LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

Item No. 5
Mtg. Date August 15, 2017
Dept. Development Services Department

Item Title: **Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone.**

Staff Contact: David De Vries, Development Services Director

Recommendation:

1. Conduct the public hearing; and
2. Adopt a Resolution (**Attachment B**) upholding the Development Services Director's determination to deny ZC1-700-0016, a request to apply for a conditional use permit to establish a medical marijuana dispensary at 6915 North Avenue in the General Commercial Zone.

Item Summary:

On June 13, 2017, the Development Services Director (Director) denied Zoning Clearance Application No. ZC1-700-0016, a request to establish a medical marijuana dispensary (MMD) on a 0.53 acre shopping center property located at 6915 North Avenue. The application was denied because the proposed MMD would be at a property located within 1,000 feet of three State-licensed family daycares. The City of Lemon Grove obtained a confidential list of family daycare homes from the Department of Social Services (DSS), subject to the provision that the list be kept confidential. The appellant, Mr. Christopher O. Williams, subsequently filed an appeal and request for public hearing, stating: "The denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial. Further, however, the applicant will provide additional details once the specific sensitive use has been identified by the City." Staff's response to the appellant's statements and DSS confidentiality requirements related to family daycare homes are provided herein (**Attachment A**).

Fiscal Impact:

None.

Environmental Review:

☒ Not subject to review
☐ Negative Declaration
☐ Categorically Exempt
☐ Mitigated Negative Declaration

Public Information:

☐ None
☐ Newsletter article
☐ Tribal Government Consultation Request
☒ Notice published in local newspaper
☒ Notice to property owners within 500 ft.

Attachments:

A. Staff Report
B. Resolution of Denial
C. Lemon Grove Municipal Code Section 17.32.090
D. Draft City of Lemon Grove Medical Marijuana Zoning Map
E. ZC1-700-0016 Application Form
F. Staff Denial Letter for ZC1-700-0016
G. AA1-700-0004 Appeal Form and Appellant's Counsel's Opinion
H. Map Showing Distance Between Uses
I. Staff Acknowledgment Letter for AA1-700-0004
J. Excerpt from DSS Frequently Asked Questions Publication
K. Information Request Letter from City to DSS, dated February 9, 2017
L. Response Letter from DSS to City dated February 21, 2017

Attachment A

LEMON GROVE CITY COUNCIL
STAFF REPORT

Item No. 5
Mtg. Date August 15, 2017

Item Title: **Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone.**

Staff Contact: David De Vries, Development Services Director

Background:

In November 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries (MMDs) and establishing performance standards and a permit process by which MMDs may be established. Measure V was subsequently codified in Chapter 17.32 of the Lemon Grove Municipal Code. The permit process for MMDs requires approval of a conditional use permit (CUP), and the performance standards prohibit MMDs on properties within 1,000 feet of certain protected uses, including licensed daycare facilities. See Lemon Grove Municipal Code Section 17.32.090 (**Attachment C**).

In order to identify and map the location of protected uses, staff relied upon on a variety of resources including, but not limited to, the website for the California Department of Social Services (DSS), which is the licensing agency for daycare throughout the State of California. As part of this research, staff discovered that DSS does not disclose the addresses of licensed family daycare homes to the general public. Such uses are conducted in private residential settings where there is an expectation of privacy and where the dissemination of such information is restricted by law. This policy is explained in the DSS Frequently Asked Questions publication (**Attachment J**). Based on a request from the City, DSS staff supplied a list of family daycare homes and their addresses to the staff at the City of Lemon Grove, provided that City staff would not disclose the list to the general public (**Attachments K and L**). To provide the public with a map identifying potential locations for MMDs, while protecting the locations of family daycare homes, City staff created a draft map with 1,000 foot buffers around the parcels where known protected uses are located. Staff then made those buffers opaque to obscure the underlying parcel geography **(Attachment D)**.

On March 7, 2017, staff presented a report to City Council describing the recommended draft review procedures and draft conditions of approval for requests to establish MMDs. Staff also presented the draft Medical Marijuana Zoning Map it had created. The review procedures include using the Zoning Clearance (ZC) process as the initial step in screening and reviewing of MMD applications. Complete ZC applications for sites which meet the zoning criteria and distance restrictions described in LGMC Chapter 17.32, and which include all required application materials will be deemed complete, and the applicants may then submit for CUP approval by the City Council. ZC applications for sites that do not meet the specified criteria are denied by staff. Staff's decision to deny any application is subject to appeal to the City Council, pursuant to LGMC Section 17.28.020(I).

On June 1, 2017, the appellant filed ZC1-700-0016, an application to apply for a conditional use permit to establish a MMD at the subject property (**Attachment E**). Prior to accepting the application, staff checked the location of the project site on the Medical Marijuana Zoning Map and determined it was ineligible for a dispensary. Staff then informed the appellant that the

proposed project site was within 1,000 feet of a protected use, and therefore staff would have no option but to deny the ZC application.

The appellant chose to file the ZC application despite staff's admonishment, and on June 13, 2017, the Development Services Director denied ZC1-700-0016 (**Attachment F**). On June 21, 2017, the appellant filed AA1-700-0004, an administrative appeal of the Director's decision **(Attachment G)**. The appeal states "The denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial. Further, however, the applicant will provide additional details once the specific sensitive use has been identified by the City." Also included in this attachment is the opinion of the appellant's attorney submitted on June 1, 2017.

On July 25, 2017, staff contacted the three family daycare home operators via a phone call and written letter and informed them that their locations would be disclosed to the appellant. One of the daycare operators informed staff that an employee stated they had been contacted by a third party regarding the daycare operations at the subject property in order to facilitate the establishment of a dispensary. On this same day, staff sent a letter to the appellant acknowledging receipt of the appeal, informing him that the appeal hearing date would be August 15, 2017, and advising him to submit any additional information he wished to provide prior to the hearing (**Attachment I**). In the same letter, out of an abundance of caution and in order to provide a full and open opportunity for the appellant to understand the reason staff denied the zoning clearance permit, and to allow the appellant to respond accordingly, staff disclosed that the protected use affecting the subject property were three licensed family daycare facilities located 853 feet southeast of the subject property with the address of the facilities provided. See the attached exhibit prepared by staff depicting the location of the site in relation to the licensed daycare facilities (**Attachment H)**. As of August 9, 2017, no additional information has been received.

Discussion:

The purpose of this appeal is to determine whether a MMD is allowed to proceed with a conditional use permit application based on a determination that the subject property is within 1,000 feet of a protected use, in this instance a licensed daycare facility. Staff contends that it has discovered appropriate evidence and made appropriate measurements to justify that there is a licensed daycare facility within 1,000 feet of the subject property. The appellant contends that the subject property is not within 1,000 feet of the protected uses.

As stated above, City staff contacted the State to obtain information about the location of each licensed family daycare home. Under the Public Records Act ("PRA"), the City is bound to protect information forwarded under these conditions. The relevant PRA section states as follows:

> **Government Code Section 6254.5. [Excerpts only]**
>
> Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment. …
>
> This section, however, shall not apply to disclosures: ...
>
> (e) Made to a governmental agency that agrees to treat the disclosed material as confidential. **Only persons authorized in writing by the person in charge of the agency shall be**

> **permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.**

Typically, once a confidential record is disclosed, the disclosure constitutes a waiver of the privilege to keep the record confidential. However, there is a specific exemption when confidential records are shared between agencies. The City is bound by the State's confidentiality request. The State of California only agreed to share its list of licensed family daycare homes, on the condition that the City keep the list confidential. The City does not have the right to turn over the licensed daycare list to any person, however, individual daycare operations may be disclosed out of an abundance of caution and in order to provide a full and open opportunity for the appellant to understand the reason staff denied the zoning clearance permit, and to allow the appellant to respond accordingly.

