S238563

IN THE

SUPREME COURT OF CALIFORNIA

UNION OF MEDICAL MARIJUANA PATIENTS, Plaintiff and Appellant, v. CITY OF SAN DIEGO, Defendant and Respondent, CALIFORNIA COASTAL COMMISSION, Real Party in Interest,	**Fourth District Court of Appeal, Division One Case No. D068185** San Diego Superior Court Case No. 37-2014-00013481-CU-TT-CTL

ANSWER BRIEF ON THE MERITS

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I.

INTRODUCTION

Petitioner brings this case under the California Environmental Quality Act (CEQA) to challenge the City of San Diego's (City) ordinance O-20356, which establishes a permitting process for medical marijuana facilities (Ordinance). Petitioner alleges the Ordinance is a "project" subject to CEQA because it places a limit on the total number of facilities, and that this limit will cause impacts associated with traffic and indoor cultivation. Petitioner alleges the Ordinance "requires thousands of patients to drive across the City to obtain their medicine" and "will result in a proliferation of small indoor cultivation sites[.]" (*See* Clerk's Transcript (CT), p. 6 (¶ 17) and p. 8 (¶ 20).)

Petitioner's arguments fail because they rely on the incorrect premise that the Ordinance *restricts* a patient's access to marijuana; there is no substantial evidence in the record to support this assumption. Instead, the Ordinance *expands* patients' access to marijuana. At the time the City adopted the Ordinance, there were NO legal facilities in the City. The Ordinance provides the means to legally permit a facility. The Ordinance does *nothing* to restrict a patient's access to marijuana: it does not prohibit or address currently existing illegal facilities or other means by which patients presently obtain marijuana—whether legal or illegal. The Ordinance only creates an additional means to obtain marijuana. So it is incorrect and speculative to assume the Ordinance will cause patients to drive farther or cultivate marijuana in their homes.

Because there are no reasonably foreseeable impacts, the City appropriately determined the Ordinance was not a "project" and therefore not subject to CEQA; it "does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable

indirect physical change in the environment[.]" (AR 28:439 (*citing* CEQA Guidelines, § 15060(c)(3) and 15378).) "An activity that is not a 'project' as defined in the Public Resources Code (see § 21065) and the CEQA Guidelines (see § 15378) is not subject to CEQA. (CEQA Guidelines, § 15060, subd. (c)(3).)" (*Muzzy Ranch Co. v Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 380.)

Agencies are not required to assess speculative impacts. Courts have long held that such a review would be meaningless, and that agencies should assess environmental impacts when there is enough information to analyze. The Ordinance mandates that the approval of any marijuana facility requires a discretionary permit, and thereby ensures that the City will perform CEQA analysis when there is enough information (location, size, design, etc.) to perform a meaningful review. Only then will the City be able to assess direct and reasonably foreseeable indirect physical changes in the environment. Therefore, the City will perform CEQA review at the appropriate time.

Petitioner also argues Public Resources Code Section 21080(a) should be read such that all activities referenced therein are subject to CEQA as a matter of law (*i.e.,* without regard to whether the activity meets the definition of "project" in Public Resources Code Section 21065). Petitioner's position is inconsistent with the text of Section 21065 and Section 21080(a), is inconsistent with the Legislative History for Section 21065, and is inconsistent with the case law, which makes clear that activities not meeting the requirements of Section 21065 are "not subject to CEQA." (*Muzzy Ranch, supra,* 41 Cal.4th at p. 380.)

The Court may also elect to dismiss this appeal as moot. Recently enacted Senate Bill 94 exempts these types of marijuana zoning ordinances from CEQA review for the next approximately two years. Accordingly, a

court cannot issue the remedy (*i.e.*, CEQA compliance) Petitioner seeks in this action.

For these reasons, as more fully explained below, the City respectfully requests that the Court affirm the trial court's and Court of Appeal's decision to deny the Petition or, alternatively, dismiss the appeal as moot.

II.

STATEMENT OF THE CASE

A. The City Council's Adoption of the Ordinance and its CEQA Determination

In a widely-attended, noticed public hearing on April 22, 2013, City Council directed the Mayor and City Attorney to develop an ordinance to allow medical marijuana facilities. (Administrative Record (AR) 16:229 and 231.)[1] Thereafter, on December 5, 2013, the Planning Commission held a noticed public hearing to discuss the proposed Ordinance. (AR 27:293-435.) The item lasted over two and a half hours, and several members of the public attended and spoke. (*Ibid.*)

The Ordinance came before City Council in a noticed public hearing on February 25, 2014. (AR 32:472.) The Court can view the hearing on the City's website at http://granicus.sandiego.gov/ViewPublisher.php?view_id=3. After nearly three hours of discussion and public testimony, City Council voted 8-1 to amend and approve the Ordinance. (AR 31:469-470; AR 32:472-627.) Final adoption required a second, noticed public hearing, which occurred on March 11, 2014. (AR 36:648-656.)

[1] The first number refers to the tab. The second number refers to the page number. If there is no second number, then the cite is to the tab only.

Prior to the adoption of the Ordinance, medical marijuana facilities were not allowed in the City. The Ordinance does nothing to address illegally operating marijuana facilities. It only creates a process to allow facilities to operate legally. The Ordinance makes amendments to the City's Land Development Code to allow "medical marijuana consumer cooperatives" to operate in specified commercial and industrial zones with a Conditional Use Permit. (AR 42:682.) Medical marijuana consumer cooperatives are defined as "a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code section 11362.5 through 11362.83." (AR 4:26.)

Contrary to Petitioner's contention that "[t]he City did not limit the definition of a 'Medical Marijuana Consumer Cooperative' to conventional 'storefront medical marijuana dispensaries,'" (Court of Appeal Opening Brief, p. 11) "[t]he intent of the Ordinance is to regulate commercial retail type facilities." (AR 42:682.) Under the Ordinance, "[t]here may not be more than four medical marijuana consumer cooperatives per City Council District." (AR 42:682.)

