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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 325 S. Melrose Dr.
MAILING ADDRESS: 325 S. Melrose Dr.
CITY AND ZIP CODE: Vista, CA 92081
BRANCH NAME: North County Division

PLAINTIFF/PETITIONER: Frank Zimmerman Collective

DEFENDANT/RESPONDENT: City of Vista, et al.

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
37-2021-00017596-CU-WM-NC

(Check one): ☒ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

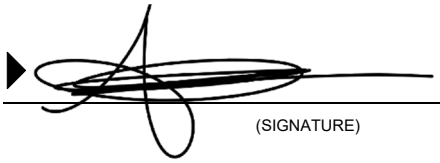
TO ALL PARTIES:

1. A judgment, decree, or order was entered in this action on *(date)*: September 15, 2023

2. A copy of the judgment, decree, or order is attached to this notice.

Date: September 18, 2023

Alena Shamos
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)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NOTICE OF ENTRY OF JUDGMENT OR ORDER

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PLAINTIFF/PETITIONER: Frank Zimmerman Collective DEFENDANT/RESPONDENT: City of Vista, et al.	CASE NUMBER: 37-2021-00017596-CU-WM-NC

PROOF OF SERVICE BY FIRST-CLASS MAIL SEE ATTACHED

NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the* Notice of Entry of Judgment or Order *if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service.
   b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):*
   b. from *(city and state):*

4. The envelope was addressed and mailed as follows:

   a. Name of person served:
   Street address:
   City:
   State and zip code:

   c. Name of person served:
   Street address:
   City:
   State and zip code:

   b. Name of person served:
   Street address:
   City:
   State and zip code:

   d. Name of person served:
   Street address:
   City:
   State and zip code:

   ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTHERN DIVISION

FRANK ZIMMERMAN COLLECTIVE,

Petitioner/Plaintiff,

v.

CITY OF VISTA; RIVERSIDE COUNTY DISPENSARY AND DELIVERY, INC. a California Corporation; and DOES 1-50, inclusive,

Respondents/Defendants.

CASE NO. 37-2021-00017596-CU-WM-NC
[Related to Case No. 37-2019-00029400-CU-WM-NC]
Unlimited Jurisdiction

(Case assigned to Hon. Blaine K. Bowman, Dept. N-31)

~~[PROPOSED]~~ JUDGMENT

Complaint Filed: April 21, 2021

Hearing Date: July 14, 2023
Time: 10:00 a.m.
Dept.: N-31

Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, California 92075

The above-entitled action came on regularly for hearing in Department N-31 of the above-entitled court on July 14, 2023, the Honorable Blaine K. Bowman, Judge, presiding. Jeff Augustini appeared for petitioner/plaintiff Frank Zimmerman Collective ("Petitioner"). Alena Shamos of Colantuono, Highsmith & Whatley, PC appeared for the respondent/defendant City of Vista ("City").

After consideration of the Administrative Record, the briefs filed by the parties, and the oral arguments of counsel:

THE COURT FINDS AS FOLLOWS:

1. The Petition for Writ of Mandamus and Complaint for Injunctive Relief brought by Petitioner is DENIED for the reasons stated in the Court's August 29, 2023 Minute Order. A true and correct copy of the Minute Order is attached hereto as **Exhibit A**.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment shall be for and in favor of the City.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

1. The relief prayed for by Petitioner is DENIED.

2. The City shall recover its costs in this action.

DATED: September 15, 2023

Honorable Blaine K. Bowman
Judge of the Superior Court

Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, California 92075

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY

MINUTE ORDER

DATE: 08/29/2023 TIME: 10:52:00 AM DEPT: N-31

JUDICIAL OFFICER PRESIDING: Blaine K. Bowman
CLERK: Amy Wagoner
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2021-00017596-CU-WM-NC** CASE INIT.DATE: 04/21/2021
CASE TITLE: **FRANK ZIMMERMAN COLLECTIVE vs CITY OF VISTA [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Civil Court Trial

APPEARANCES

The Court, having taken the above-entitled matter under submission on 7/14/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The *Petition for Writ of Mandamus and Complaint for Injunctive Relief* brought by plaintiff-petitioner Frank Zimmerman Collective (**Petitioner**) is **DENIED**.

Requests for Judicial Notice, Objections, and Motion to Strike

Request for Judicial Notice (ROA 43)
The *Request for Judicial Notice* brought by Petitioner is **GRANTED in its entirety**. (Evidence Code § 450, et seq.)

Request for Judicial Notice (ROA 48)
The *Request for Judicial Notice* brought by defendant-respondent City of Vista (the **City**) is **GRANTED in its entirety**. (Evidence Code § 450, et seq.)

Supplemental Request for Judicial Notice (ROA 54)
The *Supplemental Request for Judicial Notice* brought by Petitioner is **GRANTED**. (Evidence Code § 450, et seq.)

Evidentiary Objections (ROA 55)
The single objection made in the *Objections to Evidence* brought by Petitioner is **OVERRULED**.

Objections/Motion to Strike (ROA 57 and 59)

The *Objections to Reply Brief* brought by the City and the responding *Objections and Motion to Strike* brought by Petitioner are the functional equivalent of additional briefing and/or are in the nature of a surreply. The Court rules on these objections as follows:

Objection No. 1: Overruled
Objection No. 2: Overruled
Objection No. 3: Overruled
Objection No. 4: Overruled
Objection No. 5: Overruled
Objection No. 6: Overruled
Objection No. 7: **Sustained**

Judicial Notice (Court's Own Motion)
The briefing by both parties acknowledges a prior related case of Frank Zimmerman Collective v. City of Vista, et al. (San Diego Superior Court No. 19-29400). That case was heard in this very department. As such, this Court is uniquely familiar with the events of the prior case, and, in a narrative sense (albeit not the *technical* sense), views the instant case as a sort of continuation of the prior litigation. In the interest of fully acknowledging this Court's familiarity with that prior case, this Court, on its own motion, takes judicial notice of the entire publicly-available record and files in that prior action, which this Court will reference herein as the **"First Action"** or the **"Original Action"** – in contrast with the instant litigation which will be referenced herein as the **"Second Action"** or the **"Instant Action."** (Evidence Code § 450, et seq.)

Factual Background and Procedural History
This case pertains to the administrative process of licensing, permitting, registering, approving and/or certifying medical marijuana dispensaries within the City of Vista in response to a voter initiative authorizing (and in some ways mandating) zoning for said dispensaries within the City's territorial limits. The voter initiative was passed in or around November 2018. It was known as **"Measure Z,"** and is codified in the Vista Municipal Code (**VMC**) at § 5.94.010, et seq. There is no real dispute between the parties that Measure Z was designed to comply with certain requirements of state law. There is also no dispute between the parties that based upon the residency calculations within Measure Z the appropriate number of marijuana dispensaries that were to be approved and/or opened within the City was 11.

The briefing addresses *that* Measure Z has a number of idiosyncrasies designed, for lack of a better word, to "push through" approval of dispensaries. To provide some context, the Court, on its own motion, takes judicial notice of the general "hot button" nature of implementation of medical marijuana dispensaries. (Evidence Code § 451(g).) It appears, based on the context, that proponents of medical marijuana may expect to meet with resistance or hostility from local municipal governments, and, as such, Measure Z appears to have been designed in some ways to "force the hand" of government officials. To that end, Measure Z moved very quickly in terms of requiring the City to setup a lottery system to receive and process applications. It included provisions that those application which were not *expressly* denied were deemed automatically approved after 30 days. It also routinely characterized municipal acts of approval as "ministerial" – indicating that local governmental officials did not have "discretion" to start putting up roadblocks to the implementation and approval of marijuana dispensaries, but also leaving little time to address and smooth out any administrative inconsistencies within the ordinance itself.

With regard to those potential administrative inconsistencies, one of the problems that arose was that in

addition to approval under Measure Z, applicants had to meet other administrative requirements before actually opening a dispensary. One of those requirements was obtaining a *business license.* Business licenses are governed by a different section of the municipal code: VMC § 5.04.000A, et seq. Measure Z contemplated that the City was to publish rules and deadlines prior to accepting and processing applications, and one of the questions that arose during that time had to do with the differences between applications submitted under Measure Z (VMC § 5.94.010, et seq.) and "business licenses" obtained under VMC § 5.04.000A, et seq. That question and answer process resulted in the following question being posed to the City and agents of the City answering it follows:

[Question:] Is the business license identified in VMC § 5.94.050.8.16 and 8.17 a license issued under VMC Chapter 5.04[the business license ordinance] or VMC Chapter 5.94 [the medical marijuana ordinance]?

[Answer:] VMC § 5.94.050.8.16 and 8.17 are particular to a business license issued 'under this Article' – a term denoting Measure Z. Given that restriction, the identified 'business license' is the license granted to a medical cannabis pursuant to Chapter 5.94, as enacted under Measure Z and reflected in a Notice of Completed Registration. For a fuller explanation, please see Exhibit A.

(10 AR 57.)