Notwithstanding the confidentiality of the information shared with the City by DSS, applicants may have options in locating family daycare homes including: 1) canvassing their proposed location for other businesses which may prohibit their siting; 2) conducting internet research regarding daycare facilities that advertise on the internet; and 3) phoning DSS regarding daycare facilities in their community.

Public Information:

The Notice of Public Hearing for this item was published in the August 3, 2017 edition of The East County Californian, and mailed to all property owners within 500 feet of the subject property.

As of August 9, 2017, the City has received no responses to the Notice of Public Hearing. At the time of the public hearing, staff will provide the City Council with any additional written comments that may be received after distribution of the staff report.

Conclusion:

Staff recommends that the City Council conduct a public hearing and adopt a Resolution (**Attachment B**) upholding the Development Services Director determination to deny ZC1-700-0016, and denying a request to apply for a conditional use permit to establish a MMD at 6915 North Avenue.

Attachment B

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE UPHOLDING THE DEVELOPMENT SERVICES DIRECTOR'S DETERMINATION TO DENY A REQUEST TO APPLY FOR A CONDITIONAL USE PERMIT TO ESTABLISH A MEDICAL MARIJUANA DISPENSARY AT 6915 NORTH AVENUE (ZC1-700-0016), LEMON GROVE, CALIFORNIA

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries may be established; and

WHEREAS, Measure V includes the adoption of Lemon Grove Municipal Code Chapter 17.32 which prohibits the establishment of medical marijuana dispensaries within 1,000 feet of certain protected uses, including schools and licensed daycare facilities; and

WHEREAS, City staff requested and obtained a confidential list of licensed family daycare homes from the California Department of Social Services; and

WHEREAS, in order to obtain the confidential list of family daycare homes, City of Lemon Grove staff agreed to keep the information confidential; and

WHEREAS, on March 13, 2017, the City received a confidential list from the California Department of Social Services noting at least three such facilities are within 1,000 feet of 6915 North Avenue; and

WHEREAS, on June 1, 2017, after being informed verbally by City staff that the subject property was within 1,000 feet of a licensed daycare facility, and that submittal of a zoning clearance application would result in a denial, the appellant (Christopher O. Williams) filed ZC1-700-0016, an application to apply for a conditional use permit to establish a MMD at 6915 North Avenue, Lemon Grove, CA; and

WHEREAS, on June 13, 2017, the Development Services Director denied ZC1-700-0016 because the proposed project site is located within 1,000 feet of a State-licensed daycare facility; and

WHEREAS, on June 21, 2017, the appellant filed an administrative appeal of the Director's decision (AA1-700-0004), stating that the denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial there are no schools or licensed day care facilities within 1,000 feet of the subject property; and

WHEREAS, Government Code Section 6254.5(e) specifically exempts government agencies from the requirement to disclose confidential information that was shared between agencies under an agreement to maintain the confidentiality of said information; and

WHEREAS, City staff disclosed in writing the address of the three existing daycare facilities on July 25, 2017 as evidenced by the letter attached to the Agenda Item Summary as Attachment "I"; and

WHEREAS, the appellant has failed to show that their facility is greater than 1,000 feet from three California-licensed daycare facilities; and

WHEREAS, on August 15, 2017, the Lemon Grove City Council held a duly noticed public hearing to consider AA1-700-0004, an appeal of the Development Services Director's determination to deny ZC1-700-0016; and

Attachment B

WHEREAS, the appeal of this determination is not a project and is not subject to the environmental review requirements of the California Environmental Quality Act (CEQA);

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Denies Christopher O. Williams' Administrative Appeal No. AA1-700-0004 based on the above-findings; and

2. Upholds the Development Services Director's June 13, 2017 determination to deny Zoning Clearance No. ZC1-700-0016, a request to apply for a conditional use permit to operate a medical marijuana dispensary, at 6915 North Avenue, Lemon Grove, CA.

/ / / / /
/ / / / /

17.32.090 Medical marijuana dispensary regulations.

A. Zones. *Dispensaries* may be established by conditional use permit in the heavy commercial (HC), limited commercial (LC), general commercial (GC) and light industrial (LI) zones and subject to the distance requirements. *Dispensaries* are prohibited in mixed-use zones (Downtown Village Specific Plan and Central Commercial) and all residential zones (RLM, RL, RM, RMH).

B. Distance Requirements. An application may be submitted provided the proposed facility meets the required distance measurements. For purposes of measurements, all *dispensaries* are considered *regulated uses* and public parks as defined at Section 12.20.030 of Lemon Grove Municipal Code, playgrounds as defined at Section 18.28.020, subdivision (v), of the Lemon Grove Municipal Code, licensed day care facilities as defined at Section 17.08.030 of Lemon Grove Municipal Code, schools as defined at California Health and Safety Code Section 11362.768, subdivision (h), and alcohol and substance abuse treatment centers are considered *protected uses*. Measurement is made between the closest property lines of the *premises* in which the *regulated uses* and *protected uses* are located. A regulated use must not be:

1. Within one thousand feet of any other regulated use which is located either inside or outside the jurisdiction of the city,

2. Within one thousand feet from any protected use which is located either inside or outside the jurisdiction of the city.

The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

C. Standards.

1. Background Check Required for *Director*s and Employees. The *director* and employees of a *dispensary* must obtain a LiveScan background check through the California Department of Justice or the San Diego County sheriff's department prior to employment. *Director*s convicted of a serious felony, as defined in California Penal Code Section 1192.7, subdivision (c), and Health and Safety Code Section 11359 (Possession for sale) within the previous ten years shall not be eligible for a license. Other potential collective employees and volunteers convicted of the crimes identified in this section in the previous five years are ineligible for employment or participation. If during employment with the *dispensary*, a *director* or employee is convicted of a crime identified in this section shall be immediately dismissed from employment or required to resign as a corporate board member or officer. For purposes of this section, a conviction in another state that would have been a conviction equivalent under California law to those convictions specified in this section will disqualify the person from employment or volunteering at the *dispensary*.

2. Security Personnel Required. *Dispensaries* shall have at least one uniformed security guard on duty during operating hours that possess a valid Department of Consumer Affairs "Security Guard Card."

3. Community Relations Liaison Required. *Dispensaries* shall designate a community relations liaison (liaison) who shall be at least eighteen years of age. The liaison may also be the *director* of the *dispensary*. To address community complaints or operational problems with the *dispensaries*, the individual designated as the community relations liaison shall provide his or her name, phone number and email address to the following:

a. Lemon Grove city manager;

b. San Diego County sheriff's department personnel supervising law enforcement activity in Lemon Grove;

c. All neighbors within one hundred feet of the *dispensary*.

4. Inspection of *Premises*. City code enforcement officers, San Diego sheriff's department staff, and any other employee of the city requesting admission for the purpose of determining compliance with the standards set forth in this section shall be given access to the *premises*. City and sheriff staff shall not retain information pertaining to individual patient records viewed during an inspection, and information related to individual patients shall not be made public. Inspectors will give reasonable notice of a scheduled inspection. Unannounced inspections of a *dispensary* may occur if city or sheriff's department staff have probable cause that the collective is violating the law.

