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**CITY OF GRASS VALLEY**  
**COUNTY OF NEVADA**

NUG INC. AND SIERRA FLOWER CO.  
LLC'S CONSOLIDATED APPEALS  
OF CITY OF GRASS VALLEY'S  
SCREENING DECISIONS ON  
APPLICATIONS FOR STOREFRONT  
RETAIL DISPENSARY PERMIT

HEARING OFFICER'S  
FINAL FINDINGS AND  
RECOMMENDATIONS

After a thorough review of the parties' Briefs, the Administrative Record, and oral arguments, the following are the Final Findings and Recommendations on the consolidated administrative appeals of NUG Inc., and Sierra Flower Co. LLC, relating to the City of Grass Valley's screening decisions on applications for a storefront retail dispensary permit.

**Background**

On November 24, 2020, the City of Grass Valley amended its municipal code to allow certain cannabis businesses including storefront retail. On April 27, 2021, the City announced its cannabis application procedure. The application process would consist of two steps. "The initial screening application scoring would be completed by a committee appointed by the City Manager. Top ranked proposals would be invited to an interview, and the committee would

1 select the applicants that could apply for a cannabis permit.” (AR-7) The screening would  
2 include a review of the Commercial Cannabis Screening Application Information Packet and  
3 submission and review of criteria including: Qualifications of Owners/Operators; a Business  
4 Plan detailing operation, community benefits, product offerings, and neighborhood  
5 enhancement; and, a Safety and Security Plan. (AR-1038) The City’s evaluation included 26  
6 categories with a total of 355 available points. (*Ibid.*) The City Council specifically stated that  
7 it would not award points for locally connected ownership and would not make local  
8 preferences. (*Ibid.*)

9 Seven applicants, including both of the Appellants, NUG and Sierra Flowers,  
10 submitted applications. The Selection Committee, which consisted of three reviewers, scored  
11 applications separately, and an average was taken between the three scores. (AR-1760)

12 Provisions earned the highest average score of 340. Sierra Flowers obtained the third  
13 highest, with an average score of 328.33 (but see Calculations analysis below). NUG received  
14 the lowest average score of 285.

15 On November 22, 2021, the City sent a notice to non-party Provisions that it would be  
16 afforded the sole opportunity to apply for a retail permit. Both NUG and Sierra Flowers timely  
17 filed the present Administrative Appeals.

#### 18 **Standard of Review**

19 Under Grass Valley Municipal Code 5.60.060, and Commercial Cannabis Appeal  
20 Procedures section 4(d), Appellant bears the burden to produce evidence of reversible error  
21 and to persuade the reviewing body of it by preponderance of the evidence. The reviewing  
22 body shall affirm the decision appealed from unless the appellant persuades it that:

- 23
- 24 i. The procedure by which the decision was made violates due process  
or other applicable law;
  - 25 ii. The substance of the decision violates the Grass Valley Municipal  
Code or other applicable law; or
  - 26 iii. The record on which the decision was made does not include  
substantial evidence to support factual findings the law requires for the decision.

27 Sierra Flowers contends it will establish by preponderance of the evidence that: (1) the  
28 procedure by which the decision was made violates due process or other applicable law; and

1 (2) the record on which the decision was made does not include substantial evidence to support  
2 the factual findings the law required for the decision.

3 NUG contends that the scoring process: (1) violated NUG's due process and, (2)  
4 violated Grass Valley Municipal Code by awarding non-party Provisions the permit because  
5 the Administrative Record lacks substantial evidence to support the permit decision.

### 6 NUG's Arguments

#### 7 Bias

8 The leading case on the issue of bias by decision-makers is the case of *Petrovich*  
9 *Development Co. LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973, which provides:  
10 "A decisionmaker must be unbiased (meaning that the decisionmaker has no conflict of  
11 interest, has not prejudged the specific facts of the case, and is free of prejudice against or in  
12 favor of any party.)"

