



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: JULY 13, 2017

CONTINUED FROM JUNE 8, 2017

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Date: July 6, 2017
Case No.: 2014-003153CUA
Project Address: 2505 NORIEGA STREET
Zoning: Noriega Street Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 2069/012
Project Sponsor: Ryan Hudson
2029 Market Street
San Francisco, CA 94114
Staff Contact: Andrew Perry – (415) 575-9017
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Recommendation: **Approval with Conditions**

PROJECT DESCRIPTION

The project sponsor proposes to establish a new Medical Cannabis Dispensary (MCD) (d.b.a. The Apothecarium) at 2505 Noriega Street, within a currently vacant ground floor retail commercial space last occupied by Ace Pharmacy. The proposal would allow for the on-site sale of medical cannabis – including concentrates, edibles, and tinctures – and also proposes to provide delivery services to patients of medical cannabis. The MCD would not allow for on-site medication (e.g. smoking, vaporizing, or consumption of edibles), nor on-site cultivation for harvesting of medical product. The proposed hours of operation are 9 a.m. to 9 p.m., seven days a week.

The proposal would make tenant improvements to the approximately 2,780 square foot corner retail space with approximately 103.5 linear feet of frontage along Noriega Street and 32nd Avenue at the ground floor of the building. No physical expansion of the building is proposed, and exterior work is limited to repair of the existing storefront only. No parking would be required for the change of use. The project sponsor will maintain a full-time security guard at the storefront, and will install security cameras to cover each room, point of sale, entry, exit, and adjacent sidewalks.

The project sponsor's goal is to provide medical cannabis to registered patients within the Sunset and other nearby neighborhoods, as there are currently no MCDs in the surrounding area. The MCD would operate as the region's first bilingual (Cantonese) and bicultural dispensary, serving the neighborhood community in a manner that collaborates with traditional Asian medical practices. The project sponsor currently operates an MCD at 2029 Market Street in San Francisco and notes that there are more than 3,900 existing Apothecarium patients that reside within the zip codes of the Sunset neighborhood, and who thus stand to benefit from an MCD closer to their place of residence.

On May 5, 2015, the Board of Supervisors passed legislation under Resolution No. 179-15 to impose interim zoning controls for an 18-month period for parcels within the Irving, Judah, Noriega, and Taraval Street Neighborhood Commercial Districts, requiring Conditional Use Authorization, and imposing additional conditional use authorization criteria for Medical Cannabis Dispensaries. On December 13, 2016, the Board of Supervisors passed legislation under Resolution No. 544-16 extending these interim controls for an additional six month period. The project sponsor originally filed their application prior to the passage of the interim controls, and subsequently filed a Conditional Use Authorization application when the requirement changed.

The project was first scheduled to appear before the Planning Commission at the June 8, 2017 hearing. However, due to the fact that the interim zoning controls expired on May 5, 2017, staff was informed that the Planning Commission could not hear the request for Conditional Use Authorization on that day, as there was no corresponding Conditional Use Authorization requirement in place. Meanwhile, the Board of Supervisors was in the process of enacting permanent controls to require Conditional Use Authorization for MCDs in the subject zoning district. These controls, enacted through Ordinance No. 100-17, were signed by the Mayor on May 19, 2017 and thus took effect on June 19, 2017. Given that the project would need to comply with the permanent controls in order to obtain an MCD permit under Article 33 of the Health Code, the project and request for Conditional Use Authorization were continued without comment to the July 13, 2017 hearing, when the requirement for Conditional Use Authorization as set forth in the permanent controls would be in effect.

