

From: [Brett Martino](#)
To: [Michele Gardner](#)
Cc: [Linda Neal](#)
Subject: Comment re: February 2 Town Council Meeting, Agenda Item 18
Date: Monday, January 31, 2022 4:20:35 PM

Dear Town Clerk Gardner, Mayor Hellman and Town Council Members,

I am writing to strongly urge you to deny the appeal by Element 7 Fairfax LLC (the “**Applicant**”) of the denial of Formula Business Conditional Use Permit for its proposed store at 1930 Sir Francis Drake Blvd (the “**Proposed Business**”).

Although I am not a resident of Fairfax, as a resident of the San Geronimo Valley, my family and I spend the majority of our leisure and shopping time in Fairfax patronizing local stores and restaurants, playing in Peri Park, Central Field and the newly-constructed skatepark (for all of which we donated funds for construction, maintenance and/or improvement), and generally enjoying the safe, small-town, village-like feel of downtown Fairfax.

I am an attorney with extensive experience in land use, zoning and planning laws – including the very first formula retail restrictions in San Francisco’s Hayes Valley neighborhood – and I have seen firsthand how businesses like the Proposed Business use semantics, technicalities and persuasive marketing to gain approval of formula retail locations that would otherwise be prohibited, and yet eventually have exactly the detrimental effects on the community that the formula retail ordinances seek to prevent (displacement of existing small and medium sized unique local businesses, changing the character of the neighborhood, leaving significant vacancies resulting from corporate mergers, acquisitions and reorganizations, etc.)

For reasons already voiced by many others, I believe the Proposed Business would be a detriment to downtown Fairfax, to the community, to other nearby businesses and to Fairfax as a whole: It would be replacing a well-loved, locally owned and truly family-funded shop where people of all ages can gather and enjoy healthy food, with a (soon-to-be) majority foreign-owned, private equity funded, centrally-operated business that is closed and unwelcoming to a significant portion of the public and explicitly by law does not provide any services to anyone under the age of 18. This is not consistent with the current character of Fairfax nor with the Town’s General Plan for the future of Fairfax, and should not be approved.

Further, as explained below, a closer reading of the Applicant’s submitted materials and relevant corporate research suggests that the Applicant may be attempting to mislead the community and flout the Town’s commercial cannabis and formula business regulations by (1) acting as a retail storefront for on-premise sale of adult recreational-use cannabis and (2) obtaining permit approval under the guise of private ownership and subsequently “flipping” the Proposed Business to a large Canadian publicly-traded corporation. Such behavior should not be tolerated or encouraged by the Town, the Council or the Planning Commission.

Although the Applicant’s proposal looks professional and persuasive and suggests that the Applicant will be a “good citizen” and a positive contributor to the community, a closer reading of all of the application materials together suggests otherwise: If the Applicant’s intent is truly to make only a handful of walk-in sales to medical-use customers and conduct the majority of the Proposed Business by delivery, that would seem a poor use of expensive, valuable and currently vibrant storefront space in downtown Fairfax. If the bulk of the Applicant’s business will be delivery-only (approximately 70% according to the letter submitted by Applicant on October 30, 2021), it would make more sense for the Applicant to choose a warehouse-like location. Instead, the Applicant has chosen prime downtown retail space and proposed to convert a thriving, inviting retail shop into a blank, unwelcoming storefront that the majority of Fairfax residents and visitors (i.e., anyone under 18, and anyone over 18 without a medical cannabis use license) cannot even enter.

Based on the location the Applicant has chosen for the Proposed Business – right on Fairfax’s “main street” – and the Applicant’s submitted materials for the Proposed Business, it seems far more likely that the Applicant intends to do a substantial amount of business with walk-in sales, and that those

walk-in sales would not be limited to medical-use cannabis. This is borne out by review of the numbers in the Applicant's materials: Based on the Applicant's business plan for the Proposed Business, the Applicant expects the Proposed Business to serve approximately 600 medical-use patients (See Remedy Fairfax, Section 7 Business Plan), with approximately 30% of the 10-15 sales per hour to be walk-in customers (See letter from Applicant dated October 30, 2021). At that rate, if the Proposed Business is open 8 hours per day, that amounts to 30-40 walk-in customers per day or 200-250 walk-in customers per week – which would require one-third of the Applicant's anticipated 600 medical-use customers to visit the Proposed Business every week. Either the Applicant is extremely optimistic about the needs and shopping habits of these customers, or the Applicant intends to deceive and mislead the Town and the community and blur the line between the "medical-use retail storefront" and "adult-use delivery" categories to allow walk-in sales for non-medical purposes. The Applicant's October 30 letter practically admits this – it states that "over time, as people become familiar and comfortable with cannabis, we expect [the walk-in sales] number to increase." Given that medical-use customers already have become familiar and comfortable with cannabis as proven by their obtaining a license, this can only mean the Applicant expects an increase in recreational-use walk-in sales, which are not permitted by Town laws. This would be a clear violation of the Town's commercial cannabis laws, but one that would be difficult (and expensive) for the Town to monitor and/or enforce given that all of this would occur behind closed doors on a transaction-by-transaction basis.

As if the above were not insult enough to Town ordinances, despite all the rhetoric in the Applicant's application materials about the Proposed Business being "privately-owned" and family-funded, the current majority owner of the Applicant may be contractually obligated to transfer the Proposed Business and its interest in the Applicant to a large, publicly traded Canadian corporation – which would likely occur shortly after the Town's approval of the Proposed Business' Conditional Use Permit. (See, e.g., [GH Group, Inc. and Mercer Park Brand Acquisition Corp. Complete de-SPAC Transaction, Creating the Largest Cannabis Brand-Building Platform in California \(newswire.ca\)](#); [Glass House Brands Files Suit Against Element 7 to Enforce Transfer of Contractually Committed Licenses \(newswire.ca\)](#)). The Applicant has stated that the Proposed Business would not be subject to this arrangement, but I implore the Council to request and review the Merger and Exchange Agreement, dated February 23, 2021, between GH Group Inc. and the Applicant's parent company to be sure. If such a transaction were to occur, it would make a mockery of Fairfax's formula business restrictions and prove that corporate formula retailers like the Applicant can make an end-run around the regulations by developing businesses through a private "straw man" and then flipping them into the corporate conglomerate. This would set an unfortunate precedent that would threaten Fairfax's small-town character as every well-funded boutique retailer would flock to Fairfax and push out local merchants, and pave the way for Fairfax to follow the path of Mill Valley.

Finally, although the current decision concerns an appeal of the Planning Commission's findings, I applaud the Commission for not being persuaded by the Applicant's argument that the Proposed Business is not a "formula business" – which seems to be solely based on the Applicant's use of tricks and technicalities. Regardless of the Council's ultimate determination on the Proposed Business' Conditional Use Permit, I hope the Council will stand firm on your determination that the Proposed Business is indeed a formula business. As with the concern about "flipping" to a corporate parent, to do anything else would create an unsettling precedent and undermine the intent of the Town's Formula Business Ordinance, allowing any chain to move into Fairfax by simply hiring a graphic designer and changing the logos, colors and name of the establishment while still having a single corporate source of control pulling the strings behind the scenes.

For all the reasons set forth above, I ask the Council to deny the Applicant's appeal and deny the issuance of a Formula Business Conditional Use Permit for the Proposed Business.

Thank you for considering my comments.

Very truly yours,

Brett Martino

From: [Bridget Clark](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: 1930 Sir Francis Drake Blvd - Fairfax Remedy (Element 7)
Date: Tuesday, February 1, 2022 10:22:10 PM

Town council members,

Let's be honest, getting cannabis in Fairfax is already as easy as getting a pizza delivered. It takes a quick phone call to a legitimately locally-owned delivery service and you can have it at your doorstep in 30 minutes. We already have a nearby dispensary in town and lots of delivery options.

As stated in the Formula Business Use Permit, Fairfax Remedy (aka Element 7), a so-called "local" business, **will not help residents avoid the need to drive out of town for their shopping needs and it will not be consistent with the pedestrian orientation of the town.**

As an avid mountain biker who rides through town ALL the time, going through Fairfax is scary enough. In order for Element 7 to maintain their overhead, security guards, and many "partners" - they will need to rely on out of town business. Being the 2nd dispensary in a town of 7,500 isn't going to help our current conditions. We don't need more traffic on Sir Francis Drake, especially with an increased risk for impaired and distracted drivers.