13 First, NUG contends the committee was biased toward locally connected ownership.  
14 NUG was not local, but Provisions is. NUG points to statements made by committee member  
15 Lombardi, in a letter dated November 10, 2021, differentiating local vs. out of area entities,  
16 and specifically stating he wanted a candidate "with local roots." (AR 1648)

17 However, The City Council was advised that a local preference in screening  
18 applications was unconstitutional. AR 7. Thus, the City omitted any consideration of the  
19 location of an applicant's principal place of business.

20 Moreover, the criteria of an owner's involvement does not reflect local bias. Rather, it  
21 directly addresses supervision of a business. In fact, Lombardi's own statements about locality  
22 focused on day-to-day operations focused on customers: "So much of the success... of the  
23 business will be dependent on the person running the day to day operations." AR 1648.  
24 Additionally, it is clear that Lombardi was not biased, as his own scores demonstrate no  
25 prejudice in favor of local entities. He scored non-local applications the highest—awarding  
26 the maximum 355 points to each of Culture, Element 7, and Grupo Flor. (AR 1038) He  
27 scored Provisions with 340 points. Clearly, he had no conflict of interest, had not prejudged  
28

1 the case, and was free of prejudice against or in favor of any party. Thus, the ideals of  
2 *Petrovich* for unbiased committee members were met.

3 Additionally, as for statements made that the process was “negligent” and made a  
4 committee member “uncomfortable,” such statements were made relating specifically to the  
5 determination that interviews would not be conducted. This does not demonstrate any bias or  
6 prejudice in the process.

7 Moreover, any concerns addressed by the committee members simply demonstrates  
8 their commitment to the process and their acknowledgement of the seriousness of their roles.  
9 As their concerns were addressed to City staff, and not to other committee members, there was  
10 no tainting of the process so as to require a complete re-do of the process. Unlike *Petrovich*,  
11 where a member lobbied other members in support of one position, here, other committee  
12 members were not included in the concerns. There was no lobbying by anyone in favor or  
13 against any applicant.

14 Thus, there was no bias demonstrated by Appellant’s process or committee members.

15 Denial of Interview

16 Secondly, NUG states that it was denied the opportunity to interview as stated in the  
17 April 27, 2021, statement that “Top ranked proposals would be invited to an interview.”  
18 Committee member Collier also had wanted an interview of the candidates as set forth in his  
19 letter dated November 18, 2021. (AR 1662) But, no interviews were conducted.

20 However, the final screening process allows, but does not require, interviews. The  
21 process states: “After the Selection Committee has reviewed and scored all the screening  
22 applications, they *may* invite the highest ranked applicants in each commercial cannabis permit  
23 category for an interview with the Selection Committee.” (AR 1760) [Emphasis added.]  
24 Appellant has failed to demonstrate that all committee members wanted interviews.  
25 Additionally, NUG was not one of the “highest ranked applicants,” which would provide an  
26 interview to NUG even if interviews did occur. Thus, this argument likewise fails.

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1 Provisions' Incomplete Application

2 Thirdly, NUG contends that Provisions' application should have been dismissed  
3 outright because it did not include the mandatory Application Information Forms. "Each  
4 screening application shall complete the Applicant Information Forms." (AR 10, 32-33)  
5 These forms were not included. (AR 746-828)

6 NUG is correct in that the Applicant/Owner Application Forms were not included in  
7 the administrative record. However, this error was noted and corrected in the Second  
8 Supplement to the Administrative Record. AR 1766-1797. Thus, the Application was  
9 submitted and there is no error.

10 Scoring

11 Fourth, NUG contends that its score reductions reflect an implicit bias because points  
12 were reduced for the time an owner was on site, and the scores wrongfully deducted points for  
13 NUG in the "proof of funds" category, even though it had shown actual bank statements  
14 showing ability to fund.

15 Here, however, Appellant cannot second-guess the reviewers under substantial  
16 evidence review. The committee could reasonably assign the points set forth.

