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915 I Street, 1st Floor

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(916) 808-5163*

CORRESPONDENCE

Description of Change: The attached correspondence was received after publishing.

For the Meeting of: June 16, 2020, 5PM

31. **Ordinance Amending Sections 17.216.510, 17.228.920, 17.424.060 and 17.424.070 of the Sacramento City Code Relating to Cannabis Uses in the Shopping Center Zone and the Del Paso Boulevard/Arden Way Special Planning District (M19-005) [Noticed 06/05/2020; Passed for Publication 06/06/2020; Published 06/05/2020]**

File ID: 2020-00598

Location: Citywide

Recommendation: Conduct a public hearing and upon conclusion adopt an **Ordinance** amending sections 17.216.510, 17.228.920, 17.424.060 and 17.424.070 of the Planning and Development Code relating to cannabis uses in the shopping center zone and the Del Paso Boulevard/Arden Way Special Planning District.

Contact: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

From: [Public Comment](#)
To: [Agenda](#)
Subject: FW: 6-16-20 Council Meeting_Item 31
Date: Tuesday, June 16, 2020 12:24:06 PM
Attachments: [6-16-20 Correspondence Item 31.pdf](#)
[6-1-20 memo to Council Item 5 6-2-20.pdf](#)

From: Nancy Kitz <nancy.kitz@comcast.net>
Sent: Tuesday, June 16, 2020 11:44 AM
To: Public Comment <publiccomment@cityofsacramento.org>
Cc: Jane Macaulay <rhmacaulay@aol.com>; Ckpinsacto <ckpinsacto@aol.com>
Subject: 6-16-20 Council Meeting_Item 31

Hello,
Attached are 2 documents to be included in the Council packet for tonight's meeting regarding Item 31.
Please confirm that the docs will be included in the packet.
Many thanks,
Nancy Kitz
Eye on Sacramento
Open Government Committee

To: The Mayor, City Council Members, City Attorney and City Manager
Re: Ordinance (M19-005) Amending Sections 17.216.510, 17.228.920, 17.424.060, and 17.424.070 of the Sacramento City Code Relating to Cannabis Uses in the Shopping Center Zone and Del Paso Boulevard/Arden Way Special Planning District (“SPD”)
Date: June 1, 2020

Concerning Consent Item 05, the undersigned request that City Council remove the amendments 17.424.060 and 17.424.070 relating to cannabis uses and the Del Paso Boulevard/Arden Way SPD from the proposed Ordinance (M19-005).

I. Cannabis prohibition in the Del Paso/Arden Blvd SPD

In May of 2018, the Council amended the SPD to prohibit cannabis cultivation on parcels fronting Del Paso Boulevard and Arden Way (ORD 2018-M18-002). What follows is the Legislative History of this ordinance.

1. On February 27, 2018, Consent Item 03 initiated Title 17 Text Amendment to Del Paso Boulevard/Arden Way Special Planning District Related to the Prohibition of Cannabis Cultivation on Del Paso Boulevard and Arden Way. The Staff Report summarized the Issue Detail as follows:

- At the City Council meeting of January 24, 2018 Councilmember Warren expressed concerns regarding the cultivation of cannabis in buildings that front on Del Paso Boulevard and Arden Way in the Del Paso Boulevard/Arden Way Special Planning District.
- As a result, the City Manager is requesting that the City Council initiate an amendment to the Code so his staff can review, evaluate, and prepare appropriate language to amend the text of the Del Paso Boulevard/Arden Way SPD.
- On March 22, 2018, the proposed ordinance was reviewed by the Planning and Design Commission (“Planning”). The commission was hesitant to change the current process on a one-off basis (i.e. Del Paso Blvd.) absent a comprehensive study of other commercial corridors, SPDs, and different permutations of the prohibition. The Commission voted to recommend denial of the proposed ordinance and forward the recommendation to City Council.

Public/Neighborhood Outreach: Notice of the Planning hearing was sent to all property owners within the Del Paso Boulevard/Arden Way SPD and the following neighborhood and business associations: Del Paso Boulevard Partnership, Harmon Johnson Neighborhood Association, North Sacramento Chamber of Commerce, Old North Sacramento/Dixieanne Community Association, Preservation Sacramento, Woodlake Neighborhood Association, Woodlake Neighbors Creating Transparency.

- On April 24, 2018, the Ordinance was heard at the Law+Leg. The Committee passed a Motion forwarding the ordinance to City Council for approval.
- On May 28, 2018, the proposed ordinance was heard before City Council. During the hearing, the Mayor asked Council Member Warren to leave the meeting. Mr. Warren stated on the record “OK, I’ll leave. Do I have to come back, Mayor?”