Having answered the questions that were posed within the time pressure imposed by Measure Z itself, the City then initiated the application process. That process began with a lottery – a lottery that the City describes as involving a "bit of luck" because applicants had to draft their applications without knowing what other applicants might apply for (since there was a rule that no two dispensaries could be within 500 feet of each other) and because all of the applicants who put in for the lottery would ultimately be selected by a random draw. (Opposition, p. 40:5-7.) After the first 11 priority slots were handed-out by lottery, it is undisputed that one of the proposed dispensaries known as Riverside County Dispensary and Delivery Inc. (hereinafter, **Riverside**) was given the "number 2" slot and Petitioner was given the "number 6" slot. (Opening Brief, pp. 7:1-2 and 12:10.) Measure Z provided that "the City shall rank the applications in the order in which they were first filed" and "shall process each application according to its rank." (VMC § 5.94.060(D).) Accordingly, the City processed Riverside's application before it processed Petitioner's application.

The problem that arose at this juncture was that Riverside had proposed a location that was within 500 feet of the location that Petitioner had proposed for its location – albeit neither of these applicants had *actually built* or *begun operating* a dispensary out of either location. Nonetheless, when the City reviewed Petitioner's application, it ultimately issued a denial letter on grounds that the 500-foot buffering rules meant that Petitioner's proposed dispensary would be located too close to Riverside's proposed dispensary. Petitioner takes serious issue with this approach, claiming that the buffering rule does not apply to a *proposed* dispensary that *might* buffer-out another applicant – it only applies to dispensaries that are, to use the language of ordinance: "*permitted* medical cannabis dispensar[ies]." (VMC § 5.94.090(D) (emphasis added).)

The ordinance, incidentally, provides a "tolling" mechanism, whereby, upon request of an applicant, the City (which was otherwise mandated to rule on the application within 30 days) could "toll" the 30-day processing time if "[t]he application seeks registration for a medical cannabis business that is... not located... outside the required buffer zones..." (VMC § 5.94.070(A)(3).) It is undisputed that Petitioner never requested such tolling – not while its application was pending, not after its application was denied, not when it first sought review in this Court in the First Action, not when it sought review by the City

Council on "remand" from that First Action, and not now that it is again pending in this Court. Though Petitioner never *sought* to avail itself of such an option, the option *existed* within the framework of the ordinance.

In any event, after its application was denied, Petitioner engaged in a series of efforts to seek review of the denial. Not much needs to be said about those efforts for purposes of the instant case because those efforts were the subject of the First Action. Essentially, the ordinance provides that "[a]ny decision regarding approval, conditional approval, denial, suspension or revocation may be appealed to the city council in accordance with the provisions of the Vista Municipal Code," but Petitioner was not offered an opportunity or mechanism by which to take such an appeal. (VMC § 5.94.120.) The City's position was that the Vista Municipal Code did not provide such an appeal, but, at the conclusion of the First Action, this Court concluded that it was improper for the City Manager to deem that no appeal could be taken to the City Council when the ordinance itself gave the City Manager power to "promulgate ay other rules, regulations, and procedures necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter..." (VMC § 5.94.170(B).) Pursuant to this Court's order in the First Action, the City Manager promulgated rules for an appeal to the City Council, and the City Council heard the matter in June 2021.

Incidentally, in addition to bringing an action against the City on a writ of administrative mandate, Petitioner also sued Riverside in the First Action. At an earlier stage of the litigation, this Court granted an anti-SLAPP motion as to Petitioner's civil lawsuit against Riverside. (First Action (19-29400), ROA 115, pp. 18-22.) This Court later awarded attorney fees against Petitioner and in favor of Riverside in the amount of $55,462.50. (First Action (19-29400), ROA 198.) At the time, this Court noted that:

if Petitioner should have been given an opportunity to appeal to City Council, that right to appeal does not involve Riverside... - though admittedly, in terms of relief, should a viable claim be asserted and proven under this theory, this Court could order an appeal process be put in place and that Petitioner be given an opportunity to avail itself of that appeal process and Riverside... would only be impacted once the machinery of that appellate procedure was set in motion. As such, no claim against Riverside... is stated under that theory either – it is a theory of denial of procedural rights, not a theory involving the substance of Riverside['s]... application.

(First Action (19-29400), ROA 115, pp. 21-22.)

There appears to be relative agreement between the parties that when the matter was effectively "remanded" and an appeal was taken to the City Council, Riverside was "invited" to appear and represent its own interests but declined to do so. (Opposition, p. 15:16-18.) Of course, litigation taking the time that it does, Riverside had been progressing along the course of seeking to jump through other administrative "hoops" to actually open its dispensary. As initial approvals only lasted two years, Riverside's initial application was "renewed" in February 2021. Around that same time, the City issued a separate *business license* to Riverside as well under VMC § 5.04.000A, et seq.

Petitioner's appeal to the City Council took place in June 2021 after the effective "remand." Because some of the semantics of precisely which administrative "hoops" are at issue is in dispute, it is noteworthy that the scope of Petitioner's appeal directly included the denial of Petitioner's "application for *registration*." (VMC § 5.94.070.) The word "registration" does not appear to be an absolute term in how it is used in Measure Z, however, as elsewhere in the ordinance it is described as an application for a "medical cannabis business *license*." (VMC § 5.94.050.) What is clear, however, is that this initial application was to result in the City issuing a "Notice of Completed Registration" (also referenced herein

as an **NCR**). Being "number 2" on the priority list, Riverside received an NCR, but Petitioner, being "number 6" on the priority list did not because its proposed location was within 500 feet of Riverside and thus "buffered out" by the requirements of Measure Z. Because of this, the City sent a letter denying Petitioner's application on February 13, 2019. It is *that* denial that was appealed to the City Council directly.

Petitioner does appear to be making a broader request in this case in multiple ways, as set forth below.

First, Petitioner is also claiming that as part of its appeal of the denial of its application, it was not just appealing the City's decision to *deny* its application, but, in addition, because the City's denial was contingent upon its *approval* of the Riverside application, Petitioner was also seeking to challenge the validity of the Riverside application. Said another way, Petitioner seeks to oversee or second-guess the governmental task that the City performed when it approved Riversides "application for registration."

Second, the City *renewed* Riverside's NCR two years later (in February 2021), and, as such, Petitioner is also seeking to challenge that renewal. That, however, was not a direct factor in the *denial* of Petitioner's application two years prior. Nevertheless, given that the passage of time has somewhat changed the landscape of the case as Riverside has moved forward with opening its dispensary in the intervening four-year period that Petitioner was litigating with the City (or engaged in the administrative appeal process), Petitioner's position is that there are things that flow from that initial mistake (approving Riverside's application and denying Petitioner's application) that are within the ambit of the present appeal because a change to the root-level problem would invalidate the later actions. In other words, if Riverside's *initial* application had been properly denied (as is Petitioner's position), then *there would have been nothing to renew*. As such, Petitioner takes the position that some of these subsequent actions can be, or *were*, "roped in" to the appeal to the City Council.

Third, when the City renewed Riverside's NCR, it also *issued Riverside a business license* under VMC § 5.04.000A, et seq. Petitioner claims that it tried to have *that* issuance also brought into the appeal to the City Council. The City Council apparently declined to hear that issue on standing grounds, and Petitioner is now asking this Court to review the City Council's decision not to hear that issue.

Parsing the Issues on "Appeal"

As can be seen from the above, Petitioner has introduced a number of discrete issues as potentially fertile grounds for its present "appeal," which appears to technically be a writ of administrative mandamus. The Court notes that the actual *Petition* does not specifically reference the writ of administrative mandamus statute. But, the Opening Brief does cite Code of Civil Procedure § 1094.5, which is the statute applicable to a writ of *administrative* mandamus (as opposed to the statute for a writ of *ordinary* mandamus). (1 Abbott, et al., California Administrative Mandamus (3d ed Cal. CEB, 2023) § 1.1 (citations omitted).) As such, the *Petition* before this Court is a method of obtaining judicial review of the decision of a governmental agency, which functions in some ways like an "appeal." (As an aside, the Court notes that the instant *Petition* significant muddies the waters by not only seeking judicial review of an agency decision *as to the City*, but, also, asserts a civil cause of action for injunctive relief against Riverside, which is an altogether different claim.) As such, it is necessary to first clarify the issues that are on "appeal" or that are to be reviewed.

As set forth above, Petitioner has put forth several issues, which breakdown into the following:

1. whether the City's decision to issue an NCR to Riverside was proper,
2. whether the City's renewal of Riverside's NCR was proper,

3. whether the City's decision to deny an NCR for Petitioner was proper,
5. whether the City Council's decision not to consider certain arguments on appeal was proper,
4. whether the City's decision to issue Riverside a business license was proper.

The inner workings of these several issues create a great deal of complexity, and the approach to even involving some of these issues requires some unpacking as not all of these discrete issues are on similar analytical footing. For simplicity, the Court will first tease out issue Number 5 identified above, as that issue stands out somewhat starkly from the other issues because it arises out of application of an *entirely different ordinance* than the other issues raised.