Prior to adopting the Ordinance, the City made the following CEQA determination:

> The ... Ordinance is not subject to [CEQA] pursuant to CEQA Guidelines Section 15060(c)(3), in that it is not a Project as defined by CEQA Guidelines Section 15378. Adoption of the ordinance does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Future projects subject to the ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

(AR 28:439.)

B. The Trial and Appellate Court Decisions

At the trial court, the parties briefed two issues: whether Petitioner, as a Los Angeles organization, had standing to challenge an ordinance adopted in San Diego; and whether the adoption of the Ordinance constituted a "project" under CEQA. The trial court, the Honorable Joel R. Wohlfeil presiding, heard argument on March 6, 2015.

On March 9, 2015, Judge Wohlfeil issued a ruling rejecting the City's standing argument,[2] and denying the Petition on the grounds that there was no evidence in the administrative record that would support the existence of a "reasonably foreseeable indirect physical change in the environment" per Public Resources Code section 21065. (CT 110, first para.)

On May 1, 2015, the City filed a Notice of Entry of Judgment (CT 145-157.) On May 18, 2015, Petitioner filed a notice of appeal. (CT 158-159.) On October 14, 2016, the Fourth District Court of Appeal affirmed the trial court's judgment. The Supreme Court granted review on January 11, 2017.

III.

STANDARD OF REVIEW

"When considering a petition for traditional mandamus seeking relief under CEQA from an agency's action, the trial court reviews the agency's action for abuse of discretion." (*Friends of the Sierra Railroad v. Tuolumne Park and Recreation District* (2007) 147 Cal.App.4th 643, 652.) "Abuse of discretion is established if the agency has not proceeded in a

[2] The City does not dispute this issue on appeal.

manner required by law or if the determination or decision is not supported by substantial evidence." (*Ibid.*)

"Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384(a).) "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines, § 15384(b).) "The phrase 'reasonable assumption predicated upon fact' means a reasonable inference drawn from fact." (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 285, fn. 6 (disapproved on other grounds in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 297).) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." (CEQA Guidelines, § 15384(a).)

"In dealing with an agency's conclusion that the action in question was not a project within the meaning of CEQA, … the trial court can employ its own analysis of undisputed facts in the record and decide the question as a matter of law without deference to the agency's decision." (*Friends of the Sierra, supra,* 147 Cal.App.4th at p. 652.) "Whether an activity is a project is an issue of law that can be decided on undisputed data in the record on appeal." (*Muzzy Ranch, supra,* 41 Cal.4th at p. 382.) For example, in *Friends of the Sierra,* the court determined that there was no substantial evidence in the record showing a reasonably foreseeable impact and that the "no project" determination was therefore appropriate. (*Friends of the Sierra, supra,* 147 Cal.App.4th at p. 662.)

"In a CEQA case, as in other mandamus cases, [the appellate court's] review of the administrative record for error is the same as the trial court's; [the appellate courts] review the agency's action, not the trial court's decision." (*Muzzy Ranch, supra,* 41 Cal.4th at p. 381.)

IV.

ARGUMENT

A. CEQA applies only to "projects": activities that may cause a direct or reasonably foreseeable indirect physical change in the environment; CEQA does not apply where impacts are speculative.

The issue in this case is whether the Ordinance qualifies as a "project" under CEQA. In 1994, following the decision *Kaufman & Broad-South Bay, Inc. v. Morgan Hill USD* (1992) 9 Cal.App.4th 464, the Legislature amended the CEQA definition of "project" so that CEQA applies only to "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]" Pub. Res. Code § 21065 (*see also* Historical and Statutory Notes).[3] "An activity that is not a 'project' as defined by the Public Resources Code (see § 21065) and the CEQA Guidelines (see § 15378) *is not subject to CEQA.* (CEQA Guidelines, §15060(c)(3).)" (*Chung v. City of Monterey Park* (2012) 210 Cal.App.4th 394, 401-02 (emphasis added) (*quoting Muzzy Ranch, supra,* 41 Cal.4th at p. 380).)

The CEQA Guidelines explain that "[a] direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project." (CEQA Guidelines, § 15064(d)(1).) Petitioner does not and cannot allege that the Ordinance would cause any

[3] Prior to the *Kaufman* decision, the "direct … or … reasonably foreseeable indirect physical change" requirement was in the CEQA Guidelines (section 15378), but not in the Public Resources Code.

direct change to the environment. Instead, Petitioner argues only the existence of indirect physical changes. Therefore, this brief focuses on the definition of a "project" related to a reasonably foreseeable indirect physical change in the environment.

"An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project." (CEQA Guidelines, § 15064(d)(2).) "An indirect physical change is to be considered *only if that change is a reasonably foreseeable impact which may be caused by the project.* ***A change which is speculative or unlikely to occur is not reasonably foreseeable."*** (CEQA Guidelines, § 15064(d)(3) (emphasis added).) "The question whether alleged physical changes are reasonably foreseeable requires an examination of the evidence presented in the administrative record." (*Wal-Mart Stores, Inc., supra,* 138 Cal.App.4th at p. 291.)

For example, in *Chung,* the court held that a ballot measure requiring competitive bidding for future trash service contracts is not a "project" and therefore not subject to CEQA because the impacts were not reasonably foreseeable. (*Chung, supra,* 210 Cal.App.4th at p. 405-06.) The petitioner in *Chung* similarly argued that the ballot measure—which allowed the city to hire additional service providers—would result in traffic impacts, additional greenhouse gas emissions, and other environmental impacts. (*Id.* at p. 405.) The court rejected the claim because the impacts were speculative. (*Id.* at p. 406.) Relying on *Kaufman,* the court found environmental review at that juncture "would be meaningless. There is simply not enough specific information ... to warrant review at this time." (*Id.* at p. 406.)

