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E-FILED
12/6/2021 11:25 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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8 Attorney for Petitioner/Plaintiff, SKG TRINITY LLC

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO

12 SKG TRINITY LLC, California Limited Liability
13 Company,

CASE NO: 21CECG03601

14 Petitioner/Plaintiff,

**VERIFIED PETITION FOR PEREMPTORY
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

15 v.

16 CITY OF FRESNO; and DOES 1 through 100,
17 inclusive,

18 Respondents/Defendants.

19 Petitioner/Plaintiff, SKG TRINITY LLC (“SKG”), hereby alleges in this Verified Petition for
20 Peremptory Writ of Mandate and Complaint for Declaratory Relief as follows:

21 **PARTIES**

- 22 1. SKG is a Limited Liability Company registered with the California Secretary of State.
- 23 2. Respondent/Defendant CITY OF FRESNO (“CITY”), is a California municipal city
24 within the State of California, County of FRESNO.
- 25 3. Respondents/Defendants DOES 1 through 100, inclusive, are other public officials,
26 public officers, and/or other employees or agents of CITY who substantially caused, contributed to, and
27

1 are otherwise responsible for some or all of the actions complained of in this action. Said
2 respondents/defendants are, therefore, liable to SKG for said actions complained of in this action.

3
4 4. The identities of respondents/defendants DOES 1 through 100, inclusive, are presently
5 unknown to SKG, and once those identities are ascertained, SKG will amend this complaint to include
6 the actual names of DOES 1 through 100, inclusive.

7 5. At all times complained of herein, DOES 1 through 100, inclusive, were acting as
8 individual persons, pursuant to their authority as public officials, employees, and/or authorized agents of
9 CITY, and were acting in the course of and within the scope of their employment with CITY.

10
11 **VENUE**

12 6. Venue is proper in this Court in that the parties are located in the City of Fresno within
13 the County of Fresno, and the acts and omissions complained of herein occurred in this County. (Code
14 of Civ. Proc. §§ 393 and 395.)

15 **FACTUAL ALLEGATIONS**

16 7. On November 8, 2016, California voters passed Proposition 64, which is the Control,
17 Regulate, and Tax Adult Use of Marijuana, also known as the Adult Use of Marijuana Act (“AUMA”).
18 This law legalizes nonmedical, recreational marijuana, subject to the regulation of local government
19 jurisdictions in the State of California.

20 8. On December 13, 2018, the Fresno City Council adopted the Cannabis Retail Business
21 and Commercial Cannabis Business Ordinance, which sets out the permitting framework and regulatory
22 requirements for Medicinal and Adult-Use Cannabis businesses to operate within the CITY for
23 commercial activities such as retail, cultivation, manufacturing, and distribution. This ordinance was
24 amended on January 30, 2020 and on June 25, 2020, and may be further refined by the City Council.
25 Under the direction of the City Manager, the Office of Cannabis Oversight is responsible for
26 coordinating the implementation of the CITY’s cannabis laws and regulations.

27 9. As part of its application process, the CITY also had a “social equity” component. The
28

1 CITY stated in its presentation on October 21, 2020 during its social equity application process
2 orientation that, “It is the intent of the City of Fresno to promote equitable ownership and employment
3 opportunities in the cannabis industry to decrease the disparities in life outcomes for marginalized
4 communities and to provide opportunities for local residents to compete for cannabis business permits.”
5 Attached hereto as Exhibit A is a true and correct copy of the CITY’S application process orientation
6 regarding social equity applicants.

7 10. Section 9-3316(b) of the Fresno Municipal Code (“FMC”) establishes a cannabis social
8 equity program in the City of Fresno. The purpose of the social equity program is to address the
9 historical impact of federal and state drug enforcement policies on low-income communities. SKG is a
10 qualified social equity applicant and was verified by the CITY as such during the application process. A
11 minimum of one (and a maximum of two) out of every seven commercial cannabis business permits for
12 cannabis retail businesses will be awarded to an equity applicant.

13 11. On December 4, 2020, the CITY closed its application process for cannabis retail
14 permits, and on January 8, 2021, the CITY closed its application process for social equity applicants.
15 Before the posted deadline, SKG submitted an application for a commercial retail permit as a social
16 equity applicant for operation at the property located at 842 North Fulton Street, Fresno, California,
17 93728 (“Premises”). In the submission of an application, SKG had to expend money and resources for
18 such, thereby suffering damages as a result of the CITY’S actions as alleged herein. SKG’s Premises is
19 located in District 3 within the CITY’s district zones.

20 12. During the application process, the CITY posted on its website the application procedure
21 guidelines for commercial cannabis business permits, for non-social equity and social equity applicants,
22 dated October 19, 2020. A true and correct copy the CITY’S application procedure guidelines for social
23 equity applicants, which is applicable to SKG, is attached hereto as Exhibit B. The guidelines listed five
24 phases in which the application procedure is premised upon. The phases are as follows: Phase 1 is the
25 determination of eligibility; Phase 2 is provision of technical assistance and application review; Phase 3
26 is submission of proposed location and proof of capital; Phase 4 is the interview; and Phase 5 is the City
27 Manager’s final determination.

1 13. On September 8, 2021, SKG received a letter of determination from the CITY dated
2 September 1, 2021. Attached hereto as Exhibit C is a true and correct copy of the letter dated
3 September 1, 2021. In the letter, SKG was notified that it was not selected for a preliminary award. No
4 reason was given as to why SKG was not selected other than indicating that SKG may request for a
5 score detail. Further, the CITY did not provide a means to appeal or challenge the CITY's
6 determination.

7 14. SKG thereafter requested scoring details from the CITY and upon review, SKG
8 was shocked to see that the CITY had requirements that the CITY did not disclose to SKG or the public
9 during the application process. For example and without limitation, in the application procedure
10 guidelines (Exhibit A attached), the CITY did not disclose that points would be given for owners'
11 education and retail business experience. Further, the CITY only gave points to owners who had
12 regulated cannabis experience, thereby discriminating against individuals who did not have regulated
13 cannabis experience even though it is the intent of the CITY "to promote equitable ownership and
14 employment opportunities in the cannabis industry to decrease the disparities in life outcomes for
15 marginalized communities..."

