

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joseph D. Elford (SBN 189934) 1875 Mission Street #311 San Francisco, CA 94103		FOR COURT USE ONLY
TELEPHONE NO.: 415-573-7842 FAX NO.: ATTORNEY FOR (Name): Petitioners/Plaintiffs		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1963 E Street MAILING ADDRESS: 1963 E Street CITY AND ZIP CODE: Fresno, CA 93706 BRANCH NAME: Civil Unlimited		
CASE NAME: PIETRO DE SANTIS v. CITY OF FRESNO		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	CASE NUMBER: JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Four: CCP 1085, CCP 1094.5, Declaratory relief, Promissory Estoppel

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 23, 2021

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF FRESNO

16 PIETRO DE SANTIS, HEMP VALLEY, LLC;)
17 KERRY BURROUGH; and 861 OLIVE)
18 AVENUE RETAIL PARTNERS,)

19 Petitioners/Plaintiffs,)

20 v.)

21 CITY OF FRESNO and DOES 1 through 50)

22 Respondents/Defendants.)
23)
24)
25)
26)
27)
28)

Case No. 3:20-cv-01110-WHO (PR)

**PETITION FOR WRIT OF
MANDATE, PROHIBITION, OR
OTHER APPROPRIATE RELIEF**

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1 **PETITION FOR WRIT OF MANDATE,**
2 **PROHIBITION, OR OTHER APPROPRIATE RELIEF**

3 TO: THE HONORABLE JUDGE OF THE SUPERIOR COURT OF THE STATE OF
4 CALIFORNIA FOR THE COUNTY OF FRESNO

5 1. Petitioners/Plaintiffs Pietro De Santis (“De Santis”) and his solely owned entity Hemp
6 Valley, LLC (“HV”), and Kerry Burrough (“Burrough”) and her company 861 Olive Avenue Retail
7 Partners (“East Olive” or “EO”) (collectively “Petitioners”), by and through their counsel, hereby
8 petition this Court for a Writ of Mandate, Prohibition, or Other Appropriate relief and, by this
9 Verified Petition allege as follows:

10 **INTRODUCTION**

11 2. Petitioner De Santis is a longtime resident of Fresno, California, who sought to bring
12 premium cannabis retail dispensaries to the City of Fresno (“Fresno” or “City”) through his solely
13 owned entity HV. To this end, De Santis filed three comprehensive applications for Commercial
14 Cannabis Business (“CCB”) Permits with the City, which would provide high quality cannabis to its
15 patrons with exceptional service at three locations in different districts in Fresno. Despite the
16 detailed and comprehensive nature of these Applications, which demonstrate the experience,
17 diligence and trustworthiness of the HV team, the City summarily denied all three applications by
18 letter, dated June 25, 2021.

19 3. In making its determinations to deny Petitioners’ applications, the City violated not
20 one, but several tenants of constitutional due process. *First*, whereas the City Council directed the
21 City Manager to formulate “the procedures to issue commercial cannabis business permits, *which*
22 *shall include or require the City Manager to provide detailed objective review criteria to be*
23 *evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review*
24 *criteria”* (Fresno Municipal Code (“FMC”), § 9-3316, subd. (a), Italics Added), the City Manager,
25 instead, set forth a tangled list of criteria that were not objective and did not provide a scoring
26 system (or quantitative equivalent) tethered to the criteria articulated by the City Council. (See
27 Fresno’s “Application Procedures & Guidelines for a Commercial Cannabis Business Permit”
28 (“CCB Guidelines”).) Because the City Manager did not abide the City Council’s instructions for

1 him to develop objective criteria that are quantitatively evaluated, the City Manager's CCB
2 Guidelines conflict with the CCB Ordinance and are, therefore, void.

3 4. *Second*, the City Manager's implementation of the CCB Guidelines also deprived
4 Petitioners of due process by making arbitrary agency decisions without objective criteria or proper
5 procedural standards. Not only do the criteria promulgated by the City Manager through his CCB
6 Guidelines not fail to include objective criteria, but the City Manager refuses to reveal the scoring
7 method he used to deny Petitioners' applications. Such unbridled discretion is rife with such
8 arbitrariness that it violates due process. Worse still, the City Manager in his cursory denials did
9 not provide *any* statement of reasons for his denial of the applications, which deprives this Court,
10 the public and the Petitioners of the information necessary to determine whether the City Manager
11 conducted his review in a manner to achieve the purpose of the CCB Ordinance and fairly evaluate
12 the applications submitted by Petitioners. This lack of transparency by the local agency (City
13 Manager) further violates due process.

14 5. *Lastly*, the local agency's actions, by deviating from the City Council's directive to
15 formulate objective evaluation criteria, rendered the City Council's grant of this authority to the
16 City Manager an improper delegation of power. To the extent the local agency relied upon
17 unannounced criteria or scoring to evaluate the CCB Permit applications, this would constitute the
18 improper use of "underground regulations," in violation of due process.

19 6. Absent this Court's prompt intervention to remedy these due process violations,
20 Petitioners and the public will be left guessing how CCB Permit applications are evaluated, which
21 opens the door for arbitrariness, corruption and graft. For the reasons stated, Petitioners seek a writ
22 of Prohibition, Mandate, or Other Appropriate Relief directing the City to comply with its duty to
23 promulgate objective evaluation criteria with a point-scoring system, as directed by the CCB
24 Ordinance; order the City to discard the arbitrary capricious, and erroneous scoring results provided
25 in Phase Two of Fresno's CCB Permit Application process; order the City to disclose the
26 evaluation standards and scoring employed by the City Manager; order the City to provide a
27 statement of the reasons for its denial of Petitioners' permit applications; order the City to rescore
28 every application based on the objective, qualitative criteria required by the City Council, and stay

1 any operation of the City’s final decision to reject Petitioners’ applications and enjoin the City from
2 issuing any cannabis business permits until those applications have been properly and fairly scored.

3 **JURISDICTION, VENUE, AND PARTIES**

4 7. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure
5 sections 1085, 1094.5 and 1094.6.

6 8. Venue is proper in this Court because the City is a public entity located in this judicial
7 district and the business licenses will be issued for commercial activity in the City.

8 9. Petitioner/Plaintiff Pietro De Santis resides in the County of Fresno in the State of
9 California and owns the properties for which he sought CCB Permit applications.

10 10. Petitioner/Plaintiff Hemp Valley, LLC (“HV”) is, and at all times was, a limited
11 liability corporation duly organized and existing under the laws of the State of California, and
12 qualified to do business in California.

13 11. Petitioner/Plaintiff Kerry Burrough is a lifelong resident of the County of Fresno. She
14 received a letter denying her CCB Permit application on behalf of herself and East Olive on June 25,
15 2021.

16 12. Petitioner/Plaintiff East Olive is a partnership organized in the State of California.

17 13. Petitioners are informed and believe that Respondent/Defendant the City is, and at all
18 times mentioned herein was, a charter city incorporated under the laws of the State of California
19 located in the County of Fresno.

20 14. Petitioners are informed and believe that there are no Real Parties in Interest because
21 no applicant for a cannabis business permit has been issued a final permit.

22 15. Petitioners do not know the true names and capacities of the parties named as DOES 1
23 through 50 and, therefore, sue them by fictitious names. Petitioners are informed and believe that
24 DOES 1 through 50 are in some way responsible for the events described in this petition/complaint or
25 impacted by them. Petitioner will seek leave to amend this Petition and Complaint when the true
26 names and capacities of these parties have been ascertained.

27 16. At all times mentioned herein, each respondent/defendant was an agent, principal,
28 representative, alter ego and/or employee of the others and each was at all times acting within the

1 course and scope of said agency, representation and/or employment and with the permission of the
2 others.

3 17. The agency denials of Petitioners' CCB Permit applications constitute final agency
4 subject to judicial review because they forbade Petitioners from advancing beyond Phase Two of the
5 process denial to proceed, thereby leaving them with "no further power to reconsider or rehear the
6 claim." (See *Long Beach Unified Sch. Dist. v. State of Cal.* (1991) 225 Cal.App.3d 155, 169,
7 quoting *Chas. L. Harney, Inc. v. State of Cal.* (1963) 217 Cal.App.2d 77, 98.) Only those applicants
8 who were *approved* for the CCB Permits are entitled to an administrative appeal of such decision.
9 (FMC, § 9-3317, subd. (c) [only allowing administrative appeals from a "decision of the City
10 Manager regarding *approval* of a commercial cannabis business permit"], Italics Added.)

11 18. Thus, Petitioners have exhausted their available administrative remedies, to the
12 extent that there are any.

13 19. Peitioners have no plain, speedy, and adequate remedy at law.

14 20. Petitioners are beneficially interested in the proper and legal evaluation of their
15 applications, in accordance with due process and California law.

16 **THE CITY COUNCIL SOUGHT TO PROVIDE A FAIR SELECTION PROCESS FOR THE**
17 **CCB PERMIT APPLICATIONS THROUGH OBJECTIVE EVALUATION CRITERIA**
18 **THAT ARE QUANTITATIVELY SCORED**

19 **A. Fresno's CCB Ordinance**

20 21. In 2016, the citizens of the State of California passed Proposition 64, thus legalizing
21 commercial cannabis activity and adult recreational use in California. Proposition 64 gave each
22 locality in California the discretion either to allow or prohibit commercial cannabis activities within
23 their local jurisdictions.

24 22. To implement the directives of this state law, the Fresno City Council enacted FMC
25 Chapter 9, Article 33 to regulate "Cannabis Retail Business and Commercial Cannabis Business."
26 (Ord. 2018-68, § 1, effective January 24, 2019) ("CCB Ordinance"). The CCB Ordinance was
27 explicitly designed by the City Council to provide a permitting framework and regulatory
28 requirements for Adult Use and Medicinal Use Cannabis Business. (FMC, § 9-3306, subd. (a).) Its
overriding purpose is to provide access to cannabis for medical use for recreational use by adults,

1 “while imposing sensible regulations on the use of land to protect the city's residents,
2 neighborhoods, and businesses from disproportionately negative impacts.” (FMC, § 9-3301.) A
3 true and correct copy of FMC Chapter 9, Article 33 (the CCB Ordinance) is attached the Declaration
4 of Joseph D. Elford in Support of Petition for Wit of Mandate, Prohibition, or Other Appropriate
5 Relief (“Elford Decl.”), filed herewith, as Exhibit A.

6 23. Section 9-3305 of the CCB Ordinance provides:

7 No person may engage in any commercial cannabis activity within the city unless the
8 person (1) has a valid commercial cannabis business permit from the city (“City
9 CCB Permit”); (2) has a valid state license; (3) has a valid Cannabis Conditional Use
10 Permit; (4) is currently in compliance with all applicable state and local laws; and
11 (5) has a Cannabis Business License Tax certificate.

12 (FMC, § 9-3305.) In order to obtain a City CCB Permit for a cannabis retail business, an applicant
13 must meet the operating requirements for a cannabis retail business, as spelled out in Sections 9-
14 3309 and 9-3310 of the FMC.

15 24. A nonexhaustive list of these operational requirements include the following:

- 16 • a prohibition on the consumption of cannabis at any CCB
17 (FMC, § 9-3309, subd. (a));
- 18 • a prohibition on outwardly visible cannabis-suggestive signage
19 (FMC, § 9-3309, subd. (d), (h));
- 20 • a prohibition on persons under the age of 21 being on the premises of a recreational
21 CCB (FMC, § 9-3309, subd. (i));
- 22 • an odor absorbing ventilation and exhaust system sufficient to make the odor of
23 cannabis undetectable outside the facility (FMC, § 9-3309, subd. (j));
- 24 • an emergency contact and community relations contact
25 (FMC, § 9-3309, subd. (g), (m));
- 26 • limited operational hours (between 6:00 a.m. and 10:00 p.m.)
27 (FMC, § 9-3310, subd. (a)(1));
- 28 • an age verification system (FMC, § 9-3310, subd. (a)(3)); and
- comprehensive security measures (FMC, § 9-3309, subd. (b)).

