

CHICAGO TRIBUNE

New strategy mars pot shop approvals

By David Garrick
San Diego Union-Tribune • Last Updated: Nov 21, 2014 at 2:36 pm



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SAN DIEGO — An obscure environmental regulation is adding turbulence to the already controversial approval process facing applicants competing to open San

Diego's first legal marijuana dispensaries, city officials said this week.

While the city's first three legal dispensaries appear poised to open early next year, a dozen applicants behind them in the process are facing multi-week delays because their environmental exemptions, which were previously considered a formality, have been appealed.

The appeals appear to be strategic attempts by some applicants to get a leg up on their competitors, rather than someone raising genuine concerns about how a dispensary would impact the environment around it, attorneys working for some of the applicants said.

"People seem to feel that if they don't appeal their competitors, they're going to be the chump who then turns around and is facing an appeal," said attorney Jessica McElfresh. "It's really unfortunate because the process shouldn't be abused like this."

Lance Rogers, another attorney, said the appeals threaten to distort the process because the three applicants leading the pack got past this hurdle before anyone thought of using environmental appeals to stymie other applicants.

The appeals don't dispute that the dispensaries are exempt from state environmental rules. They claim instead that city officials cited the wrong section of the law when asserting the exemption.

"These are trivial and make little to no sense," McElfresh said.

While the stymied applicants wait for the City Council to rule on the appeals, which is scheduled for a Jan. 13 hearing, the leading applicants have nearly completed the process.

The Planning Commission is scheduled to give final approval on Dec. 18 to a dispensary planned for Otay Mesa. Rogers, who represents that applicant, said it should open before the end of January.

Two other dispensaries, one near the Sports Arena and one in Clairemont, are scheduled for approval Dec. 3 by a city hearing officer.

While both of those are expected to be appealed to the Planning Commission like the Otay dispensary was, final approval for them should come from the Planning Commission early next year.

A fourth dispensary that reached the hearing stage was rejected in late October because it was within 1,000 feet of Mission Bay Park. The applicants said this week they decided not to appeal to the Planning Commission because success seemed unlikely, so that application is dead.

The two dispensaries scheduled for Dec. 3 hearings are particularly important, because city regulations approved last winter limit the number of dispensaries to four per City Council district and each is in a district with a glut of applicants.

The Clairemont dispensary is in District 6, where eight applicants have proposed dispensaries, and the one near the Sports Arena is in District 2, where 18 dispensaries are proposed.

That one, proposed for 3452 Hancock Street, would also dash the hopes of several nearby applicants because city rules prohibit two dispensaries from opening within 1,000 feet of each other.

Rogers said he'd like to see city officials step in and rectify what he described as an unfair advantage for the three leading applicants created by the environmental appeals.

"I hope the city will allow all of the applicants a fair chance to be heard," he said.

The first nine appeals were filed by Benjamin Zoback, who the attorneys raised suspicions about.

Zoback, who hasn't returned phone calls from U-T San Diego, isn't listed on any of the pot shop applications, but the attorneys suggested he could be working for

applicants trying to block their competitors.

"The common belief, which we really can't prove, is that the people filing the appeals have been encouraged to do this," said McElfresh, noting that little information is available about Zoback. "He doesn't appear to be a likely candidate to file an appeal. He's not a land-use guru and he's not a community do-gooder."

Rogers said his firm's staff investigator came up empty when searching for information about Zoback.

"There are a lot of people who would like to know who the mysterious Mr. Zoback is and what his intentions are," Rogers said.

Edith Gutierrez, a city official overseeing the dispensary approval process, said she's heard rumors that the goal of the appeals was delaying other applications, but said she hasn't been able to confirm anything.

If the council denies the environmental appeals on Jan. 13, Gutierrez said she would schedule the dozen dispensaries for approvals by a city hearing officer in the order that their environmental exemptions were issued — an attempt to keep the process as fair as possible.

Anti-marijuana groups continue to criticize the city for moving toward allowing legal dispensaries.

Scott Chipman, leader of San Diegans for Safe Neighborhoods, said marijuana is a dangerous drug.

"We are sending a horrible message that marijuana is medicine and not harmful," Chipman said.

Originally Published: Sep 07, 2016 at 3:47 am

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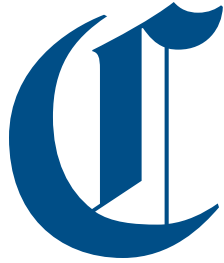


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