16 15. In fact, in every section of the scoring criteria (five sections total), the CITY failed to disclose
17 the point allocation to the public during the application process. This blatant lack of public disclosure
18 by the CITY is very unusual, and if the CITY had disclosed all of the scoring criteria, SKG would have
19 submitted a different application that would have met the criteria and the outcome would have been
20 different.

21 16. In addition, the biggest misstep of the application process is that the CITY'S scoring
22 criteria and evaluation failed to ensure that the CITY'S intent (to promote equitable ownership and
23 employment opportunities in the cannabis industry to decrease the disparities in life outcomes for
24 marginalized communities and to provide opportunities for local residents to compete for cannabis
25 business permits) was carried out. For example and without limitation, the CITY allowed for
26 individuals to apply for social equity status if that individual had an immediate family member with a
27 past conviction for a cannabis crime.

1 Article 33 of the FMC.

2 23. SKG has no plain, speedy, and adequate remedy in the ordinary course of law other than
3 the relief sought in this Petition/Complaint because, unless ordered to correctly and accurately adhere to
4 the requirements as set forth in Article 33 of the FMC, the CITY will continue to improperly carry out
5 its legal duties, and will continue to cause injury not only to SKG, but also to all other residents of
6 CITY, who wish to preserve the order of law, and uphold and follow Article 33 of the FMC.

7 24. The CITY is compelled, but failed, to exercise its mandatory, ministerial duty, and failed
8 to comply with Article 33 of the FMC.

9 25. SKG is beneficially interested in the performance of the CITY'S mandatory, ministerial
10 duties, and has been and will continue to be materially injured unless the CITY'S preliminary approval
11 of the permits as granted on September 1, 2021, contrary to governing law, are invalidated.

12 WHEREFORE, SKG demands judgment against the CITY as set forth in this
13 Petition/Complaint.

14 **SECOND CAUSE OF ACTION**

15 **DECLARATORY RELIEF**

16 (Code Civ. Proc. § 1060)

17 26. SKG hereby incorporates paragraphs 1 through 25 above and re-alleges them as though
18 fully set forth herein.

19 27. An actual controversy has arisen between SKG and the CITY concerning their respective
20 rights and duties. SKG complains that by preliminary approving the permits on September 1, 2021, the
21 CITY has acted in an arbitrary and capricious manner, and further have wholly failed to comply with its
22 own laws, other laws, and the mandates as set forth in Article 33 of the FMC.

23 28. SKG requests a determination that the CITY'S preliminary approval of the permits on
24 September 1, 2021 is inconsistent with and thus violates the above-noted laws, rendering the permits,
25 and its purported approval and issuance, illegal, invalid, null, and void.

26 29. A judicial determination is necessary and appropriate at this time so that the parties may
27 ascertain their respective rights and duties.

1 WHEREFORE, SKG demands a declaratory judgment as set forth in this Petition/Complaint.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, SKG prays for judgment as follows:

4 1. Issuance of a Writ of Mandate or other appropriate relief, invalidating - and ordering and
5 directing the CITY to set aside, vacate, and rescind - all actions and decisions purporting to preliminary
6 approve or issue the permits, and to take specific actions as may be necessary to bring the CITY'S
7 determinations, findings, or decisions into compliance with applicable law in light of the Court's
8 findings;

9 2. Issuance of a prohibitory and/or mandatory injunction, enjoining or prohibiting the CITY
10 from issuing, upholding, or implementing the permits to operate a commercial cannabis business;

11 3. A declaration that the permits, and any and all actions purporting to approve, authorize,
12 grant, issue, uphold, or implement it, are void and invalid and thus may not be relied upon;

13 4. A declaration that the approval or operation of any commercial cannabis business is in
14 violation of Article 33 of the FMC;

15 5. For an award of SKG'S expenses and costs of suit, including attorney's fees pursuant to
16 Code Civ. Proc. § 1021.5 and all other applicable law;

17 6. As a result of the CITY'S actions being arbitrary and capricious, SKG has suffered
18 damages to which it is entitled to recover under C.C.P. § 1095 in an amount to be proven at trial.

19 7. For such other and further relief as the Court deems just and proper.
20

21 Dated: November 29, 2021

WESTEN LAW, P.C.

22 

23 _____
24 Tin Westen, Esq.
25 Attorney for Petitioner/Plaintiff, SKG TRINITY
26 LLC
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EXHIBIT "A"



Social Equity Cannabis Permit Application Process Orientation

October 21, 2020 1:00 PM

AGENDA

- Introductions
- Background / Key Information
- Application Procedures
- Submitting the Application
- Questions

This webinar is recorded & will be available on our website soon with the PowerPoint.



INTRODUCTIONS



BACKGROUND

- December 13, 2018 the Fresno City Council adopted the Cannabis Retail Business and Commercial Cannabis Business Ordinance.
- Amended on January 30, 2020 and June 25th, 2020 and September 24, 2020.



BACKGROUND

- Authorizes fourteen (14) total Cannabis Retail Businesses within the City (two per Council district).
- An additional seven (7) may be authorized by City Council Resolution.
- A Minimum of one (1), Maximum of two (2) per every seven (7) will be to an equity applicant.
- Delivery is only authorized for storefront retail locations.

BACKGROUND

- Authorizes sixteen (16) Cultivators, Distributors, or Manufacturers, Microbusiness (non-retail) (no specific number of each type).
- A minimum of one (1), maximum of two (2) per every eight (8) of these permits will be awarded to an equity applicant.
- No limit on Testing Laboratories.

Zoning

- Retail: DTN (Downtown Neighborhood), DTG (Downtown General), CMS (Commercial Main Street), CC (Commercial Community), CR (Commercial Regional), CG (Commercial General), CH (Commercial Highway), NMX (Neighborhood Mixed-Use), CMX (Corridor/Center Mixed Use), or RMX (Regional Mixed-Use), and must meet all of the requirements for development in these zones.
- All buildings in which a cannabis retail business is located shall be no closer than eight hundred (800) feet from any property boundary containing sensitive use.