29 25. The application process, then, proceeds in four phases. Phase One of the Fresno
30 CCB Guidelines involves a review of the CCB Permit application for completeness. (CCB
31 Guidelines [attached to Elford Decl. as Exhibit B] at pp. 4-5.)

1 26. Phase Two of the selection process involves an evaluation of the CCB Applications
2 to provide an initial ranking, out of a total of 1,600 points, based on the following five criteria:

- 3 Section 1. Business Plan (300 points)
- 4 Section 2. Social Policy and Local Enterprise Plan (400 points)
- 5 Section 3. Neighborhood Compatibility Plan (300 points)
- 6 Section 4. Safety Plan (300 points)
- 7 Section 5. Security plan (300 points)

8 (*Id.* at p. 5.) “The top applicants, as determined by the City, which score a minimum of 80% (1,280
9 points) in Phase II will move on to Phase III of the application process.” (*Ibid.*) The remaining
10 applicants who score below this threshold are not permitted to advance to Phase Three.

11 27. Phase Three involves interviews and a second ranking, up to 2,400 points, based on
12 the following:

- 13 Section 1. Business Plan (300 points)
- 14 Section 2. Social Policy & Local Enterprise Plan (500 points)
- 15 Section 3. Neighborhood Compatibility Plan (300 points)
- 16 Section 4. Safety Plan (300 points)
- 17 Section 5. Security Plan (300 points)
- 18 Section 6. Location (200 points)
- 19 Section 7. Community Benefits and Investments Plan (500 points)

20 (*Ibid.*) The Phase Three scores are tabulated and combined with the Phase Two score to establish an
21 overall ranking of the applicants. (*Ibid.*) The top applicants with an aggregate score of at least 80%
22 (3,200 points) or greater will advance to Phase Four of the selection process. (*Ibid.*)

23 28. The last step in the process is Phase Four, which vests in the City Manager the
24 authority to make a final determination regarding the Applicants to be awarded a permit. (*Ibid.*) This
25 phase may require applicants to submit additional information and, in any event, requires them to
26 pass a criminal background check. If successful, permit awardees may then apply for the necessary
27 land use permits, including a Cannabis Conditional Use Permit (“CUP”), and provide Proof of
28 Insurance. (*Ibid.*)

29 29. *Lastly*, and of great import here, the CCB Ordinance vests authority in the City
30 Manager to “develop other commercial cannabis activity operational requirements or regulations as
31 are determined to be necessary to protect the public health, safety and welfare.” (FMC, § 9-3315;
32 see also FMC, § 9-3330, subd. (a) [“In addition to any regulations adopted by the City Council, the

1 City Manager or his/her designee is authorized to establish any additional rules, regulations and
2 standards governing the issuance, denial or renewal of commercial cannabis business permits, the
3 ongoing operation of commercial cannabis businesses and the city's oversight, or concerning any
4 other subject determined to be necessary *to carry out the purposes of this Article*” [Italics Added].)
5 To this end, the CCB Ordinance specifically directs that “[t]he City Manager *shall* adopt the
6 procedures to issue commercial cannabis business permits, *which shall include or require the City*
7 *Manager to provide detailed objective review criteria to be evaluated on a point system or*
8 *equivalent quantitative evaluation scale tied to each set of review criteria.*” (FMC, § 9-3316, subd.
9 (a) [Italics added].)

10 **B. Fresno’s CCB Guidelines**

11 30. In his attempt to carry out the responsibility assigned to him by the City Council, the
12 City Manager, on October 19, 2020, issued his “Application Procedures & Guidelines for a
13 Commercial Cannabis Business Permit” (“CCB Guidelines”). A true and correct copy of the CCB
14 Guidelines, available on the City’s website at [Cannabis-Permit-Application-Procedures-](#)
15 [Guidelines_20201019.pdf \(fresno.gov\)](#), is attached the Elford Decl., filed herewith, as Exhibit B.

16 31. To clarify the evaluation criteria employed by the City in Phases Two and Three of the
17 application process, the City Manager provided additional evaluative criteria in his Appendix to the
18 CCB Guidelines. (*Id.* at 7-11.) With respect to the Business Plan (Section 1 in both Phases Two and
19 Three), the applicant must provide:

- 20 • a resume no longer than two pages to demonstrate their qualifications
21 (*id.* at 7, Section 1.1);
- 22 • a budget for all of the operation costs (*ibid.*, Section 1.2);
- 23 • proof of capitalization (*ibid.*, Section 1.3);
- 24 • a pro forma financial statement for at least three years (*ibid.*, Section 1.4);
25 the hours of operation (*ibid.*, Section 1.5); and
- 26 • a description of the CCB’s daily operations (*ibid.*, Section 1.6).

27 32. For applicants applying for a retail permit, this last criterion entails:

- 28 • a description of customer check-in procedures (*ibid.*, Section 1.6.1, subd. (i));
- identification of the location and procedures for receiving deliveries during business
- hours (*ibid.*, Section 1.6.1, subd. (ii));

- identification of the point-of-sale system to be used (*ibid.*, Section 1.6.1, subd. (iii));
- the estimated number of customers to be served per hour each day (*ibid.*, Section 1.6.1, subd. (iv));
- a description of the proposed product line to be sold, broken down by an estimate of the relative percentage of sales of flower (raw plant material) and manufactured cannabis products (edibles and tinctures) (*ibid.*, Section 1.6.1, subd. (v)); and
- delivery service details, if applying for a delivery permit (*ibid.*, Section 1.6.1, subd. (vi)).

33. Section 2 in Phases Two and Three of the application process – the Social Policy and Local Enterprise Plan – the CCB Guidelines requires the applicant to describe:

- whether the applicant’s business is committed to providing its employees a Living Wage (CCB Guidelines at p. 8, Section 2.1);
- the compensation and benefits provided to them (*ibid.*, Sections 2.2, 2.3);
- efforts that will be made by the applicant to recruit specified individuals, such as veterans, people on public assistance, and people who were convicted for low-level cannabis crimes (*ibid.*, Section 2.4; FMC, § 9-3316, subd. (b)(1));
- the extent to which the applicant’s business will be locally managed and owned (*ibid.*, Section 2.5);
- the number and responsibilities of the business’ employees (*ibid.*, Section 2.6) and other particulars about the business’ employees, such as whether they are allowed to unionize (*ibid.*, Section 2.7);
- whether the business will provide compensation for their continuing education in the field (*ibid.*, Section 2.8); and
- whether the business will serve as an incubator of social equity businesses (*ibid.*, Section 2.9).

In particular, with respect to local employment, the CCB Guidelines require the applicant to commit to hiring a workforce that is 30% Fresno residents, with an emphasis on making good faith efforts “to hire bona fide residents of Fresno who have not established residency after the submission of an application for employment with the applicant/permittee.” (*Ibid.*, Section 2.8.)

34. For Section 3 in both Phases Two and Three – the Neighborhood Compatibility Plan – the CCB Guidelines require the applicant to describe: how the CCB will proactively address complaints relating to noise, light, odor, litter and traffic (*Id.* at p. 9, Sections 3.1, 3.3, 3.4, 3.5, 3.6; how the CCB will be managed to avoid becoming a nuisance (*ibid.*, Section 3.2); and the waste management plan (*ibid.*, Section 3.7).

1 35. With respect to the Safety Plan (Section 4 in Phases Two and Three), the CCB
2 Guidelines require the applicant to consider all possible fire, medical and hazardous situations, and
3 describe: how the Safety Plan will be prepared by a professional fire prevention and suppression
4 consultant (*ibid.*, Section 4.1); accident and incident reporting procedures (*ibid.*, Section 4.2);
5 evacuation routes (*ibid.*, Section 4.3); location of fire equipment (*ibid.*, Section 4.4), and procedures
6 and training for all fire and medical emergencies (*ibid.*, Section 4.5).

7 36. Lastly, with respect Section 5, the Security Plan, the CCB Guidelines require the
8 applicant to provide a Security Plan prepared by a professional a professional security consultant,
9 which describes all access control, inventory control, and cash handling procedures, through
10 diagrams, maps, and security protocols. (*Ibid.*, Section 5.1).

11 37. The remaining criterion in the Ordinance and Guidelines, Sections 6 and 7, involve
12 the location and community benefit plans of the facilities. Because these criteria are only required
13 at Phase Three of the application process and Petitioners did progress this far in the process, they are
14 not discussed here.

15 **C. Petitioners’ CCB Permit Applications**

16 38. In conformity with each of these criteria, Petitioners submitted a total of four
17 applications for CCB Permits (three for HV and one for East Olive) within the timeframe
18 established by the City. Petitioners expended tremendous time and resources preparing their
19 lengthy applications for CCB Permits. True and Correct Copies of HV’s three applications and
20 East Olive’s application for CCB Permits, respectively, are attached to the Elford Decl., filed
21 herewith, as Exhibits C, D, E, F (“Applications”).¹

22
23
24
25 ¹ The three applications submitted by HV are substantively identical, with the exception of several
26 specific differences based on the difference layouts of each of the properties. Because these
27 differences do not appear to affect the legal arguments raised in this petition, Petitioners will cite to
the appropriate page numbers for the application for 4561 N. Blackstone Street (Elford Decl., Exh.
C).

28 Similarly, because the application filed by Petitioner East Olive (Elford Decl., Exh. F)
responds to the same announced criteria as the applications filed by HV, the discussion that follows
cites primarily to the HV application for 4561 N. Blackstone Street for ease of reference.

1 33. Each of the applications provided detailed responses to the criteria articulated by the
2 City in its CCB Ordinance and Guidelines that address all of the announced criteria, and, in many
3 instances, far exceeded them. Peitioners' applications tracked the CCB Ordinance and Guidelines
4 demarcated by section and subsection. Section 1.1 of the HV Applications describe the
5 qualifications and experience of the nine members of the management team. (See Elford Decl.,
6 Exh. D, at pp. 4-12; see also Elford Decl., Exh. F, at p. 5 [describing same for five owners of East
7 Olive].) Even though not required by the Guideline criteria, the HV Applications also included in
8 this Section detailed descriptions of: the management team's past experience in the successful
9 implementation of compliance (Elford Decl., Exh. D, at p. 15); their extensive knowledge of the
10 cannabis industry and commitment to ethical and sustainable business practices (*id.* at pp. 15-16);
11 commitment to social equity (*ibid.*); and their past and current ventures in operating cannabis retail
12 dispensaries (*id.* at pp. 16-20).

13 34. Similarly, Sections 1.2, 1.3, and 1.4 of the Applications, set forth the operating
14 budget for the proposed cannabis retail dispensary, including: construction costs, day-to-day
15 operational expenses, compensation of employees, maintenance costs, equipment costs, proof of
16 capitalization, pro forma financial projections for five years, as well as a host of other operational
17 costs. (Elford Decl., Exh. C, at pp. 27-29; Elford Decl., Exh. F, at p. 6.) Section 1.5 of the
18 Applications describes the hours of operation and the securing of the facility and its inventory
19 during non-business hours. (Elford Decl., Exh. C, at p. 31; Elford Decl., Exh. F, at pp. 7-8.) And
20 Section 1.6 of the Applications provide detailed descriptions of: the protocols for verifying and
21 admitting customers (Elford Decl., Exh. C, at pp. 31-32; Elford Decl., Exh. F, at pp. 8-9); the
22 location and procedures for receiving deliveries, including items not required by the CCB
23 Guidelines, such as: shipment intake and inspection, quality control, rejection of substandard
24 products, inventory storage and security, and inventory records and reconciliation (Elford Decl.,
25 Exh. C, at p. 31; Elford Decl., Exh. F, at pp. 9-11); the point-of-sale software used and their
26 number, as well as inventory records and records of sales, delivery manifests and its Track-and-
27 Trace Account Manager, which are not required by the Guidelines (Elford Decl., Exh. C, at pp. 40-
28 42; see Elford Decl., Exh. F, at p. 11; an estimate of the number of customers the business expects

1 to serve each hour (Elford Decl., Exh. C, at p. 42; Elford Decl., Exh. F, at p. 13; the products to be
2 sold, delineated by the relative sales of flower products and manufactured products (edibles and
3 tinctures) (Elford Decl., Exh. C, at pp. 42-45; Elford Decl., Exh. F, at pp. 13-16; and delivery
4 service procedures, including delivery vehicle loading, delivery drop-off, delivery security,
5 delivery employee communication, and delivery vehicle maintenance (Elford Decl., Exh. C, at pp.
6 45-49; Elford Decl., Exh. F, at pp. 16-18).

