

**VIA E-MAIL**

Hon. Mayor Kevin J. Lincoln II  
and Hon. Members of the City Council  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202

**Re: Appeal to the City Council for approval of Commission Use Permit and  
Administrative Use Permit – Cannabis Dispensary**

2020 Commercial Cannabis Lottery No. RE-332 (Equity Program)

Application No. P20-0693

Applicant: Jiva SCK LLC (Heng Heung & Raj Pottabathni)

Location: 7616 Pacific Avenue, Unit A5 (Hammer Ranch Shopping Center)

Dear Honorable Mayor and Members of the City Council:

On behalf of the Applicant, Jiva SCK LLC (Mr. Heng Heung and Mr. Raj Pottabathni), we respectfully submit this letter in support of the Applicant's appeal to the Council for approval of this application for issuance of a Commission Use Permit ("CUP") to establish a retail storefront and an Administrative Use Permit ("AUP") for a retail non-storefront (delivery only) to legally operate commercial cannabis business in the City of Stockton ("City") within the Hammer Ranch Shopping Center addressed 7616 Pacific Avenue, Unit A5.

As clearly demonstrated in the Community Development Department's Staff Report, the application is fully consistent with the City of Stockton's existing regulations and policies and consistent with Stockton Municipal Code Sections for Commercial Cannabis Businesses (SMC Title 5 - Chapter 5.98, 5.99, 5.100, and Title 16 - Chapter 16.20, Section 16.20.020; Chapter 16.64, Section 16.64.040; Chapter 16.80, Section 16.80.195; and Chapter 16.240, Section 16.240.020.) This application provides features over and above minimum requirements, and easily merits the well-justified recommendations by the City's Staff for approval.

## **INTRODUCTION**

The Staff Report for the July 8, 2021, Planning Commission hearing was unequivocal:

**“Staff recommends approval as the proposed project meets the City’s standards and aligns with the General Plan 2040 goals.”**

Nevertheless, a misguided majority of the Planning Commission voted (4-2) to erroneously deny the application. That action, however, reflected an impermissible attempt to shield a single private business from the possibility of lawful competition, as clearly shown by the record. “Zoning and building laws ‘cannot be used unqualifiedly to restrict competition,’ or simply to shield existing businesses from competition. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1013.)

It is respectfully submitted that the Council should grant this appeal, and set aside the Planning Commission’s erroneous decision for several reasons:

(a). The denial action disregarded the City’s officially-adopted and existing policies and standards for issuance of use permits for cannabis retailers and were instead improperly based on a newly-contrived, *ad hoc*, “policy” of denying otherwise lawful land use permits in order to impermissibly shield one existing business from possible new competition;

(b). The Commission majority action was based on unlawful anti-competitive economic protectionism for a single private business, in violation of California planning and zoning laws;

(c). The Commission’s purported “findings” fail to justify or support denial of the use permit applications;

(d). The Commission’s purported “findings” are not supported by any substantial evidence in the public record;

(e). Some Commission members based their decisions on unauthorized consideration of the distance or “proximity” between the existing cannabis businesses and the new dispensary, in derogation of the City Council’s deliberate actions in 2019 to expressly remove any such locational limits between cannabis retailers in conformity with State law;

(f). At least some members of the Commission indicated that their decisions were based in part on improper political or economic motivations, and on speculation, rumor, or other non-evidentiary matters which were not disclosed or substantiated in the public record, resulting in denial of a fair and impartial hearing.<sup>1</sup>

<sup>1</sup> E.g., Commissioner Villapadua: “And you know what? I’m new but I’ve been doing my homework for a long time. My family has been, you know, in this industry, in the politics for a

Since the application fully complies with all lawful and applicable City standards – as confirmed by City Staff and the Chair of the Planning Commission -- it is entirely appropriate for the Council to approve and direct issuance of both requested use permits. (E.g., *Essick v. City of Los Angeles* (1950) 34 Cal.2d 614 [Supreme Court affirmed City Council’s decision to grant an appeal from planning commission’s adverse recommendation and to approve application for issuance of a CUP].)

### **BACKGROUND TO THIS APPLICATION.**

The Applicant entity’s majority member, Mr. Heung, qualified for Stockton’s Commercial Cannabis Equity Program through his eligibility as a resident living in an SB 535 Disadvantaged Area. Mr. Heung fled from the terror of the Khmer Rouge in Cambodia with his family when he was 8 and found refuge in Stockton. He and his family have lived in Stockton for 30 years. When Mr. Heung learned of the City Council’s creation in 2019 of a lottery system in 2019 to implement the City’s policies for the expansion of the commercial cannabis business program – which would include a lottery pool recognizing social and racial equities — he sought to pursue such an opportunity, and applied for an opportunity to secure a commercial cannabis retail storefront and delivery permits through the equity pool in the City’s 2020 Commercial Cannabis Lottery Program. Recognizing that Mr. Heung is precisely the type of local minority resident that the City is seeking to foster by its Equity Program, the City, through an electronic random public drawing, selected him as a winner of the City’s 2020 Commercial Cannabis Lottery and accordingly awarded him the right to apply for this Retailer Storefront CUP in Spring 2021.

In order to implement the successful outcome of the City’s lottery program, Mr. Heung along with his experienced operating partner, Raj Pottabathni, reviewed all applicable City and State regulations applicable to the operation of cannabis dispensaries in Stockton, and made extensive studies of the community. That analysis of the City’s current cannabis regulatory program revealed that there are only a few areas in Stockton that could potentially meet the City’s

while.... And you know what? I have bigger plans for my son, the elders, the kids, and this whole city. If I get behind something like this, this will always come back to me... So I ask my colleagues to join me and say no to this.” (Reporter’s Transcript of July 8, 2021, PC Hearing, p. 61, *attached*.)

Commission Chair Mallett responded: “I would like to respond to that because I do have concerns about this being about politics. And I think as Planning Commissioners, our responsibility is to deal with the land use and to look at our requirements that need to be forwarded on as for as making approvals or denials on use [permits], not whether it is going to be the politically accepted decision.” (*Ibid.*, p. 61)

criteria to be eligible as a dispensary location.<sup>2</sup> Having determined the feasibility of this site, the Applicant engaged the local community and businesses, and did extensive outreach with interested members of the public. Those efforts resulted in further confirmation of the suitability of this location and wide-spread expressions of support for the proposal to move forward.

Accordingly, the Applicant made all appropriate preparations and arrangements to pursue this application for a CUP and AUP to allow the development (improvements to an existing building) of a compatible, compliant, and attractive first class retail storefront and retail delivery cannabis business at this established, and welcoming, retail shopping center consistent with the City's existing "CG" (commercial general) zoning and cannabis business regulations.

**THE APPLICATION COMPLIES WITH ALL APPLICABLE REQUIREMENTS FOR APPROVAL OF THE USE PERMITS.**

City Staff undertook thorough review of the application, as detailed in the comprehensive Staff Report provided for the Planning Commission hearing, and provided extraordinary opportunities for public comment, including the Applicant hosting a "virtual community meeting" on May 10, 2021. In addition, the Police Department studied the area in connection with this Application and reported that there was no evidence of any significant crime increase due to the presence of a cannabis dispensary.<sup>3</sup> The Staff Report to the Planning Commission further reported that the Police Department had investigated the Application and indicated that there was no opposition to this proposed project.<sup>4</sup>

That Staff analysis confirmed that the proposed project complies with all existing City standards and General Plan policies. The record revealed no valid bases for objection to the application – much less any legal grounds for denial of the permits. Accordingly, the City's expert Planning Staff properly recommended approval by the Planning Commission:

**"The project complies with all applicable provisions of the Development Code and the Municipal Code including location requirements (SMC Section 16.80.195A(6) and B(4)) which requires separation from sensitive uses (i.e., residential zones, parks, schools, etc.)."**

<sup>2</sup> The City's website includes a Map of "Zoned Areas that meet Restrictions for Retail Storefront dispensaries and Retail Non-Storefront delivery" business locations, depicting a few small, widely-scattered, eligible areas – largely on the more remote outskirts or periphery of the City.

<sup>3</sup> Testimony to the Planning Commission on July 8, 2021, by Stockton Police Lt. Scott Graviette (head of the vice unit which monitors cannabis establishments in Stockton.)

<sup>4</sup> City Staff Report to the Planning Commission on July 8, 2021, at p. 1 and p.3.

The opinion of Staff is recognized as “substantial evidence” supporting a City’s decision to approve a land use permit. (*Browning-Ferris Industries v. City Council of San Jose* (1986) 181 Cal. App. 3d 852, 866.)

The Staff Report for the Planning Commission on July 8 methodically laid out the relevant criteria for considering the CUP and AUP application under the governing City ordinances – and the facts showing that the Application “complies with all applicable provisions” of the City. The City’s standards for issuance of these permits are stated in SMC § 16.168.050 [Findings for Use Permits], and § 16.80.195 [Cannabis business – Commission use permitting]. Unlike some other cannabis permits recently considered in Stockton, “this one has absolutely no variance requirements.”<sup>5</sup>

The Application was amply supported by the written Staff Report; the testimony of the Assistant Community Development Director, the lead City planning official for the proposal; the testimony of the Police Lieutenant in charge of the Vice unit (responsible for monitoring cannabis businesses); the Applicant and his business associates; a Petition in Support signed by at least ten (10) of the new dispensary’s prospective neighbors; the owner of the shopping center site of the proposed dispensary (and past President of the Greater Stockton Chamber of Commerce); a Stockton native with experience operating a cannabis business in Sacramento; and an equity cannabis applicant in San Francisco familiar with the professionalism, reliability, and technical experience of the Applicant’s operating partner (Raj Pottabathni).

By contrast, of the nine (9) speakers opposed to the permit, at least six (6) were employees or owners of the nearby “Zen Garden Wellness” dispensary, allegedly concerned about potential “competition” from another dispensary. However, none of those speakers presented any competent evidence, much less substantial evidence, as to the relevant issues of compliance with the City’s existing standards for approval of a use permit. More importantly, the Commission could not lawfully act solely on the basis of those objections. “A zoning board may not base the denial of a special exception solely on community objection. More specifically, the objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit.” (83 AM JUR 2D ZONING AND PLANNING § 870 [citations omitted].)

The evidence in the record strongly demonstrated that this dispensary at this proposed location fully complied with all of the requirements of the City Code, as written. In response to questions from the Commission members, City Staff testified that “there is more than adequate parking for all of the uses” at the proposed location including “ample parking per Code minimum standards” for the dispensary.<sup>6</sup> Also, in response to questions, the City’s Police authority (Lt.

<sup>5</sup> Planning Comm. Chair Mallett, Reporter’s Transcript at p. 55:12-14.

<sup>6</sup> Asst. Community Development Director Ocasio, Reporter’s Transcript, p. 52:1-7.

Graviette) testified that there is no evidence of any significant crime increase associated with the establishment of the existing dispensary.<sup>7</sup>

Even one of the Commission members who ultimately voted to deny the application admitted: “I support every aspect of this project with the exception of the location.... I’m not necessarily worried about the increase in crime ... I’m not worried about the additional parking... I am worried about the current business there.” (Comm’r. Garcia, Reporter’s Transcript, at p. 53.)

However, the only stated reason for opposing the Application was not a relevant or lawful reason, since it was based on ostensible concerns about the “proximity” of the new dispensary to an existing dispensary. As the City Staff repeatedly pointed out to the Commission, “our City Code doesn’t have a limitation on the number of dispensaries” within proximity of each other, nor any minimum distance between cannabis dispensaries.<sup>8</sup> To the contrary, the City Council deliberately removed any such limitations as to “proximity” or distance between dispensaries from the City Code in 2019, to better reflect State policies on cannabis regulations. Consequently, there was no legitimate basis for members of the Commission to have rejected Staff’s analysis and recommendations for approval.

“An agency may ... rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence.” (*City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal. App. 4th 1377, 1387.)

Indeed, as the Chair of the Planning Commission concluded following the July 8 hearing:

**“I look at all of this [the City’s existing requirements for use permit approval] and I’m looking at these requirements, and this location has met every requirement.”<sup>9</sup>**

**THE APPLICATION WAS WRONGFULLY DENIED BY A SLIM MAJORITY OF THE PLANNING COMMISSION – IMPROPERLY ATTEMPTING TO SHIELD A SINGLE BUSINESS FROM SPECULATIVE “COMPETITION.”**

Despite the Staff recommendation and the extensive evidence in the record demonstrating that the application “met every requirement” of the Municipal Code, four members of the Planning Commission “went rogue,” and voted to deny the application – in disregard of the City’s existing

<sup>7</sup> Police Lt. Graviette, Reporter’s Transcript, p. 10:23-26.

<sup>8</sup> Asst. Community Development Director Ocasio, Transcript, p. 7; Police Lt. Graviette, Reporter’s Transcript, p. 8:16 - 9:3.

<sup>9</sup> Chair Mallett, Reporter’s Transcript, at p. 61:27- 62:1..

legal standards for consideration of a use permit application as embodied in SMC § 16,658.050 – and in violation of California zoning law.

The California Supreme Court has condemned the “private anticompetitive goal of protecting or disadvantaging a particular favored or disfavored business or individual” as an “impermissible” abuse of a city’s zoning power, although zoning legislation that has “the advancement of a legitimate public purpose for the benefit of the municipality a whole as its primary objective” may be acceptable. (*Hernandez v. City of Hanford* (2007) 41 Cal. 4th 279, 297.) In contrast to broad, community-wide, zoning legislation that may have incidental anti-competitive impacts, California courts reject efforts to use “quasi-judicial” land use permitting proceedings, like this use permit application, to “shield” an existing business from competition. See, e.g., *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1013:

**“Zoning and building laws ‘cannot be used unqualifiedly to restrict competition,’ or simply to shield existing businesses from competition.** While valid zoning regulations may affect competition and have other economic effects, a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like.”

The members of the Commission voting to deny the Application sought to improperly excuse their action on the basis of improvised, *post hoc*, “findings” having little if anything to do with the City Council’s adopted standards for consideration of use permits as actually written in the Code. As clearly apparent from the video of that hearing (and from the written Reporter’s Transcript of the hearing), that rogue faction of the Planning Commission improperly contrived “findings” for denial that are not justified by the City’s existing Municipal Code and not supported by any substantial evidence in the record.

The transcript of that Planning Commission hearing is remarkable for its candid references to improper motives (“political” and otherwise), pecuniary self-interest, and unfounded speculation about possible financial impacts of “competition” as the bases for denying the application. The record of the Planning Commission proceedings clearly shows how each of the four votes for denial were driven by misplaced and legally-inappropriate and anti-competitive efforts to protect the self-interest of just one (1) individual business (“Zen Garden Wellness”) at the expense of the general welfare of the community as a whole.

For example:

\* “I feel that this bigger shop [the applicant] would hurt the smaller shop. ... And I think it jeopardizes the people working at Zen.... that’s just my opinion.... I’m not necessarily worried about the increase in crime.... I’m not worried about the additional parking.... I am worried about the current business there.” (Comm’r. Garcia, transcript, p. 53.)

