



VIA E-MAIL AND HAND-DELIVERY
City of Merced City Council
Attn: City Clerk
678 West 18th Street
Merced, CA 95340

November 14, 2022

Re: Appeal of City Planning Commission Approval of Commercial Cannabis Business Permit #22-02R

Dear Mayor Serratto and Honorable Councilmembers:

Pursuant to Chapter 20.74, *et seq.* of the Merced Municipal Code (the “Code”), Jiva MCE, LLC (“Jiva”) hereby submits this appeal (the “Appeal”) of the November 9, 2022 decision (the “Decision”) of the City of Merced Planning Commission (the “Commission”) approving Culture Merced on Motel Drive, Inc.’s (“Culture”) Commercial Cannabis Business Permit #22-02R (the “Permit”). In accordance with Section 20.74.030 of the Code, the Decision is appealable to the City Council not later than five (5) business days (excluding official City holidays) following the Commission’s action and any action on the Permit shall be suspended until this Appeal is processed and a final decision is rendered by the City Council.

For the following reasons, the Applicant respectfully requests the City Council grant the Appeal and reverse the Decision as permitted by Section 20.74.030(F) of the Code.

The award of the Permit is improper because Culture was not the top-scoring applicant, and the Commission considered its application as such erroneously. The City Selection Panel (the “Panel”) failed to properly score Jiva’s Commercial Cannabis Business Permit Application #22-09R dated January 14, 2022 (the “Jiva Application”). More specifically, although the City concedes that Jiva satisfied Criterion 5(d) and submitted documents responsive to Criterion 5(e) (collectively, the “Subject Criteria”), the Panel failed to award Jiva *any* of the nine (9) total points associated with the same. Instead, each of the reviewers awarded Jiva zero (0) points for the Subject Criteria. Worse, the City’s purported rationale for failing to award Jiva such points—i.e., Jiva’s failure to submit documentation supporting the Subject Criteria—is belied by the City’s own actions: indeed, two other CCBP applicants *were* awarded points for the Subject Criteria, despite failing to provide the same documentation the City later purported to be mandatory in its response to Jiva.

As a result of the Panel failure to award Jiva nine (9) points (averaged as three (3) points) for the Subject Criteria, Jiva received an average score of 92.67 points. But for this error, Jiva would have received an average score of 95.67. That would have been the highest score among all applicants, and Jiva would have been awarded a Commercial Cannabis Business Permit. Instead, Culture, with an average score of 95.33, improperly advanced ahead of Jiva and was awarded the Permit in error.



In light of the foregoing, Jiva therefore respectfully requests that the City Council reverse the Decision. Prior to the forthcoming City Council hearing on the Appeal, we intend to supplement this letter with additional information for your consideration.

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To Whom It May Concern:

We represent Jiva MCE, LLC (“Jiva”) in the above-referenced matter. We are aware that on November 9, 2022, following a hearing of the City of Merced Planning Commission (the “Commission”), the Commission approved Culture Merced on Motel Drive, Inc.’s (“Culture”) Commercial Cannabis Business Permit #22-02R (the “Decision”). On this basis, and pursuant to Section 20.74.030 of the Merced Municipal Code, the Decision is appealable to the City Council not later than five (5) business days (excluding official City holidays) after the date of the Decision.

Enclosed please find Jiva’s timely appeal of the Decision. In the interest of ensuring a timely appeal was filed on our Client’s behalf, we have reserved our comments, concerns and arguments for a yet-to-be-filed supplemental statement which will be forthcoming and which will address the reasons that we believe the Decision was improper, namely that the Commission erroneously considered Culture to be the top-scoring applicant in the City’s January 2022 Commercial Cannabis Business Permit process due to scoring errors by the City Selection Panel.

Should you have any questions or concerns, please feel free to contact me via phone at 310.579.6086 or via email at cassia@vicesederberg.com.

Sincerely,

Cassia Furman

Partner, Vicente Sederberg LLP

