



Agenda Correspondence

May 24, 2021

TO: Honorable Mayor and City Council
FROM: Pasadena Cannabis Equity
SUBJECT: PROPOSED ZONING CODE AMENDMENTS TO THE CITY'S CANNABIS REGULATIONS

RECOMMENDATION:

The City Council should utilize the authority granted to the City Council by Measure CC to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities ¹ and direct the City Attorney's office to prepare an ordinance to amend the existing cannabis ordinance and adopt a Cannabis Equity Program as follows:

- A) The existing cannabis ordinance should be amended to:
 1. Change the 600 foot distance requirement from residential "zones" to 150 feet from a dwelling unit within a residential zone, which is more restrictive than current state law.
 2. Remove any distance requirements from churches, parks, and libraries in conformity with current state law.
 3. The City should retain the distance requirement of 600 feet from a K-12 school, day care center, or youth center that is in existence at the time the license is issued in conformity with current state law.

¹ The ballot question for Measure CC stated:

"Shall an ordinance be adopted . . . provided that: (1) the ordinance shall not take effect unless voters approve a Cannabis Business Tax, and (2) **the City Council retains authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities?**" (emphasis added).

Thus, the authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities was very overtly and very specifically approved by the voters.

4. Remove the limit on the total number of locations or, in the alternate, set the limit at 30 (there are 445 active on and off site retail liquor licenses in Pasadena²).
 5. Change the distance requirements between cannabis retailers from 1,000 feet to 250 feet.
 6. Remove the limit of one retail location per Council District.
- B) Pasadena should establish an **Equity Permit Program** that issues permits to Equity Owners using the following criteria for Equity Owners:
1. Is a Pasadena resident at the time the permit issued; and
 2. Has lived in a combination of Council Districts 1, 3 or 5 for at least ten of the last twenty years or was arrested after November 5, 1996³ and convicted of a cannabis crime or other cannabis related violation in Pasadena, California.
 3. Owns a minimum of 51% of the operation and maintains operational control.
 4. No assignment of operational control, economic benefits or management contracts with otherwise unqualified third parties is permitted and shall require a revocation of the license.⁴
 5. A minimum of fifty (50%) of all new permits collectively issued by the City of Pasadena shall be issued to Equity Applicants. This excludes permits issued to the initial three (3) dispensaries.
 6. All dispensaries must maintain a staff comprised of at least fifty (50%) Pasadena residents and twenty-five percent (25%) Pasadena residents in census tracts identified by the City Manager as having high unemployment rates or low household incomes.
 7. The application process for Equity Owners is bifurcated to relieve Equity Applicants from having to incur the expense of holding real estate prior to obtaining a license. Equity Owners can first obtain a license without procuring a specific real estate location in advance. After obtaining a license an Equity Owner can then submit a CUP for a qualified location.

² California Department of Alcoholic Beverage Control <https://www.abc.ca.gov/licensing/licensing-reports/adhoc-report/?RPTTYPE=9&CITY=PASADENA>

³ On November 5, 1996 Pasadena voters approved Proposition 215, the first voter-approved state ballot initiative for medical marijuana in the United States, with a 57.1% YES vote.

⁴ Steve White, the owner of Harvest of Pasadena LLC was allowed to obtain a license for the benefit of Harvest, Health & Recreation, Inc. who is now attempting to sell this license for at least \$10 million. Harvest will reap this windfall having never paid any tax to Pasadena or providing any financial benefit to Pasadena residents.

BACKGROUND:

Pasadena Voters vs. the Pasadena City Council:

On November 5, 1996 California voters passed Proposition 215, the first voter-approved state ballot initiative for medical marijuana in the United States. Proposition 215 was approved by 57.1% of City of Pasadena voters.⁵ **On July 18, 2005**, the City Council of the City of Pasadena unanimously voted to ban medical marijuana dispensaries even though in 1996 Pasadena voters had overwhelmingly approved such dispensaries. **On October 9, 2015**, several bills became law allowing local control over commercial marijuana activity. **On November 23, 2015**, the City Council took advantage of these new laws and once again voted to prohibit commercial marijuana activity. **On November 8, 2016** California voters passed Proposition 64. Proposition 64 made it legal to sell and distribute cannabis through a regulated business as of January 1, 2018. Proposition 64 was approved by 62.7% of City of Pasadena voters.⁶ Despite the expressed will of Pasadena voters, the City Council of Pasadena refused to repeal its ban on the sale of cannabis. **On November 6, 2017**, the City Council once again voted to prohibit commercial marijuana activity even though just a year earlier most Pasadena voters had approved of this activity. The City Council also passed a resolution stating an intent to continue to **punish residents** and others who had sold previously sold marijuana illegally by refusing to allow them to engage in future legal sales activity. **In early 2018**, under threat of having its ban on commercial cannabis activity repealed by ballot initiative, the City Council could have simply and cost effectively amended its existing ordinances and adopted new ordinances regarding commercial cannabis business activities. Instead, in keeping with the historical resistance of most Council members to cannabis legalization despite the recorded votes of their own constituents, the City Council crafted a ballot measure (Measure CC) and a Cannabis Tax Measure (Measure DD). **On June 5, 2018**, Pasadena voters passed the City Council drafted Measure CC. Measure CC explicitly repealed the City's ban on commercial cannabis businesses and allowed commercial cannabis businesses to operate in Pasadena. Measure CC was approved by 60.8% of City of Pasadena voters. Measure CC passed in 52 of 57 City election precincts.⁷ The accompanying cannabis tax measure (Measure DD) was approved by 76% of City of Pasadena votes.

PASADENA'S CANNABIS ORDINANCE IS FLAWED IN DESIGN AND EXECUTION:

Measure CC, as drafted by the City Council and subsequently implemented by city staff, is the single worst (and easily avoided) Pasadena public policy failure in the history of Pasadena,

⁵ Source: California Secretary of State "Supplement to the Statement of Vote – November 5, 1996 General Election Political Districts Within Counties: 20,418 YES/15,348 NO.

⁶ Source: Los Angeles County Register-Recorder/County Clerk "Votes Cast by Community" for November 8, 2016 General Election: 36,992 YES/21,966 NO.

⁷ Source: City of Pasadena Resolution 9661 declaring results of the June 5, 2018 Special Municipal Election held on June 5, 2018: 16,099 YES/10,370 NO.

costing the City millions of dollars in unnecessary administrative and legal expenses and forgone tax revenue.⁸

Flawed Design – 445 active on and off-site retail liquor licenses versus 3 retail cannabis licenses:

There are 445 Active on and off-site retail liquor licenses in Pasadena.⁹ In the entire 23 square miles of Pasadena, the current rules have created only 3 (three) legal locations for the sale of cannabis and only 2 of these locations are currently operating.

City Council group tinkering with the language of Measure CC created this public policy problem. Some City Council members unreasonably feared that these locations were potential “problem liquor stores”¹⁰ and sought to effectively regulate them almost out of existence, imposing the most restrictive zoning requirements in City history, far more restrictive than even bars or strip clubs. The City now has enough experience with these locations to know that they are not and never were potential “problem liquor stores”. This fear was always unreasonable. These are extraordinarily valuable city issued and city regulated licenses that are subject to annual renewal by the City. The idea that these businesses would risk millions of dollars in value by violating City rules and regulations is absurd. These retail cannabis businesses have a tremendous economic incentive to be the most law-abiding, regulatory compliant businesses in Pasadena history.

It should be repeated that unlike with the patrons of bars and strip clubs, there is no on-site consumption at a cannabis retailer. Instead of treating these cannabis businesses realistically as retailers much more upscale than Trader Joe’s, Ralph’s or Von’s (which sell vodka and whiskey without issue) a City Council majority was in the grip of a fantasy that it was dealing with a proverbial Opium Den and proceeded to make public policy as if its fantasy was reality.¹¹

Unreasonable Distance and Number of Licenses Requirements:

There is no objective reason why Pasadena should be limited to three retail cannabis locations when it already has 445 active on and off-site retail liquor licenses.

Located within a retail adjacent area of more than 300,000 people, Pasadena can economically support up to 30 retail cannabis stores (1 per 10,000 is the industry standard). In one of your

⁸ If the City’s initial scoring process is ultimately overturned, the City could be subjected to at least \$20 million in additional out-of-pocket losses.