7 35. With respect to the Social Policy and Local Enterprise Plan, Section 2 of the CCB
8 Ordinance and Guidelines, Sections 2.1, 2.2., 2.3 and 2.4 of the Applications describe: their Social
9 Equity Hiring Program and paying their employees more than minimum wage (Elford Decl., Exh.
10 C, at pp. 50-51; Elford Decl., Exh. F, at pp 27-34; the benefits Petitioners will provide to their
11 employees, such as health insurance, dental and vision insurance, disability insurance, a retirement
12 plan, paid family medical leave, and paid vacation (Elford Decl., Exh. C, at p. 5; Elford Decl., Exh.
13 F, at p. 41); the amount of compensation to be paid to employees and their required training, as
14 well as the commitment of the Applicant to local hiring (Elford Decl., Exh. D, at pp. 52-53; Elford
15 Decl., Exh. G, at pp. 40-41). Section 2.5, 2.7, and 2.8 of the Applications detail: the ties
16 Petitioners' ownership and management teams have with the City of Fresno; the number and job
17 responsibilities for each of the facility's more than twenty employees; an executed Labor Peace
18 Agreement with the International Longshore and Warehouse Union, and HV's commitment to
19 hiring local applicants for employment, training and education. (Elford Decl., Exh. C, at pp. 52-61;
20 Elford Decl., Exh. F, at pp. 34-47.)

21 36. As required by Section 3 of the CCB Ordinance and Guidelines, the Applications set
22 forth a Neighbor Compatibility Plan describing their: proactive measures to ward off neighbor
23 complaints through community outreach; implementation of standard operating procedures to
24 minimize the CCBs' impact in the neighborhood and the broader community; plan to mitigate odor
25 through early detection of odor sources, cutting-edge ventilation and odor control systems, and
26 regular inspections; and thorough waste management plans. (Elford Decl., Exh. C, at pp. 62-69;
27 Elford Decl., Exh. F, at pp. 53-66.)
28

1 37. With respect to Section 4, the Safety Plan, the Applications detail: their
2 comprehensive fire safety and prevention plan, prepared by an experienced fire prevention expert;
3 their evacuation plan for employees and customers in case of fire, explosions, power outages. spills
4 or leaks, earthquakes, or bombs threats; and, should an emergency arise, evacuation procedures and
5 routes, and the locations of fire extinguishers. The Applications also provide plans for medical and
6 fire emergencies through an emergency “911 system” that reports emergencies and summons
7 emergency providers, evacuation routes, and a list of emergency contacts and employee training, as
8 required by CCB Guidelines, Section 4.5. (Elford Decl., Exh. C, at pp. 70-82; Elford Decl., Exh. F,
9 at pp. 74-84.)

10 38. *Lastly*, with respect to CCB Ordinance and Guideline Section 5 regarding the
11 Security Plan, the Applications describe: how this security plan will be designed and implemented
12 by experienced security experts, including background checks for employees, training them to
13 detect security risks, an inventory control system, regular audits and investigations, product access
14 protocols, a secure plan for customer check-in and entry, surveillance cameras, descriptions of the
15 locations and cannabis activities that will be conducted at the facilities, the use of armored vehicles
16 for cash deposits, strict cash handling and inventory practices, and on-site security guards. (Elford
17 Decl., Exh. C, at pp. 83-99;² Elford Decl., Exh. F, at pp. 91-140.) .

18 **D. The City Manager’s Cursory Denials of Petitioners’ CCB Permit Applications**

19 39. Despite the complete, thorough and professional nature of the proposals submitted
20 by Petitioners, all four of their applications were summarily denied by the Fresno City Manager
21 without any scores, reasoning or other explanation at that time, which prevented Petitioners’
22 applications to proceed beyond Phase Two. True and correct copies of the denial letters are
23 attached to the Elford Decl. as Exhibits G, H, I and J.

24 40. Because many CCB Permit applicants received essentially the same cursory denial
25 letters, the City subsequently released the aggregate scores for the seventy-five CCB Permit
26 applications. A true and correct copy of these aggregate scores provided by the City is attached to
27 _____

28 ² The specifics of the Security Plan have been marked as Confidential and are, therefore, not included herein.

1 the Elford Decl. as Exhibit K. Conspicuously absent from these aggregate scores, is any
2 breakdown of them vis-à-vis the five sections enumerated in the CCB Ordinance or scores for any
3 of individual implementing criteria promulgated by the CCB Guidelines. (*Ibid.*) In light of the
4 significant experience of Petitioners' management teams, their impeccable compliance record, and
5 secure financial foundation, Petitioners were surprised to learn that all of their applications were
6 rejected.

7 41. Petitioners do not have a plain, speedy, and adequate remedy at law and are
8 beneficially interested in Respondents' performance of their legal duty, so writ relief is appropriate.
9 Petitioners have a right to a proper evaluation of their Applications based on objective criteria, which
10 are scored or, otherwise, quantitatively evaluated in accordance with the CCB Ordinance. They are
11 also entitled to an explanation of this process and a statement of reasons for the City Manager's
12 decisions. It now has no other remedy available to it to obtain this result, in which it is beneficially
13 interested, other than to get such performance by issuance of a writ of mandate.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **(Ordinary Mandate – Against the City and DOES 1 through 50)**

17 42 Petitioners incorporate by reference paragraphs 1 through 41 above as though fully set
18 forth herein.

19 43. The City's issuance of CCB Permits is subject to the requirements set forth under the
20 Fresno Municipal Code, in particular, the CCB Ordinance, and California law. The City is
21 responsible for complying with its own ordinance and regulations, as well as California law, and was
22 obligated to "provide detailed objective review criteria to be evaluated on a point system or
23 equivalent quantitative evaluation scale tied to each set of review criteria." (FMC, § 9-3316, subd.
24 (a).) The City was also obligated not to abuse its discretion in scoring and ranking all the
25 applicants using unstated and undisclosed evaluation criteria, and to provide a statement of the
26 reasons for its decisions.

27 44. The City's rejection of Petitioners' applications, its arbitrary and capricious scoring
28 of all the applications for CCB Permits, and its intent to issue such Permits to potentially

1 unqualified applicants, is a violation of California law, making any issuance of CCB Permits
2 illegal, arbitrary, capricious, lacking in evidentiary support and inconsistent with proper procedure.

3 45. Whereas Petitioners' applications were arbitrarily and capriciously scored,
4 Petitioners have a clear, present, legal and beneficial right in seeing that the City follow its own
5 ordinance, and not to abuse its discretion when selecting whom to issue CCB Permits.

6 46. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,
7 other than the writ sought by this Petition. Petitioners have exhausted all available administrative
8 remedies, if any, available to them. The instant Petition was filed within 90 days of the time from
9 which the Petitioners' CCB Permit applications were denied, so this writ petition is timely.
10 Without a writ, Petitioners will lose the opportunity to be issued a CCB Permit. The only means by
11 which Petitioners may compel the City to follow California law is this petition for writ of mandate.

12 **SECOND CAUSE OF ACTION**

13 **(Administrative Mandate – Against the City and DOES 1 through 50)**

14 47 Petitioners incorporate by reference paragraphs 1 through 46 above as though fully set
15 forth herein.

16 48. The City's issuance of CCB Permits is subject to the requirements set forth under the
17 Fresno Municipal Code, in particular, the CCB Ordinance, and California law. The City Council
18 directed the City Manager to "provide detailed objective review criteria to be evaluated on a point
19 system or equivalent quantitative evaluation scale tied to each set of review criteria" (FMC, § 9-
20 3316, subd. (a)), but the City Manager failed to follow this mandate. The City is responsible for
21 complying with its own administrative processes, and the City cannot prejudicially abuse its
22 discretion in its administrative decisions or orders. Because the City's denial of the CCB Permit
23 applications was not made in compliance with the CCB Ordinance and principles of due process,
24 administrative mandamus under Code of Civil Procedure sections 1094.5 and 1094.6 is an
25 appropriate mechanism to seek judicial review. (Cf. *Delta Dental Plan v. Banasky* (1994) 27
26 Cal.App.4th 1598, 1605-1606 [because dentists are entitled to fair procedure, they have the right to
27 seek judicial review under Code of Civil Procedure section 1094.5]; *Jefferson Street Ventures, LLC v.*
28 *City of Indio* (2015) 236 Cal.App.4th 1175, 1197 ["Generally '[t]he grant of a land use permit . . . is

1 an adjudicatory act. A proceeding under Code of Civil Procedure section 1094.5 is the exclusive
2 remedy for judicial review of the . . . administrative action of local level agencies in these
3 circumstances”], quoting *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1211; see also *Allen*
4 *v. Humboldt Cnty. Bd. of Supervisors* (1963) 220 Cal.App.2d 877, 882 [remedy of administrative
5 mandamus to review administrative action is not limited to the administrative agencies specified in
6 the Administrative Procedure Act but is applicable to all administrative agencies, both state-wide and
7 local].)

8 49. In rejecting Petitioners’ applications on the basis of the City Manager’s ill-defined
9 evaluation criteria, which lack an announced point-scoring system or quantitative equivalent, the
10 City has not proceeded in the manner it was required to, and its decision is not supported by the
11 findings of the City Manager. Thus, the City has violated California law, as well as due process.

12 50. Petitioners’ CCB Permit applications were arbitrarily and capriciously scored, based
13 on unannounced selection criteria. Petitioners have a clear, present, legal and beneficial right in
14 accurate scoring and seeing that the City follows its own ordinance, and not to abuse its discretion
15 when selecting whom to issue CCB Permits.

16 51. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,
17 other than the writ sought by this Petition. Petitioners have exhausted all available administrative
18 remedies, if any, available to them. The instant Petition was filed within 90 days of the time from
19 which the Petitioners’ CCB Permit applications were denied, so this writ petitioner is timely.
20 (Code Civ. Proc., § 1094.6, subd. (b).) Without a writ, Petitioners will lose the opportunity to be
21 issued a CCB Permit. The only means by which Petitioners may compel the City to follow
22 California law is this Petition for writ of mandate.

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1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief – Against the City and DOES 1 through 50)**

3 52. Petitioners incorporate by reference paragraphs 1 through 51 above as though fully set
4 forth herein.

5 53. An actual controversy has arisen and now exists between Petitioners and Respondents
6 concerning their respective rights, liabilities, obligations and duties with respect to Petitioners' CCB
7 Permit applications.

8 54. A declaration of rights is necessary and appropriate at this time in order for the parties
9 to ascertain their respective rights, liabilities and obligations because no adequate remedy other than
10 as prayed for exists by which the rights of the parties may be ascertained.

11 55. Accordingly, Petitioners request a judicial declaration of the rights, liabilities, and
12 obligations of the parties. Specifically, Petitioners request a judicial determination that the City must
13 score their applications, in accordance with the CCB Ordinance and California law.

