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8 FRANK ZIMMERMAN COLLECTIVE

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/05/2019** at 03:30:20 PM  
Clerk of the Superior Court  
By Veronica Navarro, Deputy Clerk

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN DIEGO

12 FRANK ZIMMERMAN COLLECTIVE,

13 Petitioner/Plaintiff,

14 vs.

15 CITY OF VISTA; RIVERSIDE COUNTY  
16 DISPENSARY AND DELIVERY, INC., a  
17 California corporation; and DOES 1-50,  
18 inclusive,

19 Respondents/Defendants.

CASE NO. 37-2019-00029400-CU-WM-NC

**VERIFIED PETITION FOR WRIT OF  
MANDAMUS AND COMPLAINT FOR:**

- (1) PEREMPTORY WRIT OF  
MANDATE; AND  
(2) INJUNCTIVE RELIEF.

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24 Petitioner and Plaintiff FRANK ZIMMERMAN COLLECTIVE (“Plaintiff” or “FZC”), by and  
25 through its attorneys, hereby complains, alleges, and avers as follows against Respondents/Defendants  
26 the CITY OF VISTA (“Vista” or the “City”), RIVERSIDE COUNTY DISPENSARY AND DELIVERY,  
27 INC. (“RCDD”); and Does 1-50 (collectively “Defendants” and/or “Respondents”):  
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1 **INTRODUCTION**

2 1. This action arises out of a medical marijuana dispensary license procedure conducted by  
3 the City of Vista (“City” or “Vista”) in or around February 2019. In that process, which in part was  
4 based on a priority system based on the date and time of application submission, the City selected  
5 Respondent/Defendant and Real Party in Interest RCDD (#2 on the priority list) for license registration  
6 before FZC (#6 on the priority list), and by doing so disqualified FZC from obtaining a medical  
7 marijuana dispensary license registration due to rules that prevent dispensaries from being too close to  
8 one another (here, FZC’s proposed location was within 500 feet of RCDD’s proposed location, thereby  
9 “buffering out” FZC’s location once RCDD’s application was selected for license registration).

10 2. FZC files this action not simply because it failed to obtain license registration, but  
11 because it was “buffered out” by an applicant, RCDD, that was not legally eligible for a medical  
12 marijuana dispensary license under the governing ordinances and City rules and regulations. FZC  
13 attempted to object to its disqualification but the City indicated that “no further administrative review  
14 of the determination is possible.” Because there is no established administrative procedure for  
15 challenging or appealing the results of the City’s license registration process, FZC has no choice but to  
16 seek an order compelling the City to deny/revoke RCDD’s license registration and to instead provide  
17 license registration to FZC.

18 **PARTIES AND VENUE**

19 3. FZC is and at all relevant times was a California Nonprofit Mutual Benefit Corporation.  
20 FZC is the lessee of real property located at 1215 S. Santa Fe Avenue, Vista, CA 92083 (the “FZC  
21 Property”). FZC applied for a a medical marijuana dispensary license in the City of Vista, and  
22 participated in the City’s license registration process as set forth in the governing ordinance and  
23 associated City rules and regulations. FZC was sixth on the City’s priority list – which ordinarily  
24 would have entitled FZC to license registration as the City ultimately issued eleven such registrations,  
25 selecting the seventeenth applicant on the City’s priority list for the final registration – but FZC’s  
26 application was “buffered out” by RCDD under the City’s 500-foot buffer zone exclusion requirement.  
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1 See VMC §5.94.090(D) (“Medical cannabis businesses are prohibited within five hundred (500) feet of  
2 any other permitted medical cannabis dispensary”).

3 4. The City is and at all relevant times was a municipality located within the State of  
4 California, County of San Diego.

5 5. RCDD is and at all relevant times was a California Nonprofit Mutual Benefit  
6 Corporation. RCDD is the lessee of real property located at 1275 S. Santa Fe Avenue, Vista, California  
7 92803 (the “RCDD Property”). As noted above, RCDD was ranked #2 for priority purposes, and  
8 improperly obtained a license registration from the City to operate a medical marijuana dispensary at  
9 the RCDD Property.

