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UNION OF MEDICAL MARIJUANA PATIENTS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL COURTHOUSE

UNION OF MEDICAL MARIJUANA PATIENTS, INC.

Petitioner,

vs.

CITY OF SAN DIEGO, a municipal corporation

Respondent.

CALIFORNIA COASTAL COMMISSION, and DOES 1-100

Real Parties in Interest

PETITION FOR WRIT OF MANDATE

37-2014-00013481-CU-TT-CTL

Union of Medical Marijuana Patients, Inc. ("UMMP" or "Petitioner") alleges:

1. Petitioner is a civil rights organization based in downtown Los Angeles founded in 2007 that is devoted to defending and asserting the rights of medical cannabis patients, including promoting safe access to medical marijuana. Through legal and political action in

association with education and counseling on compliance with state law, UMMP is devoted to defending and asserting the rights of medical cannabis patients and promotes a model of legally compliant medical cannabis patient associations. With a philosophy of personal growth and social responsibility, UMMP supports patients, their member associations, and the cause of freedom of medical choice nationwide. UMMP is committed to sensible regulations for patient associations and their collectives, responsible actions of patients, and cooperation with law enforcement. UMMP's members consist of both individual medical marijuana patients and collective and cooperative associations ("patient associations"), including patients and associations that would otherwise be affected by the project's environmental impacts.

2. Respondent, City of San Diego, ("Respondent" or "City") is a charter city incorporated under the laws of the State of California. The City is the lead agency under the California Environmental Quality Act ("CEQA").

3. Real Party in Interest, California Costal Commission ("Coastal Commission"), is a state agency within the State of California, with its headquarters in San Francisco, California. Because the Ordinance applies to areas of the City near the shoreline, the Coastal Commission must approve the Ordinance.

4. Petitioner is ignorant of the true names and capacities of Real Parties sued herein as DOES 1-100, inclusive, and therefore sues these Real Parties by such fictitious names. Petitioner will amend this Petition to allege the true names and capacities of fictitiously named Real Parties in Interest. Petitioner is informed and believes and thereon alleges that each Respondent designated herein as a DOE has some responsibility for the events and happenings alleged in this Petition and/or may be affected by the outcome of the case.

5. Venue for this action properly lies in the San Diego County Superior Court (Central Courthouse) because Respondent is located in San Diego County, specifically downtown San Diego.

6. The project is the City of San Diego Ordinance No. O-20356, which authorized medical marijuana consumer cooperatives in the City of San Diego (the "Project" or

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"Ordinance"). The City Clerk certified that the date of final passage of the Ordinance was March 25, 2014.

7. The Ordinance broadly defines a "medical marijuana consumer cooperative" ("Cooperative") as follows: "[any] 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 sections 11362.5 through 11362.83." Ordinance at Section 113.0103. By its express terms, this definition includes more than just "storefront" Cooperatives. Small groups of people cultivating and/or sharing medical marijuana in their homes may also be included within this definition. At the time of the adoption of the Ordinance, there was an estimated 26,451 medical marijuana patients in the City and 30 storefront Cooperatives operating in the City (not to mention groups of people that cultivate and share medical marijuana outside of a storefront setting who would nevertheless be defined as a "Cooperative" under the Ordinance).

8. Among other things, the Ordinance will (1) Permit Cooperatives in the City with a Process Three Conditional Use Permit ("CUP") only in the IL-3-1 and IS-1-1 industrial zones; the CC-2-1, CC-2-2, CC-203, CR-2-1, CO-2-1 and CO-2-2 commercial zones, which allow watchkeeper quarters as the only permitted residential use; and those PDO zones that have the same characteristics as the listed commercial and industrial zones, (2) Mandate a 100-foot buffer from residential zones and Cooperatives, and (3) Require a 1,000 foot buffer between "sensitive uses" and other Cooperatives.

9. The Ordinance caps the total number of Cooperatives at 36 and places the limit of four per Council District. The Staff Report to the Planning Commission ("PC Staff Report") dated November 27, 2013 includes an analysis of the zoning impacts of the Ordinance conducted by SANDAG. According the PC Staff Report, there are only 8,009.21 allowable acres for a Cooperative to be located under the Ordinance. However, the PC Staff Report notes that a "significant number of potential cooperative locations would not be available" due to the assumptions used to perform the analysis. The analysis includes a table and maps showing where

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Cooperatives may be located. The table produced by SANDAG evidences that in some Council Districts (5, 9 and 3) it is not even possible to have four Cooperatives. *Id.* The end result is that there will be far fewer than 36 Cooperatives in the City (indeed, only 30 are even possible) and they will be concentrated in certain areas of the City (Council Districts 1, 6, 7 and 8). An inspection of the map produced by SANDAG clearly shows that Cooperatives will be concentrated in certain areas of the City and patients will need to travel relatively far to visit them. *Id.*

10. Respondent determined that the Ordinance was not subject to CEQA, stating: "The Medical Marijuana Consumer Cooperative Ordinance is not subject to the 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." Respondent did not conduct an Initial Study or adopt a Negative Declaration pursuant to §15063 of the California Public Resources Code.