The Ordinance passed with 8 Yes votes. And while Councilman Warren left the meeting, he did not do so in the mandated manner City Code requires when a Council person disqualifies themselves from decisions made at a public meeting (**Title 2.16.120 Manner of Disqualification**).

II. Cannabis Workshop January 14, 2020
Mr. Warren asked staff to extend cannabis prohibitions in the SPD

According to the oral staff report given at Council’s 01/14/20 Workshop meeting: Council Member Warren asked staff **to extend the (cultivation) prohibition to all cannabis production businesses and delivery only dispensaries as these are not compatible with the goal of the SPD in that they are low intensity, non retail uses that are not pedestrian friendly and do not activate the streets.** Thus, only storefront dispensaries will be allowed on the Boulevard.

However, it appears that his request to extend cannabis prohibitions in the SPD was never drafted.

During the Workshop, Mr. Warren interrupted the staff presentation and made the following comments concerning cannabis in the SPD:

“This has been constant that we want to maintain our retail corridors for retail businesses and preclude cultivation for marijuana on and in our retail corridor. But, retail uses would be allowed including marijuana retail uses. Let me just also state that one of the Council members has asked that I recuse myself from speaking on this issue because I own property on Del Paso Blvd. But this has been a consistent comment from me, and I intend to be very vocal about it unless the City Attorney advises me otherwise.”

III. Current SPD Cannabis amendments:
Planning Commission 4/23/20 / Law and Legislation 5/19//20

On April 23, 2020, for the first time, new, additional amendments regarding cannabis uses and the SPD are on the agenda at Planning. These amendments are part of an Ordinance amending various sections of Chapters 17.216 and 17.228 relating to Cannabis Dispensary Permits (M19-005). Staff Report states:

- The amendments to Title 17, Sections 17.216, 17.228 of the City Code relating to the CORE program **had already been reviewed by Planning on 09/26/2019 and at Law+Leg on 02/08/2020**. Both bodies recommended that the City Council approve the proposed amendments.
- The proposed ordinance wasn't available at the Planning meeting. Staff Report indicated that the "proposed ordinance will be sent to the Planning and Design Commissioners and posted on the internet when final review is complete."
- This raises concerns regarding the legislative process, such as: Who sponsored the amendments? Why wasn't the proposed ordinance available at the meeting? Is that why the proposal was never studied or debated by the Commissioners? Why wasn't the Public noticed of the hearing?

Proposed SPD Amendments. The ordinance amending sections of the Del Paso/Arden SPD **allow** cannabis manufacturing, distribution, and delivery only dispensary uses in the rear one-third of any building located on a parcel fronting Del Paso Boulevard or Arden Way in the SPD area.

First of all, these amendments are in direct conflict with Mr. Warren's own stated intention concerning the SPD and cannabis, as noted in the 1/14/20 Staff Report (see above), which was **to extend prohibitions on cannabis** manufacturing, distribution, and delivery only dispensaries within the SPD.

Secondly, this is not something that residents wanted or asked for. In fact, most residents prefer a blanket prohibition on cannabis uses in the Del Paso/Arden Way Special Planning District and, over the years, repeatedly advised the Councilman of their position.

The Staff Report indicates that the SPD amendments are included in the ordinance "so they can be reviewed by the City Council with the Shopping Center zoning changes related to storefront dispensaries all at the same time."

This rationale for comingling the CORE related dispensary amendments with the SPD manufacturing, distribution and delivery amendments seems far-fetched at best and misleading at worst. Especially since the Core Program amendments had already been reviewed and passed by both Planning and Law+Leg.

Why did these CORE related amendments - reviewed and passed months ago - reappear in the last month on the agendas of Planning and Law+Leg for another hearing? Frankly, it looks like the CORE amendments were reused to insert language expanding cannabis businesses in the SPD. In this way, expediting the SPD changes to City Council without benefit of public notice and input.

No Public/Neighborhood Outreach or Notice to District 2 concerning the SPD amendments - unlike the May 2018 SPD cannabis cultivation amendments. In fact, there wasn't even any Commission or Committee discussion or public comment at either Planning or Law+Leg meetings on these controversial and impactful changes that

we believe will harm the future development of the Del Paso/Arden Way Special Planning District.

IV. Amendments allow more cannabis in the SPD

Mr. Warren changes his mind. At the 01/14/20 Cannabis Workshop it was noted in the staff report that “Council Member Warren asked staff to expand the prohibitions to all cannabis production businesses, distribution and delivery dispensaries as these uses are not compatible with the goal of the SPD in that they are low intensity, non retail uses that are not pedestrian friendly.”