Kaufman likewise supports the City's position. In *Kaufman,* the court found the formation of a facilities district—a means for raising funds for acquisition and construction of school sites—was not a "project" under CEQA because the location of potential future school sites was speculative, and there was insufficient information for meaningful environmental assessment. (*Kaufman, supra,* 9 Cal.App.4th at p. 475-76.)

Like *Chung* and *Kaufman,* the record in this case does not support a conclusion that the subject activity is a "project" subject to CEQA.

B. CEQA should occur when there is meaningful information to assess.

A related issue under CEQA is timing. "Choosing the precise time for CEQA compliance involves a balancing of competing factors." (*See* CEQA Guidelines, § 15004(b).) Environmental documents should be prepared as early as feasible "yet late enough to provide meaningful information for environmental assessment." (*Ibid.*)

Friends of the Sierra Railroad (2007) 147 Cal.App.4th 643 is instructive. In that case, the petitioner challenged the district's sale of land containing a historic railroad, arguing it was reasonably foreseeable that the sale would result in development of the property and resultant impact on the historical resource. The court agreed that development was reasonably foreseeable and that the development could impact the historical resource. (*Id.* at p. 656.) Notwithstanding, the court held the approval of the sale was not a "project" as defined by CEQA because a meaningful CEQA review was not yet possible. (*Id.* at p. 657.) The court reasoned:

> In spite of these possibilities, we conclude that this case more closely resembles those prior cases in which no CEQA project was found or where CEQA review was premature than those in which there was a project or review was not premature. The reasonably foreseeable likelihood of *some* development on the [] property, combined with the possibility

> that the development could impact the historical resource included within the larger property, does not trigger CEQA review. CEQA review has to happen far enough down the road toward an environmental impact to allow meaningful consideration in the review process of alternatives that could mitigate the impact.

(*Ibid.*, footnote omitted (emphasis in original).)

The Fourth District Court of Appeal ruled similarly in *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556. The petitioner challenged a siting element that was part of the county's integrated waste management plan because the county did not analyze the impacts related to the potential landfill sites referenced in the siting element. Like the City in the present case, the county asserted that environmental review of the sites would be speculative, and that the county would perform environmental review at the time it decides to move forward with a particular site. (*Id.* at p. 569.) The court agreed that environmental review at this stage "would be premature in that any analysis of potential environmental impacts would be wholly speculative." (*Id.* at p. 576.)

C. The City complied with CEQA.

Consistent with the above statutory and case law authority, the City determined the Ordinance is not a "project" because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. (AR 28:439.) The Ordinance amends the City's Land Development Code to allow qualifying medical marijuana facilities in certain commercial and industrial zones throughout the City. The City created a discretionary process for the issuance of permits under the Ordinance, which means CEQA review must be performed before the issuance of any individual permit. (AR 28:439.)

D. Public Resources Code Section 21080(a) does not negate the causation requirement of Public Resources Code Section 21065.

Petitioner argues that, pursuant to Public Resources Code Section 21080(a), a zoning ordinance is a "project" as a matter of law without regard to whether it meets the elements of Section[4] 21065. Petitioner misreads Section 21080(a). The Legislature did not intend for Section 21080(a) to restrict the requirements of Section 21065.

Providing a general statement of the law for CEQA, Section 20180(a) reads:

> Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

Section 20165 defines "project." The "project" definition has two elements. The first element (referenced herein as the "causation element") relates to whether the activity causes a change in the environment, and the second element (referenced herein as the "categorical element") relates to the type or category of activity. Section 21065 defines "project" as (1) "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and (2) which is any of the following:

> (a) An activity directly undertaken by any public agency.

---

[4] All generic references to "Section" is a reference to the Public Resources Code.

(b) An activity undertaken by a person which is supported, in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Pub. Res. Code § 21065.)

The rules of statutory interpretation provide: "a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) Similarly, the rules require that "where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code of Civ. Proc. § 1858.)

Also, "when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it." (Code of Civ. Proc. § 1859; *see also San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision ....").)

Petitioner's argument assumes that the phrase "including, but not limited to, the enactment and amendment of zoning ordinances ..." in Section 21080(a) qualifies "***discretionary projects*** proposed to be carried out or approved by public agencies" as opposed to qualifying/clarifying

only the latter part of that phrase (*i.e.*, "proposed to be carried out or approved by public agencies").

Under Petitioner's interpretation, the listed examples are "projects" subject to CEQA without regard to whether the activity meets both elements of the "project" definition in Section 21065. This interpretation should be rejected because it assumes a causation analysis is not warranted for these activities, which makes the causation element of Section 21065 superfluous.

The City advocates for the latter interpretation, whereby the listed examples address and clarify only the type of activity subject to CEQA (*i.e.*, addressing only the categorical element of Section 21065). This interpretation gives significance to Section 21065's causation element and thereby harmonizes the two sections. Also, this latter interpretation is consistent with CEQA Guideline section 15378, which reads:

> (a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
>
> (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.
>
> (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

> (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

CEQA Guidelines, § 15378(a). Under this Guideline section, the "amendment of zoning ordinances" example clearly qualifies/clarifies only the categorical element of "project," and not the term "project" in its entirety.

The City's interpretation is consistent with the Legislature's intent that Section 21080(a) is not to be construed in a way that limits the effect of other sections within CEQA. That intent is demonstrated by Section 21080(a)'s opening qualification: "[e]xcept as otherwise provided in this division …."[5] This qualification harmonizes the two Sections by making clear that Section 21080(a) is not intended to interfere with any requirement of Section 21065.

To the extent Sections 21065 and 21080(a) can be read as being inconsistent, the rules of statutory construction require a reading that gives effect to Section 21065. Section 21080(a) is a general statement of the law; it uses the term "project," but does not define it. Section 21065 defines the term and provides far more specificity. Therefore, Section 21065 "is paramount" to Section 21080. (Code of Civ. Proc. § 1859.)

