



November 12, 2021

The Honorable Mr. Todd McGee
 Council President

The Honorable Ms. Rebecca Lisi
 Chair, Ordinance Committee

City of Holyoke
 Holyoke City Hall
 536 Dwight Street
 Holyoke, MA 01040

VIA EMAIL

RE: Holyoke Zoning Ordinance, Section 7.10, Marijuana Establishments; Request for Council to correct or rescind the Council Vote of May 20, 2021 due to errors in the ordinance.

ATTN: Mr. Jeffery Anderson-Burgos

Our firm represents H&H Realty Holdings, LLC, and H&H Cultivation, LLC (together "H&H"), as H&H is pursuing a special permit for a marijuana cultivation and manufacturing facility (an "MME") at 40-48 Main Street, in the IG Zoning District. H&H recently obtained Site Plan Approval from the Planning Board for this project on September 28th, following four meetings and numerous reviews, and is now pending before the City Council's Ordinance Committee, with its special permit filing made on July 30th, and the company has had two meetings with the Committee since its filing on July 30th. H&H is optimistic about the project being approved at all levels and looks forward to the Committee finalizing its review and voting to grant a special permit at its next meeting on November 23rd.

As you know, it was discovered by the City that amendments to Section 7.10 that were approved by the Council on May 20th contained a significant and critical error that effectively bans numerous marijuana establishments in the City dating back to November 20, 2020.

This is our understanding of the current situation: The City enacted an adult use marijuana ordinance on December 19, 2017, with the first amendment occurring on June 25, 2019, and the second amendment which is the source of the current permitting problems occurring on May 20, 2021. The second amendment, contained a significant error, whether due to a drafting error or scrivener's error, that effectively bans adult use marijuana in the City, due to the erroneous language in Section 7.10.5 "Operations", subsection 3 a., written as follows: "3. Location: a. A MME shall not be located in

buildings that contain any residential units, including transient housing such as hotels, motels and dormitories. **Any MME shall have a 200-foot buffer rom (sic) any other use as listed in Table 4.3 on the Table of Principal uses” (emphasis added).**

A 200 foot buffer from any other use in the Table of Principal Uses effectively bans adult use marijuana in the densely developed City of Holyoke. Clearly, this is an error. The City Planning Board’s March 25, 2021, recommendation to the Ordinance Committee, following a joint hearing process between those two bodies, states in the third paragraph, first and second sentences: “For the most part these changes are technical or to be in line with changes in state law. For example, the revised Ordinance maintains the 500-foot buffer zone between an incoming medical or recreational marijuana dispensary and pre-existing schools but alters how the buffer zone is measured to conform with recent state-level regulatory changes.” The letter also notes that the then-proposed amendment “establishes a more efficient, standardized, and transparent permitting process for marijuana businesses seeking to locate in Holyoke” (end of 2nd paragraph). Furthermore, my review of the draft Marijuana Ordinance put forth by the Planning Board on March 25, 2021, states in Section 3 on Location, subpart a., as follows: “Any MME shall have a zero buffer from any other use as listed in Table 4.3 Table of Uses”.

This error that needs immediate correction not only affects H&H’s applications but a number of other marijuana establishments either currently in process or recently approved by the City Council since May. Furthermore, pursuant to MGL Ch. 40A, Sec. 6 Existing structures, uses, or permits; certain subdivision plans, the May 20th erroneous zoning amendment relates back to the date of the first publication of the amendment process (in this case, November 24, 2020) and applies to all applications pending as of that publication date or filed thereafter, excepting only those that have been issued a building permit or special permit prior to the first publication. So, not only are pending and recently approved applications affected by this error, but all marijuana establishments not issued a building permit or special permit prior to November 24, 2020. Many companies that are now in violation of the May 20th amendment may well be in operation or in construction without knowledge of this mishap.

The November 24, 2020, publication was run in The Republican newspaper and reads as follows: “Notice of Public Hearing – The Ordinance Committee of the Holyoke City Council and the Planning Board will hold a public hearing on Tuesday December 8th at 6:30 pm for the following order: “ordered that the Holyoke Code of Ordinances 7.10 “Marijuana Facilities” be reviewed and amended: Including any amendments to definitions, zone requirements, and changes to the permitting process.” Meeting to be held on December 8th, 2020.

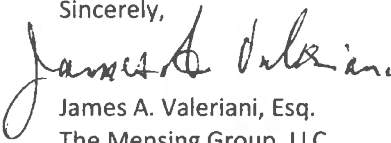
H&H acquired its property at 40-48 Main Street on November 3, 2020, and filed its applications for site plan approval on June 30, 2021, and special permit on July 29, 2021. At no time during the preparation of its applications or its interactions with the review officials was H&H alerted to the May 20, 2021, zoning amendment error. The zoning ordinance available on the City’s Website is current to April 6, 2020, and does not contain the May 20, 2021, amendment, and the amendment was not known to be available in online postings or files in the clerk’s office and the land use offices. The clerk’s office also indicated that there is no certified copy of the zoning ordinance, so what is on the City’s website is the only publicly available version of the zoning ordinance. So, the erroneous amendment was learned of at H&H’s first special permit hearing with the ordinance committee on September 28, 2021. We understand that other marijuana establishments have been issued permits since May, including special

permits, and H&H now seeks to obtain its special permit at the next Ordinance Committee meeting this November.

H&H obtained its Host Community Agreement on October 27, 2020, around the time of its purchase of the Main Street properties. H&H has invested over \$700,000 to date for the property acquisition, due diligence, civil and architectural plans, legal fees, permit fees, etc., and will invest \$2,000,000 to construct and commence operations of its MME following receipt of permits. Undoubtedly, a number of other companies are in similar positions.

We urge the City Council to take action at its next full council hearing, November 16th, to correct or rescind the error to the May 20th amendment, which is in violation of the Zoning Statute (MGL Ch. 40A) and invalid. Correcting this error will relieve H&H and the many other companies of undue jeopardy, restraint and delay. Thank you for consideration of this submission.

Sincerely,



James A. Valeriani, Esq.
The Mensing Group, LLC
100 State Street, 9th Floor
Boston, MA 02109

jim@mensinggroup.com (781 771 8100)

CC (via email): Michael Bissonnette, Esq., Assistant City Solicitor
Brenna Murphy McGee, City Clerk
John Kelly, Chairman Planning Board
Aaron Vega, Director of Planning and Economic Development
Yazan Haddad and Oliver Homberg, members and managers, H&H
Blake Mensing, Esq., The Mensing Group LLC