

PC 10/13/2022

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Comment from Applicant's Legal Counsel for Item #22-1613 on 10/13/22 Planning Commission Agenda

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Good afternoon,

Attached is a letter from the Law Offices of Omar Figueroa, who represents applicant Mr. Matthew Vaughn of Medical Marijuana Caregivers Association ("MMCA"), for Item #22-1613 on the El Dorado County Planning Commission agenda for October 13, 2022.

Please let me know if you have any questions regarding this matter.

Thank you.



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— LAW OFFICES OF —
OMAR FIGUEROA

October 3, 2022

El Dorado County Planning Commission
ATTN: Clerk of the Planning Commission
planning@edcgov.us

CC: Aaron Mount, El Dorado County Planning and Building Department
aaron.mount@edcgov.us

CC: Jefferson Billingsley, El Dorado County Counsel's Office
jefferson.billingsley@edcgov.us

Re: Item 22-1613 on the October 13, 2022 Planning Commission Agenda -
Medical Marijuana Caregivers Association (CCUP19-0005)

Dear Honorable Planning Commissioners,

Please be advised that my office represents Mr. Matthew Vaughn with regards to the commercial cannabis retail permit application submitted by Medical Marijuana Caregivers Association (MMCA). It is our honor to represent Mr. Vaughn – a glaucoma patient, dedicated advocate and responsible business owner – who has been operating one of the oldest medical cannabis establishments in the State in El Dorado County for nearly 20 years.

Although the staff's recommendation is to deny MMCA's application, I strongly feel that would be an error based on incomplete information regarding my client's background, as well as a violation of my client's rights. Further, denying this application – which, unlike most applications before the Planning Commission, would not mean that a new business could not open but rather would mean that an existing, state-licensed business would have to *shut down entirely* – would not be in the best interest of the County or the local community. Therefore, for the reasons stated herein, I ask that the Planning Commission APPROVE this application.

Mr. Vaughn has operated a medical cannabis dispensary in El Dorado County in compliance with State law since 2004. During that time, he has served countless patients, many of whom were without reliable access to medical cannabis before MMCA was established. According to my client, MMCA has paid \$45,637 in local cannabis taxes over the past three years alone (not to mention other taxes and fees dating back further), and has provided numerous jobs for local workers since first opening in 2004. Clearly, MMCA is a valuable member of the community.

MMCA is one of five pre-existing medical cannabis facilities that was temporarily "grandfathered in" by the County and allowed to maintain its existing operations while the current permit program is underway. MMCA was still required to submit an application in order to continue operating in the future, which Mr. Vaughn did in a timely fashion.

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On December 1, 2021, the El Dorado County Sheriff's Office ("EDSO") notified Mr. Vaughn via a letter (which was not postmarked until December 30, 2021 or received until January 7, 2022) that they would not be recommending that MMCA move forward with El Dorado County's cannabis permit process due to the results of his background check. However, the prior conviction which triggered the EDSO's action was dismissed pursuant to Penal Code §1203.4 ("expunged") on June 28, 1996. It is likely that the cursory background check conducted as part of the application process did not show this dismissal, so Mr. Vaughn requested his official criminal history record from the California Department of Justice. Mr. Vaughn then attempted to correct the oversight by submitting his official criminal history record showing the dismissal as well as a copy of the minute order from his expungement hearing to EDSO. However, he received no response or acknowledgement.

My office also attempted to contact EDSO about this, but was told that they would not change their recommendation, which was apparently based on their determination that it is "more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations" – a vague standard which is incongruous with state law.

This is nothing more than an attempt by the Sheriff's Office to shut down MMCA once and for all, which has operated for years in compliance with state guidelines. My client should not be penalized for being a medical cannabis advocate, and the Planning Commission has the power to stop this injustice. As EDSO acknowledged, the authority as to whether or not a commercial cannabis permit should be issued rests with the Planning Commission, regardless of the Sheriff's or of Staff's recommendation.

State cannabis regulations explicitly say that the licensing body shall take into consideration evidence of rehabilitation, including "evidence of dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or pursuant to another state's similar law¹ if applicable, evidence of dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or pursuant to another state's similar law," as well as other factors, such as the amount of time that has elapsed and an applicant's criminal record as a whole.¹ Here, not only was the conviction dismissed roughly 20 years ago, but the underlying offense occurred over 30 years ago – and was not related to drugs, money, fraud, or anything else related to one's ability or trustworthiness to operate a compliant cannabis business. There is no legitimate reason for El Dorado County to refuse to take these factors into account.

Furthermore, MMCA already has an authorized medical cannabis retail facility (as one of the County's five "pre-existing medical cannabis distribution facilities" that have been grandfathered in) and an active State license for the exact location he seeks to obtain this

¹ 4 Cal. Code of Regs. §15017.

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permit. Thus, both the County and the State have already acknowledged that Mr. Vaughn is not a threat to the public and is fit to run a commercial cannabis business. Rejection of this application based on a 30-year-old conviction that was expunged 20 years ago is incongruous with this, and also runs afoul of the requirement in Business and Professions Code §480(c) that "...a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement."

As you can see, staff have no complaints about Mr. Vaughn's actual application, because there is nothing they can object to. Again, this is not an outsider or a fly-by-night applicant – MMCA has been serving the El Dorado County community and supporting the local economy in compliance with state law for 18 years. Much of this time has been at the location described in this application, so it is already known to be suitable for this type of use. Also, this would not be a new business moving into the neighborhood, so questions related to impacts on surrounding properties aren't an issue. It would be tragic for the County to kill a small business that has been providing revenue and employment opportunities based on an incomplete, arbitrary, and potentially illegal review of my client's background. Furthermore, such an action would perpetuate rather than combat the illicit market by removing one of a limited number of legal cannabis retail access points.

Mr. Vaughn has a broad coalition of support, including California NORML, Americans for Safe Access, the El Dorado County Growers Advocacy Alliance, local patients who trust and rely on MMCA to provide their medical cannabis, and community members who know that Mr. Vaughn is a good neighbor and an honest businessman.

On behalf of my client, as well as all of the patients he has served over the years and all of the customers he hopes to serve in the future, I ask that the Planning Commission vote to APPROVE the cannabis application submitted by MMCA.

Thank you,



Lauren Mendelsohn, Esq.
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Attorney for Matthew Vaughn (MMCA)