SITE DESCRIPTION AND PRESENT USE

The project is located at the southwest corner of Noriega Street and 32nd Avenue, Block 2069, Lot 012. The subject property is located within the Noriega Street Neighborhood Commercial District ("NCD") and a 40-X Height and Bulk District. The property is developed with a one-story commercial building constructed circa 1942, and has two retail tenant spaces. The proposed MCD will occupy the corner retail location; the adjacent commercial space is currently occupied by a Limited Restaurant (d.b.a. Quon Ngon Vietnamese Noodle House). The subject property measures approximately 50 feet by 73 feet, with 3,675 square feet of lot area, and full lot coverage.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located within the Noriega Street Neighborhood Commercial District (NCD) and a 40-X Height and Bulk District. The Noriega Street NCD is located in the Outer Sunset neighborhood and stretches along Noriega Street from 19th to 27th Avenues, and resumes again between 30th and 33rd Avenues. The District is intended to provide a selection of convenience goods and services for the residents of the Outer Sunset neighborhood, and the controls are designed to promote development that is consistent with existing land use patterns and support the District's vitality. The District currently has a high concentration of restaurants, as well as a number of professional, realty, and business offices, financial institutions, and medical service uses. The area surrounding this part of the Noriega Street NCD is almost exclusively zoned RH-1 (Residential House, One-Family).

The subject location along Noriega Street is served by the 7, 7R, and 7X Muni Bus lines, and is also in proximity to commonly used bicycle routes along Ortega and Kirkham Streets, and along 34th Avenue. The immediate area is not identified as part of the Vision Zero High Injury Network for pedestrians and

cyclists, and there are existing traffic calming islands located immediately adjacent to the subject property at 32nd Avenue and at 33rd Avenue.

There are no other Medical Cannabis Dispensaries currently located in proximity to the subject property; the nearest MCDs are located more than 2 miles away at 4811 Geary Boulevard within the Inner Richmond neighborhood, and 1944 Ocean Avenue near the Ingleside Terraces neighborhood.

ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	May 19, 2017	May 17, 2017	22 days
Posted Notice	30 days	May 9, 2017	May 5, 2017	34 days
Mailed Notice	30 days	May 9, 2017	May 8, 2017	31 days

The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the conditional use authorization process. The hearing notice was mailed to owners and occupants within a 300-foot radius of the subject property, as required per Planning Code Section 790.141(c).

As the proposal was continued at the duly-noticed Planning Commission hearing on June 8, 2017, no additional notification is required under the Planning Code for the date of continuance.

PUBLIC COMMENT/COMMUNITY OUTREACH

- The project sponsor has made extensive community outreach efforts, led in part by former Oakland Mayor Jean Quan and her husband, Floyd Huen, M.D., who has been at the forefront of prescribing medical cannabis to patients. A more detailed summary of outreach efforts can be found as an attachment to the project sponsor’s application submittal. The project sponsor’s efforts to date include: meetings with a variety of active Sunset neighborhood organizations and merchants along Noriega Street; tours of the Apothecarium’s existing MCD facility on Market Street in the Castro neighborhood; interviews and information provided to multiple media outlets including Chinese-language media; door-to-door outreach to neighbors in the vicinity accompanied by Cantonese and Mandarin interpreters; and public meetings held at the Ortega Branch Library, including a patient education class entitled “Cancer and Cannabis: The Non-Euphorics”. The project sponsor notes that in addition to the hundreds of letters of support received on the project, that there is general broad support among Sunset residents for medical cannabis, having voted by 66 and 58 percent, respectively, to legalize medical cannabis through Proposition 215 in 1996 and further open marijuana laws through Proposition 64 in 2016.

- To date, the Department has directly received approximately 1,000 emails or letters in support of the proposal, many of which are from residents of the Sunset neighborhood who would utilize the proposed MCD. Many of the communications received contain similar language and format; therefore, while all letters are available as part of the case record, the printed case report only contains a representative example of the letters that were received.

The project sponsor notes in their submittal, which appears as an attachment to this case report, that they have collected 1,457 letters of support from San Francisco residents, 633 of which are from Sunset residents. The project sponsor also notes that 111 are from residents within 1,000 feet of the project site, and that 189 letters are from parents.

- To date, the Department has also received approximately 767 emails or letters in opposition to the proposal, many of which are also from residents of the Sunset neighborhood. Many of these communications contained similar language and format; therefore, while all letters are available as part of the case record, the printed case report only contains a representative example of the letters that were received.