The current SPD amendments do the opposite. These amendments allow cannabis manufacturing, distribution, and delivery only-dispensary uses in the rear one-third of any building located on a parcel fronting Del Paso Boulevard or Arden Way in the SPD area.

As mentioned, this is a complete flip on the Councilman’s previous position supporting the prohibition of cannabis production, distribution, and delivery dispensaries in the Special Planning District and which he advocated repeatedly throughout the community.

V. Conflict of Interest

Councilman Warren owns dozens of properties in the City of Sacramento many of which are located in the Del Paso Blvd/Arden Way SPD. While he has yet to file his 2020 Economic Interest Statement due on 4/1/20, his 2019 CA Form 700 lists dozens of Limited Liability Companies which include interests in land holdings, real estate properties, investments, consultation services and development projects - including properties he owns in District 2 and the Del Paso/Arden Way Special Planning District.

According to his 2019 EIS, these interests are valued at multiple millions of dollars. His wide and diverse real estate portfolio certainly raises conflict of interest issues when his position as a Council Member participating in the legislative decision-making process competes with his personal interests such as his role as a property owner and real estate developer within the District. Typically, this would involve the conflicted individual either giving up one of the conflicting roles or else recusing himself or herself from the particular decision-making process that is in question.

A public official is prohibited from “in any way attempting to use his or her official position to influence a governmental decision” when the official has a financial interest. (Political Reform Act of 1974 § 87100.)

The SPD amendments at hand underscore the reason why conflict of interest laws are grounded on the notion that **government officials owe paramount loyalty to the public, and that personal or private financial considerations on the part of government officials should not be allowed to enter the decision-making process.**

Conclusion

With regard to the Ordinance (M19-005) Amending Sections 17.216.510, 17.228.920, 17.424.060, and 17.424.070 of the Sacramento City Code Relating to Cannabis Uses in the Shopping Center Zone and Del Paso Boulevard/Arden Way Special Planning District we request that City Council remove the amendments to 17.424.060 and 17.424.070 relating to cannabis uses and the Del Paso Boulevard/Arden Way from this proposed Ordinance for the following reasons:

- Item 5 amendments did not follow Council Procedural Rules or City Codes.
 - 1) Title 17.400.030 of the Sacramento City Code indicates that only the Planning and Design Commission or City Council may initiate the proceedings to adopt, amend or remove text to any Special Planning District chapter of Title 17.
 - 2) Additionally, the Council's own Rules of Procedure requires requests to prepare or consider new ordinances must be made in accordance with Rule 13 as follows: (A) *by one or more members, or city manager*, during a council meeting or standing committee meeting in open session.
 - 3) Clearly, there are abundant transparency issues as to the origination of the amendments, Mr. Warren's involvement, and the lack of public notice.
 - 4) In this connection, allowing Mr. Warren to merely recuse himself from voting on the measure (which did occur in 2018) only succeeds in covering up his personal involvement in the decision making process that gave rise to the item.
- The ordinance fails to meet the single subject rule in drafting legislation which serves to prevent misleading or inaccurate titles. The general idea is to ensure that measures are not overly complex or that they may possibly confuse or hide provisions in a multi-faceted measure.
 - 1) In this instance, allowing storefront dispensaries in shopping center zones and PUDs city-wide has nothing to do with expanding cannabis businesses in the Del Paso/Arden Way Special Planning District.
- ZERO Public/Neighborhood Outreach or Notice in District 2 regarding increasing Cannabis businesses allowed to operate in the SPD.
- Serious conflicts of interest are raised regarding Councilman Warren's legislative activities as they relate to the Arden Way/Del Paso Boulevard Special Planning District and this proposed ordinance.

If you care about public participation and open government that should be reason enough to stop these unnecessary and unwanted changes to the Del Paso/Arden Way Special Planning District. The amendments moved in a stealth like manner, under the public's radar and in complete disregard for the law and blatant disrespect for the process.

The people in District 2 deserve better.

Please click on the link below for a map that shows the Del Paso / Arden Way Special Planning District, Councilman Warren's real estate interests and the cannabis permits in the area, including:

- a) Property he owns - 12 (indicated by purple x)
- b) Property he has recently bid on - 5 (indicated by blue plus sign)
- c) Property where cannabis use is permitted - 17 (indicated by green circle)

<https://www.google.com/maps/d/viewer?mid=1eKNrKB7ejw2r9klraO-xUiyaikVg8GMi&usp=sharing>

The map provides a visual representation of Mr. Warren's financial investments and interests and, thus, his potential conflicts of interest with regard to District 2 and the Special Planning District in particular.