11. UMMP commented on the Ordinance in two separate letters addressed to the City Council and raised each of the legal deficiencies asserted in this petition.

12. Petitioner performed all conditions precedent to filing this action by complying with the requirements of Public Resources Code §21167.5 in filing notice of this action on April 26, 2014.

13. Respondent's actions in adopting the Ordinance without conducting the necessary studies under CEQA constitute prejudicial abuse of discretion in that Respondent failed to proceed in the manner required by law and its decision is not supported by substantial evidence as required by Public Resources Code § 21168.5.

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14. **Respondent failed to proceed in the manner required by law when it concluded that the Project was not a "project" and therefore exempt pursuant to 15060(c)(3) of the CEQA Guidelines.**

15. Whether an activity constitutes a "project" subject to CEQA 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 impacts." *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 381. The term "project" as defined in Cal. Pub. Res. Code § 21065 has been broadly interpreted by courts. For example, in a seminal case decided by the California Supreme Court, the court stated that CEQA is "to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. Further, courts have concluded that the term "project" encompasses regulatory approvals such as general plan amendments, zone changes, and annexations which may ultimately lead to physical environmental changes. 14 Cal. Code Regs. § 15378(a)(1); *Bozung v. Local Agency Formation Commission*, (1975) 13 Cal.3d 263, 277 n.16. It is well established that the enactment of a zoning ordinance such as the Ordinance proposed by the City is subject to environmental review under CEQA. *See, e.g., Concerned Citizens of Palm Desert v. Board of Supervisors* (1974) 38 Cal.App.3d 272, 283 (the "enactment and amendment of zoning ordinances" are subject to CEQA). In similar circumstances, courts have rejected attempts by public agencies to forgo environmental review. *County Sanitation District v. County of Kern* (2005) 127 Cal.App.4th 1544, 1602. The City is required under CEQA to undertake a review of an ordinance when it is apparent that the regulations will "culminate in physical change to the environment." *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 281.

16. The fact that the "project" at issue is the adoption of an ordinance as opposed to a development project proposed by an applicant does not relieve the City of the obligation to undertake a review of the project under CEQA. *Rosenthal v. Board of Supervisors* (1975) 14

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Cal.App.3d 815, 823 (stating that "adopting an ordinance [is] a project"); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 (impliedly holding that adoption of ordinance is a project within the meaning of CEQA); 60 Ops.Cal.Atty.Gen. 335 (1977) ("ordinances and resolutions adopted by a local agency are 'projects' within the meaning of CEQA"). The Attorney General Opinion issued in 1977 concluded that the following ordinances were all subject to CEQA: (1) an open-range ordinance requiring private land owners to fence out cattle; (2) an ordinance allowing construction of single family dwellings in rural areas without electricity, running water, or flush toilets; and (3) an ordinance modifying road improvement standards for new subdivisions. A project need not directly effect a physical change in the environment: reasonably foreseeable indirect or secondary effects must also be analyzed. The inquiry is whether or not the Project will ultimately culminate in physical changes to the environment. *Id*.

17. The Ordinance will unquestionably culminate in a physical change to the environment and the City was required to conduct an Initial Study to analyze these impacts before approval of the Project. By adopting the Ordinance, the City committed itself to a particular approach to regulating medical marijuana - an extremely restrictive approach that, among other things, requires thousands of patients to drive across the City to obtain their medicine because Cooperatives are only allowed in certain limited places in the City, which will create traffic and air pollution. This additional travel not only may, but will, result in a direct change in the physical environment by increasing traffic and air pollutants. No further evidence is required to establish that the City is subject to CEQA under the CEQA Guidelines § 15060(c).

18. Moreover, the Ordinance shifts and/or intensifies the impacts of development to certain areas of the City. These impacts include both traffic and air pollution. Site specific-environmental review for CUPs issued pursuant to the Ordinance will not address all of the environmental consequences of the Ordinance. For example, future environmental reviews will not address the additional distances patients will have to travel. Also, certain mitigation measures available prior to the adoption of the Ordinance are not longer available when future site-specific reviews occur. Public Resources Code section 21002.1, subdivision (b), prohibits an agency

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from approving a project without requiring the implementation of any feasible mitigation measures, providing: "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Site-specific environmental review in connection with a CUP application does not afford the broad range of available solutions to the potential traffic problems associated with the Ordinance's forced relocations that could have been considered had those impacts been considered prior to the Ordinance's adoption. "[R]eview of the likely environmental effects of the proposed [development] cannot be postponed until such effects have already manifested themselves through . . . applications for approval of . . . developments. " *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158-59. Also site-specific review is more likely to result in a conclusion of insignificance because it addresses only the impacts related to a particular site rather than taking into account the broader cumulative impacts of the Ordinance as "the project." Failure to conduct an analysis at the time of adoption of the Ordinance amounts to piecemealing, which is prohibited. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1358 ("There is no dispute that CEQA forbids "piecemeal" review of the significant environmental impacts of a project.") In sum, there are impacts associated with the Ordinance that cannot be addressed by future site-specific environmental reviews and therefore the City is required to conduct an analysis of the environmental consequences of its approach to regulating medical marijuana.