14 56. Unless the City is enjoined from issuing any CCB Permits to retail cannabis
15 dispensaries, Petitioners will suffer great and irreparable injury, the complete extent cannot be
16 ascertained at this time and for which Petitioners do not have any adequate remedy at law.
17 Petitioners, thus, seek to enjoin the City from issuing any CCP Permits before Petitioners have the
18 opportunity to have their petition heard and ruled upon.

19 **FOURTH CAUSE OF ACTION**

20 **(Promissory Estoppel – Against the City and DOES 1 through 50)**

21 57. Petitioners incorporate by reference paragraphs 1 through 56 above as though fully set
22 forth herein.

23 58. The Fresno Municipal Code and its CCB Ordinance contained a promise that all CCB
24 Permits would be issued in accordance with the terms and conditions described therein, and in
25 accordance with California law. The City was reasonably aware that applicants would rely on this
26 promise.

27 59. In preparing and submitting their applications to the City, Petitioners detrimentally
28 relied on the promise by the City that CCB Permits would be awarded in accordance with the CCB

1 Ordinance and California law. Petitioners' reliance was reasonable and foreseeable to the City. The
2 City's intent to issue CCB Permits in contravention of its own CCB Ordinance is inconsistent with
3 California law, as set forth above. Thus, the City breached its promise to the Petitioners.

4 60. Inequity would result if the City were allowed to go back on its promise. Petitioners
5 expended time, money and resources in preparing and submitting its applications for the CCB
6 Permits. Petitioners' application preparation costs are currently unknown at this time and are
7 according to proof at trial, but are in an amount that exceeds the jurisdictional threshold of this Court.
8 Petitioners suffered damages by virtue of its reliance on the City's promise and the breach of that
9 promise, and Petitioners are entitled to reliance damages, together with interest at the maximum rates
10 allowed by law. Notably, this is an inadequate legal remedy for Petitioners, as they have no ability to
11 recover their expectation damages created by the City's unlawful conduct. (See *Kajima/Ray Wilson*
12 *v. L.A. Cnty. Metropolitan Trans. Auth.* (2000) 23 Cal.App.4th 305.)

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioners pray as follows:

15 61. For a writ of mandate to be issued under seal of this Court that (a) enjoins the City
16 from issuing any CCB Permits relating to storefront retail cannabis activity under the CCB
17 Ordinance; (b) to the extent the City has already issued any such permits prior to the Court's issuance
18 of mandamus relief, declares that such permits are null and void; (c) orders the City to reinstate
19 Petitioners' CCB Permit applications and to comply with the City's duty to correctly rescore
20 Petitioners' CCB Permit applications based only on objective, quantitatively evaluated criteria that has
21 been publicly disclosed to all applicants and (d) orders the City to discard the arbitrary, capricious
22 and erroneous scoring results at Phase Two of the CCB Permit selection process with respect to
23 Petitioners.

24 62. For an alternative writ of mandate and order to show cause why a peremptory writ
25 should not issue granting the writ relief sought by Petitioners.

26 63. A declaration that the City must reinstate Petitioners' CCB Permit applications based
27 only on the criteria stated in the CCB Ordinance and objective, quantitatively evaluated criteria that has
28 been publicly disclosed to all applicants, in accordance with section 9-3316 of the FMC.

1 64. For a temporary restraining order precluding the City from issuing any CCB permits
2 relating to storefront retail cannabis commercial activity under the CCB Ordinance pending hearing
3 on Petitioners’ request for preliminary injunction.

4 65. For preliminary and permanent injunctions restraining the City from issuing any CCB
5 permits relating to storefront retail cannabis commercial activity under the CCB Ordinance until: (a)
6 the City has reinstated Petitioners’ applications and has completed a full and proper rescoring of
7 Petitioners’ CCB Permit applications based only on objective, quantitatively evaluated criteria that has
8 been publicly disclosed to all applicants; and (b) the City has discarded the arbitrary, capricious, and
9 erroneous scoring results provided by the City Manager with respect to Petitioners’ applications.

10 66. Alternatively, for remand of the matter to the City to: (a) rescore Petitioners’
11 applications based only on objective, quantitatively evaluated criteria that have been publicly disclosed
12 to all applicants and/or for clarification of the reasons for its decisions.

13 67. For general damages in an amount sufficient to reimburse Petitioners for their
14 application preparation costs, which amount shall be proved at trial, plus interest at the maximum
15 legal rate according to proof.

16 68. For recovery of costs, including attorneys’ fees, pursuant to Code of Civil Procedure
17 section 1021.5 (as applicable).

18 69. Such further relief as the Court deems proper and just.

20 DATED: September 23, 2021 Respectfully Submitted,

22 /s/ Joseph D. Elford
23 Counsel for Petitioners

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1 **VERIFICATION**

2 I, Pietro De Santis am the sole owner of Hemp Valley, LLC and an individual Petitioner in
3 this action. I have read the instant Verified Petition for Writ of Mandate, Prohibition, or Other
4 Appropriate Relief.

5 The matters stated in the Petition are true based on either my own knowledge, or information
6 and belief where stated.

7 I declare under penalty of perjury that the foregoing is true and
8 correct. Executed on September 23, 2021, in Fresno, California.

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12 PIETRO DE SANTIS
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VERIFICATION

1
2 I, Kerry Burrough, am an owner and President of 861 E. Olive Partners and a Petitioner in this
3 action. I have read the instant Verified Petition for Writ of Mandate, Prohibition, or Other
4 Appropriate Relief.

5 The matters stated in the Petition are true based on either my own knowledge, or information
6 and belief where stated.

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

8 Executed on September 23, 2021, in Clovis, California.

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11 KERRY BURROUGH
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **PROCEDURAL HISTORY AND RELEVANT FACTS**

3 The relevant procedural history and relevant facts are set out in the petition, *ante*, at ¶¶ 21-
4 40.

5 **PROPRIETY OF WRIT REVIEW**

6 Courts have affirmed the propriety of writ review for challenges to medical marijuana
7 regulations (see *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1089, citing *Cnty.*
8 *of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312 and *Qualified Patients Assn. v. City of*
9 *Anaheim* (2010) 187 Cal.App.4th 734), as well as to challenges to administrative decisions
10 involving land use (see *City of Monterey, supra*, 215 Cal.App.4th at p. 1089; see also *post* at pp.
11 21-24.)

12 **ARGUMENT**

13 **I. A WRIT OF MANDATE SHOULD ISSUE TO COMPEL THE CITY TO**
14 **EVALUATE PETITIONERS' CCB PERMIT APPLICATIONS, AS**
15 **DIRECTED BY THE CITY COUNCIL THROUGH THE CCB ORDINANCE**
16 **AND TO REVEAL ITS SCORING DETERMINATIONS, AS WELL AS THE**
17 **REASONS FOR ITS DECISIONS**

18 **A. Applicable Legal Principles**

19 Two California statutes provide for judicial review of agency action. The default method of
20 judicial review of agency actions is through what is known as “traditional mandamus” (also
21 referred to as “ordinary mandamus”), as provided by Code of Civil Procedure section 1085.³ By
22 contrast, “administrative mandamus” under Code of Civil Procedure section 1094.5 is the vehicle
23 to challenge agency action requiring an inquiry “into the validity of any final administrative order or
24 decision made as the result of a proceeding in which by law a hearing is required to be given,

25 ³ Code of Civil Procedure, § 1085, subd. (a) provides, in pertinent part, as follows:

26 (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation,
27 board, or person, to compel the performance of an act which the law specially enjoins,
28 as a duty resulting from an office, trust, or station, or to compel the admission of a
party to the use and enjoyment of a right or office to which the party is entitled, and
from which the party is unlawfully precluded by that inferior tribunal, corporation,
board, or person.

1 evidence is required to be taken, and discretion in the determination of facts is vested in the inferior
2 tribunal, corporation, board or officer. . . .” (Code Civ. Proc., § 1094.5, subd. (a).)⁴ While
3 administrative mandamus under Code of Civil Procedure section 1094.5 is clearly available to
4 challenge a specific decision in an administrative hearing as to a particular individual, “section
5 1094.5 does not preclude a broader challenge to agency conduct or procedures alleged to breach the
6 agency’s statutory obligations.” (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752, citing *Timmons*
7 *v. McMahon* (1991) 235 Cal.App.3d 512, 517, 518.) “It is not inconsistent to award relief under both
8 sections 1094.5 and 1085 of the Code of Civil Procedure.” (*Id.* at p. 752, citing *Fry v. Saenz* (2002)
9 98 Cal.App.4th 256; cf. *So. Cal. Cement Masons Joint Apprenticeship Comm. v. Cal. Apprenticeship*
10 *Council* (2013) 213 Cal.App.4th 1531, 1541 [recognizing that case fell “between the statutory cracks”
11 of § 1085 and § 1094.5 writ review, but concluded it could be decided without determining which
12 writ is appropriate]; see also *Dept. of Health Care Serv. v. Office of Admin. Hearings* (2016) 6
13 Cal.App.5th 120, 141 [immaterial whether case arose under § 1085 or § 1094.5 since it presented
14 solely questions of law on undisputed facts].)

15 *i. Traditional Mandamus Under Code of Civil Procedure Section 1085*
16 *Requires De Novo Review*

17 The standard of review for traditional mandamus (Code Civ. Proc., § 1085), calls for the court
18 to determine whether “the agency's decision was arbitrary, capricious or entirely lacking in
19 evidentiary support, contrary to established public policy, unlawful or procedurally unfair.” (*Cal.*
20 *Pub. Records Research, Inc. v. Cnty. of Alameda* (2019) 37 Cal.App.5th 800, 806.) Under this
21 deferential standard of review, the court's role is to “ensure that the administrative agency has
22 adequately considered all relevant factors, and has demonstrated a rational connection between those

24 ⁴ Review of administrative actions under Code of Civil Procedure section 1094.5 is made applicable
25 to decisions of local agencies by Code of Civil Procedure section 1094.6. (Code Civ. Proc., § 1094.6,
26 subd. (a); see also FMC, § 1-310 [“the provisions of Section 1094.6 of the California Code of Civil
27 Procedure shall be applicable to all adjudicatory decisions of the Council, any board or commission
28 established pursuant to the Charter or this Code, and any hearing officer”].) The City Manager
qualifies as “a local agency . . . or . . . board” under section 1094.6. (Cf. *Morton v. Superior Court*
(1970) 9 Cal.App.3d 977, 982 [“It lies within the power of the administrative agency (in this case the
city manager). . . .”].)

1 factors, the choices made, and the purposes of the enabling statute.” (*Golden Drugs Co., Inc. v.*
2 *Maxwell-Jolly* (2009) 179 Cal.App.4th 1455, 1471; *O.W.L. Found. v. City of Rohnert Park* (2008)
3 168 Cal.App.4th 568, 586.) The appellate court applies the same standard of review as the trial court,
4 reviewing the agency’s action de novo. (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63
5 Cal.App.5th 277, 298, citing *Am. Bd. Of Cosmetic Surgery v. Med. Bd. of Cal.* (2008) 162
6 Cal.App.4th 534, 547-548; *Friends of the Old Trees v. Dept. of Forestry & Fire Prevention* (1997) 52
7 Cal.App.4th 1383, 1393.)

8 ii. *Administrative Mandamus Under Code of Civil Procedure Sections 1094.5 and*
9 *1094.6 Calls for Independent Judgment*

10 In administrative mandamus cases, Code of Civil Procedure section 1094.5 sets forth the
11 standard of review as follows:

12 The inquiry in such a case shall extend to the questions whether the respondent has
13 proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and
14 whether there was any prejudicial abuse of discretion. Abuse of discretion is
15 established if the respondent has not proceeded in the manner required by law, the
order or decision is not supported by the findings, or the findings are not supported by
the evidence.