Zoning

- Commercial Cannabis Businesses (non-retail): Cannabis Innovation Hub or within one-half (1/2) mile of State Route 99 between Shaw Ave. and Clinton Ave., one (1) mile of State Route 99 north of Shaw Ave. or south of Clinton Ave., or within one (1) mile of State Route 180 west of State Route 99, and must be zoned either IL (Light Industrial) or IH (Heavy Industrial), and must meet all of the requirements for development in these zones.
- All buildings shall be no closer than one thousand (1,000) feet from any property boundary containing sensitive use.

Fees

- Application Fee: \$7,920.00
- CCB Permit Fee: TBD
- Zoning Inquiry Letter: \$522.00
- *Livescan Background Check: \$69.00 per person
- *Conditional Use Permit: \$13,391.00
- *Business Tax Certificate Application: \$14.00

Pursuant to FMC 9-3316(b)(vi), qualified Social Equity applicants fees will be waived.



Social Equity / Local Preference

It is the intent of the City of Fresno to promote equitable ownership and employment opportunities in the cannabis industry to decrease the disparities in life outcomes for marginalized communities and to provide opportunities for local residents to compete for cannabis business permits.



Social Equity Eligibility

1. Low income household and either:
 - a. A past conviction for a cannabis crime, or
 - b. Immediate family member with a past conviction for a cannabis crime.
2. Low income household in a zip code identified as at least 60% according to the CalEnviroScreen for five (5) consecutive year period and either:
 - a. A past conviction for a cannabis crime, or
 - b. Immediate family member with a past conviction for a cannabis crime.

Low-income household whose gross income does not exceed 80 percent of the area median income for Fresno County as determined annually by the U.S. Department of Housing and Urban Development.



Social Equity Eligibility (continued)

3. Low income household and either:
 - a. Five (5) years cumulative residency in a zip code identified as at least 70% according to the CalEnviroScreen, or
 - b. Ten (10) years cumulative residency in a zip code identified by CalEnviroScreen.
4. Business with no less than fifty-one percent (51%) ownership by individuals who meet Criteria 1 and 2 above.
5. Cannabis social enterprise with no less than fifty-one percent (51%) ownership by individuals who meet Criteria 1 and 2 above.
6. An individual with a membership interest in a cannabis business formed as a cooperative.

Technical Assistance

- Pursuant to FMC 9-3316(b)(vi), qualified Social Equity applicants will be provided with technical assistance during the application process.



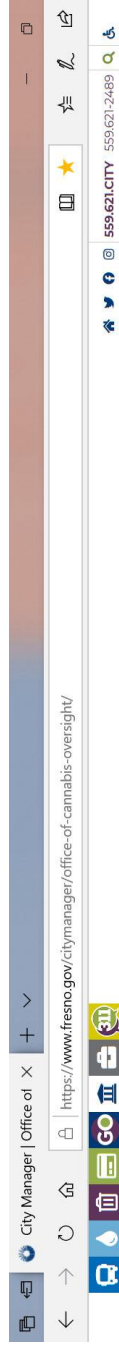
Technical Assistance

- Business Plan Development
- Satisfying the Social Policy Requirement (FMC Section Sec. 9-3316(b))
 - a. Hosting/Funding Expungement Clinics or related outreach
 - b. Crafting an environmentally sustainable business model
- Satisfying the Neighborhood Compatibility Requirement (includes Odor Control Plan, Waste Disposal, Nuisance Abatement)
- A detailed plan identifying specific business and social goals of your organization, as well as strategies for achieving them.
- Assistance securing business locations prior to or during the application process.
- Assistance securing capital investments (excluding loans and grants from the City)
- Assistance in recruiting, training, and retention of a qualified/diverse workforce.

ESTABLISHMENT OF THE FRESNO COMMUNITY REINVESTMENT FUND

In order to support equity in the local cannabis industry, The City of Fresno will establish the Fresno Community Reinvestment Fund (“the Fund”) to support local equity businesses operating in the City of Fresno under Article 33 Section 9-3315(b)(6). The fund will support local equity businesses in the area of workforce development, access to affordable commercial real estate, access to investment financing, and access to legal services and business administration technical assistance. Businesses are encouraged to consider this in the development of their community benefits and investment plan.

https://www.fresno.gov/citymanager/office-of-cannabis-oversight/



GOVERNMENT SERVICES DOING BUSINESS COMMUNITY DEPARTMENTS I WANT TO...



Office of Cannabis Oversight

Under the direction of the City Manager, the Office of Cannabis Oversight is responsible for coordinating the implementation of the City's cannabis laws and regulations.

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana ("AUMA") Act. This law legalizes nonmedical, recreational marijuana, subject to the regulation of local government jurisdictions in the State of California.

On December 13, 2018, Fresno City Council adopted the Cannabis Retail Business and Commercial Cannabis Business Ordinance, which sets out the permitting framework and regulatory requirements for Medical and Adult-Use Cannabis businesses to operate within the City for commercial activities such as cultivation, manufacturing, and distribution. This ordinance was amended on January 30th, 2020, on June 25th, 2020, and may be further refined by the City Council.

Planning and Development Department Cannabis Information

For those interested in cannabis businesses in the City of Fresno, please review the relevant City ordinances:

- About the City Manager
- City Manager's Key Staff
- Addressing Homelessness
- Office of Independent Review
- Office of Cannabis Oversight
- City Communications Office
- News Releases

FAQ: “Local Preference”

- Criteria 2.5 - Describe the extent to which the Commercial Cannabis Business will be a locally managed enterprise whose owners and /or managers reside within or own a commercial business within the City of Fresno, for at least one year prior to March 2, 2020.
- Met when 51% of ownership meets this criteria.

FAQ / FYI:

- Separate application for each permit type.
- Please use 12 point font, Times New Roman or Arial
- Diagrams should be legible.
- Living Wage (<https://livingwage.mit.edu/counties/06019>)

FAQ / FYI:

- **Q: Can an in-house security consultant qualify as a professional consultant? A: If your in-house security person is a qualified professional security expert who possess such expertise and it can be demonstrated by preparing a response to the scoring criteria this would be acceptable.**

Application Procedures



Submitting the Application



Submitting the Application FAQ:

- **Multiple applications** can be submitted until a single Viewpoint ID but please follow limitations in the procedures.
- **Background check** - if you have more than one owner or the owner is not the person filling out the application on OpenGov, please go to the main portal page to complete background forms for each owner, operator, investor, manager. It can be done under one Viewpoint ID.