5. Inspection Requirements. In order to facilitate verification that a *dispensary* operates pursuant to state and local laws, the following records must be maintained at the *premises* at all times and available for inspection by city code enforcement officers, San Diego sheriff's department staff, and any other employee of the city:

a. Client Records. The *dispensary* shall keep a record of its clients. The record shall include the following and shall be maintained for a two-year period:

i. *Qualified patient* member's name, name of *primary caregiver* when appropriate, and name of *licensed physician* recommending use of *medical marijuana* for the member.

b. *Medical marijuana* Records. *Dispensary* shall keep a record of its *medical marijuana* transactions. The following records shall be maintained for a two-year period and labeling shall occur as specified:

i. A record identifying the source or sources of all *medical marijuana* currently on the *premises* or that has been on the *premises* during the two-year period preceding the current date. The record shall include the name of the cultivator or manufacturer and the address of the cultivation or manufacturing location.

ii. All *medical marijuana* at the *premises* must at all times be physically labeled with information that will allow for identification of the source of the *medical marijuana*.

iii. All *medical marijuana* at the *premises* shall be physically labeled with the monetary amount to be charged.

c. Financial Records. *Dispensary* shall maintain records of all transactions involving money and/or *medical marijuana* occurring at the *premises*. Records shall be maintained for a two-year period preceding the current date.

d. Employee Records. *Dispensary* shall maintain a record of each employee/volunteer and *director*. The record shall include name and background check verification. Records shall be maintained for a two-year period following the end of an employee's employment or *director*'s relationship with the *dispensary*.

6. *Operations manual*. The application for a conditional use permit shall include a detailed *operations manual* including, but not necessarily limited to, the following information:

a. Authorization for the city, its agents and employees, to seek verification of the information contained within the application;

b. A description of the staff screening process including appropriate background checks;

c. The hours and days of the week the *dispensary* will be open;

d. Text and graphic materials showing the site, floor plan and facilities of the *dispensary*. The material shall also show adjacent structures and land use;

e. A description of the security measures located on the *premises*, including, but not limited to, lighting, alarms, and automatic law enforcement notification;

f. A description of the screening, registration and validation process for *qualified patient*s;

g. A description of *qualified patient* records acquisition and retention procedures;

h. The process for tracking *medical marijuana* quantities and inventory controls employed, including the source of *medical marijuana* (on-site cultivation, processing, or plant material, or processed products, received from outside sources);

i. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;

j. Other information required by the development services director.

7. Operating Standards. *Dispensaries* shall comply with all of the following operating standards. In addition to these standards, the *dispensaries* shall comply at all times with conditions outlined in the approved conditional use permit and the operational manual.

a. Dispensing *medical marijuana* to an individual *qualified patient* or *primary caregiver* more than once a day is prohibited;

b. *Dispensaries* shall only dispense *medical marijuana* to an individual *qualified patient* or *primary caregiver* who has a valid, verified *licensed physician*'s recommendation, and if appropriate, a valid *primary caregiver* designation. The *dispensary* shall verify that the *licensed physician*'s recommendation is current and valid;

c. On-site evaluation by a *licensed physician* for the purposes of obtaining a qualified status is prohibited;

d. *Dispensaries* shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the *dispensary*. The client rules and/or regulations shall include, but are not limited to:

i. Each building entrance to a *dispensary* shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming *medical marijuana* on the *premises* or in the vicinity of the *dispensary* is prohibited unless specifically authorized within the governing conditional use permit.

ii. The building entrance to a *dispensary* shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen are precluded from entering the *premises*.

iii. The hours of operation for an authorized *dispensary* shall be limited to between eight a.m. to eight p.m. or as specified within the conditional use permit.

iv. *Dispensaries* shall not permit the use or consumption of *medical marijuana* on-site unless specifically authorized under the conditional use permit.

v. *Dispensaries* shall not permit the on-site display of unprocessed marijuana plants or representations of marijuana plants in any areas visible to the public;

vi. All signage for *dispensaries* shall require a sign permit from the city prior to installation. Signage shall not include any terminology (including slang) or symbols for marijuana.

vii. *Dispensaries* shall only permit the distribution of *medical marijuana* plant material and *medical marijuana* manufactured products from licensed sources as allowed by the approved conditional use permit. Such distribution shall be limited to *qualified patient*s or *primary caregiver*;

e. *Dispensaries* shall maintain on the *premises* an on-site training curriculum capable of meeting employee, agents and volunteer training needs. The minimum training curriculum shall include professional conduct, ethics, and state and federal laws regarding patient confidentiality; specific procedural instructions for responding to an emergency, including robbery or violent incident.

f. *Dispensaries* shall maintain all necessary permits, and pay all appropriate taxes. *Dispensaries* shall also provide invoices to cultivators and manufacturers to ensure tax liability responsibility;

g. *Dispensaries* shall implement procedures as outlined in their approved *operations manual*;

h. *Dispensaries* shall submit an "annual performance review report" for review and approval by the development services director. The "annual performance review report" is intended to identify effectiveness of the approved conditional use permit, *operations manual*, and conditions of approval, as well as any proposed modification to procedures as deemed necessary. The development services director may review and approve amendments to the approved "*operations manual*"; and the frequency of the "annual performance review report." *Medical marijuana* cultivation and dispensing monitoring review fees pursuant to the current Master Fee Schedule shall accompany the "annual performance review report" for costs associated with the review and approval of the report.

i. *Dispensaries* shall maintain twenty-four-hour recorded video surveillance of the *premises*. Recordings shall be retained for thirty days for inspection by city staff. City staff must provide valid cause for viewing video surveillance. City staff must ensure that patient privacy is safeguarded. Video surveillance will not be shared with law enforcement except when formally requested as part of a law enforcement investigation directly involving the *dispensary*.

j. Sales of alcoholic beverages are prohibited.

k. Sales of tobacco and tobacco products are prohibited.

l. Sales of drug paraphernalia are prohibited.

m. The location of the *dispensary* shall include the installation of a centrally monitored alarm system

n. Lighting shall be installed to adequately light the exterior and interior of the *dispensary premises* while in conformance with Section 17.28.080.

8. Source of *Medical marijuana*. A *dispensary* shall only dispense marijuana from the following sources and this information shall be included in the *operations manual*:

a. On-Site Cultivation for Authorized *Dispensary*. If the conditional use permit authorizes limited, on-site *medical marijuana* cultivation at the *dispensary*, on-site cultivation shall be considered an accessory use and shall not exceed twenty-five percent of the *dispensaries*' total floor area and in no case exceed one thousand five hundred square feet. In addition to these area limitations, the accessory use shall conform to the specific zone regulations, Section 17.24.060 Accessory Buildings and Uses, Section 17.32.100 of this title, and applicable Building and Fire Codes. The *operations manual* shall include information regarding the on-site cultivation including, but not limited to:

i. Description of measures taken to minimize or offset energy use from the cultivation or processing of *medical marijuana* on-site; and