Comparing a fast food casual "granola bowl" based company (as it was called in the traffic study) to the traffic of a dispensary seems flawed. Even the traffic analysis acknowledges that Mana Bowls, because of the nature of the business, likely has foot and bike traffic.

I do not see how one can justify that approval of this use permit will result in **equal or better development of the premises and enhance our community**. That location is currently a meeting place with outdoor space that many locals, including teens walk or bike to.

Do we really think allowing a franchise-like business based out of L.A. to set up shop in Fairfax is going to help our traffic and safety issues?

Please think through your decision carefully and uphold the Planning Commission's denial of the application at 1930 Sir Francis Drake Blvd.

Much appreciated,

Bridget Clark

From: [Deb Kelly London](#)
To: [Michele Gardner](#)
Subject: Uphold Denial of Formula Cannabis Business
Date: Tuesday, February 1, 2022 7:41:26 PM

Michele

Please forward the following to all City Council Members.

I oppose allowing E7 Formula Business into town.

Please do not grant an application for Element 7 cannabis business to take over 1930 Sir Francis Drake Blvd. It would negatively impact traffic and parking which is an issue in Fairfax. To grant this application is not in the best interest of our community. We already have a locally-owned cannabis business in town with plenty of delivery options. Please support and uphold the Planning Commission's findings and deny this application.

Thank you

Kelly A London

The Coffee Roastery

Sent from my iPhone

From: The Coffee Roastery <thecoffeeroastery@gmail.com>
Sent: Monday, January 24, 2022 12:21 PM
To: Michele Gardner <mgardner@townoffairfax.org>
Subject: TO All Town Council Members

Dear Town Council Member and Town of Fairfax Municipal Departments

This is Deborah A London and Kelly A London responding to the Town of Fairfax Notice Of Public Hearing 7:00 PM February 2, 2022. We own The COffee ROastery located at the corner of Broadway and Bolinas at 4 Bolinas Road here in Fairfax.

We are writing regarding the Appeal of Planning Commission denial of a FORMULA BUSINESS Use Permit for a Cannabis Business.

We would like at this time to say that we are NOT in support of any FORMULA BUSINESS models or uses in the Town of Fairfax.

We feel that Franchises, Chains and the like would be a detriment to the small town business culture and success of business owners in The town of Fairfax.

An approval of one Formula Business opens the door for all Formula Businesses, Chains and the like. These types businesses would be devastating to our town and destroy small business owners,

Thank you Michele for passing this on to the Town Council Members.

Respectfully,

Deborah A London
Kelly A London
The Coffee Roastery
415-269-6970
415-717-0429
thecoffeeroastery@gmail.com

From: [Diana Perdue](#)
To: [Stephanie Hellman](#); [Renee Goddard](#); [Bruce Ackerman](#); [Barbara Coler](#); [Chance Cutrano](#); [Ben Berto](#); [Michele Gardner](#)
Subject: New rash of California marijuana robberies threaten survival of businesses
Date: Tuesday, February 1, 2022 2:27:49 PM
Attachments: [New rash of California marijuana robberies threaten survival of businesses.png](#)

No to element 7's application
Wrong business, unnecessary
Wrong location, too small, inadequate parking, dangerous
Fairfax does not need a corporation to strong arm its way into our small town.

Diana Perdue
Fairfax

2:23



Moore cannabis store in Oakland. (Photo by Tucky Blunt)

A spate of **violent robberies** targeting marijuana businesses in the San Francisco Bay Area last month have thrown into question the survival of several small businesses, with the combined losses of those operators estimated to be at least **\$5 million**.

The crimes ranged from break-ins that resulted in minor damage to, in some instances, wild gunfights between criminals and security

guards, according to media reports
and sources.

ADVERTISEMENT



The advertisement features the COVA logo, which consists of a stylized orange and yellow molecular structure followed by the word "COVA" in white. Below the logo, the text "Award-Winning POS + E-commerce + Delivery" is displayed in white, with green plus signs separating the terms. In the bottom right corner of the ad, there is a small white box with a blue 'X' icon. The background of the ad is dark blue, and a laptop displaying a software interface is visible in the bottom right corner.

 mjbizdaily.com

Sent from my iPhone

From: [Elizabeth O](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: Element 7 appeal
Date: Tuesday, February 1, 2022 2:44:11 PM

Dear Fairfax Town Council,

I am one of the [100 or so people who wrote the Planning Commission](#) and nearly 700 people who [signed the petition](#) urging Fairfax to keep Element 7 out of Fairfax. I hope you will listen to the community and **support the Planning Commission's denial** of application.

Element 7 is clearly a chain dispensary. They "*assert that their business never met the definition of a formula business because Element 7 has no corporate headquarters and the business does not have a main office location*". They argue that their administrators work from home now. The Town code regarding the definition of a formula business was adopted before the COVID pandemic. COVID has radically changed how U.S. businesses operate now. Most administrators in America work from home now so Element 7 can't use this **as a measure of a lack of corporate organization!** Please interpret the Town rules in the manner that they were intended and understand them in the context of a 2022 COVID world.

Calling Element 7 non-formulaic is "putting lipstick on a pig". Making superficial changes is a futile attempt to disguise the true nature of their corporate business.

Thank you for your service to the community.

Sincerely,
Elizabeth O'Donnell

From: [Elizabeth Share](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: Cannabis Application, Element 7
Date: Tuesday, February 1, 2022 7:56:21 AM

Dear Town of Fairfax,

I am writing to ask that you please not grant an application for Element 7 cannabis business to take over 1930 Sir Francis Drake Blvd.

I don't see any evidence, from the information I have access to, that this application is in the best interest of our community, particularly as we already have a locally-owned cannabis business in town with plenty of delivery options and many others in the Bay Area as well.

What we value and support, I hope, our locally owned businesses, like Mana Bowl, that provide healthy options for our youth while also addressing environmental sustainability by adhering to model practices for green businesses.

Please support and uphold the Planning Commission's findings and deny this application.

Thank you,
Elizabeth Share

From: ake.hannah@gmail.com <ake.hannah@gmail.com>

Sent: Friday, January 28, 2022 10:57 PM

To: Linda Neal <lneal@townoffairfax.org>

Subject: Do not approve cannabis storefront

Hello,

I am writing in support of the denial to issue a permit to the new cannabis storefront on Sir Francis Drake in Fairfax. Please do not provide them the permits to open shop and please keep Mana Bowls in place.

Thanks

Hannah

From: [James Anthony](#)
Cc: [Michele Gardner](#); JANET.COLESON@bbklaw.com
Subject: Fairfax Town Council 2/2/22 Items 17&18: DENY ELEMENT 7 APPLICATIONS
Date: Tuesday, February 1, 2022 7:04:36 PM
Attachments: [James Anthonys CV 4ja-2021 Resume.pdf](#)
[Fairfax Testimony-Item17-CCB-1lp-FINAL-1.pdf](#)
[Resume - Lauren Payne.pdf](#)
[Fairfax Testimony-Items17-18-CUP-9ja-FINAL-3.pdf](#)

Hon. Mayor and Councilmembers:

Greetings. I write to you all bcc in the interests of avoiding even the appearance of any impropriety under the Brown Act, though I am of course only exercising my personal and professional right of political free speech as you consider these matters.

Because Element 7's applications are unsupportable in so many ways, a thorough critique required a fair amount of writing and organizing: there are seven main points expressed in my testimony on Items 17 and 18, attached.

My testimony includes a table of contents/outline and an executive summary for your ease of reference. I am also available to you anytime at your convenience for email, text, or cell phone calls if you have any questions.

I apologize for any lack of clarity. California state cannabis law and regulations are complex (perhaps needlessly so)--and their interaction with Fairfax's unique permitting system leads to some perhaps surprising consequences.

I hope you enjoy the "brain teaser" aspect of all this as much as I have.

Also attached is the testimony on Item 17 from Compliance Analyst Lauren Payne (and their resume), scoring and analyzing the Commercial Cannabis Business Permit application, detailing its pluses and minuses, and on balance finding it deficient for permitting purposes.