\* “That’s the problem I have with a business that’s already been established there for years and then another one comes in. And, yeah, they said it’s not competition, but it’s always going to be competition, regardless.” (Comm’r. Jones, p. 56.)

\* “I can just imagine how things are going to be when we’re having the grand opening or when [the new dispensary] is open.” (Comm’r. Villapadua, p. 60.)

\* “We have to ask ourselves about the vitality of existing business after approving such [competing cannabis retail] permits in such proximities.” (Comm’r Mountain, p. 57.)

\* “And so overall, when it comes to business prosperity, that is not politics. It’s economics. And if our job is to sustain the economics in our city, it’s also to ensure a business prosperity. And so with that being said, I would like to make a motion to deny the permit. (Comm’r Mountain, p. 62-63)

Accordingly, the denial of the application on these “impermissible private anticompetitive” grounds was contrary to the law of California, and contrary to the existing written standards governing the issuance of use permits, as established by the City itself.

### **THE PLANNING COMMISSION’ FINDINGS DO NOT JUSTIFY THEIR VOTE TO DENY THE USE PERMIT APPLICATION**

A City’s decision on a use permit application is “an administrative or quasi-judicial act” (*Essick, supra*, 34 Cal.2d at 623), in contrast to the City Council’s “quasi-legislative” or policy-making acts when the Council adopts or amends the City’s zoning regulations. When acting in its “quasi-judicial” role considering a use permit, the Commission was limited to evaluating whether the project complies with the City’s existing (and written) zoning policies and CUP criteria – not to re-write those policies or to contrive new policies to prohibit potential lawful business competition with an existing business.

As the Chair of the Commission properly pointed out, the Council had already made the legislative policy decisions regarding the criteria for approving retail cannabis permits. It was not the role of the Commission to re-write or add to those criteria in hearing this application. (*Topanga, supra*, 11 Cal.3d 506; *Stewart Enterprises, Inc. v. City of Oakland* (2016) 248 Cal.App.4th 410 [Court issued writ to vacate City’s denial of permit based on newly-contrived criteria]; *Security Nat. Guaranty Inc. v. Calif. Coastal Comm.* (2008) 159 Cal.App.4th 402, 407, 419-420 [Commission abused its discretion by denying a permit on the basis of new land use policies which were newly-created during and in response to the particular application].)



Accordingly, the Planning Commission's decision cannot be sustained where – as here – (1) the Commission failed to make legally-adequate findings to justify its decision, or (2) the findings are not supported by substantial evidence in the public record. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511.)

The Commission's findings plainly failed to demonstrate that their denial of the permit was based on the City's adopted and applicable criteria under SMC § 16.168.050. That Section states seven (7) findings that are required in order to approve a use permit, in addition to the two (2) "location requirements" required for retail cannabis permits under SMC § 16.80.195 (a)(6). None of the City's existing criteria in the Municipal Code authorize the Commission to deny an application based on the mere allegation, or speculation that the proposed new business would cause a "reduction of business prosperity" of one existing business. To the contrary, the Staff Report confirmed that all of the City's requirements were met by this project at this location. Even the Planning Commission majority agreed that the project meets at least four (4) of the seven (7) criteria.

However, led astray by their misplaced concern for shielding Zen Garden Wellness from the risk of lawful business competition, the Commission majority purported to "find" that this application did not satisfy three (3) of the seven (7) criteria of SMC § 16.168.050. As stated on the record at the end of the Commission's hearing, four members of the Commission purported to re-write those criteria and contrived to "find" as follows:

(2) The proposed use would *not* strengthen the integrity and character of the neighborhood and zoning district *because it would reduce the business prosperity of an existing business;*  
....

(5) The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified, if applicable, *would* endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, peace, or general welfare of persons residing or working in the neighborhood of the proposed use, *because increasing dispensaries would possibly cause increased crime rates, ...*

(6) The design, location, size, and operating characteristics of the proposed use would *not* be compatible with the existing and future land uses on-site and in the vicinity of the subject property, *because it would interfere with business prosperities of existing businesses; ...*

These purported findings did not justify the denial of the permits. None of the City's adopted criteria call for consideration of the "prosperity" of any group of private businesses – much less the "prosperity of a single private business. To the contrary, the existing criteria as actually established by the Council allow for consideration of "the *integrity and character of the neighborhood...*" – not the "prosperity" of just one individual business.

As the Supreme Court has emphasized, any local government's use, or mis-use, of the zoning power for the "private anticompetitive goal of protecting or disadvantaging a particular favored or disfavored business or individual" is "impermissible." (*Hernandez v. Hanford, supra*, 41 Cal. 4th at 297.)

Moreover, the denial of this Application would be contrary to the Council's recent actions and policies providing for the controlled expansion of legal, regulated, cannabis business opportunities in Stockton.

In 2019, the Planning Commission recommended additional changes to City policies to expand opportunities for cannabis businesses while retaining control over the pace of such expansion. The City Council largely approved those recommendations and adopted Council Ordinance No. 2019-03-05-1501 on March 5, 2019 — which confirmed its policy of controlled expansion, and increased the number of new cannabis business permits that could be awarded annually in the City. The Council also established a lottery system for selecting appropriate applicants – and created an Equity Program with eligibility requirements to qualify as an applicant to enter a lottery that includes an "equity pool" to address the Council's concerns about historic racial, ethnic, and social inequities in providing business opportunities.

The Council's actions in 2019 also repealed previous local provisions limiting the location of new cannabis businesses within specified proximity to existing cannabis businesses, and replaced those provisions with more flexible standards to align the City's criteria with the provisions of State law. (SMC § 16.80.195.) The Commission's action here would, in effect, unlawfully repudiate the Council's legislative action.

**THE PLANNING COMMISSION'S PURPORTED "FINDINGS" ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD**

The Commission's findings were invalid, even if they had been based on the relevant existing Municipal Code criteria, because they were not supported by substantial evidence in the record, as required by law. (*Topanga, supra*, 11 Cal.3d at 506, 511.)

The Commission's three "findings for denial" were not supported by evidence in the record. There was no competent evidence presented as to the existence, much less the impact, of any supposed "business competition" if the new dispensary is approved. The purported "finding no. 5" regarding fear of "increased crime rates" was not only unsubstantiated, but was actually contrary to the testimony of Police Lt. Greviette.

Mere "argument, speculation, unsubstantiated opinion or narrative, or 'evidence' that is clearly inaccurate or erroneous" is not "substantial evidence" – and is not sufficient to support the Commission's denial. (*Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.

App. 5th 261, 268.) “But speculation is not evidence, less still substantial evidence.” ( *People v. Waidla* (2000) 22 Cal.4th 690, 735.)

There was only speculation, or fear, that a new dispensary may “compete” with Zen Garden Wellness, but attempt to demonstrate or quantify the potential “impact” if any of such competition. There was, by contrast, testimony that having two similar businesses located in relative close proximity is often a positive factor for both businesses, as well as for the neighborhood as a whole. Moreover, when the Council revised Stockton’s cannabis regulations in 2019, and removed the prior “proximity limits” on cannabis retailers, the Council heard testimony from the owner of another “competing” dispensary, on Stagecoach Road, urging the City to permit and encourage clustering or co-location of cannabis retailers in close proximity to help sustain the economic vitality of the cannabis businesses – and who testified to the positive “synergy” that results when similar cannabis businesses are allowed to locate in close proximity.

There are apparently four (4) existing retail cannabis dispensaries operating in Stockton and three (3) other applicants that have received a CUP and AUP, of which two (2) were given approvals earlier in 2021 that required a waiver/variance according to public records. Zen Garden Wellness is already facing “competition” from those dispensaries and apparently thriving. There is no evidence that having one more dispensary, located closer to Zen Garden Wellness, would have any adverse impact on Zen Garden Wellness. More importantly, there was no substantial evidence to show that approval of this Application and its associated permits would be harmful to “the integrity and character of the neighborhood and zoning district” — which is the only relevant inquiry – not the speculative competitive impact on one *individual* private businesses.

In response to the concerns raised by members of the Commission, the Applicant has retained an expert urban economist to conduct a study and analysis as to the validity – if any - of those “anticompetitive” concerns. We are respectfully submitting the Report summarizing the results of that expert analysis by ALH URBAN & REGIONAL ECONOMICS, in support of this appeal. That analysis provides relevant and competent evidence responding to those concerns.

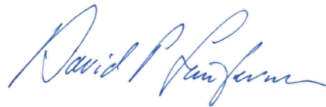
Notably, other local jurisdictions in the northern San Joaquin Valley region support retail cannabis storefront businesses at a significantly higher per-capita ratio than currently exists in Stockton and its environs. For example, the City of Modesto, which has a population approximately 30% less than the City of Stockton, currently maintains licensure for eight (8) cannabis retail stores which are all actively operating and successfully competing with one another [with a maximum of ten which could be approved per local ordinance]. Moreover, the greater Stanislaus County area hosts eighteen (18) additional active licensed cannabis retailers, with seven (7) located in Stanislaus County proper, and eleven (11) more located in various jurisdictions within Stanislaus County (See Attachment). This in stark contrast to the situation in Stockton and surrounding San Joaquin County. No cannabis storefronts are allowed in unincorporated San Joaquin County, per its local ordinance. The City of Tracy is the only jurisdiction within San Joaquin County other than Stockton which has approved retail cannabis storefronts. Tracy just

recently approved (4) cannabis retailers with a maximum of ten (10) prospective operators within its borders [none of which are currently active]. Stockton, and San Joaquin County are arguably currently underserved, taking into consideration the per capita ratio of cannabis retail stores in these adjacent jurisdictions.

We respectfully request the City Council grant this appeal, set aside the Planning Commission's decision, and approve the requested CUP and AUP (subject to the terms and conditions as recommended by City Staff) -- for all of the reasons stated by the Staff Report, as well as the reasons provided in this letter and by the Applicant, its business team, and by the supportive community.

I appreciate the Council's consideration of these points and requests. We look forward to the opportunity of presenting the appeal in further detail at the time of the Council hearing, and will be glad to respond to any questions regarding points presented above. Thank you.

RUTAN & TUCKER, LLP



David P. Lanferman

DPL:sb

CC: Asst. Community Development Director S. Ocasio

Attachment:

Reporter's Transcript of Planning Commission

CITY OF STOCKTON  
PLANNING COMMISSION  
MEETING OF JULY 8, 2021

RE: 21-0410 CONTINUED PUBLIC HEARING - COMMISSION USE  
PERMIT TO ESTABLISH A RETAIL STOREFRONT CANNABIS BUSINESS  
AND AN ADMINISTRATIVE USE PERMIT TO ESTABLISH A RETAIL  
NON-STOREFRONT (DELIVERY ONLY) CANNABIS BUSINESS - ALL  
CONCERNING A 6,500 SQUARE FOOT COMMERCIAL SPACE AT 7616  
PACIFIC AVENUE, UNIT AS (APPLICATION NO. P20-0693)

Transcribed by:

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1 CHAIR MALLET: All right. So moving to Agenda  
2 Item No. 5, public hearings/environmental assessments.

3 Agenda Item 5.1 is a continued public hearing for  
4 a commission use permit to establish a retail storefront  
5 cannabis business and an administrative use permit to  
6 establish a retail non-storefront delivery only cannabis  
7 business, all concerning a 6500 square foot commercial  
8 space at 7616 Pacific Avenue, Unit A5, Application  
9 P20-0693. I'd like to open the public hearing. Do we  
10 have any commissioner disclosures to report?

11 COMMISSIONER RIZVI: Yes, I've talked to both  
12 parties.

13 CHAIR MALLET: Okay.

14 COMMISSIONER RIZVI: Thank you.

15 CHAIR MALLET: Commissioner Garcia?

16 COMMISSIONER GARCIA: Yes, I spoke to one of the  
17 applicant's representatives.

18 CHAIR MALLET: Okay.

19 COMMISSIONER VILLAPUDUA: As well. Just one of  
20 them.

21 COMMISSIONER JONES: I was also contacted, but I  
22 didn't speak.

23 CHAIR MALLET: I also spoke to one of the  
24 applicant's representatives.

25 Okay. At this time I would like staff to  
26 present.

27 STAFF: Good evening, Chair and Commissioners.  
28 Before you this evening is a proposal for a commission use

1 permit and administrative use permit for a 6500 square  
2 foot retail cannabis storefront and non-storefront  
3 cannabis business at 7616 Pacific Avenue, Suite A5. The  
4 proposed location is within a multi-tenant site in the  
5 Hammer Ranch Shopping Center in the 7000 block of Pacific  
6 Avenue just south of Hammer Lane. Neighboring uses  
7 include restaurants, a dentist, another cannabis retailer,  
8 beauty services, grocery store, and post office.

9 The applicant is a 2020 general pool lottery  
10 winner. Suite A-5 is approximately 6500 square feet as  
11 mentioned earlier. The applicant, Mr. Heung, proposes to  
12 utilize the space to house both storefront and delivery  
13 operations. 12- to 15 full-time employees are planned in  
14 the first year with up to 20 in the third year. Business  
15 hours are proposed to be seven days a week from 8:00 AM to  
16 8:00 PM, and those are consistent with our code standards.

17 The city's current Cannabis Regulatory Program  
18 includes the limited expansion of certain cannabis  
19 business types including retail storefront. The ability  
20 to apply for this type of use is awarded through the  
21 lottery process where two winners are selected annually,  
22 one from the general pool and one from the equity pool.  
23 As stated previously, this applicant is a general pool  
24 winner of the 2020 lottery. There are no annual limits  
25 for retail non-storefront. That is a delivery business.  
26 However, this use does require an administrative use  
27 permit, so that is included in the proposal before you  
28 today. All timeliness, requirements in regard to this

1 application have been met as required by the code. Both  
2 proposed land uses have the same location requirements  
3 including a minimum 300 feet from residentially zoned  
4 properties, 600 feet from other uses such as K-12 schools,  
5 day-care, youth child care centers, in-home family  
6 day-care, child care, religious facilities or drug abuse  
7 alcohol recovery treatment centers.

8 Necessary action to approve or deny the project  
9 is in two parts. The Commission Use Permit and an  
10 Administrative Use Permit, each with those findings. The  
11 proposed project meets all required findings, and those  
12 are listed in detail in your staff report on pages 9 to 11  
13 of the agenda packet. The proposed project also aligns  
14 with the 2040 general plans, specifically goals LU-4 and 6  
15 and policy LU-6.2, and those are listed on the slide.

16 A location waiver is not necessary for this  
17 proposed site as all codified location distance  
18 requirements have been met. The proposed project as well  
19 as immediate neighboring uses have been analyzed for  
20 parking and also per codified requirements, staff has  
21 confirmed that all suites meet minimum parking standards  
22 to support their specific uses. In addition to minimum  
23 parking standards, there are additional spaces in the  
24 vicinity available for patrons. No concerns have been  
25 received from internal city departments.

26 The subject site and all adjacent parcels are  
27 zoned commercial general. There are no residentially  
28 zoned properties within 300 feet. The closest being at



1 480 feet to the east identified by the green arrow. No  
2 sensitive uses as defined by the Cannabis Regulatory  
3 Program are within the 600 foot distance requirement. If  
4 you look at the slide, you can see that the inner loop is  
5 the 300 feet and the outer loop is the 600 feet.