The Business License Issue and Appeal to the City Manager

The parties' briefing – and, in particular, Petitioner's analysis – make much of the parsing of different words like "application," "permit," "registration," and "license." But, both parties seem to acknowledge two foundational points about the difference between a "NCR" and a *business license*. First, the parties seem to be in agreement that a "NCR" (which, again, stands for "Notice of Completed Registration") is a document governed by the *marijuana ordinance*, which is also referenced herein as "Measure Z" and which is codified as VMC § 5.94.010, et seq. For simplicity in this part of the analysis, this Court will refer to that municipal law as the "**Marijuana Ordinance**." Second, the parties also seem to be in agreement that a *business license* is a document governed by the *business license ordinance*, which is codified in a separate section of the Vista Municipal Code at VMC § 5.01.000A, et seq. For simplicity in this part of the analysis, this Court will refer to that municipal law as the "**Business License Ordinance**." To put a finer, but simpler, point on it, the Marijuana Ordinance is codified at § 5.**94**, while the Business License Ordinance is codified at § 5.**04**. To put an even finer point on it, both ordinances contain a section specifying their intent:

Business License Ordinance (VMC § 5.04.030)
Section 5.04.030 Purpose

*This chapter is enacted **solely to raise revenue** for municipal purposes, and is **not intended for regulations**.*

Marijuana Ordinance (VMC § 5.94.010)
Section 5.94.010 Purpose and Intent

*The purpose of this chapter is to **establish a comprehensive set of regulations** with attendant **regulatory permits** applicable to the operation of medical cannabis dispensaries. The regulations are intended to ensure such operations are consistent with the overall health, welfare and safety of the city and its populace, and that such operations are in compliance with California's Compassionate Use Act of 1996 as well as California's Medical Marijuana Program Act of 2003. Furthermore, the purpose of this chapter is to **establish a framework for regulation** consistent with the Medical Marijuana Regulation and Safety Act of 2015 as drafted, and also any future regulations contemplated by the Bureau of Medical Marijuana, Department of Consumer Affairs, the Department of Health and Safety, the Department of Agriculture, or any other governmental agency in its promulgation of rules and laws pertaining to commercial cannabis activities throughout the State of California.*

This chapter is not intended to permit activities that are otherwise illegal under state or local law. This chapter is not intended to conflict with federal or state law.

(Some emphasis changed.) One ordinance is clearly regulatory – the other specifies that it is not for regulation at all.

The procedural throughline of Petitioner's challenge of the City's actions here is the denial of the NCR

(which came in the form of a letter dated February 13, 2019). After a roundabout detour to this Court to compel the City to put an appeal process in place that was consistent with the provisions of Measure Z, what Petitioner was able to appeal to the City Council was *that denial of the NCR*. The business license has nothing to do with the denial of the NCR. The business license was issued to Riverside approximately two years *later*. As set forth above, Petitioner takes the position that the fundamental flaw in the issuance of the business license two years later is that, foundationally, it is built upon the prior issuance of a NCR to Riverside, and, if the NCR that was issued to Riverside was invalid, then so too would the subsequent business license be invalid.

While that might work as a theory, the challenge for Petitioner is how to get that issue in front of an appropriate governmental agency or appellate body. Petitioner's attempt to do so seems to have been based upon the notion that since the denial of the NCR to Petitioner could be appealed to the City Council under *the Marijuana Ordinance*, and since Petitioner takes the position that the scope of that appeal should allow it to attack the validity of the NCR that was issued to Riverside in February 2019 (which was the basis upon which Petitioner was *denied* an NCR), then it should be able to also raise the subsequent issuance of a business license to Riverside *within that appeal*. This Court disagrees.

What muddies the waters of the issue is that Petitioner appears to have submitted some sort of *combined* appeal. (See 41 AR 481-486.) That appeal purported to be under *both* the Marijuana Ordinance *and* the Business License Ordinance. (41 AR 481:23-28.) What makes those two ordinances notably different, however, is that the Business License Ordinance contemplates an appeal *to the City Manager* while the Marijuana Ordinance contemplates an appeal *to the City Council*.

Business License Ordinance (VMC § 5.04.210)
Section 5.04.210 Appeal
*Except as provided under section 5.04.410, any person **aggrieved** by any decision of the collector made pursuant to this chapter may **appeal such decision to the City Manager** by filing a written notice of appeal with the City Clerk within 30 days after notice of said decision has been given by the collector. The City Manager shall thereupon fix a time and place for hearing such appeal. The City Clerk shall give notice to such person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at Vista, California, postage prepaid, addressed to such person at his last known address. The City Manager shall have authority to determine all questions raised on such appeal. **The City Manager** shall consider all evidence produced, shall make findings thereon and shall render a decision. **Such decision shall be final and conclusive**. No such decision shall conflict with any substantive provisions of this chapter.*

Marijuana Ordinance (VMC § 5.94.120)
Section 5.94.120 Appeals
*Any decision regarding approval, conditional approval, denial, suspension or revocation may be **appealed to the city council** in accordance with the provisions of the Vista Municipal Code.*

(Some emphasis changed.) A *combined* appeal does not even make sense given the stark differences between both the purposes of the statutes (one regulatory, the other strictly for revenue) and the appeal procedures contained within each of the statutory schemes (one appeal to the City Council, the other to the City Manager).

However, even if this Court were to construe the "appeal" of the business license issue as purely an appeal under the Business License Ordinance, the City Manager, through the City Attorney's Office, officially denied that appeal on grounds that Petitioner was not an "aggrieved" party under the appeal

provision of the Business License Ordinance. That issue never had to go before the City Council because the City Council is not involved in the administrative appeal procedure that applies *to business licenses*. As such, this Court need not review the City Attorney's letter denial *through the lens of any subsequent actions taken by the City Council*. Instead, that letter is independently reviewable via a writ of administrative mandamus as a "final and conclusive" administrative action of the City Manager. (VMC § 5.04.210.)

The City Manager, again via the City Attorney's Office, denied Petitioner's appeal. In doing so, the City Attorney's letter-denial quoted County of Alameda v. Carleson (1971) 5 Cal.3d 730, 737 for the proposition that: "One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment. [Petitioner]'s interest must be immediate, pecuniary, and substantial and not nominal or remote consequences of the judgment." (42 AR 954.) Based thereon, the City concluded that:

[Petitioner] is not aggrieved by the City's issuance of [Riverside]'s Business License because [Petitioner]'s position would not be affected in any way had [Riverside] not been granted the License. [Petitioner] was not issued a NCR, a necessary prerequisite to the issuance of a business license under VMC section 5.04.145. If [Riverside] were denied a business license, [Petitioner]'s position would remain exactly the same. It would still need to apply for and receive an NCR to be eligible for its own business license. In other words, [Petitioner]'s appeal does not demonstrate that its alleged interest in challenging [Riverside]'s Business License has been recognized by law. In sum, [Petitioner] has failed to demonstrate that it has a legal right to automatically be issued a NCR if [Riverside]'s NCR was not granted and/or renewed.

(42 AR 954.) Petitioner's position is that its interest is not *so* remote as to render it a non-aggrieved person because the decision regarding whether or not it should have been issued a NCR *was still on appeal at the time*. Thus, in Petitioner's view, while it was waiting for the litigation process to play-out before a decision on its NCR became final, it remained unsettled whether or not Petitioner had a NCR and thus that possibility rendered Petitioner a sufficiently "aggrieved" party to allow it to appeal the issuance of the Business License to the City Manager.

The problem with this view harkens back to the stated "purposes" of the two different ordinances at issue. Petitioner might be right that if one looks more broadly at *anything* causing a grievance (such as a chain of events that would cement the loss of a NCR under a separate ordinance) then it might be considered an "aggrieved" party. But, taking that view is simply too broad. By way of hypothetical example, one could imagine two business with different interests such as a yoga studio needing peace and quiet and a metalworking shop needing to operate heavy machinery that end up leasing office suite next door to one another. Just because the business of one might drive away the clientele of the other, the yoga studio would not have standing to challenge the machine shop's *business license* as an "aggrieved party" – that simply is not what the ordinance is designed for; not its *purpose*. The Business License Ordinance has a stated purpose of being for "rais[ing] revenue for municipal purposes..." (VMC § 5.04.030.) Petitioner's grievance is *regulatory* in that the entire thrust of Petitioner's challenge over the years has been that it was "buffered out" of being allowed to pursue opening a dispensary. Petitioner's grievance is not that *it* was denied a business license under VMC § 5.04.000A because Petitioner never made it that far.

