

AGENDA

SPECIAL MEETING

ANTIOCH CITY COUNCIL: CANNABIS STANDING COMMITTEE

COUNCIL MEMBERS WILSON AND THORPE

THURSDAY, AUGUST 20, 2020

3:00 P.M.

PURSUANT TO GOVERNOR GAVIN NEWSOM'S EXECUTIVE ORDER N-29-20, THIS MEETING WILL BE HELD AS A TELECONFERENCE/VIRTUAL MEETING. OBSERVERS MAY VIEW THE MEETING LIVESTREAMED VIA THE CANNABIS STANDING COMMITTEES' WEBSITE AT:

<https://www.antiochca.gov/csc/meeting/>

NOTICE OF OPPORTUNITY TO ADDRESS THE COMMITTEE

Members of the public wishing to provide public comment may do so in the following way:

- 1) Prior to 1:00 the day of the meeting: Written comments may be submitted electronically to the following email address: cityattorney@ci.antioch.ca.us. All comments received before 1:00 pm the day of the meeting will be provided to the Cannabis Committee at the meeting. Please indicate the agenda item and title in your email subject line.
- 2) After 1:00 the day of the meeting and during the meeting: Comments can be submitted to the Cannabis Committee through the Zoom meeting. Please use the link to register and attend the meeting.

After hearing from the public, the agenda item will be closed. Deliberations will then be limited to members of the Committee.

The City cannot guarantee that its network and/or the site will be uninterrupted. To ensure that the City Council receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting.

NOTICE OF AVAILABILITY OF REPORTS

This agenda is a summary of the discussion items/actions proposed to be taken by the Committee. The Agendas, including Staff Reports will be posted onto our City's Website 24 hours before each Committee Meeting. To view the agenda information, click on the following link: <https://www.antiochca.gov/government/agendas-and-minutes/csc/>

- 1. ROLL CALL**
- 2. INTRODUCTIONS**
- 3. PUBLIC COMMENT ON AGENDIZED ITEMS**
- 4. POTENTIAL REVISIONS TO CANNABIS ORDINANCE**
 - a. Receive staff presentation, discuss and advise staff on potential cannabis ordinance modifications including potential cannabis overlay district modifications.
- 5. ONE PLANT OPERATING AGREEMENT**
 - a. Discuss One Plant's Operating Agreement including its social equity program.
- 6. INDOOR CANNABIS CULTIVATION**
 - a. Discuss and advise on indoor cannabis cultivation.
- 7. MESA ANTIOCH, LLC REQUEST FOR AMENDMENT TO BILLBOARD LEASE AGREEMENT**
 - a. Discuss Mesa Antioch, LLC's request to amend billboard lease agreement to permit cannabis advertising.
- 8. INFORMATION ON ACTIVITIES OF EXISTING AND PROPOSED CANNABIS BUSINESSES**
 - a. Contra Costa Farms
 - b. Delta Dispensary
 - c. One Plant
 - d. Alluvium
 - e. Cookies
 - f. Others
- 9. MOTION TO ADJOURN:** *The Secretary of Cannabis Committee Meeting will make a motion to adjourn the meeting. A second of the motion is required, and then a majority vote is required to adjourn the meeting.*

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| <p><u>IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND CALIFORNIA LAW</u>, it is the policy of the City of Antioch to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at the number or email address below at least 72 hours prior to the meeting or when you desire to receive services. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. The City's ADA Coordinator can be reached @ Phone: (925) 779-6950, and e-mail: publicworks@ci.antioch.ca.us.</p> |
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CITY OF
ANTIOCH
CALIFORNIA

DATE: August 20, 2020
TO: Cannabis Standing Committee
SUBMITTED BY: Thomas Lloyd Smith, City Attorney
SUBJECT: Potential Revisions to Cannabis Ordinance

DISCUSSION

Receive staff presentation, discuss and advise staff on potential cannabis ordinance modifications to the current cannabis overlay district.

State law prohibits a cannabis business from being within a 600-foot radius of an existing school, day care center, youth center. The City's current restrictions are broader than state law, limiting the location of a cannabis business only within the Cannabis Zoning Overlay District and not within 600 feet of any private or public school, public park owned or operated by the city; property occupied by a residential land use or with a residential or general plan land use designation or zoning designation; and a child care center, as defined by the Antioch Municipal Code. The City has the discretion to reduce the 600-foot restriction.

Staff has attached the existing cannabis ordinance as background information for the Cannabis Standing Committee.

ATTACHMENTS

A. Cannabis Ordinance No.2165-C-S

ORDINANCE NO. 2165-C-S

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING ARTICLE 3845 OF CHAPTER 5 OF TITLE 9 OF THE ANTIOCH
MUNICIPAL CODE TO INCLUDE THE REQUIREMENT OF A DEVELOPMENT
AGREEMENT, AMENDING DEFINITIONS RELATED TO CANNABIS RETAIL AND
CANNABIS DELIVERY, AND REQUIRING A 600 FOOT SEPARATION FROM CHILD
CARE CENTERS.**

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") through the general rule, that it can be found with certainty that the project will have no potential for significant impact on the environment.