ii. Description of chemicals stored or used; and

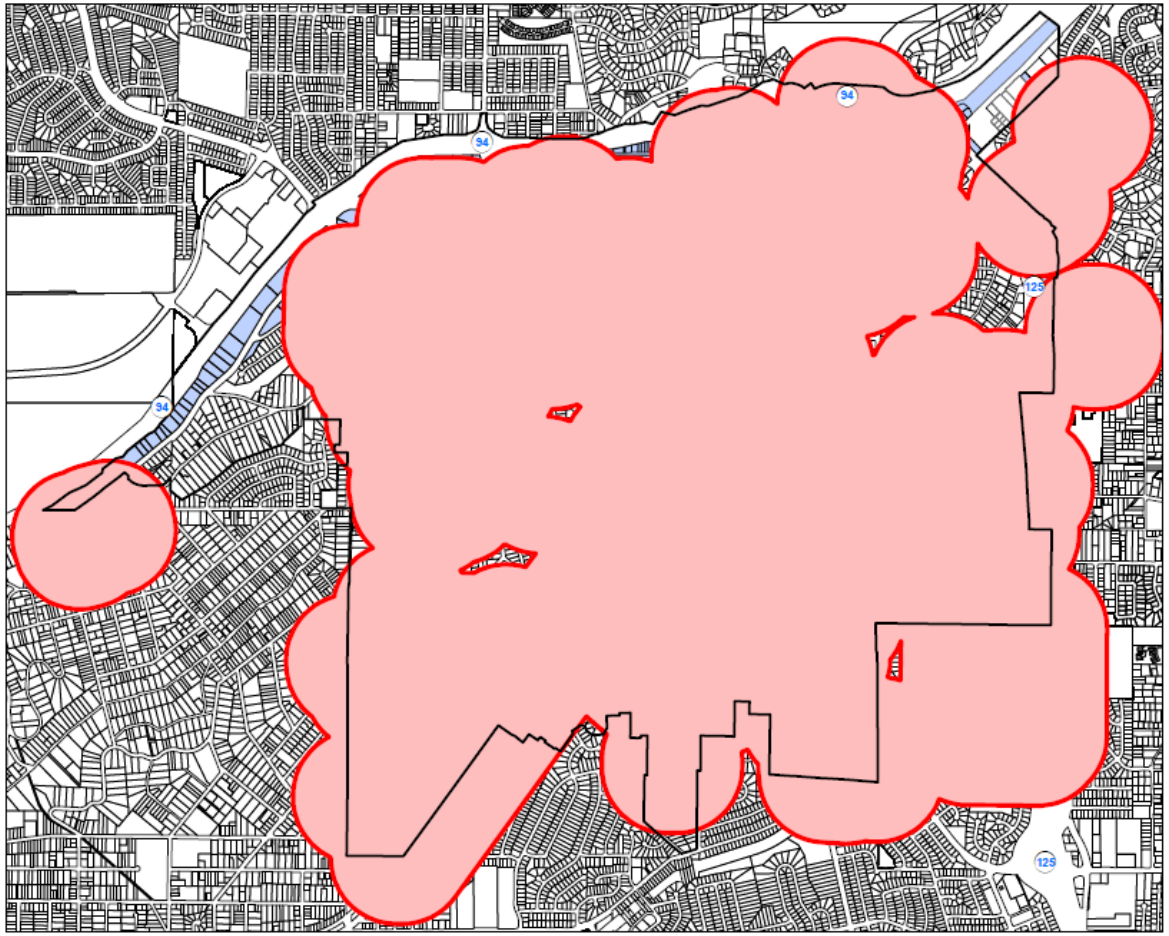
iii. Description of any effluent discharged into the city's wastewater and/or stormwater system;

b. Licensed External Source. Until one year following the date when the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, *dispensaries* shall source their *medical marijuana* from cultivators and manufacturers that have obtained a local business license or equivalent document showing that the organization is operating in zoning and regulatory compliance from another jurisdiction for the *medical marijuana* cultivation or manufacturing. One year from the date that the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, all sources of *medical marijuana* or *medical marijuana* products sold in a *dispensary* must also have a state license for their *medical marijuana* activities. (Ord. 443 § 1, 2016)

Draft Lemon Grove Medical Marijuana Dispensary Zoning

Legend

- Lemon Grove Boundary
- Zones Permitting Dispensaries (With Approved CUP)
- 1,000 Foot BufferAround Protected/Regulated Uses (Dispensaries Prohibited Inside the Buffers)



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NOTES:
1) This map may not include all protected uses, specifically those in surrounding jurisdictions.
2) To ensure privacy for family daycare homes, this map intentionally obscures the exact locations of protected uses.
3) Map last updated on July 5, 2017

PLANNING PERMIT APPLICATION

Development Services Department / Planning Division
3232 Main Street, Lemon Grove, CA 91945
Phone: 619-825-3805 Fax: 619-825-3818
www.lemongrove.ca.gov

CITY OF LEMON GROVE
JUN 0 1 2017
DEVELOPMENT SERVICES

APPLICATION REQUEST- SELECT ALL THAT APPLY – (SUBJECT TO OTHER PERMIT REQUIREMENTS)

- [x] Zoning Clearance (ZC)
- [ ] Pre-Application (PA)
- [ ] Minor Use Permit (MUP)
- [x] Conditional Use Permit (CUP)
- [ ] Planned Development Permit (PDP)
- [ ] Minor Modification (MM)
- [ ] Variance (VA)
- [ ] Boundary Adjustment/Lot Merger (BA)
- [ ] Tentative Map (TM) - 5 or more lots
- [ ] Other
- [ ] Tentative Parcel Map (TPM) - 4 or fewer lots
- [ ] Certificate of Compliance (CC)
- [ ] Zoning Amendment (ZA)
- [ ] Specific Plan Amendment (SPA)
- [ ] General Plan Amendment (GPA)
- [ ] Modification of
- [ ] Time Extension for
- [ ] Appeal of
- [ ] Substantial Conformance Review of

APPLICANT:	Christopher O'Neal Williams	**PHONE:**	(619) 847-8264
ADDRESS:	6257 Thorn St	**FAX:**	
	San Diego, CA 92115	**EMAIL:**	chris@xmgmedia.com
PROPERTY OWNER:	MATTAR FAMILY TRUST OF [redacted] 1950	**PHONE:**	619-666-9978
ADDRESS:	4395 Alta Mira Dr.	**FAX:**	
	La Mesa CA. 91941	**EMAIL:**	
CONTACT PERSON:	Abhay Schweitzer	**PHONE:**	(619) 940-5814
ADDRESS:	3956 30th Street	**FAX:**	
	San Diego, CA 92104	**EMAIL:**	abhay@techne-us.com

*If applicant or property owner is a trust, partnership, or corporation, please attach record(s) of ownership listing all trustees, partners, or officers, as applicable.

PROJECT NAME: NORTH AVE. MMD

PROJECT ADDRESS: 6915-35 North Ave, Lemon Grove, CA. 91945

ASSESSOR PARCEL #: 479-013-03-00 **SITE ACREAGE:**

DETAILED DESCRIPTION OF PROPOSED PROJECT USE, STRUCTURE, AND IMPROVEMENT:

The proposed project consists of an existing single story commercial building with an approximate square footage of 2,156 sf., to be converted into a Medical Marijuana Dispensary located at 6915-35 North Ave., Lemon Grove CA. 91945. The scope of the project is to include interior remodel of the existing structure with non-structural and non-loadbearing walls; Site modifications to include parking lot re-stripping, pedestrian access from the parking lot and existing right of way, and miscellaneous site improvements such as lighting, fencing and security cameras

ZC17-0016

Rev. November 2015

Attachment E

APPLICANT CERTIFICATION:
I hereby certify that the statements furnished in this application and in the supplemental materials present the data and information required for this project to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge. In addition, I grant permission to the City of Lemon Grove to reproduce submitted materials, including but not limited to plans, exhibits, photographs, and studies for distribution to staff, Planning Commission, City Council and other agencies in order to process this application.

Signature: Christopher O. Williams	Date: March 20, 2017
Name (please print): Christopher O. Williams	Phone: 619 847 8264

CONSENT BY PROPERTY OWNER
If applicant is other than property owner, owner must sign consent to filing. Attach additional sheets if necessary. If property owner is a corporation or trust, a designee authorization letter is required.

I/We, as the owner(s) of the subject property, consent to the filing of this application. We further consent and hereby authorize City representative(s) to enter upon my property for the purpose of examining and inspecting the property in preparation of any reports and/or required environmental review for the processing of the application.

Signature: X LeRoy Matter	Date: 3-18-17
Name (please print): LEROY MATTER	Phone: 619-466-1388
Signature:	Date:
Name (please print):	Phone:

Note: This application being signed under penalty of perjury and does not require notarization.