While the word "aggrieved" as used in the Business License Ordinance left a bit of daylight for Petitioner to argue as is has, proper interpretation of the ordinance in context reveals that Petitioner is not "aggrieved" in a manner that would confer standing to appeal *someone else's* business license. The parties dispute the appropriate standard of review for this Court to apply to this determination. According

to Petitioner, "with respect to statutory interpretation, the trial court must exercise an *independent review* while applying well-settled rules of statutory construction." (Opening Brief, p. 22:1-3, citing Hubbard v. California Coastal Com. (2019) 38 Cal.App.5th 119, 135 (emphasis added).) On the other hand, the City argues that "[c]ourts 'give presumptive value to a public agency's interpretation of a statute within its administrative jurisdiction because the agency may have 'special familiarity with satellite legal and regulatory issues,' leading to expertise expressed in its interpretation of the statute.'" (Opposition, p. 33:4-9, quoting Pacific Gas & Electric Co. v. Public Utilities Com. (2015) 237 Cal.App.4th 812, 839, also citing Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7.) Here, the Business License Ordinance provides for an appeal to the City Manager and further provides that such appeals are "final and conclusive." (VMC § 5.04.210.) Were it appropriate to defer to the City Manager in such circumstances, there would be ample reason to do so given that the City Manager is familiar with the kinds of appeals that are brought by *business license* applicants. And, from the perspective of setting up an appropriate statutory and/or taxation scheme, limiting appeals to only those parties whose *taxes* are to be affected via the revenue-raising provisions of the Business License Ordinance (by only considering those parties to be "aggrieved") is an exercise of familiarity with the issues and governmental schemes that are at play. But, beyond that, even if deference is not called-for in this circumstance, the Court itself in independently reviewing the provisions of the Business License Ordinance concludes that the word "aggrieved" as used therein is designed to apply to those parties who are impacted with regard to their taxes or denied the ability to open a business because of taxes – not to be used as a backdoor for considering denials under a completely different ordinance with a completely different "regulatory" purpose.

As such, this Court concludes that Petitioner is not a "person aggrieved" for purposes of challenging the decision to issue a *business license* to *Riverside* – a completely different entity. The Business License Ordinance simply does not contemplate creating a forum for one business to challenge another business's licensure in the nature of a direct civil suit, nor is it designed to create a quasi-governmental role for another private business (Petitioner) to try to second-guess or review the governmental decisions made by the City about *another entity's* business licensure for purpose of collecting revenues.

The NCR Issues and Appeal to the City Council

Having disposed of the *business license* issue under the Business License Ordinance, what remains of the issues at play in the instant writ of administrative mandamus are, at least as identified by Petitioner, the following:

1. whether the City's decision to issue an NCR to Riverside was proper,
2. whether the City's renewal of Riverside's NCR was proper,
3. whether the City's decision to deny an NCR for Petitioner was proper,
4. whether the City Council's decision to not entertain certain of Petitioner's arguments on appeal was proper

Again, these are not four co-equal issues to be considered; framing of how each of these issues arise is critical to consideration and analysis of them. Given the procedural posture of the instant *Petition*, what Petitioner is "appealing" is a ruling by the City Council, and, in turn, the issue the City Council was hearing pursuant to its appellate authority under the Marijuana Ordinance was the denial of Petitioner's application for registration – i.e. declining to issue a NCR to Petitioner. There is a throughline between these two "issues" as discretely itemized above, such that they are essentially one and the same: first, was the City Manager correct in denying Petitioner's application for a NCR, and, thereafter, when Petitioner appealed the City Manager's decision to the City Council, did the City Council provide a fair hearing, properly consider the issues, and reach a decision that was supported by the law and the

evidence. That is the issue that this Court can address via the administrative writ of mandamus procedure.

However, Petitioner *also* seeks to have this Court review some of the City's *other* decisions on *different applications* – such as the decision to approve Riverside's application and the decision to renew the NCR that been issued to Riverside. Petitioner's position seems to be that it has a direct "beneficial interest" in the outcome of Riverside's application, which Petitioner frames as conferring standing as a party that is able to appeal the decision to issue a NCR to Riverside.

Any decision regarding approval, conditional approval, denial, suspension or revocation may be appealed to the city council in accordance with the provisions of the Vista Municipal Code.

(VMC § 5.94.120.) Some of the challenge in this case stems from the fact that Petitioner appears to be appealing under two of these scenarios – appealing "approval" of Riverside's application and appealing "denial" of Petitioner's application. Though there is only one formal appeal that was filed, it can be thought of as encompassing these two different types of appeals permitted under the Marijuana Ordinance.

At the hearing on this matter, and in the Court's tentative ruling, this led to some characterization of standing that is "direct" and standing that is "indirect." While Petitioner argued strenuously against this concept as a binary at the hearing, the point is less that an appealing party has direct or indirect standing and more the question of examining the scope of matters raised to determine whether a party has legal standing to raise them. Examples may help illustrate the point.

Since the instant case is about "buffering" – a zoning concept that has to do with ensuring that certain types of businesses are located a certain amount of distance away from other zoned areas (such as residences or schools) – an analogous concept in this case could the approval of a NCR too close to a school. In other words, the Marijuana Ordinance specifies that a NCR shall not be approved if the proposed location is within 1,000 feet of a school. (VMC § 5.94.070-3.) In considering a scenario in which someone might have "standing" to appeal the *approval* of an application (which is something the Marijuana Ordinance expressly states is appealable), one might imagine a NCR that is approved for a dispensary that is too close to a school. If the City were to mistakenly approve such an application, would *any* taxpayer or resident within the City have standing to challenge the approval of the NCR? The Court posits that under traditional concepts of "standing" (and under the "beneficial interest" standing concept applied in writ of mandamus cases as discussed below), the answer would be no, as an ordinary citizen or taxpayer does not have sufficient "beneficial interest" in the proximity of a dispensary to a school to make a legal challenge. However, *the school* would have a sufficient "beneficial interest" to challenge the approval of an application for a dispensary that was too close to it, and such a challenge would be of the *approval* of the application.

In this case, Petitioner has an additional way of getting at the issue because, in addition to challenging the *approval* of Riverside's application (which was independently appealable), the Marijuana Ordinance also specifically provides authority to appeal the "denial" of an application – in this case, that denial was of *Petitioner's* application.

Both of the above present different bases for mounting an appeal, but they each come with different parameters in terms of the concept of *standing* or having a "beneficial interest." In the first example of a dispensary that is approved too close to a school, there does not appear to be much doubt that the school would have standing to appeal the approval, but the more poignant question raised by this case

is: what is the *scope* of that appeal? If the school's issue is that the approved NCR proposes a dispensary that is too close to the school, is the school's appeal *limited to that issue* such that the entire dispute to be litigated is whether or not the proposed dispensary is within 1,000 feet of the school? Or, conversely, as long as the school has a basis to claim a "beneficial interest" in the City's decision to approve the application, can the school then mount any additional legal challenge it wants such as claiming that the dispensary that received a NCR had faulty application materials due to improper site plans with plumbing issues, electrical issues, mechanical issues, and unlawful compliance with the requirements of the American's with Disabilities Act? Under traditional notions of standing, as well as under the specific concept of a "beneficial interest" as it has developed within the writ of administrative mandamus context in California, this Court concludes that the latter would be outside the scope of a proper appeal. Applying that principle to Petitioner, to the extent that Petitioner is appealing the *approval* of Riverside's application, the scope of what Petitioner can appeal is similarly limited.

But, as described above, Petitioner has an alternative way of getting at the same issue – by appealing the *denial* of its application. Specifically, the stated reason for the denial of Petitioner's application was the *approval of Riverside's*. Petitioner takes issue with this in two ways – one of which will be reserved for further analysis below. First, Petitioner argues that *even if* Riverside's application was approved, that did not result in an actual, operational, dispensary being implemented immediately. Thus, Petitioner argues that mere *approval* of Riverside's application was not a sufficient basis to deny Petitioner's application. That issued will be set aside and addressed separately below. Second, Petitioner argues that if the approval of Riverside's application *was* enough to warrant a denial of Petitioner's application, then Riverside has standing to, on appeal, *challenge anything and everything that might have been needed to get Riverside's application approved.* This includes challenging the site plans, challenging the electrical, challenging the mechanical, challenging the plumbing, and challenging the disability access. The Court rejects this view. Just as above, with a school that desires to appeal the approval of an application that would allow for a dispensary within its "buffer" zone, the scope of appeal is limited to the school's interest – i.e. in the protection of the buffer, not to any and all possible issues that may exist in the application of the approved dispensary. Similarly, as Petitioner's application was denied because Riverside received a NCR for a dispensary that is within 500 feet of Petitioner's proposed location, Petitioner had standing to appeal whether or not Riverside's location was, indeed, within 500 feet, and Petitioner also had standing to appeal whether a "mere" approved NCR was sufficient to buffer it out (as opposed to requiring that an actual dispensary was up and running before it could effectively be a "buffer" zone).

When it comes to the issue of standing, the Court is mindful that the Marijuana Ordinance is somewhat silent as to the question of *who* can appeal to the City Council. It does, however, provide that the City Manager has the authority to promulgate rules, regulations, and procedures "necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter..." (VMC § 5.94.170(B).) The parties do not argue that the City Manager, in fact, promulgated rules limiting *who* can appeal decisions regarding issuance of a NCR, but it is notable that the ordinance delegate the power to do so to the City Manager.