SECTION 2:

The City Council enacted Ordinance 2143-C-S on June 26, 2018 regarding Cannabis Businesses; and

SECTION 3:

At its regular meeting of March 20, 2019, the Planning Commission recommended that the City Council adopt this Ordinance to amend the Zoning Ordinance to require Development Agreements and amending locational requirements for cannabis cultivation and volatile manufacturing.

SECTION 4:

The text of the Zoning Ordinance is amended to conform to the modified text, attached hereto as Exhibit 1.

SECTION 5:

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in force and effect.

SECTION 6:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.


* * * * *

I HEREBY CERTIFY that the forgoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the 9th of April 2019, and passed and adopted at a regular meeting thereof, held on the 23rd of April 2019 by the following vote:

AYES: Council Members Wilson, Motts, Thorpe and Mayor Wright

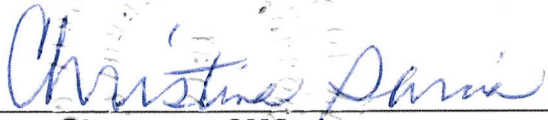
NOES: Council Member Ogorchock

ABSENT: None



Sean Wright, Mayor of the City of Antioch

ATTEST:



Arne Simonsen, CMC
City Clerk of the City of Antioch

EXHIBIT 1

§ 9-5.203 DEFINITIONS

"CANNABIS RETAIL. A cannabis business that distributes, dispenses, stores, exchanges, packages, re-packages, labels, sells, makes available, transmits, or gives away cannabis or cannabis products for either medical or recreational use and is operated in accordance with state and local laws and regulations. Cannabis retail includes, but is not limited to, selling ~~and/or delivering~~ cannabis or cannabis products ~~as part of a sale~~, pursuant to a Type 10 cannabis license, or a cannabis license subsequently established.

"CANNABIS DELIVERY. A cannabis business that offers delivery of cannabis or cannabis products for either medical or recreational use and is operated in accordance with state and local laws and regulations, pursuant to a Type 9 cannabis license, or a cannabis license subsequently established. Cannabis delivery includes, but is not limited to, delivering cannabis directly to retail or wholesale customers or to other recipients with or without compensation and specifically excludes any on-site retail use. If retail use exists on the same site, the entire land use shall be classified as Cannabis Retail and subject to the provisions thereof.

§ 9-5.3845 CANNABIS BUSINESS.

A cannabis business may be established within the Cannabis Business (CB) Zoning Overlay District only under the following conditions:

(A) A use permit from the City Council is required for all cannabis land uses, including cannabis businesses and cannabis retail. The application shall be considered by the Planning Commission who shall make a recommendation to the City Council.

(B) Prior to operating in the city and as a condition of issuance of a use permit, the operator of each cannabis business shall enter into a development agreement pursuant to Government Code section 65864, et seq., known as the Development Agreement statute, setting forth the terms and conditions under which the cannabis business will operate that are in addition to the requirements of this section, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

(C) A Cannabis business shall be located no closer than 600 feet from the following:

- (1) Any private or public school serving students grade kindergarten through high school;
- (2) Any public park owned or operated by the city;
- (3) Any property occupied by a residential land use or with a residential or general plan land use designation or zoning designation; and
- (4) A Child Care Center, as defined by the Antioch Municipal Code.

(D) In addition to the standard findings for approval of a use permit, the City Council shall make the following additional finding in support of approval of a use permit for a cannabis business.

(1) That the location and site characteristics of the proposed cannabis business are consistent with all applicable state laws and city standards or guidelines, that all provisions have been made to ensure that the operation of the cannabis business will not create excessive demands for police service or other public services, and that the cannabis business will benefit the city.

CITY OF
ANTIOCH
CALIFORNIA

DATE: August 20, 2020
TO: Cannabis Standing Committee
SUBMITTED BY: Thomas Lloyd Smith, City Attorney
SUBJECT: One Plant Operating Agreement

DISCUSSION

Discuss One Plant's Operating Agreement including fees and gross receipts due to City on a monthly basis. The insurance limits that are to be kept in place for the term of the Agreement and its proposed social equity program as required in the operating agreement.

Staff has attached the most current draft of the One Plant Operating Agreement, which contains the social equity program requirement under Section 7. Staff has also attached One Plant's current social equity program proposal for consideration by the Cannabis Standing Committee.

ATTACHMENTS

- A. One Plant Operating Agreement-Draft
- B. Social Equity Program Proposal

RECORDING REQUESTED BY,
AND WHEN RECORDED, MAIL TO:

City of Antioch
200 H Street
Antioch, CA 94509
Attn: City Clerk

Exempt from recording fee per Government Code §6103

OPERATING AGREEMENT

This Operating Agreement ("**Agreement**") is entered into between the City of Antioch, a municipal corporation ("**City**") and Three Habitat Consulting Antioch LLC dba One Plant [type of entity] ("**Operator**"), whose address is _____, Antioch, California 94509. City and Operator may be referenced herein as "**Party**" or collectively as "**Parties**."