TO BE COMPLETED BY PLANNING STAFF

APPLICATION PROCESSING:

FILE #(s):	**ACTION:**
DATE:	☐ **APPROVED** ☐ **DISAPPROVED**
FEES: **RECEIPT #:**	☐ **CONDITIONALLY APPROVED (See Below)**
ZONE:	**LAND USE DESIGNATION:**

COMMENTS and/or CONDITIONS:

Rev. November 2015

CITY OF LEMON GROVE

"Best Climate On Earth"

Development Services Department

Date: June 13, 2017

Pick Axe Holdings, LLC
Attn. Christopher Williams
6257 Thorn St.
San Diego, CA 92115

Mattar Family Trust of 1990
4395 Alta Mira Drive
La Mesa, CA 91941

SUBJECT: Denial of Zoning Clearance Application ZC1-700-0016 for property located at 6915 North Avenue, in the City of Lemon Grove (APN: 479-013-03-00).

Christopher Williams,

On June 1, 2017, staff received the subject application to establish a medical marijuana dispensary (MMD) at the subject property in the City of Lemon Grove. The application has been denied for the following reasons, which may not be all inclusive:

- The property is located within 1,000 feet of a State-licensed small family daycare home.

In order for staff to process a conditional use permit application for a MMD, the application must include all of the information required by Chapter 17.32 of the Lemon Grove Municipal Code, as well as the items listed on the City's MMD Planning Permit Checklist. Additionally, the location of the proposed MMD must comply with the zoning requirements and distance restrictions contained within Chapter 17.32. If any of the required items are missing, or if the proposed location does not meet the zoning requirements and distance restrictions, then staff cannot process a conditional use permit application. Please review the requirements of Chapter 17.32 and the MMD Planning Permit Checklist prior to submitting another application. Please also verify that the site chosen meets the distance restrictions established by Chapter 17.32. Staff's decision to deny this application may be appealed to the Lemon Grove City Council pursuant to Lemon Grove Municipal Code, Section 17.28.020(I). Appeals must be filed in writing within 10 calendar days of the date on this denial letter and must include a filing fee of $75.00. Appeals must be filed using forms provided by the Development Services Department.

Respectfully,

David De Vries, Development Services Director

3232 Main Street Lemon Grove California 91945-1705
619.825.3805 FAX: 619.825.3818 www.ci.lemon-grove.ca.us

APPEAL APPLICATION & REQUEST FOR PUBLIC HEARING

Community Development Department / Planning Division
3232 Main Street, Lemon Grove, CA 91945
Phone: 619-825-3805 Fax: 619-825-3818
www.ci.lemon-grove.ca.us

APPLICANT:	Pick Axe Holdings, LLC c/o Gina Austin	PHONE:	619-924-9600
ADDRESS:	6257 Thorn St.	FAX:	
	San Diego, CA 92115	EMAIL:	gaustin@austinlegalgroup.com

CASE/PROJECT NUMBER: ZC1-700-0016

DECISION /CONDITIONS OF APPROVAL BEING APPEALED (INCLUDE CONDITION ITEM NUMBERS):

Applicant is appealing staff's determination that the property is located within 1,000 feet of a small family daycare home.

SPECIFIC REASON(S) FOR APPEAL OR REQUEST FOR PUBLIC HEARING:

The denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial. Further, however, the applicant will provide additional details once the specific sensitive use has been identified by the City.

Attach additional sheets if necessary.

Applicants Signature — Date: 06/21/17

TO BE COMPLETED BY PLANNING STAFF

FILE #(s): AA1-700-0004
DATE: 6/21/17
FEES: $75 RECEIPT #:

COMMENTS and/or CONDITIONS:

Customer # → 052190
Lot # → 045868

Attachment G

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN
CALIFORNIA, ARIZONA & HAWAII
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

CITY OF LEMON GROVE
JUN 01 2017
DEVELOPMENT SERVICES

May 31, 2017

City of Lemon Grove
Development Services
3232 Main Street
Lemon Grove, CA 91945

Re: **6915-6935 North Ave**, Application for Medical Marijuana Dispensary (MMD)

To Whom It May Concern:

Austin Legal Group, APC ("ALG") represents the applicant for a MMD located at 6915-6935 North Ave, Lemon Grove ("MMD Location"). The purpose of this letter is to provide further clarification as to why the MMD Location is not within 1000' of a Protected Use as defined by section 17.32.090 of the Lemon Grove Municipal Code (the "Code".) It is our professional opinion that there are no Protected Uses within 1000' of the MMD Location.

While the MMD Location was not within the approved highlighted properties on the City's most recent map, as explained in more detail below, there are no Protected Uses within 1000' of the MMD Location. Further, the City supplied a list of Protected Uses in response to a public records request ("City's Response"). The City's Response is attached hereto as Exhibit 1. No Protected Uses were identified in the City's Response within 1000' of the MMD Location. (See Exhibit 2).

The applicant is requesting the City process the CUP application for the MMD at 6915-6935 North Ave all the way through to City Council Hearing despite the MMD Location being identified within the buffer area identified on the City's zoning map.

Exhibit 3, attached hereto, identifies the 1000' radius around the MMD Location on the assessor parcel map. Exhibit 4, attached hereto, identifies the 1000' radius around the MMD Location on a graphic map.

None of the Protected Uses provided by the City in response to the Public Records request are within 1000' of the MMD Location. The nearest Protected Use is located at 7164 Broadway, approximately 1,315' property line to property line without consideration of natural or constructed barriers. (See Exhibit 5.)

In further support, this office conducted an independent analysis of the 1000' area surrounding the MMD Location and, as explained below, no Protected Uses were identified.

There are no protected uses within 1000' to the north or northwest of the MMD Location. The nearest neighborhood to the north starts with King Street, La Mesa. However, Route 94 is a constructed barrier that impedes direct physical access between the properties. There are no properties immediately north or northwest of the MMD Location which is not separated by the Route 94 Freeway. The municipal code requires that the City take into account "natural topographical barriers and constructed barriers that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access" (Lemon Grove Municipal Code § 14.32.090 (B).) Due to the Route 94 as a constructed barrier, the most direct route around the barrier is approximately 1,794 ft. (See Exhibit 6.)

Similarly, based upon the City's Response, public records, and business tax certificates there are also no Protected Uses to the west of MMD Location. To the west of the MMD Location there is a commercial shopping center which includes a wide variety of commercial businesses. The 1000' point to the west is the Rubio's Coastal Grill, located in the Marketplace at the Grove Shopping Center at 3406 College Ave. Located within the 1000' between the MMD Location and Rubio's Coastal Grill is the Route 94 freeway.

To the east of the MMD Location there is a commercial shopping center that does not contain any Protected Uses. The extent to which 1000' to the east of the MMD Location extends is to Albertsons located at 7090 Broadway. Based on the APN and Parcel IDs for schools, parks, playgrounds, alcohol and substance rehabilitation facilities, and licensed day care facilities, there are no Protected Use facilities within 1000' east of the MMD Location.

Finally, business tax certificates, public records, the City's Response do not identify any Protected Uses the south and southeast of the MMD Location. The extent to which 1000' south of the MMD Location extends to the Lemon Grove Apartment Complex, Hillside Terrace Apartments, located at 3262 College Place. Located within the 1000' south between the MMD Location and the apartment complex includes several commercial entities.

* * *

For the reasons above, we are requesting the City of Lemon Grove find that there are no Protected Uses within 1000' of the MMD Location and immediately issue the Zoning Clearance for the MMD Location.

Sincerely,
AUSTIN LEGAL GROUP, APC

Gina M. Austin, Esq.