In any event, as addressed above, the parties invoke the "beneficial interest" standard. Applying that standard immediately in this case skips a step. Technically, the "beneficial interest" standard is something that applies to a party that is seeking an *administrative writ of mandamus* (from a trial court) – not necessarily to a party seeking appellate review under the Marijuana Ordinance (from the City Council). (1 Abbott, et al., California Administrative Mandamus (3d ed Cal. CEB, 2023) § 7.1 (citations omitted) ("A petitioner must have a 'beneficial interest' for the court to issue a writ of administrative mandamus.").) It is not immediately clear from the briefing why the City Council should apply a

"beneficial interest" standard when considering *who* may bring an appeal under the Marijuana Ordinance; but, then again, it is not clear from the ordinance itself *what* limitations there might be on who may bring such appeals. As was stated repeatedly throughout the Original Action, "the Initiative is neither a model of statutory drafting, nor an example of clarity." (Original Action (19-29400), ROA 258, p. 9; Original Action (19-29400), ROA 225, p. 2 ("all parties seemed to share some level of agreement that the ordinance at issue in this case – an initiative ballot measure passed by voters and pertaining to the licensing and establishment of marijuana dispensaries within the territorial borders of the City – was not a model of clarity"); Original Action (19-29400), ROA 115, p. 16 ("As a direct-to-voter ballot measure, the Initiative is not necessarily a model of clarity in statutory drafting.").) Luckily, the unclear ordinance delegated authority to the City Manager to promulgate necessary rules to "implement and administer the intent" of the ordinance and vested authority for hearing appeals in the City Council. As such, those bodies have the authority to harmonize the unclear portions of the ordinance as long as in so doing they do not run afoul of the terms within the ordinance itself.

It is an exercise of appellate authority to consider the standing issue of whether Petitioner could challenge the approval of *someone else's* application. This Court does not consider such exercise to have been arbitrary, capricious, an abuse of discretion, or even unsupported by the statutory scheme. In fact, were this Court to consider the question afresh, it would come to the same conclusion (along the same lines as outlined above with regard to the concept of standing). In the law, there are cases in which private citizens step into the shoes of a government official and become a "private attorney general" but those areas tend to apply to vindicating important public rights. What Petitioner is attempting to do here is analogous in that Petitioner is attempting, in a way, to "step into the shoes" of the City and, as a fellow applicant seeking to open a marijuana dispensary, go in and review and challenge, *at a granular level*, the application of another applicant. The Court concludes that it is well within the authority of the City Council (and within the authority of the City Manager if or when the City Manager chooses to promulgate rules about standing to appeal under VMC § 5.94.120) to set parameters barring applicants challenging each other's applications at such a granular level (i.e. digging into the minutia of an applicant's site plans with regard to electrical, plumbing, and compliance with the American's with Disabilities Act).

Other examples exist in the law where, at a certain point, an inquiry goes too far or becomes too attenuated to be actionable. In the field of tort law, there is the concept of *proximate* cause:

*'"Proximate cause" – in itself an unfortunate term – is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct. In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would 'set society on edge and fill courts with endless litigation.' [*North v. Johnson, *59 N.W. 1012 (Minn. 1984).] As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of an act, upon the basis of some social idea of justice or policy.'*

(Black's Law Dictionary (11th ed. 2019) (definition of "cause"), quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts (5th ed. 1984) § 41, p. 264.) Similar concepts have been explored in the field of foreclosure law, where homeowners seeking to resist foreclosure proceedings bring an action not to challenge the validity of the debt obligation that they owe, but, rather to "go behind" the mortgage and challenge the financial securitization process. See Saterbak v. JPMorgan Chase Bank, N.A. (2016) 245 Cal.App.4th 808.

Central to this appeal is whether as a borrower, Saterbak has standing to challenge the assignment of the DOT on grounds that it does not comply with the PSA for the securitized instrument...

'Standing is a threshold issue, because without it no justiciable controversy exists.' {Citations.} Pursuant to Code of Civil Procedure section 367, '[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.'

Saterbak contends the 2007-AR7 trust bears the burden of proving the assignment in question was valid. This is incorrect. As the party seeking to cancel the assignment through this action, Saterbak 'must be able to demonstrate that... she has some such beneficial interest that is concrete and actual, and not conjuctural or hypothetical.' {Citation.}

...

Saterbak alleges the DOT was assigned to the 2007-AR7 trust in an untimely manner under the PSA. Specifically, she contends the assignment was void under the PSA because MERS did not assign the DOT to the 2007-AR7 trust until years after the closing date. Saterbak also alleges the signature... on the assignment document was robo-signed.

Saterbak lacks standing to pursue these theories. The crux of Saterbak's argument is that she may bring a preemptive action to determine whether the 2007-AR7 trust may initiate a nonjudicial foreclosure. She argues, 'If the alleged "Lender" is not the true "Lender,"' it 'has no right to order a foreclosure sale.' However, California courts do not allow such preemptive suits because they 'would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature.' {Citations.}

...

...Consequently, Saterbak lacks standing to challenge alleged defects in the MERS assignment of the DOT to the 2007-AR7 trust.

Saterbak v. JPMorgan Chase Bank, N.A. (2016) 245 Cal.App.4th 808, 813-815. While neither tort law and its attendant concepts of "proximate cause" nor foreclosure law and the related holding of the Saterbak are directly applicable to this case – nothing is. On the issue of standing, the Marijuana Ordinance itself is somewhat vague. It specifies that "any" decision may be appealed so long as it applies to "approval, conditional approval, denial, suspension, or revocation" but it does not specify *who* may bring such appeals – in fact, it does not technically even specify what the approval, conditional approval, denial, suspension, or revocation would be *from*, and, as briefed at length in this case, there is significant dispute as to which steps fall under the Marijuana Ordinance and what those documents are called (be it "permits," "certifications," "registrations," or "licenses").

At the hearing on this matter, and in the tentative ruling, there was some discussion as to whether or not Riverside's application *could* impacted (by having the NCR revoked) by the appeal that Petitioner made to the City Council. Much of this concern turned on notions of due process – i.e. whether Riverside was given notice and whether a full and fair adversarial proceeding took place. While the Court's tentative analysis noted that the City had not adopted rules that would *compel* another applicant to appear for an adversarial proceeding, Petitioner persuasively argued at the hearing that *compulsion* was not the operative or critical component for the City Council to have power to alter or change the outcome of

Riverside's application; rather, the critical component was merely basic due process – that Riverside had notice of the appeal (and of the scope of issues to be raised in the appeal) and an opportunity to be heard. An email from the City Clerk to Riverside reads as follows:

Good afternoon Paul-

The City has just received the attached appeal from Frank Zimmerman Collective. In reviewing the appeal, the appellant makes allegations stating that the City should have never issued Riverside County Dispensary and Delivery a Notice of Completed Registration or renewed their registration in February. Riverside is welcome to participate in the appeal hearing which will be held virtually on June 15 at 2 p.m. However, the City is not compelling Riverside's attendance at the appeal hearing.

(58 AR 2376.) It appears that Riverside chose not to take advantage of that opportunity, but Riverside's decision not to become involved does not alter the legal calculus of whether the City Council had *power* to alter the outcome of Riverside's application when it heard the appeal in this matter. This Court concludes that the City Council did, in fact, have sufficient authority to alter the outcome with regard to Riverside's application when it heard the appeal that was mounted by Petitioner.

At the hearing, the City Council appears to have *heard* arguments about the possible inadequacy of Riverside's application, but mixed into the hearing on that issue were multiple instances of the City Attorney raising concerns about actually *addressing* the adequacy of Riverside's application because Riverside was not participating in the proceeding and has its own due process rights before being stripped of its NCR. (47 AR 1671:9-11; 47 AR 1711:10-17.) The transcript of the hearing contains an argument by City Counsel that:

If the Council wants to consider Riverside's application, Riverside would be a necessary and indispensable party to the proceedings for due process rights, because they have rights to the NCR that they have been issued. They would need to be before the Council and have an opportunity to be heard on it.

(47 AR 1713:23-1714:3 (emphasis added).) As this Court concludes that the City Council did, in fact, have *power* to change the outcome of Riverside's application at the appeal hearing, the issue being raised with regard to due process is somewhat limited at this procedural juncture. In other words, the argument on this issue is a limited one. Specifically, this issue only matters in the context of the present writ proceeding (which requires this Court to review the proceedings in the underlying administrative tribunal for things like a lack of substantial evidence or clear legal error) if: (1) the City Council believed it *did not* have power over Riverside's application when it heard the appeal, and (2) *rested its decision* on that lack of power. There is some evidence in the record that there was, at the very least, some confusion over this issue because the City Attorney framed the City's argument as follows:

With regard to Riverside's appeal, this is the City's position on this. So [Petitioner]'s appeal attacks primarily the issuance of the City's issuance of a notice of complete registration to Riverside. The Staff doesn't believe, and ***I don't believe that [Petitioner] has standing to attack the issuance of Riverside's NCR in this proceeding****, however, subject to that, I will address [Petitioner]'s allegation and the City's positions with regard to them.*

(47 AR 1679:18-24 (emphasis added).) Therein lies some of the challenge of reviewing what the City Council did – at least one member of the City Council seems to have been swayed by the argument that Riverside's interests should not be considered since Riverside was not involved in the appeal:

COUNCIL MEMBER FRANKLIN: It seems like, based on your statement, that if we really wanted to delve into the facts of the approval and the continued force of the licensure of Riverside, we need to have a completely separate public hearing and appeal to the approval.

MR. CHUNG: As to Riverside's license, I would agree.