6 This is an aerial view of the proposed project in  
7 its proximity to the existing cannabis retailer in that  
8 same shopping center. The distance between the two sites  
9 is approximately 150 feet, which is separated by a drive  
10 aisle and an existing dentist. The code is silent on  
11 minimum distances between cannabis businesses and  
12 currently there are no prohibitions or limits on said  
13 proximity.

14 The slide before you provides crime statistics  
15 for the subject site over a two-year period. It's  
16 important to know that building addresses are often  
17 identifiers for calls of service. Therefore, it can't be  
18 surmised that the address is the cause or involved in set  
19 incident. In the two-year span, there was a total of 928  
20 calls for service including that general address and  
21 nearby suites. Of those, two resulted in a crime report.  
22 Representatives from the police department are present  
23 should you have any specific questions regarding the crime  
24 statistics.

25 Although there's no requirement in the code, the  
26 cannabis business is reframed from being located within a  
27 certain proximity of one another. Staff has provided a  
28 map of the city that shows where current cannabis

1 businesses exist, and this is more just for your  
2 reference. It's also attached in the staff report.

3 Therefore, staff recommends that the Planning  
4 Commission via a resolution approve the Commission Use  
5 Permit and approve the Administrative Use Permit to allow  
6 the establishment of a retail storefront and retail  
7 non-storefront cannabis business at 7616 Pacific Avenue,  
8 Suite A5. I'm happy to answer any questions.

9 CHAIR MALLETT: Commissioner Villapudua?

10 COMMISSIONER VILLAPUDUA: Yeah, thank you, Chair.  
11 What was the -- what's the reporting on the traffic crime  
12 for the existing dispensaries right now?

13 STAFF: Traffic -- could you clarify what you  
14 mean by traffic crime?

15 COMMISSIONER VILLAPUDUA: Well, just any type of  
16 crimes. Was there any crimes with the existing  
17 dispensary? Was there any problems in the past, what,  
18 two, three years?

19 STAFF: So I'm going to defer to our police  
20 department representatives for that. They can speak a  
21 little more eloquently than I can.

22 LT. GRAVIETTE: Good evening, everybody. My name  
23 is Lieutenant Scott Graviette. I oversee the vice unit,  
24 which monitors the cannabis establishments in the city.  
25 So at this particular location, there isn't any  
26 significant increase and there wasn't any -- there was --  
27 the only significant incident was a burglary where they  
28 were victimized, so to speak. So I don't know if,

1 Commissioner, if I'm answering your question, but there  
2 isn't any significant crime increase due to the existing  
3 dispensary.

4 COMMISSIONER VILLAPUDUA: Okay. Thank you.

5 LT. GRAVIETTE: Yep.

6 CHAIR MALLET: Any other questions? Okay.  
7 Staff, did -- oh, Commissioner Rizvi.

8 COMMISSIONER RIZVI: Thank you. Thank you,  
9 Chair.

10 Thank you, Stephanie. Stephanie, could you go  
11 back to the proximity? I think you had a -- right. Yeah.  
12 Thank you. So right now as we speak, what is the code  
13 say, our code here?

14 STAFF: So the code is silent on requiring a  
15 minimum distance between cannabis businesses.

16 COMMISSIONER RIZVI: Okay.

17 STAFF: So there's -- there's no prohibition or  
18 requirement that they be a minimum distance from one  
19 another.

20 COMMISSIONER RIZVI: And is it just in Stockton  
21 or is it just the industry standard or that's how it is?

22 STAFF: So there -- for the Stockton code,  
23 there's no -- no mention. There is California -- I don't  
24 know which -- I don't want to say the wrong code, but  
25 there's California code where the Bureau of Cannabis  
26 Control has to determine overconcentration, and that would  
27 be part of their state licensing review.

28 COMMISSIONER RIZVI: Oh, got it.

1           STAFF: And they determine that off of census  
2 track data.

3           COMMISSIONER RIZVI: Okay. Thank you.

4           STAFF: Uh-huh.

5           CHAIR MALLETT: So I have a question that there  
6 is not a specific number of cannabis dispensaries that can  
7 be within a certain census tract; is that correct?

8           STAFF: My understanding, based off the  
9 California code, is that it's a ratio of how many in that  
10 census tract as compared to the ratio in the county. So  
11 the BCC actually calculates that based off a formula.  
12 They report every six months. They have like a  
13 statistical output that they use. And I -- I think -- I  
14 don't know if PD has more to say to that, but that's my  
15 understanding of the law.

16           LT. GRAVIETTE: As far as the PD and the state  
17 licensing, that's something that would come later in the  
18 process. And Stephanie can speak to that. But we don't  
19 have any input on that. All we can go by is our current  
20 city code at this particular point in the process.

21           CHAIR MALLETT: And our city code doesn't have --  
22 have a limitation on the number of dispensaries within --

23           LT. GRAVIETTE: In proximity to each other?

24           CHAIR MALLETT: Yes.

25           LT. GRAVIETTE: It does not. I just want to  
26 defer to Stephanie. It does not.

27           CHAIR MALLETT: Okay.

28           LT. GRAVIETTE: I just want to be very clear on

1       it. It does not.

2               CHAIR MALLETT: Okay. Thank you.

3               LT. GRAVIETTE: Yes.

4               CHAIR MALLETT: Commissioner Villapudua?

5               COMMISSIONER VILLAPUDUA: Thank you, Chair. One  
6 more question. I know I asked a question regarding the  
7 last dispensary. What's a report on activity in the whole  
8 parking lot? I'm talking, you know, from the grocery to  
9 the dentist, the whole operation, the whole area.

10              LT. GRAVIETTE: Forgive me. Let me grab my  
11 binder here.

12              COMMISSIONER VILLAPUDUA: All right. Thank you.

13              LT. GRAVIETTE: So I think Stephanie spoke to the  
14 number of calls for service. And we might as -- kind of  
15 just cover it. Calls for service is anybody who calls 911  
16 that that location is given either verbally or pings off  
17 the tower in that area. There's many determining factors  
18 as to why that location is -- is given. Okay? And the  
19 calls for service could be numerous things.

20              So in a particular day, a police department can  
21 answer from 1,000 to 1300 calls for service in a day. I  
22 think the key component here is how many case numbers are  
23 actually pulled. That's going to signify a significant  
24 incident. Not to minimize someone calling 911. That  
25 could be for numerous things. But when a case number is  
26 actually pulled, there's some significant incident that  
27 needs to be documented or a crime report was pulled.

28              So with those stats, let me -- forgive me for one

1 moment here. So for the area -- this is from -- correct  
2 me if I'm wrong, Stephanie, but I have here from 7/1 of  
3 '16 to 4/30 of '21. And we use 732 Pacific Avenue. Okay?  
4 Do you want the last year or you want just kind of an  
5 overview?

6 COMMISSIONER VILLAPUDUA: You know what? Give me  
7 the last two years.

8 LT. GRAVIETTE: Okay. So since the business  
9 opened --

10 STAFF: This is for the neighboring businesses to  
11 clarify.

12 LT. GRAVIETTE: This is for the neighboring  
13 business. Okay? Which we have the data for 1,000 feet  
14 from that proximity. So any DR -- DR number. Excuse me.  
15 Any case number, crime report number, was pulled is in a  
16 thousand feet of that particular area. So that -- the  
17 other -- the 7632 Pacific opened up in 2018. Okay? In  
18 that particular there there's 300 -- there's 332 calls per  
19 service in that particular area. Okay? 2019 was 348.  
20 2020 was 328. And current year-to-date, there's 85.  
21 Okay? Previously to that there's 258 in 2017. So not a  
22 significant increase.

23 And what we also do is we look at the correlation  
24 between that particular place and the crime index of the  
25 entire city. So there is no significant crime increase  
26 with that particular location during that time period. I  
27 hope I'm making sense. It gets kind of confusing. I want  
28 to make sure that you're very clear in your determination

1 in the information I'm providing you so you can make a  
2 clear and concise decision on the information we're  
3 providing. And if I'm not clear, please ask and I will  
4 try to simplify it or reword it.

5 CHAIR MALLETT: That's good.

6 COMMISSIONER VILLAPUDUA: Yeah, no further  
7 questions.

8 LT. GRAVIETTE: Okay.

9 CHAIR MALLETT: Okay. Any further questions?  
10 Okay.

11 Staff, I was -- were there any communications?

12 STAFF: There were a number of public comments  
13 received. Those have been forwarded to you via e-mail as  
14 we received them. I will defer to the Planning  
15 Commissioners and to the clerk to discuss how to handle  
16 those public comments.

17 THE CLERK: Chair, you can make a motion to waive  
18 the reading of those public comments.

19 CHAIR MALLETT: I'd like to make a motion to  
20 waive the reading.

21 COMMISSIONER JONES: I second.

22 COMMISSIONER GARCIA: I second.

23 STAFF: Everybody received them; correct?

24 THE CLERK: Yes. Please cast your votes. Motion  
25 passes 6-0.

26 Chair, we also received a few public comments via  
27 e-mail after, which I can proceed with reading. We have  
28 several people on the WebEx to make public comment and we

1       also have further -- oh, go ahead.

2               ATTORNEY: Just, Chair, if I may, before we go  
3       into general public comments since we've now waived the  
4       communications that we received in advance, we typically  
5       go to the applicant -- the discussion and then open it up  
6       more generally.

7               CHAIR MALLETT: Okay. All right. And I would  
8       like to invite the applicant to make a statement.

9               STAFF: Through the Chair, the applicant does  
10      have a presentation for the Commission. The applicant  
11      would like to make a presentation to the Commission.

12              CHAIR MALLETT: Okay.

13              MR. DRIVON: Chair Mallett, members of the  
14      Commission, good evening, and thank you for the  
15      opportunity to be heard. My name is Zach Drivon, an  
16      attorney before you on behalf of the applicant, Heng  
17      Heung, his operating partner, Raj Pottabathini, and the  
18      applicant entity Jiva SCK, LLC. Before I get into the  
19      main portion of my comments, a couple of points of  
20      clarification for the record, first being that Jiva was  
21      actually a 2020 social equity pool winner and not a  
22      general pool winner.

23              STAFF: If I may, he's an equity applicant but he  
24      was selected via the general pool.

25              MR. DRIVON: Understood. Thank you for that  
26      clarification. The second being I'm born and raised in  
27      Stockton. I've been living here for 35 years. I've made  
28      my decision to have my home here, my family here, raise



1 two children, and I take personal exception to the  
2 characterization that I'm a carpet bagger or that I have  
3 an intention to sell the city out. So I wanted to make  
4 that clear before I get into my comments.

5 So first I'd like to state, thanks, Staff, for  
6 all the time and resources invested in bringing this  
7 project before you this evening as well as for the  
8 recommendation of approval and recognition that we meet  
9 all necessary criteria with no request for waivers,  
10 variances, or special considerations under the city's  
11 current municipal code. As the city continues to move  
12 forward in the development and refinement of its cannabis  
13 program and governing regulations, we're proud to bring  
14 forward what we believe is the first minority owned and  
15 operated social equity applicant truly poised for success,  
16 given the resources, experience, and successful track  
17 record of Jiva Life and its principal, Raj Pottabathini as  
18 well as the opportunity to work with one of the state's  
19 foremost retailers, Cookies, with whom an opportunity for  
20 a brand licensing agreement will be available in the event  
21 of project approval.

22 Even as the city's legislative committee  
23 considers potential changes to the cannabis program, we  
24 feel that this project would serve as a model for the  
25 further development of its equity program and other  
26 potential minority owned businesses moving forward,  
27 especially in light of our intention to participate in the  
28 city's work force diversity program with the commitment to

1 hiring at least 50 percent of our staff from disadvantaged  
2 areas in the city and 90 percent of our total employees  
3 from the City of Stockton as well as the greater San  
4 Joaquin County area.

5 We understand that there is a concern regarding  
6 the project's close proximity to Zen Garden Wellness.  
7 However, there are examples of multiple cannabis retailers  
8 operating compatibly within the immediate vicinity of one  
9 another. First would be in the City of Modesto, which has  
10 a population 30 percent lower than ours where there are no  
11 less than 26 licensed dispensaries operating in and around  
12 its borders within Stanislaus County, with six other  
13 municipalities in that jurisdiction regulating and  
14 licensing cannabis retailers. We provided a list of these  
15 stores for your reference in Exhibit 1.

16 In comparison, the City of Stockton currently  
17 only has four active retail storefronts with an additional  
18 three CUPs approved and no cannabis retail storefronts to  
19 be allowed in San Joaquin County nor in any other local  
20 jurisdiction within its borders, with the exception of  
21 Tracy, which may ultimately have four retail storefronts.  
22 Five of these Stanislaus County stores operate along  
23 Modesto's McHenry Avenue alone, which is Modesto's  
24 equivalent of Pacific with two of these, Medallion  
25 Wellness and Phenos located directly across from one  
26 another. Both are successful. They continue to serve  
27 their respective customers and contribute to the success  
28 of Modesto's cannabis program, and we are confident such

1 would be the case here.

2 Most, if not all of the letters of opposition  
3 received seemed to have been prepared or solicited by Zen  
4 Garden Wellness themselves, all of which make unfounded  
5 assertions based on hypothetical anecdotes as well as a  
6 decade's old report and legal cases which predate the  
7 inception of the commercial cannabis industry in  
8 California and are contrary to the facts and circumstances  
9 of existing operations in nearby jurisdictions. All in an  
10 attempt to restrict competition.

11 We have before you this evening a petition signed  
12 by more than ten of our perspective neighbors in the  
13 Hammer Ranch Shopping Center who have signed on with their  
14 endorsement of approval of our store. I want to address  
15 and correct some of the misleading statements and  
16 assertions that have been included in some of these  
17 letters of opposition.

18 First is the assertion that another retailer will  
19 increase the risk of criminal activity in the area. This  
20 ignores the fact that additional security will be in  
21 place, the presence of which serves to increase safety,  
22 not undermine it. It is illogical and untrue that the  
23 presence of our store will increase any public safety risk  
24 whatsoever. This project was referred by staff to SPD and  
25 these were not concerns identified by our own local public  
26 safety officials.

27 Next is that special buffers between dispensaries  
28 are a necessary element to protect the viability of these

1 businesses. In addition to the Medallion Wellness and  
2 Phenos cannabis dispensaries successfully operating  
3 directly across from one another in Modesto, Jiva store in  
4 San Bernardino, which is branded Cookies, actually shares  
5 a property line with another dispensary called Authentic  
6 909. These happen to be among the two most successful  
7 cannabis retail locations in that jurisdiction and both  
8 operate without any negative impacts to the shopping  
9 center areas in which they're located.

10 Next is the false assertion that this project is  
11 going to be a quote, unquote, discount super store. The  
12 opponents allude to the Cookies brand partnership Jiva has  
13 established in other locations such as San Bernardino. In  
14 actuality, the Cookies brand consistently maintains the  
15 highest pricing in the industry and would not in any way  
16 work to undercut local pricing, thereby diluting its brand  
17 integrity and established pricing structure.