RECITALS

- A. Operator submitted an application for approval of a use permit for a cannabis business, as further detailed herein.
- B. On _____, by Resolution _____, the City Council approved a Cannabis Business Use Permit to operate cannabis business UP _____ ("**CBUP**"). A copy of the CBUP is attached hereto as **Exhibit A** and incorporated herein. The CBUP relates to the Site, as described in **Exhibit B**, attached hereto and incorporated herein.
- C. One condition of the CBUP is that the City and Operator execute a Development Agreement or an Operating Agreement. This Agreement meets this requirement of the CBUP.
- D. On _____, 2020, the City Council adopted Resolution _____ approving this Agreement.

AGREEMENT

1. **Recitals.** The Recitals set forth above are incorporated herein as if fully set forth in this Agreement.
2. **Definitions.** The following terms, when capitalized herein, shall have the meanings specified below.
 - a. **Agreement**—This Agreement between the City and Operator.
 - b. **Applicable Law**—All applicable federal, state, regional, and local statutes, regulations, and rules including the Uniform Building Code and other Uniform Codes, the California Environmental Quality Act, the City's ordinances, resolutions, rules, and regulations, as each statute, regulation,

Operating Agreement for Three Habitat Consulting Antioch LLC dba One Plant
[date]

regulation, rule, Code, ordinance, and resolution may be amended from time to time, excluding such federal law which may conflict with state or local laws authorizing cannabis businesses or operations.

c. Business Operations—The commercial cannabis business operated at the Site by Operator, its officers, officials, employees, agents, and consultants, as approved by the City Council in the CBUP, and as subject to the terms and conditions of this Agreement.

d. Cannabis—Both medical and non-medical cannabis as defined by Health & Safety Code section 11362.5 and Business and Professions Code sections 26000 *et seq.*

e. Cannabis Business Use Permit—the Cannabis Business Use Permit, attached hereto as Exhibit A, as approved by City Council Resolution _____.

f. City—the City of Antioch, California.

g. City Attorney—the City Attorney of the City.

h. City Council—the City Council of the City.

i. City Manager—the City Manager of the City.

j. Operator— Three Habitat Consulting Antioch LLC dba One Plant.

k. Fees—All charges, expenses, costs, monetary exactions, and any other monetary obligations imposed on Operator by City, other than assessments or regular or special taxes, and not limited to fees paid pursuant to this Agreement.

l. Gross Receipts—The total of amounts actually received or receivables from sales and the total amounts actually received or receivable for the performance of any act or service for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise. Gross receipts shall also include all receipts, cash, credits and property of any kind without deduction of the cost of the property sold, the costs of the materials used, labor or services costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" are the following:

- Cash discounts allowed and taken on sales
- Credit allowed on property accepted as part of the purchase price and which property may later be sold
- Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser
- Such part of the sale price of property returned by a purchaser upon rescission of the contract of sale as is refunded whether in cash or by credit
- Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee furnishes to the City the names and addresses of the others and the amounts paid to them
- Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business are not excluded

The intent of this definition is to ensure that, in calculating payments to the City, all sales and revenue from the Business Operations are captured and, therefore, this definition shall be given the broadest possible definition consistent with this intent.

m. Major amendment—Any modification to this Agreement that makes a substantive change, modification, or deviation in the terms of this Agreement or any Exhibits hereto.

n. Minor amendment—Any modification to this Agreement that does not make a substantive change, modification, or deviation in the terms of this Agreement or any Exhibits hereto.

o. Police Chief—the Police Chief of the City.

p. Project—The Business Operations, Site Development, Odor and other Mitigation Plans, Security Plans, and all other terms and conditions applicable to Operator's Business Operations.

q. Site—The physical location of the Operator's Business Operations, as described in Exhibit B, attached hereto.

r. Square Footage under Cultivation—the actual amount of canopy (measured by the aggregate area of vegetative growth of live cannabis plants on the premises including the area occupied by vertically and horizontally stacked canopies) that is limited by the maximum amount a cannabis business is authorized to cultivate by this Agreement or the CBUP, without deducting for unutilized square footage.

s. State license(s)—the license(s) issued by the State, whether through the Bureau of Cannabis Control or other regulatory agency authorizing the Operator to conduct its Business Operations

3. **Effective Date.** This Agreement shall be effective as of the date of the Resolution approving this Agreement, or such other date (if any) as specified in the Resolution approving this Agreement.

4. **Term of Agreement.** The initial term of this Agreement shall be ten years, with two possible extensions of five years each. This Agreement may be extended by mutual agreement of the Operator and the City Council on such additional terms and conditions as to which the Parties may agree. At the end of the term, Operator agrees to cease all Business Operations at the Site, notwithstanding the terms and conditions of the CBUP. The parties agree that, prior to the end of the initial ten-year term, they will meet and confer in good faith with the goal either of continuing this Agreement on the same terms and conditions or of modifying the Agreement so that the Business Operations may continue for the mutual benefit of the City and the Operator.