COUNCIL MEMBER FRANKLIN: ***So our not being here today to have an investigation, a fact-finding of those facts, I don't think its reasonable to bring them in.***

(47 AR 56:7-16 (emphasis added).) This Court cannot independently examine the thinking of each of the council members who voted as to the outcome of the appeal hearing. As such, while the issue appears to have been raised and discussed, and may have even confused some Council Members, what ultimately matters is not the ideas and concepts that were batted around at the hearing and discussed in a free and open exchange of arguments, but, rather, the final written decision that the City Council officially approved. That written decision ultimately includes making determinations about the adequacy of Riverside's application:

3. Frank Zimmerman Collective's arguments that Riverside County Dispensary and Delivery's application should have been denied are unfounded. Specifically:

a. Riverside County Dispensary and Delivery submitted the site plans required by VMC section 5.94.050(B)(7). VMC Chapter 5.94 did not require Riverside County Dispensary and Delivery to submit to construction ready plans as Frank Zimmerman Collective contends.

b. Riverside County Dispensary and Delivery submitted a signed and notarized authorization from its landlord acknowledging and allowing Riverside County Dispensary and Delivery's leased premises to be used as a medical cannabis dispensary as required by VMC section 5.94.050(B)(6).

c. The City reasonably relied on the information provided for in Riverside County Dispensary and Delivery's application as its application was submitted under penalty of perjury as required by VMC section 5.94.050(B)(19). Riverside County Dispensary and Delivery's application also included a Live Scan showing that Mr. Tossonian had not suffered any felony drug convictions in the last four years as required by VMC section 5.94.050(B)(14).

(48 AR 1750-1751.) Thus, as the issue of the adequacy of Riverside's application *was ultimately reached* by the City Council, any confusion about whether it was appropriate to reach the issue is ultimately superfluous.

However, this brings the analysis to what this Court views as the heart of the dispute between the parties. Ironically, at the hearing on this matter, both parties urged this Court to make a finding about whether or not the decision of the City Council was supported by "substantial evidence." That is understandable as it is the applicable legal standard. However, it begs the question: substantial evidence *of what*? The question the parties are ultimately arguing here is not one of *evidence* – it is a question about what the standard was that the City was to apply when reviewing applications. To put the conflict into sharper terms, the City is arguing that when approving Riverside's application it only needed to have what the Court will refer to as "cursory" or "facial" adequacy. In other words, given the long and tedious process of obtaining permits and opening a business (a roughly two-year process), Riverside (and really any applicant for a NCR) only needed to have adequate *plans* for opening a dispensary – it did not need to have every proverbial "i" dotted and proverbial "t" crossed. In the City's view, applications could be approved as long as the proposed template plans were adequate. Petitioner takes a much

different view of the standard, arguing that Riverside was required to, essentially, have absolutely perfect and flawless plans the day it submitted them to the City even if it would still take two years (approximately) for Riverside to complete all of the stages for actually open its dispensary. Thus, it is not that the parties here have a disagreement about *what the evidence is* – it is that they disagree about *the standard the City was supposed to apply* when exercising its (admittedly ministerial) duty of reviewing applications.

Perhaps the biggest challenge with this dispute, once setup in this manner and viewed through this lens, is that there really is no strong authority for the precise standard that the City was to apply when reviewing applications – other than one touchpoint that the Marijuana Ordinance offers: that the City's review was to be "ministerial." Read in context, it appears that the marijuana-friendly voter initiative was drafted (and ultimately passed) with an eye toward forcing the hand of municipal official. Said another way, it appears as it if was designed to prevent municipal government from thwarting its implementation via exercises of *discretion*. This, however, has little to do with the *standard* that was to be applied when reviewing applications – with perhaps one caveat. To the extent that the Marijuana Ordinance was designed to force implementation and actually get dispensaries licensed and up and running, the general intent of the ordinance would appear to be more aligned with the position taken by the City in this action rather than the position taken by Petitioner. To wit, Petitioner is arguing more of a "fine-toothed comb" review of Riverside's application such that it could be denied on any one of a number of issues (plumbing plans, electrical plans, ADA compliance, etc.). The general thrust of the Marijuana Ordinance is to the contrary – denying the City much leeway or discretion in terms of finding ways to *deny* an application. At the hearing on this matter, a very good argument was made by the City that the review Petitioner seeks to have done of the Riverside application – i.e. a much finer "under the microscope" review – is actually a much *higher* scrutiny than any other applicant would face. While there is no particular legal authority addressing whether a higher scrutiny of this sort would be improper, common legal principles of fairness, equal justice under law, and avoidance of arbitrary and capricious application of the law, put a proverbial "thumb on the scale" in terms of supporting the City's position. In other words, where there is *no clear standard*, the fact that the City reviewed all applications in the same "cursory" or "facial" adequacy – rather than subjecting some to higher standards of review while others did not receive such rigorous treatment – is consistent with fair and equal application of the law. Moreover, in a situation where the Marijuana Ordinance itself created a very tight timeline of 30 days to review and take action on all applications, the City's decision to review applications for "cursory" or "facial" validity rather than taking a detailed, in-depth, highly-scrutinizing approach makes sense under the circumstances and is not *in*consistent with any provisions of the Marijuana Ordinance.

The counterargument to the above is that the City did not have discretion – even to pick the applicable standard. As such, to the extent that the City failed to fully scrutinize all applications in detail, others with standing could still challenge that process and *force* a deeper review. And, under this view, the City does not have "discretion" to decline to engage in a heightened review when an appeal to the City Council forces the issue. This Court disagrees with this view. In reviewing applications, the City chose one standard and stuck to it for all applications – or so it appears from the evidence available. Once an appeal to the City Council is triggered, this Court is of the view that the "ministerial" language of the Marijuana Ordinance did not apply – at least not to the City Council, which was acting in a quasi-judicial role. In other words, as an appellate body, the City Council had some discretion when resolving disputes that were raised *between* applicants. This harkens back to the analysis above with regard to *how* one views the nature of the appeal that was taken, since it appears that Petitioner was attempting to appeal both *the approval of Riverside's application* and *the denial of Petitioner's application* (which, in some ways, inherently triggers also appealing Riverside's approval since that was the *basis* for denying Petitioner's application). Were the City Council *solely* reviewing the denial of Petitioner's application, a

more ministerial approach might be appropriate – i.e. a review to merely see whether City officials complied with the legal requirements when reviewing Petitioner's application. *But*, the moment that the appeal to the City Council begins to involve *the legal rights of other entities*, the appeal process – indeed the adversarial process more broadly – calls for a certain level of discretion in examining and applying the legal requirements. Nothing in the Marijuana Ordinance prevents the *City Council* from exercising discretion, and none of the rules promulgated by the City Manager to create the appeal process appear to have imposed such a limitation. (See (VMC §§ 5.94.120 and 5.94.170(B).) As such, it appears that the City did an adequate, ministerial review of Petitioner's application and denied it. Then, on appeal, the City Council concluded that the ministerial review by the City was adequate and proper. *To the extent that the appeal sought review of Riverside's application*, the City Council properly exercised discretion in declining to required that Riverside be subjected to higher scrutiny than any other applicant just because another applicant with a lower-priority lottery number was unhappy about being "buffered out" on initial review of the applications.

The Standard of Review

In the briefing, the City makes the point that a cannabis license is not a "vested right" and thus does no trigger "de novo" review. (Opposition, p. 30:13-15, citing Hauser v. Ventura County Bd. of Supervisors (2018) 20 Cal.App.5th 572, 575 (additional citations omitted).) While the parties admit that the *statutory* interpretation aspects of this case are subject to independent review, there is general agreement that with respect to the *factual* aspects of the case are subject to an abuse of discretion standard, which, in turn, means a review of whether the decision of the governmental agency (here, the City Council) is supported by "substantial evidence" in light of the record as a whole. While the City Council is required to have made factual findings that "bridge the analytical gap" between the record evidence and the decision reached, *inferences* that can be drawn from the evidence may constitute "substantial evidence" (as long as such inferences are logical and reasonable), findings are to be presumed to be supported by the administrative record, and reasonable doubts are to be resolved in favor of the governmental agency. The burden is on the Petitioner to show that the decision reached by the governmental agency is *not* supported by substantial evidence. Thus, this Court will not substitute *its* judgment for that of the City Council – only examine whether the City Council abused its discretion.

Applying these standards, Petitioner advances two main theories: one legal, one factual. The legal theory advanced by Petitioner has to do with whether or not its application could be "buffered-out" by the mere *issuance* of a NCR to another potential dispensary (or whether that competitor needed to reach a further "permitted" stage closer to actually opening its doors as a dispensary). The factual questions are myriad and dig into the details behind Riverside's application – details like whether Riverside's site plans comply with municipal code requirements, the American's with Disabilities Act, or California regulations like the Electric Code, the Mechanical Code, the Plumbing Code, the Building Code, etc.