18 Next, some of the opposition letters even refer  
19 to a quote unquote, lower level of customer attracted by  
20 such quote unquote discount retailers. And  
21 notwithstanding the inaccuracy of that characterization as  
22 to this project, they seem to disparage their own  
23 clientele as well as their industry counterparts by  
24 comparing cannabis retail stores to liquor stores, strip  
25 clubs, and discount dollar stores. I doubt they made the  
26 same comparisons when describing the nature of their own  
27 store to commissioning council at the time of their  
28 approval hearings, and to do so now is hypocritical.

1           The fact is that the city maintains a number of  
2 shopping centers and commercial corridors with competing  
3 restaurants, coffee shops, and other retailers who all  
4 offer a diverse selection of goods and services and cater  
5 to a diverse customer base. Just a few examples of this,  
6 right here at home, include Walgreen's and Target  
7 maintaining pharmacies in each of their stores directly  
8 across from one another along Pacific and March Lane.  
9 We've got a brand-new Starbucks going in, just a stone's  
10 throw away from Dutch Bros. further down Pacific Avenue.  
11 As well, DeVons and Gary Long's Jewelers maintaining shops  
12 just a few suites from one another in Lincoln Center and  
13 so on.

14           There are hundreds of vendors and thousands of  
15 cannabis products to place on offer for customers. These  
16 businesses do not cannibalize one another when operating  
17 in close proximity but rather benefit from customer  
18 overflow, respectively with stoked interest from  
19 like-minded consumers interested in seeing what the next  
20 business has to offer. And in fact, we believe that Zen  
21 Garden Wellness may see a bump in their customer traffic  
22 based on our being approved.

23           To say that this market competition dynamic does  
24 not correlate to the cannabis industry is also factually  
25 untrue. And one need not look to Denver, Seattle, or Los  
26 Angeles as the opponent's decade's old studies suggest but  
27 only look to the present day Modesto, Stanislaus County  
28 example to validate this fact.

1           Next is the assertion that there's a lack of  
2           parking and an increased delivery and distribution  
3           activities are going to create traffic congestion in the  
4           shopping center. As you can see, there's actually a drive  
5           aisle located between the two buildings where each of  
6           these stores would be located with more than 30 spaces  
7           directly in front of our location of which 15 will be  
8           dedicated and approximately 80 additional spaces  
9           surrounding the neighboring building where Zen Gardens is  
10          located. Not to mention a multitude of parking spaces in  
11          front of Save Mart in the Hammer Ranch Center.

12          The photos depicted in the opposition letters  
13          show what appears to be an extremely impacted shopping  
14          day. I went out the day before the originally scheduled  
15          hearing and took photos of the parking areas in front of  
16          both Zen Garden as well as the subject location. Across  
17          the parking areas were at least 20 to 25 available parking  
18          spaces, and that's a conservative number, including  
19          numerous open spaces directly in front of each location.  
20          You can see for yourself in the photographic Exhibits 2  
21          through 6 we provided for your reference this evening.

22          Moreover, this project includes a designated  
23          shipping/loading and unloading area in the rear of the  
24          facility with discrete access from which our deliveries  
25          will be dispatched and distribution shipments will be  
26          received, thereby eliminating the potential for any  
27          conflicts between back-of-the-house operations and  
28          customer access for any of the storefronts.

1           Zen also has seemed to solicit the opposition of  
2 fellow tenants who benefit from their store serving as an  
3 anchor for that building, but failed to acknowledge that  
4 right next door at 7616 Pacific, where we propose to  
5 locate our operation, there are three vacant suites that  
6 would stand to be revitalized with new tenants eager to  
7 parlay the proximity of an anchor business just as Zen  
8 Garden, CAP's Pizza and Tap House, and Pops Breakfast cafe  
9 have created synergy for their businesses in the building  
10 next door.

11           Finally, the assertion that Mr. Heung, being an  
12 equity applicant is a sham and that this project is  
13 somehow advanced under some loophole is contrary to the  
14 facts. Mr. Heung, who is a majority owner of the company,  
15 was selected in the 2020 lottery through the city's  
16 existing process, and this application has advanced just  
17 as any other project would. Heng, a 30-year Stockton  
18 resident who still lives in a disadvantaged area of the  
19 city, fled Cambodia with his parents and 12 siblings as a  
20 refugee from the Khmer Rouge and came to the city at eight  
21 years old for a better life. This is the quote unquote  
22 equity story opponents say you should be suspicious of.  
23 To say that Heng is a placeholder for a quote unquote  
24 Cookies super store ignores the potential for success that  
25 this project has not only for Heng himself but for the  
26 shopping center as well as the City of Stockton.

27           And that leads into our slide presentation with  
28 some specific as to our efforts thus far along with our

1 operations and community benefits moving forward. And I  
2 understand that I will be the clicker person. Just arrow  
3 forward? Thank you.

4 Moving on to slide 2. Heng, an operating partner  
5 Jiva through this project will work to provide safe access  
6 to quality lab tested cannabis products in a friendly and  
7 secure atmosphere and will serve to uplift our city  
8 through job creation, tax revenue, and continuing  
9 community activism and philanthropic engagement. With an  
10 emphasis on a medical first approach, we plan to provide  
11 as much helpful guidance and information about our  
12 products, proper application, and potential effects, and  
13 will maintain a dedicated medicinal patient counter for  
14 express service along with discounts and promotions for  
15 customers with medical recommendations.

16 Slide 3 provides an overview of some of the  
17 projects Jiva is working on across the state including our  
18 brand partnerships with Cookies at the San Bernardino  
19 store, which is currently generating 1.1 million dollars  
20 in revenue per month.

21 Slide 4 is another look at our retail brand  
22 partnerships as well as vendors we work with and products  
23 on offer at our locations. And just to note a few, PAPA  
24 and Barkley, Flow Kana, Henry's Original. These are some  
25 of the most prominent brands in the cannabis industry in  
26 California right now.

27 Slide 5 speaks to the direct and immediate  
28 positive impact this project will have in the area. These



1 include attracting new businesses in those vacant suites,  
2 eliminating vacancies, generating additional foot traffic,  
3 increasing safety and security, upgrading our parking lot,  
4 maintaining neighborhood compatibility, ensuring crime  
5 prevention, stabilizing the Hammer Ranch Shopping Center,  
6 creating up to 40 plus jobs by year two for locals here.  
7 Optimizing visibility for other businesses. Contributing  
8 money to improving the center at large. And enhancing the  
9 aesthetic appeal of the center itself.

10 Slide 6 shows you the community outreach we've  
11 done. This includes circulating a community and  
12 neighborhood introduction letter, which was circulated  
13 late April. A virtual meet and greet that we hosted on  
14 May 10th. And creating an open line of communication with  
15 neighboring businesses to allow them to ask us questions,  
16 voice their concerns, and allow us to assuage those  
17 concerns.

18 We have gotten letters of support from California  
19 Dental, Royal Indian Restaurant, La Castle Nails & Spa,  
20 Shogun Restaurant, Bobalicious Cafe, Deborah Foxy  
21 Clothing, Barking Lot Pet Styling, Vvs Kutz Barber Shop,  
22 Smokey Joe's, and Oriental Chef Restaurant.

23 The next slide shows the efforts we have made in  
24 communications through Mr. Pottabathini as well as the  
25 property owner, Kathryn Smith, to provide direct  
26 concessions to Zen Garden Wellness themselves in an effort  
27 to foster a positive coexistence. These include  
28 diversifying our product line by conveying that 50 to 60

1 percent of the products in our store are in-house brands,  
2 and a further commitment to diverse -- further  
3 diversifying product lines so we have different products  
4 on offer. We've offered to pay their common area and  
5 maintenance fees. We've offered to pay for the cost of  
6 the parking lot and perimeter clean-up. We've actually  
7 offered to pay for their security. We've offered to  
8 cosponsor community benefit events and make philanthropic  
9 contributions in the name of both stores as well as noted  
10 before, improvements to upgrading the Hammer Ranch  
11 Shopping Center.

12 Slide 8 gives you a look at our employment plan  
13 which includes a commitment to hiring city and county  
14 residents, as I said, to make up 90 percent of our  
15 personnel with wages starting at \$18 an hour going up to  
16 \$25 an hour with health insurance, retirement, and  
17 vacation benefits as well as bonus incentives based on  
18 tenure and performance. Jiva is especially excited to  
19 support Heng as one of the city's first minority equity  
20 applicants, advancing under Stockton's vision to create a  
21 more equitable and a diverse cannabis industry here at  
22 home.

23 Slide 9 gets into the economics of the business.  
24 A snapshot of our financial projections show an  
25 anticipated 6.6 million dollars in sales in year one, an  
26 11.3 million projected in year five, with a total of 2.2  
27 million dollars in taxes to be paid to the city during  
28 that time period. And in light of the potential Cookies

1 brand partnership we have at hand, it should be noted that  
2 these projections are very conservative.

3 Slide 10 provides a brief timeline for the  
4 development through which we expect to be up and running  
5 in six months time.

6 Slide 11 allows me to introduce the applicant  
7 himself, Heng Heung, a caregiver by profession and a  
8 single father of two boys aged 8 and 11. Heng recognized  
9 the benefits of medicinal cannabis through his elderly  
10 mother's treatment of her chronic joint pain with  
11 medicated topicals as well as for friends who returned  
12 home from military service suffering the effects of war.  
13 Heng will be directly involved in the business as an  
14 owner/operator starting as an assistant sales manager,  
15 building from his prior experience of eight years in the  
16 retail sales field, and will have the opportunity, through  
17 additional cannabis business experience and training, to  
18 advance to a top level managerial position in operations.

19 So with that, I thank you for your time thus far.  
20 I'd ask that you please adopt staff's recommendation of  
21 approval and advance that to City Council, and I'm proud  
22 to introduce to you Heng Heung.

23 MR. HEUNG: Good evening. I'm Heng. I've been  
24 here pretty much all my life. Came in '85 and still here.  
25 Love the city. And I want to see it grow. And I want to  
26 thank you guys for considering this. So I learned about  
27 the city's equity lottery. I was interested in applying.  
28 And I wanted to get in, you know, a good dispensary going

1 here in Stockton. Why not? And I just want to see the  
2 city grow. I was introduced to Raj, who has retail  
3 cannabis merit and was a part of the equity in San  
4 Francisco and decided to partner up with Raj and Jiva to  
5 support me. I couldn't do it by myself. So together  
6 with, along with the resources and experience to make this  
7 a success for the community and provide opportunity for  
8 the people here in Stockton; otherwise, we would never --  
9 I would never have a chance without them. And I've seen  
10 firsthand the benefit of cannabis. Like I said, my mom,  
11 she's elderly. She's -- she doesn't have a lot of time  
12 anymore, so it helps her get up during the days, help her  
13 sleeps at night. And it's only with the time I'll be able  
14 to get any sleep actually. And I'm confident and excited  
15 if this gets approved, you know, this project would have a  
16 positive impact. And I'd like to introduce Raj, and he's  
17 going to tell you a little bit more about operations. So  
18 but thank you, guys, again for hearing me out and I really  
19 appreciate this opportunity. Thank you.

20 MR. POTTABATHINI: Thank you, Heng. Thank you,  
21 Zach. Can everybody here me?

22 STAFF: We can hear you.

23 MR. POTTABATHINI: Fantastic. I can turn my  
24 video if you want. But if not, I'll just go ahead and  
25 continue. Good evening, Commissioners. My name is Raj  
26 Pottabathini, managing director for this project and  
27 principal of Jiva. I grew up in the Bay Area and entered  
28 the commercial cannabis business industry in 2014 in the

1 State of Washington where I have two retail permits. I  
2 launched Jiva in 2018 and to date have eight cannabis  
3 retail delivery approvals that are either pending or  
4 already have a CUP, including this opportunity here in  
5 Stockton. I'm the owner and partner for a San Francisco  
6 office of cannabis social equity retail permit.

7 I'm going to now share a few components of our  
8 business. Here's a look at our six steps regarding  
9 employee training starting with delivery of a  
10 comprehensive employee handbook, safety and health  
11 orientation, cannabis product and inventory education,  
12 company culture and hospitality standards, regulatory  
13 compliance and best practices, and as a final step,  
14 employees will participate in accompanied shifts.

15 In order to integrate with the neighborhood, we  
16 strive to be a compatible and responsible neighbor. We  
17 will have a dedicated neighborhood liaison, response  
18 management protocols, implement noise reduction  
19 strategies, and ensure light pollution reduction. The  
20 site offers vehicle and pedestrian access with no traffic  
21 impact. We have a no loitering and no on site consumption  
22 policy. We have vendors in place to install odor  
23 mitigation equipment and to handle cannabis waste  
24 management. Most importantly, our staff will be trained  
25 to adhere to a good neighbor policy and practice, nuisance  
26 avoidance. Our business is not the impairment to the  
27 character and integrity of the zoning district. It will  
28 not be a detriment to public health, safety, or general

1 welfare. And with an increased security presence, we  
2 believe crime prevention shall enhance neighborhood  
3 safety.

4 The greatness of a community is most accurately  
5 measured by the compassionate action of its members. This  
6 is a quote from Coretta Scott King, and with that  
7 ideology, we shall strive to be active participants in the  
8 community through volunteering services annually, in kind  
9 donations, monetary donations, and sponsorships towards  
10 local nonprofits and community-oriented organizations.  
11 Our monetary donations will start at a minimum of \$50,000  
12 annually and up to 2.5 percent of gross profits.

13 We have done some preliminary outreach  
14 demonstrating advanced community stewardship and have  
15 joined several Chambers of Commerce's in the area and made  
16 monetary donations to the Stockton shelter for the  
17 homeless, the Woman's Center For Youth and Family  
18 Services, the San Joaquin YMCA earmarked for the 209 Gives  
19 program and Discovery Challenge Academy. We have  
20 communicated our intent to financially support the  
21 Stockton's Chamber of Commerce's Fresh program and the  
22 rotary club.

23 Here is the look at our standard operating  
24 procedures which include various aspects of the business  
25 such as opening and closing procedures, the sale of  
26 cannabis products, customer education, delivery service  
27 procedures, customer relationship management, and a focus  
28 on product management and inventory control that optimizes

1 track and trace, point of sales, and online ordering for  
2 express pickup.

3 This is a quick peak at the projected sales mix  
4 by product type.

5 We have a cash management system that includes  
6 armored vehicle service, an in store two vent system as a  
7 cash storage solution between pickups, and we do have  
8 access to safe banking.

9 Our security plan will be reviewed by a qualified  
10 security consultant and shall include aspects of  
11 architectural security which features crime prevention  
12 through environmental design, exterior lighting, and  
13 secure storage. The electronic security system will have  
14 a video assessment and surveillance with remote monitoring  
15 and access control. Operational security includes  
16 employee background checks, limited access areas, and  
17 on-site security services. Our security plan will be  
18 shared with the Stockton police department as part of the  
19 operators permit process.

20 Similarly, as part of the fire permit process,  
21 we'll have a fire and life safety plan that will be  
22 assessed by a qualified fire prevention and suppression  
23 consultant, and we will include fire prevention diligence,  
24 a monitoring alarm system, and a building evacuation plan.