E. The caselaw does not support Petitioner's position that a zoning ordinance is a "project" as a matter of law.

Petitioner argues that *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372 supports its argument that an amendment to a zoning ordinance is a "project" as a matter of law. *Muzzy*

[5] "division" refers to division 13 of the Public Resources Code, which contains the full text of CEQA.

Ranch does not support this position; instead, the Supreme Court made clear that *both* elements of Section 21065 must be met, and that the causation element requires a case specific analysis based on undisputed data in the record on appeal. (*Muzzy Ranch, supra,* 41 Cal.4th at p. 382.)

In *Muzzy Ranch,* the Supreme Court analyzed whether the commission's adoption of the Travis Air Force Base Land Use Compatibility Plan (TALUP) qualified as a "project" under Public Resources Code Section 21065. The categorical element was easily met in that case because the adoption of the TALUP is clearly "an activity directly undertaken by [a] public agency[,]" which is the first of the three categories set forth in Section 21065. (*Muzzy Ranch, supra,* 41 Cal.4th at p. 381-382.) The Court then analyzed the causation element at length. (*Id.* at p. 382 ("The question is whether the Commission's adoption of the TALUP is the sort of activity that may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment (Pub. Resources Code, § 21065) so as to constitute a project.").)

Specifically at issue was whether the TALUP caused a reasonably foreseeable indirect physical change in the environment as a result of displaced residential development. The TALUP restricted residential development within a 600 square mile zone to those levels currently permitted under existing general plans and zoning regulations. (*Id.* at p. 379.) Importantly, the TALUP prohibited persons from seeking general plan or zone amendments to allow increased residential development. (*Ibid.*) Thus, whereas zoning "is subject to change[,] and amendment of a general plan is not a rare occurrence[,]" the TALUP restricted any such amendment. (*Id.* at p. 383.) The Court stated that the TALUP was not merely advisory, but that it carries significant, binding regulatory consequences for local government in Solano County. (*Id.* at p. 384.)

The Court noted that, because of the State's high-priority requirement of making housing available, and the State's ever increasing population, a government agency may reasonably anticipate that its placement of a ban on residential development in one area may have the consequence of displacing residential development to other areas. (*Id.* at p. 382-83.) The Court therefore concluded that the activity would cause a reasonably foreseeable change in the environment.

The Supreme Court analyzed the "project" issue exclusively under Section 21065 and specifically addressed the causation element. There is no reference to Section 21080(a) in the opinion. Thus, this case does not stand for the proposition that a zone amendment qualifies as a "project" as a matter of law; instead, the case shows that the causation element must be addressed.

Petitioner also relies on *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, in which the Third District Court of Appeal addressed whether the county appropriately approved a mitigated negative declaration (MND) related to a subdivision to create 16 parcels out of four on approximately 159 acres of land zoned for agricultural and light industrial use. (*Id.* at p. 695-96.) After the county prepared a revised initial study, which concluded that the project would potentially have significant environmental impacts related to air quality, cultural resources, and hydrology/water quality that could be mitigated, the county prepared a MND. (*Id.* at p. 697.)

Notwithstanding the initial study conclusions, the county argued that the subdivision was not a "project," and the court disagreed. The court held that the subdivision qualified as a project because it is a governmental activity listed on Section 21080(a), noting that "[i]t virtually goes without

saying that the purpose of subdividing property is to facilitate its use and development." (*Id.* at p. 702.)

Petitioner reads this case to hold that the causation element of Section 21065 need not be met for subdivisions, and indeed all activities listed in Section 21080(a). However, in its analysis, the *Rominger* court only held that a subdivision in particular meets the causation element. (*Ibid.* ("the goal of subdividing property is to make that property more useable. And with the potential for greater or different use comes the potential for environmental impacts from that use.")(*I.e.,* there was a reasonably foreseeable indirect physical change in the environment).)

Petitioner takes this holding too far by arguing that this case stands for the proposition that all zoning amendments qualify as "projects" irrespective of whether those amendments have a potential to cause a reasonably foreseeable indirect physical change in the environmental. The *Rominger* court did not address amendments to zoning ordinances, which are different from subdivisions in that they do not necessarily make a particular property more usable.

It appears the only court aside from the Fourth District Court of Appeal that addressed this issue of whether a zoning ordinance is a "project" as a matter of law under section 21080(a) is the Fifth District Court of Appeal in *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273 (disapproved on other grounds in *Hernandez, supra,* 41 Cal.4th at p. 297). That court analyzed the statutory construction issue as follows:

> Sections 21065 and 21080 could be construed to mean that the enactment of a zoning ordinance is not automatically a project and will not be a project unless all of the essential elements for a project contained in section 21065 are met. Under this view, the qualifying language at the beginning of subdivision (a) of section 21080, which states that "[e]xcept

> as otherwise provided in [CEQA]," would be construed to mean that all of the essential elements for a project contained in section 21065 are "otherwise provided in [CEQA]" and are not eliminated by the language in section 21080 that states discretionary projects include the enactment of zoning ordinances. If such a construction were adopted, courts could not presume that the enactment of a zoning ordinance "may cause ... a ... physical change in the environment" (§ 21065), but would have to review the administrative record for evidence establishing both the requisite causal link as well as the requisite physical change in the environment. Under this construction, the main significance of subdivision (a) of section 21080 would be limiting the applicability of CEQA to *discretionary* projects.
>
> This issue of statutory construction has not been raised in a published appellate opinion or in two widely used CEQA treatises. (See 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2005) § 4.21, pp. 172–173; see Remy, *supra,* at p. 78 ["The following are all 'projects' subject to CEQA: [¶] ... [¶] (3) the enactment and amendment of zoning ordinances"].) The Guidelines, however, have melded the provisions of subdivision (a) of section 21080 into the definition of "project" (see Guidelines, § 15378, subd. (a)(1)) and, thus, appear to have rejected by implication a bright-line rule that all zoning amendments are projects.