16 (Civ. Code Civ. Proc., § 1094.5, subd. (b)); *Clary v. City of Crescent City* (2017) 11 Cal.App.5th 274,
17 284.) “When a petitioner contends the findings are not supported by the evidence in the
18 administrative record, the standard of review is either the substantial evidence or the independent
19 judgment standard. (*Inzana v. Turlock Irrigation Bd. of Directors* (2019) 35 Cal.App.5th 429, 438,
20 citing *Strumsky v. San Diego Cnty. Employees Ret. Assn.* (1974) 11 Cal.3d 28, 32.) However, if the
21 evidence is undisputed and not subject to conflicting inferences, or the administrative decision rests
22 on an interpretation or application of a statute or ordinance, a question of law is presented for [the
23 court’s] independent review.” (*Inzana, supra*, 35 Cal.App.5th at p.439; cf. *Communities for a Better*
24 *Env’t. v. Energy Res. Conservation and Dev. Com.* (2020) 57 Cal.App.5th 786, 815 [“In conducting
25 their essential judicial review function, courts review agency findings under either the substantial
26 evidence or independent judgment standard, depending on the gravity of the right at issue”].)
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1 Because the evidence is undisputed, and is based on the application of an ordinance, courts exercise
2 their “independent judgment” in reviewing the agency’s decision. (*Cf. Inzana, supra.*)⁵

3 **B. The CCB Guidelines Are Invalid Because They Do Not Comply with the City**
4 **Council’s Directive “to Provide Detailed Objective Review Criteria to be**
5 **Evaluated on a Point System or Equivalent Quantitative Evaluation Scale Tied**
6 **to Each Set of Review Criteria”**

7 To ensure that CCB applications would be fairly considered based on their merit, which is
8 made especially necessary by the limited number and value of the CCB Permits sought by seventy-
9 five applicants, the City Council directed the City Manager to “adopt the procedures to issue
10 commercial cannabis business permits, which shall include or require the City Manager to provide
11 detailed objective review criteria to be evaluated on a point system or equivalent quantitative
12 evaluation scale tied to each set of review criteria.” (FMC, § 9-3316, subd. (a).)⁶ The need for a

13 ⁵ Judicial review in administrative mandamus cases (Code Civ. Proc., § 1094.5) requires the
14 petitioner to submit the complete administrative record where necessary to determine how to resolve
15 a dispute over the sufficiency of the evidence. (See, e.g., *Caveness v. State Personnel Bd.* (1980) 113
16 Cal.App.3d 617, 630.) And judicial review in traditional mandamus actions (Code of Civ. Proc., §
17 1085) follows similar record procedures, depending on the what records are available and whether
18 there is an evidentiary dispute. (*Cf. Western States Petroleum Assn. v. Superior Court* (1995) 9
19 Cal.4th 559, 576 [although extra-record evidence is generally not admissible in traditional mandamus
20 actions challenging quasi-legislative administrative decisions, such extra-record evidence is
21 admissible in in traditional mandamus actions challenging “informal” agency actions]; *Carrancho v.*
22 *Cal. Air Res. Bd.* (2003) 111 Cal.App.4th 1255, 1269 [defining “informal” agency actions as those
23 that do not require a hearing; “In the absence of a hearing, the record documenting the agency's
24 action will not provide an adequate basis for judicial review. In such a case a reviewing court may
25 hear extra-record evidence.”], citing 2 Kostka & Zischke, *Practice Under the California*
26 *Environmental Quality Act* (Cont.Ed.Bar 2003) Judicial Review, § 23.52, pp. 969–970.) Petitioners
27 have requested the complete administrative record from the Fresno City Council, so it should be
28 available well-before five days before any hearing in this matter. (*Cf. Cal. Rules of Court*, rule
3.1140 [“The party intending to use a part of the administrative record in a case brought under Code
of Civil Procedure section 1094.5 must lodge that part of the record at least five days before the
hearing”].) In any event, Petitioners has submitted all of the correspondence between themselves and
the City Manager, including the CCB Permit Applications (Elford Decl., Exhs. C, D, E, F), the denial
letters issued by the agency (Elford Decl., Exhs. G, H, I, J), and the aggregate scores (Elford Decl.,
Exh. K), so the content of the administrative record for this writ should be complete.

⁶ Unfortunately, with the vesting of broad local authority in licensing and regulating cannabis
ventures came the evils of corruption and graft. This is primarily due to two factors. The *first* is the
enormous size of the cannabis market, which has been estimated to total \$52 billion. (Brydne Slatter,
High Costs: Corruption Scandals in America’s Legal Marijuana Industry, The Global Anti-
Corruption Blog, Feb. 28, 2020 [Elford Decl., Exh] [hereinafter *Slatter*] at p. *1; cf. GAI, *Cannabis*

1 fair, objective review process based on a point system or equivalent quantitative evaluation scale
2 essential to the CCB Ordinance’s purpose to “protect the city’s residents, neighborhoods, and
3 businesses from disproportionately negative impacts.” (FMC, § 9-3309.)

4 At the outset it must be noted the City Council’s direction to the City Manager to formulate
5 objective criteria scored in a quantitative manner is mandatory rather than permissive, as evidenced
6 by its use of the term “shall, rather than “may.” (See FMC, § 1-204, subd. (e), (f) [“‘May’ is
7 permissive.” “‘Must’ and ‘Shall’ are mandatory.”]; *Newland v. Kizer* (1989) 209 Cal.App.3d 647,
8 655 [interpreting “shall as mandatory and “may” as permissive].) And the CCB Guidelines amount
9 to “regulations.” (Cf Cal. Code Regs., tit. 1, § 250, subd. (a) [“‘Underground regulation’ means any
10 guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule,
11 including a rule governing [a state agency],” but has not been formally adopted as a regulation under
12 the APA.) Despite the mandatory nature of the City Council’s directive, the City Manager failed to
13 draft the CCB Guidelines, according to the City Council’s instructions. (See *Ellena v. Dept. of Ins.*
14 (2014) 230 Cal.App.4th 198, 205 [“Where a statute or ordinance clearly defines the specific duties or
15 course of conduct that a governing body must take, that course of conduct becomes mandatory and
16 eliminates any element of discretion”].)

17 Rather than draft the CCB Guidelines in the manner directed by the City Council, the City
18 Manager promulgated a tangled list of criteria that do not include a point system (or its equivalent)
19 and fail to provide for “detailed objective review criteria.” (Cf. FMC, § 9-3316, subd. (a).)
20 Whereas the CCB Ordinance sets forth five criteria sections for Phase Two, which state the number
21 of points that can be awarded to an applicant within each section, the City Manager did not ascribe

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24 *Cronyism*, Feb. 2021 [Elford Decl., Exh. M] [hereinafter *Cannabis Cronyism*] at p. 2 [“cannabis has
25 evolved into a nearly \$21 billion industry that lobbies, pressures, and rewards politicians who look
26 out for it”], citation omitted). *Second*, “in most [localities] the license evaluation criteria, and the
27 evaluation process, are extremely opaque, and local government officials frequently have substantial
28 discretion regarding who receives these licenses.” (*Ibid.*) Where state and local officials are given
such great power to issue a small number of extremely valuable licenses through an opaque process,
“it should come as no surprise that the legal marijuana market has become a hotbed for corruption.”
(*Ibid.*; see also *Cannabis Cronyism*, *supra*, at p. 2 [“As with any economic activity regulated by the
government, affected businesses seek an advantage by hiring insiders who have access to those close
to the regulatory process. They also make campaign contributions to well-positioned politicians.”];

1 any point scores (or an equivalent quantitative evaluation system) for the additional criteria he
2 added to the five sections for Phase Two contained in the CCB Ordinance (see Elford Decl., Exh.
3 B). This lack of objective criteria in the CCB Guidelines, together with its lack of a point scoring
4 system, cannot assure the petitioner or the public that the CCB Permits applications were assessed
5 objectively in an even-handed manner. (See *Banknote Corp. of Am. v. U.S.* (2003) 56 Fed.Cl. 377,
6 383, *aff'd*, 365 F.3d at 1345 (2004) [“it is beyond peradventure that a contracting agency must treat
7 all offerors equally, evaluating proposals evenhandedly against common requirements and evaluation
8 criteria”]; cf. *O’Brien v. Town of Caledonia* (7th Cir. 1984) 748 F.2d 403, 408 [finding phrase
9 “leading to serious discredit to the town” to be unconstitutionally vague “as it lacks objective
10 criteria and can only be subjectively applied”]; *Bence v. Breier* (7th Cir. 1974) 501 F.2d 1185, 1190
11 [holding term “conduct unbecoming a member and detrimental to the service” to be
12 unconstitutionally vague for same reasons].) The subjective evaluation criteria employed by the
13 City Manager do not constrain his discretion, as required by the CCB Ordinance and basic
14 principles of due process.

15 When evaluating the validity of a regulation, the court first “ask[s] whether the regulation is
16 ‘consistent with and not in conflict with’ the provision that authorizes it.” (*In re Gadlin* (2020) 10
17 Cal.5th 915, 926, citing *Morris v. Williams* (1967) 67 Cal.2d 733, 748 (In Bank); accord *In re*
18 *Guise* (2021) 66 Cal.App.5th 933, 281 Cal.Rptr.3d 558, 563.)⁷ “We then inquire whether the
19 regulation is reasonably necessary to effectuate the purpose of the authorizing law.” (*In re Gadlin*,
20 *supra*, 10 Cal.5th at p. 926; cf. Gov. Code, § 11342.2 [“Whenever by the express or implied terms of
21 any statute a state agency has authority to adopt regulations to implement, interpret, make specific or
22 otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless
23 consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of

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25 *Cannabis Cronyism*, *supra* at p. 5 [“evidence suggests that the current California framework allows
26 for increased corruption in a system where ‘money talks’”].)

27 ⁷ Many of the cases cited in this section involve regulations promulgated by state agencies, rather
28 than local ones, so California’s Administrative Procedure Act, Gov. Code, § 11340 et seq. (“APA”) does not technically apply to the Fresno City Manager. Nevertheless, the principles articulated in those authorities are helpful in determining what due process requires. (See *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90, described *ante* at p. 36.)

1 the statute”]; accord *Woods v. Superior Court* (1981) 28 Cal.3d 668, 679 (In Bank.) “The task of the
2 reviewing court in such a case ‘is to decide whether the [agency] reasonably interpreted the
3 legislative mandate.’” (*Woods, supra*, 28 Cal.3d at p. 679, quoting *Credit Ins. Gen. Agents Assn. v.*
4 *Payne* (1976) 16 Cal.3d 651, 657.) “Administrative regulations that alter or amend the statute or
5 enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down
6 such regulations.” (*Woods, supra*, 28 Cal.3d at p. 679, quoting *Morris, supra*, 67 Cal.2d at p. 748.)
7 Were it otherwise, as described below, the enabling legislation would constitute the improper
8 delegation of authority to the agency. (Cf. *Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-376 (In
9 Bank) [“legislative power may properly be delegated if channeled by a sufficient standard;” the
10 “grant of authority [must be] . . . accompanied by safeguards adequate to prevent its abuse”]; see
11 also *Kugler, supra*, 69 Cal.2d at pp. 375-376, quoting *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic*
12 *Beverage Control* (1966) 65 Cal.2d 349, 369; *Kugler, supra*, 69 Cal.2d at pp. 376-377 [legislative
13 branch must “establish an effective mechanism to assure the proper implementation of its policy
14 decisions” when delegating power] .)