Please feel free to contact me by email or cell phone with any questions or needs for clarifications.

Madame Clerk, please accept all these documents as the official testimony for the record of Ms. Payne and myself.

Thank you all for your public service.

Yours very truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 *office*

(510) 207-6243 *cell*

james@anthonylaw.group



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Date: February 1, 2022
To: Fairfax Town Council
From: Lauren Payne, Compliance Analyst, Anthony Law Group
857-205-7546 *cell*
Re: February 2, 2022 Fairfax Town Council Meeting: Element 7 Applications for Commercial Cannabis Business Permit (Item 17) Should be Denied.

Honorable Mayor and Town Councilmembers:

My name is Lauren Payne and I have been consulting in the cannabis industry on various local and state licensing procedures since 2011¹. Prior to that, I ran the legal hotline for Americans for Safe Access and helped their Policy Shop develop reasonable recommendations for local and state medical cannabis laws throughout the country.

I have had a substantial role drafting more than a hundred applications throughout the United States. Most of these were highly competitive markets – and my clients won!

After over 15 years of policy experience in cannabis, I am considered an expert in this space. (My resume is attached.) This is my analysis and scoring of the Element 7 Fairfax Commercial Cannabis Business Permit application.

¹ I also sit on the Oakland Cannabis Regulatory Commission; however I am not acting in any official capacity with this letter.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

SCORING AND ANALYSIS PER THE FAIRFAX CORING CRITERIA

I. Business qualifications and business plan as demonstrated by (35 Points):

- Industry experience
- Financial capacity to start up and sustain business operations
- Business design/layout: secure, attractive, unobtrusive design
- Innovative or boutique business models consistent with the Fairfax community
- Additional information that demonstrates the ability to operate in a manner consistent with the values of the Town, including, without limitation, local residency of principals (3+ years), connection to Fairfax, ability to serve Fairfax, familiarity with the Town ii.

Total Points Awarded: 21

The full Element 7 team is undoubtedly strong and includes dozens of experts in the field. In my experience, however, these roles rarely play much of a role in development of actual operating procedures or training. They are generally used to gain points on applications. That said, Robert DeVito who seems to be the only person with contractual obligations to the facility, has a lot of good experience in cannabis and business operation.

There is a lack of clarity as to whether the local “co-founders” Nicolas Pommier & Matthew Brown are truly principals in the company. They are each listed as members of the existing LLC but in other communications with the Town, DeVito is described as a “single private owner.” As of the submission of these materials, Pommier only held 11% of voting interest and Brown only 3%. No breakdown is given as to whether either of them has any financial interest. The Operating Agreement also provides for additional adjustments to voting and financial interests at any time; given that DeVito holds 86% voting interest, he would be able to make these adjustments himself.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

With locals holding 14% of the voting interest, this is not a locally-controlled company. The named principals are described as intended staff but no supporting evidence of that intention is provided. The Operating Agreement and other entity formation documents have no mention of these commitments. If there are additional contractual agreements showing these commitments, it is standard practice to include them with application materials.

As for financial capacity, there is only one actual contribution of \$1,000 that has been made to the Fairfax project by Robert DeVito. The capitalization documents show tens of millions; it's important to note, however, that each of those documents references that these funds are available to Element 7 for their projects throughout the state of California. There is no mention of any commitments made explicitly or exclusively to the Fairfax project. In communications with the Town Element 7 has said they've expended at least \$100,000 so far in securing local approval. Their initial Use of Funds table found in Section 6, Business Plan, on page 188 shows a budget of \$40,000 for all permitting. Given that they have already expended more than twice that, it's concerning that they would no longer be able to meet any of their projections at this point. Are additional capitalization funds available to continue with local & state permitting, which is only the beginning of the process? Initial capitalization seems unclear at best.

Beyond the initial capitalization concerns, the *pro forma* (projected financials) and associated market research seems to be based on dated industry standards. Section 7 Financial Capacity to Launch and



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Sustain the Business and the subsequent Section 7 Additional Information [...] rely heavily on research conducted and reported in 2018 by Deloitte. While that report was seen as useful at the time, there have since been a dozen (or more) market reports released by various respected outfits. In fact, the Deloitte report cited on page 175 of the application materials has been updated annually. It's also important to point out that the report is reliant solely upon the Canadian market. The cannabis market is ever-shifting and it is vital to update market research accordingly.

With respect to Section 7 Business Design and Layout, “modern” is mentioned multiple times which seems antithetical to the proposed neighborhood Element 7 has identified. The area’s historic village-like character definitely does not bring to mind the word “modern.” Their architect and design team seems to be entirely based in Los Angeles, which may explain the disconnect.

II. Quality of operating plan as demonstrated by (35 Points):

- Demonstrated understanding of all State requirements, including but not limited to security, financial, other recordkeeping
- Inventory controls and sales procedures to prevent diversion to illegal market and access by minors
- Employee training above State requirements
- Parking, circulation, and traffic plan, including truck and delivery parking if applicable, to ensure safe access and minimize traffic congestion
- Complaint response program
- Additional operational procedures demonstrating safety, commitment to community welfare and community responsiveness

Total Points Awarded: 20



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

The application materials do a mediocre job of demonstrating an understanding of all state requirements, as there are multiple discrepancies between the submitted materials and state legislative and regulatory requirements that were in place at the time of submission. As an example, under 19 Cal. Code of Regulations Tit. 4 § 15037 record retention is required for a minimum of 7 years. However, Section 8 Data Management on page 202 states logs will only be retained for 6 years.

Many of the submitted state application materials do not contain sufficient information for state approval and are lacking basic citations to law, required language, and even in some instances lack of responses to each question posed. Additionally, many of the materials simply state “see [Section of Fairfax application materials]” which would be unacceptable for state submission and thus fails to meet Fairfax’s requirement to provide a completed state application.

The state procedure forms (aside from the Delivery Procedures form) do not seem to contemplate delivery activities. The application itself is only for a Type 10 Medical state license, which brings to the forefront the issues that arise with state licensure that requires local authorization & compliance with respect to all aspects of local rules & regulations.

Operating procedures included in Section 8 Operating Plan are missing a lot of operational details, especially with respect to Delivery Procedures. While it’s not practical or useful to include every



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

single procedure in an initial application, it is useful for regulators to understand what a typical day looks like for staff.

Given that the entire facility is 850 square feet, it's reasonable to expect a brief discussion of where specific activities will take place. As an example, the application outlines what happens when a delivery order is received with respect to data transmission & records. It does not, however, describe where the products will be stored, who will be packing the orders, and where.

Various points of the application states that they project serving 50-100 delivery customers a day and it's challenging to get an idea of where all of those activities will take place without narrative details.

The Delivery Entrance is the only delivery-specific space identified on the submitted diagrams. Presuming diagrams are to scale and properly marked, the Delivery Entrance is a square space with walls that measure less than 6'9" on each side. Is it to double as the workspace for multiple dispatch operators and the head of delivery? Is this where all dispatch equipment, invoices and other active delivery records will be kept?

Secured storage is especially important given that the adult use customers who use the delivery services may not have access to certain medical cannabis products. Will these products be segregated? How? Where? Again, presuming that the diagrams are to scale and properly marked, the storage space for the entire facility is a square space with walls that measure 6'9" on each side. All



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

cannabis products must be held in secured, limited access storage under 19 Cal. Code of Regulations §15000.7 which excludes the additional storage area noted on the diagrams.

Employee training information provided is almost entirely limited to initial training for staff prior to opening. Language included in the application materials does not commit to any specific training programs once the initial round of hiring is complete. Additionally, there is only one mention of ongoing training with no details about what that will entail beyond the number of hours per staff member. There is lack of clarity whether these hours will be dedicated continued training, or if it will be rolled into staff trainings about new operating procedures, new products obtained, and feedback sessions with management. Many facilities tout their continued training commitments, but lack actual substantive training after initial onboarding occurs.

The Section 8 Classroom Training Program on page 219 cites industry standards from a report developed in 2017. Many, many industry standards have changed in the interim with respect to topics, length of training, identifying which staff should receive which trainings, etc. The program seems to heavily rely on those outdated standards. There is no evidence that any of the mentioned training systems have been engaged for use by Element 7 in Fairfax.