Questions



Thank you!

[https://www.fresno.gov/citymanager/
office-of-cannabis-oversight/](https://www.fresno.gov/citymanager/office-of-cannabis-oversight/)

Phone: (559) 621-5555

Email: Cannabis.reg@fresno.gov



EXHIBIT "B"



City of Fresno

Office of the City Manager
2600 Fresno Street
Fresno, CA 93721
P: 559.621.5555

E-mail: Cannabis.regs@fresno.gov

APPLICATION PROCEDURES & GUIDELINES FOR A COMMERCIAL CANNABIS BUSINESS PERMIT (SOCIAL EQUITY APPLICANTS)

October 19, 2020

Information regarding the Commercial Cannabis Business (CCB) Application process can be found on the City's website at <https://www.fresno.gov/citymanager/office-of-cannabis-oversight/> and includes the following:

- California state regulations and resources
- Fresno Municipal Code Chapter 15
- Fresno Municipal Code Chapter 9, Article 33
- Application Procedures Guidelines
- Background Application form
- Commercial Cannabis Business (CCB) Application

The application process to operate a CCB in Fresno will be available on October 19, 2020. The applicant must submit an application form and evidence of eligibility by November 13, 2020. Due dates of the submission of application materials are described in the "Application Review, Scoring, and Selection" section of these procedures. The application procedures and link to the Cannabis Permitting Portal will be available on the City's website, listed above. Applications must be submitted through the portal prior to the deadline.

Applicants should monitor the City's web page for any additional information, FAQ's or updates. It is the responsibility of the Applicant to stay informed of any changes or updates on the application process .

AMENDMENTS TO THE APPLICATION

After January 29, 2021, Applicants will not be allowed to make amendments to their application or to supplement their application, except as otherwise specifically permitted in these procedures or as authorized in writing by the City. City staff will conduct a preliminary evaluation of the applications for completeness and will reject any application that is missing a major component (i.e. Business Plan), notifying the applicant by email. Substantive evaluations of the applications will occur during Phase II. At that time, the City will notify applicants by email if applications are found to be missing minor requirements (for example, signatures/dates on forms, proof of payments receipts, or missing scanned pages in one of the scored criteria documents). Applicants will be granted one week from the date of the email to submit the required supplemental information.

LIMITATIONS

Social Equity Applicants must have a majority ownership in the business. Any business owner possessing an ownership interest of twenty percent (20%) or more in any cannabis business will be limited to submitting a maximum of two permit applications during the current application period. In addition, the City is imposing a limitation on the CCB retail locations to a maximum of two per council district. Furthermore, Social Equity applicants are not permitted to apply for the standard application process. Therefore, since the requirements for the two application

processes are distinctly different, and applicants cannot participate in both, all applicants should carefully consider which of the two application processes they wish to participate in before filing an application.

Please note: the City is issuing a minimum of one (1), maximum of two (2), out of every seven (7) commercial cannabis business permits for retail businesses and a minimum of one (1), maximum of two (2), out of every eight (8) permits for the other authorized types of commercial cannabis businesses to a social equity applicant.

CITY'S RESERVATION OF RIGHTS

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a commercial cannabis business permit pursuant to FMC Chapter 9, Article 33 (FMC 9-3333). The City reserves the right to reject any and/or all applications, with or without cause or reason. The City may modify, postpone, or cancel the request for a CCB license without liability, obligation, or commitment to any party, firm, or organization. Applicants shall have no right to a CCB permit. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Manager may terminate or delay the program. In addition, the City reserves the right to request and obtain additional information from any candidate submitting an application. Late or incomplete applications at the time of application closing **WILL BE REJECTED**. Furthermore, an application **RISKS BEING REJECTED** for the following reasons:

- The application/proposal was received after the deadline.
- The application/proposal does not contain the required elements, exhibits, nor is it organized in the required format.
- The application/proposal is not fully responsive to the City's Request for Permit application.
- The issuance of the CCB permit at the proposed location is inconsistent with State law, FMC Chapter 9, Article 33, or other applicable Fresno city codes.

APPLICATION PROCESS

Review the information regarding the application process to determine which documents you will need. Before submitting it, review your application in its entirety to ensure that it is complete and accurate.

The following procedures outline the application evaluation and selection process, required materials, and other information necessary to apply for a permit to operate a CCB in Fresno.

CCB APPLICATION SUBMITTAL REQUIREMENTS

All applications must be submitted in a PDF format or alternative format approved by the City Manager. All CCB Application materials, evaluation criteria, and required documents must be submitted through the **City of Fresno Cannabis Permitting Portal** at: <https://fresnocv.viewpointcloud.com/> by the due dates specified in the description of the application phases below.

Please Note: Responses to the Evaluation Criteria (Sections 1-3 found in Appendix A) shall be limited to 125 pages. All materials must be submitted through the City of Fresno Cannabis Permitting Portal, including:

- CCB Initial Application – submitted directly through the Portal

- Evaluation Criteria (Described in Phase II on page 4 of this document) – each section must be submitted in a separate PDF document uploaded to the Portal.
- Proof of Capitalization (Phase III) (All bank statements, loan documents, promissory notes, financial and commitment letters) – must be submitted as a PDF document uploaded to the Portal.
- Verification of ownership, or if the applicant does not own the proposed location, the applicant will have to provide a “Letter of Intention” to Lease, or a Leasing Agreement. (Phase III)
- Safety and Security Plan (Phase V) – must be submitted as a PDF document uploaded to the Portal.

All applications submitted to the City are public documents for purposes of Public Records Act requests and will be posted online on the City’s website, with the exception of redactions for the Security Plan and financial information.

SUPPLEMENTAL APPLICATION SUBMITTAL REQUIREMENTS

At the time of filing, pursuant to FMC 9-3316, all applicants are required to provide the following:

- A statement that the applicant employs, or will employ within one year of receiving a commercial cannabis business permit, one supervisor and one employee who have completed a Cal-OSHA industry outreach course offered by a duly authorized training provider (FMC 9-3316(c)).
- A statement, signed under penalty of perjury, that all information contained in the application is true and correct. A subsequent finding of false information shall be grounds for denial or revocation of the commercial cannabis business permit. A denial or revocation on these grounds shall not be appealable (FMC 9-3319(d)).