10 5. FZC is ignorant of the true names and capacities of the Defendants/Respondents sued  
11 herein as DOES 1 through 50, inclusive, and therefore sues such Defendants/Respondents by fictitious  
12 names. FZC will amend its claims to allege the true names and capacities of DOES 1-50 when they  
13 have been ascertained. FZC is informed and believes and on that basis alleges each of the fictitiously  
14 named Defendants is responsible in some manner for the acts, omissions, events and occurrences herein  
15 alleged, and that FZC’s damages herein alleged were proximately caused in some way by such DOE  
16 Defendants.

17 7. Jurisdiction and venue is proper in this Court. FZC is disputing the denial of license  
18 registration to operate a medical marijuana dispensary at the FZC Property, which is located within the  
19 City of Vista, County of San Diego. Further, FZC challenges the legality and propriety of the actions  
20 of the City in its application, interpretation, implementation and enforcement of City ordinances,  
21 governing rules, procedures, policies and regulations for the application process for medical marijuana  
22 dispensary license registrations, as well as both the outcome of and manner in which that process was  
23 conducted.

24 **FACTS RELEVANT TO ALL CAUSES OF ACTION**

25 8. As noted above, this action arises specifically from the City’s denial of FZC’s medical  
26 marijuana dispensary license application for the FZC Property, and specifically from the City’s denial  
27 of its application in favor of RCDD’s application, which (as described in more detail below) was and is  
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1 legally ineligible for license registration under the express provisions of Vista’s “Measure Z” voter-  
2 driven ballot initiative as well as the rules, regulations, policies and procedures promulgated and  
3 enacted by the City in order to implement, administer and enforce the provisions of Measure Z.

4 9. The licensing and application process is governed by Chapter 5.94 *et seq.* of the Vista  
5 Municipal Code (“VMC”), as well as by the City’s various applicable policies, procedures and rules.

6 10. Section 5.94.050 of the VMC, in clear mandatory “shall” language, mandates that each  
7 applicant for a medical cannabis license “shall” submit an application to the City which in turn “shall”  
8 contain, *inter alia*, the following: (1) “If the property is being rented or leased, the applicant **must**  
9 submit a signed and notarized authorization acknowledging that the current owner of the property is  
10 aware of the intended use as a medical cannabis business and consents to such use” (the “Owner  
11 Authorization”); and (2) “A site plan describing the property with **fully dimensioned interior and**  
12 **exterior floor plans including: electrical, mechanical, plumbing, and disabled access compliance**  
13 pursuant to Title 24 of the State of California Code of Regulations and the Americans with Disabilities  
14 Act.” *See* VMC §§5.94.050(B)(6), (7) (emphasis added).

15 11. Once submitted, the City, as a ministerial duty, was required to process the applications  
16 in the order set forth in the priority list – *i.e.*, in the order they were submitted and date/time stamped.  
17 According to the VMC, processing of the applications “shall consist of verification of the information  
18 required by Sec. 5.94.50 as complete and accurate.” VMC §5.94.060(G). Stated differently, only  
19 accurate and complete applications that comply with VMC Section 5.94.050 were/are eligible for  
20 license registration under the express provisions of the VMC, and, equally as important, the  
21 determination that an application was/is complete and accurate was expressly made a ministerial duty  
22 of the City. *Id.*

23 12. As noted above, the City deemed RCDD’s application complete and accurate, and based  
24 on its priority rank (#2), the City issued a license registration to RCDD as one of the maximum of 11  
25 medical cannabis license registrations that were permitted under the VMC. However, RCDD’s  
26 application was *not* accurate or complete, and did not comply with the provisions of VMC §5.95.050.

1           13.     First and foremost, RCDD was expressly required to provide an Owner Authorization  
2 with its application, but failed to do so – and thereby failed to comply with the express requirements of  
3 Section 5.94.050(B)(6). RCDD’s failure to submit an Owner Authorization with its application  
4 rendered its application incomplete and in violation of the VCM – and thus its application should have  
5 been rejected/disqualified by City as part of its ministerial duty to process the applications.

6           14.     Second, and equally as important, the VCM required RCDD to submit detailed site plan  
7 containing fully dimensioned interior and exterior floor plans, including plans for electrical,  
8 mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the California Code of  
9 Regulations (essentially the Building Standards Code) and the ADA. *Id.* at §5.94.050(B)(7). Title 24  
10 in turn requires that building plans that are submitted be “construction ready.” Yet the plans submitted  
11 by RCDD are expressly stamped “NOT FOR CONSTRUCTION,” thereby establishing that the plans  
12 submitted by RCDD did not comply with Title 24 as required, and significantly they contained no  
13 construction-level detail. Further, despite being required by Title 24 and the ADA, RCDD’s site plans  
14 failed to provide details for proposed occupancy and exiting, electrical load calculations and a single  
15 line diagram, mechanical plans (including hood and HVAC information), energy compliance  
16 information, disabled access compliance information, and also failed to provide a complete hazardous  
17 materials checklist. Notably, these requirements are mandated by City policy in connection with  
18 proposed tenant improvements at commercial/industrial sites. *See Exhibit A* (City’s Tenant  
19 Improvement – Commercial/Industrial Form).

