

RESOLUTION NUMBER 6338

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, UPHOLDING THE PLANNING COMMISSION'S DECISION TO DENY DYNAMIC MEDS, INC. DISPENSARY'S APPEAL AND AFFIRM THE APPLICANT'S APPLICATIONS HAVE EXPIRED BASED UPON NON-RENEWAL OF THEIR APPLICATIONS PURSUANT TO THE PERRIS MUNICIPAL CODE AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, Dynamic Meds, Inc. (“Applicant”) obtained approval from the City of their Medical Dispensary Application (PLN 17-05171) on November 13, 2018, approval of their Adult-Use Retailer Application (PLN 18-05353) on February 5, 2019, and approval of their Minor Modification Application (PLN 18-05038) on November 13, 2018 (collectively “Applications”); and

WHEREAS, Perris Municipal Code Sections 5.54.100 and Sec 5.58.090 state marijuana application approvals automatically expire one year from the date of issuance unless the holder of a commercial marijuana operation permit applies for the renewal of an existing permit no less than sixty (60) days prior to the permit's expiration date; and

WHEREAS, the Applicant never applied for renewal for any of their marijuana Applications; and

WHEREAS, the City provided notice to the Applicant that the Applications had expired pursuant to Perris Municipal Code Sections 5.54.100 and Sec 5.58.090 due to non-renewal. The notice included references to a revocation of permits and abandonment of applications due to non-renewal; and

WHEREAS, on September 17, 2021, the Applicant submitted a notice of appeal to the Planning Commission regarding their Medical Dispensary Application (PLN 17-05171) and their Adult-Use Retailer Application (PLN 18-05353) – specifically, titled as a “notice of appeal of purported revocation of conditions of approval for a dispensary permit (No. 17-05171) and the minor modification (No. 18-05038)”;

WHEREAS, the Applicant’s notice of appeal conceded there is nothing to revoke as no permits have been issued; and

WHEREAS, in response to Applicant’s notice of appeal, the City provided notice to the Applicant that former correspondence mistakenly used the term “revocation” rather than “abandonment,” that the Applications had been abandoned and expired pursuant to Perris Municipal Code Sections 5.54.100 and Sec 5.58.090 due to non-renewal, and referenced PMC Sections 5.58.080 and 5.54.080 which state there is no right to appeal an abandoned application; and

WHEREAS, the Applicant and the City engaged in litigation as to whether an appeal hearing was required, and ultimately, the Court determined the City revoked the permits (although Applicant concedes no permits have been issued) and ordered the City to hold an appeal hearing pursuant to the Perris Municipal Code; and

WHEREAS, in compliance with the Court's Order, the Planning Commission held a duly noticed public hearing on November 15, 2023, at which time all interested persons were given full opportunity to be heard and to present evidence, and where the Planning Commission denied the Applicant's appeal and affirmed that the Applicant abandoned their applications (Medical Dispensary Application - PLN 17-05171, and Adult-Use Retailer Application - PLN 18-05353) based upon non-renewal of their applications pursuant to the Perris Municipal Code and determined that the applications had expired pursuant to Perris Municipal Code Sections 5.54.100 and Sec 5.58.090; and

WHEREAS, the Applicant submitted an appeal to the City Council on November 16, 2023, of the Planning Commission's decision orally rendered on November 15, 2023; and

WHEREAS, the City initially set the City Council public hearing for the Applicant's appeal of the Planning Commission's decision for January 9, 2024 in accordance with PMC requirements; and

WHEREAS, upon receiving Notice of the January 9, 2024 Public Hearing, the Applicant's counsel indicated he was unable to attend the scheduled hearing, and requested the hearing be rescheduled with the understanding that the Applicant would waive the time limit prescribed in the PMC to the extent necessary to accommodate a hearing at a later date; and

WHEREAS, the parties met and conferred on a mutually agreeable date and set the rescheduled the City Council public hearing for the Applicant's appeal of the Planning Commission's decision to February 13, 2024; and

WHEREAS, on February 13, 2024, the City Council conducted a duly noticed public hearing to consider an appeal of the Planning Commission's denial of the Applicant's appeal, at which time all interested persons were given full opportunity to be heard and to present evidence; and

WHEREAS, prior to taking action, the City Council has heard, been presented with, and/or reviewed all of the information and data which constitutes the administrative record for the above-mentioned approvals, including all oral and written evidence presented to the City during the hearings; and

WHEREAS, now the City Council desires, by this Resolution, to uphold the Planning Commission's decision to deny the Applicant's appeal, and to affirm and further hold that the Applicant abandoned their Applications (Medical Dispensary Application - PLN 17-05171, Adult-Use Retailer Application - PLN 18-05353, and Minor Modification Application (PLN 18-05038) (collectively "Applications) based upon non-renewal of their Applications pursuant

to the Perris Municipal Code and determine that the Applications expired pursuant to Perris Municipal Code Sections 5.54.100 and Sec 5.58.090; and

WHEREAS, an appeal hearing to determine whether an applicant abandoned their medical and adult use retailer dispensary applications is not considered a “project” within the meaning of the California Environmental Quality Act (CEQA) and under CEQA Guidelines Section 15378 and Public Resources Code Section 21080(b)(5). To the extent the action is considered a project, an environmental analysis of the project was previously completed for the Applications so no further CEQA analysis is required; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS does resolve as follows:

Section 1. The above recitals are all true and correct and are incorporated herein by this reference.