5. **Operating Conditions.** In addition to the terms and conditions set forth in the CBUP, Operator's Business Operations shall be subject to the additional terms and conditions:

a. Hours of operation of retail sales on the Site shall not exceed 7 days per week, 8.00 a.m. to 8.00 p.m. There are no other hours' restrictions on the Business Operations, including delivery.

b. Subsequent to the annual audit by the Police Department or a third party selected by the Police Department, the Police Chief shall have the discretion to require additional security measures or modify existing security measures at the Operator's expense, as may be required by law or reasonable for public safety. At Operator's expense, the Police Chief may also determine to require additional security measures at any time upon the Department's finding that existing security measures are

insufficient for the Business Operations to comply with the terms of the CBUP or to adequately protect public health and safety. The Police Chief's determination is appealable to the City Manager.

c. The City Manager may impose additional mitigation measures, whether relating to odor or other factors affecting public health and safety, on the Project at Operator's expense, as may be required by law or reasonable to maintain public health and safety. The City Manager's determination is appealable pursuant to Title 1, Chapter 4 of the City's Municipal Code.

6. Fees.

a. Operator agrees to pay all fees, whether imposed by the City, state, or other regulatory agencies in a timely manner. Operator's failure to pay such fees in a timely manner may, at the City's sole discretion, constitute Evidence of Default. City may provide thirty (30) days' prior written notice to Operator as to any unpaid City fees. If Operator fails to pay such fees, plus any interest or penalties due for late payment, Operator agrees that the City may record on the property which is the subject of the CBUP one or more liens for the fees owed.

b. Operator agrees to pay City beginning with the fifteenth of the month immediately following the date the City issues the Certificate of Occupancy for the Site the amounts set forth in **Exhibit C**, attached hereto and incorporated herein. The amount due for Gross Receipts is payable thereafter on the 15th of each month or, if the 15th is a weekend day or a national or state holiday, on the next business day ("Due Date"). The amount due for square footage is payable annually based on the square footage on the anniversary date of the Agreement's Effective Date, with adjustments made during the year as square footage is added or removed. The Operator shall also submit with its Gross Receipts payment a report on a form provided by the Operator and approved by the City which lists the gross receipts for the period, any adjustments to the gross receipts and basis therefore, the gross receipts subject to the percentages set forth in Exhibit C, and the total amount due.

c. A payment is late or deficient under this Section if not postmarked by or received by the City Finance Department on or before the Due Date. A late or deficient payment shall be subject to a penalty of a one-time penalty of five percent (5%) of the amount owed, plus monthly non-compounding interest at the maximum rate allowed by law, but not to exceed an annualized amount of ten percent (10%).

d. If the City Manager is not satisfied with the veracity of report(s) filed by Operator regarding the Business Operations' total gross receipts or square footage, the City Manager may compute and determine the amount of the fees to paid on the gross receipts or square footage and make a deficiency determination upon the basis of the facts contained in such report(s), or upon the basis of any information in City's possession, or that may come into City's possession within three years of the date the fees are paid. One or more deficiency determinations of the amount of fees owed for a period or periods may be made. The determination of the City Manager pursuant to this subsection is appealable pursuant to Title 1, Chapter 4 of the City's Municipal Code.

7. Social Equity Programs.

a. Operator agrees to implement and maintain for the entirety of the term of this Agreement a Social Equity Program ("**Equity Program**") to benefit the City and its residents, to foster equitable participation in the cannabis industry, and to create business opportunities for those most

negatively impacted by the enforcement of cannabis laws prior to the legalization of cannabis in California. Operator shall initiate its Equity Program within three months of this Agreement's Effective Date.

b. Operator shall prepare a written Social Equity Program Plan ("Equity Plan"), which includes an Equity Program description and an action plan with goals, tasks, responsible parties, timelines, and measurable outcomes. The Equity Plan shall be set forth in Exhibit D, attached hereto and incorporated herein. Operator shall provide an annual report to the City Manager and City Attorney on its progress in carrying-out the Equity Program's goals and measurable outcomes. Upon request of the City Manager or City Attorney, Operator shall also agree to provide a presentation to the City Council on the Equity Program's goals and measurable outcomes. The Equity Plan may be modified in writing by request of the Operator and approval of the City Manager or the City Attorney.

c. If the City Council, the City Manager, or the City Attorney determine that Operator's Equity Plan does not adequately achieve the City's goals as set forth herein, the City Council, the City Manager, or the City Attorney shall have the discretion to require the Operator to modify its Equity Plan subsequent to one or more meetings with the Operator.

8. Applicable Law. At all times, Operator shall conduct its Business Operations consistent with Applicable Law, including the City's ordinances, rules, and regulations; the CBUP; and this Agreement, as each may be amended or modified from time to time. Any violation thereof by Operator or its Business Operations may, at the City's discretion, be considered Evidence of Default.