In addition to the individual letters and emails that were submitted, the Department has also received hundreds of pages of petition signatures from San Francisco and non-San Francisco residents alike. In total, it is estimated that upwards of 5,000 signatures have been obtained in this manner; an exact number is difficult to obtain due to the sheer volume of signatures received, as well as due to uncertainties around the possibility of repeated signatures since these pages were submitted by a few organizations over the course of the Department's review, with a large batch initially submitted in 2015 and then again in 2017.

In addition to the opposition documented above, the staff report contains letters submitted on behalf of a collection of residents and merchants along Noriega Street, the Ark of Hope Preschool located two blocks away at Noriega and 34th Avenue (and represented by the Pacific Justice Institute), and the Lutheran Church of the Holy Spirit located one block away at Noriega and 31st Avenue.

- On June 8, 2017, Supervisor Tang's (District 4) office reported to Department staff the following comment totals that their office received through that date:
 - 926 signatures and letters of support, with 171 from residents of District 4 and 755 from other residents of San Francisco
 - 5,875 signatures and letters of opposition, with 3,217 from residents of District 4, 2,009 from other residents of San Francisco, and 647 from non-San Francisco residents

ISSUES AND OTHER CONSIDERATIONS

- **Medical Cannabis Dispensary (MCD).** Planning Code Section 790.141 states that all MCDs are required to be heard by the Planning Commission, which will consider whether or not to exercise

its discretionary review powers over the building permit application. The Conditional Use Authorization hearing satisfies this Code requirement.

San Francisco Health Code, Article 33, Medical Cannabis Act 3308:

(e) It is unlawful for any person or association operating a medical cannabis dispensary under the provisions of this Article to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such dispensary to remain open, or patrons to remain upon the premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department shall issue permits to two medical cannabis dispensaries permitting them to remain open 24 hours per day. These medical cannabis dispensaries shall be located in order to provide services to the population most in need of 24 hour access to medical cannabis. These medical cannabis dispensaries shall be located at least one mile from each other and shall be accessible by late night public transportation services. However, in no event shall a medical cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two medical cannabis dispensaries permitted to remain open 24 hours per day.

The 2505 Noriega Street MCD project will afford the project sponsor the opportunity to comply with the SF Health Code and operate legally and under SFDPH supervision. The applicant will still be required to obtain a permit from SFDPH and will be subject to their regulations including tax compliance, non-profit operation, background checks and annual compliance inspections. This proposal would convert a vacant ground floor retail space to a medical cannabis dispensary use.

- **Planning Code Compliance.** The proposed MCD complies with all relevant Planning Code requirements. Most notably, the subject property was not found to fall within 1,000 feet of any public or private elementary or secondary school, or community facility or recreation center primarily serving persons younger than 18 years of age. A map has been included as an attachment to this report, which demonstrates Planning Code compliance. The map does identify one Early-Age Child Care facility (d.b.a. Ark of Hope Preschool) within 1,000 feet of the subject property; however, this facility only serves children up to the age of 6 years old and as such does not meet the Planning Code definition of a school, and would therefore not automatically prohibit the location of an MCD at the subject property.
- **Clustering and Neighborhood Impact.** In the subject District, the Planning Code does not prohibit the clustering of MCDs, nor does the San Francisco Health Code. As of February 2017, there are thirty-six (36) permitted MCDs¹ with the Department of Public Health (DPH); additionally, the Planning Commission has recently approved eight (8) more MCDs, which have not yet completed the permitting process through DPH. Of the 44 MCDs that are either permitted by DPH or have received Planning Commission approval, there are none that are located within 2 miles of the subject property. A map has been included as an attachment to this report, which

¹ 7 of the 36 permitted MCDs in the DPH database are operating out of a shared office (delivery-only) space at 214 California Street. Therefore there are only 30 distinct locations with permitted MCDs in the City, with recent Planning Commission approval for 8 additional locations.

shows the concentration of MCDs in the immediate vicinity and City as a whole. As there are no other MCDs in the immediate vicinity of the subject property, there should not be any substantial negative impacts that may arise due to clustering of this land use type.