19. Further, the City failed to analyze the reasonably foreseeable consequences of increased indoor cultivation of medical marijuana. Petitioner informed the City that patients might cultivate their own medicine in their homes if Cooperatives fail to obtain their CUP or relocate far from where patients reside. Petitioner highlighted the following facts:

- Based on the existing patient base, existing patients may establish up to 26,451 home cultivation sites in the City to meet their personal needs if the Cooperatives are significantly reduced in number or fail to obtain a CUP from the City. Each patient would be required to establish their own cultivation site in order to avoid being defined as a "Cooperative" under the Ordinance.

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- Assuming patients use 1 ounce of marijuana per month, then 19,838 pounds of cannabis per year would need to be cultivated to meet patient needs in the City

20. The Ordinance's limitation on the total number of Cooperatives that may be able to operate in the City, coupled with their location far from where many patients reside, will result in a proliferation of small indoor cultivation sites and the environmental impacts associated with indoor cultivation may be significant. Petitioner provided Respondent with a copy of a recent study entitled *The Carbon Footprint of Indoor Cannabis Production*, published in *The International Journal of the Political, Economic, Planning, Environmental and Social Aspects Energy*, detailing the environmental impacts of indoor cannabis cultivation. The following are highlights from the study:

- On average, approximately one third of cannabis production takes place under indoor conditions. Approximately two-thirds of all cannabis is produced outdoors. In California, 400,000 individuals are authorized to cultivate cannabis for personal medical use, or sale for the same purpose to 2100 dispensaries.

- One average kilogram of cannabis is associated with 4600 kg of carbon dioxide emissions (greenhouse-gas pollution) to the atmosphere, a very significant carbon footprint, or that of 3 million average U.S. cars when aggregated across all national production.

- Indoor cannabis production utilizes highly energy intensive processes to control environmental conditions during cultivation.

- Indoor cultivation also results in elevated moisture levels that can cause extensive damage to buildings as well as electrical fires caused by wiring out of compliance with safety codes.

- Indoor carbon dioxide levels are often raised to 4-times natural levels to boost plant growth when cannabis is cultivated indoors.

- Indoor cannabis production results in electricity use equivalent to that of 2 million average U.S. homes. This corresponds to 1% of national electricity consumption.

- In California, the top-producing state, indoor cultivation is responsible for about 3% of all electricity use or 9% of household use. This corresponds to greenhouse-gas emissions equal to those from 1 million cars.

- Accelerated electricity demand growth has been observed in areas reputed to have extensive indoor Cannabis cultivation. For example, after the legalization of medical marijuana in 1996, Humboldt County experienced a 50% rise in per-capita residential electricity use compared to other parts of the state.

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- Shifting cultivation outdoors can nearly eliminate energy use for the cultivation process. However, outdoor cultivation creates its own environmental impacts. These include deforestation; destruction of wetlands, runoff of soil, pesticides, insecticides, rodenticides and human waste; abandoned solid waste; and unpermitted impounding and withdrawals of surface water. These practices can compromise water quality, fisheries and other ecosystem services. However, outdoor cultivation can compromise security.

21. It is reasonably foreseeable that cultivation of medical marijuana within the City will increase due to the Ordinance. Cultivation of medical marijuana, an inherently agricultural activity, especially in a residential setting, in and of itself contemplates environmental impacts, which the City failed to analyze. UMMP noted that wastewater resulting from cultivation would be created as well as additional waste plant material (a.k.a bio-waste). Further, UMMP highlighted that there would be an increase in electrical consumption.

22. The City failed to analyze any of the reasonably foreseeable impacts of the increased indoor cultivation of medical marijuana. The facts presented by Petitioner demonstrate potential significant environmental effects in terms of (1) Greenhouse Gas Emissions, (2) Hazards & Hazardous Materials, (3) Hydrology / Water Quality, and (4) Utilities / Service Systems. Because the Ordinance will create direct and/or reasonably foreseeable indirect physical changes in the environment, the project is subject to CEQA.

23. The Project is subject to CEQA and Petitioner made a fair argument regarding the significant environmental effects of the Project. Respondent thereby violated its duties to conduct an Initial Study conforming to the requirements of CEQA and the CEQA Guidelines. Accordingly, the City's adoption of the Project must be set aside.

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WHEREFORE, petitioner demands entry of judgment as follows:

1. For a peremptory writ of mandate directing:

   a. Respondent to vacate and set aside its adoption of the Project.

   b. Respondent to suspend all activity under the Project that could result in any change or alteration in the physical environment until Respondent has taken such actions that may be necessary to bring the Project into compliance with CEQA.

   c. Respondent to 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.

2. For its costs of suit.

3. For an award of attorneys fees.

4. For other equitable or legal relief that the Court considers just and proper.

Dated: April 29, 2014

By: 

Jamie T. Hall
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Attorney for Petitioner, Union of Medical Marijuana Patients, Inc.

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VERIFICATION

I am an officer of petitioner, Union of Medical Marijuana Patients, Inc., and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true and of my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 28, 2014

By: James C Shaw
James C. Shaw
Union of Medical Marijuana Patients, Inc.

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