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Residents for Responsible Governance

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
SAN DIEGO COUNTY, CENTRAL DIVISION

EL CAJON RESIDENTS FOR  
RESPONSIBLE GOVERNANCE,

Petitioner

v.

CITY OF EL CAJON,

Respondent

Case No. 37-2017-00045604-CU-MM-CTL

VERIFIED PETITION FOR  
WRIT OF MANDATE, DECLARATORY &  
INJUNCTIVE RELIEF  
(Code Civ. Proc. §§ 1060, 1085)

***IMMEDIATE STAY REQUESTED***

[VIA FAX] [IMAGED CASE]

NOW COMES Petitioner El Cajon Residents for Responsible Governance and hereby petitions this Court for issuance of a Writ of Mandate directing at Respondent, City of El Cajon, set aside its adoption, by City Council vote of October 10, 2017, of Ordinance 5065 which amended the El Cajon Municipal Code and made effective November 23, 2017, and which Petitioner is informed that Respondent began implementing and/or enforcing such amendments on November 27, 2017.

This Verified Petition and Memorandum of Points and Authorities seeks relief under Code of Civil Procedure §§ 1060, 1085, an Immediate Stay Order, alternatively, an Alternative Writ directed at Respondent City of El Cajon to stay the enforcement of Ordinance 5065 to preserve the status quo pending this action.

1           1.       Petitioner, El Cajon Citizens for Responsible Governance, petitions this court for peremptory  
2 writ of mandate directing respondents City of El Cajon to take jurisdiction of and exercise its authority to  
3 stay the effective date, enforcement, and/or implementation of Ordinance 5065, which by vote on October  
4 10, 2017, Councilmembers adopted Resolution No. 10972 and amended the El Cajon Municipal Code to re-  
5 criminalize violations of its local zoning and land-use laws and increased the maximum daily civil fines for  
6 marijuana-related violations from its former progressive fee structure ranging between \$100-\$500 based on  
7 number of prior violations, if any, to up to \$ 2,500 per day, beginning with the very first citation. Petitioner  
8 further requests this court award damages, legal fees, and cost of this action.

9           2.       Petitioner El Cajon Residents for Responsible Governance, a mutual benefit corporation  
10 organized under the laws of the State of California; and, at least one of its members resides in the City of El  
11 Cajon, San Diego County.

12           3.       Respondent City of El Cajon is a municipal corporation organized under the laws of the State  
13 of California.

14           4.       Respondent City Council of El Cajon is a general-law city, governed by a city council made  
15 up of an elected mayor and four council members, one of whom is designated Mayor Pro Tem (collectively,  
16 the “City Council”), and currently is comprised of Mayor Bill Wells, Mayor Pro Tem Bob McClellan and  
17 Council Members Steve Goble, Gary Kendrick, and Ben Kalasho.

18           5.       All cities and counties in California derive their power to promulgate and enforce ordinances  
19 and laws under the California Constitution which states, “the county or city may make and enforce within its  
20 limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” CAL.  
21 CONST. ART. XI, SEC. VII. “Local legislation in conflict with general law is void. Conflicts exist if the  
22 ordinance duplicates bracket citations bracket, contradicts, or enters an area fully occupied by a general law,  
23 either expressly or by legislative implication.” People v. Minor, (2002) 96 Cal.App.4th 32, 42 (citing  
24 Morehart v. County of Santa Barbara (1994) 7 Cal.4th. 752, 747).

25           6.       El Cajon Mayor Bill Wells has made no secret of the fact that the purpose of Ordinance 5065  
26 is to prohibit any marijuana related businesses from operating within its city limits.

27           7.       Petitioner now therefore seeks a Writ of Mandate, pursuant to Code of Civ. Proc. § 1085,  
28 prohibiting the City of El Cajon from enforcing Ordinance 5065 and Resolution No. 10972, as well as a

judicial declaration under Code of Civil Procedure § 1060 that Ordinance 5065 is void and unenforceable.

8. While the Adult Use Marijuana Act (“AUMA”) affords local governments authority to regulate and tax commercial cannabis activity, to interpret AUMA as enabling local legislative bodies to completely and totally prohibit any commercial cannabis activity is simply inaccurate and nonsensical.

9. If AUMA were interpreted as having granted local legislative bodies all across California the authority to completely ban commercial cannabis, as Respondent claims, AUMA would be illusory. The City of El Cajon would have this Court believe, then, that it’s City Council, or any or all other city councils, boards of supervisors, and other local governing bodies are vested with the authority to overrule the voters of the State of California by simply amending their zoning or land use codes.

