

## CITY OF GRASS VALLEY

### COMMERCIAL CANNABIS APPEAL PROCEDURES

Pursuant to Grass Valley Municipal Code section 5.60.060, I hereby adopt the following regulations governing appeals of decisions of the City under Chapter 5.60 of that Code, including but not limited to, decisions of the Commercial Cannabis Selection Committee on Commercial Cannabis Screening Applications:

1. **DEADLINE.** An appeal may be submitted to the City Clerk in writing within 15 days of the date the decision appealed was made. Appeals shall be filed on a form provided by the City.
2. **FILING FEE.** An appeal must be accompanied by an appeal fee established from time to time by resolution of the City Council. As of December 2021, the fee is \$371.00. An appeal is not perfected until the City Clerk receives both the appeal form and the filing fee.
3. **DECISIONMAKER.** The Community Development Director shall refer the appeal in the Director's discretion to the City Council or to a hearing officer appointed by the City Council and shall inform the appellant of that decision within 30 days of receipt of a complete appeal.
4. **HEARING PROCEDURES.**
  - a. **BRIEFING.** The reviewing body shall establish deadlines by which:
    - i. the appellant must submit all arguments and evidence relevant to the appeal,
    - ii. City staff may submit counter-arguments and evidence, and
    - iii. The appellant may submit reply papers. If the reviewing body orders an oral hearing on an appeal, any reply papers shall be submitted no later than five days before the hearing.
  - b. **REPRESENTATION.** An appellant may represent him- or herself or may retain counsel or a non-attorney representative to argue an appeal.

- c. ORAL HEARING. These rules confer no right to an oral hearing and the reviewing body retains discretion to decide the appeal on the papers. If the reviewing body orders an oral hearing, the following procedures apply:
- i. NOTICE OF ORAL APPEAL HEARING. The City Clerk shall serve a notice of oral appeal hearing either personally or by U.S. Mail, first class postage prepaid, to the appellant at the address provided on the appeal form. The hearing shall occur no sooner than 10 days after service of the notice.
  - ii. TIME AND PLACE OF HEARING. The reviewing body shall conduct an oral appeal hearing at the place and time stated in the notice of hearing. Appeal hearings may be held by teleconference or other electronic means in the reviewing body's discretion. A hearing may be continued from time to time by agreement of the appellant and City staff or for good cause as determined in the reviewing body's discretion.
  - iii. EVIDENCE. The reviewing body will consider written or oral testimony or other evidence regarding the issues the parties identify. Evidence to support a decision must be credible and relevant in the estimation of the reviewing body, but formal rules of evidence do not apply. The reviewing body retains the discretion to exclude evidence it finds is unduly repetitious or irrelevant.
  - iv. PRESIDING OFFICER. The Mayor or the hearing officer, as the case may be, shall conduct the hearing, govern the presentation of evidence, and address any procedural issues presented during the course of the hearing. The Mayor or hearing officer, as the case may be may issue orders, including protective orders, as necessary to exercise the appellate jurisdiction granted by these Procedures.
- d. BURDEN OF PROOF; STANDARD OF REVIEW. The appellant bears the burdens to produce evidence of reversible error and to persuade the reviewing body of it by a preponderance of the evidence. The reviewing body shall affirm the decision appealed from unless the appellant persuades it that:

- i. The procedure by which the decision was made violates due process or other applicable law;
  - ii. The substance of the decision violates the Grass Valley Municipal Code or other applicable law; or,
  - iii. The record on which the decision was made does not include substantial evidence to support factual findings the law requires for the decision.
5. CITY COUNCIL CONSIDERATION OF HEARING OFFICER'S RECOMMENDATION. If the City Council appoints a hearing officer, it shall consider his or her written recommended decision as follows:
  - a. HEARING OFFICER'S DECISION; TIME FOR SAME. After considering all arguments and evidence submitted, including testimony submitted at any oral appeal hearing, the hearing officer shall provide the City Council a recommended written decision to affirm (in all or part), modify, or reverse the decision appealed. The hearing officer shall render the written decision no later than 30 after the hearing is completed unless the appellant and City staff agree otherwise or the hearing officer determines in writing that 60 days are necessary due to the volume or complexity of the issues or evidence.
  - b. ORAL HEARING ON HEARING OFFICER'S RECOMMENDATION. The City Council may, in its discretion, order an oral hearing on the hearing officer's recommendation or may make a final decision based on the administrative record before the hearing officer and the hearing officer's written recommendation without further input from the appellant and City staff. Any oral hearing the City Council orders on the hearing officer's recommended decision shall be conducted pursuant to section 4 of these Procedures.
  - c. COUNCIL ACTION ON HEARING OFFICER'S RECOMMENDATION. The City Council may adopt (in all or part) or modify the hearing officer's recommendation or remand it to the hearing officer for further consideration in its reasoned discretion under the standards stated in section 4.d. of these Procedures.

6. COUNCIL ACTION WITHOUT HEARING OFFICER. If the City Council does not appoint a hearing officer, it shall adopt a written decision after conducting the appeal pursuant to section 4 of these Procedures. The Council may direct the successful party to prepare a form of decision for its review.
7. FINALITY. The City Council's adoption of a written decision on the appeal, whether or not provided by a hearing officer, shall be final as to the City and subject to judicial review as provided below.
8. NOTICE OF DECISION. The City Clerk shall mail notice of the City Council decision to the appellant at the address provided on the appeal form within five business days of the decision.
9. JUDICIAL REVIEW. Judicial review of the City Council's decision on any appeal shall be subject to California Code of Civil Procedure section 1094.5, if timely filed as required by California Code of Civil Procedure Section 1094.6.
10. EXHAUSTION OF ADMINISTRATIVE REMEDIES. Failure to timely file a complete appeal form accompanied by the filing fee constitutes a waiver of appeal rights and a failure to exhaust administrative remedies. Failure to raise an issue in the appeal form or the opening papers on an appeal constitutes a failure to exhaust administrative remedies as to that issue and a waiver of the right to raise that issue upon judicial review of the City Council's decision.

Notice of these Procedures was given by publication in **The Union** and posting to the City's website for 10 days. Accordingly, I hereby adopt these Procedures under the authority granted me by Grass Valley Municipal Code section 5.60.060. These Procedures shall remain in effect until amended or repealed by further action of the Community Development Director of the City.

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Tom Last (date)  
Community Development Director  
City of Grass Valley, California