The Legal Question: Whether a Holder of an NCR Constitutes a "Permitted Medical Cannabis Dispensary" Under VMC § 5.94.090(D)

It is not disputed that Riverside *was* issued an NCR in this case – though Petitioner hotly contests that Riverside *should not have been* issued such a document. But, even with Riverside being issued that document, Petitioner argues that the issuance of a NCR to Riverside for a proposed dispensary that would have been within 500 feet of Petitioner's proposed location did not mean that Petitioner was "buffered out." Petitioner's argument hinges on the wording of the ordinances buffering restrictions, which read as follows:

Section 5.94.090 Location Restrictions and Limitations

...

D. Medical cannabis businesses are prohibited within five hundred (500') feet of any other ***permitted medical cannabis dispensary****. The distance is measured from front door to front door, without regard to intervening structures.*

(VMC § 5.94.090(D) (emphasis added).) The magic word for purposes of the analysis is "permitted." Petitioner's argument is that a NCR is not a "permit," and thus it does not render an applicant – even an *approved* applicant – a "permitted" medical cannabis dispensary. The City counters that a NCR *is* a permit.

Before digging into the strengths and weaknesses of each parties' arguments, the Court first notes that an electronic word search of the Marijuana Ordinance reveals that variations of the word "permit" appear 27 times throughout the ordinance. Some of those uses appear to be formal, such as references to the "Board of Equalization Seller's Permit." (VMC § 5.94.050(B)(17).) Others appear to refer to a specific type of permit, though with less formality – such as an "employee work permit" (VMC § 5.94.080(C)(3)), "building permits" (VMC § 5.94.050(B)(7)), or a "special use or conditional use permit" (VMC § 5.94.070(H)). Other uses appear to equivocate, referring in parallel structure to "special site plan, variance, or any other permit or certificate..." (VMC § 5.94.070(H).) Still other uses appear to be in the more colloquial usage of the word "permit" meaning "to allow," as follows:

--"This chapter is not intended to *permit* activities..." (VMC § 5.94.010 (emphasis added))
--"It shall be unlawful to own, establish, operate, use, or *permit* the establishment or operation of..." (VMC § 5.94.020 (emphasis added))
--"No one under 18 years of age shall be *permitted* to enter establishment..." (VMC § 5.94.080(P) (emphasis added))
--"...to *permit* any breach of peace therein..." (VMC § 5.94.130)

Repeating a theme that was already addressed earlier in this ruling, it would appear again that the Marijuana Ordinance is not a model of clarity, as these many uses of the word "permit" lend some confusion as to the manner in which the word was being used in the section cited by Petitioner to advance the argument that a NCR – which Petitioner refers to as a "registration" to distinguish it from a "permit" since the acronym "NCR" stands for "Notice of Completed *Registration*" (VMC § 5.94.030) – is not a permit.

Indeed, continuing on this theme of a lack of clarity, there is not only confusion as to the various manners in which the word "permit" is used – there is also a lack of clarity as to how to characterize the approval that was being obtained by doing an application under the Marijuana Ordinance. Indeed, the section of the ordinance that describes how to prepare and submit an application is entitled "Application for Medical Cannabis Dispensary Business *License*." (VMC § 5.94.050 (emphasis added).) It contains a clause that reads: "Each application for a medical cannabis business or dispensary business *license* shall be submitted to..." (VMC § 5.94.050(B) (emphasis added).)

As such, Petitioner refers to the approval as a "registration" (admittedly, as does the ordinance with its reference to a "Notice of Completed Registration"), but the ordinance also refers to the approval at issue variably as a "license." In fact, the ordinance even seems to refer to the approval/registration/license as a "permit" at certain points:

--"A medical cannabis dispensary shall operate in conformance with the following minimum standards,

and such standards shall be deemed to be pat of the conditions of approval on the *permit* for a medical cannabis business..." (VMC § 5.94.080 (emphasis added).)

--"Proof of a valid and current *permit* issued by the city in accordance with this chapter. Every medical cannabis dispensary shall display at all times during business hours the *permit* issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the location of the medical cannabis dispensary." (VMC § 5.94.080(B)(1)(f) (emphasis added).)

--"The medical cannabis dispensary *permit* holder shall make available..." (VMC §5.94.080(S) (emphasis added).)

An appeal of the legal meaning of the phrase "permitted medical cannabis dispensary" was taken to the City Council, and the City Council is vested, in the first instance, with appellate authority to determine the meaning of that word in that specific clause of the ordinance. However, on review, there is some tension as to what standard is appropriate to apply. This Court independently reviews questions of law, but certain authorities indicate that deference to a public agency's interpretation of laws within its particularized area of expertise can be appropriate. Pacific Gas & Electric Co. v. Public Utilities Com. (2015) 237 Cal.App.4th 812, 839, also citing Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7. Ultimately, it is unnecessary to reach the question of whether deference is required here because the Court reaches the same conclusion that the City Council apparently came to: that receipt of a "NCR" amounts to being a "permitted medical cannabis dispensary."

Petitioner's arguments in favor of a contrary interpretation break down into the following: (1) a semantic argument regarding the actual word "permitted" as it appears in the clause of the ordinance at issue (already addressed above), (2) an argument that the authors of the Marijuana Ordinance *intended* to setup a "race" between multiple dispensaries, and (3) an argument that looks to the total process that goes into eventually opening a dispensary to conclude that satisfying the initial step (the NCR) is not tantamount to completing the purported final step of obtaining a "business license."

The third of these arguments ties into the first, which was already addressed above. Essentially, Petitioner breaks down the steps that are needed to finally open a medical marijuana dispensary, which include: obtaining an NCR, a license from the State of California, a Certificate of Occupancy, and a business license under the Business License Ordinance (discussed above and codified at VMC § 5.01.000A, et seq.). (Opening Brief, p. 15:4-6.) This argument is largely dependent upon the semantic differentiation between a "registration" (or an NCR) and a "business license," but, as has been discussed above, those semantic differences do not really hold within the context of the overall ordinance. The Marijuana Ordinance itself refers to approvals under its terms variably as registrations, approvals, or permits, and possibly even certificates. While it appears to be true that an NCR must be obtained *first* before the other steps in the process can be taken, that procedural fact does not render an NCR *not* a permit, and there is no indication that as a matter of land use permitting only one type of governmental approval can be called a "permit." It appears, on the contrary, that multiple kinds of permits could be necessary for using a particular property in a particular way. As such, even if the "business license" referenced under the Business License Ordinance were to be referenced as a "permit" it is not mutually exclusive from the NCR being characterized as a "permit" as well.

Petitioner's other argument revolves around the intent of the authors of the Marijuana Ordinance. At the risk of being repetitive, all parties seem to concede – and the Court agrees – that the ordinance itself is not a model of clarity. Indeed, Petitioner's own counsel stated at the hearing before the City Council: "My personal belief is the author of this ordinance, which was none of you. Some random person, who in

some respects didn't write this very well, intended..." (47 AR 1722:18-20.) Given this general consensus as to the confusion in the language of the ordinance itself, the Court is not inclined to rely to strongly on any effort to "read the tea leaves" of what the authors *intended*. Unlike a statute passed by a legislature or even an ordinance passed by a local government body where there are legislative records, minutes from hearings, and records as to the thinking and drafting that goes into a statute or ordinance – the instant Marijuana Ordinance is a voter initiative measure without clear "legislative history" from which to glean insight as to the intended meaning. Beyond that, were the Court to engage in some consideration of the intent of the authors of the ordinance, perhaps the best touchpoint would be to take judicial notice of the political interests that commonly swirl around the efforts to legalize medical marijuana. From that perspective, and given the somewhat "rushed" procedure that denies the City much "discretion" in terms of denying or delaying applications, it would seem that the authors of the Marijuana Ordinance were less concerned with the particular business interests of an individual dispensary and more concerned with simply *getting dispensaries approved.* From this perspective, the notion that the authors intended to establish a "race" between competing dispensaries is not well-supported. Beyond this "intent of the authors" concern, other judicial principles countenance against an interpretation that sets up a "race." With the knowledge that one of the two applicants is within the buffer zone of the other, there is a guarantee that both applicants *cannot* establish a dispensary as proposed. Therefore, engaging in a "race" indicates a significant amount of waste on one of the parties – and "[e]quity abhors wanton waste." Gammon v. McKevitt (1920) 50 Cal.App. 656, 665. The Court sees no intent to establish a "race," and, moreover, sees significant "waste" to both the applicants (or at least one of the applicants) as well as to the City which would have to later re-evaluate the buffering issue.

Against these arguments, the City argues that the only time it considers the buffering issue is when it evaluates application during the approval of applications for registration under the Marijuana Ordinance. The City further argues that information regarding the precise address where the proposed dispensary will be built is a prerequisite for obtaining licensure from the State of California – a later step in the long road to eventually opening a dispensary. (California Code of Regulations, title 4, § 15002(c)(5)(N)(17), (18) and (24).) Thus, the City has made the decision to evaluate the buffering issue *at the time it considers applications for registration under the Marijuana Ordinance*. Petitioner's position is that it is fine that the City *consider* buffering at that stage, but it can only deny an application if another dispensary is *actually "permitted"* within the buffer zone – not just "approved" or "registered" under the Marijuana Ordinance. The City's argument against this is that there is no other step in the process at which to place a second review of the buffering issue.

