

# ADMINISTRATIVE HEARING INSTRUCTIONS AND PROCEDURE FOR APPEALS

## Re: Request for Proposals #2436

### For Commercial Cannabis Businesses: Storefront Retail, Non-Storefront Retail & Microbusiness with Storefront Retail

#### I. **Purpose:**

On October 5, 2020, the City of Concord opened its Request for Proposals (RFP) #2436 to invite Applicants to submit proposals to successfully open and responsibly operate commercial cannabis businesses in the City of Concord, based on the following number of City Cannabis Licenses available pursuant to Chapter 5.80 (Cannabis) of the City's Municipal Code:

- Three (3) Storefront Retail Licenses
- Three (3) Non-Storefront Retail Licenses
- Two (2) Microbusinesses with Storefront Retail Licenses

The Instructions to the RFP, with exhibits, are available at the City's Cannabis Regulations webpage at: <https://www.cityofconcord.org/Cannabis>. Two Addendums to the RFP Instructions (dated October 10, 2020 and November 16, 2020) are also posted on the City's Cannabis webpage.

As part of the RFP Process, Applicants who do not advance to Phase IV to be interviewed by the City Council based on their scoring and ranking are allowed to appeal that determination by submitting a written appeal to the City Manager's office within ten (10) days after the City has issued its notification that the Applicant is not advancing to Phase IV. As specified in the RFP Instructions, the administrative appeal is to be considered by an independent Hearing Officer.

This Administrative Hearing Instructions and Procedure for Appeals shall establish the procedure for handling and determining the outcome of each appeal submitted in connection with RFP #2436.

#### II. **Summary of RFP #2436 Process:**

Pursuant to the RFP Instructions, the RFP Process consists of the following four Phases:

- Phase I (Initial Review of Submittal Requirements).* The RFP mandates that all Proposals must be submitted in their entirety no later than 4:00 p.m. on November 19, 2020. No late proposals are to be considered. City staff is to conduct the initial review of the submitted Proposals for completeness; those Proposals that are deemed complete are to be forwarded to the City's Consultant, HdL Companies, for evaluation, scoring and ranking. Incomplete proposals are to be deemed ineligible to proceed to Phase II, with no rights to appeal this determination.
- Phase II (Criteria Evaluation and Scoring).* On July 28, 2020, the City Council approved the Evaluation Criteria and Scoring to be used by HdL Companies in their review of the Proposals, as set forth in Exhibit B of the RFP Instructions. Applicants who scored a minimum of 80% (or at least 1,6000 points out of 2,000) in Phase II are to be moved on to Phase III of the RFP Process.

The evaluation matrix is available at this link:

[https://www.cityofconcord.org/DocumentCenter/View/5287/Exhibit-B\\_Evaluation-Criteria-and-Scoring-Detail](https://www.cityofconcord.org/DocumentCenter/View/5287/Exhibit-B_Evaluation-Criteria-and-Scoring-Detail).

- C. *Phase III (Eligibility List).* Applicants who meet the scoring threshold of at least 1,600 points are to be ranked by HdL Companies within each license category (Retail Storefront, Retail Non-Storefront and Microbusiness with Retail Storefront). The ranking list is to be subsequently forwarded to the City Manager to identify and determine the highest scoring Applicants to advance to Phase IV, for each license type as follows:

- Six (6) Applicants for Retail Storefront
- Six (6) Applicants for Retail Non-Storefront
- Four (4) Applicants for Microbusiness with Retail Storefront

In the case of a tied score, the City Manager has the discretion to increase the number of Applicants to be interviewed by the City Council.

City staff is to notify each Applicant of their respective ranking and inform them whether or not they will advance to the Phase IV of the RFP Process, which includes interview and selection by the City Council. Applicants who do not receive adequate scoring or ranking to advance to Phase IV may appeal this determination by submitting a timely written appeal to the City (as detailed below).

- D. *Phase IV (Interviews and Final Selection).* Phase IV review is anticipated to occur following the conclusion of the appeal period and/or after all decisions have been rendered on any filed appeals. All Applicants who have been ranked with the highest scores in their respective license categories shall proceed to City Council for review, interview, and selection. Applicants who have been selected by the City Council may then apply for their respective City Cannabis License and land use approval(s).

### III. **Appeal:**

- A. *Appeal.* The RFP Instructions provide that Applicants who are notified that they have not been included on the Eligibility List (Phase III) to advance to Phase IV may submit a written appeal (via email) to the City Manager's office ([cityclerk@cityofconcord.org](mailto:cityclerk@cityofconcord.org)) within ten (10) days from the date that the City has issued its notification that the Applicant will not move forward to the City Council interviews in Phase IV. A \$3,000 deposit to cover the costs of the appeal is also required to be submitted by Appellant at this time. (This deposit may need to be replenished by Appellant should the cost of appeal exceed the initial deposit). The Appeal Form to be used by Appellants is available on the City's Cannabis Regulations webpage: <http://www.cityofconcord.org/Cannabis>. The written appeal must specify the grounds for appeal and shall include all documents and written materials to be considered at the appeal hearing.

For purposes of the appeal process, all time deadlines shall refer to consecutive calendar days, with a close of business time of 4:00 p.m.; if the last day falls on a weekend or on a City holiday, the last day shall be extended to the following working day until 4:00 p.m.