25 Here is a look at the site as you've seen in  
26 Stephanie's presentation for the proposed location. As  
27 you can see, there's an abundance of parking and  
28 convenient access points.

1           These are conceptual renderings of the interior  
2 reflecting our intention of establishing a quality retail  
3 storefront, and we hope that will resonate with the  
4 community and its residents. This slide and the next are  
5 conceptual Jiva renderings.

6           And these are conceptual renderings of a Cookies  
7 branded storefront, if we go in that direction for  
8 branding. And as you can see, this project either way  
9 will develop a premium retail experience for the city.  
10 The next slide also is another version, and we thank you  
11 for your time. We look forward to serve the city and to  
12 be a model cannabis retailer. Thank you.

13           MR. DRIVON: Can I answer any questions that the  
14 Commission may have?

15           COMMISSIONER JONES: Yes. Stockton is a pretty  
16 big area. I just want to know why you chose that area  
17 when there's already one that's been established there. I  
18 just want to know.

19           MR. DRIVON: Certainly, Ms. Jones. The field of  
20 available properties given the existing setbacks in the  
21 City of Stockton actually very much restricts the  
22 availability of the objectively viable properties. We did  
23 consider other properties when locating our store, but  
24 this property was the only one that we found that was not  
25 going to require a request for a variance or an exception  
26 from the current municipal code.

27           COMMISSIONER JONES: And also you said that, you  
28 know, you was going to have a lot of security and stuff



1 but, you know, most business that open up, they always say  
2 they going to have a lot of security but, you know,  
3 sometimes I just think that two side by sides together --  
4 I don't know if side by side, but to me, it's like a  
5 little conflict. I don't know. Because, you know, I'm  
6 not in the cannabis business or nothing like that so I  
7 really don't know. And I'm not saying -- I'm for  
8 everybody to have a business. But to be close to each  
9 other, I thought that would be kind of like a conflict of  
10 interest or something to me.

11 MR. DRIVON: Well, I understand your thinking.  
12 As far as the security goes, I think SPD noted that there  
13 was no significant increase just by the simple existence  
14 of this cannabis retail store. And what we've seen over  
15 the last five years, I represent probably 15 licensees or  
16 start-up businesses in cannabis, and when you bring a  
17 cannabis store into a community based on the state  
18 mandated security infrastructure and security personnel  
19 that are required, they actually serve to increase  
20 security in these neighborhoods. And so in my comments, I  
21 alluded to the fact that it goes against logic and it goes  
22 against factual circumstances on the ground that an  
23 additional store, especially with the additional security  
24 that it brings in, is going to create that public safety  
25 risk.

26 COMMISSIONER JONES: Okay. Thank you.

27 MR. DRIVON: Thank you.

28 CHAIR MALLET: Thank you.

1 MR. DRIVON: Thank you, Chair Mallett.

2 CHAIR MALLET: Okay. At this time we would like  
3 to open public comment, and I would remind anyone we have  
4 blue cards; correct?

5 THE CLERK: Yes, chair.

6 CHAIR MALLET: Okay. Remind everyone that we  
7 are limiting it to three minutes.

8 THE CLERK: Thank you. We also received two  
9 e-mails that were not received in time to send as  
10 correspondence, and we do have a couple people on WebEx if  
11 I can begin with those.

12 CHAIR MALLET: Okay. Yes.

13 THE CLERK: Thank you, chair. First from Mary  
14 Elizabeth. I ask that the Planning Commission deny the  
15 use permits related to a proposed cannabis business at  
16 7616 Pacific Avenue. I read through all the comment  
17 letters and what really struck me as a vital point is the  
18 overconcentration issue and parking. I have been working  
19 on the grandfathered overconcentration of liquor stores in  
20 our disadvantaged communities. It is very difficult to  
21 revoke a use permit and requires more staff time than city  
22 has capacity for. I could not find any annual use review  
23 documentation for the existing cannabis business. The  
24 alcohol ordinance imposed some additional requirements on  
25 new liquor stores in recognition of the situation that  
26 occurred with areas of our city having many liquor stores  
27 and these liquor stores concentrated in areas of the town  
28 with lower income levels. I don't think that the

1 restriction on number of cannabis storefronts that it was  
2 anticipated that the Hammer Lane corridor be the marijuana  
3 district. The proposed use would not maintain or  
4 strengthen the integrity and character of the neighborhood  
5 and zoning district in which it is to be located, just  
6 because it is not vacant since the proposed use as a  
7 conditional use due to the potential to be an attractive  
8 nuisance.

9 Commenter's including existing shopping center  
10 owners have raised the issue of adequate parking spaces  
11 policy 2-5 increase the amount of secure, convenient, and  
12 accessible bicycle parking throughout Stockton within the  
13 city by school master plan was not referenced. General  
14 plan policy LU-6.3 ensure that all neighborhoods have  
15 access to well maintained public facilities and utilities  
16 that meet community service needs. Action LU-6.3  
17 coordinate to the extent possible upgrades and repairs to  
18 roadways with utility needs, infrastructure upgrades, and  
19 bicycle and pedestrian improvements. The conditions that  
20 staff placed on the use permits including planting three  
21 trees in the parking lot but no accommodation for bicycle  
22 racks. Residents reported as the most frequent request  
23 from the community engagement process was to install safe,  
24 secure bicycle parking. One of the most reported concerns  
25 centered on bicycle theft with particular emphasis on the  
26 placement of bicycle racks in areas that are well lit and  
27 visible from surrounding buildings. Providing secure  
28 end-of-trip facilities to reassure the riders their

1 property will be safe once they arrive at their  
2 destination is an essential component of encouraging  
3 bicycle usage. While I continue with my request to deny  
4 the use permit, I request that bicycle parking be a  
5 condition of granting the use permits and that the  
6 Planning Commission receive annual updates for all  
7 condition uses requiring annual permits and those annual  
8 reports are posted on the city's website.

9           Next, we have from Krystah Carlisle. My name is  
10 Krystah Carlisle, and I am a resident here in the City of  
11 Stockton of District 5. The purpose of this e-mail is to  
12 inform and gain assurance from my councilmember that all  
13 comments that were submitted to the city clerk's office  
14 relating to Planning Commission Item 5.1, permitting a  
15 retail storefront cannabis dispensary in an existing  
16 shopping center, be read into the public record. Many of  
17 my friends and fellow business owners that would be  
18 adversely affected by this use submitted comments back in  
19 May are actively tuned into the meeting only to have the  
20 meeting continued to July 8. I know the comments have  
21 been added to the staff report for the Commission;  
22 however, denying the public of having the ability to have  
23 all the comments submitted read out loud into the record,  
24 I believe it dilutes the effect and intent of public  
25 interest. So I'm asking if you would be so kind to follow  
26 up to ensure public transparency and make sure the public  
27 voice is heard for all. We should not have to re-submit  
28 comments nearly two months later for it to be read out

1 loud. Thank you. Krystah Carlisle.

2 And now on WebEx we have Kathryn Smith. Please  
3 go ahead.

4 KATHRYN SMITH: Can you hear me?

5 THE CLERK: Yes, we can hear you.

6 KATHRYN SMITH: Good evening, Commissioners. I  
7 would like to speak in favor of the project. Also I first  
8 of all would like to thank staff for their professionalism  
9 through this whole process. They've been extremely  
10 helpful. Our partnership bought Hammer Ranch about 20  
11 years ago. We rehabbed it and filled it with tenants as  
12 it was practically empty when we bought it. It was a  
13 great center until COVID, and unfortunately this virus  
14 caused many of our tenants to go out of business. We  
15 thought we were very smart buying a shopping center that  
16 had service tenants, and we never anticipated something  
17 like this happening.

18 I've been involved with Raj throughout this whole  
19 process. He's extremely professional. And I assure you,  
20 I would not support a use I thought would hurt our center  
21 or our tenants. Cookies will increase the traffic,  
22 therefore, benefiting my tenants. Of course, I have  
23 nothing to do with the building that is adjacent to us. I  
24 just am part owner of Hammer Ranch Shopping Center.  
25 Cookies will increase foot traffic, as I said, and our  
26 tenants are very much for this tenant. We spend a  
27 tremendous amount of money on security cameras and guards  
28 at our center, and Cookies will pay for their own

1 security, which is a huge benefit for us. I have never  
2 had a tenant in my life come to me and say they're  
3 bringing their own security guards. It's really a huge  
4 benefit, as I said. Also they build very attractive  
5 spaces, like we've all had a chance to see the interiors  
6 that they will be building. And again, the tenants are  
7 happy with this.

8 I would like to just say a couple of words  
9 regarding the proximity of the tenant. I've been involved  
10 in brokerage and retail development for over 40 years.  
11 I'm also a past president of the greater Stockton Chamber  
12 of Commerce. And pursuant to the alcohol, in many centers  
13 they do have liquor stores. Drug stores sell liquor and  
14 also grocery stores sell liquor. I do develop Dollar Tree  
15 stores, and we often locate with purpose to another Dollar  
16 store, and they come and locate across the street or next  
17 to us. It helps everybody. The synergy always works and  
18 it's -- as Zach said earlier, he went into many cases of  
19 Lincoln Center where they have jewelry stores in the same  
20 shopping center and so on and so forth. I very much would  
21 appreciate your support and I'm happy to answer any  
22 questions.

23 THE CLERK: Thank you. Next we have Olivia  
24 Clarke.

25 OLIVIA CLARKE: Hi, there. My name is Olivia  
26 Clarke. I'm an attorney representing Stockton Partners,  
27 LLC, established local business owners whose leadership is  
28 over 50 percent minority. Stockton Partners is the owner

1 of Zen Garden Wellness, adjacent cannabis business owner  
2 at the proposed project site. Our main concern for the  
3 Commission's attention this evening is that the city is  
4 required to make certain findings on the record in order  
5 to approve such a project as before it now. These  
6 findings are not supported by evidence that is in the  
7 existing record. For instance, the city is required to  
8 make findings that the project is in conformity with  
9 general plan land uses, objectives, policies, and  
10 programs. While cannabis is an allowable use within the  
11 general plan, other general plan principals prioritize  
12 safety, traffic, circulation, and smart business forward  
13 planning. There's no information in the agenda packet  
14 demonstrating staff and the applicant have considered  
15 other general plan principles specifically related to  
16 traffic impacts, circulation, public safety, and sensitive  
17 business concentration. Allowing this project it seems  
18 will be to an overconcentration of cannabis businesses in  
19 the area that has already been discussed at tonight's  
20 meeting.

21 City policy and practice has been to space and  
22 distribute cannabis businesses around the city as shown in  
23 exhibits. The concern for overconcentration has been  
24 explained in multiple comment letters you've been provided  
25 which we generally support and reiterate at this time.  
26 Approval of this project would result in two cannabis  
27 businesses about 150 feet from one another. This is not  
28 keeping with public policy and commonly have land use

1 principles that generally disfavor concentration of such  
2 sensitive uses. Parking, traffic control, and  
3 circulation, other general plan principles will also be  
4 impacted by such a use. And it seems unclear there is  
5 evidence in the record for the city to make a requisite  
6 finding related to the same. For instance, with staff  
7 report indicates 15 spaces are required for the project,  
8 but also says the project will employ 18 employees the  
9 first year and 20 in future years. It's unclear that  
10 there is sufficient parking for the project, like, for  
11 instance, customers, and a requisite finding for project  
12 approval.

13 Another finding the city will be required to make  
14 is that the use will maintain or strengthen the integrity  
15 and character of the neighborhood. Cannabis businesses  
16 are sensitive uses more analogous to a liquor store than a  
17 coffee shop or jewelry store. Overconcentration of  
18 cannabis businesses will likely threaten the vitality of  
19 the established businesses as demonstrated and discussed  
20 at this meeting this evening as well as in the various  
21 comment letters.

22 We respectfully urge the Commission to hear the  
23 genuine concerns of Stockton Partners and comments made by  
24 citizens and other business owners in that at least 34  
25 members of the public recommending that the Commission  
26 deny this project, especially to the extent they recommend  
27 an (unintelligible) --

28 THE CLERK: Thank you. Your time has elapsed.



1           Maia Aguirre.

2           MAIA AGUIRRE: Can you hear me?

3           THE CLERK: Yes. We can hear you.

4           MAIA AGUIRRE: Okay. Thank you. My name is Maia  
5 Aguirre, and I am a Stockton native and have a vested  
6 interest in the cannabis market space. I'm urging the  
7 Commission to approve the application presented today.  
8 Mr. Heung and Jiva have managed to secure an approvable  
9 location with zero sensitive uses in its boundaries. I'm  
10 hearing a lot about overconcentration. Why can't they  
11 choose another location. Other cannabis business owners  
12 know that the Stockton location requirements are extremely  
13 stringent, some of the most in Northern California. If  
14 you were to look on LoopNet today, less than 2 percent of  
15 the current leasable space in Stockton would be approvable  
16 with zero sensitive uses. I know that we recently -- the  
17 city recently approved another cannabis dispensary that  
18 had multiple sensitive uses and it was approved with a  
19 waiver.

20           So to find a location without any sensitive uses  
21 is in and of itself a unicorn. Mr. Drivon also presented  
22 to the Commission study after study and data reiterating  
23 that there is no data to support claims that the proximity  
24 would be detrimental to the community. And you on your  
25 own, I don't have the data that he gave you. But there's  
26 plenty of data in California, the big areas have done  
27 study after study. Colorado has studies that proximity in  
28 a limited amount would not be harmful to the other

1       dispensaries or to the community in general. And I think  
2       that it's unprudent to use the word "overconcentration"  
3       when you're talking about a second dispensary in Northern  
4       Stockton. Granted, the proximity is close, but again,  
5       when you're talking about cases -- case studies like  
6       Modesto and the other instances, you have four and five  
7       dispensaries on the same street, some of them directly  
8       across the street with very little impact. Our law  
9       enforcement has already shown that they don't see any  
10      concern in terms of impact. And those are some of the  
11      things specifically that I've heard. People were talking  
12      about bike racks. As a cannabis-vested business  
13      individual, I'm sure that any business coming in would  
14      have no problem installing bike racks. And with regards  
15      to security, one of the commissioners asked a question  
16      about, well, how do we know you'll maintain it? The BCC,  
17      which is the Bureau of Cannabis Control, requires a safety  
18      plan. And they do random audits. At minimum, the  
19      facility that I operate in Sacramento, four times a year,  
20      minimum. And if they come in and you are out of  
21      compliance, at the very minimum you'll get cited and  
22      potentially you could lose your licensure. And no  
23      dispensary, after everything they're going through, is  
24      ever going to put that at risk. It's also a benefit to  
25      both the dispensary and the community to make sure that  
26      all of the security factors are continuously in place.