9. Default.

a. If the City Manager finds Evidence of Default, the City Manager shall provide at least forty-five (45) days' written notice thereof to Operator, with the notice specifying the nature of the default, the facts supporting such Evidence of Default, and the manner in which the Default may be cured. Within that forty-five day period, Operator shall cure the Default to the City Manager's reasonable satisfaction, provide evidence with supporting facts as to why no Default exists, or provide alternatives satisfactory to the City Manager to address the Default.

b. If the City Manager is not satisfied with Operator's response and/or believes a Default continues to exist, then the City Manager may, at his/her sole discretion:

- Order the Operator to suspend all Business Operations at the Site until the Default is cured.
- Take such other action as may be authorized by the CBUP or this Agreement.
- Remedy the Default and charge the costs thereof to the Operator, who agrees to pay such sums.

c. The decision of the City Manager under this section is appealable pursuant to Title 1, Chapter 4 of the City's Municipal Code.

d. The remedies of this section, plus any other remedies set forth in this Agreement and remedies available in law or in equity are cumulative, and non-exclusive. Such remedies are distinct and separate whether or not exercised by the City. The City may, in its discretion, exercise any or all of its rights and remedies, at once or in succession, at such time or times as it considers to be appropriate.

10. Record Keeping. Operator shall keep, maintain, and preserve to the extent applicable all records that may be necessary to determine the amount of gross receipts, the number of retail delivery vehicles, the amount of cannabis manufactured, the amount of cannabis delivered, and any and all other records by which City may determine and verify the amount of fees due to the City pursuant to Section 6 hereof. At Operator's expense, City shall have the option of conducting, whether by City staff or by a City-selected consultant, an annual audit to verify the fees due to the City pursuant to Section 6 hereof and compliance with Exhibit D. City shall have the right to inspect such records at all reasonable times during normal business hours and upon not less than five (5) business days' prior notice. To the extent permitted by Applicable Law, City agrees to treat such records as confidential.

11. Annual Review. In addition to the right to conduct an audit pursuant to Section 10 hereof, the City Manager, at his/her discretion, may direct City staff or a third party to review, no more frequently than once per year, the Business Operations and compliance thereof with the CBUP and this Agreement. Operator shall be responsible for paying the costs of this annual review, which shall not exceed \$10,000 per review, adjusted annually by the CPI index for Bay area cities. In the event there is good cause for a review that would exceed \$10,000 (as adjusted annually), Operator and City shall negotiate a minor amendment to allow for such review. Based on this review, City may require additional mitigation measures or other changes to the Business Operations to assure compliance with the CBUP and this Agreement.

12. Amendments. This Agreement may be amended from time to time, if in writing and signed by both parties. The City Manager or the City Attorney shall have the discretion to approve a Minor Amendment to this Agreement or to refer such Minor Amendment to the Council for review and possible action. The City Council, at a duly noticed public meeting, shall have the discretion to approve a Major Amendment or a Minor Amendment, which has been referred to the Council.

13. Assignment. City has entered into the Agreement with Operator in reliance upon Operator's specialized knowledge, experience, and expertise relating to the Project and cannabis-related business. Therefore, this Agreement may not be assigned or otherwise transferred by Operator, whether to a third party or to another entity (even if Operator is a partner, owner, or otherwise a participant in such entity), without the prior written authorization of the City Council at a duly noticed meeting. Any such assignment or transfer, at City's sole discretion, may be considered Evidence of Default. Should Operator wish to assign or otherwise transfer the Agreement, Operator shall provide evidence to the reasonable satisfaction of the City Manager and the City Attorney of the specialized knowledge, experience, expertise, and financial stability of the proposed assignee or transferee prior to review and possible approval by the City Council.

14. Indemnification. Operator agrees to indemnify, defend, and hold harmless City, its officers, officials, employees, agents, and consultants from any and all administrative, legal, or equitable actions, claims, or other proceedings instituted by any person or entity not a party to the Agreement challenging the validity of the Agreement or any action arising out of or relating to the Agreement. Operator shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by the City in defense of the action or proceeding, plus staff and consultant time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Operator agrees to

pay directly or timely reimburse on a monthly basis City for all such court costs, attorney's fees and time referenced herein.

Operator further agrees to indemnify, defend, and hold harmless City, its officers, officials, employees, agents, and consultants from any and all claims, costs, and liability for any damages, personal injury or death, or property damage which may arise directly or indirectly from Operator's Business Operations pursuant to this Agreement, except as caused by City's sole or gross negligence.