The outlined complaint response program seems to comport with state law, however there is no mention about notifying its customers and patients about the program or the ability to return damaged or nonconforming products.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

As more exhaustively explained in the Item 18 Anthony Law Group testimony from attorney, James Anthony, the application also fails to recognize the critical interaction between the unique Fairfax system of medical-only dispensary permit coupled with adult-use delivery permit. Under California's system of dual licensing, Fairfax's requirement of two separate premises (imposed by the Town ordinance, regulations, and procedures on the only such operation, the existing dispensary and its delivery use) lead to a requirement of two separate California licenses. Nowhere does the application address or show an understanding of these legal requirements, clearly imposed under the existing example under the Town and state law. Such a failure in itself should lead to the failure of the application *in toto*. The points awarded here do not consider that fatal flaw and are given generously as a hypothetical model.

III. Public benefits, including, but not limited to the following (30 Points):

- Employee training above State requirements
- Social equity: One or more principals who earn at or below median household income; women or minority owned business; small business
- Offer medical cannabis:
 - Patient services, such as physician or caregiver networking
 - Experience serving patients
- Reduced-cost products to low-income medical patients
- Locally-sourced, organic/pesticide-free products
- Green business rating: Is certified or qualifies for certification
- Participation and support of local youth-serving prevention and education programs, and/or adult addiction programs

Total Points Awarded: 23



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

There is no mention of one or more principals earning at or below median household income, nor is there mention of being a women- and/or minority-owned business. While Element 7 has, in communications with the Town, claimed to be a small business, their backing seems to say otherwise.

The application materials do not mention any additional patient services such as physician or caregiver networking. There is mention of a handful of public events where customers can learn about various topics but there does not seem to be any program specifically tailored to supporting patients. The materials mention a few organizations that may benefit from their partnership with Element 7, but it is clear that no specific steps have been undertaken to initiate those relationships.

There is no mention of any discount programs for low-income patients; there is a program to provide a handful of products at the \$20 price point.

While the application mentions a handful of youth-oriented groups, again it is clear that the information provided is limited to basic research and Element 7 has not endeavored to engage these groups to determine what their needs may be, or even if they're interested in working with a commercial cannabis company.

The inclusion of mention of volunteer hours and offering 6% net revenue to “programs for the local community” are worded in such a way that it seems these hours and donations will be limited to the



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

outlined Events in Section 9 Public Benefits Plan beginning on page 263. These educational programs look a whole lot like marketing opportunities rather than true community benefits.

CONCLUSION

Grand Total Points Awarded: 64

Falling well short of the minimum 80 points that the Town of Fairfax system requires to move forward to Town Council, this application would have failed at the Planning Commission level if subjected to strict scrutiny in a truly competitive cannabis business context today. The Planning Commission itself only gave the application 80.1 points. And that barely passing score was predicated on one Commissioner scoring Public Benefits in a range of 20-23 points. Staff split the difference at 21.5 points. If the low end of 20 points is used, the average total score is 79.8.

Very truly yours,

Lauren M. Payne
Compliance Analyst
857-205-7546 cell
Attachments:
Resume



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Date: February 1, 2022
To: Fairfax Town Council
From: James Anthony, *Principal*, Anthony Law Group
510-207-6243 *cell*
Re: February 2, 2022 Fairfax Town Council Meeting: Element 7 Applications for Cannabis Retail CUP (Item 18) and related Permits (Item 17) Should be Denied.

Honorable Mayor and Town Councilmembers:

Greetings. I submit this testimony in the interests of a rational cannabis retail policy for Fairfax at the present time, under the present circumstances locally and statewide, and in light of the present applications from Formula Business Element 7 which you, collectively, can and should deny.

Table of Contents/Outline:

- I. Executive Summary..... 2
- II. Formula Business *Element 7* is a Wholly-Owned Subsidiary of the Largest Cannabis Company in California, *Glass House*, Which in Turn is Owned by a Publicly Traded (Toronto Stock Exchange) National Brand Cannabis Investment Company, *Mercer Park*; It is Not Locally-Owned Nor Owner-Operated. 3
- III. Formula Business *Element 7*'s Financial Projections are Misleading; The California Cannabis Industry is Unstable and Unpredictable. 5
- IV. *Element 7* Admitted That It is a Formula Business in Its Application; And as the Planning Commission Found, It Does Not Meet Fairfax's Legal Requirements for a CUP. 8
- V. Even if *Element 7* Were Not a Formula Business, Town Council Can and Should Reject Its Application for a CUP on General Grounds, as Did Planning Commission..... 9
- VI. Legally, a Conditional Use Permit (CUP) is a Discretionary Permit that the Town Has the Clear Power to Deny for any Rational Reason, Including Those Found in the Planning Commission Denial; In the Unlikely Event of an Appeal, Such Denials Will Be Upheld by the Courts. 10
- VII. *Element 7* Fails to Comply with the Complex Local and State Law that Governs Cannabis Businesses in Fairfax and Requires Separate and Distinct Physical Premises and Two Separate State Licenses for the Two Permitted Uses: The Medical-Only Storefront Dispensary and The Adult-Use Delivery Service. . 11
 - A. The Town Code, Past Practices, and State Law, Together, All Require that Medical Dispensaries and Adult Use (Recreational) Delivery Services Must Have Separate Physical Premises and Separate State Licenses Even if Operated by the Same Entity. 13
 - B. *Element 7*'s Failure to Address this Unusual Requirement of Two Separate Premises and Two State Licenses to Operate the Two Different Uses Under Local and State Law is Fatal to Their Application Which the Town Council Must Now Reject. 16
- VIII. Conclusion..... 17



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

I. Executive Summary

My name is James Anthony. For the last 17 years I have been a local government and land-use cannabis attorney. In addition to my private law practice, I sit on the Board of Directors of a number of local and state cannabis trade associations and have been active in cannabis advocacy for decades. Before that I was a problem property (zoning/nuisance) prosecutor for the City of Oakland. (*See*, resume attached separately.) I have watched cannabis evolve from a radical progressive social movement, defending the right to use safe effective medicine, into an international financial market funneling billions of dollars into the latest California “get rich quick” scheme.

The current cannabis “green rush” is an extremely volatile high-risk game, in the shadow of federal prohibition and the hope for federal legalization. There is nothing predictable about the new cannabis businesses, except the huge changes happening now: buyouts, mergers, bankruptcies—these are weekly, if not daily, occurrences in the new go-go industry of cannabis investment.

As a land use cannabis attorney with a local government background, I understand that not all types of cannabis businesses are appropriate for all types of cities and towns. This is not a question about cannabis or even about whether Fairfax should have another dispensary. It's about whether Fairfax should have: 1) This applicant Element 7, a giant corporate conglomerate; 2) Now, at this extremely volatile moment in the evolution of the California cannabis industry; and 3) In this location, in a sensitive part of the Town Center Planning Area with its historic village-like character.

The answer to all three parts of that question is “No.” Formula Business Element 7 is not right for the village character of the town of Fairfax. The Town Council can and should deny its



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

applications. (This letter focuses on the Formula Business Conditional Use Permit; a separate letter will be submitted revisiting the scoring for the Commercial Cannabis Business Permit.)