Section 2. Based on the forgoing, and all written and oral testimony presented at the public hearing on January 9, 2024, which are all incorporated herein by this reference, the City Council finds as follows regarding Medical Dispensary Application - PLN 17-05171, Adult-Use Retailer Application - PLN 18-05353, and Minor Modification Application (PLN 18-05038):

- a) The Applicant concedes they never submitted renewal of either one their dispensary applications pursuant to Sec 5.54.100 and Sec 5.58.090 of the Perris Municipal Code, as the dispensary applications automatically expire one year from the date of issuance unless the holder of a commercial marijuana operation permit applies for the renewal of an existing permit no less than sixty (60) days prior to the permit's expiration date – as such, the applications were automatically expired and have remained expired since November 13, 2019 (medical use) and February 5, 2020 (adult-use retailer).
- b) Although the Applicant obtained staff approval for both the Medical Dispensary Application and Minor Modification Application on November 13, 2018, they did not submit the off-site improvements to the engineering department until July 2020 and the on-site improvements until November 2020 to start the plan check process and obtain approval for the construction.
- c) Per the PMC, Dynamic Meds was not permitted to operate until demonstrating compliance and completion of all conditions of approval in order to receive final approval. However, in violation of the law, Dynamic Meds illegally operated since at least October 7, 2018 for about 3.5 years without proper permits. In addition to operating illegally the entire time,

Dynamic Meds was also operating at an extreme competitive economic advantage in comparison to the other dispensaries by not paying any taxes. During the entire time of illegal operation, Dynamic Meds has not produced any evidence that they had a state approved license to operate, or a certificate of occupancy, or even a valid business license (which was revoked due to being erroneously issued).

- d) The Applicant deceptively reached out to HDL, the City's third-party business license provider, to issue a business license in error on January 1, 2020, although the applicant needed to complete the on-site and off-improvements first, followed by obtaining a Certificate of Occupancy, before a Business License could be issued.
- e) Even after multiple notices by the City Attorney's office (March 6, 2020, and April 1, 2020) to close their illegal operation, the Applicant chose not to close their operation. The dispensary operation only closed after the Sheriff's Department came to the site to shut down the operation between August 6, 2021, and August 10, 2021.
- f) There is no revocation here as the Applicant concedes no permits have been issued. As such, an appeal of a revocation is moot.
- g) The Applicant abandoned their approvals because they failed to renew their applications, which have now expired.
- h) There is no opportunity for the Applicant to submit a new dispensary application, as on March 27, 2018, the City Council approved Resolution 5252 to suspend all new dispensary applications due to concerns over the number of dispensary applications in process and that the current regulations did not provide a limit on the number of dispensaries that would be allowed within the City.

Section 3. Based on the findings set forth above, and all written and oral testimony presented at the public hearing on January 9, 2024, which are all incorporated herein by this reference, the City Council hereby upholds the Planning Commission decision on November 15, 2023 to deny the applicant's appeal, and to affirm and further hold that the Applicant abandoned their Applications (Medical Dispensary Application - PLN 17-05171, Adult-Use Retailer Application - PLN 18-05353, and Minor Modification Application (PLN 18-05038) (collectively "Applications) based upon non-renewal of their Applications pursuant to the Perris Municipal Code and determine that the Applications expired pursuant to Perris Municipal Code Sections 5.54.100 and Sec 5.58.090; and

Section 4. The City Council declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the remaining

provisions, sections, paragraphs, sentences, and words of this Resolution shall remain in full force and effect.

Section 5. The City Council declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Resolution shall remain in full force and effect.

Section 6. The Mayor shall sign this Resolution and the City Clerk shall certify to the adoption of this Resolution.

ADOPTED, SIGNED, and APPROVED this 13th day of February, 2024.

Mayor, Michael M. Vargas

ATTEST:

City Clerk, Nancy Salazar

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Resolution Number 6338 was adopted by the City Council of the City of Perris at a regular meeting held on the 13th day of February 2024, by the following called vote:

AYES: NAVA, CORONA, RABB, VARGAS
NOES: NONE
ABSTAIN: ROGERS
ABSENT: NONE

City Clerk, Nancy Salazar