27               The city is losing tremendous opportunities in  
28      the cannabis space because of their current highly

1 restrictive location requirements, yet here you have an  
2 applicant, a local resident, who has jumped through all  
3 the hoops that are required, has --

4 THE CLERK: Thank you. Next we have Kathleen  
5 Gapusan.

6 KATHLEEN GAPUSAN: Okay. I've been in this  
7 community for 62 years. I come from an era where my  
8 mother was white and married a Filipino and I had to go  
9 south to Main Street. So when I got to go to school, a  
10 white school, and one of the first things I learned was  
11 pot, weed, tree, marijuana, cannabis. Mama sent me away  
12 from the minority schools by using the address of a  
13 (unintelligible) friend. I was 13, eighth grade. This  
14 was before forced bussing. Stockton was one of nine  
15 cities nationwide ordered to desegregate. My point is I  
16 started smoking cannabis to fit in and I never stopped.  
17 Okay? Yes, I wanted it legalized for many reasons;  
18 however, since its legalization, I have also learned so  
19 much. I know what I'm smoking. I don't have to fear the  
20 law. It's expensive, addicting, and harmful to kids,  
21 especially ages 13 to 18 in a formative neurological stat.  
22 I smoke the stuff. I don't buy babes, concentrates,  
23 edibles, key, beverages, et cetera. That stuff is alien  
24 to me. No idea what it is, how much to take, what the  
25 down sides are. Scares me to think my kids and my  
26 grandkids, my great grandkids know this crazy lineup.  
27 Common sense, please, we are still learning. But in -- I  
28 don't -- it take a genius to say no, not a good fit. In

1 all honesty, I prefer folks buy dispensary weed and  
2 products. But we seem to be doing robust business. Why  
3 aren't we working on getting the bids to legalize pot. I  
4 don't know why this location was even on any city map.  
5 Please, listen and reject this proposal. Let City Council  
6 decide. I don't want to give an alien and a man from  
7 Fremont all control over our money and our properties and  
8 our kids and all the dope smokers in this town. I'm tired  
9 of it. I'm tired of our own people selling us out. Don't  
10 you get it? We're legal now. We got more dispensaries.  
11 We don't need any more. You know, they're going to prep  
12 him up because he's an alien, because he's Vietnamese or  
13 something? Man, what a great thing to do. That's the  
14 best you can do? You can't give him a city job where they  
15 sweep or do -- sweep truck services or anything else;  
16 right? We got to give him a pot dispensary. That's all  
17 the City of Stockton can come up with. It makes me mad  
18 and it makes me sick. And I smoke pot. And it's not  
19 something I'm happy about. But I share it with you  
20 because we need to do something.

21 THE CLERK: Thank you. Next we have Melody N.

22 MELODY N: Hello, everyone. My name is Melody,  
23 and I'm the general manager of Zen Garden Wellness. Can  
24 you hear me now a little better? My name is Melody, and I  
25 am the general manager of Zen Garden Wellness. I have  
26 been with Zen Garden since opening day and for three years  
27 have worked hard with my team through the COVID pandemic  
28 to control our site, build relationships with our

1 clientele, and serve them well in our area seven days a  
2 week. We share a parking lot with the retail store, pizza  
3 place, and a family dental office. I feel that allowing  
4 another large dispensary with such close proximity will  
5 strain our shopping center's assessability, safety, and  
6 damage the relationships we built in good faith with our  
7 clientele through a hard three years. We are concerned  
8 when we hear rumors of a mega store wanting to open within  
9 our parking lot. While we welcome healthy competition,  
10 placing a mega store next to a small business powered by  
11 supporting our community in a holistic approach is not  
12 supporting our community's best interest. Allowing this  
13 to pass would make it really hard to survive as a  
14 business, effectively control our site, and serve existing  
15 clientele in a safe, clean, and organized manner. This  
16 decision raises major flags, the most important is safety  
17 of our employees and surrounding businesses as there will  
18 be an increase of product transportation, delivery,  
19 vehicular traffic, and loitering due to an increased long  
20 lines, overall congestion within the shopping center. Our  
21 clientele will now be forced to drive around hoping for a  
22 convenient safe spot to park and to shop, being mindful  
23 that a majority of our clientele are older. A lot of them  
24 do have difficulties just going around town.

25 Stockton is an incredibly diverse community. We  
26 ask that you deny this project so that we may continue to  
27 support local small businesses and vendors and allow small  
28 all owned and operated by people of color. We ask that

1     you deny this project so we may continue to peacefully  
2     service our clientele without imposing unhealthy market  
3     pricing, longer lines, and an overall unwelcoming  
4     environment. I love my job, my team, and the City of  
5     Stockton. Please don't ruin our business to start  
6     another. We've only been here a short time and are  
7     recovering from the pandemic that everyone has gone  
8     through. A shock like this would be really hard on our  
9     community. Thank you for your time.

10           THE CLERK: Next we have Phil Abid.

11           PHIL ABID: Hi, folks. My name is Phil Abid. I  
12     am a staff sergeant with RC Security, and I've had the  
13     privilege of providing security for Zen Health and  
14     Wellness over the past year. In that time I've seen the  
15     comings and goings of the property. I understand the  
16     traffic and I understand the needs of parking. I ask that  
17     you deny this petition or this application in the basis of  
18     personal security and -- of personal and pedestrian  
19     security.

20           We have three businesses in our building. It is  
21     not POPS diner any longer. When you took that picture it  
22     was a closed business. We now have the Cluckin Rooster  
23     has opened. And last week they had a soft opening. And I  
24     saw a parking lot that was halfway full before we even  
25     opened the business. We open at 10:00. The pizza place  
26     opens at noon. Once they opened, that parking lot was  
27     full throughout the day. It's evident to me that parking  
28     will fall over a busy street, Aetna, into the parking

1 space of Save Mart. That is a busy street. So busy and  
2 with speeding that the city saw fit to put in speed bumps  
3 to mitigate the issue. And it has some but not quite.  
4 There's no crosswalks. There's no good line of sight  
5 across the parking lot. Part of my job is to provide  
6 safety not only to the business but to the customers as  
7 well. I like a line of sight. I like being able to get  
8 to my customers. I like walking the money from the car to  
9 the building and the product to the car when necessary.  
10 That's not feasible when it's across a busy street and out  
11 of our reach.

12 In addition to that, I look at the lines that are  
13 created at dispensaries. There are lines. There's lines  
14 for our dispensary. There's lines for Pats [ph]. And  
15 we're fortunate enough to have sidewalks that go all  
16 around our building. We're able to direct our clientele.  
17 That does not impede other businesses nor does it put them  
18 in a parking lot that's going to be inundated with extra  
19 traffic. Pats is the same way. They come out the side.  
20 Doesn't hit another building. Goes down the back, across  
21 a dirt road and on to Hammer Lane. You can see it as you  
22 drive to work in the morning.

23 I don't see that with this other proposed  
24 location. It's got two businesses on each side of its  
25 door. When that line is created, that line will impede  
26 those other businesses. In addition, there is no sidewalk  
27 around this place where people can line up safely in a  
28 parking lot that has more traffic, more loitering. I ask

1 you to deny this application. Thank you.

2 THE CLERK: Thank you. Next we have Corey  
3 Travis.

4 COREY TRAVIS: Commissioners, good evening. My  
5 name is Corey Travis, and I do represent Zen Garden  
6 Wellness. We are both a dispensary operators and equity  
7 owned group as well as shopping center owners. I had some  
8 prepared remarks here but I would like to respond to a few  
9 things that the applicant has presented. And it's a  
10 frustrating process for us as a business that went through  
11 what was a very inclusive process for us a few years ago  
12 to stand here today seeing materials for the first time,  
13 materials that we requested, meetings that we liked and  
14 requested to be part of. But at the end of the day, I  
15 have no doubt that the things that they are saying in  
16 concept are effective and are true. Because they happened  
17 when we came to the area. They talk about increased  
18 security, better security, revitalizing the area. That's  
19 true. And that happened when we moved into the center.  
20 We did that. We had a problem with homeless. We had half  
21 of the UJs building was shut down. There was more vacancy  
22 now back then. And we got rid of those problems. We  
23 cleaned them up. We invested and we worked with other  
24 business owners to bring restaurants and diverse retail  
25 shopping areas to this dispensary. But, you know, at the  
26 end of the day, what's happening is you have a major  
27 retail chain that has deployed consultants and lawyers and  
28 renderings to tell you that putting the largest dispensary



1 in the City of Stockton directly next to another  
2 multi-thousand square foot dispensary and sharing 30  
3 parking spaces is somehow a good idea. I told the  
4 applicant Raj that we would support -- we support their  
5 equity application. We support their business, and we  
6 support them in the City of Stockton. But there are a lot  
7 of projects that can benefit from the development that a  
8 company like Cookies can bring to the area that isn't  
9 directly on top of another dispensary.

10 Commissioners, the proposed application is not  
11 about Stockton. This is about big cannabis. And this is  
12 not the first time they've tried to come to the center.  
13 Our group, in fact, has turned down multiple proposals by  
14 the Cookies corporation to convert our store to Cookies.  
15 But quite frankly, we didn't like the way that they did  
16 business, high fees and royalty fees, requiring you to buy  
17 certain products that are their products. They are there  
18 to sell more of their brand in as many markets across the  
19 state as they can. You have before you a one hundred  
20 percent equity owned business in Stockton that is -- that  
21 is run by the people before you in this -- in this room.  
22 We put Stockton first when we did our use permit  
23 application. I came before this Commission as an  
24 applicant. And all of us together delivered the project  
25 that we promised that we would. And now we stand to see a  
26 very limited parking lot encroached upon by a multi-  
27 thousand square foot dispensary. And that concerns us.  
28 We would urge the applicant to look at other areas in the

1 city. When I spoke with the applicant's representative,  
2 Raj, he said that he wanted to go somewhere else...

3 THE CLERK: Thank you. Your time has elapsed.

4 COREY TRAVIS: Please allow me to return if you  
5 have any questions.

6 THE CLERK: Next we have Constance Carter.

7 CONSTANCE CARTER: Good evening, Chair Mallett,  
8 Vice Chair Sanguinetti in his absence, and the entire  
9 Commission. My name is Constance Carter, and I have been  
10 an owner of Zen Garden for the last three years. I've  
11 lived in Stockton for over 22 years and I'm raising my  
12 children here. I pay taxes here. I've owned other  
13 businesses here. I own real estate here. I've seen the  
14 process as it relates to cannabis take many twists and  
15 turns since 2011 when cannabis retail was originally  
16 approved and then soon after a moratorium was passed  
17 around 2013 ending with the city approving two cannabis  
18 retail fronts on Fremont Street. So in 2017 under the  
19 original ordinance when Stockton began accepting  
20 applications for perspective qualified candidates, my  
21 family and I were excited. We were excited, you guys, to  
22 potentially have an opportunity to compete for a use  
23 permit to operate a store of our own, one that could truly  
24 be locally homegrown. No pun intended. A shop where the  
25 ownership, management, and staff are truly local. My  
26 family and I knew this was a tall task to order and that  
27 it wasn't going to be easy. We began to go to our close  
28 friends and family and we began to raise funds. With the

1 grass roots effort, we were able to raise two and a half  
2 million dollars to purchase the old UJs restaurant. And  
3 knowing the value that UJs had to the community, we were  
4 able to keep it UJs for another two years until we changed  
5 it over to the Cluckin Rooster, which became a big hit for  
6 our community.

7 Then, of course, as you all are aware, the  
8 pandemic had closed us down temporarily and today we have  
9 this proposed project that's like David versus Goliath  
10 that will ensure the demise of our store if it's approved.  
11 I say this because I want you all to see the big picture.  
12 We at Zen Garden are not a big corporate cannabis shop  
13 whose sole interest is to just sell weed and turn profits.  
14 We're truly in the hospitality business. This is our  
15 life. And now to think that we could be shuttered by a  
16 corporate monster that's presented itself as an equity  
17 based company with community ties is unconscionable and  
18 offensive to those who actually do represent the epitome  
19 of equity. Now I want to remind you that there weren't  
20 any equity lottery winners when we applied. We truly did  
21 this on our own. And it will be a shame if this  
22 application was -- is approved at just 150 feet from our  
23 business. Thank you.

24 THE CLERK: Thank you. Up next we have Malcolm  
25 Joshua Weitz. Malcolm, can you hear us?

26 MALCOLM JOSHUA WEITZ: Hi. My name is Malcolm  
27 Joshua Weitz. Can you hear me?

28 THE CLERK: We can hear you. Thank you.

1 MALCOLM JOSHUA WEITZ: Hi. So my name is -- as I  
2 said, my name is Malcolm Joshua Weitz. I'm a born and  
3 raised San Franciscan. I am a cannabis activist, a  
4 cannabis consumer, a new father, and also an equity  
5 cannabis applicant in San Francisco. I did a year in  
6 prison for a nonviolent cannabis offense. I then came  
7 back to San Francisco and was instrumental in implementing  
8 a robust and comprehensive equity program along with the  
9 human rights division in San Francisco. That was in 2017.  
10 In 2018, as you can imagine, there was a, you know, a big  
11 rush to get into the San Francisco market. And out of  
12 all, I heard, you know, people say things about, you know,  
13 bad corporate candidates. Out of all the corporate  
14 candidates, people that did approach me, you know, I  
15 really believed in Jiva SCK, Raj's vision. You know, from  
16 the person of color to a person of color, I really felt  
17 that, you know, he was a rare breed. He had experience in  
18 the cannabis business and he really believed in me, you  
19 know, as an owner/operator of our partnership.

20 During the past, you know, arduous process of  
21 getting a cannabis license, which we're still in in San  
22 Francisco, he's been a very, very reliable technical  
23 partner. He's been very generous with his time and  
24 resources. And I would like to voice my very strong  
25 support for Jiva and Raj for their cannabis retail  
26 location in Stockton.

27 THE CLERK: Thank you.

28 That concludes public comment, Chair.

1 CHAIR MALLET: Thank you. Okay. So at --

2 THE CLERK: Oh, I didn't have any public comment  
3 cards. You would need to fill out a blue public comment  
4 card. What was your name?

5 FABIAN: Fabian.

6 THE CLERK: I do apologize. Fabian. Please come  
7 to the podium.

8 FABIAN: My name is Fabian Ardias [ph.] I grew  
9 up in the area and live nearby. And I'm the assistant  
10 manager at Zen Garden, the existing dispensary at the  
11 proposed location. Having worked at the site in the past  
12 three years, we have -- we have a team that has worked  
13 hard to create a safe and welcoming location within the  
14 center. Placing another dispensary in and around our  
15 building will cause us to lose control of our own property  
16 and will put our business at risk. Currently we share a  
17 parking lot with multiple surrounding businesses. And  
18 already seeing heavy traffic on busy days, it will be  
19 difficult for staff and patrons to find an accessible  
20 spot. Having two security companies, two sets of  
21 customers, two sets of employees, and one small lot along  
22 with increased vendors and delivery activity, traffic will  
23 be overwhelming just to the plaza itself. This could be  
24 especially difficult during major retailer days and  
25 seasons when activity spikes.

26 In the past we have seen what happens when a new  
27 dispensary opens in our city. When the discounted  
28 retailer opened down the road, we noticed a significant

1 decrease in traffic to our store. Potentially opening a  
2 new one mere feet away will be detrimental to business and  
3 staff already fighting through a pandemic -- already  
4 fighting through a pandemic is the last thing we need is  
5 to compete for our customers with our neighbors.

