



February 13, 2019

Anthony M. Cioe, President
Survivormedz, a Cooperative Corporation
dba Releaf Meds
1440 Coolidge Avenue
National City, CA 91950

Via Regular Mail and Email
tcioe@yahoo.com

Re: Request for Appeal

Dear Mr. Cioe:

On February 1, 2019 the Vista City Manager, in writing, denied an application submitted by Survivormedz, a Cooperative Corporation ("Applicant") seeking approval to operate a medical cannabis business in the City of Vista pursuant to VMC Chapter 5.94 ("Determination"). On February 11, 2019, the City received your correspondence requesting to appeal the Determination to the Vista City Council. This letter informs you that you have exhausted all available administrative remedies, and no administrative appeal of the Determination is available.

Your letter references Vista Municipal Code § 5.94.120, but that section only authorizes an applicant to exercise appeal rights afforded under the Vista Municipal Code ("VMC"). In this instance, no such rights exist under the VMC. Your letter suggests that the appeal process may be utilized under VMC § 5.04.210, but VMC § 5.04.210 is inapplicable because: (1) it applies to actions of the "tax collector" taken under Chapter 5.04, but your grievance is not premised on Chapter 5.04; and (2) the appeal afforded by that section is not heard by the City Council, but is heard by the City Manager who renders a "final and conclusive" decision without opportunity for further administrative review. Other Chapters of the VMC are also inapplicable. Chapter 2.20 outlines the functions of the City Manager, but does not create an independent mechanism for appealing his or her determinations. Similarly, Chapter 2.12 announces the role and power of the City Council, but does not vest the Council with an inherent right to review the determinations of the City Manager on appeal. In sum, no provisions of the VMC provide appeal rights in this instance, and therefore an appeal is not possible under VMC § 5.94.120 "in accordance with the provisions of the Vista Municipal Code."

Further, VMC § 5.94.120 is not a substantive provision. The language of 5.94.120 does not establish any mechanics for an appeal process, including: (1) the deadline for filing an appeal; (2) the required contents for an appeal; (3) the nature of the appeal proceeding (e.g., a formal hearing before the City Council, a restricted hearing, or a contest involving only written submissions); and (4) the deadline for rendering a City Council appeal determination. Further,

the section does not identify the parties authorized to file appeals of a "denial" or an "approval." A substantive ordinance would be required to address whether appeals could be lodged by: (a) nearby landowners, business owners or residents objecting to an approval; (b) schools or sensitive uses that may be impacted by an approval; (c) a denied applicant seeking to dispute an approval hoping to advance to the 11 applicants eligible for approval; or (d) an approved applicant hoping to contest the approval of an approved competitor

The City of Vista must follow the language of Measure Z authorizing such appeals as may be available "in accordance with the provisions of the Vista Municipal Code." Since the authors of Measure Z did not create a substantive appeal process and none is found elsewhere in the VMC, no further administrative review of the determination is possible. If further review of the matter is required, it must occur in a court of competent jurisdiction.

Very truly yours,



Patrick Johnson
City Manager