⁹ California Department of Alcoholic Beverage Control <https://www.abc.ca.gov/licensing/licensing-reports/adhoc-report/?RPTTYPE=9&CITY=PASADENA>

¹⁰ In 1886 Pasadena incorporated, largely as a measure to rid the city of its saloon.

¹¹ Basing public policy on either idealized or horrific narratives is a common mistake of political bodies. City staff weakly attempted to prevent the City Council from instituting many of these absurd restrictions but ultimately staff acquiesced. Repeated attempts by City staff to correct this City Council error have been voted down.

first meetings on cannabis, David Reyes remarked that the Pasadena population by itself could support up to 14 retail cannabis stores.

There are no state laws that require that a cannabis retailer be any distance from a residential zone, church, park or library. There are no state laws requiring separation between retailers.

There is no objective reason why cannabis retail locations must be 1,000 feet apart. In Pasadena, Sexually Oriented Business are required to be only 250 feet apart. Bars in Old Pasadena are required to be only 250 feet apart. There is no objective reason why cannabis retailers must be more than 600 feet from any residential zone, church or faith congregation, park, or library. Since no consumption is allowed on site, there is no impact on “sensitive uses”. Other than purchasing firearms, the actual retail purchase of cannabis is already the most regulated and controlled retail activity in Pasadena.

People who are walking, running, buying gasoline, driving a car, or are otherwise engaged in lawful retail activity are not pollution.¹²

These distance regulations effectively bar commercial cannabis activity from 99.75% of the City. A draft cannabis map prepared by City staff showed:

- 1) No legal location in District 1
- 2) No legal location in District 2
- 3) Approximately 3 available legal blocks in District 3
- 4) Approximately 2 available legal blocks in District 4
- 5) No legal location in District 5
- 6) Approximately 1 legal block in District 6.
- 7) No available legal location in District 7.¹³

During discussions, city staff repeatedly advised the Council that the zoning rules imposed by Measure CC were so restrictive that it was likely that only 3 locations would ever be opened, rather than the 6 that Measure CC proposed, or the 14 locations staff claimed the City by itself could economically support.

The Flawed Reasoning of Limiting Locations by Council District:

The City Council inserted a provision in Measure CC that limited locations to 1 location per Council District. **Pasadena City Council Districts are political subdivisions not zoning subdivisions.** They are not demographically or geographically identical and in at least one case

¹² However, in Pasadena some residents are treated as “threats” because authorities imagine them to be. Pasadena should change its slogan from City of Roses to City of Idealized Nonsense and Absurdly Horrific Narratives.

¹³ The City Council voted to approve the location occupied by Integral after the Planning Commission refused to.

(District 5) haven been gerrymandered to create more Latino representation. District 1 is more heavily single-family residential than any other District. Most of the Big Box Retailers are in District 4. District 3 happens to encompass most of the small retail areas not near residential zones, schools, churches, parks or libraries.

As a result of its political design, District 3 contains more actually available and legal cannabis locations than the rest of the City Council Districts combined.

The 1 per Council District requirement is the root cause of most of the chaos, lawsuits, delay and unnecessary expense that has been the result of Pasadena’s unworkable commercialization of cannabis. This single rule acted to further invalidate 50% of the already tiny handful of legal locations.

Council Districts are drawn to be geographically contiguous and capture communities of interest. Because it is impossible to do this while also creating Council Districts that are zoned identically, there will always be an unequal dispersal of regulated business types within City Council Districts.

The claim that District 3 would be “unfairly” impacted by a change to the cannabis zoning rules is as fallacious as saying District 2 is “unfairly” impacted by auto body shops. It is a function of zoning and the relative location of commercial areas versus residential areas, not political boundaries.

Failed in Execution:

The City of Pasadena cannabis ordinance is plagiarized from the West Hollywood cannabis ordinance. Much of Pasadena’s cannabis ordinance is a word-for-word reproduction of the West Hollywood cannabis ordinance.