PROHIBITION ON EX PARTE COMMUNICATIONS

Beginning at the time of filing, no Applicant or Owner shall initiate, engage in, or continue any communication to or with any elected official or Planning Commissioner for the City of Fresno, and no elected official or Planning Commissioner shall initiate, engage in, or continue any communication to or with any Applicant or Owner, concerning any matter related to the application. The application shall be rejected if prohibited communications take place (FMC 9-3316(g)).

BACKGROUND CHECK

Each owner, operator, investor or manager must undergo a criminal history background check to demonstrate they do not provide grounds for denial per FMC Section 9-3318(c). Owners, operators, investors, or managers who do not meet the criminal history eligibility requirements of Section 9-3318(c) will be disqualified. Included in the application package is a background check form which must be completed and submitted as part of the application process. This process will be required to meet the minimum threshold qualifications pursuant to FMC Section 9-3318. However, the background check will be completed at Phase V of the application process and only those Applicants which are successful at being awarded a permit will be required to pay the background check fee of \$69.00.

ZONING INQUIRY LETTER (ZIL)

At Phase III, Applicants must request a Zoning Inquiry Letter from the Planning and Development Department. The fee for a Zoning Inquiry letter is \$522. This fee will be waived for qualified social equity applicants. To secure this letter, an Applicant must make a written request,

submitted through the online application system FASTER, which should specify the intended use of the building (cannabis retail, etc.), and the proposed building location. Please advise the City if you currently occupy the premises or if there is a tenant currently occupying the premises. Please note: you must make your request for the ZIL by the Phase III due date of November 13th, 2020. If you have not received a response to this request by the due date it will not disqualify your application. The issuance of a ZIL does not constitute written evidence of permission given by the City or any of its officials to operate a cannabis business, nor does it establish a “permit” within the meaning of the Permit Streamlining Act, nor does it create an entitlement under the Zoning, Development, or Building Code. A regulatory permit for a CCB does not constitute a permit that runs with the land on which the cannabis business is established. Please note that the cannabis business will be required to obtain a Cannabis Conditional Use Permit (CUP). This will require completion of a separate application that will be made available only after the awarding of the permit at the conclusion of Phase V.

SOCIAL EQUITY APPLICANT’S FEE

Pursuant to the City’s Social Policy for Cannabis Businesses, applicants who are applying as Social Equity applicants must first be evaluated to verify their eligibility pursuant to the City’s eligibility criteria, (see FMC 9-3316(b)(4)(iii)) before any substantive review of their application can occur. Social Equity applicants must identify themselves as such at the outset by checking the appropriate box on the Commercial Cannabis Business Application. Notwithstanding FMC Section 9-3316(d), the application fees for Social Equity applicants will be temporarily waived pending a determination that they satisfy the City’s eligibility criteria. Should the applicant be deemed not qualified, they will be ineligible and will have the option to appeal the decision.

OUTREACH AND ORIENTATION MEETINGS

The City will hold a “kick off” virtual orientation meeting on the following date:

- The application process orientation meeting is scheduled for October 21, 2020 from 1pm-3pm.

Pre-registration for the orientation meeting is required. The registration link is available at: <https://www.fresno.gov/citymanager/office-of-cannabis-oversight>

APPLICATION ELIGIBILITY CRITERIA

Social Equity Applicant. To be considered an equity applicant, the majority ownership interest in the company applying must qualify under at least one of the following criteria:

1. Low income household and either:
 - a. A past conviction for a cannabis crime, or
 - b. Immediate family member with a past conviction for a cannabis crime.
2. Low income household in a zip code identified as at least 60% according to the CalEnviroScreen for five (5) consecutive year period and either:
 - a. A past conviction for a cannabis crime, or
 - b. Immediate family member with a past conviction for a cannabis crime.
3. Low income household and either:
 - a. Five (5) years cumulative residency in a zip code identified as at least 70% according to the CalEnviroScreen, or
 - b. Ten (10) years cumulative residency in a zip code identified by CalEnviroScreen.
4. Business with no less than fifty-one percent (51%) ownership by individuals who meet Criteria 1 and 2 above.
5. Cannabis social enterprise with no less than fifty-one percent (51%) ownership by individuals who meet Criteria 1 and 2 above.
6. An individual with a membership interest in a cannabis business formed as a cooperative.

APPLICATION REVIEW, SCORING AND SELECTION PROCESS

PHASE I: DETERMINATION OF ELIGIBILITY

The application and supporting eligibility documents shall be **due by November 13, 2020** by 4:00 PM. Upon receiving a completed application, City staff will review the materials to determine eligibility under the City's criteria in Section 9-3316(b)(4) of the Fresno Municipal Code (FMC). Applications determined to be eligible will advance to Phase II (Provision of Technical Assistance and Application Review). LATE APPLICATIONS WILL NOT BE CONSIDERED.

PHASE II: PROVISION OF TECHNICAL ASSISTANCE AND APPLICATION REVIEW

Once an applicant's eligibility has been determined, they will be eligible for technical assistance. Technical assistance will be limited to providing guidance and assistance with the checklist in Appendix A (Business Plan and Neighborhood Compatibility) and will consist of advising applicants on the content of the components immediately below, rather than crafting the content for them. Technical assistance will be provided for the following topics as needed:

1. Business Plan Development
2. Satisfying the Social Policy Requirement (FMC Section Sec. 9-3316(b))
 - a. Hosting/Funding Expungement Clinics or related outreach
 - b. Crafting an environmentally sustainable business model
3. Satisfying the Neighborhood Compatibility Requirement (includes Odor Control Plan, Waste Disposal, Nuisance Abatement)
4. A detailed plan identifying specific business and social goals of your organization, as well as strategies for achieving them.
5. Assistance securing business locations prior to or during the application process.
6. Assistance securing capital investments (excluding loans and grants from the City)
7. Assistance in recruiting, training, and retention of a qualified/diverse workforce.