15. Insurance.

a. For the term of the Agreement, Operator shall be required to, and agrees to, maintain in full force and effect public liability and property damage insurance, including personal injury in an amount of not less than three million dollars (\$3,000,000) per occurrence and five million dollars (\$5,000,000) aggregate, and automobile insurance for owned and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. Each policy shall have such coverage and limits as may be reasonably requested by City from time to time. Each policy shall have a self-insured retention of not more than one hundred thousand dollars (\$100,000).

b. The insurance referenced herein shall include endorsements, naming as additional insureds the City, its officers, officials, employees, consultants, and agents. The endorsements shall also specify that the insurance is primary, with any policies held by the City to be non-contributing.

c. The insurance referenced herein shall be evidenced by certificate(s) of insurance, which shall be kept current during the term of this Agreement.

d. The certificate(s) and endorsement(s) shall be provided to, and approved by, the City Attorney prior to Operator beginning Business Operations.

e. The insurance shall be placed with a company authorized to transact business in the State of California and with a rating of not less than A.M. Best-A, or such other rating as approved by the City Attorney.

f. Operator shall provide at least thirty (30) days' prior written notice of any cancellation, reduction in scope or amount, or material modification of the insurance referenced herein.

g. If Operator fails to maintain the insurance referenced herein, the City in its sole discretion may obtain such insurance at Operator's expense, with Operator obligated to promptly reimburse the City, or determine such failure to be Evidence of Default.

16. Notices. Any notice or communication required by the Agreement between the parties shall be in writing and may be delivered either personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or by registered mail, shall be deemed to have been given and received on the day of actual receipt at any of the addresses designated below as to the party to whom the notice is sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. However, should a party's address no longer be valid such that delivery by registered mail, return receipt required, is not successful, then delivery by U.S. mail shall be effective

five business days after mailing of notice. Such notices or communications shall be given to the parties at the addresses set forth below:

To the City of Antioch:

City of Antioch
200 H Street
Antioch, CA 94509
Attn: City Manager

With a copy to:

City of Antioch
200 H Street
Antioch, CA 94509
Attn: City Attorney

To Operator:

Three Habitat Consulting Antioch LLC dba One Plant
[address]

17. Miscellaneous

a. Each party has had an equal opportunity to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply to the Agreement.

b. If any term, provision, covenant, or condition of this Agreement is held by court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless enforcement of the Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would the frustrate the purpose of the Agreement.

c. The Parties shall take all steps reasonable and necessary to effectuate the terms and intent of the Agreement. However, no provision of the Agreement shall limit, or be construed to limit, the right of the City, the City Manager, the City Attorney, or the City Council to exercise discretion as to the Agreement or other matters.

d. The Parties are not, and shall not be construed, to be partners or joint venturers.

e. The only parties to the Agreement are City and Operator. There are no third-party beneficiaries and the Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

Operating Agreement for Three Habitat Consulting Antioch LLC dba One Plant
[date]

f. In the event that suit is brought by either Party to the Agreement, the Parties agree that venue shall be exclusively vested in the state court of Contra Costa County, or in the U.S. District Court for the Northern District of California.

g. This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between parties with respect to the subject matter hereof.

h. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Operator for any breach hereof. As such, the Parties agree that in no event shall Operator be entitled to recover damages against City for breach of this Agreement.

i. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

j. All waivers must be in writing to be effective or binding upon the waiving party and no waiver shall be implied from any omission by a party to take or not take any action with respect to default or other matters. Failure by a party to insist upon the strict performance of any provisions of the Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by the other party in the future. Furthermore, no express written waiver of any default shall affect any other default or cover any other period of time specified in such express waiver.

k. Notwithstanding termination or expiration of this Agreement for any reason, Sections 6c, 6d, 10 and 14 shall be continuing obligations of Operator and shall survive this Agreement.

EXECUTED AS OF _____, 2020.

CITY OF ANTIOCH

OPERATOR

City Manager, City of Antioch

Three Habitat Consulting Antioch LLC
dba One Plant

Attest:

City Clerk

Approved as to form:

City Attorney

EXHIBIT A

[to be attached]

EXHIBIT B

The Site is located at _____, Antioch CA 94509 and is
APN _____.

EXHIBIT C

| Business type | Yr 1 | Yr 2 | Yr 3 | Yr 4+ |
|--------------------------------|-------------|-------------|-------------|--------------|
| Retail | 2% | 3% | 4% | 5% |
| Microbusiness* | 2% | 3% | 5% | 6% |
| Cultivation (per square foot)* | \$2 | \$3 | \$5 | \$6 |
| Distribution | 2% | 3% | 4% | 5% |
| Manufacturing | 2% | 3% | 4% | 5% |

*Eligible for local employment incentive

The total amount payable to City by the Operator pursuant to this Exhibit shall be reduced by the following amount(s) if the Operator employs not fewer than the following numbers of Antioch residents on a full-time basis, providing healthcare benefits:

| | |
|-----------------------------|----------------------------------|
| At least 20 City residents | 1%, but not to exceed \$60,000 |
| At least 50 City residents | 3%, but not to exceed \$150,000 |
| At least 100 City residents | 6%, but not to exceed \$300,000 |
| At least 150 City residents | 9%, but not to exceed \$450,000 |
| 200 or more City residents | 12%, but not to exceed \$600,000 |

Example: If the revenue due to the City from Operator, based on gross receipts, is \$500,000, and the Operator employs 51 City residents, then the \$500,000 would be reduced by 3% and the Operator would owe the City \$485,000.

For any Operator requesting the local employment incentive, the City reserves the right to verify the number of City residents employed on an annual basis.

