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Court Rules Commercial Cannabis Businesses are Similar to Current Land Uses and Covered by City's General Plan EIR

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In *Lucas v. City of Pomona*, the Court of Appeal, Second District, recently held that proposed land uses relating to commercial cannabis businesses are similar to existing and defined land uses within a zoning ordinance district and do not require additional environmental review under the California Environmental Quality Act (CEQA).

The City of Pomona decided to allow cannabis businesses in specific areas within its boundaries, and in doing so determined that adoption of an Overlay District was exempt from the requirements of CEQA. Thus, the City did not conduct additional environmental review under CEQA when designating these areas for commercial cannabis activity.

After conducting a multistep analysis, City staff determined that the six commercial cannabis uses were similar to existing business practices. These Determinations of Similarity are: 1) cannabis cultivation is a use similar to raising of crops; 2) cannabis distribution is a use similar to distributing plants; 3) cannabis manufacturing is a use similar to manufacturing, compounding, processing, or packaging of products; 4) cannabis retail is similar to retail stores; 5) cannabis retail storefronts are similar to retail storefronts; and 6) cannabis lab testing is similar to laboratory testing.

The City evaluated the proposed Overlay District's consistency with the findings of the 2014 EIR prepared for the City's General Plan Update. This evaluation considered each of the environmental issues from the EIR: air quality, GHG emissions, land use and planning, noise, public services, and traffic. The City concluded that approval of the Overlay District would not result in any new or increased severity of significant environmental effects beyond those identified in the 2014 General Plan EIR, and therefore no additional environmental review or documentation was required.

After a local citizen found out his storefront was excluded from the proposed commercial cannabis zone, he sued the City for violation of CEQA.

The Court of Appeal held that a substantial evidence standard is the appropriate standard of review in determining whether additional environmental review under CEQA is required or a statutory exemption exists. Using this standard, the exemption applies to the project if substantial evidence in the administrative record supports the finding of an exemption. This standard was accepted over the more stringent “fair argument” standard, which would permit the exemption if there is no credible evidence to the contrary.

The court found that there was substantial evidence to support the finding that the approval of the Overlay District was similar enough to existing determinations made in the EIR for the General Plan Update and therefore additional CEQA review was not required. However, this case may have limited applicability because a different court may not reach the same conclusion due to potentially unique impacts of some cannabis businesses such as odor for cannabis cultivation businesses and use of certain chemicals for manufacturing cannabis businesses.