A comparison between the original West Hollywood ordinance¹⁴ and the largely plagiarized Pasadena ordinance¹⁵ shows how Pasadena edited the West Hollywood ordinance for use in Pasadena. Pasadena’s deletions are shown as strikethroughs and Pasadena’s insertions are underlined:

An application evaluation~~selection~~ committee composed of at a minimum three (3) individuals ~~with demonstrated experience in either city government or the cannabis industry, with no business interests in the City of West Hollywood~~ shall be appointed by the ~~City Manager~~city manager to review and score each application based on the general criteria listed below. The specific criteria and weighting (points per criteria) for

¹⁴ West Hollywood Municipal Code Section 5370.035. b. and e.

¹⁵ Pasadena Municipal Code Section 5.78.080.B. and E.

each license type permit category will be determined prior to the commencement of the initial screening application period and posted publicly. Each application will be independently scored by the evaluation selection committee members.

The scores awarded by the application evaluation selection committee shall be totaled and averaged for each applicant. The applicants shall then be ranked from highest to lowest based on their scores.

The requirements that the committee be “composed of at a minimum three individuals” whose scores “shall be totaled and averaged” are identical for both cities. West Hollywood carefully followed this requirement. Pasadena ignored it.

In addition, Pasadena removed West Hollywood’s requirement that the committee members have no business interests in the City. Pasadena likely removed this language and ignored the scoring procedures because City Staff intended to steer a no-bid scoring contract to an existing city vendor, Hinderliter, de Llamas and Associates (HDL).

How West Hollywood Scored Applications:

West Hollywood convened a committee to independently review and score each application. The application evaluation committee members began their review of applications in late July 2018. In total, each application evaluation committee member independently reviewed over 20,000 pages, and individually scored each application based on the final weighting criteria. The scoring process took over three months and was completed in late November 2018. Once all of the application evaluation committee members were finished, the five scores for each application were averaged. The average score for each applicant in each applicable license category was then sorted from highest to lowest. The average scores for all applicants were posted on the City’s website on Tuesday, December 18, 2018. The City’s auditing firm (White, Nelson, Diehl, Evans LLP) reviewed each of the committee members’ scores to verify accuracy of the math and confirm that scores awarded did not exceed the maximum allowable point value in each category. Based on their findings, minor corrections were made when necessary; however, none of the corrections materially impacted the results that were released on December 18, 2018 or the rankings of the top scoring applicants.

West Hollywood carefully followed the law, using 5 scores (more than the required minimum of 3) whose scores were then totaled and averaged as required by law.

How Pasadena Scored Applications:

By law, Pasadena was required to use the same scoring process as West Hollywood. Instead, likely to accommodate the issuance of a no-bid contract to HDL, Pasadena conducted an illegal scoring process. Instead of convening a committee of at least 3 individuals to score applications, the City gave a no-bid contract to HDL to score the applications. Contrary to the

requirements in the ordinance, the contract with HDL failed to specify the requirement of a minimum of three scores which would be totaled and averaged (possibly because it would have tripled the City's contract costs). HDL scored each application only once by a single individual. No average was ever calculated.

As a result, the final six applicants selected by the City were not lawfully selected. Only 3 of the 6 applicants have found locations City staff claims are legal. Harvest has refused to open its location and instead has repeatedly sought to sell its license instead.

In summary, Pasadena's cannabis process was poorly designed and illegally executed.

You have allowed this to continue uncorrected for two years.

ESTABLISH A PASADENA CANNABIS EQUITY PROGRAM

Cities across California and the US have created Social Equity rules, requiring a portion of cannabis licenses be given to those people who were previously harmed by cannabis laws.

The Pasadena City Council, true to its history of resistance to legalizing cannabis, has done the opposite. It is currently the official legislative policy of Pasadena to take continuing punitive action towards residents the City previously prosecuted for cannabis sales. Rather than emphasizing social equity and Pasadena resident ownership, 2 of the 3 existing licenses have been given to out-of-state billion-dollar cannabis corporations. One of these out-of-state cannabis corporations have spent hundreds of thousands of dollars paying local lawyers and "advisors" including at least two former Pasadena City Councilmembers. The number of currently legal locations (three) are so small that one landlord is reportedly collecting \$80,000 a month (three times the going rate) in rent for a legal but currently vacant location. Individuals harmed by Pasadena's historic war on drugs have received nothing. Other Pasadena commercial property owners are falling into foreclosure and bankruptcy and receive nothing.