20           15.     Stated simply, RCDD failed to submit a required Owner Authorization and failed to  
21 comply with the express provisions of the VCM (including Title 24 of the CCR and the ADA). Thus,  
22 RCDD’s application was inaccurate and incomplete, and it should never have obtained license  
23 registration. And the City had a duty to reject RCDD’s application as part of its ministerial processing  
24 duties, yet failed to do so. As a direct and proximate result of the City’s failure comply with its  
25 ministerial duty to follow the express requirements of the VCM as well as its own building code  
26 policies and procedures, it improperly issued a license registration to RCDD and improperly denied  
27 FZC’s application.

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**FIRST CAUSE OF ACTION**  
**PETITION FOR PEREMPTORY WRIT OF MANDATE**  
(AGAINST ALL RESPONDENTS)

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4 16. FZC incorporates as though set forth herein in full the allegations contained in  
5 Paragraphs 1-15 above.

6 17. The City had and has a ministerial duty to adhere to, follow and enforce the applicable  
7 law. Here, as set forth above, the Respondents violated their duties as set forth in, *inter alia*, VMC  
8 §§5.94.050-060 and the City’s own building code policies, rule and regulations by permitting  
9 applicants whose applications did not comply therewith to obtain licenses in violation of the law and in  
10 violation the City’s ministerial duties to process, review, and to deny applications that were non-  
11 compliant.

12 18. To the extent Respondents claim they had discretion in the creation, implementation,  
13 interpretation and/or alteration of the requirements set forth in the VMC and/or the City’s own policies,  
14 procedures, rules and regulation, FZC contends they abused that discretion, that their actions and  
15 determinations on such matters were/are arbitrary, capricious, unfair, unlawful, corrupt, and against the  
16 overwhelming weight of facts and evidence available to the City at the time, and/or were the result of  
17 “unreasonable” policies and procedures that were not legally permissible.

18 19. There is no plain, speedy or adequate remedy in the ordinary course of law available to  
19 FZC, it has a substantial and direct beneficial interest in enforcing the City’s ministerial duties and/or  
20 correcting its abuses of discretion vis-à-vis the license application evaluation and selection process, as  
21 that process resulted in it improperly being denied license registration to which it otherwise would have  
22 been entitled, and FZC legally is entitled to performance by the City of its ministerial duties and/or to  
23 the proper exercise of discretion under the correct legal interpretation of VMC §§5.94.010 *et seq.*

24 20. There are no applicable administrative appeal procedures for FZC to exhaust vis-à-vis  
25 the denial of its application. Notwithstanding the lack of any applicable administrative appellate  
26 process, FZC attempted to raise the above issues with the City, but the City indicated that “no further  
27 administrative review of the determination is possible.” As such, FZC has been left with no choice but  
28 to seek redress via this Petition.

1 **SECOND CAUSE OF ACTION**  
2 **INJUNCTIVE RELIEF**  
(AGAINST ALL DEFENDANTS)

3 21. FZC incorporates as though set forth herein in full the allegations contained in  
4 Paragraphs 1-20 above.

5 22. FZC seeks an injunction requiring the City to deny/revoke the license registration issued  
6 to RCDD for the RCDD Property, and instead issue a license registration to FZC on the FZC Property.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, based on the foregoing, FZC prays for the following relief:

9 **First Cause of Action**

- 10 1. For the granting of its petition for mandamus as set forth above; and  
11 2. For such other or different relief as deemed necessary or appropriate by the Court.

12 **Second Cause of Action**

- 13 1. For the granting of injunctive relief as requested above; and  
14 2. For such other or different relief as deemed necessary or appropriate by the Court.