6 Our approach to facilitate fair access and  
7 opportunity to advance within our diverse community has  
8 made a positive impact in the lives of many individuals.  
9 We kept many loyal customers because of the way we do  
10 things at Zen. We have a team that has cultivated a  
11 culture here that has challenged the stigma behind  
12 cannabis by offering a service based off knowledge and  
13 educating the public on every visit. We are driven by  
14 competition but we strongly believe that placing multiple  
15 retailers within the same shopping center will not be  
16 healthy for our industry or community.

17 I oppose the notion to having multiple  
18 dispensaries within the Hammer Ranch Plaza. And just a  
19 response to one of the dispensaries. They mentioned that  
20 works very well in San Bernardino. That Cookies store and  
21 the 909 dispensary are close to a -- the NOS Event Center  
22 which holds events for up to 50,000 people on any given  
23 weekend. So I can see how they bring in that type of  
24 revenue. But that is nothing like our location here in  
25 Stockton. And the industry in Modesto grew very fast in a  
26 very small time. So there are multiple stores and  
27 multiple storefronts that work well within Modesto and  
28 just Stanislaus County on its own. But the industry grew

1 at a pace there that the market is way different than you  
2 see here in Stockton. Way different than the market you  
3 see in Sacramento, San Francisco, and even down south in  
4 Fresno. So I see how it works in Modesto, but the  
5 industry grew there at an expedient rate that has  
6 caused that to happen. Thank you for your time.

7 THE CLERK: Thank you. Now that concludes public  
8 comment.

9 CHAIR MALLETT: Thank you. So at this time I  
10 would need to close the public hearing and bring it back  
11 to the Commission.

12 COMMISSIONER RIZVI: Chair, I had a question from  
13 the staff. I don't know if you need to open the public  
14 hearing again. Do we?

15 ATTORNEY TARYN JONES: Questions for staff? No.  
16 It can remain closed. If you have questions for the  
17 applicant, then the public hearing will need to be  
18 reopened.

19 COMMISSIONER RIZVI: Staff. So staff, we heard a  
20 lot of parking issues today. I mean I think predominantly  
21 other than other things mostly parking and the -- or  
22 congestion. And crowd -- crowd control was one of the  
23 things. I just wanted to see what your -- because staff  
24 is recommending this. I wanted to see what you had  
25 analyzed as far as traffic impact or anything like that.

26 STAFF: Thank you. So staff did take that into  
27 account and we looked at the entire site based off of the  
28 uses and compared that with required parking as stated in

1 the code. And there is ample parking per code minimum  
2 standards. In fact, just -- it's hard -- you know,  
3 obviously everyone wants the front spaces. You know,  
4 every business wants the closest spaces. But given that  
5 it's a shopping center, there is more than adequate  
6 parking for all of the uses that are there based off code  
7 standards. We double-checked just to be sure.

8 COMMISSIONER RIZVI: To the Chair. Even if at  
9 full capacity, you know, right now, maybe they're empty  
10 spaces. Did the staff consider that as well?

11 STAFF: For the specific area, we considered the  
12 restaurant at the -- I guess it's a chicken place now,  
13 formerly Pops and UJs. We considered the existing pizza  
14 place that's there, the existing dispensary, the existing  
15 dentist office, and the proposed site. Because they are  
16 all adjacent to one another in a row. Given the -- they  
17 have the separation of that drive aisle. But we  
18 considered all of that in the analysis, and there is  
19 adequate parking.

20 COMMISSIONER RIZVI: Okay. Thank you.

21 STAFF: Uh-huh.

22 CHAIR MALLETT: Commissioner Garcia.

23 COMMISSIONER GARCIA: Thank you, Chair. I'm for  
24 business including cannabis. It's a rising industry. It  
25 allows a legal way to satisfy the people's needs and wants  
26 while generating tax revenue for the city. And this  
27 project would even fill a vacant building. So far I voted  
28 in favor of all cannabis projects during my tenure on the



1 commission including another for another one of Attorney  
2 Drivon's clients. And I support every aspect of this  
3 project with the exception of the location. I recognize  
4 that in Modesto there are several shops in the same  
5 street. I don't see much wrong there. The difference  
6 here is there those shops aren't as close as these two  
7 would be, including the Medallion and the Phenos. I know  
8 they're close but here it would be even closer -- I mean  
9 we're talking about barely half a football field. Okay?  
10 Unfortunately, I believe approval would hurt the existing  
11 business. Okay? I mean I can get completely behind the  
12 idea of Jiva coming into Stockton. Absolutely. However,  
13 I feel that this bigger shop would hurt the smaller shop.  
14 If we take a look at condition 2, strengthening the  
15 integrity. Okay? If the bigger shop puts a smaller shop  
16 out of business, we're back to where we started with a  
17 vacant building. Okay? So that's not exactly  
18 strengthening the character. Or -- and condition 5, I'm  
19 paraphrasing, where a proposed location would not  
20 jeopardize the interest of persons working there. And I  
21 think it jeopardizes the people, you know, working at Zen.  
22 You know, that's just my opinion. I'm not necessarily  
23 worried about the increase in crime. I do believe Jiva  
24 would bring in additional security. I'm not worried about  
25 the additional parking, you know. Theoretically, the  
26 overflow could be handled by the grocery stores adjacent,  
27 you know. I am worried about the current business there.  
28 I do agree with Attorney Drivon that other similar

1 businesses that are right next to each other, like in  
2 Lincoln Center, they don't normally hurt each other. They  
3 can help each other. However, the cannabis industry as is  
4 is still new-ish, especially here in Stockton. It's  
5 changing. It's evolving, and we're all learning as we go.  
6 Okay? And yes, we have a Noah's Bagels and a Starbucks  
7 right next door to each other in Lincoln Center, but  
8 that's a big difference with this versus grabbing a cup of  
9 coffee and a pastry. I think it's a big difference. If  
10 this shop were somewhere else, even maybe even across the  
11 street, I'd get behind it. I mean we take a look at the  
12 location waivers. As a commission we have granted  
13 reasonable waivers regarding to location in the past.  
14 Okay? However, as is, where it is, I'm having a challenge  
15 approving this. And I would love to see how the rest of  
16 my commissioners feel about it.

17 CHAIR MALLETT: I would like to respond to that  
18 because I disagree with you on that point where you're  
19 saying that that competition is going to be a negative.  
20 Listening to everybody -- at first I had the exact same  
21 feelings you had. But I'm looking at everything. I'm  
22 looking at the land use. Looking at everything, all the  
23 requirements. But now I'm seeing that it -- something I  
24 didn't realize, but listening to everyone, it seems like  
25 these are cannabis businesses, but there is another type  
26 of business as what they're -- you're specifying. You're  
27 out of my league as far as what all of these varieties  
28 mean. But I'm thinking that it can bring it in and as

1 long as we can say that it, you know, as far as parking,  
2 all of the land use requirements, everything, they've met  
3 every requirement, then it may be existing business rise  
4 to the occasion and become a better business and probably  
5 even a stronger business because you look at the sites  
6 where every location is. They are in close proximity.  
7 You know, if you're going to get in your car and go  
8 someplace, there's a lot down Hammer.

9 So the fact that this is within the same shopping  
10 center, I agree. I was -- I had the exact same opinion.  
11 But I think, given the limitations and looking at the ones  
12 that we have denied based on the variances that needed to  
13 be approved, this one has absolutely no variance  
14 requirements. And so from a land use, and I think that's  
15 our responsibility to look at, it meets all the  
16 requirements.

17 COMMISSIONER JONES: Thank you, Chair. Let's  
18 see. You know, I was born and raised in Stockton and I  
19 support all Stockton businesses. And, you know, the  
20 problem I have is outside coming in and running a  
21 businesses. That's my main concern right there. Always  
22 have been. To me, the Zen Garden investors are all  
23 Stockton, all from Stockton. 50 percent of that group is  
24 women and minorities. And, you know, I think it's hard  
25 for the small business -- when a big one come in and to  
26 me, it's other locations here in Stockton, other  
27 locations. There's a lot -- I've been looking around when  
28 I'm driving by. There's a lot of places where they can

1 go. That's the problem I have with a business that's  
2 already been established there for years and then another  
3 one comes in. And, yeah, they said it's not competition,  
4 but it's always going to be competition, regardless. So  
5 in that case, I'm -- I'm not for it. Thank you.

6 CHAIR MALLETT: Commissioner Mountain.

7 COMMISSIONER MOUNTAIN: Yeah, I just did a lot of  
8 review over the different correspondence, and I see  
9 there's a lot of support, you know, from people like  
10 Joshua from Raj management. He speaks about his father  
11 and father's issues and equity program and the Carol  
12 security and firefighters and other strong expressions  
13 from, you know, like the Farm D like and so on and so  
14 forth. But it still doesn't go into the support of our  
15 business. Regardless, those are great things. And seeing  
16 what I see what's against it is things like what Melody  
17 stated about the hardships of business or like what Fabian  
18 stated about growing up in the area and living nearby and  
19 understanding the importance of this business or even  
20 businesses like CAP's Pizza, speaking about parking lots  
21 with this dispensary.

22 For each of the other correspondence that  
23 consists of residents and business and owners, they all  
24 share the same similar sentiments and concerns, concerns  
25 for traffic congestion, concerns for crime rate and for  
26 crime rate increase, community harms and injury, worries  
27 of oversaturation, which makes the business and the lot to  
28 fill a lack of city support to businesses.

1 Cannabis dispensaries have expressed their  
2 concerns of this being the fifth dispensary on Hammer  
3 Lane. And they all stated that they demonstrated a sense  
4 of tolerance for Zen. But adding another is not something  
5 many find to be an advantageous to the community as well  
6 as the community members and customers. And there's also  
7 concern for our reputation of our city overall. I  
8 remember not too long ago, us as a commission, we were  
9 voting on a type 21 liquor license, and we all came to a  
10 consensus on how it would create an oversaturation of  
11 liquor sales. In that situation we all agreed that a  
12 competitive market was good, but an oversaturation was  
13 not. The community is listening to us and paying  
14 attention to the precedence we are creating here on the  
15 commission.

16 Now what I don't want to do is I don't want to  
17 convey a message that I'm against competitive market.  
18 Like Commissioner Mallett stated, a competitive market is  
19 great. It's a great thing. But I'm a firm believer -- so  
20 I'm a firm believer in it. And sustainability of  
21 opportunities for a city's economy can also be achieved  
22 through a competitive market. But we also need to  
23 understand at what sacrifice are we going to do that at.  
24 It comes to the point that we have to ask ourselves about  
25 the vitality of existing business after approving such  
26 permits in such proximities. The cannabis market is not  
27 going anywhere any time soon. But if we do not take care  
28 of our small businesses, they will.

1           So as we -- as a city, we speak about bringing  
2 business in to strengthen our city and our revenue. But  
3 we are setting an example of future business that we care  
4 about their business but not for their prosperity. So as  
5 we vote, I will like all my fellow commissioners to  
6 consider what message we are conveying with the yes vote  
7 and how it will affect our community's trust. The  
8 business is not a problem and it's not -- in supporting  
9 the business, I completely agree. If we're seeking to  
10 approve the permit, I would also essentially ask myself as  
11 a business, at what point will the city do the same thing  
12 to me.

13           CHAIR MALLETT: Commissioner Rizvi.

14           COMMISSIONER RIZVI: So I had got a few comments.  
15 First of all, I think the only business that flourished  
16 during cannabis was -- during pandemic was cannabis. I  
17 mean it has been proven not by me. I'm not going to prove  
18 it. By articles, tons of articles out there. 2020 was  
19 the highest sales revenue tax collected by California on  
20 cannabis. So cannabis business is on rise. We all know  
21 that. So I just wanted to clarify that. Because I heard  
22 conflicting information here that it had -- pandemic had a  
23 negative impact on cannabis.           Secondly, you  
24 know, it is -- and fortunately and unfortunately, I know  
25 people from Zen Gardens. We were here when we approved a  
26 few years ago. And I actually visited the facility,  
27 myself and at that time Commissioner Jobrack [ph.] And  
28 they run a business very nicely. They were one of the

1 first ones here and very professional. And they are  
2 still, you know, we haven't heard any negative thing about  
3 their operation. So they have done a great job for the  
4 city and for that shopping plaza.

5 You know, and what makes it tough is we don't  
6 create policy. And when we are looking at policy, it is  
7 the City Council that creates policy. I mean we can  
8 debate all night long. Ultimately, it's the land use  
9 issue and that's why I asked many times proximity, is  
10 there's an issue with that. Is there an issue with the  
11 traffic study? And I don't smoke cannabis so it's not  
12 that it's personal to me. But what I see, my job as a  
13 commissioner, is to make sure the law and the regulations  
14 that are put by the city, we implement that unless there's  
15 evidence that comes out of these discussions.

16 As far as equity partner, I am a minority myself  
17 and I'm a big believer in that. Stockton is a diverse  
18 community and I'm proud to be a Stocktonian. And also,  
19 you know, we heard about business competition. My fellow  
20 Commissioner Garcia said that -- and I agree -- this is a  
21 very -- how do you say adolescent market for California,  
22 cannabis. And it has a lot of time -- it will require a  
23 few more years to mature. With that said, Stockton  
24 already has very limited options and opportunities for  
25 these businesses. And I think that's getting addressed,  
26 but we are a bit behind addressing that. And looking at  
27 that from land use perspective, unless I hear anything  
28 else, my fellow commissioners have said, again, we don't

1 create policy here. We don't take sides here. We just  
2 want to make sure that this is the charter of Planning  
3 Commission to give everybody a fair chance. And City  
4 Council is one that can change policy. Today it stands  
5 that the city recommends that. So I just want to say that  
6 in that case I will be in favor of this based on the  
7 city's recommendation. Thank you.

8 CHAIR MALLETT: Commissioner Villapudua.

9 COMMISSIONER VILLAPUDUA: Thank you, Chair.  
10 Thank you, Staff, for the presentation. You know what?  
11 You know, I'm born and raised here as well, you know. I  
12 have a seven-year-old kid. There's a passion in my life.  
13 You know, the other day I went to -- it was a Monday, and  
14 they just opened a new business. So correction, there was  
15 -- the guy -- something chicken. So my son, he loves  
16 breakfast. So I read about it. I know they had a soft  
17 opening. And I believe even then -- it was just a soft  
18 opening, it was busy. It took about an hour to get us  
19 some basic eggs and hash browns, you know. But that's  
20 where my son wanted to go. But I'll tell you, that  
21 parking lot was filled up, even being just a soft opening.  
22 I just can imagine how things are going to be when we're  
23 having the grand opening or when they're open. I wasn't  
24 aware that the pizza joint next door also was a bar. So,  
25 you know, there's a lot of things that I just picked up  
26 being in the neighborhood. You know, I took a walk  
27 because I knew this was coming on my agenda. There's also  
28 another business that's coming around, I believe it's some



1 type of dough cookie pastry that they're going to have  
2 their grand opening. Knowing me, I'm all about the city.  
3 I'm always liking of doing a grand opening. I was chosen  
4 by the mayor for a reason. And through a lot of, you  
5 know, applicants. And you know what? I'm new but I've  
6 been doing my homework for a long time. My family has  
7 been, you know, in this industry, in the politics for a  
8 while. I've heard about, you know, talking about Modesto  
9 having similar, you know, things they're trying to do  
10 here. But I'll tell you this. Some of those leaders who  
11 made those decisions are not leaders no more. And you  
12 know what? I have a big passion for the city, and you  
13 know what? I have bigger plans for my son, the elders,  
14 the kids, and this whole city. If I get behind something  
15 like this, this will always come back to me. And there is  
16 people that until now from this day for making similar  
17 decisions that we're doing today.

