

ATTACHMENT B
CITY OF SAN PABLO
REQUEST FOR QUALIFICATIONS
APPEAL PROCEDURES FOR CANNABIS OPERATOR PERMITS ELIGIBILITY LIST

Pursuant to San Pablo Municipal Code Section 17.62.130.H.3, the following procedures shall govern appeals (requests for reconsideration) of decisions of the City Council with respect to the “Request for Qualifications / Cannabis Operator Permits Retail Sales Eligibility List” (“RFQ”), including but not limited to, actions of RFQ selection committee:

1. **DEADLINE.** An appeal may be submitted to the City Clerk in writing within 15 days of the City Council’s initial approval of a ranked list of eligible respondents to the City’s RFQ.
2. **FILING FEE.** An appeal must be accompanied by an appeal fee \$4,574.00. An appeal is not perfected until the City Clerk receives both the appeal form and the filing fee. The filing fee is non-refundable.
3. **DECISIONMAKER.** Within 45 days of the City’s receipt of a valid appeal, the City Council will appoint a hearing officer to conduct the appeal. Any hearing officer shall be a neutral party uninvolved in the making of the decision from which appeal is taken.
4. **HEARING PROCEDURES.**
 - a. **BRIEFING.** The appointed hearing officer shall establish deadlines for the below briefing procedures within 20 days of appointment, which deadlines shall ensure completion of the briefing and oral hearing, if any, within 90 days:
 - i. The City or the appellant may invite any other person with an interest in the appeal, including but not limited to a successful respondent to the RFQ as to an appeal by an unsuccessful respondent (“real party in interest), or such real party in interest may state its interest in intervening in the appeal or participating in it as an amicus without invitation by the City or the appellant;
 - ii. The appellant must submit all arguments and evidence relevant to the appeal;
 - iii. City staff and any real party in interest may submit counterarguments and evidence; and
 - iv. The appellant may submit reply papers. If the hearing officer orders an oral hearing on an appeal, any reply papers shall be submitted no later than 10 business days before the hearing.

- b. REPRESENTATION. An appellant or real party in interest may represent itself or may retain counsel or a non-attorney representative to argue an appeal.
- c. ORAL HEARING. These rules confer no right to an oral hearing and the hearing officer retains discretion to decide the appeal on the papers but the City, the appellant, or any real party in interest may make written request to the hearing officer for an oral hearing. If the hearing officer orders an oral hearing, the following procedures apply:
 - i. NOTICE OF ORAL APPEAL HEARING. The hearing officer shall serve a notice of oral appeal hearing either personally or by U.S. Mail, first class postage prepaid, to the appellant and to any real party of interest at such addresses as they may have provided the City. The hearing shall occur no sooner than 20 days after service of the notice.
 - ii. TIME AND PLACE OF HEARING. The hearing officer shall conduct any oral appeal hearing at the place and time stated in the notice of hearing. Appeal hearings may be held by teleconference or other electronic means in the hearing officer's discretion. A hearing may be continued from time to time by agreement of the appellant and City staff or for good cause as determined in the hearing officer's discretion.
 - iii. EVIDENCE. The hearing officer will consider written or oral testimony or other evidence regarding the issues the parties identify. **Evidence to support a decision must be credible and relevant in the estimation of the hearing officer, but formal rules of evidence do not apply.** The hearing officer retains the discretion to exclude evidence it finds to be unduly repetitious or irrelevant.
 - iv. PRESIDING OFFICER. The hearing officer shall conduct the hearing, govern the presentation of evidence, and address any procedural issues presented during the course of the hearing. The hearing officer may issue orders, including protective orders, as necessary to exercise the appellate jurisdiction granted by these procedures.
- d. BURDEN OF PROOF; STANDARD OF REVIEW. The appellant bears the burden to produce evidence of reversible error and to persuade the hearing officer of it by a preponderance of the evidence. The hearing officer shall affirm the decision appealed from unless the appellant persuades it that:
 - i. The procedure by which the decision was made violates due process or other applicable law;

- ii. The substance of the decision violates the San Pablo Municipal Code or other applicable law; or
 - iii. The decision was arbitrary or capricious or the record on which the decision was made does not include adequate evidence to support the factual findings upon which the decision was made.
- 5. CITY COUNCIL CONSIDERATION OF HEARING OFFICER'S RECOMMENDATION. The City Council shall consider the hearing officer's written recommended decision as follows:
 - a. HEARING OFFICER'S DECISION; TIME FOR SAME. After considering all arguments and evidence submitted, including testimony submitted at any oral appeal hearing, the hearing officer shall provide the City Council a recommended written decision to affirm (in whole or in part), modify, or reverse the decision appealed. The hearing officer shall render the written decision no later than 30 days after the hearing is completed unless the appellant and City staff agree otherwise or the hearing officer determines in writing that 60 days are necessary due to the volume or complexity of the issues or evidence.
 - b. COUNCIL ACTION ON HEARING OFFICER'S RECOMMENDATION. The City Council may adopt (in whole or in part) or modify the hearing officer's recommendation or remand it to the hearing officer for further consideration.
 - c. NOTICE. The City Clerk shall provide notice (in the manner required by section 4.c.i. of these procedures) of the City Council's consideration of the hearing officer's recommended decision, enclosing a copy of it, to every party who participated in the appeal before the hearing officer. The notice shall include the date, time, and location of the City Council meeting at which the hearing officer's recommended decision will be considered.
- 6. FINALITY. The City Council's decision on the appeal, based on the hearing officer's recommendations, shall be final as to the City and subject to judicial review as provided below.
- 7. NOTICE OF DECISION. The City Clerk shall mail notice of the City Council decision to the appellant to any real party in interest (in the manner required by section 4.c.i. of these procedures) within 5 business days of the decision.
- 8. JUDICIAL REVIEW. Judicial review of the City Council's decision on any appeal shall be subject to California Code of Civil Procedure section 1094.5, if timely filed as required by California Code of Civil Procedure section 1094.6.

9. EXHAUSTION OF ADMINISTRATIVE REMEDIES. Failure to timely file a complete appeal form accompanied by the filing fee constitutes a waiver of appeal rights and a failure to exhaust administrative remedies. Failure to raise an issue on the appeal form or in the opening papers on an appeal constitutes a failure to exhaust administrative remedies as to that issue and a waiver of the right to raise that issue upon judicial review of the City Council's decision.