Attachment G

PROTECTED USES

School Age Child Care Center (CDSS Website; Facility Search)

CHRISTIAN CHURCH OF LEMON GROVE SCHOOL AGE PROG. 6970 SAN MIGUEL AVE 91945 Licensed

CHRISTIAN CREATIVE LEARNING ACADEMY/SCHOOL-AGE 2920 MAIN STREET 91945 Licensed

EAST COUNTY FAMILY YMCA GOLDEN 7885 GOLDEN AVE. 91945 Licensed

MERRY GO ROUND LEARNING CENTER - SCHOOL AGE 2749 LEMON GROVE AVENUE 91945 Licensed

Child Care Center Preschool (CDSS Website; Facility Search)

AKA HEAD START - SAN MIGUEL 7059 SAN MIGUEL 91945 Licensed

CHRISTIAN CHURCH OF LEMON GROVE PRESCHOOL 6970 SAN MIGUEL AVENUE 91945 Licensed

CHRISTIAN CREATIVE LEARNING ACADEMY 2920 MAIN ST 91945 Licensed

DISCOVERY LEARNING CENTER 1515 SKYLINE DRIVE 91945 Licensed

LEMON GROVE SCHOOL DISTRICT-GOLDEN AVE PRESCHOOL 7885 GOLDEN AVENUE 91945 Licensed

LEMON GROVE SCHOOL DISTRICT-MONTEREY HEIGHTS P.S. 7550 CANTON DRIVE 91945 Licensed

LEMON GROVE SCHOOL DISTRICT-MOUNT VERNON PRESCHOOL 8350 MOUNT VERNON STREET 91945 Licensed

LEMON GROVE SCHOOL DISTRICT-SAN ALTOS PRESCHOOL 1750 MADERA STREET 91945 Licensed

LEMON GROVE SCHOOL DISTRICT-SAN MIGUEL PRESCHOOL 7059 SAN MIGUEL AVENUE 91945 Licensed

LIGHTHOUSE CHRISTIAN PRESCHOOL 1345 SKYLINE DRIVE 91945 Licensed

MERRY GO ROUND LEARNING CENTER 2749 LEMON GROVE AVENUE 91945 Licensed

SHILOH CHRISTIAN ACADEMY 2770 GLEBE ROAD 91945 Licensed

ST. JOHN OF THE CROSS PRESCHOOL 8175 LEMON GROVE WAY 91945 Licensed

EXHIBIT 1 - PAGE 1

Large Family Daycare (up to 14 kids) (CDSS Website; Facility Search)

AHMED, FATHA & MOHAMED FAMILY CHILD CARE	Unavailable	91945	Licensed
ALVAREZ, VERONICA & JUAN FAMILY CHILD CARE	Unavailable	91945	Licensed
DELGADO, ALICIA & JOSE FAMILY CHILD CARE	Unavailable	91945	Licensed
DELGADO, GLORIA FAMILY DAY CARE	Unavailable	91945	Licensed
GEORGE, CARRIE FAMILY CHILD CARE	Unavailable	91945	Licensed
HUSSEN, FARTUN FAMILY CHILD CARE	Unavailable	91945	Licensed
JOHNSON, KATHLEEN FAMILY DAY CARE	Unavailable	91945	Licensed
LEDEZMA, LORENZA FAMILY CHILD CARE	Unavailable	91945	Licensed
MAXWELL, REBECCA & DANIEL FAMILY CHILD CARE	Unavailable	91945	Licensed
MILLER, O & CARTER, I FAMILY CHILD CARE	Unavailable	91945	Licensed
SAMBRANO, LAURA FAMILY CHILD CARE	Unavailable	91945	Licensed
TANABE, SYLVIA FAMILY DAY CARE	Unavailable	91945	Licensed

Drug Treatment Facilities (Google Search)

Alano Club	6901 Central Avenue
McAllister Institute	2049 Skyline Drive

Adult Daycare

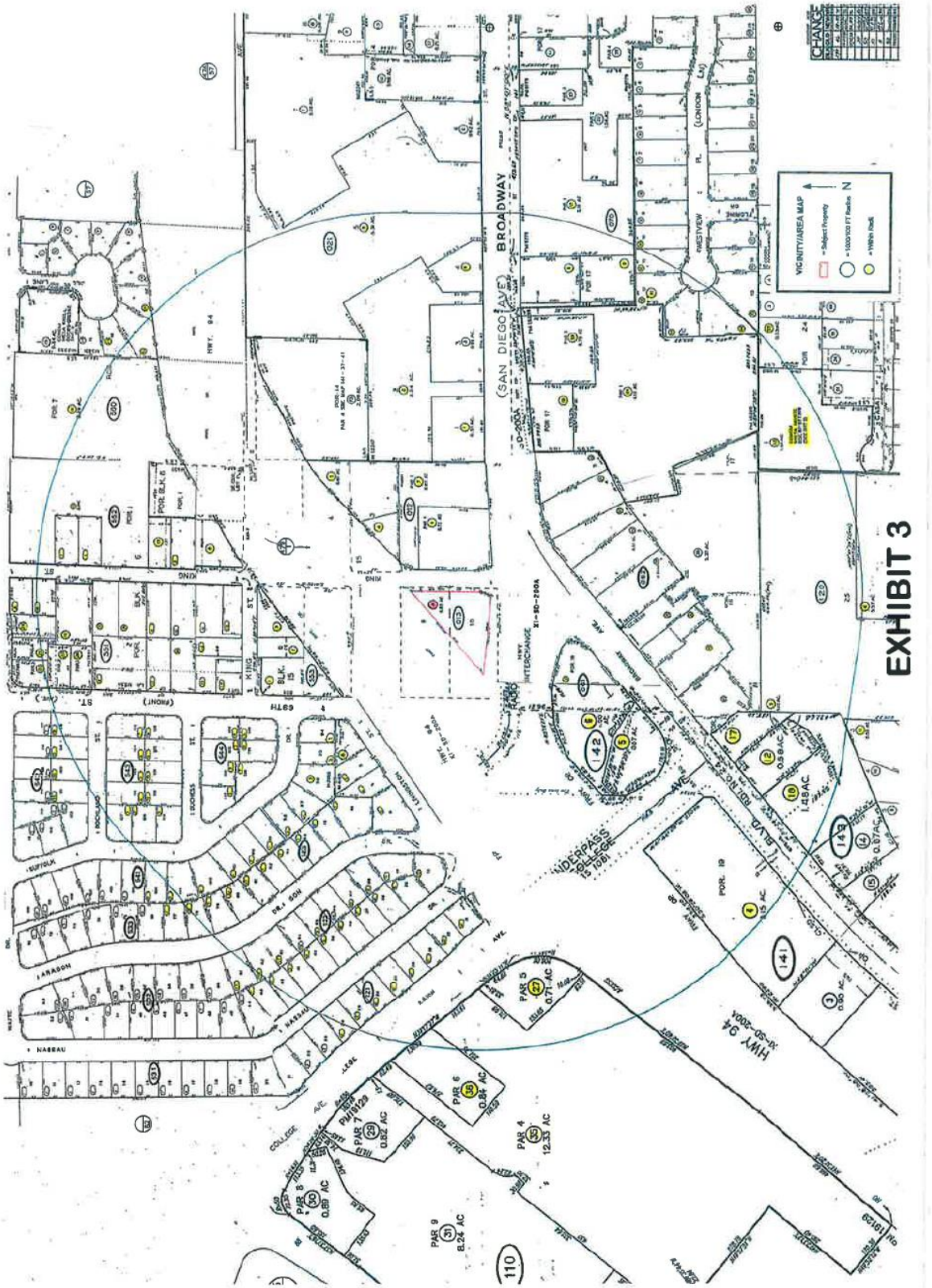
HEALTHY OPPORTUNITIES PROGRESSIVE EDUCATION	3225 OLIVE ST.	91945	Licensed
LINK CENTER, THE	7944 GOLDEN AVE	91945	Licensed