15  
16 DATED: June 5, 2019

LAW OFFICE OF JEFF AUGUSTINI

17  
18 By: 

JEFF AUGUSTINI

19 Attorneys for Petitioner/Plaintiff  
20 FRANK ZIMMERMAN COLLECTIVE

# EXHIBIT A





# Tenant Improvement - Commercial/Industrial

## Introduction

Welcome to the City of Vista.

We hope this information will assist you through the process should you wish to make a tenant improvement to an industrial or commercial building in the City.

Development Services is composed of representatives of the Building, Planning and Engineering Divisions. This Division will assist you through the processing of forms, permits and applications. You may visit the Development Services Center at 200 Civic Center Drive or telephone (760) 639-6100.

## Planning Requirements

Be sure that your proposed use is permitted by calling a Planner at (760) 639-6100.

### How your Tenant Improvement is processed:

After you submit three (3) sets of Tenant Improvement plans for building plan-check, the plans are routed as follows:

	<u>Processing Time for each Plan-Review</u>
1 set to Planning Division	2-4 weeks
1 set to Fire Department	2-4 weeks
1 set to Building Plan Check	2-4 weeks*

\*Most tenant improvements require two (2) plan-checks. Each plan-check takes approximately two (2) weeks for plan-review. This does not include design time.

This process (assuming two plan-checks) should normally take approximately 30 days.

### Items required for a Commercial/Industrial Tenant Improvement plan submittal:

1. Three (3) sets of plans to scale.
  - a. Site Plan
  - b. Floor plan showing equipment; what is being built (partitions, walls)
  - c. Details
2. Two (2) sets of details of occupancy and exiting
3. Two (2) sets of electrical load calcs/single line diagram
4. Two (2) sets of plumbing schematics/gas and water pipe sizing
5. Two (2) sets of mechanical plans, i.e. hood details, heating/air conditioning information
6. Two (2) sets of energy compliance information
7. Two (2) sets of disabled access compliance

8. Complete Hazardous Materials checklist
9. Plan-check deposit (to be determined at the time of submittal)

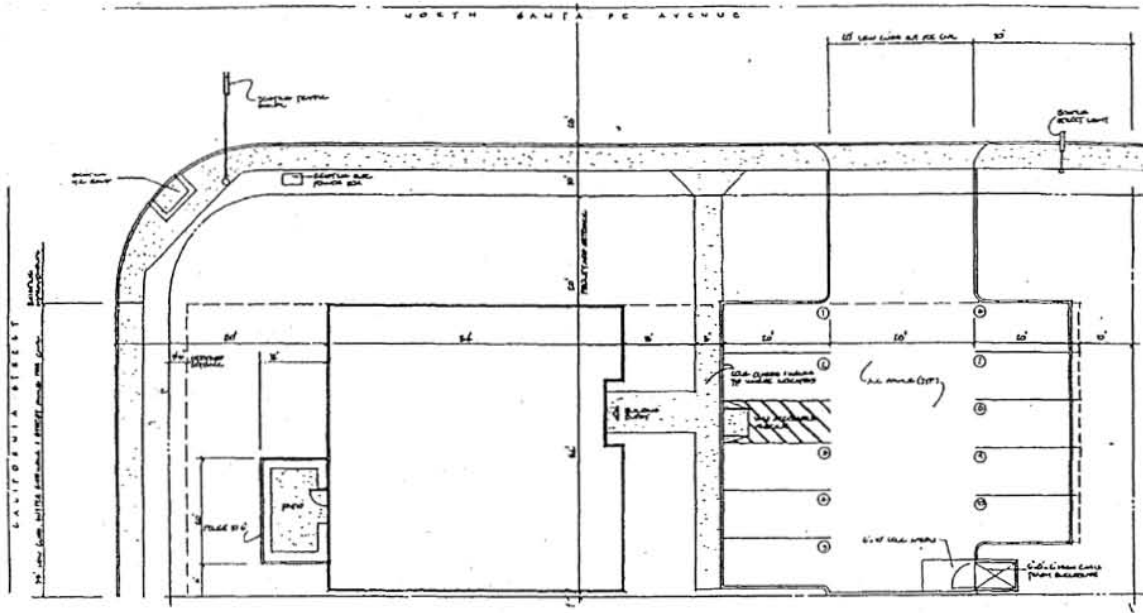
Dependent upon use and location, you may be required to pay additional sewer fees. For information regarding sewer fees, please contact the Sanitation Division at (760) 639-6115.

