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**From:** Sanders, Greg <gsanders@nossaman.com>  
**Sent:** Tuesday, August 06, 2019 1:59 PM  
**To:** Nunez, Guille  
**Subject:** Board of Zoning Appeals (August 7, 2019) - SweetFlower Pasadena, LLC Appeal Letter  
**Attachments:** 57100422\_1 - Sweetflower\_Pasadena Dispensary - 2019 08 06 Letter re\_ Appeal of Determination.DOCX

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Guille – Attached is a letter addressed to the Board of Zoning appeals. The letter explains the basis SweetFlower’s appeal of the determination finding its original cannabis conditional use permit application incomplete. Please forward the letter electronically to each of the members of the Board of Zoning Appeals. For you convenience, 20 copies of the letter will be delivered to you today by messenger.

Please let me know if you have any questions or need further information regarding this matter.

Greg Sanders

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Refer To File #: 503561-0001

**VIA EMAIL AND MESSENGER**

August 6, 2019

The Honorable Felicia Williams, Mayor and  
Members of the Board of Zoning Appeals  
City of Pasadena  
100 N. Garfield Avenue,  
Pasadena, CA 91101

Re: SweetFlower LLC – Appeal of Determination that Conditional Use Permit:  
Cannabis Retailer Application is Incomplete

Dear Ms. Williams and Members of the Board of Zoning Appeals:

We represent SweetFlower Pasadena, LLC (“Sweetflower”) with regard to all matters pertaining to SweetFlower’s application for a Conditional Use Permit: Cannabis Retailer filed on June 12, 2019 (“Application”). The purpose of this letter is to supplement the Request for Appeal filed with the Board of Zoning Appeals by Sweetflower on July 3, 2019 appealing the determination by the Planning and Community Development Department that the Application is incomplete.

By letter of June 27, 2019, Ms. Guille Nunez, Management Analyst IV, Planning and Community Development Department (“Determination Letter”), informed Timothy Dodd of SweetFlower the Application was deemed incomplete. The basis for the determination was that the location map filed with the Application does not comply with the requirements of Pasadena Municipal Code Section 17.50.066 D (5) because it was not “prepared by a licensed surveyor as indicated in the Cannabis Retailer application.”

Following is a discussion of the basis of this appeal (unless otherwise indicated, all future references to “Sections” are to the Pasadena Municipal Code):

I. Section 17.50.066 D (5) does not require that the Application location map be prepared by a licensed surveyor.

Contrary to the assertion in the Determination Letter that the Application is incomplete because the submitted location map does not comply with Section 17.50.066 D (5), the location map is complete and does comply with the relevant section because it satisfies each of the listed requirements for location maps submitted with cannabis conditional use permit applications. Neither Section 17.50.066 D (5) nor any other section of the Pasadena Municipal Code require that the location map be prepared by a licensed surveyor. The location map

submitted with the Application was compliant in every respect with the requirements of Section 17.50.066 D (5).

In a meeting of June 12, 2019 convened by City staff with two members from each of the six successful applicants (including two members from SweetFlower) the City provided, for the first time and after multiple delays by the City, the conditional use permit application process and requirements for cannabis retailers. During the review of the conditional use permit application process in this meeting, the City provided no more or less emphasis on the licensed surveyor requirement than it did any other requirement established for the conditional use permit process. Rather, the City provided a cursory summary of all of the requirements set forth on each page of the application form and summarized the application process.

At the conclusion of the City's presentation, questions were invited from the attendees. The majority of substantive questions went to the requirement of "completeness;" what standard the City would apply in judging an application for it to be deemed "complete" and to then be considered for the next phase of the conditional use permit process.

As the City anticipated that completed applications would be received from the successful applicants within 24 hours of the meeting, the City owed a duty of care to all applicants to immediately, clearly and carefully set out the standards by which it would assess "completeness." The City failed in discharging its duty of care in this regard. In the June 12 meeting, the City provided at least three different standards it would employ to assess "completeness" – first, a "complete with no gaps" standard, was expressed. After further questions were raised by attendees, the City expressed a "substantially complete" standard. Last, after a further round of questions from various attendees, the City expressed a "complete in good faith" standard by which it would assess application completeness.

SweetFlower Pasadena had already substantially compiled a proposed conditional use permit application based on prior experience and familiarity with the Pasadena Municipal Code, and had a fully compliant location map in hand. Over the course of the next five hours SweetFlower completed the remainder of the application materials that were outstanding and required for a complete application.

It should be further noted that after the June 12 meeting, but before SweetFlower submitted its complete application, the City sent an email to all meeting attendees (and prospective applicants) in which the City further underscored the nebulous "good faith" application completeness standard advice that had previously been proffered. In that email, the City staff advised, "We expect applicants to submit their best application at the time that the appointment is requested with the full body you want included in the CUP."

At no time prior to or during the initial notification of the cannabis retailer conditional use permit application process did City staff inform prospective applicants that solely by reason of the submission of a location map prepared by a professional other than a licensed surveyor would the City deem the entire Application incomplete.

In reliance on the City's representations, SweetFlower, in good faith, submitted its "best (and complete) application" which, as discussed above, was completely code compliant. Had the staff indicated its insistence on having location maps prepared by a licensed surveyor,

SweetFlower would have willingly complied. Based, however, on the standards for completeness expressed by the City of Pasadena staff that day, and in full reliance thereon, SweetFlower submitted its complete Application at 5.34 p.m. that same day, making it the first application received. In furtherance of SweetFlower's good faith compliance, the submitted location map in all respects complies with the City's location map requirements for all uses for which location maps are required in connection with conditional use permit applications. The location map submitted by SweetFlower was prepared by a retired licensed surveyor in good faith. As discussed above, the submitted location map complies in all respects with Section 17.50.066 D (5). In fact, the sample location map emailed by the City staff on June 13, 2019 to prospective applicants nowhere indicates that it must be prepared by a licensed surveyor.

