

From: [Damian A. Martin](#)
To: [Mermell, Steve](#)
Cc: [Bagneris, Michele](#); [Daza, Laarni](#)
Subject: RE: Letter to D. Martin - Request for Appeal of Commercial Cannabis Screening Application
Date: Wednesday, June 26, 2019 7:59:01 PM
Attachments: [image001.png](#)
[00000300-JF139B781OC031-JFJ443EA1NC031.pdf](#)
[PRA 0011327 - Requestor Email.msg](#)

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City Manager Mermell:

Thank you for providing the attached letter, although—given the flimsiness of the legal analysis—I can hardly believe the City Attorney concurs with the conclusion that WOW Health and Wellness, LLC (“WOW”), “may not appeal the results of the screening process, and, therefore, the City will not be taking any action on [WOW’s] request.”

For starters though, thank you for clarifying that you had “delegated to the Director of Planning and Community Development (‘[Director](#)’) the authority to undertake the tasks necessary to complete the screening process.” When WOW initially attempted to file its Appeal with the City, the Director and Planning and Community Development Department took the position that cannabis permit screening application decisions were decisions of the City Manager—which would completely contradict Laarni Daza’s attached email indicating “that the City Manager’s Office does not have any records responsive to [WOW’s] PRA request.”

Speaking of contradictions, you have taken the position that “[o]ne of the actions so taken by the Director was to publish a rule that the results of the screening process were not appealable, and the Director published that rule on the City’s Marijuana Regulations page here: <https://ww5.cityofpasadena.net/planning/marijuana-regulations/>.” However, there is not a single published rule on the Marijuana Regulations page that says “the results of the screening process were not appealable”. Below are links to all the documents that could be considered “regulations” on the Marijuana Regulations page—there is not a single utterance in any of the documents saying the results of the cannabis permit screening process are not appealable:

- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2018/12/Screening-Application-Information-Packet_FINAL.pdf
- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2018/12/Review-Criteria_1.16.19-Revised.pdf
- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2018/12/Questions-and-Responses-for-Commercial-Cannabis_FINAL.pdf
- <https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2017/08/Applicant-Owner-Submittal-Form-FINAL-Rev-1.3.19.pdf>

- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2019/01/Questions-and-Responses_P2_1.16.19-1.pdf
- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2019/01/Questions-and-Responses_P3_1.25.19.pdf
- https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2019/01/Questions-and-Responses_P4_1.30.19-FINAL.pdf

Notably in your letter, you do not cite or quote any specific regulatory language posted on the Marijuana Regulations page, but just cite to the webpage generally, hoping I suppose, that WOW hadn't thoroughly reviewed the above documents.

In a second misreading, you have taken the position that under Article 8 of the Zoning Code, the definition of decision “only applies to decisions made by the Director pursuant to the Zoning Code.” Again as above with the Marijuana Regulations page, Article 8 of the Zoning Code never uses the words “pursuant to the Zoning Code.” Rather, Article 8 of the Zoning Code, defines “decision” as “[a]n action in compliance with this Zoning Code”. Are you really taking the position that the Director’s—to use your own words—“**decisions** made during the screening process” were **NOT** in compliance with this Zoning Code?! Such a conclusion would be hugely problematic for the City’s cannabis screening process because the Director’s existence, appointment, and authority all stem from the Zoning Code. See PMC § 17.70.030.A (“The Pasadena Planning Director, referred to in this Zoning Code as the Director, shall be appointed by the City Manager.”).

On that note, even if Article 8 of the Zoning Code, defined “decision” as “an action pursuant to the Zoning Code”, the Director’s—again to use your words—“**decisions** made during the screening process” were clearly pursuant to the Zoning Code. On that note and as mentioned above, the Director’s existence, appointment, and authority all stem from the Zoning Code. See PMC § 17.70.030.A (“The Pasadena Planning Director, referred to in this Zoning Code as the Director, shall be appointed by the City Manager.”). More specifically, although Sections 5.78.070 and 5.78.080 of the Pasadena Municipal Code provide the City Manager authority to appoint a designee to make “decisions . . . during the screening process”, Section 17.70.030—*i.e.*, the Zoning Code—provides the Director’s existence, appointment, and authority to accept that designation. Accordingly, Chapter 17.72 applies to any “determination, decision, or action rendered by the Director” without limitation. To use your words yet again, you plainly agree that the Director made “**decisions** . . . during the screening process”. These decisions are clearly appealable pursuant to Chapter 17.72 of the Pasadena Municipal Code.