- **Proposition 64/Adult Use of Marijuana Act.** Although approved by the voters in November 2016, the Adult Use of Marijuana Act does not authorize any existing or future MCD to distribute nonmedical (aka “adult use”) cannabis without (1) a state license and (2) compliance with San Francisco’s local laws. While Proposition 64 requires the State to begin issuing licenses by January 2018, the Planning Department, along with other City agencies, is crafting local land use and other regulatory controls to address the production, processing, and sale of adult use cannabis. Per Mayor Lee’s Executive Directive 16-05, these regulations are to be introduced by September 2017 so that they can be effective prior to the onset of the State licensing system. The Department maintains a very high level of confidence that San Francisco will embrace the opportunity to establish local land use regulations for adult use cannabis businesses, and in particular that these controls will articulate a discretionary process through which existing MCDs can apply to convert in whole or part to adult use cannabis dispensaries. It is unlikely in the extreme that existing MCDs will be allowed to dispense adult use cannabis on a ministerial (or “automatic”) basis. As with any change to the Planning Code, these controls will be presented to the Planning Commission for review and discussion prior to consideration by the Board of Supervisors and Mayor.

- **Additional Findings for MCDs subject to Interim Zoning Controls.** Resolution Nos. 179-15 and 544-16, which created and extended interim zoning controls requiring Conditional Use Authorization for MCDs in the four Sunset NCDs, set forth additional criteria CU criteria that must be satisfied by a proposed MCD, specifically that: the MCD will bring measureable community benefits and enhancements to the NCD; the MCD has prepared a parking and transportation management plan sufficient to address the anticipated impact of patients visiting the MCD; and the MCD has demonstrated a commitment to maintaining public safety by actively engaging with the community prior to applying for the conditional use, including adequate security measures in its operation of the business, and designating a community liaison to deal effectively with current and future neighborhood concerns.

Based on the subject application submittal, the Department does find that the additional criteria have been met, as further detailed in the attached Draft Motion.

The additional findings required by Resolution Nos. 179-15 and 544-16 were not included in the most recent legislation for permanent zoning controls under Ordinance No. 100-17. Therefore, there is no longer a requirement that such findings must be made prior to granting Conditional Use Authorization. However, the Draft Motion (No. 8 in the Findings section) discusses how the project meets these additional criteria in order to provide the Commission with additional information in their consideration of the Conditional Use Authorization request.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant Conditional Use Authorization to allow the establishment of a new Medical Cannabis Dispensary (d.b.a. The Apothecarium) within the Noriega Street Neighborhood Commercial District, pursuant to Planning Code Sections 303 and 739.84, and formerly pursuant to Planning Code Section 306.7 and interim zoning controls established under Resolution Nos. 179-15 and 544-16.

BASIS FOR RECOMMENDATION

- The project allows for the establishment of a business with a known registry of some 3,900 existing patients which live within the broader Sunset neighborhood, and which stand to benefit from a Medical Cannabis Dispensary located closer to their residence. There are no MCDs that currently exist within the Sunset neighborhood, and none within 2 miles of the proposed location.
- The proposed operators and owners of the business have extensive experience and expertise on the subjects of medical marijuana regulation, prescription of medical marijuana to patients, and on the operation of an MCD itself. The Apothecarium is a locally-cultivated MCD, which has operated a location in the Castro neighborhood for approximately 6 years, and has grown to be an exemplary model for the operation of MCDs within the City, demonstrating how MCDs can collaborate with and blend into the community, and how an MCD can help to clean up the area in which they operate.
- Similar to the Apothecarium's Castro location, which has since its inception donated more than \$335,000 to neighborhood and other local non-profits and charitable organizations, the owners of the proposed MCD anticipate making similar contributions to the Sunset neighborhood.
- Similar to the Apothecarium's Castro location, the proposed MCD will host free weekly programs that will be available to residents of the neighborhood, including yoga, meditation, anxiety and depression programs, and veteran support groups. The MCD also expects to offer, or support other organizations which offer programming which explores connections between medical cannabis and traditional Chinese medicine, and educational programming around senior access to health care and youth education around medical cannabis.
- The project sponsor has hired a consultant to conduct a parking and traffic study for the proposed MCD, which found that the proposed use would not be detrimental to parking and traffic in the vicinity, as there is a sufficient supply of parking within 1,000 feet of the proposed project to accommodate the anticipated number of vehicle trips during the peak hour. Additionally, trip generation estimates for the proposed MCD are similar to, or less than the trip generation estimates which would be caused by another retail or eating and drinking use, as would likely be located within the District.
- The project site is directly accessible by transit along Noriega Street, and the project sponsor has agreed to voluntarily provide certain Transportation Demand Management measures, which should help to further reduce the number of vehicle trips to the MCD.
- The proposed MCD would not allow for any cultivation, processing, smoking, vaporizing, or other means of medication on site.
- The proposed MCD has conducted extensive community outreach and has committed to continue building relationships with Sunset residents, so that any concerns may be addressed quickly. The proposed MCD operator has direct experience in the industry, and plans to employ