17 **Sierra Flowers' Arguments**

18 Monopoly

19 First, Sierra Flowers contends that the City wrongfully decided to allow only one  
20 dispensary permit, which results in a monopoly in favor of Provisions. Sierra Flowers  
21 references the situation in the City of Baldwin Park, where the City "effectively [afforded] the  
22 company a distribution monopoly." [SF Opening Brief 6:3.]

23 However, Grass Valley Municipal Code §5.60.070(d)(1) provides that the City may  
24 have multiple permits for many cannabis activities. However, it capped retail dispensary  
25 permits at one per 7,500 people, with a maximum of two. As Grass Valley's population is 14,  
26 016, only one retail dispensary permit is currently available, which counsel at oral argument  
27 admitted is correct. Thus, the "City-created monopoly" alleged by Appellant is code-driven.  
28 Moreover, as the present administrative appeal only seeks redress of the screening process, and

1 not the underlying code provisions, this argument by Sierra Flowers fails. This hearing officer  
2 cannot require the City to allow two permits. Such action is in the sole control of the City.  
3 Appellant may seek to modify such code provision by approaching the City Council.  
4 However, this Hearing Office has no authority to make such change on its own accord.

5 Arbitrary

6 Secondly, Sierra Flowers contends that the City process was arbitrary and capricious  
7 and the record on which the decision was made does not include substantial evidence to  
8 support the factual findings the law requires. Sierra Flowers contends the City failed to select  
9 a qualified and unbiased Selection Committee. Appellant points to a fourth selection  
10 committee member, who did not make any recommendations, who declined her appointment  
11 due to a conflict of interest. Appellant also points to concerns of the committee themselves  
12 about the process, whereby member Collier wanted an interview process to be included.  
13 Additionally, one committee member stated: "I do not have the background, or the  
14 qualifications to provide a quality recommendation." (AR 1647-1652)

15 However, the fact that one committee member declined appointment because of a  
16 conflict of interest demonstrates the lack of bias in the process. So, this argument is without  
17 merit.

18 As for the lack of interviews, although member Collier wanted interviews, the  
19 screening process allows, but does not require, interviews. The process states: "After the  
20 Selection Committee has reviewed and scored all the screening applications, they may invite  
21 the highest ranked applicants in each commercial cannabis permit category for an interview  
22 with the Selection Committee." (AR 1760) Appellant has failed to demonstrate that all  
23 committee members wanted interviews. Thus, this argument likewise fails.

24 Further, the fact that one committee member felt he did not have the background to  
25 properly score the nursery, distribution and delivery applications, is not relevant. He provides  
26 no statement that he could not properly score retail dispensary applications. Thus, this was  
27 neither arbitrary nor capricious.

1 Next, the scoring sheet had detailed categories and points. Moreover, all scores were  
2 averaged. So, to the extent a member had erroneous bases for points awarded, such erroneous  
3 bases would be the same for all candidates/applicants. Thus, this argument fails.

4 Calculations

5 Thirdly, Sierra Flowers points out that the City failed to accurately calculate scores.  
6 The tally sheet did not accurately reflect the reviewers' actual scores. Sierra Flowers' properly  
7 calculated average score is 331.67, putting it second behind Provisions.

8 Sierra Flowers is correct in this argument. Nonetheless, this is a harmless error  
9 because it still puts Sierra Flowers in second place, behind Provisions, who was allowed to  
10 apply for the license.

11 Points

12 Fourth, Sierra Flowers contends that it was deprived of points that it objectively  
13 earned. Various deficiencies in the reviewers' scores are noted.

14 Here, however, Appellant cannot second-guess the reviewers under substantial  
15 evidence review. The committee could reasonably assign the points set forth. Moreover,  
16 although Sierra Flowers was not awarded the dispensary permit, it was allowed to become a  
17 distributor. The distribution applications had a different process for selection than the  
18 dispensary applications. There is no error.


19 Conclusion

20 The Hearing Officer, in this Final Findings and Recommendations, recommends to  
21 affirm in their entirety the decisions appealed.

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24 DATED: 5-25-22

25   
ALBERT DOVER  
26 Judge of the Superior Court (Ret.)  
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