Marijuana Outlet (MO).

On February 14, 2019, the Planning Commission of the City of San Diego approved a total of four CUP applications for MMCC/MO's within Council District 6. Pursuant to SDMC section 141.0504, no more than four MMCC/MO's are allowed per Council District to minimize the impact on the City and residential neighborhoods. The proposed MMCC will not comply with the regulations of the Land Development Code as four CUPs for an MMCC/MO have been approved within Council District 6. Therefore, the proposed MMCC will be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

MMCCs are allowed in the IL-3-1 Base Zone with a Conditional Use Permit (CUP). Pursuant to San Diego Municipal Code (SDMC) Section 141.0504, a limit of four MMCCs

allowed per Council District was adopted in order to minimize the impact on the City and residential neighborhoods. However, on February 14, 2019, the Planning Commission of the City of San Diego approved a total of four CUP applications for MMCC/MO's within Council District 6. Pursuant to SDMC section 141.0504, no more than four MMCC/MO's are allowed per Council District to minimize the impact on the City and residential neighborhoods. The proposed MMCC will not comply with the regulations of the Land Development Code as four CUPs for an MMCC/MO have been approved within Council District 6. Therefore, the proposed MMCC will not comply with the regulations of the Land Development Code as four CUP applications for an MMCC/MO have been previously approved within Council District 6.

**d. The proposed use is appropriate at the proposed location.**

The proposed 1,200 square-foot MMCC within an existing 15,760 square-foot building is located at 9212 Mira Este Court in the IL-3-1 Zone of the Mira Mesa Community Plan area. Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The purpose and intent of the IL Base Zone is to permit a range of uses, including nonindustrial uses in some instances. Specifically, the IL-3-1 allows a mix of light industrial, office, and commercial uses. The parcels to the north and southeast are within the IL-3-1 Zone, the other adjoining parcels are in the IL-2-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of the Community Plan.

However, on February 14, 2019, the Planning Commission of the City of San Diego approved the fourth CUP for a MMCC/MO's within Council District 6. Pursuant to SDMC section 141.0504, no more than four MMCC/MO's are allowed per Council District to minimize the impact on the City and residential neighborhoods. The proposed MMCC will not comply with the regulations of the Land Development Code as four CUPs for an MMCC/MO have been approved within Council District 6. Therefore, the proposed MMCC will exceed the limitation established by the City Ordinance and is not an appropriate use at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the Appeal is denied, the decision of the Hearing Officer is affirmed, and based on the Findings hereinbefore, Conditional Use Permit No. 1296451 is hereby denied by the Planning Commission to the referenced Owner/Permittee.

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Tim Daly  
Development Project Manager  
Development Services

Adopted on: August 15, 2019

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