(*Id.* at 286, fn. 7 (italics in original).)

To the extent the *Rominger* case can be read as creating a rule that all activities referenced in Section 21080(a) are "projects" as a matter of law, it should be overruled. Such a rule is inconsistent with Section 21065, inconsistent with *Muzzy Ranch* (and all such cases that hold an activity is not a project unless it meets the causation element of Section 21065), inconsistent with the above-referenced statements in the *Wal-Mart* case, inconsistent with the Fourth District's opinion in this case (in which the issue was thoroughly analyzed), and inconsistent with *Union of Medical*

Marijuana Patients, Inc. v. City of Upland (2016) 245 Cal.App.4th 1265 (in which the court found that a zoning ordinance was not a "project").

F. The Legislature intended to limit the application of CEQA to only those activities that result in a direct or reasonably foreseeable indirect physical change in the environment.

The Legislature codified the causation element of Section 21065 in 1994 to clarify the definition and make it consistent with CEQA Guidelines, Section 15378. (Pub. Res. Code § 21065, Historical and Statutory Notes.)

In the Enrolled Bill Report, the Governor's Office of Planning and Research stated:

> Under current law, the vague definition of "project" has been the subject of wide interpretation. For example, decisions from the courts of appeal have not always been consistent with one another.
>
> SB 749 would specify that a "project" under CEQA is limited to actions which result in a direct, or reasonably foreseeable indirect, physical change in the environment.

(Request for Judicial Notice (RJN), Exh. "A," 0001.) The report goes on to state:

> SB 749 offers a number of consensus revisions to CEQA which will improve implementation of the Act as well as streamline litigation. The proposed definition of "project" will focus environmental analysis upon the physical aspects of proposed activities and will restrict the use of CEQA to challenge projects on nonenvironmental basis. This will restrict frivolous litigation where no evidence of environmental effects exist. For example, lawsuits instigated by trade unions for the purpose of forcing the use of union labor will be limited to those instances where physical impacts can be shown to exist.

(*Id.* at 0005.) The Enrolled Bill Report from the Resources Agency states:

> This change would codify the holdings in two court decisions that ruled that environmental effects of an activity must be reasonably foreseeable before CEQA will apply to the approval of that activity. A number of other decisions have required CEQA compliance where the impacts were uncertain and difficult to foresee. This change in the definition will help focus CEQA on situations where the environmental effects can be reasonably analyzed and made understandable to the people who must consider the information in making a public decision.

(*Id.* at 0007.)

The above Legislative analysis shows the revisions are intended to streamline CEQA by reducing frivolous lawsuits and to subject only those activities to CEQA that have identifiable impacts. This comports with common sense. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 (common sense "is an important consideration at all levels of CEQA review.").) The primary purpose of CEQA is to mitigate environmental impacts. (Pub. Res. Code § 21002.) The primary tool to accomplish this is the Environmental Impact Report (EIR). The purpose of an EIR is to identify and address project impacts. (Pub. Res. Code § 21002.1.) However, if an agency cannot identify a direct or reasonably foreseeable change in the environmental, the EIR would not serve its intended purpose. Instead, the agency would only waste precious resources performing a meaningless task of analysis that would serve no purpose but to delay or obstruct approval of the activity.

The Legislature intended to apply the threshold requirements under Section 21065 to all activities. Petitioner's argument that the adoption of a zoning ordinance—or any activity—is exempt from these requirements contravenes this intent and therefore should be rejected.

G. Petitioner advocates for a causation analysis during the exemption determination stage, but this position is inconsistent with CEQA.

CEQA establishes a three-tier process for environmental review. (*Muzzy Ranch, supra,* 41 Cal.4th at p. 379-381.) The first tier requires a review to determine whether the activity is a "project" under Section 21065. (*Id.* at p. 380.) If not, then the activity is "not subject to CEQA." (*Ibid.*) If the activity qualifies as a "project," then the agency must determine whether an exemption applies; this is part of the tier two analysis. (*Id.* at p. 380-381.) If no exemption applies, then the agency must determine whether there is substantial evidence that the project may cause a significant effect on the environment. (*Ibid.*) If not, then the agency must prepare a negative declaration. (*Ibid.*) If such evidence does exist, then the agency proceeds to tier three, in which it prepares an EIR. (*Ibid.*)

Petitioner places great significance on this Court's statement that the tier one "project" determination is a "categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Id.* at p. 381.) Petitioner takes this to mean that a causation analysis is or may not be warranted in the "project" determination phase. Petitioner appears to advocate for a rule that requires agencies to perform the causation analysis under the tier two common sense exemption process and not before.

First, this ignores what the Supreme Court actually did in *Muzzy Ranch.* This Court did in fact perform the causation analysis during tier one in order to determine whether the activity was subject to CEQA. (*Id.* at p. 382-385.)

Second, the causation analysis serves different purposes under tier one and tier two. The tier one analysis serves an important "gate-keeper" role that prevents agencies from preparing meaningless EIRs. If the analysis proceeds to tier two, then theoretically there are identifiable impacts to assess. The tier two common sense exemption only applies if the agency can state with certainty that there is no possibility that the impacts will be significant. (*Id.* at p. 385-386.)

This case presents a good example for why the causation analysis is important in tier one. Here (as described in more detail below), the Ordinance does not present any identifiable direct or reasonably foreseeable indirect changes to the environment. Accordingly, there are no impacts to analyze or mitigate, and the preparation of an EIR would serve no meaningful purpose.