Ultimately, and especially given the clear analysis above, your decision to reject WOW’s appeal puzzles me from both a legal and political perspective. Presently, the Pasadena’s cannabis permit screening process is cratering before our eyes:

- The City selected an applicant with widely publicized and credible accusations of unlawful business practices. See Eddie Rivera, *Pasadena Cannabis Finalist MedMen Faces Increased Scrutiny*, Pasadena Now (updated June 14, 2019), www.pasadenanow.com/main/pasadena-

[cannabis-finalist-medmen-faces-increased-scrutiny/#.XRQinuhKhPY](https://www.mjbizdaily.com/former-cfo-sues-cannabis-firm-medmen-alleging-breach-of-contract/); John Schroyer, *Former CFO sues cannabis firm MedMen, alleging breach of contract, other misdeeds*, Marijuana Business Daily (January 31, 2019), <https://www.mjbizdaily.com/former-cfo-sues-cannabis-firm-medmen-alleging-breach-of-contract/>; Jeff Smith, *Marijuana firm MedMen, top execs face \$20 million suit for allegedly breaching duties, enriching selves*, Marijuana Business Daily (January 10, 2019), <https://www.mjbizdaily.com/marijuana-firm-medmen-top-execs-face-20-million-suit-for-allegedly-breaching-duties-enriching-selves/>; John Schroyer, *Marijuana retailer MedMen facing potential class action lawsuit from former employees*, Marijuana Business Daily (December 6, 2018), <https://www.mjbizdaily.com/marijuana-retailer-medmen-facing-class-action-lawsuit-from-former-employees/>.

- Protesters have questioned the transparency and community benefits of the Director’s “decisions made during the screening process”. Eddie Rivera, *Protesters Question Transparency and ‘Community Benefits’ of City’s Cannabis Licensing Process*, Pasadena Now (June 12, 2019), www.pasadenanow.com/main/protesters-question-transparency-and-community-benefits-of-city-cannabis-license-process/#.XRQh--hKhPY.
- WOW is informed and believes that attorney Roger Diamond, famous for successfully suing California municipalities throughout the State, is preparing a class action lawsuit to challenge the Director’s “decisions made during the screening process”.
- WOW is informed and believes that a group of local residents are preparing a ballot initiative to challenge / overturn the Director’s “decisions made during the screening process”.
- In its Appeal, WOW clearly establishes that the Director’s appointment of a selection committee consisting of only a single member—HdL Companies—is an egregious violation of the voter-approved Measure CC.
- In its Appeal, WOW clearly establishes that the City used the cannabis permit selection process fee to raise over \$1.2M in revenue in violation of Article XIII C of the California Constitution.

To begin, the City’s acceptance of WOW’s appeal would thwart any efforts by Roger Diamond to initiate a class action lawsuit because of his clients’ failure to exhaust their administrative remedies as WOW is doing with its Appeal. On that note, by submitting its Appeal, WOW sought to adjudicate its concerns with the City’s cannabis permit screening process in a quiet administrative hearing rather than a court of law and public opinion. With that point in mind, if you and the City Attorney still refuse to accept WOW Appeal’s after reviewing this email, WOW’s will have no further recourse than to provide the Pasadena City Council notice of WOW’s intent to sue challenging the Director’s “**decisions** made during the screening process” and to proceed with a lawsuit.

Respectfully,

Damian A. Martin, Esq., M.B.A.