**Title Sheet of plans must show:**

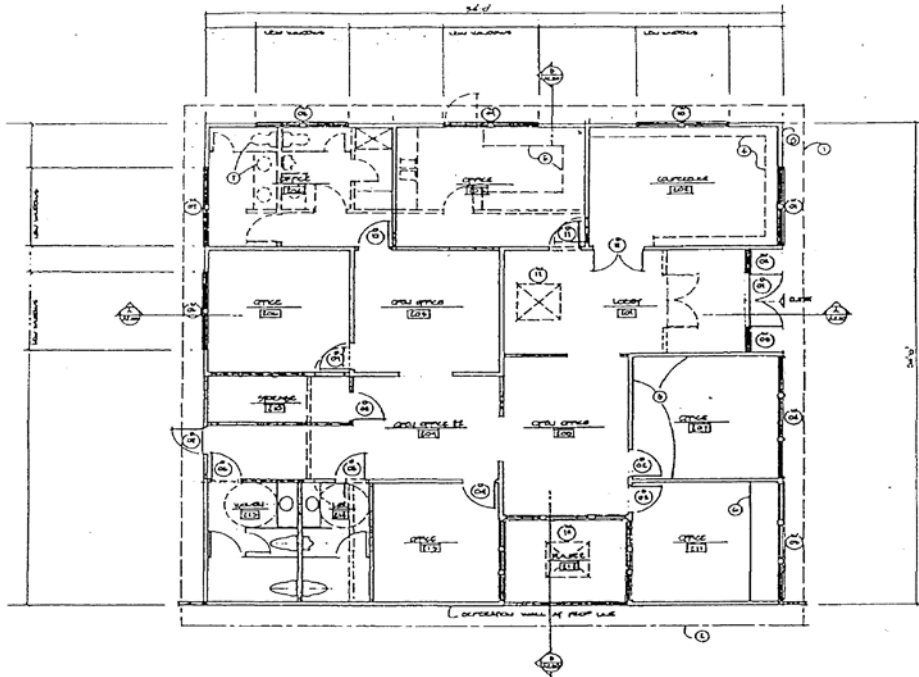
1. Site address
2. Assessor's parcel number
3. Legal description
4. Type of building (office, warehouse, tilt-up, etc.)
5. Building area (show parking areas and garages separate)
6. Type of construction
7. Building sprinklered (Yes\_\_\_\_\_No\_\_\_\_\_)
8. Occupancy classification
9. Contact person (name, address and daytime telephone number)

**Prior to issuance, the following must be completed:**

1. Hazardous Materials Questionnaire completed and signed by the County of San Diego and the City of Vista Fire Department if needed as directed on the Hazardous Materials Questionnaire.
2. Food handling establishments require Health Department approval.
3. Contractor information must be on file and current; to include Workers Compensation insurance, State contractor's license, and City of Vista business license.
4. All building permits with a valuation greater than \$75,000 require an approved solid waste recycle plan prior to building permit issuance. Please reference the "Construction and Demolition Debris Recycling" handout which is available at the City of Vista's Development Services Center.



Sample SITE PLAN  
 V. 1.1.1.1



- NOTES**
1. LOCATE ALL WORK...
  2. REMOVE ALL EXISTING...
  3. NEW WORKSHOP...
  4. NEW OFFICE...
  5. NEW OFFICE...
  6. NEW OFFICE...
  7. NEW OFFICE...
  8. NEW OFFICE...
  9. NEW OFFICE...
  10. NEW OFFICE...
  11. NEW OFFICE...
  12. NEW OFFICE...

- LEGEND**
- EXISTING STRUCTURE TO BE REMOVED
  - NEW STRUCTURE TO BE CONSTRUCTED
  - WORK TO BE RECONSTRUCTED
  - WORK TO BE RECONSTRUCTED
  - WORK TO BE RECONSTRUCTED
  - WORK TO BE RECONSTRUCTED

Sample  
 FLOOR PLAN SYMBOLS & NOTES  
 VP - 100

VERIFICATION

State of California, County of Los Angeles

I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR: (1) PEREMPTORY WRIT OF MANDAMUS; and (2) INJUNCTIVE RELIEF;** and know its contents.

I have been authorized by Petitioner and Plaintiff Frank Zimmerman Collective, to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that basis allege that the claims, allegations and averments stated in the foregoing document are true based upon the information reasonably available to me.

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

Executed on June 5, 2019, at Long Beach, California.

  
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ELLIOT LEWIS

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