But this does not mean the City can state with certainty that the Ordinance will result in no significant environmental impacts. Individual facilities, depending on their location and other factors, may result in significant environmental impacts. The problem is that the impacts are not reasonably foreseeable at the stage of adoption of the Ordinance.

So under the process Petitioner advocates, the City likely would be unable to meet the common sense exemption standard, and would find itself in the position of having to prepare an EIR without identifiable impacts. The agencies in many of the above-referenced cases would likewise find themselves in this position. (*E.g., Friends of the Sierra Railroad, supra,* 147 Cal.App.4th 643; *Kaufman, supra,* 9 Cal.App.4th 464; *Chung, supra,* 210 Cal.App.4th 394; and *Pala Band of Mission Indians, supra,* 68 Cal.App.4th 556.) This underscores the importance of performing a causation analysis during the tier one phase.

H. Substantial evidence in the administrative record does not support Petitioner's theory that the Ordinance may result in a reasonably foreseeable indirect physical change in the environment.

In section II(C)(4) of Petitioner's Opening Brief (OB), at pages 37-45, Petitioner contends the Ordinance may cause reasonably foreseeable impacts related to traffic, air pollution, increased cultivation, development and redevelopment, and displaced development. Petitioner does not cite to evidence in section II(C)(4), but notes at page 12 that it "commented on the Ordinance by submitting two lengthy letters to the City and raised the legal deficiencies asserted by this suit." Those letters are at AR 73:1658-1733 and 78:1902-1923. This section addresses that purported evidence.

1. There is no substantial evidence supporting a theory that the Ordinance may cause reasonably foreseeable indirect impacts related to traffic and air pollution.

Petitioner argues the Ordinance "*may* cause patients to have to drive farther to obtain medicine" which theoretically will cause traffic and air pollution impacts. (OB, p. 37 (emphasis in original).) The record contains Petitioner's counsel's letters and maps showing potential locations where facilities may be located.

The maps (AR 58:1514-1515) do not support Petitioner's conclusions. In fact, they run counter to Petitioner's theory. At the time of the Ordinance's adoption, there were NO legal facilities in the City. The maps show locations where an applicant could apply to have a legal medical marijuana facility—over 8,000 acres of potentially feasible locations (*i.e.*, over 12.5 square miles throughout the City). (AR 58:1520)

The flaw with Petitioner's theory (and entire case) is that it assumes the Ordinance *removes* all the means by which patients presently obtain

their marijuana. This is the only way Petitioner can prove its allegations that the Ordinance "requires thousands of patients to drive across the City to obtain their medicine" and "will result in a proliferation of small indoor cultivation sites[.]" (*See* CT, p. 6 (¶ 17) and p. 8 (¶ 20).) However, there is no evidence in the entire administrative record that supports this flawed assumption. The Ordinance does nothing to restrict the means by which patients presently obtain marijuana. (AR 42:682-683.) In fact, the AR supports a conclusion contrary to that reached by Petitioner; namely, the AR shows the Ordinance establishes a process to permit legal facilities where none existed before, and thereby provides an additional means of obtaining marijuana. (*Ibid.*) So it is not reasonable to conclude the Ordinance will require patients to drive farther to obtain marijuana.

Petitioner also cites to its own comment letters in support of its theory. The letter argues "[i]t is reasonably foreseeable that Cooperatives in the City may relocate and/or close and patients may travel to visit relocated Cooperatives or cultivate their own medicine in their homes if Cooperatives fail to obtain their Conditional Use Permits (CUPs)." (AR 73:1662-1663.) The opinion in the letter is not substantiated by any factual support in the record. As such, it does not qualify as substantial evidence. (CEQA Guidelines, § 15384(a) ("argument, speculation, [and] unsubstantiated opinion … does not constitute substantial evidence."); *see also Pala Band of Mission Indians, supra,* 68 Cal.App.4th at 580 (comment letter comprised of argument and unsubstantiated opinion does not constitute substantial evidence).)

For example, in *Wal-Mart Stores, Inc. v. City of Turlock* (2007) 138 Cal.App.4th 273, Wal-Mart argued it was reasonably foreseeable that an ordinance banning big-box retailers would cause an indirect change in the environment as a result of traffic and other impacts. In support of its

argument, Wal-Mart cited (1) engineering and other expert reports opining that a Wal-Mart would generate fewer vehicle trips and result in less air quality and other impacts than a multitenant shopping center; and (2) a letter from a real estate developer who opined "it is more likely than not" that a large supermarket would occupy the subject property if the ban went into effect. (*Id.* at 281-82.)

The *Wal-Mart* court rejected the arguments and concluded that "there is insufficient evidence in the administrative record to establish that the physical changes predicted by Wal-Mart are reasonably foreseeable[.]" (*Id.* at 291.) The court noted there was no evidence to support the conclusion that the ordinance was the *catalyst* for the alternative development, or that any developer expressed any interest in an alternative development. (*Id.* at 291-92.) Similarly, in the present case, Petitioner concludes the Ordinance is the catalyst for the disappearance or relocation of the pre-existing facilities, but cites *no factual support* for the conclusion.

The unsubstantiated opinions within Petitioner's counsel's letters regarding closures and relocations of pre-existing facilities are nothing more than speculation. Even assuming the mere possibility of a closure may be foreseeable, "substantial evidence must exist in the administrative record before a foreseeable alternative is *reasonably* foreseeable." (*Wal-Mart, supra,* 138 Cal.App.4th at p. 298 (emphasis in original).) Here, there is no such evidence.

Petitioner's opinion is rendered more speculative because it considers only one means for obtaining marijuana (the illegal facilities) and fails to account for the various other means by which patients obtain marijuana and have obtained marijuana since before the proliferation of dispensaries. Petitioner estimates there were approximately 26,451 medical marijuana patients in the City of San Diego at the time the City adopted the

Ordinance. (AR 73:1661.) It is reasonable to presume these patients were already obtaining marijuana from a number of different sources including: delivery services, illegal dispensaries, friends or family, individual dealers, qualified care-givers, or home cultivation. The Ordinance does nothing to preclude or address any of these existing means for obtaining marijuana.