EXHIBIT D

[See attached comparison of One Plant's proposal and current city-approved programs]

Social Equity as currently proposed by One Plant

In collaboration with the City of Antioch, Operator will support a social equity program to aid vulnerable youth with the goal of providing financial support for resources that are not generally available through traditional social services. Operator's focus is to support and develop upward mobility and to promote financial literacy within the youth community. Operator will accomplish this goal by providing support a City's youth program(s) developed and/or approved in writing by the City of Antioch Youth Services Network Manager ("Program"). Operator will support such a program with 0.25% in year one, 0.37% in year 2, and 0.5% in year 3 and thereafter (with a minimum annual guarantee of \$25,000) of gross receipts per year, paid quarterly. Each subsequent quarterly payment shall be due thereafter on the 15th of each third month or, if the 15th is a weekend day or a national or state holiday, on the next business day. Late payment shall be subject to the same penalties and interest set forth in Section 6 hereof.

Current operating agreements include the following amounts:

Alluvium: 0.25%, 0.37%, and 0.5% of gross receipts in years one, two, and subsequent years.

Contra Costa Farms: 0.25%, 0.37%, and 0.5% of gross receipts in years one, two, and subsequent years, with a minimum of \$50,000 per year and up to \$100,000 per year.

Delta Dispensary: 0.25%, 0.37%, and 0.5% of gross receipts in years one, two, and subsequent years.

CITY OF
ANTIOCH
CALIFORNIA

DATE: August 20, 2020

TO: Cannabis Standing Committee

SUBMITTED BY: Thomas Lloyd Smith, City Attorney

SUBJECT: Mesa Antioch, LLC Request for Amendment to Billboard Lease Agreement

DISCUSSION

Discuss Mesa Antioch, LLC's request to amend billboard lease agreement to permit cannabis advertising.

Staff has attached some background information from the existing contract with Mesa Antioch, LLC to facilitate the conversation.

ATTACHMENTS

A. Excerpts from Mesa Antioch LLC's First Amended Lease Agreement



**First Amended and Restated Lease Agreement
Billboard Lease**

Between

CITY OF ANTIOCH,
a California Municipal corporation
("City")

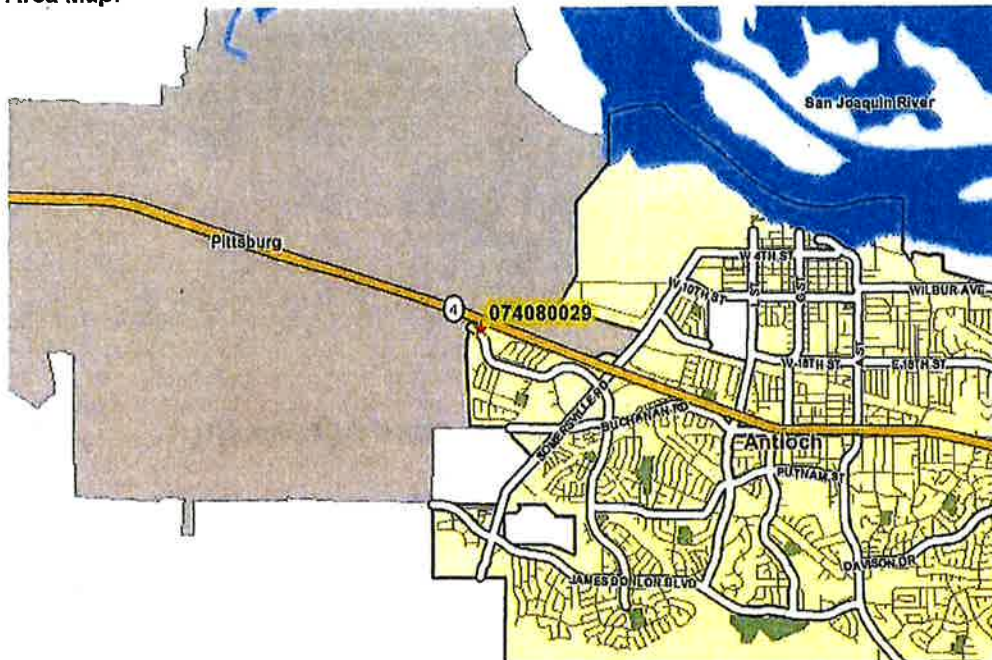
And

MESA ANTIOCH, LLC,
a California limited liability company
("Tenant")



Exhibit A
APN# 074-080-029 – City Property Description

Area Map:



Site Map: Final location of Billboard and Premises to be determined between City and Mesa.



Exhibit B
Billboard Description

The proposed Billboard will have the standard outdoor advertising "bulletin" dimensions preferred by advertisers and typically used on freeways. The two advertising faces will each measure 14' high by 48' wide, and will be set at a "V" angle for easier reading from the road. The top of the sign will be positioned approximately 30-40 feet above grade level on Highway 4. Final dimensions, height, and design are subject to change based on a planning review by the City of Antioch.