II. **Formula Business *Element 7* is a Wholly-Owned Subsidiary of the Largest Cannabis Company in California, *Glass House*, Which in Turn is Owned by a Publicly Traded (Toronto Stock Exchange) National Brand Cannabis Investment Company, *Mercer Park*; It is Not Locally-Owned Nor Owner-Operated.**

Element 7 exists for the purpose of turning a huge profit on a corporate buyout. That buyout will result in new ownership who will do whatever it takes to maximize returns to their shareholders: standardization, uniformity, corporate inventory, etc. And in fact they have already done so. Element 7 first applied in Fairfax in January 2020, and then re-launched in January 2021 promising local ownership and local control, in a transparent attempt to paper over its true nature as statewide investment scheme. But in April 2021, Glass House, the largest California cultivation corporation announced that it was buying Element 7 and simultaneously merging with national cannabis brand company, Mercer Park Brand Acquisition Corp. (NEO: BRND.A.U; OTCQX: MRCQF) (“BRND”), a Special Purpose Acquisition Company (SPAC) and publicly traded company (in Toronto because U.S. stock exchanges are forbidden to list cannabis stocks) in a deal worth \$657,000,000.¹ Element 7 was a significant part of the deal, as the BRND Chairman said:

“Combined with the proposed combination with the Southern California Greenhouse asset and **17 proposed Element 7 retail licenses**, Glass House Group is poised to become the largest, vertically integrated brand-building platform in California, the world’s largest cannabis market.”²

¹ <https://markets.businessinsider.com/news/stocks/glass-house-cannabis-spac-deal-mercerc-park-neo-exchange-2021-4-1030288910>

² <https://www.newcannabisventures.com/mercerc-park-brand-spac-to-buy-california-cannabis-operator-glass-house-group-for-567-million/>, *emphasis added*.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

This means standardization and cookie-cutter management from afar, franchise style. That is not what Fairfax is about. The new post-merger Glass House Brand started trading on the Canadian stock exchange in Toronto in July 2021.³ (To the best of my knowledge, Element 7 never updated its application to reflect this new ownership.)

Note also that what Element 7 brings to the table is “17 *in-process* retail licenses.”⁴ That is to say, as part of their \$24 million valuation **they may have already bundled up and sold their non-existent Fairfax license.**⁵

Element 7’s business model is to amass 17 paper licenses and leverage them to buy their way into the largest cannabis company in the state. Formula Businesses might be a fine model where corporate chain stores are common, but it does not fit with Fairfax’s character, nor does it align with the Fairfax General Plan Policies. Large corporate chains with merely a nod to local participation do not preserve the community and neighborhood’s character. Additionally, maximizing profit for out-of-town owners, and serving out-of-town demand drawn due to the paucity of nearby dispensaries, is inconsistent with the unique and historic village character of the Town. Placement of a chain storefront within the Town Center Planning Area of Fairfax does not preserve the unique visual

³ <https://www.forbes.com/sites/ajherrington/2021/07/09/glass-house-eyes-dominating-californias-cannabis-market-with-stock-listing/?sh=17d812304e5f>

⁴ <https://www.newcannabisventures.com/mercerc-park-brand-spac-to-buy-california-cannabis-operator-glass-house-group-for-567-million/>, *emphasis added*.

⁵ And apparently Element 7 wasn’t satisfied with that \$24 million dollar buyout—they have tried to renege on the deal and are now being sued by Glass House: <https://www.greenmarketreport.com/glass-house-brands-sues-element-7-over-ma-contract-breach/>. Element 7’s track record for keeping its promises is questionable. When they are bought out again, the Town will be unable to enforce the “promises” made during the local approval process. (See also the article’s reference to the Fairfax controversy and the anti-Element 7 petition signed by 700 locally concerned citizens.)



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

appearance and shopping and dining experience of the Town for its residents or its visitors. It does not further the public health, safety, and welfare of the Town's residents. Rather, it diminishes them.

Even if through some quirk of corporate structuring Element 7 Fairfax LLC is not formally a part of the buyout deal, it is owned 86% by Robert Divito who definitely is part of the deal and who owns with Glass House at least 17 other Element 7 entities. Regardless of corporate shell games, Element 7 Fairfax LLC is still part of a consortium of businesses under common ownership.

The Planning Commission was correct in denying the Formula Business Conditional Use Permit and recommending denial of the Design Review & Sign permits, as well as the Cannabis Business permit. Fairfax is not the right place for this type of business. Element 7 is anything but locally owned by an owner-operator: it is owned by a national brand company that is the largest cannabis company in California. The Town Council should deny its application on that basis also.

III. Formula Business Element 7's Financial Projections are Misleading; The California Cannabis Industry is Unstable and Unpredictable.

In its January 2021 application, Element 7 claims it will sell \$4.5 million of cannabis in Year 2, and \$5.4 million in Year 3. This is misleading, unrealistic, and unsupportable by any rational projection. California's legal cannabis market is in jeopardy. As the LA Times said in a December 26, 2021 editorial, the entire industry is "a mess" and more than 75% of sales take place outside of the licensed market.⁶

⁶ <https://www.latimes.com/opinion/story/2021-12-26/editorial-californians-overwhelmingly-supported-legalizing-marijuana-so-why-is-it-still-a-mess-five-years-later>



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Grossly excessive taxation on legal cannabis fuels the underground market by making legal cannabis products wildly more expensive than unlicensed products – in many instances as much as 50% greater or more.⁷ In November 2021 this intolerable situation led industry leaders to threaten a tax strike, saying that the “state’s licensing process is unworkable, and the regulatory framework has disincentivized operators to remain open. Our tax structure is creating a thriving illicit market, putting people out of business and killing what could be one of the greatest industries of California.”⁸

Element 7 will not sell \$4 million in cannabis regardless of the promises they make to the Town to secure a permit. Lynnette Shaw, operator of CBC Marin Alliance,⁹ has stated that revenue there, in Fairfax’s only dispensary, has declined dramatically since the heyday of medical cannabis when they had no competition. CBC Marin Alliance made only in \$1.7 million at the height of legal medical sales. More recently, with competition from 20+ nearby licensed cannabis delivery services that serve Fairfax, and at least 22 unlicensed ones, 2021 sales are down to just over a million dollars.

As a consequence of over-regulation and excessive taxation the industry is now headed for freefall. On January 10, 2022, in his Budget Summary, the Governor was forced to admit that

⁷ <https://www.change.org/p/toni-g-atkins-cannabis-industry-united-for-less-taxes-and-more-retail?redirect=false>

⁸ <https://www.benzinga.com/markets/cannabis/21/11/24264808/co-founder-of-flow-cannabis-calls-for-tax-revolt-in-california-says-regulatory-system-unworkable>

⁹ CBC Marin Alliance is Fairfax’s hometown landmark, the oldest surviving dispensary in the nation started in 1997 by true activists who fought for medical cannabis from the beginning. See, https://mjbrandinsights.com/from-motorcycle-gangs-to-swat-raids-how-lynette-shaw-became-the-godmother-of-legal-cannabis/?utm_source



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

cannabis tax revenues are well below the state's optimistic projections, and that the industry is unstable and in need of serious tax reform.¹⁰

A November 2021 sales report from BDS Analytics¹¹ shows that legal sales in California fell by more than 11 percent to \$293.1 million when compared to 2020 and are down nearly 8 percent from August 2021. This is also reflected in data released by the California Department of Tax and Fee Administration (CDTFA),¹² which shows a \$176 million drop in taxable sales from the second quarter to the third quarter of 2021.

Unable to meet their projections legitimately, there is only one option for Formula Business Element 7, or Glass House, or whichever corporation buys their Fairfax license next: to follow the corporate strategy of using massive cash reserves to undercut and then bankrupt their competition, the hometown landmark, CBC Marin Alliance, and other nearby delivery services.

And then Fairfax will again have only a single storefront dispensary, this time corporate, rather than homegrown. Fairfax might consider waiting until the chaos in the cannabis industry dissipates to revisit additional storefront permits.

The Town is under no obligation to issue any new permit at all. The Town Code § 5.56.070 (D) on Cannabis Business Permit Applications states clearly: "The town reserves the discretion to not grant any applications in the interest of the health, safety, or general welfare of the town."

¹⁰ <https://lao.ca.gov/Publications/Report/4492>, p. 223-24.

¹¹ <https://www.newcannabisventures.com/american-cannabis-sales-weakened-further-in-september-according-to-bdsa/>

¹² <https://www.cdtfa.ca.gov/dataportal/charts.htm?url=CannabisTaxRevenues>



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Element 7 cannot reasonably expect that it will get a permit just because it is the only current applicant.

Element 7's rosy projections and promised largesse to the Town are not credible. The Town Council can and should deny its applications on this basis also.

IV. Element 7 Admitted That It is a Formula Business in Its Application; And as the Planning Commission Found, It Does Not Meet Fairfax's Legal Requirements for a CUP.

In its January 2021 re-launch of its original January 2020 application, Element 7 first admits that it is a Formula Business and that this is a good thing because it allows them to surmount the barriers to entry of over-regulation and excessive taxation with their massive cash reserves. It then weakly argues that it actually isn't a Formula Business on some narrow reading of the ordinance.