The City is ultimately responsible for setting up a scheme for implementing the Marijuana Ordinance, and, indeed, has been granted both a quasi-legislate or regulatory role in propounding rules and regulations where necessary to clarify the implementation of the Marijuana Ordinance (VMC § 5.94.170(B)) and a quasi-judicial role in resolving discrepancies via appeal to the City Council (VMC § 5.94.120). As noted above, deference to governmental agencies interpreting their own rules and regulations is sometimes appropriate in the context of reviewing administrative action and the fact that the City has decided to evaluate the buffering issue at the early stages of the overall process for opening a marijuana dispensary, combined with the fact that the City does not have an efficient procedural way to re-evaluate the issue prior to the opening of a dispensary, calls for a certain amount of deference in that the City is interpreting its own rules and regulations in a manner designed to implement the concerns of the Marijuana Ordinance.

Lastly, the City argues that there is a nuanced distinction to be made regarding the areas in which it has discretion. While it is true that the Marijuana Ordinance largely makes *approval* of an application for registration a "ministerial" act:

Section 5.94.070 Issuance and Renewal of Registration
*A. Upon receipt of an application for registration, the City shall, as a **ministerial** duty, complete the processing and issue a Notice of Completed Registration and place the applicant on the registration list within 30 calendar days, to be tolled if, and only if, requested by the applicant to allow processing time unless:*

(VMC § 5.94.070 (emphasis added).) The City argues, however, that just because it had a ministerial duty to approve those applications that qualified does not mean that it had a similarly ministerial duty to *deny* applications. In other words, Petitioner takes the position that Riverside's application *should have been denied*. The City, however, argues that even if there were some deficiencies within Riverside's application, the Marijuana Ordinance did not *compel* the City to deny Riverside's application. The City claims it had some discretion to overlook certain discrepancies and go ahead and approve an applicant anyway. The Court agrees.

The Court notes at this juncture that the City has objected (in a manner that resembles a "sur-reply") to Petitioner's reply briefing on the issue of the City's authority to deny an application. (ROA 57, Objection II.) The City argues that Petitioner included a City Regulation in its reply brief to make this argument and that: "[Petitioner]'s citation now to the City's Regulation is both entirely new and misstates the evidence." (ROA 57, p. 4:10-11.) The Court **OVERRULES** this objection, finding the argument by Petitioner both relevant and appropriately responsive to an issue that was raised in the opposition brief.

The Factual Questions: Whether Riverside's Application Was Appropriately Approved
Again, Petitioner raises a myriad of factual questions that dig into the details behind Riverside's application – details like whether Riverside's site plans comply with municipal code requirements, the American's with Disabilities Act, or California regulations like the Electric Code, the Mechanical Code, the Plumbing Code, the Building Code, etc. The transcript of the hearing reveals that Petitioner was provided a full and fair opportunity to raise these arguments at the hearing, with the one caveat that Petitioner had to raise these arguments without Riverside being present to constitute an adversarial proceeding. Nonetheless, as addressed above, Riverside was "invited" to appear at the hearing with notice of the issues Petitioner intended to raise, and, as such, its interests could have been impacted by the City Council's ruling such that those issues were sufficiently before the City Council. Therein lies some of the challenge of reviewing what the City Council did – at least one member of the City Council seems to have been swayed by the argument that Riverside's interests should not be considered since Riverside was not involved in the appeal:

COUNCIL MEMBER FRANKLIN: It seems like, based on your statement, that if we really wanted to delve into the facts of the approval and the continued force of the licensure of Riverside, we need to have a completely separate public hearing and appeal to the approval.
MR. CHUNG: As to Riverside's license, I would agree.
*COUNCIL MEMBER FRANKLIN: **So our not being here today to have an investigation, a fact-finding of those facts, I don't think its reasonable to bring them in.***

(47 AR 56:7-16 (emphasis added).) It thus seems that at least one member of the City Council was swayed by this line of reasoning. On the other hand, one member is not the deciding vote, which was unanimous by 4-0, with the Deputy Mayor recusing due to a potential conflict of interest. (47 AR 65:10-11.) However, the *written* decision of the City Council made the following determinations:

3. Frank Zimmerman Collective's arguments that Riverside County Dispensary and Delivery's

application should have been denied are unfounded. Specifically:

a. Riverside County Dispensary and Delivery submitted the site plans required by VMC section 5.94.050(B)(7). VMC Chapter 5.94 did not require Riverside County Dispensary and Delivery to submit to construction ready plans as Frank Zimmerman Collective contends.

b. Riverside County Dispensary and Delivery submitted a signed and notarized authorization from its landlord acknowledging and allowing Riverside County Dispensary and Delivery's leased premises to be used as a medical cannabis dispensary as required by VMC section 5.94.050(B)(6).

c. The City reasonably relied on the information provided for in Riverside County Dispensary and Delivery's application as its application was submitted under penalty of perjury as required by VMC section 5.94.050(B)(19). Riverside County Dispensary and Delivery's application also included a Live Scan showing that Mr. Tossonian had not suffered any felony drug convictions in the last four years as required by VMC section 5.94.050(B)(14).

(48 AR 1750-1751.) As such, the City's ultimate written decision found Riverside's plans to be adequate.

The fundamental problem here is – as discussed at length above – in determining just how far "under the hood" the City was required to look when allowing Petitioner to appeal the approval of *Riverside's* application. The Marijuana Ordinance indicates that even "approvals" of applications for registration may be appealed, but, as set forth above, legal concepts like proximate cause and standing indicate that reasonable restrictions could be placed on the inquiry to be made when such "approvals" are appealed. Perhaps the biggest challenge here is that the City *did not* place limits on the scope of an appeal of such approvals. Indeed, the City Council's own written ruling makes findings about whether Riverside's site plans were valid, whether the landlord authorization was signed and notarized, and whether the City could rely upon Riverside's application (which was signed under penalty of perjury).

What is lacking here is a clear indication from the City as to the *scope* of an appeal of an "approval" of a registration. It is the view of this Court that the City Council (with appellate authority over applications) had the discretionary power to determine whether, when considering an appeal by another entity (Petitioner), it was appropriate to impose a "heightened" scrutiny on another applicant. Exercising such discretion in the context of an adversarial appeal is not a question of whether there was "substantial evidence" to support the result – it is a question of *what legal standard there needed to be "substantial evidence" to support.* The City Council expressly made the finding that Riverside "submitted the site plans required... [and] [the Marijuana Ordinance] did not require Riverside... to submit to construction ready plans as [Petitioner] contends." (48 AR 1750-1751.) Parsing this ruling carefully, while it is *factual* to determine that Riverside "submitted the site plans required," it is *legal* in nature to determine that "VMC Chapter 5.94 *did not require* Riverside... to submit to construction ready plans..." as that ruling speaks to the *legal requirement* that was imposed rather than to the actual application that was submitted. (48 AR 1750-1751 (emphasis added).) As such, the "substantial evidence" test is not what needs to be applied to the latter half of this express ruling. The question here is not whether Riverside submitted "construction ready" plans. Indeed, it appears that both sides would agree that Riverside's plans were not "construction ready." It is for this reason that the parties' focus on the "substantial evidence" appears to be a bit misplaced. The City is not arguing that Riverside's plans were "construction ready" because its own findings do not reference that they were. Rather, the City is arguing that, *legally, they did not need to be.* This presents a legal question. The only extent to which this produced a factual question is, once the legal question is resolved, the factual question can be asked whether there was substantial evidence at the hearing to support the City Council's conclusion that the

legal standard had been met. The Court concludes that the City Council made the correct legal determination as to the legal standard that "construction ready" plans did not need to be submitted by applicants seeking a NCR. Or, said another way, the City's approach, adopted by the City Council on appeal, that applications need only be reviewed for facial validity (with City officials relying on things like declarations under penalty of perjury) was a correct one.

Having determined the appropriate *legal* standard, the "substantial evidence" inquiry on this writ of administrative mandamus becomes relatively straightforward. There was evidence in the record showing that Riverside met this lower standard of having its application supported by plans that, while not "construction ready," were adequate for purposes of clearing the first step on the road to opening a full-fledged dispensary – the step of obtaining a NCR.

IT IS SO ORDERED.

Judge Blaine K. Bowman

PROOF OF SERVICE

Frank Zimmerman Collective v. City of Vista, et al.
San Diego Superior Court Case No. 37-2021-00017596-CU-WM-NC
[Related To Case No. 37-2019-00029400-CU-WM-NC]
Our File No. 52005-0006

I, Tracey S. West, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: TWest@chwlaw.us. On September 11, 2023, I served the document(s) described as **[PROPOSED] JUDGMENT** on the interested parties in this action addressed as follows:

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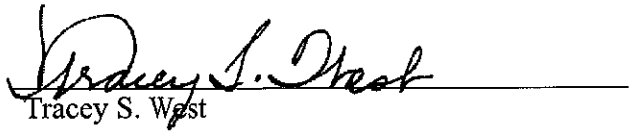
☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on September 11, 2023, from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 11, 2023, at St. Louis, Missouri.



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PROOF OF SERVICE

Frank Zimmerman Collective v. City of Vista, et al.
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 18, 2023, at St. Louis, Missouri.

Tracey S. West

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