18 So I ask my colleagues to join me and say no to  
19 this. Thank you very much.

20 CHAIR MALLET: I would like to respond to that  
21 because I do have concerns about this being about  
22 politics. And I think as Planning Commissioners, our  
23 responsibility is to deal with the land use and to look at  
24 our requirements that need to be forwarded on as far as  
25 making approvals or denials on use, not whether it is  
26 going to be the politically accepted decision. And so  
27 that's where I'm concerned. I look at all of this and I'm  
28 looking at these requirements, and this location has met

1 every requirement. Whether I agree with the business  
2 being too close to each other or an additional cannabis  
3 business within the city, there's multiple cannabis  
4 businesses within the city and there will be more and more  
5 coming forward if they can find a location. But right now  
6 the requirements are -- there's not that many spaces -- I  
7 mean to present it. My other concern is you talk about  
8 parking. If that landlord ever rents -- say this is  
9 turned down. If they rent 6500 square feet of space, it's  
10 going to go maybe to another restaurant. Maybe. I mean I  
11 don't know. Where -- I mean you're saying there's no  
12 parking now. I don't know that that is accurate. And so  
13 I'm concerned that we're forgetting what our  
14 responsibilities are in whether to approve or deny this  
15 use permit.

16 Commissioner Mountain.

17 COMMISSIONER MOUNTAIN: You know, I agree. Like  
18 I stated earlier, there's a lot of requirements that are  
19 met. And I heard your statement about how, you know, we  
20 must leave politics out of this and I 100 percent agree  
21 with that, and also agreeing, understanding what the land  
22 use is for. But it's also our job to serve as an advisory  
23 committee for the council. And in being an advisory  
24 committee, we have to understand that what's best for our  
25 city fiscally. And so overall, when it comes to business  
26 prosperity, that is not politics. It's economics. And if  
27 our job is to sustain the economics in our city, it's also  
28 to ensure a business prosperity. And so with that being

1 said, I would like to make a motion to deny the permit.

2 COMMISSIONER VILLAPUDUA: Second it.

3 CHAIR MALLET: Okay. I have a motion from  
4 Commissioner Mountain and a second from Commissioner  
5 Villapudua to deny the project. Could you explain what he  
6 -- requirements he needs to have to do the denial, please,  
7 City Attorney?

8 ATTORNEY TARYN JONES: Thank you, Chair. Sorry.  
9 Just as a clarification, and I know that this body has  
10 done this before, but just to clarify the motion, this  
11 body, if it does vote to deny the permit, it will need to  
12 go through the process of making the findings. Approval  
13 requires all of the findings to be made in the  
14 affirmative. So if it is denied, one or more will have to  
15 be found in the negative. Typically the way this motion  
16 is made is that you make a motion to deny and then with  
17 the directing of staff to bring back findings as  
18 articulated on the record.

19 CHAIR MALLET: So with the motion he --  
20 Commissioner Mountain would need to give the findings on  
21 why he is moving to deny.

22 ATTORNEY TARYN JONES: If I may. So those  
23 individuals in support of denial can also voice and come  
24 to a consensus as to the reasons why the permit should be  
25 denied. That can be more of a group understanding as all  
26 of the members will be voting on it. To the extent  
27 Commissioner Mountain has a particular findings that he  
28 wishes to articulate in the negative, he can do so as part

1 of his motion from the outset if he would like.

2 CHAIR MALLET: Okay. So are we voting first or  
3 is he coming up with his findings once we vote?

4 ATTORNEY TARYN JONES: I would just ask that is  
5 in fact the clarification is consistent with Commissioner  
6 Mountain's intent so that way I'm not putting words into  
7 the commissioner's mouth as it is his motion.

8 CHAIR MALLET: Okay.

9 COMMISSIONER MOUNTAIN: Thank you. I stated on  
10 here it would not be conducive or beneficial to the  
11 surrounding neighborhoods, the community and businesses,  
12 as well as a finding on the effects on public safety.

13 STAFF: Through the Chair, if I can request  
14 clarity on how the impacts are to public safety so we can  
15 have that for the finding.

16 COMMISSIONER MOUNTAIN: Of course. The  
17 increasing dispensaries in the surrounding areas would  
18 cause a possible increase in surrounding crime rates. All  
19 right.

20 ATTORNEY TARYN JONES: Chair, if I may. As a  
21 point of clarification, is this in response to a  
22 particular finding on -- so the general findings are  
23 listed in the staff report. Is this the -- are both of  
24 those -- I heard conducive to neighborhood and then public  
25 safety. Are those in response to finding No. 2? Or I'm  
26 just trying to understand the findings.

27 COMMISSIONER MOUNTAIN: If you can look that for  
28 me, that would be great.

1           ATTORNEY TARYN JONES: So it does have to be --  
2 because the findings have to be responsive to -- the  
3 findings of fact have to be responsive to those findings  
4 articulated in the code. So to the extent the --

5           COMMISSIONER MOUNTAIN: I do recall previously  
6 that we've had you guys help us out in the best way you  
7 could.

8           ATTORNEY TARYN JONES: Okay. So --

9           COMMISSIONER MOUNTAIN: But if you could do that,  
10 I would greatly appreciate that.

11           ATTORNEY TARYN JONES: So what we can do now is  
12 we can run through each of the findings and then you can  
13 fill in as well as any individuals who are similarly  
14 inclined can fill in information about why denial is  
15 appropriate.

16           COMMISSIONER MOUNTAIN: Sounds good.

17           ATTORNEY TARYN JONES: So again, not all of the  
18 findings need to be found in the negative. Only one or  
19 more.

20           COMMISSIONER RIZVI: To the Chair. Is it  
21 possible to show it on the screen so we all can see and  
22 the public can also see?

23           ATTORNEY TARYN JONES: I don't believe -- I don't  
24 believe that we have the Elmo anymore. However, they are  
25 in the staff report. They begin on page 9. It's also in  
26 the resolution. So it should be in your packet. Do we  
27 have them?

28           COMMISSIONER RIZVI: That's fine. I have it. I

1 was talking about the public who's sitting there for them.

2 ATTORNEY TARYN JONES: We will read them one by  
3 one. So -- and this again goes -- so the motion maker is  
4 Commissioner Mountain, but to the extent that you would  
5 like to speak as a Commission as to clarify the motion,  
6 that is still possible at this time.

7 The first finding is that the proposed use is  
8 allowed within the subject zoning district with the  
9 approval of a use permit and complies with all other  
10 applicable provisions of the development code and the  
11 municipal code. Is there any problems with the first  
12 finding?

13 COMMISSIONER MOUNTAIN: That's fine.

14 ATTORNEY TARYN JONES: The second finding is that  
15 the proposed use would maintain or strengthen the  
16 integrity or and character of the neighborhood and zoning  
17 district in which it is located.

18 COMMISSIONER MOUNTAIN: That would be the one.

19 ATTORNEY TARYN JONES: Okay. And in particular,  
20 you said it was not conducive to the neighborhood. Can  
21 you clarify that a bit further based on the findings that  
22 we've heard tonight?

23 COMMISSIONER MOUNTAIN: Of course. I just would  
24 have to bring up the -- try to bring up the staffing  
25 report so I can make sure I do it exactly word for word.

26 ATTORNEY TARYN JONES: Okay.

27 COMMISSIONER MOUNTAIN: If you could just read it  
28 out loud again just so I can --

1           ATTORNEY TARYN JONES: Certainly. Finding No. 2  
2 is the proposed use would maintain or strengthen the  
3 integrity and character of the neighborhood and zoning  
4 district in which it is to be located.

5           COMMISSIONER MOUNTAIN: Yes, the proposed use  
6 would not strengthen the integrity of the neighborhood  
7 because it would reduce. It would reduce the business  
8 prosperities.

9           ATTORNEY TARYN JONES: Finding No. 3 is that the  
10 proposed use would be consistent with the general land  
11 uses, objectives, policies, and programs of the general  
12 plan and any applicable specific plan or master  
13 development plan.

14          COMMISSIONER MOUNTAIN: That's fine.

15          ATTORNEY TARYN JONES: Okay. Finding No. 4, the  
16 subject site would be physically suitable for the type and  
17 density/intensity of use being proposed including the  
18 provision of services, e.g., sanitation and water, public  
19 access, and the absence of physical constraints, e.g.,  
20 earth movement, flooding, et cetera.

21          COMMISSIONER MOUNTAIN: That's fine.

22          ATTORNEY TARYN JONES: Okay. Finding No. 5, the  
23 establishment, maintenance or operation of the proposed  
24 use, the location proposed, and for the time periods  
25 identified, if applicable, would not endanger, jeopardize,  
26 or otherwise constitute a hazard to the public  
27 convenience, health, safety -- sorry -- health, interest,  
28 safety, peace, or general welfare of persons residing or

1 working in the neighborhood of the proposed use.

2 COMMISSIONER MOUNTAIN: That would -- that would  
3 support my second statement.

4 ATTORNEY TARYN JONES: And that was that the  
5 public safety would be diminished because increasing  
6 dispensaries would possibly cause increased crime rates;  
7 is that correct?

8 COMMISSIONER MOUNTAIN: Correct.

9 ATTORNEY TARYN JONES: Okay. Is anything  
10 additional? Just -- okay.

11 COMMISSIONER MOUNTAIN: That's fine.

12 ATTORNEY TARYN JONES: And then No. 6, the  
13 design, location, size, and operating characteristics of  
14 the proposed use would be compatible with the existing and  
15 future land uses on site and in the vicinity of the  
16 subject property.

17 COMMISSIONER MOUNTAIN: Well, that would support  
18 the first change -- the amendment of the first one about  
19 the area not being -- not being beneficial to the  
20 surrounding environment.

21 STAFF: Through the Chair, can you please -- we  
22 have to have -- we have to be able to justify these  
23 findings. When you say not beneficial, can you explain  
24 why it's not beneficial?

25 COMMISSIONER MOUNTAIN: I just stated about the  
26 prosperity of the nearby businesses.

27 STAFF: Okay. So you're saying prosperity to  
28 neighboring existing businesses, the community, the



1 neighborhood? I guess just to help us understand.

2 COMMISSIONER MOUNTAIN: I mean if you have the  
3 proper discourse, feel free to do as you please.

4 STAFF: Staff cannot provide findings. The  
5 deciding body --

6 COMMISSIONER MOUNTAIN: I'm not asking you to  
7 find findings. I'm asking you to use the proper  
8 vocabulary, if that's what you prefer.

9 ATTORNEY TARYN JONES: Would you agree with the  
10 statement -- so I think Stephanie was giving you several  
11 options and she was just looking for a confirmation as to  
12 which was appropriate. She didn't mean to limit your  
13 ability to make the findings. I think you said it  
14 wouldn't be beneficial because it would interfere with  
15 business prosperities. She meant -- and please correct me  
16 if I'm wrong -- she asked to clarify, is this the existing  
17 businesses? Is this future businesses? Is it the general  
18 neighborhood at large?

19 COMMISSIONER MOUNTAIN: Existing businesses.

20 ATTORNEY TARYN JONES: Existing businesses.  
21 Thank you.

22 COMMISSIONER MOUNTAIN: Thank you.

23 ATTORNEY TARYN JONES: The last finding is that  
24 the proposed action would be in compliance with the  
25 provisions of California Environmental Act, CEQA, and the  
26 city's CEQA guidelines.

27 COMMISSIONER MOUNTAIN: It meets those  
28 qualifications.

1           ATTORNEY TARYN JONES: Okay. So if you wouldn't  
2 mind, when clarifying your motion, as I understand it, you  
3 are making a motion to deny and asking staff to come back  
4 with a resolution articulating the findings on the record,  
5 which you have articulated, in which you found that  
6 finding No. 2, No. 5, and No. 6 could not be met for the  
7 reasons stated on the record. Is that accurate?

8           COMMISSIONER MOUNTAIN: This is correct.

9           ATTORNEY TARYN JONES: Chair, if I may. Can I  
10 confirm with this individual who seconded the motion that  
11 the -- that they still agree with the motion as made. I  
12 think that was Commissioner Villapudua?

13           COMMISSIONER VILLAPUDUA: Yes.

14           ATTORNEY TARYN JONES: Okay. You're all set to  
15 take your vote.

16           THE CLERK: Thank you. Please cast your votes.

17           COMMISSIONER MOUNTAIN: My vote -- hold on. Can  
18 you reset the vote?

19           THE CLERK: Please recast them, please.

20           ATTORNEY TARYN JONES: Sorry. To clarify the  
21 motion just based on what we discussed --

22           COMMISSIONER MOUNTAIN: Yes. I keep pressing yes  
23 and it keeps showing up as --

24           ATTORNEY TARYN JONES: So it seems as though this  
25 was a technical issue with the voting. So we'll take the  
26 vote one last time. If the technological issue is not  
27 resolved, we'll take a roll call vote.

28           THE CLERK: They have been reset. Please cast

1 your votes.

2 ATTORNEY TARYN JONES: Given the past  
3 correspondence that we've had with Commissioner Mountain  
4 and the fact that his vote is not accurately reflected by  
5 the technology, I'm going to request that the clerk take a  
6 roll call vote so we can ensure that the vote is  
7 appropriately recorded.

8 THE CLERK: Commissioner Garcia?

9 COMMISSIONER GARCIA: Yes.

10 THE CLERK: Commissioner Mountain?

11 COMMISSIONER MOUNTAIN: Yes.

12 THE CLERK: Chair Mallett?

13 CHAIR MALLET: No.

14 THE CLERK: Commissioner Rizvi?

15 COMMISSIONER RIZVI: No.

16 THE CLERK: Commissioner Villapudua?

17 COMMISSIONER VILLAPUDUA: Yes.

18 THE CLERK: Commissioner Jones?

19 COMMISSIONER JONES: Yes.

20 THE CLERK: Motion passes 4-2.

21 CHAIR MALLET: Okay. So appeal -- any party  
22 that wishes to appeal this decision may do so within 10  
23 days of the Commission's decision pursuant to Stockton  
24 Municipal Code 16.100.020.

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1 STATE OF CALIFORNIA, . )  
2 )  
3 COUNTY OF STANISLAUS. )  
4

5 I, JULIE RISHWAIN PALERMO, a Certified Shorthand  
6 Reporter in and for the County of Stanislaus, State of  
7 California, do hereby certify:

8 That I have transcribed the electronic/audiotaped  
9 recording of the proceedings; that the foregoing  
10 transcript constitutes a full, true, and correct  
11 transcription of all proceedings had and given.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 and affixed my Official Seal on August 10, 2021.  
14

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18 JULIE RISHWAIN PALERMO, CSR #4220  
19 Certified Shorthand Reporter  
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