The applications must include all criteria in Sections 1, 2, 3, and 7 in Appendix A and will be **due on January 8, 2021 by 4:00 p.m.**

PHASE III: PROPOSED LOCATION AND PROOF OF CAPITAL

In this phase the proposed location of the business will be evaluated to ensure the location meets all the required distance from the sensitive use buffers pursuant to FMC Section 9-3307. Therefore, the applicant will be required to request a Zoning Inquiry Letter (ZIL) from the Planning and Development Department. In addition, if the applicant does not own the proposed location, the applicant shall provide a "Letter of Intention" to Lease, or a Leasing Agreement, showing that the property will be leased for its intended purpose as a commercial cannabis business. All applicants will be required to secure a property and submit the required information to the Portal by 4:00 p.m. on January 29, 2021.

Finally, before proceeding to Phase IV applicants will be required to provide evidence that they possess sufficient capital (recommended minimum of \$400,000) matching the figure quoted in their Business Plan as necessary to launch the business and sustain it for at least three months. This will consist of a variety of start-up expenses, including but not limited to new construction or tenant improvements; lease payments; equipment purchases; product purchases; salaries and utilities; and permitting and processing fees for any state, county or city cost they will incur. Applicants must show proof of secured capital in a bank account, letters of credit or evidence of other liquid assets. If the applicant has not secured the recommended minimum amount of capital necessary for their business operations, they must submit a plan demonstrating how they intend to secure it. Any of the documents submitted as proof must be able to be validated by City staff. Failure to authorize City staff to validate this requirement will disqualify an Applicant from moving to Phase IV of the process. All applicants will be required to submit evidence of sufficient capital to the Portal by 4:00 p.m. on January 29, 2021.

The City will conduct a maximum of ten (10) interviews for retail applicants. If the number of qualified applicants exceeds this number, interview slots will be determined by a lottery. For the purpose of all other license types (Cultivation, Distribution, Manufacturing, and Testing Lab) this number will be determined by the City based on the total number of applications it receives for both Social Equity and standard applications. However, in no case will the total number of Social Equity Applicants interviewed be less than 20% of the total Applicants interviewed from both application processes.

PHASE IV: INTERVIEW

In Phase IV, the applicants will be interviewed by the Selection Committee, which will consist of City staff from various departments. The interview phase will provide the Selection Committee

with an opportunity to test applicants' understanding of the license type for which they are applying, and to the degree deemed necessary, to explore deeper into parts of the application criteria being evaluated in order to elaborate upon any component that seemed to lack sufficient detail, or to ask supplemental questions to clarify portions of the submittal criteria which need further clarification. This phase will also involve detailed discussion of the applicant's Community Benefits and Investments Plan, which will be an essential part of the final selection evaluation. In addition, bonus points may be granted at the discretion of the Selection Committee pursuant to the local preference cited in FMC Section 9-3317(a). Applicants will be forced-ranked against other retail and non-retail applicants in those two license categories based on the interviews. Therefore, a numerical score will not necessarily determine the results. The purpose of the rankings is to produce an Eligibility List, which the City Manager will use to make the final determination of awarding the permit(s) and establishing a criteria for the selection of other prospective Social Equity permits in the event that an Applicant awarded a permit is disqualified or is unable to continue in the process for any reason.

PHASE V: CITY MANAGER'S FINAL DETERMINATION

The City Manager will make a final determination regarding the Applicants to be awarded a permit, based on the Eligibility List. If requested by the City Manager, the top Applicants may be requested to provide additional information or respond to further questions before the City Manager makes the final decision on the awarding of a permit(s). Permit awardees will be required to submit to a background check including a Live Scan prior to advancing to the land use permitting process. Once the background check is successfully completed, permit awardees will then apply for the necessary land use permits, including a conditional use permit as required by FMC Section 9-3305. In addition, as part of the land use permitting approval process, those applicants awarded a permit will be required to produce a Safety Plan, Security Plan, and Proof of Insurance.

Please Note: Any Commercial Cannabis Permit issued under FMC Article 33, Chapter 9 will be immediately suspended or not renewed if a commercial cannabis business fails to become operational within 18 months of being awarded its permit.

As a condition of approval of any commercial cannabis business permit, applicants shall be required to meet all of the following conditions before they may be issued a permit:

1. Applicants must execute an agreement, in a form approved by the City Attorney, which indemnifies the City, its employees and agents from any and all claims, losses and liabilities arising out of the city's issuance of a commercial cannabis business permit (See FMC 9-3333(a) for the full extent of the indemnification).
2. Maintain insurance at coverage limits and with conditions thereon determined necessary and appropriate by the City Manager (FMC 9-3333(b)).
3. Reimburse the City for all costs and expenses, including but not limited to legal fees, costs, and court costs which the City may be required to pay as a result of any legal challenge related to the City's approval of a commercial cannabis business permit.

Any decision of the City Manager regarding **approval** of a CCB permit may be appealed to the City Council by: the applicant, the Mayor or the Councilmember whose district the business would be located in. Appeals must be initiated by filing a letter with the City Manager. Such action shall require a statement of reasons for the appeal. All appeals shall be filed with the City Manager in writing within 15 days of the date of the decision to issue a commercial cannabis business permit. A City Council hearing shall be set within twenty (20) days of the City Manager receiving an appeal. Ten (10) days prior to the scheduled City Council hearing, a notice of the

hearing shall be sent to the applicant, to all properties and property owners of record within a minimum 1,000-foot radius of the proposed business location, and to the Councilmember in whose district the proposed location resides.

ESTABLISHMENT OF THE FRESNO COMMUNITY REINVESTMENT FUND

In order to support equity in the local cannabis industry, The City of Fresno will establish the Fresno Community Reinvestment Fund (“the Fund”) to support local equity businesses operating in the City of Fresno under Article 33 Section 9-3315(b)(6). The fund will support local equity businesses in the area of workforce development, access to affordable commercial real estate, access to investment financing, and access to legal services and business administration technical assistance.

CONTACT

If you have any questions or would like an update on the status of your application, please contact the City Manager’s Office at (559) 621-5555 or by email at Cannabis.regs@fresno.gov.