15 In short, the benchmark for determining whether an unlawful delegation has occurred focus
16 on whether the “Legislature ‘provide[d] an adequate yardstick for the guidance of the administrative
17 body empowered to execute the law.’” (*Monsanto Co. v. Office of Env'tl. Health Hazard Assessment*
18 (2018) 22 Cal.App.5th 534, 557, quoting *Gerawan Farming, Inc. v. Agric. Relations Bd.* (2017) 3
19 Cal.5th 1118, 1150; see also *Carson Mobilehome Park Owners’ Assn. v. City of Carson* (1983) 35
20 Cal.3d 184, 190 [“An unconstitutional delegation of authority occurs only when a legislative body . . .
21 fails to provide adequate direction for the implementation of that policy”]; *Henry’s Restaurants of*
22 *Pomona, Inc. v. State Bd. of Equalization* (1972) 23 Cal.App.3d 120, 125 [delegation of authority to
23 an agency is proper only if “discretion is executed within the scope of the controlling statute”].)
24 Thus, either the Fresno City Council improperly delegated power to the City Manager by failing to
25 provide adequate safeguards, or the City Manager improperly abused the power delegated to him by
26 failing to following the City Council’s instructions. (Cf. *Planned Parenthood of Wisconsin, Inc. v.*
27 *Van Hollen* (W.D. Wis. 2014) 23 F.Supp.3d 956, 963 [“The power to prohibit licensure may not
28 constitutionally be placed in the hands of hospitals. Such an impermissible delegation without

1 standards or safeguards to protect against unfairness, arbitrariness, or favoritism is void for lack
2 of due process.”.) Either way, the City violated due process. (Cf. *Grayned v. City of Rockford*
3 (1972) 408 U.S. 104, 109 [a statute is void for vagueness if it “impermissibly delegates basic policy
4 matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with
5 attendant dangers of arbitrary and discriminatory application”]; accord *People v. Superior Court*
6 (*Caswell*) (1988) 46 Cal.3d 381, 404.)

7 **C. The City’s Denials of Petitioners’ CCB Permit Applications, Which Were Not**
8 **Evaluated by Objective Criteria and Do Not Include a Statement of Reasons for**
9 **these Decisions, Violate Due Process**

10 At its core, due process is “intended to secure the individual from the arbitrary exercise of the
11 powers of government.” (*Hurtado v. California* (1986) 110 U.S. 516, 527, quoting *Bank of*
12 *Columbia v. Okley* 1819) 17 U.S. 235, 244; see also *Wolff v. McDonnell* (1974) 418 U.S. 539, 558
13 [“The touchstone of due process is protection of the individual against arbitrary action of
14 government”], citing *Dent v. West Virginia* (1889) 129 U.S. 114, 123.) “Just as in a judicial
15 proceeding, due process in an administrative hearing also demands an *appearance* of fairness.”
16 (*Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90], Italics Added.)
17 The liberty and property interests protected by due process are intricately intertwined in our political
18 system. (See *Lynch v. Household Fin. Corp.* (1972) 405 U.S. 538, 552 [Justice Stewart for the Court
19 observing that “a fundamental interdependence exists between the personal rights to liberty and the
20 personal right in property.”) The court explained in *Golden Day Schools, Inc. v. State Dept. of Ed.*
21 (2000) 83 Cal.App.4th 695:

22 ‘Liberty’ and ‘property,’ the twin interests protected by constitutional due process,
23 “are broad and majestic terms. They are among the ‘[g]reat [constitutional] concepts . .
24 . purposely left to gather meaning from experience. . . . [T]hey relate to the whole
25 domain of social and economic fact, and the statesmen who founded this Nation knew
26 too well that only a stagnant society remains unchanged.”

27 (*id.* at p. 704, quoting *Bd. of Regents v. Roth* (1972) 408 U.S. 564, 571 (*Roth*)).

28 This observation derives from the Court’s much earlier description of due process as follows:

While this court has not attempted to define with exactness the liberty thus
guaranteed, the term has received much consideration and some of the included things
have been definitely stated. *Without doubt, it denotes not merely freedom from bodily*

1 *restraint but also the right of the individual to contract, to engage in any of the*
2 *common occupations of life, to acquire useful knowledge, to marry, establish a home*
3 *and bring up children, to worship God according to the dictates of his own conscience,*
4 *and generally to enjoy those privileges long recognized at common law as essential to*
5 *the orderly pursuit of happiness by free men.*

6 (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399, Italics added [collecting cases]; *accord Roth, supra*,
7 408 U.S. at p. 572; *see also Cafeteria Workers v. McElroy* (1961) 367 U.S. 886, 895 [“The very
8 nature of due process negates any concept of inflexible procedures universally applicable to every
9 imaginable situation.”]).

10 Once it has been shown that either a liberty or property interest is implicated, the court must
11 determine what process is due. (*See, e.g., Morrissey v. Brewer* (1972) 408 U.S. 471, 481, quoted in
12 *Golden Day Schools, supra*, 83 Cal.App.4th at 708.) In *Matthews v. Eldridge* (1976) 424 U.S. 319,
13 the Supreme Court articulated three factors that guide decisions about “what process is due.” (*Id.* at
14 p. 333.) “They are: (1) the private interest that will be affected by the official action; (2) the risk of
15 an erroneous deprivation of such interest through the procedures used and the probable value, if any,
16 of alternative or substitute procedural safeguards; and (3) the government interest, including the
17 function involved and the fiscal and administrative burdens that the additional or substitute
18 procedural requirement would entail.” (*Golden Day Schools, supra*, 83 Cal.App.4th at 708, quoting
19 *Matthews, supra*, 424 U.S. at p. 333.) Notably, California courts have added a fourth factor in their
20 consideration of due process under state law – “the dignitary interest in informing individuals of the
21 nature, grounds, and consequences of the action and in enabling them to present their side of the story
22 before a responsible government official.” *Today’s Fresh Start, Inc. v. L.A. Cnty. Office of Ed.*
23 (2013) 57 Cal.4th 197, 213, quoting *People v. Allen* (2008) 44 Cal.4th 843, 862-863; *see also Saleeby*
24 *v. State Bar of California* (1985) 39 Cal.3d 547, 564 [noting that federal courts “have continued to
25 focus on the differences between “expectancies” and “entitlements,” but California “has expanded
26 upon the federal analytical base by focusing on the administrative process itself”].)

26 *i. Petitioners Have a Property Interest in the Use to Which They Put Their Land*

27 “Property” for due process purposes includes traditional forms of property, such as real estate,
28 personal property or money. (The Rutter Group, *California Practice Guide: Administrative Law*, §
3:51 (December 2000).) One way to view the property interest at issue here, which is *not* the view

1 advanced by Petitioners here, is the right to *obtain* a CCB Permit. This view has been rejected in
2 California. (Cf. *Golden Days Sch., Inc. v. State Dept. of Educ.* (2000) 83 Cal.App.4th 695, 704
3 [“the right to bid on a contract is not a property right.”]; see also *Stacy & Witbeck, Inc. v.*
4 *City & Cnty. of S.F.* (1985) 36 Cal. App. 4th 1074, 1086 fn. 6 [“[T]here is no entitlement and no
5 protected [property] interest ... in bidding on future public works projects in the City.”].)

6 Another way to view the property right at issue here, which *is* the view advanced by the
7 Petitioners, is the right to control the land they own or rent. Under the “entitlement” view of property
8 found in *Roth, supra*, an applicant’s interest in obtaining a permit only rises to the level of a property
9 interest protected by due process where there is either a certainty or very strong likelihood that an
10 applicant would have obtained the permit, absent the alleged due process violation. (*Yale Auto Parts,*
11 *Inc. v. Johnson* (2d Cir. 1985) 758 F.2d 54, 59; see *River Park, Inc. v. City of Highland Park* (7th Cir.
12 1994) 23 F.3d 164, 165 [“Without a legitimate claim of entitlement, there is no property interest”
13 under *Roth*], citing *Bd. of Regents v. Roth, supra*, 408 U.S. at pp. 576-578; *Perry v. Sinderman* (1972)
14 408 U.S. 593, 601.) Judge Newman posited in *RRI Realty Corp. v. Inc. Vill. of Southampton* (2d Cir.
15 1989) 870 F.2d 911, that “[i]t is not readily apparent why land use regulation cases that involve
16 applications to local regulators have applied the *Roth* entitlement test to inquire whether an
17 entitlement exists in what has been applied for – whether a zoning variance, a business license, or a
18 building permit – instead of simply recognizing the owner’s indisputable property interest in the land
19 he owns and asking whether local government has exceed the limits of substantive due process in
20 regulating the plaintiff’s use of his property by denying the application arbitrarily and capriciously.”
21 (*Id.* at p. 917 [footnote omitted]; see also *Bello v. Walker* (3d Cir. 1988) 840 F.2d 1124, 1129
22 [focusing exclusively on whether the local land use regulator acted arbitrarily and capriciously
23 without inquiry as to whether the protected property interest is in the land the plaintiff owns and is
24 seeking to use or in the permit he requires for his intended use; “the deliberate and arbitrary abuse of
25 government power violates an individual’s right to substantive due process”], abrogation on other
26 grounds recognized by *United Artists Theatre Cir., Inc. v. Township of Warrington, PA* (3d Cir.
27 2006) 316 F.3d 392; cf. *The Rutter Group, California Practice Guide: Administrative Law*, § 3:87
28 (December 2000) [“One way to analyze [cases involving agency discretion] is to argue that the

1 discretionary/nondiscretionary distinction does not apply to decisions relating to land use, given that
2 real estate is a traditional form of property rather than “entitlement” (new property) such as
3 employment or public assistance benefit rights”].)

4 In *River Park, Inc. v. City of Highland Park* (7th Cir. 1994) 23 F.3d 164, Judge
5 Easterbrook succinctly and eloquently described the distinction between the “entitlement”
6 theory and the traditional view of property as the right to control one’s land as follows:

7 For the reasons the district court gave, River Park may well have lacked a
8 property interest in one classification rather than another. But it surely had a property
9 interest in the land, which it owned in fee simple, and it is therefore entitled to contend
10 that the City’s regulation of that land deprived it of property without due process. . . .
11 Zoning classifications are not the measure of the property interest but are legal
12 *restrictions* on the use of property.

11 * * *

12 Those things people can hold or do without the government’s aid count as property or
13 liberty no matter what criteria the law provides.

14 * * *

14 So River Park was entitled to due process of law.

15 (*Id.* at pp. 165-166, citing *Euclid v. Ambler Realty, Co.* (1926) 272 U.S. 365.)

16 The same is true here. While Petitioners may not have a property right in obtaining a CCB
17 Permit, they had a property right to control the land that they own or rent without government
18 interference. (See *River Park*, *supra*; cf. *Action Apartment Assn. v. Santa Monica Rent Control Bd.*
19 (9th Cir. 2007) 509 F.3d 1020, 1026 [holding that a rent control ordinance could serve as a basis for a
20 substantive due process claim for plaintiff landowners; “landowners have a constitutionally protected
21 property interest in their right to devote their land to any legitimate use” and an “arbitrary deprivation
22 of that right, thus, may give rise to a viable substantive due process claim”] [internal citations and
23 quotation marks omitted]; *Harris v. Cnty. of Riverside* (9th Cir. 1990) 904 F.2d 497, 503 [recognizing
24 constitutionally “protected property interest” in a landowner's right to “devote [his] land to any
25 legitimate use”], quoting *Washington ex rel. Seattle Title Trust Co. v. Roberge* (1928) 278 U.S. 116,
26 121].) The City of Fresno, here, treads on the property interest of property owners, such as De Santis,
27 who wish to use their land for commercial cannabis activity, since the Ordinance expressly prohibits
28 such activity without a CCB Permit. (See FMC, § 9-3302 [“Except as specifically authorized in this

1 Article, the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling,
2 sale, delivery, distribution or transportation (other than as provided under Bus. & Prof. Code
3 section 26090(e)), of cannabis or cannabis product and medicinal cannabis or medicinal cannabis
4 product is expressly prohibited in the city”].) Because Petitioners have a property interest in using
5 their property as they deem appropriate, they have a property interest in this regard.