Thank you for your consideration,

Jeff Brooke
Barbara Stanton - Old North
Sacramento
Donna Zukowski
Taylor Gutermute - Woodlake Artists
Group
Sondra Betancourt - Ben Ali
Neighborhood Assn
Tina Echols

Flor Gressel
Karen Solberg
Richard Sickert
Larry Glover-Meade - Immediate Past
President WNA
Gordon Lew - Noralto
Jane Macaulay
Nancy Kitz

To: The Mayor, City Council Members, City Attorney and City Manager
Re: Ordinance (M19-005) Amending Sections 17.216.510, 17.228.920, 17.424.060, and 17.424.070 of the Sacramento City Code Relating to Cannabis Uses in the Shopping Center Zone and Del Paso Boulevard/Arden Way Special Planning District (“SPD”)
Date: June 16, 2020

Concerning Consent Item 31, *the undersigned request that City Council remove the amendments 17.424.060 and 17.424.070 relating to cannabis uses and the Del Paso Boulevard/Arden Way SPD from the proposed Ordinance (M19-005).*

I. Our 6/1/20 Letter to City Council

Please see the 6/1/20 correspondence (included here) that we sent to you all when this Item was on the Council’s Agenda wherein we discuss in depth the following issues:

- The amendments did not follow Council Procedural Rules or City Codes.
 - 1) Title 17.400.030 of the Sacramento City Code indicates that only the Planning and Design Commission or City Council may initiate the proceedings to adopt, amend or remove text to any Special Planning District chapter of Title 17.
 - 2) Additionally, the Council’s own Rules of Procedure requires requests to prepare or consider new ordinances must be made in accordance with Rule 13 as follows: (A) *by one or more members, or city manager, during a council meeting or standing committee meeting in open session.*
 - 3) Clearly, there are abundant conflict and transparency issues as to the origination of the amendments, Mr. Warren’s involvement, and the lack of public notice.
 - 4) In this connection, allowing Mr. Warren to merely recuse himself from voting on the measure only succeeds in covering up his personal involvement in the decision making process that gave rise to the item.
- *The ordinance fails to meet the single subject rule in drafting legislation* (mixing the CORE program with the SPD) which serves to prevent misleading or inaccurate titles. The general idea is to ensure that measures are not overly complex or that they may possibly confuse or hide provisions in a multi-faceted measure.
 - 1) In this instance, allowing storefront dispensaries in shopping center zones and PUDs specifically for CORE Program which is city-wide, has had multiple public hearings for over a year (before COVID-19) and has been thoroughly vetted by the public and the council *has nothing to do with expanding cannabis businesses in the Del Paso/Arden Way Special Planning District.*
- ZERO Public/Neighborhood Outreach or Notice in District 2 regarding increasing Cannabis businesses allowed to operate in the SPD.
- Serious conflicts of interest are raised regarding Councilman Warren’s legislative activities as they relate to the Arden Way/Del Paso Boulevard Special Planning District and this proposed ordinance.

II. Councilman's Warren Real Estate in the SPD

This link provides a google map that lists Councilman Warren's real estate located within the Del Paso Arden Way Special Planning District.

https://www.google.com/maps/d/drive?state=%7B%22ids%22%3A%5B%221kTsk89TNhKdBaH_0UroFMIwE5RJtmdHC%22%5D%2C%22action%22%3A%22open%22%2C%22userId%22%3A%22104972181625600138285%22%7D&usp=sharing

Mr. Warren owns:

- 14 properties within the Special Planning District
- 12 of which are vacant
- 5 properties he has recently bid on

Please note that, to date there are at least 44 vacant properties within the SPD. Some of which are owned by the Councilman. Without a doubt, Mr. Warren is the largest landowner within the Del Paso Arden Way SPD. His property holdings include commercial buildings, rentals, and vacant land.

III. GOV 87100 The Political Reform Act

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

In this connection, Mr. Warren has not filed his 2020 Economic Interest Statement which was due on 04/01/2020. The EIS serves as an important enforcement mechanism for the Act's disqualification requirements. Currently, the Councilman is out of compliance with the Political Reform Act and its regulations. Previous EISs list dozens of Limited Liability Companies related to real estate.

82003. "Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more.

The regulations also clarify when a governmental decision directly involves a public official's interest in real property. **A public official is directly involved if the property in which the official has the interest is the subject of the decision that is before the official's agency or if the official's property is located within a 500-foot radius of the subject property.** This includes the situation where the decision involves the zoning, annexation, sale, lease, actual or permitted use of, or taxes or fees imposed on the property in which the official has an interest. (Regulation, § 18704.2, subd. (a).) (The regulations are found in title 2 of the California Code of Regulations in section 18000 et seq.)