Phone: 757-652-0460

Email: damian.martin.esq@gmail.com

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From: Daza, Laarni <ldaza@cityofpasadena.net>

Sent: Thursday, June 20, 2019 3:17 PM

To: damian.martin.esq@gmail.com

Cc: Mermell, Steve <smermell@cityofpasadena.net>; Bagneris, Michele <mbagneris@cityofpasadena.net>

Subject: Letter to D. Martin - Request for Appeal of Commercial Cannabis Screening Application

Good afternoon Mr. Martin,

Please see attached sent on the City Manager's behalf.

Regards,

Laarni Daza

Senior Executive Assistant
to City Manager Steve Mermell
City of Pasadena
100 N. Garfield Avenue, Suite S228
Pasadena, CA 91101

P: (626) 744-4059



Nunez, Guille

From: Daza, Laarni
Sent: Thursday, June 20, 2019 11:56 AM
To: damian.martin.esq@gmail.com
Cc: Daza, Laarni
Subject: PRA 0011327 - Requestor Email

Good morning Mr. Martin,

Please be advised that the City Manager's Office does not have any records responsive to the PRA request.

Regards,
Laarni Daza

--- Original Request ---

Received: 6/17/2019

Subject Matter: The Public Record Act Request RE WOW's Appeal

Request: As required under the California Public Records Act and other applicable law, on behalf of WOW Health and Wellness, LLC ("WOW"), please provide the following records for the period starting on November 7, 2016 (the date the City Council authorized the City Manager to enter into a three-year agreement with HdL Companies) to present:

1. Any (draft, preliminary, and final by any person or collectively decision-making body) "scoring sheets", written explanations, or notes of the selection committee, including HdL Companies (or any employee or agent of HdL Companies), appointed pursuant to Sections 5.78.070 and 5.78.080 of the Pasadena Municipal Code to score and review of any cannabis retailer screening application, including WOW's (the "Selection Committee").
2. The identity of each member of the Selection Committee.
3. Any guidance or instructions that were provided, reviewed, or discussed by any person or collectively decision-making body (including the Selection Committee) in the process of the scoring and reviewing any cannabis retailer screening application, including WOW's.
4. A summary and the minutes of any meeting of the Selection Committee and between any members of the Selection Committee.
5. Any materials (including any Owner/Applicant Forms, Cover Letters, or Business Plans) that were reviewed or discussed by any person or collectively decision-making body (including the Selection Committee) in the process of the scoring and reviewing any cannabis retailer screening application, including WOW's.

6. Any communications (and records thereof, e.g., email attachments) between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and HdL Companies (or any employee or agent of HdL Companies).

7. The record, summary, and minutes of any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and HdL Companies (or any employee or agent of HdL Companies).

8. Any materials reviewed or discussed at any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and HdL Companies (or any employee or agent of HdL Companies).

9. Any communications (and records thereof, e.g., email attachments) between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and the Selection Committee (or any individual member or agent of any individual member).

10. The record, summary, and minutes of any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and the Selection Committee (or any individual member or agent of any individual member).

11. Any materials reviewed or discussed at any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and the Selection Committee (or any individual member or agent of any individual member).

12. Any communications (and records thereof, e.g., email attachments) between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and (i) any owner / operator of any cannabis retailer screening applicant, (ii) any agent(s) of any applicant, (iii) any consultant(s) of any applicant, and/or (iv) any lobbyist(s) of any applicant.

13. The record, summary, and minutes of any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and (i) any owner / operator of any cannabis retailer screening applicant, (ii) any agent(s) of any applicant, (iii) any consultant(s) of any applicant, and/or (iv) any lobbyist(s) of any applicant.

14. Any materials reviewed or discussed at any meeting between any former or current officer (e.g., Mayor, City Council, City Manager, City Attorney), employee, or agent of the City of Pasadena and (i) any owner / operator of any cannabis retailer screening applicant, (ii) any agent(s) of any applicant, (iii) any consultant(s) of any applicant, and/or (iv) any lobbyist(s) of any applicant.

Please provide all records in an electronic format, for example, emails in a .pst as .msg files, documents as .pdf or .doc, etc. Once all of the files are prepared / readied, WOW will provide the City a flash drive or an external hard drive upon which to upload / transfer all of the files.

Respectfully,

Damian A. Martin, Esq., M.B.A.
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