As part of a large corporate chain, Element 7 has the elements of a Formula Business—standardization, uniformity, corporate inventory, etc. It falls well within the ambit of the Purposes of Fairfax's Formula Business (aka chain store) Ordinance at Town Code §17.040.200:

- Meeting local demand not outside demand (that Element 7's sales projections rely on),
- Limiting traffic impact,
- Supporting true local owner-operators, and
- Preserving the Town's unique village character.

Its features are within the "other similar features" catchall clause of the Town Code §17.040.210 definition of Formula Business. And it falls within the Town Code §17.040.210 "unless the context clearly indicates or requires a different meaning" clause. As a large paper chain of cannabis businesses, Element 7 exists in a context where one must assume that they will cut every



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

corner and take every large-scale advantage possible to gain market share, cut competition, and achieve profitability. For a chain of that size that can only mean standardization, uniformity, corporate inventory, etc., all the hallmarks of Formula Business.

Even if through some quirk of corporate structuring Element 7 Fairfax LLC is not formally a part of the buyout deal, it is owned 86% by Robert Divito who definitely is part of the deal and who owns with Glass House at least 17 other Element 7 entities. Regardless of corporate shell games, Element 7 Fairfax LLC is still part of a consortium of businesses under common ownership.

For the reasons given in the Planning Commission resolution of denial, Element 7 is not eligible for a Formula Business CUP at this location. The Town Council should deny its applications.

V. Even if Element 7 Were Not a Formula Business, Town Council Can and Should Reject Its Application for a CUP on General Grounds, as Did Planning Commission.

The Planning Commission resolution states numerous rational factual findings as the basis for denying the CUP. These include specific examples of incompatibility with the Town's General Plan Policies and the factual inability to make the findings required for a CUP under the general provisions of Town Code §17.032.060. The applicant Element 7 will not "preserve and enhance the village (small town) character and pedestrian scale of the downtown area" as required by the General Plan Policy TC-1.1.1. In rejecting the CUP application the Town does not have to prove that Element absolutely could not meet the requirements of the General Plan and the Town Code. If the Town Council simply cannot make an affirmative finding that Element 7 shall and will meet *even just*



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

one of the various requirements, then legally Town Council cannot and should not approve the CUP.

Town Council should deny the application for those reasons.

VI. Legally, a Conditional Use Permit (CUP) is a Discretionary Permit that the Town Has the Clear Power to Deny for any Rational Reason, Including Those Found in the Planning Commission Denial; In the Unlikely Event of an Appeal, Such Denials Will Be Upheld by the Courts.

It is a fundamental principal of land use law that local government has great power of discretion to issue a CUP or not for *any* rational reason. A court will not disturb such a decision even if the judge personally disagrees with the particular decision. It is not for the court to substitute its opinion for that of the local legislative body, in this case, the Fairfax Town Council. A denied applicant would have to sue and prove that the decision was completely *irrational*, arbitrary, or capricious, that is, without *any* rational basis whatsoever. That is a very high bar for the failed applicant. It is the source of the phrase, “You can’t fight City Hall.”

On the other hand, if the Town were to approve and issue a CUP, then as soon as the new permittee spent money in reliance on the new CUP—build out, hiring employees, more investment (beyond what went into the application *before* the CUP was awarded)—the CUP would “vest” into a constitutionally protected property right. At that point, it would be very hard for the Town to revoke the CUP. (This is why Oakland has 300 liquor stores: they each have vested rights, and it is nearly impossible to shut them down: the courts keep giving them chances to redeem themselves to protect their property rights.)

Indeed, the Town is more susceptible to a legal challenge from an existing licensed operator for improperly issuing the CUP in question, especially if it did so under different or unequal



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

conditions comparatively between the two operators. This seems unlikely at this juncture, but it is a much stronger hypothetical than a challenge from a denied applicant for a CUP.

For until the Town issues a CUP there is no property right, and any such lawsuit would be unsuccessful. Good lawyers know this and do not waste their clients' time and money bringing unwinnable lawsuits. The Town is under no obligation to issue this CUP or any CUP.¹³ CUPs are “discretionary” permits (as opposed to “ministerial” ones, like building permits for plans that are up to code, that must be issued and can be compelled—because those are *not* discretionary) because the Town is free to deny them for any rational reason.

The Town should deny the applications for the well-reasoned, rational, written factual findings in the Planning Commission resolutions of denial demonstrating that the applicant Element 7 has failed to meet the Town's legal requirements. In doing so, the Town is on rock solid legal ground, well within its discretionary general police power to legislate for the public health, safety, and general welfare.

VII. Element 7 Fails to Comply with the Complex Local and State Law that Governs Cannabis Businesses in Fairfax and Requires Separate and Distinct Physical Premises and Two Separate State Licenses for the Two Permitted Uses: The Medical-Only Storefront Dispensary and The Adult-Use Delivery Service.

As explained below, because Fairfax defines “Medical-use cannabis storefront retailer(s)” and “Delivery-only retailer(s)” as separate “use categories” in the Zoning Code¹⁴, Fairfax also requires that they be conducted in two separately licensed “side-by-side premises” under state law.

¹³ The Town Code § 5.56.070 (D) on Cannabis Business Permit Applications states clearly: “The town reserves the discretion to not grant any applications in the interest of the health, safety, or general welfare of the town.”

¹⁴ Town Code § 17.110.040



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

Element 7's application does not show any evidence of separate premises for the two uses. Thus, it fails to meet local law. Nor does it show any evidence that it understands that it must get two separate state licenses and keep them in separate and distinct premises and all the implications that follow. Its premises diagram will violate state law and be rejected by the state as the basis for two separate state license applications.

And if it does not get those two licenses and maintain those two separate premises, it likewise violates Fairfax law. Not only does the current application and its plan fail to meet either state or local requirements, at a mere 750 square feet it is likely too small to ever do so. At best the current application might qualify for either use alone, but that is not what it is requesting. It is asking for both uses, like the existing medical cannabis dispensary. But unlike the existing dispensary that does follow the local and state requirement of separate premises and separate state licenses, Element 7 has failed to even spot the issue.

To be fair, it is not an obvious issue. It arises out of the complex interaction of Fairfax's unique approach and the state's legal requirements. It is an issue unique in all the state, and yet, it is Fairfax law as followed by Fairfax's existing dispensary. Because of this, if the law were to be applied differently to a new dispensary, serious controversy would erupt as to such an unequal, unfair, and inequitable discrimination between the new and the old.

A detailed explanation of the issue and its consequences follows.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

A. The Town Code, Past Practices, and State Law, Together, All Require that Medical Dispensaries and Adult Use (Recreational) Delivery Services Must Have Separate Physical Premises and Separate State Licenses Even if Operated by the Same Entity.

Fairfax’s cannabis permit system is unique in the entire state of California. Among the 530 local governments, only Fairfax Town has an ordinance that permits only medical-only cannabis storefront dispensaries, but allows them to operate adult use (non-medical, or “recreational”) cannabis delivery. It is a unique hybrid and an utter anomaly. Very few dispensaries anywhere continue to be medical only, usually due to contractual or lease obligations, and only rarely due to local regulation. None of the other medical-dispensary-only jurisdictions also permits adult use delivery.

This anomaly is a hold-over from the transitional period to adult use legalization in 2018 around which time Fairfax allowed its single medical cannabis dispensary the adult use delivery option. It remains in the Town Code today as revised in 2019 to allow for an additional medical dispensary permit, with the adult use delivery option, in the unfettered discretion of the Town Council to grant or deny.

Thus, Town Code § 5.56.040 (in the Business Licenses section, Title 5) and Town Code § 17.110.040 (in the Zoning section, Title 17) state in identical language that the Town’s permitted maximum of two “cannabis retailers” may each operate as 1) a medical-use cannabis storefront, and/or 2) a delivery-only retailer (medical or adult use or both), or any combination of the two.

As part of the evolution of this unusual regulatory regime, in those same two identical Town Code sections, the Town requires the medical dispensary and the adult use delivery to have separate premises and separate state licenses so that the medical/adult use split can be maintained. “One



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

retail location may consist of *side-by-side licensed premises* as defined in 16 Cal. Code of Regulations § 5025, in order to permit the operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.”