EXHIBIT 1 - PAGE 2

Attachment G

EXHIBIT 2

Attachment G



Attachment G

EXHIBIT 4

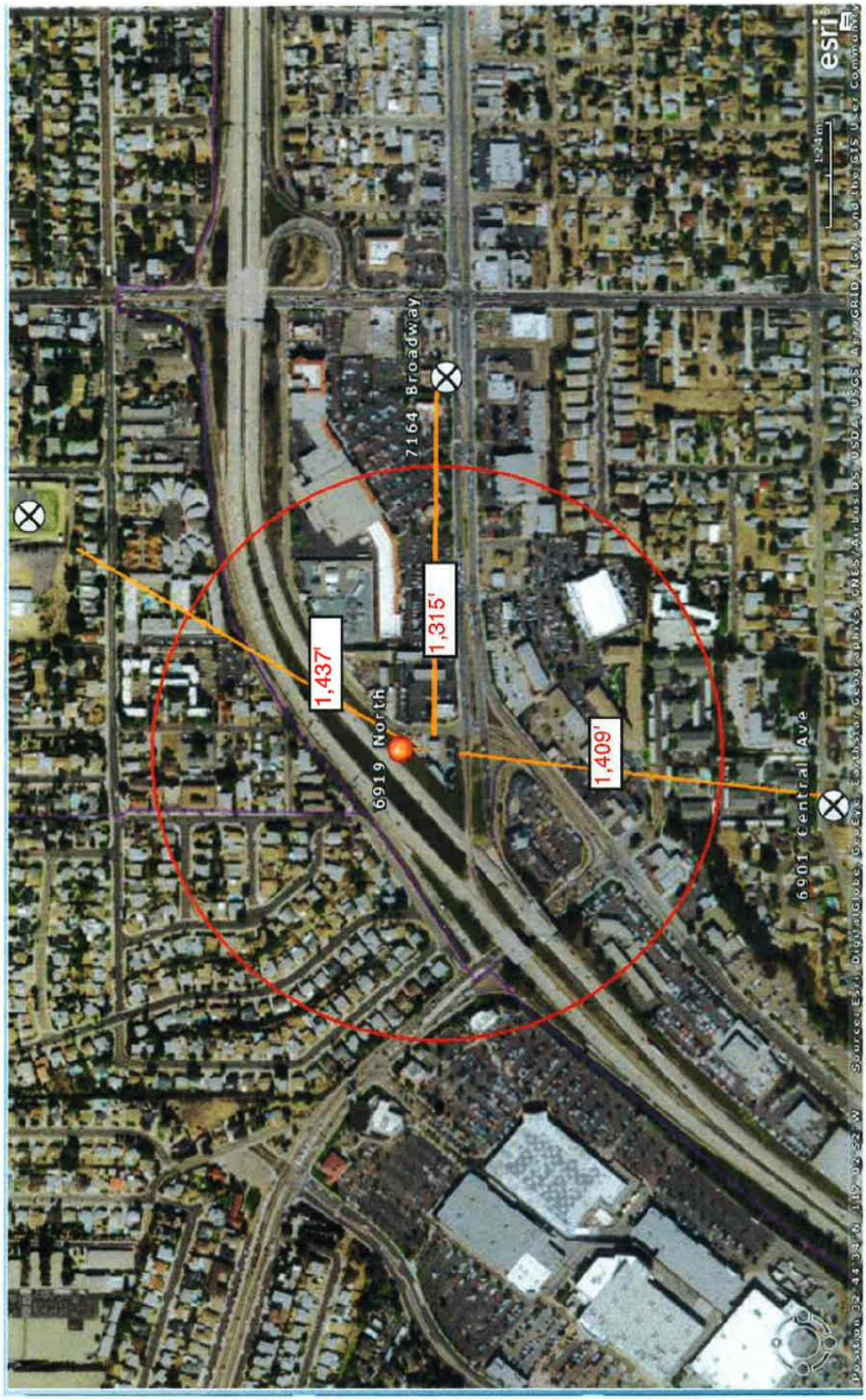
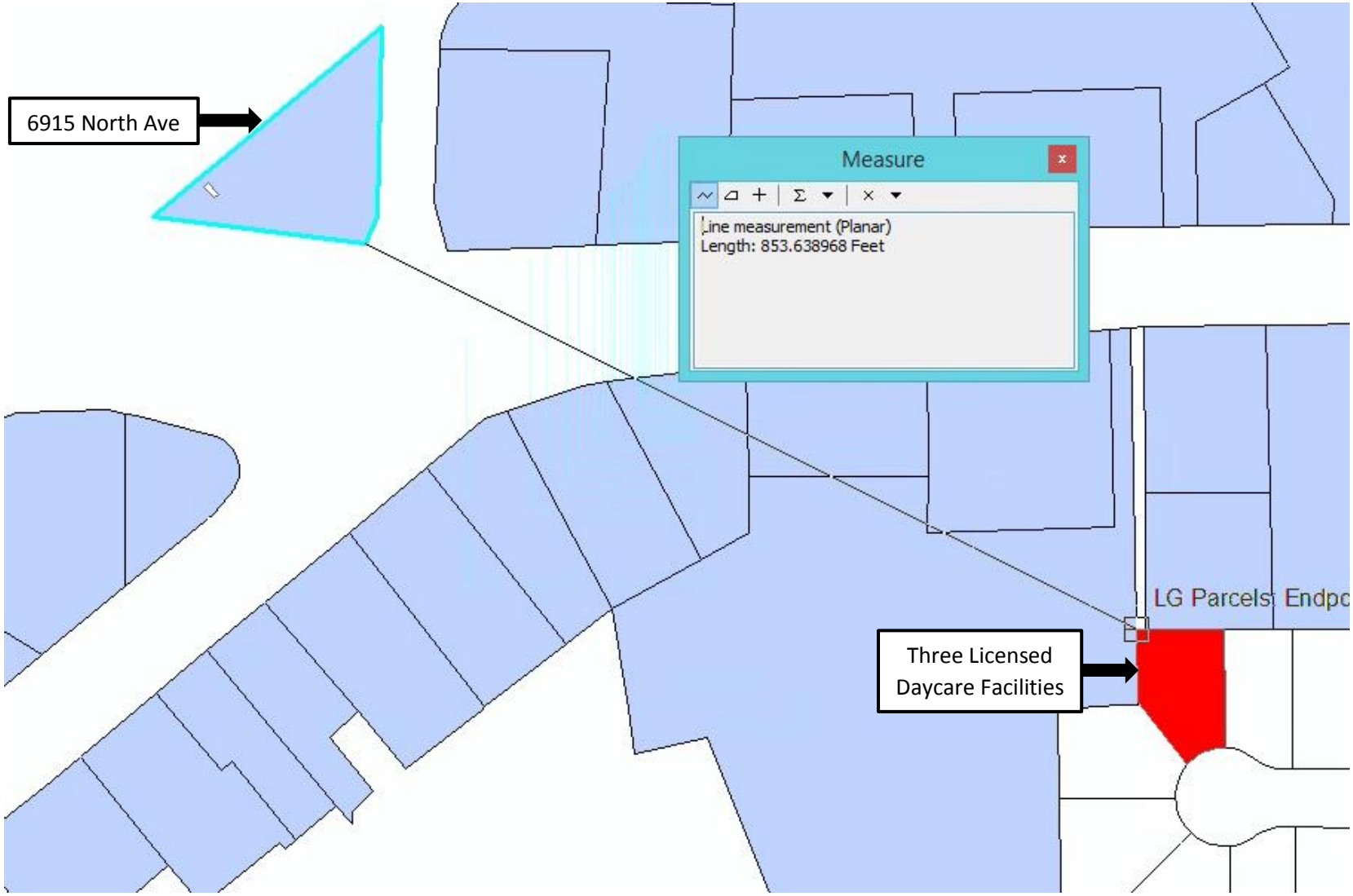