10. Indeed, the local legislative body across the state it is ancillary to and in furtherance of AUMA’s purpose - namely, to legalize marijuana for medical and non-medical uses. It does not grant local legislative bodies a veto power over whether to allow at all the sale of a commodity. If that were so, Poway could criminalize the sale of soda, Julian could ban the sale of apples from Ramona, and El Cajon could go further than Ordinance 5065 and could ban the sale of alcohol, cigarettes, pornography, and whipped cream.

### **PARTIES, JURISDICTION, AND VENUE**

11. The City of El Cajon is a general-law city, governed by a city council made up of an elected mayor and four council members, one of whom is designated Mayor Pro Tem (collectively, the “City Council”). Currently, the Mayor is Bill Wells, the Mayor Pro Tem is Bob McClellan and the other Council Members are Steve Goble, Gary Kendrick, and Ben Kalasho.

12. Petitioner also has standing to challenge as its members are also California voters, and interested in Respondent adhering the voters’ intent, as to the lawfulness of Ordinance 5065 and Resolution No. 10972, and seeks to restrain and prevent the unauthorized enforcement of an unconstitutional ordinance.

13. This Court has jurisdiction under Code of Civ. Proc. §§ 410.10, 525-526, 526a, 1060, 1085. This action is an unlimited civil case pursuant to Code of Civil Procedure § 580 because Petitioner seeks non-monetary relief that is not available under limited jurisdiction, including but not limited to mandamus, declaratory relief, and injunctive relief.

14. Venue is proper in the Superior Court of San Diego County under Code of Civil Procedure §§

393-395, because the City of El Cajon is a public entity situated in San Diego County and because all the acts and omissions complained of in this Petition took place in San Diego County.

### **BACKGROUND – HISTORY OF CANNABIS LAWS IN CALIFORNIA**

15. In 1996, the voters continued this trend by enacting Proposition 215, known as the Compassionate Use Act (“CUA”), to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes,” as codified in Health & Safety Code § 11362.5. The CUA provided medical marijuana patients an affirmative defense to prosecution and removed the threat of criminal penalties for the possession and cultivation of marijuana for medical purposes. Sections 11357 and 11358 of the Health and Safety Code no longer applied to a patient or primary caregiver who “possesses or cultivates marijuana for the personal medical purposes.”

16. In 2003, the Legislature expanded the protections for medical-marijuana use by enacting the Medical Marijuana Program Act (“MMPA”). The MMPA added 18 new code sections that address the general subject matter covered by the CUA, including cultivation of medical marijuana, codified as Health & Safety Code §§ 11362.7 et seq. One of those sections is Health and Safety Code § 11362.77, which provides that “a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient” without facing criminal sanction.

17. For most of the last two decades, regulation was left to local governments. However, three laws passed by a bipartisan Legislature in 2015—known collectively as the Medical Cannabis Safety and Regulation Act (“MCRSA”) provided the state with a regulatory framework for medical marijuana.

18. Despite the general direction of state law—driven by both California voters and the Legislature—toward liberalizing access to marijuana, many cities and counties reacted in the reverse by using their local zoning power to limit or outright prohibit access to medical marijuana. Some local governments passed ordinances banning medical marijuana businesses, and at least one has gone so far as to criminalize the very conduct that the voters of California voted to condone.

### **THE PEOPLE VOTE IN FAVOR OF PROPOSITION 64**

19. On June 28, 2016, Secretary of State Padilla announced that an initiative to legalize recreational marijuana, the AUMA, had obtained enough valid petitioner signatures to be included as Proposition 64 on the ballot for the November 8, 2016 General Election. The purpose of the AUMA was “to

1 establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture,  
2 distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21  
3 years and older, and to tax the commercial growth and retail sale of marijuana.” To that end, one stated  
4 intent of the AUMA was to “[p]ermit adults 21 years and older to use, possess, purchase and grow  
5 nonmedical marijuana within defined limits for use by adults 21 years and older as set forth in this  
6 Act. (emphasis added).

7 20. On November 8, 2016, Proposition 64 passed with 57% voter approval statewide. A majority  
8 of voters in both San Diego County (57.0%) and El Cajon (51.6%) also voted to pass Proposition 64. The  
9 AUMA therefore became state law on November 9, amending various provisions of the Health and Safety  
10 Code, Business and Professions Code, and Revenue and Taxation Code.

## 11 **FIRST CAUSE OF ACTION**

### 12 **Writ of Mandate (Code Civ. Proc. § 1085)**

13 21. Petitioner incorporates by reference each allegation in the preceding paragraphs as though  
14 each were fully alleged herein.

15 22. Respondent City of El Cajon has a ministerial duty under the California Constitution not to  
16 promulgate or enforce ordinances that conflict with the general laws of the State, as provided by Article XI  
17 Section 7 of the California Constitution.

