

RESOLUTION NO. 2022-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY ADOPTING THE HEARING OFFICER’S RECOMMENDATION ON THE APPEALS OF NUG, INC. AND SIERRA FLOWER CO. LLC FROM THE SELECTION COMMITTEE’S DECISION ON SCREENING APPLICATIONS FOR A STOREFRONT RETAIL CANNABIS DISPENSARY PERMIT

WHEREAS, in November of 2020, the City approved Ordinance No. 806, which permitted and regulated a variety of separately licensed cannabis businesses, including storefront retail, delivery-only retail, testing laboratories, cannabis manufacturing, distribution, and cultivation or nurseries;

WHEREAS, Ordinance No. 806 allows a single storefront retail cannabis business permit in the City unless and until the City meets a population threshold it has not met;

WHEREAS, the Community Development Director developed application procedures and regulations for the selection of commercial cannabis permittees (“Regulations”), the City received public comment on those procedures, and the City Council adopted the application procedures and permit fees in May 2021;

WHEREAS, the City accepted screening applications for commercial cannabis permits from May through August 2021, and received seven screening applications for retail dispensary businesses;

WHEREAS, in July 2021 City appointed a Selection Committee to review and score the storefront retail screening applications in accordance with the Regulations;

WHEREAS, the City received seven applications for the opportunity to apply for the single storefront retail cannabis business permit, including applications from Grass Valley Provisions, Sierra Flower Co. LLC, and NUG, Inc.;

WHEREAS, after a review of the applications, the Selection Committee unanimously selected Grass Valley Provisions to apply for a storefront retail cannabis permit;

WHEREAS, Sierra Flower Co. LLC and NUG, Inc. timely appealed the decision of the Selection Committee under the Community Development Director’s procedures for appeals (“Appeal Procedures”);

WHEREAS, the City Council referred the appeals to an impartial hearing officer, retired Nevada County Superior Court Judge Al Dover (“Hearing Officer”), to hear the appeals and to recommend a decision to the City Council;

WHEREAS, at 11:00 a.m., May 19, 2022, the Hearing Officer held a hearing on the appeals at Grass Valley City Hall, 125 E. Main Street, Grass Valley, California, at which Ariana Van Alstine of AAVA Consulting, LLC appeared on behalf of appellant Sierra Flower Co. LLC, Stephen L. Ramazzini appeared on behalf of appellant Nug, Inc., Cameron Brady of Ingram Brady appeared on behalf of real party in interest Grass Valley Provisions, and David J. Ruderman of Colantuono, Highsmith & Whatley, PC appeared on behalf of the City of Grass Valley; and

WHEREAS, after hearing both written and oral argument, the Hearing Officer recommends the City Council affirm the decision of the Selection Committee.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRASS VALLEY AS FOLLOWS:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The City Council notified the appellants of its consideration of the Hearing Officer's recommendation by mailing a copy of a draft of this resolution, the hearing officer's recommendation, and the notice of the public hearing before the City Council.

Section 3. The City Council has considered the administrative record regarding the appeals of Sierra Flower Co. LLC and NUG, Inc., including any supplements thereto, the evidence submitted by parties to the Hearing Officer, the briefs of all parties, the tentative and final recommendation issued by the Hearing Officer, oral presentations by the appellants, the real party in interest, and other interested parties at the hearing before the City Council.

Section 4. The City Council adopts the recommendation of the Hearing Officer to affirm the decision of the Selection Committee in full. The Hearing Officer's recommendation is attached as **Exhibit A** and incorporated herein by this reference. This constitutes the City's final decision on the appeals and the Appeal Procedures do not provide for reconsideration of this resolution.

Section 5. This Resolution is exempt from CEQA under Business and Professions Code, section 26055, subdivision (h) (CEQA does not apply to "an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity") and California Code of Regulations, title 14, section 15061, subdivision (b)(3) ("CEQA applies only to projects which have the potential for causing a significant effect on the environment"). Adoption of the Hearing officer's recommendation constitutes "discretionary review and approval" of a permit to engage in commercial cannabis activity. Additionally, adoption of the Hearing Officer's recommendation cannot have a significant effect on the environment because it does not authorize a land use; it only authorizes the successful applicant to apply for a land use permit.

Section 6. The Deputy City Clerk is hereby directed to give notice of this decision in the manner required by Code of Civil Procedure section 1094.6, subdivision (b) to the appellants

and the real party in interest. The City hereby gives notice that the time within which judicial review of this action must be sought is governed by Code of Civil Procedure section 1094.6.

ADOPTED as a resolution of the City Council of the City of Grass Valley at a regular meeting held on the 28th day of June 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Ben Aguilar, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael G. Colantuono, City Attorney

Taylor Day, Deputy City Clerk