1,437'
1,315'
1,409'
6919 North
7164 Broadway
6901 Central Ave
esri

EXHIBIT 5

Attachment G

EXHIBIT 6

Attachment H



Source: City of Lemon Grove GIS database 2017

CITY OF LEMON GROVE

"Best Climate On Earth"

Development Services Department

Date: July 25, 2017

Pick Axe Holdings, LLC
Attn. Christopher Williams
6257 Thorn St.
San Diego, CA 92115

Mattar Family Trust of 1990
4395 Alta Mira Drive
La Mesa, CA 91941

SUBJECT: Appeal hearing for denial of Zoning Clearance application ZC1-700-0016 for property located at 6915 North Avenue, in the City of Lemon Grove (APN: 479-013-03-00).

Christopher Williams,

On June 1, 2017, staff received the subject application to establish a medical marijuana dispensary (MMD) at the subject property in the City of Lemon Grove. On June 13, 2017, staff denied the application because the property is located within 1,000 feet of a State-licensed daycare facility. In order to provide a full and open opportunity for you to understand the reason staff denied your zoning clearance permit, and to allow you to respond accordingly, we wish to inform you that the specific protected uses affecting your project site are three licensed family daycare facilities located at 7106 Westview Place. By measuring georeferenced parcel boundary information, we have determined that your property at 6915 North Avenue is located 853 feet northwest of the daycare facilities, and is therefore ineligible for MMD approval.

On June 21, 2017, staff received an appeal of its decision to deny the application. Staff's decisions are subject to appeal pursuant to the provisions of the Lemon Grove Municipal Code, Section 17.28.020(I). The Lemon Grove City Council will consider the appeal and make a determination to grant or deny the appeal at a public hearing to be conducted on August 15, 2017.

The City will provide this hearing but objects on the basis that Pick Axe Holdings LLC, the entity that lodged the appeal, is not the party who filed the Zoning Clearance Application who is Christopher O. Williams. The City preserves this objection for the appeal hearing and for the defense of any writ that may be filed in Superior Court.

In addition, should you need additional time to prepare for the hearing you can request a continuation of the appeal hearing to the next City Council hearing.

The staff report will be available to the public in the afternoon on August 10, 2017 (http://www.lemongrove.ca.gov/departments/mayor-council/current-city-council-agenda).

3232 Main Street Lemon Grove California 91945-1705
619.825.3805 FAX: 619.825.3818 www.ci.lemon-grove.ca.us

Attachment I

If you have any additional supporting material you would like to submit for the appeal, please provide that information to staff at your earliest convenience.

Respectfully,

David De Vries, Development Services Director

Department of SOCIAL SERVICES CDSS (http://www.cdss.ca.gov/)

Frequently Asked Questions

Where can I find the facility defintions?
See the Glossary link at the top.

Where can I find out more about how facilities are regulated in California?
Please visit the Community Care Licensing (http://www.ccld.ca.gov/) website.

What is the best way to search?
Select just one or a few of the available search terms. You will be able to filter your search on the Results screen.

Where can I find the definitions of the facility types?
The definitions for the facility types can be found on the Glossary (http://www.ccld.ca.gov/res/html/glossary.htm) page.

I am looking for Foster Family Homes. Why can't I find them.
The publication of names and addresses of Foster Family Homes is restricted by law and considered confidential.

Why can't I find the addresses for Small Family Child Care homes (less than 8 children)?
Because these are Child Care providers' homes, the publication of addresses is restricted. To find Small Family Child Care home providers in your area, contact the Resource and Referral Network (http://www.rrnetwork.org/find_child_care) or call 1-800-KIDS-793. The Network can also assist you in searching for the right child care for your child and can provide you with addresses of facilities in your area.

Why can't I see or search on street addresses for Large Family Child Care Homes?
For Large Family Child Care Homes, you can still search using the City, Zip and County options. To obtain the address of a Large Family Child Care Home, please contact either the State Licensing Office, the Resource and Referral Network (http://www.rrnetwork.org/find_child_care) or call 1-800-KIDS-793.

Why can't I get a list of Small Family Child Care homes?
Information related to Small Family Child Care homes is restricted by law. Small Family Child Care home information is available to provide consumer information to parents with children in care and to parents seeking child care from a local child care home.

CITY OF LEMON GROVE

"Best Climate On Earth"

Development Services Department

February 9, 2017

Michelle Hood, Office Services Supervisor I
Community Care Licensing
San Diego Child Care Regional Office
7575 Metropolitan Drive #110
San Diego, CA 92108

RE: Request for List of Small Family Daycare Homes with Addresses

Michelle:

On November 8, 2016, voters in Lemon Grove passed Measure V, which removed the City's prohibition of medical marijuana dispensaries (dispensaries). Measure V (copy attached) allows dispensaries to be established by conditional use permit (CUP) subject to certain distance restrictions. One such distance restriction states that no dispensary shall be permitted within 1,000 feet of licensed daycare facilities. Therefore, City staff needs to identify the location of family daycare homes both inside the City boundaries and outside the City boundaries within 1,000 feet. The applicable postal codes we need information for are 91945, 91977, 91941, and 92114.

Our staff is sensitive to the need for privacy at family daycare homes. Therefore, if provided we do not intend to share this information with the general public. Our goal is to use the information to prepare a map for staff use only.

Sincerely,

Patti Rehn for David DeVries

David DeVries, AICP
Director of Community Development
City of Lemon Grove

Attachments:

1. Measure V

CDSS
WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

EDMUND G. BROWN
GOVERNOR

February 21, 2017

Mr. David DeVries
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

RE: Request for Confidential Child Care Facilities Data

This letter is in response to your letter request to obtain a copy of the confidential Small Family Child Care Home list, which are in-home child care facilities with 8 or fewer children enrolled, as well as the Large Family Child Care Home list, which are in-home child care facilities with 9-14 children enrolled.

In your letter, you expressed that the need for this list is to ensure that those applying for medical marijuana dispensaries are not located within 1,000 feet of a licensed daycare facility.

For your information, Health and Safety Code Section 1596.86(b) requires the Department of Social Services (DSS) to maintain the personal privacy of small family child care homes and prevent the use of lists containing their names, addresses, and other identifying information, except for administering the licensing program, facilitating the placement of children, and providing the names and addresses to resource and referral agencies funded by the Department of Education, and food and nutrition programs also funded by the Department of Education.

In consideration of your reasoning for requesting the Small Family Child Care Home list, and Child Care Licensing's administrative responsibility to protect the health and safety of its clients in care, it appears your request is in line with the mandate of the above statute.

I am including as an attachment to this letter, a copy of the fee schedule that contains the fee amount for the Small Family Child Care Home list. It also contains instructions for where to send your check.

Steven Blount of our Information Systems Division will receive a copy of this letter, so he will be aware that you have been approved to receive a copy of the list. It should be understood that the small family child care home list is to remain only in your possession, and not shared.

Thank you for your communication. If you have any questions or additional concerns, you may contact Jenni Fong, System Review Analyst at (916) 651-0264.

Sincerely,

Sheila Fleming, Manager
Child Care Program System Administration and Support Unit

Attachment

cc: Steven Blount, ISD