18 23. Petitioner is beneficially interested in the El Cajon City Council complying with the laws of  
19 the State of California.

20 24. Ordinance 5065 amends the El Cajon Municipal Code to re-criminalize, and fine excessively,  
21 commercial cannabis activity within its City.

22 25. Respondent City purports to have the authority to prohibit commercial cannabis activity  
23 within its City, regardless of California voters’ passage of Proposition 64 on November 8, 2016.

24 26. Proposition 64 legislated the legalization of cannabis for nonmedicinal purposes and  
25 Respondent City lacks the authority to veto the voters. It is therefore a violation of the City’s duty under  
26 Article XI, Section 7 of the California Constitution not to promulgate ordinances in conflict with general  
27 laws.

28 27. Petitioner seeks mandamus under Code Civ. Proc. § 1085 compelling Respondent City of El

Cajon to comply with its ministerial duties under the California Constitution and Health & Safety Code.

28. A writ of mandate is justified because the City of El Cajon must be enjoined from enforcing local ordinances which are contrary to state law, and which relate to matters of statewide concern.

29. There is no plain, speedy, or adequate remedy in the ordinary course of the law for Petitioner.

30. A speedy decision in this matter is needed to prevent Respondent City of El Cajon from enforcing unconstitutional laws, which will undoubtedly cause irreparable injuries to its residents if enforced, and which would greatly expose Respondent City of El Cajon to damages claims for violating the civil rights of its residents by choosing to enforce Ordinance 5065 under the authority it mistakenly presumes to have.

31. Other local governments in California are already in the process of considering and adopting their own regulations under Proposition 64, and they may be inclined to act contrary to state law if El Cajon is able to do it.

## **SECOND CAUSE OF ACTION**

### **(Violation of Cal. Health and Safety Code § 11357 et seq.)**

32. Petitioner incorporates by reference each allegation in the preceding paragraphs as though each were fully alleged herein.

33. Respondent City of El Cajon has a ministerial duty under Health and Safety Code § 11357 et seq. to adopt only reasonable regulations that reasonably regulate the sale of marijuana.

34. Respondent City of El Cajon has violated this duty by adopting Ordinance 5065, which does not seek to regulate commercial cannabis activity, but instead, to prohibit it and punish the very conduct California voters decided to legalize—Ordinance 5065 makes no attempt at “regulating”; and instead, it digs in its heels against societal change, re-criminalizing and completely banning commercial cannabis activity.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner El Cajon Residents for Responsible Governance respectfully prays:

- 1) That this Court issue an IMMEDIATE STAY ORDER staying the enforcement of those amended portions of the El Cajon Municipal Code which were amended by the El Cajon City Council on October 10, 2017 by the passage of Resolution No. 10972 and adoption of Ordinance 5065;

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- 1 2) Alternatively, that this Court issue an ALTERNATIVE WRIT to preserve the status quo  
2 and prohibit Respondent City of El Cajon, its agents, servants, officers, and employees from  
3 enforcing or attempting to enforce Ordinance 5065, or expending any government resources in  
4 doing so.
- 5 3) That this Court issue an order directing CITY OF EL CAJON to show cause, if any exists, why  
6 adoption of Ordinance 5065 was authorized; and  
7 a. Not preempted by state law on a matter of statewide concern;  
8 b. Not in violation of Article XI, Section 7 of the California Constitution;
- 9 4) That this Court issue an order directing CITY OF EL CAJON to show cause, if any exists, why a  
10 PEREMPTORY WRIT should not issue directing the El Cajon City Council to repeal Ordinance  
11 5065.
- 12 5) That this Court declare:  
13 a. That passage of Resolution No. 10972 and adoption of Ordinance 5065 exceeded the  
14 legislative authority vested in the CITY OF EL CAJON by the Constitution, General  
15 Assembly, and Voters of the State of California.
- 16 6) That this Court award Petitioner its costs of suit;
- 17 7) That this court award Petitioner its reasonable attorneys' fees under Code Civ. Proc. § 1021.5 or  
18 other applicable statutes or rules; and  
19
- 20 8) That this Court award to Petitioner such further relief as it may deem proper.

21  
22 **Respectfully Submitted,**  
23 **LAW OFFICES OF JAMES P. FINIGAN,**

24 Dated: NOVEMBER 28, 2017

By: \_\_\_\_\_

25 JAMES P. FINIGAN  
26 Attorney for El Cajon Residents for  
27 Responsible Governance  
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**VERIFICATION**

I, JAMES P. FINIGAN, have read the foregoing Petition for Writ of Mandate and know the contents thereof. I declare the allegations contained therein are true to my knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was signed on November 28, 2017 in La Jolla, California.

Dated: NOVEMBER 28, 2017



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JAMES P. FINIGAN