6 *ii. Petitioners Have a Liberty Interest in Pursuing Their Chosen Occupation*

7 So, too, does the denial of Petitioners’ liberty interest trigger due process protections.
8 “Without doubt, [a liberty interest] denotes not merely freedom from bodily restraint but also the
9 right of the individual to contract, to *engage in any of the common occupations of life*, to acquire
10 useful knowledge, to marry, establish a home and bring up children, to worship God according to the
11 dictates of his own conscience, and generally to enjoy those privileges long recognized at common
12 law as essential to the orderly pursuit of happiness by free men.” (*Meyer v. Nebraska* (1923) 262
13 U.S. 390, 399 [collecting cases], Italics added; cf. *Yakov v. Bd. of Med. Examiners* (1968) 68 Cal.2d
14 67, 75 [“The right to practice one’s profession is sufficiently precious to surround it with a panoply of
15 legal protection”]; cf. *People v. Ramirez* (1979) 25 Cal.3d 260, 268 [holding that “the due process
16 safeguards required for protection of an individual’s statutory interests must be analyzed in the
17 context of the principle that freedom from arbitrary adjudicative procedures is a substantive element
18 of one’s liberty. [Citation.]”]; see also *Traux v. Raich* (1915) 239 U.S. 33, 41 [“It requires no
19 argument to show that the right to work for a living in the common occupations of the community is
20 of the very essence of the personal freedom and opportunity that it was the purpose of the
21 Amendment to secure”] [collecting cases].) “The established doctrine is that this liberty may not be
22 interfered with, under the guise of protecting the public interest, by legislative action which is
23 arbitrary or without reasonable relation to some purpose within the competency of the state to effect.”
24 (*Meyer, supra*, 262 U.S. at pp. 399-400.) And, in California, such liberty interest receives greater
25 protection than it does under federal law, as, unlike federal law, California law recognizes a
26 “dignitary interest” in being free from arbitrary and capricious government action. (See *Today’s*
27 *Fresh Start, Inc. v. L.A. Cnty. Office of Education* (2013) 57 Cal.4th 197, 213 [“In addition [to the
28 three factors considered under the federal standard for due process], we may also consider a fourth

1 factor, ‘the dignitary interest in informing individuals of the nature, grounds, and consequences of the
2 action and in enabling them to present their side of the story before a responsible government
3 official”], quoting *People v. Allen* (2008) 44 Cal.4th 843, 862-863.)

4 The majority of cases finding an “occupational liberty interest” in government licensing and
5 contracting have done so in the context of debarment. “Debarment” excludes an individual or entity
6 from doing business with the government as a result of wrongful conduct or violations of a public
7 contract or program. (*So. Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108
8 Cal.App.4th 533, 542, citing *Golden Day Schools, Inc. v. State Dept. of Ed.* (2000) 83 Cal.App.4th
9 695, 703.) In California, debarment, in and of itself, constitutes the deprivation of a liberty interest.
10 (See, e.g., *Golden Day Schools, supra*, 83 Cal.App.4th at pp. 706 [“government debarment continues
11 to implicate a liberty interest. It is the right to be considered for, not to receive, a government
12 contract”]; cf. *Llamas v. Butte Cmty. Coll. Dist.* (9th Cir. 2001) 238 F.3d 1123, 1128 [debarment
13 implicates a liberty interest because it impinges on “the freedom ‘to engage in . . . the common
14 occupations of life’” and on the “generalized . . . right to choose one’s field of private employment”],
15 quoting *Bd. of Regents v. Roth* (1972) 408 U.S. 564, 572; *Conn. v. Gabbert* (1999) 526 U.S. 286,
16 292.) But formal debarment is not necessary to implicate this occupational liberty interest –
17 government actions “that formally or automatically exclude the plaintiff from work on a category of
18 future public contracts or government employment opportunities” also triggers due process. (*Golden*
19 *Say Schools, supra*, 83 Cal.App.4th at pp. 707-708; see also *Trifax Corp. v. District of Columbia*
20 (D.C. Cir. 2003) 314 F.3d 641, 644 [“(“government action precluding a litigant from future
21 employment opportunities will infringe upon his constitutionally protected liberty interests . . . when
22 that preclusion is either sufficiently formal or sufficiently broad”]; *Taylor v. Resolution Trust Corp.*
23 (D.C. Cir. 1995) 56 F.3d 1497, 1506 [liberty interest implicated where plaintiff demonstrates that
24 “the government’s action formally or automatically excludes the plaintiff from work on some
25 category of future government contracts” or by demonstrating that “the government's action
26 precludes [it]—whether formally or informally—from such a broad range of opportunities that it
27 interferes with [its] constitutionally protected right to follow a chosen trade or profession”], quoting
28

1 *Kartseva v. Dept. of State* (D.C. Cir. 1994) 37 F.3d 1524, 1529; accord *Stacy & Witbeck, Inc. v. City*
2 *and Cnty. of San Francisco* (1995) 36 Cal.App.4th 1074, 1086, fn. 6.)

3 As noted *ante*, in determining whether an agency action constitutes a de facto debarment
4 implicating a liberty interest, courts consider the breadth of the agency’s interference with the
5 applicant’s chosen occupation or profession. At the heart of this inquiry is whether the agency action
6 only affects the applicant’s ability to practice his occupation with the government or, alternatively,
7 whether it applies more broadly to preclude occupational opportunity with others. (Cf. *M & B*
8 *Construction Co. v. Yuba Cnty. Water Agency* (1999) 68 Cal.App.4th 1358, 1362 [“since the local
9 regulation only goes to the City’s own business dealings with contractors and not to any third party
10 relationship, it is difficult to view this as a matter in which transient citizens of the state would be
11 particularly concerned”]; *Cafeteria v. Workers Union, Local 473 v. McElroy* (1961) 367 U.S. 886,
12 896 [holding that government did not violate cook’s due process rights by barring her from working
13 at a specific military base because she “remained free to obtain employment . . . with any other
14 employer”]; *Llamas, supra*, 238 F.3d at p. 1128 [plaintiff did not have a protected liberty interest
15 because he had “not been banned from pursuing a janitorial position elsewhere or a career in law
16 enforcement as he desire[d]”; rather, he had been foreclosed only from working for the Butte
17 Community College District].)

18 Here, the denials of Petitioners’ CCB Permit applications not only precludes them from
19 operating a cannabis dispensary in the City of Fresno, but it also effectively prohibits them from
20 doing so in other localities in California. Most localities in California require that applicants for
21 commercial cannabis permits are either local residents or have business ties to the locality. (See, e.g.,
22 FMC, § 9-3317, subd. (a) [“Local preference shall be included in the [CCB Permit] review criteria”];
23 City of Oxnard Ord. No. 2994, § 11-454, subd. (NN), available at [Final-Version-of-Cannabis-](#)
24 [Ordinance-2994.pdf \(oxnard.org\)](#) [defining “local ownership” for purposes of local social equity
25 plan]), so Petitioners would effectively be precluded from applying for a commercial cannabis permit
26 almost anywhere else in California. Indeed, the City of Oxnard, for instance, expressly prohibits
27 persons or entities who have been denied a cannabis license in any city or county from obtaining a
28 permit. (Oxnard, Ord. No. 2994, § 11-458, subd. (A) [persons prohibited from holding a cannabis

1 license include “an “applicant [who] has been denied a license or has had a license suspended or
2 revoked by any city, county, city and county or any other state cannabis licensing authority”]; see
3 also “City of Concord Cannabis License Application,” at p. 6, available at [Revised-Cannabis-
4 License-Application-final \(cityofconcord.org\)](#), [asking whether the applicant has been denied has
5 ever had a cannabis permit application denied by any jurisdiction].) And most, if not all, of these
6 local ordinances set a limit on the number of cannabis business permits that the locality will issue, so
7 there will likely not be many cannabis business permits available for which Petitioners can apply.
8 This widespread impairment of Petitioner’s right to engage in their chose occupation as cannabis
9 business operators implicates a liberty interest subject to due process. (See *Schware v. Bd. of Bar of
10 Examiners of New Mexico* (1957) 353 U.S. 232, 234-235, 247 [holding that New Mexico denied an
11 attorney applicant due process by refusing to allow him to practice law in the state

12 *iii. The City’s Actions Violate Substantive Due Process Because They Arbitrarily
13 Deprive Petitioners’ of the Freedom to Practice Their Chosen Occupation*

14 Whereas procedural due process requires governmental entities to provide an individual
15 procedural rights before it may deprive him or her of life, liberty, or property (see *Matthews v.
16 Eldridge* (1976) 424 U.S. 319, 332-333,) substantive due process refers to government actions that
17 are “arbitrary and capricious,” even if proper procedures are used (*Blaylock v. Schwinden* (9th Cir.
18 1988) 862 F.2d 1352, 1354; see also *Daniels v. Williams* (1986) 474 U.S. 327, 331 [substantive due
19 process bars certain offensive government actions “regardless of the procedures used to implement
20 them”]; *Arroyo Vista Apartments v. Cnty. of Santa Barbara* (C.D. Cal. 1990) 732 F.Supp. 1046, 1053
21 [“The Ninth Circuit continues to recognize that the due process clause includes a substantive
22 component which guards against arbitrary and capricious governmental action, even when the
23 decision to take that action is made through procedures that are in themselves constitutionally
24 adequate”].) In rejecting the Petitioners’ CCB Permit applications based on deficient criteria without
25 an indication how scoring was made and without any reasoning for the denials, Fresno’s actions
26 violate both substantive and procedural due process.

27 Fresno’s actions in denying Petitioners’ CCB Permit applications deprived them of
28 substantive due process because the City Manager’s failure to provide the objective criteria called for
by the CCB Ordinance sanctioned arbitrary and capricious decisionmaking. (Cf., e.g., *Arlington*

1 *Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252, 267 [in zoning dispute cases, the principle
2 of substantive due process assures property owners of the right to be free from arbitrary or irrational
3 zoning actions].). Although the federal Administrative Procedure Act (5 U.S.C., § 706(2) (“APA”))
4 is not specifically applicable to local agency decisions, the courts’ descriptions under the APA of
5 what constitutes “arbitrary and capricious” agency decisionmaking are apply equally here. (Cf.
6 *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90 [“although California’s
7 Administrative Procedure Act (APA) [citation] does not apply to hearings before local, as opposed to
8 state, administrative agencies [citation], to the extent citizens generally are entitled to due process . . .
9 the provisions of the APA are helpful as indicating what the Legislature believes are the elements of a
10 fair and carefully thought out system of procedure”].) “The APA’s arbitrary-and-capricious standard
11 requires that agency action be reasonable and reasonably explained.” (*FCC v. Prometheus Radio*
12 *Project* (2021) -- U.S. --, 141 S.Ct. 1150, 1158.) Under this standard, the court inquires whether “the
13 agency has acted within a zone of reasonableness and, in particular, has reasonably considered the
14 relevant issues and reasonably explained the decision.” (*Ibid.* [collecting cases]; see also *Motor Veh.*
15 *Mfrs. Assn of U.S., Inc. v. State Farm Mut. Auto Ins. Co.* (1983) 463 U.S. 29, 43 [“[T]he agency must
16 examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational
17 connection between the facts found and the choice made’”], quoting *Burlington Truck Lines v. United*
18 *States* (1962) 371 U.S. 156, 158.) The court “must set aside any action premised on reasoning that
19 fails to account for ‘relevant factors’ or evinces ‘a clear error of judgment.’” (*Marsh v. Oregon*
20 *Natural Res. Council* (1989) 490 U.S. 360, 378.)