Petitioner has argued in the past (and may argue in the Reply) that the substantiality of the evidence is irrelevant. (*E.g.*, Court of Appeal Opening Brief, 29.) This argument confuses two entirely different concepts: (1) substantial evidence as a threshold for credibility of evidence; and (2) the substantial evidence legal standard of review. The City does not argue that its conclusions are entitled to the deference reserved for *e.g.*, an agency's fact conclusions set forth in an EIR. Under that standard, an agency's fact conclusions are entitled to deference so long as the conclusions are supported by substantial evidence, regardless of whether evidence supports a contrary conclusion. (*Center for Biological Diversity v. California Department of Forestry and Fire Protection* (2014) 232 Cal.App.4th 931, 941.) Instead, here, the City argues only that Petitioner's claim that the Ordinance may cause a reasonably foreseeable indirect physical change in the environment must be supported by *substantial* evidence in the record as opposed to proffered "evidence" that lacks the minimum threshold of credibility (*e.g.*, speculative or unsubstantiated opinions). Petitioner's claims must be supported by substantial evidence in order to uphold the integrity of the process. (*Wal-Mart, supra,* 138 Cal.App.4th at 298.)

2. <u>There is no substantial evidence supporting a theory that the Ordinance may cause reasonably foreseeable indirect impacts resulting from additional home cultivation of marijuana.</u>

Petitioner argues the reports attached to its comment letter (AR 73:1658-1733) show a substantial increase in home cultivation can constitute an environmental impact; however, Petitioner cites to no evidence in the AR that shows a causal link between the *Ordinance* and an increase in home marijuana cultivation. In fact, there is no such evidence.

The *Wal-Mart* court rejected a similar argument. Wal-Mart cited to engineering and expert reports which concluded that a Wal-Mart would result in less impacts than a multi-tenant shopping center. The court held the expert reports were not enough because the reports "merely assume such a multitenant shopping center will be built there." (*Wal-Mart Stores, Inc., supra,* 138 Cal.App.4th at 292.)

Petitioner fails to mention that California law already allows patients and their caregivers to grow marijuana for personal use. (Health & Safety Code §§ 11362.5(d), 11362.765(b), and 11362.775.) The City's laws mirror State law. (*See* CT 64-65 (San Diego Municipal Code (SDMC) §§ 42.1301 and 42.1303).) The intent of the Ordinance is only to regulate "commercial retail type facilities." (AR 42:682.) If a patient or care-giver currently cultivates marijuana in their home, it is reasonable to assume they will continue to do so; the Ordinance affects no change in that practice.

Petitioner's theory of impacts arising from increased cultivation incorrectly assumes the Ordinance is restricting a right that already exists. However, the Ordinance does not, and cannot, preempt rights given under State law. An increase of home cultivation is not a logical or reasonably foreseeable result of an Ordinance that only creates another means for obtaining marijuana.

3. <u>There is no substantial evidence supporting a theory that the Ordinance may cause reasonably foreseeable indirect impacts resulting from displaced development.</u>

Petitioner argues that the Ordinance will cause "displaced development." For evidentiary support of this theory, Petitioner's counsel's comment letter states that "the Ordinance may result in relocations outside of the City's jurisdiction[.]" (AR 73:1663.) For this argument, Petitioner also previously cited to reports which generally state that marijuana cultivation can cause environmental impacts. However, as discussed above, there is no substantial evidence tying the Ordinance to these impacts. The Ordinance does not, as Petitioner argues, compel (or even address) closures or relocation of pre-existing facilities. Without such evidence, the impacts are speculative and not *reasonably* foreseeable. (*Wal-Mart, supra,* 138 Cal.App.4th at 298.)

The theory of displaced development typically comes into play when an agency restricts an activity that was otherwise not restricted (or further restricts an activity). For example, in *Muzzy Ranch, supra,* 41 Cal.4th 372, the case on which Petitioner relies, this Court found that a land use plan that restricted residential development within a 600 square mile zone had the effect of displacing the development to other jurisdictions.

This theory does not apply here because the Ordinance does not restrict a use that was previously unrestricted. To the contrary, the Ordinance creates a process to allow facilities in San Diego where a process did not previously exist. So the Ordinance displaces nothing. The Ordinance does not compel the closure of pre-existing facilities, as Petitioner argues. There is nothing in the record that addresses pre-existing facilities. Those facilities were already operating outside of the law, and it is reasonable to presume that they will either continue to do so or, because they are illegal, will be closed through enforcement actions unrelated to the Ordinance.

The *Wal-Mart* case is instructive in that it likewise addresses speculative claims of displaced development. (138 Cal.App.4th 273.) In that case, Wal-Mart argued that a ban on superstores in Turlock would "force" such stores to locate in communities near Turlock thereby causing residents of Turlock to drive greater distances. (*Id.* at p. 296-97.) The court noted, however, that there was no evidence to support this inference. (*Ibid.*) Without a factual basis, the court noted that claim was nothing more than unsubstantiated argument or opinion and thus not substantial evidence of a reasonably foreseeable impact. (*Id.* at 297 (*citing* Pub. Res. Code § 21080(e)(2)).)

Similarly, here, Petitioner argues and opines that there will be impacts related to displaced development, but provides no factual support for the argument and opinion.

4. There is no substantial evidence supporting a theory that the ordinance may cause reasonably foreseeable indirect impacts resulting from construction activity.