Those two Town Code sections require an unwieldy system of two “side-by-side licensed premises... [under state regulations] ...to permit the operation of both” a storefront and a delivery by one operator. That Town requirement has a severe impact on the operators in their separate state licensing requirements: separate state licensed premises require separate state licenses. And that is exactly how the Town has consistently applied this section to its only medical dispensary with an adult use delivery.

The Town application form for a Town adult-use delivery permit (derived from Town of Fairfax Resolution 18-40 Section V. A. 5.) requires “complete copies of your state *licenses* relating to cannabis retail sales and delivery.”¹⁵ *Licenses*, plural, means that the dispensary must pay double the administrative compliance costs and business license maintenance, tax and fee costs. Most importantly, it implicates state regulations mandating that separate licenses be maintained in separate and distinct premises.

Additionally, Town Code § 17.110.050 explicitly requires that a “dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times... A valid state

¹⁵ *Emphasis added.* While they are of course official Town Records, working copies of both the Adult-Use Cannabis Delivery Permit Application Form and Resolution 18-40 are available from this office upon request as a courtesy to Town Council.



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

cannabis license authorizing *adult-use cannabis deliveries...*” (emphasis added). That second state license must be separate from the dispensary’s first state license for medical-only storefront dispensary.

The floor plans of two adjacent state-licensed premises must be completely separate and distinct: separated by solid walls, with separate security, etc., and with no shared storage or other efficiencies available to a single-license combo dispensary-delivery (legal under state law and everywhere else they are permitted, except in Fairfax). If separate and distinct premises are not shown, the state Department of Cannabis Control will reject the two license applications until revised to show separation.

This “1, 2 regulatory punch combination” is, like Fairfax’s whole “medical storefront/adult-use delivery” combination, unique in all the state. And it is an unavoidable consequence of California’s dual licensing system that gives great weight and power to local government restrictions. California Business & Professions Code § 26055(d) says that the state “shall not approve an application for a state license... if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200 [Local Control].”

Here, Fairfax requires, and always has required and enforced, separate premises under separate state licenses. The state will not issue an Adult Use storefront dispensary license in Fairfax because local law prohibits it, allowing only a Medical license, which the state will issue. To operate an Adult Use delivery, a Fairfax storefront cannot use its Medical retail license, it must get a separate delivery-only (non-storefront) Adult Use license. This consequence of Fairfax law is unavoidable.

This requirement of separate licenses and separate premises is hugely burdensome. The existing operator needed to create two separate premises with separate addresses and entrances and



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

exits, and with no overlap of the operating space. Thus they were required to give up precious floor space and dedicate a separate office suite to the adult use delivery operations. The inventory of the two separate licenses must be separately stored and secured, separately accounted for in the statewide mandatory computerized track-and-trace system, etc. The two licensees function as two separate businesses: one medical storefront and one adult use delivery in separate premises under their separate state licenses as required by Town law and therefore by state law as well.

This is the version of the Town Code regarding medical storefront and adult use delivery that has always been imposed on the existing dispensary by the Town and therefore by the state also. Should the Town Council for some inexplicable reason now choose to apply a different version of the Town Code's requirements to the new dispensary, releasing it from the two premises/two state licenses requirements, a situation of gross unfairness and violation of the principles of equal protection of the laws would exist. The consequences of that kind unfair treatment are predictable and might require judicial resolution.

B. Element 7's Failure to Address this Unusual Requirement of Two Separate Premises and Two State Licenses to Operate the Two Different Uses Under Local and State Law is Fatal to Their Application Which the Town Council Must Now Reject.

Nowhere in its application has Element 7 addressed this complex and singular example of regulatory synergy in the dual state and local licensing system, perhaps because it is not familiar with the ins-and-outs, the specific quirks of the Town's unique system. Element 7's premises diagram submitted with its applications fails to display the required two separate and distinct sets of



ANTHONY LAW GROUP, PC

3542 Fruitvale Avenue, #224
Oakland, CA 94602
(510) 842-3553
info@anthonylaw.group

premises. And its applications fail even to mention the “two state licenses” requirement of Fairfax law as it has been written and implemented since 2019 and on which basis it makes its application.

Element 7 missed the specific complexity of the laws of the Town of Fairfax as applied and in interaction with state law. These applications can and must be rejected.

Element 7 cannot qualify for a conditional use permit because, as well as for other reasons adduced by the Planning Commission, it does not comply with other applicable state and local laws and regulations as described above. And it cannot qualify for a Commercial Cannabis Business Permit for the same reason: it fails to follow—or even acknowledge the existence of—applicable local and state law, described above.

VIII. Conclusion

The Town Council can and should deny the Element 7 applications for the reasons given in the Planning Commission denial resolutions and other reasons as given above and any others as found by Town Council. Formula Business Element 7 is not a good fit for Fairfax, will not enhance the Town’s village-like character as required by law to receive a CUP, and would be detrimental to the Town in numerous ways as described above.

Very truly yours,

James Anthony
Principal
510-207-6243 *cell*
Attachments:
Resume

From: [photo](#)
To: [Stephanie Hellman](#)
Cc: [Renee Goddard](#); [Kirstin Radasch](#); [Barbara Coler](#); [Chance Cutrano](#); [Michele Gardner](#); [Bruce Ackerman](#)
Subject: Stop Element 7 cannabis chain store from opening in Fairfax
Date: Monday, January 31, 2022 12:44:54 PM

Dear Fairfax Town Council —

Please support and uphold the Planning Commission's denial of the application for a cannabis business at 1930 SFD Blvd. The cannabis business application should be denied on the following grounds:

1. It is a FORMULA business. It would NOT offer "equal or better development of the premises than would otherwise be the case."
2. It is NOT "in the public interest and for the protection or enhancement of the community"
3. It will have significant adverse financial impacts to same or similar businesses since it is so close to the LOCALLY-OWNED cannabis store a couple blocks away.
4. It would negatively impact traffic and parking.

Please be a part of stopping this chain store cannabis company from opening in Fairfax, and from being a part of their plan to open up 21 locations. Again, this is a formula business which doesn't adhere to Fairfax's General Plan for keeping out chain stores.

E7 has been denied in both Larkspur and San Anselmo. Our Planning Commission already DENIED the application for the chain cannabis company, Element 7. Thank you for that. Let's deny their appeal as well.

Thank you for your consideration,

Kirstin and Tom Asher

3 Rocca Drive
Fairfax, Ca 94930

From: [Liz Harges](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: Element 7 concern
Date: Tuesday, February 1, 2022 7:12:19 AM

Dear Town Council,

Please do not grant an application for Element 7 cannabis business to take over 1930 Sir Francis Drake Blvd. Home of Mana Bowls, a family run business with a loyal customer base. Allowing Element 7 to take over this space would negatively impact traffic and parking which we all know is an issue in Fairfax. To grant this application is not in the best interest of our community. I'm actually surprised that its even open for discussion given past applications denial and the community concerns. We already have a locally-owned cannabis business in town with plenty of delivery options. Please support and uphold the Planning Commission's findings and deny this application.

Element 7 is a formula business

- It would NOT offer "equal or better development of the premises than would otherwise be the case"
- It is NOT "in the public interest and for the protection or enhancement of the community"
- It will "have significant adverse financial impacts to same or similar businesses" since it is so close to the **LOCALLY-OWNED** cannabis store a couple blocks away
- It would negatively impact traffic and parking

Best,
Chris and Liz Harges

From: [Mallory](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: cannabis chain
Date: Tuesday, February 1, 2022 5:14:13 AM

PLEASE NO !!!

From: marc@2910.org
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: NO Element 7 in Fairfax!
Date: Monday, January 31, 2022 9:47:13 PM

Dear Fairfax Town Council members:

Please support and uphold the Planning Commission's denial of the application for a cannabis business at 1930 SFD Blvd.

The cannabis business application should be denied on the grounds that:

- It is a formula business
- It would NOT offer "equal or better development of the premises than would otherwise be the case"
- It is NOT "in the public interest and for the protection or enhancement of the community"
- It will "have significant adverse financial impacts to same or similar businesses" since it is so close to the LOCALLY-OWNED cannabis store a couple blocks away
- It would negatively impact traffic and parking
- It is a chain store

Approving what amounts to a chain store business would violate the long-standing prohibition of such businesses, or at the very least chip away at it and make it more difficult to keep them out in the future. We are depending on you to safeguard the non-chain-store character of Fairfax!