industry-standard best practices with regards to safety and security, including use of a surveillance system and employment of an on-site security guard at the entrance to the business.

- The project promotes the continued operation of an established, locally-owned business and contributes to the viability of the overall Noriega Street NCD, as it will occupy a vacant storefront and add to the diversity of goods and services provided within the District.
- The project meets all applicable requirements of the Planning Code.
- The project is desirable for, and compatible with the surrounding neighborhood.
- The business is not a Formula Retail use and would serve the immediate neighborhood.

RECOMMENDATION: Approval with Conditions
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Attachments:

- Parcel Map
- Sanborn Map
- Zoning Map
- Aerial Photographs
- Context Photographs
- 1,000' Radius Map – Schools and Child Care Facilities
- MCD Concentration/Proximity Map
- MCD Combined CUA/312 Notice
- California Environmental Quality Act (“CEQA”) Categorical Exemption
- Resolutions 179-15 and 544-16 – Interim Zoning Controls
- Project Sponsor Submittals
 - Hearing Brief and Exhibits (dated 6/29/2017)
 - Letter to Department (dated 6/20/2017)
 - MCD/CUA Application Submittal
 - Fehr & Peers Consultant-Prepared Transportation and Parking Study
- Project Communications in Support:
 - Common Example Letter in Support
 - Other Letters in Support
 - Letter from Castro Merchants Association
- Project Communications in Opposition:
 - Common Example Letter in Opposition
 - Other Letters in Opposition
 - Example Opposition Petition Signature Page
 - Letter from Ark of Hope Preschool (3/25/2017)
 - Letter from Pacific Justice Institute – Representing Ark of Hope Preschool (3/30/2017)
 - Letter from Lutheran Church of the Holy Spirit
 - Letter from Pacific Justice Institute – Representing the Lutheran Church of the Holy Spirit (9/17/2015)
 - Letter from Noriega merchants (9/4/2015), updated submittal (6/30/2017)
- Reduced Architectural Plans

Attachment Checklist

- | | |
|---|--|
| <input checked="" type="checkbox"/> Executive Summary | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Existing Conditions</u> |
| <input checked="" type="checkbox"/> Environmental Determination | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u> |
| <input checked="" type="checkbox"/> Height & Bulk Map | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Parcel Map | 3-D Renderings (new construction or significant addition) |
| <input checked="" type="checkbox"/> Sanborn Map | <input type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Aerial Photo | <input type="checkbox"/> Wireless Telecommunications Materials |
| <input checked="" type="checkbox"/> Context Photos | <input type="checkbox"/> Health Dept. review of RF levels |
| <input type="checkbox"/> Site Photos | <input type="checkbox"/> RF Report |
| | <input type="checkbox"/> Community Meeting Notice |
| | <input type="checkbox"/> Housing Documents |
| | <input type="checkbox"/> Inclusionary Affordable Housing Program: Affidavit for Compliance |

Exhibits above marked with an "X" are included in this packet

_____AWP_____

Planner's Initials

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