IV. Determining a Conflict of Interest

To determine whether a conflict of interest exists under the Act, the FPPC applies the following eight-step process.

STEP 1: Is the individual a public official? Yes.

STEP 2: Is the public official making, participating in making, or influencing a governmental decision? Yes.

Actually making a decision includes voting on a matter, appointing a person to a position, obligating one's agency to a course of action on an issue, or entering into a contract for the agency. (Regulation, § 18702.1, subds. (a)(1)-(4).) **Participation in Decision Making**-The proscriptions of the Act encompass a broad range of activities beyond the most obvious actions such as voting or contracting, since the language "participate in making . . . a governmental decision" is included in the general prohibition. (§ 87100.) "Participation" includes (1) negotiations without significant substantive review and (2) advice by way of research, investigations, or preparation of reports or analyses for the decision maker, if these functions are performed without significant intervening substantive review.

In this connection, the Staff report underscores Mr. Warren's involvement with the SPD ordinance: "Since the January 14th meeting, City staff worked on developing the proposed ordinance and consulted with Councilmember Warren's office on the final proposed version."

STEP 3: Does the public official have one of the qualifying types of economic interest? Yes.

Interests in real property An official has an "interest in real property" when the official, or his or her spouse or dependent children have a direct or indirect equity, option, or leasehold interest of \$2,000 or more in a parcel of property (e.g., ownership, mortgages, deeds of trusts, options to buy, or joint tenancies) located in, or within two miles of, the geographical jurisdiction of the official's agency (e.g., within two miles of city boundaries for city officials). (§§ 82033 & 82035.) The \$2,000 threshold applies to the value of the official's interest, based upon the fair market value of the property itself.

STEP 4: Is the economic interest directly or indirectly involved in the governmental decision? Yes

Real Property The regulations also clarify when a governmental decision directly involves a public official's interest in real property. **A public official is directly involved if the property in which the official has the interest is the subject of the decision that is before the official's agency or if the official's property is located within a 500-foot radius of the subject property.** This includes the situation where the decision involves the zoning, annexation,

sale, lease, actual or permitted use of, or taxes or fees imposed on the property in which the official has an interest. (Regulation, § 18704.2, subd. (a).) It also includes major redevelopment decisions involving establishment or amendment of the redevelopment plan where the official owns property in the redevelopment area.

STEP 5: Will the governmental decision have a material financial effect on the public official's economic interests? Yes

With directly involved interests materiality generally is presumed when the public official's economic interests are directly involved in the governmental decision unless the official can demonstrate that the decision will have no financial effect on the official or his or her interests. (Regulation, § 18705, subd. (a).)

STEP 6: Is it reasonably foreseeable that the economic interest will be materially affected? Yes.

The FPPC has set forth guidelines to assist in determining whether a particular decision's effects are "reasonably foreseeable." The following factors should be considered in making the determination: (1) the extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction.

Moreover, in this regard, the Planning Staff Report states:

The Del Paso Boulevard/Arden Way Special Planning District (SPD) was established in 1994 to assist in the preservation of an economic climate in this mixed-use neighborhood of residential, commercial, and light industrial uses by retaining existing businesses while accommodating new development. One of the goals for properties in the area is to promote an active retail district along the two major thoroughfares of Del Paso Boulevard and Arden Way. A storefront cannabis dispensary, with an approved Conditional Use Permit (CUP), is a compatible land use with this goal.

STEP 7: Is the potential effect of the governmental decision on the public official's economic interests distinguishable from its effect on the general public? Yes. According to the Secretary of State records, Mr. Warren is the single member of dozens of Limited Liability Companies which variously own property, plan to develop property, and build homes in District 2 and in the Special Planning District.

STEP 8: Despite a disqualifying conflict of interest, is the public official's participation legally required? No.

We believe that there is an overabundance of evidence that shows Councilman Warren's apparent conflict of interests in this matter, in addition to his role in the participation of creating the ordinance, to warrant the removal of the SPD cannabis changes from this Item.

Thank you for your consideration,

Jeff Brooke

Barbara Stanton - Old North Sacramento

Donna Zukowski

Taylor Gutermute - Woodlake Artists Group

Sondra Betancourt - Ben Ali Neighborhood Assn

Tina Echols

Flor Gressel

Karen Solberg

Richard Sickert

Larry Glover-Meade - Immediate Past President WNA

Gordon Lew - Noralto

Jane Macaulay

Nancy Kitz