Thank you,
Marc

Marc Vendetti marc@2910.org
Phone: 415-450-5309 8-5 Pacific Time

*Speak I love you in ten thousand ways without using the words
and the words will speak themselves without using the voice.*

~Michael Bridge

[SevaChild International](#) | [Marin Museum of Bicycling](#) | [2910 LLC](#)

 Please consider the environment before printing this e-mail

From: [MICHELLE LEOPOLD](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Subject: Vote AGAINST 2/2/22 Public Hearing items 17 & 18
Date: Monday, January 31, 2022 11:59:24 AM

To the Fairfax Town Council
Re: 2/2/22 Public Hearing items 17 & 18

Dear Fairfax Town Council,

As a local business owner in Marin County, I want to reshare my perspective on **the importance of keeping Element 7 “formula business” out of Fairfax and why local ownership and control is so necessary.**

I know E7 has jumped through hoops to remove **the appearance** of being a “chain”, but it doesn’t change who they are. They can change their job titles, their website, their marketing spin and their front people, but ...

- They have a formula for running similar cannabis businesses across California and “North America” ([see E7 Illinois](#)).
- They maintain over 80% ownership and control.
- They have 21 of their non-local “people” listed in their [business plan](#) – pages 10-14 (aside from their local front people). This is not a small operation.
- Although, [per the staff report](#), they “*assert that their business never met the definition of a formula business because Element 7 has no corporate headquarters and the business does not have a main office location*”, they do indeed have a “North America Head Office” in Los Angeles [per their website](#).
- They also call themselves “*a national retail operations group*”. This is very different from Mana Bowls or Fairfax Alliance or, yes, Henhouse.

Formula Business is more than paint colors, uniforms, or names on a building. Formula retail is a commitment to the company and the bottom line. Small, truly locally-owned businesses are committed to the community.

Fairfax has pledged their support to small business innovations locally. And you have done a lot of work in the recent past to make the community more equitable. If you are serious about it, you can uphold the spirit of what it means to keep Fairfax local and keep corporate cannabis out. E7 is not interested in the residents of Fairfax. And they are not a movement toward more social justice.

If Fairfax keeps a 2nd allowable storefront in their ordinance, they should truly consider what Prop 64 promised. You can read about it in the LA Times article here: [California promised ‘social equity’ after pot legalization. Those hit hardest feel betrayed](#). The article was also [reprinted in today’s Marin IJ](#).

For all these reasons, please AGAIN vote NO tonight on Public Hearing item 17 & 18 for Element 7.

Thank you for your consideration.

Michelle Leopold, Greenbrae

*The Mom in our Mom & Pop Hardware Store, Marin Ace Hardware, San Rafael
415.302.4055*

(PS & FYI Ace Hardware stores are locally owned and part of a cooperative, not a franchise. Co-ops allow you to run your business the way you want, and do not have a Roy Kroc/Sam Walton at the top. That is why Goodmans, Fairfax Lumber, Pini, Chase Ace, Corbet's, Marin Ace, and Pt. Reyes Building Supply are so very different, and all locally owned and operated.)

From: [Roger B](#)
To: [Michele Gardner](#)
Subject: Element 7/Fairfax Remedy
Date: Tuesday, February 1, 2022 6:31:23 PM

Hello Michele Gardner,

I hope the council members can review this article about Element 7 and their merger in a \$567M deal.

Please see this article about a Canadian special acquisition company, Mercer Park Brand, purchasing Glass House who in turn merged with Element 7.

<https://mjbizdaily.com/california-cannabis-firm-glass-house-group-to-be-bought-in-567m-deal/>

Regards,

Roger Bettini

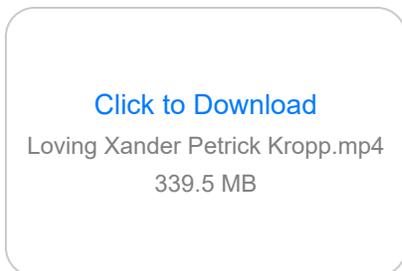
From: [Tori Kropp](#)
To: [Renee Goddard](#); [Barbara Coler](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#); [Patti Mahoney-Oliver via Change.org](#)
Cc: [Kelsey Fernandez](#); [Linda Henn](#); [Laurie Dubin](#); [Don Carney](#); [Ruby Gibney](#); [Henry Pratt](#); [John Riley](#)
Subject: Xander and Tori Kropp - Fairfax Town Council Meeting - Element 7
Date: Tuesday, February 1, 2022 9:19:08 PM

Download full resolution images
Available until Mar 3, 2022

Hi - I am sending this to you -- the Fairfax Town Council. My community, my neighborhood. I ask you to take a few minutes to read just 2 of the many articles I have written and with your full attention to watch the short video of my son Xander Kropp, in advance of the meeting. It is very important that you see the real impact of easy access to cannabis in our county. I am absolutely non-political, I am neither an activist nor some kind of angel mother. I have simply and devastatingly lost a beautiful child to a very short course of drug use that began with high dose cannabis at age 17. I will speak at the meeting and I will ask Element 7 some very specific questions about what they know about the teen drug use here and how any of this is about anything other than making BIG money. So that you fully understand— Marin County has the highest rate of teenage drug use in the entire state of California. As much as we can do, and as much as you can do is truly a matter of life and death. Gummy bears with 80% thc? I don't use cannabis but my friends who do don't need the gummy bears. This is marketing for kids. Please be responsible. I am this community. Xander is this community. What kind of village are we really?

Thank you,

Tori Kropp



[Marin Voice: My vibrant son is dead, but if one young life can](https://www.marinj.com)
[...https://www.marinj.com > 2020/05/11 > marin-voice-...](https://www.marinj.com)

[Where Is The Outrage? - Marin Healthy Youth](https://www.marinhealthyyouthpartnerships.org)
[Partnershipshttps://www.marinhealthyyouthpartnerships.org > blog](https://www.marinhealthyyouthpartnerships.org)



From: [Patti Mahoney Oliver](#)
To: [Renee Goddard](#); [Bruce Ackerman](#); [Stephanie Hellman](#); [Chance Cutrano](#); [Michele Gardner](#)
Cc: [April Goldman](#)
Subject: Los Angeles based and backed Element 7 (Fairfax Remedy)
Date: Wednesday, February 2, 2022 2:49:26 PM

Dear Counsel,

You have been elected to fiercely and bravely protect our community and serve the people.

Please tonight vote against corporate cannabis being on the main drag of our beautiful town.

Our neighboring towns have denied them for good reason. You have been presented lots of facts to support a “no” vote.

I took a poll on Nextdoor it is a two to one vote against it. This is of course a select few Nextdoor folks. I am not a fan of Nextdoor but put my normally under the radar self out there a few times because I think that this chain store big pharmacy business model will forever change this wonderful town of ours.

I also got over 700 supporters to sign a petition with hardly an effort on change.org.

I can't dedicate so much to dissect what is going on but it is clear that this organization has repackaged itself as Fairfax Remedy. Makes me sick to think of pot as a remedy. Our kids and out of Towners will see this and believe it's of our belief system. The Remedy to life in Fairfax.

It's simply not the right spot. I saw in their petition this is delivery only... like a taxi cab company delivering pot. There is so much traffic here at this intersection. I have been sitting here on the front porch of the Intended location for almost three hours. There simply is not enough parking or road bandwidth for a corporate “delivery only”cannabis store front that will mostly likely serve out of towners.

I've been told that the only platform left to deny this corporation or company from forever changing our town is to prove they are a chain. Big Pharna. Though this letter will not prove that, you have been given a lot of undeniable evidence that this is the flavor of Fairfax Remedy.

Please don't sell our kids out. It's your duty to do the right thing.

I am faithful you will be brave and follow the lead of our neighboring Towns.

We don't need a Remedy... we need you to vote against taking the Remedy.

Respectfully Yours,

Patti Oliver
415 272 4248

PS. I've seen so many good kids on foot coming on today. Kind parents and all at a slow pace. Hardly a car.

Sent from my iPhone