Petitioner argues that it is reasonably foreseeable that the Ordinance may result in some physical changes in the environment as a result of new construction activity. However, the construction of a new facility is not reasonably foreseeable. It is far more likely that a permittee would simply occupy an existing retail space. Notwithstanding, this type of potential impact underscores why the best course of action is to perform CEQA review at the time an individual permit is issued, which is what the Ordinance mandates. At such time, the City will not have to guess about where the facility will be located, its size, whether construction is required, and other issues that could impact the physical environment. Such time is "far enough down the road toward an environmental impact to allow meaningful consideration in the review process of alternatives that could

mitigate the impact." (*Friends of the Sierra Railroad, supra,* 147 Cal.App.4th at 657.)

I. The Court can dismiss the appeal as moot because the recently enacted Senate Bill No. 94 exempts from CEQA the adoption of an Ordinance that authorizes commercial cannabis activity with a discretionary review permit.

"A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated.'" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 (*quoting Younger v. Superior Court* (1978) 21 Cal.3d 102, 120).) Because "'the duty of ... every ... judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or ... to declare principles or rules of law which cannot affect the matter in issue in the case before it[,][i]t necessarily follows that when ... an event occurs which renders it impossible for [the] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to formal judgment....' [Citation.]" (*Wilson, supra,* 191 Cal.App.4th at p. 1574 (*quoting Consol. Etc. Corp. v. United A. Etc. Workers* (1946) 27 Cal.2d 859, 863).)

"The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." *Wilson, supra,* 191 Cal.App.4th at p. 1574; see also *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 (case moot where contract with county had expired and court could not award it to disappointed bidder).) "When events render a case moot, the court, whether trial or

appellate, should generally dismiss it." (*Wilson, supra,* 191 Cal.App.4th at p. 1574.)

In its Prayer, Petitioner seeks a writ directing the City to (1) vacate the Ordinance; (2) "suspend all activity under the Project that could result in any change or alteration in the physical environment until [the City] has taken such actions that may be necessary to bring the Project into compliance with CEQA"; and (3) "prepare, circulate, and consider a legally adequate Initial Study, and if applicable, an Environmental Impact Report, and otherwise to comply with CEQA in any subsequent action taken to approve the Project." (CT 10.)

"The remedies for an agency's failure to comply with CEQA are governed by section 21168.9." (*Golden Gate Land Holdings LLC v. East Bay Regional Park District* (2013) 215 Cal.App.4th 353, 367.) Public Resources Code Section 21168.9 reads in relevant part (emphasis added):

> (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:
>
> (1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
>
> (2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination,

finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) *Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division* and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division.

On June 27, 2017, the Governor approved Senate Bill (SB) 94 regarding medicinal and adult use of cannabis. (RJN, Exh. "C.") SB 94 reads in relevant part:

> The bill, until July 1, 2019, would exempt from the California Environmental Quality Act the adoption of a specified ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, license, or other authorizations to engage in commercial cannabis activity.

(RJN, Exh. "C" at 0032.)

If the Court were to find in favor of Petitioner, SB 94 effectively precludes a court from awarding Petitioner the remedy it seeks. The second and third writ directives that Petitioner seeks are plainly contrary to the exemption in SB 94.

The first directive Petitioner seeks (vacation of the Ordinance) is precluded by Section 21168.9(b) because it is "not necessary to achieve compliance with [CEQA.]" If the Court were to vacate the approval of the Ordinance, assuming the then likely scenario that the City approves a

replacement ordinance within two years, the vacation of the Ordinance will not have achieved compliance with CEQA.

Because SB 94 has rendered this appeal moot, the Court should dismiss the appeal. (*Wilson, supra,* 191 Cal.App.4th at p. 1574.)

V.

CONCLUSION

Based on the foregoing, the City respectfully requests that this Court affirm the trial court's and Court of Appeal's decision and deny the Petition. Petitioner cites to no substantial evidence in the administrative record that supports its theory that the Ordinance may cause a reasonably foreseeable indirect change on the physical environment. Petitioner's case is based on the incorrect and speculative assumption that the Ordinance *restricts* the existing means by which patients presently obtain their marijuana. To the contrary, the Ordinance *expands* the means by which patients may obtain marijuana in that it creates a process to permit legal facilities where none previously existed. The Ordinance does nothing to affect the various other means by which patients obtain marijuana—whether legal or illegal.

Environmental review is premature because any potential impacts are speculative at this point. The City cannot provide any meaningful review until it has more information about the facilities. The City will not have sufficient information about the projects until permit applications are filed, and the City has committed to perform environmental review at that time. (AR 28:439.) The City's actions are proper and supported by CEQA.

Also, the Court may elect to dismiss the case as moot in light of SB 94, which prevents the Court from issuing the writ Petitioner seeks.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By _____
Glenn T. Spitzer
Deputy City Attorney

Attorneys for Respondent,
City of San Diego

CERTIFICATE OF COMPLIANCE

[CRC 14(c)(1)]

Pursuant to California Rule of Court, Rule 14(c)(1), I certify that this **ANSWER BRIEF ON THE MERITS,** contains 9,161 words and is printed in a 13-point typeface.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By _____
Glenn T. Spitzer
Deputy City Attorney

Attorneys for Respondent,
City of San Diego

IN THE

SUPREME COURT OF CALIFORNIA

PROOF OF SERVICE

Union of Medical Marijuana Patients, Inc.. v. City of San Diego, et al.

S238563

4th Civil No. D068185
San Diego County Superior Court
Case No. 37-2014-00012481-CU-TT-CTL

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California, where the mailing occurs; and, my business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the foregoing **ANSWER BRIEF ON THE MERITS** to the following:

[BY OVERNIGHT MAIL VIA GOLDEN STATE OVERNIGHT (GSO)]

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[BY U.S. MAIL] I further declare I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

The Honorable Joel Wohlfeil
San Diego Superior Court
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330 West Broadway
San Diego, CA 92101

Court of Appeal
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I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct. Executed on July 28, 2017, in San Diego, California.

Merlita S. Rich
Legal Secretary