APPENDIX A: EVALUATION CRITERIA

CRITERIA

1. BUSINESS PLAN *Criteria required in Phase II*

- 1.1. Owner qualifications. Resumes are not to exceed two (2) pages per owner.
- 1.2. A budget for construction, operation, and maintenance, compensation of employees, equipment costs, utility cost, and other operation costs.
- 1.3. Proof of capitalization in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets which can be verified by the City.*
- 1.4. Pro forma for at least three years of operation.
- 1.5. Fully describe hours of operation and opening and closing procedures.
- 1.6. Daily operations. With as much detail as possible, the Business Plan should describe the day-to-day operations which meet industry best practices. This should include at a minimum the following criteria for each license type in which you are applying for a permit.
 - 1.6.1. Fully describe the day-to-day operations if your applying for a retail permit:
 - a. Describe customer check-in procedures.
 - b. Identify location and procedures for receiving deliveries during business hours.
 - c. Identify the name of the Point-of-sale system to be used and the number of Point-of-Sale locations.
 - d. The estimated number of customers to be served per hour/day.
 - e. Describe the proposed product line to be sold and estimate the percentage of sales of flower and manufactured products.
 - f. If proposed, describe delivery service procedures, number of vehicles and product security during transportation.
 - 1.7. Fully describe the day-to-day operations if you are applying for a **DISTRIBUTION** permit:
 - 1.7.1. Criteria for distribution operations:
 - a. Identify the number of deliver drivers, hours of deliver and vehicles to be used.
 - b. Describe the transportation security procedures.
 - c. Describe the how inventory will be received, processed, stored, and secured in the licensed premises.
 - d. Describe the quality control procedures designed to ensure all cannabis is proper packaged, labeled and tested.
 - 1.8. Fully describe the day-to-day operations if you are applying for a **MANUFACTURING** permit:
 - 1.8.1. Criteria for manufacturing operations:
 - a. Identify all cannabis products manufactured within the permitted premises.
 - b. Describe quality control procedures.
 - c. Describe inventory control procedures.
 - d. Describe the extraction process, equipment and room in which extractions will be conducted.
 - e. Provide detail as to whether the extraction equipment has been reviewed and certified by a Professional Engineer or Certified Industrial Hygienist.
 - f. Describe the sanitation procedures.
 - 1.9. Fully describe the day-to-day operations if you are applying for a **CULTIVATION** permit:
 - 1.9.1. Criteria for all cultivation operations:

- a. Identify location and procedures for receiving deliveries of seedlings and immature plants.
- b. Describe the planned square footage/acreage of the cultivation.
- c. The estimated number of pounds produced per harvest, and number of anticipated harvests per year.
- d. Describe whether the cultivation operation will use natural light, artificial light, or mixed light.
- e. Identify how cultivation waste will be rendered unusable and unrecognizable, and how it will be stored and disposed of.
- f. Describe the use of any gases used in the cultivation operation, such as CO₂, including storage, location, and monitoring systems for employee safety.

1.10. Fully describe the day-to-day operations if you are applying for a **TESTING** permit:

1.10.1 Criteria for all testing operations:

- a. Describe the sampling standard operating procedures
- b. Describe procedures for transporting cannabis field samples
- c. Describe the chain of custody for field samples
- d. Describe the quality control procedures
- e. Describe the Laboratory Supervisor/Manager responsibilities and qualifications
- f. Identify location and procedures for storing cannabis products

2. SOCIAL POLICY AND LOCAL ENTERPRISE PLAN *Criteria required in Phase II*

- 2.1. Describe whether the Commercial Cannabis Business is committed to offering employees a Living Wage.
- 2.2. Briefly describe benefits provided to employees such as health care, vacation, and medical leave, to the degree they are offered as part of employment.
- 2.3. Describe compensation to and opportunities for continuing education and employee training.
- 2.4. Describe the Commercial Cannabis Business plan to recruit individuals who meet the criteria listed in the Social Policy Section 9-3316 (b) (1) of the Fresno Municipal Code (FMC) and the percentage of local employees it hires.
- 2.5. Describe the extent to which the Commercial Cannabis Business will be a locally managed enterprise whose owners and /or managers reside within or own a commercial business within the City of Fresno, for at least one year prior to March 2, 2020.
- 2.6. Describe the number of employees, title/position and their respected responsibilities.
- 2.7. Describe whether the CCB has five (5) or more employees and whether it has signed a labor peace agreement allowing employees to unionize without interference.
- 2.8. Provide a workforce plan that includes at a minimum the following provisions:
 - 2.8.1. Commitment for 30% of employees to be local hires; the business must show that it has either hired or made a good faith effort to hire bona fide residents of Fresno who have not established residency after the submission of an application for employment with the applicant/permittee.
 - 2.8.2. Commitment to offer apprenticeships and/or compensation for continuing education in the field; and
 - 2.8.3. Commitment to pay a living wage to its employees.

3. NEIGHBORHOOD COMPATIBILITY PLAN *Criteria required in Phase II*

- 3.1. Describe how the CCB will proactively address and respond to complaints related to noise, light, odor, litter, vehicles, and pedestrian traffic.

- 3.2. Describe how the CCB will be managed to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community.
- 3.3. Describe odor mitigation practices.
- 3.4. Identify potential sources of odor.
- 3.5. Describe odor control devices and techniques employed to ensure that odors from cannabis are not detectable beyond the permitted premises.
- 3.6. Describe all proposed staff odor training and system maintenance.
- 3.7. Describe the waste management plan.

4. **SAFETY PLAN** *Criteria required in Phase V*

The Safety Plan should consider all possible fire, medical and hazardous situations.

Complete policy/procedures manuals are not required at this point in the application process. Please only provide a description for each criterion which incorporates the following provisions:

- 4.1. The Safety Plan shall be prepared and/or assessed by a professional fire prevention and suppression consultant.
- 4.2. Describe accident and incident reporting procedures.
- 4.3. Describe evacuation routes.
- 4.4. Location of fire extinguishers and other fire suppression equipment.
- 4.5. Describe procedures and training for all fire and medical emergencies.