At no time was SweetFlower ever advised by the City staff that the failure to include with its application a map prepared by a licensed surveyor would result in a finding that the application was incomplete. The nebulous application completeness standard imparted by the City ("good faith" and "best application") and the sample location map emailed to prospective applicants implied that any technical infirmities with the location map could be corrected without jeopardizing the status of SweetFlower's application. In fact, Section 17.60.040 G provides that, "Whenever an applicant desires/needs to file revised materials, the materials shall be submitted at least 10 days before a public hearing on the application." SweetFlower properly and reasonably relied on the City staff's advice regarding the standards for a complete application with the assurance provided by Section 17.60.040 G that location map technical issues could be resolved after submission of the Application and prior to a determination of its completeness.

Further, as discussed fully in Section III below, there is no provision in the Pasadena Municipal Code or regulations promulgated by the City Manager authorizing imposition of a requirement that licensed surveyors prepare cannabis retailer conditional use permit application location maps or delegation of authority to do so to the Director of the Planning and Community Development Department.

II. The Planning and Community Development Department failed to convene a predevelopment plan review meeting required by Section 17.60.040 C.

Section 17.60.040 C mandates that the Planning and Community Development Department convene a meeting to review and discuss "all applications for discretionary permits required under this Zoning Code . . ." which meeting must be conducted "before deeming the application complete." If the meeting must be conducted prior to making a determination that an application is complete, it necessarily follows that such meeting must occur before an application is deemed incomplete. (See § 17.60.040, subs. C (1-3).) Any other interpretation would eviscerate the purposes of the predevelopment plan review meeting requirement which, among other things, includes the opportunity to "Familiarize applicants for the projects with the regulations and procedures that apply to the projects." (§ 17.60.040, subs. C (c).) Following a predevelopment plan review meeting, applicants must receive "the results of the predevelopment plan review and staff comments." (§ 17.60.040 C (3)(e).)

The required predevelopment plan review meeting with SweetFlower was never convened. Rather, the Planning and Community Development Department ignored the explicit Pasadena Municipal Code predevelopment plan review meeting requirements and proceeded to determine that the Application is incomplete on the basis of a requirement the department had

no legal authority to impose. Had the predevelopment plan review meeting been held as required, the mandated communication of the results of the meeting would have advised Sweetflower to submit a location map prepared by a licensed surveyor. SweetFlower would have complied despite the objection that the Planning and Community Development Department had no legal authority to require such a map and the Application would thereafter have been deemed complete.

It bears noting that there is no allegation that the location map prepared by a very experienced and qualified professional and submitted by SweetFlower was erroneous or even suspect in any respect. The Planning and Community Development Department's sole basis for declaring SweetFlower's Application incomplete is that this entirely accurate map was not "prepared" by a currently licensed surveyor (an extraordinary requirement). It strains credulity to determine that an application that contains, reliably and accurately, all the required data and information for review and approval of a conditional use permit is not "complete" due to the lack of a particular attestation.

III. Only the City Manager is authorized to promulgate regulations regarding cannabis retail business permit applications.

The staff report submitted to the Board of Zoning Appeals in connection with this appeal asserts that the Director of Planning and Community Development is vested with the authority to impose requirements for cannabis retailer conditional use permits that are not specified elsewhere in the Pasadena Municipal Code. The Pasadena Municipal Code provides otherwise.

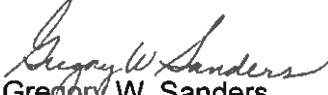
Section 5.78.070 A provides that "The City Manager shall promulgate the procedures to govern the application process and manner in which the decision will ultimately be made regarding the issuance of any commercial cannabis permit . . ." (Emphasis added.) "Commercial cannabis permit" is defined in Section 5.78.050 M to mean "a regulatory permit issued by the City of Pasadena pursuant to this chapter to a commercial cannabis business." Section 578.080 F sweeps cannabis retailer conditional use permits within the ambit of Chapter 5 of the Pasadena Municipal Code by providing that "applicants shall apply to the planning and community development department [sic] to obtain any required land use approvals." In furtherance of his sole authority to promulgate regulations under Section 5.78.070 A that govern cannabis conditional use permit applications, the City Manager has published the Cannabis Use Permit: Cannabis Retailer Rules and Regulations.

The provisions of Section 5.78.70 are clear and unambiguous. The City Manager, not the Director of Planning and Community Development, has the authority to impose extraordinary requirements for cannabis retailer conditional use permit applications, including a requirement that location maps be prepared by a licensed surveyor. Further, there is no provision in the Pasadena Municipal Code authorizing delegation of the City Manager's authority to the Director of Planning and Community Development. Accordingly, imposition of the requirement by the Planning and Community Development Director that the location map accompanying the Application be prepared by a licensed surveyor is not permitted.

For all of the reasons discussed above, we urge the Board of Zoning Appeals to follow the requirements of the Pasadena Municipal Code and overturn the decision that the Application is incomplete.

We will be present at the appeal hearing with representatives of SweetFlower to present oral argument and to respond to any questions you may have.

Respectfully Submitted,

  
Gregory W. Sanders  
Nossaman LLP

GWS:jg