Pasadena residents receive nothing.

Further, the City Council has taken no action to assist residents, especially those subjected to disproportionate attention by law enforcement, in getting cannabis convictions expunged even though Proposition 64, which provides for expungement, has been the law for nearly five years.

Measure CC gave no preference to Pasadena residents and no remedy for the thousands of people Pasadena had spent decades persecuting for cannabis "crimes" which are now legal.

40,000 people are still in prison for cannabis crimes while a Pasadena cannabis "contributes" \$9,400 to pay the holiday party expenses of one Councilmember.

Criteria for a Pasadena Cannabis Equity Program:

Pasadena should establish an Equity Permit Program that issues permits to Equity Owners using the following criteria for Equity Owners:

1. Is a Pasadena resident at the time the permit issued; and
2. Has lived in a combination of Council Districts 1, 3 or 5 for at least ten of the last twenty years or was arrested after November 5, 1996¹⁶ and convicted of a cannabis crime or other cannabis related violation in Pasadena, California.
3. Owns a minimum of 51% of the operation and maintains operational control.
4. No assignment of operational control, benefits or management contracts with otherwise unqualified third parties is permitted and shall require a revocation of the license.¹⁷
5. A minimum of fifty (50%) of all permits collectively issued by the City of Pasadena shall be issued to Equity Applicants. This includes permits issued to the initial three (3) dispensaries.
6. All dispensaries must maintain a staff comprised of at least fifty (50%) Pasadena residents and twenty-five percent (25%) Pasadena residents in census tracts identified by the City Manager as having high unemployment rates or low household incomes.
7. The application process for Equity Owners is bifurcated. Equity Owners can first obtain a license without procuring a specific real estate location in advance.

CONCLUSION:

The City Council, with a mix of historic resistance to the voters will and the use of horrific fear-based narratives created the biggest public policy disaster in Pasadena history.

Cannabis retailing is a routine, highly controlled and regulated, boring and straightforward retail activity.

It isn't a bar. It isn't a strip club. It isn't an opium den.

In fact, these are the most law-abiding, regulatory compliant businesses in Pasadena.

City staff have repeatedly implored the Council to fix these issues of overregulation. The City Council has repeatedly refused. In the interim, the former Mayor was thrown out of office in a

¹⁶ On November 5, 1996 Pasadena voters approved Proposition 215, the first voter-approved state ballot initiative for medical marijuana in the United States, with a 57.1% YES vote.

¹⁷ Steve White, the owner of Harvest of Pasadena LLC was improperly allowed to obtain a license for the benefit of Harvest, Health & Recreation, Inc. who is now attempting to sell this license for at least \$10 million. Harvest will reap this windfall having never paid any tax to Pasadena or providing any financial benefit to Pasadena residents.

landslide, largely because of his inability to admit he was wrong on this and many other issues and take corrective action.¹⁸

The City has developed a poisonous corporate culture that refuses to admit mistakes. These uncorrected mistakes are causing a significant and growing portion of Pasadena residents to believe that City government is dishonest and corrupt. A failure to take corrective action in this matter will cause the faith and confidence of residents in the City and its elected leaders to continue to be undermined.

CONSEQUENCES:

If the City fails to correct this public policy failure, we will draft a ballot measure that replaces your flawed ordinance, institutes a Social Equity requirement for Pasadena residents and those you have harmed with your unethical and immoral “War” on peaceful and harmless cannabis users and, as an anti-corruption measure, removes oversight of the Cannabis Permitting Process (and perhaps oversight of the entire Planning Department) from the City Manager and places it in the hands of an appointed commission.

FISCAL IMPACT:

A fully realized Pasadena cannabis retail environment will produce approximately \$90 million a year in sales which will produce \$3,600,000 in direct revenue for the General Fund which is likely more than 4 times what the City is collecting currently from the two operational locations.

¹⁸ On November 3, 2020 Pasadena Mayor Terry Tornek, who repeatedly defended Measure CC and its implementation by City staff, was the first City Council member to be removed by Pasadena voters in 33 years.