5. **SECURITY PLAN**** *Criteria required in Phase V*

The Security Plan should consider all access control, inventory control, cash handling procedures. **Complete policy/procedures manuals are not required at this point in the application process.** Please only provide a description for each criteria which incorporates the following provisions:

5.1 The Security Plan shall be prepared and/or assessed by a professional security consultant.

5.2 Premises (Security) Diagram. In addition to diagrams submitted for other sections of the application, applicants are expected to submit a premises diagram (or site plan) which, focuses on the proposed security measures and how they relate to the overall business. (Pursuant to CCR Title 16, Division 42, §5006. Premises Diagram).

5.2.1 The diagram shall be accurate, dimensioned and to scale (minimum scale ¼”).

The scale may be smaller if the proposed location exceeds more than a 1/2-acre parcel but must not be printed on larger than an 11” x 17” sheet of paper. **(Blueprints and engineering site plans are not required at this point of the application process)**

5.2.2 The diagram must be drawn to scale and clearly identify property boundaries, entrances, exits, interior partitions, walls, rooms, windows, and doorways. The activity in each room and the location of all cameras must be identified in the diagram.

5.2.3 Description of cannabis activity that will be conducted in each area of the premise. Commercial cannabis activities that must be identified on the diagram/site plan may include but are not limited to the following if applicable to the business operations; storage areas, batch sampling areas, loading/unloading of shipment areas, packaging and labeling, customer sales areas, training areas, employee break room areas, extractions, infusions, processing, and testing areas.

5.2.4 Limited-access areas, defined as areas in which cannabis goods are stored or held and only accessible to permittees, or its employees or contractors and areas

used for video surveillance monitoring and storage devices (Pursuant to CCR Title 16, Division 42, §5000 (m) Limited-Access Area and §5042 Limited-Access Area.

5.2.5 Number and location of all video surveillance cameras.

5.3 Identify intrusion alarm and monitoring system including the name and contact information for the monitoring company (if the company has been selected).

5.4 Briefly describe cash handling procedures which covers day to day transactions with customers, vendors armor carrier vehicles and transporting it to the bank.

5.5 Discuss whether the CCB will utilize the services of on-site security guards. Include in the discussion:

5.5.1 Number of guards.

5.5.2 Hours guards will be on-site.

5.5.3 Locations at which they will be positioned.

5.5.4 Guards' roles and responsibilities.

6. **LOCATION** *Criteria required in Phase III*

6.1. In addition to the location-related details provided in the Commercial Cannabis Business (CCB) Application (pages 1-7), the application shall include a thorough description of the proposed location, including but not limited to the overall property, building, and floor plan.

6.2. The application shall include at least one (1) photograph of the front (street side) of the building or street view of the vacant parcel.

6.3. Premises (Site) Diagram for each proposed location. In addition to diagrams submitted for other sections of the CCB Application, applicants are expected to submit a premise/site diagram that focuses on the overall property, building. This diagram should show the overall parcel and adjoining or neighboring buildings that may be affected by the commercial cannabis business.

6.3.1. A Premise (Site) Diagram must be accurate, dimensioned and to-scale (minimum scale of 1/4"). The diagram shall provide a detailed description of all available/shared parking spaces, driveway locations, and auxiliary buildings on the parcel. **(Blueprints and engineering site plans are not required at this point of the application process. Security features are not required for this section.)**

7. **COMMUNITY BENEFITS AND INVESTMENTS PLAN** *Criteria required in Phase II*

7.1. The CCB Application should describe the social responsibility plan. This should include all benefits the CCB has provided or plans to provide to the local community, for example by directly aiding, participating in, or funding the work of local non-profits, community-based organizations, civic organizations, or social services organizations. Benefits may be in the form of volunteer services, monetary donations, financial support of City-sponsored activities or organizations, in-kind donations to the City or other charitable organizations and/or contributions to the Fresno Community Reinvestment Fund. It may also include, but is not limited to:

7.1.1 Providing funding for or hosting expungement clinics or outreach services.

7.1.2 Incorporating an environmentally sustainable business model including energy efficient buildings and vehicles.

7.1.3 Utilizing vacant buildings, brownfields land, or blighted areas of the city for the business.

7.2. Describe the Commercial Cannabis Business plan to develop a public health outreach and educational program that outlines the risks of youth use of cannabis and that identifies resources available to youth related to drugs and drug addiction.

* Should an applicant wish the financial information to be treated as confidential, they should clearly identify it on each page as such. However, applicants should be aware that the information may be subject to disclosure under Government Code Section 6254. All applications submitted are considered public documents for Public Records Act request purposes.

** Security Plans will not be made public pursuant to Government Code Section 6254(f).

EXHIBIT "C"



OFFICE OF THE CITY MANAGER

September 1, 2021

Tin Westen
SKG Trinity
14271 Jeffrey Road #107
Irvine, CA 92620
tin@westenlawpc.com

Application #CSE-20-9
Proposed location: 842 N. Fulton Street

Dear Applicant,

On August 31, 2021, the City Manager's Office completed its review of Cannabis Business Permit applications and made a determination on Applicants receiving a preliminary award of a Commercial Cannabis Business Permit (CCB Permit).

Your application was not selected for a preliminary award. Your application will remain open and you may be contacted in the event a permit awardee fails to meet the conditions that must be satisfied in order to obtain official issuance of a CCB Permit.

Now that the interview process is complete, Applicants may request their own application scoring details by submitting a Public Records Act (PRA) request. For PRA requests, please visit <https://www.fresno.gov/pr>

A notice regarding a final decision on your application will be provided when the City Manager officially issues the CCB Permits pursuant to FMC Section 9-3317 (d), for this application process.

Thank you for your application.

A handwritten signature in black ink, appearing to read "Jennifer Ruiz". The signature is fluid and cursive, written over the typed name.

Jennifer Ruiz, MBA
Project Manager
Office of the Mayor and City Manager
Office of Cannabis Oversight
E-Mail: Jennifer.Ruiz@fresno.gov

cc: Thomas Esqueda, City Manager
City Attorney's Office

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VERIFICATION

I, SOUTCHAY SOYINTHISANE, am a Member of SKG TRINITY LLC, who is a
Petitioner/Plaintiff in this matter. I have read the foregoing VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and
know its contents. I am informed and believe, and on that basis allege, that the matters stated in the
foregoing document are true and correct.

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

Executed on November 30, 2021, in Fresno, California.


SOUTCHAY SOYINTHISANE