



REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of September 13, 2022

Todd Bodem

Prepared by:

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SUBJECT: Denial of Unsuccessful Candidates for Commercial Cannabis Business (CCB) Permits

RECOMMENDATION:

- 1) Receive a presentation from staff;
- 2) Receive public comment; and
 - a. Deny the applications of the three unsuccessful CCB permit candidates; and
 - b. Authorize the establishment of an eligibility list for the unsuccessful candidates in the event one or both of the prevailing candidates are unable to meet the remaining requirements for obtaining a CCB permit.

BACKGROUND:

At the April 12, 2022, City Council meeting, the City Council took two actions concerning selection of Commercial Cannabis Business (CCB) permit applicants: (1) the Council decided to select only two applicants to move forward in the process of applying for and obtaining CCB permits; and (2) the Council selected SloCal Roots Management LLC dba Root One (SloCal Roots) as one of these two “prevailing candidates” (the term used in Guadalupe Municipal Code Chapter 9). The Council was not able to select the second prevailing candidate at this meeting, however, due to the lack of majority support for any of the four remaining CCB permit applicants. The Council was able to narrow the selection down to two (4) of the remaining four (4) CCB permit applicants: BDSF 1 Holdings LLC dba Element 7 Guadalupe (“Element 7”) and LGBA Management LLC dba The Roots Dispensary (“The Roots Dispensary”). The Council also directed that City staff request that these two CCB permit applicants make another presentation to the Council focusing on the community benefit and neighborhood plan portions of their applications.

No action was taken concerning the applications of the two remaining applicants, Guadalupe Erudite Ventures dba HerbNJoy (“HerbNJoy”) and Guadalupe Community Project LLC dba Mr. Nice Guy (“Mr Nice Guy”) at the April 12th Council meeting.

The additional presentations from The Roots Dispensary and Element 7 took place at the April 26, 2022, City Council meeting. Council member Ramirez and Council member Costa were not present at this meeting; however, because a quorum of the Council was present, it was legally permissible for the Council to move forward with the presentations and make its decision concerning which of the two CCB applicants would be selected to move forward in the process. After the presentations, the City Council

deliberated and ultimately selected Element 7 as the second of the two prevailing candidates to move forward in the process.

Due to a procedural irregularity that has been well documented and explained in prior staff reports, the City Council voted to rescind its selection of Element 7 was made to the City Council (with all five (5) members present) at the Council meeting of July 12, 2022. The Council also directed staff to invite Element 7 and The Roots Dispensary to make another presentation to the City Council (with all five (5) members in attendance).

The additional presentations from Element 7 and The Roots Dispensary took place at a special City Council meeting held on August 16, 2022. After receiving these presentations, the City Council selected Element 7 on a 4-1 vote to proceed with the process of obtaining a CCB permit.

DISCUSSION:

Now that the Council has selected the two prevailing candidates for pursuing CCB permits, it is appropriate to take action on the applications for the three unsuccessful candidates. As stated above, no action was taken at the April 12th Council meeting on the applications of HerbNJoy and Mr. Nice Guy even though these applicants were not selected to continue in the process of obtaining a CCB permit. With the selection of Element 7, The Roots Dispensary has also not been selected to continue in the process for a CCB permit at this time.

In the staff report for the April 26th meeting concerning the second presentations by Element 7 and The Roots Dispensary, staff recommended:

...that the Council place CCP permit applications that will not be selected to move forward with the process at this time on an “eligibility list” that will remain active until both CCB permits authorized by the City Council have actually been issued. Staff recommends creation of this eligibility list because it is possible that one or both of the CCB permit applicants ultimately selected to move forward in the process may be unable to comply with all the requirements for issuance of a CCB permit, including but not limited to: obtaining a conditional use permit; successfully entering into a community benefit agreement on terms acceptable to the City; or some other reason such as being unable to complete the purchase of a property or execution of a lease required for the cannabis business location.

The staff report for this item also stated:

Alternatively, instead of creating the eligibility list, Council can take action to formally reject the unselected CCB permit applicants at the April 26th meeting or at a future meeting, but staff does not recommend doing so since having additional candidates for a CCB permit on an eligibility list in the event one or both of the selected applicants fail to meet the requirements for issuance of a CCB permit (or timely meet these requirements) would save the City time and money by not having to start the application process over.

Guadalupe Municipal Code section 9.22.140.I. states: “The City Council shall either deny or approve the final candidates and shall select the top candidates in each category of the cannabis businesses ...” The Council has taken action to approve two of the applicants (SloCal Roots and Element 7) but has not taken specific action to deny any of the final candidates. Now that the two “prevailing” candidates have been selected to continue with the process for obtaining a CCB permit, it is appropriate for the Council to take specific action to deny the applicants of the unsuccessful candidates.

Even though staff is recommending that the City Council deny the applications for HerbNJoy, Mr. Nice Guy, and The Roots Dispensary, staff is also recommending that the City Council confirm that an eligibility list be created for these three unsuccessful applicants in the event that one or both of the prevailing candidates (i.e., Element 7 and/or SloCal Roots) ultimately fail to meet the remaining requirements for issuance of a CCB permit or obtain issuance of the required conditional use permit. If Council confirms that it wants to create an eligibility list, staff will bring another item on a future Council agenda concerning this list as well as some other matters that require Council direction such as establishing a timeline for the prevailing candidates to obtain issuance of a conditional use permit and commence business operations.

Should the Council take the recommended action and deny the applications for the three unsuccessful candidates, no administrative appeal is available or required before an unsuccessful candidate would be able to seek judicial review in the superior court. Guadalupe Municipal Code section 9.22.140.J. states, in part: “The City Council’s decision concerning which applicant(s) will be issued an official cannabis business permit(s) is final and is subject to the time limits set forth in California *Code of Civil Procedure* Section 1094.6 for judicial review.” There is no point in requiring the candidates who have been denied by the City Council to bring an administrative appeal to the City Council, the same body that denied their applications in the first place.