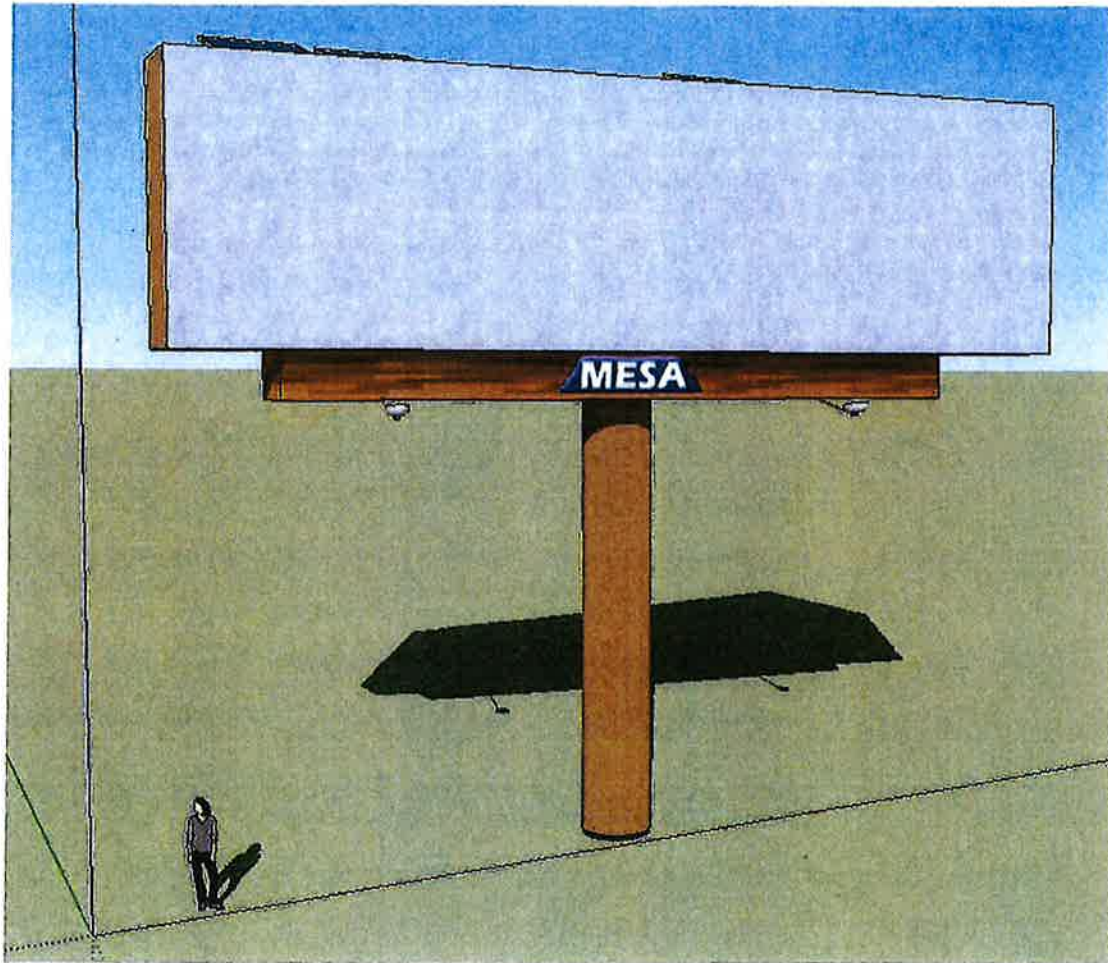


Exhibit C
Advertising Criteria

The purpose of the Billboard is to generate revenue for the City, and the display of advertising is solely for this purpose. The Billboard is not intended to provide a general public forum for purposes of communication, but rather to make use of property held by the City in a proprietary capacity in order to generate revenue.

Except for any advertising or messages displayed on the Billboard at the request of the City, all advertising to be displayed on the Billboard must be strictly "commercial advertising." As used in this Lease, "commercial advertising" means advertising for a commercial or industry business, product, good, service, or other commercial or industrial activity for a commercial or industrial purpose.

In addition to the general limitation on Billboard advertising to strictly commercial advertising, Tenant may not display any message that:

1. is false, misleading, or deceptive;
2. promotes the sale or use of tobacco products, alcoholic beverages, or medical marijuana, whether directly or indirectly;
3. depicts violence or anti-social behavior or relates to illegal activity, unless such depictions clearly promote a movie, video game, television show or other entertainment media;
4. contains "obscene matter," as that term is defined in California or federal law, or promotes any "adult entertainment business" or any products sold at an "adult boutique" as such terms are defined in the Antioch Municipal Code;
5. contains any "political advertising," which means advertising that promotes or opposes any candidate for public office or promotes or opposes a ballot measure, referendum, bond issue, or any federal, state or local legislation, regulation, or other discretionary action;
6. holds a person or group of persons up to public ridicule, derision, or embarrassment, or defames a person or group of persons;
7. contains language that is obscene, vulgar, profane, or scatological, or that presents a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order;
8. that promotes any product, service or activity this illegal under federal, state, or local law.