21 Here, Fresno acted arbitrarily and capriciously in summarily denying Petitioners CCB Permit
22 applications for several reasons. *First*, even after the City Council directed the City Manager to
23 formulate detailed objective criteria to score CCB Permit applicants (FMC, § 9-3316), his CCB
24 Guidelines, instead, articulated a host of nebulous criteria without any indication of how these criteria
25 were scored, or otherwise evaluated, by the local agency. (See CCB Guidelines.) This lack of
26 objective scoring criteria promotes arbitrary and capricious decisionmaking because the Guidelines
27 allow for unbridled subjective decisionmaking unconstrained by an announced scoring system or
28 objective criteria.

1 *Second*, and relatedly, the City Manager’s actions in denying Petitioners a CBB Permit are
2 arbitrary and capricious because his denial decisions were not “reasonably explained” (or explained
3 at all), which means that he has failed to demonstrate (and there is no way to demonstrate) that he
4 “reasonably considered” the relevant factors. (See *FCC v. Prometheus Radio Project*, *supra*, 141
5 S.Ct. at p. 1158.) The courts have held that an agency’s decision “must contain a statement of its
6 reasons for denying the petitioner relief adequate for us to conduct our review. (*Ghaly v. INS* (9th
7 Cir. 1995) 58 F.3d 1425, 1430; cf. *Cal. Assn. of Nursing Homes, Sanitariums, Rest Homes for Aged*
8 *v. Williams* (1970) 4 Cal.App.3d 800, 809-812 [finding that “administrative record . . . prevented
9 meaningful judicial review” because the agency had not compiled an identifiable body of evidence by
10 which to measure the regulation’s compliance with the statutory standard]; *Ponce v. Hous. Auth.*
11 (E.D. Cal. 1975) 389 F.Supp. 635, 650 [“commensurate with due process . . . tenants must receive a
12 concise statement of the federal agency’s reason for its subsequent action”].) The City Manager’s
13 application of the CCB Guidelines to deny Petitioners’ applications, therefore, is arbitrary and
14 capricious because he inexplicably deviated from the City Council’s direction in FMC section 9-3316
15 to provide objective criteria and, instead, set forth imprecise criteria that remain a mystery and do
16 constrain agency discretion. He also failed to give a statement of the reasons for his decisions.

17 *iv. The City’s Actions Also Violate Procedural Due Process Because They Conflict With*
18 *the Instructions of the CCB Ordinance and Are Not Accompanied By Any Statement of*
19 *Reasons*

20 The agency’s actions deprived Petitioners of procedural due process for similar reasons.
21 Procedural due process imposes constraints on governmental decisions to ensure that they are not
22 arbitrary. (See *Matthews v. Eldridge* (1976) 424 U.S. 319, 332.) To wit, procedural due process
23 requires, at a minimum, that administrative agencies abide by their own regulations and state the
24 reasons for their ultimate conclusions. Here, as stated, the City Manager’s final decision to deny
25 Petitioners’ CCB Permit application failed to comply with the direction of the CCB Ordinance and
26 did not provide *any* reasons at all for its denial decision. (See Elford Decl., Exhs. H, I, J, K.) Indeed,
27 the City Manager was understandably reluctant to provide the applicants even the aggregate score it
28 assigned to the applications. (See *ante* at pp. 12-13.) Such lack of transparency in the
decisionmaking process, without any statement of reasons for the decision, or any indication

1 whatsoever how the evaluations were made, violates procedural due process. (Cf. FMC, § 1-403
2 [“Due process of law [requires] . . . an adequate explanation of the reasons justifying the
3 administrative action].)

4 *Second*, the “black-box” nature of the selection process employed by the City Manager is
5 made all the more glaring by his failure to provide scores with respect to each of the five sections
6 listed in the Ordinance or for any of the criteria articulated in his CCB Guidelines. Rather than
7 being transparent about the evaluation process for Phase Two applicants, which was used to
8 disqualify Petitioners from proceeding to Phase Three, the sparse denial letters issued to it did not
9 provide any reasons at all, much less the scores required by the CCB Ordinance. Indeed, it was
10 only after such denial letters were issued that the City Manager even revealed the *aggregate* scores
11 for each of the applicants, which *still* does not comport with the CCB Ordinance or due process,
12 because the aggregate scores do not reveal how each of the criteria was evaluated or the weight the
13 administrative agency placed with respect to each of the criteria listed in the CCB Guidelines. This
14 lack of transparency not only prevents Petitioners from learning from any shortcomings of their
15 rejected applications, so they can improve upon them in the future, but it also deprives the court of
16 the ability to review the agency decision for legal error. (Cf. *Castillo v. INS* (9th Cir. 1991) 951
17 F.2d 1117, 1121 [“[I]n order for this court to conduct a proper substantial evidence review of the
18 BIA’s decision, the Board’s opinion must state with sufficient particularity and clarity the reasons for
19 denial of asylum”], citing *Contreras-Buenfil v. INS* (9th Cir. 1983) 712 F.2d 401, 403; *Latecoere,*
20 *Intl., Inc. v. U.S. Dept. of Navy* (11th Cir. 1994) 19 F.3d 1342, 1356 [to permit review, a contracting
21 agency must provide “a coherent and reasonable explanation of its exercise of discretion”].) This
22 violates basic principles of administrative law, as well as procedural due process. (Cf. *Mejia-Carillio*
23 *v. U.S.* (9th Cir. 1981) 656 F.2d 520, 522 [“Those Board opinions that lack an adequate statement of
24 the BIA’s reasons for denying the petitioner relief must be remanded to the Board for clarification of
25 the bases for its opinion”], citing *Cardoza-Fonseca v. INS* (9th Cir. 1985) 767 F.2d 1148, 1455.)

26 Several California cases have required administrative agencies to provide many of the same
27 protections as those required due process, even though due process is not otherwise applicable. (The
28 Rutter Group, *California Practice Guide: Administrative Law*, § 12:95 (December 2000); cf. *Saleeby*

1 v. *State Bar of California* (1985) 39 Cal.3d 547, 564 [noting that federal courts “have continued to
2 focus on the differences between “expectancies” and “entitlements,” but California “has expanded
3 upon the federal analytical base by focusing on the administrative process itself”].) The leading case
4 on the subject is *Fascination, Inc. v. Hoover* (1952) 39 Cal. 2d. 360, wherein the Court interpreted a
5 licensing statute to require a hearing to determine the merits of a license application that the agency
6 has rejected. (*Id.* at pp. 269-271; see also *Andrews v. State Bd. of Registration for Civil &
7 Professional Engineers* (1954) 123 Cal.App.2d 685, 692-694 [license application cannot be rejected
8 without providing a hearing]; *Martin v. Bd of Supervisors of Lake Cnty.* (1933) 135 Cal.App. 96,
9 100-104 [rejection of liquor license application triggers right to hearing].) The California Supreme
10 Court explained in *Fascination, Inc., supra*, as follows:

11 It would be preposterous to concede that any judicial tribunal could be clothed with
12 the arbitrary power of issuing licenses and regulating business subject only to its own
13 caprice; that with or without a hearing on the merits of the application, with or without
14 reason, or upon ex parte statements or rumors, with no opportunity of refuting them,
15 the board could grant or deny a petition for license. This is not the purpose or spirit
16 with which regulatory statutes are enacted. Law contemplates justice whether it is
17 granted as a privilege or recognized as a vested right. We therefore conclude that the
18 right to engage in the sale of beverages under the ordinance of Lake County may not
19 be arbitrarily denied by the Board of Supervisors without a hearing or an opportunity
20 on the part of the petitioner to present the merits of her application to the licensing
21 tribunal.

18 (*Id.* at p. 270, quoting *Martin v. Bd. of Supervisors of Lake Cnty.*(1933) 135 Cal.App. 96, 102.) The
19 same result is warranted here.

20 v. *To the Extent the Agency Relied on Evaluation Criteria Not Disclosed to the Public,
21 Its Actions Violate Due Process By Employing “Underground Regulations”*

22 Underscoring the deficiencies in the City Manager’s CCB Permit application decisions is the
23 due process doctrine of “underground regulations.” As a general matter, agencies may not evaluate
24 applications by the use of regulations that have not been promulgated in accordance with procedural
25 requirements. (*Patterson Flying Serv. V. Dept. of Pesticide Regulation* (2008) 161 Cal.App.4th 411,
26 429 [“underground regulation” is one not adopted in compliance with Administrative Procedures Act
27 and, thus, is invalid]; *Davenport v. Superior Court* (2012) 202 Cal.App.4th 665, 669 [“Any
28 regulation not properly adopted under the APA is labeled an ‘underground regulation.’”], citing

1 *Patterson Flying Serv., supra*.) To be deemed an invalid underground regulation, the agency must
2 intend it to apply generally rather than in a specific case, and the agency must adopt it to implement,
3 interpret, or make specific the law enforced by the agency. (*Modesto City Sch. v. Ed. Audits Appeal*
4 *Panel* (2004) 123 Cal.App.4th 1365, 1382, citing *Tidewater Marine Western, Inc. v. Bradshaw*
5 (1996) 14 Cal.4th 557, 571.) “Most underground regulations are ‘guidance documents,’ meaning
6 agency pronouncements that are not legally binding but are intended to furnish guidance to the public
7 or to the agency’s staff. . . .” (The Rutter Group, *California Practice Guide: Administrative Law*, §
8 25:1 (December 2000); accord *id.* at § 25:70; see also *Nightlife Partners, supra* 108 Cal.App.4th at
9 90 [noting that provisions of the APA, while technically not applicable to local administrative
10 agencies, are helpful in determining what process is due].) Underground regulations are but one
11 example of “the recurrent theme of executive agencies seeking to implement ‘house rules’ unfettered
12 by any outside constraints. . . .” (*Engleman v. State Bd. of Educ.* (1991) 2 Cal.App.4th 47, 49, citing
13 *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 205; *Grier v. Kizer* (1990) 219 Cal.App.3d
14 422, 440.)

15 In this case, the agency either relied upon underground regulations to supply the evaluation
16 and scoring criteria that the agency considered in assessing the CCB Permit applications, or it did
17 not provide any evaluative criteria at all, which leaves such decisions to the whim of the
18 decisionmaker. Either way, the agency has violated due process. (Cf. *Engleman, supra*, 2
19 Cal.App.4th at p. 49 [holding that textbook selection criteria employed by State Board of Education
20 constituted improper underground regulations].) Because the criteria considered and the scoring
21 performed by the agency remain cloaked in secrecy, the public does not have information from
22 which to determine whether the agency is effectuating the purpose advanced by the CCB Ordinance
23 -- “to regulate the cultivation, processing, manufacturing, testing, sale, delivery, distribution, and
24 transportation of cannabis, cannabis products, medicinal cannabis, and medicinal cannabis products
25 in a responsible manner to protect the health, safety, and welfare of the residents of the city and to
26 enforce rules and regulations consistent with state law” (FMC, § 9-3301.) -- and the applicants have
27 no way of determining how they scored, so that they can learn from their mistakes and correct such
28 deficiencies in future applications. (Cf. *GADV, Inc. v. Beaumont Independent School Dist.* (E.D.

1 Tex. June 7, 2011) 2011 WL 2220242, at *4 [“the plain wording of [the statute] requires the Board
2 to ‘evaluate and rank each proposal submitted in relation to the published criteria;’” “This
3 requirement enhances transparency in the bid process, and allows the public to compare the Board's
4 choice against the benchmark -- the published criteria.”].) This provides yet another reason for this
5 Court to hold the agency’s denials of HV’s CCB Permit application invalid and grant the instant writ.

6 **CONCLUSION**

7 For the foregoing reasons, Petitions respectfully submit that the instant writ should issue.

8
9 DATED: September 23, 2021 Respectfully Submitted,

10
11 /s/ Joseph D. Elford

12 Counsel for Petitioners
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