

COLANTUONO  
HIGSMITH  
WHATLEY, PC

ALENA SHAMOS | (858) 682-3665 | ASHAMOS@CHWLAW.US

Our File No. 33020.0009

November 14, 2022

Presiding Justice Judith D. McConnell  
Justice Joan K. Irion  
Justice Truc T. Do  
California Court of Appeal  
Fourth Appellate District, Division One  
750 B Street, Suite 300  
San Diego, California 92101

Re: Request for Publication — *UL Chula Two LLC, v. City of Chula Vista et al.*,  
Fourth District Court of Appeal, Division 1, Case No. D079215,  
opinion filed October 24, 2022

Dear Honorable Presiding Justice and Associate Justices:

The Respondents, City of Chula Vista and the Chula Vista City Manager (jointly “City”); Real Party in Interest, March and Ash Chula Vista, Inc. (“March and Ash”); and League of California Cities (“Cal Cities”) jointly write to request this Court order publication of its opinion in the appeal noted above (the “Opinion”) under California Rules of Court rules 8.1105 and 8.1120.

**Interest of Parties in Publication:**

The City and March and Ash are parties to the appeal and have an interest for the reasons set forth in this letter. In particular, the City has an interest in consistency in the application of its administrative appeal procedures, as described in the Opinion, and in its discretion to deny commercial cannabis applications based on applicants’ past illegal operation of marijuana dispensaries in violation of other jurisdictions’ permissive zoning ordinances.

Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

**Publication is Warranted:**

The Opinion meets several of the standards for publication as it:

- “applies an existing rule of law to a set of facts significantly different from those stated in published opinions;”
- “modifies, explains, or criticizes with reasons given, an existing rule of law;”
- “advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;” and
- “involves a legal issue of continuing public interest.

(Cal. Rules of Court, rules 8.1105(c)(2), (c)(3), (c)(4), (c)(6).)

The Opinion establishes that a local government has the power to deny licenses based on past operation of a marijuana dispensary in violation of local permissive zoning regulations. While existing case law affirms the authority of local governments to enforce permissive zoning regulations against marijuana dispensaries (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729; *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153; *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078, 1081, 1088), the instant decision establishes that such prior violations may be considered by a local government in evaluating a cannabis license application, even where those violations occurred in and were enforced by other jurisdictions. The Opinion also confirms that courts will not overrule a city’s proper exercise of discretion in this arena, an important holding as more jurisdictions implement licensing regimes for retail cannabis.

The Opinion bolsters the applicability of internal screening procedures where a city attorney's office acts as both advocate and advisor in an administrative hearing. Older cases seemingly placed the burden on local government to affirmatively demonstrate screening procedures existed in every case. (See *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813; *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575, 1586.) The Opinion affirms, in accord with our Supreme Court's decision in *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, that the burden is on the party asserting an alleged violation to show bias. Counsel for the City have not identified a published opinion that explains the proper burden with regard to screening procedures following *Today's Fresh Start*, and legal treatises express uncertainty. (See Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2022) Due Process Hearings—Requirements Concerning Decisionmakers, ¶¶ 3:425–500.)

The Opinion also affirms the admissibility and substantiality of hearsay evidence in administrative hearings where specifically authorized by statute. Although a long-standing principle (see *In re Lucero L.* (2000) 22 Cal.4th 1227, 1244), the City has found no published cases applying it to a local government's administrative hearings. The Opinion clarifies and explains this rule, applying it to a new set of facts significantly different from those stated in published opinions.

Publishing the Opinion would also provide guidance on an “issue of continuing public interest.” (Cal. Rules of Court, rule 8.1105(c)(6).) There are at least three other recent opinions addressing challenges to local cannabis retail licensing:

- *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265
- *Aziz v. City of Maywood* (Cal. Ct. App., Oct. 14, 2022, No. B314247) 2022 WL 7890814
- *SweetFlower Pasadena LLC v. City of Pasadena* (Cal. Ct. App., May 19, 2022, No. B308897) 2022 WL 1574715

In short, the Opinion provides useful guidance and it was developed at great public and private expense. Publishing it can avoid the need to reestablish those principles in other cases at future public expense. Publication would help trial courts adjudicating decisions made at administrative hearings, particularly in the context of marijuana licensing.

Fourth District Court of Appeal,  
Division One  
November 14, 2022  
Page 4

Because it meets several criteria in rule 8.1105(c), the City, March and Ash, and Cal Cities respectfully request the Court order the Opinion published.

Respectfully,

A handwritten signature in black ink, appearing to read 'Alena Shamos', with a long horizontal flourish extending to the right.

Alena Shamos

AS:mcs

**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*

San Diego Superior Court, Case No. 37-2020-00041554-CU-WM-CTL

Court of Appeal for the State of California,

Fourth Appellate District, Division One - Case No.: D079215

Our File No.: 33020-0009

I, Tracey S. West, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: TWest@chwlaw.us. On November 14, 2022, I served the document(s) described as **REQUEST FOR PUBLICATION OF OPINION** on the interested parties in this action addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ **BY ELECTRONIC TRANSMISSION:** By causing a true copy of the document(s) to be sent to the persons at the e-mail addresses listed on the service list on November 14, 2022, from the court authorized e-filing service at TrueFiling. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.
- ☒ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 14, 2022, at St. Louis, Missouri.

  
\_\_\_\_\_  
Tracey S. West

**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*

San Diego Superior Court, Case No. 37-2020-00041554-CU-WM-CTL

Court of Appeal for the State of California,

Fourth Appellate District, Division One - Case No.: D079215

Our File No.: 33020-0009

Gary K. Brucker, Jr., Esq.

*Attorneys for Petitioner/Plaintiff*

Lann G. McIntyre, Esq.

*UL Chula Two LLC*

Lewis Brisbois Bisgaard & Smith LLP

**VIA TRUEFILING**

550 West C Street, Suite 1700

San Diego, CA 92101

Telephone: (619) 233-1006

Facsimile: (619) 233-8627

Email: Gary.Brucker@lewisbrisbois.com

Email: Lann.McIntyre@lewisbrisbois.com

David Kramer, Esq.

*Attorneys for TD Enterprise LLC*

Josh Kappel, Esq.

**VIA TRUEFILING**

Vicente Sederberg LLP

633 West 5<sup>th</sup> Street, 26<sup>th</sup> Floor

Los Angeles, CA 90071

Telephone: (310) 695-1836

Facsimile: (303) 806-4505

Email: dkramer@vicesederberg.com

Email: josh@vicesederberg.com

Heather Riley, Esq.

*Attorneys for March and Ash*

Rebecca Williams, Esq.

*Chula Vista, Inc.*

Allen Matkins Leck Gamble Mallory &

**VIA TRUEFILING**

Natsis LLP

One America Plaza

600 West Broadway, Suite 2700

San Diego, CA 92101-0903

Telephone: (619) 233-1155

Facsimile: (619) 233-1158

Email: hriley@allenmatkins.com

Email: bwilliams@allenmatkins.com

Philip Tencer, Esq.  
TencerSherman LLP  
12520 High Bluff Drive, Suite 240  
San Diego, CA 92130  
Telephone: (858) 408-6901  
Facsimile: (858) 754-1260  
Email: Phil@tencersherman.com

*Attorneys for TD Enterprise LLC*  
**VIA TRUEFILING**

San Diego Superior Court  
Civil Central Division – Hall of Justice  
Dept C-75  
330 West Broadway  
San Diego, California 92101

**VIA U.S. MAIL**