- B. *Grounds for Appeal.* As specified in the RFP Instructions, grounds for appeal include:
1. Deviation from the City's published Competitive Selection Application Instructions that materially and adversely affected the applicant by altering the outcome of the City's decision on the Applicant's proposal. Examples of appealable deviations are:
    - i. Failure on the part of the City to provide appropriate notification regarding changes to the process via website postings and/or email to the Applicant prior to the time the application was submitted.

- ii. Failure on the part of the City to provide an Applicant an equal opportunity to modify an application, where that opportunity was provided to other applicants.
  2. The scoring of one or more portions of the Applicant's proposal was not justified based on the information presented in the submittal, or due to a material error or omission on the part of the entity scoring the proposal submittal.
    - i. Any appeal must be supported by evidence that the Applicant presented the relevant information with completeness and in the appropriate section of the proposal. Information presented in the proposal that is incomplete in nature, or that is relevant to a question posed by the City on the Application Instructions and Procedures but appears in the incorrect section, even if complete, shall be grounds for the dismissal of the appeal.

**IV. Appeal Hearing:**

- A. *Appointment of Hearing Officer and Timing of Hearing.* In the case of an appeal, the City Manager will appoint an independent Hearing Officer to consider the appeal and conduct an appeal hearing, with the target of scheduling the hearing fourteen (14) days after receipt of the appeal.

Due to the COVID-19 pandemic, all appeal hearings shall take place virtually at a recorded Zoom meeting. The Hearing Officer, through the City Manager's office, shall notify the appellant of the time and place of the hearing, with the appropriate Zoom link.

At the discretion of the Hearing Officer, the hearing date may be continued to a hearing date that is mutually agreeable to all parties.

- B. *Submittal of Documents/Materials.*

1. Appellant documents. All of Appellant's documents and materials supporting the appeal shall be submitted to the City at the same time as the written Appeal Form. If the supporting documents are too lengthy to be submitted by email, Appellant may arrange with City staff to transmit the documents via drop box or flash drive. City staff shall then forward these documents to the Hearing Officer for review at least seven (7) days prior to the hearing.
2. City Written Response. The City's written response and any other documents prepared or assembled in response to the appeal shall be submitted to the Hearing Officer by email at least seven (7) days before the scheduled hearing, with a copy sent to the Appellant by email.
3. The Hearing Officer shall have the discretion to consider any late submitted documents.

- C. *Hearing Procedure.*

1. The appeal hearing shall be considered an informal hearing. While the credibility and relevancy of the submitted evidence and testimony shall be evaluated by the Hearing Officer, the rules of formal evidence shall not apply. All parties and/or witnesses shall be sworn in by the Hearing Officer before testifying.
2. The Hearing Officer shall allow the parties to present arguments and summarize evidence in the record, subject to the following order and rules:
  - i. Appellant and/or Appellant's representative shall have 20 minutes to make a presentation in support of the appeal.

- (a) Prior to the hearing date, the Appellant may submit a request to the Hearing Officer for additional time, not to exceed 40 minutes, and the reason why additional time is requested (see Appeal form). The Hearing Officer has the discretion to allow for additional time for Appellant's presentation. In addition, the Hearing Officer may grant additional time at the time of the hearing to either party as deemed necessary.
- iii. Thereafter, the City's Consultant and/or City staff/representative shall have 20 minutes to make its presentation to summarize the City's scoring and ranking of Appellant's Proposal in the RFP process.
- iv. After the initial presentations by the Appellant and the City, each party may have five (5) minutes to present rebuttal arguments.
- v. The Hearing Officer may ask questions from either party at any time during the hearing.
- vi. Once the Hearing Officer is satisfied that each party has been provided a reasonable opportunity to present their case, the Hearing Officer will then close the Appeal Hearing.
- vii. The appeal hearing shall be recorded and retained by the City for a period of two (2) years.

D. *Hearing Officer's Written Decision.* Once a hearing on an appeal has taken place, the Hearing Officer shall issue a written decision on the appeal within ten (10) days of the appeal hearing date, and the Hearing Officer shall provide the written decision by email to both the Appellant and the City. The Hearing Officer's written decision shall provide a determination as to whether or not an Appellant should have been given a higher score in the Phase II (Criteria Evaluation and Scoring) portion of the RFP process, and the Hearing Officer shall provide the reasoning and refer to the evidence in support of the written decision.

- 1. If the Hearing Officer's decision on the appeal provides for a new score for Appellant and if this new score is deemed to be equal or higher to the scores attributed to the top ranked Applicants who are already advancing to Phase IV (*i.e.*, within the top six (6) scores for retail, the top six (6) scores for non-storefront, and the top four (4) scores for microbusiness with storefront), the Appellant shall be allowed the opportunity to join with the other high ranked Applicants in advancing to Phase IV (Interviews and Selection) of the RFP process (In this case, an additional deposit of \$7,000 will be required to cover the costs of Phase III and Phase IV). If the new score does not place the Appellant in a ranking equal to or higher than the top-ranking Applicants within each respective license category, the Appellant shall not proceed to Phase IV of the RFP process.

E. *Hearing Officer's Decision is Final.* The written decision of the Hearing Officer on each appeal shall be considered final on the day that it is transmitted to the Appellant. The written decision is not subject to further appeal with the City.

- 1. Each written decision issued by the Hearing Officer shall contain the following language: "There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date that the decision is final (Code of Civil Procedure Sec. 1094.6)."